A good tax system shares many of the features of a good orchestra. It needs a variety of instruments (whether of a policy or of a musical nature) to achieve the desired outcomes. It needs those instruments to work together harmoniously. Most importantly, any good tax system, like any good orchestra, should be better than the sum of its parts. But that does not mean that each part of the tax system should be designed to perform the same function. Just as various parts of the orchestra might offer different attributes, perspectives and functional outcomes at various points in the music being performed, so different taxes might be called upon to satisfy different principles and address different policy outcomes at varying times.

That is why it is not inappropriate to consider whether an increase in the GST rate, accompanied by a broadening of its base, might not be a good policy direction for Australia. It is true that the GST is horribly regressive, offending most aspects of the equity, or fairness, principle that is so often lauded as one of the key criteria for a ‘good’ tax system (the others most usually being efficiency and simplicity). But it does not matter if one aspect of the tax system is regressive so long as overall the tax system is not regressive. That is one of the key lessons that our British counterparts have learned as a result of their Mirrlees Review of the UK tax system. And it is a lesson we should be prepared to take on board.

The School of Taxation and Business Law (Atax) has long been at the forefront of the debate about tax reform in Australia. Only recently one of our younger members of staff featured – on the GST debate – on Q & A on ABC TV, while a more seasoned colleague offered a somewhat different perspective the following day on radio. Many other staff members have been involved in the on-going debate, undertaking research projects, contributing articles and participating in critical decision-making forums. The School has many different voices, but one important vision – the achievement of a better tax system for Australia. That harmony is – I hope – evident in all that we do as a School, which is reflected in the contents of this issue of Atax Matters.

Professor Chris Evans, Acting Head of School

Professor Robert Deutsch’s appointment to the role of Deputy President of the Administrative Appeals Tribunal
‘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

Australian School of Business graduates form a global community of over 66,000 people of which 2,756 are Atax graduates. Alumni provide financial support as well as acting as advocates, ambassadors and mentors, making a vital contribution to the School’s continued growth and success.

Our alumni community can also take advantage of powerful business networks, stay in touch with research in their specialist area and have the opportunity to attend a range of events including talks by senior figures in business and government.

- Exchange partners: > 200 partners in 35 countries
- Visiting academics: > 350 visiting academics from 34 countries
- Knowledge@ASB subscribers: > 75,000 in 96 countries
10TH TAX ADMINISTRATION CONFERENCE: RISKY BUSINESS

How can tax administrations reduce tax avoidance and fraud? What can the government do to reduce costs for tax administrations and taxpayers? To what extent do tax administrators influence public policy? These were just some of the issues addressed at the School of Taxation and Business Law Atax Conference, ‘Risky Business’, held in Sydney on 2 & 3 April 2012. Keynote speakers explored international approaches across a range of tax compliance and administration issues including reforms, risks and change.

The Atax 10th International Tax Administration Conference focused on risk management under two main themes of compliance costs and compliance behaviour, examining how tax administrations with limited resources can manage risk and productivity.

Read Knowledge@ASB interviews on conference presenters
Prof. Chris Evans, School of Taxation & Business Law, UNSW
Michael D’Ascenzo, Australian Tax Commissioner
Richard Highfield, Senior Adviser with the OECD’s Centre for Tax Policy and Administration
ICAA SMSF SPECIALISATION LAUNCHED

The School of Taxation and Business Law (Atax) is delighted to extend its relationship with the Institute of Chartered Accountants in Australia (ICAA) through providing a unique program for its members leading to them becoming specialists in Self Managed Superannuation Funds (SMSF).

The relationship with ICAA goes back a long way, involving dedicated masters programs and significant levels of research. Indeed, Atax faculty (Professors Evans, Walpole, McKerchar and Deutsch, Assoc. Prof Tran Nam, Dr Jenny Buchan and Shirley Carlon) are currently involved in large-scale research projects sponsored by ICAA.

The dedicated specialist SMSF program is set at a master’s level covering the regulation and taxation of SMSFs, which are the largest by number (over 450,000) superannuation funds in Australia and which also hold the largest percentage of assets of all types of superannuation funds ($400bn).

Australia is unique in that it allows individuals to, in effect, hold and control their superannuation directly through SMSFs. This, in turn, creates enormous risk to Government through misapplication and misuse of these funds. Hence, over 2500 pages of legislation, and some of the most complex taxation laws.

ICAA fully appreciates the role its members play in this market and the need for them to be totally across this complex regulation and legislation to properly service their clients. Atax is delighted to help the ICAA achieve that through this unique program co-ordinated by Atax Senior Lecturer and former AMP Global Tax Director, Gordon Mackenzie. Over 1000 members expressed an interest in the Atax specialisation program and we have, in just 7 months, had over 260 complete it.

24TH GST CONFERENCE

The School of Taxation and Business Law (Atax) GST conference is one of the premier events on the national GST calendar every year. As it has done on previous occasions, it brought together a unique mix of GST practitioners from the corporate world and professional practice, and key decision makers from the tax administration, to exchange views.

The keynote speaker at the conference was Professor Greg Smith of the Henry Review (Australia’s Future Tax System Report). He shared with delegates his insights into the inadequacies of the current tax base and discussed the role that might be played by a cash flow tax to take up the slack. The cash flow tax would be similar in many respects to the GST – but more highly automated and efficient, concentrating less on individual transactions with a saving in compliance costs as a result. This paper was complemented by the presentation by Atax’s Professor Michael Walpole who reviewed the financial services tax that was mooted in the Henry Review.

Further Details

Click here for details on 25th Anniversary GST Conference in Brisbane on 22 & 23 April 2013

TRANSFER PRICING SEMINAR

The School of Taxation and Business Law ran a highly successful seminar at the Intercontinental Hotel in May 2012 on the highly contentious area of Transfer Pricing. The seminar was conducted by Prof Bob Deutsch and Mr Nick Houseman, partner, PricewaterhouseCoopers and attracted an audience of some 25 tax professionals.

The key themes were an understanding of where transfer pricing is up to and where it is about to go under the umbrella of the new Division 815 proposed by the Australian Treasury. That Division forms the main part of an Exposure Draft which was released by the government earlier this year.

SPOTLIGHT
The life of a Visiting Professor to the OECD Centre for Tax Policy is not quite the experience of cultural immersion described in former SBS journalist Sarah Turnbull’s travel memoir Almost French – but it comes close. The ostensibly bilingual working environment is predominantly English, but Atax’s Professor Michael Walpole has nevertheless been totally immersed in a stimulating Paris life and OECD workplace during his 3 month stint as an academic visitor to the OECD.

Working in the Consumption Taxes unit of the Tax Policy Division Michael has been engaged extensively in preparations for and participation in the OECD’s first VAT Global Forum in November 2012. He has presented at the Forum on the topic of VAT compliance costs, and participated as a panellist. He has also contributed to OECD publications relating to the taxation of intangibles whilst also pursuing his own research agenda. Later, he will be involved in an OECD project to measure compliance costs.

Michael says that as one of the many Australians at the OECD in various capacities he has had valuable exposure to the OECD’s work and work culture. It is sometimes said that whereas the rest of the world lives to work, Parisian’s work to live. Michael’s response is ‘Don’t you believe it. I am surrounded by an incredibly busy team of professionals who are prepared to work all hours to get the job done. They are perfectionists and committed to getting their published material right. Despite this and the pressure, they are also wonderfully collegial.’

And when work is done, beyond the office door, there are still the sights and sounds of Paris, a walk home along tree lined boulevards, and the smell of fresh bread wafting up from the boulangerie below.
The word ‘trust’ as used in everyday language involving human interactions conjures up the idea of confidence and integrity in the conduct of others. The discretionary trust as a legal institution/legal relationship, which is the type of trust most people are referring to when talking about a family trust, appears to be built on a base of mistrust on a number of levels. Why?

Under a discretionary trust, a potential beneficiary only receives income or capital from the trust if the trustee exercises their discretion in favour of that beneficiary. And generally, the size of the distribution is also at the discretion of the trustee. This means that even if a beneficiary has been assured of income and capital distributions by the promoter of a trust (the person behind the trust), or has a legitimate expectation of getting a distribution, that assurance or expectation is worth little should the trustee not make a distribution. In short, a potential beneficiary of a discretionary trust, in legal terms, only has a right to be considered for distributions.

In addition to the long established power to remove a ‘rogue’ trustee, more recently an extra check on the trustee’s uncontrolled powers to make distributions has been introduced in the form of a ‘guardian’ or ‘protector’. This person can be given the power to veto certain trustee distribution decisions (e.g. where one beneficiary is distributed more than $100,000 of capital). Let us also not forget that one motive (among a range of motives) for establishing a discretionary trust over assets is to avoid giving ownership of assets to children for many years with the hope of guarding against such things as ‘spendthrift children’, ‘gold-diggers’ and children simply realising assets.

For many discretionary trusts, the background to their creation, and the manner of their operation, implies or suggests a lack of trust in those that may come to be associated with the trust.

Associate Professor Dale Boccabella
School of Taxation and Business Law
Australian School of Business
The University of New South Wales
MASTER OF TAXATION

The Master of Taxation is a program designed for the tax specialist who is keen to gain deeper knowledge and who seeks career prospects. The program aims to develop an advanced taxation knowledge base and advanced professional skills in taxation, international taxation, revenue administration or taxation and financial planning.

More information on the Master of Taxation

MASTER OF APPLIED TAXATION

The Master of Applied Taxation has been developed in partnership with the Institute of Chartered Accountants (ICAA) exclusively for Graduate Diploma of Chartered Accounting (Grad DipCA) graduates. The program enables students to keep up to date with the volume and complexity of tax law.

More information on the Master of Applied Taxation

POSTGRADUATE INFORMATION WEBINAR

We will be hosting three webinars in November 2012, January and February 2013. Each Webinar comprises an online audio presentation which will briefly introduce you to the University of New South Wales Master of Tax and Master of Applied Taxation Programs. You will be introduced to courses on offer, the structure of the masters programs and the flexible distance learning program. Following the presentation you will be able to ask questions via audio. The PG course co-ordinator Nolan Sharkey and a member of the student recruitment team will be happy to answer any questions you have.

Further information and registration

Watch a video on studying Postgraduate Tax at UNSW
During 2012, The School of Taxation and Business Law (Atax) has welcomed three research fellows. Professor Kevin Holland from University of Southampton visited the School in March-April. He presented a School seminar and a paper at the Atax 10th International Tax Administration Conference on various aspects of the equity market. Chris Evans, Shirley Carlon and Kevin also submitted a successful research grant to the Institute of Chartered Accountants in Australia to examine ‘The roles and responsibilities of accountants as managers of tax knowledge.’ Kevin returned to Sydney in November to work on the project.

The 2012 Abe Greenbaum Fellow was Dr Yan Xu who is an Assistant Professor in the Faculty of Law at the Chinese University of Hong Kong. During her stay in July/August, she presented seminars at The School of Taxation and Business Law and the Australian Treasury on various aspects of China’s tax history. Several publications associated with her visit at TBL will soon appear.

TBL’s 2012 John Raneri Fellow was Professor Gerard McCormack from University of Leeds. During his visit in July-August he gave a School seminar on international insolvency law. His joint work with Anil Hargovan on Australian and international insolvency law has been accepted for presentation at the 2013 INSOL Conference in The Hague, May 2013.

A competitive research grant was awarded to Jenny Buchan, Charles Qu and Lorelle Frazer by the Institute of Chartered Accountants in Australia for work relating to a research report 'Franchisors in administration: profiles, factors and impacts'. Jenny was also commissioned to write a research report for the NSW Office of Small Business about the current and future regulation of retail and other small business leases.

Associate Professor Frank Zumbo was appointed as the South Australian Deputy Small Business Commissioner in January 2012. This is a part time appointment and involves Associate Professor Zumbo assisting South Australian small businesses in any disputes they may have with larger businesses, or with the South Australian Government or Local Councils.

Professor Robert Deutsch was appointed to the role of Deputy President of the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions made by Australian Government ministers, agencies and other tribunals.

Chris Evans & Nolan Sharkey (with Rick Krever, Ann O’Connell and Anthony Ting) were awarded a 3 year ARC grant for Cross Border Taxation Problems China/ Australia.
BOOKS PUBLISHED IN 2012

Buchan J, Franchisees as Consumers
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Hodgson H, Tax Questions & Answers 2012
Sharkey N, Taxation in ASEAN and China: Local Institutions, Regionalism, Global Systems and Economic Development
Taylor C J, Walpole M, Understanding Taxation Law: An Interactive Approach
Evans C, Cooper and Evans on CGT, 4th edition
Woellner, Barkocz, Murphy, Evans & Pinto, Australian Taxation Law 2012 – 22nd Edition
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