University of Southampton

TRN Tax Research Network

Simplifying Tax: Policy, Process and Practice

Thursday 7 and Friday 8 September 2006

Organised by the School of Law, University of Southampton in conjunction with the Tax Research Network

List of Abstracts in Alphabetical Order of Presenter's Name

Duncan Bentley, Professor, Pro-Vice-Chancellor (Teaching & Learning), Dean of the Faculty of Law, Bond University, Gold Coast, Australia,

The international codification of taxpayers' rights

Building on earlier work by the author and writers such as Baker and Groenhagen and Sawyer, this paper puts forward a proposal for the international codification of taxpayers' rights. The paper argues for a two-tier model of taxpayers' rights. The first tier will provide a benchmark for developed countries with a sophisticated legal system. The second tier will provide a code of basic taxpayers' rights for developing countries. The code will be framed so that it can be easily adapted and incorporated into a legal system, cognisant of the particular culture and context of that system. This is particularly important in the light of tax reform in developing countries that is often driven by conditions placed on loan agreements by donor organisations and countries.

Codification of taxpayers' rights is important in both developed and developing countries when considering simplification. Currently taxpayer's rights are considered piecemeal and, as occurred in the United States with the introduction of the so-called "Taxpayer Bills of Rights", have been driven by a political agenda that is not founded in a careful consideration of tax policy and content. The paper argues that codification will provide the basis for a comprehensive consideration of taxpayers' rights. It needs to take place with an understanding that the legal and administrative rights are inextricably linked. Administrative rights have developed in response to the drive to increase taxpayer compliance. They incorporate a wide range of dispute resolution mechanisms to resolve conflicts over taxpayers' rights. However, they cannot be considered in isolation. To do so is to ignore the legal influences that are shaping taxpayers' legal rights at a national and supranational level and which should flow through into the administrative rights and better support their application.

The paper provides a framework for codification. It identifies the structure of a code, the basis for classification of sets of rights and how a two-tier model can be designed to operate simply and effectively. The discussion includes consideration of barriers to interpretation of rights across jurisdictions and legal systems. The paper concludes by identifying the process by which an international code of taxpayers' rights could be implemented.

Professor Rebecca Boden, Professor of Critical Management, University of Wales Institute, Cardiff

Giving credit for complexity:
Social policy and tax credits in the UK and Australia

The support of families with children is a core social policy objective of the majority of states in the world. Traditional social security systems do not necessarily make a link between the receipt of cash and work. In richer countries, such systems are increasingly seen as providing insufficient incentive to work and are being supplanted by transfer payment systems. Transfer payments are in-work benefits designed to encourage work by supplementing earned income. They attempt some improvement in vertical equity between working taxpayers by making transfer payments either directly or through the tax system/salary cheque.

Transfer payments support low wage economies. The withdrawal of transfer payments would, in theory, force wages up and cut tax bills as social security costs fall, thereby incentivising people to work. But free market solutions may not be efficient because wages are not paid dependent upon family or personal need. Transfer payment schemes theoretically allow government to target money, minimising costs by efficiently matching income to need. These systems are inherently complex as, to work, they require complex classificatory regimes, nuanced systems for the targeting of payments and means-testing.

Since 1997 the UK has enthusiastically adopted the transfer payments approach and developed a suite of 'tax credits' administered by HMRC. This reflects the neo-liberal (Barry *et al* 1996) stance of the Blair government that it is the role of the state to effectively facilitate the development of a vibrant private sector economy. In social policy terms, government has attempted to facilitate entry into employment, tried to alleviate child poverty (as this adversely affects life chances and therefore economic productive capacity) and supported a low wage economy using the tax/benefits system.

UK tax credits are inordinately complex and have, perhaps unsurprisingly, been problematic in practice:

1. Government decides who is needy and therefore worthy of support. Often such classificatory regimes have little relation to the real (and complicated) lives of people and are subject to little democratic control.

2. The system in operation has proved to be costly and riddled with error (NAO 2005). Technological failures have not helped (Public Technology 2005), but at heart there are difficulties with the administration of a system that scrutinises the minutia of people's lives. Means-testing in particular has proved to be cumbersome, costly, time-consuming and confusing for many people.

3. The government has largely demolished the principle that, in a two-parent household, social security payments should go to the mother and tends to treat the household as a simple 'black-box' into which money flows where, it is assumed, it is used efficiently and effectively. This may conflict with social policy objectives.

4. The system has significantly eroded the shifts made towards independent taxation for people in couples since the early 1980s. Related to this, problems are starting to arise over the definition of the 'household'.

It is evident that this programme of reform was embarked upon with little forethought and voices raised questioning the changes were not heeded (see for instance Hirsch 2000). The UK system is therefore ambitious in its attempts at social control, inherently complex and deeply problematic in operation.

Similar reforms, which have also raised similar concerns, have been underway in Australia, most notably through the Family Tax Benefit. For instance, Cass and Brennan (2003) express concern at the adverse effects that changes may be having on vertical, horizontal and gender equity. Hodgson (2004) explores issues of targeting, simplification and effectiveness of payment routes.

Both Australia and the UK therefore have systems which use the tax system for redistribution, represent a radical departure from past systems, have distinct neo-liberal ideological foundations and are relatively untested. Both have encountered significant problems.

Rebecca Boden will be an ATAX (University of New South Wales) visiting fellow in 2006. With regard to the UK and Australian systems, this paper will present the early results of a systematic secondary comparative analysis of the two countries. Specifically, it will:

- Explore the nature and extent of the complexity of systems that attempt to resolve multi-faceted social policy issues through regimes of classification, measurement and administration

- Evaluate the actual and potential adverse impacts of the complexity of these schemes in terms of social policy objectives

- Assess the prospects for improving them

References

Barry, A., Osborne, T. and Rose, N. (eds) (1996), **Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government,** London: Routledge.

Cass, B. and Brennan, D. (2003) “Taxing Women: the politics of gender in the tax/transfer system”, *eJournal of Tax research,* 1,1.

Hirsch, D. (2000) **A credit to children**, York: Joseph Rowntree Foundation

Hodgson, H. (2004), “Mum - It's Not Fair! An Analysis of Transfer Payments to Australian Families Applying the Criteria of Equity and Simplicity” Australian Tax Forum, 19,3

National Audit Office (2005) http://www.nao.org.uk/pn/02-03/02031072.htm. Accessed 25 November 2005.

Public Technology (2005) http://www.publictechnology.net/modules.php?op = modload&name=News&file=article&sid=4040. Accessed 25 November 2005.

Monica Chowdry, Lecturer, School of Law, King's College London

Limiting time limits in VAT

(Working title)

Where VAT is overpaid, recovery can be sought as of right. It is for Member States to decide how recovery can be sought and it is perfectly legitimate for Member States to introduce time limits. Revenue and Customs have indeed placed time limits into the legislation with regards to both the recovery of input tax and the recovery of output tax. However, whether or not they have done so in a manner consistent with Community law is a matter of some controversy. The time limit relating to output tax, contained in s80 Value Added Tax Act 1994 was not introduced in a manner compatible with Community law, as confirmed by *Marks and Spencer plc v Customs and Excise Commissioners* (Case C-62/00) [2003] QB 866. This paper seeks to consider a number of further issues, which have yet to be clarified. For example, whether or not Revenue and Customs have adequately rectified the defects in the legislation highlighted by *Marks and Spencer* and also, the extent to which the same defects exist in the legislation introduced in Regulation 29. These issues are currently being aired in the Tribunal and to some extent in the Courts, with references to the ECJ and an appeal to the House of Lords pending. This is an area in which clarity is paramount and yet the cases seem to conflict with one another with no coherent line of authority forthcoming, so that the law in this area is confusing for taxpayers. Whilst it is hoped that the highest courts will address these issues, it is of importance that this is done in the most simple, certain and effective manner.

Rita de la Feria, Lecturer, School of Law, Queen's University, Belfast

The EU VAT Treatment of Insurance and Financial Services under Review

This paper aims to provide an analysis of the ongoing process of simplifying the VAT treatment of insurance and financial services. As opposed to many other Sixth VAT Directive provisions, the original rules regarding the VAT treatment of insurance and financial services have remained unaltered since their introduction in 1977. Regarded as the archetypical “difficult-to-tax” services, insurance and financial services have been exempt from VAT, not as a matter of principle, but rather as a necessity. In practice however, this exemption has meant that insurers and financial institutions have been virtually blocked from deducting any input tax. This legislative status quo has given rise to numerous difficulties, as highlighted by the Court of Justice's complex body of case-law on the interpretation of Article 13B(a) and (d) of the Sixth VAT Directive. It has also been a root cause of the aggressive VAT planning phenomenon, as demonstrated by the recent *Halifax* case. One of the strongest points of contention has been the VAT treatment of outsourced and sub-contracted insurance and financial services, with the Court issuing a series of rulings on this matter, culminating with the recent decision in *Accenture*. The controversy, and legal uncertainty, resulting from these rulings - in particular *Accenture* - has triggered the European Commission's current consultation procedure on the modernisation of the VAT treatment of insurance and financial services. This paper proposes to analyse the evolution of Court of Justice jurisprudence in the context of these legislative shortcomings, as well as the different options proposed by the Commission in order to resolve this enduring problem within the EU VAT system.

Maureen Donnelly, Associate Professor of Taxation, Faculty of Business, Brock University, St. Catharines, Ontario, Canada; and Allister Young

"A Twist on Tax Simplification: Please, Sir, We Want Some More"

Much has been written on the nature of complexity in the tax system and its causes. Responsibility for complexity has been placed on all members of the tax community – judges, practitioners and government. Krever has described the government's contribution as having two aspects: first, its reaction to adverse judicial decisions and tax minimization schemes, and, secondly, its use of tax legislation to achieve economic and political goals. We suggest that there is a third way in which the government contributes to tax complexity and that is through inaction. Complexity, we argue, does not always arise from endless amendments of intricate rules, but can be equally caused by the lack of formal rule-making. When the legislature fails to provide rules, uncertainty is created. Taxpayers who are uncertain find it difficult to comply; therefore, we argue that complexity is reduced by tax measures that facilitate compliance.

In the Canadian context, group taxation is an example of an area where government inaction has created unnecessary complexity. In 1985, the Canadian government put forward for discussion a proposal to allow the transfer of losses within a commonly-owned group of corporations. Although the White Paper acknowledged that the ability to transfer credits and losses within corporate groups had "the potential of reducing the complexity of business operations", it was never implemented. Ironically, although the main purpose of the proposal was simplification, the government's failure to proceed was based on their assessment that the proposed system was too complex.

Canadian corporations continue to adjust their affairs to achieve the same tax result as they would under a tax-loss transfer system; however, with no legislation to provide the system, they are forced to carry out time-consuming, costly and inefficient series of transactions and to rely on the goodwill of tax administrators to sanction the results.

The first part of the paper will deal with the nature of tax complexity and its causes. In particular, the roles of the legislature and practitioners will be examined. Although the more traditional argument is that complexity results from too much legislation (what Richard Vann refers to as "tax rule madness") and simplification initiatives should reduce the volume of tax law, we will argue that the opposite may be true.

The second part of the paper will look at the history in Canada of the group taxation debate and present the case for additional legislation in this area as a simplification initiative.

Sandra Eden, Lecturer, University of Edinburgh

The lady's not for turning – when can HMRC change their mind?

The practice of asking the courts to adjudicate over the *fairness* of actions by the tax authorities in relation to taxpayers has been a relatively recent development. This paper will consider one strand of this development in particular: the circumstances under which the courts have permitted the tax authorities to depart from assurances given, whether in private communication with the taxpayer or in published statements (for example, statements of practice, HMRC interpretations and extra-statutory concessions). It will show that this line marks the compromise between the principle of legitimate expectation invested in citizens in their dealings with the executive on the one hand and the primacy of statute law on the other. This in turn raises questions about the extent to which tax policy resides in the authorities rather than the legislature.

It is clearly important in practice that taxpayers should be able to rely on such statements and only under clearly defined circumstances that the tax authorities should be able to go back on their words. This paper will ask whether the courts have provided a coherent set of rules which can be applied in practice and whether the line has been drawn in the correct place.

Chris Evans, Professor, Director ATAX, The University of New South Wales, Sydney, Australia

Consulting the Oracle:
Using the Delphi Methodology to Inform the Personal Tax Reform Debate

The personal income tax (PIT) is a vital component of modern tax systems. In Australia it has been largely untouched by recent (primarily business and indirect) tax reforms. It currently faces major problems. Solutions need to be found, in Australia as elsewhere, to a variety of defects relating to the tax base, tax rates and tax administration. This paper considers one part of a broader research project which aims to develop a model of the Australian personal income tax system that is capable of commanding widespread expert and community support while still delivering the expected revenue flow and tax policy objectives. In this way, it is proposed that the project will inform and influence the contemporary debate about reform of the Australian PIT in particular and the PIT of comparable tax jurisdictions more generally.

The paper explains how a Delphi methodology has been used as a critical component of the overall research project. The Delphi methodology combines quantitative and qualitative techniques to explore future possibilities in systematic and iterative rounds of anonymous testing involving a panel of international experts in the field of personal taxation. Studies comparing the Delphi's results with other methods have confirmed the effectiveness of the methodology on the basis of both its capacity to generate ideas and its effective use of participants' time. The experts have been drawn from Australia and from countries with comparable PIT regimes, such as the UK, the USA, Canada and New Zealand. Over a four month period the panel has responded to a series of open-ended propositions relating to the design and operation of the PIT, with a view to establishing whether a consensus on key PIT reform issues can develop.

The paper identifies the key outcomes derived from the Delphi, and shows how they are being used to inform the final phase of the broader research project.

Dr. S.J.C. Hemels, Faculty of Law, Department of Tax Law & Economics, Leiden University

Simplifying tax laws by using policy criteria for tax incentives
(with a focus on tax incentives for the arts)

Most tax lawyers are not very fond of tax incentives (also known as tax expenditures). General complaints are that tax incentives complicate the tax legislation, that there is not enough information nor democratic control on these costs, and that they are favourites of pressure groups as tax incentives are often – incorrectly- perceived as free lunches. When talking about simplifying taxes, the first response would therefore be to abolish tax incentives.

However, in some cases this abolishment may cause the loss of a useful and effective instrument for government policy. The abolishment of such tax incentives would simplify the tax laws, but could make direct subsidy laws more complicated. Furthermore, these direct subsidy laws might be less effective in achieving targets of governmental policy. Society as a whole would therefore not benefit from such a tax simplification. A good example of a policy field that can benefit from tax incentives is cultural policy. Most countries exempt works of art from the taxable base for wealth tax or income tax purposes. The reason for such tax incentives is often to promote investments in art or the possession of art. It is easier to achieve this target through a tax incentive than to include works of art in the taxable base and to pay owners of works of art a direct subsidy. Another example in this field is the 'acceptance of works of art in lieu of tax'. In a lot of countries it is possible to pay inheritance tax with important works of art. As the government decides whether it accepts such an offer or not, it is a very efficient way to preserve important works of art for a country. Especially when heirs want to sell such works of art on the international market, it can be very difficult to collect enough direct funds in time to buy the art work. But efficiency is not the only reason why the abolishment of tax incentives is not always the best solution. Specific tax incentives, like the gift deduction and incentives for cultural investments can also increase the involvement of the public, not only with cultural institutions but with charities in general. Direct subsidies seem to have failed this target of cultural policy, so tax incentives might provide for an effective alternative.

However, these advantages do not mean that nothing has to be changed, as the complaints of tax lawyers about tax incentives are definitely valid. Especially some VAT incentives and tax incentives for films cost a lot of public money and do not seem very effective with regards to cultural policy targets. This paper proposes criteria for tax incentives, especially in the field of cultural policy. If implemented, these criteria would simplify tax laws, as tax incentives which do not meet these criteria could be abolished without harming policy targets.

Malcolm James, Lecturer, University of Wales Institute, Cardiff

Tax Simplification – The Impossible Dream?

Tax academics and tax practitioners, particularly in more developed countries, have increasingly argued that taxation systems should be simplified in order to reduce administration and compliance costs. Despite this apparent consensus very little, if any, quantifiable progress has been made in recent years towards this goal. This is, in part, due to the lack of a strict definition of "complexity" and "simplicity" or of a robust quantifiable measure of simplicity/complexity in a tax system, which makes it impossible to accurately ascertain any progress. This paper argues, not whether simplifying the tax system might be desirable, but whether, in complex economies, the forces which drive tax systems make complexity inevitable.
This paper address one aspect of the simplification debate, that of the relationship between complexity/simplicity and equity between taxpayers. It can either be argued that a simpler tax system is inherently more equitable, or that a simpler tax system may be less equitable, but that this is an acceptable price to pay. Existing research disagrees whether there is a positive or negative correlation between simplicity and equity or whether the relationship is far more complex and subtle (see Milliron (1985) and Carnes and Cuccia (1996)). Using both existing research and empirical example this paper explains the nature of this relationship. This analysis could, I argue, inform policy debate about the social utility of simplification agendas and identify the barriers to their implementation.

References

Carnes G. and Cuccia A. 1996: An Analysis of the Effect of Tax Complexity and Its Perceived Justification on Equity Judgments; Journal of the American Taxation Association pp 40-56
Milliron V. (2001): An Analysis of the Relationship Between Tax Equity and Tax Complexity; Journal of the American Taxation Association pp 19-33

Bruce Koch PhD, CPA, Professor of Accounting, Albers School of Business & Economics, Seattle University

The Impact of Tax Law Reading and Content Complexity on Performance

The issues of content and reading complexity and their impact on performance are particularly important in all technical business writing and of are particular import in the tax area. Tax literature is replete with calls for simplification. In order to simplify tax law, it is important to understand how content and reading complexity interact with each other to cause overall complexity. The purpose of this research is to study the interaction of content and reading complexity in order to help develop a process to reduce these components of complexity and comply with IRS Restructuring and Reform Act of 1998 Act Section 4022 which calls for tax law simplification. To accomplish this objective, we examine the impact of reading and content complexity caused by the changes in capital gains rules applicable to 1996 and 1997.

Emer Mulligan, Lecturer, National University of Ireland, Galway

Understanding the practice and process of tax planning in multinational corporations: An Institutional Perspective

Tax planning is important for many organisations as is partly evidenced, for example, by research conducted by Mills, Erickson and Maydew (1998). However, a very limited amount of academic research has been conducted on how tax planning is done in practice. This paper addresses this 'gap' in the tax planning literature as defined by Mulligan and Lamb (2004). It identifies a clear need for research to be conducted which will provide a rich understanding of the many and varied aspects of tax planning in organisations. Such research, it is argued, is necessarily qualitative, will draw on possible insights from sociological theory but will also draw on many pieces of research (some quantitative) completed on tax planning to date. Findings from such research may help explain and add to our understanding of some findings from prior quantitative research conducted on tax planning. Specifically, this paper is concerned with providing a new institutional sociological perspective on how US multinational corporations create, formulate and administer their tax plans. This paper reviews theoretical and empirical literature on institutional theory with a particular focus on the use of institutional theory in the accounting/taxation domain. Three strands of institutional theory are identified in the literature, namely, old institutional economics, new institutional economics and new institutional sociology. The research which is the subject of this paper is concerned mostly with the latter.

The advantage of the new sociology based approach is that it facilitates the consideration of the 'social, political and economic aspects that make up the context within which an organization functions' (Dillard, Rigsby and Goodman, 2004: p.511). The tax arena certainly provides a very rich social, political and economic context. The findings from some exploratory interviews with tax professionals working within US multinational corporations and tax advisors to such corporations are presented and analysed. Preliminary observations arising out of in-depth semi-structured interviews which were subsequently carried out with VPs/Directors of Taxes are presented and discussed in the context of developing an appropriate theoretical framework through which the process and practice of tax planning in US MNCs could be explained and understood. The interviews covered a number of themes with respect to tax planning, including the organization of the tax planning function, tax strategy and its alignment with overall business strategy, performance measurement, tax and accounting, tax risk management, tax outsourcing and the role of external tax advisors, technical approaches to tax planning, and external influences/actors in the corporate tax arena.

Following the review of institutional theory and taking the findings from the exploratory interviews, and observations from the in-depth interviews into account, this paper demonstrates how various aspects of the practice of tax planning can be fruitfully analysed and understood within common themes which emerge within institutional theory such as legitimacy seeking behaviour, isomorphism and decoupling.

References

Dillard, J. F., Rigsby, J. T., & Goodman, C. 2004. The making and remaking of organization context. Accounting, Auditing and Accountability Journal, 17(4): 506-542.

Mills, L., Erickson, M. M., & Maydew, E. L. 1998. Investments in Tax Planning. The Journal of the American Taxation Association, 20(1): 1-20.

Mulligan, E. & Lamb, M. 2004. The Nature of Tax Planning and the Tax Planning Process: A Literature Review. Tax Research Network Conference, Bournemouth University, 16-17 September.

Richard Murphy BSc FCA, Director Tax Research LLP, Ely, Cambridgeshire

Simplifying Tax Policy: The Approach Of The Professional Institutes

The UK's tax and accountancy institutes make frequent calls for simplification of the UK tax system. It is referred to as a core objective of some of those institutes (it is Tenet 3 of 'Towards a Better Tax System', ICAEW Tax Faculty, 2000). The call for simplification is frequently associated with a stated desire for certainty within taxation law (Tenet 2, ibid). The stated position of these professional bodies does, however, have to be contrasted with the positions they take when specific proposals are under consideration since the call for simplification is not always reflected in the responses they submit on those occasions.

This paper draws on the methodology of complexity theory to compare the stated strategic taxation policy of four professional institutes (ICAEW, ACCA, ICAS and CIoT) with the public submissions they made, or the accredited comments their officials allowed to be published, concerning three recent proposals of significance to UK taxation, being the proposed reform of the residence and domicile system, proposed reform of the scheduler system of taxation and changes in the recognition of some types of income as a consequence of UITF 40.

The three issues to be reviewed are of substantial significance to taxation in the UK, covering respectively the definition of those on whom a charge to tax arises, how chargeable income is categorised for taxation purposes and when it is recognised as having arisen.

The paper will seek to determine to what degree these professional institutes do seek to create both certainty and simplicity within the tax system, and to what degree they accept the reality of complexity as an inevitable component of a mature tax system.

About the author: Richard Murphy is a chartered accountant. He has worked in practice and commerce. He is a visiting fellow at the Centre for Global Political Economy at the University of Sussex and is a member of the Research Committee of the ACCA. He is director of Tax Research LLP in which role much of his work examines issues relating to the impact of taxation on the allocation of resources and rewards both within corporations and states and between states. He is a regular commentator on taxation policy issues in a variety of media.

John Prebble, Barrister & Professor of Law, Victoria University of Wellington, New Zealand

Fictions of Income Tax

Paper submitted, to be provided at conference.

Craig Richardson, Economic Adviser, HM Revenue & Customs, London; and Steve Webster

Administrative burdens and simplification in HMRC

In the Budget on 16 March 2005, the Chancellor of the Exchequer announced the Government's acceptance of the report from the Better Regulation Task Force. Recommendation 1 of this report stated that the UK should adopt the Dutch Standard Cost Model and use it to measure the Administrative Burden that HMRC places on businesses in the UK , with the aim of setting a challenging but achievable target to reduce the burden. Budget 2006 published the initial results of the work, namely an estimate of the total tax administrative burden, and targets to reduce it.

This paper reports on HMRC's work on administrative burdens. We focus on three key areas:

- The completion of the Administrative Burdens Measurement exercise - we summarise the methodology used and the challenges it raises, and then focus on the first results and conclusions from the Standard Cost Model. We highlight the key areas of burden, but also show that a large proportion of the burden is explained by a relatively small number of obligations. We explore the idea that the "long tail" of minor obligations, while adding little to the overall administrative burden, can substantially explain the perception of complexity in the tax system.

- Impact assessments - we outline our initial thinking on how the standard cost model will fit in with the existing impact assessment process for new policies.

- Recent simplifications - We present the results of some recently introduced simplification measures, and show how they can be costed with the SCM. We also discuss how businesses can suggest simplifications to the tax system through our online portal.

Paul Tammert, Lecturer of Taxation, Estonian Public Service Academy, Estonian Business School & Tallinn Technical University

Simplifying Tax Practice – Case study: Estonian Income Tax

Estonian Income Tax Law is original and famous in West-European countries, mostly because of flat tax rate. But in reality most original and valuable part of Estonian Income Tax is the system - how it is implemented.

For first, here is only one Income Tax Law at all, which embrace at once Income Tax for Enterprises and for Natural Persons and impose a tax to capital gains, to business income and to the salaries and wages and natural benefits.

But what is much more important, the object of Estonian Income Tax is only payments, what are paid out from enterprises to natural persons. This means for Enterprises and for Tax Administration, that here is no need for tax purposes to study enterprise income and costs on the meaning of realisation and timing, both here isn't need to study problems which cover the turnover and basic property and tax depreciation of those. All this makes accounting work inside enterprise much simpler and cheaper. Tax Administration is interested on his work only from the transfers from enterprise to the natural persons and costs, what might be qualified as costs, what are not connected with entrepreneurship. And here is no difference, whether money paid out as a wages or salaries or dividends or natural benefits or capital gains.

The Income Tax Law itself covers 44 pages and written with 141 480 characters (with spaces) – what is extremely few and written on quite simply language. Both – the Law is accessible for everyone freely in Internet on Estonian and on English on every moment without charge. (If someone is interested, then look on the page: http://www.riik.ee/en/ and from this Estonian Legislation in English or internet page: http://www.legaltext.ee/en/andmebaas/ava.asp?m=026)

If to speak about efficiency of Estonian Income Tax, then here is possible to mark, that income tax gave on year 2004 13,6% from all tax income of Estonian State (Income tax from dividends gave 5,2%) and 3,8% from Estonian GNP.

But for Estonian state here is a big problem, as to 2009. Estonia must change Income Tax Law, because of European Court decision: Case C-294/99, Athinaiki Zithopiia AE and Elliniko Dimosio (Greek State), where was fixed that dividend tax paid to the state as *additional cost tax* isn't a legal. So here is alternatives for Estonian state: or to go back to the old European system or to go onward on the old way but different way.

So my suggestion is to give on the Tax Conference thoroughgoing review from actual Estonian Income Tax, what is a big step onward on the way simplifying tax practice.

Michael Walpole, Associate Professor, Associate Director (Teaching), ATAX, University of New South Wales, Sydney

The role of taxation in businesses' choice of location of intangible property

The changes to the identification and taxation of intangible property in the *2002 Finance Bill* were said to be needed in order to clear up the confused and *ad hoc* rules applicable to intangibles. The Regulatory Impact Statement that accompanied the changes in Schedule 29 indicated inter alia that "[w]ithout reform, the UK would continue to treat intangible assets less favourably than many other countries to the disadvantage of companies based here."[1] The changes were welcomed and despite early amendments required to deal with unforeseen consequences of the changes, appear to have been effective in improving the coherence and simplicity of the taxation of intangibles. This paper asks the question whether the reforms have made the UK a more attractive place to do business using intangibles.

Various sources suggest that the location of intangible property is an important choice by taxpayers when they have an opportunity to shift the location of such assets. This paper will identify the types of intangibles likely to be involved and will note the work of writers such as Arias[2], Henshall[3], Forbes[4], Hardgrove et al[5] and Walsh[6] who are strong advocates for the proper identification and tax effective location of intangible property. The paper will conclude from this that choice of location of intangibles for tax reasons is a deliberate strategic decision on the part of businesses.

The paper recognises that tax is not the sole motivation for choices made in the location of intangible property, through, for example the work of Tsiopulos et al[7] and also recognises that some tax rules may make the relocation of certain intangibles impracticable, noting the work in this area of Grubert[8], whose model suggests that in the US "marketing intangibles" cannot be used in international transfer pricing because of the efficacy of the US CFC provisions.

In light of this, the question will be asked whether and what intangibles businesses do have incentives to move around and, in particular, whether the recent changes to the UK have resulted in a change of behaviour on the part of UK corporations. It will identify ways in which this change in behaviour can be measured and what early indications there are of any change in the choice of UK as a location for corporation to hold their intangible assets.

---

[1] Regulatory Impact Statement accompanying Schedule 29 *2002 Finance Act UK*, paragraph 3.
[2] Ignacio Arias, "How to restructure across Europe" (April 2003) 14(4) *International Tax Review* pages 48 – 53.
[3] John Henshall, "Intellectual Property – Horror Stories 2002" (2002) 3(12) *Tax Planning International Transfer Pricing* pages 10 – 13.
[4] Thayne Forbes, "To have and to hold" [September 2000] Issue 102 *Managing Intellectual Property* pages 44 – 50.
[5] Michael W. Hardgrove, and Alex Voloshko, "Maximize your global IP", [April, 2003], *Journal of Accountancy* pages 43 – 47.
[6] Mary Walsh, "Get the best from intangibles" (February 2001) 12 (2) *International Tax Review*, pages 23 – 27.
[7] Thomas Tsiopoulos, Pierre-Pascal Gendron, and Agata Uceda, "Beyond Fiscal Issues" (2002) 3(2) *Tax Planning International Transfer Pricing* pages 3-9.
[8] Harry Grubert, "Intangible income, intercompany transactions, income shifting, and the choice of location" (March 2003) 56 (1) *National Tax Journal* pages 221- 242.

David Williams

Judicial Handling of Tax Appeals

Paper to be submitted.