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TABLE OF CONTENTS

FOREWORD	iv
Charities' Tax Privileges in New Zealand: A Critical Analysis JONATHAN BARRETT AND JOHN VEAL	1
Australia's Proposed Unrelated Commercial Activities Tax: Lessons from the U.S. UBIT MICAH BURCH	21
New Zealand's Recently Negotiated Double Tax Agreements and International Tax Policy Reform ANDREW M C SMITH.....	31
GAARs in Australia and South Africa: Mutual Lessons TERESA CALVERT AND JUSTIN DABNER	53
Post Implementation Reviews Of Recent Australian Tax Reform PAUL KENNY.....	79
Procedural Justice and Audit-Query Experiences of Small Businesses and Tax Agents SUE YONG.....	101
A Super Massive 'Black Hole'? The Tax Treatment of Seismic Strengthening Costs ANDREW J MAPLES.....	123
Using On-Line Assessments in a Distance Learning Taxation Course: Effects on Students' Performance LIN MEI TAN.....	153
Show Me the Evidence: How the Scholarship of Learning and Teaching is Critical for Modern Academics DR BRETT FREUDENBERG.....	171

**AUSTRALIA'S PROPOSED UNRELATED COMMERCIAL ACTIVITIES TAX:
LESSONS FROM THE U.S. UBIT**

MICAH BURCH*

ABSTRACT

After announcing its intention to tax income from the unrelated commercial activities of not-for-profit entities in its 2011-2012 budget, the Australian government delayed by a year (to 1 July 2012) the start date for its *Better Targeting for Not-For-Profit Tax Concessions* reforms. The delay is in response to the not-for-profit sector's desire for further consultations before implementation and offers a welcome opportunity to reconsider the measure in light of the US experience with a similar tax provision. This article outlines some problems with the justifications for, and implementation of, the planned reform.

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I INTRODUCTION

The Australian Government intends to introduce legislation imposing tax on the income of a not-for-profit entity ('NFP') derived from commercial activities unrelated to the entity's charitable purpose. This article considers certain aspects of the proposed unrelated commercial activities tax ('UCAT') in light of the key (putative) policy justifications for such a tax and the sixty years of experience with a similar (though not identical) tax in the United States — the unrelated business income tax ('UBIT'). In particular, the article looks at historical and political issues surrounding the enactment of the proposed tax, the seemingly unkillable 'competitive neutrality' rationale for subjecting otherwise exempt entities to income tax on their unrelated commercial activities, and some observations regarding practical concerns such as the complexity, administrability, inefficiency, and revenue effects of such a tax. There are a number of articles, in Australia and overseas, that canvass the tax policy concerns more fully, and which provide in-depth analysis of particular aspects of Australia's larger NFP reform initiative.¹ This article highlights issues that especially benefit from a comparison between Australia's proposed UCAT and the United States UBIT.

II WORD INVESTMENTS

The last five years have seen a flurry of activity and commentary regarding the regulation of not-for-profit entities in Australia, kicked off in 2008 when the High Court decided *Commissioner of Taxation v Word Investments Ltd* ('Word').² The case involved a religious organisation (Wycliffe Bible Translators Australia, a tax-exempt missionary and bible translation organisation) that operated a business (Word Investments, a for-profit funeral and investment business) in a purely commercial manner. After having their application for recognition of charitable status rejected by the Commissioner, the business successfully argued up to the High Court that it was entitled to status as a charitable institution for the purposes of income tax concessions on the basis that the income derived from its commercial activities was used simply as a means to the end of furthering the entity's sole and exempt purpose of advancing religion. The majority found that 'Word endeavoured to make a profit, but only in aid of its charitable purposes.'³

¹ See, eg, Joyce Chia and Miranda Stewart, 'Doing Business to Do Good: Should We Tax the Business Profits of Charities and Not for Profits?' (2012) [unpublished paper]; Kerrie Sadiq and Catherine Richardson, 'Tax Concessions for Charities: Competitive Neutrality, The Tax Base, and "Public Goods" Choice' (2010) 25(4) *Australian Tax Forum* 401. 'The proposed UCAT is just one part of a comprehensive review and reform of Australian NFP regulation. The reform also calls for, *inter alia*, a new standalone regulatory oversight commission (the Australian Charities and Not-for-Profits Commission, to be established by 1 October 2012) and a statutory definition of 'charity' (announced July 2012, effective one year hence).

² *Commissioner of Taxation v Word Investments Ltd* [2008] HCA 55 See, eg, Ian Murray, 'Charity Means Business: *Commissioner of Taxation v Word Investments Ltd*' (2009) 31(2) *Sydney Law Review* 309.

³ *Ibid* [24]. The decision in *Word* read the business's organisational documents to evince an overall charitable purpose (advancing religion) and read down individual matters that, considered on their own were beyond the true purpose, to be *powers* available in furtherance of the overall purpose: *Ibid* [23].

The holding in *Word*, which in many respects merely confirms existing law, recalls the state of play in the United States tax-exempt sector before the enactment of the UBIT in 1950. Before that time, the 'destination of income' doctrine, established by the Supreme Court in 1924 in *Trinidad v Sagrada Orden de Predicadores*,⁴ determined eligibility for tax exemption based on the destination and not the source of income. Thus, an organisation (including a purely profit-seeking venture) could donate all of its profit to charity and thereby eliminate its tax liability (as is currently the case under Australian tax law for certain NFPs), which simulates the effect of being exempt from tax. But with the introduction of the UBIT came a statutory denial of exemption for 'feeder organisations' that primarily carry on a business for profit but then donate all such profit to exempt organisations.⁵

III US UBIT: HISTORY AND POLICY

If *Word* was the prompt for tangible reform in Australia, then New York University's ownership of the Mueller Macaroni Company (the profits from which supported the law school) was the lightning rod for the storm that led to the replacement of the 'destination of income' doctrine with the UBIT in the United States. Mueller's acquisition in 1947 by NYU complemented other commercial holdings of the university, including a leather company, a chinaware company, and a manufacturer of piston rings.⁶ The popular press raised the alarm regarding abuse of the income tax exemption by charitable organisations and the growing controversy led in short order to hearings in the House Ways and Means Committee regarding concerns over unfair competition by charities.

In 1950, President Truman proposed the UBIT, saying that the tax exemption was being used to 'gain competitive advantage over private enterprise through the conduct of business and industrial operations entirely unrelated to [the exempt purpose]'.⁷ The reports of both houses of Congress on the bill emphasised that the mischief being addressed was primarily unfair competition.⁸ During congressional debate, influential Representative John Dingell warned that 'the macaroni monopoly will be in the hands of the universities.'⁹

Congress passed the UBIT into law and implementing Treasury Regulation § 1.513-1(b) unambiguously lays out that the 'primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the non exempt business endeavours with which they compete'.

⁴ 263 US 578 (1924).

⁵ IRC §502 (2012).

⁶ Stephen Schwarz, 'Federal Income Taxation of Investments by Nonprofit Organizations: Beyond a Primer' (2000) <http://www1.law.nyu.edu/ncpl/pdfs/2000/Conf2000SchwarzPaper.pdf>, citing Donald L. Sharpe, 'Unfair Business Competition and the Tax on Income Destined for Charity: Forty-Six Years Later' (1996) 3 Florida Tax Review 367, 380-383.

⁷ House of Representatives Document No. 81-451 [1950] 5.

⁸ House of Representatives Document No. 81-2319 [1950] 409; Senate Report No. 81-2375 [1950] 504.

⁹ Revenue Revision of 1950: Hearings Before the House Committee on Ways and Means, 81st Congress 580 (1950) (statement of Rep. John Dingell).

The UBIT, found in §§ 511–514 of the Internal Revenue Code, generally imposes income tax at the corporate tax rate on the unrelated business income of certain tax-exempt entities. The business income must arise from a trade or business that is regularly carried on by the charity and is unrelated to its purposes. Section 513 defines ‘unrelated trade or business’ as ‘any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption ...’. UBIT does not apply to a long list of exempted types of unrelated passive income including dividends, interest, loan proceeds, annuities, royalties, rents from real property, capital gains, and certain other types of income such as research income.¹⁰ Additionally, any kind of investment income is subject to UBIT to the extent that it is debt-financed.¹¹

As discussed below, the UBIT in theory and in practice is not adequately justified by a concern for competitive fairness between NFPs and for-profit entities. Ethan Stone has posited that the political expediency of this fallacious rationale, along with deeply conflicting societal attitudes toward the proper role of society’s ‘third sector’, account for the longevity of the UBIT without regard to thoughtful tax policy analysis.¹² According to Stone’s analysis, the UBIT was simply a politically expedient way to attempt to reign in charitable behaviour that exposed the ‘dissonance’ between the presumptive basis for the exemption generally (the exempted entities’ supposed commitment to the performance of ‘good works’) and the problematic activities being notoriously undertaken by some NFPs.¹³ The UBIT could be said to address the concerns over NFP malfeasance without actually threatening what was an entrenched and fundamental policy (of exempting legitimate charities and their activities in furtherance of their exempt purpose). The contours of the rules, which distinguish between related and unrelated income, and passive and active income, cannot be justified based on the given tax policy grounds of competitive neutrality (or other related grounds), but can be rationalised based on an appreciation for the symbolism of charities and their undertaking of particular activities. As Stone observes, ‘Active business endeavors present symbolic problems that passive investments do not’.¹⁴ Implicitly, the same could be said for both related and unrelated activities.

Evelyn Brody also identifies the ambivalence at the core of policy discussions regarding charitable entities. There is a sense in which it just seems wrong to tax charitable entities and she attributes this to their similarity to independent sovereigns, especially inasmuch as the general view of charities as exceptional is rooted in historical and internalised views of the role of religion (specifically, the church).¹⁵ The UBIT, then, can be seen as a way of one sovereign limiting the undue expansion of the activities of

¹⁰ IRC §512(b) (2012).

¹¹ IRC §514 (2012).

¹² Ethan Stone, ‘Adhering to the Old Line: Uncovering the History and Political Function of the Unrelated Business Income Tax’ (2005) 54 *Emory Law Journal* 1475.

¹³ *Ibid* 1550–1553.

¹⁴ *Ibid* 1545.

¹⁵ Evelyn Brody, ‘Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption’ (1997) 23 *Journal of Corporation Law* 585, 605–606.

another sovereign (made up of societal structures outside the market and government, such as charity and religion).¹⁶ Even though churches, among others, were not originally subject to the UBIT, the tax was extended to all tax-exempt entities in the 1969 tax reform.¹⁷ The way in which the UBIT came about can perhaps best be understood as a response to a perceived problem at a particular historical moment, and as such is reflective of deeply held historical assumptions.

A historical consideration of the UBIT adds a valuable insight to the knotted tax policy debate over the issue, which seems stuck. Though not often appropriate in discussions regarding tax policy, considerations of historical context are germane when considering the tax treatment of NFPs, especially charities and religious organisations, whose unique role has always been recognised. A similar examination of the Australian UCAT proposal (and that which prompted it) might shed some light on the underlying concerns animating the tax, and thereby provide a better basis upon which to evaluate the proposal, both on its own terms and in the context of the larger NFP reform agenda.

IV UCAT

The UCAT differs from the UBIT in that the UCAT is intended to apply only to retained unrelated profits of NFPs (whereas the UBIT applies to unrelated income whether retained or not). It is thus worth recalling that the outcome sought by the taxpayer in *Word*, namely tax-exemption for business profits ultimately put to charitable use, could already be achieved under existing law for many types of NFPs. For example, a charity may operate an unrelated business through a subsidiary that pays a franked dividend to the charity, which is eligible for a refund of the franking credits (if it is a qualifying NFP). Under s 207-115(2) of *Income Tax Assessment Act 1997* (Cth), only charitable institutions and certain charitable funds are eligible for a refund of franking credits; religious, scientific, and public educational institutions are not. Alternatively, the subsidiary business could make a tax-deductible donation of all of its income to the charity, if the charity qualifies as a deductible gift recipient ('DGR'). Although a wide variety of charities can qualify as a DGR, churches generally do not qualify and a variety of other NFPs are unlikely to qualify for the benefits of either structure (for example, arts organisations, community service organisations, and sporting clubs).

Nonetheless, for a large portion of NFP entities the outcome approved in *Word* was already possible. *Word* did not by itself usher in a sea change in the way NFPs fund themselves. It did, however, confirm that certain organisations that were not favoured by the statutorily approved techniques for obtaining tax-free funding from unrelated business activity could nonetheless achieve such an outcome.

In the same way that NYU operating one of the largest macaroni operations in the United States simply did not meet expectations of the proper societal role for tax-exempt organisations, the response to *Word*, in the form of the UCAT, seems to be motivated less

¹⁶ Ibid at 606–607.

¹⁷ Stone, above n 12, 1484–1488. In fact, as early as the 1947 congressional hearings instigated by NYU's macaroni deal, there was concern about charities taking over, and domination by the church as in medieval times. Ibid n 61 and accompanying text.

by pure tax policy concerns and more by concerns that evangelical groups can operate for-profit funeral and investment businesses tax-free and the Seventh Day Adventists (through their Sanitarium brand of health foods, including most notably, breakfast cereal) can rival Kellogg's in revenue without paying company income tax.

V COMPETITIVE ADVANTAGE?

If the UBIT and the UCAT both arose due to similar concerns regarding the proper role of charities, their justifications were tactically similar as well. Just as the UBIT was introduced ostensibly to prevent unfair competition by treating the unrelated business activities of exempt entities in the same way for income tax purposes as the for-profit businesses with which they compete, the Australian Treasury's recent Consultation Paper in relation to the UCAT states that it is meant, in large part, to create 'a level playing field for all small, large and NFP businesses in Australia'.¹⁸

This despite the fact that the 'competitive neutrality' justification has been persuasively challenged by economists, legal scholars, and even recent government studies discussing Australian NFP reform. The Henry Review concludes that 'NFP organisations should have scope to conduct commercial activities freely. This approach ... would reflect the principles of the High Court of Australia's *Word Investments* decision.'¹⁹ Similarly, the 2010 Productivity Commission found that the income tax exemption generally does not violate notions of competitive neutrality: '[O]n balance, income tax exemptions are not significantly distortionary as not-for-profits have an incentive to maximise the return on their commercial activities that they then put towards achieving their community purpose.'²⁰

This last statement gives the lie to the most commonly identified competitive advantage supposedly provided by tax exemption: that it provides exempt entities better cash flow compared to that of for-profit competitors, allowing the otherwise identical business owned by a tax-exempt to either expand more quickly or engage in predatory or anti-competitive pricing. With regard to the former danger, the proposition fails to account for the fact that, unlike for-profit businesses, NFPs cannot access equity capital markets as a source of funding. With regard to the latter, as noted above, presumably NFPs engaging in commercial activity do so with the same goal of maximising pre-tax profit as any other business, and are thus unaffected by tax (under certain assumed simplifying conditions, at least) in their investment decisions.

A slightly less intuitive competitive concern is the effect of tax (or tax exemption, as the case may be) on a potential investor's valuation of a given investment. The concern is that, because tax-exempts receive higher cash flow from an investment than taxable entities would receive from the same investment (because of tax), NFPs will be able to outbid for-profit businesses for that investment. Michael Knoll's comprehensive analysis of this claim shows that it fails to consider the interaction between each entity's discount

¹⁸ Australian Treasury, *Better Targeting of Not-For-Profit Tax Concessions* (Consultation Paper, 27 May 2011) [8] ('Consultation Paper').

¹⁹ Commonwealth, *Australia's Future Tax System* (2009) ('Henry Review') B3-3.

²⁰ Productivity Commission, *Contribution of the Not-for-Profit Sector* (2010) 197, 203-205.

rate and the valuation of alternative investments. Knoll illustrates the analysis with a simple hypothetical.²¹ Assume a particular investment yields a \$100 annual return. If a for-profit firm makes the investment, its after-tax annual return, assuming a tax rate of 30%, is \$70 while the tax-exempt investor keeps the full \$100 return each year. In deciding whether or not to make the investment, both firms will value it on a present value basis, using its own particular discount rate. If the going market return on the next best investment alternative is 10%, the for-profit's after-tax return on such an alternative investment is 7%, and that is the for-profit entity's after-tax discount rate. Its annual after-tax return of \$70 will be discounted at 7%, yielding a present value of \$1,000 (assuming the returns are perpetual) over the life of the investment. For the same investment, the tax-exempt's after-tax return is 10%, as it pays no tax on the alternative investment either. The tax-exempt's discount rate is thus 10%, and the \$100 after-tax return would be valued in present value terms also at \$1,000.

Because both potential investors value the target investment equally in present value terms, there is no advantage caused by tax. In short, relative tax rates do not affect how an investor values potential investments. While a tax-exempt might enjoy greater cash flow from a given investment, it will also enjoy greater cash flow from any other investment — and the two effects cancel each other out from a competition perspective. To the extent that UBIT is imposed on an investment, the tax-exempt investor will value it lower than a for-profit investor values it (because the tax-exempt investor's discount rate is still the before-tax return obtainable from investments to which the UBIT does not apply), and thus the UBIT actually creates a competitive advantage for for-profit firms with respect to unrelated business. In an influential article, Susan Rose-Ackerman further shows that, if anything, UBIT increases competition in areas *related* to the NFP's exemption as it discourages unrelated business activity.²²

Nonetheless, the continued currency of the unfair competition rationale in the public debate and perception surrounding the issue of taxation of NFPs warrants some further attention. Even if competitive neutrality is not a legitimate underlying concern (to the extent there can ever be a singular motivating rationale for complex statutory law), and even if in some circumstances, or under relaxed assumptions, NFPs do actually enjoy a tax-induced advantage, the countervailing interests identified in response to such concerns are instructive for policy considerations going forward.

The UCAT proposal is premised on the concern identified in the Henry Review that the ability of NFPs to use their retained untaxed business income to subsidise further investment is in fact an advantage for NFPs. Even if true, there are a number of reasons why we might allow or even encourage such an advantage. The issue of tax exemption is fundamentally predicated upon the notion that NFPs provide valuable public goods that, because of market failure, would not otherwise be produced by the public sector (and would otherwise presumably be provided by government, if at all). There is an extensive literature on the nature of such 'positive externalities', and they include matters both

²¹ Michael Knoll, 'The UBIT: Leveling an Uneven Playing Field or Tilting a Level One?' (2007) 76 *Fordham Law Review* 857, 866–871.

²² Susan Rose-Ackerman, 'Unfair Competition and Corporate Income Taxation' (1981) 34 *Stanford Law Review* 1017, 1038–1040.

tangible (the ability to provide underprovided public goods, to serve different clienteles and to operate using more socially useful criteria than pure profit maximisation) and abstract (greater community engagement and participation, the 'warm glow' created by a society that prioritises charity and public-minded endeavours, the creation and bolstering of societal values and social interconnectivity, and even simple diversity). Also, as mentioned above, there are many tangible ways in which NFPs are disadvantaged, and so tax concessions can be seen as offsetting such disadvantages.

To the extent that they are true, these rationales for the different tax treatment of NFPs relative to for-profit entities might go further than simply negating the argument that tax exemption is anti-competitive. Along with the fallacy of the assumptions required to make the market model justifiable, these rationales raise the question of whether it would indeed be a bad thing if we did in fact provide NFPs (carefully defined, of course) with a competitive advantage. Despite internally consistent, economics-based arguments predicated on the market capitalism model, the unreality of the assumptions raises the question of what exactly would be the problem if charities outcompeted for-profit entities in certain industries. Putting the thorny issue of religion aside, it is not clear to this author that society would necessarily be worse off if, say, charities concerned with health and the environment outcompeted corporate giants in the breakfast cereal market.

This is a particularly controversial line of inquiry, and perhaps one that has more rhetorical promise than theoretical legitimacy. But this line of inquiry is worth bearing in mind when one considers the taxation and regulation of the third sector more generally, especially given that market imperfections are increasingly obvious, government's ability to ameliorate inequality is limited, and societal views toward government and the market are at least as important as increasingly chimeric optimal tax policy concerns. After all, convincing arguments based on economics and tax policy apparently have not yet sufficed to win over policymakers and the public.

Given the array of societal attitudes toward, and tax rules regarding, the various sources of funding potentially available to NFPs (ie donations, active business activity — related or unrelated, passive investment, direct funding, etc), it is important to at least ask a related question: if it is justified to subsidise NFPs via the tax system, is it necessarily better to subsidise donations, for example, to a greater extent than competitive business operations? The potentially anti-democratic aspect of donative funding is problematic; are we more concerned with antitrust? The issue might be more usefully examined as a question of the optimal source of funding for socially desirable not-for-profit activity.

What we think as a society about the NFP sector has become complex and muddled, but its thoughtful consideration, and a consistent application of principles, is integral to the coherence and effectiveness of major reforms, including tax reforms. The taxation of NFPs must be considered along with the rest of the reforms in this area of law (particularly the definition of charity). There is a feedback loop of sorts: the high-level policy concerns should guide the structure and workings of the regulatory apparatus, but the workings of, say, the tax law can also reflect back upon, and inform, the high-level policy concerns.

VI LINE-DRAWING PROBLEMS

Assuming (as we often do in tax) that the policy issues are or can be sufficiently sorted out, it is also worth considering the UCAT proposal with regard to more instrumentalist tax policy concerns such as administrability and compliance, complexity, inefficiency, and, of course, revenue effects. In these regards the UBIT experience can also be instructive — and discouraging for the proposed UCAT.

As mentioned above, the UCAT is not a copy of UBIT and one fundamental difference is the UCAT's focus on *retained* unrelated profits in particular. To the extent that the proposal is a reaction to the holding in *Word*, it is worth noting that the decision itself accepted that retention of profits in and of itself does not endanger an NFP's exempt character. And the ATO acknowledges that it is acceptable to retain profits for the purpose of providing even more public good in the future.²³ NFPs engaging in ambitious large-scale projects might need years of capital investment in order to carry out such projects. They also need to save for a rainy day, in case, for example, other sources of funding should decline or a greater need for their services arise. At any rate, the concern with retention, on its own, would seem to apply equally to related business income. Here one can see the considerable problems with line-drawing, the complexity of the tax law, and its effects on administration and compliance costs. Controversy and uncertainty over the contours of the meaning of 'retained' are likely to be as severe as those regarding the distinction between 'related' and 'unrelated' activity.

Like the UBIT, the UCAT proposal depends upon identifying *unrelated* business income. Doing so is costly and complex. US Treasury Regulation § 1.513-1(d)(2) says that business is 'related' to an exempt purpose if it 'contribute[s] importantly to the accomplishment of the exempt purposes'. In one notorious example, the IRS advised that a museum's gift shop sales of home furnishings resembling those on display at the museum were related, while its sales of soap and perfumes were not substantially related to the museum's exempt educational purpose.²⁴ Further guidance was also required to identify as 'unrelated' the sale of items whose designs merely interpret museum collection pieces, and as 'related', the sales of reproductions and adaptations of items in the museum's collection.²⁵ The issue is a litigious one involving complicated factual scenarios and difficult, if not inevitably arbitrary, line-drawing exercises that are inefficient for NFP entity and revenue authority alike. What should we make of Sanitarium's argument that the sale of vegetarian food products furthers a religious tenet of Seventh Day Adventism?

A similar characterisation fiasco might also arise with respect to the exemption for passive income. Particular items identified as passive can be problematic; the UBIT exception for royalties, for example, provides NFPs with huge profit opportunities, as does the exemption for real property rents (an area where there actually could be a tax advantage provided to tax exempts). Internal Revenue Code § 513 (and the regulations promulgated thereunder) provide a cornucopia of other quirky exceptions. Even for

²³ Australian Tax Office, *Income Tax and Fringe Benefits Tax: Charities*, TR 2011/4 [202], 12 October 2011.

²⁴ Internal Revenue Service, Private Letter Ruling 8605002, 4 September 1985.

²⁵ Internal Revenue Service, Private Letter Ruling 9550003, 18 September 1995.

investments that are unarguably passive, arguments regarding the distortionary effects of differential taxation would apply. As would other policy concerns implicated by active business: it was, after all, seemingly safe passive investments by charities, such as those made with Bernie Madoff, that led to the demise of many American charities. It may be the case that passive investment is equally, if not more, dangerous than active business in terms of mission creep, as the former has the potential to de-focus organisational attention on proper stewardship of the entity's purposes.

It was criticism of the universities' participation in active investments that led to the UBIT originally; but recent complaints in the United States regarding tax concessions offered to NFPs such as universities often focus on their excessive *passive* investments. It is not clear what policy objective is being pursued by such line-drawing; certainly not competitive neutrality. At any rate, a more useful tool for addressing changing concerns over NFP behaviour already exists: charities that stray from their purpose by engaging in unrelated activity to the extent that they no longer can be said to be primarily pursuing their exempt purpose can still lose their exemption entirely.

Finally, the related issues of the revenue effects of a proposed UCAT and the inefficiently induced tax planning response should be mentioned. United States NFPs subject to the UBIT view it as toxic — as much for the reporting requirements as for the tax burden. They engage in vast amounts of tax planning that surely waste as many dollars in fees and opportunity costs as are saved in tax. Though not said with scholarly authority, the UBIT seems to be a hyper-salient tax. 2008 IRS statistics²⁶ show that the large majority of NFPs who report unrelated business activity do not actually pay any UBIT whatsoever. Similarly, it is hard to imagine a significant revenue gain from the UCAT. In the face of all of the above criticisms, and more, the foregoing facts further suggest both wasteful planning opportunities and revenue irrelevance. Australia's 1995 Industry Commission report concluded that an unrelated business income tax would be 'complex, rarely used and generally ineffective.'

Reflexive legislative responses to narrow perceived mischief inevitably expand and become entrenched, subjecting a whole range of entities to a complex regulatory regime that has not only known inconsistencies but will undoubtedly have further unforeseen and unintended consequences upon implementation. The cost and trouble for both taxpayers and the ATO of the UCAT must be weighed not only against the measurable benefits, but also against unquantifiables such as the proper relationship between government, the market, and the NFP sector. The task is daunting, and as evidenced by the United States UBIT at least, has proven too much for tax policymakers. Australia's proposed UCAT should be evaluated as part of the overall NFP reform agenda, bearing in mind not just matters of tax policy but also historical, political, and philosophical concerns. In the end, such a tax should be considered carefully — its history is one of poor execution of unclear policy goals.

²⁶ Available at <[http://www.irs.gov/uac/SOI-Tax-Stats---Exempt-Organizations'-Unrelated-Business-Income-\(UBI\)-Tax-Statistics#2](http://www.irs.gov/uac/SOI-Tax-Stats---Exempt-Organizations'-Unrelated-Business-Income-(UBI)-Tax-Statistics#2)>.