

10th Queensland Tax Research Symposium

Papers at a glance

Theme 1: Innovation

A toss of a (bit)coin: The uncertain nature of the legal status of cryptocurrencies (UK, NZ, Canada and Australia)

Professor Julie Cassidy

University of Auckland

Dr Man Hung Alvin Cheng

University of
Nottingham Ningbo
China

Based on similar technology, hundreds of cryptocurrencies are being created and traded. The economic substance of cryptocurrencies gives them value, but to date, the law has not definitively defined this substance. Regulating cryptocurrency is a difficult task for regulators, as the definition of “cryptocurrency” and which aspect requires regulation, are not settled. This difficulty exists at two levels: initial coin offerings that brought the cryptocurrency into existence, and trading in the cryptocurrencies themselves. Julie and Man’s paper contrasts the legal position of crypto currencies in China and Japan, with the position in AU, NZ, the UK and Canada.

How to get Angle Investors interested in just four words – ESIC

Mr Charl van den Berg

Grant Thornton and TC
Beirne School of Law
UQ

Raising equity to start or grow an existing business presents a suite of risks for investors, and challenges for those seeking equity investors. Income tax law has the potential to differentiate the position of some companies to attract new equity, when compared to other business structures. This differentiation is the result of the introduction of *Early Stage Innovation Company (ESIC)* tax incentives in 2016. Charl takes a practical, multi-disciplinary approach in discussing the short- and long-term income tax benefits for investors that should be considered as part of their decision making process. Secondly, he systematically analyses the hurdles and specific tests that the company raising equity should appropriately plan for, to differentiate itself from others seeking new equity.

Imports to Ectopia: Copyright and Income Tax Concessions

Dr Jonathan Barrett

University of Wellington

John Prebble uses the term ‘ectopic’ and its correlatives to connote the way in which income tax law is ‘pathological serious, and incurable’. According to Prebble, ‘income tax law is, in a fundamental sense, dislocated from the facts to which it relates’. Copyright law is similarly dislocated from artistic practice, even though artistic works have attracted copyright protection since the early nineteenth century. Jonathan critically engages with copyright law and its incorporation into income tax legislation in Australian and New Zealand in his paper. Jonathan does not support special income tax concessions for artists, but argues for equitable treatment of similarly situated taxpayers, if such concessions are in fact granted.

Theme 2: Tax residency

The application of Australia's domestic tax laws and tax treaties where a foreign company is a resident

**Mr Norman
Hanna**

Independent Advisor

Norman's paper provides an examination of the Australian income tax implications which may arise if the Commissioner is successful in applying TR 2018/5 such that a foreign incorporated company is considered an Australian tax resident on the basis of central management and control. Many of the foreign incorporated companies caught by TR 2018/5 will also prima facie be regarded as resident in their country of incorporation and thus a 'dual resident'. Although Australia has a tax treaty network that is available in some cases to potentially resolve the issue of dual residency for treaty purposes, a whole raft of domestic tax law implications will arise when a foreign incorporated company is a dual resident. Norman highlights the Australian tax issues faced by a 'dual resident' companies.

Australia's Taxing Rights over Individuals under the *Income Tax Assessment Acts*: Examining the Utility of the General Jurisdictional Rules

**Dr Sonali
Walpola**

Australian National
University

The core jurisdictional rules that underpin the Australian income tax law are that Australian residents *for tax purposes* are taxed on their worldwide ordinary income and statutory income (the residency rule) and that non-residents are taxed on Australian sourced ordinary income and statutory income (the source rule). Sonali examines the usefulness of the core jurisdictional rules, and considers if it is possible to re-express or re-organize the analysis in this area so that it more accurately captures the true position once relevant tax rules are collectively considered. Sonali's paper looks at national identity, CGT, and the impact of DTAs.

The interaction of citizenship taxation with controlled foreign corporation rules: the case of the transition tax

Dr Karen Alpert

UQ Business School

Karen draws on her own tax experience as a (former) US citizen and AU citizen, to discuss the impact of US President Donald Trump's 2017 sweeping tax reform package known as the Tax Cuts and Jobs Act (TCJA). The US is unique in taxing non-resident citizens under the same rules that apply to US resident taxpayers. Karen shares her concerns that the transition tax places a large compliance burden on small CFCs owned by individual US shareholders, secondly that taxpayers had little opportunity to adequately plan for the implications of TCJA, and thirdly that the transition tax is arguably a retroactive tax on earnings as far back as 1986. She points out that the transition tax will affect the ability of shareholders to obtain foreign tax credits for host country dividend taxes for years to come.

The role of 'intention' in determining the residency of individual taxpayers

Dr John Minas

University of Tasmania

Mr Norman

Hanna

Independent Advisor

John and Norman are concerned with the four residency tests for individual taxpayers in section 6(1) of the Income Tax Assessment Act 1936. In their paper, they focus on the role of intention in the application of these tests. They argue that these contextual meanings are akin to a clear definitional boundary which can be understood on an analysis of leading case law decisions concerned with the residency tests. Their paper provides a foundation for a framework for the application of the tests with consideration of the text, context, and purpose of the resident definition. Their purpose is to ameliorate perceived difficulties associated with the tests experienced by taxpayers, tax practitioners and tax administrators

Theme 3: Business

Tax implications of financial assurance in Queensland

**Elizabeth
Colbran**
Deloitte

Although financial assurance obligations are a common feature of the mining and resources industries, the taxation implications associated with providing financial assurance are complex and unclear. Effective from 1 April 2019, the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (Qld) significantly reformed Queensland's financial assurance framework for resource activities. Elizabeth considers the taxation treatment of the various mechanisms of providing financial assurance under the Queensland framework: contribution amounts under the new financial provisioning scheme; cash surety; surety in the form of bank guarantees and insurance bonds; and administration fees under the new framework. She also examines taxation issues relevant to financial assurance obligations more generally in a mergers and acquisitions (M&A) context, such as payments made by vendors to compensate purchasers for taking on financial assurance obligations.

Work Ready Graduates for Australian Small to Medium Accounting Firms

Sharon Hayes
Griffith Business
School
**Professor Brett
Freudenberg**
Griffith Business
School
**Dr Deborah
Delaney**
Griffith Business
School

It is estimated that 40 per cent of domestic accounting graduates are recruited by small and medium accounting (SMA) firms in AU each year. How work ready are these graduates? Sharon, Brett and Deborah has done the research, and find accounting graduates are meeting the expectations of SMA employers despite not being work-ready. They share their important findings. Competition enables the firms to select graduates with a higher level of skills, who are then provided with additional learning and support to assist with their employment tasks. Fewer graduates are being employed within this arena due to a higher number of students not meeting the requisite skill level, and the additional resources that would be involved in bringing the graduates to a work-ready level. SMA firm employers would welcome more Work Integrated Learning (WIL) opportunities being available for students to assist in developing these skills.

An investigation of the full impacts of the mandatory public disclosure of tax return data on firms and financial analysts

Pei-Jia Lum
PhD candidate, UQ
Business School

Pei-Jia's PhD investigates the full impact of the mandatory public disclosure of tax return data in the annual *Corporate Tax Transparency Report (CTT Report)* on Australian firms subject to the disclosure, as well as interested users. Her study consists of two phases. The first phase of investigation examines changes in the tax-related behavioural responses of firms subject to the disclosure. Tax-related behavioural response comprises changes in tax strategies and tax disclosures made by firms following their inclusion in the CTT Report. The second phase considers whether financial analysts are better informed regarding a firm's actual tax position following the publication of tax return data, as well as additional voluntary disclosures made by firms subject to the CTT legislation. Pei-Jia explains the empirical nature of her study, and how the potential implications go beyond the informational content in the CTT Report. Her study captures the intended and unintended impacts on firms and financial analysts.

Work-related tax deductions in a changing industrial environment: ramifications for university academics

Dr Steven Stern
Victoria University

Steven explains that in a previous era in the university sector, academic employment was dominated by tenure or other permanent employment. He goes on to say that casualisation of the academic workforce in the current era may be as high as 50 per cent of staff at some universities. In this new era, casual academics bear their own work-related expenses and are responsible to keep themselves

“work ready”. This position raises the stakes for employees: they must retain the ability to deduct work-related expenses from their assessable income for tax purposes. Steven looks at the issue from different vantage points: “worker rorts” that are costly to the AU economy, the ATO’s approach to expense substantiation, enterprise agreements, and the High Court of Australia decision in *Commissioner of Taxation v Finn*.

Theme 4: Trusts

Effective business structures for Australian small and medium enterprises: A Case Study Approach

Barbara Trad

PhD candidate, Griffith University

Barbara’s PhD uses evidence to analyse and critique the use of trusts as a business structure in Australia. There appears to be non-tax (commercial) reasons for the adoption of trusts. These include the potential for limited liability and greater asset protection from creditors in case of bankruptcy or divorce. If aggressive tax planning is the dominant motivation for choosing trusts, a related concern is that SMEs may be adopting a business structure that does not meet their overall commercial needs. This may result in economic costs for businesses and may create a systemic inefficiency for the Australian economy. Barbara reflects that it is critical to analyse whether the use of trusts is due to aggressive tax planning, as this could lead to a potential tax revenue leakage for the government or whether there are commercial reasons for their utilisation.

The chaotic Thomas litigation and the passing of franked distributions and associated attributes to discretionary beneficiaries: Has some tax law clarity been attained?

Associate Professor Dale Boccabella

University of New South Wales

The Thomas litigation in the High Court involved a discretionary trust in receipt of substantial franked distributions, and their (and associated tax attributes) allocation to beneficiaries. The trust also operated an active business. There was considerable uncertainty surrounding the two trustee resolutions that purported to allocate the trust’s taxable income (net income) and the franked distributions and associated tax attributes. Indeed, it is arguable that the trustee failed to allocate the trust law income per se, which is an indispensable step in achieving allocation of taxable income to beneficiaries. Dale focuses on trustee intention, to identify the guidance and the contribution the Thomas litigation provides on the operation of the income tax provisions directed at the allocation of franked distributions and associated attributes to beneficiaries.

Dissecting the Australian Labor Party’s tax policy on family trusts

Dr Thea Voogt

TC Beirne School of Law UQ

In 2017, the ALP adopted a new policy proposal for a minimum 30 per cent flat rate of income tax on distributions from all discretionary trusts, except from ‘farm trusts’, suggesting that trusts are a tool for wealthy Australians to lower their taxes. Thea considers whether there is evidence that trading trusts represent wholesale commercial success, and results in the creation of wealth for the families involved. In relation to ‘farm trust’, she considers three questions: why the ALP considered it necessary to create an exception for farm trusts; what a ‘farm trust’ is, taking into account the way that primary producers structure their operations in Australia; and, given the extent to which income tax law already makes provision for the unique features of primary production, whether this further exception is in fact necessary on the one hand, or required on the other hand, as an extension of consistent tax policy.