

The Tax Group

RESEARCH REPORT 2007

The Tax Group at Melbourne Law School is a focal point for excellence in tax research and education. Members of the Tax Group carry out a range of tax research projects with a technical and a policy focus and contribute actively to public debate on tax reform. The Tax Group brings together academic faculty and experienced tax professionals including members of leading law and accounting firms and leading members of the Tax Bar, to provide a comprehensive and detailed Tax Masters degree program.

Activities of the Tax Group include:

- academic research into tax law and policy;
- offering a diverse range of more than 20 advanced tax subjects in the Melbourne Law Masters and teaching in the LLB, JD and B.Comm; and providing additional training programs to government officials in Australia and overseas;
- organising workshops, seminars and lectures on tax policy and law; and
- developing and maintaining relationships with leading tax academics and centres of tax research and teaching, including the Oxford University Centre for Business Taxation; the Institute for Tax Law and Policy Research at Monash University; and leading US institutions including the University of Michigan Law School and the University of Florida Levin College of Law.

Research projects

Key research projects of the Tax Group in 2007 included projects on employee share ownership; tax reform processes in a globalized world; and international taxation rules.

Employee share ownership

Associate Professor Ann O'Connell continued work with Professor Richard Mitchell of the Centre for Labour Law and Professor Ian Ramsay of the Centre for Corporate Law and Securities Regulation on a 3 year ARC-funded research project, 'Employee share ownership: current practice and regulatory reform'. Associate Professor O'Connell prepared a research report titled 'Employee Share Ownership Plans in Australia: The Taxation Law Framework' and at the annual Australasian Tax Teachers Association Conference held at the TC Beirne School of Law, University of Queensland in January 2007, presented a paper on 'Employee Share Ownership Plans – Current Practice and Regulatory Reform'. Research Fellow Kerry Brewster began empirical research into small business and employee ownership.

Tax reform and globalization

Associate Professor Miranda Stewart and Senior Lecturer Sunita Jogarajan continued their research and publishing on the impact of globalization and international institutions on tax reform. Sunita Jogarajan carried out research into the influence of the IMF on tax reform, funded by a Melbourne University Early Career Researcher Grant. Miranda Stewart published a chapter on global tax policy transfer to developing countries, focusing on the example of Ghana. In her role as an International Research Fellow of the Oxford University Centre for Business

Taxation at the Said Business School, Associate Professor Stewart presented on the politics of tax reform at an academic symposium held at Oxford University in June 2007.

International taxation

Senior Lecturer Dr Michael Kobetsky carried out research into unitary taxation of international enterprises, presenting a paper at the annual Australasian Tax Teachers Association Conference held at the TC Beirne School of Law, University of Queensland. A revised version of the paper was accepted for publication in the IBFD Bulletin of International Taxation. Dr Kobetsky also travelled to Tokyo, Japan to present a paper at the Asian Development Bank Tax Conference on 'Transfer Pricing: Principles and Practice'. The conference was attended by tax officials from Asian developing countries.

Senior Lecturer Sunita Jogarajan attended the 4th Annual Asian Law Conference held at the University of Indonesia, Jakarta, where she presented a paper on the Indian tax system and foreign direct investment. In an exciting development, the recommendations of a 2006 Report on 'ASEAN Tax Regimes and the Integration of the Priority Sectors: Issues and Options', co-authored by Senior Lecturer Sunita Jogarajan with Ian Farrow of KPMG, were reflected in the Joint Ministerial Statement of the 11th ASEAN Finance Ministers' Meeting in Chiang Mai, Thailand, 5 April 2007. These recommendations will help shape income tax and trade policy in ASEAN member countries over the next several years. The report was also developed into a chapter included in the book *Brick by Brick: The Building of an ASEAN Economic Community* (full publication details below).

Associate Professor Ann O'Connell presented a paper on 'Combating Large Scale Tax Evasion – the Australian Experience', with a particular emphasis on international tax evasion, at the annual Tax Research Network Conference held at Sheffield University in the United Kingdom.

Income tax law and policy

- Associate Professor Ann O'Connell participated in a conference hosted by the Centre for Public Policy (University of Melbourne) on the theme 'From Welfare to Social Investment: Reimagining Social Policy for the Life Course'. Associate Professor O'Connell's conference paper was on the topic, 'The Proposed Superannuation Tax Changes: Good Policy or Electoral Pragmatism'.
- Senior Lecturer Sunita Jogarajan attended the Australasian Tax Teachers' Association Conference held at the TC Beirne School of Law, University of Queensland, where she presented a paper on the corporate consolidated groups tax regime, entitled 'Purpose in Consolidation- No More Purpose?', subsequently published in the Australian Tax Review.

Publications in 2007

- Jogarajan, S and Stewart, M, 'Review Essay – Harmful Tax Competition: Defeat or Victory?' (2007) 22 *Australian Tax Forum* 3.
- Jogarajan, S, 'Purpose in consolidation – no more purpose?' (2007) 36 *Australian Tax Review* 253.
- Jogarajan, S and Farrow, I, 'ASEAN Tax Regimes: Impediment or Pathway to Greater Integration' in Hew, D (ed) *Brick by Brick: The Building of an ASEAN Economic Community* (2007, Asia Pacific Press).
- Kobetsky, M, O'Connell, A and Stewart, M, 'Australia' in Bongaarts, P, Bouzora, D, Maisto, D and Pelvan, G (eds) *Investment Funds: International Guide to the Taxation and Regulation of Mutual Funds and their Investors* (2007 edition, International Bureau for Fiscal Documentation).

- O’Connell, A, ‘Employee Share Ownership Plans in Australia: The Taxation Law Framework’ (Research Report, Employee Share Ownership Project, Melbourne Law School, The University of Melbourne, March 2007).
- O’Connell, A, Landau, I, Mitchell, R, and Ramsay, I, ‘An Overview of Existing Data on Employee Share Ownership in Australia’ (Research Report, Employee Share Ownership Project, Melbourne Law School, The University of Melbourne, March 2007). This has also been published in SSRN and accepted for publication in the *UCLA Pacific Basin Law Review*.
- O’Connell, A, Landau, I, Mitchell, R, and Ramsay, I, ‘Employee Share Ownership: A Review of the Literature’ (Research Report, Employee Share Ownership Project, Melbourne Law School, The University of Melbourne, March 2007).
- Stewart, M, 'Tax Policy Transfer to Developing Countries: Politics, Institutions and Experts' in Schui, F. and Nehring, H (eds) *Global Debates about Taxation* (2007: Palgrave Macmillan UK).
- Stewart, M and Flynn, M, *Death and Taxes* (2nd edition, Thomson).
- Stewart, M and Walker, K, ‘Australia – National Report’, Report on Constitutional Limitations on the Legislative Power to Tax in Australia for the 17th Congress of the International Academy of Comparative Law (2007) 15(2) *Michigan State Journal of International Law* 193-245

Visiting Teaching and Seminar Presentations

Members of the Tax Group were invited to teach or present seminars at a range of institutions during 2007.

- Associate Professor Miranda Stewart was a Visiting Professor at the University of Florida Levin College of Law during January and February 2007, where she taught the subject ‘Taxes and Government Spending’ and ‘Taxation of International Business Transactions’ in the US Tax Masters program.
- Two members of the Tax Group, Senior Lecturers Dr Michael Kobetsky and Ms Sunita Jogarajan, visited the University of Tasmania Faculty of Business to teach 'Advanced Taxation' to honours students.
- Associate Professor Ann O’Connell conducted a seminar for the School of Enterprise on Taxation Issues in the Commercialisation of Intellectual Property in July 2007.
- Sunita Jogarajan taught a seminar on ‘GST and Property’ at the State Revenue Office of Victoria in July 2007.

Knowledge transfer and contributions to policy debates

Members of the Tax Group participate in peak professional bodies, as Fellows of the Taxation Institute of Australia and members of the International Fiscal Association, in which they play a role in the development of tax law and policy. Tax Group members also work as special counsel to leading law and accounting firms, ensuring close links with the tax profession and an awareness of the problems of taxation in practice.

- Associate Professor Ann O’Connell was a member of the Advisory Panel to the Board of Taxation in Treasury, the peak federal government body concerned with taxation reform, and sat on the Education, Examinations and Quality Assurance Board of the Taxation Institute of Australia.
- Associate Professor Miranda Stewart worked as a Consultant to the National Inquiry by the Human Rights and Equal Opportunity Commission into Discrimination Against People in

Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits. The Commission reported in May 2007 and adopted the recommendations of Miranda Stewart in respect of discrimination in tax and superannuation laws.

Melbourne Law School Annual Tax Lecture

The Annual Tax Lecture series was launched by the Tax Group in 2005 with the purpose of placing the development of tax law in its historical context and to inform public debate on current tax issues. In April 2007, the Tax Group hosted the third Annual Tax Lecture by Professor John Tiley of Cambridge University, on the topic 'Managing Tax Avoidance: Recent UK Experience'.

Previous Tax Lectures have been presented by Justice Young of the Federal Court of Australia and Mr Allan Myers QC of the Victorian Bar.

Seminars and workshops

The Tax Group hosted three Melbourne branch meetings of the International Fiscal Association in 2007.

- Professor Malcolm Gammie QC, of the UK Bar and Leiden University, The Netherlands, spoke on 'A UK perspective on international tax before the ECJ- Process and Outcomes' at a branch meeting hosted jointly with the Tax Bar Association.
- Professor Lee Burns of the University of Sydney gave a presentation on 'Harmonisation of the Anti-deferral Regimes and the Board of Taxation Discussion Paper'.
- Dr H David Rosenbloom, Distinguished Professor, New York University, spoke on 'Transfer pricing/cost sharing and US practice' in a meeting hosted jointly with the Tax Bar Association.

The Tax Group has also initiated a discussion group for tax academics in Victoria, to encourage cross-fertilization of research and teaching.

Management and staff

In 2007, Ms Sunita Jogarajan was promoted from Lecturer to Senior Lecturer.

The Co-Directors of the Tax Group are Associate Professor Ann O'Connell and Associate Professor Miranda Stewart. Ms Kerry Brewster is Tax Group Coordinator and Research Fellow.

The Tax Group's website can be accessed at: www.tax.law.unimelb.edu.au .

The Tax Group can be contacted by email at: law-tax@unimelb.edu.au .