

TAXATION LAW RESEARCH PROGRAMME

ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW

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FACULTY OF LAW

UNIVERSITY OF HONG KONG

TLRP NEWSLETTER No. 2

INTRODUCTION

The Taxation Law Research Programme (TLRP) was established within the HKU Faculty of Law's Asian Institute of International Financial Law (AIFL) in late 2007. This is the second TLRP Newsletter.

This TLRP Newsletter includes items on:

- *The Peter Willoughby Memorial Lecture – Wednesday, 10 December 2008:*
- *A TLRP Seminar: “Tax in the Virtual World” – Thursday, 18 December 2008;*
- *The TLRP - 2ND International Conference: “Green Taxation in East Asia” to be held on Friday, 29 January 2010; and*
- *A review of recent TLRP activities.*

COMING TLRP ACTIVITIES

Peter Willoughby Memorial Lecture
Professor Jinyan Li, Osgoode Hall Law School
Wednesday, 10 December 2008

The *Peter Willoughby Memorial Fund* was established in 2000 to sponsor a memorial lecture in memory of the late Professor Peter Willoughby and his invaluable contribution to the Faculty of Law and legal education in Hong Kong.

This year's Peter Willoughby Memorial Lecture will be held at HKU on:

Wednesday, 10 December 2008

We are most fortunate to have **Professor Jinyan Li**, from Osgoode Hall Law School in Canada attending to deliver the 2008 Peter Willoughby Memorial Lecture.



Professor Jinyan Li BA (Econ)
(University of International Business &
Economics, Beijing), LL.B. (Toronto),
LL.M. (Queen's), D Jur. (Osgoode)

Professor Jinyan Li has been teaching in Canada since 1991. She has also been a visiting researcher at Harvard Law School and a visiting professor at the University of Sydney, Loyola Law School and Soochow University. She has been a consultant to the Canadian government as well as to the IMF and OECD in relation to Chinese tax reforms. Professor Li has published more than 10 books and many journal articles in the area of taxation. Her important publications include: *International Taxation in Canada* (Li, Cockfield and Wilkie, 2007), *Principles of Canadian Income Tax Law* (Hogg, Magee and Li, 6th ed. 2007), and *Taxation in the People's Republic of China*. Her works have been cited frequently by scholars and Canadian courts including the Supreme Court of Canada.

The 2008 Peter Willoughby Memorial Lecture is entitled:

The Phenomenon and Implications of Cross-Cultural Convergence of Corporate Income Tax: A Case Study of China and Canada

*After three decades of reforms, the Chinese Enterprise Income Tax has a lot in common with its counterpart in Canada and other Western countries. Convergence is evident in terms of their functions, policy objectives, structural elements, and even anti-avoidance rules. And yet, the underlying local legal culture remains as divergent as ever. What forces pushed for convergence? To what extent is the convergence more apparent than real? How much is the divergence determined by local legal culture? What does this phenomenon mean for China's future tax reforms? The forthcoming **Peter Willoughby Memorial Lecture** explores these questions and more.*

Be sure to mark your diary for this event: Wednesday, 10 December 2008.

TLRP Seminar: "Taxing Activities Associated within Virtual Worlds"
Dr Michael Walpole, ATAX, University of New South Wales
Thursday, 18 December 2008

The growth of virtual worlds such as Second Life and World of Warcraft on the internet has resulted in the establishment of entire virtual communities in which members run businesses and carry on trade, sometimes for their own purposes and sometimes as part of the games.

Data suggest that there is substantial investment in such virtual world business activities and in some games there are facilities to exchange world currencies for virtual world currencies (such as Linden Dollars in Second Life). The Australian Taxation Office (like several overseas agencies) has firmly indicated its stance that income from such activities will be taxed in the hands of Australian residents. This heroic approach is faced with considerable practical and legal difficulties. This paper explores the many challenges involved in taxing activities undertaken in the virtual world.

Dr Michael Walpole is an Associate Professor and an Associate Dean at ATAX in the Faculty of Law, University of New South Wales. He is an experienced practitioner and tax academic with a keen research interest in the taxation of intangible property. Michael has recently concluded a term as Academic Visitor to the Oxford University Faculty of Law and the Oxford Centre for Business Taxation at the Oxford University Business School.

*** TLRP - 2ND International Conference – January 2010**

Introduction

We would like to provide readers with advance notice on the second International Conference to be organized by the TLRP. This conference, which is now in the advanced planning stage, has the working title:

GREEN TAXATION IN EAST ASIA: PROBLEMS AND PROSPECTS

We have used the term *Green Taxation* as a shorthand expression to include:

Taxes, fees and charges – *similar to traditional taxes, fees and charges* – which are directed (at least in part) at generating improved environmental outcomes.

The conference is scheduled to be held on: **Friday, 29 January 2010**

Conference Overview

East Asia - and particularly Greater China - confront severe environmental degradation problems as a direct product of several decades of remarkable economic growth. It is for this reason that the conference will make East Asia its primary focus. The conference will remain fundamentally comparative, however. The ultimate aim is to inform the debate (as it relates to the use of tax and related measures) on meeting environmental challenges in East Asia by drawing on relevant world-wide experience.

A primary aim of the conference is to generate an academically well grounded comparative study of the use and misuse of fiscal measures – especially Green Taxation:

- To encourage environmental protection and improvement in particular jurisdictions (and across jurisdictional borders);
- To discourage practises leading to environmental damage and degradation in particular jurisdictions (and across jurisdictional borders).

We are also interested in the revenue outcomes of such measures – and the way such outcomes can, in turn, shape later tax and related policy – and social behaviour. Our aim is that the conference will explore the scope – and limits – of Green Taxation in depth.

Regional Relevance

The Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) has seen a marked degradation of its living environment, including air quality, over the last two decades, especially. Environmental degradation is even worse in the Mainland PRC. In 2006 it was reported that 16 of the 20 most polluted cities in the world, where “you could chew the air”, were in Mainland China.

Although debate about the full extent of the problems, their causes and appropriate remedies is both widespread and animated, governments in the PRC and the HKSAR - and Asia's “Las Vegas”, the Macau Special Administrative Region (MacauSAR) - all openly recognize that there are serious problems.

This debate has taken place within the context of the intense worldwide conversation about global warming, climate change and environmental degradation generally. East Asia has been part of this dialogue and within this region there has been significant discussion about public policy initiatives like carbon-trading systems and a wide range of other regulatory controls.

Also, since 2000, an annual Global Conference on Environmental Taxation (GCET) has been held, see further: <http://www.worldecotax.org/>. To date, the GCET has mainly focussed on environmental taxation issues arising in the Americas, the EU and Australia. Thus far, there has been no serious, detailed, comparative study primarily focussed of the good – and bad – ways in which Green Taxation can be utilized in East Asia as one important means to try and shape collective environment-affecting behaviour.

The aim of this conference is to address this space in the public policy debate.

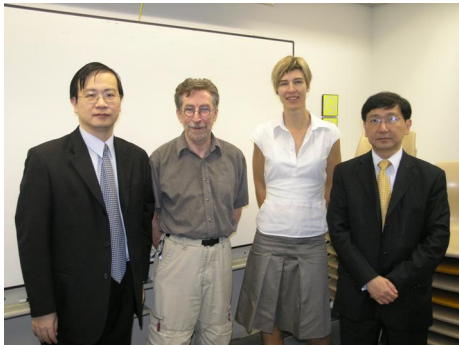
Further Information

We will keep you informed as planning for the conference advances.

RECENT TLRP ACTIVITIES

**** June 2008 “Achieving Tax Reform: Consultation in a Tax Policy Network”***

The Australian government has recently paid increased attention to consultation in business tax reform. Consultation is generally seen to be a “good thing” that helps to achieve successful tax reform but a conceptual framework for analysing consultation processes is lacking. This paper argues that we can best understand business tax consultation using the concept of a policy network that reflects a mode of governance extending beyond the formal boundaries of government. The paper considers examples of consultation in an Australian business tax policy network. Finally, it identifies problems and issues with current consultation processes and how the tax policy network can be made more effective. Given that Hong Kong’s recent attempts tax reform consultation proved less effective than the HKSAR Government hoped, there may be some useful lessons for future Hong Kong tax reform initiatives to be gleaned from the Australian experience.



From left to right: Associate Professor Wilson Chow, Professor Richard Cullen, Ms. Miranda Stewart and Professor Johannes Chan SC

Miranda Stewart is an Associate Professor at the University of Melbourne Law School. She has previous experience teaching in the tax program at New York University Law School; in tax policy and legislation in the Australian Tax Office and in tax advising and litigation for large businesses with Arthur Robinson & Hedderwicks. Miranda has published refereed articles in a wide range of national and international journals including in the *British Tax Review*, *Tax Law Review (US)*, *Australian Tax Forum*, *Journal of International Taxation* and in books published by the International Bureau of Fiscal Documentation and Australian Tax Research Foundation.

Her research is on the politics and processes of tax reform; business tax incentives for venture capital and taxation of corporations, partnerships, managed funds and trusts; sustainability and success of tax reform and tax and distributive justice. She teaches postgraduate tax courses including Corporate Tax, Fiscal Reform and Development and Taxation of Small and Medium Enterprises. She consults with specialist tax firm Greenwoods & Freehills.

**** September 2008 “The Interpretation of Article 56 of the European Community Treaty”***

Article 56 of the European Community Treaty deals with the free movement of capital within Member States of the European Union (EU) and the movement of capital between EU Member States and third countries. There has been considerable debate within the EU about how Article 56 should be interpreted. This seminar reviewed this debate.



Borbala Kolozs (*pictured at left*) is a Research Fellow in the Institute for International Tax Law at the Vienna University of Economics and Business Administration in Austria. Her recent publications include: “Tax Authority Gains New Powers” (2006) 43 *Tax Notes International*; and “Some Interesting Issues Regarding Articles 56-58 of the European Community Treaty” (in press).

TLRP OVERVIEW

The Foundation Members of the TLRP are:

- Professor Andrew Halkyard
- Associate Professor Wilson Chow
- Visiting Professor Richard Cullen

The TLRP has been established:

- To foster research, including comparative research, on Hong Kong, Mainland and Asian Taxation Law and related policy areas.
- To explore the Public Law as well as the Private Law dimensions of tax policy and operating taxation systems.
- To establish research collaboration links with other taxation research institutes internationally (*International Tax Research Network [sponsored by the OECD], Monash University – Taxation Law and Policy Research Institute (TLPRI) and ATAX – UNSW, being examples*) and with Universities with which HKU has strong existing collaborative links in the taxation field (*NUS and Kyushu University, being examples*).
- To engage in collaborative research projects with staff in other institutions in Hong Kong (and abroad) and with research-minded persons in the private sector.
- To seek funding, as appropriate, through research grants and other sources, to undertake relevant Tax Law research projects.
- To provide public sector, capacity building consultancy services on tax policy development and tax system operation.

- To conduct lectures / workshops / seminars / conferences focusing on Tax Law research.
- To run one major Tax Law Conference in Hong Kong at least every two years.

For further information on the TLRP please contact either:

- **Richard Cullen**
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 or
- **Flora Leung**
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We would be very pleased to hear from you and welcome your suggestions for future research and other activities.

If you would like to receive further information about the TLRP in future, please complete the reply form below and fax it to Flora Leung at (852) 2549 8495 or email your contact details to Flora Leung at fkleung@hku.hk.

Taxation Law Research Programme		
<u>Reply Form</u>		
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