

BOOK REVIEW: EVANS, C., KREVER, R., & MELLOR, P. (2015). TAX SIMPLIFICATION. THE NETHERLANDS: KLUWER LAW INTERNATIONAL

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The principles of a “good tax”, commonly expressed in terms of simplicity, certainty, equity, neutrality and efficiency, are well-known and often-quoted in the tax literature. Tax simplification has been, and will continue to be, on the agendas of governments in many countries, including Australia. The UK, for example, has a formal independent Office of Tax Simplification.

A tax will be simple, relatively to others, if for each dollar raised by it the cost of official administration is small, and if the compliance costs – the costs in money and effort of all kinds to the taxpayer – are also small.

The seminal Asprey Report² notes that after equity, simplicity is perhaps the next most universally sought-after of qualities in individual taxes and tax systems as a whole. It then goes on to presciently observe that, like ‘fairness’, it is a word that, in this context, points to a complex of ideas.

So why bother about complexity? A quote in the UK context from Jolyon Maugham QC, in July 2015, will no doubt resonate in Australia:

The UK’s tax code runs to 22,298 single spaced, small font, heavily footnoted pages. That’s two-thirds the page-count of the 32 volume Encyclopaedia Britannica, which affected to summarise the sum total of human knowledge.

The Australian context is no better – according to Robin Speed from the Rule of Law Association, if Australia keeps making new laws at the current rate, there will be 830 billion pages of tax legislation by the turn of the next century. To further complicate things, there are two main Acts in Australia (the original 1936 Act and the partially rewritten, but not finished, 1997 Act).

Even the judiciary encounters difficulties with the complexity of tax legislation. In 1991, for example, a High Court Justice criticised the complexity of the capital gains tax:

The provisions of s.160M(5), (6) and (7) of the *Income Tax Assessment Act 1936* (‘the Act’) and provisions to which they are related are extraordinarily complex. They must be obscure, if not bewildering, both to the taxpayer who seeks to determine his or her liability to capital gains tax by reference to them and to the lawyer who is called upon to interpret them ... successive administrations have

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² Taxation Review Committee (1975).

allowed the Act to become a legislative jungle in which even the non-specialist lawyer and accountant are likely to lose their way.³

Arguments in favour of reducing complexity include the substantial (though difficult to measure) economic costs it creates, the greater the number of errors and consequent higher administration costs, the fact that it can lead to a point where no-one understands it, and research which shows that people are more likely to comply with tax laws if they understand them. Despite these laudable ideals, as the editors of this book note, little has been achieved in the ongoing quest for simplicity.

Against this background, this book examines all aspects of tax complexity and simplification, from policy through to practice. Commendably, it takes both a theoretical and practical approach to the topic, which enables readers to understand tax complexity, assess its impact and identify potential means by which tax simplification might be achieved or at least complexity 'contained'. As such, the book would appeal not only to tax scholars and students, but to practitioners, policy makers, legislators and the judiciary as well.

The contributors to this book are highly respected academics, administrators and practitioners with direct knowledge of complexity and how attempts to achieve simplicity have fared in a variety of jurisdictions.

The book contains 19 chapters in total, which derive from a three-year, multi-university research project entitled 'Assessing and Addressing Tax System Complexity', funded by the Australian Research Council (ARC) together with the Institute of Chartered Accountants in Australia (ICAA). It is comprehensive and will provide an enduring legacy to the vexed issue of tax simplification in the tax literature. What follows is a summary of each of the chapters.

Chapter one examines the measurement of complexity and its causes. It also usefully covers why it is practically (and politically) so difficult to simplify tax legislation.

Chapter two explores notions of tax complexity, including the concept of hypercomplexity, relying on the works of sociologist Lars Qvortrup, which posit that the growing level of complexity represents the basic challenge of our current society.⁴ It then proceeds to look at the difference between anthropocentric and polycentric approaches to the income tax system, with the author of this chapter exploring the possibility that the tax environment may currently be in the midst of a period of transition between the two mindsets, and that one's understanding of the condition of the current tax system depends on whether one uses an anthropocentric or polycentric approach. Though this chapter is grounded in complex theoretical concepts, the author explains it in an accessible and practical manner.

Chapter three explores the issue of tax complexity and symbolic power. Four dimensions of tax complexity are explored by the authors of this chapter: code complexity (including the language of legislation, anti-avoidance rules and rules or principles); structural complexity (number of rates and provisions); policy complexity (socio-economic imperatives, tax expenditures and political goals); and administration and compliance complexity. Bourdieu's theory of social practice is next examined, and is followed by some observations about vested interests and symbolic power. Again, this chapter is grounded in complex theoretical concepts,

³ Deane J in *Hepples v FCT [No. 2]* (1991) 65 ALJR 650, 657.

⁴ Qvortrup (2003).

but provides an important background to some of the challenges that are inherent in trying to reduce tax complexity.

Chapter four examines the important practical issue of measuring tax complexity, including *what* to measure and *how* to measure it, as well as examining the costs and consequences of tax complexity. This is an important chapter, as the issue of measuring tax complexity is important, as it can guide decisions as to where to direct efforts to reduce complexity.

Chapter five takes an integrated approach to the economic measurement of the costs of tax complexity. The chapter was motivated by the observation of the author that any first step toward tax simplification necessarily involves the measurement and monitoring of the adverse impacts of tax complexity. As the author of this chapter acknowledges, while there is a substantial body of literature on the 'collection costs' (tax compliance plus administration costs), these costs alone do not fully capture the costs of tax complexity and, accordingly, a systematic and integrated approach to measuring costs is put forward in this chapter.

Chapter six broadens the dialogue on tax complexity by examining 'Paying taxes', which is one of 11 indicators used by the World Bank in its annual *Doing Business* project, which measures the ease of doing business in 189 economies. The stated aim of this project is to provide an objective basis for understanding and improving the regulatory environment (which would include complexity) for domestic businesses around the world. A case study approach is adopted in this chapter, which is a very useful way of understanding the issues that are raised in the discourse.

Chapter seven follows neatly on from the previous chapter, with an examination of whether the 'Paying taxes' report will guide tax system simplification. The chapter notes that the need for the information contained in this report is going to become more prevalent as years pass, and that it will become important for governments to ensure their tax systems are simple to understand and comply with, yet remain robust enough to prevent potential abuses.

Chapter eight examines the important practical issue of measuring tax compliance costs for personal (non-business) taxpayers, small and medium enterprises (SMEs), and large businesses in an Australian context. As noted above, one critical dimension of simplification is the costs of compliance and hence the information in this chapter is practically a matter of great significance.

Chapter nine also examines measuring tax complexity, but this time in the context of an analytical framework and evidence for individual income tax preferences for Canada. It flows nicely from the analysis provided in the previous chapter.

Chapter ten looks at the complex practical issues of administering tax complexity versus simplicity in the US context. It also examines the important issue of the implications for tax administrations and judicial reviews.

Chapter eleven considers some of the reasons why complexity in the tax system, although generally unwelcome, may be necessary. The topical example of tax minimisation by multinational entities (MNEs), and the anti-avoidance responses to these activities, are usefully examined in this context. The author argues that the community cannot want (or afford) a tax system that is too simple, for such a system may not be able to withstand the efforts of some who are prepared to 'swim outside the flags' and test the law. Therefore, some complexity in

the form of anti-avoidance provisions may be needed to protect the integrity of tax systems. Also, the latter part of the chapter makes the argument that there might be a case for complex tax provisions in situations where complexity leads to greater operational or administrative simplicity, or if the outcome aligns with the community's expectations of equity.

Chapter twelve explores individual taxpayer perceptions of tax complexity, with the aim of investigating whether taxpayers were cognisant of any of the tax simplification measures available to them. The pilot study that this chapter details also investigated whether tax complexity influenced these taxpayers' tax burdens and analysed suggestions by respondents about how the tax system could be simplified for individual taxpayers.

Chapter thirteen highlights the complexity of sanctioning regimes and explores our limited understanding of the resulting incentives, using tax penalties as a primary example. This is a useful construct; tax penalties are often complex, so this is an appropriate lens through which to view tax complexity.

Chapter fourteen provides some cautions regarding tax simplification. The author concludes this chapter by noting that we should not have unrealistic expectations about the amount of simplification that can be achieved, referring to the observations of a former US Treasury official:

The problem with simplification ... is not that there's any disagreement that simplification is needed. The problem is that it's not really a priority. It's on everyone's list of important tax policy objectives, but it's never close enough to the top that it generates serious momentum.⁵

Chapter fifteen examines the UK's Office of Tax Simplification and its complexity index, including how the index may be used in practice to track the relative complexity of measures in the tax system, and to prioritise simplification reviews of the tax system. This chapter is a very useful and real example of an institutional measure that exists to try to overcome excessive complexity in tax systems.

Chapter sixteen examines the institutional framework for tax policy-making and oversight in the context of managing tax complexity. The chapter does not take issue with the view that complexity is not desirable, but accepts that it is, to some extent, inevitable. This is a theme that resonates with the authors of other chapters of the book as well. The chapter also deals with the question of simplicity as a driver for reform in the UK and the political background to this debate. It argues that there has been a proliferation of institutional approaches, including the Office of Tax Simplification (OTS) in the UK context, and goes on to argue that further institutional reforms are needed in order to tackle the problems at root, as it is not clear that institutions like the OTS have been able to achieve this.

Chapter seventeen looks at oversight mechanisms and administrative responses to tax complexity in the United States, providing another practical and real context within which readers can understand the many challenges associated with reducing tax complexity.

⁵ Cummings and Swirski, *Interview with Robert P Hanson*, (2003). Mr. Hanson served as Tax Legislative Counsel in the US Treasury Department during the George W Bush Administration.

Chapter eighteen looks at possible pathways for tax policy and administration: institutions and simplicity. It is provided from an Australian perspective, by a former Commissioner of Taxation, and the insights provided as to whether existing institutions could be improved, or whether new institutions could make a positive difference in driving a simplification agenda, will be of great interest to policy makers.

The final chapter – chapter nineteen – examines simplified small business tax regimes in developing countries. This is an important practical issue, as the goal of simplified tax regimes for such businesses is to facilitate voluntary tax compliance and provide access for small businesses to the benefits of greater formalisation. The cases presented in the chapter provide empirical evidence for a number of problems associated with simplified regimes for these businesses. This information is useful from a policy perspective to guide decisions as to how these problems might be overcome.

In conclusion, this book provides a wealth of knowledge in the area of simplification and tax complexity. At the end of reading the book, readers might be left with a number of impressions, including that complexity is an inherent feature of the complex world we live in, that countries should not underestimate the challenges of achieving greater tax simplification and, finally, that there are rarely any “quick fixes”. Tax will probably never be simple, but the book provides much hope and practical guidance as to how it could be made simpler.

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