

ATTA News April 2015


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1 Presidential column

As I write this column winter seems to have arrived early in Christchurch with snow on the hills. While the snow did not last long, this is a sharp reminder that summer has well and truly gone, at least in New Zealand! While for many this is the break in the semester, for me it means needing to finish marking assignments and setting a test.

The ATTA Executive met (virtually) on 13 April and made progress on a number of matters. At this time I am delighted to be able to advise that we have almost finalised an agreement with Oxford University Press to continue on from CCH to sponsor the ATTA Doctorial Series, for at least the next two years, after which it will review its involvement. Further details, plus an invitation for submissions from members who have recently completed their doctorate will be made. You can also expect to hear more about the 2106 ATTA Conference to be hosted by the University of NSW, with Victoria University of Wellington anticipating finalising dates for 2017. Submissions have closed for the next issue of JATTA; your ongoing support of JATTA is critical to ATTA’s success, and I would like to thank everyone who has submitted a paper and would also like to thank in advance everyone who will be reviewing these submissions.

I would like to personally congratulate Professor Dale Pinto who has received Honorary Life Member of the Tax Institute in recognition of his outstanding contribution to the Institute. Congratulations also go to Justice Michelle Gordon who has been appointed a justice of the High Court of Australia. Justice Gordon was a key note speaker at the 23rd Annual ATTA Conference, and will be sworn in on 9 June 2015.

On the tax policy front, the New Zealand Minister of revenue released two papers signalling that the business transformation project of Inland Revenue is well underway. Making Tax Simpler: A green paper on tax administration and Making Tax Simpler: Better digital services for a better tax system, are important reading if you have an interest in tax policy. I would commend to you Lisa Marriott’s commentary on these developments.
The long awaited Rethink: Tax discussion paper, was released by the Australian Treasurer on 30 March 2015. At around 200 pages, there is plenty of reading, with 66 specific questions asked. This is the first of at least two papers, with solutions to be started to be considered as part of the options (green) paper in the second half of 2015. I would encourage all those interested in the future of the tax system to review this paper, and consider joining the debate. I do not intend to coordinate a submission on behalf of ATTA but would encourage members to make their own submissions.

Adrian Sawyer

2 Call for Articles: 2015 edition of JATTA – Extended submission date

The closing date for submissions to the next edition of the Journal of the Australasian Tax Teachers’ Association (JATTA) has been extended to Friday 29 May 2015.

All papers on taxation will be considered for publication. In particular, JATTA welcomes submissions from authors of the 2015 ATTA conference papers and other papers on the theme of this year’s ATTA conference: Tax – “It’s time” for change. JATTA can provide a forum for publication of the many excellent papers presented at the conference.

Submissions should be presented in MS Word format using double spaced 12 point Times New Roman font. For the purposes of ensuring that the refereeing process is anonymous, please ensure that your name does not appear anywhere on the paper (including in the headers or footers, or the MS Word document information) and also ensure that the footnotes do not reveal your identity. Furthermore, papers should conform to the 3rd edition of the Australian Guide to Legal Citation produced by the Melbourne University Law Review: see http://www.law.unimelb.edu.au/mulr/aglc.

An abstract of approximately 100 words is also required. A document separate to this should also be submitted with the author’s/authors’ details (eg, name/s, position/s, institution/s, contact email address/es, etc).

All submissions to JATTA are subject to double blind peer review by appropriate specialists in the particular field of taxation. JATTA satisfies the description of a refereed journal and was included in the ERA 2012 Journal List.

Please submit your papers by email to John Tretola at john.tretola@adelaide.edu.au no later than 29 May 2015.

3 Arrivals, departures and honours

The University of Notre Dame Australia has recently made the following tax-related appointments:
1. Professor John Prebble (Victoria University of Wellington) has been appointed an Adjunct Professor with the School of Law, Sydney;
2. Dr Holger Sorensen (Barrister, Ground Floor Wentworth Chambers) has been appointed an Adjunct Professor with the School of Law, Sydney;
3. George Syrota (formerly with the University of Western Australia) has been appointed a Sessional Lecturer/Tutor with the School of Law, Fremantle; and
4. Nicholas Augustinos has been promoted to the position of Senior Lecturer with the School of Law, Sydney.
Professor **Margaret McKerchar** will retire from UNSW effective 30 April 2015 and has been appointed as an Emeritus Professor of UNSW. Margaret is well known to ATTA members as a former President of ATTA and as a leading tax researcher and mentor to other researchers and students. Margaret was President of ATTA from 2001 to 2003, initiated JATTA, and initiated the Tax History Chapter of ATTA in 2013. Margaret was Head of School of the Australian School of Taxation (Atax, Faculty of Law) from 1 July 2009 until 31 December 2010 and was instrumental in the move of Atax to the UNSW Business School (and merger with the then School of Business Law and Taxation). She has devoted over 20 years voluntary service to CPA Australia and was President of the NSW Division of CPA Australia in 2009.

Margaret was awarded the Graham Hill Medal by her ATTA peers in 2009 in recognition of her outstanding contribution to tax teaching and policy. Margaret is recognised both nationally and internationally as a leading expert in taxpayer compliance behaviour; tax administration; and in the design and conduct of tax research. She has been a pioneer of advances in online education through the use of webinars, online marking and the use of Moodle learning communities as delivery strategies.

As an Emeritus Professor at UNSW she will, so far as time and circumstances permit, continue to mentor staff, provide advice on research and program design, supervise HDR students, and contribute to grants and publications.

John Taylor

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Congratulations to **Dale Pinto** who has been honoured by being made an Honorary Life Member of the Tax Institute, in recognition of his outstanding contribution to the Institute. The award was announced in front of 450 delegates. Dale is currently Chair of the Taxation Institute’s Education Quality Assurance Board, a member of TEQSA’s Expert Panel in Accounting and Taxation as well as the Board of Taxation’s Advisory Panel and the ATO’s Tax Technical Panel (Superannuation).

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**4 Tax and Transfer Policy Institute invitation**

The Tax and Transfer policy institute would like to invite all ATTA members to our conference in April 2015. ATTA members will receive free registration.

LOOKING FORWARD AT 100 YEARS: WHERE NEXT FOR THE INCOME TAX?
The Tax and Transfer Policy Institute will present a landmark research and policy conference on the future of the income tax, to be held at Crawford School of Public Policy, The Australian National University, Canberra, from Monday 27 to Tuesday 28 April 2015. As the Federal Government prepares its White Paper on Tax Reform during 2015, our income tax has reached its first century. The personal and company income tax has shown remarkable resilience as together, these tax bases have come to provide the lion’s share of tax revenues in Australia in the last 100 years. Today, the income tax faces new stresses from social and economic changes in the way that we work, save and invest and from the globalisation and digitisation of Australia’s economy.

What role should the income tax play in Australia’s future tax system? What can we learn from the past or from new research in reforming the policy, law and administration design of our income tax for the future? Papers are invited on any aspect of theory or practice of the income tax including personal and company tax, from diverse disciplinary perspectives in public economics, law, accounting, political science or public policy disciplines.

Confirmed international academic keynote speaker at this conference will be Professor Michael Graetz, of Columbia University, in the United States. Presenters include:
- Patricia Apps
- Siobhan Austen
- Valerie Braithwaite
- Rob Bray
- Geoffrey Brennan
- Graeme Cooper
- Richard Eccleston
- Chris Evans
- Youngdeok Lim
- John Minas
- Mark Bowler Smith
- Julie Smith
- Antony Ting
- Richard Vann
- Neil Warren

The conference will run from 9am on Monday 27 April to 2pm on Tuesday 28 April 2015. A program will be available shortly on our website taxpolicy.crawford.anu.edu.au/ This event is by invite only with a limited number of places available to the public. Please register your interest to attend the conference with diane.paul@anu.edu.au.

5 New Zealand developments

Developments in New Zealand over the last month include:

- Extension of the drought relief / income equalisation scheme to farmers in the Canterbury and Marlborough regions (as well as Central and North Otago).
- A change in the ‘use of money’ interest rates from 8th May 2015. The rates will increase from 8.4% to 9.21% (charged by Inland Revenue) on underpaid tax and from 1.75% to 2.63% (paid by Inland Revenue) on overpaid tax.
- Publication of an Officials’ Issues Paper on simplifying the tax treatment of employee share schemes. At the present time, employees must file an IR 3 return where they have received benefits under an employee share scheme (as the benefits are not taxed at source). The proposal is that the Income Tax Act 2007 is amended to allow for employers to account for such benefits – potentially through the PAYE system.
A consultation campaign on tax administration was released by the Minister of Revenue, Todd McClay, on 31st March. The campaign is known as Making Tax Simpler and started with the release of two consultation papers. The papers are titled:

• Making Tax Simpler: A green paper on tax administration. This paper outlines some of the areas targeted for possible improvements, including the collection and calculation of PAYE, GST and related information; using existing business processes and technology to calculate provisional tax; helping smaller businesses with their taxes; and reviewing withholding tax rules.

• Making Tax Simpler: Better digital services for a better tax system. This paper outlines options to make better use of digital technology both for paying taxes and receiving entitlements. Options include working with third parties such as banks and software developers; providing assistance to those who have limited access to, or skills with, digital technology; and expansion of digital services.

The Taxation (KiwiSaver HomeStart and Remedial Matters) Bill was passed on 31st March. The changes in this Bill will allow some KiwiSaver (retirement savings scheme) members to withdraw more of their savings in order to purchase their first home. Members may now withdraw the annual member tax credit (paid by the Government), along with their own contributions and the contributions made by employers.

Lisa Marriott

6 Recent Federal Court of Australia tax cases

Recent Federal Court of Australia cases, (from 3 March to 7 April 2015), with the catchwords taken from the Federal Court website. For the full cases check the FCA website search engine here (http://www.fedcourt.gov.au/publications/judgments/search#legislation) or Google the case names.

Commissioner of Taxation v Moignard [2015] FCA 143
White J, 3 March 2015
Catchwords
Taxation: appeal from decision of Administrative Appeals Tribunal (AAT) that trust income was not part of taxpayer’s assessable income pursuant to ss 97 and 101 of Income Tax Assessment Act 1936 (Cth) because taxpayer had not been presently entitled to that income – whether AAT misconstrued or misapplied ss 97 and 101 – whether AAT failed to address issues or make necessary findings of fact in determining present entitlement – whether AAT erred in having reliance on subsequent conduct of trustee – whether AAT misapplied or reversed onus of proof imposed on taxpayer by s 14ZZK of Taxation Administration Act 1953 (Cth) – whether taxpayer bore burden of establishing actual tax liability before AAT.

Donoghue v Commissioner of Taxation [2015] FCA 235
Logan J, 17 March 2015
Catchwords:
Income Tax – notices of assessment issued to applicant pursuant to audit conducted by respondent – application under s 39B of the Judiciary Act 1903 (Cth) for orders declaring assessments invalid and quashing them – injunction – source of information – where audit performed and assessments made with the benefit of material provided by third party individual without applicant’s permission – whether third party material subject to legal professional privilege – state of knowledge of respondent – whether there was conscious misuse of privileged material
Held: third party worked to or for law firm with which the applicant had a retainer – alternatively third party acted as applicant’s agent for the purposes of applicant’s dealing with law firm – communications and documents made for dominant purpose of obtaining legal
advice or for use in litigation and were therefore subject to legal professional privilege – respondent held apprehension that this was the case – material assisted respondent’s train of inquiry and in process of making assessments – no right given by s 166 or s 263 of the Income Tax Assessment Act 1936 (Cth) to Commissioner to use material which is subject to legal professional privilege – element of recklessness in process of assessment sufficient to amount to conscious maladministration as described in Federal Commissioner of Taxation v Futuris Corporation Ltd (2008) 237 CLR 146 – assessment quashed – respondent restrained from using third party material.

Donoghue v Commissioner of Taxation [2015] FCA 291
Logan J, 17 March 2015
Catchwords
Income Tax: orders made in separate judicial review proceedings quashing assessments – effect of those orders on related recovery proceedings based on debt created by those assessments instituted by the Deputy Commissioner of Taxation against tax payer and appeal proceedings under Part IVC of the Taxation Administration Act 1953 (Cth) challenging those assessment – request by Deputy Commissioner of Taxation that recovery proceedings be adjourned
Held: an adjournment of the recovery proceedings would deny tax payer the fruit of forensic success in the judicial review proceedings – recovery proceedings dismissed – tax appeals adjourned for further directions as dismissal could prevent tax payer from challenging taxation liability under Part IVC if any appeal against the quashing of the assessments was upheld.

Tax Practitioners Board v Li [2015] FCA 233
Edmonds J, 17 March 2015
Catchwords
Civil Penalties – quantum – applicant contravened Tax Agent Services Act 2009 (Cth) s 50-20 by recklessly making false, incorrect or misleading statements to Commissioner of Taxation – relevant considerations in fixing appropriate penalty – statements not deliberately or knowingly false – no intention to mislead Commissioner – tax agent registration terminated as result of conduct – loss caused to Commonwealth – inconvenience to taxpayers – specific deterrence – general deterrence – admission of contraventions prior to hearing – totality principle – proportionality of penalty to objective seriousness of contravening conduct – parity principle

Donoghue v Commissioner of Taxation [2015] FCA 301;
Logan J, 24 March 2015
Catchwords
Income Tax – application for orders consequential to judgment in judicial review proceedings quashing tax assessments and restraining further use by respondent of material used in making those assessments but subject to legal professional privilege – respondent required to deliver up to the applicant or destroyed privileged material and withdraw caveat and garnishee notices issued in respect of tax assessments
COSTS – indemnity costs sought against Commissioner of Taxation (Commissioner) in judicial review proceedings and Deputy Commissioner of Taxation (Deputy Commissioner) in related recovery proceedings – whether Deputy Commissioner acted in wilful disregard of a known fact – whether Commissioner’s submissions were unmeritorious to the point of unnecessarily prolonging proceedings – conscious maladministration in exercise of Commissioner’s assessment-making duty a developing area of law – Deputy Commissioner and Commissioner’s costs conduct not unreasonable – costs to follow the event in respect of both the judicial review and recovery proceedings

Smith v Boné, in the matter of ACN 002 864 002 Pty Ltd (in liq) [2015] FCA 319
Gleeson J, 7 April 2015
Catchwords

Bankruptcy and Insolvency – whether director caused company to trade while insolvent – whether reasonable grounds for suspecting company was insolvent – whether director failed to prevent company from incurring debts when aware of reasonable grounds to suspect company was insolvent – whether reasonable person in director’s position would have been aware of reasonable grounds for suspecting company was insolvent – where company made payment arrangements to repay tax debts – whether director acted honestly and ought fairly to be excused for contravention of civil penalty provision or breach of duty – amount of recoverable compensation – whether director entitled to set off – whether preferential payment made – Corporations Act 2001 (Cth), ss 588M, 588FF, 1317S, 1318

John Passant

7 Call for papers

The 6th Queensland Tax Researchers’ Symposium (QTRS) AND the 3rd Meeting of the Australasian Tax History Chapter (THC)
Griffith University Business School will host the 3rd meeting of the Australasian Tax History Chapter (THC) on Thursday, 2 July and the 6th Queensland Tax Researchers Symposium (QTRS) on Friday, 3 July 2015. These two events bring together tax academics and research higher degree students to discuss and present their current research interests. This is a joint initiative between academics from various universities with Griffith University, QUT, James Cook University and UNSW also sponsoring the event. These events build on the success of the annual symposium, which has been held since 2010. The 2015 Symposium will be held at Griffith University’s South Bank campus (Brisbane) located on the fringe of Brisbane’s central business district. Registration is open to academics with a research interest in tax, as well as research higher degree students who are currently undertaking an honours, Masters or PhD dissertation in a tax related topic. While registration is free, numbers are limited and attendees will need to register by Friday 15 May 2015. Attendees may register for one or both days. Those interested in presenting a paper (including research higher degree students) are encouraged to submit a short abstract of their work by 30 April 2015 (500 words) indicating whether they wish their paper to be part of the THC meeting on 2 July or the QTRS on 3 July. Authors will be notified of their acceptance by 11 May 2015. Note it is possible for tax academics to attend without presenting. General enquiries about both the THC and QTRS (including paper submissions and registration) should be directed to:
Anna Mortimore
Lecturer- Taxation
Griffith Business School, Griffith University
Email: a.mortimore@griffith.edu.au
Ph: +61 7 555 28082

The Global Conference on Environmental Taxation is the leading global forum for exchanges on the principles and practices of environmental taxation and other market-based instruments relevant for greening of the economy and progressing sustainable development. Research presented at the previous fifteen conferences has helped provide a much stronger theoretical and empirical underpinning of the legal, economic and behavioural issues in this area. These conferences are intended to advance knowledge, understanding and debate rather than any particular environmental agenda.
The theme for the Conference is **Green Fiscal Reform: Protecting our Natural Resources for a Sustainable Future**. The theme is designed to place greater focus on natural resource protection, a theme that has received less explicit attention in past conferences. It also emphasises an area of great concern to the host country, Australia.

We invite the submission of abstracts for the 16th Global Conference on Environmental Taxation (GCET16), to be held in Sydney at the UTS Haymarket campus, Australia from 23-26 September 2015.

Topics can extend from climate change and other sustainability related policies; biodiversity protection; environmental stewardship; pollution control; water conservation; land degradation; renewable energy and innovation such as wind, solar, geothermal, biogas; mining and rehabilitation; wildlife protection and feral animal treatment; while encompassing market instruments such as carbon pricing, emissions trading schemes, other environmental taxes, subsidies, direct action or spending programs and tax concessions both positive and perverse.

**Note:**
Wednesday 23 September 2015 will be an afternoon session open to everyone with PhD candidate presentations only.
Saturday 26 September 2015 will be a morning session open to everyone that will focus on evaluation frameworks for environmental taxes and concessions.

Abstracts should not exceed 400 words. No figures, tables, footnotes, endnotes or other references should be included in the abstract.

Final acceptance of any contribution requires registration of an author.

**Important dates:**
Deadline for submission of abstracts: 30th April 2015
Notification of acceptance of abstracts: 28th May 2015
Deadline for submission of papers: 24th August 2015

For further information and to submit your Abstract please visit:

We look forward to welcoming you to Sydney.

**Professor Natalie Stoianoff**
Conference Chair
Faculty of Law, University of Technology Sydney

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**Australian GST Journal**

The *Australian GST Journal* is a quarterly journal which has been published by Thomson Reuters since 1998. Papers between 3,000-8,000 words are encouraged. AGSTJ is subject to double blind peer review, and is listed on the ABDC Journal Quality List.

Papers for issue 2 are invited now. Papers for Issue 3 are due around June, and papers for issue 4 are due around August.

Please submit your papers to the General Editor Christine Peacock at peacock.c.a@gmail.com

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**International Conference of Chinese Tax and Policy**

The organising committee of the *International Conference of Chinese Tax and Policy* is pleased to announce this call for papers for the 2015 conference. The conference is to be held at Xiamen University, Xiamen, China on December 12-13, 2015.

The organising committee welcomes any paper dealing with the conference theme: **Individual Income Tax Reform in China**. All accepted papers have the priority to be selected for publication in the *Journal of Chinese Tax and Policy*, subject to an international blind peer-review process.

**Submission Guidelines**

- Please submit an abstract in English of 300 words.
- Please provide the final paper in English, and please provide the Chinese original if the work has been translated.
- If translation is needed for the paper, it can be applied with the *Journal of Chinese Tax and Policy*
- Please send all submissions to business.jctp@sydney.edu.au.

**Key Dates**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tr>
<td>May 9, 2015</td>
<td>Final date for submission of Abstracts. Acceptance will be notified by the end of June, 2015.</td>
</tr>
<tr>
<td>September 26, 2015</td>
<td>Final date for submission of written conference papers if assistance is required for the translated document.</td>
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<tr>
<td>November 14, 2015</td>
<td>Final date for submission of written conference paper for inclusion in full conference papers made available to conference attendees on the conference website.</td>
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<tr>
<td>November 28, 2015</td>
<td>Final date for submission of PowerPoint presentations for conference speakers.</td>
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**8 Tax and related meetings**

**Local**

**Tax and Transfer Policy Institute**, Crawford School of Public Policy, Australian National University *Looking Forward at 100 years: Where Next for the Income Tax?* 27-28 April 2015. As the White Paper tax reform process kicks off with release of the Issues Paper in the new year, Australia's income tax reaches 100 years of age. The keynote speaker is Profesor Michael Graetz of Columbia University. The conference will address key topics of future of the personal income tax, company tax and income tax in the federation. Confirmed speakers include Professor Geoffrey Brennan, Richard Vann, Chris Evans, Neil Warren and Richard
Eccleston. More information and program for this invitation conference will be available soon. Free registration for ATTA members. See further

Associate Professor Antony Ting, University of Sydney will be presenting a tax research seminar titled: ‘**General anti-Base Erosion and Profit Shifting (BEPS) rule: a second best solution to BEPS?**’ School of Taxation and Business Law, UNSW, Kensington Campus, Room 2055, 4 May 2015– Monday, 12.30-2.00pm. A light lunch will be provided. Please RSVP to Associate Professor Fiona Martin on f.martin@unsw.edu.au

**Tax and Transfer Policy Institute.** Crawford School of Public Policy, Australian National University **Seminar Series.** Christian Gillitzer, Senior Research Economist from the Reserve Bank of Australia will present our next seminar in the TTPI series. Tuesday 19 May 2015, 1-2pm. Further details and registration for the event will be available at
<https://taxpolicy.crawford.anu.edu.au/events/current>

The **6th Queensland Tax Researchers’ Symposium (QTRS) AND the 3rd Meeting of the Australasian Tax History Chapter (THC)**, Griffith University Business School, South Bank campus, Brisbane, 2-3 July 2015. This is a joint initiative between academics from various universities with Griffith University, QUT, James Cook University and UNSW also sponsoring the event. While registration is free, numbers are limited and attendees will need to register by Friday 15 May 2015. Attendees may register for one or both days. Note it is possible for tax academics to attend without presenting. General enquiries about both the THC and QTRS (including paper submissions and registration) should be directed to: Anna Mortimore, Lecturer- Taxation Griffith Business School, Griffith University Email: a.mortimore@griffith.edu.au Ph: +61 7 555 28082

The **Global Conference on Environmental Taxation**, University of Technology, Sydney, Sydney, Australia 23-26 September 2015. Theme for the Conference is **Green Fiscal Reform: Protecting our Natural Resources for a Sustainable Future.** Note:
Wednesday 23 September 2015 will be an afternoon session open to everyone with PhD candidate presentations only.
Saturday 26 September 2015 will be a morning session open to everyone that will focus on evaluation frameworks for environmental taxes and concessions.

ATTA’s **28th Annual Conference** will be hosted by the University of New South Wales School of Taxation & Business Law January 2016 (dates to be confirmed). The theme of the conference is **Tax and time travel: looking forward and looking back.** The conference will celebrate 28 years of ATTA in Australasia. Further information about the conference is included above in this newsletter. If you have any questions please contact John Taylor at c.taylor@unsw.edu.au

The **Tax Institute**’s website www.taxinstitute.com.au lists many conferences, conventions, seminars, and breakfast clubs. For further enquiries, contact Phillipa Cardigan (02) 8223 0045 or email phillipacardigan@taxinstitute.com.au or register online at www.taxinstitute.com.au Call the National Events team on 1300 733 842 for more details.
Overseas

3rd Annual Bentham House Conference, The Philosophical Foundations of Tax Law, UCL Faculty of Laws, Bentham House, Endsleigh Gardens, WC1H 0EG London, Friday 8th & Saturday 9th May 2015. There is currently very little literature considering the philosophical aspect of tax law. Yet given the controversy that surrounds tax, particularly in a turbulent economic environment, it is an excellent time to explore tax from a philosophical perspective. It is essential that we have a complete understanding of the answers to some of the seemingly basic questions which surround tax, before we can begin to think about what a tax system should look like. Questions such as what in fact is a tax? Why should we tax? How much should we tax and on whom should tax be levied? What should taxes be used for? How do ideas of fairness and justice tie in with the tax system? The consideration of all these questions is crucial to a complete understanding of the tax system and the future of the tax system.

This symposium brings together those with a shared interest in legal philosophy and tax law, as well as perspectives from economics and political philosophy, in order to give a comprehensive and unique perspective to a complex issue. The papers and presentations given over the course of the symposium will culminate in a book of essays edited by Monica Bhandari. <http://www.ucl.ac.uk/laws/conferences/tax-law-registration-12462526753>

Registration details <http://www.eventbrite.co.uk/e/philosophical-foundations-of-tax-law-registration-12462526753>

American Accounting Association Calls for paper website http://aaahq.org/calls/default.cfm

Canadian Tax Foundation http://www.ctf.ca/ctfweb/en

Institute for Fiscal Studies Conferences and seminars http://www1.ifs.org.uk/conferences/index.shtml

Institute for Austrian and International Tax Law 2015 events:
May 18, 2015 – Panel discussion with tax lawyers (in German)
June 1, 2015 – PwC-WU-Seminar: “Current Developments in European and International Tax Law” (German/English): Aline Kapp/Claudine Devillet
June 25, 2015 – Semester closing
July 30/1, 2015 – Second EU-China Tax Summit
July 2-4, 2015 – Conference: “The Impact of Bilateral Investment Treaties on Taxation” (Rust, Burgenland)
July 13-17, 2015 – CEE Vienna International Tax Law Summer School

The topics of the seminar sessions and other events can always be found at www.wu.ac.at/taxlaw. Please feel cordially invited to visit our website again regularly. Additionally, there will again be a huge number of other technical seminars and conferences. Please see our website for most up-to-date information on them.

International Bureau of Fiscal Documentation inaugural Africa Tax Symposium, Trends in International Taxation: An African Perspective, 18-19 June 2015, Livingstone, Zambia. Set in the stunning Victoria Falls surroundings of the Sun International Hotel, Livingstone, this two-day event will feature prominent speakers, including IBFD tax experts on Africa, and eminent tax practitioners from Africa and Europe. Speakers will lecture on the current trends in international taxation, addressing these from an African perspective. Topics will cover:
• Current trends in international tax planning: BEPS and the African experience
• Transfer pricing: issues, challenges, and a possible way forward
• Taxation of natural resources: lessons from Africa and beyond

View the full programme <http://www.ibfd.org/IBFD-Tax-Portal/Events/Trends-International-Taxation-African-Perspective#tab_program>


Please note that a contribution fee of USD 83.00 is applicable.
If you have any questions, please do not hesitate to contact our Head of Marketing, Sorrel Hidding, either by email at S.Hidding@ibfd.org or by telephone at +31 20 554 0142.

International Bureau of Fiscal Documentation. Various courses in Amsterdam, the Netherlands or in Malaysia. For details, see http://www.ibfd.org The IBFD International Tax Academy (ITA) runs an extensive international course program. Generally all courses are held in Amsterdam. Should you require any further information or wish to register please refer to their web site www.ibfd.org or contact the International Tax Academy at +31-20-554 0160 or by e-mail ita@ibfd.org

For courses go to http://www.ibfd.org/Training

IBFD International Tax Courses - A selection of related courses in 2015
Treaty Aspects of International Tax Planning 26 - 28 November, Sao Paulo
VAT Considerations in M&A Transactions 28 - 29 May 2015, Amsterdam

Doctoral Meeting of Researchers in International Taxation (DocMIT) and Postdoctoral International Tax Forum (PITF), 21-22 May 2015. IBFD Head Office, Amsterdam, The Netherlands. In 2015, IBFD will organize the 13th edition of the meeting for doctoral researchers and the 4th edition of its postdoctoral (early career scholars) meeting. The purpose of these meetings is to provide the researchers with an opportunity to discuss their current research projects with leading academics and a select circle of colleagues. Participants benefit from tailored coaching provided by our panel of international tax professors, as well as from the feedback provided by peers from various parts of the world. Our aim is to provide researchers with a forum to further their research in the field of taxation.


2015 Basel, Switzerland (30 August 2015 - 4 September 2015) www.ifabasel2015.com
Topics under consideration as Subjects 1 and 2 of the Congress are "The use of tax measures in the area of research and development (R & D)" and "Taxation and fundamental rights: taxpayers' procedural rights in a globalised world"
2016 Madrid, Spain
2017 Rio de Janeiro, Brazil
2018 Seoul, Korea, Rep of
2019 London, United Kingdom

International Atlantic Economic Society (IAES) conference www.iaes.org for more information. Prof Dr M. Peter van der Hoek Academy of Economic Studies, Bucharest, Romania and Erasmus University, Rotterdam, Netherlands. Mailing address: Erasmus University (L 7-20) P.O. Box 1738 NL-3000 DR Rotterdam Netherlands Phone/Fax: +31-10-4081622 E-mail: vanderHoek@frg.eur.nl
International Tax Planning Association Forthcoming meetings
http://www.itpa.org/meetings.html

Other useful tax and law related conference websites include the
International Bar Association:
http://www.ibanet.org/Conferences/conferences_home.aspx
IBFD Course calendar
International Events and Law Conferences
http://internationaleventsandlawconferences.yolasite.com
Conferences in Australia http://www.conferencealerts.com/country-listing.php?page=1&ipp=All&country=Australia
New South Wales Bar Association
Practising Law Institute http://www.pli.edu/
New York County Lawyers Association http://www.nycla.org
American Bar Association Taxation CLE topics
http://www.americanbar.org/cle/cle_courses_by_topic/taxation.html
New York Bar Association http://www.nysba.org/
Hieros Gamos Worldwide Law Events Calendar http://www.hg.org/legal-events.asp
For Australian ones http://www.hg.org/legal-events-australia.asp
For social sciences and humanities conferences, meetings etc, see Mind: The Meetings Index
http://www.interdok.com/mind
See also the magazine Australian Conference & Exhibition Diary, Vamosi Information
Publication.

9 ATTA people in the media

Eccleston, Richard & Stewart, Miranda

Passant, John
Refugee Action Committee member John Passant said he attended the counter rally to send a message Muslims were welcome in Australia. "I'm disappointed that people turn out under the banner of Reclaim Australia, which is basically a racist banner, to push Islamophobia," he said. "I think it's an abuse of the Australian flag to use it for what is essentially a racist purpose, to ignite hate against Muslim people.”

Ting, Antony
ABC TV 7:30 Report, 8 April 2015 <http://iview.abc.net.au/programs/7-30/NC1505H048S00#playing>

Ting, Antony; Sadiq, Kerrie & Vann, Richard
See also Australia Proof Committee Hansard Senate Economics References Committee Corporate tax avoidance, (Public) Wednesday, 8 April 2015 pp 9-18
Vann, Richard
Glenday, James ‘West should tackle corporate tax avoidance the way it has Islamic State, Senator Bill Heffernan says’, ABC News 8 April 2015 <http://www.abc.net.au/news/2015-04-08/west-should-tackle-tax-cheats-like-it-has-islamic-state-senator/6376076>
Hewett, Jennifer ‘No easy answers in tech tax games’, Australian Financial Review 9 April 2015 p 2
Mather, Joanna ‘Treasury may go alone on ‘Google tax’’, Australian Financial Review 10 April 2015 p 9

10 Recent publications

**Bold** indicates ATTA members. Readers are encouraged to notify the Editor of recently written publications for notification, in these pages. Please note some of the overseas publications listed may not yet be available locally.

**Local**


- A proposal to address the impact of fraudulent phoenix activities on unremitted superannuation guarantee contributions in Australia - Anna Giardina and Dale Pinto
- Powering innovation through tax concessions: the changing research & development tax incentives - Kerrie Sadiq
- Dissent in High Court revenue decisions: changing jurisprudence and the incidence of dissent - Rodney Fisher

- Tackling base erosion and profit shifting through enhanced information exchange - Katie Webster and Nicholas Augustinos


Passant, John ‘Stop the cuts: Tax the rich’, Independent Australia 13 April 2015 <https://independentaustralia.net/politics/politics-display/stop-the-cuts-tax-the-rich,7579>


(2015) 82 Taxation Today – (April)
- Supreme Court Looks at Jennings and Bradbury - James Coleman
- The National Council of Women Litigation [Part 2] - Susan Barker

The Tax Institute publications

(2015) 49 (9) Taxation in Australia April 2015
- Australian TOFA implications for insurers from the NZ Sovereign Assurance case - Joanne Dunne and James Hamblin
- Enforcement of tax liabilities and solvency - Nishad Kulkarni
- Limiting abuse of administrative power and enhancing economic welfare - John Azzi
- Tax cases: An unintended waiver of legal professional privilege - Michael Norbury
- Alternative assets insights: The Sojitz case: Implications for landholder duty and TARP - Costa Koutsis and Rachael Cullen
- Superannuation: Temporary incapacity can provide welcome relief - Daniel Butler
- Accounting for tax: A tale of two rulings or: How I learned to stop worrying and love uncertainty - Arthur Athanasiou
- Property development: Property becoming trading stock - Amy Wark and Josh Chye
• Director’s breach of fiduciary duties results in a clawback of super contributions - Melissa Brazzale and Philip Broderick
• Tax counsel's report: Immediate opportunities for tax system improvement - Stephanie Caredes

• The abandoned education cap policy: public participation in tax reform consultation - Patricia O’Keefe, Bernadette Smith, Sonia Shimeld and John Minas
• Back to the future and beyond - Stephen Barkoczy
• Has the Charities Act 2013 changed the common law concept of charitable “public benefit” and, if so, how? - Fiona Martin
• Not so guaranteed: superannuation guarantee and Australian small businesses - Brett Freudenberg and Scott Sargent
• The costs of compliance and associated benefits for small and medium enterprises in New Zealand: some recent findings - Ranjana Gupta and Adrian Sawyer
• Applying the Delphi method as a research technique in tax law and policy - Evgeny Guglyuvatyy and Natalie P Stoianoff
• A case study of the ACT’s reformed vehicle stamp duty - Anna Mortimore

Papers published in March/April

National Division:
• Are tax havens dead? - David Russell
• The Board of Tax Review of the debt/equity rules - Teresa Dyson
• Tax issues in structuring an effective executive package - Andy Hutt
• Tax risk management - Alison Feather and Peter Nearhos
• Recent cases - Philip Bender
• Issues facing parents and subsidiaries in the current international tax climate - Peter Mccullough
• Small business CGT case study - Brian J Richards
• Deceased estates: A practical perspective - Loreena Gillon
• Tax effective extraction of retained earnings from “dormant” private companies: Case studies - Paul Hockridge
• The Income Tax Assessment Acts: Statutes in senescence - AH (Tony) Slater
• Practical management of Division 7A - Adele Townsend
• Win your privatisation bid for infrastructure assets by optimising capital allowances - Chris McLean and Hayden Scott
• Solving inherited problems - Andrew Noolan
• The latest on the ATO’s management of tax audits and disputes - Damien Browne and Ashley King
• Practical realities of being a tax advisor - Scott Treatt
• Grouping for payroll tax - Philip Magoffin
• Prior to being bankrupt, superannuation is a claimable asset - Peter Bobbin
• Professional practice structures - Ash Chotai
• Vesting trust deeds - Michael Butler
• Tax mistakes - The tax practitioner obligation - Mark Bird


Overseas


*European Taxation* Number 4 - 2015
Luxembourg Reshapes Its Transfer Pricing Landscape - Oliver R Hoor
Secondary Establishments in EU VAT and Treaty Law - Aleksandra Bal
BEPS Impact on EU Law: Hybrid Payments and Abusive Tax Behaviour - Evgenia Kokolia and Evgenia Chatziioakeimidou
EU update – Commission - Laura Ambagtsheer-Pakarinen; Council - Laura Ambagtsheer-Pakarinen; Court of Justice - Laura Ambagtsheer-Pakarinen
CFE news: Opinion Statement FC 15/2014 on Developing a Multilateral Instrument to
Modify Bilateral Tax Treaties (BEPS Action 15)
Has the Pension Reform in Armenia Solved the Existing Problems or Merely Created a New, Bigger One? Mesrop Manukyan
Belgian Ruling Commission’s Opinion on the Concept of “Employer” within the Meaning of Article 15 of the OECD Model - Andy Cools
Bulgaria - Corporate Income Tax Act Changes - Lubka Tzenova
Greece - New CFC Rules - Katerina Perrou


*International VAT Monitor* Number 2 - 2015
What is a supply for VAT purposes? Reflections on Qantas Airways Ltd - Alan Schenk
VAT Grouping Schemes – Standpoint - Claudia Dias Soares and Afonso Arnaldo
Split-Payment Mechanism for Public Bodies - Simonetta La Grutta
Tax offence of failure to pay VAT - Patrick Harteveld and Andrea Scotto d’Abusco
VAT Committee – Guidelines 2014 - Fabiola Annacondia
Overview of General Turnover Taxes and Tax Rates - Fabiola Annacondia
VAT news - Reports from: Albania, Argentina, Bahamas, Belarus, Belgium, Botswana, Brazil, China (People’s Rep.), Colombia, Costa Rica, Czech Republic, European Union, Finland, Germany, Hungary, India, Italy, Luxembourg, Macedonia (FYR), Mexico, Norway, Pakistan, Paraguay, Peru, Poland, Portugal, Puerto Rico, Romania, Singapore, South Africa and United States.
VAT case notes - Case notes from: Australia, Austria, Brazil, Canada, Finland, Poland, United Kingdom and United States.

11 Quotable quotes

“That consumers have suffered a doubling in energy prices in the past five years, and that large profits have gone overseas, is bad enough. That the beneficiaries have dodged paying tax on these profits is especially repugnant.”

“I have already found, for reasons set out above, that the process of assessment included Mr Main’s acting in wilful disregard of a right which Mr Donoghue had to claim legal professional privilege in respect of the material supplied to the Australian Taxation Office by Simeon Moore and which Mr Main always believed might be privileged. That was not a proper purpose. Recklessness was regarded in Futuris as sufficient to establish the element of consciousness in conscious maladministration. In turn, what amounted to the requisite recklessness was regarded as being informed by that sufficient in respect of the tort of misfeasance in public office, as explained in Three Rivers District Council v Bank of England [No 3] and Northern Territory v Mengel. On the findings which I have made, Mr Main was reckless in the sense described in these cases. The Commissioner’s process of assessment was, therefore, affected by conscious maladministration. As was stated in Futuris at [25] in the passage I have emphasised, conscious maladministration in the process of assessment does not produce an assessment to which s 175 of the ITAA36 applies. That is this case. The assessments concerned must therefore be quashed. It necessarily follows that separate penalty assessment dependent upon the primary tax assessments must also be quashed. In the absence of any income or penalty tax liability, no general interest charge would, as a matter of law, be payable. As that result necessarily follows, I do not, as presently advised, see any need for separate declaratory relief to that effect.”


“People and companies charged with tax fraud or tax evasion should be granted the presumption of innocence in court, according to a new parliamentary inquiry that pushes the federal government to radically overhaul current rules.

At the moment, a taxpayer accused of tax evasion is deemed guilty and must prove their innocence, and the Standing Committee on Tax and Revenue inquiry has recommended that change after hearing that the Tax Office often goes on “fishing expeditions” and uses its extraordinary powers to gather information that it then uses against the taxpayer.

House tax committee chairman Bert van Manen said that if the allegation of fraud and evasion was being made, and the ATO was seeking to hit people with a tax bill dating back beyond five years, then all taxpayers – from small-business people to big companies such as Glencore and Commonwealth Bank – should be given the benefit of doubt.

The committee recommended the onus should be on the ATO to prove the accused taxpayer was guilty and that findings or allegations of fraud or evasion should only be made by an SES officer.”


“Australia’s federal politicians have been outed as the country’s most eager property investors, casting doubt on their willingness to rein in negative gearing.
The controversial practice allows taxpayers to use tax losses from rental properties to cut their
taxable income. Critics argue it contributes to Australia's house affordability crisis.

Around one in seven Australian taxpayers own rental properties, but among federal politicians
it is at least one in three.

Figures compiled by property authors Lindsay David, Paul Egan and Philip Soos show federal
politicians own an average 2.4 properties each, including their family homes.

Collectively they own a portfolio of 541 properties, conservatively estimated to be worth
$350 million.

…

But of the 226 members of Parliament, 84 of them hold at least one investment property and
at least one mortgage or investment loan, meaning they are possibly negative gearing.

Parliament's register of members' interest does not disclose if its members who hold a loan
against their investment properties are negatively geared.

But as one federal politician told Fairfax Media, after admitting he negatively geared a second
property: "If someone has more than one mortgage of course they're negatively gearing.
You'd be an idiot not to."

Economists like Saul Eslake from Bank of America Merrill Lynch, and John Daley from the
Grattan Institute – who recently took on Treasurer Joe Hockey on Q&A – say negative
gearing and the capital gains tax discount should be wound back because they are inflating
house prices and accelerating falling rates of home ownership among the young.

Source: Hunter, Fergus and Hutchens, Gareth ‘How property investing politicians have skin
in the game on the negative gearing debate’, Sydney Morning Herald 27 March 2015
have-skin-in-the-game-on-the-negative-gearing-debate-20150327-1m8s36.html>

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“Land tax is one of the most efficient taxes for precisely the reason it is unpopular: it is hard
to dodge. They know where you live. You can hire as many accountants as you want, but it is
difficult to hide that mansion in Point Piper.”

Source: Irvine, Jessica ‘Land tax often overlooked in the tax debate’, Sydney Morning Herald
debate-20150407-1mfro2.html>

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“But maybe if we talked first about defining our sense of self, it might ennoble our
conversation on the administrative tools to take us there. Tax after all is simply a means to an
end. And it's that end - the Australia we might aspire to - that might make a logical starting
point for a conversation that might end in tax.

We might surprise ourselves. We might find a way to nudge our national dialogue away from
the stultifying limiter of individual interest to a more elevated sense of shared conviction and
belief.
We might even agree that this shared vision is worth an extra contribution, from each according to their means. From each according to their capacity to pay. To each according to their need.

Dealing with tax in isolation seems to be cutting the ends adrift from the means. When we do that we let the conversation reduce, we let it narrow to a cynical play of self against self.

If we could agree that housing the homeless, empowering the first Australians, and building a better class of submarine made sense as a set of shared national goals, we might also be more disposed to raising the GST, company tax, land tax or whatever else seemed necessary to make it happen.

We might yet discover that there is no I in country.”

Source: Green, Jonathan ‘Have we got this tax debate completely backwards?’ ABC The Drum Opinion, 2 April 2015 <http://www.abc.net.au/news/2015-04-02/green-have-we-got-this-tax-debate-completely-backwards/6365458>

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“The Corporate Tax Association has vehemently rejected the claim big business tries to inappropriately minimise tax but some of its own executives work for companies that have had legal clashes with the Australian Tax Office.

In its submission to the Senate inquiry into tax avoidance the association “objects to views that paint a picture that the Australian corporate tax system is fundamentally flawed and that corporate taxpayers in Australia are inappropriately minimising their tax bills”.

…

While neither the vice-president nor the treasurer are known to have been directly involved in the tax disputes, the United Voice union questioned how the association could insist Australian businesses were “highly compliant with the tax laws” and that the “vast majority are transparent in their management of their tax affairs” when the tax practices of its own members had been challenged by the ATO.”


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“Sydney University’s Professor Richard Vann, who will also give evidence to the Senate inquiry, said new laws could add billions of dollars to the budget bottom line.

"You would be talking in the billions, but I think the low billions," he said.

"The companies seem to say, whenever asked to appear, that what they do is legal.

"But particularly, so far as their intellectual property is concerned, it seems to be largely located in tax havens, where nothing happens, and that must be a defect in the rules.””

Source: Glenday, James ‘West should tackle corporate tax avoidance the way it has Islamic State, Senator Bill Heffernan says’, ABC News 8 April 2015 <http://www.abc.net.au/news/2015-04-08/west-should-tackle-tax-cheats-like-it-has-islamic-state-senator/6376076>
Senator Xenophon: What were your revenues last year in Australia? Can you tell us that?
Ms Carnegie: I am sorry; we do not disclose those.
Senator Xenophon: And you do not disclose those either, do you, Mr King?
Mr King: We do disclose those. We reported revenues last year in Australia of $6 billion.
Senator Xenophon: How much of that went overseas?
Mr King: We reported all of our revenue and all of our costs, and we—
Senator Xenophon: No, I asked you how much of that went overseas.
Mr King: Our net profit was $250 million.
Senator Xenophon: How much of the money went overseas? How much of that $6 billion paid by Australian consumers went overseas? Can you please tell us that?
Mr King: We pay using the ‘arms-length’ basis, which I have been into several times before. It is an established tax principle for the cost basis of all of the products that we bring into the country. All of this is clearly worked and disclosed with the ATO. It is very transparent in advance pricing agreement discussions with the ATO.

Senator Xenophon: You are not a novice in such things. You have appeared before Senate inquiries, a United States Senate inquiry where Microsoft was slammed for its behaviour. Yet Microsoft has not changed its practices since that 2012 Senate committee report with the findings made against Microsoft. Are still doing things as you were doing them three years ago?
Mr Sample: That is correct, Senator. Senator Levin did point out that everything we were doing was legal and in full compliance with the US tax—
Senator Xenophon: It was just a ‘dubious validity’ and ‘egregious’.
Mr Sample: That was the senator’s opinion.
Senator Xenophon: How much revenue do you take from Australia?
Mr Sample: Two billion dollars.
Senator Xenophon: How much of that goes overseas?
Mr Sample: The revenue is in payment for products and services provided—
Senator Xenophon: No, please answer the question. Please do not do this to me. How much of the $2 billion goes overseas?
Mr Sample: The $2 billion is billed by the Singapore group and it is paid to the Singapore group.
Senator Xenophon: So all of it goes to Singapore?
Mr Sample: Of that $2 billion, that is correct, Senator.
Senator Xenophon: Thank you for your direct answer.

Source: Australia Parliament Proof Committee Hansard Senate Economics References Committee Corporate tax avoidance, 8 April 2015, Sydney, pp 53; 55

"We as a society have essentially decided to spend quite a lot more money on health. It's good news, it's keeping people alive for a lot longer. The bad news is someone's got to pay for it. We've agreed as a society to have an national disability insurance scheme, that's terrific but somebody's got to pay for it."
"So far we've had relatively little discussion about the fact that taxes will probably have to go up, and of course no politician wants to talk about that."


"When the government released its discussion paper on tax it said “lower, simpler, fairer”. Ever since we have been flooded with demands for taxes that are higher, more complicated, and less economic.

Treasurer Hockey has foreshadowed a new bank tax. Assistant Treasurer Frydenberg wants more tax from multinationals. Labor’s Senator Dastayari wants more tax from the miners. The Greens’ Senator Milne wants more tax from News Corporation. Labor wants higher tax on superannuation. Possibly, so too, does the Liberal Party.

The Treasury wants to cut franking credits to raise tax on Australian investors (including superannuation funds). The left-wing think-tanks like the Australia Institute and the Grattan Institute want higher taxes on property investment and capital gains.

“Lower, simpler, fairer” is looking like some kind of morbid joke.

None of the above proposals is for lower tax. None would make our tax system simpler.”