

# Assessing Taxpayer Response to Legislative Changes: A Case Study of 'In-House' Fringe Benefits Rules

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*On 22 October 2012, the Australian Federal Government announced the removal of the \$1,000 in-house fringe benefits concession when used as part of a salary packaging arrangement. At the time of the announcement, the Federal Government predicted that the removal of the concession would contribute additional tax revenue of \$445 million over the following four years as well as an increase of GST payments to the States and Territories. However, anecdotal evidence at the same time indicated that the Australian employer response was to immediately stop providing employees with such in-house fringe benefits via salary sacrificing arrangements. Data presented in this article, collected from a combination of interviews with tax managers of four Australian entities as well as a review of the published archival data, confirms that the abolition of the \$1,000 in-house fringe benefits concession was perceived as a negative change, whereby employees were considered the 'big losers' despite assertions by the Federal Government to the contrary. Using a conceptual map of tax rule change developed by Oats and*

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# ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

*Sadler, this article seeks to understand the reasons for this fringe benefits tax change and taxpayer response. In particular, the economic and political factors, and the responses of the relevant taxpayers (employers) are explored. Drawing on behavioural economic concepts, the actions, attitudes and response of employers to the rule change are also examined. The research findings suggest that the decision by Australian employers to cease providing the in-house fringe benefits as part of a salary-packaging arrangement after the legislative amendment was impacted by more than simple rational behaviour.*

## 1. INTRODUCTION

On 22 October 2012, in its Mid-Year Economic and Fiscal Outlook Statement ('2012 MYEFO'),<sup>1</sup> the Australian Federal Government outlined changes to the rules for in-house fringe benefits. The change meant that any in-house fringe benefits offered to employees through a salary packaging arrangement would no longer be afforded a \$1,000 exemption from fringe benefits tax. The stated reasons for the amendments were to improve fairness for employees who could not access these arrangements and to 'return the use of this concession to its original intent.'<sup>2</sup> In essence, it was the Australian Federal Government's view that the concession was never intended to be used in a salary packaging arrangement and, as such, should be removed.

The purpose of this article is to examine Australian employer responses to the legislative change. Using the fringe benefits tax ('FBT') legislative amendment as a case study, the

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<sup>1</sup> Australian Federal Government, 'Mid-Year Economic and Fiscal Outlook 2012-13' *Department of Treasury* (2012).

<sup>2</sup> *Ibid* 171.

article attempts to identify the reasons for the change and explore the impact that this amendment had on Australian organisations, employers and employees. This change has significant implications for both employers and employees, particularly in the way that employees are remunerated.

Two research questions are specifically addressed in this article. First, the article investigates the factors that brought pressure to bear on the Federal Government to initiate the FBT in-house fringe benefit rule change. This question is designed to assess the factors that led to the decision by the Federal Government to announce in the 2012 MYEFO to immediately abolish the annual \$1,000 exemption for in-house fringe benefits provided to employees through a salary packaging arrangement. In order to identify the reasons for the tax law amendment and explore the impact of that amendment, this article adopts the conceptual map of tax change developed by Oats and Sadler.<sup>3</sup> Their conceptual map outlines a non-exhaustive list of nine factors that bear on the decision to change tax rules. By using this framework, the factors that led to the current rule change can be examined. The anticipated or unanticipated taxpayer behaviour of tax rules, changes to them, or a lack thereof, can also be considered.<sup>4</sup>

Second, the article investigates anecdotal evidence, which at the time of the announcement indicated that the Australian employer response was to immediately stop providing employees with in-house fringe benefits via salary sacrificing arrangements. Data supporting this conclusion was collected from two sources. In the first instance, four semi-structured interviews were conducted with key tax managers in Australian organisations. This data resulted in preliminary findings that the employer response was to stop providing these benefits. To

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<sup>3</sup> Lynne Oats and Pauline Sadler, 'A conceptual map of tax rule change' (2011) 26(2) *Australian Tax Forum* 109.

<sup>4</sup> *Ibid* 131.

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

supplement the comments made by interview participants in the interviews and provide a more rigorous analysis of the preliminary findings, a detailed archival search was undertaken immediately before and after the release of the 2012 MYEFO. A total of 84 archival data sources, consisting of newspaper and journal articles, media reports, legislative documents and other government reports as well as online professional publications were reviewed.

Following the finding that the Australian employer response to the announcement was to immediately stop providing employees with in-house fringe benefits via salary sacrificing arrangements, the article then examines whether the response by Australian employers constituted anticipated or unanticipated behaviour. In the case of unanticipated behaviour, behavioural economic concepts are applied in an attempt to describe and explain the reasons for the taxpayer response to the FBT legislative change. Behavioural economic theory is generally used to investigate the factors which influence the decisions of individuals and organisations beyond what is considered to be economically rational. Cognitive and social factors often bear on the decision making process, as do emotions. The behavioural economic concepts used in this study are similar to those used by James who explains the reasons for the failure of the introduction of an unpopular United Kingdom ('UK') community charge tax ('Poll Tax') in 1993 and the success of the Value Added Tax ('VAT') in 1973.<sup>5</sup> James concludes that the failure of the UK Government to take account of behavioural economic factors led to the vehement adverse response by the public, and subsequent removal of the tax.<sup>6</sup> In this article the concept of tax morale, or the inherent willingness of taxpayers to pay tax, and the perception of equity were found to be

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<sup>5</sup> Simon James, 'The contribution of behavioral economics to tax reform in the United Kingdom' (2012) 41 *Journal of Socio-Economics* 468.

<sup>6</sup> *Ibid* 468.

influential factors in the behaviour of employers in response to the legislative changes.<sup>7</sup>

The remainder of this article is structured as follows. Section two describes the motivation for the research. Section three provides a background to the legislative amendment as well as an historical overview of the \$1,000 in-house fringe benefits exemption. Section four discusses the relevant literature, particularly the conceptual map of tax rule change and the behavioural economic theory literature demonstrating its use in this article. Section five then describes the research methods employed. This is followed by Section six which provides an analysis and discussion of the data collected. Finally, Section seven concludes the article.

## **2. MOTIVATION**

On Wednesday 23 October 2012, the morning following the release of the 2012 MYEFO, one of the authors received several phone calls from colleagues working within the accounting and tax divisions of listed Australian companies, government departments and not-for-profit organisations. All were enquiring about the impact on their organisations and its employees of the FBT change announced the night before. One tax practitioner from an Australian listed company forwarded an e-mail sent by company management confirming that the company was immediately ceasing to provide in-house fringe benefits to all new employees via salary sacrifice arrangements. Similar phone calls and e-mails were received during the morning inquiring as to the impact of the FBT change that had occurred overnight. It soon became apparent that the release of the 2012 MYEFO on Tuesday 22 October 2012, which

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<sup>7</sup> James Alm and Benno Torgler, 'Culture differences and tax morale in the United States and in Europe' (2006) 27 *Journal of Economic Psychology* 224.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

immediately changed the way that the FBT in-house exemption applied, resulted in several Australian employers making the decision to immediately cease packaging in-house fringe benefits for their staff. Over the ensuing months, four structured face-to-face interviews were conducted with key tax managers in Australian organisations to canvass their views and opinions as to the reason for this decision. The comments received by interview participants confirmed the changes to the FBT in-house rules on 22 October 2012 were the catalyst for each of their organisations' decision to immediately cease providing in-house fringe benefits to employees via salary sacrificing arrangements. It was these events which provided the motivation for the subsequent investigation and informed the research questions that form the basis of this article. Given that only four interviews were conducted, it was necessary to supplement the data collected in interviews by conducting a detailed archival search of published data both before and after the release of the 2012 MYEFO.

### 3. BACKGROUND TO THE IN-HOUSE FRINGE BENEFIT RULES

Fringe benefits tax was enacted on 1 July 1986 via the *Fringe Benefits Tax Assessment Act 1986* (Cth) ('*FBTAA86*') and the *Fringe Benefits Tax Act 1986* (Cth) ('*FBTA86*'). FBT is payable by employers on the value of fringe benefits provided to their employees or their associates in respect of employment. In-house fringe benefits are defined as 'goods or services provided to employees which would normally be sold by the employer in the ordinary course of business.'<sup>8</sup> Broadly, there

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<sup>8</sup> *Fringe Benefits Tax Assessment Act 1986* (Cth) s 136(1) ('*FBTAA86*').

are three types of in-house fringe benefits - expense payments, property, and residual fringe benefits.<sup>9</sup>

Under s 62 of the *FBTAA86* in-house fringe benefits previously received concessional treatment by way of an exemption from FBT for the first \$1,000 of the aggregate taxable value. When first introduced, this concession was for a maximum amount of \$200. The reason for its introduction was not explained except to state that:

As a practical matter, there will be no tax on goods consumed at work nor on the first \$200 in value in a year of free or discounted goods or services provided to an employee, including discounted air fares to airline and travel agency employees.<sup>10</sup>

The concession was increased to a maximum of \$500 on 1 April 1998 and then subsequently increased again to \$1,000 on 1 April 2007. Over the past three decades, it has been common practice for employers to allow their employees the opportunity to salary-package up to \$1,000 worth of in-house fringe benefits from their pre-tax income under an effective salary packaging arrangement. This essentially meant that the \$1,000 benefit was tax-free to the both the employer and employee.<sup>11</sup>

On 22 October 2012, the Australian Federal Government released the 2012 MYEFO in which they outlined their intentions to immediately amend s 62 of the *FBTAA86* to remove the annual \$1,000 concession when used as part of a salary packaging arrangement. The measure applied to any new arrangement entered into from that date onwards, however existing arrangements would still be afforded the concession up

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<sup>9</sup> Ibid.

<sup>10</sup> Commonwealth, Parliamentary Debates, House of Representatives, 2 May 1986, [34] (Paul Keating).

<sup>11</sup> *FBTAA86* s 62(2)(a); this section also formerly extended the \$1,000 concession to airline transport fringe benefits.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

until 1 April 2014. At that time, the concession would cease to exist for all arrangements.

The rationale for these changes was outlined in the Explanatory Memorandum to the *Tax Laws Amendment (2012 Measures No. 6) Bill* (2012):

The [original] concessions were not intended to allow employees to access goods and services by agreeing to reduce their salary and wages (through salary packaging arrangements) in order to buy goods and services out of pre-tax income.

As a result of expansion in the availability of salary-sacrifice arrangements, employees are increasingly accessing concessional tax fringe benefits under these arrangements and receiving tax-free non-cash remuneration benefits for goods and services.<sup>12</sup>

As stated in the 2012 MYEFO, the Federal Government was of the view that ‘this measure [would] return the use of this FBT concession to its original intent.’<sup>13</sup> Such a statement also demonstrated the Federal Government’s position that the use of the concession in this way was seen as both unintended and unanticipated.

In the 2012 MYEFO, the Federal Government estimated that the removal of the \$1,000 in-house fringe benefit exemption would contribute additional revenue of \$445 million over the following four years and result in an increase in GST payments to the States and Territories of \$85 million over the forward estimated period.<sup>14</sup> *Tax Laws Amendment (2012 Measures No. 6) Bill* (2012) and the accompanying Explanatory Memorandum were drafted incorporating these recommendations and

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<sup>12</sup> Explanatory Memorandum, *Tax Laws Amendment (2012 Measures No.6) Bill 2012* (Cth) [7.6]–[7.8].

<sup>13</sup> Australian Federal Government, above n 1, 171.

<sup>14</sup> *Ibid.*

introduced into Federal Parliament for the first reading on 29 November 2012. After being passed by the House of Representatives, the Bill was introduced into the Senate on 19 March 2013. The Bill was subsequently passed by the Senate and received Royal Assent on 28 June 2013.

#### **4. A FRAMEWORK FOR INVESTIGATING THE FBT TAX RULE CHANGE**

To investigate the factors that brought pressure to bear on the Federal Government to initiate the FBT in-house fringe benefit rule change, as well as the response of Australian employers, an investigatory framework is required. Two separate but interlinked theoretical frameworks relate to the drivers of tax rule change and subsequent taxpayer response. The first framework adopted is a conceptual map of tax rule change. The second framework draws on behavioural economic concepts with the various factors potentially explaining taxpayer response. This article adopts a case study approach in order to apply the conceptual map. It then attempts to extend the conceptual map by analysing unanticipated taxpayer responses using behavioural economic concepts. Each of the two frameworks are discussed in turn.

##### **4.1 Drivers of Tax Rule Change**

Oats and Sadler provide tax scholars with a conceptual map for describing the reasons for tax rule change and taxpayer response to new tax rules.<sup>15</sup> Their map is developed in two stages. The first stage identifies and examines pressures for tax law changes. They note:

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<sup>15</sup> Oats and Sadler, above n 3.

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

Understanding the forces at work in eliciting changes to the tax rules is an important part of uncovering the inherent power relationships. Their identification allows us to probe what are generally taken for granted assumptions about why change occurs, and to begin to understand the complexities of tax rule change so often overlooked by policy makers.<sup>16</sup>

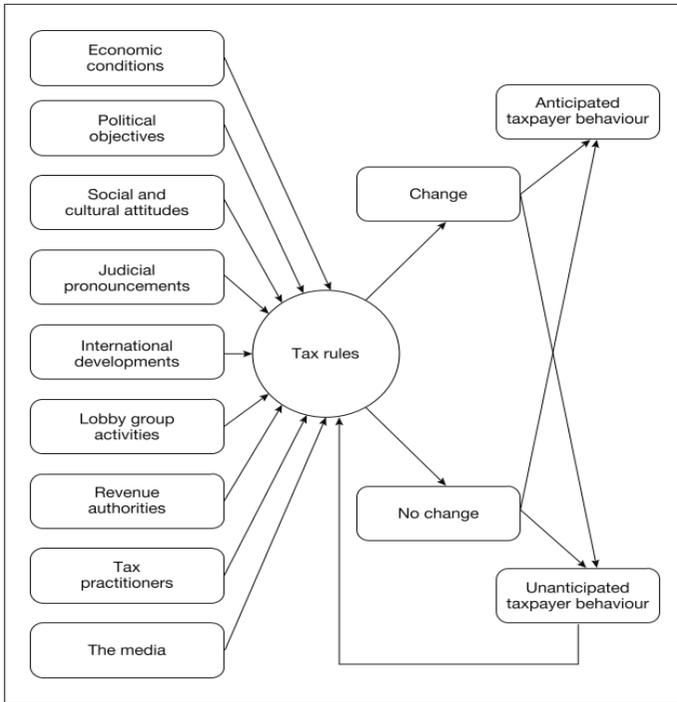
In their model Oats and Sadler identify nine factors that potentially have bearing on tax rule change. Although not an exhaustive list, the nine factors are: economic conditions, political objectives, social and cultural attitudes, judicial pronouncements, international developments, lobby group activities, revenue authorities, tax practitioners, and the media.<sup>17</sup> Oats and Sadler's conceptual map of rule change is diagrammatically depicted as follows:<sup>18</sup>

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<sup>16</sup> Ibid 110.

<sup>17</sup> Ibid 131.

<sup>18</sup> Ibid 130.



The factors contained in this conceptual map are supported by the work of James who indicates that the changing business environment also plays a role in the decision to change tax rules.<sup>19</sup> Further, he states that the ‘economic, social, political and technical environment in which taxes have to operate [also change] constantly.’<sup>20</sup>

The second stage of Oats and Sadler’s conceptual map involves observing taxpayer response to the tax rule change, or a

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<sup>19</sup> James ‘The contribution of behavioral economics to tax reform in the United Kingdom’, above n 5.

<sup>20</sup> Ibid 474.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

failure to change, which in turn results in further pressure for more change.<sup>21</sup> They make the following observation:

Irrespective of whether the response to pressure is for tax rule change or no change, policy makers will have in mind a response that is intended from taxpayers. This will form the rationale for making the change, that is, to effect a particular behavioural change. Increasingly these intended responses are backed up by sophisticated economic modelling.<sup>22</sup>

The Oats and Sadler conceptual map classifies taxpayer behaviour into one of two categories: anticipated and unanticipated taxpayer behaviour. Anticipated taxpayer responses can generally be planned for in the drafting of new rules. However, unanticipated taxpayer behaviour is particularly problematic. According to Oats and Sadler, unanticipated taxpayer behaviour arises ‘when taxpayers, for example, seize upon unintended loopholes caused by poor drafting, often with the assistance of astute, even devious, advisers.’<sup>23</sup>

Further studies have also investigated the concept of different consequences arising from tax law changes. For example, Kraal and Harvey identify consequences concerning the way that motor vehicle fringe benefits were previously valued under the statutory formula method.<sup>24</sup> While the statutory formula was designed to assist the Australian car industry, they argue that this method promoted unnecessary mileage and therefore fuel consumption in salary packaged vehicles in order to obtain greater tax concessions than would

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<sup>21</sup> Oats and Sadler, above n 3, 130.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Diane Kraal and Dianne Harvey, ‘Fringe benefits tax for cars: some further considerations for policy change and reform’ (2009) 24 *Australian Tax Forum* 589.

otherwise be afforded to the taxpayer. Subsequent to their article, unintended taxpayer behaviour and the impact of tax changes on industry was observed when the Federal Government announced that, effective from 16 July 2013, the statutory formula method used in valuing car fringe benefits would be abolished. The response was an immediate backlash from the car industry.<sup>25</sup> Media reports claimed that the abolition of the statutory formula method would have a dire effect on the Australian car industry due to an estimated drop in car sales of 20per cent.<sup>26</sup> Shares in the salary packaging provider McMillan Shakespeare plunged by 43per cent or \$500 million due to the claims that employers would cease providing salary packaged company cars to employees if the new laws came into force.<sup>27</sup> As such, this example illustrates how a tax law rule change, even a seemingly small or insignificant change, can cause significant, potentially unanticipated behaviour by taxpayers in a way that was not expected by the policy makers.

This article applies Oats and Sadler's conceptual map of tax rule change to the repeal of the \$1,000 in-house fringe benefits exemption. Using this two-stage model, the article seeks not only to assess which, if any, of the nine factors led to the FBT legislative rule change, but also seeks to determine taxpayer response to the FBT rule change. In the second stage of the conceptual map of tax rule change, particular emphasis is placed on assessing unanticipated taxpayer behaviour arising in relation to the FBT rule change.

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<sup>25</sup> Phillip Coorey, 'Car makers reel from FBT hit', *The Australian Financial Review* (Melbourne), July 17 2013.

<sup>26</sup> J Dowling, 'Costello says wheels will fall off car plan', *The Courier Mail* (Brisbane), July 31 2013.

<sup>27</sup> Tim Binstead, 'McMillan smashed by Rudd tax changes', *The Australian Financial Review* (Melbourne), July 26 2013.

# ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

## 4.2 Behavioural Economic Concepts

Behavioural economic theory is generally used to investigate the factors which influence the decisions of individuals and organisations beyond what is considered to be economically rational.<sup>28</sup> Cognitive and social factors often bear on a decision making process, as do emotions. Behavioural economic theory has been gaining prominence in the field of taxation law and is one which may offer insight into any unanticipated behaviour and the reasons for the response by employers. At the outset, it can be noted that two factors were prominent in this study: taxpayer morale and perceived equity.

Often fiscal legislative provisions and subsequent amendments are based on underlying assumptions of traditional economic theory. Most notably it is assumed that perfectly rational individuals will seek to maximise their welfare and make decisions based on self-interest.<sup>29</sup> However, several authors have noted the limitations of traditional economic theory, particularly these assumptions on which it is based. Reeson and Dunstall discuss many reasons and cases in which taxpayers' decision-making behaviour differs from rational behaviour as assumed in economic models.<sup>30</sup> Tomer, who identifies the differences between behavioural economic and mainstream economic theories in terms of six dimensions (narrowness, rigidity, intolerance, mechanicalness, separateness

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<sup>28</sup> See for example, the work of Richard Thaler and Cass Sunstein.

<sup>29</sup> William Congdon, Jeffrey Kling and Sendil Mullainathan, 'Behavioral Economics and Tax Policy' (2009) 62 *National Tax Journal* 375; Stefano DellaVigna, 'Psychology and Economics: Evidence from the Field' (2009) 47 *Journal of Economic Literature* 315; Richard Thaler, 'Toward a positive theory of consumer choice' (1980) 1 *Journal of Economic Behavior and Organization* 39.

<sup>30</sup> Andrew Reeson and Simon Dunstall, 'Behavioural Economics and Complex Decision-Making: Implications for the Australian Tax and Transfer System: Commonwealth Scientific and Industrial Research Organisation' (2009) *CSIRO Australia*.

and individualism), cites further evidence of the criticisms of neoclassical economics.<sup>31</sup> Kahneman, Knetsch and Thaler argue that firms themselves can act in a manner that is not in their own self-interest and take issue with the conceptual parsimony of standard microeconomics that fails to account for this.<sup>32</sup> They state ‘the standard microeconomic model of the profit-maximising firm assigns essentially no role to generosity and social conscience or even to good will or indignation.’<sup>33</sup>

Behavioural economics also factors in taxpayer compliance.<sup>34</sup> Research in the compliance area is generally consistent with the work of J. Braithwaite with regard to expected utility, the compliance model and responsive regulation.<sup>35</sup> James suggests that responsive regulation shares similarities with behavioural economics<sup>36</sup> and, while not specifically considering behavioural economics concepts, V. Braithwaite states ‘the level of intrusiveness may be escalated ... until the intervention elicits the desired response.’<sup>37</sup> Murphy, discussing responsive regulation, demonstrates that using traditional deterrence theories to induce compliance with the law

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<sup>31</sup> John Tomer, ‘What is behavioral economics?’ (2007) 36 *The Journal of Socio-Economics* 463.

<sup>32</sup> Daniel Kahneman, Jack Knetsch and Richard Thaler, ‘Fairness and the Assumptions of Economics’ (1986) 59 *The Journal of Business* 285.

<sup>33</sup> *Ibid* 285.

<sup>34</sup> Congdon, Kling and Mullainathan, above n 29; Simon James, ‘Behavioural economics and the risks of tax administration’ (2012) 10 *eJournal of Tax Research* 345; Simon James, Kristina Murphy and Monika Reinhart, ‘Taxpayer beliefs and views: two new surveys’ (2005) 20 *Australian Tax Forum* 157.

<sup>35</sup> John Braithwaite, ‘Meta Risk Management and Responsive Regulation for Tax System Integrity’ (2003) 25 *Law and Policy* 1; John Braithwaite and Toni Makkai, ‘Testing an Expected Utility Model of Corporate Deterrence’ (1991) 25 *Law and Society Review* 7; Valerie Braithwaite, ‘Responsive Regulation and Taxation: Introduction’ (2007) 29 *Law and Policy* 3.

<sup>36</sup> James ‘Behavioural economics and the risks of tax administration’, above n 34.

<sup>37</sup> Braithwaite, above n 35, 5.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

can be effective, but when it comes to tax planning schemes such strategies can be counter-productive.<sup>38</sup> In that study, the particular actions taken by the Australian Taxation Office were perceived as procedurally unfair. Similarly, Feld and Frey find that there is more to take into account than simple deterrence models.<sup>39</sup> As such, influences other than sanctions, penalties and legal coercion affect taxpayer behaviour.

While taxes may be constructed in such a way as to induce certain behaviour, there are also other factors which influence behaviour, actions and responses to tax change.<sup>40</sup> James states:

The tax system is used to influence behaviour – for example, encouraging certain activities such as saving. Nevertheless, insufficient account is sometimes taken of behavioural factors in the development and implementation of tax reforms themselves.<sup>41</sup>

In other words, failure to sufficiently account for behavioural factors when developing tax rules can have the effect of an adverse response by taxpayers. In another article, James concludes that mainstream economic theory has made a great contribution to understanding the effects of taxation, and further has been making an increasing contribution to understanding how tax administration might be improved.<sup>42</sup>

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<sup>38</sup> Kristina Murphy, 'An examination of taxpayers' attitudes towards the Australian tax system: findings from a survey of tax scheme investors' (2003) 18 *Australian Tax Forum* 209.

<sup>39</sup> Lars Feld and Bruno Frey, 'Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation' (2007) 29 *Law and Policy* 102.

<sup>40</sup> Ian Wallschutzky, 'Possible causes of tax evasion' (1984) 5 *Journal of Economic Psychology* 371.

<sup>41</sup> James 'The contribution of behavioral economics to tax reform in the United Kingdom', above n 5, 468.

<sup>42</sup> James 'Behavioural economics and the risks of tax administration', above n 34.

Cited by James, Congdon, Kling and Mullainathan state that “the implications of behavioural economics” for public policy, including tax policy, have yet to be systematically explored, and ... this oversight leads to both mistaken policy and missed opportunity’.<sup>43</sup> McKerchar, in her article which examines the behavioural response by taxpayers to actions by tax administrators, argues that despite the mass of literature that examines taxpayer behaviour ‘the fundamental problem of being able to understand why taxpayers behave in the way they do, remains largely unsolved.’<sup>44</sup>

Tax morale is known to be a major factor influencing taxpayer decisions. Tax morale refers to the willingness of taxpayers to pay taxes. Literature which discusses tax morale emphasises that it has a bearing on the attitudes and subsequent actions of taxpayers.<sup>45</sup> Feld and Frey demonstrate the influence that tax morale has on compliance behaviour and, importantly, stress the failure of the traditional deterrence model to explain such behaviour.<sup>46</sup> When discussing the psychological tax contract, they describe tax morale ‘as a complicated interaction between taxpayers and the government establishing a fair, reciprocal exchange that involves the giving and taking of both parties.’<sup>47</sup> Alm and Torgler define tax morale as an ‘individual’s intrinsic willingness to pay tax.’<sup>48</sup> It is this definition of tax morale that is important in the current article

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<sup>43</sup> Congdon, Kling and Mullainathan, above n 28, 375 cited in James

‘Behavioural economics and the risks of tax administration’, above n 34, 345.

<sup>44</sup> Margaret McKerchar, ‘Understanding and predicting taxpayers’ behavioural responses to actions by tax administrations’ (2003) 3 *OECD Papers* 289, 290.

<sup>45</sup> James Alm, Isabel Sanchez and Ana De Juan, ‘Economic and Noneconomic Factors in Tax Compliance’ (1995) 48 *Kyklos* 3; Alm and Torgler, above n 7; James ‘Behavioural economics and the risks of tax administration’, above n 34; Margaret McKerchar, Kim Bloomquist and Jeff Pope, ‘Indicators of tax morale: an exploratory study’ (2013) 11 *eJournal of Tax Research* 5.

<sup>46</sup> Feld and Frey above n 39.

<sup>47</sup> *Ibid* 104.

<sup>48</sup> Alm and Torgler, above n 7, 224.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

and has been identified as one of the factors that impacted on the Australian employer responses to the change to in-house fringe benefit tax rules. According to James ‘when taxes are not well administered tax morale may be undermined.’<sup>49</sup> In summary, as stated by Picciotto:

There is ample evidence that taxpayer compliance largely depends on having a favourable attitude towards the tax system, and in particular on considering that it is on the whole a fair and just system.<sup>50</sup>

Equity, or a perception of equity, is also a contributing factor that affects taxpayer decisions and their willingness to pay tax with equity or fairness, as discussed in behavioural economic literature in relation to taxation.<sup>51</sup> Tax resistance has been found to be positively related to perceptions of inequity.<sup>52</sup> Indeed Feld and Frey argue that taxpayers’ compliance is more likely if they perceive the political process as being fair and legitimate in terms of both horizontal and vertical equity,<sup>53</sup> a sentiment shared by many others such as Wallschutzky.<sup>54</sup> Perceived inequity can be related to the trade-off between tax payments and public expenditure benefits, the benefits gained by those who pay tax, or the perception of how taxpayers’ money is

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<sup>49</sup> James ‘Behavioural economics and the risks of tax administration’, above n 34, 345.

<sup>50</sup> Sol Picciotto, ‘Constructing Compliance: Game Playing, Tax Law, and the Regulatory State’ (2007) 29 *Law and Policy* 11, 24.

<sup>51</sup> Massimo Bordignon, ‘A fairness approach to income tax evasion’ (1993) 52 *Journal of Public Economics* 345; Frank Cowell, ‘Tax evasion and inequity’ (1992) 13 *Journal of Economic Psychology* 521; James ‘The contribution of behavioural economics to tax reform in the United Kingdom’, above n 5, 468.

<sup>52</sup> MW Spicer and S Lundstedt, ‘Understanding tax evasion’ (1976) 31 *Public Finance Finances publiques* 295; Wallschutzky, above n 40.

<sup>53</sup> Feld and Frey, above n 39.

<sup>54</sup> Wallschutzky, above n 40.

spent.<sup>55</sup> Further, government policy on taxation can of itself have a negative impact on the perception of fairness.<sup>56</sup>

Existing case studies demonstrate the influence of perceived equity. James discusses the reasons for the failure of the UK community charge tax in 1993 and the success of the VAT in 1973.<sup>57</sup> James identifies one of the reasons that the community charge tax failed was failure by the Government to phase in the changeover period to allow taxpayers' expectations to adjust. Instead, it was done in a single step which magnified the 'vehement adverse public reaction.'<sup>58</sup> In comparison, the relatively successful introduction of the VAT was announced two years prior to its introduction. This issue is particularly relevant in the case of the present study, as the removal of the \$1,000 in-house fringe benefits concession was effective immediately. There was no consultation prior to the announcement. James argues that in introducing the failed tax, the British Government ultimately based its argument on traditional economic principles failing to take into account a range of behavioural factors. However, in the implementation of the successful VAT such factors were accounted for.<sup>59</sup> The most significant factor in the failure of the poll tax was that it was perceived as unfair by the public, even though it contained all the characteristics of suitable tax policy.

Using similar concepts identified by James,<sup>60</sup> this article draws on behavioural economic concepts to understand factors which had a bearing on Australian employer response to the

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<sup>55</sup> Bordignon, above n 51; James 'The contribution of behavioral economics to tax reform in the United Kingdom', above n 5; McKerchar 'Understanding and predicting taxpayers', above n 44; Wallschutzky, above n 40.

<sup>56</sup> McKerchar 'Understanding and predicting taxpayers', above n 44.

<sup>57</sup> James 'The contribution of behavioral economics to tax reform in the United Kingdom', above n 5, 468.

<sup>58</sup> Ibid 472.

<sup>59</sup> Ibid 468.

<sup>60</sup> Ibid.

# ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

\$1,000 FBT rule change. In this context, this article attempts to apply behavioural economic concepts to understand why employers reacted to the tax rule change in the way that they did.

## 5. RESEARCH METHODOLOGY

This research holds exploratory, explanatory and descriptive intentions regarding the legislative change and the subsequent response by employers by first using the conceptual map of tax rule change and in the second instance behavioural economic concepts. As Babbie notes ‘often, we are able to predict without understanding.’<sup>61</sup> As such, one might be able to predict that employers will logically be averse to paying additional taxes or incur increased expenditure and therefore cease offering in-house fringe benefits in a salary packaging arrangement. However, in order to completely comprehend the reasoning behind such actions we must also seek to understand the behaviour.

### 5.1 Qualitative Research Method

Oats demonstrates the necessity for more interpretivist research in taxation, stating ‘the dead hand of positivism pervades tax research in a variety of ways that contribute to the perception of tax as a highly technical endeavour.’<sup>62</sup> Instead she views tax as very much having social and institutional elements which exhibit the potential for more interpretive research. This is synonymous with other accounting and social fields. This article attempts to add to this fieldwork through a constructionist

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<sup>61</sup> Earl Babbie, *The Practice of Social Research* (Wadsworth, 7<sup>th</sup> ed, 1995) 19.

<sup>62</sup> Lynne Oats, *Taxation: A Fieldwork Research Handbook* (Routledge, 212) 4.

paradigm by adopting a qualitative approach in which a richness of data may be achieved and the social issue understood.

A qualitative research approach typically involves an inductive method being adopted, with great importance given to the individual meaning and complexity of situations.<sup>63</sup> Data is generally collected in the participant's settings (such as interviews and focus groups), and/or extracted from sources (for example, newspaper articles and diaries, and audio and visual records) which allow the researcher to explore and ascertain the research problem from the viewpoint of individuals and groups.<sup>64</sup>

Given the objectives of this article, the appropriate methodological approach is a case study, one that seeks to understand and explain the responses by Australian employers to the FBT legislative change. The research design is outlined in the next section.

## 5.2 Research Design

A case study can be defined as 'an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.'<sup>65</sup> In recent times, several tax academics have advocated the use of case studies as a mode of inquiry for tax researchers. For example, Rogers and Oats state:<sup>66</sup>

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<sup>63</sup> John Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (Sage Publications, 2009) 4.

<sup>64</sup> *Ibid.*

<sup>65</sup> Robert Yin, *Case Study Research: Design and Methods* (Sage Publications, 3<sup>rd</sup> ed, 2013) 13.

<sup>66</sup> Helen Rogers and Lynn Oats, 'Case Study' in Lynn Oats (ed) *Taxation: A Fieldwork Research Handbook* (Loutledge, 2012) 28, citing A Christians,

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

Christian's calls for legal scholars to draw on social science to make explicit the choice and purpose of case study research within tax law scholarship, and also to learn from the methodologies used in the social sciences, for example interview techniques and methods of analysing qualitative data.

This statement represents a major motivation for the method employed in this study.

Traditionally case study research is conducted with the idea that the organisation is the case in which data is collected in depth.<sup>67</sup> However, a phenomenon or an event can also be viewed as the case to be studied through in depth analysis of the issue.<sup>68</sup> As demonstrated by Rogers and Oats, there has been an increase in studies which do so.<sup>69</sup> In the present study, the phenomenon being examined is the FBT rule change and the subsequent response by Australian employers.

Adopting Oats and Sadler's conceptual map of tax rule change, the purpose of this article is to assess the factors that led to the tax rule change by the Federal Government in the 2012 MYEFO, and the subsequent response by Australian employers, using behavioural economic concepts to analyse any unanticipated behaviour that may have occurred. In this context a case study design is appropriate, as the research considers a contemporary issue that combines a mix of both exploratory and explanatory research, first looking at the responses by Australian employers to the FBT legislative change and second by

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'Case study research and international tax theory' (2010) 51 *Saint Louis University Law Journal* 331.

<sup>67</sup> Rogers and Oats, above n 66, 26.

<sup>68</sup> Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting* (Thompson Reuters Australia, 2010) 102.

<sup>69</sup> Rogers and Oats, above n 66, 29.

attempting to understand reasons for their response and whether this behaviour was anticipated or unanticipated.

While generalisation may be an issue in terms of using case study research,<sup>70</sup> Lukka states that case studies can in fact be generalisable where they add to theory.<sup>71</sup> With this in mind, this article seeks to contribute to knowledge regarding the Oats and Sadler model, as well as to behavioural economic theory.<sup>72</sup> Case studies typically combine multiple data collection methods.<sup>73</sup> In this article, employer's responses are assessed and analysed using a combination of interviews and published archival data. Given that qualitative data was obtained from only four interviews, the researchers supplemented this by reviewing published archival data to determine whether the views and comments made by the four interview participants were reconfirmed or contradicted. This process allowed us to triangulate the data from two independent sources, thereby adding to the validity of the results and findings.

### ***5.2.1 Interviews***

Subsequent to the phone calls received the day after the release of the 2012 MYEFO on 22 October, the authors contacted those managers working within the accounting and tax divisions of listed Australian companies, government departments and not-for-profit organisations to request face-to-face interviews.

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<sup>70</sup> Bent Flyvbjerg, 'Five Misunderstandings About Case-Study Research' (2006) 12 *Qualitative Inquiry* 219.

<sup>71</sup> Kari Lukka, 'The problem of generalizability: anecdotes and evidence in accounting research' (1995) 18 *Accounting Auditing and Accountability Journal* 71.

<sup>72</sup> Oats and Sadler, above n 3.

<sup>73</sup> Kathleen Eisenhardt, 'Building Theories from Case Study Research' (1989) 14 *The Academy of Management Review* 532.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

Interviews have been used in many instances in the literature to analyse taxpayer behaviour.<sup>74</sup> Along with Simon, Katona is recognised as one of the earliest pioneers of behavioural economics.<sup>75</sup> Tomer states:

Katona emphasized low level theory with a great emphasis on empirical observation of behaviour; his approach was far from abstract, *a priori* economic theory. To obtain information on important subjective, intervening variables, he made great use of surveys often involving interviews, to learn about attitudes, aspirations, expectations, optimism/pessimism, social learning/cognition, habituation, and stereotypes.<sup>76</sup>

Given that this research attempts to understand the response and behaviour of Australian employers towards the FBT legislative change, interviews were considered a useful way of exploring and better understanding behaviours, and reasons behind decisions made. Four semi-structured interviews with tax managers of four Australian organisations impacted by the FBT legislative change were conducted. A semi-structured interview is a form of interview where the interviewer uses a list of themes and questions to be covered, however the order of the questions may be varied from interview to interview and questions can be adapted to particular situations.<sup>77</sup> As such, questions were changed or re-ordered, and probing questions were added during interviews in order to ensure that additional relevant information was obtained from participants.

Potential respondents included Australian organisations that had offered in-house fringe benefits to their employees as part of a salary packaging arrangement prior to the release of the 2012

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<sup>74</sup> Wallschutzky, above n 40.

<sup>75</sup> Tomer, above n 31, 469.

<sup>76</sup> Ibid 470.

<sup>77</sup> Mark Saunders, Phillip Lewis and Adrian Thornhill, *Research Methods for Business Students* (Pearson Education, 5<sup>th</sup> ed, 2007).

MYEFO. The aim of the research was to determine these organisations' reaction and response to the legislative change, whereby in-house fringe benefits provided under a salary packaging arrangement would no longer be eligible for the \$1,000 exemption after this date.

A judgemental, or purposive, convenience sampling technique was used to select interview participants.<sup>78</sup> While this may present some limitations in terms of the credibility of the data, it was necessary to establish which organisations were affected by the legislative change before collecting data from them. As explained by Rubin and Rubin,<sup>79</sup> in identifying suitable respondents to approach, it is important to identify key individuals within those organisations who had the required knowledge and experience regarding the topics related to the research questions.

An overview of the four organisations that agreed to participate in the study is summarised in Table 1 below.

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<sup>78</sup> Naresh Malhotra, *Marketing Research: An Applied Orientation* (Pearson Education Australia, 3<sup>rd</sup> ed, 2006) 370.

<sup>79</sup> Herbert Rubin and Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data* (Sage Publications, 2<sup>nd</sup> ed, 2005) 64-65.

# ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

**Table 1 Participant Information**

Participant	Organisation Type	Approximate number of full-time	Approximate number of who salary-
A	Government Department	192,000	40,000
B	Not-For-Profit Entity (a Religious Organisation) (‘NFP’)	5,900	75
C	ASX Listed Company	7,300	1,500
D	ASX Listed Company	_ 80	_ 81

Whilst there were only four interview participants, the number of employees in receipt of salary-sacrificed in-house fringe benefits across these organisations came to more than 41,000.

Each participant interviewed was a tax manager who had direct influence over the decision regarding employee remuneration in the form of salary packaged in-house fringe benefits. While it is recognised that conducting only four interviews is a limitation of the article, and that interviewing

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<sup>80</sup> One of the organisations that was represented by two interviewees, was not in fact directly affected by the legislative change as they did not offer their employees in-house fringe benefits in a salary-sacrifice arrangement. This represents an obvious limitation in the current study, however, this is made up for by the fact that the interviewees from this organisation were able to provide a more objective perspective on the issue and the purpose of the benefit as well as offering insight into the more general themes of tax morale and perceived fairness of the tax system.

more participants would certainly strengthen results, the responses and comments made between participants were very consistent and each one had a lot to say about the issue. The fact that the participants were all tax managers in their respective organisations who had direct influence over the decision regarding employee remuneration in the form of in-house fringe benefits further strengthens the validity of the data collected.

The second ASX listed company was represented by two interviewees. Another limitation identified in this study is that this organisation did not offer in-house fringe benefits in the form of a salary packaging arrangement to their employees. Instead, they offered their staff up to \$1,000 worth of in-house fringe benefits paid for out of after-tax income (not pre-tax income). Nevertheless, the interviewees from the second ASX listed company did offer their opinions as to the reasons for the FBT rule change (which formed the basis of the first research question), and the likely impact of the rule change on employees in their industry. As their company was not directly impacted upon by the rule change, the interviewee was able to provide a more objective opinion on the salary packaging arrangements as well as a useful insight in the tax system as a whole.

Interviews were conducted face-to-face on each of the participants' premises during August 2013. Face-to-face interviewing has advantages in that it enhances interviewer-respondent rapport and allows for the observation of non-verbal cues that may indicate confusion or hesitation on the part of the respondent when answering questions.<sup>81</sup> This may assist in strengthening the internal validity of the study as the researcher

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<sup>81</sup> Sabine Mertens Oishi, *How to Conduct In-Person Interviews for Surveys* (Sage Publications, 2<sup>nd</sup> ed, 2003) 6.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

is able to probe further and clarify questions for the participant.<sup>82</sup>

The interview questions were developed using themes evident in the prior literature and based on the research questions. Two interviewers were always present during interviews which assisted in the quality of the process as well as increased accuracy of data interpretation. Interviews were recorded and subsequently transcribed allowing for a free flowing interview whilst also leaving the researcher free to follow up on questions and contentious issues where the interviewee required some clarification.<sup>83</sup> Interview times ranged between 20 and 50 minutes.

### 5.2.2 Archival Data

As previously noted, given that only four interviews were conducted, the researchers supplemented the comments and concerns highlighted in the interviews by conducting a review of published archival data both before and after the release of the 2012 MYEFO. Such materials included newspaper articles, online publications by professional bodies such as the Institute of Chartered Accountants (ICAA), CPA Australia, and the Tax Institute of Australia; industry reports; newsletters and publications by the big four accounting firms; legislative documents and other government reports; as well as online media-related sources. The inclusion of this data allowed for an analysis of perceptions without manipulation of the data by the researcher, which can sometimes unintentionally occur with interviews.<sup>84</sup> Furthermore, it allowed for triangulation of the

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<sup>82</sup> William Trochim, *Qualitative Methods* (20 October 2006) Research Methods – Knowledge Base <<http://www.socialresearchmethods.net/kb/qual.php>>.

<sup>83</sup> Steinar Kvale, *Doing Interviews* (Sage Publications, 2007).

<sup>84</sup> Catherine Marshall, *Designing Qualitative Research* (Sage Publications, 5<sup>th</sup> ed, 2011).

data by analysing and matching comments made during interviews with general public opinion as a collective found in the media, as well as professional opinion found in professional publications.<sup>85</sup>

To capture attitudes, reactions and responses to the removal of the \$1,000 in-house fringe benefit exemption, data was collected and analysed which related to both before and after the release of the 2012 MYEFO. However, in many instances finding data specifically relating to public perceptions on the in-house fringe benefit concession was difficult. A possible explanation for this was that the concession was not widely known or understood and only had limited application to those employees who had elected to salary package \$1,000 of in-house fringe benefits. For this reason, the perceptions of the 2012 MYEFO as an entire document were considered.

In most instances, newspaper articles were collected from the Dow Jones Factiva database. However, in some instances data was collected directly from newspapers or from the corresponding websites. Whilst major newspapers were sourced, including *The Australian* and *The Financial Review*, other lesser known and less prestigious newspapers were also reviewed in order to obtain more commentary on the in-house fringe benefit concession specifically. Table 2 summarises the archival data sources collected.

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<sup>85</sup> Aron Shenton, 'Strategies for ensuring trustworthiness in qualitative research projects' (2004) 22 *Education for Information* 63.

# ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

**Table 2 Archival Data Sources**

Analysis	Source	Search terms used	Time period	Records sample
Professional Publications	Professional Accounting and Tax Bodies (ICAA, CPA, TIA, PwC, KPMG, EY, Deloitte).	“in-house fringe benefits concession” “MYEFO”	2012	14
			2013	17
			<b>Total</b>	31
Media Coverage	The Advertiser; The Age; The Australian; The Financial Review; The Sydney Morning Herald; The Daily Telegraph; The Herald Sun; Business Spectator; Smart Company; Mondaq Business Briefing; AAP; The Times; The West Australian; Smart Company; Leading Company; Business Spectator; The Conversation; Startup Smart; The Courier Mail; The Property Observer.	“in-house fringe benefits concession” “MYEFO” “salary-sacrifice”	2012	52
			2013	1
			<b>Total</b>	53
<b>Cumulative Total</b>				<b>84</b>

## 5.2.2 Data Analysis

Shortly after the conclusion of each interview the digital recording containing the interview was transcribed into an electronic text file. The transcriptions were completed by the researcher which aided in immersion with the data. Data

analysis was undertaken by way of thematic coding of both interviews and the archival data materials using ‘theory-generated codes.’<sup>86</sup> Codes were formed using behavioural economic concepts and subsequently categorised into themes of tax morale and the perception of fairness in the tax system, as well as in relation to the research questions themselves.<sup>87</sup> The data was then analysed by the researchers by content and thematic analysis to identify patterns across cases.<sup>88</sup> This was done with the assistance of the computer program N-Vivo.

Adopting a triangulation approach, comments made in the interviews were matched to similar themes contained in the archival data to see if it corresponded. However, in the case of the interviews greater emphasis was placed on the reaction to the change and their subsequent actions. The analysis was predominantly linguistic and conversation orientated.<sup>89</sup> In this manner an iterative process was used which involved moving between theory, data and the literature in order to refine the research findings and relate them back to the research issues.<sup>90</sup>

## **6. TAXPAYER ACTIONS AND RATIONALE**

In this part of the article we analyse taxpayer response and the rationale for their actions. Specifically, Section 6.1 analyses

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<sup>86</sup> Catherine Marshall, *Designing Qualitative Research* (Sage Publications, 5<sup>th</sup> ed, 2011) 209.

<sup>87</sup> Eisenhardt, above n 73.

<sup>88</sup> Dilanthi Amaratunga and David Baldry, ‘Case Study Methodology as a Means of Theory Building: Performance Measurement in Facilities Management Organisations’ (2001) 50 *Work Study* 95; Chad Perry, ‘Processes of a case study methodology for postgraduate research in marketing’ (1998) 32 *European Journal of Marketing* 785; Yin, above n 65, 50-51.

<sup>89</sup> Oats and Sadler, above n 3.

<sup>90</sup> This concept was taken from the paper published by Paul Andon and Clinton Free, ‘Media Coverage of Accounting: The NRL Salary Cap Crisis’ (2013) 27 *Accounting, Auditing and Accountability Journal* 15.

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

the factors which brought pressure to change the tax rule as outlined in Oats and Sandler's conceptual map of tax rule change. Using behavioural economic concepts, Section 6.2 then reports on what other factors influenced Australian employers' response to cease providing in-house fringe benefits from employees' pre-tax income. The factors that contributed to this decision will be summarised under two broad headings: tax morale and the perception of equity.

### **6.1 Conceptual Map of Tax Rule Change**

Of the nine factors outlined by the Oats and Sadler conceptual map of tax rule change, it is apparent that (1) the prevailing economic conditions, and (2) the political objectives of the then Labor Government, influenced the decision to initiate the rule change. What became apparent from the archival data search was that these two factors were interrelated in terms of their impact on the need for change. Furthermore, it appears that the unanticipated behavior of taxpayers in relation to the original concessional treatment of in-house fringe benefits also influenced the Government's decision to change the law. This is discussed below.

The global financial crisis ('GFC') significantly affected the economy in 2008. The newly appointed Labor Federal Government, elected in December 2007, was placed under immediate pressure to strengthen the economy and ensure that the Australia did not succumb to a recession like other advanced economies around the world. Its response was to increase spending on a range of programs. However, as a result of lower tax receipts and increases in Government spending, the budget position deteriorated throughout the period leading up to October 2012. The budget deficit in the 2011-2012 financial

year was \$45.7 billion.<sup>91</sup> By mid-late 2012, economic recovery was underway. However, many believed that government spending should ease and the budget should be more efficiently managed. Returning the budget to surplus was seen as the major political objective of the Federal Government who promised to do so in 2012-2013.

Prior to the release of the 2012 MYEFO, the Federal Treasurer, The Hon. Wayne Swan MP, was quoted as saying that Australia was ‘in the right place at the right time as the weight of the global economic activity shifted towards our region.’<sup>92</sup> However, with hindsight, the Federal Government was too optimistic in their view of the economy and expected tax receipts.<sup>93</sup> At the time of the release of the 2012 MYEFO in October, global growth forecasts were downgraded and a failing economy with slowing GDP meant that the government would not raise the money it needed to return the budget to surplus.<sup>94</sup> Additionally, with falling commodity prices there was a lack of revenue received from profit taxes such as the mineral resource rent tax (‘MRRT’).<sup>95</sup> As a result, tax revenue write-downs were experienced, half of which were attributable to the commodities slump and a deficiency in company tax receipts.<sup>96</sup>

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<sup>91</sup> Piers Akerman, ‘Economic gloom points to a grim future for our nation’, *The Mercury* (Tasmania), 8 October 2012.

<sup>92</sup> Institute of Chartered Accountants, ‘Chartered Accountants Tax Bulletin’ (2012) 40 *Chartered Accountants Tax Bulletin*, [1] <<http://services.au.trclient.com/1/online/18223038-873.html>>.

<sup>93</sup> N Hume, ‘Australia unveils spending cuts’, *Financial Times* (London), 22 October 2012.

<sup>94</sup> Andrew Probyn, ‘Tax perks, visas targeted to protect Budget surplus’, *The West Australian* (Perth), 22 October 2012.

<sup>95</sup> Deloitte Australia, ‘Dude, where’s my \$12 billion? – Executive Summary’ (2013) 83 *Deloitte Budget Monitor* i <[http://www.deloitte.com/view/en\\_au/au/f995f050e287e310VgnVCM1000003256f70aRCRD.htm](http://www.deloitte.com/view/en_au/au/f995f050e287e310VgnVCM1000003256f70aRCRD.htm)>.

<sup>96</sup> Gemma Daley, ‘Company tax slump bites hard’, *The Australian Financial Review* (Melbourne), 23 October 2012.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

Despite poorer than expected fiscal results, the first paragraph of 2012 MYEFO stated ‘the Government is returning the budget to surplus in 2012-2013, notwithstanding a weaker global economy that has weighted heavily on tax receipts. Returning to surplus is appropriate given current economic conditions.’<sup>97</sup> Intent on achieving such a goal, the then Federal Treasurer revised down its projected surplus from \$1.5 billion to \$1.1 billion. However, a lack of revenue also forced the Government to introduce spending cutbacks to achieve this goal.<sup>98</sup> To achieve a budget surplus the Government cut spending and reduced certain tax concessions. As noted by Martin, the 2012 MYEFO was the fourth consecutive mid-year update to cut spending.<sup>99</sup> However, there were somewhat conflicting opinions on the budget surplus goal and whether it was indeed time to bring the budget back to surplus.<sup>100</sup> Some commentators pointed out that the economy was still fragile and that the Government should avoid cuts to spending and abandon the course to surplus<sup>101</sup> which it would subsequently do in December 2012.<sup>102</sup>

While opinions of the Government’s objectives differed, what was apparent from a review of the archival data was that a range of economic and political objectives were the catalyst for the Federal Government’s decision to amend the FBT laws in an attempt to raise greater tax revenue. Published media reports

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<sup>97</sup> Australian Federal Government, above n 1, at 1.

<sup>98</sup> Peter Martin, ‘Swan cuts workers’ perks to curb debt’, *The Sydney Morning Herald* (Sydney), 22 October 2012.

<sup>99</sup> Peter Martin, ‘Tax perks will go in budget update as Treasurer looks to “Labor Values”’, *The Age* (Melbourne), 22 October 2012.

<sup>100</sup> Probyn, above n 94.

<sup>101</sup> Institute of Chartered Accountants, ‘Boost to infrastructure investment builds momentum for our future’ (Media Release, 14 May 2013) <<http://www.charteredaccountants.com.au/News-Media/Media-centre/2013/Boost-to-infrastructure-investment-builds-momentum-for-our-future.aspx>>.

<sup>102</sup> Deloitte Australia, above n 95.

suggest that one of the Federal Government's primary motives to removing the \$1,000 in-house fringe benefits concession, which had been in place since 1 July 1986, was to achieve the objective of returning the Federal budget to surplus. This is consistent with two of the nine factors identified in Oats and Sandler's conceptual map of tax rule change: economic conditions and political objectives. There is, however one more factor that appears to have brought pressure on the decision to change the tax rule: taxpayer behaviour.

As previously noted, tax rules subsequently lead to both anticipated and unanticipated taxpayer behaviour, the latter of which may lead to further changes to the legislation, particularly where taxpayers seize upon 'loopholes' that exist in the tax legislation. In this case study, the unanticipated behaviour was a consequence of the original legislation rather than the tax rule change. One of the Federal Government's reasons for the FBT change, as stated in the 2012 MYEFO, was to 'return the use of this concession to its original intent.'<sup>103</sup> This statement indicated that employer actions allowing employees to salary package \$1,000 worth of goods or services from their pre-tax income amounted to unanticipated taxpayer behaviour. The Australian Federal Government specifically made the case that the concession had become more prevalent due to widespread use of salary sacrificing arrangements. Thus, it was evident from the comments in the 2012 MYEFO that the Federal Government had not intended that the original FBT in-house concessions would be used as part of a salary packaging arrangement.<sup>104</sup> As such, this unanticipated behaviour formed a major reason for the removal of the concession.

The Federal Government estimated that the removal of the concession would contribute additional revenue of \$445 million

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<sup>103</sup> Australian Federal Government, above n 1, 171.

<sup>104</sup> Ibid.

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

over the following four years, and an increase in GST payments to the States and Territories of \$85 million over the forward estimates period.<sup>105</sup> However, these estimates were based on a presumption that employers would continue to provide \$1,000 worth of in-house fringe benefits to employees as part of a salary packaging arrangements. Further, they would pay the FBT or cash out the benefit in the form of additional \$1,000 worth of salaries and wages, which would form part of the assessable income of each employee and would therefore be subject to income tax.<sup>106</sup> Data in this study reveals that this assumption was incorrect and thus casts doubt as to whether the government would be able to raise the additional funds budgeted for in the 2012 MYEFO.

Based on all responses from the four interview participants, as well as supporting comments from the archival data, the evidence strongly suggests that, instead of continuing to provide in-house fringe benefits to their employees via salary sacrificing arrangements and paying the tax, many employers would stop providing benefits to their staff via salary sacrificing arrangements altogether. If the benefits were cashed out instead, the consequence is that employees would be financially worse off as a result of the abolition of the FBT concession because income tax would be payable on the amount no longer salary packaged.

Consequently, the Federal Government, when modelling the additional tax revenues expected, appears not to have factored in the response of Australian employers (the taxpayers) to the legislative rule change.

Rational economic factors played a role in the decision of Australian employers to immediately cease providing in-house fringe benefits in a salary packaging arrangement. However, as

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<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

the next section of the article explores, there were other factors that influenced employer decisions to remove the arrangements. These factors largely related to low tax morale and the perception that the rule change was unfair and unjust.

## 6.2 Behavioural Economics Concepts

In this part of the article, the additional factors of tax morale and perception of equity are analysed as possible contributors to the employers' decision to cease offering in-house benefits.

### 6.2.1 Tax Morale

Tax morale, as identified in the literature, is a taxpayer's willingness to pay taxes. Where taxes are not well-administered tax morale may be undermined.<sup>107</sup> As the results below indicate, based on the interviews conducted as well as evidence extracted from an archival data search of publicly available documents, low tax morale appears to have been a contributing factor in the decision to cease providing \$1,000 worth of in-house fringe benefits to employees.

The carbon tax, which was a major point of contention in politics in Australia, was introduced and became effective on 1 July 2012. Prior to this date, and in the lead up to the 2010 Federal election, the then Federal Labor Prime Minister, the Hon. Julia Gillard MP, promised that there 'will be no carbon tax under the Government I lead.'<sup>108</sup> Soon after the election, with Labor returned to government, the promise was broken and legislation for a carbon tax was drafted.<sup>109</sup> As such, the public

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<sup>107</sup> James 'Behavioural economics and the risks of tax administration', above n 34, 345.

<sup>108</sup> Samantha Maiden, 'Prime Minister Julia Gillard's broken promises lose voter trust', *Herald Sun* (Melbourne), 13 March 2012.

<sup>109</sup> *Ibid.*

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

were already sceptical of Federal Government changes to the tax system.

Controversy also surrounded the federal budget deficit. As previously stated, as a result of the GFC, in 2011-12 the Federal budget was in a deficit of around \$45.7 billion.<sup>110</sup> The then Federal Treasurer committed the Government to delivering a surplus of \$1.1 billion in 2012-13. With Government spending cuts and tax increases, some political and economic commentators believed that returning the budget to surplus was too aggressive and short-sighted. For example, an article in the *General Observer* stated:

I can understand it from the government's perspective, to fail to produce this long-promised surplus next May, just months out from an election would give the Coalition the sort of opening that Labor desperately wants to avoid.<sup>111</sup>

Others argued that the Government was acting in a short-sighted manner and trying to return the budget to surplus too soon. For example, prior to the release of the 2012 MYEFO the ICAA published in their 2012 Tax Bulletin that:

Yesterday, in anticipation, of the update, the Institute issued a press release maintaining our long-held view that a heavy-handed approach to spending cuts, tax increases and the winding-back of tax concessions will only serve to further erode the already subdued outlook for both business and consumer sentiment. Specifically, the Institute expressed the belief that the appropriate approach to fiscal policy, in the face of this uncertain economic outlook is for the government to step in and help bolster the non-resources sectors of the

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<sup>110</sup> Akerman, above n 91.

<sup>111</sup> James Thomson, 'Wayne Swan slashes benefits to save paper-thin surplus', *Property Observer*, 23 October 2012.

economy, which means resisting the temptation to adopt a ‘slash and burn’ approach in the [2012] MYEFO ... update simply to achieve a slender budget surplus in 2012-13.<sup>112</sup>

Deloitte stated ‘the search for surplus was leading to (1) poor decisions (timing shifts and money grabs) and (2) pressures on the economy (slowing it more amid what was already a slowdown).’<sup>113</sup>

At the same time as the changes to the FBT in-house rules there were many new and significant changes to the tax system in general. In addition to introducing the carbon tax and the mineral resource rents tax there were also changes to superannuation rules. In the 2012 MYEFO, the Australian Federal Government also announced the change from quarterly to monthly corporate tax payments<sup>114</sup> which was branded as tax trickery.<sup>115</sup> Many other FBT changes also occurred, such as the changes to the taxation of the living-away-from-home allowances, the abolition of meal card arrangements and changes to the statutory formula method in valuing car fringe benefits.<sup>116</sup>

Furthermore, many felt that the Federal Government was being overly optimistic with its forecasts of revenue. It was feared that this would lead to spending cuts and tax increases into 2013 as exemplified by the ICAA’s response: ‘In early 2013, the government’s razor gang is probably going to have to

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<sup>112</sup> Institute of Chartered Accountants, ‘Chartered Accountants Tax Bulletin’, above n 101, [5].

<sup>113</sup> Deloitte Australia, above n 95.

<sup>114</sup> Australian Federal Government, above n 1.

<sup>115</sup> ‘Tax trickery does little to fix budget ills’, Business Review Weekly, *The Australian Financial Review* (Melbourne), 23 October 2012.

<sup>116</sup> Andy Nguyen, *The end of salary packaging?* (29 August 2013) Taxpayers Australia

<[https://www.taxpayer.com.au/NewsDetail/27638/The\\_end\\_of\\_salary\\_packaging\\_](https://www.taxpayer.com.au/NewsDetail/27638/The_end_of_salary_packaging_)>.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

do some more work on spending cuts and tax increases if they want to deliver a budget surplus.<sup>117</sup> This, together with other factors and tax changes, bred an air of uncertainty around the tax system,<sup>118</sup> which was reflected not only in terms of the tax system as a whole but FBT legislation specifically.

This question was put specifically to the four interviewees in an attempt to canvas their opinion as to what factors brought pressure to bear on the Federal Government to initiate the removal of the \$1,000 in-house fringe benefits concession provided under a salary-sacrifice arrangement. Participant responses were very similar. For example, Participant B from the NFP organisation replied:

I think they're just grabbing at straws looking for looking for small finance dollars.

According to Participant D from an ASX listed company:

That's why I think fundamentally they took it out because they had massive budget deficit ... and they're desperate so they will take it out of anything and they saw that [the removal of the \$1,000 in-house fringe benefit concession] as something that they can simply take away.

The comments made by all four participants seemed to echo the views of published media reports, that the Federal Government's primary motive to remove the \$1,000 in-house fringe benefit concession that had been in place since 1 July 1986 was to achieve the objective of returning the Federal budget to surplus.

It was not only the number of tax changes that were becoming an issue but also the speed at which these changes

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<sup>117</sup> Institute of Chartered Accountants, above n 101, 1.

<sup>118</sup> James Alm, Betty Jackson and Micael McKee, 'Institutional Uncertainty and Taxpayer Compliance' (1992) 82 *The American Economic Review* 1018.

were taking place. According to the ICAA ‘the speed of change that we have experienced in recent times (revenues) clearly shows that deterioration of our financial health can happen swiftly.’<sup>119</sup> The Tax Institute stated ‘[in addition], taxpayers can only realistically deal with a certain amount of change in a short amount of time. Changes can be accommodated and in some cases financially budgeted for, but only if there is enough time to do so.’<sup>120</sup> Finally, in December 2012 less than three months after the release of the 2012 MYEFO, the Federal Government abandoned its surplus objective after it became apparent that they would not be able to deliver.<sup>121</sup>

All four interviewees commented that they were not consulted about the change to the in-house fringe benefits rules and were completely caught off-guard when the 2012 MYEFO was released announcing the abolition of the \$1,000 in-house concession. Not only had this change come about with no announcement or consultation, but there was also a lack of a phase-in period. While existing in-house arrangements could continue until 1 April 2014, the concession ceased to apply immediately for new arrangements entered into after 22 October 2012.

For the ASX listed company, because of the structure of their arrangements, the change was immediate for both existing and new arrangements. Hence, it was clear that the FBT rule change came as a complete surprise to Australian employers and greatly impacted on the way they remunerated staff. This was reflected in one particular comment made by Participant B:

You never know what’s going to be around the corner in the legislation etc.

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<sup>119</sup> Institute of Chartered Accountants, above n 92, [8].

<sup>120</sup> The Tax Institute, ‘2012 – 13 Federal Budget Submission’ Submission to the Department of the Treasury, 16 March 2012, 2.

<sup>121</sup> Deloitte Australia, above n 95.

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

Participant A noted that the change ‘came out of the blue.’ Similarly, Participant B was not aware of any changes that were forthcoming and commented:

No we weren’t. It came as a complete surprise to us.

The rapid extent of tax law changes, coupled with the fact that many of the changes were seen purely as a means to bringing the budget back into surplus with no account of the economic conditions, the surprise with which such changes came about and the lack of consultation, all appeared to contribute to a lack of willingness to pay the additional tax, or low tax morale.

### **6.2.2 *Perceptions of Equity***

Based on comments from the four interview participants, together with a review of the archival data, the removal of the \$1,000 concession for salary packaged in-house fringe benefits was perceived as unfair and inequitable by employers, which subsequently impacted on their willingness to pay the additional FBT tax resulting from the rule change.

Interviewees were asked who they believed would be most adversely affected by the removal of the \$1,000 in-house concession. All interviewees believed that employees, and not employers, would be the biggest losers from the change. For example, Participant A noted:

I certainly think there are losers. I think that the Government justified [the removal of the concession] as employees shouldn’t have been winning in the first place. I think if you ask the average employee who used to be able to package it, they will say they lost out.

Participant B added:

Everybody's a loser. I think the employees are probably the biggest losers.

According to Participant C:

I'll definitely say employees were the biggest losers.

Some interviewees believed that the Government was attacking salary packaging as a whole. The shutting down of such benefits was discussed during the interview with Participant C:

My opinion is that the Government is taking away benefits that employees would have had. It's becoming harder and harder for us to provide benefits to our employees.

All of the interview participants stated that the very reason why they provided the arrangements in the first place was for the benefit of their employees, whether it be to help them out as much as possible or because it is part of the firm's corporate culture. Participant B further stated that for NFP entities it increased their attractiveness as an employer. It was clear that the provision of these arrangements was for the benefit of employees rather than employers. In the case of Participant C, who had a separate entity within their organisation that managed the in-house fringe benefit concessions for all staff, a whole division was disbanded with several employees losing their jobs. They had many disgruntled employees, some blaming the company for the loss of the benefit, not a change in tax legislation. These statements demonstrate that employers initially provided in-house fringe benefits because it benefited their employees, not because it benefited the employers.

In the 2012 MYEFO, the Australian Federal Government stated that they were trying to protect low-to-middle income

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

earners by targeting high income earners in the budget.<sup>122</sup> The then Federal Treasurer was quoted as saying that cuts would be targeted in ways to ‘protect low- and middle-income earners and the community’s most vulnerable.’<sup>123</sup>

Each interviewee was subsequently asked to provide their opinion as to whether the removal of the \$1,000 in-house fringe benefit concession would impact more on low-to-middle income employees or executives. Given the comments made by the Federal Government regarding their targeting of higher income earners and the protection of low-to-middle income earners, this is an important question. Each participant stated in different ways that they believed that the lower income earners were the ones who would be the most negatively impacted upon given that it was only a \$1,000 benefit. For example, Participant B stated:

It will have a substantial effect on the lower income earners... For [NFPs] it’s used as a little bit of a carrot to keep people. But, it’s not something that’s going to make or break those decisions.

A similar comment was made by Participant D:

If you’re talking real benefit then no doubt someone with a lower marginal tax rate is worse off.

Participant C noted that it depended on what employees were getting with their benefit. High income earners tended to salary package one type of benefit and low income earners another and so each category was at a loss. However, the consensus was that low income earners would feel it the most.

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<sup>122</sup> Stephen Scott, ‘I’ll spare the poor from cuts, says Swan’, *The Advertiser* (Adelaide), 22 October 2012.

<sup>123</sup> Stephen Scott, ‘Rich tax hit - Swan razor to slice wealthy, salary perks’, *Herald Sun* (Melbourne), 22 October 2012.

A review of the archival data supports the abovementioned comments and reveals that several commentators also believed that the removal of the \$1,000 in-house concession would actually hurt those taxpayers the then Federal Treasurer stated the Government was trying to protect.

Michael van Schaik from Moore Stephens stated:

In making the announcement, the Federal Government has trumpeted that such measures reflect ‘Labor values’ and are aimed at protecting low and middle-income earners. It is our view the proposed measures are at best, short-sighted and misguided. It is evident that such programs are most beneficial and especially popular amongst employees with taxable income range that would be subject to marginal tax rates of 20.5% and 34% (including Medicare Levy) – purportedly the exact class of employees the Federal Government is seeking to ‘protect’.

Rather than furthering their interests, it is our suggestion that pursuit of such a policy will adversely impact low and middle-income earners and devastate employers who are already struggling for sales in this tough economic climate.<sup>124</sup>

Lam<sup>125</sup> wrote that the removal of the \$1,000 in-house concession had negatively impacted teachers and other school staff who would no longer be able to salary-sacrifice their children’s school fees. Along with teachers, utility workers and

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<sup>124</sup> Michael van Schaik, *Australia: Removal of in-house fringe benefits concession – aims at the ‘fat cats’?* (28 October 2012) Mondaq <<http://www.mondaq.com/australia/x/203170/Income+Tax/Removal+of+inhouse+fringe+benefits+concession+aimed+at+the+fat+cats>>.

<sup>125</sup> Andrew Lam, ‘Schools impacted by removal of FBT Concessions for In-House Benefit’, *Mondaq Business Briefing* (Sydney), 20 March 2013.

## ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES

retail staff were among those identified as those ‘expected to suffer from the change.’<sup>126</sup>

Others reported that commentators speculated that ‘the hardest hit employers are likely to be school and insurers, as well as retailers utilizing card mechanisms to allow employees to salary sacrifice the cost of goods purchased’<sup>127</sup> The views presented by the four interviewees as well as a review of the archival data suggests that the FBT rule change hurt those the Government had promised to protect – the low-to-middle income earners.

The disproportionate effect on low-income earners is one factor that can have a great and negative impact on taxpayer willingness to pay tax.<sup>128</sup> The data presented above indicates that this was the case with the removal of the \$1,000 in-house concession which was identified immediately as affecting low-to-middle income earners as opposed to high-income earners.

As identified by Holler et al, the framing of the tax issue can have an impact on the decisions of taxpayers.<sup>129</sup> In the 2012 MYEFO, the Federal Government justified their decision to remove the \$1,000 in-house concession as returning the use of the concession to its original intent.<sup>130</sup> However, an analysis of the collated data revealed that the media regarded the concession as a ‘loophole’. For example, one particular article cited the

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<sup>126</sup> Katie Walsh, ‘Fringe benefit tax breaks sacrificed’, *The Australian Financial Review* (Melbourne), 27 October 2012.

<sup>127</sup> Tax and Accounting Insight ‘FBT Concession for in-house fringe benefits via salary packaging removed’ Thomson Reuters 26 June 2013, <http://taxinsight.thomsonreuters.com.au/fbt-concession-for-in-house-fringe-benefits-via-salary-packaging-removed/>

<sup>128</sup> James ‘Behavioural economics and the risks of tax administration’, above n 34, 345.

<sup>129</sup> Holler et al, ‘Framing of information on the use of public finances, regulatory fit of recipients and tax compliance’ (2008) 29 *Journal of Economic Psychology* 597.

<sup>130</sup> Australian Federal Government, above n 1.

example of a company that permitted employees to salary package \$1,000 worth of tickets to attend sporting events such as the V8 super cars.<sup>131</sup> Such articles used this extreme example when mentioning that the Government was closing a ‘loophole’.<sup>132</sup>

Interviewees were asked their opinion as to whether or not they believed salary packaging of in-house fringe benefits was a loophole. All four interview participants did not consider that the \$1,000 in-house concession was a loophole. For instance, Participant A mentioned that the use of the sporting ticket example was extreme and went on to say that salary packaging was common and widely used by all organisations. Participant B said directly that it wasn’t a loophole, that it was simply a small opportunity for employees to get a slightly better benefit. Participant C also stated that the rules allowed it so it wasn’t a loophole. Finally, Participant D who was quite opinionated on the matter said that it was most definitely not a loophole, but rather the Government and certain sections of the media had portrayed it as such by using extreme examples, and this was used as a justification for the FBT legislative change. Hence, it was evident from responses by interviewees that the concession was not perceived as a loophole. To quote Participant D:

That’s part of the political spin. I wouldn’t put too much into Swanny [Wayne Swan] calling it a loophole. You’re getting rid of it – fine. But don’t label it like somebody is trying to abuse exactly what was put in place.

These comments support the contention that employers viewed the FBT legislative change was perceived as unfair and thus impacted on the willingness of employers to pay the additional FBT.

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<sup>131</sup> Martin, above n 98.

<sup>132</sup> Scott, above n 122.

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

All four interview participants stated that they would immediately cease providing in-house fringe benefits to new employees via a salary sacrificing arrangement. All indicated that they would continue to allow such arrangements for existing employees until 31 March 2014, being the end of the transitional period for those employee with arrangements in place on the date of the change.

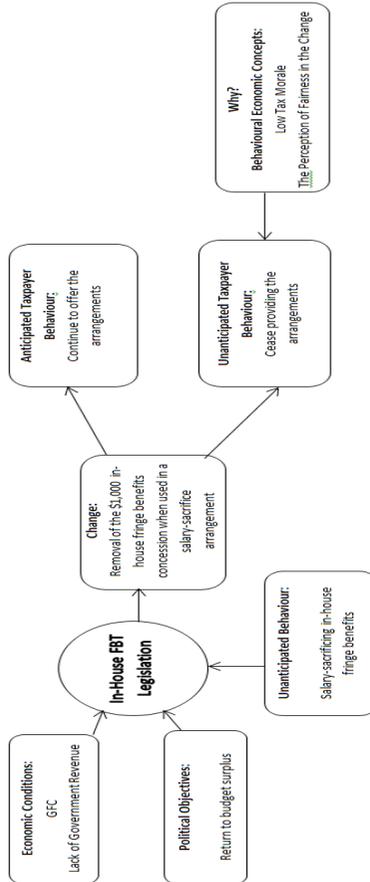
When asked as to why they would cease their current arrangements, all four interview participants stated that if they were to continue to offer the in-house arrangements they would have no choice but to 'pass on' the resulting FBT liability to their employees and so it was in their employees' best interest to cease the arrangements. Participant A from the Government Department stated:

No unfortunately because there would be costs to government if we continue to offer it so because of the way that the law's been changed, we simply ... can't incur any FBT liability. So we just had to say, 'sorry but that's the end of that one'.

When asked what other forms of remuneration, if any, would be provided to employees in place of the \$1,000 in-house concession, three of the employers stated that they would not be offering their employees anything to replace the \$1,000 in-house concession. This meant that those employees would be financially worse off as a result of the abolition of the FBT concession. In the case of the Government Department, employees were provided with the option of having it replaced with another fringe benefit or cashing it in the form of additional salaries and wages.

The evidence presented indicates that the FBT rule change on 22 October 2012 led to significantly less participation in salary-sacrificing of in-house fringe benefits. Adapting the Oats and Sadler Model, and incorporating behavioural economics theory, the factors affecting the FBT change and the subsequent

response can be depicted as follows:



Overall, the evidence supports the view that employees were perceived as the biggest losers from the legislative change.

# **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

## **7. CONCLUSION**

The objective of this article was to explore the reasons behind the legislative change to the in-house fringe benefits tax rules as outlined in the 2012 MYEFO. More importantly, the purpose of the article was to assess the response by Australian employers to the tax rule change, and to subsequently assess the impact that the change had on Australian employers and employees. In order to do so a case study approach was undertaken in which the phenomenon to be studied (the change to the in-house FBT rules) was the case. Four interviews were conducted and supplemented with a search of published archival materials. Thematic analysis on interviews and archival data alike was conducted and classified in terms of tax morale, the perception of equity and in relation to the research questions specifically.

The first research question concerned the factors that brought pressure to bear on the Australian Federal Government to change the tax rules. Of the nine factors identified in the conceptual map of tax rule change, the two major factors that appeared to drive the FBT legislative change were the prevailing economic conditions and the political objectives of the Government. That is not to say that the other seven factors outlined in the Oats and Sadler model may have played a contributing role in the FBT change. However, from interviews conducted and a review of the archival data, it appears that two conditions, namely, economic conditions and the political climate at the time of the legislative change, contributed significantly to the decision to change the FBT concession.

Following an increase in fiscal expenditure during the GFC, the Federal Budget was in deficit of approximately \$45.7 million in 2011-2012. The then Federal Treasurer committed the Government to delivering a surplus of \$1.1 billion 2012-13. However, decreased tax receipts and revenues owing to a

depressed global economy and introduction of profit-based taxes made it clear that the budget surplus would need to be revised and cuts to concessions made. The use of the \$1,000 in-house fringe benefit concession to salary packaged in-house fringe benefits was apparently an unintended or unanticipated use of the law. As such, the Federal Government removed the concession whereby employees could salary-sacrifice in-house fringe benefits from pre-tax dollars. By doing so, the Federal Government expected to raise an additional \$445 million dollars in revenue. However, by failing to take account of behavioural economic concepts in the review of tax law, they were unable to anticipate adequately the reaction of taxpayers to the changes (that is, unanticipated behaviour).

The second research question related to the response by Australia employers, the taxpayers in this instance, to the change of the in-house fringe benefit rule, particularly this unanticipated behaviour. Qualitative data obtained from four semi-structured interviews conducted with key tax managers in Australian organisations revealed that, following the legislative change, employers immediately ceased providing in-house fringe benefits in the form of salary packages to their employees, stating that they would have to pass on the FBT liability to their employees thereby making it financially unattractive.

Following a multitude of rapid and significant changes to many areas of the Australian tax system and failed Government promises, it appeared that tax morale, or the inherent willingness to pay tax, was relatively low at the time that the FBT change occurred. The removal of the \$1,000 in-house fringe benefit rule was perceived by interviewees as unfair. It was recognised by professionals that the change would affect low-to-middle income earners as opposed to high income earning executives, even though the Federal Government claimed that the change would protect lower income earners. Indeed, the unanimous view of all interview participants was that their employees were

## **ASSESSING TAXPAYER RESPONSE TO LEGISLATIVE CHANGES**

the big losers from the removal of the concession. The change came unexpectedly and without consultation. The concession was labelled as a loophole, yet none of the interviewees considered it one. Ultimately, the removal of the concession would simply increase costs to the employer and employees lost out.