A distressing feature of many of the recent options the current political debate in the lead up to the Federal Budget was the absence of much discussion of broader considerations of principle or even much in the way of transparent interaction of the arguments of sectional interests. Revenue considerations appeared to have become paramount in a political context where both sides uncritically accepted the desirability of surplus budgets and the undesirability of government debt. The Henry Review with its longer term and systematic view of the needs of the Australian tax system seemed a distant memory. While in their Tax Reform Road Map the Treasurer and Assistant Treasurer, released at the time of the Budget, are at pains to justify decisions as implementing recommendations of the Henry Review, the “road map” is more of a “mud map” (drawn in haste on the side of the road giving directions to the next destination) rather than a systematic response to the Henry Review recommendations and the longer term needs of the Australian tax system.

Although, like the woodcutter, not entirely innocent of self of sectional interest academic institutions are or at least should be reasonably independent players in the process of tax law and policy development. At ATax we do appreciate the need to engage with all participants in this process and value our associations with government officials, professional firms and professional associations. One of our aims is to evaluate those perspectives in the light of evidence and longer term considerations of principle and prudently. Hence at ATax we welcome the funding of a Taxation Studies Institute announced in the Budget and seek to cooperate with the Institute in the development of evidence based tax policy for Australia.

By John Taylor

The 2013 Federal budget held few surprises as most of the tax issues had already been released into the public domain. There were however several new initiatives with respect to international tax including:

- Reductions to the thin-capitalisation debt levels,
- Extension of the worldwide ratio to non-resident controlled groups,
- Change to the definition of dividend under s225-90, and
- Removal of the deduction under s225-90.

In addition, changes have been made to the definition of taxable Australian property so far as disposals by foreign residents are concerned.

Secondly, a Bill has been introduced increasing tax on concessional contributions for those over age 59. It is worth noting that:

Firstly an exposure draft has been tabled of the additional 15% tax on concessional contributions which attract tax and/or excess non-concessional contributions tax do not attract a tax concession. Accordingly, they are contributors to which these changes apply.

Secondly, a Bill has been introduced increasing concessional contributions for those over age 59 from 1 July 2013 to $35,000 and for those over age 49 from 1 July 2014 to $30,000.

There is no sight yet of the corresponding rules which will assess fund earnings over $100,000 pa at 15%. By Gordon Mackenzie

‘Rashomon’s’ relevance in tax law and policy

A film admired by some lawyers is Akira Kurosawa’s Rashomon (1950). In the film a woodcutter meets a priest and a commoner in the pouring rain and recounts to them the testimony of each participant (a murdered man, his wife and a bandit) in a murder in medieval Japan and then gives his own, supposedly independent, version. Each account is inconsistent with all the others in several important respects. Each participant stresses that his or her actions were honourable. The supposedly neutral woodcutter’s account is undermined when the commoner deduces that the woodcutter stole the murdering bandit’s dagger. The commoner concludes the entire case is motivated by self interest and leaves. This nearly shatters the priest’s faith in humanity but it is restored when the woodcutter picks up a baby who has been abandoned at the gate saying that he intends to take care of it along with his wife and six children. The weather clears and the woodcutter walks off into the sunlight revealed behind the opening clouds.

The themes of the film have relevance in the context of the development of tax law and policy. There are many participants in that process: business; unions; government officials; professional bodies; academics; and government itself. To some extent each participant, even academics who sometimes style themselves as supposedly neutral observers, is concerned with self or sectional interest. Part of the process of developing good policy decisions and good law involves allowing these various interests to interact in a transparent way. As in the film, however, law and policy are better still in the sunlight revealed behind the opening clouds.

‘One of the real differentiators for the ATAX programs in the marketplace is the fact that it is so flexible in how you can progress through the course of study.’

Yasser El-Ansary
Chartered Accountant
Atax Master of Taxation alumnus

Where our students come from

<table>
<thead>
<tr>
<th>STATE</th>
<th>%</th>
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<tbody>
<tr>
<td>NSW</td>
<td>50%</td>
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<tr>
<td>QLD</td>
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<tr>
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<tr>
<td>WA</td>
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<td>NT</td>
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<tr>
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<td>MALE</td>
<td>57%</td>
</tr>
<tr>
<td>FEMALE</td>
<td>43%</td>
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</tbody>
</table>

The 2013 Federal Budget highlights by Gordon Mackenzie

1.10 Broadly, superannuation contributions which attract tax concessions to which the changes apply include:

- Employer contributions to accumulation interests;
- Personal contributions which are claimed as an income tax deduction, generally claimed by the self-employed; and
- Contributions for defined benefit interests (valued by an actuary).

1.11 Contributions that are subject to excess contributions tax in the form of either excess concessional contributions tax and/or excess non-concessional contributions tax do not attract a tax concession. Accordingly they are not included in amounts of low tax contributions to which these changes apply.

Paras 1.9–1.11 Draft Explanatory memorandum: Sustaining the Superannuation Contribution Concessions
Starting postgraduate study can seem daunting, but it is also immensely rewarding. If you’re considering commencing postgraduate study in Taxation now is the time to get underway. We will provide all the support you need to start your Master of Taxation (MTax) at UNSW in Semester 2, 2013 (July). Taxation is a dynamic discipline with legislation, policy and practice constantly changing. Studying your MTax is an opportunity to move beyond just keeping up to date with what’s changing, and to examine current best practice and the key challenges in the areas you are passionate about. With courses on a diverse range of subjects from Self-Managed Superannuation Funds Law, Capital Gains Tax, Taxation of Trusts and Transfer Pricing to Tax Risk Management and Principles of Revenue Administration, you can choose a mix of courses that suits you.

Some resolutions shouldn’t wait for New Years — Start your UNSW MTax now!

Postgraduate information webinar
Register now for our next online webinar which will introduce you to the Master of Tax and Master of Applied Taxation programs. We will run through the courses on offer, the structure of the masters programs and how flexible distance learning works in practice. Following the presentation there will be an opportunity to ask any questions you may have. The postgraduate course co-ordinator Nolan Sharkey and a member of the student recruitment team will be happy to answer any questions you have about studying at UNSW.

Register for our Postgraduate Information Webinar
Links to information on postgraduate taxation study
Ask a question about postgraduate taxation programs
Information on the Master of Taxation
Information on the Master of Applied Taxation
Information on the LLM Majoring in Taxation

Jenny Buchan’s time in France

The last ATAX Matters contained an account of Michael Walpole’s time in Paris in 2012. Our business law academic Jenny Buchan also had fun and adventures in France this year. Jenny Buchan spent January and February 2013 in Brittany, France, teaching and researching franchising law at the Graduate School of Management (IGR-IAE), University of Rennes 1, in Rennes, and in the MBA program at the Audencia-Nantes Business School in Nantes. Although she taught in English, Jenny’s French was given a very good workout. Her biggest challenge was delivering a guest address at the University of Rennes 1 about her research. Her speech ‘Franchisees as Consumers’ can be read on her UNSW homepage.

Of course no trip to France should be devoted entirely to work. Jenny spent wonderful weekends with friends in Lyon, Malestroit, St Malo and Paris. She saw silk scarves being woven, learned the eclectic vocabulary that goes with a shop devoted to cheese and butter-to-die-for, ancient walled towns and extreme tidal range, visited galleries, watched the rescue police practising leaping into the fast flowing Seine, and explored. Imagine galettes, crêpes, seafood and cider and post Christmas sales, and you could almost be there too!

My research looks at how taxation law impacts on payments from mining companies to Australian Indigenous land holders particularly under the Native Title Act. Approximately 60% of Indigenous Australian communities neighbour mining developments and my research shows that income from mining is significant to their economic development. Charity law is also part of this research as many Indigenous communities in Australia, New Zealand and Canada seek to optimise the benefits they receive from mining and also to use these benefits for community purposes rather than individual gain. A logical choice for receipt of mining payments is therefore a charity that combines the income tax exemption with a not-for-profit and charitable purpose.

My research has led to Federal Government drafting legislation excluding from assessable income certain mining payments made to Native Title Groups in Australia. As part of the consultation process on this Bill I was invited to be an expert witness before the House of Representatives Standing Committee on Economics in January 2013 to answer questions about the proposed measures. The Bill has been approved by the House of Representatives and is now before the Senate.

By Fiona Martin
Strength in depth – the role of our adjuncts

The work of the School of Taxation and Business Law is supported by an eminent body of Adjunct Professors and Visiting Professional Fellows. These adjuncts provide high level input to the School’s teaching and research activities, and ensure critical engagement between the full time academics and key stakeholders in the globalised tax profession and in the best universities around the world.

Current adjuncts include Professor Judith Freedman from Oxford University, who has delivered thought leadership lectures at the university, participated in Atax conferences and collaborated with various of our staff in research developing Guidelines to address uncertainty. Professor Richard Bird from the University of Toronto who has been involved with Atax academics in Australian Research Council grants, been a keynote speaker at Atax conferences, and who has taught tax administration courses to Masters’ students; and Professors Andrew Halkyard (formerly at Hong Kong University) and Yuri Grbich (Atax Foundation Director), both of whom are heavily involved in postgraduate programs in the Sydney CBD. And most recently the School has appointed Michael D’Ascenzo AO, the former Australian Commissioner of Taxation, to its adjunct professoriate. Michael will deliver a public lecture later in 2013 and will also lend his vast experience gleaned from the tax world to the benefit of postgraduate students in various courses.

Further details of all the School’s adjuncts can be found at www.asb.unsw.edu.au/schools/taxationandbusinesslaw/facultyandstaff/pages/adjuncts.aspx

For more information on the Adjuncts and their work, please visit the website at www.asb.unsw.edu.au/schools/taxationandbusinesslaw/facultyandstaff/pages/adjuncts.aspx
Academics turn to sport for charity

Three of our ‘sporty’ academics competed in the Sydney Nissan Corporate triathlon in March. The challenge consisted of a 300m ocean swim, 8km cycle and a 3km run. With a combined age well in excess of 150 years, the three members of Team Ataxia felt confident they could break all sorts of records. They were certainly well prepared for the event. Team captain Chris Evans undertook swimming lessons to enable him to stay afloat for the whole of the swimming leg. Gordon Mackenzie was so serious that he cut his nicotine intake to less than 5 a day. Dale Boccabella anticipated a smooth progress through the event given his natural height advantage: he estimated he would be able to complete the entire course with just 8 swimming strokes, 16 rotations of the cycle pedals and 32 strides.

The day of the event arrived and our boys managed a collective team time of 2 hours 43 minutes. They all personally made it in less than or very close to one hour. They would have been even faster had Dale not torn a calf muscle after warming up just before the start, had Chris not chosen to argue for 3 minutes with a pernickety event marshal about having the strap of his cycling helmet unclipped during ‘transitioning’ from cycling to running, and had Gordon not been burdened with a Coles green shopping bag containing his shorts and running shoes as he finished the swimming and sprinted (sic) towards his cycle. The most amazing result was that they managed to raise over $4000 in donations which went to the Children’s Tumour Foundation of Australia.
### Articles published in 2012/2013

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Journal/Conference</th>
<th>Year</th>
<th>Pages</th>
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<tr>
<td>Hargovan, Anil</td>
<td>Constitutional Validity of Examination Power Exercised by Receiver and Mortgagees in Possession</td>
<td>Insolvency Law Bulletin</td>
<td>2012</td>
<td>55</td>
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<td>Tran-Nam, Binh</td>
<td>The Gains from International Trade and International Aid in the Presence of Public Goods</td>
<td>Global Journal of Economics</td>
<td>2012</td>
<td>1(1)</td>
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<tr>
<td>Evans, Chris</td>
<td>Towards the development of a tax system complexity index</td>
<td>Conference of the new Tax Administration Research Centre jointly run in the UK by Exeter University and the Institute for Fiscal Studies.</td>
<td>2012</td>
<td></td>
<td>(co-written with Binh Tran-Nam)</td>
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<tr>
<td>Hargovan, Anil</td>
<td>Directors Duties to Creditors and Commercial Realism: Arising Tensions</td>
<td>Corporate Law Teachers Conference, Australian National University.</td>
<td>2012</td>
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### Conference papers delivered in 2012/2013

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<tr>
<td>Datt, Kalmen</td>
<td>Delivered a session on Corporate Tax</td>
<td>2013 ATTA conference in New Zealand.</td>
<td>2013</td>
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<td>Taylor, John</td>
<td>Archival Research As An Aid In The Interpretation Of Tax Legislation</td>
<td>Tax Research Network Conference, University of Roehampton.</td>
<td>2012</td>
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Awards & promotions

Evans, Chris
Appointed ‘Extraordinary Professor’ at University of Pretoria 1 January 2013 and will be spending some time in South Africa in the second half of the year engaging with academic staff in the University’s Department of Taxation in relation to research mentoring.
Appointed International Fellow 1 January 2013 at the new Tax Administration Research Centre jointly run in the UK by Exeter University and the Institute for Fiscal Studies (and will be working at the centre for periods of time in September/October 2013).
Awarded competitive research grant in April 2013 from New Zealand Inland Revenue Department (with Binh Tran-Nam) for research into Small and Medium Enterprise tax compliance costs in New Zealand.

Hodgson, Helen
Supervisors: Professor Chris Evans and Professor Bettina Cass

Martin, Fiona
PhD – Title: an evaluation of existing income tax regimes for mining payments made pursuant to the Native Title Act 1993 (Cth) and the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), and of five proposals for legal reform.
Supervisors: Prof Michael Walpole, ASB and Assoc Prof Sean Brennan, Faculty of Law.

Taylor, John
Visiting Professor, Faculty of Law, University of British Columbia, Vancouver, Canada (November 2012 to February 2013)

Walpole, Michael
Michael has been invited to join a task team supporting the OECD’s Working Party 9 (VAT) agenda of work. He will be involved in the team’s development of aspects of the OECD Guidelines ‘Neutrality of Value Added Taxes in the Context of Cross-Border Trade’ with a specific focus of how the Guideline should operate in the presence of avoidance and other practices which may be seen as an abuse of VAT laws.

School Seminar Series
The 2013 School Seminar series was launched in March by Dr Adrian Sawyer, Professor of Taxation, University of Canterbury, New Zealand. Adrian delivered a paper to a capacity audience on ‘Implications of the multilateral convention on mutual administrative assistance in tax matters and the foreign account tax compliance act: an Australian perspective’. Adrian was a visitor here at the school for seven weeks.
Dr Lisa Marriott from Victoria University of Wellington, New Zealand visited the school in March and April and delivered a paper on ‘Tax Evasion, Welfare Fraud and the Justice System: A comparison of investigation, prosecution and sentencing in New Zealand and Australia’. In April Associate Professor Jing Li from the Beijing Institute of Technology, China delivered a paper on ‘A storm of foreign direct investment and antidumping investigations: the case of China’.
We hosted two seminars in May, delivered by our own academics. Bruce Gordon spoke on ‘Acceptance by conduct in e-commerce transactions’ and Kathleen Bain and Dale Boccabella presented on ‘GST and Low Value Imports’ later in the month. We are also working on two Thought Leadership seminars to be led in the second half of the year. Please email Christine Brooks (Christine.brooks@unsw.edu.au) if you would like to receive invitations to our public seminars.