An Outline Research Proposal for the Degree of Doctor of Philosophy in Taxation, University of Canterbury
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A Comprehensive Anti Tax Haven Legislation for Australia and New Zealand: International Comparative Studies and Reform

1. Abstract

It is trite law that taxpayers may plan their affairs so as to ensure that income tax laws are inapplicable to their particular income.¹ So long as taxpayers declare all their taxable income, ensure that they abide strictly by the taxing statutes and do not enter into sham transactions they may use any number of legal devices in order to minimise their liabilities. The use of a suitable tax haven has become a characteristic feature of modern international tax planning, and is frequently an essential element of an international group’s corporate structure.

Many countries have enacted anti tax haven statutes in their legislations. The OECD’s relevant works on counteracting measures against the use of tax havens have also been reinforced since the year 2000.

This research proposal focuses on the appropriateness or the consequence of anti tax haven legislation in Australia and New Zealand. In particular, the risk of avoidance and manipulation of the tax base will be examined. The ultimate goal is to contribute to the reform for a comprehensive anti tax haven legislation for Australia and New Zealand.

2. Description of the proposed research

2.1. Research topic

Title of research idea
A Comprehensive Anti Tax Haven Legislation for Australia and New Zealand: International Comparative Studies and Reform

Summary of the research idea
Research into those elements of the anti tax haven statutes in Australia and New Zealand that are vulnerable to abuse and manipulation by taxpayers, and compare those with other jurisdictions globally. Developing a comprehensive anti tax haven legislation for Australia and New Zealand for adequately preventing and combating such abuse and manipulation.

Brief description of the research proposal

Introduction
Taxes in most countries have in the last 30 years soared to quite high levels. The primary reason for this large increase has been the need to satisfy collective social expenditure program, which have demanded large increases in state expenditure.

In this respect, Australia and New Zealand’s actions have reflected a global trend towards the expansion of individual domestic tax jurisdictions for principally economic reasons. In his treatise on the Canadian international taxation regime, Professor Arnold noted the potential attraction of an efficient international taxation system to a modern cash-strapped country:

“With the expanding role of government in society and increased government expenditures has come a seemingly relentless search for additional tax revenues. Many countries have succumbed to the temptation to extend their taxing jurisdiction. And a government’s power to tax is limited effectively only by the countervailing interests of other Governments and the practical difficulties of enforcement and collection.”

It was perhaps inevitable then that sustained attention would finally be given to Australia and New Zealand’s international taxation regime, and in particular, the prevalent practice of resident taxpayers deferring their domestic income tax liability by deferring foreign-sourced income until the date of their distribution and receipt in Australia or in New Zealand. Such taxpayers were usually earning foreign-sourced income indirectly by virtue of an interest in a foreign corporate entity.

This resulted in the enactment of provisions relating to Controlled Foreign Companies and Foreign Investment Funds during late 1980’s to early 1990’s, to create sophisticated machinery capable of taxing the diverse overseas earnings of Australian residents as well as New Zealand residents.

Many people, being of the opinion that a burden has been imposed on them have turned to their tax advisers for advice to arrange their affairs so as either to reduce their taxable income or to ensure that they derive no income at all on which taxation is payable.

The concept of writing this thesis would offend many people. However, this is a fascinating subject. I have been gathering information over the past ten years from various sources. I have worked as an external auditor for a corporate heavyweight from Hong Kong that has used places such as the British Virgin Islands and the Cayman Islands to avoid taxation. Senior forensic accountants in Auckland have interviewed me, in relation to my experiences with a certain high profile Asian company and its relationship to organised crime and money laundering in New Zealand. In addition to these sources, I have read literally hundreds of books by other authors, business magazines from New Zealand and overseas, government reports, and Hansards. I have asked a lot of questions through my Hong Kong affiliates in overseas banks, overseas government agencies, overseas solicitors and incorporation agents.

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To set up in the Caribbean Islands with low or zero tax, having secret Swiss bank accounts or having a branch office on 5th Avenue in New York are affordable to ordinary people.

Tax havens draw mixed press: some think they are the answer to their taxation nightmare while others are put off by implications they are legally dodgy. Setting up business in a tax haven is legal. Some tax havens have secrecy laws to conceal assets and income, which are arguably beneficial. So, why do the developed countries tolerate the continued existence of tax havens? Can they not prohibit their taxpayers from using tax havens? They cannot do so, at least not without destroying their own capital markets. The fact is that every country, large and small, is a tax haven to some degree.

It is sensible for taxpayers to arrange their affairs legally in a way that subjects them to the least possible taxes. In view of the virtually confiscatory taxes that many taxpayers now face, it may even be imperative.

It is not the use of tax havens that causes government officials to wince. It is their abuse by people who try to evade taxes.

Evidence from overseas has, however, shown that, even with very comprehensive tax haven legislation and the influence of the international community such as the OECD, all tax haven transactions cannot be stopped. In February, 2007, Senators Levin, Coleman and Obama introduced the Stop Tax Haven Abuse Act in the US for the ostensible purpose of curtailing alleged abuses of the tax system by both individuals and corporations. Since then, the Bill has been subject to severe opposition and it has gone through a number of revisions. However, till today, the Bill has not yet been passed into legislation.

Research questions

In this study exposure of the anti tax haven statutes to erosion of the tax base and manipulation by taxpayers will be examined. The study specifically seeks an answer to the following two – mutually related - research questions:

- Which aspects of the anti tax haven statutes are vulnerable to abuse by tax payers (potential tax leaks)? Is it possible to distinguish different types of abuse according to their cause or effect?
- What are the best ways to combat avoidance of the anti tax haven statutes? In tax law in general - and consequently also in Australian and New Zealand tax law - there is a constant tension between fairness and efficiency. That tension is clearly tangible in the design of the anti tax haven provisions. The assessment framework also includes the objectives of the anti tax haven regime such as effectiveness, simplicity, transparency, certainty, consistency, coherence, flexibility and enforceability.

Originality and topicality

This research is original as it is not yet on the agenda for research of Australia and New Zealand's academia for proposing a comprehensive anti tax haven legislation for both countries, although a

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6 http://finance.groups.yahoo.com/group/JacobsReport/message/669
number of literatures have been written on comparative analysis of the appropriateness or consequence of their anti tax haven measures. Moreover, the research is topical in view of the fact that tax administrations are increasingly focusing on international tax avoidance. The financial crisis has shown that governments are taking firmer measures against tax structures.

2.2. Approach
The study will be based primarily on literature review. I will also consult with other stakeholders through interviews or video conferencing. Methodological basis of research is the dialectical method of cognition. While writing this thesis I seek to provide a theoretical understanding of the research, that the legal regulation of anti tax avoidance in the light of the analysis of many legal acts that are described in the PhD research. Widely used method of comparative law, which aims to attract primarily on the attainment of the objectives of the thesis.

Comparative approach in this paper is twofold: firstly, it helps to determine how to address the legal issue of anti tax haven abuse in Australia and New Zealand, considering the experience of the US and the EU; Second, it broadens the horizons of legal research, to take into account how positive and negative foreign experience, promotes a balanced approach in formulating proposals for the improvement of Australian and New Zealand legislation.

There are other scientific methods of research, which can provide a logical analysis, the relationship between the private and public, as well as an analysis of the texts of legal rules using formal methods of logic. Used as a sociological and a method to study the real state of reality. Scientific basis of this PhD research mainly comprise primary, so most of the findings and the scientific research based on an analysis of legislation and judicial decisions of the authorities of Australia and New Zealand considering the experience of the US and the EU. The paper analyzed the current Tax laws and regulations. Extensive research material presented jurisprudence on anti tax haven abuse, as well as the US Courts and the European Court of Justice, adopted in prejudicial manner.

It will start with a description of the anti tax haven statutes in Australia and New Zealand. Next an inventory will be drawn up of the elements of the statutes that are vulnerable to abuse by taxpayers. The study will also make use of international literature for comparative studies. Additionally, the American experience may be drawn from particularly in the context of the failure of the introduction of the “Stop Tax Haven Abuse Act”. Finally, solutions will be identified and compared, and propose the reform for a comprehensive anti tax haven legislation for Australia and New Zealand for adequately preventing and combating tax haven abuse.

2.3. Literature references
1. Adams J., “Coming to terms with the Antilles”, (Euromoney, April 1983).

For examples, see Mahabir S.S., “A Comparative Analysis of New Zealand and Australian Offshore Investment Rules”, (Auckland University of Technology, 2008), and Wood M., “Logic of Appropriateness or Logic of Consequence? Competing Explanations for the OECD Campaign against Tax Havens”, (Victoria University of Wellington, 2010).
29. http://www.oecd.org/topic/0,2686,en_2649_33745_1_1_1_1_37427,00.html
3. Time Plan

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<td>Enrolment</td>
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<td>September 2011 – February 2012</td>
<td>Research Proposal and Presentation in February 2012</td>
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<td>March 2012 – August 2013</td>
<td>Collection and analysis of relevant materials and conducting interviews for PhD research</td>
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<td>September 2013 – February 2014</td>
<td>Answering research question 1</td>
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<td>March 2014 – August 2014</td>
<td>Continuing answering research question 1 and starting answering research question 2</td>
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<td>September 2014 – February 2015</td>
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<td>March 2015 – February 2016</td>
<td>Writing of doctoral thesis and thesis submission</td>
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