



RESEARCH REPORT 2008

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 as well as teaching tax law in the Melbourne LLB, JD and B.Comm degrees; and providing additional training programs and seminars to government officials in Australia and overseas;
- organising significant 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:

Tax group members are currently working on the following significant research projects, many of which are collaborative and interdisciplinary in nature and both build on and contribute to professional and consultancy work carried out by members of the Group. 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'. In 2008, the project focused on the use of employee share plans by listed and unlisted entities and included both conceptual and empirical research. In association with the project, Ann O'Connell organized a workshop involving business, professional, government and academic participants on taxation and regulation of employee share schemes and produced a number of publications listed below.

Fiscal policy and globalization

Associate Professor Miranda Stewart further developed her research on globalization and the role of international institutions in fiscal reform, preparing a joint paper with Professor Lisa Philipps of Osgoode Hall Law School, York University, Canada on budget transparency laws for the *Symposium: Ruling the World: Generating International Legal Norms* hosted by Brooklyn Law School, USA.



International Tax

Dr Mike Kobetsky spent time visiting at the ANU College of Law during 2008 writing his book on the attribution of profits to branches of international enterprises under the OECD Model Tax Convention.

Tax and Indigenous Economic Development; Poverty in the midst of Plenty

Miranda Stewart was one of a collaborative and interdisciplinary team working on issues of native title and Indigenous economic development, including tax and legal entity issues during 2008, under the leadership of Professor Marcia Langton. She presented papers and workshops on taxation of business entities to a range of audiences working on native title and Indigenous development.

Miranda Stewart and Sunita Jogarajan worked with KPMG to research the policy and design of tax incentives to stimulate investment and business activity on Aboriginal land in remote and regional Australia in a consultancy for an Australian government agency.

Significant Publications in 2008

- **Associate Professor Miranda Stewart**

STEWART, M (2008) 'Consultation in Business Tax Reform: Towards an Effective Tax Policy Network' in Cooper, Graeme (ed), *Executing an Income Tax* (Australian Tax Research Foundation)

STEWART, M (2008) 'Tax and Same Sex Couples: Still Waiting for a Fair Go' 42(9) *Taxation in Australia* 517-534.

Philipps, L and STEWART, M (2008) 'Defining Fiscal Transparency: Transnational Norms, Domestic Laws, and the Politics of Budget Accountability' *Joint Working Paper, Comparative Research in Law and Political Economy* (Osgoode Hall Law School, Toronto, Canada) and *University of Melbourne Legal Studies* (Melbourne Law School), SSRN ID 1292849 (October 31, 2008)

- **Associate Professor Ann O'Connell**

Brown M, Landau I, Mitchell R, O'CONNELL A & Ramsay I. 2008. Why do employees participate in employee share plans? A conceptual framework. *Labour and Industry*. 18 (3): 45-72.

O'CONNELL A. 2008. Employee share ownership plans: The taxation law framework. *Journal of the Australasian Law Teachers Association*. 3: 36-60.

O'CONNELL A. 2008. The Tax Position of Charities in Australia - Why does it have to be so Complicated? *Australian Tax Review*. 37 (1): 17-37.

O'CONNELL A & Brewster K. 2008. Combatting large-scale tax evasion - Australia's experience. *Bulletin for International Fiscal Documentation*. 62: 145-150.

O'CONNELL A. 2008. *Employee share ownership in unlisted entities: Objectives, current practices and regulatory reform*. Employee Share Ownership Project. Melbourne, Australia: Melbourne Law School.



- **Dr Michael Kobetsky**

KOBETSKY, M. (2008) 'Transfer Pricing Measures in Emerging Developing Economies', *Asia Pacific Tax Bulletin* 14: pp. 363–377

KOBETSKY, M. (2008) 'The Case for Unitary Taxation of International Enterprises' *Bulletin for International Taxation* 62: pp. 201–215

Tax Group Seminars/Workshops/Conferences

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 the tax law in its historical context, and to inform public debate on current tax issues.

In 2008, the Hon. Justice Michael Kirby, of the High Court of Australia, presented a Lecture entitled "Sham in Tax Law After *Raftland Pty Ltd v Commissioner of Taxation*" to a crowd of more than 200 members of the judiciary, profession, academia and students. This Lecture was published in the Melbourne University Law Review, Volume 32, Number 3, 2008. Previous Lecturers have included Professor John Tiley of the University of Cambridge, Justice Young of the Federal Court of Australia and Mr Alan Myers QC.

IFA Seminars

The Tax Group also hosted two Melbourne branch meetings of the International Fiscal Association in 2008.

On 12 June 2008, Professor Reuven Avi-Yonah, Director of the International Tax LLM Program at the University of Michigan Law School gave a presentation on "Tax Competition, Tax Arbitrage and the International Tax Regime".

On 25 September 2008, Mr Casey Plunkett, Partner at Chapman Tripp in New Zealand, gave a presentation on "Recent New Zealand International Tax Reforms".

Conferences

In April Associate Professor Ann O'Connell ran a one day workshop on taxation and regulation of Employee Share Ownership Plans for Unlisted Entities with representatives from industry, the ATO, ASIC and Treasury at the Melbourne Law School.

The Tax Group hosts a monthly Discussion Group on topical tax law developments for our nearly 30 adjuncts and professional faculty.

Visiting Conference Presentations, Seminars and Teaching

Members of the Tax Group were invited to teach or present seminars to a range of institutions during 2008 and presented a number of conference papers:

- Ann O'Connell presented a paper on Cross-border Issues of Pensions to the International Fiscal Association in Belgium in September 2008. She also chaired a session on Taxation of Charities at the Fourth Tax History Conference in Cambridge in July 2008 and participated in the Annual Conference of the European Tax Professors



- Association dealing with Cross-border issues of ESOPs in Cambridge in July 2008.
- Miranda Stewart was a Visiting Professor at Brooklyn Law School during October 2008, when she presented three talks to students, faculty and a conference audience. In June 2008 she gave a paper at the Native Title Conference held in Perth and presented at a one day Workshop on Taxation Issues immediately after the conference. In September 2008, Miranda presented on tax law issues at an Aurora Project workshop for native title lawyers. She also participated in the Symposium for International Research Fellows at Oxford University Said Centre for Business Taxation during June 2008.
- Sunita Jogarajan presented a paper on 'ASEAN Tax Regimes - Impediment or Pathway to Greater Integration' at the 5th Asian Law Institute Conference held at the National University of Singapore in May 2008.

Tax Group members also continued their commitment to the publication of quality text books for teaching and reference purposes, as Mike Kobetsky, Ann O'Connell and Miranda Stewart collaborated in producing the seventh edition of Kobetsky M, Krever R, O'Connell A & Stewart M. 2008. *Income tax: Text, materials and essential cases*. 7th ed. Sydney, Australia: Federation Press for law students and Sunita Jogarajan contributed to C. Coleman, G. Hart, S. Jogarajan, R. Krever, J. McLaren, K. Sadiq (ed), *Principles of Taxation Law* (2008), for commerce students.

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.

Miranda Stewart and Ann O'Connell made a joint submission on tax issues in commercializing intellectual property to the Innovation Review of 2008. Miranda gave written evidence and was called to give oral evidence to the Senate Legal and Constitutional Affairs Committee in respect of tax and superannuation for their *Inquiry into the Same-Sex Equality Reform Bill 2008*. She also assisted the federal Attorney General's committee on legal and administrative issues associated with this reform and presented a Television Education Network paper and interview on discrimination against same-sex couples in tax and superannuation law.

Visitors to the Tax Group

The Law School hosted eminent tax scholars from around the world to teach in the Melbourne Law Masters program and carry out collaborative research. Visitors included:

- **Professor Tim Edgar**
University of Western Ontario Law School
- **Professor Brian Arnold**
University of Western Ontario Law School
- **Professor Yariv Brauner**
University of Florida Law School
- **Professor Lisa Philipps**
Osgoode Hall Law School, Canada



- **Professor John Prebble**
Victoria University of Wellington, New Zealand

Management and staff

In 2008 the Co-Directors of the Tax Group were Associate Professor Ann O'Connell and Associate Professor Miranda Stewart. Ms Anna Whitelaw and Ms Chiara Comodori worked with the Co-Directors as Coordinators of the Tax Group.

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 ; our current Tax Group Coordinator is Ms Tessa Dermody.