

## RESEARCH REPORT 2006

### About the Tax Group

The Tax Group at Melbourne Law School aims for excellence in tax education and research. It offers a comprehensive postgraduate program and teaches a range of subjects in the LLB and JD degrees. The tax program is designed and taught by, and in conjunction with, experienced taxation practitioners including members of leading law and accounting firms and leading members of the Tax Bar. The program provides detailed taxation knowledge and skills for tax professionals and policy-makers and seeks to develop the foundations of tax policy and law for research students.

### Research in the Tax Group

The Tax Group undertakes taxation research with a technical, public policy and reform focus and contributes at various levels to public debate on taxation reform. The tax faculty has a diverse range of tax research interests, including Australian individual and corporate income tax, comparative and international taxation, tax policy and critical perspectives on taxation. Much Tax Group research is interdisciplinary and comparative in nature.

In 2006, Professor Cameron Rider and Associate Professor Ann O'Connell continued work with Professor Richard Mitchell of the Centre for Labour Law and Professor Ian Ramsey of the Centre for Corporations Law and Governance on a 3 year ARC-funded research project, "Employee share ownership: current practice and regulatory reform".

The Tax Group also continued their research into tax and intellectual property funded by the Intellectual Property Research Institute of Australia (IPRIA). In 2006, Professor Cameron Rider, Associate Professor Ann O'Connell, Associate Professor Miranda Stewart, Lillian Hong and Michelle Herring produced a substantial report titled "Taxation Problems in the Commercialisation of Intellectual Property". Professor Cameron Rider presented this research in a series of lectures hosted by IPRIA throughout Australia, titled "Taxing the Mind". This has now been developed into a postgraduate tax subject.

In addition, the Tax Group continued to conduct research on tax reform and international institutions, and the process of tax reform. Sunita Jogarajan commenced a research project into the influence of the IMF on tax reform in developed countries which is funded by a Melbourne University Early Career Researcher Grant.

### Significant publications and presentations by Tax Group faculty

Dr Michael Kobetsky, Associate Professor Ann O'Connell and Associate Professor Miranda Stewart published a 6<sup>th</sup> edition of *Income Tax: Text, Materials and Essential Cases* (with Professor Rick Krever of Monash University).

Associate Professor Ann O'Connell, Dr Michael Kobetsky, and Associate Professor Miranda Stewart also wrote the chapter 'Australia' in *Investment Funds: International Guide to the Taxation and Regulation of Mutual Investment Funds and their Investors, International Bureau of Fiscal Documentation* (edited by Bongaarts, P, Bouzora, D, Maisto, G, Pelvang, A).

Associate Professor Miranda Stewart edited a book and special issue of *Law in Context* titled “Tax Law and Political Institutions” featuring an introduction from Associate Professor Miranda Stewart and contributions from members of law, politics and commerce faculties in Australia, New Zealand, Canada and Hong Kong. She also presented papers on aspects of business tax reform at two conferences organised by the Australian Tax Research Foundation and on tax reform and governance at the first OECD International Network for Tax Research conference at University of Michigan Law School in the US.

Lecturer Sunita Jogarajan presented a paper on ‘Tax Concessions for Returning Australians’ at the ATTA conference which was later published as a journal article “Bring them Home- The Case for Tax Concessions for Returning Australians” in the *Revenue Law Journal*. Sunita also co-wrote a paper on ‘The Australian Investor in India – Business Structures, Tax and Investment Scenarios’ for the inaugural CPA Australia India Conference and published a paper on the Indian tax system and foreign direct investment in the *Asia-Pacific Journal of Taxation*. Sunita also co-authored a report on ‘ASEAN Tax Regimes and the Integration of Priority Sectors’ which was funded by the ASEAN Australia Development Cooperation Program.

Dr Michael Kobetsky gave a number of presentations in China. These included seminars for the Chinese central revenue authority on international tax anti-avoidance measures and a transfer pricing seminar for the Chinese Taipei revenue authority. Dr Kobetsky also gave a keynote address on transfer pricing to Chinese Taipei tax officials and tax advisers. He presented an international tax seminar to the Study Group of Asian Tax Administrations and Research (an association of tax agencies including Australia, New Zealand, Japan, South Korea, China and Chinese Taipei) hosted by Chinese Taipei.

In addition, Dr Kobetsky presented a paper at the Taxpayers Australia National Conference on the tax consequences of investing overseas. He also published ‘Article 7 of the OECD Model: Defining the Personality of Permanent Establishments’ in the *Bulletin for International Taxation*.

### **Contributions to public policy and dissemination of research**

Members of the Tax Group participate in peak professional bodies in which they play a key role in development of tax law and policy. In 2006, several members of the Tax Group were fellows of the Taxation Institute of Australia and active members of the International Fiscal Association. Professor Cameron Rider was a member of the Taxation Committee of the Law Council of Australia. Associate Professor Ann O’Connell was a member of the Advisory Panel to the Board of Taxation, the peak federal government body concerned with taxation reform. Associate Professor Ann O’Connell was also a member of the Education, Examinations and Quality Assurance Board of the Taxation Institute of Australia.

In these roles and in an individual capacity, in 2006, members of the Tax Group participated in consultation on technical tax law reform initiatives and on broad policy issues.

### **Tax group events and visitors**

The Tax Group was pleased to host the 18<sup>th</sup> Annual Australasian Tax Teachers Association Conference from 30 January 2006 to 1 February 2006. On the theme “Old Taxes in a New World”, the conference featured, as keynote speakers, His Honour Justice Richard Edmonds of the Federal Court, Professor Neil Brooks of Osgoode Hall Law School, Toronto, Professor Malcolm Gammie QC of London School of Economics, Mr Michael D’Ascenzo, incoming Commissioner of Taxation, Professor Judith Freedman of Oxford University, and Professor Claire Young of UBC, Vancouver. It was attended by more than 100 tax faculty from around Australia and New Zealand.

The Tax Group also hosted with IPRIA a Venture Capital Symposium in February 2006. Associate Professor Miranda Stewart spoke at the symposium, together with Professor Daniel Sandler, of the University of Western Ontario, Canada; Associate Professor Stephen Barkoczy from Monash

University; Ben Davey, Partner at Freehills Lawyers and Craig Moore of the Australian Venture Capital Association Ltd. The symposium was attended by members of the profession, venture capital business and federal government including Treasury and Ausindustry.

In October 2006, the second Annual Tax Lecture took place at the Melbourne Law School. 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. The 2006 Lecture was given by Justice Neil Young of the Federal Court, on the topic "The Historical Significance of the High Court's decision in *Federal Commissioner of Taxation v Myer Emporium*".

The Tax Group also hosted two branch meetings of the International Fiscal Association in 2006. In September 2006, a presentation was given at the International Fiscal Association branch meeting by Graham Whyte, Assistant Commissioner (International Relations) at the Australian Taxation Office, addressing Australia's new international tax treaties on exchange of information with tax havens. In November 2006, Professor Tim Edgar from the University of Western Ontario, Canada spoke about the Canadian general tax anti-avoidance rule and recent Canadian Supreme Court decisions.

The Tax Group continued its practice of hosting a Tax Discussion Group for leading members of the tax profession and academia. The Tax Discussion Group allows the tax faculty and professional colleagues, alumni and postgraduate students to consider and discuss new legislation, cases and strategic developments in tax law and policy.

### **Changes in the Tax Group**

In 2006, Professor Cameron Rider resigned as the Director of the Tax Group and became a Professorial Fellow of the Tax Group. Associate Professor Miranda Stewart and Associate Professor Ann O'Connell became the Co-directors of the Tax Group.