1-1-1995

International Tax Education

John Prebble

Follow this and additional works at: <http://epublications.bond.edu.au/rlj>

Recommended Citation

Prebble, John (1995) "International Tax Education," *Revenue Law Journal*: Vol. 5 : Iss. 2 , Article 1.
Available at: <http://epublications.bond.edu.au/rlj/vol5/iss2/1>

This Journal Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in Revenue Law Journal by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

International Tax Education

Abstract

Government and commercial organisations that have to do with income tax devote a good deal of time and money to the continuing education of their staff. Professor Prebble's article offers a philosophical basis and a theoretical framework for such education, and suggests an approach to curriculum planning and programme design for the education of people who work in the area of international taxation.

The article advocates the adoption in curriculum planning of the kaizen approach that has been developed from W Edwards Deming's seminal work on management theory and offers syllabuses of topics and skills that could be included in continuing education curricula.

Keywords

tax education, curriculum, law, income tax

INTERNATIONAL TAX EDUCATION¹

John Prebble
Professor of Law
Victoria University of Wellington

Government and commercial organisations that have to do with income tax devote a good deal of time and money to the continuing education of their staff. Professor Prebble's article offers a philosophical basis and a theoretical framework for such education, and suggests an approach to curriculum planning and programme design for the education of people who work in the area of international taxation.

The article advocates the adoption in curriculum planning of the kaizen approach that has been developed from W Edwards Deming's seminal work on management theory and offers syllabuses of topics and skills that could be included in continuing education curricula.

PART I

1 Introduction

People's approach to international tax education should adopt the same systematic strategy that good educationalists employ in planning for education in other topics. We should proceed at the same time on two fronts: first, identification of the competencies that are to be developed, as to both knowledge and skills; and secondly, identification of appropriate pedagogic techniques, and the competencies necessary in the teachers who will use them.

¹ This article was developed from a paper presented at the 11th Asian-Pacific Tax Conference, Singapore, 21 and 22 November 1994 and a lecture at the National Chengchi University, Taipei, on 1 June 1995. The article draws very heavily on and gratefully acknowledges the help of GP Wilson, "The AAA Annual Meeting Presents 'Leveraging our Core Competencies: Structuring and Communicating Knowledge'" (April 1994) *Accounting Education News* 18. Ms Susan Gray of Auckland College of Education, Professor Roger Hopkins and Dr Rod Downey of Victoria University, Wellington, Mr Stephen Titter of Messrs Ernst and Young, Auckland, and Mr Kerry Barwise of the Australian High Commission, Singapore, gave the author valuable help.

(1995) 5 Revenue L J

2 Role of the teacher²

Perhaps the primary role of the teacher is to give structure to knowledge. Using building blocks of concepts and theories, the teacher creates for the student a framework into which facts and ideas may be placed. This framework constitutes the skeleton of the student's human capital, the capital that it is the endeavour of education to enhance. Good design of the framework enables the student to place new information in its logical location in the framework, and quickly to understand its relationship to information that he already has. The student's command of the framework also facilitates independent work: discovering new knowledge is much easier if one has a base to work from.

The second role of the teacher is communication: passing on the knowledge of the framework, and of information that it contains or should contain, to the student. The teacher's skill is her ability to ensure comprehension on the part of her audience.

3 Student skills

At the same time as imparting knowledge to students and furnishing them with a framework for that knowledge, teachers should help their students to acquire and to develop skills that are relevant to the subject matter of their education. The skills that are required for practice in the field of international taxation are much the same as the skills that are required in other areas of law and accountancy. Teaching about analysis, careful organisation of one's writing, the writing of well-constructed, elegant and correct prose, and so on, can and should be integrated into international tax education in the same way as such teaching can and should be integrated into other forms of legal and accountancy teaching. However, there are several skills that have an unusual importance in the tax area, and that therefore merit particular attention in international tax education. The examples of critical thinking and of meta-cognition are considered below, but they hardly constitute an exhaustive list.

² For further reading on the orthodox educational theory underlying the concepts discussed in this paper, see Ramsden, *Learning to Teach in Higher Education* (1992 Routledge); Le Brun and Johnstone, *The Quiet Revolution* (1994 Tan Books); Biggs, "Teaching for Better Learning" (1990-91) 2 *Legal Education Review* 133; and Ramsden, "Evaluating and Improving Teaching in Higher Education" (1990-91) 2 *Legal Education Review* 149.

4 Critical thinking

Income tax law is unique, or almost unique, among legal disciplines in having the character of ectopia.³ That is, income tax law is in an important sense dislocated from its subject matter. The subject matter is business and investment transactions and profits, which are continuing phenomena that occur without regard to time or place. Tax law, however, insists that profits must be located in particular jurisdictions and must be attributed to particular fiscal years.

That act of location and that attribution must often take place according to rules that lack fundamental logic or a priori, principled, justification. One result, for example, is that it is common for two jurisdictions each to claim that a single profit has its source within their respective boundaries. Another result is that jurisdictions connected to a receipt may attribute it to different assessment periods, with consequences for the operation of foreign tax credit rules.

As mentioned above, and as explained in the articles cited in the accompanying footnote, this characteristic of ectopia, or dislocation of a body of laws from its subject matter, is never or rarely found in other areas of law. However, it is a quality that tax law shares with the discipline of accountancy. Accountancy must attribute a continuous stream of profits to one or another of different assessment years, often without an underlying economic justification for doing so. For transfer pricing purposes, accountancy must apportion profits between entities and between jurisdictions, even where from an economic point of view the profits in question are derived by a single economic entity, most usually a multi-national group of companies.

An important result of these considerations is that the rules of both tax law and accountancy at some points lack principled justification, that is, justification beyond the principle that answers must be obtained to particular problems and that systems in the end must be workable. A consequence is that critical thinking is particularly crucial in the tax area. Does a rule reflect economic substance? Or is it fundamentally a formal or mechanical matter?

³ See Prebble J, "Why is Tax Law Incomprehensible" [1994] *British Tax Review* 380 and "Ectopia, Formalism, and Anti-Avoidance Rules in Income Tax Law" in Krawietz W, MacCormick N and Von Wright G (eds), *Prescriptive Formality and Normative Rationality in Modern Legal Systems, Festschrift for Robert Summers* (1994 Duncker & Humblot) 367.

(1995) 5 Revenue L J

One symptom of ectopia is that rules of tax law that set boundaries are often misleading as to the characteristics of the typical transaction or entity to which they apply. Rules are often drafted with the extreme case in mind, not the typical case.

Take an example from the area of controlled foreign company regimes. Someone coming fresh to most controlled foreign company legislation might well conclude that a typical controlled foreign company comprises, say, six shareholders. Five of the shareholders live in the jurisdiction that has enacted the regime in question and each of the five owns 11% of the company's capital. The sixth, who lives somewhere else, owns the balance of 45%. Of course, most controlled foreign company regimes would catch such an entity, by virtue of five or fewer residents owning more than half the capital of the company in question. But for commercial reasons companies with such a structure are very seldom formed. The typical controlled foreign company is the wholly owned subsidiary of a domestic parent corporation.

The skill of critical thinking enables people to get superior insights into all sorts of problems. To extrapolate from the example given in the previous paragraph, critical thinking enables students to determine whether the significance of a rule is clear from its terms, or whether the rule establishes a boundary for a category that exists for the most part well away from the boundary. Critical thinking reminds people that the form of legal rules, especially in taxation, can be far removed from their substance. Critical thinkers are less inclined to take rules at their face value, and are more able to question the real effect and the policy of rules. Take, for instance, a critical thinker who understands that money is essentially fungible, and who seeks to compare, for example, a schedular and a global tax system, or different rules for the carrying forward of losses, or different systems for the crediting of a company's income tax to its shareholders. This critical thinker will be able to work out which rules and consequences are a function of the substantive requirements of the concept of income, and which rules and consequences are driven simply by the form that a particular tax system has adopted for a particular regime.

5 Elaboration

In the present context, the term "elaboration" refers to the thinking strategy that relates new information to prior knowledge. There are many examples of elaboration in law, but a particular case in tax law

is the strategy of approaching a new and unfamiliar tax system, something that many tax professionals will have to do at some time or another.

It is impossible for anyone to master more than a small number of tax systems (indeed, many people would say that the number is one). However, it is possible for tax professionals to know the questions that they must ask if they are to work out how the tax laws of another jurisdiction operate. People in private practice must ask these questions if their clients are engaged in international transactions. People in government must ask these questions if they are charged with negotiating double tax agreements, or if they are policy-makers who must find out how other countries deal with a problem that needs attention domestically, to give two examples.

6 Meta-cognition: stipulative and substantive reasoning

In this article, “meta-cognition” is used to mean, broadly speaking, “thinking about thinking”. People who employ meta-cognition are aware of the thought processes that they apply to problems, endeavour systematically to improve those processes, and try to choose reasoning tools that are most appropriate for the problem at hand. An example of meta-cognition in the tax area is an awareness of the difference between what might be called “stipulative” reasoning on the one hand and “contextual” or “substantive” reasoning on the other hand.

The manoeuvre of argumentation sometimes nicknamed the “no-true-Scotsman” move can be thought of as an example of stipulative reasoning. The manoeuvre is used as a counter-attack when a generalisation is falsified, in the following manner. *Generalisation*: No Scotsman is generous. *Falsification*: MacDonald is a Scotsman, and he is generous. *Counter-attack*: No *true* Scotsman is generous. The danger of this kind of argument, which does no more than redefine a stipulation, is that people will sometimes be persuaded that the original generalisation is true. A classical example is the claim by Thrasymachus in Book I of Plato’s *Republic* that genuine rulers are not capable of making mistakes in determining their own self interest.

The distinction between stipulative and substantive reasoning is related to the familiar distinction between form and substance. In this article, “stipulative reasoning” means reasoning that proceeds from terminology or from stipulations. Reasoning that proceeds from precisely drafted statutory rules is often stipulative in this sense. For

(1995) 5 Revenue L J

example, a rule that says, "If an individual is present in the country for 183 consecutive days he is resident for tax purposes" leaves no room for argument by someone who has been in the country for seven months.

Take, on the other hand, a rule that says, "A taxpayer shall be credited with tax that is charged by the country of source on income that arises in that country". If a taxpayer, being a lender of money, produces a receipt for withholding tax on interest that has been paid by a borrower in Arcadia, the receipt being issued by the Arcadian government, stipulative reasoning alone may give the wrong answer to the question of whether the taxpayer is entitled to a credit in his country of residence.

Depending on the facts, on the terms of the definition, and on the approach to statutory interpretation that is employed by courts of the country of residence, one or more of the following substantive and contextual questions may become relevant. Did the borrower pay withholding tax at all, or was the receipt issued without any collection? If there was a collection of money, was it "tax" or was it money that was paid voluntarily on the understanding that it would be given back? Did the law of the source country impose liability, either primary or secondary, on the recipient of the interest in the country of residence, or was the debtor/payer solely liable for the tax?

One of the most difficult questions in tax law is to know when stipulative reasoning will supply the correct answer, and when the law requires us to go further and employ substantive or contextual reasoning. An example of a case where even the House of Lords was divided on that issue is *Fitzwilliam v Inland Revenue Commissioners*,⁴ a case about a plan to avoid United Kingdom capital transfer tax.

Steps in the plan included Countess Fitzwilliam giving £2 million to her daughter on 9 January 1980 (step 2 of the plan) and the daughter giving £2 million to Countess Fitzwilliam on 31 January 1980 (step 4). Lord Templeman held that, "Steps 2 and 4 must be disregarded [for purposes of the plan] The payments are disregarded because they are self-cancelling."⁵ On the other hand, Lord Keith and the rest of their lordships disagreed, and gave independent effect to the two gifts. The majority thus proceeded on the basis of the label or identifying stipulation of "gift" that the parties applied to the

⁴ [1993] 3 All ER 184 (HL).

⁵ Ibid at 213-214.

transactions, whereas Lord Templeman had greater regard to the transactions' context and substance.

Throughout all law there is tension between form and substance, but this tension is particularly acute in the area of taxation. Students who appreciate the difference between stipulative reasoning and contextual reasoning are well equipped to tackle the problems that this tension throws up.

7 Substantive and administrative rules

Something that should not be confused with the form/substance dichotomy is the distinction between substantive and administrative rules of tax law. An understanding of this difference, and an ability to think about rules of taxation in the light of the distinction, could be described as another example of meta-cognition, in the sense that the term is used in this article.

An example is in the area of trusts. It is common for tax systems to treat the income of trusts as one income. That is, income is taxed to either the trustee or the beneficiary, but not to both (in contrast to company taxation, where income is often taxed in the hands of both the company and the shareholder). Regimes that treat trust income as one income would ordinarily tax income that the trustee accumulates in the hands of the trustee, and income that the trustee distributes in the hands of the beneficiary.

The rules just stated are the substantive rules. But it is not uncommon for a tax system to make the trustee liable for the beneficiary's tax, because collection from a trustee is often easier. Such a regime could well be framed in terms that appear to be substantive and that, to all practical intents and purposes, are substantive. But in essence they are a collection mechanism.

A similar difference is the distinction between rules of tax accounting (which essentially relate to the time of recognition of receipts and expenses) and substantive rules of tax law, as to whether receipts and expenses must be taken into account in computing assessable income. Sometimes, rules that fall into one category are framed as if they were within the other. For example, rules about taking deductions for bad debts are rules of tax accounting, but they are often framed as part of a deductions regime.

(1995) 5 Revenue L J

Appreciation of subtleties of these kinds may be thought of as an example of meta-cognition. Students and practitioners have a far superior insight into tax law if they are able not only to think about rules of tax law and their apparent effects, but also to look behind the rules to find out how they fit into the larger, multi-layered matrix of the whole professional discipline.

8 Self replenishment

A broader skill that applies to students of other subjects as well as to students of taxation is the ability to replenish one's own human capital: that is, to keep on educating oneself. As people progress through life, an increasing proportion of their education will be self-education, assuming that their education continues at all.

In the context of self-education the disciplinary framework and the building blocks of knowledge that teachers have enabled students to add to that framework are crucial foundations, without which progress is slow and patchy for many people.

9 Fundamental learning skills

Sections 3 to 8 of this article have considered certain skills that practitioners in the international tax area should have available to them. There are a host of other, more fundamental, study and learning skills that one would hope that university graduates, at least, would already command when they begin their professional careers. However, these skills tend to some extent to be taken for granted at universities. Most good students acquire most of these skills incidentally, without the skills being identified or specifically taught. But good educators at the professional and continuing education level will find it worthwhile to plan their teaching with these skills in mind. The skills are not specific to taxation study. On the contrary, they are relevant to most disciplines. For example, the list set out below comes from JM O'Malley and AU Chantot, *Learning Strategies in Second Language Acquisition*,⁶ with only minor alterations.

⁶ (1990 Cambridge University Press) 198-199.

Metacognitive strategies

Advance organisation

Previewing the main ideas and concepts of the material to be learned, often by skimming the text for the organising principle.

Advance preparation

Rehearsing the language needed for an oral or written task.

Organisational planning

Planning the parts, sequence, and main ideas to be expressed orally or in writing.

Selective attention

Attending to or scanning key words, phrases, linguistic markers, sentences or types of information.

Self-monitoring

Checking one's comprehension during listening or reading, or checking one's oral or written production while the work is taking place.

Self-evaluation

Judging how well one has accomplished a task.

Self-management

Seeking or arranging the conditions that help one learn.

Testing by generalisation, and

Testing the value of the pathological case

Evaluating a conclusion or hypothesis by (a) testing its application over a wide field, or (b) testing an extreme example of its application (added by the writer to the O'Malley-Chanot list).

Cognitive strategies

Resourcing

Using reference materials.

Grouping

Classifying words, terminology, numbers or concepts according to their attributes.

Note taking

Writing down key words and concepts in abbreviated verbal, graphic, (including mind maps) or numerical form.

Summarising

Making a mental or written summary of information gained through listening or reading.

(1995) 5 Revenue L J

Deduction

Inferring particular instances from a general law, or, more loosely, applying rules to understand or produce a result or to solve problems.

Imagery

Using visual images (either mental or actual) to understand and remember new information or to make a mental representation of a problem.

Auditory representation

Playing in the back of one's mind the sound of a word, phrase, or fact in order to assist comprehension and recall.

Elaboration

Relating new information to prior knowledge, relating different parts of new information to each other, or making meaningful personal associations with the new information.

Transfer

Using what is already known about a discipline to assist comprehension or production.

Induction

Inferring a general law from particular instances, or, more loosely, using information in a text to predict outcomes, or to complete missing parts.

Social and affective strategies

Questioning for clarification

Eliciting from a teacher or peer additional explanation, rephrasing, examples, or verification.

Co-operation

Working together with peers to solve a problem, pool information, check a learning task, or get responses on oral or written performance.

Self-talk

Reducing anxiety by using mental techniques that make one feel competent to undertake the learning task.

PART II**10 Education or training?**

“Education” and “training” are elastic words that often overlap. Here, “education” refers to teaching people why things work, and “training” to teaching them how they work. Tax law is not an intuitive subject. An important reason is the ectopia of tax that has already been mentioned. The dislocation between tax law and its subject matter means that the logical connections that people can expect to find within other legal disciplines are often absent or obscure in tax law. A second reason is that tax law tends to be more influenced by political forces than most other forms of law, and consequently may develop inconsistencies that have no reasonable explanation at all.

One result of the factors mentioned in the previous paragraph is that there is a great temptation to teach students something other than tax law, how it works, and its underlying reasons and principles. Instead, too often, people resort to rote teaching or to guidebooks that are paraphrases of the law or statements of conclusions about law.

In the context of an income tax department, resort to these measures is understandable. Because of constraints on salaries or because of competition from the private sector, commissioners of taxation must make the best of the people that they are able to engage. Sometimes, the most cost-effective way of training someone to carry out a complex task is to break it into a conveyer belt of modules that the staff member can manage even without having a grasp of the overall legal principles that are involved. However, such “training” as opposed to “educational” approaches should be avoided as much as possible. Best results, and greater staff satisfaction, will ordinarily be obtained where staff not only know what they are supposed to do, but understand why they are supposed to do it.

Education, as opposed to training, should teach students to create their own structures of knowledge and to develop their own conceptual frameworks, so that they can understand the importance of the work that they do within the wider context of the tax system as a whole. To this end, emphasis on structures and concepts will always be more significant in the teacher-pupil relationship than emphasis on knowledge. Knowledge can be much more readily obtained in the context of directed self study, once the teacher has ensured that students have command of the frameworks that are necessary to package and use that knowledge.

(1995) 5 Revenue L J

11 Teachers and the contribution of universities

Organisations that provide tax education to their staff are rarely able to employ a full department of people for the purpose. A common pattern is to appoint research and/or training officers who themselves undertake some of the work, and who organise others within the organisation to take responsibility for different modules. The Australian Tax Office, which since 1991 has funded ATAX, an extramural degree programme in Australian taxation law and practice at the University of New South Wales, is a rare example of an organisation that has managed partially to move outside this pattern.

There are no doubt many exceptions, but if one starts from the proposition that the teacher's primary role is to create conceptual structures of knowledge for the student it is likely that people most qualified to undertake the task are in universities. A combination of research (and writing for scholarly and professional journals), teaching, and professional practice is, for most teachers, a good foundation from which to develop the teaching competencies, and then the courses, that are necessary to instruct people in international taxation. University teachers are more likely than other people to have this combination of experience.

University teachers tend to be good at creating structures for knowledge. Their experience and training commonly includes, for example, writing theses or books. Such projects are much larger and go on much longer than most tasks that confront practitioners. These projects require the categorisation, organisation, and communication (in the form of the written product) of large quantities of knowledge. University teachers redeploy these same basic skills when they plan, construct, and teach courses of study.

The basic competency of a university teacher can be thought of as the structure of knowledge that is at her command. She uses this knowledge within the university for teaching, and in her research for producing books and articles in scholarly or professional journals. She can use the same fundamental structure as a source of knowledge for education of practitioners, and as the basis of the intellectual structure that she passes on to her pupils.

When it comes to education and continuing education of officials or tax practitioners, one difficulty is to find enough university teachers to undertake the task. Universities often find it hard to recruit the

number of tax teachers that they would like and, even if they achieve that goal, the people involved are unlikely to have enough time available after finishing their university duties to undertake all the international tax teaching that inland revenue departments and professional firms may require. A possible solution is to employ universities to establish the conceptual structures that should be the foundation of tax education, and at least to outline the syllabuses of the teaching modules that will fit into these structures once they are in place.

Experience suggests that most employers who want to improve the education of their staff in the tax area do not engage or consult university teachers for the purpose. As mentioned, a common approach is to designate employees to gain command of a topic, and to ask those employees to pass their knowledge on to their colleagues. Further, as has been mentioned, some larger firms in a sense mimic universities by establishing research departments, one task of which is planning and delivering education within the firm. Both these approaches have their advantages, though the first will be more effective if it is part of an overall systematic plan, and not wholly ad hoc. However, there will often be merit in adding a university-provided component.

12 Kaizen/Deming theories applied to education

It is increasingly accepted that education must be a life-long process. People active in the field of international taxation would not seriously question this principle: change is so frequent that without at least some updating of knowledge now and then practitioners would either cease to be very active, or would become dangers to their clients.

While most people would acknowledge the truth of the previous paragraph, working out the implications for an educational programme requires further thought. Anglo-Saxon management styles tend to favour the "if it ain't broke don't fix it" approach. Applied to, say, a factory this principle entails care in planning and establishing the building and machinery, and maintenance with varying degrees of care for a number of years. Eventually, when the plant is clearly superannuated or beyond economical repair, there is a major project of renovation and replacement. Applied to education the principle entails recruiting staff with as good a grounding in relevant disciplines as possible, and topping up their skills and knowledge with training, as and when that seems necessary.

(1995) 5 Revenue L J

This stop-start approach to improvement may be contrasted with the management style worked out by the celebrated American consultant Dr W Edwards Deming, adopted by much of Japanese industry, and nowadays often called the "kaizen" approach. Kaizen entails steady, regular, incremental improvements to management and work systems and to physical plant. The philosophy accepts that no method of undertaking any particular operation is ever perfect: one can always think of some small improvement.⁷ The Deming/kaizen approach is steadily gaining ground in Western management philosophy. Its influence is seen, for instance, in the total quality management school of thought.⁸

Kaizen is equally appropriate as the philosophical foundation for a programme of tax education for practitioners. Indeed, to some extent it has already been adopted and institutionalised by some of the large international accounting firms, in the form of regular seminars for staff. These firms understand that an organisation should not wait until it perceives a need for education in one area or another, but should have a regular programme to develop the skills and knowledge of its staff.

13 Comprehensive approach

This article has several times mentioned the desirability of organising international tax education in a systematic, comprehensive way. Ideally, tax departments and firms should develop for their staff a syllabus that follows the conceptual structure of knowledge that has been discussed. For any one person, this syllabus should extend over several years, with continuing education added on top.

The fundamental reason for approaching international tax education in this holistic way is that, if properly planned, the total benefit obtained from a full educational syllabus can be greater than the sum of its modular parts. It has been argued that a primary role of teachers is to develop conceptual frameworks for their disciplines

⁷ See eg, W Edwards Deming, *Out of the Crisis* (1982, 1986 Massachusetts Institute of Technology); Masaaki Imai, *Kaizen, The Key to Japan's Competitive Success* (1986 Random House). Of Deming's celebrated, if somewhat plonking, "14 Points for Management" the most relevant in the present context is number 5: "Improve constantly and forever the system of production and service, to improve quality and productivity, and thus constantly decrease costs". (Deming at 23)

⁸ Something of the relationship between kaizen and total quality management is seen in Imai, above n 5 at ch 3.

and to pass these frameworks to their pupils. As Wilson says with several well-chosen metaphors:

By emphasising structures rather than mundane rules, [teachers] increase the half-life of their students' human capital considerably. They provide students with the trunk of the tree of knowledge that they will develop throughout their careers. While the leaves on this tree will change over time and across countries as they learn new standards, the tree trunk—that is, the conceptual framework for their learning—will remain intact.⁹

If teachers adopt the approach that Wilson describes, it follows that there must be a holistic, comprehensive syllabus. Ad hoc modules can be integrated to meet new or previously unrecognised needs, but they should not be the basis of an education system.

A second reason for a comprehensive syllabus is simply to have a convenient check on the competencies that individuals have mastered, and a means of identifying what they should undertake next. Readers will no doubt have drawn these conclusions from what has gone before, if they did not already hold these opinions in any event.

A third reason is that, in the context of one's career, a good deal of education comes about as a result of learning by doing. To a greater or lesser extent, all professionals can be thought of as following two educational paths: the formal path of instruction, with which this article is mainly concerned, and the accompanying path of professional practice. In its earlier stages, this second path may be thought of as apprenticeship. A comprehensive educational plan for staff can monitor and integrate the development of competencies that come about through both educational paths.

Fourthly, a comprehensive plan enables the teaching and inculcation of professional values and ethics to be monitored and integrated with staff career development. The somewhat inchoate nature of many values and ethical principles means that, to the extent that managers of staff turn their minds to them at all, they are tempted to rely on people to pick them up incidentally, on the job. Even if that approach is sufficient, it no doubt repays systematic monitoring to ensure that it is producing the desired results. There are several other reasons

⁹ Wilson GP, "The AAA Annual Meeting Presents 'Leveraging our Core Competencies: Structuring and Communicating Knowledge'" (April 1994) *Accounting Education News* 18, unnumbered continuation page.

(1995) 5 Revenue L J

that argue for a systematic, comprehensive approach to international tax education that are not as immediately apparent.

14 Skill development

The first of the reasons just mentioned is skill development. Knowledge can reasonably easily be fitted into modules, but organising the teaching of skills is a different and more difficult task. Skills are best taught in conjunction with the teaching of knowledge, for at least three reasons: *Economy*: incorporating a skills component in a delivery-of-knowledge module will often require little or no extra time. Skills teaching can frequently form a vehicle for the teaching of knowledge. Obvious examples are requiring students to write essays or to take part in moots. *Efficiency and relevance*: to the student, skills are clearly more relevant to career needs if they are taught in the context of knowledge that is obviously relevant to the student's work. This factor leads to greater efficiency in mastering skills. *Reinforcement*: retention of knowledge that has been learned is enhanced if the knowledge is employed or demonstrated as the subject matter of a skills-based exercise.

People who accept that there is a strong case for teaching skills in the context of teaching knowledge will appreciate the importance in this respect of planning and following a comprehensive syllabus. Most skills will take longer to inculcate and to develop than the duration of any single knowledge-based module. Also, most skills can reasonably and beneficially be taught alongside more than one or two particular subject matters.

For these reasons, although skills acquisition should be integrated with knowledge acquisition, the skills elements of a syllabus must follow their own programme. They cannot be consolidated into modules that will neatly match modules of knowledge. Most should be spread over several knowledge modules, and perhaps revisited as students increase in their command of the discipline. It follows that employers who wish to equip their staff with skills that are thought to be desirable will achieve this goal more effectively if there is a long-term syllabus of knowledge teaching that can serve as a vehicle for skills acquisition.

15 Organisation planning and staff career development

An equally if not more important reason for following a planned and detailed syllabus is that, properly handled, this strategy can be very beneficial for the development and retention of the human capital of the organisation, which will almost always in this context be by far its most important asset.

Most of modern commerce and industry finds that it must spend increasing amounts on the education and training of its staff, but it is probably fair to say that concerns that are involved with international taxation are likely to have training budgets that are towards the higher end of the scale. There is simply so much to learn, and change is so rapid, that few industries apart from electronic processing and communication will have the same insistent, constant need to update and upgrade the knowledge and skills of their staff.

In the tax area, the organisations that tend to spend most on staff development are government income tax departments and the tax divisions of large accounting firms. For them, staff education is very expensive, often to the extent that the salary, training costs, supervision, and overhead of recruits total more than the value of their output for many months after they are taken on.

If recruits are enticed away by other employers after only two or three years of engagement, the first employer will certainly suffer a loss of staff earning potential, and may well suffer an actual loss on the balance of costs of, and of benefits from, employees concerned, over the time between their recruitment and their resignation. Staff retention is a major consideration for employers in the tax area in general, and international taxation in particular.

16 Education as part of personnel policy

Education and training of course make staff more attractive to rival employers, but equally, education and training can be a vital and effective tool to improve staff retention and loyalty as well as performing their obvious function of improving staff skills and knowledge. An important element in retention is for staff to have an idea of their possible career path. This path can be defined by promotional steps, but, for a number of reasons, employers will be reluctant to define these steps with too much precision. However, one series of steps that can be made reasonably precise is the pathway for staff education and mastery of professional competencies.

(1995) 5 Revenue L J

Suppose an employer is experiencing losses of staff after 18 to 24 months' of employment and after considerable investment in education and development, at about the point when the employees concerned would be expected to start to make a significant contribution to the output of the organisation. One factor that would cause an employee to hesitate to resign would be if she were only part way through a defined syllabus of staff education that is clearly set out over, say, a three or four year period.

Desirably, the tax and international tax elements of the syllabus would be listed alongside tax-relevant professional skills, together with a schedule of more general competencies that the employee is to master, such as dealing with clients, negotiation, tendering, client development, and so on.

The employer might hope that when the employee had reached the end of the syllabus her career satisfaction and commitment to the organisation would be enough to encourage her to stay, or, at least, to return after a period working in a sister organisation in another country. In short, aside from developing skills and knowledge, an education programme can be one of the most significant factors in staff retention and in the long term development of the human capital of the organisation. Education is not just a means of improving the quality of staff, but has a major role to play as an element of employer/employee relations.

The factors considered in the immediately preceding paragraphs suggest that where an organisation has a comprehensive syllabus for its professional tax staff the syllabus should extend over at least three years. Other advantages of spreading staff education in this manner are that there is a corresponding spreading of costs of what is an undeniably expensive process, and that there is a more favourable balance between employees' professional working time and their studying time. If people undertake the whole syllabus at once they will have little time for productive work.

17 Education and competition to recruit staff

Staff education is also very important at the recruitment and early employment stage. In New Zealand, large accounting firms regularly survey their professional staff to discover what priorities they accord to different elements of their employment packages: level of remuneration, congeniality of colleagues, quality of supervision,

standard of building and plant, prospects for periods of secondment to sister firms, and so on. Regularly, staff accord the highest priority to education and training.¹⁰

Education programmes are also important at the pre-employment stage. Nowadays, employers increasingly compete for staff on the employers' abilities to build and maintain human capital. It is true that New Zealand and Australian universities these days produce more than enough graduates in accountancy, law, or both, to fill all vacancies in government and private sector tax departments several times over, but that fact does little to reduce competition among employers to recruit the best qualified and cleverest applicants. The quality of continuing education that prospective employers offer is a significant consideration for people who are in the position of weighing and comparing offers from several organisations.

18 Structure of tax knowledge

This article has emphasised the desirability of approaching tax education holistically, and, in that context, from two points of view: the constructing of a conceptual framework of tax knowledge as a foundation for any programme of continuing education in international taxation; and the integration of the organisation's tax education programme into its overall personnel development and staff relations policies. Once the basic requirements of an organisation's education programme are identified the latter should not prove difficult. As to the former, the author offers the list tabulated later in this section as a basic structure for a syllabus for practitioners in international tax law.

The reason for including nearly all the components in the list will be fairly obvious, but two, evidence and criminal law, require short explanations. Evidence is included because tax practitioners tend to give undue emphasis to written documents. On the one hand, they are apt too quickly to conclude that documents mean what they say, or, at least, have the significance that their drafters purport. On the other hand, tax practitioners are apt to accord too little weight to non-documentary evidence such as circumstance and inference.

In the experience of the author and of practitioners with whom he has discussed the subject, revenue officials in particular commonly have an imperfect command of what amounts to evidence of a fact. Take

¹⁰ Author's discussions with principals and research/training personnel of New Zealand accounting firms, 1994.

(1995) 5 Revenue L J

two examples. First, officials are sometimes far too easily put off the scent of questionable transactions by firm, confident statements of purported facts by taxpayers' professional advisers: statements that, by their very nature, can never be more than hearsay.

Secondly, officials often fail to trust their common sense as to what inferences a judge or jury may legitimately draw from evidence of primary facts. For example, a combination of transactions that are commercially inexplicable, together with a smokescreen of cosmetic embellishments, all carefully concealed from the tax authorities, may be enough to justify a court in drawing an inference of fraud, at least if there is no countervailing explanation from the taxpayer. But revenue officials commonly require much more direct evidence of dishonesty before launching a prosecution for fraudulent evasion.

Training in the law of evidence assists in the development of a healthy scepticism as to whether things really are as they seem on the surface. Equally importantly, the law of evidence constitutes both an analytical framework and a theoretical underpinning for that scepticism.

Criminal law is listed for similar reasons to evidence. One has the impression that, apart from the United States, common law jurisdictions make little use of the criminal law to prosecute evasion. In other countries it is rare for authorities to go beyond administrative sanctions or prosecutions for formal failures to comply with tax (as opposed to criminal) legislation: failure to lodge tax returns, and so on. Indeed, one sometimes gets the impression from such prosecutions as are reported that a major reaction of the defendants is surprise: not so much surprise that they were found out, but surprise that having been found out they have been prosecuted.

If this impression that revenue authorities seldom call on the criminal law is correct, and if the situation continues, it may indeed not be necessary for tax officials and practitioners ever to know much about the criminal law. But at least a passing acquaintance with the discipline would be a useful insurance against the possibility of a change in official policy.

Basic principles of law

The legal system

Sources of law

John Prebble International Tax Education

Interpretation of statutes and documents

The hierarchy of the courts

Legal topics

Contract

Agency

Commercial law

Trusts

Business associations

Evidence

Criminal law

Domestic and background taxation topics

Basic taxation topics

Sources of tax law

Principles of income (typically as business profits)

Principles of allowability of expenditure

The capital/revenue distinction

Compensation and insurance

Tax accounting

More specialised tax topics

Losses

Alienation of income

Avoidance

Generic taxation topics

Employment remuneration

Casual profits

Interest

Companies and dividends

Royalties

Trusts and beneficiaries

Annuities

International taxation

Systematic elements

Residence

Source

Unilateral relief of double taxation

Tax treaties

Withholding tax on outward-flowing passive income

Collection mechanisms (eg, deemed agency)

Specific types of income

Business profits

(1995) 5 Revenue L J

Employment
Interest
Royalties
Dividends
Trusts
Foreign exchange gains and losses

Anti-avoidance rules

Controlled foreign companies
Other foreign income attributing rules
Transfer pricing
Thin capitalisation

Particular transactions

Investments
Immigration and emigration
Mergers and acquisitions
Divestments
Liquidations
Leases
Profit repatriation

Generic regimes

Natural resource extraction
Banking
Insurance
Shipping and aviation
Computer software
Entertainers and athletes
Film renters

Comparative studies

If it can possibly be fitted in, a short course of comparative study should be part of a comprehensive tax education. Here, "comparative study" does not mean a description of part of someone else's tax system. Rather, the term implies taking one or two difficult concepts or problems (for example, drawing the line between capital and income or dealing with the taxation of trusts) and examining in some detail the way one's own and one or two other jurisdictions approach the matter in question.

From a pedagogic point of view, the true comparative method has much to commend it. It helps people to learn to look at things from new angles. It gives practice in analysis, to see whether apparent differences are real or superficial. It shows people that there are often

several ways of dealing with similar problems, to mention some examples.

19 Envoi

This article argues for comprehensive, systematic continuing professional education for practitioners involved in international taxation, both officials and people in the private sector. Many readers will accept the merits of the broad thrust of the argument. But the discussion would be incomplete without mentioning two things.

First, to some readers the article may appear to assume an over-formal relationship between teacher and pupil, mentor and apprentice. That is not intended. The apparent formality is a result of the systematic planning that the article promotes, and a result of the primary focus of the article: on the formal part of staff education, rather than on learning by doing. Of course, for many professionals, more of their continuing education comes from learning by doing than from formal courses of instruction, and that is altogether what one might expect. The article's emphasis on building a framework to which people can add knowledge is an implicit recognition of learning by doing. Incidental knowledge that people pick up in practice is much more useful when the learner can give it its proper context.

Since the article does not refer a great deal to on the job training it does not discuss the appropriate relationship between the trainer, supervisor, or mentor and the trainee. No doubt, that relationship should be relatively informal, with staff members encouraged steadily to increase in responsibility and professional function. In this context, a team and leader approach, rather than a formal teacher/pupil approach, is no doubt both more common and more effective. The article does not intend to suggest that there should be a return to the times when there was a formal divide between supervisor and staff. Rather, the purpose of the article is to approach international tax education in a systematic way, and to set out in a comprehensive form the objectives of that education.

Secondly, it is interesting to consider a particular recruitment and training practice in the United Kingdom that flies in the face of much of what this article contains.

The United Kingdom Board of Inland Revenue recruits on a regular basis a number of very intelligent and well educated generalists, for

(1995) 5 Revenue L J

example classics graduates with excellent honours degrees. To an outsider, the continuing education given to these recruits is surprisingly narrow. Sometimes one finds them, for example, in a policy section in Somerset House, employing a very thorough command of a particular regime, but with only a sketchy knowledge of the rest of the tax laws. Contrary to one's intuition, they are often extremely effective in their work. Moreover, their lack of general knowledge of the law or of professional qualifications means that they are unlikely to be enticed away to work in law or accounting firms.

What is the explanation of the apparent effectiveness of these people? The author is unaware of any systematic study that has tried to answer this question, but advances the possible answer that these recruits are simply very clever and have enjoyed excellent analytical educations, albeit educations that have nothing to do with tax, law, or accountancy. It may be for that reason that the Board of Inland Revenue was able to recruit them in the first place. There is limited demand for, say, classics, philosophy or history graduates who are not keen on teaching. The Board of Inland Revenue benefits from the practice of the United Kingdom civil service to recruit, train and employ well educated generalists in areas where other employers might limit themselves to people with more specific qualifications, and seems to have considerable success in following this practice. That said, one suspects that the recruits might be even more effective if they also had the benefit of the broad professional education that is suggested in this article.