

THE AUSTRALIAN

September 16, 2009 12:12am AEST

In search of tax perfection

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Article from: [The Australian](#)

IF you think the tax collector's is a friendless lot think again, at least among academic lawyers who study taxation.

While they universally criticise the cumbersome complexities of the revenue laws they are all admiration for the Tax Office. Especially its boss Michael D'Ascenzo, who takes their research so seriously; he is said to take holidays to attend conferences of the Tax Teachers Association.

While some - cynics would say all - students study tax in order to learn how to avoid it, many, perhaps most teachers and researchers are interested in the economics and administration, the policy and psychology of tax as a subject for scholarship.

There is an applied research culture. Many people HES spoke to have an engineer's obsession with the tax system, a fascination with the way it works and a determination to make the legislative machinery work better. And they are all anxious that the complexity of the system makes it hard to explain to students.

So while this community of scholars is not universally optimistic about the outcome of Treasury Secretary Ken Henry's review of the tax system their diverse research interests ensure passionate, and surprisingly similar, opinions of what they want it to deliver.

And while they acknowledge the way the Henry review has consulted tax law experts it is almost inevitable some are irritated, even envious of the way economists are making the running on the review's research base.

"Economists only focus on efficiency, lawyers want to look at the whole measure," says Ann O'Connell, associate dean at the Melbourne Law School.

And they argue about their influence. Paul Kenny from Flinders University, who has studied tax reform for 15 years, wonders if anybody is listening, "whether the government takes notice of articles in referred journals, I am not sure".

But Associate Professor Margaret McKerchar, head of the ATAX school within the University of NSW's law faculty, says "tax academics are heard".

But if Canberra is not paying attention, officials, (D'Ascenzo aside) are mad to ignore academics who are keen to work out ways for government to deliver on the four principles of tax perfection: equity and efficiency, simplicity and fiscal adequacy.

The way tax is treated among researchers in law faculties across the country demonstrates a shift from a focus on professional competencies to an assumption that tax law is the foundation public-policy discipline.

Although academics HES spoke to are anxious about teaching an ever denser discipline to undergraduates in less time, they are keen to expand the scope of tax law research.

According to McKerchar, "some are interested in black letter law but there is more interest in compliance, in interpreting the law and its consequences as socio-legal research".

"Tax is people's lives and quite endlessly fascinating," says Cynthia Coleman, an adjunct professor at the University of Sydney and a 30-year veteran of tax teaching.

Tax law was once considered a tradecraft, commensurate with conveyancing and taught in commerce degrees. In the 1960s the one textbook treated tax "as merely an exercise in statutory interpretation and as a policy free-zone. The politics and economics were for others," says another senior scholar, Philip Burgess,

now a visiting fellow at the University of NSW's law school.

"Until the early 80s tax law was taught by practitioners, not full-time academics, and all people got was black letter law preparation for practice, there was no analysis," says Rick Krever, professor of business law and taxation at Monash University, who consults to organisations as diverse as the ATO and IMF and is a founding member of the policy research community.

It does not seem that much has changed. For many students today, especially undergraduates, the basics are the best they can expect to get, not because lecturers are not interested but because even the rudiments take more time than is available to explain.

O'Connell says: "You tend to teach undergraduates broad themes and give them the basics by case law, you show them where to find the answers. You're almost teaching a research methodology because tax changes so fast."

As the subject has become ever more complex the time and interest students are prepared to expend on it has diminished. "Students were prepared to read more, they didn't have as many work commitments which cut into their time. Tax is not like history. You can't do a lot of reading at the end and pull it together."

While tax academics teaching in commerce faculties have big student numbers, especially in the lucrative full-fee international market, tax can struggle for space in the undergraduate curriculum. The result is that law schools have looked to postgraduate teaching and research to make money from their tax teachers.

Thanks to the globalising economy and the incomprehensibility of local laws demand is strong in specialist master courses.

"There are a lot more tax topics than a decade ago," says Kenny. According to McKerchar, "postgraduates are interested in international tax and everybody is looking for risk management and planning".

The schools that make the running are those tapping large commercial markets for tax law expertise, notably the G8 universities of Sydney, Melbourne and NSW.

The Melbourne Law School offers 20 tax subjects in its masters program and teaches up to 500 postgraduates.

But while incomes differ across institutions research interests are much the same. "Most academics are focused on improving the tax system", says McKerchar, although Burgess argues this can make for a certain similarity in everybody's interests.

"I have just reviewed the papers from the last ATAX conference and nothing has changed. People are working on compliance, same as in the 80s and usually conclude 'more research is needed'."

He says additional research which is needed, is on the history of the tax system. "Australia has used every company law system, there is no institutional memory".

"However most are inclined to work on what we have now."

Admiration for the ATO is all but universal, with Coleman speaking for many when she talks of its innovations, which are admired and emulated internationally. "It started marketing in the 80s, customer service in the 90s and its compliance model has been copied in New Zealand and Malaysia."

But everybody also accepts the legislative system is not working well. "There are bills every year to plug the holes in the last ones," Krever says.

Which is why they all have advice for the Henry review.

For O'Connell the Henry review, "is a fantastic opportunity to tackle very serious problems, but I worry it will focus on efficiency rather than equity".

McKerchar wants it to address fiscal federalism and simplify tax: "People should be able to understand tax; equity and certainty are the business of the tax system."

"Henry should stand back and address the real issues, looking at principles, not short-term revenue," Krever

says.

And Coleman has no doubt what the real issues are. She wants the capital gains tax discount gone and believes the way the tax and welfare systems interact must change. "The Tax Act is used to do too much, a streamlined system would do everybody a favour."

Kenny just hopes that the review will draw attention to tax: "It needs to identify winners and losers and encourage a debate on trade-offs. That's all I really ask, it's then up to the Commonwealth to work out which is acceptable."

Whatever Henry proposes, the tax law specialists will delight in dissecting the detail.

"Studying tax is like learning a language," Coleman concludes.

If so, it's one where the rules of grammar keep changing.

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