

Palisi, Paul

Working Paper

Tax expenditure analysis: Origins, debates and future prospects

Treasury Working Paper, No. 2017-03

Provided in Cooperation with:

The Treasury, The Australian Government

Suggested Citation: Palisi, Paul (2017) : Tax expenditure analysis: Origins, debates and future prospects, Treasury Working Paper, No. 2017-03, ISBN 978-1-925504-37-8, The Australian Government, The Treasury, Canberra

This Version is available at:

<https://hdl.handle.net/10419/210395>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



<https://creativecommons.org/licenses/by/3.0/au/legalcode>



Australian Government

The Treasury

TAX EXPENDITURE ANALYSIS – ORIGINS, DEBATES AND FUTURE PROSPECTS

Paul Palisi¹

Treasury Working Paper²

2017-03

Date created: March 2017

Date modified: March 2017

-
- 1 Structural Reform Group, The Treasury, Langton Crescent, Parkes ACT 2600, Australia. Correspondence: paul.palisi@treasury.gov.au.
 - 2 The views expressed in this paper are those of the author and do not necessarily reflect those of The Australian Treasury or the Australian Government. I thank Maryanne Mrakovcic, Matt Brine, Robert Ewing and Richard Maher for their valuable feedback on earlier drafts of the paper.

© Commonwealth of Australia 2017

ISBN 978-1-925504-37-8

This publication is available for your use under a [Creative Commons BY Attribution 3.0 Australia](http://creativecommons.org/licenses/by/3.0/au/legalcode) licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a [Creative Commons BY Attribution 3.0 Australia](http://creativecommons.org/licenses/by/3.0/au/legalcode) licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Australian Government the Treasury

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website (see www.itsanhonour.gov.au)

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: medialiaison@treasury.gov.au

Tax expenditure analysis – origins, debates and future prospects

Paul Palisi

2017-03

24 March 2017

ABSTRACT

This paper outlines the origins of tax expenditure analysis in the 1960s, the key debates at that time and over subsequent decades, and the current state of tax expenditure analysis. The paper suggests that the pros and cons of tax expenditure analysis were comprehensively worked through within a short time of the concept being proposed. These debates have since been rehashed periodically, with little of real or lasting value being added. While there is broad agreement that some form of reporting of tax expenditures is needed, prospects for future meaningful development of the underlying tax expenditures concept appear limited.

Keywords: Tax, tax expenditure

Paul Palisi

Structural Reform Group

The Treasury

Langton Crescent

Parkes ACT 2600

1. INTRODUCTION

Each year, the Australian Treasury produces the annual Tax Expenditures Statement (TES). The TES contains a description of each Australian Government tax expenditure and, where possible, estimates of the size of these tax expenditures. It also outlines the framework used to identify and measure tax expenditures, along with the key caveats and limitations of this framework.

This paper provides some important background to the TES. It outlines the origins of tax expenditure analysis in the 1960s, the key debates at that time and over subsequent decades, and the current state of tax expenditure analysis. The paper focuses on the academic literature in the United States because this is from where much of the literature originates, and because it covers the key issues. The appendix contains a short outline of the literature in Australia. The debate around tax expenditures in Australia has largely mirrored the debate in the United States.

2. ORIGINS³

Income tax comprised only a small proportion of federal revenue in the United States before the 1940s. However, income tax was increased substantially during World War Two to help pay for the war effort.⁴ Given its new significance, concerns emerged in the 1950s and 1960s about the wide range of exemptions, deductions, deferrals and incentives in the income tax law.

In 1967, a senior United States (US) Treasury official, Stanley Surrey, introduced the term ‘tax expenditure’ to describe these tax provisions.⁵ In 1968, the US Treasury published ‘Tax Expenditure Budget – a Conceptual Analysis’, setting out the basic principles of tax expenditure analysis.⁶ In 1972, the US Ways and Means Committee started publishing tax expenditure estimates. In 1974, Congress passed legislation requiring the President to report on tax expenditures in the annual federal Budget. The first report was published in 1976.

Other countries followed suit relatively soon after. For example, in 1979, Canada and the United Kingdom began publishing tax expenditure statements.⁷

3 Generally, see Forman (1986).

4 The number of persons paying income tax increased from around four million in 1939 to around 50 million in 1945; Forman (1986), footnote 1.

5 Shavero, however, notes that ‘[t]ax expenditure analysis seems to have been invented twice. In Germany, as early as 1954, writers had noted the ‘equivalence between special tax deductions... and government subsidies... By 1959, the German government had begun reporting on subsidies in the federal budget, including those supplied through the tax system...’; Shavero (2003) at 23.

6 See Annual Report of the Secretary of the United States Treasury on the State of the Finances 1968 at 326; https://fraser.stlouisfed.org/scribd/?toc_id=323559&filepath=/files/docs/publications/treasury/AR_TREASURY_1968.pdf&start_page=3.

7 Standing Committee on Expenditure (1982) at 4.

In 1982, the (Australian) House of Representatives Standing Committee on Expenditure published a report on tax expenditures. It recommended, among other things, that the Budget include a paper listing all tax expenditures and the estimated cost of major tax expenditures.⁸ In March 1985, the Australian Government accepted the Committee's recommendations and the first Tax Expenditures Statement was tabled on 11 November 1986.⁹ The *Charter of Budget Honesty Act 1998* introduced a legal requirement for an annual Tax Expenditure Statement to be published by the Australian Government by 31 January each year.

3. THE TAX EXPENDITURE CONCEPT

According to Surrey, the tax expenditure concept:

*... posits that an income tax is composed of two distinct elements. The first element consists of structural provisions necessary to implement a normal income tax, such as the definition of net income, the specification of accounting rules, the determination of the entities subject to tax, the determination of the rate schedule and exemption levels, and the application of the tax to international transactions... The second element consists of the special preferences found in every income tax. These provisions... take many forms, such as permanent exclusions from income, deductions, deferrals of tax liabilities, credits against tax, or special rates.*¹⁰

Surrey considered that, while the Schanz-Haig-Simons (SHS) definition of income was a 'useful starting point' for identifying the 'normative provisions in an income tax', it had limitations.¹¹ In particular, it didn't deal with some types of income (for example, government transfers) or losses (for example, medical expenses) and it didn't address, for example, the appropriate time period over which to measure income. Further, he considered that 'the SHS definition, though theoretically correct, is too rigid and demanding to be applied comprehensively in a national income tax'.¹²

As a result, tax provisions were included in the 'normal tax' by the 1968 US Treasury report that could arguably have been tax expenditures – in particular, unrealised capital gains and imputed income from owner-occupied housing and other durable consumer assets.¹³ Further, the income tax benchmark needed to deal with matters not covered by the SHS definition such as the progressive tax rate schedule and the level of the tax-free threshold.¹⁴

Surrey highlighted the similarity of tax and direct expenditures:

*Whatever their form, these departures from the normative tax structure represent government spending for favoured activities or groups, effected through the tax system rather than through direct grants, loans, or other forms of government assistance.*¹⁵

8 Standing Committee on Expenditure (1982) at vii.

9 Statement by the Treasurer, the Hon Paul Keating, MP, 'Release of Tax Expenditures Statement', tabled in the Senate on 11 November 1986. This Statement also notes that limited information on tax expenditures had been provided in Budget papers in most years from 1980-81.

10 Surrey and McDaniel (1985) at 3.

11 Ibid at 187. The SHS definition holds that income is equal to the 'increase in net wealth between two specified times plus consumption during that period'; ibid at 186.

12 Ibid at 187-188.

13 Ibid at 188.

14 Ibid at 192.

15 Ibid at 3.

The purpose of the tax expenditures budget was therefore to:

*include in the budget and in the budget-making process the cost of special tax provisions which... can be considered as alternatives to direct expenditures and loan programs, so as to allow decisions which make the most effective use of all budgetary resources.*¹⁶

Surrey stated that the 'classification of an item as a tax expenditure does not itself make that item either a desirable or undesirable provision'.¹⁷ However, he clearly considered that tax expenditures were poor public policy primarily because, unlike direct expenditures, 'the overwhelming majority... disproportionately benefit upper-income groups'.¹⁸ He emphasised the 'upside-down character of tax expenditures'.¹⁹ Surrey considered that:

*...many tax incentives look, and are, highly irrational when phrased as direct expenditure programs structured the same way. Indeed, it is doubtful that most of our existing tax incentives would ever have been introduced, let alone accepted, if so structured, and many would be laughed out of Congress.*²⁰

More ideologically, Surrey considered that:

*... the individual who earns his profits, even high profits, by meeting a need or desire of society, finds his rewards subject to the progressive income tax. The economic system is thus functioning as it is intended it should, and the tax system, which acts as a control, is also functioning as intended. But when rewards are in the form of tax incentives, the latter control is eliminated and tax millionaires are produced.*²¹

Ultimately, Surrey's hope was that, by bringing to light previously hidden inequitable tax provisions, an annual tax expenditures budget would prompt Congress to repeal them.

4. IMMEDIATE CRITICISM

Surrey's tax expenditure concept was immediately strongly criticised, particularly by a professor of law at Yale University, Boris Bittker.

¹⁶ Surrey and Hellmuth (1969) at 530.

¹⁷ Surrey and McDaniel (1985) at 5.

¹⁸ Ibid at 72.

¹⁹ Ibid at 71.

²⁰ Surrey (1970) at 721-722.

²¹ Ibid at 723.

Bittker argued that Surrey had failed to provide a 'set of principles enabling us to decide with reasonable assurance which income tax provisions are departures' from the normal income tax.²² He questioned why, in the US Treasury's Tax Expenditure Budget, some tax provisions were deemed to be 'structural' (for example, tax exemptions for families), but other seemingly similar provisions were not (for example, tax exemptions for persons who were blind or aged over 65).²³ Bittker further noted that:

*aside from the many ambiguities that become apparent as soon as one attempts to apply the Haig-Simons definition to the protean stream of economic life, any system of income taxation is an aggregation of decisions about a host of structural issues that the Haig-Simons definition does not even purport to settle. As to these, one could lock forty tax experts in a room for forty days, and get no agreement...*²⁴

Bittker also questioned the application of the tax expenditure concept to indirect taxes, suggesting that:

*It would seem to follow that an excise tax is always just what Congress enacts, so it is meaningless to talk of 'departures', 'concessions', 'exceptions' and 'special provisions'.*²⁵

Ultimately, Bittker was concerned that tax expenditure analysis would 'succeed in bringing some issues to the fore only to conceal others... [h]alf-truths are often more deceptive than silence.'²⁶

In response, Surrey and Hellmuth, among other things, noted an earlier concession by the US Treasury Department that:

*the exclusions from the listing are to some extent arbitrary. The objective of this analysis is to provide a list of items that would be generally recognised as an intended use of the tax system to achieve results which are now, or could be, achieved through direct Government expenditures.*²⁷

Surrey and Hellmuth also suggested that Bittker was 'both too pessimistic and too anarchistic'²⁸ and that:

*we must also strive constantly to develop the criteria to permit both order and rational criticism of disorder. To do otherwise is to turn the tax system over to those who thrive on disorder, for then their advantages are beyond judgement and control.*²⁹

Bittker's other key point was that:

*The Treasury's Tax Expenditure Budget makes the simplifying assumption that economic activity would not have been affected by repeal of the tax provisions under study...*³⁰

22 Bittker (1969) at 247.

23 Ibid at 253.

24 Ibid at 260.

25 Ibid at 259.

26 Ibid at 259.

27 Statement of Secretary of the Treasury Barr, *Hearings on the 1969 Economic Report of the President*, Joint Economic Committee, 91st Congress, 1st Session at 9; reproduced in Surrey and Hellmuth (1969) at 529-530.

28 Surrey and Hellmuth at 537.

29 Ibid.

30 Bittker (1969) at 247.

The estimates were therefore 'often... quite unrealistic'.³¹ He also predicted that:

*... the fine print warnings, descriptions of methodology, and other disclaimers [in the Tax Expenditures Budget] are bound to be over-shadowed by the apparently objective dollar amounts.*³²

In response, Surrey and Hellmuth noted that:

*... this approach is in keeping with the Budget generally, since Budget estimates of direct expenditures do not involve second level effects of the expenditure itself, or its absence...*³³

5. REAGAN ADMINISTRATION

It appears that debate about tax expenditures remained largely within academia until the Reagan administration came to power in 1981.³⁴ The 1983 Tax Expenditures Budget stated that:

*The very term 'tax expenditure' is misleading in several respects, and there are formidable difficulties in trying to define the underlying concept or to measure the effect of 'special' tax provisions....*³⁵

More stridently:

*The term "tax expenditures" is... unfortunate in that it seems to imply that Government has control over all resources. If revenues which are not collected due to "special" tax provisions represent Government "expenditures," why not consider all tax rates below 100% "special," in which case all resources are effectively Government-controlled?*³⁶

The 1983 Tax Expenditures Budget redefined tax expenditures to be provisions that applied to a narrow class of taxpayers or transactions and which were exceptions from general provisions. These general provisions formed the benchmark – known as the 'reference tax law' – underpinning the Tax Expenditures Budget. As a result, accelerated depreciation and graduated tax rates for corporations, among others, were no longer deemed to be tax expenditures.³⁷

These changes were widely criticised (particularly by Surrey) and, from 1985, the US Treasury began using two benchmarks – the original benchmark based on Schanz-Haig-Simons and the reference tax law (which substantially overlapped).³⁸

31 Ibid.

32 Bittker (1969b) at 539-540.

33 Surrey and Hellmuth (1969) at 536.

34 For example, academic commentators debated whether particular tax provisions were tax expenditures or not, and proposed alternative definitions of a tax expenditure that attempted (unsuccessfully) to avoid the problems of the Surrey definition; see, for example, Thuronyi (1988) at 1166-1170.

35 See: https://fraser.stlouisfed.org/scribd/?toc_id=213541&filepath=/files/docs/publications/usspa/Specanalyses_1983.pdf&start_page=206 (at 208).

36 Ibid.

37 Sugin (2011) at 32-33. Norman Ture, a senior US Treasury official, was a key proponent of the Reagan administration changes. In particular, Ture criticised the income tax foundation of tax expenditure analysis, instead proposing, in effect, a consumption tax benchmark; Bartlett (2001) at 9-11.

38 Sullivan (2001) at 702; Joint Committee on Taxation (2008) at 26.

6. GEORGE W. BUSH ADMINISTRATION

Following tax reforms in the mid-1980s, the two benchmarks used by the US Treasury appear to have converged, and debate over tax expenditures died down – until 2002.³⁹

*Until earlier this month, all was quiet on the tax expenditures front. Year after year the economists at the Treasury Department... and at the Joint Committee on Taxation... have been dutifully pumping out tax expenditures estimates. But few paid attention. And those who did took the estimates for granted. Frankly, until the recent budget release, nobody really gave a damn.*⁴⁰

The attention-grabbing statement in question appeared in the 2002 Tax Expenditures Budget:

*[The tax expenditure concept] assumes an arbitrary tax base is available to the Government in its entirety as a resource to be spent. Because of the breadth of this arbitrary tax base, the Administration believes that the concept of 'tax expenditure' is of questionable analytic value... The Administration intends to reconsider this presentation in the future.*⁴¹

In subsequent years, the Bush administration made several changes to the Tax Expenditures Budget. In particular, the 2004 Tax Expenditures Budget:

- made significant changes to the tax expenditures included in the document; for example, to include net imputed rental income from owner-occupied housing as a tax expenditure, and exclude preferential tax rates for capital gains and dividends;
- included estimates for negative tax expenditures for the first time; for example, for corporate tax;⁴² and
- in particular, began reporting tax expenditures against a consumption tax benchmark (in addition to a comprehensive income tax benchmark and reference tax law).⁴³

The appendix reporting against a consumption tax benchmark lasted until the 2009 Tax Expenditures Budget – the last of the Bush administration – and has not re-appeared since.

39 Sullivan (2001) at 702-703.

40 Ibid at 701.

41 US Budget 2002, Analytical Perspectives, Tax Expenditures, p61.

42 Noting the United States does not have dividend imputation.

43 Joint Committee on Taxation (2008) at 28; Sugin (2011) at 33.

7. RECENT CONCERNS

More recently, concerns have focused on the substantial growth in tax expenditures in the United States, contrary to Surrey's original hope.

*Tax expenditures have grown in importance to the point where they are now the dominant instruments for implementing new discretionary spending policies... we spend more than twice as much through tax expenditures as we do through old-fashioned explicit spending programs.*⁴⁴

Put colloquially, 'tax expenditures have become as American as apple pie.'⁴⁵ As to the cause:

*Something else is afoot, and that something else, of course, is politics. Tax subsidies... permit a marvellous muddling of budget terminology: they increase government spending in economic terms but can be presented as "targeted tax cuts".*⁴⁶

However, one commentator has suggested that tax expenditure budgets themselves may have contributed to the growth in tax expenditures:

*Surrey's views were grounded in the classic Progressive tradition of informed and professional decision-making by public-spirited officials. As admirable as that tradition may be, few today believe that it incorporates the entire story of political decision-making.*⁴⁷

Further:

*The growth of tax expenditure budgets has signalled to organized interests seeking assistance from the public treasury that tax expenditures are often a better political route than equivalent direct spending programs.*⁴⁸

In its 2008 review of tax expenditure analysis, the Staff of the Joint Committee on Taxation conceded that 'there is scant evidence that tax expenditure analysis has succeeded in its first mission of "expenditure control"'.⁴⁹ More pointedly:

*Tax expenditure analysis no longer provides policymakers with credible insights into the equity, efficiency, and ease of administration issues raised by a new proposal or by present law, because the premise of the analysis (the validity of the "normal" tax base) is not universally accepted. Driven off track by seemingly endless debates about what should and should not be included in the "normal" tax base, tax expenditure analysis today does not advance either of the two goals that inspired its original proponents: clarifying the aggregate size and application of government expenditures, and improving the Internal Revenue Code.*⁵⁰

...

44 Kleinbard (2009) at 3.

45 Zelinsky (2012) at 9.

46 Kleinbard (2009) at 18.

47 Zelinsky (2012) at 8.

48 Ibid at 9.

49 Joint Committee on Taxation (2008) at 6.

50 Ibid at 7-8.

*The result is a sterile debate as to the appropriateness of the choice of that base, which in turn obscures rather than illuminates the important economic efficiency problems that current policies embody.*⁵¹

Following its review, the Committee's report – which had changed little since the 1970s, unlike the US Treasury's Tax Expenditure Budget⁵² – re-categorised 'tax expenditures' as:

- tax subsidies, defined as tax provisions that are 'inconsistent with an identifiable general rule of the present tax law (not a hypothetical "normal" tax), and that collect less revenue than does the general rule'. Most items previously classified as tax expenditures fell into this category;⁵³ or
- tax-induced structural distortions, defined as 'structural elements of the Internal Revenue Code... that materially affect economic decisions in a manner that imposes substantial economic efficiency costs.'⁵⁴

However, these changes lasted all of one year, being reversed in the 2009 report.⁵⁵ A key criticism was that they did not resolve the benchmark issue – in particular, it was not clear how a 'general rule' could be discerned from the tax law.⁵⁶

8. STATE OF THE DEBATE

Three things stand out about the current state of the debate on tax expenditure analysis.

First, key issues raised by Bittker as early as 1969 – that is, about the appropriate benchmark and about estimating the size of tax expenditures⁵⁷ – have not been resolved and indeed appear beyond resolution. They are dutifully noted each year at the beginning of tax expenditure statements across the world – for example, the opening chapter of Australia's 2016 Tax Expenditures Statement.⁵⁸

51 Ibid at 10.

52 Ibid at 25.

53 Ibid at 9.

54 Ibid at 10. Tax-induced structural distortions, by definition are also not tax subsidies – that is, they don't deviate from an identifiable general rule. The JCT also continued reporting a 'few items' that were neither tax subsidies nor tax-induced structural distortions, to 'preserve continuity with... prior work'; ibid at 11.

55 Joint Committee on Taxation (2010) at 4-5.

56 Dean (2012) at 279; Sugin (2011) at 34.

57 The 'revenue forgone' method used by the US Treasury since 1969 (which does not account for taxpayers behavioural responses) remains the standard way for estimating the size of tax expenditures in most OECD countries; Australian Treasury (2016) at 4. The Australian Tax Expenditures Statement also includes 'revenue gain' estimates for ten large tax expenditures. While 'revenue gain' estimates do aim to account for taxpayer behavioural responses, they are subject to significant caveats: Australian Treasury (2016) at 5.

58 Australian Treasury (2016), Chapter 1.

Second, there appears to be some frustration in the United States about tax expenditure analysis, flowing both from the lack of resolution of key issues and because tax expenditure analysis has conspicuously failed to slow the growth of tax expenditures there. Even critics of tax breaks and concessions sometimes express strident criticism of the usefulness of tax expenditure budgets:

*Long dead as a constraint on policymaker behaviour, a guardian known as the tax expenditure budget has been reanimated to serve a different role: accountant. Unfortunately, as poor a goad as the tax expenditure budget proved, it makes an even worse guide. Now a zombie accountant shambling through the corridors of power, the tax expenditure budget has become an object of derision where it was once hailed as a champion.*⁵⁹

Third, despite the above, the debate about tax expenditure analysis is likely to continue. One important reason is that the debate has long largely been an extension of a broader debate about the relative merits of a comprehensive income tax and an expenditure tax.⁶⁰ This, in turn, reflects views about whether the main aim of the tax system should be to help address income inequality by ensuring that as much income as possible is subject to progressive tax rates, or whether the system should prioritise raising revenue in the most economically efficient manner, particularly by ensuring that current and future consumption (that is, savings) are treated as neutrally as possible.

The fact that many, if not most, tax expenditures would be categorised as such under either benchmark is beside the point, this being that the choice of benchmark determines how tax provisions at the heart of the income/expenditure tax debate are portrayed in the tax expenditure budget.

Specifically, an income tax benchmark generally portrays tax ‘breaks’ for savings as positive tax expenditures – that is, they are presented as being ‘under-taxed’ relative to the benchmark with an often significant cost to revenue. However, they may not be presented as tax expenditures at all under an expenditure tax benchmark and some could be negative tax expenditures – that is, ‘over-taxed’ relative to the benchmark.

Official publications presenting savings as being ‘under-taxed’ or ‘over-taxed’ would be of significant benefit (or detriment) to the parties to the broader tax policy debate. Given the prize at stake, this perennial debate is likely to keep dragging the tax expenditure debate along with it.

9. WHAT NEXT?

Despite not meeting Surrey’s initial hopes, there seems to be broad agreement that some form of official reporting of tax deductions, concessions, incentives and so on is still needed.

Those concerned about the growth of tax expenditures tend to support expanding the analysis included in the tax expenditure budget – for example, by including distributional analysis,⁶¹ as well as changing budget processes to more directly require the reconsideration of tax expenditures.⁶²

⁵⁹ Dean (2012) at 267.

⁶⁰ See, for example, Fleming and Peroni (2008) at 508-511.

⁶¹ For example, to include information about who benefits from tax expenditures and who would lose if a tax expenditure was abolished: Sugin (2011) at 42.

⁶² For example, presenting tax expenditures explicitly as direct expenditures in the Budget and requiring them to go through the same authorisation process within Congress as direct expenditures; Kleinbard (2009) at 28.

Even critics of the Surrey approach to tax expenditure analysis concede that some form of reporting would be beneficial. Bittker suggested:

... a more limited accounting, one that confined itself to estimating the cost of departures from the Haig-Simons definition, without attempting to account for the “cost” of such structural provisions as the joint return, rate schedules, taxable periods, tax exemptions and other aspects of existing law for which that definition provides no normative model ... such calculations could provide information that would be helpful in applying our political, economic and ethical criteria in making policy judgments about the tax system.⁶³

Conversely, some critics of the Surrey approach suggest broadening the analysis:

We think democratic debate would be promoted if we knew how much additional revenue could be gained by repealing each of the code provisions shown in the various tax expenditure budgets, as well as who would bear the incidence of that additional revenue. We think democratic debate would also be promoted in precisely the same way, however, if we knew how much additional revenue could be gained through a host of changes to provisions that are not shown on the tax expenditure budgets. Most tax provisions, like most policy judgments, are good only as long as their price tags are not exorbitant. Here again, the tax expenditure budget hides that fact by suggesting that certain features of the tax system are different in kind from others.⁶⁴

This proposal reflects a concern (raised by Bittker as early as 1969) that:

the tax expenditure budget’s conception of an appropriate tax base has no legitimate claim to establishing the terms of political debate. It should not immunize provisions of the code from political discussion, nor should it change the burden of justification for others.⁶⁵

10. CONCLUSION

The most likely outcome for the foreseeable future is that tax expenditure budgets, in the United States at least, will continue to be produced much as they have been in the past. The experience of the Joint Committee on Taxation in 2008 is particularly instructive – major changes to its analytical framework lasted all of one year, making it unlikely that it will attempt major changes again anytime soon. The substance and focus of the US Treasury’s Tax Expenditures Budget could be expected to continue to vary with the colour of the prevailing administration. The academic literature seems unlikely to generate new ideas that might resolve the longstanding debates about tax expenditure analysis any time soon.

63 Bittker (1969) at 260-261.

64 Kahn & Lehman (1992) at 1664-1665.

65 Ibid at 1663.

REFERENCES

- Australian Treasury, 2016 Tax Expenditures Statement, January 2017.
- Australian Treasury, 1986, Tax Expenditures Statement, October 1986.
- B Bartlett, 'The End of Tax Expenditures as We Know Them', IRET Policy Bulletin No 84, 2001.
- BI Bittker, 1969, 'Accounting for Federal 'Tax Subsidies' in the National Budget', 22 National Tax Journal Vol.2, 244-261.
- BI Bittker, 1969b, 'The Tax Expenditure Budget — A Reply to Professors Surrey & Hellmuth', 22 National Tax Journal Vol. 4, 1969, 538-542.
- M Burton, 'Making the Australian Tax Expenditures Statement an Effective Policy Instrument — from Fiscal Record to Transparent Report', 8 Journal of Australian Taxation Vol 1 (2005), 1-69.
- M Burton and K Sadiq, 'Tax Expenditure Management — A Critical Assessment', Cambridge University Press, 2013.
- SA Dean, 'The Tax Expenditure Budget Is a Zombie Accountant', University of California, Davis Law Review, Vol 46, 2012, 265-312.
- JC Fleming and RJ Peroni, 'Reinvigorating tax expenditure analysis and its international dimension', 27 Virginia Tax Law Review, 2008, 437-562.
- JB Forman, 'Origins of the Tax Expenditure Budget', Tax Notes, vol. 30, no. 6 (1986), 537-545.
- DA Kahn & JS Lehman, 'Tax Expenditure Budgets: A Critical View', Tax Notes 54 (1992): 1661-1665.
- ED Kleinbard, 'The Congress Within the Congress: How Tax Expenditures Distort Our Budget and Our Political Processes', Ohio Northern University Law Review, Woodworth Memorial Lecture, 2009, 1-30.
- DN Shaviro, 'Rethinking tax expenditures and fiscal language', New York University School of Law, Research Paper 72, Sept 2003.
- Staff of the Joint Committee on Taxation, A Reconsideration of Tax Expenditure Analysis, 2008.
- Staff of the Joint Committee on Taxation, Estimates of Federal Tax Expenditures for Fiscal Years 2009-2013, 2010.
- Standing Committee on Expenditure, House of Representatives, 'Taxation Expenditures', August 1982.
- L Sugin, 'Tax expenditures, Reform and Distributive Justice', 3 Columbia Journal of Tax Law, 2011, 1-42.
- M Sullivan, 'Administration Reignites Old Battle Over Tax Expenditures', 91 Tax Notes no.5, 2001, 701-707.
- SS Surrey, 'Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures', 83 Harvard Law Review (1970), 705-738.
- SS Surrey and WF Hellmuth, 'The Tax Expenditure Budget—Response to Professor Bittker', 22 National Tax Journal Vol. 4, 1969, 528-537.
- SS Surrey and PR McDaniel, Tax Expenditures, Harvard University Press, Cambridge Mass, 1985.
- V Thuronyi, 'Tax Expenditures: A Reassessment', Duke Law Journal, 1988, 1155-1206.
- United States Government Budget, Fiscal Year 2002, Analytical Perspectives, Tax Expenditures.
- EA Zelinsky, 'The Counterproductive Nature of Tax Expenditure Budgets', Tax Notes, Vol. 137, No. 12, 2012, 1-9.

APPENDIX: TAX EXPENDITURE LITERATURE IN AUSTRALIA

The academic literature on tax expenditures in Australia appears to be relatively modest compared to the United States, and to cover quite similar issues to the American literature. In 2005, an Australian academic, Mark Burton, noted that:

*Given the longevity of Australian tax expenditures reporting and the pragmatic rationale for such reports, it is somewhat surprising that there is remarkably little secondary literature which deals at any length with tax expenditures in the Australian context. Of the Australian literature that does exist, little critical analysis is directed towards the tax expenditure concept itself. As a result, the storms which have raged upon this particular aspect of tax expenditure reporting in the United States appear largely to have passed Australia by.*⁶⁶

General articles consistent with the Surrey approach to tax expenditures include:

J Smith, 'Tax Expenditures: the \$30 Billion Twilight Zone of Government Spending', Research Paper No. 8, 2002–03, Department of the Parliamentary Library.

D Boccabella, 'To cut fairly, Commission of Audit should look at tax expenditures', The Conversation, 12 March 2014.

<http://theconversation.com/to-cut-fairly-commission-of-audit-should-look-at-tax-expenditures-23769>

General articles highlighting concerns about the Surrey approach to tax expenditures include:

R Carling, 'Right or Rort: Dissecting Australia's Tax Concessions', 2015, Research Report 2, Centre for Independent Studies.

S Davidson, 'Getting tax expenditures right is a game of hypotheticals', The Conversation, 13 March 2014.

<http://theconversation.com/getting-tax-expenditures-right-is-a-game-of-hypotheticals-24327>

Proposals to extend tax expenditure analysis include:

R Krever, 'Analysing Implicit Tax Expenditures' (2011) 35(2) Melbourne University Law Review 426.

Krever argues that tax expenditure analysis should be extended to 'implicit' tax expenditures – that is, tax expenditures created by court rulings that have been implicitly endorsed in the design of tax law.⁶⁷

M Burton, 'Making the Australian Tax Expenditures Statement an Effective Policy Instrument – from Fiscal Record to Transparent Report', 8 Journal of Australian Taxation Vol 1 (2005), 1-69.

⁶⁶ Burton (2005) at pp4-5.

⁶⁷ Burton and Sadiq go further and suggest that tax expenditure analysis should extend to 'an omission to undertake the requisite administrative tasks' and to where 'the legislature has not enacted a rule that the normative framework indicated ought to be enacted': Burton and Sadiq (2013) at 61-62.

Burton argues that, rather than just measuring the size of government or identifying tax 'spending' programs, the focus and purpose of the TES should be to promote public debate on the tax system. He therefore proposes that the TES be reformulated as an 'annual report card on the operation of the national taxation system'.⁶⁸ It would report information 'regarding the nature, scope, operation and ultimate beneficiaries of each tax expenditure as well as the overall incidence of the income tax'.⁶⁹ The TES would be published by an 'independent government agency'⁷⁰ and would cover Commonwealth, state and territory tax systems.⁷¹ Burton suggests that 'costs might well be recouped as a result of tax reforms flowing from review of the information contained in the TES'.⁷²

Official reports

In 5 December 2015, the House of Representatives Standing Committee on Tax and Revenue released a report on the TES. The Government's response was tabled on 29 November 2016. The response supports five of the 13 recommendations and a further two in part. The report and Government response are available at: http://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Tax_Expenditures/Report.

Other official reports about tax expenditures include:

Standing Committee on Expenditure, House of Representatives, 'Taxation Expenditures', August 1982.

Economic Planning and Advisory Council, 'Tax Expenditures in Australia', 1986.

Australian National Audit Office, Audit Report No. 32 2007-08, Performance Audit, Preparation of the Tax Expenditures Statement.

Australian National Audit Office, Audit Report No. 34 2012-13, Performance Audit, Preparation of the Tax Expenditures Statement.

Joint Committee on Public Accounts and Audit, Review of Auditor-General's Reports tabled between August 2007 and August 2008, June 2009, Chapter 4.

⁶⁸ Burton (2005) at 69.

⁶⁹ Ibid at 29.

⁷⁰ Ibid at 34.

⁷¹ Ibid at 63-64.

⁷² Ibid at 32.