

ACADEMIA AS AN INFLUENCER OF TAX POLICY AND TAX ADMINISTRATION

MICHAEL D'ASCENZO AO ^{1*}

ABSTRACT

This paper considers how academia can influence tax policy and administration, highlighting examples where this has occurred. However, overall it concludes that the impact of academia does not appear on its face to have been as substantial as one might have thought. This paper explores the hurdles and conundrums that may have limited the impact of tax researchers on tax policy and administration. The paper nevertheless is optimistic about the potential for a closer engagement of tax researchers with tax policy advisers and the tax administration, and for corresponding benefits in the impact of that engagement. In terms of methodology, this paper is enhanced by the Delphi-type interviews on the topic with a number of relevant stakeholders.

^{1*} Presented by Michael D'Ascenzo AO at the 8th Queensland Tax Researchers' Symposium, Brisbane, 3 July 2017.

I. INTRODUCTION

More than ever, research is playing an important part in supporting proposed tax reforms and finding solutions to Australia's tax system. Also, for tax academics, the importance of quality research is critical in an increasingly competitive tertiary environment.²

There is good news and bad news. The bad news first – Australian tax research has probably not made as much of an impact as one might have imagined, particularly in the sphere of tax policy. The good news is that it can be an important influencer of tax policy, and that there is scope for tax research to be a more significant contributor to the tax policy agenda.

Notwithstanding the impressionistic conclusions outlined above, this paper acknowledges the inherent complexities associated with an empirical measurement of research impact in the field of taxation. For example, the tangible outcomes of thought leadership and tax research may not arise until well into the future. Moreover it will often be difficult to attribute an outcome to one causal factor only.

This paper outlines a range of ways in which academia can influence policy and administration. It provides specific examples of where this has occurred, and suggests avenues for further collaboration between academics and the government, the Federal Treasury (Treasury) and the Australian Taxation Office (ATO). The qualitative judgments in this paper are made on a scale of what might be possible. Within the context of a topic focusing on academic impact, this paper also takes the opportunity to make more general comments on frameworks, processes and capabilities in relation to tax policy development.

II. HOW ACADEMIA INFLUENCES POLICY AND ADMINISTRATION.

One way for academic researchers to influence Australia's legal frameworks has been through membership of law reform and other review bodies. The research, teaching and publication activities of these academics have often given them the prominence to be selected for those positions. Another way is for academics to be directly engaged in policy development or administration by being consultants to government or government

² Kerrie Sadiq and Brett Freudenberg, 'Emerging from the shadows: tax as a research discipline' (2014) 27(1) *Accounting Research Journal* <<https://doi.org/10.1108/ARJ-02-2014-0024>>.

departments. Again, the standing of the academic in the relevant area, often demonstrated by their research, teaching, and publications, provides the passport for those engagements, as do past links with government, the public sector, industry or the tax profession.

A good example of those types of activities, albeit outside the tax field, is the contribution of Harold Ford to the development of company law.³ At a more micro level his input on the registration of company charges drew on his intimate knowledge not only of company law but also real property law and improved the operational workings of the underlying policy. Closer to home, the iconic example is the input of Robert Gregory to the development of the HECS.⁴ In the broader tax and transfer field, John Piggott and Greg Smith were members of the Henry review.⁵ Academics have also translated their expertise in areas of law into the administration or interpretation of the law as members of regulatory bodies or the Administrative Appeals Tribunal (AAT). For example, a number of academics have accepted roles such as Ombudsman or Information Commissioner.

The ATO used to have a position of ‘Academic in residence’ and has used the services of academics on its public rulings panels. While, as outlined above, academics have occupied a range of positions that influence tax policy and administration, there are two most common roles adopted by them that may influence the development of tax policy and administrative practices.

A. *Independent Commentary*

³ ‘With the passing of Harold Ford, the Australian legal community has lost a remarkable teacher, scholar, law reformer and author, who was the undisputed founding father of modern Australian corporations law. His contribution to commercial law over six decades is unequalled and his influence impossible to overstate.’ Justice Julie Dodds-Streeron (Eulogy for Professor Ford), ‘Wrote the Book on Commercial Law’, *Obituaries, The Sydney Morning Herald* (Sydney), 2 November 2012
<<http://www.smh.com.au/comment/obituaries/wrote-the-book-on-commercial-law-20121101-28n5q.html>>

⁴ Robert Gregory, ‘Musing and Memories on the Introduction of HEC’s and Where to Next on Income Contingent Loans’ (2009) 12(2) *Australian Journal of Labour Economics* 237.

⁵ The Australia’s Future Tax System Review, informally known as the Henry Tax Review, was published in 2010. It was established to examine Australia’s tax and transfer system, including state taxes, and make recommendations to position Australia to deal with the demographic, social, economic and environmental challenges of the 21st century.

As part of their academic work, tax researchers publish papers that bring to attention potential improvements to the tax system or to tax administration. These published papers may influence the thinking of policy makers, advisers and administrators. It does not really matter if the recommendations made in these papers have a ‘slow burn’ in terms of their gestation period. Even where they are rejected, they provide a framework for discussion about counterfactuals to the status quo. Parliamentary committees often question Treasury and ATO officials about the viability of these different approaches.

Academics have been influential in bringing coherence to concerns expressed by those in opposition to a policy change, or those lobbying for a change in policy.⁶ Here academics need to be watchful of maintaining their academic integrity. However, in circumstances where technical changes emanating from a user perspective can improve the operation of a policy, academics can be influential in the modification of that policy. Similarly, coherent and consistent user input can simplify the administrative operation of the tax system. It is difficult to measure the impact of thought leadership provided by academics and academic research. As well as influencing the students they teach and publishing learned papers, academics also present at conferences, and may be vocal in the media regarding their research. Their arguments may leave a lasting impression on exiting or future tax advisers, as well as stakeholders in industry and the tax profession. For example, Treasury used to have an in-house Seminar Series, where academics had the opportunity to directly influence Treasury staff.⁷ ATO officers regularly attend and participate in academic tax conferences.

B. Direct Advice to Government

The possibility for academics to be drawn within the tent of policy development is often enhanced where they have links with the policy makers and advisers and/or the potential target group for the policy measure. Again, it is important to avoid capture and undue influence when providing advice or fronting a perspective as to the desired policy outcome.

⁶ For example, Robert Deutsch has recently taken on the role of senior tax counsel at The Tax Institute: The Tax Institute, ‘New Senior Tax Counsel appointment - message from the CEO’ (Media Release, 27 February 2017). Professor Deutsch has also been a member of the AAT and the ATO’s public rulings panel.

⁷ Examples of speakers and topics included Neil Warren, ‘What does it take to get States to reform their taxes?’ (2013); John Taylor, ‘An Examination of Some Approaches to Cross Border Corporate-Shareholder Taxation for Australia’ (2013); and Richard Vann, ‘The missing pieces of BEPS? Theory and the method analysis’ (2014).

A conundrum for some academics when the opportunity arises to contribute to policy development or administrative practices relates to copyright issues and the academic's independence in publishing the outcome of their work. There are two observations that can be made here. First, independence of thought should never be lost, because of the value added benefit to the government and to the community flows from the provision of full and frank advice, and evidence based analysis. However, this does not mean that the academic is free to use the work in a way that is contrary to the wishes of the employer. Academics need to understand that in working within the tent of the government of the day, and its administrative arms such as public sector departments, there will often be a perceived need to control the timing and manner of public release of the research activities or advice, or indeed whether there is any public release at all. This reticence may apply no matter whether the engagement relates to research, reviews of existing policy or arrangements, the development of new policy, or the crafting of administrative strategies or procedures. It is an issue that has been a show stopper to many opportunities for collaboration between academics and the public sector.

When tax researchers take on commissions to work within the tent, they are burdened with the same yoke as policy advisers or other employees. For example, Treasury itself must provide professional, evidenced based, full and frank advice to the government of the day, but it is then up to the government to accept it or not:

The Treasury Department is a department of state. It is part of the executive government. It works to the government of the day, whatever the political persuasion of the government of the day. And so in that sense of course the Treasury is not independent from government and it can never behave as if it is independent from government. But there's another sense in which it does have a degree of independence and that is that the Treasury conducts its analysis without government interference. It's up to the government of the day to decide whether to accept that analysis or whether to reject that analysis.⁸

The role of the in-house policy adviser requires patience, perseverance and a good sense of timing. The downsides for tax researchers in this position are that they may be unable to

⁸ ABC Radio, 'Treasury boss says Budget was beyond the 'reading age' of its critics', *PM*, 19 May 2009 (Ken Henry) <<http://www.abc.net.au/pm/content/2008/s2575258.htm>>.

publish the fruit of their work, and this may negatively impact on their university/academic careers; and some may find the lack of transparency morally confronting.

C. The Challenges in Recognising the Impact of Tax Researchers.

A challenge for the university sector is to find additional ways to recognise the excellence, engagement and impact of academics.⁹ Moreover, impact in the tax field will be inherently difficult to measure given the slow burn nature of changes to tax policy. In addition there will often be various other contributors or events that have a causal connection with changes in tax policy and administration. It may be difficult to accurately attribute the causality of a change, particularly where some of the contributions are not specifically made public.

The upsides of being within the tent are the direct access to the decision makers and their deliberations, and importantly access to data that may not otherwise be available. While there is a choice to be made, being within the tent as an unbiased provider of evidence based research provides the academic with a substantially greater opportunity to influence the direction of policy development. In addition, the insights gained from this work can help guide and direct the researcher's future independent academic research and publications.

However, how this effort is recognised by the university sector is still an open question.

Evans has observed that independence can be a 'double-edged sword', leaving the institution to "think the unthinkable" and to make proposals that may take the debate outside institutional comfort zones', but that this freedom may not translate to legislative outcomes.¹⁰

This conundrum has also played out in relation to joint research activities with the ATO, where opportunities to collaborate have been thwarted by the issue of the ownership of copyright to the outcome of the work.

⁹ 'In the Innovation Statement late last year, the federal government indicated a strong belief that more collaboration should occur between industry and university researchers.' At the same time, government, education and university bodies have made numerous recommendations for the 'impact' of university research to be assessed alongside or in addition to the existing assessment of the quality of research.' Steven Taylor, 'When measuring research, we must remember that engagement and impact are not the same thing', *The Conversation (online)*, 11 April 2016 <<http://theconversation.com/when-measuring-research-we-must-remember-that-engagement-and-impact-are-not-the-same-thing-56745>>.

¹⁰ Chris Evans, 'Reviewing the Reviews: A Comparison of Recent Tax Reviews in Australia, the United Kingdom and New Zealand or "A Funny Thing Happened on the Way to the Forum"' (2012) 14(2) *Journal of Australian Taxation* 146, 155.

D. *A Cooperative Approach Between Government and Academics*

In the field of tax administration, the ATO has sought to support academia by releasing a sanitised 2% sample file to aid research efforts. Further increasing the percentage of ATO data that could be available and accessed for research activity would be a boost for tax researchers, especially if the access included longitudinal data.¹¹ The ATO has also supported joint research activities, subject to the secrecy provisions in the law. In addition, tax academics have also been involved in the ATO's Tax Gap research activities, and lobbied for this research.¹²

Nevertheless, there is further scope for the ATO to engage academics, as short term employees or other engagement options, to undertake research activities using the rich data base available to the ATO. While these arrangements may mean that the tax researcher is subject to the ATO's secrecy provisions, the output of the researcher's activities is directly brought to bear in the future development or review of tax policy and administration. Moreover, the insights gained can usefully guide the tax researcher's future independent and academic research.

More generally, better access to data would allow tax researchers to predict more reliably changes in tax behaviour associated with any tax policy or administrative change. Treasury has used academics to assist in modelling policy changes. For example, in relation to superannuation it has used distributional data from the National Centre for Social and

¹¹ The ATO is phasing in a de-identified sample longitudinal file (called aLife) for individuals. This implements a recommendation made by the Henry Review; Bruce Bastian, 'ATO Data Presentation' (Presented at the 8th Queensland Tax Researchers' Symposium, Brisbane, 3 July 2017); Steven Hamilton, 'Data Resolution: Recent Developments in Empirical Tax Policy Research' (Presented at the Treasury Seminar Series, 2013) highlights the use of longitudinal data for research purposes in Denmark.

¹² The ATO first published Tax Gap estimates for the GST and the luxury car tax (LCT) gap in 2012 as part of its increased emphasis on measuring the effectiveness of its activities: ATO, *Measuring tax gaps in Australia for the GST and the LCT* (NAT 74422) 2012. A number of tax academics had previously recommended tax gap research to be undertaken by the ATO, similar to the research done in a number of other countries; See, Jacqui McManus and Neil Warren, 'The Case for Measuring Tax Gap' (2006) *eJournal of Tax Research* 4(1), 61-79 <<http://www.austlii.edu.au/au/journals/eJITaxR/2006/3.html>>; and Sylvia Villios, 'Measuring the tax gap of business taxpayers in Australia' (2012) *Revenue Law Journal* 21(1), Article 1 <<http://epublications.bond.edu.au/rlj/vol21/iss1/1>>. The ATO has since established a Tax Gap Expert Panel which includes academic input: Australian Taxation Office Submission Inquiry into the impact of the non-payment of the Superannuation Guarantee, 2017.

Economic Modelling (NATSEM)¹³, and the Melbourne Institute's Household Income and Labour Dynamics in Australia (HILDA) survey for households.¹⁴

III. THE ROLE OF THINK TANKS IN TAX POLICY DEVELOPMENT

Another way that tax researchers have influenced the tax agenda is through the work of 'think tanks'¹⁵ such as the Grattan Institute¹⁶ and the Tax Transfer Policy Institute¹⁷. Some Institutes receive funding from Treasury, and the Grattan Institute has a Treasury secondment.

Governments may be cautious to be aligned with any particular Institute, particularly where the Institute has its own 'push agenda' which may not coincide with the government's short term rhetoric. In addition, it could be argued that the proliferation of think tanks means that public funding is often spread lightly amongst them.

One benefit of the independence of think tanks is their ability to socialise new ideas with the general public, an outcome that would not be open to Treasury unless sanctioned by the government. This freedom could justify a review of current funding and institutional arrangements, such as the use of strategic partnerships between a think tank whose views are aligned with those of the government and the government. However, alternatives to current

¹³ The National Centre for Social and Economic Modelling at the University of Canberra.

¹⁴ The University of Melbourne, *HILDA Survey* (2017) <<http://melbourneinstitute.unimelb.edu.au/hilda>>.

¹⁵ Policy and/or research institutes.

¹⁶ 'This year Grattan Institute again contributed the highest-quality policy research and ideas to public debate. We also strengthened our capability to communicate these ideas effectively to policy makers, opinion leaders, and the public through the media, presentations and events, and our website.' The Grattan Institute, *Report on Operations 2015-16* (30 June 2016) <<https://grattan.edu.au/wp-content/uploads/2015/11/Grattan-Institute-Annual-Report-on-Operations-30-June-2015.pdf>>.

¹⁷ 'Responding to the need to adapt Australia's tax and transfer system to meet contemporary challenges, TTPI delivers policy-relevant research and seeks to inform public knowledge and debate on tax and transfers in Australia, the region and the world. TTPI is committed to working with governments, other academic scholars and institutions, business and the community.' Tax Transfer Policy Institute (TTPI), *About Us* (25 February 2016) <<https://taxpolicy.crawford.anu.edu.au/about-taxpolicy>>.

arrangements should be harmonious with the concept of responsible government and the wide traditional role of Treasury.¹⁸

The downside of this approach is that it may impede a more organic development of thought leadership, including ‘out of the box’ thinking on the model tax system for the future. This may occur if funding is skewed to one Institution, or where original research is not listened to or otherwise supported. Governments and Treasury have, or should have, a long term trajectory for a model tax system. Democratic and political processes often result in an extended period of public socialisation before the steps along the pathway to a model tax system crystallise into legislation. This reality opens up the opportunity for a strategic partnership between government, the Treasury, think tanks and academics, where the think tanks and academics can publically raise issues, engender debate and better inform the public about the pros and cons of major changes to the existing tax framework. In other words the government does not necessarily have to be aligned with proposals which still require the general support of the public, with the socialisation of the proposals undertaken by others. The government would show its hand at a time where there is general community acceptance of a major change.¹⁹

There is a risk that different think tanks may hold different views and propose diametrically opposed views and approaches, further polarising the debate on tax policy. On the other hand, over time these think tanks are likely to bring coherence to each of the opposing viewpoints, and in so doing, better articulate the choices for government and the general public. On balance, think tanks provide academics with the opportunity to bring to public attention the outcomes of their research which ultimately may find their voice in changes to policy and the status quo.

The rise of think tanks and the evolving role of the Board of Taxation, makes tax policy advice more contestable, and provides the government with policy advice from sources other

¹⁸ Michael D’Ascenzo, ‘Pathways for Tax Policy and Administration: Institutions and Simplicity – An Australian Perspective’ in Chris Evans, Richard Krever and Peter Mellor (eds), *Tax Simplification* (Kluwer Law International, 2015) 301.

¹⁹ While politics may often make major change a long-term exercise, it is a government responsibility to be a prime mover of change where it considers this necessary and urgent notwithstanding electoral risks.

than Treasury.²⁰ In this environment it behoves the Treasury to ensure that it has the wherewithal to provide the government with professional, evidence based advice which draws in the evolving tax literature, international tax experience, and sophisticated research and modelling. It could be argued that Treasury needs to do more if it is to remain the government's key adviser on tax policy.

It has been questioned in the past whether Treasury sees its role as bringing together all the threads relevant to the development of sound tax policy, including the intelligence drawn from research, consultation and international tax law developments so as to formulate a blueprint for the future tax system.²¹ Such a blueprint could guide Treasury's advice to government.

The good news is that there are two recent developments that suggest that Treasury does see itself as authoring such a blueprint, recognising that ultimately tax policy is a matter for government. Hence the public release of any such road map, or parts of it, is also a matter for government. In the past such releases have accompanied reviews of the tax system commissioned by the government.

The first is the establishment within the Treasury Revenue Group of a Tax Framework Division²² to develop a long term picture of a model future tax system. This Division should bring together domestic and international tax research, and in engaging with academics provide for cross fertilisation of views and spur targeted research into areas of mutual interest.

The second is the establishment of the Treasury Research Institute.²³ The Institute aims to deepen Treasury's understanding of contemporary economic developments and to stimulate debate on important policy issues. It publishes papers on topical economic and policy issues,

²⁰ Robert Heferen, Nicole Mitchell and Ian Amalo, 'Tax Policy Formulation in Australia', (Paper presented at the Canadian Tax Foundation Tax Policy Roundtable, Ottawa, 20 June 2013).

²¹ Michael D'Ascenzo, 'Pathways for Tax Policy and Administration', above n 17, 293.

²² Australian Government – The Treasury, *Organisational Structure* (2017) <<http://www.treasury.gov.au/About-Treasury/OurDepartment/Organisational-structure>>.

²³ Australian Government – The Treasury, *Treasury Research Institute* (2017), <<http://research.treasury.gov.au/>>.

written by both external contributors and staff. It identifies research topics of interest to Treasury to encourage work or collaboration with researchers.

IV. THE LONG GESTATION PERIOD OF MAJOR CHANGES TO THE TAX SYSTEM

In the main it takes a long time to make substantial changes to the tax system. Accordingly, to make a difference, academics, and policy advisers more generally, need to appreciate that policy development may take time and that policy development is usually a repeat game. For example the introduction of Goods and Services Tax (GST) in Australia was a saga that played out over numerous attempts over three decades.²⁴ One of the most influential reviews of the Australian tax system was the 1975 Commonwealth Taxation Review (Asprey review). A key theme of the report of that committee, the Asprey Report²⁵ was the need to broaden the tax base to improve equity and efficiency. It is useful to note here the key involvement of Ross Parsons from Sydney University as a member of that review body.

In 1985, the Draft White Paper recommended a broadening of the tax base through the adoption of a broad based consumption tax, the introduction of a capital gains tax and comprehensive taxation of fringe benefits.

As Sam Reinhardt and Lee Steel observed:

The Draft White Paper and tax academics also argued for taxing capital gains to improve economic efficiency and reduce tax avoidance. In particular, it was argued that the lack of a capital gains tax distorted investment towards assets providing returns in the form of capital gains, rather than income streams, and provided an incentive to convert income into capital gains. It was also argued that, combined with the classical taxation of dividends (discussed below), the lack of a capital gains tax created incentives for companies to retain profits, potentially resulting in less efficient investment choices from an economy wide perspective.²⁶

²⁴ Sam Reinhardt and Lee Steel, 'A brief history of Australia's tax system', (Paper presented at the 22nd APEC Finance Ministers' Technical Working Group Meeting, Vietnam, 15 June 2006).

²⁵ Commonwealth of Australia, Taxation Review Committee (Report [Asprey report] 31 January 1975) <<http://adc.library.usyd.edu.au/data-2/p00087.pdf>>.

²⁶ Sam Reinhardt and Lee Steel, 'A brief history of Australia's tax system', above n 23 (emphasis added).

The recommendations relating to capital gains and fringe benefits taxation were adopted following the Draft White Paper but there was insufficient support for the implementation of a broad-based consumption tax at that time. Notwithstanding general academic acceptance that the existing wholesale sales tax was not efficient or simple,²⁷ the introduction of a broad based consumption tax in Australia proved difficult, with unsuccessful attempts to introduce such a tax in 1985 and in 1993. It was only in July 2000 that the government introduced a GST based on the value-added tax model, as part of a broader package of taxation reform. This elephantine gestation period demonstrates the slow burn nature of major policy shifts. Ken Henry²⁸ made a number of statements on the time scales of major tax reform in his address to the ATAX Post-Henry Review Tax conference on 21 June 2010, reported in the *Australian Financial Review*:

Dr Henry said the introduction of the goods and services tax 10 years ago led to the “most extraordinary” reform of state taxes, and future reforms would require “something like that” compact between the commonwealth and the states. The Rudd Government has been widely criticised for adopting less than 10 of the 138 Henry tax review proposals – the most notable being the 40 per cent resource super profits tax – and ruling out almost 30 recommendations. But Dr Henry said the 1975 Asprey tax review demonstrated the success of the Henry review should be measured “not in months or years” but decades. “Asprey’s recommendations received little attention from the Whitlam government and then also the Fraser government, but the issues it raised did not disappear.” Indeed, capital gains tax, fringe benefits tax and dividend imputation were eventually introduced by then treasurer Paul Keating in the 1980s, before John Howard introduced the GST in 2000. “All of these reforms were stimulated by Asprey,” Dr Henry said.²⁹

V. POLICY ISSUES ON THE SHORT AND LONG-TERM HORIZONS

²⁷ The narrow base and differential rate structure created distortions to production and consumption decisions in favour of low taxed or untaxed goods or services. Cascading of the WST through the production chain reduced economic efficiency and export competitiveness by increasing the cost of production in Australia. The arbitrary range of WST tax rates and exemptions imposed significant costs in terms of complexity and compliance.

²⁸ Secretary to the Treasury and Chair of the Australia’s Future Tax System inquiry at the time.

²⁹ John Kehoe, ‘Asprey review shows reform is a long-term process’, *The Australian Financial Review* (online), 22 June 2010 <<http://www.afr.com/news/politics/asprey-review-shows-reform-is-a-longterm-process-20100621-ivbel>>.

The long-term future of the Australian Tax system provides fertile ground for further academic work. The Base Erosion and Profit Shifting agenda has put the spotlight on the development of new laws preventing multinational tax avoidance.³⁰ Many of the changes proposed are within the current paradigm of the existing international framework. Even in this context, some out of the box thinking may still be necessary in developing effect solutions to the BEPS problem.³¹ For example, there is academic research being undertaken in relation to a destination based cash flow tax.³²

Australia's domestic tax system relies heavily on personal income tax and company tax. Viewed objectively, the tax system could be characterised as narrow based with relatively high rates. In relation to personal tax there have been carve outs for superannuation, capital gains, negative gearing, and work related expenses. With reduced growth in wages, bracket creep alone may not be sufficient to keep pace with government spending.³³

The nominal rate of company tax is now high relative to OECD and Asian averages. Moreover, there is a growing body of academic opinion that the mobility of capital and international tax competition may put at risk the viability of the corporate tax system.³⁴ For Australia, corporate taxation constitutes a substantial proportion of total taxes relative to most

³⁰ Note the efforts of the Tax Justice Network and associated academics to promote this agenda. The Federal Government has responded by implementing both legislative and administrative changes under the banner, 'Earned here, Taxed here'. Australian Government, *New laws preventing multinational tax avoidance* (2017) <<https://fairtax.gov.au>>.

³¹ Michael D'Ascenzo, 'BEPS: Thinking Inside or Outside the Box', (Paper presented at the University of New South Wales Thought Leadership Seminar, 19 November 2013).

³² Alan Auerbach, Michael P. Devereux, Michael Keen and John Vella, 'Destination-Based Cash Flow Taxation', (Working paper 17/01, Oxford University for Business Taxation, February 2017).

³³ 'Individual taxpayers will soon feel the bite from an ever-rising burden of funding government services as the cost of company tax cuts and bracket creep falls on households, independent budget office modelling shows.' Jacob Greper, 'Bracket creep ends personal taxes surging, PBO [Portfolio Budget Office] warns,' *The Australian Financial Review* (online), 5 July 2017 <<http://www.afr.com/news/policy/tax/bracket-creep-sends-personal-taxes-surging-pbo-warns-20170705-gx56mi>>.

³⁴ 'With continuing globalisation, tax settings will be of increasing importance for decisions about where capital will be invested, especially for small open economies like Australia...Many countries are reducing tax rates on business and capital income relative to labour income and consumption. There has been a clear downward trend in statutory company income tax rates, particularly among small open economies (Table 1.1). Empirical evidence indicates that company tax rates matter for investment decisions, particularly investments for which location is not critical, and decisions by firms about where to declare profits and pay tax.' Commonwealth of Australia, *Australia's Future Tax System - Final Report* (2 May 2010) [1.4].

other OECD countries, albeit that imputation credits apply to resident shareholders. Without corporate taxes, mechanisms such as dividend withholding taxes (to tax non-residents) and undistributed profits taxes might be needed to obtain equivalent aggregate tax outcomes. Tax planning also diminishes the tax revenue associated with major business transactions. For example, some stapled structures arguably re-characterise trading into more favourably taxed passive income which can have the effect of reducing the Australian tax applicable to that income in the hands of non-resident investors.³⁵ In addition levels of debt to equity, and particularly related party debt and interest rates remain high relative to prudent commercial practices.³⁶

The GST has its own set of carve outs, for example, food, health, housing and age care. It requires the agreement of nine jurisdictions for a change in the rate. Without a significant change to current Federal–State funding arrangements, any additional GST would flow to the States.

The taxation of Australian resources, such as the petroleum resource rent tax, has uplift factors that reduce its ability to source substantial taxation, particularly in relation to the shift from petroleum to gas projects.³⁷ A mining tax was introduced but then repealed.

Land taxes are of course a matter for the States and Territories.

VI. ACADEMIC RESEARCH AND THE ATO

The ATO has long had a productive engagement with academia. For example, in the early 1980's the ATO first engaged a resident academic, Robin Woellner, an experiment repeated in the 1990s. There has also been substantial engagement and interaction between the ATO and academics since the 1980s focussing on cost of compliance research. This included the ATO sponsoring academic conferences and research on compliance costs. One of these conferences in 1985 included a presentation from Cedric Sandford, a pioneering scholar in

³⁵ Australian Government – The Treasury, *Stapled Structures, Consultation Paper*, (24 March 2017) <<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/Stapled-Structures>>.

³⁶ See *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation* [2017] FCAFC 62.

³⁷ Tax Justice Network Australia (Jason Ward), *Opening statement to the Senate Inquiry into Corporate Tax Avoidance* (3 July 2017) <http://www.taxjustice.org.au/opening_statement_senate_inquiry>.

this field, and with the major tax reforms from the mid-1980s, a greater focus was placed on complexity and compliance cost issues by taxpayers, academics, tax professionals, the ATO and the government.³⁸

These ATO driven activities in relation to compliance costs were re-allocated to Treasury after the introduction of the GST as part of the Regulatory Impact Statement program. Over time, research activities of this nature were resurrected by the ATO to supplement its market research, and collaboration with academic on compliance cost studies continue to this day.³⁹ The ATO also had a close relationship with the University of New South Wales through its sponsorship of the Australian School of Taxation (ATAX). ATAX considers itself as a major contributor to the tax agenda:

Atax has contributed to many technical and policy related tax issues through research, including the seminal study of tax compliance costs in Australia - one of the world's largest such studies, the 2011 Tax Summit, and the study of federal fiscal relations. Other key areas of taxation research Atax has contributed to include; international tax, Capital Gains Tax, tax in China, taxation of superannuation, environmental tax and GST.⁴⁰

In the late 1990s Valarie Braithwaite was instrumental in the development of the ATO's Compliance Model:

The ATO Compliance Model captures the importance of investing heavily in building a broad base to the pyramid, a base where there is considerable consensus on what compliance means, strong commitment to doing the right thing, and communication networks that reinforce the importance of law abiding behavior. Such bases cannot be taken for granted.⁴¹

³⁸ See, Jeff Pope, 'The Compliance Costs of Income Taxation in Australia,' (1992) 8(2) *Policy Winter* 8 <<https://www.cis.org.au/app/uploads/2015/04/images/stories/policy-magazine/1992-winter/1992-08-02-jeff-pope.pdf>>.

³⁹ See, Chris Evans, Phil Lignier and Binh Tran-Nam 'Tax Compliance Costs for the Small and Medium Enterprise Business Sector: Recent Evidence from Australia', (Research Discussion Paper 003-13, Tax Administration Research Centre, 2013).

⁴⁰ Atax was also a consultant in 2007 to the Board of Taxation's scoping study of small business tax compliance costs. In addition, in 2009 Atax was a member of the government's Tax Design Advisory Panel. University of New South Wales – Business School, *Atax Celebrates 21 years of Tax Education* (14 March 2012) <<https://www.business.unsw.edu.au/news-events/news/atax-21-anniversary>>.

⁴¹ Valarie Braithwaite and John Braithwaite, 'Managing taxation compliance: The evolution of the ATO Compliance Model' in Michael Walpole & Christopher Evans (Eds), *Tax Administration in the 21st Century* (Prospect Media Pty Ltd, 2001) 215.

There is no doubt that the Compliance Model has had a substantial and positive impact on the way the ATO has approached its compliance work.⁴² For example, in the ATO's 2012-13 Compliance program booklet states:

“The model helps us understand the factors that influence compliance behaviour and attitudes of different groups of taxpayers and their advisers to compliance. Based on that understanding we apply differentiated strategies to address risks to the fair operation of Australia's tax and superannuation systems.

Our aim is to influence as many taxpayers as possible to move down the pyramid into the ‘willing to do the right thing’ zone.”⁴³

From 1999 to 2005 the ATO sponsored the Australian National University's Centre for Tax System Integrity. According to the ANU's School of Regulation and Global Governance:

The partnership of the Australian Taxation Office (ATO) and the Australian National University (ANU) produced ground-breaking research on how voluntary taxpaying cultures can be maintained and why cooperation and contestation occur within the tax system. The work of the Centre located tax systems and their administration within the context of democratic governance where the fair and reasonable treatment of citizens is understood to be a basic entitlement.⁴⁴

There are two other areas that highlight the impact of academics to tax administration. The first is the contribution of academics on the ATO's public rulings panels.⁴⁵ Public Rulings outline the ‘ATO view’ on contentious tax interpretation matters, and are important in providing certainty to taxpayers. Another area where the work of academics has been pivotal is the building within the ATO of sophisticated and world class capabilities in the field of

⁴² Michael D'Ascenzo, 'Modernising the Australian Taxation Office: Vision, people, systems and values' (2015) *eJournal of Tax Research* 13(1), 1, 5, 15-16.

⁴³ Australian Taxation Office, *Compliance program 2012-13* (Internet Archive Waybackmachine, 19 June 2013). Similarly, the Compliance Model was prominent on the ATO's website in 2015.

⁴⁴ Australian National University School of Regulation and Global Governance (RegNet), *Centre for Tax System Integrity (CTSI)* (2 February 2016) <<http://regnet.anu.edu.au/research/centres/centre-tax-system-integrity-ctsi>>.

⁴⁵ For example, Richard Vann, Rick Krever and others made a tangible contribution to the development of public rulings associated with the introduction of the GST.

analytics. The harnessing of the power of analytics has driven a more efficient and effective tax administration.⁴⁶

Given the high level of engagement of academics with the ATO, as outlined above, a conclusion that the impact of academics to tax administration has been less than optimal perhaps belittles the substantial contributions made by academics to the evolving sophistication and modernisation of the ATO. Perhaps this underestimation of the impact of academic research on tax administration is a result of the inherent difficulty of measuring impact; perhaps it is the result of an error in the attribution of the causal link to the many initiatives undertaken by the ATO across the wide canvass of its operations; and perhaps it reflects an insatiable appetite as to what could possibly be achieved.

Notwithstanding the many significant contributions made by academics to the operation of the ATO it is surprising to find little reference to the impact of academia in the ATO's annual reports. In fact, over the last decade the sole reference is in the 2011-12 Annual Report:

We support independent academic research where appropriate. Requests for our support come from both academic institutions and individuals. The provision of a data sample set which allows academics and other interested parties to undertake their own research is one example of the support we provide. We are also collaborating with the Institute of Chartered Accountants in a study on the cost of compliance.⁴⁷

Researchers are also mentioned in the 2012 Taxation Statistics publication:

Each edition of Taxation statistics is a broad collection of data compiled from income tax returns (in this case for the 2009-10 income year) and other information provided to the ATO such as goods and services tax (GST) annual returns and business activity statements (here, for the 2010-11 financial year) ... In addition, to assist more advanced researchers, we can

⁴⁶ Federal Commissioner of Taxation Michael D'Ascenzo, 'The effective use of analytics in public administration: The Australian Taxation Office Experience' (Paper presented at the Australian Institute of Company Directors, Hobart, 22 June 2012); and Michael D'Ascenzo, 'Global Trends in Tax Administration' (2015) 1(1) *Journal of Tax Administration* 81, 89.

⁴⁷ Commissioner of Taxation, *Annual Report 2011-12- Support for Academic Research* (30 October 2012) <<https://www.ato.gov.au/About-ATO/Annual-Reports/Annual-Report-2011-12/Part-02-Our-performance/Encouraging-community-engagement/Conducting-research/Support-for-academic-research/>>.

make available a file containing a 1% confidentialised sample of individual tax return information.⁴⁸

While the ATO undertakes a substantial amount of market research activities, these have mainly involved survey firms rather than academics. Overall, while there have been high levels of engagement between administration and academics, a glass half empty appraisal of the impact of academics to tax administration might say that more could have been achieved. This conclusion flows from the view that there is still more scope for collaborative work between academics and the ATO. The hurdles here are often the reluctance of academics to abrogate their independence in relation to the research output; and trade-off decisions by the tax administration in relation to internal and external funding options. Fitting in and adding value to the ATO's agenda would work well for academics and the community. In addition, academics should continue to play a critical role in bringing to public attention areas where the tax system is not working well, whether that be in relation to tax policy, tax administration or judicial interpretations of the tax law.

VII. CONCLUSION

Tax research should and has played a role in influencing tax policy. However, it remains an open question whether tax researchers are a resource that could be better utilised by tax policy makers and advisers. Similarly, while academics have certainly made a substantial and positive impact on the ATO's focus, strategies, and processes, there is arguably scope to do more. Tax researchers may often have a choice to make:

- Be in the tent with the prospect of better data, and a greater likelihood of the research output influencing policy or administrative change; or
- Thinking the unthinkable, but accepting that adoption of those views, if at all, is likely to be a slow burn.

⁴⁸ Australian Taxation Office, *Taxation Statistics 2009-10* (April 2012) <<https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2009-10/>>.

It is important to have tax researchers both directly influencing policy and administration inside the tent and thinking the unthinkable outside the tent. Fortunately, in the tax world there is an on-going need for research either to sandbag the current domestic and international tax system or for over the horizon thinking about the future.

Given the increasing contestability of tax policy advice, there is a growing range of avenues through which academics can pursue relevant tax research and have their views considered in the development of policy. There is also the opportunity to collaborate with Treasury, either inside or outside the tent. Doing so will help enhance Treasury's capabilities, vitally important to Treasury's role as the government's principle adviser on tax policy. Similarly, there is always scope based on research to improve the operations of the tax administration. For example, for some time now the ATO has sought to better measure its impact, and academics have been assisting with this work. It is also worth noting that although difficult to measure, academia has made an impact on the staff in Treasury and the ATO. For example, academic focus on the cost of compliance has encouraged ATO officers to search for ways to minimise those costs, including the pre-filing of tax returns, and the ATO's emphasis on digital processes such as Standard Business Reporting.

In terms of academic impact on at least one staff member at the ATO, allow me to conclude on a personal note. As a relatively junior officer at the ATO, I read an article by Yuri Grbich on the potential use of section 260 against the trust stripping schemes of the 1970s and 1980s. These views emboldened me and others over time to persuade the ATO to consider the use of section 260 (and arguments based on sham) against the trust stripping schemes of that era. This was at a time when there was still a general view that the courts had 'despatched the old section 260 of the *Income Tax Assessment Act 1936* (Cth) into that forlorn purgatory reserved for legislative provisions which had fallen from judicial favour.'⁴⁹ The adoption of this

⁴⁹ Yuri Grbich, 'Anti-Avoidance Discretions: The Continuing Battle to Control Tax Avoidance' (1981) 4(2) *University of New South Wales Law Journal* 17, 17; See, Yuri Grbich 'Problems of Tax Avoidance in Australia' *Canadian taxation* 3(4), 203; John G Head (ed) 'Taxation Issues of the 1980s' (Papers presented at the Australian Tax Research Foundation Conference, Sydney, 19-21 August 1982) 416, 424-426; Julie Cassidy, 'Part IVA - A Toothless Tiger?' (2001) 11 *Revenue Law Journal* 65.

approach worked, with ATO assessment action, settlements and the threat of retrospective legislation bringing finality to these schemes.⁵⁰

⁵⁰ Trevor Boucher, *Blatant, Artificial and Contrived, Tax schemes of the 70s and 80s* (Australian Taxation Office, 1st ed, 2010).