

TAXATION LAW RESEARCH PROGRAMME

ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW

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FACULTY OF LAW

THE UNIVERSITY OF HONG KONG

TLRP NEWSLETTER No. 10

INTRODUCTION

The Taxation Law Research Programme (TLRP) is one of the research programmes within the Asian Institute of International Financial Law (AIIFL) at the Faculty of Law of The University of Hong Kong. The Foundation Members of the TLRP were Professor Andrew Halkyard, Associate Professor Wilson Chow and Professor Richard Cullen. Professor Cullen serves as the TLRP Convenor.

TLRP VISITOR



Dr Diane Kraal is a Senior Lecturer of the [Department of Business Law and Taxation](#) at Monash University. Diane visited the TLRP at HKU in late June 2018 for discussions with Richard Cullen. Diane is recognized internationally as an expert on Natural Resources Taxation (NRT) in Australia (and comparatively). Diane has held roles in the minerals resource sector with Conzinc Rio Tinto of Australia (CRA) Ltd as a management and financial accountant. She is an experienced

professional having worked with Ernst and Young and was a Registered Tax Agent. Diane has worked in the financial services sector as the taxation manager with Australia's largest administrator of industry superannuation funds. For eight years she was Manager (Taxation and Banking) at La Trobe University, Melbourne. Diane has presented research papers at conferences both in Australia and overseas, including at the University of Cambridge in 2012 and 2014. In 2015 Diane was awarded a Visiting Fellowship to the Australian National University. In 2016 Diane visited the International Monetary Fund (IMF) in Washington DC to pursue extractive industry tax issues. In 2014 and 2015 the National Research Institute of Papua New Guinea (PNG) and the PNG Treasury appointed Diane and Dr Craig Emerson (former Federal Minister with the Rudd and Gillard governments) to research petroleum and mining tax reform. Tax reform in PNG has the support of the IMF. PNG's National Budget 2017 broadly includes Kraal and Emerson's petroleum and mining tax reform initiatives.



Three former TLRP Post-Doctoral Fellows, **Dr Jingyi Wang** (*left*), **Dr Yan Xu** (*middle*) and **Dr Doreen Qiu** (*right*) met up again at the Conference on “Addressing Tax Challenges in a Global Digital Environment” hosted by the Law School of Xiamen University and the WU Global Tax Policy Centre on 21-22 July 2018, in Xiamen. Dr Qiu gave a presentation, Dr Xu and Dr Wang were panellists. Dr Wang and Dr Qiu are based at Peking University and Xiamen University respectively. Dr Xu

is taking up a new appointment at UNSW as a University Scientia Fellow. She will be an Associate Professor in the School of Taxation and Business Law at UNSW.

RECENT TLRP PUBLICATIONS

Jingyi Wang and Wilson Chow, **Individual Income Taxation Reform in China: What is the Real Change?** (2019) 14(2) Journal of Comparative Law.

Jingyi Wang and Wilson Chow, **Capital Gains Tax with Hong Kong Characteristics: Desirability, Feasibility and Design** (2018) 48(2) Hong Kong Law Journal 555.

TLRP Tax Comments No. 7

Consumption Tax Reform in America: Under the Radar - but Underway by *Richard Cullen* – October 2018 (also published online at the *IPP Review*)

TLRP Tax Comments was introduced in early 2016 to provide an online publication platform for stimulating Tax Law & Policy articles and notes. TTC publications are added to on an *ad hoc* basis, as suitable articles or notes come to hand. (TTC is not designed to operate as a regular journal, with regular issues.) Article and notes are reviewed by staff within the TLRP. TLRP Tax Comments No. 1 to No. 7 are available at:

<https://www.law.hku.hk/aiifl/taxation-law-research-programme-tlrp/>

TLRP SEMINARS

19 June 2019

Blockchain, Big Data and International Tax Compliance

Dr Sarah Hinchliffe, Assistant Professor of Tax and Accounting, University of Akron

Abstract: Blockchain, or distributed ledger technology (DLT), is an emerging digital technology that represents a foundational shift in record keeping. Blockchain is a way of ordering and verifying transactions in a distributed ledger, where a peer-to-peer network of computers maintains and validates a record of consensus of transactions with a cryptographic audit trail. Tax professionals (in both the legal and accounting industry) may need to embrace the advent of blockchain and the potential uses of DLT beyond cryptocurrency. From developing tax strategies to claiming potentially available R&D credits, this seminar discussed how blockchain is helping to reimagine the tax function in Hong Kong, the US and Australia.

12 June 2018

Investments, Pensions, and Strategic Planning – Taxation Opportunities and Traps for Hong Kong Residents and Expats

Dr Sarah Hinchliffe, Assistant Professor of Tax and Accounting, University of Akron

Abstract: Successful global mobility management constitutes more than ever a skillful balancing act and leads companies to use flexible and innovative solutions. Global Mobility is changing for employees and employers alike. Companies, for example, increasingly look for smarter ways to manage expatriates. Over the past decade, many companies have moved from one-size-fits-all policies to more segmented policies designed to meet the requirement of different types of assignments and expatriates. Managing expatriate allowances, in particular, requires smarter approaches. Maintaining expatriate benefits such as pension and healthcare also continue to present thorny issues for many companies. The legal implications, from a planning perspective for both the employer and employee, are often overlooked. For an expatriate in Greater China who is approaching retirement, planning for how assets in a retirement plan are to be converted into income is of upmost importance. This seminar discussed key legal issues for employers in Greater China, and Hong Kong, who employ or seek to employ expatriates from Australia, the United States, Canada, and the United Kingdom. On the flipside, an employee from one of these jurisdictions who may be fast approaching retirement, should be informed about certain challenges, including: volatility, inflation, longevity, taxation and estate planning, and how best to address them. Taxation implications for both the employer and employee (with a focus on employees approaching retirement) were discussed, and included: pension and retirement plans unique to the above jurisdictions, taxation and property planning strategies for expatriate employees and professionals employed in Greater China, Estate and gifting considerations, also legal disclosure requirements. Adding to these global mobility policy and legal issues, the regional specificities presenting as a challenge to the adaptability of companies' policies were also discussed.

11 April 2018

Multinationals under Siege – The Changing Nature of International Tax and Trade Disputes

Eugene Lim, Former Head, Baker & McKenzie, Singapore

Abstract: Global transparency in tax and trade matters is here to stay with greater exchange of information, mutual administrative assistance agreements and guidelines from the World Customs Organisation. This seminar examined the various mechanisms for authorities to exchange information on tax and trade matters and why traditional strategies of dealing with disputes on a single jurisdiction basis increasingly is anachronistic. It also explored how multinational enterprises and advisors need to adapt to the changing nature of global tax and trade disputes.

9 April 2018

The Arm's Length Price Myth

Eugene Lim, Former Head, Baker & McKenzie, Singapore

Abstract: This seminar explored the implications of multinational enterprises relying primarily on transfer pricing principles for the purposes of ascertaining the price of intercompany transactions and how this often creates tensions with other areas of law which

impact on the pricing of related party transactions. This seminar also discussed some techniques used by multinational enterprises to rationalise some of these tensions and the intrinsic difficulties in achieving a sustainable balance.

17 October 2017

Hong Kong: A Simple Law Tax System that Works

Associate Professor Wilson Chow, Head, Department of Professional Legal Education, HKU

This was a special Tax Lecture for a group of students from the Executive Master of Laws Program (LLM) in International Taxation of the University of Liechtenstein.

TLRP INTENSIVE COURSES

An Introduction to International Taxation

Dr Sarah Hinchliffe, Assistant Professor of Tax and Accounting, University of Akron

An introductory level course on the operation of international taxation as it applies to expatriates and businesses. The course provided a comprehensive introduction to the current international tax regime operating in selected jurisdictions, including Hong Kong, Mainland China, Australia, the United Kingdom and the United States. The course was held in June 2018 and June 2019.

A new Intensive Course “Taxation and the Digital Economy**”, 6-8 December 2019**

Dr Sarah Hinchliffe, Assistant Professor of Tax and Accounting, University of Akron

The digital economy has raised several questions across the globe about whether existing tax laws can be applied to transactions utilising digital ledger technology (DLT), including blockchain. The BEPS initiative has further spurred regulators and tax authorities to clamp down on the tax revenue gap by combatting aggressive tax planning schemes. Blockchain has further complicated jurisdiction-specific tax compliance initiatives because of the nature of the digital platform on which it is based. This course identifies current and emerging key tax and legal issues concerning the use of DLT by SMEs also MNEs. It is designed for persons currently working in tax compliance roles, tax advisory roles (including in Hong Kong also internationally), academics, accountants and lawyers. It is most beneficial for junior- and mid- career professionals in accounting and tax advisory roles. While it is beneficial to have previously studied the “Introduction to International Tax” intensive course offered at HKU Faculty of Law, it is not a prerequisite to be able to enrol in “Taxation and the Digital Economy” intensive course. The format of this course, while intensive, is both accessible and interactive. More information about the course is available at www.AIIFL.com.

OTHER NEWS

NEW BOOK ON INTERNATIONAL TAXATION

In 2018, the Taxation Institute of Hong Kong approached Associate Professor Wilson Chow in the Faculty of Law at HKU - and a key member of the TLRP - about the writing of a new book on International Taxation. After some discussions, the TLRP began a search to locate two authors well qualified in Tax Law and Tax policy to take on this task.

We were fortunate that two very experienced and well qualified tax practitioners, Belinda Law (JD, HKU 2016) and Sue Cuthbertson agreed to take up this opportunity.

We are now pleased to announce that the Taxation Institute of Hong Kong and Wolters Kluwer have jointly published a new textbook on international taxation called **International Tax Law and Practice** in August 2019. Whereas a majority of international tax textbooks focuses on developed economies such as the US and the EU, International Tax Law and Practice places particular emphasis on Hong Kong and China. Most international tax textbooks have traditionally focused on developed economies mainly because international businesses have grown out of these economies. In addition, the complex tax systems adopted by the jurisdictions in these economies have driven a need for explanations of international tax concepts in the context of such complex tax systems.

However, as China has contributed to the significant growth of the international business community in recent decades, international tax has become an important topic in Asia for both business people and professionals. The Taxation Institute recognised the need for an international tax textbook that focused on Hong Kong and China and that explained complex international tax concepts in easily understandable terms.

This new international tax textbook will also serve as a key study guide for students who need to prepare for the Taxation Institute's Certified Tax Adviser Qualifying Examination Paper 3 - International Tax.



Brief bios on Belinda Law (*right*) and Sue Cuthbertson (*left*) are as follows:

Belinda Law is a US certified public accountant and a 2016 JD graduate from HKU. She is a seasoned tax professional with over 17 years of experience, specializing in the financial services industry, in particular, the design and implementation of tax efficient cross border investment and operating structures. For her JD dissertation, she researched into the interaction, within Hong Kong, between FATCA & the AEOI legislation and Hong Kong's constitutional and statutory protections of privacy rights. The resulting research article titled "Is Taxpayer Privacy Being

Compromised in Hong Kong?" was subsequently published in the July 2017 issue of the Bulletin for International Taxation and later translated into Chinese and published in the Taxation Translation Journal. She is on her way to become a qualified barrister in Hong Kong and will be starting her pupillage this September.

Sue Cuthbertson is a UK Chartered Tax Adviser with over 35 years of international tax experience, mainly in the area of financial services. After working with the Big 4, where she specialized in providing tax advice to financial institutions, including banks, fund, insurance companies and fund managers she worked at Deutsch Bank as a director in the tax financing group. Subsequently, she spent 10 years as the Deputy Regional Tax Director with Credit Suisse. In that time, she supported front office groups such as Private Equity, Equity, Fixed Income and Asset Management by advising on sustainable but tax-efficient products and investment structures. In the last 12 years, she has advised SMEs and MNCs, including private equity funds and venture capital funds, on international tax matters, in particular inward and outward investment to and from Hong Kong and Mainland China. Sue has worked in the UK, Asia Pacific, including Hong Kong and Mainland China, and India. She is the founding shareholder of SB Tax Advisors (International) Limited, a boutique international tax practice, whose vision is to assist businesses to manage their tax affairs in an

ethical, transparent and sustainable manner whilst still achieving tax efficiencies thus securing effective tax rates that are agreeable to all stakeholders, be it shareholders or tax authorities.

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

More information about the TLRP is available at <https://www.law.hku.hk/aiifl/taxation-law-research-programme-tlrp/>

We look forward to your continuing support.

28 August 2019