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**ALLEGRA CRAWFORD, ASSISTANT EDITOR**

Research Assistant, Victoria University of Wellington School of Law  
[allegra.crawford@vuw.ac.nz](mailto:allegra.crawford@vuw.ac.nz)

**LAURA LINCOLN, ASSISTANT EDITOR**

Research Assistant, Victoria University of Wellington School of Law  
[laura.lincoln@vuw.ac.nz](mailto:laura.lincoln@vuw.ac.nz)

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## Announcements

Collected Papers by the Right Honourable Sir Ivor Richardson  
Part I Tax Avoidance

The Richardson Series collects the papers of the Right Honourable Sir Ivor Richardson, Distinguished Fellow of the Victoria University of Wellington Law Faculty. The Faculty gratefully acknowledges the sponsorship of the New Zealand Branch of the International Fiscal Association, whose generosity funds the Richardson Series.

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# **LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES**

## **VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPER S**

### **"Attitudes to Income Tax Avoidance"**

*Inaugural Address, Victoria University of Wellington, 1967*

*"Attitudes to Income Tax Avoidance" (1967) 30 NZJPA 1*

*[Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 1](#)*

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law

Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

This paper discusses the growing importance of income tax law, the corresponding increase in tax avoidance, and the different perspectives on tax avoidance. A brief history of income tax is given, and an analysis of the competing objectives of an income tax system, its inherent problems, and the possible solutions to these. There follows an explanation of what is meant by tax avoidance, the features of the New Zealand income tax system which create opportunities for tax avoidance, and the arguments against permitting this on a large scale. The paper then outlines the attitudes towards tax avoidance of the legislature, judiciary, revenue, and taxpayers, before concluding with an observation as to the increased interest which income tax law holds for both lawyers and teachers and students of law.

Abstract by Allegra Crawford.

### **"And Now the New Section 108"**

*New Zealand Law Journal, pp. 560, 1974*

*[Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 2](#)*

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law

Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

Section 108 of the Land and Income Tax Act 1954 was of great practical significance as a general anti-avoidance tax section, but was plagued by difficulties of interpretation and application. In this article, Sir Ivor Richardson reviews the development of section 108, the reasons for recasting the legislation to overcome some of the problems with its drafting, and the broad effect of the new provision.

Abstract by Allegra Crawford.

### **"Appellate Court Responsibilities and Tax Avoidance"**

*2 Australian Tax Forum 3, 1985*

*[Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 3](#)*

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law

Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

The subject raises two questions for consideration: the interpretation of tax legislation, and the characterisation of transactions for tax purposes. This paper briefly outlines the problems of drafting tax legislation, before describing the different judicial approaches to interpretation of tax legislation, including the scheme and purpose approach of New Zealand courts. In considering when the scheme and purpose of the legislation will necessitate re-characterisation of transactions for income tax purposes, there is a discussion of the business purpose requirement, and an analysis of the tax effect of the assignment of personal exertion income to a third party. Concerning the manner in which the character of a transaction is to be determined at law, the paper provides a discussion on form and substance, analysing the English 'fiscal nullity' approach and its reception in other jurisdictions, and concluding that such an approach

must be firmly grounded in the scheme and purpose of the legislation.

### **"Judicial Approaches to Tax-Influenced Financial Arrangements"**

*TAXATION OF CORPORATE DEBT FINANCE*, p. 11, R. Krever, Y. Grbich, P. Gallagher, eds., Longman Professional, 1991

[\*Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 4\*](#)

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law  
Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

A study of judicial approaches to tax-influenced financial arrangements raises two issues: the characterization of transactions for tax purposes, and the interpretation of tax legislation. This paper addresses the first in the context of form and substance approaches, considering how broad a view the courts should take in looking for the real substance of the transaction. Subsequent to an explanation of the conventional form-based approach of the courts following the Duke of Westminster, the exceptions to this rule are raised (sham transactions and arrangements to which a general anti-avoidance provision applies), leading to a discussion of the development of the fiscal nullity doctrine in England, and its rejection in Australia. On the subject of Judicial interpretation of tax legislation, this paper analyses the scheme and purpose approach adopted in New Zealand and its limits; that is, the extent to which the underlying scheme and purpose of the legislation may be obscured by conflicting objectives within the legislation, reliance on outdated provisions, the absence of a comprehensive concept of income and the imperfections of tax accounting. In advocating for this approach, examples are given which illustrate the difficulty of identifying tax norms and principles for general application, through a discussion of: (1) the relationship between sections 260 and 51 of the Australian income tax legislation; (2) whether the treatment of personal exertion income should rest on identifiable underlying tax norms; and (3) the simplistic approach to assessability/deductibility of interest.

Abstract by Allegra Crawford.

### **"Reducing Tax Avoidance by Changing Structures, Processes and Drafting"**

*TAX AVOIDANCE AND THE RULE OF LAW*, IBFD Publications and Australian Tax Research Foundation, Amsterdam, 1997

[\*Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 5\*](#)

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law  
Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

This paper argues that there is too great a reliance placed on anti-avoidance provisions, discretions reposed in the revenue, and judicially developed doctrines as a means of countering tax avoidance. In view of the difficulties in defining and countering tax avoidance, it is suggested that there should be a greater emphasis on reducing incentives for tax planning, changing legislation drafting approaches, restructuring the Government's tax collection organization, and reorganizing the tax collecting system to recognize and reflect the features of modern tax collecting that affect tax avoidance. The problems inherent in the current system are discussed as well as the changes which should be made to correct these problems, with a view to improving tax collecting overall.

### **"Countering Tax Avoidance"**

(2004) 10 NZJTL 301

[\*Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 6\*](#)

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law  
Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

In his observations on countering tax avoidance, Sir Ivor concludes that a clearly formulated, well understood and workable general anti-avoidance provision is an essential feature of a modern income tax system. But it is not the peg on which the whole system should rest. The practical answer lies in tax design including specific avoidance provisions, rate structures and sound, workable and timely quantification and dispute resolution processes, which substantially reduce the incentives for tax avoidance. Ideally then, a general anti-avoidance provision will be infrequently invoked.

### **"A Review of Tax Legislation and Judicial Decisions, 1973-1975"**

*Papers prepared and presented by ILM Richardson and Inland Revenue Department at the Continuing Education Course, New Zealand Society of Accountants, 1976*

[\*Victoria University of Wellington Legal Research Paper Series Richardson Paper No. 7\*](#)

**IVOR RICHARDSON**, Victoria University of Wellington - Faculty of Law

Email: [richardsons@xtra.co.nz](mailto:richardsons@xtra.co.nz)

This paper sets out the cases concerning tax and estate planning decided between 1973 and 1975 and considered to be of most significance for accountants and lawyers. For each case, the relevant sections of the Land and Income Tax Act 1954, a summary of the facts and the court's decision, and a comment on the importance and any issues or uncertainty arising out of the decision are provided. The final section of the paper assesses the effect of the Inland Revenue Department Act 1974 and the Land and Income Tax Amendment Act (No. 3) 1975.

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## About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the [Law School](#) has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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