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“WHO CARES ABOUT TAX THEORY, AND WHY?”

**THE PLACE OF TAX DISCIPLINES WITHIN ACADEMIA: REFLECTIONS FROM
‘DOWNUNDER’**

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Abstract

Taxation does not formally sit within a single discipline, and for that matter, there continues to be debate concerning whether it is capable of being a discipline in its own right. Furthermore, taxation does not inherently exist without the existence of rules duly decreed, imposed and enforced on members of society. While the teaching of taxation is dominated by exploring the operation of fundamental principles and rules principally found within legislation (and interpreted by the courts), research in taxation utilises much broader perspectives. This includes contributions from disciplines throughout the social sciences, including accounting, economics, history, public policy, psychology and sociology. The paper explores the places in which the ‘tax discipline’ sits within academia, taking a principally Australasian perspective.

1. INTRODUCTION

Taxation does not fit solely within any one particular discipline. While taxation has been part of society for thousands of years, academia’s interaction with it varies substantially across disciplines and jurisdictions. Former United States (US) Supreme Court Justice Oliver Wendell Holmes Jr stated: “Taxes are what we pay for civilized society.”¹ Furthermore, we should not underestimate the influence of taxation on society, as reflected by the comment made by Justice Jackson in *Dobson v Commissioner* that “... no other branch of the law touches

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¹ *Compania General de Tabacos v. Collector*, 275 U.S. 87 (1927), per Justice Holmes, at 100.

human activity at so many points as does tax law”.² If we accept the continuing relevance of Justice Jackson’s statement, then taxation has an influence on almost every form of economic (and social) activity, as well as on the behaviour of people.

What is a discipline? According to the online Oxford Dictionary, a discipline is “[a] branch of knowledge, typically one studied in higher education”.³ It cites as an example “sociology is a fairly new discipline”.⁴

In recent years taxation has emerged as a field of study attracting significant teaching and research interest from a number of disciplines. Importantly, without a series of rules imposed by a body on others, then taxation does not inherently exist. Consequently, it should not come as a surprise that taxation is a specialisation taught within the legal discipline, broadly interpreted. This is particularly so with respect to the application and interpretation of the law. It also features prominently within the accounting syllabus, as it is usually a core component for recognised professional accounting programmes. In contrast, taxation is usually much less prominent in the syllabi of other disciplines. Thus in effect tax is a social construct that can be studied through a number of different disciplinary lenses.

From a research perspective, Lamb argues that tax is not a discipline in itself but rather is a multi-disciplinary field of research, or a clustering of research interests.⁵ This includes important contributions from the disciplines of economics, history, philosophy, psychology, public policy, and sociology. Taxation is much more than merely interpreting and applying legislation. Academia are more frequently approaching taxation from inter-disciplinary behavioural-focussed perspectives. Understanding why people comply, and do not comply, with their tax obligations, is critical to an effective tax system.

Governments enact tax legislation to do much more than raise revenue. They set out to alter taxpayers’ behaviours, redistribute wealth, stimulate the economy, and produce public goods and services. Academics should take advantage of opportunities to provide input into the development of tax policy. This may be through their scholarship and submissions on

² 320 US 489 (1943), at 494.

³ See <https://en.oxforddictionaries.com/definition/discipline>.

⁴ Ibid.

⁵ Margaret Lamb, “Interdisciplinary Taxation Research – An Introduction”, in Margaret Lamb, Andrew Lymer, Judith Freedman and Simon James (eds), *Taxation: An Interdisciplinary Approach to Research* (Oxford, 2005), at 4.

(proposed) tax policy. As such, it is essential for academics to examine taxation from multiple perspectives. Academia should also include these perspectives as they facilitate students' teaching and learning, and when undertaking their research-related activities.

This paper will explore these observations further. It will also provide evidence that reflects a number of variations in where tax disciplines are 'traditionally' expected to fit within academia. In part this can be attributed to the influence that the key professions (accountancy and law, in particular) exert within those jurisdictions. It is also a product of various academic traditions, with differences across jurisdictions. For example, in the US law schools are postgraduate and lawyers have more influence in tax practice than in many other nations. The paper will incorporate analysis drawing from a number of Western nations, along with some Asian nations, but with a focus on the Australasian region. The paper concludes that the current diversity of tax disciplines within academia may evolve further through global exchanges in both teaching and scholarship.

The remainder of this paper is organised as follows. In section 2 there is a brief introduction as to why there is a relative paucity of prior research that considers where tax fits within the disciplines and its existence as a discipline in its own right. This is followed by an analysis of the tax discipline from teaching and research perspectives in section 3 and 4, respectively. The paper then makes some concluding observations which are set out in section 5.

2. PRIOR LITERATURE

In terms of the prior literature, to the writer's knowledge, there are no specific works on point that look at the position of tax disciplines within academia. While this is a somewhat unusual position for a research paper, this can be explained by the fact that the prior literature is in most respects, reflected in the content of the next two sections, namely the 'tax discipline' as viewed from both teaching and research perspectives. There are a number of studies that contribute to our knowledge of how the 'tax discipline', or 'disciplines that incorporate tax', embrace taxation within teaching, along with the emergence of inter-disciplinary perspectives on research involving aspects of taxation.

Adding to this rather unusual state of affairs is the debate over whether tax is in fact a discipline, and its relative 'youth' in terms of its journey towards 'maturity' as a recognised discipline, or at least a sub-branch of other disciplines, such as law. With this in mind, there remains a clear

‘gap’ in the literature for ‘disciplinary-based’ studies that contribute to the emerging dialogue over the place of taxation within academia, both in terms of teaching and research.

One may ask, why does this matter? The writer would suggest that in order to provide additional evidential support to tax being a discipline in its own right, those working within need to offer convincing arguments to the wider debate concerning tax being only a multi-disciplinary area, at least from a research perspective. From a teaching perspective, traditionally tax courses are not seen as needing to include material from outside of law and accounting.

It is the aim of this study to add to this dialogue through concurrently looking at tax as a ‘discipline’ from both teaching and research standpoints. In this regard the perspective is from one based ‘down under’ in New Zealand (NZ), or more aptly, an Australasian perspective.

3. THE ‘TAX DISCIPLINE’ – A TEACHING PERSPECTIVE

3.1 Early commentary

Life as an academic, especially a tax academic, can be a lonely experience when all (or almost all) of their departmental or school colleagues share no interest in their subject (whether it be teaching, research or both). This experience is made all the more daunting when tax (law) has as recently as 50 years ago not even recognised as an academic subject.⁶ Lazar’s comments were made at a time when in-depth examination of tax law was the domain of lawyers and coverage of the key issues only for the training of accountants. In what was at the time a thought provoking work, Lazar raises issues that are relevant today, such as how to teach tax law (separate courses or within other subject areas), and whether it should be taught at the undergraduate level at all. The approach in the US where law is a postgraduate degree is an example of a postgraduate option. Lazar also discusses the extent to which the teaching of tax should provide the skills to enable students to solve difficult problems involving tax issues. The debate has moved on since then, with taxation firmly embedded, in the Western World at least, as a compulsory subject in the vast majority of accounting degrees, and an optional subject in law degrees (an exception being the US).

⁶ See L Lazar, “Some Reflections in teaching Tax Law” (1970) *British Tax Review* 406-412.

Tax as a subject area, or discipline, is usually included within a (undergraduate) qualification, often as a required ‘service course’ supporting another major, such as accounting. In other instances, such as in law, tax is an advanced elective course taken by those students that see it as a valuable support to their other commercial law courses. Outside of accounting and law, it may form part of public finance courses in the economics and finance disciplines. Tax may also be included in other discipline areas by way of forming a component within a course; examples include the disciplines of: history; psychology; and sociology.

3.2 A US perspective

Within the US, tax teaching differs significantly with respect to whether it involves accounting students or law students. Most tax academics utilise the American Institute of Certified Practising Accountants (AICPA’s) Model Tax Curriculum (MTC) which outlining tax topics that tax educators should cover in their undergraduate accounting tax classes. The AICPA’s goal is to ensure that “all accounting students obtain the fundamental tax knowledge they need to begin careers in accounting or tax regardless of the path that a student might take to obtain a degree.”⁷ The MTC’s core components include:

- 1) the role of taxation in economic decision making and financial reporting;
- 2) the fundamental tax laws and essential tax-planning concepts; and
- 3) the breadth of existing tax issues and their impact on a variety of taxpaying entities.

From a law school perspective, in the US law is a postgraduate offering only, comprising three years of juris doctorate (JD) courses for domestic students. US domestic students may already be exposed to some taxation teaching through their undergraduate programme, but equally may have no background in business (and for that matter tax) at all. Most JD programmes at the high ranked US universities will include several tax courses.⁸ Indeed, a number of institutions offer an array of tax courses that extend beyond the federal income tax to incorporate policy, international, corporate, estates and trusts, partnerships, non-profits and others. International law students would usually take a one year Master of Laws (LL.M) programme, having a law degree from an institution in their home country. Furthermore, a number of US institutions

⁷ See Gail D Moore and Lara D Cassidy, Lara D, “Teaching Tax Effectively Using the AICPA’s Model Tax Curriculum” (2012) 5(17) *Review of Higher Education & Self-Learning* 35-41.

⁸ The major ranking of US universities is provided by US News.

offer specialist LLM qualifications in taxation.⁹ An emerging issue in the teaching of law, including tax law, in the US is requiring inclusion of experiential education. As Joy observes, while the American Bar Association (ABA) mandates a minimum of 6 credits (covering simulation, law clinic or externship), this is insufficient to prepare law students to be lawyers.¹⁰ Joy advocates for essential lawyering skills and professional values to be part of the core curriculum (not add-ons); every student needs to have a real-life practice experience opportunities to develop these skills and values; and law school curricula needs to respond to legal needs of today and the future.

More recently, as accounting programs that incorporate tax offerings have evolved in the US, the focus has turned to the level of international tax topics that are included. Writing in 2008, Fecowycz, Larkins, McGill and Porcano¹¹ emphasise the need for students to take courses that include international tax (including tax treaties, foreign tax credits and transfer pricing), in addition to developing more interpersonal skills. This call should be amplified in the post-Base Erosion and Profit Shifting (BEPS) era, given that tax extends well beyond the jurisdictional borders for many entities and individuals. BEPS is the Organisation for Economic Cooperation and Development's (OECD)'s initiative to close gaps in international taxation for multinational enterprises (MNEs) that allegedly avoid taxation or reduce tax burden in their home country by engaging in various tax operations (such as inversions) or by migrating intangibles to lower tax jurisdictions. A total of 15 Action Plans were developed and are in the process of being implemented, with a significant shift in the overall dynamics of international tax planning and compliance expected.¹²

⁹ For a review of LLM tax offerings, see Paul L. Caron, Jennifer Kowal, Katherine Pratt, and Theodore P. Seto, "Pursuing a Tax LLM Degree: Where?", University of Cincinnati – College of Law Public Law & Legal Theory Research Paper No. 10-18 and Loyola Law School Los Angeles Legal Studies Research Paper No. 2010-18 (available on SSRN).

¹⁰ Peter A. Joy, "The Uneasy History of Experiential Education in US Law Schools" (2018) 122 *Penn State Law Review*, forthcoming, at 30-32. [Currently available as: Washington University School of Law Legal Studies Research Paper Series Paper No. 18-02-04.]

¹¹ Jennifer L. Fecowycz, Ernest R. Larkins, Gary A. McGill and Thomas M. Porcano, "Acquiring International Tax Knowledge" (2008) 18 *Advances in Taxation*, 143–169.

¹² For a general review of BEPS issues, see Adrian Sawyer, "An Update on Hong Kong's Exchange of Information Developments and Engaging with BEPS", (2017) 25(2) *Asia Pacific Law Review*, 170-189.

3.3 A UK perspective

In the United Kingdom (UK), survey results published in 2005 provide the first substantial contribution to the literature on accounting tax education in the UK. Craner and Lymer¹³ look at themes emerging from the prior literature which is predominantly from the US. The authors looked at where the tax course(s) is located within an accounting degree programme, the objects and content of the course, staffing and teaching and learning assessment methods. The courses were found to generally be optional and offered in the last year of the degree. This is largely a result of the professional bodies not mandating a tax paper be taken as part of an accounting degree. Most courses had a ‘computational – income tax and corporate tax’ bias; this appropriateness of this approach is questioned by the authors. While traditional teaching techniques were the dominate method employed, other methods (such as small group seminars) were emerging. Little use of computer-based material was evident; this position has changed significantly with the onset of the ‘digital age’.

3.4 Australian and NZ perspectives

A number of jurisdictions, including Australia, NZ and the UK, have seen governments ‘up the ante’ in terms of research expectations, including encouraging the incorporation of research within the approaches taken to tax teaching. McKerchar¹⁴ provides an appraisal of the University of Sydney’s vision to be a research-led teaching institution within international best practice. As an ‘insider’ at the time of its development, McKerchar is able to reflect upon the strategy development, and its impact on teachers and students. Two major approaches available to academics are either to incorporate their research within the curriculum (a challenge for many given the often tenuous and complex link between their research and areas of teaching), or to engage their students in research activities. The latter method is not without its critics, as will be discussed in the next section of the paper.

In a NZ context, Tan and Veal¹⁵ conclude in their survey of tax educators and practitioners that a high level of conceptual understanding is more important than technical proficiency for most

¹³ John Craner and Andrew Lymer, “Tax education in the UK: as survey of tax courses in undergraduate accounting degrees” (2005) 8(2) *Accounting Education* 127-156.

¹⁴ Margaret McKerchar, “An Appraisal of Research-led teaching in the context of taxation: can both teacher and Student Benefit?” (2005) 1(2) *Journal of the Australasian Tax Teachers Association* 491-498.

¹⁵ Lin Mei Tan and John Veal, “Tax Knowledge for Undergraduate Accounting Majors: Conceptual v. Technical” (2005) 9(1) *eJournal of Tax Research* 28-44. For a discussion on assessment methods comparing methods used

tax topics that would be covered within a tax course(s). This would indicate that there is scope to introduce students to theoretical perspectives in addition to outlining the current legislative and judicial approaches to key concepts. With the main professional body at the time (New Zealand Institute of Chartered Accountants – now Chartered Accountants Australia and New Zealand) requiring only a general outline of the learning outcomes, this enabled academics to choose their own relative emphasis on conceptual versus technical proficiency. It is also suggested that NZ academics have a much closer relationship with the tax profession than in jurisdictions such as the US, which facilitates a closer alignment between the desired outcomes of the profession and academia.

3.5 The scholarship of teaching and learning

McKerchar's analysis of the University of Sydney's¹⁶ overarching institutional philosophy to teaching raises the wider debate concerning the place of the scholarship of learning and teaching (SoLT), and whether this research is an important area for tax academics to engage in. Freudenberg observes in relation to SoLT¹⁷ that:

“... good teaching is of itself not enough in modern university environments. Increasingly, *academics are being asked to provide evidence of learning and teaching outcomes, and also to be engaged in the scholarship of teaching.* ... The scholarship of learning and teaching (‘SoLT’) is seen as one way of providing evidence of learning and teaching outcomes. *By engaging in the SoLT, academics can be more active agents: this can have beneficial implications in terms of their teaching and of student learning, but also can raise their research profile.*”

With respect to academics knowledge about learning, Freudenberg goes on to state that:¹⁸

“*While academics may have strong discipline knowledge, many academics may have limited knowledge of theories of learning and strategies of teaching.* Research has demonstrated that even those academics identified as excellent teachers may have only

at one Australian university with that at an NZ university, see Audrey Sharp and Kalmen Datt, “Proposals for Assessment in Tax Teaching” (2010) 5 *Journal of the Australasian Tax Teachers Association* 46-65.

¹⁶ McKerchar, above n 14.

¹⁷ Brett Freudenberg, “Show Me the Evidence: How the Scholarship of Learning and Teaching Is Critical for Modern Academics” (2012) 7 *Journal of the Australasian Tax Teachers Association* 171-190, at 172-3 (emphasis added, footnotes omitted).

¹⁸ *Ibid.*, at 178 (emphasis added, footnotes omitted).

'sketchy knowledge' of the literature. However, it is argued that *even these excellent teachers would benefit from engaging with SoLT*. This is because they need to be able to provide robust evidence of why their practices are good, and the SoLT can assist with framing this to ensure that they are given due credit for their achievements.”

Overall, Freudenberg sees SoLT as “... an integration of these two aspects of this role, providing a foundation to create knowledge about teaching and learning practices, and then to disseminate this for the benefit of all stakeholders.”¹⁹ Should tax academics engage directly in the area of the scholarship of teaching and learning, they will need to ensure they are familiar with the theories, research methodology, and dissemination outlets within the broader discipline of education. This approach also demonstrates an example of inter-disciplinary research.

In a very recent study of legal teaching methods for taxation comparing Australia, NZ and the US, Kraal²⁰ concludes from the interviews she conducted that tax law is taught to business students by teachers (academics or practitioners) from either law or business schools within the institution, but for law students this is solely by law school teachers. In terms of normative teaching methods, the curriculum can include:²¹

1. dissemination of the basic legal principles based on case law, that is, technical-rational knowledge;
2. inductive application of legal principles to given scenarios; and
3. practicum exercises to address everyday problems of legal practice, which draw on tacit, as well as explicit, knowledge

Kraal argues that there is a role and place for theory, stating that:²²

“Law schools generally use methods [1] and [2], *recognising that knowledge is valid if based on a theory*, while business schools generally use all three methods. Business schools can be found in both research and non-research universities, although one

¹⁹ Ibid, at 190.

²⁰ Diane Kraal, “Legal teaching methods to diverse student cohorts: a comparison between the United Kingdom, the United States, Australia and New Zealand” (2017) 47(3) *Cambridge Journal of Education* 389-411.

²¹ Ibid, at 394-5.

²² Ibid, at 395 (emphasis added).

difference is that *research universities are known to emphasise methods [1] and [2] over method [3].*²³

Kraal observes that business schools generally offer a basic and advanced tax law course (which are frequently compulsory courses), while law school offerings are typically elective courses.²³ Teaching styles differ between UK, US, Australian and NZ universities, with US teachers/academics focussing more on problem solving and expectations of prior reading. Institutions in the other jurisdictions make greater use of lectures and tutorials, with innovations coming through (such as introducing activities necessitating more student interaction).

An increasing trend is greater cultural diversity in classes, necessitating more thought over teaching practices. This can be particularly challenging, as the norm is that the lecturer comes with a legal practitioner or tax accounting practitioner background. Usually there is no formal teaching qualifications or related professional development required prior to a person's academic appointment. During their employment various forms of tertiary teaching qualifications may be required or encouraged. In sum, Kraal argues that the challenge is for academics to reflect on their teaching, abandon old habits, and think creatively about what methods are appropriate for their classroom environment.

3.6 Location of staff and course offerings

In undertaking the research that informs this paper, a review of the tax course offerings at universities in Australia and NZ was undertaken, supplemented by a brief review of a selection of institutions in Asia, Europe, North America and the UK. Owing to space limitations, the data is not reproduced in detail here but it is available upon request.

In Australian universities, tax is taught in both the business and law schools. The largest group of tax academics is at the University of New South Wales (UNSW) in the School of Taxation and Business Law. With the exceptions of several of the major 'sandstone' universities (such as the University of Melbourne (Melbourne) and University of Sydney (Sydney)), there is a larger concentration of staff and tax courses within the business schools than in the law schools. However, when looking at the research discipline background of the faculty, a significant majority publish in journals within the legal discipline.

²³ Ibid, at 395-399.

An examination of the undergraduate courses at the larger institutions (in terms of their tax offerings),²⁴ reveals a very consistent coverage of topics, especially where there is only 1-2 courses in tax offered. This can be largely attributed to professional accreditation requirements for business schools. Buttressing these requirements are the choices made by those teaching the courses as to what they believe is necessary for tax students to know and develop skills in as part of their tertiary studies. Where institutions offer a major in taxation, or a much larger series of optional courses, then the coverage of topics is much broader, with more complex issues included within the curriculum. Those institutions with a Master's program in taxation can take this to an even higher level, including offering courses that specialise in an aspect of taxation, such as international taxation.

In NZ, all eight universities were included in the review. Where there is a law school at the institution, there would usually be one optional paper offered (the exception being the University of Auckland (UA), which also offered the only Masters of Taxation programme in NZ). The greater concentration of tax papers, including majors, were in three institutions: UA, University of Canterbury (UC) and Victoria University of Wellington (VUW). Students are required to take one or more tax courses for business-based degrees in NZ, which is largely attributable to professional accreditation requirements. A review of the content of the tax papers reveals a high degree of similarity in content, with those institutions offering more than one course able to include a wider range of topics and skill development.

In the Asian region, in Hong Kong (with a sample of 5 institutions), 3 had their offerings in the business faculty, and 2 in both the business and law faculties. In Singapore (a sample of 4 institutions), 3 had their offerings in the business faculty, and 1 in both the business and law faculties. In Europe, the jurisdiction reviewed was the Netherlands (a sample of 4 institutions), with all tax courses in the law faculty. In the UK (a sample of 10 institutions), 4 had their offerings in both the law and business faculties, 3 in the law faculty, 2 in the business faculty, plus 1 in a combined law and business faculty (for the degree M.SC in Taxation).

Turning to North America, in Canada (a sample of 10 institutions), 5 had their offerings in the business faculty, 3 in the law faculty, and 2 in both the business and law faculties. In the US (a sample of 20 institutions), 18 institutions offer an LL.M in Taxation, 2 offer an LL.M degree

²⁴ This included: University of Adelaide, Australia National University (ANU), Curtin University, Melbourne, Monash University, Sydney, Queensland University of Technology (QUT), and UNSW.

which includes tax courses, 8 have a ‘Graduate Tax Program’, with all offerings other tax courses in the law school. Three also offered tax courses in the business school.

What this less than comprehensive review suggests is that for the teaching of tax, there is a mix between offerings of tax being in business schools and law schools, although in the US, in the higher ranked institutions law schools had more tax offerings than the business schools. The degree of course content is very similar in the institutions in Australia and NZ. That said, in all regions, the course content is largely dictated by ensuring students are familiar with the key aspects of the domestic regime, as well as varying degree of appreciation of the wider international sphere in which taxpayers operate. The major focus in these courses is the relevant law and its interpretation, although accounting, economic and other policy issues are also present in many courses. This suggests there is some recognition of the inter-disciplinary nature of taxation, but with scope for greater appreciation of its importance.

4. THE ‘TAX DISCIPLINE’ – A RESEARCH FOCUS

4.1 Introductory comments

Before moving into examining the ‘tax discipline’ from a research focus, it is useful to consider what is meant by ‘research’. Bordens and Abbot compare research to science as a means of not just acquiring knowledge but also as a way of thinking and of viewing the world.²⁵ Research is also commonly described as being either basic (pure) or applied in nature. The former is normally associated with the testing of the validity of theories without necessarily considering their application in the real world. Applied research is more frequently associated with investigating a problem in a real-life context or which has the potential to have direct application.²⁶

In a tax context, research should be seen as much more than studying the revenue statutes and their interpretation, which is the typical domain of most ‘traditional’ legal academics. While this research is important, tax needs to be seen in a wider context. Our understanding of law and practice can be greatly enriched through different lenses and perspectives than the limited scope of black letter law analysis. Much of the early research in the tax discipline has been

²⁵ Kenneth Bordens and Bruce Abbot, *Research Design and Methods: A Process Approach* (7th ed, McGraw-Hill, 2008).

²⁶ Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting* (Thomson Reuters 2010), at 6.

applied in nature (such as analysing the implications of a case to the development of an aspect of tax law), with more recent research incorporating theories and their testing within empirical settings. Some excellent examples of such research can be seen in the International Bureau of Fiscal Documentation's (IBFD's) and Oxford University Press (OUP)-Australasian Tax Teachers Association (ATTA) Doctoral Series of publications.²⁷

Research traditions within the tax discipline are dominated by those used in law and accounting, along with economics, history, political science, psychology and sociology. In many respects this reflects the discipline within which the researchers are located (for example, legal tax academics most often would use traditional legal methodologies, such as black letter law). Over time, researchers have more frequently adopted cross-disciplinary or inter-disciplinary perspectives and methodologies in their research. In part this has been driven by researchers in tax having their methodological roots in areas other than law and accounting. Tax, if one accepts it as being a standalone discipline, is firmly embedded in the social sciences.

4.2 Early comments on the place of tax research

Lamb and Lymer, writing in 1999,²⁸ argue that an improvement in both the quantity and quality of tax research will follow from a better understanding of the inter-disciplinary nature of tax research and how it relates to the wider accounting research community. The authors define what they mean by tax research (in an accounting context):²⁹

What do we mean by 'tax research in an accounting context'? We include research that deals with *taxation in the functional context of accounting practice – financial reporting, auditing, managerial accounting, financial management or tax accounting*. We also include tax research that contributes to academic literature on *the measurement and reporting of accounting information, the management and organization of accounting functions, and the interactions between accounting information and capital market behaviour and individual financial decision-making*.

²⁷ See further: <https://www.ibfd.org/IBFD-Products/IBFD-Doctoral-Series>; and generally <https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association>.

²⁸ Margaret Lamb and Andrew Lymer, "Taxation research in an accounting context: future prospects and interdisciplinary perspectives" (1999) 8(4) *The European Accounting Review* 749-776. For a more recent perspective on empirical tax research in accounting, see Douglas A Shackleford and Terry Shevlin, "Empirical tax research in accounting" (2001) 31 *Journal of Accounting and Economics* 321-387.

²⁹ Lamb and Lymer, *ibid*, at 750 (emphasis added).

Tax is seen as an important contribution to accounting research. However, this does not appear to be reflected in the publications in the major international peer reviewed accounting journals, and where it does appear, it is clustered in a few areas, which use analytical and empirical/statistical approaches.³⁰ Three major challenges exist to increasing tax research:³¹

We suggest that taxation research presents three key challenges to the researcher. First, the *interdisciplinary nature of the problem requires the researcher to define carefully the nature of the particular problem under examination*. Second, the subject requires the researcher to *work outside the core of the discipline*. Third, the tax researcher often *works at the boundaries of disciplines where he or she is likely to need interdisciplinary perspectives and methods*. We argue that these challenges apply regardless of the national setting, and their interactions raise dilemmas for the researcher that can be resolved by adopting a ‘satisficing’ strategy to balance the demands of the interdisciplinary subject against the constraints of working within an academic home discipline.

To be effective when undertaking tax research, Lamb and Lymer suggest there needs to be an acceptance that inter-disciplinary tax research is a component of accounting research. This in turns necessitates that supportive networks for tax research be built, that inter-disciplinary methods for tax research be developed, and the research literature of tax needs to be constructed within an accounting context. Thus, it would appear that in Lamb and Lymer’s view, tax is unlikely to flourish, from an accounting-based research perspective, as a separate discipline. That said, it needs to draw heavily upon research methods and theories in the wider accounting discipline, taking an inter-disciplinary focus.

Writing around a decade later, Hanlon and Heitzman³² review the state of tax research within the broader disciplines of accounting, economics and finance. They reemphasise the multi-disciplinary nature of tax research, which in their view makes tax research exciting but challenging. Hanlon and Heitzman observe:³³

³⁰ Ibid, at 753-757.

³¹ Ibid, at 750 (emphasis added).

³² Michelle Hanlon and Shane Heitzman, “A review of tax research” (2010) 50 *Journal of Accounting and Economics* 127-178. The authors provide an update on the earlier work of Douglas A Shackelford and Terry Shevlin, “Empirical tax research in accounting” (2001) 31 *Journal of Accounting and Economics* 321-387.

³³ Hanlon and Heitzman, *ibid*, at 127 (emphasis added).

“Tax research can be difficult not only because one has to *follow tax studies in accounting, finance, economics, and law* (through academic institutions, governmental agencies, and policy think tanks), but also because *different disciplines often use different languages and have different perspectives.*”

In their conclusion to their review, the authors make a significant statement:³⁴

“One issue that has been raised is that *tax research in accounting needs more theory. This is likely true*; almost every applied field could benefit from a stronger theoretical foundation.”

4.3 Recent contributions – increasing emphasis on theory and methodology

In a more recent study, Tyler looks at the changes in approach in legal (tax) research. He observes:³⁵

“During the *last 20 years empirical research methods have become increasingly central* to the landscape of legal scholarship. *Prior to that time the field of legal scholarship has been most heavily dominated by normative analyses of the law*, i.e. by ‘black letter law’. Such doctrinal analyses involve efforts to understand the best balance of rights and obligations under the framework defined by law. Their inspiration is drawn from moral, legal and political philosophy. They build their analysis around questions of what ought to be. *Increasingly empirical research methods have been used to address a variety of legal questions. This paper embraces the idea of evidence informed law.*”

Tyler’s article is particularly poignant to those researchers that adopt a traditional black letter law approach. Is their research making the greatest contribution that it could, if it were to adopt methodologies and theories from other disciplines? Should the findings be empirically defensible if their intention is to alter policy, practice or behaviours? Tyler goes on to make the assertion that:³⁶

³⁴ Ibid, at 168-169 (emphasis added).

³⁵ Tom R Tyler, “Methodology in Legal Research” (2017) 13 *Utrecht Law Review* 130-141, at 130 (emphasis added, footnotes omitted).

³⁶ Ibid, at 131, (emphasis added).

“Empirical research has value and it is much better to base policy on evidence than on hunches. In this article it is suggested that the benefits of an empirical approach are enhanced not simply by the use of data, but in particular by drawing upon the power of social science theories. ...

Drawing upon social science theory allows us to imagine that factors not currently within the system could matter and test whether that is in fact the case. It provides a method of identifying new issues and also a method for testing their importance.”

Where do Tyler’s comments leave traditional legal research? Is there a place for it? The current writer would argue there remains a place for such research, especially in regard to examining the implications of a decision in case law on existing statute law, and for critiques of existing legislation and proposed legislation. There remain challenges in applying empirical analysis to legal research. Not only is there a need for an appropriate balance of internal and external validity, but there needs to be the cooperation of authorities to assist in the research, such as to provide data or randomly assign participants to treatments, and the like. Revenue authorities in developed Western nations have not been overly forthcoming in this regard, except for instances where they commission the research on their terms. As Tyler comments:³⁷

“To the extent that research is evaluated in terms of internal validity and field experiments are the ‘gold standard’ for evidence, social change is controlled by existing authorities. If they do not permit their assumptions to be tested, then no high quality evidence will be available to evaluate those assumptions.”

This approach to evidence-informed law is an increasing trend in the US and Europe. Nevertheless, Tyler notes that “... much of this empiricism involves the a-theoretical use of empirical research methods.”³⁸ Tyler concludes:³⁹

“[A] more neglected aspect of reliance on evidence is the use of theoretical models from social science to define the scope of the questions about which empiricism occurs. This approach allows social science to expand the framework within which law operates. It makes the important contribution of identifying factors that would be predicted to matter,

³⁷ Ibid, at 141, (emphasis added).

³⁸ Ibid, at 141.

³⁹ Ibid, at 141 (emphasis added).

but are currently minimized. And it provides a *methodology for testing those theoretically based arguments.*”

Thus an important way forward for legal tax research to be more evidence-based is to incorporate theoretical models from the social sciences and then to empirically test these arguments. For example, researcher could use the case study methodological approach to explore developments in an area of the law, including incorporating perspectives from beyond the law itself, such as the impact of societal views on shaping the underlying policy. Traditional black letter law researchers should keep this in mind as they undertake future research.

Taekema offers a slightly different perspective with respect to theoretical and normative frameworks in legal research (which incorporates legal tax research). Legal scholars traditionally do not comment on their perspectives on the various points of view in the prior research, choosing to leave them implicit.⁴⁰ While legal doctrinal scholarship traditionally focusses on positive law, there is also legal research that takes a socio-legal or theoretical legal perspective (and is thus informed by theory). Legal scholarship, Taekema notes, “has a special position as an academic discipline, because the subject matter to which it applies, law, is predominantly concerned with norms.”⁴¹ Taekema goes on to observe:⁴²

“The dual character of legal scholarship is an important part of the problem of legal methodology: *by studying law as an existing practice, it may be said to share the descriptive and explanatory focus of social science; by making interpretive normative arguments, it may be seen as a normative humanities discipline such as ethics.* One might say that legal scholars face an identity problem: are they social scientists, normative humanities scholars, or a unique species that blends the two? *I would argue that there is a particular blend of social science and humanities aspects, and that legal scholarship does not fully belong to either group* (Taekema 2011). It is not fully social scientific, because it does not usually aim at empirical data collection nor at answering explanatory questions. In its own way, it does gather facts, but then one needs to understand fact-gathering more broadly than as empirical data collection. It is not fully part of normative humanities because its arguments need to be based on descriptions of positive law. It

⁴⁰ Same Taekema, “Theoretical and normative frameworks for legal research: putting theory into practice” (2018) *Law and Method*, forthcoming at 2.

⁴¹ *Ibid*, at 8.

⁴² *Ibid*, at 9 (footnotes omitted, emphasis added).

does makes its own normative arguments (as discussed earlier, usually based on legal values and principles). I would also claim that most doctrinal legal scholars do not want to choose, but are also rather vague about how they see the blend between the two. This shows most clearly in the research aims pursued in legal doctrinal work.”

4.4 The importance of interdisciplinary tax research

As noted in the previous section of this paper, taxation is a subject of enquiry that cuts across a range of disciplines, including law, economics, politics, psychology, history and accountancy, to name a few. However, from a research perspective, Oats notes that research into taxation as a social and institutional phenomenon, rather than as abstraction from the real world, is largely neglected.⁴³ Emerging perspectives that are now mainstream and incorporate other methodologies include: behavioural, business strategy, capital markets, ethics, macroeconomics, microeconomics, policy, tax compliance costs, and others. Tax research is also embracing ‘new’ approaches, such as fieldwork and external data gathering, including working with human subjects. Oats makes an important observation with respect to researching tax:⁴⁴

“Tax research is not known for its reflexivity, and methodology is something we tend not to talk about much, even in work where it assumes central importance such as the capital markets based work within tax accounting scholarship. Tax researchers come from a variety of disciplinary backgrounds, and may have some research training acquired from that particular disciplinary perspective. What we often lack is an understanding of research approaches and methods from other disciplines ...”

A comprehensive introduction to areas where taxation research is part of research traditions is provided in an edited work by Lamb, Lymer, Freedman and James.⁴⁵ In their book, examples of inter-disciplinary approaches to taxation problems are offered, culminating in suggestions of how to produce ‘good research’ in taxation through both singular and inter-disciplinary approaches.

⁴³ Lynne Oats (ed), *Taxation: A Fieldwork Research Handbook* (Routledge, 2012).

⁴⁴ *Ibid*, at 1 (emphasis added).

⁴⁵ Lamb, Lymer, Freedman and James (2005), above n 5.

Perhaps the most significant contribution to undertaking research in taxation is that by McKerchar,⁴⁶ who provides guidance on the process from design to conducting and reporting on research in taxation (as well as law and accounting). The role of theory is pivotal to developing a research proposal and in due course undertaking the research. What these works, and others, indicate is that theory and method are growing in importance in tax research.

The paper now turns its focus onto one aspect of tax research, where there is remains an ongoing debate over the methodological approaches taken in empirical studies, namely the use of students as proxies for taxpayers. Marriott⁴⁷ offers some insights into this debate, indicating that there appears to be a gradual acceptance of the use of students in tax experimental research over time. Marriott draws her analysis from a review of a number of leading predominantly US-based peer reviewed journals over the period 1990 to 2010 that feature empirical tax studies. Marriott makes four suggestions for moving forward, including recognition of the need to incorporate inter-disciplinary input.⁴⁸

The research makes four suggestions from the research findings. First, *student subjects should primarily be utilised when students are the population of interest*. In these cases, there is little need to justify their use, as it will be driven by the research question. Where student subjects are used and they are not the population of interest, some justification or explanation of the subject sample choice should be provided. Second, *where student samples are used and they are not the population of interest, findings should be interpreted conservatively, and, in particular, policy recommendations made should have caveats attached*. Third, *research using students, where students are not the population of interest, should acknowledge the inherent limitations in the research output*. Finally, it is suggested that *the tax discipline could benefit from greater inter-disciplinary input where tax experiments are concerned*. The collective knowledge of a range of social science disciplines is likely to be of value in experimental tax research. However, the tax discipline does not appear to take into account the findings of other disciplines, and potentially misses out on many insights into experimental research.

⁴⁶ McKerchar, above n 26.

⁴⁷ Lisa Marriott, "Using student subjects in experimental research: a challenge to the practice of using students as a proxy for taxpayers (2014) 17(5) *International Journal of Social Research Methodology* 503-525.

⁴⁸ *Ibid*, at 522 (emphasis added).

In making a collective assessment of the prior analysis, it would be fair to argue that tax research is now moving towards maturity through recognising its limitations and drawing heavily upon various disciplines. While those working within the ‘tax discipline’ would argue that tax is a discipline itself, when looking from outside within, tax research is *better* described as a combination of disciplines, with aspects of tax policy, practice, etc. at its centre of interest.

4.5 Outlets for presenting and publishing tax specific research

An important outlet for researchers working within the tax discipline (in whole or in part) is disseminating their work and networking at academic conferences and symposiums. Taxation may often be a small stream in larger conferences within the disciplines of accounting and law, for example. It may also be the focus of dedicated tax conferences/symposiums, as illustrated in Table 1 below:

Table 1: Specialist Tax Conferences/Symposiums by region (not exhaustive)

Region	Organisation/Conference
Australasia	Australian Tax Teachers Association (ATTA) Conference International Tax Administration Conference (ITAC) Queensland Tax Researchers Symposium (QTRS)
Europe	Global Conference on Environmental Taxation Institute for Austrian and International Tax Law (IAITL) Conferences International Bureau for Fiscal Documentation (IBFD) Conferences International Fiscal Association (IFA) Conferences
North America	American Taxation Association (ATA) Conference Canadian Tax Foundation (CTF) Conference National Tax Association (NTA) Conference
United Kingdom	Cambridge Tax Policy Centre (CTPVC) Conference and Tax History Conference (CTHC) Oxford University Centre for Business Taxation (OUCBT) Conference Tax Research Network (TRN) Conference Tax Administration Research Centre (TARC) Conference
Other	International Conference on Chinese Tax and Policy (ICCTP)

Looking more closely at one of these conferences with which the current author is the most familiar, namely ATTA, McKerchar is very much on point with her comment:⁴⁹

“Those based in Australia and New Zealand (numbering approximately 100) have been meeting since 1989 at the annual conference of the Australasian Tax Teachers Association (ATTA) to share their research and promote tax teaching. While tax is undoubtedly their main focus, *ATTA members come from varied disciplinary backgrounds including law, accounting, economics, psychology, science, politics and the social sciences*. These backgrounds bring *different perspectives to the nature of tax research, be they doctrinal, theoretical, conceptual or empirical*. To some extent they also bring *different expectations about quality and rigour; and provide opportunities for innovation, cross-fertilisation and fresh thinking*. Currently tax researchers have to be able to listen to the ‘language’ of others, to be more open-minded to their contributions and to consider how they can inform their own understanding. *It is argued that the often intra-, inter- and multi-disciplinary nature of tax research is a strength of the discipline and not inappropriate given that tax itself is a dynamic, complex and multi-dimensional phenomenon.*”

McKerchar also comments on the close relationship between tax academics and practice, with issues in practice often informing the research undertaken by academics, and policy issues researched by academics leading to legislative changes and /or changes in tax practice. In terms of academic journals, while a number of general law reviews, accounting-based journals and other journals within the social sciences may publish papers on taxation, there are a number of specialist tax-based journals. Table 2 provides a non-exhaustive list of such journals set out by region:

⁴⁹ Margaret McKerchar, “Connecting Tax Research and Practice: The Past, Present and Future”, in edited by Elaine Evans, Roger Burritt and James Guthrie, *Bridging the Gap between Academic Accounting Research and Professional Practice* (2011, University of South Australia and the Institute of Chartered Accountants), Chapter 4, at 52 (emphasis added).

Table 2: Specialist Tax Journals (not exhaustive)⁵⁰

Region	Journal
Asia	Asia Pacific Journal of Taxation Asia Pacific Tax Review
Australasia	Australian Tax Forum Australian Tax Review eJournal of Tax Research Journal of Australian Taxation Journal of the Australian Tax Teachers Association New Zealand Journal of Taxation Law and Policy Revenue Law Journal
Europe	Bulletin for International Taxation EC Tax Review European Taxation International Transfer Pricing Journal International VAT Monitor Intertax
North America	Advances in Taxation Canadian Tax Journal Colombia Journal of Tax Law Florida Tax Review Houston Business and Tax Law Journal International Tax and Public Finance International Tax Journal Journal of the American Taxation Association Journal of International Accounting, Auditing and Taxation Journal of Legal Tax Research (ATA) Journal of Taxation Journal of Taxation of Investments National Tax Journal New York University Journal of Law & Business Pittsburgh Tax Review (The) Tax Advisor Tax Executive Tax Law Review (The) Tax Lawyer Tax Management International Journal Tax Notes/Tax Notes International/State Tax Notes University of Miami Business Law Review Virginia Tax Review
United Kingdom	British Tax Review (The) Corporate Tax Review (The) EC Tax Journal Fiscal Studies

⁵⁰ Based on material from Lamb, Lymer, Freedman and James (2005), above n 5, Appendix.

With the continuing debate over whether tax is a discipline in its own right (an issue that was resolved by many tax academics years ago in the affirmative, perhaps with a degree of self-interest), it is perhaps not surprising that the generalist journals in the disciplines of law and accounting, for example, publish relatively few articles from 'tax' academics. Numerous explanations can be offered, such as the small numbers of tax academics compared to academics as a whole in the major disciplines, the lack of perceived interest in their work to a wider audience, and the 'poor quality' of their research (including a perceived lack of theoretical underpinning). A partial response, therefore, is for the 'tax discipline' to have its 'own' journals that publish work of relevance to their readers, and employ research methods that are 'accepted' by members of the 'tax discipline'. In part this explains why a high percentage of the specialist tax journals are 'new' compared to other related disciplines. Few specialist tax journals have a publication history dating back to a period prior to the 1980s.

5. CONCLUDING OBSERVATIONS: THE IMPORTANCE OF THEORY AND PRACTICE IN TAXATION

This paper has set out to demonstrate that the 'tax discipline' has evolved over the last fifty or so years from a position where tax academics were both few and far between, and lived a very isolated life, at least as far as their 'discipline' is concerned. While it remains debatable from an 'outside' perspective as to whether tax is a discipline in its own right, those within would attest to the tax discipline being very much 'alive and well', and a critical part of the teaching components within business schools, and more frequently an elective for students within law schools.

The requirements of various professional bodies to require tax content within a business degree has been pivotal to business schools offering one or more tax courses. A number have sufficient offering to enable tax to be a minor or major that students may take as part of their degree. Within law schools there is a much greater variation across jurisdictions, with no better evidence of this being the US institutions where not only is law a postgraduate degree, but many highly ranked institutions offer tax specialisations and/or numerous tax course offering.

A majority of the teaching faculty come with either a background in the legal profession or the tax profession more generally, even where the course is located in a business school. Taking Australasian universities as an example, the course content is very similar, which is not surprising given the 'direction' from professional accounting accreditation bodies. Where an

institution offers more than one course, it is more common to see the content reflect tax issues from other disciplinary perspectives (outside of accounting and law), such as behavioural, economics, and public policy perspectives. This is accompanied by exposure of students to the view that the boundaries of the ‘tax discipline’ are much wider than those of the law in application and practice. This should leave students with the impression that tax is effectively multi-disciplinary in nature. Inclusion of theoretical perspectives is also most common where a school or department within an institution that offers more than one course.

From a research perspective, the literature reviewed in this paper indicates that outside of the legal discipline, tax research needs to be multi-disciplinary, drawing upon the expertise of researchers from a range of disciplines, including accounting, economics, history, psychology, and sociology, to give some examples. In this regard it is difficult to assert that tax is a separate discipline when it comes to research. Increasingly tax research (outside of legal tax research), is finding its way into journals for a range of disciplines, including accounting, history and psychology. It is also being influenced by the use of theories and varied methodological approaches that are appropriate for the research that is being undertaken. Legal tax research inherits the challenges of legal research more generally; it has not fully grasped the interplay between the empirical and normative aspects of law. It also needs to be more evidence-informed, and contextualised for (implicit) theoretical assumptions.

Notwithstanding the comments above, most tax research in the English speaking Western World is disseminated through specialist tax conferences (such as those highlighted in Table 1), and then through specialist tax journals (particularly those set out in Table 2). It is within Australasia, as well as in the UK and Europe to a lesser degree, that academics from a range of disciplines jointly undertake research, present their findings at inter-disciplinary (tax) conferences, and publish frequently in tax-based journals. A feature of not only many of these conferences, but also the academic tax journals, is inclusion of inter-disciplinary research (outside of research which is legally based), along with authors of paper being from more than one discipline. Legal tax research will always be central to tax research, as tax is inherently a creature of statute. What should continue to emerge is legal-based research that is influenced by contributions in other disciplines, including contributions from public policy, accounting and history. Tax research should also be incorporating empirical evidence that has been interpreted through the lens of theories from areas within the social sciences.

In the ‘cross-over’ area of teaching pedagogical research (or SoLT), there is an opportunity for tax academics to undertake research into teaching that not only adds to the wider body of knowledge on learning and teaching from a tax perspective, but also offers evidence to support what is high quality teaching. Such research necessitates researchers to incorporate existing teaching theories and their application in practice.

This paper comes with a number of limitations. Most significant is the lack of a comprehensive empirical study of tax courses, educators and research from across the jurisdictions covered in the study. This extends to excluding jurisdictions where English is not the language of instruction or writing. Associated with this is that the data gathered at best provides a limited snapshot of teaching and research in selected Asian and European countries, along with a range of samples from Australian, NZ and North American institutions.

The paper also limits its analysis of course content to a selection of institutions where the course outlines and associated information are readily available online. While it was not the intention to provide an in-depth review, this could be the subject of future research.

From a research perspective, this paper did not seek to sample individual publications and make its own stocktake of the disciplinary background of the author(s), the methodology employed, the theoretical perspectives adopted, and the like. Rather it sought to rely upon the content and arguments presented in a number of literature reviews in the broad ‘tax discipline’, supported by anecdotal evidence and the experience of the current author. Future research could update a number of these prior studies as well add depth to our understanding of tax research overall.

To answer the question: “*Who cares about tax theory and why?*” the current author would like to have his name placed on this list as someone who cares. Having a theoretical perspective is vital to teaching a concept (including implicitly explaining legislation and cases) and in conducting research. It is something that he encourages his postgraduate students to adopt. Frequently in traditional legal teaching and research, theoretical perspectives are either assumed (implicit) or ignored. It is suggested here that in teaching and researching in tax within the broad legal discipline, greater explicit acknowledgment of theoretical perspectives and methodology would enhance the student experience, as well as the ‘perceived reputation’ of legal tax research outside of the legal discipline. The ‘black letter law’ approach is, and should remain, an important methodological approach in the legal discipline. The current writer

continues to reflect on these perceptions and their implications, especially when engaging with those that come from a non-traditional legal disciplinary perspective.

A challenge for all of us that teach and/or research in the 'tax discipline' is to prepare ourselves to be able to engage with the wider community that has an interest in tax teaching and research from disciplines outside of our own. Depending upon our personal disciplinary perspective, we can argue that tax is a discipline in its own right that is maturing. From a research perspective, tax is multi-disciplinary, which adds additional challenges to researchers who seek to engage with others on matters related to tax.