

TAXATION LAW RESEARCH PROGRAMME

ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW

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FACULTY OF LAW

UNIVERSITY OF HONG KONG

TLRP NEWSLETTER No. 5

INTRODUCTION

This is the Fifth Newsletter from the Taxation Law Research Programme (TLRP) at the Faculty of Law, University of Hong Kong. The TLRP is a programme within the Asian Institute of International Financial Law (AIIFL), one of the Faculty's key research centres.

UPCOMING EVENTS

THIRD TLRP INTERNATIONAL CONFERENCE

(25 February 2012)

The European Union and Greater China: Understanding the Fundamentals of the New Taxation Relationship

The European Union (EU) and Greater China - Mainland China, Hong Kong, Taiwan and Macau - (GC) comprise two of the key super-jurisdictions within the 'new' system of world trade which has evolved since 1989 (and since the commencement of China's 'open-door' policy around 1978).

The Taxation Relationship between the EU and GC is of rapidly growing importance. The International Tax dimensions of this relationship extend with each passing year.

Increasingly, the Municipal Tax aspects are of great interest, EU investment within GC continues notwithstanding currency-related difficulties within the EU. Moreover, as we look forward, it seems guaranteed that GC investment within the EU is set to lift significantly and continuously over coming decades. This Conference will offer a comprehensive review of a range of key International Tax and Municipal Tax areas of concern arising out the complex, developing Tax Relationship between the EU and GC.

We are fortunate to have a number of recognised international speakers from the Institute for Austrian and International Tax Law at WU in Vienna. This Institute is one of the foremost Taxation Law and Policy Research Centres in the EU. A number of notable, international and local commentators have also accepted invitations to attend the Conference – each of whom will provide succinct commentary on presented papers to begin the Q&A sessions.

Further details can be downloaded at: <http://www.law.hku.hk/aiifl/research/taxation.html>.

Seminar “Will the United States Government Ever Again Have a Functioning Budgetary System?” (27 February 2012)

Speaker: **Professor Neil H. Buchanan**, The George Washington University Law School

Please visit www.AIIFL.com for further information about the Seminar.

Intensive Course “An Introduction to International Taxation” (June 2012)

Presenter: **Sarah Hinchliffe**, Australian Legal Practitioner and Teaching Fellow at the University of Melbourne.

An introductory level course to the operation of international taxation as it applies to expatriates and businesses. The Course will provide a comprehensive introduction to the current international tax regime operating in select jurisdictions, including Hong Kong, Mainland China, Australia, the United Kingdom and the United States.

Course Details can be found at <http://www.law.hku.hk/aiifl/research/taxation.html>.

RECENT TLRP VISITORS

Seminar “**Transfer Pricing: Implications of the Recent SNF Judgment**” (9 November 2011)

Dr Michael Kobetsky, Melbourne Law School (*photo at right*)



Transfer pricing is the price which multinational enterprises charge for transactions between associated enterprises for goods and services. Transfer prices affect the respective taxable profits of associated enterprises, and most jurisdictions have transfer pricing measures to ensure that transfer prices are appropriate. Transfer pricing measures require transfer prices to reflect market prices charged in transactions between independent and unrelated enterprises. But it is often difficult to obtain comparable market prices. Australia has transfer pricing measures in its domestic tax law which are reflected in its tax treaties. While Australian transfer pricing measures were enacted in 1982 the only transfer pricing court decision occurred earlier this year, in June 2011, in the SNF case. The full Federal Court rejected the Taxation Commissioner’s contention that an Australian associated enterprise, SNF Australia Pty Ltd, had been over-charged for its purchases of industrial chemicals from associated enterprises in France, the US and China. Paradoxically, the Court found that SNF Australia had been undercharged.

Seminar “**Hong Kong’s Developing Double Tax Agreement (DTA) Regime: A Case Study of the HKSAR-New Zealand DTA**” (1 September 2011)

Professor Adrian Sawyer, University of Canterbury (*photo at right*)



Since Hong Kong adopts the territoriality basis of taxation, Hong Kong residents generally do not suffer from double taxation. Nevertheless, the Hong Kong Special Administrative Region Government (HKSARG) recognised that there are merits in concluding double taxation agreements (DTAs) with its trading partners. Consequently it is establishing a DTA network with its trading partners in order to minimise exposure of Hong Kong residents and residents of its DTA partners to double taxation. The Hong Kong-New Zealand DTA was negotiated in December 2010. In this seminar, Professor Sawyer reviewed the HK-NZ DTA and comment on the approach to negotiating DTAs in both jurisdictions.

Tax Lecture “**A Simple Law Tax System that Works: Lessons from Hong Kong**” (10 October 2011)

Professor Richard Cullen presented a 2-hours Lecture (*photos below*) to a group of students who are studying an Executive Master of Laws (LL.M.) in International Taxation at the University of Liechtenstein led by Professor Martin Wenz.



Professor Martin Wenz and his students



RECENT ACTIVITIES

Visit to the Australian School of Taxation (Atax) at the University of New South Wales, and to the Australian Tax Teachers’ Association Conference: January 2012

Three members of the TLRP, Richard Cullen, Wilson Chow and XU, Yan were invited to visit Atax at UNSW in January 2012 to discuss projected co-operative research plans (underlying a joint research funding application). Whilst in Sydney, the TLRP members also attended the

annual Australian Tax Teachers' Association Conference held at the University of Sydney. XU, Yan presented a paper at the Conference.

Visit to Zhongshan University: November 2011



Professor Andrew Halkyard, Professor Richard Cullen, Wilson Chow and Dr XU Yan visited Zhongshan University in Guangzhou in early November 2011 to meet with Professor YANG Xiaoqiang who is a leading Tax Law Academic in Mainland China. During the visit, they discussed research collaboration on Tax Law and Tax Policy related to Greater China; Tax Law teaching exchanges and presented a joint seminar.

The 12th GCET in Madrid

Brief History of the Global Conference on Environmental Taxation (GCET)

The GCET has been held every year since 2000 as an international meeting of specialists and a forum for the exchange of ideas, information, and research findings about environmental taxation issues and sustainable economic development.

The main role of the GCET is to provide insights and analysis on how informed tax policy can promote sustainable environmental goals. By discussing environmental taxation issues that exist around the world, effective approaches used in one country can be considered by governmental authorities in other countries.

Recent GCET conferences have attracted delegates from more than 50 countries representing a wide range of disciplines (law, economics, accounting, environmental management, and public administration) and a variety of sectors (academic, government, the private sector, and nongovernmental organizations). To date, the GCET conferences have been hosted by distinguished institutes including Vermont Law School in the U.S., the Faculty of Law, University of Ottawa in Canada and the Faculty of Law, National University of Singapore.

Participation in the 12th GCET in Madrid, Spain

Dr XU Yan from the TLPB participated in this year's GCET which was hosted by the Institute of Environmental Science of Complutense University of Madrid and the Department of Business Law (UNED) in Madrid on 20-21 October 2011. The key theme of the 12th GCET is "Market Instruments and Sustainable Economy".

Dr XU made a presentation, together with a colleague from University of San Diego School of Law, on the topic of "Can Taxation Related to Corporate Social Responsibility Enhance Sustainable Growth: The Case of China".



Abstract of the paper

Corporate social responsibility (CSR) is a broad concept which refers to the belief that businesses have a responsibility to society and the environment that exceeds their obligations to the stockholders or investors in the business. This paper seeks to examine the environmental aspects of CSR, to explore current scenarios where China is utilising tax policy or similar policies in confronting environmental matters, and to fashion a mandatory compliance and taxation scheme that takes into account existing voluntary standards of compliance-with a long term goal of changing producer and consumer behaviour in China and globally.

OTHER NEWS

Professor Andrew Halkyard is an Adjunct Professor at HKU Faculty of Law. He taught “Principles of Hong Kong Taxation on Income” in the first semester and will co-teach “International Tax and Tax Planning” with Dr XU Yan in the second Semester. Andrew will also participate in the third TLRP International Conference in February 2012.



Professor Halkyard is best-known as the author of the Encyclopaedia of Hong Kong Taxation, a 4 volume looseleaf text dealing with the major revenue law statutes enacted in Hong Kong. From 1995 until 2006 Andrew was a Deputy Chairman of the Inland Revenue Board of Review. He is currently a visiting Professorial Fellow at Atax, University of New South Wales, a member of the Editorial Board of the Revenue Law Journal and the Asia-Pacific Journal of Taxation and is a Senior Fellow, Taxation Law and Policy Research Institute, Monash University.

CATRC (Central Asian Tax Research Center)

In this newsletter, we wish to introduce our readers to an important sister tax research institution located in Central Asian, the Central Asian Tax Research Center (CATRC) (of the Kazakhstan Institute of Management, Economics and Strategic Research (KIMEP), founded by Dr Chan Young Bang (the President of KIMEP)). The CATRC is currently directed by Professor Tomas Balco (*photo below*). It is a specialized applied research center organized as an independent academic unit under the School of Law at KIMEP with a primary focus on tax research related to Kazakhstan and Central Asian and a secondary focus on CIS countries and Eastern/Central Europe. The Center carries out a wide range of academic and client-focused research. The Center’s research agenda is determined in consultation with an advisory board and potential clients. Current areas of research include:

- Taxation and Foreign Direct Investment
- International Taxation - Tax Treaties
- International Taxation - Domestic rules
- Customs Union and Taxation
- Oil & Gas and Mining Taxation
- Developing Countries and Taxation
- Substance and Form in Tax Law
- Foreign Investment Agreements and Taxation
- Enhanced Relationship Agenda



The Center presents the results of its research through regular external events dedicated to the various areas. The objective is to share the knowledge with the business community and also to get further input and support for further research from the community.

The Center provides a platform for research within Kazakhstan, providing independent advice to key players in Kazakhstan and Central Asia, such as Foreign Investors, the Tax Payer Community, and the Governments of the respective Republics on issues related to improvement of tax policies, tax legislation and administrative frameworks. The CATRC connects local tax professionals together with leading domestic and foreign tax academics and researchers with the objective to make a contribution in relation to:

- Tax Research on Central Asian countries;
- Policy recommendations for sustainable and effective tax systems and administration;
- Promotion and development of the tax profession; and
- University education and training of qualified tax professionals

KIMEP (Kazakhstan Institute of Management, Economics and Strategic Research)

The Kazakhstan Institute of Management, Economics and Strategic Research is the leading independent North American-styled academic institution in the CIS. Currently, it has approximately 4,000 students enrolled in six academic units, studying business, law, journalism, the social sciences and English pedagogy. KIMEP's curriculum is based on international standards, and all of its classes are taught in English. Utilizing a strong support system that features a first-rate Language Center, the largest English-language library in the CIS, a modern Sports Center and much more, KIMEP strives to provide a strong academic experience for all of its students and faculty.

KIMEP has an outstanding reputation throughout Kazakhstan and the region. KIMEP's programs are consistently rated by the Kazakhstani Ministry of Education as the first in their class, and a recent independent assessment by Kazakhstan's business and legal community awarded KIMEP with the best MBA and Executive MBA Programs in the country.

More information is available: www.kimep.kz

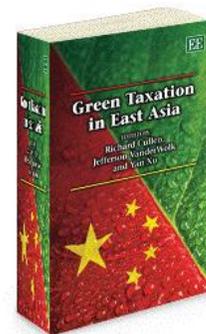
NEW PUBLICATION

Green Taxation in East Asia

Richard Cullen, Jefferson VanderWolk and Yan Xu (Contributing Editors)
Edward Elgar, Cheltenham, 2011

Further details can be found at

http://www.e-elgar.co.uk/bookentry_main.lasso?id=14053



“The right of East Asia to grow its economy and provide its citizens with living standards enjoyed elsewhere is as undeniable as the risk to the global environment from this growth. A volume that contrasts current initiatives in China and Hong Kong to reduce that risk with lessons from international experience presented by leading international experts from four continents, is more than just timely; it can make a key contribution to the development of contemporary thinking on taxation and the environment. This work fits the bill perfectly.”

- Rick Krever, Monash University, Australia

We welcome your comments and suggestions for further research and other activities, please feel free to email Professor Richard Cullen at richard.cullen@gmail.com or Flora Leung at fkleung@hku.hk.

We look forward to your continuing support and to seeing you at future TLRP events.