

# TAXATION LAW RESEARCH PROGRAMME

ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW

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FACULTY OF LAW

THE UNIVERSITY OF HONG KONG

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## TLRP NEWSLETTER No. 9

### 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 TLRP Convenor.

### PUBLICATIONS

#### TLRP TAX COMMENTS (TTC)

TTC 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.

Tax Comments No 4

#### **An Update on Hong Kong's Exchange of Information Developments and Engaging with BEPS by *Professor Adrian Sawyer***

The Hong Kong Special Administrative Region (HKSAR) implemented automatic exchange of information (AEOI) with the Inland Revenue (Amendment) (No. 3) Ordinance 2016 coming into effect on 30 June 2016. This development is the latest phase in the reform of the HKSAR's exchange of information capability. AEOI follows earlier legislative reform to permit the HKSAR to enter into tax information exchange agreements (TIEAs), and the signing of a Model 2 intergovernmental agreement (IGA) under the United States' (US's) Foreign Account Tax Compliance Act (FATCA). The HKSAR is also actively engaged in the G20/OECD's Base Erosion and Profit Shifting (BEPS) initiative, becoming an Associate member in order to facilitate implementation of the relevant BEPS Action Plans in both the HKSAR and internationally. This paper briefly reviews the historical developments in information exchange in the HKSAR, focussing on the implications of AEOI and BEPS developments, with some thoughts as to what the future may look like for businesses operating in the HKSAR.

**Question & Answer Session on: Hong Kong's Comprehensive Double Tax Agreement (CDTA) Network** by *Associate Professor Wilson Chow*

Associate Professor Wilson Chow was recently approached by Yimian Wu, who is working on an article for Tax Analysts in the USA, the publishers, inter alia, of *Tax Notes International*. We thought it would be good to share these concise responses to a set of good questions as a TLRP Tax Comment.

**Hong Kong's Involvement with International Tax Reform: What's the 'BEPS'?** by *Professor Adrian Sawyer*

The Hong Kong Special Administrative Region (HKSAR) was initially a reluctant participant in major international tax reforms initiated by the OECD, including (automatic) exchange of information (AEOI). In more recent times, as outlined in an earlier paper by the author, the HKSAR has become an active participant working at the forefront of the Base Erosion and Profit Shifting (BEPS) initiatives, including being part of the ad hoc group that developed a multilateral instrument under BEPS Action 15. This paper provides a forward-looking overview of BEPS, outlines the HKSAR's engagement with BEPS and international tax reform, and offer some thoughts on where BEPS may take us.

**TLRP TAX COMMENTS (TTC) – WORKING PAPER SERIES (WPS)**

As our experience with TTC has grown, we have realized that there is a need, within the TTC structure, to create a TTC-WPS. The objective of the TTC-WPS is to allow for the publication of papers which, although completed in draft form, are undergoing further revision and development. In this way, such papers are made available for reading within the TLRP network; and made available so that readers within the TLRP network can provide feedback to TTC-WPS authors.

The first paper offered in the TTC-WPS is:

**DTA Pensions Clause Fails Preservation, Portability and Long Duration Capital Formation Tests** by *Ross Smith*

Pension accruals for retirement funding are included in domestic assets, then are subject to tax in International transfer transactions, which should not be in the scope of transnational tax avoidance issues. Existing Double Taxation Agreements (DTA) only have a single objective of tax rights, which unfortunately conflicts with the needs of overseas mobile citizens to enable adequate funding of pension retirement income streams, that should function with the 'Sole Purpose Test' in respect of SISA Legislation under the Australian Constitution's 'Pension Powers' (S51xxiii). An actuarial model may suggest that a funded CPI indexed pension commencing at 66% of pre-retirement salary, should obviate a Government's liability in the provision of old-age pensions. Regrettably in Australian public administration, there appears to be a co-existence conflict when its taxation regime eliminated its 1946 national pensions scheme that left the Government's liability unfunded for the provision of old-age pensions. Changing jobs between tax jurisdictions several times before retirement causes pension payments to be taxed and paid out, which is also an opportunity cost to primary capital markets and causes a serious shortage of long duration capital for large scale investment projects. As a partial solution to co-existence conflict, this paper advocates that a 'Preservation and Portability' Instrument

should be included in Article 17 Pensions Clause in DTAs that preserves pension accruals until retirement age, allows for the tax-free portability transactions between respective tax jurisdictions, supports adequate funding of pensions in retirement, and adds significant economic value to primary capital markets with higher volume, long duration capital formation retention. The retention generates tax revenue as a secondary derivative to successful funding arrangement in the first instance.

The full versions of all the TTC and TTC-WPS are available at:

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

## ARTICLES

### [Hong Kong/United States - Is Taxpayer Privacy Being Compromised in Hong Kong?](#)

published at the Bulletin for International Taxation on 27 June 2017

**Belinda Law** wrote this article as her HKU JD Dissertation supervised by Professor Richard Cullen

### [Ho Kwok Tai v Collector of Stamp Revenue - Analysis and Implications](#)

**Stefano Mariani**, Registered Foreign Lawyer, Deacons Hong Kong

### [Losing Out in Powering Innovation: The Necessity of Introducing Research and Development Tax Incentives in Hong Kong](#)

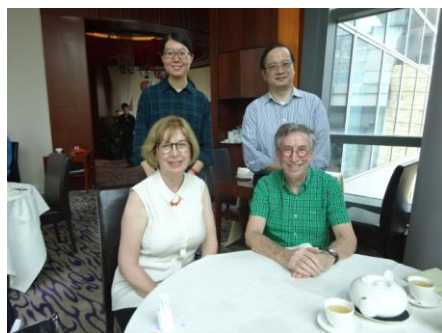
**Dr Jingyi Wang**, Post-Doctoral Fellow in PRC Tax, The University of Hong Kong

The above two articles were published in the Hong Kong Law Journal Vol. 47, Part 1 of 2017.

### [Misfiring the First Judicial Shot at Legislation by Press Release: Wong Chak Sin v Collector of Stamp Revenue](#)

published in the Hong Kong Law Journal Vol. 46, Part 3 of 2016  
**Jianlin Chen**, Assistant Professor of Law, The University of Hong Kong

## TLRP VISITORS



**Dr Fiona Martin**, School of Taxation and Business Law, UNSW, Australia, visited the University of Hong Kong on 5 May 2017 to meet with Professor Richard Cullen, Associate Professor Wilson Chow and Dr Jingyi Wang (Post Doctoral Fellow (PDF) in the TLRP). They discussed tax law and tax policy matters and possible future research collaboration. (*Top Left and Right: Dr Jingyi Wang, Associate Professor Wilson Chow; Below Left and Right: Dr Fiona Martin and Professor Richard Cullen*)



**Dr Doreen Qiu**, Xiamen University (former PDF in the TLRP), visited the University of Hong Kong on 18 January 2017 to meet with Professor Richard Cullen, Professor Zhao Yun, Associate Professor Wilson Chow, Dr Shitong Qiao and Dr Jingyi Wang to discuss possible tax research collaboration and other research plans. (*Left to Right: Professor Richard Cullen, Dr Jingyi Wang and Dr Doreen Qiu*)

## TLRP SEMINARS

13 June 2017

### Expats & Professionals in Greater China: Retirement Planning Opportunities & Challenges

**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 represent 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. The 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.

30 March 2017

### Hong Kong's Involvement with International Tax Reform: What's the 'BEPS'?

(TTC No. 6 – above)

**Professor Adrian Sawyer**, University of Canterbury



*Abstract:* The Hong Kong Special Administrative Region (HKSAR) was initially a reluctant participant in major international tax reforms initiated by the OECD, including (automatic) exchange of information. In more recent times, as outlined in a seminar delivered in November 2016, the HKSAR has become an active participant working at the forefront of the Base Erosion and Profit Shifting (BEPS) initiatives, including being part of the ad hoc group developing a multilateral instrument under BEPS Action 15.

The seminar provided a forward-looking overview of BEPS, outline the HKSAR's engagement with BEPS and international tax reform, and offer some thoughts on where BEPS may take us.

18 November 2016

## **An Update on Hong Kong's Exchange of Information Developments and Engaging with BEPS** (ITC No. 4 - above)

**Professor Adrian Sawyer**, University of Canterbury



*Abstract:* The Hong Kong Special Administrative Region (HKSAR) implemented automatic exchange of information (AEOI) with the Inland Revenue (Amendment) (No. 3) Ordinance 2016 coming into effect on 30 June 2016. This development is the latest phase in the reform of the HKSAR's EOI capability. AEOI follows earlier legislative reform to permit the HKSAR to enter into tax information exchange agreements (TIEAs), and the signing of a Model 2

intergovernmental agreement (IGA) under the US's Foreign Account Tax Compliance Act (FATCA). The presentation briefly reviewed the historical development in information exchange in the HKSAR, with the focus being on the potential implications of AEOI, and contemplation of what the future may hold for the HKSAR.

## **TLRP INTENSIVE COURSE**

9-11 June 2017

### **An Introduction to International Taxation**

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

An introductory level course to 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.

## **OTHER NEWS**



### **HKGCC Forum on Maintaining and Enhancing Hong Kong's Tax Competitiveness**

This Forum was organised by the Hong Kong General Chamber of Commerce on 11 July 2017. Michael Olesnick, Chairman of the Joint Liaison Committee on Taxation (JLCT), spoke on the Tax Policy Unit (TPU) and Section 39E, Marcellus Wong, Senior Advisor of PricewaterhouseCoopers, spoke on tax incentives and fiscal policy and

Associate Professor Wilson Chow at HKU commented on the tax incentives for R&D development in other jurisdictions. (Left to Right: Associate Professor Wilson Chow, Grace Tang, HKGCC, Michael Olesnick and Marcellus Wong)

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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](mailto:richard.cullen@gmail.com) or Flora Leung at [fkleung@hku.hk](mailto:fkleung@hku.hk).

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

We look forward to your continuing support.

July 2017