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Undertaking empirical tax research: a personal experience

by

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Abstract

Getting published is the name of the game but how to get started? Once up and running as an early career researcher you may seek to add another dimension to your research in the form of policy/jurisprudential analysis or empirical research. Both streams can take the legally trained scholar out of their comfort zone, arguably more so with empirical research involving surveys and statistical analysis. But there is an alternative form of empirical research utilising semi-structured interviews that can be both more flexible and insightful than the use of surveys.

This paper canvasses the lessons for researchers drawn from the author's experience. In particular, it explores the semi-structured interview methodology focusing on issues associated with its implementation.

Undertaking empirical tax research: a personal experience

Introduction

The request to speak to you this morning about my experiences in tax research, whilst flattering, has caused to dispel any misconceptions I had about my relative youth and starkly brought to my attention that I am closer to retirement than to the beginning of my career. When I looked back at my CV in preparation for this paper it seemed like only yesterday that I published my first articles but, alas, it was way back in 1987. Since those care free early days I have spent almost 20 years of my life in academia with the balance in practice as the National tax director for Deloittes and later Ernst & Young.

Research and writing papers was not a major focus for me in my undergraduate degree. I was one of those rare students who preferred exams. I certainly never intended to make a career out of research or being an academic. After 18 months of disillusioned private practice in Tasmania I took up a suggestion to apply for a tutorship position at the Law School at the University of Tasmania. My motivation, apart from achieving a substantial pay rise (it was a long time ago after all), was to commence a Masters by a research with a view to subsequently moving to Melbourne and heading into specialist legal practice. At that stage my interests were split between company law and taxation law and indeed my Masters, which subsequently became a PhD, was in company law. In fact, I continue to teach company law to this day (although no longer publish).

Well here I am a 24 years later comfortable in my skin as a tax academic with approaching 200 books, book chapters, refereed articles, non-refereed papers and presentations under my belt. But here I would just like to make the aside that numbers are not everything and there are many great researchers out there with a small portfolio of high quality and lengthy research papers. Similarly there are many very worthy academics who focus on writing textbooks and so have less time for research papers. However I will warn you that having sat on appointment and promotion committees often the raw numbers of publications are given far more significance than they ought. As a pragmatic rule of thumb then if a paper looks like exceeding 30 A4 pages seriously consider whether the research can be the subject of a number of publications. Also ensure that you leverage off the one piece of research to try and achieve as many publications from it as possible (without, of course, going to the extent of plagiarising yourself).

How did I start?

When counseling early career staff as to how to get published it is often evident that they have a real fear of rejection and a concern that they do not know enough to make a sensible comment. I guess this humility in the junior ranks of academia makes up for the lack of humility that you often see at the senior levels! It is certainly wise to acknowledge that your knowledge may be limited and you may not appreciate all the

nuances and background to the legislation and cases on which you are writing but it comes a time when you really just need to embrace the moment. You need to get across a topic as best you can and, if possible, achieve some inside knowledge that will be news to the World. You should also appreciate that reviewers and editors tend to be gentler with submissions from early career academics (or at least I am) but, of course, reputation is everything and you do not want to get off to a bad start.

My early publications suggest that I was rather naive and brash, writing on topics that I thought were novel but in hindsight would have been reasonably well appreciated within the tax profession. However they were drawn from my experiences in practice and so, I guess, I was able to provide some insight that was not available in existing published documents. These early publications led on to requests to give presentations on specified topics (of which most practitioners knew little about at the time) which I then submitted for publication. I was also junior counsel in the first Part IVA case, Case W58¹, which then marked me as rather an expert in this area and led to numerous publications where I was confident that I had something new and considered to say.

Lesson: to start a publications career obtain expertise in a topic either from your Masters or PhD research or experiences in practice and then have courage. Prior to submission have the paper reviewed by a knowledgeable colleague and, most importantly, make sure that it is well structured with useful headings, grammatically correct and with no spelling or punctuation errors.

How your research might develop

Most tax academics will start off publishing black letter law type articles explaining and analysing what the law is (so called doctrinal research). These will often be case notes or explanations of legislation often deriving from work they are doing in their research thesis or in the preparation of teaching materials. This is a great and safe way to start but it is just that, a start.

After five or so years teaching and researching in tax, especially if you have completed a postgraduate degree, you should start to develop a greater insight into the law which should enable you to go beyond a simple statement of what the law is to exploring policy and even jurisprudential considerations underlying the black letter law and expressing an opinion / recommendation (non-doctrinal research). If you are not too conversant with jurisprudential and sociological concepts then consider undertaking the course on tax jurisprudence offered by Professor John Prebble from Victoria University, Wellington.

One way to really tease out and understand policy considerations behind the law is to undertake international comparisons. Once you appreciate that whilst there is a convergence in most tax systems around the World there are also contrasting approaches to dealing with the same issue based on different emphases on policy considerations. So, for example, you might begin to understand the significance of

¹ Case W58 [1989] AATA 152; 89 ATC 524.

either a foreign tax credit system or a foreign income exemption system depending on whether a country is a net capital importer or exporter. Or you might begin to see a different treatment of fringe benefits depending upon whether the top marginal rate is aligned with the corporate income tax rate.

Certainly undertaking some comparative international tax research is a relatively easy and enjoyable way to expand your publication list and begin to focus on the policy behind our laws, not just the meaning of the law itself. A good way to start is to get a hold of the weekly publication *Tax Notes International*, focus on particular countries or topics you are interested in and see what developments have occurred in recent times. Even if your interest in a country stems from non-tax considerations I guarantee that once you start looking at their tax system all sorts of interesting comparative elements will arise.

What about empirical research?

I have a great suspicion of surveys and statistics and so for years refused to undertake any empirical focused research. Having been legally trained I also saw such research as mundane and outside my skill set.

However I now acknowledge that empirical research is an important way in which academics can add something new to the knowledge base and test out the existing theories. Most empirical research by academics is also impartial unlike a lot of the research performed by management consultants and accounting firms on behalf of lobby groups and the Tax Office.

Nevertheless I still approach survey results and statistical analysis with suspicion. I acknowledge that a lot of very useful work has been done but when I read papers complete with discussion on independent, dependent and mediating variables, population sizes, statistical norms and regression theory my eyes cloud over and I go straight to the findings. Sometimes when I have dug deeper looking at this research I have been less than impressed by the nature of the questions asked in the survey forms sometimes seem to solicit particular answers. Still I acknowledge that surveys and statistics are a large field of tax research but I am not the right person to talk about it.²

Quantitative methodologies are, however, not the only sort of empirical research. Qualitative research methodologies are also available such as focus groups, in-depth interviews and semi-structured interviews. My experience in empirical research has been in the semi-structured interview format. Pursuant to this format interviewees with potentially insightful knowledge in the area of interest are the subject of a conversational type interview which is flexible enough to tease out issues as they develop from the interview but focused enough to (hopefully) extract sought after information. These types of interviews can provide academics with the insight we

² For an excellent discussion of empirical research techniques see Margaret McKerchar, "Philosophical paradigms, strategies of inquiry and knowledge claims: understanding the detail of research design in taxation" *20th Australasian Tax Teacher's Conference*, University of Tasmania January 2008 (McKerchar).

may otherwise lack from not working in practice or government. At the same time, because we are impartial, possibly have a better handle on the big picture and have the time, we can draw findings from such research that might otherwise be missed by those immersed in it.

I have used this semi-structured interview approach now six times:

1994 - interviews with tax professionals throughout Southeast Asia with a view to identifying the determinants as to where a multinational company establishes its regional headquarters (and how important the tax regime is),³

2001 - interviews with Japanese officials and academics with a view to understanding certain nuances of the Japanese tax system and whether there are any lessons for Australia,⁴

2004 - interviews with practitioners and government and NGO officials in Vanuatu with a view to understanding the extent of tax haven activities and the implications of the OECD's project on harmful tax practices,⁵

2006 - interviews with Melbourne tax practitioners with a view to understanding the dynamics of their relationship with the Australian Tax Office,⁶

2007 - interviews with academics and officials based in Dubai with a view to understanding the significance of Islamic finance from the perspective of foreign investment into countries such as Australia,⁷ and

³ *Should taxation incentives be introduced to encourage the location of South East Asian/South West Pacific regional corporate headquarters to Australia?*, University of Tasmania, Hobart 1994 and "Are taxation incentives designed to attract regional corporate headquarters likely to be effective?", *International Trade and Business Law Annual*, Vol 2, No 2, May 1996.

⁴ "The Japanese Consumption Tax Experience: Lessons for Australia?", *Journal of Australian Taxation*, Vol 5, No 2, June 2002, 185 – 212; "Japan's Income Tax System – Lessons for Australia" (2001) 11 *Revenue Law Journal* 97 – 126; "A comparison of the Australian and Japanese Corporations Tax Reorganization rules" (2002) 6 *Asia-Pacific Journal of Taxation* 93 – 103; "Tax Consolidation Regimes – Australia and Japan compared" (2002) 6 *Asia-Pacific Journal of Taxation* 98 - 111.

⁵ "To join the international tax cartel or not? How should Asia respond to the OECD's harmful tax regimes project?" (2005) 11 *New Zealand Journal of Taxation Law and Policy* 299 - 313. Reprinted in (2007) *Journal of International Taxation* 1 – 10 and "The Legacy of the OECD's Harmful Tax Practices Initiative: Implications for Australia and Vanuatu" (2004) Vol 8 (No 4) *Asia-Pacific Journal of Taxation* 70 - 97.

⁶ "The Australian Tax Office / Tax Profession partnership: lessons from a pilot interview program" (2008) 23 *Australian Tax Forum* 29.

⁷ "Eliminating Income Tax Barriers to inbound Islamic Investment" (2008) 62 *Bulletin of International Taxation* 238 -247.

2007 - interviews with New Zealand tax practitioners with a view to understanding the dynamics of their relationship with the New Zealand Internal Revenue Department.⁸

I find this type of research very exciting and an adrenalin rush. Maybe that is because it is not without its risks and certainly some interviews are much more productive than others. There is also a lot of work involved in setting up the interviews, not the least of which is getting the proposed research through the Universities' ethics committees.

There is no doubt, however, that the research findings obtained can tap new frontiers. My work in Southeast Asia resulted in a lengthy submission to the Federal Government which was followed up by approaches from various sources for almost a decade afterwards. The research was even written up in *Time magazine* although, alas, I failed to make the shortlist for man of the year!

The interviews in Japan were the only way (apart from learning to read Japanese—something I have been struggling unsuccessfully with for nine years) to obtain an understanding of certain Japanese tax laws in relation to which very little English translation was available. I was also able to get some understanding as to how these laws worked in practice.

The interviews in Vanuatu gave me a fascinating insight into the workings of tax havens. I was in the middle of a rather a hostile environment because both the IMF and OECD had a presence in Vanuatu that was not appreciated by the proponents of the tax haven regime. Being independent I was able to move between the two groups.

The interviews in Dubai were the most difficult. However I did manage to gather enough insight into the significance of Islamic finance for the paper to scrape in a best conference paper prize and be the basis of a subsequent submission to the Australian Treasury.

It is the interview programs in Melbourne and New Zealand of tax practitioners that the rest of the paper will primarily focus on. These interview programs are part of a larger research project that Associate Professor Mark Burton from Melbourne University and I have been focused on for four years. The findings have been rather controversial, being inconsistent with Tax Office commissioned survey results, and I think this highlights the point I made earlier of the importance of impartial empirical research by academics. Mark and I are hoping to expand this research to include Canada in 2011.

A semi-structured interview approach to obtaining empirical data

⁸ “The limits of the responsive regulation model: what really defines the relationship between the IRD and tax practitioners” (2009) 15 *New Zealand Journal of Taxation Law and Policy* 111 – 132. Jointly authored (50%) with Dr Mark Burton. Reprinted in (2009) 24 *Taxation Today* 31.

Theoretical basis

All empirical type research needs to start with a clear purpose which will then feed into the design of the research methodology. Our purpose was to assess how the partnership model of the relationship between the Australian and New Zealand tax administrators and the respective tax practitioners was working in practice and whether it was a sustainable model. If, as anecdotal evidence and our analysis suggested, the model was breaking down in practice then the secondary question was whether and how the model might be improved upon.

Due to our bias against quantitative methodology, as discussed earlier, (and probably reflecting the fact that our philosophical paradigm is one of interpretivism rather than positivism)⁹ we decided to engage a qualitative methodology (adopting the theoretical framework of either phenomenology or grounded theory).¹⁰ To this end semi-structured interviews offered the best outcome.¹¹

Preliminary work

As with my previous experiences using this methodology the work starts with a detailed literature review of the topic with a view to identifying the gaps and inadequacies in the knowledge base. A list of themes that need answering is then settled which form the basis of the questions asked at the interviews.

Next potential interviewees are identified. This is not necessarily about trying to identify a broad and representative sample size but rather identifying practitioners or officials who may have a considered view on the topic at hand. Having said that, in the case of tax practitioners we were cognizant of the eclectic nature of the group and wanted to try and obtain the views of the different types of practitioners (for example lawyers, accountants, barristers, small business advisers and large business advisers). This is where the Internet and existing contacts are very useful, the latter even more so if we are able to use their name when approaching the interviewee. This is certainly preferable to cold calling.

Then it is just a matter of contacting the interviewees and setting up the logistics of the meetings which would typically be at their offices at a time convenient to them. A lot of thought must go into the letter requesting the interview. It needs to be short and to the point stating what you are about and establishing your credentials. To date our success rate with obtaining a positive response has been very high – in the 90+% region.

The interviews¹²

We have discovered that about three interviews per day is enough to provide for traveling time between interviews and some opportunity to reflect on whether the questions and approach to the interviews needs revision. The process can also be physically draining and intense.

⁹ See McKerchar at p3.

¹⁰ Id, p10-12.

¹¹ The alternative of the use of focus groups was dismissed due to the sensitive nature of the matters being discussed. In-depth interviews were not appropriate given that we wanted to maintain flexibility during the interviews to tease out our understanding from our "expert" interviewees.

¹² Also see McKerchar at p12-13 for a discussion of interview methodology.

In the letter requesting the interview we promise that the interview will be short, between 30 and 60 minutes. The first few minutes is critical to establish what our research project is about, that we are independent and that we are credentialed and not about to waste the interviewee's time. The questions are structured in such a way that the interview will hopefully flow like a conversation and we try to quickly establish a rapport and empathy with the interviewee to put them at ease. The interviews are not confrontationalist or provocative but rather more emphatic in nature.

Typically the interview will be of one person but sometimes I have interviewed two or even small groups of interviewees. I have mixed views on this. Certainly it is very hard work if you are the sole interviewer, especially if the attempt to do the interview is over a meal! Also I am not always sure that the responses are as candid as they might otherwise be given the presence of other practitioners or officials.

For the Melbourne interviews I was on my own whilst in New Zealand both Mark and I were present. We concluded that it was better to have two interviewers with one primarily running the interview and the other stepping in if something is missed or not clear.

Whilst we take notes as the interview proceeds we also seek the permission of the interviewee to record the interview, which is typically granted.

A useful technique that we have discovered is that on finalising the interview (and turning the recorder off) to then have a loose relaxed exchange. If you have been successful in establishing a rapport then the interviewee tends to relax and this provides an opportunity to possibly obtain some very frank insight. I had some great success with this in Vanuatu. At this time we usually provide a token gift which also helps create a relaxed atmosphere. We also undertake to send to the interviewee a copy of our notes and findings that they can further comment on before anything is published. Of course we make assurances of confidentiality.

Sometimes I have walked out of interviews after only 30 minutes downcast and without much success but the majority of times the interviewees are very forthcoming. This is often a product of selecting the right people who have some special knowledge or interest in the subject matter and, therefore, are keen to express their views. On a few occasions I have even had to wind up the interview, even though the interviewee seems keen to continue, as it is being carrying on for so long - another reason why three interviews a day is enough to allow for the possibility of going over time.

Writing up the results

It is important in writing up the results of the interviews to acknowledge the limitations of your research methodology. The interview findings are merely the opinions of a select group of practitioners or officials. However if you have chosen your interview group carefully the people interviewed may be representative of a large constituents base and/or have particular experience and insight into the area in which you are researching. But be wary of making too greater generalisations from your findings. It certainly helps if you can identify other research or theory which is

supported by the observations from your interviewees (known as cumulative validation).¹³

Due to the small sample sizes we did not consider it necessary to use coding and software packages in order to be able to present the data and identify themes. We had initially intended that both interview programs be pilots with a view to conducting a broader range of interviews around both countries. Had we proceeded with this exercise then it would have been necessary to explore ways in which the data could have been usefully collated. However given the consistent themes that we obtained from our samples we doubted that an exercise looking at a larger population size would add much value. We were supported in this view by literature that suggested that small unrepresentative samples are not a bar to the findings from qualitative methodology being reliable. Furthermore, because in most cases our interviewees had been selected for their special insight into the topic the methodology had elements of a Delphi group of experts consultative approach.¹⁴

As noted above we found a definite theme evolving from the interviews and it was rare that there were opposing views. Even Internal Revenue Department officials in New Zealand supported some of the adverse comments made by practitioners!

Should your findings be controversial, be prepared to be attacked for bearing a message that might not be appreciated by all. When I first presented my findings from the Melbourne interviews at the 2008 Brisbane Australasian tax teachers conference the Commissioner of Taxation, who was in the audience, was not impressed by the findings that practitioners were critical of the implementation of the ATO's partnership or mutual dependence model. He insisted that our findings were completely at odds with the ATO's survey results that showed a great degree of satisfaction with the ATO by practitioners and he suggested that the people I have interviewed were "cowboys". In fact, they were far from it being mostly senior and respected members of the profession in Victoria.

In due course we looked at the surveys being used by the research agency commissioned by the ATO and then understood why we may have been getting conflicting data. At the same time as further fuelling my distrust of surveys I also learnt a lesson that I need to be more sensitive when presenting contentious findings. I have no doubt that the senior membership of the ATO are sincere in their pursuit of a closer relationship with the profession but our research suggests that the implementation of this model at the coalface is problematic.

Conclusion

Taxation law research, as reflected in the published papers, primarily focuses on the black letter law doctrinal approach of analysing and explaining what the law is. Less common is non-doctrinal research focusing on policy and/or jurisprudential discussion often leading to suggestions as to what the law ought to be. What I would describe as a third subset of tax law research is empirical with the bulk of this work

¹³ McKerchar at p14.

¹⁴ McKerchar at p13-14.

being quantitative (typically survey based), but also sometimes qualitative typically in the form of focus group discussions¹⁵ and sometimes using the Delphi methodology.¹⁶ Interview type research seems to be much less common. Mark and I could only identify three other tax law researchers who had published results in Australia arising from semi-structured interviews in the last two decades.¹⁷

If your research takes you in the direction of empirical studies then I commend to you the semi-structured interview approach either as the sole basis of conducting the research or in conjunction with other methodologies such as surveys or focus group analysis. An interview approach will not result in hard statistics. However because the questioning style is much more flexible and, if you choose your cohort of interviewees carefully, there is an opportunity to obtain a much greater insight into the issues under investigation than the mere compilation of raw statistics that could be influenced by many inadequacies within the research framework.

In this age when we as tax researchers spend so much of our time hunched over legislation or, even more so, staring at a computer screen the personal interaction element of interviews is also refreshing. It gets you out of your ivory tower and even out of the country to interact with people who may have surprisingly different views and perspectives than you have. Your paradigms can be challenged with the result that your research may be much more enlightened than it would otherwise have been had you remained seated behind your desk. Overall the experience can be very rewarding.

The downside is that such research is time consuming, can be costly, may be difficult to set up and will definitely take you outside your comfort zone. Above all it is risky. Nevertheless I encourage you to give it a go.

¹⁵ Cynthia Coleman has been involved in considerable research using focus groups. Also see McKerchar at p13.

¹⁶ Chris Evans, "Unravelling the mysteries of the oracle: the voice of the experts", *19th Australasian Tax Teachers Conference*, University of Queensland, 22-24 January 2007

¹⁷ Roman Tomasic and Brendan Pentony, "Tax compliance and the rule of law: from legalism to administrative procedure?" (1991) 8 *Australian Tax Forum* 85 and John Braithwaite, "Chapter 12 – Through the eyes of the advisers: a fresh look at high wealth individuals" in Valerie Braithwaite (ed) *Taxing Democracy: Understanding tax avoidance and evasion*, Ashgate 2003 at 245. McKerchar identifies some others at p12.