JOTA

Journal of Tax Administration

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Journal of Tax Administration

About the Journal

The Journal of Tax Administration is a peer-reviewed, open access journal concerned with all aspects of tax administration. Initiated in 2014, it is a joint venture between the University of Exeter and the Chartered Institute of Taxation.

JOTA provides an interdisciplinary forum for research on all aspects of tax administration. Research in this area is currently widely dispersed across a range of outlets making it difficult to keep abreast of. Tax administration can also be approached from a variety of perspectives including, but not limited to, accounting, economics, psychology, sociology and law. JOTA seeks to bring together these disparate perspectives within a single source, to engender more nuanced debate about this significant aspect of socio-economic relations. Submissions are welcome from both researchers and practitioners on tax compliance, tax authority organisation and functioning, comparative tax administration and global developments.

The editorial team welcomes a wide variety of methodological approaches including analytical modelling, archival, experimental, survey, qualitative and descriptive approaches. Submitted papers are subjected to a rigorous blind peer review process.

Submission of papers

In preparing papers for submission to the journal, authors are requested to bear in mind the diverse readership, which includes academics from a wide range of disciplinary backgrounds, tax policy makers and administrators and tax practitioners. Technical and methodological discussion should be tailored accordingly, and lengthy mathematical derivations, if any, should be located in appendices.

Message from the Chartered Institute of Taxation

The Chartered Institute of Taxation is very pleased to be working with the University of Exeter's Tax Administration Research Centre on this new journal. We are an education charity with a remit to advance public education in, and the promotion of, the study of the administration and practice of taxation. Although we are best known for the professional examinations for our members, we have also supported the academic study of taxation for many years and are pleased to widen that support with our involvement with this journal.

I would like to thank Lynne Oats, and her team at Exeter, for their work in producing the journal and look forward to continuing to work with them in the future.

Anne Fairpo
President, Chartered Institute of Taxation

Webpage

The Journal of Tax Administration website can be found here:
www.jota.website

Editorial

We are pleased to present the inaugural issue of this new journal, jointly sponsored by the Chartered Institute of Taxation and the University of Exeter's Tax Administration Research Centre. We are grateful to all of the contributors to this first issue, who have willingly given their time to this new venture. Given the nature of tax administration as an area of research and policy development that embraces a diverse range of academic disciplines, it is especially pleasing to see contributions drawing from each of the main disciplines, economics, law, public policy and psychology. We hope this signals an intention going forward to cast a wide net for future contributions to the journal.

Joel Slemrod puts forward a case for 'sexing' up tax administration, arguably a tall order, but one that those of us engaged in tax administration research and practice would endorse. He reminds us optimal tax theory tends to neglect important aspects of administration and compliance and gives us a flavour of his tax system approach.

Richard Bird comprehensively outlines the current challenges facing developing countries in the context of tax administration. He offers a variety of suggestions for improvement, by reference to a range of recent academic studies which will prove invaluable to future scholars working in this area.

Kristin Hickman has very kindly allowed us to republish a paper previously published in the Duke Law Journal. Her paper provides important insights into the increasingly shaky case for tax exceptionalism in the context of administrative review. Through an empirical examination of US Treasury Regulations, Hickman demonstrates the vast array of non-revenue raising measures that the IRS is required to administer; an underappreciated aspect of the role of modern tax administrations.

Michael D'Ascenzo, former Commissioner of the Australian Taxation Office, provides an omnibus survey of global trends in tax administration, drawing on developments not only in Australia but also in other jurisdictions. These include trends to greater independence for revenue authorities, increasing international cooperation and risk based administration. He paints a dynamic picture of rapid change, particularly in relation to technological developments, and a need for responsiveness on the part of tax agencies.

Finally, Jonathan Leigh Pemberton, OECD, gives us his views on current trends in tax administration in OECD and other advanced and emerging economies. In particular he outlines the past current and future work of the OECD in the area, some of which foreshadows the latest Tax Administration Series by the Forum on Tax Administration.

This first issue of JOTA also includes two reviews. The first of these is in the form of a literature review, written by two members of the Tax Administration Research Centre based at the University of Exeter, exploring scholarship dealing the relationship between social norms and tax compliance. The second is a review of the recently published report of the Indian Tax Administration Reform Commission.

Also included in this first issue, and which we hope will become a regular feature of the journal, is an overview of recently published journal articles on various aspects of tax administration. We hope that this will be useful to researchers, practitioners and policy makers alike, many of whom are unable to find the time to search through the panoply of published work. While not claiming to be comprehensive, the overview does provide an indication of 'what's hot' in tax administration research. Readers with suggestions for papers to be included in future overviews are encouraged to contact us with suggestions.

The publication of this first issue of JOTA should be taken as a sign that we are now 'open for business', and welcome submission of papers from the full range of disciplinary backgrounds and covering the full range of topic areas that fall within the umbrella of tax administration.

Lynne Oats
On behalf of the Managing Editors

Sexing Up Tax Administration[1]

Joel Slemrod[2]

The word administration does not set academics hearts aflutter, given that most of them expend not inconsiderable energy to avoid any administrative duties in their career. Many people, from all walks of life, spend not inconsiderable time trying to avoid tax. So it is with admirable courage that the editor and sponsors of this new journal will proceed.[3]

And with great social value. Even those who strive to avoid taxes will admit it plays an important role in all countries. I will argue in this essay that tax administration plays a crucial role in tax systems, one that academics would do well to heed. I have struggled to come up with a name for this set of issues that is less inherently repellent, for a while using the term "tax implementation," but that moniker holds barely more allure, and I am now resigned that the way forward is to make clear the importance of, and intellectual merit, of tax administration, and not to come up with a sexier logo.

Most everyone [4] would agree that a tax agency, like other government bureaucracies, should strive to use its resources efficiently and effectively. They might even agree that a tax agency would benefit from having a management consulting firm review its practices and benchmark them against other countries. These people would be pleased to know that McKinsey & Company (Dohrmann & Pinshaw, 2009) has done just this, publishing in 2009 a report entitled "The Road to Improved Compliance," which details their findings from research on direct taxes at federal tax administrations in 13 countries, including the United States, but not the United Kingdom. They identified four major drivers of tax administration performance: proactive demand management, sophisticated taxpayer segmentation, streamlined operations, and rigorous performance tracking. They identified several aspects of tax administrations that correlate with high performance: (1) getting taxpayers to file online, (2) pre-population for individual taxpayers and pre-certification for business taxpayers, (3) segmentation of taxpayers and tailored approaches, (4) clear, centralized guidance to examiners and collectors, and (5) track metrics frequently and high level of detail.

To be sure, experts working on developing countries' tax policy have stressed the importance of the administrative dimension, dating back at least to Stanley Surrey (1957) and Richard Goode (1981). Richard Bird (e.g., 1983, 1989), has developed the connections more than anyone else remarking in Bird and Casanegra de Jantscher, 1992 (p. 1) that "policy change without administrative

[1] This article is based on a speech delivered in Barcelona on October 27, 2014. It draws on Slemrod and Gillitzer (2014a, 2014b). See also Slemrod (forthcoming).

[2] Paul W. McCracken Collegiate Professor of Business Economics and Public Policy at the Ross School of Business, and Professor in the Department of Economics, at the University of Michigan

[3] Tanzi (1992, p. iii)) offers another reason for the relative lack of attention to administration in the tax literature--it requires an intimate knowledge of how an administration works that is acquired only by years of practical experience.

[4] Becker and Mulligan (2003) suggest that a tax that is suboptimal can improve taxpayer welfare because the system creates additional political pressure for suppressing the growth of government.

change is nothing" (Casanegra de Jantscher, 1990, 179).The quintessential statement of this point is due to Milka Casanegra de Jantscher former Assistant Director of the IMF's Fiscal Affairs Department, who said that in developing countries "tax administration is tax policy." Such scholars often stress that no single strategy is appropriate for all countries and under all circumstances. This understanding has not permeated tax policy analysis in developed countries, although in writing about Colombia, Vázquez-Caro asserts that it applies not only to developing countries, and that "the secret to success" in the developed countries has been the emphasis on implementing tax laws. (1992, 147).

The International Monetary Fund has also been very active in providing technical assistance on tax administration issues. For example, it has developed a Tax Administration Diagnostic Assessment Tool (discussed at http://www.tadat.org,), which aims to provide an objective evidence-based assessment and baseline of a tax administration's performance that can inform a dialogue about reform priorities and, with repeat assessments, assess the progress achieved. In 2011 an IMF trust fund provided $30 million to finance technical assistance to contribute to the development of tax systems in low- and lower-middle income countries that addresses weaknesses underlying low revenue collection rates, including fragmented administrative structures, poorly designed operational processes, and unclear accountability.

Until recently, the insights of these experts have not been well integrated into the modern theory and empirical analysis of taxation. In what follows I speculate about why that integration has been slow to happen, and outline an overarching framework for integration that I call a tax-systems approach. By integrating rigorous theory and empirical analysis with expert insights into actual tax practice is, in my view, how to "sex up" tax administration, in the sense of the Free Dictionary (2014) definition: to change something in order to make it more exciting or interesting.

THE MODERN THEORY OF TAXATION

The modern theory of taxation, which I think of as starting around 1970, began with the work of Peter Diamond, James Mirrlees, and several others, represented a major breakthrough in how economics addressed the evaluation of taxation. The normative literature before 1970 was largely rhetorical and evaluated taxation against fairly vague standards such as fairness, and what that meant from one writer to another often varied. Starting in 1970, the analysis of taxation became rigorous, yes, mathematical, and the advantage of rigor is that one could compare one contribution to another, which greatly facilitates making intellectual progress. However, rigorization comes at a cost, because the models used to analyse taxation are stylized: they have to focus on particular features of taxation and make simplifying assumptions about how the world works. The standard models also unavoidably emphasize certain aspects of taxation at the expense of others.

The problem is that how the modern theory of taxation choses its stylizations means that it misses much that is important about taxes. It cannot address many current tax policy issues—for example, should Greece raise revenue to meet its bailout conditions by increasing tax rates or by cracking down on tax evasion? - thus creating a disconnect between topical tax issues of the day and the economic theory of taxation. And, in my view, it misses much of what is intellectually fascinating about taxes. The problem lies in six limitations of the standard model.

SIX LIMITATIONS OF THE STANDARD MODEL OF TAXATION

1. No administrative or compliance costs

In the standard toolkit, little attention is paid to the administrative and compliance costs of taxation. But these costs are not trivial. Most empirical studies conclude that they are an order of magnitude higher than the tax authority's budget. In many situations the sum of these costs, often identified as costs of collection, is the same order of magnitude as the type of costs that the modern toolkit does emphasize, which is the distortionary costs of taxation, called excess burden or deadweight loss. The great majority of the modern theory of taxation simply ignores these issues, and therefore cannot contribute to the multitude of tax policy issues that involve a trade-off between collection costs and other desiderata, such as the taxation of the imputed rent of owner-occupied housing or the use of presumptive income taxes.

2. Limited tax policy instruments

The second limitation is the unduly close focus on tax rates and bases--what is the optimal tax rate or pattern of tax rates and, to a lesser extent, what the tax base should be. But the government has a vast array of other tax policy instruments such as enforcement tools (i.e., audits), the penalty that is owed upon detected evasion, public disclosure of tax information and information reporting. For example, third-party information reporting is key to why, although in the United States only 1 percent of income returns are audited, the probability of detection of evasion if you try to cheat on your income taxes by understating wage or salary income, is closer to 99 percent. The difference between the 1 percent figure and the 99 percent figure is the system of information reporting. But how extensive should information reporting be: should it cover not only employee income but also capital income, how should it be extended into the informal economy? The empirical and theoretical aspects of these questions are fascinating questions of tax-systems analysis.

3. Limited behavioural response to taxation

The standard model focuses on what I refer to as the real behavioural response to taxation, for example labour supply and savings decisions, to the relative exclusion of often equally important avoidance and evasion responses. In the seminal article in the modern theory of taxation, the Mirrlees (1971) paper on optimal tax progressivity, an individual chooses (only) how much to work. Shortly thereafter, the classic tax-systems paper of Allingham and Sandmo (1972) introduced evasion as a choice and analysed the determinants of evasion. Fortunately, the analysis of evasion is now flourishing, but relatively little research has been devoted to integrating the choice of evasion into the optimal tax models of the kind that Mirrlees (1971) introduced -- not none, but very little.

4. String assumptions about information

Although the standard model recognizes the central role in taxation of asymmetric information between the government and private citizens, the assumptions of its stylized models have tended to be very extreme. For example, Mirrlees (1971) assumes (1) that the tax authority can costlessly and perfectly measure a person's income, and (2) that at no cost can it measure somebody's ability or effort. We know the first is certainly wrong: it isn't costless for a tax authority to measure income. It's also true that one can get some sense of individuals' ability or effort at some cost, such as by using tags in the sense of Akerlof (1970).

5. Invisible firms

The standard modern analysis of taxation has no meaningful role for firms. The seminal articles assume that firms have constant returns-to-scale production technology, under which there's no meaning to where one firm ends and another begins. The production technology doesn't distinguish between a given level of output that is produced by one big firm or by a million tiny firms. There is no determinate firm size and, in fact, firms are irrelevant. For example, in models of optimal commodity taxation, what matters is consumer choices, and firms don't enter. But, in fact, consumption taxes are collected from firms. Most U.S. states levy retail sales taxes, under which taxes are remitted by retail firms. Just about every other country levies value-added taxes, under which the taxes are remitted by businesses at all stages of production and distribution. In no actual consumption tax system are consumption taxes remitted by individual consumers. This strongly suggests that economizing on collection costs dictates that commodity taxes be collected from firms, and also suggests that the value-added tax has features that make it the best firm-based commodity tax system. A model without firms cannot address these issues. Nor can a model without firms address heterogeneous firms, so for example one can't evaluate size-based exemptions from the tax system.

6. No role for tax remittance

Finally, and related to the invisibility of firms, in the standard toolkit there is no concern with the details of tax remittance. It doesn't matter which side of the market a tax is imposed "on" —buyer or seller, for example. The incidence of the tax, as well as its effects on sales or output, should be the same either way. This irrelevance result is a folk theorem asserted in every undergraduate public finance textbook. I call it a folk theorem because the conditions under which it might be true are never actually formally presented and proven. Those conditions are close to being true in some cases, and far from being true in others: sometimes who remits is critically important.

TAX-SYSTEMS APPROACH

I posit that there is another framework for tax analysis, which I call a tax-systems perspective, which can aspire to overcome these limitations and provide insight into many important issues of taxation that the standard toolkit misses. Tax administration, broadly defined, is central to a tax-systems perspective.

I define a tax system as a set of rules, regulations, and procedures with three aspects. First, it defines what events or states of the world trigger tax liability, for example the earning of income, the ownership of a residence that might be subject to property tax, or the sale of a capital asset. This first aspect, which I denote *tax bases and rates*, is the principal object of the standard model, but that's only the first piece of a tax system. Second, a tax system specifies who or what entity must remit that tax and when. I call these *remittance rules*. For example, under most income tax systems, it is the employer that remits—actually sends to the government—an approximation of what tax an employee owes on that income. Third and finally, tax system details procedures for ensuring compliance, including third-party information-reporting requirements and the consequences, including penalties, of not remitting legal liability: these are the *enforcement rules*. Note that the standard model, as in Mirrlees (1971), assumes that tax liabilities can be ascertained and collected costlessly. If that is true, of course, remittance rules are irrelevant, as is worrying about enforcement rules—in fact, no country needs a tax administration. Alas, this is not the world we live in.

THE THREE BUILDING BLOCKS OF TAX-SYSTEMS ANALYSIS

In sum, there are three building blocks to a tax-systems approach. The first is to recognize that there are multiple sources of cost. The standard model stresses excess burden or deadweight loss, but there are also administrative costs and compliance costs. Second, there are multiple behavioural responses. They're not just real behavioural responses, say, the effect on labour supply or on saving, but there's also evasion of various kinds and there is also avoidance. Third, there are multiple tax instruments. A tax system consists not only of tax rates and tax bases, but also of many other aspects of a tax system.

Optimal tax systems

Given this new perspective, how do we evaluate tax systems? I suggest that there are two aspects to consider. The standard tax instruments need to be analysed taking into account these issues. For example, are complex commodity tax systems, as prescribed by optimal tax theory, still optimal in the presence of fixed per-tax-rate costs of administration? In addition, there is a whole new set of tax instruments to think about. What are optimal audit rates and rules? Should the employer or employee remit taxes on labour income? Should there be public disclosure of tax information? How much information reporting should the tax authority require of businesses? Luckily, the sorts of rigorous analytical methods that the standard model has developed can be brought to bear to these questions, so we don't need to start all over again to develop new approaches to analysis. We do, though, need to recognize that, because taxation is at its heart an issue about information and in particular asymmetric information, an important task is to integrate the economics of information into the economics of taxation. This is especially true because we're in the midst of an information revolution that has profound implications for taxation.

Administrative costs

Up to now excess burden, also known as deadweight loss, has received most of the attention in the standard model. But there are other costs. For example, administration costs need to be considered, especially in countries where there are limited government resources. Collecting tax requires a costly bureaucracy, especially if taxes are collected non-capriciously, which a government that seeks legitimacy should aspire to. A capricious tax system, which assigns tax liabilities randomly--or at least in a way that is unrelated to income, assets, or other indicators of ability to pay--is relatively easy to administer. What makes administration more expensive is when a legitimate government wants to be able to defend how tax liability is related to factors that society thinks appropriate, such as income or wealth or patterns of consumption.

For any given objective, there are more and less effective ways for a tax administration to operate. Should a tax administration be organized by tax levy—say into a corporate tax division, value-added tax division, and customs division—or by taxpayer segment, corporations versus high-income individuals, large taxpayer units, etc.? These are important issues that the type of study done by McKinsey & Company (Dohrmann & Pinshaw, 2009), to which I have alluded, can help a tax administration efficiently use the resources it has been allotted.

Market transactions facilitate administration of a legitimate tax system because they generate arm's-length numbers that can help measure income, for example, or the value of consumption. But not all market transactions facilitate tax administration. Cash transactions are particularly hard for the tax authority to monitor. South Korea, and some South American countries, offer subsidies for using credit or debit cards and for businesses dealing with the financial sector, because it is easier for the tax administration to monitor those transactions.

Administrative cost is a function of the physical size and the tangibility of the tax base as well as its visibility and the mobility—it's harder to tax diamonds than windows. In most countries it's easier to tax cars, or owners of cars, because they have to go through a registration procedure that is integrated with the tax authority. It's more efficient for a tax authority to deal with a smaller number of large units because there's some element of fixed administrative costs for each entity that must be dealt with. Moreover, one expects that larger entities have a more sophisticated financial operation, so that the cost to them would actually be lower dealing with their tax liabilities. Administrative cost is an increasing function of the complexity and the lack of clarity of the tax, and tends to have decreasing average costs in respect of the tax rates. For example, once you have an administration set-up with a value-added tax at a 5 percent rate, the administrative cost certainly doesn't double when you increase the rate to 10 percent.

Compliance costs

The other non-standard cost is compliance cost, defined as the cost of collecting revenue borne in the first instance by taxpayers or third parties to the tax collection process. For the individual income tax, this consists of the time people spend on their tax affairs and the money they pay to advisors to help them with their tax affairs, plus the cost incurred by, for example, employers that remit on behalf of their employees (i.e., withhold). In most, if not all, quantitative studies, compliance costs tend to dwarf administrative costs. For example, I would estimate that the compliance costs for the U.S. income tax are about 10 percent of revenue collected, compared to administrative costs of about 0.6 percent of revenues. The IRS public relations office will, for obvious reasons, focus on the latter figure and say the United States has a tremendously efficient tax system with a cost of just 60 cents per 100 dollars raised, but, in fact, the truth is closer to 10 dollars and 60 cents per 100 dollars raised. Many policy decisions can shift the cost of collection from what shows up in the tax authority's budget to compliance costs, by, for example, requiring that taxpayers submit receipts with their tax returns rather than having to provide them only upon audit. Such a policy change makes the tax authority look more efficient (i.e. less costly), but doesn't necessarily lower the social cost per dollar raised.

Just as taxes can be shifted, so too can compliance costs. If a tax policy change places more compliance cost on businesses one can expect that, in equilibrium, the prices they charge to their customers will be higher. Thus both administrative and compliance costs ultimately burden citizens, although only the administrative costs show up in official budgets. To be sure, it is more difficult to measure compliance costs than administrative costs. For example, how does one value the time, say, of preparing the individual income tax? If I spend 30 hours a year preparing my tax return, how do we value that? The standard way economists do it is by valuing taxpayers' time at their after-tax wage rate, but that is correct only under certain assumptions. For someone who actually enjoys doing their taxes, that's way too high. Second, how do we differentiate between voluntary and involuntary costs? For a typical big business, some of the tax-related costs that they incur are mandatory to comply with the law; however, much of the cost they incur is voluntary, what we might call tax planning. These are two different things but, from the point of view of society, both are resource costs. Another issue is that, for businesses, it's especially problematic to measure a marginal cost of compliance because a business wants to keep track of what they're doing with or without tax-filing requirements, for managerial accounting purposes. How much of what they do would they have done anyway, in the absence of taxes?

MULTIPLE BEHAVIOURAL RESPONSES

The canonical model of evasion choices due to Allingham and Sandmo (1972) is a deterrence model, in that evasion is constrained by the threat of punishment to risk-averse taxpayers. I accept that deterrence is the first-order explanation for what determines (limits) evasion. I also accept that deterrence is not the whole story and that non-deterrence factors, such as duty and social norms, explain differences in noncompliance across individuals and businesses. There is, though, clear empirical evidence for the deterrence effect on evasion, but only mixed empirical support for non-deterrence theories.

Coming up with such empirical evidence is, to put it mildly, challenging. Many years ago a colleague of mine remarked at an academic conference, sarcastically but accurately, that the empirical analysis of tax evasion is very straightforward, except for two things: (1) you can't measure the right-hand-side variables, and (2) you can't measure the left-hand-side variable. Almost all the empirical analyses of evasion, including the credible ones, don't actually have a measure of evasion, but instead rely on indirect measures of evasion. Tax administrations have the same problem: it's not easy to measure evasion. There are, though, several promising developments in measuring tax evasion and, more importantly, how to measure the determinants of tax evasion and how different policies might affect tax evasion. Let me discuss three promising developments.

Traces-of-income methods

Following Slemrod and Weber (2012), I call the first method the traces-of-income approach. Let me explain with a non-tax analogy. In the United States, there are posted speed limits on most roads, but the typical driver (especially in my home state of Michigan) likes to drive faster than that. Many people have a device in their cars called a fuzz buster (fuzz is a slang term for police). A fuzz buster can detect police radar within a certain area; when it does, it makes a sound and the driver knows he had better slow down. Why would a person have a fuzz buster if they weren't thinking of evading the speed limit? There would be no point. So, one can imagine the presence of fuzz busters, their change over time and across states, as a trace of the amount of speed-limit violations that occurs.

The classic research design of the traces-of-income approach to measuring tax evasion is due to Pissarides and Weber (1989). Here's their approach. First they assume, reasonably in my opinion, that how much food someone purchases is a function of income, but doesn't depend on what *kind* of income—salary versus self-employment—a person has. Next they look at what the ratio of food purchases to reported income is, separately for employees and self-employed people. Pissarides and Weber discovered that the ratio of food purchases to the income reported by self-employed people is considerably higher than that reported by employees. Given their assumption, this implies that self-employed people are more likely to underreport their income. With Naomi Feldman, I did something similar using actual income tax returns in the United States where, instead of food, we examined charitable contributions (Feldman & Slemrod, 2007). We find that charitable contributions as a fraction of reported income is substantially higher for people who are self-employed. This means either that self-employed folks are (way) more charitable, which is conceivable, but I think the bigger explanation is that they're underreporting their income relative to employees. Under this methodology, we have no direct information about evasion, but can infer something about its patterns under reasonable assumptions.

Analysis of administrative data

The second promising development is the analysis of administrative tax return data, sometimes linked to other administrative records, often on the whole population of a country. These kinds of data first became available in Scandinavia but now they're available under varying protocols in Canada, in the United Kingdom, many other European countries, and the United States. Compared to having small samples of tax-return data, when a researcher has *all* returns, she has much more (statistical) power to reach reliable conclusions about the effect of taxation, and can do all sorts of fascinating analyses, taking advantage of anomalies in tax schedules such as notches. This is why the partnership between the HMRC and the Tax Administration Research Centre at the University of Exeter is so important.

Randomized field experiments

Third, we can take advantage of randomized field experiments. Randomized field experiments have been heralded as the "credibility revolution" (Angrist & Pischke, 2010) in empirical economics because, when done correctly, the researcher need not worry about getting a control group. The control group is built into the randomization. You have two otherwise statistically identical groups, one that gets the policy treatment of interest and the other that doesn't.

When the promise of randomized field experiments became widely recognized, as a tax researcher I was concerned, even despairing, because I presumed there was no way any country was ever going to allow for research purposes the randomization of tax rates: "Loyal citizens, next year half of you—chosen for no substantive reason at all--will be subject to one tax rate schedule, while the other half will be subject to a different tax rate schedule." I was afraid that the credibility revolution was going to leave tax researchers behind. It turns out that I was way too pessimistic. Although it's true that tax rates and bases are probably never going to be randomized, for other tax-system instruments policy randomization is possible. Many years ago I conducted a study in Minnesota where the content of letters sent to taxpayers was varied randomly, providing different sets of information such as an audit threat or an appeal to social conscience (Slemrod, Blumenthal, & Christian, 2001). We then analysed taxpayer behaviour subsequent to receiving the letter and compared the responses of groups that received the various letter treatments. Recently randomized field experiments have received more attention. Kleven et al. (2011) have done a wonderful field experiment about income tax in Denmark; Pomeranz (2013) has done an interesting study on the value-added tax in Chile; and Fellner, Sausgruber, and Traxler (2013) have done similar research on TV licence fees in Austria. We tax researchers need to join the credibility revolution and do our best to persuade tax authorities to work with us to implement credible randomized experiments.

AVOIDANCE

Avoidance is different than evasion. If you ask an economist what's the difference between evasion and avoidance, the first answer you would get is that evasion is illegal and avoidance isn't. The distinction was put most vividly by Denis Healey, the former U.K. Chancellor of the Exchequer, when he said *"The difference between tax avoidance and tax evasion is the thickness of a prison wall"*. But this definition doesn't distinguish a legal real behavioural response to tax instruments, such as working less when tax rates go up, from the kinds of legal responses we would naturally consider as avoidance. Slemrod and Yitzhaki (2002) offers the following distinction: avoidance consists of taxpayers' efforts to reduce their tax liability in ways that do not alter their consumption basket other than due to income effects, where consumption basket includes labour supply. Many kinds of behaviour qualify as avoidance under this definition: paying a tax professional to search for deductions; buying and selling essentially equivalent assets with different tax treatment, known as tax arbitrage; and slightly retiming a transaction to get in or just past when the tax law changes.

Sometimes the avoidance behaviour occurs because tax liability is based on a surrogate tax base, which may be justified on administrative or compliance costs' grounds. Consider capital gains in an income tax. In principle, accrued capital gains should be included in the tax base, but are very difficult to measure on an annual basis. So, instead many countries tax capital gains realizations. Taxing realizations is reasonable, but it triggers all sorts of income tax avoidance. Probably the most important economic example of this is the tax treatment of debt versus equity. Under most income tax systems, if a corporation raises funds by debt, the interest payments are deductible as an expense of doing business through the corporation. If, on the other hand, a corporation raises money by issuing shares, the payments to the stockholders are not considered a deductible expense of doing business. Many very smart people, often with MBAs, go to Wall Street and spend their careers inventing securities that provide the stochastic cash flows that the corporation wants, but make sure the security is just on the debt side of the line for tax purposes. In the neighbourhood of the dividing line, these securities attain deductibility but are not substantively different than neighbouring—in characteristics' space—equity instruments. This is a classic tax-systems issue because it is practically infeasible to have a different tax treatment for every security, although in principle one can. Why do payments to those who provide funds to a corporation have to be either 100 percent deductible or not deductible at all? You could have rules where, depending on what the security's characteristics are, the payments could be 38 percent deductible or 73 percent deductible, but this doesn't happen.

INTERACTIONS

Interactions among the real, evasion, and avoidance responses of taxpayers can be important. Consider the example of Puerto Rico, a territory of the United States. For many years income earned in Puerto Rico was not taxed when earned and not taxed when repatriated to a U.S. parent company. This made Puerto Rico a very attractive place for U.S. businesses to be. During this period there was an inordinate amount of U.S. companies investing in Puerto Rico in particular kinds of businesses such as electronics, pharmaceuticals, and high-fashion clothes. What do these three lines of business have in common? Consider a U.S. pharmaceutical company that puts a subsidiary in Puerto Rico, where the subsidiary essentially takes as an input the powder for a pill with a chemical formula that was developed in the United States, and basically just presses the powder into pills. The subsidiary then sells the pills back to the United States and the accounting is done so that, to the tax authorities, it looks like the Puerto Rican subsidiary is enormously profitable. The inter-company pricing is set in such a way that the powder is sold to the subsidiary very cheaply and the pills are sold back to the U.S. parent at a nice profit. For pharmaceuticals, electronics, and high-fashion clothing, the real value-producing activity, be it drug research, computer programming, or fashion advertising, is done in the United States, but much of the income for tax purposes looked like it was in Puerto Rico.

What does this have to do with interactions among real and avoidance responses? A U.S. company couldn't get away with this kind of transfer pricing unless it had an actual plant in Puerto Rico, doing *something*. A company had to put some real investment there, but what was driving the attractiveness of Puerto Rico was not that Puerto Rico had a comparative advantage in high-fashion clothing manufacturing or a labour force that was particularly good at these tasks, but rather that the parent company could only get the tax benefits of the income shifting from the United States to Puerto Rico if they had some real activity there.

NON-BASE POLICIES

Public disclosure

I want to talk a bit about a few fascinating tax-system issues, beginning with public disclosure. The first U.S. income tax, which was during the Civil War in the 1860s, featured public disclosure of income tax returns. The United States had it again in the 1920s and 1930s, and then it was abolished. It is current policy in Norway, Sweden, and Finland and was policy in Japan for a half century until 2004. Public disclosure of tax return information is supported on the grounds that it improves policy transparency and that it helps enforcement. If I can look up and see what my neighbour declares his or her income to be, and I notice they have a BMW parked in the garage, I might have some information that might be of use to the tax authority. If people understand this dynamic, they might be less inclined to understate their income. Opponents decry the invasion of privacy.

As social scientists pondering whether public disclosure is a good idea or not, we should investigate whether it works -- does it actually improve tax compliance? I have studied that question by focusing on the end of the Japanese policy in 2004 (Hasegawa, Hoopes, Ishida, & Slemrod, 2013). I've also done research using data from Norway, where tax returns have been public information since the 19th century, but were made easily available on the Internet in 2001 (Bo, Slemrod, & Thoresen, forthcoming). We can identify the impact on reported income in Norway because of the availability of a type of control group. Before the move to the Internet, in some towns in Norway everybody had easy access to their neighbours' tax returns because the local football teams would go door-to-door as a fundraiser, selling little books of this information they got from the tax offices. For people living in these municipalities, putting the information on the Internet was no big change. However, in other municipalities, they didn't have the tax return information readily available. So using that research design, we find that there was actually about a 2 to 3 percent increase in reported income in the municipalities that had no such information prior to going on the Internet, pretty convincing evidence of a disclosure effect on tax compliance.

Enforcement

I stated that optimal tax-systems considerations change the answers to some optimal tax questions. It also raises many new questions, such as how many resources to devote to enforcement. An optimal tax-systems approach can, in principle, determine what the enforcement budget of the tax authority should be—at the margin, the social benefit should equal the social cost. Importantly, the social benefit is not the same as revenue raised, because revenue collected represents a transfer from private to public hands, not a pure social gain. Thus, an oft-suggested criterion is wrong. The *wrong* rule is to allocate budget to the tax authority as long as an extra billion dollars it's given will produce more than a billion dollars tax collection. We know this criterion is not right because it compares apples and oranges. A billion-dollar budget is a real resource cost, while a billion dollars in extra collections is a transfer. That's not to say it doesn't have some social value, but the value is not measured by the amount collected.

Also of interest is the point of remittance, or collection, of taxes. In a recent paper, I and co-authors (Kopczuk et al., 2014) analyse the collection of state diesel taxes in the United States over a period when the collection point changed intermittently from retail gas stations to distributors of gasoline to the terminal. We show that the pass-through rate of the tax and revenues, for a given tax rate, both changed as the collection point changed, suggesting that the collection point changed the amount of evasion and that the folk theorem about the irrelevance of who must remit does not always hold.

Exemption of small businesses

Next consider the tax exemption of small businesses. Many countries do it, explicitly by law or implicitly by lax enforcement. The standard model says optimal tax policy would never exempt small businesses for tax because it provides an incentive for production to move to a small scale from a larger scale, which violates what is known as production efficiency. One of the seminal articles in optimal taxation, Diamond and Mirrlees (1971), teaches us that, whatever other distortions a tax system creates, it should always preserve production efficiency. It turns out that this isn't true anymore if there's some per-firm fixed cost element of the tax authority dealing with firms. With fixed costs, then *ceteris paribus* it can be appropriate to exempt some smaller firms because the potential revenue from these firms is small relative to the compliance and administrative costs savings. Thus there's a clear, principled reason for why a tax authority might consider exempting small firms in some cases. The standard model can't address the issue, but models with heterogeneous firms can clarify when and how to have special treatment for small businesses, and what empirical information is required to assess when such situations arise.

Line drawing

The last topic I wish to address is line drawing--how do we draw the line between two diverse items that are taxed differently? In Michigan if you buy food at a grocery store, the purchase is exempt from sales tax, but if you buy food at a restaurant the expenditure is taxable. Consequently, at the “characteristic border” between those two, one observes salad bars in grocery stores and then, just beyond the cash register, tables with napkins and silverware provided. You can buy your food and eat it right there, but presumably it’s not subject to sales tax. The tax authority has to draw a line between what’s taxed and what isn’t. In such real-life scuffling about tax systems, line drawing is critically important, but the standard models can’t handle this phenomenon.

There are hundreds of thousands of different commodities, and probably at least hundreds more introduced each week. No tax system can levy a separate tax rate for each one, as the standard optimal tax theory prescribes. Maybe we can have two or three different tax rates, but how do you draw the lines to determine which commodities attract which tax rates? Usually the lines are drawn based on the characteristics of the consumption goods. As soon as these lines have been identified, there will be tax-driven product innovation--new commodities are introduced that are just on the low-tax side of the line that would never have been produced otherwise. In Indonesia, the preferential tax treatment of motorcycles led to the creation of a new type of motorcycle with three wheels and long benches at the back seating up to eight passengers. In Chile, the market responded to high taxes on cars, but not on panel trucks, by introducing a redesigned panel truck that featured glass windows instead of wood panels and upholstered seats in the back. I recently learned that the Swedish pop group ABBA, who wore outrageous costumes at their performances, admitted that one reason for their flamboyant outfits was the income tax law in their country that held that the cost of the costumes was deductible if and only if the costumes could *not* be worn on the street. Thus, the tax authority had to somehow draw a line between what could be worn on the street and what could not. Line drawing affects not only to pop musicians’ garb. The same issues apply to the important distinction between debt versus equity finance, whether a worker is an employee or an independent contractor, and many other economically significant issues.

INFORMATION REVOLUTION

Tax systems are, at their core, largely an issue of asymmetric information among the taxpayers, remitting agents, and the tax authority. Thus, the revolution in information technology is bound to have profound implications for tax systems. The most obvious one is the computerization of the tax collection process, which can make tax administration and enforcement much more efficient, but that’s not the only implication. In principle, a tax authority can now base tax liability on a much wider range of information than before. For example, in Finland speeding fines can be related to the violator’s income and instantly assessed; the police officer can tell just by clicking into the system—one rich speeder was fined €116,000! Naritomi (2013) evaluates an anti-tax evasion program in the state of Sao Paulo, Brazil called Nota Fiscal Paulista that provides tax rebates and monthly lottery prizes for consumers who ask for receipts, and establishes a direct communication channel between the tax authority and consumers through an online account system, where consumers can verify receipts reported by establishments and can act as whistle-blowers by filing complaints. Smart tax cards can personalize consumption tax rates, depending on how much is spent and on what is purchased. "Zappers" provide another good example of the influence of new technology. Zappers are automated sales suppression devices that a retailer can install into their point-of-sale system—their electronic cash register. The zapper randomly deletes sales transactions, so then when the sales tax or income tax auditor asks for the sales register the firm owner says "Sure, here it is," and the auditor might never suspect the skimming of taxable sales. My point is that technology impacts both sides of the tax enforcement game.

CONCLUSION

Frank Hahn (1973, p. 106) once wrote that optimal tax formulas are either guides to action or nothing at all. My view is that, although the modern analytical methods that came into prominence more than 40 years ago represented a tremendous advance, they feature stylized models that are so far from the reality of taxes on the ground—withholding, information reports, audits, tax havens, evasion, and line drawing and notches—that they cannot be reliable guides to action. Tax-systems analysis applies rigorous economic tools to issues that are prominent in the formulation and administration of real-world tax policies. Policy makers should ponder the inter-relationship among tax rates, tax bases, enforcement, and administration, recognizing that tax policy is really tax-systems policy. A tax-systems approach can ward off substantial policy errors, such as foregoing tax increases because the existing base is too narrow or too poorly enforced. The way forward features more communication between tax administrators and academics, in sharing data, institutional knowledge, and rigorous methods of analysing data that yield reliable inferences about how the real world of taxation works.

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Improving Tax Administration in Developing Countries

Richard M. Bird[1]

Improving tax administration has long been a matter of concern to those concerned with developing countries. Since all countries need revenues, all countries have revenue administrations.[2] For developing countries to benefit from the opportunities afforded by globalisation - or to rebound from the blows it may deal out - they must be able to mobilise adequate fiscal revenues. Money alone is not enough; but it is necessary for any state to function, and the most reliable way to get it is with an effective tax administration. How countries tax affects the allocation and distribution of resources and the rate of economic growth. In addition, however, the tax system constitutes one of the major interfaces between citizens and state in any country so how taxes are administered may affect not only the political future of the government of the day but also, more fundamentally, public trust in government. Tax administration may thus play a critical role not only in shaping economic development but in developing an effective state.

The standard economic approach to taxation usually ignores such key administrative issues as evasion and avoidance, administrative and compliance costs, and how the way in which taxpayers and tax officials conceptualize and carry out the process of assessing, collecting, and enforcing taxes may profoundly alter the effects of the tax system. However, "…optimal policy requires simultaneous consideration of the design of the tax code and of the administrative structure crated to enforce it (McLaren 2003, v). Good tax administration focuses on the collection of information in a world in which "…information is observable with error, to varying degrees, and its quality depends greatly on the type of administration and enforcement in place" (Slemrod & Gillitzer 2013, 186). Since such problems are especially critical in developing countries around the world, it is not surprising that good tax administration is seldom found in practice.[3] Until recently, little good information was available on tax administration and even less scholarly attention was paid to the mundane but important reality of how tax systems actually worked in developing countries.[4] Now, however, the pioneering effort of the OECD to collect comparative information about tax administrations in OECD member countries (OECD, 2013) has been extended to a wider set of

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[2] In many if not most countries, substantial revenues – including tax revenues – are collected by agencies other than the central tax administration: in Latin America, for example, on average over the 2006-2010 period, only 62.5% of tax revenues were collected by "the" tax administration (http://www.ciat.org/index.php/en/blog/item/68-importancia-fiscal-administraciones-tributarias-america-latina.html accessed 23/02/2015). Tax revenues are also collected by sub-national governments, social security agencies, and, in some countries, separate customs agencies; moreover, a variety of non-tax revenues are collected by still other agencies. Since in addition the authority, autonomy and internal organization of central tax agencies are also often very different from country to country, international comparisons must obviously be made with care. However, none of these issues can be discussed further in the present paper.

3 See, for example, the recent extensive review of tax administration in India by the Tax Administration Reform Commission, available at http://finmin.nic.in/the_ministry/dept_revenue/tarc_report.asp, and reviewed in this journal see page 132.

[4] Of course, a few excellent country studies existed, with Radian (1980) being a particularly noteworthy example.

countries,[5] and several recent empirical studies have already appeared drawing on this new data base.[6]

The absence of good comparative data did not slow the flow of advice over the years from many sources to many developing countries about how they might improve their tax administrations. Although this activity generated a huge volume of material, little was published and even less was systematically evaluated either by the providers themselves or by outside scholars. [7] Nonetheless, recently international agencies, building on their considerable experience in the field, have laid increasing emphasis on 'benchmarking' tax administration performance in developing countries.[8] Moreover, a few such countries have begun not only to analyse the massive amount of administrative data generated by their increasing modernized tax administrations but even to allow outside scholars to have access to such data under certain conditions.[9] For all these reasons, it may perhaps be timely to discuss briefly a few aspects of tax administration in developing countries that need to be considered by those who wish to improve this important (and unduly neglected) aspect of the state-building and development process and to move a bit further down the long road between analysing an optimal tax structure for developing countries[10] and understanding how a more effective tax system may perhaps become reality in such countries.

THE POLITICAL ECONOMY OF TAX ADMINISTRATION

The economic approach to tax administration is simple: apply additional resources to the task up to the point at which the gains from doing so cease to be worth the cost.[11] The political economy of tax administration is more difficult. Curiously, however, the aspect of tax administration in developing countries that has been most examined by scholars in recent years has perhaps been the political dimension.[12] As would-be tax reformers in all countries usually learn all too soon, short-run political considerations often hamper not only policy changes but also attempts to improve revenue administration (which are inevitably long-term

[5] The most recent OECD (2013) study covers 52 countries; additional information is provided in IDB (2013) for 13 additional Latin American countries, in ADB (2014) for another 6 Asian countries and in ITD (2010) for some African countries.

[6] See Robinson and Slemrod (2012) and Alm and Duncan (2014). These studies are suggestive although (in part for reasons mentioned in note 1) cross-country administrative comparisons must be handled with care.

[7] One of the few outside analyses of foreign technical assistance in tax is that by Stewart and Jogarjan (2004); for my own views, see Bird (2014). In many ways the most interesting, and probably most studied, foreign study of taxation in a non-western country was perhaps that by Carl Shoup in Japan under the American post-war occupation (Shoup 1949), as discussed by Gillis (1991) and especially Brownlee, Ide and Fukagai (2013). However, although Shoup paid an unusual amount of attention to administrative issues in his missions (including those to Venezuela (1959) and Liberia (1970), the principal focus of these studies, like the contemporary and later studies by such other distinguished tax advisers as Kaldor (1980) in India, Sri Lanka (then Ceylon) and elsewhere and Musgrave in Colombia (1971) and Bolivia (1981), was on tax policy. Apart from an early IMF-based review of tax administration reform efforts (Bird and Casanegra 1992) and a few internal or at least little-circulated internal reports by the IMF, USAID, and other agencies, to my knowledge no systematic examination of the extensive foreign assistance to tax administrations in developing countries during the last six decades exists.

8 See, as only one example, the TADAT approach of the IMF (available at http://www.tadat.org). My own (somewhat skeptical) view on these efforts is set out in Vazquez-Caro and Bird (2011).

[9] For examples of such studies in Latin America, see Pomeranz (forthcoming) and de Paula and Scheinkman (2010),

[10] For pioneering examples of the optimal approach, see Newberry and Stern (1987) and Ahmad and Stern (1991); for a more recent example, see Gordon (2010).

[11] As Slemrod and Yitzhaki (2002) make clear, the economically optimal level of administrative effort is always less than the level that will yield the greatest revenue.

[12] See, in particular, Moore (2007), Brautigam, Fjeldstad, and Moore (2008), and a series of interesting country studies emerging in recent years from the International Centre for Tax and Development such as Prichard (2009).

in nature).[13] The connection between revenue systems and political development has attracted attention from scholars such as Levi (1988), Steinmo (1993), and Lieberman (1988), to mention only a few. Until recently, however, the focus of most such studies was on the (perceived) distributional impact of state policy, with changes often being interpreted as reflecting the rise and fall of different social and economic groups. For example, the extent to which a nation's finance relies on income taxation was seen as a "mirror of democracy"' in the sense that the income tax symbolised the strength of egalitarianism and commitment to social justice.[14] The characterization of 'direct' taxes as progressive and indirect taxes as 'regressive' continues to play an important role in tax politics. Many of the 'VAT wars' that have occurred in recent decades in countries as varied as Canada, Japan, South Africa, Guatemala, and Ghana, for example, have been driven in part by the perception that a 'regressive' consumption tax like VAT is inherently less desirable than a 'progressive' income tax.[15] How governments raise revenue not only affects policy outcomes but also reflects political forces and induces political reactions.

The same can be said about how taxes are collected. Consider, for example, the simple question of whether taxpayers should file income tax returns. Some have argued that doing so is an unnecessarily costly and troublesome exercise for most taxpayers so that countries should move away from requiring most taxpayers to file annual returns (Graetz, 1997). On the other hand, others suggest that, not only (in the well-known words of U.S. Supreme Court Justice Holmes) are taxes "what we pay for civilized society," but that society is more likely to be civilized if people are aware of the costs they incur when they think governments act on their behalf (Shoup, 1969). People may differ about such deep issues: but it is clear that the way in which people pay taxes may affect how they feel about both taxes and government.[16]

The administrative and compliance costs associated with collecting taxes are also relevant in this context. Often, 10 percent or less of tax returns produce 90 percent of the revenue. But the remaining 90 percent of returns may account for perhaps 80 percent of the associated administrative and compliance costs. Whether for cost or political reasons, or both, many countries in recent years have reduced the role of self-assessment in the income tax by using 'pre-populated' returns (OECD 2006) with much—even all—of the information being filled in administratively, and the taxpayer's main role being simply to sign and submit. Singapore has taken this approach to the extreme by not only enabling most taxpayers to avoid filing anything but even debiting their bank accounts for the taxes the government calculates are due (Oldman & Bird 2000). On the other hand, a recent study (Coleman 2007) concluded that Australians would rather file returns that generated refunds rather than have less tax withheld in the first place.

[13] Studies of successful administrative reform in countries like Singapore (Sia and Boon 1997) and Chile suggest that it is likely to take 8-10 years to modernize an administration, even with a good starting point.

[14] The quoted phrase comes from Webber and Wildavsky (1986), p 526. For an example of this approach in action, see Kato (2003).

[15] The first two countries are discussed in Ecclestone (2007), and the last three, more briefly, in Bird and Gendron (2007). How progressive either VAT or income tax is in practice in any country depends on such features as the structure of the tax, the nature of the economy, the effectiveness of the administration, as discussed in e.g. Bird and Zolt (2005) and Bird and Gendron (2007).

[16] This linkage has recently been explored in some of the literature on 'salience' beginning with Chetty, Looney and Kroft (2007) as well as in the 'Wicksellian' literature epitomized by Breton (2006). My own take on each of these approaches may be found in Bird (2010) and Bird and Slack (2014).

In Canada, where many transfer programs are administered through the income tax, many people file even when they have had no tax withheld.

Such issues are even more important in less economically developed countries. For example, Smith (2003) suggests that, although the South African Revenue Service (SARS) in post-Apartheid South Africa did a good job in raising revenue, the way it did so actually reduced fiscal redistribution while its failure to tap the large informal sector substantially reduced its state-building role. This comment raises the important question of the interaction between tax administration and such nebulous but potentially important concepts as 'tax culture' (Nerré, 2008) and 'tax morale' (Torgler, 2007).[17] Among the many factors that shape the nature and impact of tax administration are the nature of the legal system, the extent of corruption, and how people feel about government. On the other hand, how taxes are collected may itself weaken or strengthen public trust (social capital) in a number of ways. Early attempts to explore this interdependence suggest that influence does indeed run both ways, with higher levels of trust – a more responsive and legitimate state – being associated with more tax effort and the level of trust being associated with better 'governance quality' in terms of the performance and perception of key state institutions like tax administration.[18]

How and how well a tax administration works depends to a considerable extent on the environment within which it works (Gill, 2000). The nature of the tax structure and the underlying legal system is one factor, as is the extent to which taxation is used to achieve objectives other than simply collecting revenue. Another obvious factor is the structure and nature of the economy. For example, financial development, particularly the use of banking channels for payment, makes transactions easier to observe and hence broadens the potential scope of taxation and makes tax administration easier (Gordon & Li 2009). Because growth is usually accompanied by a rising share of the formal or organised sector, the base for most taxes increases. Unless modern systems of business accounting are adopted widely, however, it is difficult to make effective use of such modern taxes as the income tax, the corporation tax and the VAT. Only when accounting is both common and standardized can countries move from dependence on the burdensome and harassing physical verification of items on which older taxes like stamp taxes and excises are based. When 'informal' economic activity remains important all too often about all that can be done is to adopt some variant of presumptive taxation in the hope that over time the problem will disappear (Alm, Martinez-Vazquez & Wallace 2004). On the other hand, as financial systems become more sophisticated and countries more open it becomes easier for funds to cross international borders to escape taxes. The possibility of international income shifting through various forms of transfer pricing and related financial transactions, like the growth of cross-border electronic commerce, limits the scope of feasible administrative actions by national tax authorities. While such matters are neglected by administrations in developing countries at their peril, they are not discussed further here in part because even the most sophisticated tax administrations in the most developed countries are still struggling to work out

[17] The important question of taxing 'informality' is not discussed further here: see Alm, Martinez-Vazquez and Wallace (2004) for a useful introduction.
[18] Among the earlier attempts to explore these relationships empirically, see Bird, Martinez-Vazquez and Torgler (2008); a good review of more recent work may be found in Alm, Martinez-Vazquez and Torgler (2010).

how to deal with what is now generally called 'base erosion and profit shifting' (BEPS).[19]

THE REVENUE PRODUCTION PROCESS[20]

One way to think of revenue administration is as a multiple-input, multiple-output process. Outputs include not only revenue but also such important intangible products as equity and perhaps even a certain degree of state-building. The principal inputs are people, materials and information. These inputs are combined in a series of systems within an organisational framework and then transformed in the context of the specific environment and the process of management into outputs. Although this production process may be further broken down into a number of separable components, only a few key aspects are noted here. For example, the resources required include properly skilled staff, adequate infrastructural and equipment support, and managerial input through an organisational hierarchy and an intra-organisation communication and information sharing system.

Importantly, as emphasized earlier, the critical information needed to ascertain the existing and potential tax base includes a number of subsystems to cover specific areas, such as: (1) assessing the potential tax base for the aggregate economy;[21] (2) identifying potential taxable entities and – at least in principle – being able to estimate the amount of the tax base for each if it proves necessary to do so; (3) establishing a 'risk management' function to classify potential taxpayers into relatively homogenous groups from the point of view of differences in the resources needed and the strategy that the administration must employ to collect taxes from them; [22] and (4) monitoring and providing feedback on the effectiveness of strategies employed by the administration in collecting taxes from different groups of potential taxpayers. Perhaps the most important of these subsystems with respect to revenues is the second, which includes the collection of information from potential taxpayers themselves, from third parties (including other public agencies), and from within the tax administration itself.

In addition to developing risk management strategies, rules governing activities to counter each type of non-compliance by different groups of taxpayers need to be established. Such activities may include, for instance: requiring new or non-filing potential taxpayers to file, preventing or punishing tax avoidance, preventing or punishing incorrect tax base reporting by filers, recovering taxes due but not paid voluntarily by taxpayers, and imposing penalties when required. The design of implementation of penalties for non-complying taxpayers—and perhaps also of rewards for complying taxpayers – is an unduly neglected question, requiring close attention not only to exactly what constitutes sufficient proof of non-compliance to warrant sanction but also, more importantly, the appropriate

[19] See OECD (2013a) for an introduction, and http://www.oecd.org/ctp/beps.htm for current developments in the on-going struggle. My own views on this issue may be found in the latter part of a recent paper (Bird 2015).
[20] Portions of the next few sections draw on earlier work on this subject, particularly Bird (2004).
[21] The extent to which the potential base is reached by the existing tax system is the focus of many recent discussions of the 'tax gap' (Gemmell & Hesseldine 2012) as well as such empirical studies as HMRC (2010) and European Commission (2013).
[22] See, for example, European Commission (2010) and Kkwaja, Asawati and Loepick (2014)

nature and structure of penalties.[23] For example, given the critical importance of information to good tax administration, it is surprising how few countries seem to impose adequate penalties for not providing required information or to monitor adequately the completeness and accuracy of third-party information returns. Finally, since no tax administration is perfect, careful and explicit provision should also be made to deal with mistakes. At least two sub-systems are required for this purpose—one to redress taxpayer grievances (review, appeals, administrative remedies, ombudsmen), and one to identify and correct (or prevent) errors by officials (internal reviews, inspection and anti-corruption units).

To operate this complex production process efficiently and effectively in a complex environment is not simple. Three key ingredients seem essential for effective tax administration in any country: the political will to implement the tax system effectively; a clear strategy as to how to achieve this goal; and adequate resources for the task at hand (Casanegra de Jantscher & Bird 1992). It helps, of course, if the tax system is well designed, appropriate for the country in question, and relatively simple, but even the best-designed tax system is likely to be properly implemented only if these three conditions are satisfied. Much attention is frequently and correctly paid to the resource problem—the need to have sufficient trained officials, adequate information technology and so on. In the absence of a sound implementation strategy, however, even adequate resources will not do the job. And in the absence of sufficient political support, even the best strategy cannot be effectively implemented. Indeed, abundant experience around the world has made it clear that the single most important ingredient for effective tax administration is clear recognition at the highest levels of politics of the importance of the task and the willingness to support good administrative practices, even if political friends are hurt.[24]

Unfortunately, relatively few developing countries—and by no means all developed countries—have been able to leap this initial hurdle. Often, urged by international agencies (such as the 'troika' in Greece) or simply desperate to get more revenues, countries have launched frantic efforts to corral defaulters or to rope in new victims without hurting politically powerful interests and without providing the time, resources and consistent long-term political support needed to do a good job. No doubt it would be nice if this could be done, but it cannot. The widespread reluctance to collect taxes efficiently and effectively without fear or favour may be understandable in countries, like many developing countries, that are somewhat fragile politically, but without major changes in this respect, no viable long-term tax system can possibly be put into place.

If the political will is there, the techniques needed for effective revenue administration are not a secret. The lessons taught by experience "…on the whole were not exciting – more like 'how to be a good public accountant' than 'how to be a star in the movie or in the opera or on the football field'" (Harberger, 1989, p.27). The tax administration must be given an appropriate institutional form. It must be adequately staffed with trained officials. It should be properly organised. Computerisation and appropriate use of modern information technology can help

[23] An old but still useful discussion of some of the issues involved may be found in Oldman (1965).
[24] See, for instance, the fascinating comparison of tax administration in Argentina and Chile in Bergman (2009).

a lot, but technology alone cannot do the job.[25] Further, the technology must be carefully integrated into the tax administration if it is to increase output and not just costs. Many countries have found it difficult to work out the right mix and sequencing for upgrading both IT and human resources (Bird & Zolt 2008). In the end, well-trained people, with adequate political support, are needed to administer taxes effectively. Provision must be made for training and retraining staff as needed. The information needed for effective administration must be collected from taxpayers, relevant third parties, and other government agencies, stored in an accessible and useful fashion, and used to ensure that those who should be on the tax rolls, are, that those who should file returns, do, that those who should pay on time, do, and that those who do not comply are uncovered, pursued, and sanctioned, as necessary. All this may seem obvious and trite but none of it is easy and little of it is simple. But it is not rocket science. It can be done and it has been done, in countries ranging from rich to relatively poor.

BENCHMARKING TAX ADMINISTRATION

One approach to improving tax administration is to begin with a model of what a good revenue administration should look like, then to examine the actual tax system in a country to determine how it diverges from the model. The usual next step is to propose changes that will transform 'what is'—the imperfect reality of the current situation—into 'what ought to be'—the perfect model of a modern revenue administration. Variants of this approach dominate both the literature and in many respects in practice. It is, for example, essentially the approach followed in both OECD 'principles' of good administration (OECD 1999) and in the World Bank's diagnostic framework (Gill 2000). Although extending the 'standard model' of tax reform to include more aspects of tax administration (Slemrod & Gillitizer 2014; also this issue, page 6) is obviously desirable, it too has important limitations as a guide to reforming tax administration because, like the less formal approaches just mentioned, it does not pay sufficient attention to the critical question of why 'what is' exists, that is, why certain administrative styles and practices exist and persist in a particular environment. 'Model' approaches are unlikely to point the way to perfection in any real situation because they unduly downplay the importance of 'path dependency' and 'context specificity'—academic language for history and the current environment – in shaping outcomes. Would-be reformers who attempt to implement a pure 'model'-based reform are likely to encounter many unforeseen obstacles, traps, and dead-ends along the way and to end up some distance from the postulated ideal.

An alternative approach to assessing – and, hopefully, improving – the performance of a particular tax administration is to compare it to the experience of other countries.[26] To some extent, this approach is simply a variant of the theoretical model approach—with the model now being based on some international 'best practice' standard—and hence subject to the same pitfalls. Nonetheless, it is always illuminating to look at institutions in comparative perspective. If other countries face similar problems, one can learn from examining how they have dealt with them. One may also learn from observing the

[25] It can certainly help a great deal, however: for an interesting recent example from China, see Winn and Zhang (2013).
[26] For earlier reviews of this approach, see e.g. Das-Gupta (2002), Gallagher (2005), and Crandall (2010).

outcomes of alternative solutions tried elsewhere. Most importantly, perhaps, one can learn a lot about any particular system by thinking about the similarities and differences between it and that in other countries. If nothing else, comparative analysis frees one to some extent from parochialism—the tendency to generalise local problems to universal dilemmas and local solutions to universal truths – and perhaps also helps to overcome the common belief that there must be a simple solution to our local problems that can simply be borrowed from somewhere else.

Of course, one has to be as careful in making use of comparative information as in employing theoretical models. Each approach may be helpful in skilled hands. Equally, however, each may be dangerous if misused. On the comparative side, for example, it is all too easy to fall into the approach of picking this good feature from that country, and that one from another country, and then proposing to introduce both into a third country without taking adequately into account that from an institutional perspective every country is both unique and to some extent an organic unity. As Hirschman (1967) once noted, there are no such things as 'side effects' when it comes to policy analysis: there are only effects. When considering any change, one needs to take into account not only the desired consequences—for example, more revenue and less evasion or lower administrative costs—but all the relevant consequences that change might produce, such as higher compliance costs and increased taxpayer discontent. Benchmarking tax administration performance along the lines set out in the IMF's TADAT approach, for instance, may be helpful in indicating respects in which a country's administration deviates from what seems to be best practice But knowing there may be a problem is a very different matter from knowing how best to deal with that problem in that country. What most benchmarking exercises do is essentially to consider (some) inputs --for example, money, people and the extent and nature of IT (information technology) -- and (some) outputs -- for example, revenue collection, arrears and evasion detected – with respect to a particular set of activities packaged within a particular organizational structure. In addition, benchmarking exercises may sometimes also consider a few aspects of the rather dark box within which policy design (architecture), implementation systems (engineering), and operations (management) combine to turn inputs into outputs. But not even the most extensive benchmarking study can either tell the whole story or permit direct inferences about causality.[27]

HOW TO IMPROVE TAX ADMINISTRATION PERFORMANCE

There is thus no single set of prescriptions—no secret recipe—that, once introduced, will ensure improved tax administration in any country. However, experience suggests that there are a number of simple general rules that are more likely to lead to successful reform.

Know the context

Countries exhibit a wide variety of tax compliance levels, reflecting not only the effectiveness of their tax administrations but also taxpayer attitudes toward taxation and toward government in general. Attitudes affect intentions and

[27] For a more extended discussion of benchmarking and a proposed variant of the conventional 'by the numbers' approach, see Vazquez-Caro and Bird (2011).

intentions affect behaviour. Attitudes are formed by such factors as: the perceived level of evasion, the perceived fairness of the tax structure, the complexity and stability of the tax system, how the tax system is administered, how much people value the services financed by taxes, and the legitimacy of government. Government policies affecting any of these factors may influence taxpayer attitudes and hence the observed level of taxpayer compliance. For instance, measures sometimes recommended for countries with very low compliance levels—such as massive application of administrative penalties, for example - may be quite inappropriate for countries with higher compliance levels, where selective application of stricter penalties may be effective in enhancing more 'voluntary' compliance and may indeed even lead to increased evasion by offending people's sense of fairness and hence damaging that nebulous but real state of mind often called "tax morale" (Frey & Torgler 2007).

Keep it simple

To assess how well a tax administration is functioning, let alone suggest how to improve it, one must take into account the environment in which it has to function, the laws it is supposed to administer and the institutional infrastructure with which it has been equipped. It is not possible to appraise the efficiency or effectiveness of tax administration without taking into account both the degree of complexity of the tax structure and the extent to which that structure remains stable over time. As a UK report said almost 80 years ago, a certain degree of complexity may be inevitable.[28] Nonetheless, complexity still remains a concern in the UK, as elsewhere (Ulph, 2014). An essential precondition for the reform of tax administration is to simplify the tax system in order to ensure that it can be applied effectively in the generally low-compliance contexts of developing and transitional countries. Even the most sophisticated tax administration can easily be overloaded with impossible tasks such as ascertaining the legitimacy of credits claimed by businesses for "scientific research" or verifying deductions for dependents resident abroad. The life of administrators is also complicated by the propensity of many governments to alter tax legislation annually or even more frequently.

Some countries have acted very drastically along these lines. Much of the initial success achieved in reforming the tax administration in Bolivia in the 1980s, for example, was clearly attributable to the extensive simplifications made in the tax system (Silvani & Radano 1992). It seldom makes sense to reform tax administration without simultaneously reforming tax structure to be both sensible and administrable. Often, even small simplifications in tax policy may permit considerable improvements to be made in administration. Even in more developed countries, measures such as reducing the number of income tax deductions may permit the elimination of filing requirements for most wage earners, thus greatly reducing the administrative burden because withholding alone will then suffice to enable most income taxpayers to fulfil their obligations. Of course, some countries have taken the opposite path and complicated the life of administrators greatly by

[28] "…To expect from us a codification of the law of income tax which the layman could easily read and understand was a vain hope, which only the uninstructed could cherish. … Income tax legislation must, by its very nature, be abstract and technical, and can never be easy reading" (Income Tax Codification Committee, 1936, pp. 18-19).

introducing such complexities as joint filing under the income tax, special reduced VAT (GST) rates, and multitudinous tax incentives.

Tax law often must be complex to cope with such issues as cross-border transactions. Nonetheless, it is important to simplify procedures for taxpayers by such measures as eliminating demands for superfluous information in tax returns and, when possible, consolidating return and payment invoices. As mentioned earlier, restricting the number of policy objectives and hence the number of tax expenditures, as well as being willing to accept only 'rough justice' in taxation, will also make the tax task a lot easier (Slemrod, 2010). If too many objectives of social and economic policy are incorporated into tax law, the result may be a system too complex for both taxpayers and tax administration. Voluntary compliance may not work well when taxpayers find it hard to figure out their obligations correctly and withholding (and its verification) becomes difficult when the tax base is ill-defined or when there are many exemptions and deductions.

Have a reform strategy

Even if one takes the external environment facing the revenue administration as given, it is useful to think of the strategic problem facing the administration at three levels - architecture, engineering, and management (Shoup, 1991). The architecture is the design of the general legal framework—not only the substance of the laws to be administered but also a wide range of important procedural features including the degree to which tax administration is centralised and the size of the administrative budget. Once the general architectural design has been determined, the 'engineer' takes over and sets up the specific organisational structure and operating rules for the tax administration, including the basic strategy to be followed. In many ways, doing this, and evaluating how well it is being done are the primary tasks of top management. Finally, once the critical institutional infrastructure has been erected, the tax managers charged with actually administering the tax system can do their jobs - determining how to apply the technology and human resources available to them.

Different taxes and tasks may require different implementation methods: for example, a property tax is an essentially presumptive levy, in which the tax base is determined administratively whereas a value-added tax is (in practice) an essentially accounts-based tax. Different skill sets and technologies are required. A property tax needs input from numerous agencies outside the revenue administration such as land registers, information on sales, and the like as well as expert valuers. A VAT, like an income tax, requires not only some expert accountants but also people who are knowledgeable about how different industries operate. The appropriate strategies for facilitating compliance and dealing with non-compliance are unlikely to be the same with respect to these two very different taxes.

The main ways in which an administration can be improved are, essentially, either by altering the tasks with which it is charged or by strengthening the tools with which it is equipped. Simple exhortations to 'do better,' while cheap and always popular, are of little use to resource-strapped administrators faced with impossible tasks. Gimmicks or quick-fixes such as tax amnesties[29] or lotteries in which tax invoices constitute lottery numbers are usually of little use in resolving the basic problems of good revenue administration.[30]

A somewhat more useful device may be to introduce widespread withholding, covering not only traditional items such as wages, interest and dividends but also extending to professional fees, rents, and indeed in some countries to practically all business transactions.[31] In fact, occasionally countries have even introduced what may be called 'reverse withholding' in which purchasers (government agencies or large enterprises) 'withhold' tax from sellers (small enterprises). However, even such widespread withholding is no panacea. The administration must be able to control withholders to make sure they hand over to the Treasury the amounts withheld, and it must also be able to check whether the amounts taxpayers credit against their liabilities have in fact been withheld. The mere expansion of withholding is unlikely to lead to a sustainable increase in compliance unless the administration is able to control both withholders and taxpayers subject to withholding.

The taxpayer as client

The most important player in the tax game is the (potential) taxpayer. The most important change in thinking about tax administration in recent years has been the increasing recognition of the central role of the private sector—taxpayers and third-party agents like banks and employers—in the taxing process. [32] It is critically important to treat them not as potential evaders but as clients -- unwilling clients as a rule, but clients nonetheless. Facilitating compliance involves such elements as improving services to taxpayers (and third-party agents) by providing clear instructions, understandable forms, and assistance and information as necessary. Monitoring compliance requires the establishment and maintenance of taxpayer current accounts and management information systems covering both ultimate taxpayers and third-party agents (such as banks) involved in the tax system as well as appropriate and prompt procedures to detect and follow up on non-filers and delayed payments. Improving compliance requires a judicious mix of both these measures as well as additional measures to deter non-compliance such as establishing a reasonable risk of detection and the effective application of penalties. Ideally, such measures should be combined so as to maximise their effect on compliance. For example, when introducing a VAT or other new tax, emphasis should first be given to assisting taxpayers to comply with the new tax, then to detecting noncompliance, and finally to applying penalties. Successful reform strategies require an appropriate mix of all these approaches.

[29] Governments desperate for quick funds sometimes turn to amnesties as one way out. Sometimes the immediate revenue results are impressive, although the real present value of any net revenue increment is seldom clear as people pay deferred taxes and "launder" illegal money. Perhaps the most effective amnesty is one that is given to, so to speak, "wipe the slate clean" of old offenses in order to launch a new era of tough tax enforcement. Unfortunately, all too many countries have given periodic amnesties, and hence lost all credibility. If amnesties are given too often (e.g. India granted 7 over a 35- year period, while Argentina had 21 in the same period) they soon come to be anticipated. Even an amnesty with initial positive revenue effects may prove of little use if future compliance is eroded.

[30] Wan (2010) reports a favorable 'lottery' experiment in China, but experience elsewhere with this approach has been much less positive (Berhan & Jenkins 2005).

[31] For an older but still useful introduction to many of the issues, see Soos (1990).

[32] See, for instance, Aberbach and Christensen (2002) and Braithwaite (2003).

Improving tax compliance is not the same as discouraging noncompliance. This perhaps paradoxical conclusion emerges from the numerous sociological and psychological studies of taxation that have been carried out in recent years, based on both experimental and survey evidence (Kirchler, 2007). This literature suggests that to a considerable extent tax administrations get the taxpayers they deserve in the sense that how taxpayers behave reflects how tax authorities treat them.

Tax compliance in most countries most of the time can perhaps best be characterised as 'quasi-voluntary compliance', because taxpayers have little choice as to whether their income sources have tax withheld or not. Nonetheless, in many ways it can be useful to think of there being three distinct groups of taxpayers in any country at any time: those who always comply, those who do not—almost irrespective of whether they can get away with it or not -- and those who may or may not comply, depending on how they perceive the costs and benefits of doing so. Each group needs to be dealt with differently. Some always pay; some always cheat; and some cheat when they think they can get away with it. An important task facing any tax administration is to prevent the mix from tipping in the direction of pervasive non-compliance.

Some taxpayers always comply. They may do so not simply because they do not have much opportunity to evade or because they are exceedingly risk-averse, but because they think it is the right thing to do—and, importantly, they think other right-thinking people are also complying. By definition, there are more such people in high-compliance countries than in low-compliance countries. Even in the latter, however, it is a gross oversimplification to pretend, as the standard economic model of tax evasion (as set out in e.g. Cowell (1990) generally does, that every taxpayer views the decision as to whether to pay his or her taxes as a gamble to be decided independently of his or her membership in, and loyalty to, the community. Care must be exercised in extrapolating results from one context to another. While non-compliers may be similar in some respects everywhere, both the size and the nature of the factors inducing compliers to comply may be quite different in different countries. Aspects that may differ from country to country include: the value attached to 'fairness' (and its meaning), the degree of deference to authority (and the legitimacy attached to that authority), and the extent to which contributing to the finance of government activities is seen to be socially (as opposed to privately) desirable. Increased enforcement actions -- like amnesties, whether viewed separately or jointly from increased enforcement - may have quite different results with respect to compliers than non-compliers. Public education about taxpayer rights and obligations and increased efforts by tax authorities to provide improved service to taxpayers may also help. However, there is as yet little quantitative evidence supporting this view and, although such policies may change attitudes, not all changes for all groups will necessarily be in the desired direction.

No tax administration can play the policeman for every potential taxpayer, if only because resources are always limited. Partly for this reason tax systems all over the world have tended over the years to move toward a regime in which taxpayers themselves determine and report - in other words, 'self-assess' - their tax liability and pay the amounts due without any special prodding from tax authorities.

In most cases, such compliance is at most quasi-voluntary in the sense that through withholding the default position for most taxpayers is to let the authorities keep the money, but even so self-assessment is likely to result in high levels of compliance only if accompanied by actions that lend credibility to the sanctions prescribed in the law against non-compliance. More recently, some countries have, as mentioned earlier, taken steps to make compliance even easier by practices such as pre-populating tax returns.

Whatever the approach taken, effective tax administration requires establishing an environment in which citizens are induced - for whatever reason (whether the credible threat of punishment for non-compliance or a social norm of compliance) - to comply with tax laws. Efficient tax administration requires that this task be performed at minimum cost to the community. Neither task is simple.

Compliance costs matter

Compliance costs are costs incurred by taxpayers in complying with revenue law (Evans 2008). Studies of private compliance costs generally find that these costs are larger than budgetary administrative costs, that they are largely substituted for administrative costs, and that their incidence can be quite different from those of the taxes themselves (Sandford, 1995). In particular, the complexity and cumbersome administrative methods commonly found with respect to such taxes as stamp taxes and minor excises in some jurisdictions may result in very high compliance costs. Low compliance may to some extent be a function of high compliance costs, as well as of such more basic problems as lack of state legitimacy, inadequate connection between taxes and benefits, and perceptions of tax fairness. Because of their partly ‘fixed cost’ nature compliance costs have generally been found to be regressive and hence relatively much more important for small than for large traders (Sandford 1995). Such costs are often significant in developing countries and constitute yet another barrier to the ‘formalization’ of economic activity (Coolidge & Ilic 2009).

Manage IT properly

Tax administration is not so much about money as information. A good tax administration has to gather and utilise information in such a way as to collect the revenues set out in the law in the fairest and most efficient way possible. It is not surprising that recent attempts to improve tax administration in developing countries have centred to a considerable extent on the adoption of new information technology’ (IT). Indeed, it is difficult to conceive of a modern tax administration that can perform its tasks efficiently without making considerable use of IT. All too often, however, the expectation of greater effectiveness from adopting new technology has either not materialised or has proven to be a much more time-consuming and costly process than originally envisaged (Bird & Zolt 2008). Successful reform requires not simply ‘computerising’ existing forms and procedures but rather rethinking, redesigning and streamlining systems and procedures—for example, to eliminate unnecessary and unused information required from taxpayers. The successful introduction and use of IT thus requires fundamental reorganisation in both systems and procedures. And since process change inevitably changes what people do, technological improvement usually requires major (and often difficult) negotiations with present staff as well as changes in recruitment, training, and evaluation procedures. Even the best IT system will not produce useful results unless there are real incentives for officials to utilise it properly.

Keep your eye on the ball

Simplifying the procedures involved in being taxed is always a popular cause. Taxpayers are frequently irritated by the complexity of tax forms and the varied requirements for record-keeping and documentary support. Of course, forms and procedures reflect the underlying legislation and that legislation is often not simple. The world is complex, and so must the tax system be to a considerable extent. However, not everyone needs to be confronted with its full complexity. While there is obviously need for information essential to determine tax liability, tax forms in many countries are often cluttered with items which are not relevant for most taxpayers. Careful review of existing forms can help identify such items, eliminate them in the interest of simplicity, or at least confine them to separate schedules for those few for whom they are relevant. In many countries, tax forms require so much information that it is hard to imagine what conceivable gain can justify imposing such complexity and compliance costs on taxpayers. Often, such information, even if supplied by taxpayers, is put to no good use. In some countries, taxpayers do not even bother to fill out forms because they know that in the end their tax liabilities will be negotiated in any case. Nonetheless, tax forms (often web-based these days) are the critical interface between the tax system and the public. Good initial design, as well as obtaining and utilising feedback for improvement, is an important element in a good revenue system.

In some countries, the tax system is sometimes used as an instrument for detailed policy intervention. In part for this reason, tax laws change often, and provisions favouring narrow industry interest groups to achieve some very specific policy goal are not uncommon. Substantial and frequent changes in tax rules cause many problems. Ideally, the tax structure should, so far as possible, be a fixed parameter that entrepreneurs can factor into their business decisions and discretionary interventionism should be held to a minimum. The development of the tax system and that of the private sector are mutually interdependent processes. The structure of the tax system must not only be adapted to the reality of economic activity but it must as much as possible be stabilised and made transparent if its full benefits are to be realised. Both tax officials and taxpayers must be able to know with a high degree of certainty what the law is and how it will be applied.

From an administrative point of view, most revenue comes from a relatively few tax collecting agents, customs administration (VAT and excises on imports, import surcharges, and tariffs), social security agencies (social security contributions and personal income tax (PIT) on transfers), government itself (PIT withholding on wages), state enterprises (PIT withholding, VAT, excises, and corporate or enterprise income taxes (CIT), larger private enterprises, especially those in the financial sector (as for state enterprises, plus taxes on dividends and interest). Accurate tracking of these fiscal flows, which probably account for 80 per cent or more of current collections in many countries, and keeping these payments current is critical to successful tax administration.

Reliable Tax Identification Numbers (TINs) are essential if the reach of the tax system is to be extended in developing countries from the existing central core of large taxpayers into the remainder of the potential tax base. Before devoting much effort to this difficult task, however, it is critical to ensure that tight control is maintained over the payments and liabilities of large taxpayers, for example, by setting up a large taxpayer unit (LTU) and monitoring closely the non-filing, stop-filing, and compliance behaviour of such taxpayers (Baer, Benon & Toro 2002). Once this is done, attention can be turned to the TIN problem. Even then, however, there is no need for everybody and everything to be numbered. Bringing in potential new taxpayers is, of course, easier when all tax data is accessible in computerised form, and a unique TIN is required on various documents. But it can be a serious mistake to wait for that day to come before beginning to develop effective auditing practices on the basis of what already exists.[33]

Dealing with non-compliance

The basic tasks of tax administration consist of three distinct (though connected) activities—identification, assessment, and collection. Tax administrations must also ensure that third parties required by law to report transactions or withhold taxes do not default in their obligations. The primary function of tax administration is to monitor compliance and to apply the sanctions prescribed in the statute against offenders. Even with the best of organisation and effort, no tax agency can detect all offenders. Hence, a major plank in the strategy of tax enforcement is to devise methods to prevent (or at least minimise) non-compliance at all of these stages. Among such methods are two proven strategies mentioned earlier - utilizing IT and other tools to develop effective risk management strategies and utilizing withholding as much as possible - combined with two older standbys - auditing (sharpened and made more effective by good IT utilization) and effective and well-designed sanctions.

CONCLUSION

The prevalent attitude in the tax administration in many developing countries appears to be that all taxpayers are potential criminals and that subjecting them to taxation is fundamentally a matter of identifying and controlling them and catching those who cheat. No modern tax system can function on fear alone. Problems of tax enforcement cannot be solved simply by calling in the 'tax police.' On the contrary, there is often much to be gained from viewing taxpayers more as clients than as would-be criminals. A taxpayer service perspective would emphasise on reducing taxpayer uncertainty by clarifying some of the present legal ambiguities (for example, with respect to the treatment of cross-border services), communicating clearly what the law is, and sticking to it instead of changing it every year (or every month) and leaving people uncertain as to just what the law is, and taking compliance costs more clearly into account in designing legal and administrative procedures. Services to taxpayers that facilitate reporting, filing and paying taxes may sometimes be a more cost-effective method

[33] There is a huge literature on auditing; a useful brief starting point is Biber (2010, 2010a).

of securing compliance than measures designed to counter non-compliance, although little research seems yet to have been done on such matters.

The job of establishing an environment in which citizens are induced to comply with tax laws is obviously difficult in countries with large informal sectors, poor salary structures for public servants, ineffective and uncertain legal systems, and an entrenched distrust of government - often somewhat paradoxically combined with a habit of excessive dependence on that same government. The key to success lies in evolving a strategy that best utilises the available resources to minimise the scope for non-compliance and to maximise the likelihood of detection and punishment of non-compliance, while simultaneously providing facilities and incentives for compliance at each stage of the compliance process. But no single formula can apply everywhere: each country must evolve its own strategy, depending on its own circumstances and background.

The new availability of detailed information on tax administration in a number of countries and of (at least roughly) comparative information across an increasing range of countries offers researchers new opportunities and policy-advisers a better chance than they previously had to design reform strategies based on solid evidence rather than anecdote and inevitably limited personal experience. Those who have worked in this field in the past may perhaps have some wise advice to pass on - “the owl of Minerva spreads its wings only at dusk” as Hegel put it - when they consider the rich new data bases becoming available to researchers today they can only agree with Wordsworth that “bliss was it at that dawn to be alive, but to be young was very heaven!”

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Administering the Tax System We Have

Kristin E. Hickman♦

Abstract

Traditional perceptions of tax exceptionalism from administrative law doctrines and requirements have been predicated at least in part on the importance of the tax code's revenue raising function. Yet, Congress increasingly relies on the Internal Revenue Service to administer government programs that have little to do with raising revenue and much more to do with distributing government benefits to the economically disadvantaged, subsidizing approved activities, and regulating outright certain economic sectors like non-profits, pensions, and health care. As the attentions of the Treasury Department and Internal Revenue Service shift away from raising revenue and toward these other matters, the revenue-based justification for tax exceptionalism from general administrative law norms fades. To demonstrate the shift, the Article incorporates empirical analysis of Treasury Department and Internal Revenue Service regulatory activity over time.

INTRODUCTION

In *Mayo Foundation for Medical Education & Research v. United States*,[1] the Supreme Court rejected tax exceptionalism from administrative law requirements and doctrines absent justification.[2] Yet, many tax administrative practices do not comport precisely with general administrative law norms. Some differences are most likely due to a combination of specialization, cloistering, path dependence, and litigation strategy, as attorneys have failed to recognize or declined to mention tax departures from general administrative law norms and generalist judges have relied on attorneys' briefs.[3] For example, tax lawyers and administrators have a longstanding habit of labelling general authority regulations issued by the Department of the Treasury (Treasury) as "interpretative rules," even though such regulations are legally binding and thus "legislative" in general administrative law parlance.[4] As a result, for many years prior to *Mayo*, generalist courts and tax

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1. Mayo Found. for Med. Educ. & Research v. United States, 131 S. Ct. 704 (2011).

2. *See id.* at 713 ("[W]e are not inclined to carve out an approach to administrative review good for tax law only.").

3. *See* Kristin E. Hickman, *Agency-Specific Precedents: Rational Ignorance or Deliberate Strategy?*, 89 TEX. L. REV. SEE ALSO 89, 92 (2011) (identifying litigation strategy as a partial explanation for tax departures from general administrative law norms); *see also* Paul Caron, *Tax Myopia, or Mamas Don't Let Your Babies Grow Up To Be Tax Lawyers*, 13 VA. TAX REV. 517, 531–89 (1994) (highlighting several areas, including tax administration, in which a "tax is different" mindset has yielded tax exceptionalism in the law). *See generally* Robert Glicksman & Richard Levy, *Agency-Specific Precedents*, 89 TEX. L. REV. 499 (2011) (describing how specialization, cloistering, and path dependence lead to judicial divergence from administrative law norms, with tax as one example).

4. *See* Glicksman & Levy, *supra* note 3, at 520 (observing the habit). *See generally* Kristin E. Hickman, *Coloring Outside the Lines: Examining Treasury's (Lack of) Compliance with Administrative Procedure Act Rulemaking Requirements,* 82 NOTRE DAME L. REV. 1727 (2007) (examining the incidence and legal validity of characterizing Treasury regulations as exempt from APA notice-and-comment rulemaking requirements).

litigants talked past each other, and briefs in tax cases regularly failed to alert courts to the disagreement over whether the tax-specific *National Muffler Dealers Ass'n v. United States*[5] standard of review[6] survived the Supreme Court's decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*,[7] leading to a jurisprudential mess. [8] The same habit of terminology has caused Treasury to claim routinely that most of its regulations are not subject to notice-and-comment rulemaking procedures under the Administrative Procedure Act[9] (APA), even as the regulations bind taxpayers and the Internal Revenue Service (IRS) alike—a circumstance that is currently causing jurisprudential mischief.[10]

Other tax deviations from general administrative law norms are the result of congressional choice. For example, administrative law doctrine interprets the APA as requiring a presumption in favor of judicial review for legal challenges against final agency actions. [11] In the tax context, Congress has deliberately limited judicial review with the Anti-Injunction Act,[12] Internal Revenue Code (I.R.C.) § 7421, although the full scope of that limitation is unclear. Retroactive rulemaking typically is not an option for other agencies. [13] By comparison, Congress has explicitly given Treasury broad authority to adopt retroactively applicable regulations in I.R.C. § 7805(b).[14] Further, in response to claims that Treasury's use of temporary regulations violates APA notice-and-comment rulemaking requirements, the government has argued that I.R.C. § 7805(e) expressly authorizes it to do so.[15]

Whatever the origins of the differences between tax administrative practices and general administrative law norms, courts and scholars often invoke the importance of revenue raising to explain or defend tax exceptionalism. Long before *Mayo*, in *Bull v. United States*, [16] the Supreme Court justified special limitations on a taxpayer's ability to challenge tax assessments and collections on the ground that "taxes are the life-blood of government, and their prompt and certain availability an imperious need." [17] Professor Steve Johnson has identified the "revenue imperative" as the claimed justification for "several features of tax administration that uniquely advantage" the IRS, including the Anti-Injunction Act limitation on

5. Nat'l Muffler Dealers Ass'n v. United States, 440 U.S. 472 (1979).

6. *Id.* at 477.

7. Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984).

8. Brief of *Amicus Curiae* Professor Kristin E. Hickman in Support of Respondent at 16–19, Mayo Found. for Med. Educ. & Research v. United States, 131 S. Ct. 704 (2011) (No. 09-837), 2010 WL 3934618, at *16–19; *see also* Glicksman & Levy, *supra* note 3, at 516–26 (connecting the legislative and interpretative terminology discrepancy with pre-*Mayo* judicial confusion over whether Treasury regulations were *Chevron* eligible); Kristin E. Hickman, *The Need for* Mead*: Rejecting Tax Exceptionalism in Judicial Deference*, 90 MINN. L. REV. 1537, 1556–59, 1563–89 (2006) (documenting the origins of the pre-*Mayo* judicial confusion at greater length).

9. Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706 (2012).

10. *See generally* Glicksman & Levy, *supra* note 3 (observing this condition); Hickman, *supra* note 4 (documenting this position empirically).

11. Abbott Labs. v. Gardner, 387 U.S. 136, 140 (1967).

12. Anti-Injunction Act, I.R.C. § 7421 (2012).

13. *See* Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988) (rejecting retroactive rulemaking by agencies absent express congressional authorization).

14. I.R.C. § 7805(b) (2012).

15. *See* Brief for the United States at 29, United States v. Home Concrete & Supply, LLC, 132 S. Ct. 1836 (2012) (No. 11-139), 2011 WL 5591822, at *29 (citing I.R.C. § 7805(e) as "granting the Treasury Department authority to issue temporary regulations"); Brief for the Appellant at 51–52, Intermountain Ins. Serv. of Vail, LLC v. United States, 650 F.3d 691 (D.C. Cir. 2011) (No. 10-1204), 2010 WL 6210551, at *51–52 ("If the absence of notice and comment could deprive temporary regulations of validity, then § 7805(e) is meaningless.").

16. Bull v. United States, 295 U.S. 247 (1935).

17. *Id.* at 259–60.

judicial review of Treasury and IRS actions.[18] Writing for the Court in *Bob Jones University v. Simon*, [19] Justice Powell similarly concluded that "the principal purpose" of the Anti-Injunction Act is "the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference." [20] Citing several cases, Nina Olson, the National Taxpayer Advocate, has linked the revenue raising function to judicial reluctance to impose common procedural due process requirements upon IRS revenue collection efforts.[21] Some tax scholars have invoked Treasury's authority to promulgate retroactive tax regulations as an important tool for protecting the fisc from "abuse." [22] Somewhat ironically, prior to *Mayo*, the American Bar Association Tax Section's Task Force on Judicial Deference cited the IRS's revenue raising role as the most important argument in favor of denying rather than extending *Chevron* deference to most Treasury regulations, claiming that "[t]his function of the IRS may encourage the agency to issue rulings or to promulgate regulations that test the outer limits of reasonableness."[23]

Anecdotally, defenders of tax exceptionalism often emphasize the difficulty that Treasury and the IRS face in keeping up with sophisticated and aggressive tax planners and tax shelter promoters whose schemes defy the spirit of the tax laws, or in combatting outright scofflaws who would delay or avoid paying their taxes by tying up the government in frivolous lawsuits. Certainly such groups exist, consume scarce administrative resources, and threaten the fisc. But the government's reliance on tax collection notwithstanding, it does not necessarily follow that raising revenue is the only, or even the primary, focus of the contemporary U.S. tax system and those charged with administering it.[24] The I.R.C. now contains hundreds of tax expenditure items representing more than $1 trillion of indirect government spending each year. Former Joint Committee on Taxation Chief of Staff Edward Kleinbard has called tax expenditures "the dominant instruments for implementing new discretionary spending policies."[25]

18. Steve Johnson, *Preserving Fairness in Tax Administration in the* Mayo *Era*, 32 VA. TAX REV. 269, 279–80 (2012); *see also* Nina E. Olson, Nat'l Taxpayer Advocate, 2010 Erwin N. Griswold Lecture Before the American College of Tax Counsel: Taking the *Bull* by Its Horns: Some Thoughts on Constitutional Due Process in Tax Collection (Jan. 23, 2010), *in* 63 TAX LAW. 227, 232 (2010) (making a similar connection regarding the Anti-Injunction Act).

19. Bob Jones Univ. v. Simon, 416 U.S. 725 (1974).

20. *Id.* at 736.

21. Olson, *supra* note 18 at 230–33.

22. Edward A. Morse, *Reflections on the Rule of Law and "Clear Reflection of Income": What Constrains Discretion?*, 8 CORNELL J.L. & PUB. POL'Y 445, 487–88 (1999); *see also* Marvin A. Chirelstein & Lawrence A. Zelenak, Essay, *Tax Shelters and the Search for a Silver Bullet*, 105 COLUM. L. REV. 1939, 1956–57 (2005) (advocating retroactive rulemaking as a means of combatting abusive tax shelters); Kyle D. Logue, *Legal Transitions, Rational Expectations, and Legal Progress*, 13 J. CONTEMP. LEGAL ISSUES 211, 232–35 (2003) (same).

23. IRVING SALEM, ELLEN P. APRILL & LINDA GALLER, ABA SECTION OF TAXATION: REPORT OF THE TASK FORCE ON JUDICIAL DEFERENCE, *in* 57 TAX LAW. 717, 724–25 (2004).

24. In discussing the U.S. tax system, I am contemplating the I.R.C.—Title 26 of the U.S. Code—as administered by Treasury and the IRS. One could argue instead that tax system administration concerns revenue assessment and collection efforts across agencies. Many other federal government agencies are responsible for administering taxes, tariffs, levies, fees, penalties, and other payments that contribute to the fisc. For example, U.S. Customs and Border Protection (CBP), an agency within the Department of Homeland Security, is responsible for administering duties and fines on imported goods. *See generally* J.F. Chester & Sophilia Hsu, *Going Global: A Legal Primer for Innovation- and Knowledge-Based Companies*, CURRENTS: INT'L TRADE L.J., Summer 2012, at 3 (describing the CBP's role in administering import laws); *International Fashion Trends: The Business of International Fashion Law*, 21 CARDOZO J. INT'L & COMP. L. 795, 820 (2013) (comparing the CBP to the IRS). Also, for a particularly interesting article criticizing the U.S. Department of Agriculture's administration of a user fee levied by the Animal and Plant Health Inspection Service, see Charles E. Smith, *Air Transportation Taxation: The Case for Reform*, 75 J. AIR L. & COM. 915, 927–35 (2010). Nevertheless, I think most evaluations of the U.S. tax system and U.S. tax administration as such concern the I.R.C., Treasury, and the IRS. Also, the instances of tax exceptionalism from administrative law norms that I discuss in this Article concern the I.R.C., Treasury, and the IRS.

25. Edward D. Kleinbard, Professor of Law, Woodworth Memorial Lecture: The Congress Within the Congress: How Tax Expenditures Distort Our Budget and Our Political Processes (May 7, 2009), *in* 36 OHIO N.U. L. REV. 1, 3 (2010).

As further observed by former Assistant Secretary of the Treasury for Tax Policy Pamela Olson,

> The continual enactment of targeted tax provisions leaves the IRS with responsibility for the administration of policies aimed at the environment, conservation, green energy, manufacturing, innovation, education, saving, retirement, health care, child care, welfare, corporate governance, export promotion, charitable giving, governance of tax exempt organizations, and economic development, to name a few.[26]

Following a similar theme, several former IRS Commissioners recently advised the D.C. Circuit that "Congress has decided to administer an increasingly wide variety of government assistance programs through the federal income tax system, including assistance for low income families, health care, education, and homebuyers."[27]

Congress may perceive the non-revenue raising aspects of the I.R.C. to be minor and peripheral to the I.R.C.'s core revenue raising function; so, for that matter, may defenders of tax exceptionalism who focus their gaze on those taxpayers who resort to aggressive measures to avoid paying taxes. But what if that perception is no longer accurate? As the former IRS Commissioners observed, "Congress's willingness to use its taxing power to effectuate public policies in areas such as health care has fundamentally changed the roles of the tax return and tax return preparers."[28] If the efforts of tax administrators are likewise increasingly focused on programs, purposes, and functions other than raising revenue, then what ought to be the implications for instances of tax exceptionalism in administration that are premised on the revenue raising function?

Drawing from a much larger and ongoing empirical study of tax administration and Treasury regulations, this Article offers a preliminary snapshot of the extent to which the efforts of contemporary tax administrators focus on programs, purposes, and functions other than raising revenue. [29] The Article focuses on Treasury regulations—proposed, temporary, and final—promulgated by Treasury's Office of Tax Policy with the help of members of the IRS Chief Counsel's Office between January 1, 2008, and December 31, 2012. To provide context for the empirical analysis, Part I of this Article offers a qualitative discussion of the different goals, purposes, and functions of the contemporary U.S. tax system. Turning to the empirical study, Part II outlines study methodology and reports the results. Specifically, the study classified major Treasury regulation documents by subject matter and evaluated them both document by document and project by project, outright and based on relative page length. Across measures, between 30 percent and 40 percent of observations fell into subject matter categories that are most clearly oriented toward programs, purposes, and functions other than traditional revenue raising. Another 25 percent of observations fell into subject matter categories that arguably serve dual functions. In short, a lot—maybe even a majority—of the effort that Treasury and the IRS spend promulgating Treasury regulations concerns programs, purposes, and functions other than raising revenue. In light of the study's findings, Part III

26. Pamela F. Olson, Woodworth Memorial Lecture: And Then Cnut Told Reagan . . . Lessons from the Tax Reform Act of 1986, (May 6, 2010), *in* 38 OHIO N.U. L. REV. 1, 12–13 (2011) (citations omitted).

27. Brief *Amici Curiae* of Former Commissioners of Internal Revenue in Support of Defendants-Appellants at 22, Loving v. IRS, No. 13-5061 (D.C. Cir. Apr. 5, 2013), 2013 WL 1386248, at *22.

28. *Id.* at 4.

29. Distinguishing revenue raising from other programs, purposes, and functions is not always obvious, easy, or even possible. *See infra* Parts I and II.B.

of the Article suggests that Congress ought to reconsider, or at least adjust, some of the statutory exceptions from administrative law requirements that it has adopted in the tax context. Alternatively, or in addition, where the scope of some of those exceptions is in doubt, courts ought to consider construing the relevant statutory language in a manner that minimizes its deviation from general administrative law norms.

THE TAX SYSTEM'S COMPETING FUNCTIONS

Raising revenue is obviously a key function of any tax system. As the saying goes, "Taxes are what we pay for civilized society . . . ."[30] Taxes provide the funds needed for the government to do all of the things that we, as citizens, ask it to do to make our society more civilized: building roads and supporting schools; shielding consumers from adulterated food and mislabelled pharmaceuticals; enforcing safe workplaces and protecting the environment; and providing a basic social safety net. The guiding purpose of the U.S. tax system historically has been, and to some extent still is, to raise revenue. The culture, practices, and procedures of the IRS, in particular, are oriented toward the mission of raising revenue.[31] Nina Olson has described the IRS as "the federal government's accounts receivable department."[32] As Figure 1 demonstrates, the tax administration efforts of Treasury and the IRS yield a lot of revenue for the government—mostly, though not exclusively, from the individual income tax and employment taxes.

The I.R.C. is not and probably could never be entirely value neutral. For example, Congress seems doomed to choose between disfavouring single individuals or married couples in determining the income tax rate brackets and the standard deduction.[33] Further, many longstanding features of the I.R.C. deliberately pursue social welfare or regulatory goals in the course of raising revenue. The progressive structure of the individual income tax is frequently justified at least partly as a remedy for societal inequality.[34] Although the estate tax was adopted largely to raise revenue, combatting inequality was a driver there also, [35] and contemporary defenders of the estate tax continue to invoke that concern as a rationale for its retention.[36] Historical evidence suggests that Congress enacted the corporate income tax not only to raise revenue but also to provide a mechanism by

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30. Compañía Gen. de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

31. *E.g.*, John F. Coverdale, *Legislating in the Dark: How Congress Regulates Tax-Exempt Organizations in Ignorance*, 44 U. RICH. L. REV. 809, 837–38 (2010) ("The IRS is essentially a tax collection agency, and its culture reflects that reality."); Francine J. Lipman, *Access to Tax ~~In~~Justice*, 40 PEPP. L. REV. 1173, 1195–96 (2013) (describing the mismatch between the IRS's collection-oriented culture, practices, and procedures, and the needs of low-income taxpayers claiming the earned income tax credit (EITC)); Shu-Yi Oei, *Getting More by Asking Less: Justifying and Reforming Tax Law's Offer-in-Compromise Procedure*, 160 U. PA. L. REV. 1071, 1119 (2012) (suggesting that the IRS's "fundamental collection mission" and "enforcement culture" get in the way of its administering the Offer In Compromise program).

32. NAT'L TAXPAYER ADVOCATE, INTERNAL REVENUE SERV., 1 2012 ANNUAL REPORT TO CONGRESS 40 (2012), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Volume-1.pdf.

33. Tax experts have been debating this issue for decades. *See generally, e.g.*, Lily Kahng, *One Is the Loneliest Number: The Single Taxpayer in a Joint Return World*, 61 HASTINGS L.J. 651 (2010); Lawrence Zelenak, *Doing Something About Marriage Penalties: A Guide for the Perplexed*, 54 TAX L. REV. 1 (2000).

34. HENRY C. SIMONS, PERSONAL INCOME TAXATION: THE DEFINITION OF INCOME AS A PROBLEM IN FISCAL POLICY 15–19 (1938); Meredith R. Conway, *Money, It's a Crime. Share It Fairly, but Don't Take a Slice of My Pie!: The Legislative Case for the Progressive Income Tax*, 39 J. LEGIS. 119, 130–32 (2013).

35. Jeffrey A. Cooper, *Ghosts of 1932: The Lost History of Estate and Gift Taxation*, 9 FLA. TAX REV. 875, 882 (2010).

36. *See generally, e.g.*, Paul L. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax To Reduce Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255 (2013) (invoking societal inequality as a rationale for retaining the estate tax).

which the government could regulate corporate activity and constrain corporate political power.[37]

Figure 1. IRS Revenue Collections by Type of Tax, Fiscal Year 2012[38]
(Money amounts in thousands of dollars)

Type of Tax	Gross Collections	% of Total
Individual and estate and trust income taxes[a]	1,387,836,515	55.0
Employment taxes: Old-Age, Survivors, Disability, and Hospital Insurance (OASDHI), Federal Insurance Contributions Act (FICA), Self-Employment Contributions Act (SECA), unemployment insurance, railroad retirement	784,396,853	31.1
Business income taxes[b]	281,461,580	11.1
Excise taxes	56,174,937	2.2
Estate and gift taxes	14,450,249	0.6
Total	2,524,320,134	100.0

[a] Includes $37.3 million in Presidential Election Campaign Fund contributions.
[b] Includes $496 million from the unrelated business income tax imposed on tax-exempt organizations, which is less than .05 percent of total collections.

Indeed, taxes are routinely recognized as a tool in the regulatory toolbox.[39] The federal income tax is littered with provisions that are not based on anyone's conception of an ideal tax base, but rather are motivated by a desire to encourage some behaviours and discourage others. For example, the I.R.C. authorizes income tax deductions for charitable contributions [40] and denies income tax deductions for bribes,[41] political lobbying,[42] and excessive compensation.[43] Excise taxes are another example, and the I.R.C. contain dozens.[44] Although they are now actually collected by the Bureau of Alcohol, Tobacco, and Firearms, "sin taxes"

37. STEVEN A. BANK, FROM SWORD TO SHIELD: THE TRANSFORMATION OF THE CORPORATE INCOME TAX, 1861 TO PRESENT 43–44 (2010) (acknowledging that regulatory goals were present but considering them secondary); Reuven S. Avi-Yonah, *Corporations, Society, and the State: A Defense of the Corporate Income Tax*, 90 VA. L. REV. 1193, 1217–20 (2004) (citing historical evidence in justifying the continuation of the corporate income tax on regulatory grounds). *See generally* Marjorie E. Kornhauser, *Corporate Regulation and the Origins of the Corporate Income Tax*, 66 IND. L.J. 53 (1990) (documenting regulatory goals driving the Corporate Excise Tax of 1909 as a precursor to the modern corporate income tax).

38. The information in Figure 1 derives from the IRS Data Book for the fiscal year ended September 30, 2012. *See* INTERNAL REVENUE SERV., DEP'T OF THE TREAS., INTERNAL REVENUE SERVICE DATA BOOK, 2012, at 3 (2013), *available at* http://www.irs.gov/pub/irs-soi/12databk.pdf.

39. *See, e.g.*, STEVEN SHAVELL, ECONOMIC ANALYSIS OF ACCIDENT LAW 277–78 (1987) (recognizing taxation as a tool for controlling risk); Stephen Breyer, *Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reform*, 92 HARV. L. REV. 547, 581 (1979) (discussing tax as a regulatory tool).

40. I.R.C. § 170 (2012). This deduction has been part of the individual income tax since 1921. *See* Revenue Act of 1921, ch. 136, § 214(a)(11), 42 Stat. 227, 241.

41. I.R.C. § 162(c). Deductions for "improper" payments to foreign officials or employees were disallowed in 1958. Technical Amendments Act of 1958, Pub. L. No. 85-866, § 5, 72 Stat. 1606, 1608. In 1969, Congress expanded I.R.C. § 162(c) and adopted language that more closely resembles the current provision. Tax Reform Act of 1969, Pub. L. No. § 91-172, § 902(b), 83 Stat. 487, 710.

42. I.R.C. § 162 (e).

43. *Id.* § 162(m). The deduction limitations for political lobbying and excessive compensation were both adopted in 1993. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §§ 13211(a), 13222(a), 107 Stat. 312, 469–71, 477–79 (codified as amended at I.R.C. § 162(e), (m) (2012)).

44. *See generally* INTERNAL REVENUE SERV., DEP'T OF THE TREAS., PUBLICATION 510 (2013), *available at* http://www.irs.gov/pub/irs-pdf/p510.pdf (describing a few dozen excise taxes in the I.R.C.).

on liquor[45] and cigarettes[46] have been part of the I.R.C. for several decades—whether to discourage their use, to offset the cost of their negative social consequences, or both. The I.R.C. taxes crude oil and petroleum products, ozone-depleting chemicals, and gas-guzzling vehicles to protect the environment,[47] and vaccines to fund the National Vaccine Injury Compensation Program and compensate the families of children adversely affected by vaccination,[48] among other excise tax examples.

Even some longstanding deductions that we now regard as serving primarily non-revenue raising goals at one time may have been considered relatively value neutral or definitionally essential in computing net income. In writing about tax incentives, Professor Stanley Surrey described several tax provisions that "are now defended on incentive grounds" as having "cloudy" origins.[49] The deduction for home mortgage interest is illustrative. Individual taxpayers have been able to deduct home mortgage interest since Congress first enacted the income tax in 1913.[50] Today, tax experts consider the deduction for home mortgage interest to be a tax expenditure item aimed at promoting homeownership.[51] Yet, the Revenue Act of 1913[52] did not mention home mortgage interest specifically, but merely authorized a deduction for interest payments of any kind.[53] Congress permitted taxpayers to deduct consumer interest as well as business interest for administrability reasons, which made sense in a more agrarian era in which business and personal expenses were often commingled, nonfarm consumer debt was low, and most homeowners were not subject to the income tax in any event.[54] Congress only began contemplating the deductibility of home mortgage interest as an incentive for home ownership after World War II, when homeownership, mortgage debt, and the reach of the income tax had all expanded.[55] In 1986 and 1987, Congress revamped the interest deduction—denying a deduction for consumer interest generally, but authorizing a specific deduction for most home mortgage interest to promote homeownership.[56] In short, a deduction that was

45. *See, e.g.*, I.R.C. § 5001 (imposing taxes on distilled spirits and wines produced in or imported into the United States). These taxes have existed since at least 1958. Excise Tax Changes Act of 1958, Pub. L. No. 85-859, § 201, 72 Stat. 1275, 1313–14 (1958) (codified as amended at I.R.C. §§ 5001–5693 (2012)).

46. *See* I.R.C. § 5701 (imposing taxes on cigars, cigarettes, and other tobacco products manufactured in or imported into the United States). These taxes have existed since at least 1954. *See* Internal Revenue Code of 1954, ch. 52, § 5701, 68A Stat. 1, 705 (1954) (codified as amended at I.R.C. § 5701 (2012)).

47. I.R.C. §§ 4064, 4611–4612, 4681–4682. *See generally* Janet E. Milne, *Environmental Taxation in the United States: The Long View*, 15 LEWIS & CLARK L. REV. 417 (2011) (discussing existing environmental taxes as a tool for protecting the environment).

48. I.R.C. §§ 4131–4132; *see* Derry Ridgway, *No-Fault Vaccine Insurance: Lessons from the National Vaccine Injury Compensation Program*, 24 J. HEALTH POL. POL'Y & L. 59, 62 (1999) (describing the relationship between the vaccine excise tax and the National Vaccine Injury Compensation Program).

49. STANLEY S. SURREY, PATHWAYS TO TAX REFORM 127 (1973).

50. *See* Revenue Act of 1913, ch. 16, § II(B), 38 Stat. 114, 167; CHRISTOPHER HOWARD, THE HIDDEN WELFARE STATE: TAX EXPENDITURES AND SOCIAL POLICY IN THE UNITED STATES 49 (1997).

51. *See* S. COMM. ON THE BUDGET, 112TH CONG., TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS 358 (Comm. Print. 2012) (Cong. Research Serv.) [hereinafter 2012 CRS COMPENDIUM] ("For taxpayers who can itemize, the home mortgage interest deduction encourages home ownership by reducing the cost of owning compared with renting.").

52. Revenue Act of 1913, ch. 16, 38 Stat. 114.

53. *See id.* § II(B), 38 Stat. at 167; *see also* HOWARD, *supra* note 50, at 53–54 ("Included in these expenses was interest paid on *all* indebtedness, including but not limited to home mortgages."); Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 LAW & CONTEMP. PROBS. 233, 240–44 (2010) (discussing the history of home mortgage interest deductions in the early internal revenue laws).

54. *See* HOWARD, *supra* note 50, at 53–54; Ventry, *supra* note 53, at 241–42.

55. *See* Ventry, *supra* note 53, at 252–59 (recounting 1950s criticism of the deduction for home mortgage interest as well as Congress's continued support for using the tax code to promote homeownership).

56. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2246–48 (1986) (codified as amended at I.R.C. § 163(h)(1)–(3) (2012)); Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330, 1330–85 (codified as amended at I.R.C. § 163(h)(1)–(3)); *see also* Ventry, *supra* note 53, at 274–76 (discussing how qualified residence interest was designed to boost homeownership).

once relatively value neutral is now perceived as merely an indirect financial subsidy to mostly middle-class homeowners and the real estate industry.

Although the tax system has always served multiple goals, recent decades have seen a dramatic escalation in tax programs and provisions serving purposes other than traditional revenue raising. First and foremost, Congress has dramatically expanded its use of tax expenditures—various exclusions, deductions, credits, deferrals, and preferences that, by definition, represent the exact opposite of revenue raising.[57] Not long after Stanley Surrey coined the tax expenditures term in the 1960s, [58] the federal tax expenditure budget listed sixty items totalling somewhere between $60 billion and $65 billion.[59] By comparison, the most recent biennial compendium of tax expenditures prepared by the Congressional Research Service lists two hundred and fifty such items totalling well over $1 trillion,[60] and even that extensive list does not purport to be comprehensive. [61] Some tax expenditures are small and, sometimes, short-lived, like recent credits for first-time homebuyers and purchasers of electric vehicles. [62] Others are large, longstanding, and complicated—like the exclusions for employer contributions for employee health coverage and retirement plans, or the aforementioned deduction for home mortgage interest.[63]

What may be underappreciated, however, is the extent to which tax expenditures require the IRS to serve programs, purposes, and functions that look less like traditional revenue collection and more like the regulatory and social welfare programs of other, nontax agencies.[64] Congress increasingly utilizes refundable tax credits rather than direct subsidies to alleviate poverty and support working families.[65] Amounts expended by the government on the earned income tax credit (EITC) and the child tax credit each surpassed those for Temporary Assistance for Needy Families and its predecessor, Aid to Families with Dependent Children,

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57. *See* 2012 CRS COMPENDIUM, *supra* note 51, at 1031–35 (documenting types of tax expenditures). A daunting array of articles addresses the topic of tax expenditures, including but not limited to debate over the precise definition of the concept. For one helpful summary of the scholarly discussion of tax expenditures, including disagreement over the definition, see Eric T. Laity, *The Corporation as Administrative Agency: Tax Expenditures and Institutional Design*, 28 VA. TAX REV. 411, 421–29 (2008). For an explanation of the methodology used by the Joint Committee on Taxation for compiling its list of federal tax expenditures and noting areas of disagreement, see STAFF OF J. COMM. ON TAXATION, 112TH CONG., ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2011–2015, 3–10 (Comm. Print 2012).

58. *See* SURREY, *supra* note 49, at vii (describing Surrey's introduction of the term in a 1967 speech and his development of the tax expenditure budget in 1968 as Assistant Secretary for Tax Policy in the Treasury Department).

59. *Id.* at 7–11.

60. 2012 CRS COMPENDIUM, *supra* note 51, at 1,11.

61. The Compendium draws its data from tax expenditure estimates compiled by the Joint Committee on Taxation (JCT). *Id.* at 1. The JCT, in turn, acknowledges that it does not include de minimis items that fall below $50 million or items for which quantification is unavailable. STAFF OF THE J. COMM. ON TAXATION, *supra* note 57, at 27–30.

62. The tax expenditure estimates compiled by the JCT in 2012 documented more than thirty items valued at less than $50 million each. *See* STAFF OF THE J. COMM. ON TAXATION, *supra* note 57, at 27–28. The same report included seventy-six tax expenditure items that expired in 2010 and 2011, including, for example, the I.R.C. § 36 first-time homebuyer credit of (available for homes purchased between April 9, 2008, and May 1, 2010) and the I.R.C. § 30 credit for purchasing a plug-in electric vehicle (available for vehicles purchased between February 18, 2009, and December 31, 2011). *See id.* at 28.

63. According to the 2012 Congressional Research Service compendium, the amounts in 2011 for these three expenditures, respectively, were $109.3 billion, $105.3 billion, and $77.6 billion. 2012 CRS COMPENDIUM, *supra* note 51, at 5.

64. *See* Susannah Camic Tahk, *Everything Is Tax: Evaluating the Structural Transformation of U.S. Policymaking*, 50 HARV. J. ON LEGIS. 67, 67 (2013) ("For the past twenty-five years, Congress has been relying increasingly on the tax code to accomplish goals beyond raising revenue.").

65. *See* Lipman, *supra* note 31, at 1180–84 (describing the history of the EITC as a mechanism for alleviating poverty); *EITC & Other Refundable Credits*, IRS, http://www.eitc.irs.gov (last visited Mar. 21, 2014) (highlighting and facilitating claims to the EITC and other refundable tax credits). *See generally* David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 956 (2004) (discussing Congress's integration of spending programs into the I.R.C., comparing the EITC and food stamp programs); Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. REV. 1867 (2005) (comparing and contrasting the EITC, Temporary Assistance for Needy Families, and food stamps).

years ago.[66] In other words, the IRS is now one of the government's principal welfare agencies, on par with the Department of Health and Human Services (HHS) and the Social Security Administration.[67] Other scholars have documented some of the administrative challenges posed by this arrangement, as the tax system's traditional revenue raising orientation clashes with the objectives of the refundable credits.[68]

Anecdotally, Treasury and IRS officials bemoan the amount of time they spend implementing the Patient Protection and Affordable Care Act (ACA). Enacted in 2010,[69] the ACA is a complicated and massive piece of legislation that endeavours to expand health insurance coverage and control health care costs through various mandates, regulations, and subsidies administered by a combination of federal and state agencies.[70] The ACA contains several revenue raising components, including new excise taxes on indoor tanning services [71] and medical devices, [72] a new insurance policy "fee,"[73] and an expanded Medicare tax.[74] The ACA's infamous individual mandate may also yield some revenue, but the I.R.C. and ACA label the mandate a "shared responsibility payment" and a "penalty" rather than a tax.[75] Regardless, the core aims of the ACA are health care access and cost controls, not raising revenue, and the roles that Treasury and IRS officials play in ACA implementation extend far beyond the legislation's revenue raising components.[76] Since the ACA's enactment, Treasury and the IRS have worked with HHS and the Department of Labour (Labour) to draft regulations that, among other things, accommodate religious organizations that object to mandatory contraceptive coverage;[77] elaborate the extent to which group health plans are precluded from denying coverage to individuals with pre-existing health conditions;[78] and identify ways in which health insurance providers may or may not offer incentives for participating in wellness programs.[79] The ACA's medical loss ratio provisions, its requirement that health insurers accept all eligible applicants irrespective of pre-existing conditions, and its standards for coverage and pricing—all of which Treasury and the IRS are involved in implementing—essentially convert health insurance companies into public utilities, much like providers of telecommunications services (regulated by the Federal Communications Commission) or electricity transmission services (regulated by the Federal Energy

66. NAT'L TAXPAYER ADVOCATE, INTERNAL REVENUE SERV., 2009 ANNUAL REPORT TO CONGRESS: VOLUME TWO: RESEARCH AND RELATED STUDIES 78 (2009), *available at* http://www.irs.gov/pub/irs-utl/09_tas_arc_vol_2.pdf.

67. Lipman, *supra* note 31, at 1173.

68. *See generally* Michelle Lyon Drumbl, *Those Who Know, Those Who Don't, and Those Who Know Better: Balancing Complexity, Sophistication, and Accuracy on Tax Returns*, 11 PITT. TAX REV. (forthcoming 2014), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2338161; Lipman *supra* note 31, at 1184–98. *But see* Zelenak, *supra* note 65, at 1915 (arguing that the tax system is better at administering welfare programs than other agencies).

69. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 21, 25, 26, 29 and 42 U.S.C.).

70. *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2580 (2012) (noting the ACA's goals and size).

71. I.R.C. § 5000B (2012).

72. *Id.* § 4191.

73. *Id.* § 4375.

74. *Id.* § 1401(b).

75. *Id.* § 5000A; *see also Nat'l Fed'n of Indep. Bus.*, 132 S. Ct. at 2582–84, 2600 (holding that the individual mandate is not a tax for purposes of I.R.C. § 7421(a), even though the mandate is constitutional as an exercise of Congress's power to lay and collect taxes).

76. For a list of ACA tax provisions and discussion of Treasury and IRS responsibilities with respect to the ACA, see *Affordable Care Act Tax Provisions*, IRS, www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions (last visited Mar. 21, 2014).

77. T.D. 9578, Group Health Plans and Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8725 (Feb. 15, 2012).

78. T.D. 9491, Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections, 75 Fed. Reg. 37,188 (June 28, 2010), 2010-32 I.R.B. 186,188–89.

79. Notice of Proposed Rulemaking, Incentives for Nondiscriminatory Wellness Programs in Group Health Plans, 77 Fed. Reg. 70,620 (Nov. 26, 2012).

Regulatory Commission).[80] In short, in the context of implementing the ACA, at least, Treasury and the IRS seem indistinguishable from other, more traditional regulatory agencies.

Although the ACA has expanded and brought renewed attention to Treasury and IRS involvement in the health care sector, those agencies' participation in administering health and welfare programs is not new. Long before Congress enacted the ACA, it assigned Treasury and the IRS a leading role in administering health care as well as pension benefits governed by the Employee Retirement Income Security Act of 1974 (ERISA).[81] Congress enacted ERISA to protect participants in certain employee pension and welfare plans, including health coverage plans, by imposing various participation, vesting, funding, reporting, and disclosure requirements on the employers and unions that sponsor them.[82] The role of Treasury and the IRS in administering the pension aspects of ERISA largely corresponds to provisions in the I.R.C. that exclude qualifying pension contributions and earnings from taxable income[83]—acknowledged tax expenditure items.[84] By contrast, Treasury and IRS responsibilities for administering ERISA health coverage requirements (as opposed to ACA health coverage requirements) relate most closely to a financial penalty, styled as an excise tax, imposed by the I.R.C. on nonconforming group health plans.[85] Regardless, as with the ACA, Treasury and IRS administrative efforts in the ERISA area have virtually nothing to do with raising revenue. Instead, Treasury and the IRS have worked in recent years, again with HHS and Labour, to adopt regulations concerning the length of hospital stays for new mothers and their new-born infants[86] and ensuring that the mental health and substance abuse disorder benefits provided by group health plans enjoy parity with those plans' medical and surgical benefits.[87]

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80. *See* Kenneth S. Abraham, *Four Conceptions of Insurance*, 161 U. PA. L. REV. 653, 668–71 (2013) (making this comparison); Richard A. Epstein & Paula M. Stannard, *Constitutional Ratemaking and the Affordable Care Act: A New Source of Vulnerability*, 38 AM. J.L. & MED. 243, 261–67 (2012) (comparing and contrasting the constitutional posture of health insurers under the ACA with that of public utilities); Sara Rosenbaum, *Realigning the Social Order: The Patient Protection and Affordable Care Act and the U.S. Health Insurance System*, 7 J. HEALTH & BIOMEDICAL L. 1, 25 (2011) (describing the ACA as adopting "a public utility approach").

81. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of 26 and 29 U.S.C.) .

82. *See* STEVEN J. SACHER, JAMES I. SINGER & TERESA M. CONNERTON, EMPLOYEE BENEFITS LAW 22–35 (2d ed. 2000) (describing ERISA's purposes and coverage); Anne Tucker, *Retirement Revolution: Unmitigated Risks in the Defined Contribution Society*, 51 HOUS. L. REV. 153, 163–66 (2013) (same). Although historical accounts of ERISA focus primarily on pension reform, Congress drafted ERISA to cover a broader array of employee welfare plans, including employer-sponsored health insurance plans. *See* SACHER ET AL., *supra*, at 28 (including insurance coverage among list of welfare plans covered by ERISA).

83. *E.g.*, I.R.C. §§ 401–407, 410–418E, 457 (2012). Many of these provisions have parallel provisions in ERISA, and Treasury claims interpretive jurisdiction over both. *See* COLLEEN E. MEDILL, INTRODUCTION TO EMPLOYEE BENEFITS LAW 95–96 (3d ed. 2011) (listing I.R.C. provisions and corollary ERISA provisions); *see also* T.D. 9419, Mortality Tables for Determining Present Value, 73 Fed. Reg. 44,632 (July 31, 2008), 2008-40 I.R.B. 790, 791 n.1 (asserting jurisdiction to adopt morality tables for determining present value and making other computations for purposes of applying pension funding requirements under I.R.C. §§ 412 and 430 as well as ERISA § 302); T.D. 9484, Diversification Requirements for Certain Defined Contribution Plans, 75 Fed. Reg. 27,927 (May 19, 2010), 2010-24 I.R.B. 748, 748–49 (adopting regulations concerning diversification requirements for defined contribution plans holding publicly traded employer securities under both I.R.C. § 401(a)(35) and parallel provision 29 U.S.C. § 204(j)).

84. 2012 CRS COMPENDIUM, *supra* note 57, at 963.

85. Specifically, for any group health plan that fails to meet the requirements of I.R.C. chapter 100, I.R.C. § 4980D imposes an excise tax upon a sponsoring employer of one hundred dollars per day, per individual affected. I.R.C. § 4980D. Chapter 100, in turn, imposes an array of portability, access, and renewability requirements, as well as benefit requirements for mothers and newborns and for mental health, among other things. I.R.C. §§ 9801–9802, 9811–9812 (imposing group health plan requirements); *see also* MEDILL, *supra* note 83, at 354–55 (discussing the "excise tax penalty" adopted to enforce group health plan requirements).

86. T.D. 9427, Final Rules for Group Health Plans and Health Insurance Issuers Under the Newborns' and Mothers' Health Protection Act, 73 Fed. Reg. 62,410 (Oct. 20, 2008), 2008-47 I.R.B. 1179, 1181.

87. T.D. 9479, Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 75 Fed. Reg. 5410 (Feb. 2, 2010), 2010-18 I.R.B. 618, 620.

The exempt organization sector represents yet another area in which Treasury and IRS regulation has expanded far beyond the revenue raising function. Charities have been exempt from the corporate income tax from its origin in 1913,[88] and Congress authorized the deduction for individual contributions to eligible charities not long after that.[89] Exempt organizations with certain types of income now pay an unrelated business income tax.[90] Neither the exemption from the corporate income tax, nor the deduction for charitable contributions, however, contributes to revenue raising in any way; rather, both are means by which the federal government indirectly subsidizes exempt organizations. [91] In the century since Congress first exempted charitable organizations from the corporate income tax, the non-profit sector has expanded dramatically in both size and complexity.[92] Current Treasury and IRS administration efforts in this one area now involve an entire IRS division (out of only four) monitoring more than 1.6 million tax exempt organizations [93] across a few dozen separate statutory classifications that encompass universities with billion-dollar endowments and tiny religious schools teaching a few dozen students in a small town; large hospitals and small, free health clinics; labour unions; chambers of commerce; the National Football League; churches, big and small; the Metropolitan Opera and tiny, rural theater companies; the local Elks Lodge; and your Aunt Sadie's garden club.[94] Defining which organizations are eligible for exempt status and, separately, which may receive tax deductible contributions is complicated.[95] Evaluating applications for exempt status and monitoring existing organizations for continued compliance with eligibility requirements are even more difficult. Tax administrators in this sector routinely make decisions implicating issues as varied as free speech, politics, and religion;[96] election law and campaign finance;[97] and, again, health

88. The Revenue Act of 1913, which established the modern income tax, exempted charities from the levy imposed on corporate earnings. *See* Revenue Act of 1913, ch. 16, § II.G(a), 38 Stat. 114, 172 (exempting, inter alia, "any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes").

89. Revenue Act of 1921, ch. 136, § 214(a)(11), 42 Stat. 227, 241.

90. I.R.C. §§ 511–514 (2012); FRANCIS R. HILL & DOUGLAS M. MANCINO, TAXATION OF EXEMPT ORGANIZATIONS ¶ 21.01 (2002) (describing the unrelated business income tax). For documentation of the IRS collection of $496 million in unrelated business income tax in fiscal year 2012, see Figure 1, *supra*.

91. *See e.g.*, 2012 CRS COMPENDIUM, *supra* note 57, at 5 (identifying charitable contribution deduction as a tax expenditure item); Daniel Halpern, *Is Income Tax Exemption for Charities a Subsidy*?, 64 TAX L. REV. 283, 311–12 (2011) (concluding that both exempt status and the charitable contribution deduction are subsidies for exempt organizations). *But see* Boris I. Bittker & George K. Rahdert, *The Exemption of Nonprofit Corporations from Federal Income Taxation*, 85 YALE L.J. 299, 304 (1976) (concluding that early legislative perceptions "that nonprofit organizations are not suitable targets for an income tax . . . was a sound judgment deserving more attention and respect than it has received from tax scholars").

92. HILL & MANCINO, *supra* note 90, ¶ 1.01; James J. Fishman, *The Nonprofit Sector: Myths and Realities*, 9 N.Y. CITY L. REV. 303, 303–04 (2006).

93. *See At-a-Glance: IRS Divisions and Principal Offices*, IRS, http://www.irs.gov/uac/At-a-Glance:-IRS-Divisions-and-Principal-Offices (last visited Mar. 21, 2014) (listing four primary IRS divisions: Wage and Investment; Large Business and International; Small Business/Self-Employed; and Tax-Exempt and Government Entities); *Tax Exempt & Government Entities Division at a Glance*, IRS, http://www.irs.gov/uac/Tax-Exempt-&-Government-Entities-Division-At-a-Glance (last visited Mar. 21, 2014) (describing the work of the TE/GE division and noting "this sector is not designed to generate revenue, but rather to ensure that the entities fulfill the policy goals that their tax exemption was designed to achieve").

94. I.R.C. §§ 501(c)(1)–(29), (d)–(f) (describing different exempt organization types); *see also* Charles A. Borek, *Decoupling Tax Exemption for Charitable Organizations*, 31 WM. MITCHELL L. REV. 183, 201–07 (2004) (describing a spectrum of exempt organizations); Fishman, *supra* note 92, at 303–05 (same).

95. Only some exempt organizations can receive tax deductible contributions. *Compare* I.R.C. § 501 (listing types of exempt organizations), *with id.* § 170(c) (listing organizations eligible to receive deductible contributions).

96. *See generally* Johnny Rex Buckles, *Does the Constitutional Norm of Separation of Church and State Justify the Denial of Tax Exemption to Churches that Engage in Partisan Political Speech?*, 84 IND. L.J. 447 (2009); Richard W. Garnett, *A Quiet Faith? Taxes, Politics, and the Privatization of Religion*, 42 B.C. L. REV. 771 (2001); Steffen N. Johnson, *Of Politics and Pulpits: A First Amendment Analysis of IRS Restrictions on the Political Activities of Religious Organizations*, 42 B.C. L. REV. 875 (2001).

97. Demonstrating the issues that the IRS faces in this area, in 2011, the *Election Law Journal* published an entire volume on this topic. For just a few of the contributions to that volume, see, for example, Richard Briffault, *Nonprofits and Disclosure in the Wake of* Citizens United, 10 ELECTION L.J. 337 (2011); Lloyd Hitoshi Mayer, *Charities and Lobbying:*

policy and hospital governance.[98] For a prime example of the difficulties Treasury and the IRS face in assessing an organization's exempt status, one need look no further than recent regulations, proposed in the wake of the IRS–Tea Party scandal, attempting to identify for I.R.C. § 501(c)(4) social welfare organizations exactly which activities are candidate-related political activities.[99]

Speaking of politics and campaigns, how many tax experts realize that the I.R.C. has an entire subtitle dedicated to the financing of presidential election campaigns? Tax experts who prepare their own or others' individual income tax returns will no doubt recall the box on the Form 1040 asking taxpayers whether they want three dollars from some unidentified source to fund presidential election campaigns. [100] I.R.C. § 6096 authorizes individual taxpayers to allocate three dollars of federal funds to the Presidential Election Campaign Fund.[101] Subchapter H, in turn, governs eligibility to receive the funds, authorizes audits of campaign expenses, requires reports to Congress, and penalizes noncompliance. [102] The Federal Election Commission (FEC) is primarily responsible for administering Subchapter H, [103] but Treasury and the IRS play secondary roles that require coordination and cooperation with the FEC and, occasionally, regulations to govern those administrative efforts.[104] Again, however, Subchapter H serves no revenue raising function whatsoever.

EMPIRICAL STUDY

None of these observations about the contemporary U.S. tax system's scope are especially novel. All are well recognized within the tax policy literature. Nevertheless, my own informal impression is that many tax experts view the administrative burdens of these additional programs, purposes, and functions as small and tangential relative to the revenue raising function. Although this may be true provision by provision or program by program, when considered collectively, these non-revenue raising items add up. My goal with this project is to obtain at least a preliminary sense of the extent to which contemporary tax administration is dedicated to social welfare and regulatory programs, purposes, and functions, rather than more traditional revenue raising. To achieve this goal, the Article evaluates Treasury regulations—proposed, temporary, and final—promulgated during the five-year period between January 1, 2008, and December 31, 2012.

Institutional Rights in the Wake of Citizens United, 10 ELECTION L.J. 407 (2011); Donald B. Tobin, *Campaign Disclosure and Tax-Exempt Entities: A Quick Repair to the Regulatory Plumbing*, 10 ELECTION L.J. 427 (2011).

98. *See, e.g.*, Jessica Berg, *Putting the Community Back into the "Community Benefit" Standard*, 44 GA. L. REV. 375, 377 (2010) (discussing IRS-developed "community benefit" criteria that nonprofit hospitals must satisfy to maintain exempt status).

99. Notice of Proposed Rulemaking, Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71,535 (Nov. 29, 2013). For comprehensive coverage of the IRS–Tea Party scandal through April 5, 2014, including but not limited to reaction to the proposed regulations, see Paul Caron, *The IRS Scandal, Day 331*, TAXPROF BLOG (Apr. 5, 2014), http://taxprof.typepad.com/taxprof_blog/2014/04/the-irs-scandal-5.html.

100. INTERNAL REVENUE SERV., DEP'T OF THE TREAS., FORM 1040 (2013), *available at* http://www.irs.gov/pub/irs-pdf/f1040.pdf (offering opportunity to authorize contributions in the upper right-hand corner of the first page).

101. I.R.C. § 6096; *see also* Presidential Election Campaign Fund Act of 1966, Pub. L. No. 89-809, § 302(a), 80 Stat. 1587–90 (codified as amended at I.R.C. § 6096 (2012)) (establishing the fund).

102. I.R.C. §§ 9001–9042.

103. *See id.* § 9009(b) (authorizing the FEC to promulgate regulations "as it deems necessary to carry out the functions and duties imposed on it by" chapter 95, consisting of §§ 9001–9013); *id.* § 9039(b) (authorizing the FEC to adopt regulations "which it determines to be necessary to carry out its responsibilities under" chapter 96, consisting of §§ 9031–9042).

104. Treas. Reg. § 702.9006-1 (2008); Treas. Reg. § 702.9037-1 (2008); Treas. Reg. § 702.9037-2 (2008).

Why study treasury regulations?

If the goal is to evaluate the full picture of tax administration, studying Treasury regulations alone may seem like a rather limited place to start. Several government agencies and offices are responsible for administering different aspects of the U.S. tax system. Although the Treasury's Office of Tax Policy and the IRS Chief Counsel's Office work closely in promulgating regulations, they represent separate agencies that perform different administrative functions. [105] Treasury's regulatory preferences and priorities may not always align precisely with those of the IRS or the Department of Justice Tax Division, which also plays a prominent role in tax enforcement.[106] Moreover, the Chief Counsel's Office is only one part of a much larger IRS bureaucracy with many offices and divisions pursuing a wide range of processing, enforcement, educational, and other administrative tasks.[107]

Nevertheless, studying Treasury regulations is a worthwhile first step. Among the various documents published by Treasury and the IRS in administering the tax system, Treasury regulations are the most authoritative. [108] Treasury often undertakes regulation projects in response to recent legislation.[109] Congress has tended in recent years to ask the tax system to do more rather than less, and that trend shows no sign of abating.[110] Therefore, although this study does not aim to be predictive in any way, determining the extent to which Treasury regulation projects over the past five years arguably pursued ends other than raising revenue may give us some idea of what we might expect from future Treasury and IRS regulatory agendas.

Also, some of the express and supposed statutory exceptions from administrative law norms in the tax context focus importantly on Treasury regulations more than

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105. The Internal Revenue Manual discusses this relationship. IRM 32.1.1.3, 32.1.1.3.1, 32.1.1.4.4, 32.1.1.4.5 (Sept. 23, 2011) (discussing involvement of Office of Chief Counsel and Office of Tax Policy personnel in regulation projects); *see* LEANDRA LEDERMAN & STEPHEN W. MAZZA, TAX CONTROVERSIES § 1.03 (3d ed. 2008) (comparing Treasury and IRS involvement in regulation drafting); MICHAEL I. SALTZMAN, IRS PRACTICE & PROCEDURE ¶ 1.02 (1991) (describing the Treasury and IRS roles in the tax system).

106. GERALD A. KAFKA & RITA A. CAVANAUGH, LITIGATION OF FEDERAL CIVIL TAX CONTROVERSIES ¶ 1.09 (describing different functions of IRS and Department of Justice attorneys in tax cases).

107. SALTZMAN, *supra* note 105, ¶ 1.02.

108. *See, e.g.*, Mitchell Rogovin & Donald Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View from Within*, TAXES, Aug. 2009, at 21, 22 (describing Treasury regulations as "the primary source for guidance as to the IRS's position regarding the interpretation of the [I.R.C.]," and discussing their legal weight).

109. This proposition should be self-evident. For example, as discussed in Part I above and documented in Part II.C below, a substantial percentage of Treasury regulation projects undertaken and documents published in the past five years have concerned the ACA—a massive piece of legislation that nevertheless required extensive implementing regulations. Moreover, although the summary of study findings below does not address this topic in detail, as part of the larger study from which this paper derives, I have coded each regulation project studied for whether Treasury adopted new regulations or amended old regulations in response to legislation. Of the 262 regulation projects discussed as part of this paper, 118 contained some reference to legislation that Treasury was acting to implement. For additional examples supporting the proposition that Treasury promulgates regulations in response to legislation, see, for example, T.D. 9533, Modification of Treasury Regulations Pursuant to Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 Fed. Reg. 39,278 (July 6, 2011), 2011-33 I.R.B. 139, 139 (acting to implement new requirements imposed by the Dodd-Frank legislation); T.D. 9464, Interim Final Rules Prohibiting Discrimination Based on Genetic Information in Health Insurance Coverage and Group Health Plans, 74 Fed. Reg. 51,664 (Oct. 7, 2009), 2009-48 I.R.B. 692, 692 (adopting temporary regulations in response to statutory changes made by the Genetic Information Nondiscrimination Act of 2008); T.D. 9422, S Corporation Guidance Under AJCA of 2004 and GOZA of 2005, 73 Fed. Reg. 47,526 (Aug. 14, 2008), 2008-42 I.R.B. 898, 898–99 (implementing changes made to rules governing S corporations by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005).

110. *See supra* Part I; *see also, e.g.*, Brief *Amici Curiae* of Former Commissioners of Internal Revenue in Support of Defendants-Appellants, *supra* note 27, at 3–7 (describing the expansion of congressional use of the tax system for functions other than traditional revenue raising).

other tax agency actions. As already noted, one example is Congress's explicit authorization in I.R.C. § 7805(b) of retroactive Treasury regulations with no limitation for subject matter. Another is the Anti-Injunction Act, which at least arguably precludes pre-enforcement judicial review of Treasury regulations under the APA.[111] In litigation, the government has argued in recent years that I.R.C. § 7805(e) authorizes the issuance of temporary Treasury regulations with only post-promulgation notice and comment and without a contemporaneous claim of good cause—an approach to notice-and-comment rulemaking that is inconsistent with general administrative law requirements.[112]

Finally, although IRS administrative activities do not fully align with Treasury's regulatory agenda, a certain symbiotic relationship does exist between Treasury regulations and IRS guidance and enforcement activity. An IRS that helps draft and must enforce new Treasury regulations in individual cases is likely to expend its own resources in interpreting and applying those regulations. Relatedly, IRS enforcement actions in turn prompt Treasury to promulgate new regulations as the need for clarification arises. Thus, while Congress should not rely solely on a study of Treasury regulations in contemplating the need for IRS organizational reform, the close relationship between Treasury Department and IRS activities makes Treasury's regulatory emphasis at least relevant to such discussions.

Methodology

Like most agencies, Treasury and the IRS promulgate regulations using notice-and-comment rulemaking.[113] For virtually all Treasury regulation projects, Treasury and the IRS will publish a notice of proposed rulemaking (NOPR) with background, explanation, and proposed regulatory text.[114] After affording interested members of the public an opportunity to submit comments regarding the proposed regulations, Treasury and the IRS will publish a Treasury Decision (TD) containing final regulations along with further background and explanation.[115] In many instances, Treasury and the IRS publish a TD with legally binding temporary regulations simultaneously with the NOPR and then replace or withdraw the temporary regulations with the TD that contains the final regulations.[116] This Article evaluates Treasury regulation activity by considering

111. The scope of the Anti-Injunction Act as a limitation on judicial review in the tax context has been the subject of recent litigation. *E.g.*, Cohen v. United States, 650 F.3d 717 (D.C. Cir. 2011) (en banc); Halbig v. Sebelius, No. 13-623, 2014 WL 129023 at *8–11 (D.D.C. Jan. 15, 2014); Fla. Bankers Ass'n v. U.S. Dep't of Treasury, No. 13-529 (JEB), 2014 WL 114519, at *6 (D.D.C. Jan. 13, 2014). *See generally* Kristin E. Hickman, *A Problem of Remedy: Responding to Treasury's (Lack of) Compliance with Administrative Procedure Act Rulemaking Requirements*, 76 GEO. WASH. L. REV. 1153 (2008) (discussing this issue).

112. *See supra* note 15 and accompanying text. To date, the only judicial opinion to address the issue—a concurring opinion by Judges Halpern and Holmes of the U.S. Tax Court—squarely rejected the government's interpretation of I.R.C. § 7805(e) as inconsistent with the plain text of that provision and as contrary to congressional intent regarding the APA. *See* Intermountain Ins. Serv. of Vail, LLC v. Comm'r, 134 T.C. 211, 245–46 (2010) (Halpern & Holmes, JJ., concurring in the result), *rev'd on other grounds*, 650 F.3d 691 (D.C. Cir. 2011), *vacated*, 132 S. Ct. 2120 (2012); *see also* Kristin E. Hickman, *Unpacking the Force of Law*, 66 VAND. L. REV. 465, 496–99 (2013) (discussing this issue at greater length).

113. *See* 5 U.S.C. § 553(b)–(d) (2012) (describing notice-and-comment rulemaking procedures generally); IRM 32.1.2.3(3) (Sept. 23, 2011) (describing the process of referencing the APA and asserting that "the IRS usually publishes its [Notices of Proposed Rulemaking] in the Federal Register and solicits public comments").

114. IRM 32.1.1.2.2 (Sept. 23, 2011) (describing IRS NOPRs). Occasionally, Treasury publishes a TD containing final regulations without first publishing a NOPR. *See, e.g.*, T.D. 9586, Removal of Regulations Requiring 3% Withholding by Government Entities, 77 Fed. Reg. 24,611 (Apr. 25, 2012), 2012-22 I.R.B. 960, 960 (withdrawing existing final regulations without first publishing a NOPR after Congress repealed the associated I.R.C. provision).

115. IRM 32.1.1.4, 32.1.1.5 (Sept. 23, 2011) (describing TDs and the process of issuing final regulations).

116. *Id.* 32.1.1.3 (Sept. 23, 2011) (describing IRS use of temporary regulations). Whether Treasury and IRS use of temporary regulations complies with the APA's notice-and-comment rulemaking requirements is an open and debated question. *See, e.g.*, Hickman, *supra* note 112, at 492–502 (detailing the controversy).

major rulemaking documents—mostly, but not exclusively, TDs and NOPRs—published between January 1, 2008, and December 31, 2012.[117]

Identifying the documents.

Treasury and the IRS typically publish TDs and NOPRs in both the Federal Register and the Internal Revenue Bulletin. Consequently, major rulemaking documents were identified in three ways. First, I looked at the documents listed in the "Highlights of This Issue" and "Finding List of Current Actions on Previously Published Items" sections of each issue of the Internal Revenue Bulletin during the relevant time period. Second, because TDs are numbered sequentially, I ascertained which were published in the Federal Register during the relevant time period. Finally, to be certain that I had identified all of the relevant documents, I searched in Westlaw's Federal Register database for the Regulation Identifier Number (RIN) and Counsel Automated Systems Environment Management Information System (CASE-MIS) number assigned to each of those documents already located.[118]

During the five years under study, Treasury and the IRS published 449 major rulemaking documents in the Federal Register or the Internal Revenue Bulletin: 241 TDs,[119] 199 NOPRs,[120] and 8 additional, highly substantive documents labelled as an advanced NOPR,[121] a request for information,[122] or a solicitation of

117. For many regulations, Treasury and the IRS also publish one or more minor documents—for example, to schedule or cancel public hearings, or to correct typographical errors in TDs or NOPRs. *See, e.g.*, Fees on Health Insurance Policies and Self-Insured Plans for the Patient-Centered Outcomes Research Trust Fund; Hearing Cancellation, 77 Fed. Reg. 47,573 (Aug. 9, 2012) (canceling a previously scheduled public hearing); Health Insurance Premium Tax Credit; Correction, 77 Fed. Reg. 41,048 (July 12, 2012) (documenting corrections to regulatory preamble contained in T.D. 9590). These documents tend to be brief and routinized, but they generally are not published in the Internal Revenue Bulletin and can be easy to miss in the Federal Register. Sometimes Treasury will publish two separate documents with individual correcting amendments in the same edition of the Federal Register. On other occasions, Treasury will combine several correcting amendments in the same Federal Register document. Some minor notices address more than one project. In sum, including these minor technical documents in the study would have been more distortive than meaningful.

118. For further discussion of RIN and CASE-MIS numbers, see Appendix 1.

119. Although Treasury and the IRS typically publish all TDs in both the Federal Register and the Internal Revenue Bulletin, publication in the Internal Revenue Bulletin typically occurs some weeks after publication in the Federal Register. Consequently, the study includes several TDs published in the Federal Register but not the Internal Revenue Bulletin during the study period, and vice versa. The study also includes one TD that was published in the Federal Register but was never published in the Internal Revenue Bulletin. For further details, see Appendix 2.

120. Although Treasury and the IRS typically publish all NOPRs in both the Federal Register and the Internal Revenue Bulletin, publication in the Internal Revenue Bulletin typically occurs some weeks after publication in the Federal Register. Consequently, the study includes several NOPRs published in the Federal Register but not the Internal Revenue Bulletin during the study period, and vice versa. The study also includes one NOPR that was published in the Federal Register but was never published in the Internal Revenue Bulletin. For further details, see Appendix 2.

121. Treasury and the IRS do not often publish advanced NOPRs. Typically, the IRS uses revenue procedures or notices published in the Internal Revenue Bulletin but not in the Federal Register to notify taxpayers that it is contemplating a regulation project and to seek public comment regarding preliminary thinking about conceptual aspects. Nevertheless, in the time period covered by the study, Treasury published three advanced NOPRs in the Federal Register that were sufficiently substantive to warrant inclusion in the study. One described preliminary proposals for regulating the marketing by tax return preparers of tax refund anticipation loans and other similar products. *See generally* Advanced Notice of Proposed Rulemaking, Guidance Regarding Marketing of Refund Application Loans (RALs) and Certain Other Products in Connection with the Preparation of a Tax Return, 73 Fed. Reg. 1131 (Jan. 7, 2008). Another requested comments in response to six questions concerning potential modifications to the new markets credit program of I.R.C. § 45D and was published contemporaneously with a NOPR containing proposed regulations implementing that same provision. *See generally* Advanced Notice of Proposed Rulemaking, New Markets Tax Credit Non-Real Estate Investments, 76 Fed. Reg. 32,882 (June 7, 2011). The third advanced NOPR posed questions and offered preliminary proposals and alternatives to address religious objections to contraceptive coverage under the ACA. *See generally* Advanced Notice of Proposed Rulemaking, Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501 (Mar. 21, 2012).

122. Treasury published four requests for information in the five-year time period covered by the study. *See* Medical Loss Ratios; Request for Comments Regarding Section 2718 of the Public Health Service Act, 75 Fed. Reg. 19,297 (Apr. 14, 2010); Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 Fed. Reg. 5253 (Feb. 2, 2010); Request for Information Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 74 Fed. Reg. 19,155 (Apr. 28, 2009); Request for Information Regarding Sections 101 Through 104 of the Genetic Information Nondiscrimination Act of 2008, 73 Fed. Reg. 60,208 (Oct. 10, 2008).

comments.[123] Having identified these 449 documents, I then categorized them by subject matter and recorded other data for each as follows.

Subject matter categories

Although it is easy to recognize that the tax code serves multiple goals, it is impossible to code meaningfully the full panoply of I.R.C. provisions and Treasury regulations as serving an exclusively revenue raising, social welfare, or regulatory purpose. As outlined in Part I, individual tax code provisions and programs, together with their related regulations, often reflect two or even all three of these emphases at once. Nevertheless, categories of tax provisions are readily identifiable as being more or less heavily oriented toward non-revenue raising functions. As discussed in Part I, tax expenditures are obvious. One might quibble over whether a particular tax expenditure item serves social welfare purposes or regulatory purposes (or both simultaneously), but tax expenditures cannot be said to raise revenue for the government. Regulations implementing the ACA and ERISA, governing the exempt organization sector, or administering the Presidential Election Campaign Fund are likewise heavily weighted, if not completely oriented, toward purposes and functions other than revenue raising. By contrast, given that Social Security and Medicare taxes represent the second largest source of government revenue and remain substantially free of tax expenditures, regulations concerning these taxes are perhaps the most heavily weighted toward the revenue raising function. Given the mixed justifications for the corporate income tax, the estate tax, and various non-ACA excise taxes, regulations concerning these taxes arguably fall somewhere in the middle.

Accordingly, I coded each document according to a list of subject matter categories that offer at least some sense of the extent to which Treasury's regulatory efforts are focused on purposes other than revenue raising. The categories are as follows:

- Tax expenditures
- Affordable Care Act
- ERISA
- Exempt organizations
- Corporate/international that is primarily corporate
- Individual/not obviously corporate
- Gifts, trusts, and estates

Each of these documents announced Treasury's intention to embark upon a regulation project, described the issues to be addressed by the project, and posed various questions with respect to which Treasury was seeking public comment. For example, one request for information contained a list of thirty-nine questions aimed at helping Treasury and Labor to evaluate "what steps, if any, they could or should take, by regulation or otherwise, to enhance the retirement security of participants in employer-sponsored retirement plans and IRAs by facilitating access to, and use of, lifetime income or other arrangements designed to provide a stream of lifetime income after retirement." Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 Fed. Reg. 5253, 5255 (Feb. 2, 2010). Building upon the answers to these questions, Treasury subsequently issued proposed regulations governing longevity annuity contracts purchased under tax-qualified defined contribution plans. Notice of Proposed Rulemaking and Notice of Public Hearing, Longevity Annuity Contracts, 77 Fed. Reg. 5443 (Feb. 3, 2012).

123. On August 22, 2011, Treasury, HHS, and Labor together published proposed standards for benefit and coverage summaries and glossaries provided by health insurance providers to their customers pursuant to the ACA. Notice of Proposed Rulemaking, Summary of Benefits and Coverage and the Uniform Glossary, 76 Fed. Reg. 52,442 (Aug. 22, 2011). On the same day, these same agencies published a separate document containing and seeking comments regarding proposed templates for a summary of benefits and coverage and a uniform glossary that would comply with the proposed regulations. *See* Summary of Benefits and Coverage and Uniform Glossary-Templates, Instructions, and Related Materials Under the Public Health Service Act, 76 Fed. Reg. 52,475 (Aug. 22, 2011). Although not labeled a TD or NOPR, this accompanying document, which exceeded fifty pages in length, seemed sufficiently substantive to be included in this study.

- Partnerships and other non-T&E pass through
- Employment taxes
- Non-ACA excise taxes
- Campaign finance
- Administration and procedure

Most or all of these categories should be familiar and unobjectionable to tax experts. For the most part, the listed categories are drawn directly from large and specifically identifiable programs administered by the IRS; from I.R.C. subtitles, chapters, and subchapters; and from government documents reporting taxes collected and returns filed.[124] The campaign finance category corresponds to Subtitle H provisions concerning the financing of presidential election campaigns.[125] Nevertheless, a few additional points of explanation regarding the subject matter categories may be helpful in assessing the study's findings.

First, to add objectivity given differences of opinion among tax experts concerning the definition of tax expenditures, the study relied on the 2006, 2008, 2010, and 2012 biennial compendia prepared by the Congressional Research Service in assigning documents to the tax expenditures category.[126] In other words, if a document implemented a tax provision discussed by one of the biennial compendia, then the document was coded as belonging to the tax expenditure category. Even if some might argue that a particular tax provision does not really represent a tax expenditure, so long as one of the biennial compendia discussed the provision, then a document interpreting that provision was coded as belonging to the tax expenditures category. Correspondingly, even if some might consider a particular tax provision to represent a tax expenditure item, if none of the biennial compendia discussed the provision, then a document implementing the provision was not coded as belonging to the tax expenditure category.

That said, some provisions in the I.R.C. that were not cited by one of the biennial compendia nevertheless exist solely to elaborate the parameters of tax expenditure items. For example, the various compendia list I.R.C. §§ 401–407, 410–418E, and 457, but not I.R.C. § 430, as providing an exclusion from an individual's income for certain employer contributions to employee pension plans.[127] I.R.C. § 430 imposes funding requirements for some qualifying plans and defines a term contained in I.R.C. § 412—one of the listed provisions—which also imposes funding requirements for qualifying plans.[128] In short, for some taxpayers, the exclusion will only be available if their employers comply with I.R.C. § 430. Accordingly, documents promulgating regulations that interpret I.R.C. § 430 were coded as belonging to the tax expenditures category, even though I.R.C. § 430 itself was not listed in any of the biennial compendia.

124. *E.g.*, INTERNAL REVENUE SERV., *supra* note 38, at 3 tbl.1.

125. I.R.C. §§ 9001–9042 (2012). For further discussion of Subchapter H, see *supra* notes 102–104 and accompanying text.

126. 2012 CRS COMPENDIUM, *supra* note 51; S. COMM. ON THE BUDGET, 111TH CONG., TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS (Comm. Print 2010) (Cong. Research Serv.); S. COMM. ON THE BUDGET, 110TH CONG., TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS (Comm. Print 2008) (Cong. Research Serv.); S. COMM. ON THE BUDGET, 109TH CONG., TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS (Comm. Print 2006) (Cong. Research Serv.).

127. *E.g.*, 2012 CRS COMPENDIUM, *supra* note 51, at 963.

128. *See* I.R.C. § 430 (defining the term "minimum required contribution" including for purposes of I.R.C. § 412(a)(2)(A)).

Second, I assigned each document to a single subject matter category. Yet, perhaps inevitably, the categories sometimes overlap in ways that cause a degree of subjectivity in coding certain documents. For example, Treasury's administrative responsibilities under ERISA overlap considerably with the tax expenditure excluding employer contributions to employee pension plans from an employee's income. Indeed, many TDs and NOPRs interpreting the I.R.C. provisions relevant to that tax expenditure also mention ERISA. In some instances, Treasury and the IRS note explicitly that relevant provisions in the I.R.C. and ERISA are parallel and that Treasury has interpretative jurisdiction over both. I coded such documents based on my assessment of their dominant concern.

Also, some ACA provisions modify ERISA, so several of the documents written to implement the ACA mention ERISA as well. Also, the ACA imposes excise taxes—for example, on medical devices and indoor tanning services. Still other ACA provisions raise revenue but under some other label like "fee" or "penalty."[129] Whatever the label, the ACA's revenue raising provisions are often inextricably intertwined with other aspects of the legislation. Accordingly, rather than try to code ACA-related documents as separate subcategories, I gave the ACA its own category and coded all documents that claimed to implement provisions of the ACA as such.

Lastly, most documents that fall in the administration and procedure category implicate tax professionals or taxpayers across several categories. Occasionally, however, Treasury and the IRS promulgate a procedural regulation that is limited to a particular substantive I.R.C. section. In such cases, although the regulation addresses procedural matters, it would not exist but for the substantive provision. I coded documents fitting this description as belonging to the relevant substantive category, rather than to the more general administration and procedure category.

Additional variables coded

While I considered each of the 449 documents coded to be sufficiently substantive for inclusion, those documents were not equal in length or complexity. Several were more than fifty pages long, while many others were limited to a single page. A one-page TD or NOPR must satisfy all of the same procedural, circulation, and review requirements as a fifty-page TD or NOPR.[130] In that sense, all of the documents were equal, irrespective of their page length. Also, page length is not a precise proxy for complexity or the amount of time Treasury and IRS personnel spent drafting a document. Nevertheless, to provide a more thorough basis for evaluating the 449 major rulemaking documents studied, and to avoid overweighting short documents and underweighting long ones, I recorded the page length of each in addition to recording its subject matter.

Also, in addition to considering the 449 major rulemaking documents individually, I evaluated them on a project-by-project basis by grouping together those documents that are part of the same rulemaking project.[131] Individual documents are likely better indicators of time dedicated to task than entire projects for two reasons. First, preparing each document takes time, and Treasury and IRS

129. For discussion of the ACA revenue raising provisions, see *supra* notes 71–75 and accompanying text.

130. Section 32, Chapter 1 of the Internal Revenue Manual offers detailed requirements for drafting, circulating, and reviewing regulation documents. IRM 32.1.2.1–32.1.9.5 (Sept. 23, 2011).

131. For more detail on this aspect of the methodology, see Appendix 1.

personnel must satisfy many procedural, circulation, and review requirements document by document. Second, although most regulation projects consist of one TD and one NOPR, some regulation projects contain three, four, or even five such documents. Evaluating individual documents avoids overweighting smaller projects and underweighting larger ones. Nevertheless, many procedural steps are performed project by project rather than document by document, and the substantive and rhetorical overlap of documents within a single regulation project undoubtedly offers some efficiency of production.[132] Consequently, assessing the documents project by project as well as individually offers a more thorough approach to measuring how Treasury and IRS personnel spend their time.

Altogether, the 449 major rulemaking documents published by Treasury during the five years covered by the study represent 262 individual regulation projects. Of those projects, 65 contain regulations that are or were only proposed. Some of the proposed regulations remained outstanding at the end of the study period, while others had been withdrawn in lieu of further action. Another 32 projects include temporary and proposed regulations that remained outstanding at the end of the study period. The remaining 165 projects were finalized during the study period.

Just as I recorded the length of each of the 449 major rulemaking documents studied, I also added together the page lengths of all of the documents that were part of a single project. Because some Treasury regulation projects with documents published during the study period were initiated prior to that period, however, grouping the documents studied into projects involved pulling additional documents that predated the study period. Consequently, although the findings presented below include the subject matter breakdown of large Treasury regulation projects based on their total pages, the page totals for those projects do not correlate precisely with the tables evaluating individual documents.

RESULTS

The following figures present the study results in different ways. First, the figures report the results of the document, project, and page counts for each subject matter category individually. Thus, for example, one can compare the tax expenditures and ACA categories with the administration and procedure category using each of those measures.

Second, the figures group the categories into subsets based on the analysis in Part I. One subset consists of the five categories with the weakest relationship to the tax system's traditional revenue raising function: tax expenditures, ACA, ERISA, exempt organizations, and campaign finance. As also discussed in Part I, however, other subject matter categories beyond those five possess histories and features that arguably support thinking about them in social welfare or regulatory terms. These categories tie closely to taxes that raise revenue but are also strongly associated with social welfare and regulatory objectives: the corporate category, which corresponds to the corporate income tax; the gifts, trusts, and estates category, which relates to the estate tax; and the non-ACA excise tax category. Both of the two subsets of categories are, in turn, subtotalled to the side of each figure. The third and final subset consists of categories that, with the possible

132. IRM 32.1.2.1–32.1.9.5.

exception of the administration and procedure category, enjoy the strongest relationship with the revenue raising function.

The administration and procedure category is particularly difficult to characterize as either more or less concerned with revenue raising than other subject matter categories. The administration and procedure category includes procedural regulations governing the filing of returns and the withholding, assessment, and collection of taxes, as well as penalties for noncompliance and other matters directly associated with revenue raising. The administration and procedure category also includes regulations governing the professional behaviour of tax practitioners, implementing the IRS whistle-blower program, and safeguarding taxpayer privacy.[133] None of these matters pertains precisely to revenue raising, yet at the same time, they all do. As a result, characterizing documents and projects addressing these issues as either more or less oriented toward raising revenue seems especially debatable. To be conservative, the following figures group the administration and procedure category among those with the strongest relationship to the revenue raising function. With that windup, as presented in Figure 2, a straight count of the major rulemaking documents studied shows that a substantial portion of those documents addresses programs and provisions other than traditional revenue raising.

As Figures 2 and 3 demonstrate, between one-sixth and one-fifth of the documents and projects studied concerned obviously non-revenue raising tax expenditure items. Roughly another one-sixth concerned the relatively regulatory ACA, exempt organization, ERISA, and campaign finance categories. Taken together, almost one-third of the documents and projects studied—hardly a negligible proportion—addressed the programs and provisions least associated with traditional revenue raising. Shaded in Figures 2 and 3, the subset of categories that raise at least some revenue but are also strongly associated with social welfare and regulatory goals represent another one-fourth of the documents evaluated by this study. If one accepts the argument that the corporate income tax, the estate tax, and excise taxes exist as much or more to serve social welfare and regulatory purposes than to raise revenue, then the total number of documents and projects least associated with traditional revenue raising rises to well above half.

Figure 2. Straight Count of Major Rulemaking Documents

Category	Count	Percent
Tax expenditures	80	17.8
Affordable Care Act	41	9.1
Exempt organizations	13	2.9
ERISA	11	2.4
Campaign finance	3	.7
Corporate/international that is primarily corporate	89	19.8
Gifts, trusts, and estates	21	4.7
Non-ACA excise taxes	6	1.3
Administration and procedure	98	21.8
Individual/not obviously corporate	64	14.3
Partnerships and other non-T&E pass through	18	4.0
Employment taxes	5	1.1
Total	449	99.9[a]

32.9%

58.7%

[a] This column does not total precisely 100 percent due to rounding.

133. For a breakdown of the administration and procedure category, see Appendix 3, Figure A3.3.

Shifting the analysis from individual documents to regulation projects yields similar results, as shown in Figure 3.

Figure 3. Straight Count of Regulation Projects

Category	Count	Percent
Tax expenditures	50	19.1
Affordable Care Act	18	6.9
Exempt organizations	9	3.4
ERISA	5	1.9
Campaign finance	1	0.4
Corporate/international that is primarily corporate	50	19.1
Gifts, trusts, and estates	12	4.6
Non-ACA excise taxes	3	1.1
Administration and procedure	57	21.8
Individual/not obviously corporate	40	15.3
Partnerships and other non-T&E pass through	14	5.3
Employment taxes	3	1.1
Total	262	100.0

31.7%

56.5%

Interestingly, the individual category, which consists principally of individual income tax matters that are not tax expenditures, and the employment taxes category together represented less than one-sixth of the documents and regulation projects studied. When one considers that the individual income tax an employment taxes represent more than 85 percent of gross revenue collected by the IRS, the number of documents and projects associated with those taxes seems strikingly small.

Lastly, it is notable that the administration and procedure category was the largest, representing more than one-fifth of the major rulemaking documents and regulation projects studied. In an informal conversation, one former Treasury official with whom I shared these results suggested that the relatively large number of documents and projects addressing administrative and procedural matters represents a substantial shift from twenty years ago. In fact, he was somewhat dismayed that administrative and procedural matters, rather than substantive interpretation, seem to consume such a large percentage of Treasury and IRS time and resources. If he is right in suggesting that this category has expanded over time, then one is left to wonder the reasons why. Evaluating the major rulemaking documents studied in terms of pages published yields results that are similar yet even more dramatically weighted toward the primarily non-revenue raising categories.

According to Figure 4, the percentage of pages published in connection with tax expenditures roughly correlates with the number of documents and the number of projects. The percentages for pages published with respect to the relatively regulatory ACA and ERISA categories, however, went up—substantially so for the ACA category. Taken together, fully two-fifths of the pages published addressed programs and provisions that most obviously stand apart from the traditional revenue raising function. Adding the three shaded categories brings that total up as well to two-thirds of the pages published. It might have been foreseeable that the largest difference between the counts for individual documents or projects and pages published comes from the ACA category. The

ACA was enacted in 2010, in the very middle of the period studied.[134] Given the size and complexity of that legislation and the central role played in its implementation by Treasury and the IRS, it is unsurprising both that Treasury and the IRS have dedicated a significant part of their regulatory agenda since then to implementing that legislation and that many of the resulting NOPRs and TDs are especially lengthy. Whether Treasury and IRS efforts to administer the ACA will displace revenue raising or other social welfare and regulatory programs, purposes, and function to such a degree on an ongoing basis remains to be seen.

Figure 4. Page Count of Major Rulemaking Documents

Category	Count	Percent
Tax expenditures	575	17.2
Affordable Care Act	526	15.8
Exempt organizations	121	3.6
ERISA	138	4.1
Campaign finance	4	0.1
Corporate/international that is primarily corporate	612	18.4
Gifts, trusts, and estates	243	7.3
Non-ACA excise taxes	11	.3
Administration and procedure	568	17.0
Individual/not obviously corporate	434	13.0
Partnerships and other non-T&E pass through	71	2.1
Employment taxes	31	0.9
Total	3,334	99.8[a]

40.8%

66.8%

[a] This column does not total precisely 100 percent due to rounding.

Nevertheless, notwithstanding its recent enactment and complexity, the ACA was not the only category with large projects. As Figure 5 demonstrates, of the fifteen completed regulation projects totalling more than fifty pages, only two concern the ACA. Fully six of the twelve subject matter categories are represented among the largest projects, including tax expenditures and exempt organizations as well as the corporate and administration and procedure categories. On the other hand, the individual and employment tax categories were not represented. Overall, the average page count among the 165 final projects was slightly less than 20 pages; only 46 projects, or less than 30 percent, were longer than that average. The categorization of those 46 projects resembles the other findings.

In summary, whether the focus is on documents, projects, or page counts, it is apparent that Treasury and the IRS commit substantial resources to adopting regulations that interpret, elaborate, and implement tax provisions aimed primarily at regulatory and social welfare programs, purposes, and functions rather than raising revenue. Indeed, depending on how one perceives the corporate income tax, the estate tax, and non-ACA excise taxes, one could argue that Treasury and the IRS dedicate less of their regulatory effort to raising revenue than to other programs, purposes, and functions. At a minimum, Treasury and IRS expend comparatively little effort promulgating regulations concerning the revenue raising aspects of the individual income tax and employment taxes, notwithstanding that those taxes together represent the vast majority of collections. Anecdotally, Treasury regulation drafters have been swamped for the past few years with implementing the massive ACA. The ACA is landmark

134. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 21, 25, 26, 29 and 42 U.S.C.).

legislation and thus may skew the data artificially away from revenue raising and yield anomalous results for the period studied. Nevertheless, as the above analysis indicates, ACA regulations do not dominate the other categories so dramatically as to leave other social welfare and regulatory efforts negligible relative to revenue raising.

Figure 5: Finalized Projects Over 50 Pages[135]

Project subject	Category	Pages
Use of actuarial tables in valuing annuities (§ 7520)	Gifts, trusts, and estates	157
Methods to determine taxable income in connection with a cost sharing arrangement (§ 482)	Corporate/international that is primarily corporate	156
Treatment of services; allocation of income and deduction from intangibles; stewardship expense (§ 482)	Corporate/international that is primarily corporate	137
Measurement of assets and liabilities for pension funding purposes (§§ 430, 436)	Tax expenditures	129
Summary of benefits and coverage, glossary for group health plans (§ 9815)	Affordable Care Act	128
Unified rule for loss on subsidiary stock (§§ 358, 362, 1502)	Corporate/international that is primarily corporate	110
Special rules to reduce § 1446 withholding (§ 1446)	Administration and procedure	79
Tax return preparer penalties (§§ 6694, 6695)	Administration and procedure	73
Source rules involving U.S. possessions and other conforming changes (§ 937(b))	Corporate/international that is primarily corporate	71
Basis reporting by securities brokers (§§ 1012, 6045)	Administration and procedure	68
Implementation of Form 990 (§§ 6033, 6043)	Exempt organizations	56
Religious accommodation for contraceptive coverage (§ 9815)	Affordable Care Act	54
Application of separate limitations to dividends from noncontrolled § 902 corporations (§ 904)	Corporate/international that is primarily corporate	51
Gain recognition agreements with respect to certain transfers of stock or securities by U.S. persons to foreign corporations (§ 367)	Corporate/international that is primarily corporate	51

Figure 6: Breakdown of 46 Final Projects Larger than Average

Category	Total	Percent
Tax expenditures	8	17.4
Affordable Care Act	6	13.0
Exempt organizations	2	4.3
ERISA	1	2.2
Corporate/international that is primarily corporate	12	26.1
Gifts, trusts, and estates	2	4.3

36.9%

67.3%

135. To avoid comparing apples with oranges, all of the projects presented in Figure 5 were taken from the 165 regulation projects for which Treasury and the IRS have published final regulations. Nevertheless, three projects that were still ongoing at the end of 2012 were already larger than some of those listed in Figure 5. Those three projects concerned the following topics: the deduction and capitalization of expenditures related to tangible property under I.R.C. § 263, categorized as individual/not obviously corporate; group health plans and health insurance issuers, implementing the ACA; and health insurance exclusions for pre-existing conditions, also under the ACA.

Administration and procedure	8	17.4
Individual/not obviously corporate	5	10.9
Partnerships and other non-T&E pass through	1	2.2
Employment taxes	1	2.2
Total	46	100.0

POTENTIAL IMPLICATIONS OF THE STUDY

The study documented by this Article provides merely a limited snapshot of Treasury and IRS tax administration efforts. More extensive study—covering a longer time frame or evaluating other aspects of IRS administration, for example—will provide a more comprehensive understanding of the extent to which the attentions of Treasury and the IRS are focused on pursuing goals and administering programs with only a tangential relationship to the U.S. tax system's traditional revenue raising mission.

Nevertheless, this study at least offers a fair indication of the contemporary mix of issues that drafters of Treasury regulations spend their time addressing. Like the I.R.C. itself, Treasury regulations carry the force and effect of law. Promulgating Treasury regulations is one of the most legally consequential actions that Treasury and the IRS undertake in administering the tax system. As noted, some instances of tax exceptionalism from general administrative law norms and doctrines particularly concern Treasury regulations. Specifically, statutory provisions arguably limit pre-enforcement judicial review of Treasury regulations and explicitly authorize retroactive effective dates for new Treasury regulations. Although I have addressed pre-enforcement review in prior work and will save more complete consideration of retroactivity for the future, I would like to take the opportunity here to offer a few thoughts regarding the potential implications of this study in those areas.

Pre-enforcement judicial review for treasury regulations

The Anti-Injunction Act, I.R.C. § 7421(a), provides generally that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."[136] Correspondingly, the Declaratory Judgment Act (DJA) contains a tax exception that prevents courts from providing declaratory relief for controversies "with respect to Federal taxes."[137] Courts generally have interpreted these provisions as operating coextensively [138] and as substantially limiting judicial review of tax cases outside of statutorily authorized refund and deficiency actions.[139]

136. Anti-Injunction Act, I.R.C. § 7421(a)(2012).

137. 28 U.S.C. § 2201(a).

138. *See, e.g.*, Cohen v. United States, 650 F.3d 717, 727–31 (D.C. Cir. 2011) (en banc) (analyzing the issue and holding in favor of coextensive interpretation); Ambort v. United States, 392 F.3d 1138, 1140 (10th Cir. 2004) ("In practical effect, these two statutes are coextensive . . . ."); Sigmon Coal Co. v. Apfel, 226 F.3d 291, 299 (4th Cir. 2000) ("[T]he two statutory texts are, in underlying intent and practical effect, coextensive." (quoting *In re* Leckie Smokeless Coal Co., 99 F.3d 573, 583 (4th Cir. 1996)).

139. *See, e.g.*, Bob Jones Univ. v. Simon, 416 U.S. 725, 748–50 (1974) (reading I.R.C. § 7421(a) and the DJA as precluding judicial review of an IRS threat to withdraw an organization's exempt status on the ground that allowing the suit could have an indirect effect of reducing the tax burdens of the organization's contributors); Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962) (identifying the purpose of I.R.C. § 7421(a) and the DJA as "permit[ting] the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund").

That said, most of the cases interpreting I.R.C. § 7421 and the DJA concern either tax protesters raising frivolous legal arguments already rejected by the courts[140] or taxpayers asserting technicalities to avoid levies or property seizures for taxes clearly owed.[141] In the 1970s, the Supreme Court cited I.R.C. § 7421 and the DJA in declining to consider constitutional challenges to IRS ruling letters denying or revoking exempt organization status under I.R.C. § 501(c)(3).[142] In response, Congress adopted a statutory exception for such rulings.[143] The Court also cited I.R.C. § 7421 in declining to consider the merits of a Vietnam War–era constitutional challenge by war protesters to income tax withholding in which the taxpayers conceded that they would likely lose a refund action and that they merely wanted the opportunity to decline to pay their taxes and to require the government to levy.[144]

By contrast, case law regarding whether I.R.C. § 7421 and the DJA preclude pre-enforcement judicial review of Treasury regulations is both limited and mixed. The Supreme Court has never addressed the question. In *California v. Regan*,[145] the Ninth Circuit decided that regulations requiring third-party reporting of pension-plan data would "*have an impact on* the assessment of federal taxes" by enabling the IRS to evaluate individual beneficiaries' claims to favourable tax treatment and thus could not be reviewed pre-enforcement.[146] Similarly, in *Foodservice & Lodging Institute v. Regan*,[147] the D.C. Circuit concluded that regulations governing how restaurant employers allocate and report tip income among employees "plainly *concern[ed]* the assessment or collection of" those employees' federal taxes and were thus unreviewable pre-enforcement.[148]

Also in *Foodservice & Lodging Institute*, however, the D.C. Circuit concluded that I.R.C. § 7421 and the DJA did not preclude a pre-enforcement challenge to a regulation that required restaurants to report tips received so that the IRS could evaluate tip compliance in the restaurant industry, reasoning that regulation "[did] not relate to the assessment or collection of taxes."[149] More recently, in *Cohen v. United States*,[150] the D.C. Circuit allowed an APA procedural challenge against an IRS notice to proceed outside the usual channels of refund and deficiency actions.[151] The *Cohen* case did not involve a pre-enforcement challenge, precisely, as the taxes at issue had already been paid, and the *Cohen* court was careful to

140. *See, e.g.*, Shrock v. United States, No. 95-3927, 1996 WL 414177, at *1 (7th Cir. July 22, 1996) (calling tax protestor's claims "frivolous" and "repeatedly rejected"); Gassei v. Dep't of Justice, No. 91-6400, 1992 WL 149981, at *2 (10th Cir., Nov. 2, 1992) (rejecting taxpayer's argument as clearly contrary to controlling circuit precedent); Purk v. United States, Nos. 89-37989, 89-3790, 1990 WL 12188, at *1 (6th Cir. Feb. 13, 1990) (observing that "other courts have rejected similar claims" to that raised by the taxpayer).

141. *See, e.g.*, Weiler v. United States, No. 94-56465, 1996 WL 169254, at *4 (9th Cir. Apr. 10, 1996) (finding the record "replete with evidence" that IRS assessments were valid); Nuttle v. IRS, No. 95-2089, 1995 WL 643106, at *2 (10th Cir. Nov. 2, 1995) (declining to enjoin the collection of taxes recognized as due by the Tax Court so that the taxpayer could avoid posting an appeal bond); Knight v. United States, No. 93-35039, 1993 WL 140589, at *2 (9th Cir. May 4, 1993) (refusing to enjoin the collection for lack of deficiency notice because the I.R.C. did not require notice).

142. Alexander v. "Americans United" Inc., 416 U.S. 752, 761–63 (1974); *Bob Jones Univ.*, 416 U.S. at 736–48.

143. Tax Reform Act of 1976, Pub. L. No. 94-455, § 1306(a), (b)(8), 90 Stat. 1520, 1717, 1719–20 (1976) (codified as amended at I.R.C. § 7428(a) (2012) and 28 U.S.C. § 2201(a)).

144. United States v. Am. Friends Serv. Comm., 419 U.S. 7, 10–12 (1974) (per curiam).

145. California v. Regan, 641 F.2d 721 (9th Cir. 1981).

146. *Id.* at 722 (emphasis added).

147. Foodservice & Lodging Inst. v. Regan, 809 F.2d 842 (D.C. Cir. 1987).

148. *Id.* at 844 (emphasis added).

149. *Id.* at 846. The D.C. Circuit went on to uphold the regulation as reasonable. *Id.* at 847.

150. Cohen v. United States, 650 F.3d 717 (D.C. Cir. 2011) (en banc).

151. *Id.* at 734 ("Allowing judicial review of Appellants' APA suit is consistent with the APA's underlying purpose . . . .")

restrict its justiciability determination to the case's facts and circumstances.[152] Nevertheless, much of the *Cohen* court's reasoning could be extended to allow other APA procedural challenges to proceed pre-enforcement. Since the D.C. Circuit decided *Cohen*, at least one district court has declined to apply I.R.C. § 7421 to dismiss a pre-enforcement APA challenge to the validity of a Treasury regulation. In *Florida Bankers Ass'n v. United States Department of Treasury*,[153] the district court allowed a pre-enforcement APA challenge against information reporting regulations implementing the Foreign Account Tax Compliance Act to proceed notwithstanding the Anti-Injunction Act, citing the D.C. Circuit decisions in both *Foodservice & Lodging Institute* and *Cohen*.[154] Also in the D.C. Circuit, the government did not even raise the question of reviewability in *Loving v. IRS*[155]—a pre-enforcement challenge to the validity of Treasury regulations that would impose competency testing, continuing education, and ethics requirements on tax return preparers.[156]

Nevertheless, in *Halbig v. Sebelius*,[157] another district court held that I.R.C. § 7421 precluded judicial review of a pre-enforcement APA challenge to Treasury regulations concerning health insurance premium tax credits under the ACA.[158] Also citing *Cohen*, the *Halbig* court concluded that because the credits would, in turn, would trigger certain assessments on employers under I.R.C. § 4980H, and those assessments served a revenue raising function, the Anti-Injunction Act precluded the employers' suit.[159]

The relevant statutory text is sufficiently open to interpretation, and case law in the area is so limited, that courts have some latitude in deciding whether to interpret I.R.C. § 7421 and the DJA to allow pre-enforcement judicial review of Treasury regulations. Focusing on the importance of the IRS's revenue raising function, the Supreme Court in the 1960s and 1970s embraced a broad construction of what it means to restrain tax assessment and collection that would seem to preclude just about any tax case outside of statutory refund or deficiency actions. By contrast, at least some of the more recent court opinions have adopted narrow interpretations of "assessment" and "collection" to allow APA challenges to proceed.[160]

The leading Supreme Court case supporting a broad application of I.R.C. § 7421—*Enochs v. Williams Packing & Navigation Co.*,[161] decided in 1962—emphasized the IRS's revenue raising function: "The manifest purpose of [I.R.C. § 7421] is to permit the United States to assess and collect taxes alleged to be due without judicial intervention . . . ."[162] If courts perceive that an increasing number

152. *Id.* at 725–26.

153. Fla. Bankers Ass'n. v. U.S. Dep't of Treasury, No. 13-529 (JEB), 2014 WL 114519 (D.D.C. Jan. 13, 2014).

154. *Id.* at *6–7.

155. Loving v. IRS, No. 13-5061, 2014 WL 519224 (D.C. Cir. Feb. 11, 2014).

156. *See generally* Brief for the Appellants, Loving v. IRS, No. 13-5061, 2014 WL 519224 (D.C. Cir. Mar. 29, 2013), 2013 WL 1282685 (failing to address reviewability); Defendants' Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, Loving v. IRS, 917 F. Supp. 2d 67 (D.D.C. 2013) (No. 12-cv-00385-JEB), 2012 WL 8133439 (same).

157. Halbig v. Sebelius, No. 13-623 (PLF), 2014 WL 129023 (D.D.C. Jan. 15, 2014)

158. *Id.* at *8–11.

159. *Id.* at *11.

160. *Fla. Bankers Ass'n*, 2014 WL 114519, at *6; Cohen v. United States, 650 F.3d 717 (D.C. Cir. 2011) (en banc); *see* Hibbs v. Winn, 542 U.S. 88, 100–02 (2004) (interpreting similar language in 28 U.S.C. § 1341). *But see Halbig*, 2014 WL 129023, at *9 (applying I.R.C. § 7421 to preclude judicial review of pre-enforcement APA challenge to a regulation governing a tax credit because the plaintiffs' ultimate goal was to "restrain" the IRS from assessing a related excise tax).

161. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962).

162. *Id.* at 7.

of new Treasury regulations are more oriented toward non-revenue raising programs and goals, however, they may be more inclined to construe pre-enforcement challenges to those regulations as unrelated to the assessment and collection of taxes, and thus beyond the scope of I.R.C. § 7421.

Regardless of what the courts do, Congress should revisit the scope of I.R.C. § 7421 and the DJA. Although protecting the fisc is an important goal, Congress has previously signalled its recognition that some circumstances warrant extending pre-enforcement judicial review. As noted above, Congress adopted an exception from I.R.C. § 7421 and the DJA in response to Supreme Court decisions precluding judicial review of IRS rulings denying or revoking exempt organization status.[163] Congress could again contemplate adopting language that would further narrow the scope of I.R.C. § 7421 and the DJA to bring judicial review of Treasury regulations in closer alignment with administrative law norms.

Retroactivity

For space reasons, this study did not attempt to evaluate regulations' effective dates; I instead chose to save a more thorough examination of that issue for future work. Nevertheless, this study demonstrates the merits of considering in greater depth the ability of Treasury and the IRS to adopt retroactive Treasury regulations.

I.R.C. § 7805(b) authorizes Treasury to make final regulations apply retroactively to the date Treasury published a related proposed or temporary regulation in the Federal Register, and to make both final and temporary regulations apply retroactively to the date Treasury or the IRS issued a public notice substantially describing the regulation's expected contents.[164] I.R.C. § 7805(b) goes on to offer several additional circumstances in which Treasury is authorized to adopt retroactively effective regulations, including when Treasury adopts a regulation within eighteen months after Congress enacts the related statutory language;[165] when Treasury seeks "to prevent abuse"; [166] or when Treasury endeavours to correct procedural defects.[167]

Notwithstanding its breadth, the current language of I.R.C. § 7805(b) represents a contraction of Treasury's authority to adopt retroactive regulations. Prior to 1996, Treasury regulations were presumed to apply retroactively to the date that Congress enacted the related statutory language unless Treasury exercised its discretion to provide otherwise.[168] In 1996, Congress substantially amended I.R.C. § 7805 to remove that presumption and to authorize retroactivity only under specified circumstances, which as noted nevertheless remain quite broad.[169]

163. *See supra* note 143 and accompanying text.

164. I.R.C. § 7805(b)(1) (2012). The same provision gives Treasury the third and obvious option of making final and temporary regulations apply as of the date on which Treasury files them in the Federal Register, but doing so would not make said regulations retroactive.

165. *Id.* § 7805(b)(2).

166. *Id.* § 7805(b)(3).

167. *Id.* § 7805(b)(4).

168. *See* BORIS I. BITTKER, MARTIN J. MCMAHON & LAWRENCE A. ZELENAK, FEDERAL INCOME TAXATION OF INDIVIDUALS ¶ 46.04[3] (2002) (documenting the history of Treasury's authority to adopt regulations with retroactive effect).

169. Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 1101(a), 110 Stat. 1452, 1468 (1996) (codified as amended at I.R.C. § 7805). The amended statute applies only to regulations relating to statutory provisions enacted on or after July 30, 1996. *Id.* § 1101(b).

Prior to 1996, courts reviewed Treasury's decision to apply its regulations retroactively for abuse of discretion based on the several factors, such as whether the regulation in question changed the law, whether the taxpayer had justifiably relied on prior pronouncements, and whether retroactively applying the regulation would yield overly harsh results.[170] Since 1996, courts have had few opportunities to consider the scope of Treasury's authority to adopt retroactively effective regulations. A few cases discuss what it means for a regulation to prevent abuse, but they all concern a single regulation—Treasury Regulation § 1.752-6—which requires a partner to reduce its basis in a partnership interest when the partnership assumes certain liabilities of the partner.[171] Although one court addressing this issue concluded both that Congress authorized retroactivity and that the regulation would prevent abuse,[172] another district court and the Court of Federal Claims have found that retroactive effect was neither authorized nor a proper exercise of preventing abuse.[173] The continued vitality of pre-1996 factors for assessing abuse of discretion remains undetermined.[174]

As noted in the Introduction, Treasury's authority to adopt retroactive regulations is unusual among administrative agencies. The administrative law norm against retroactive rulemaking is rooted in popular notions regarding fair notice and the rule of law.[175] Retroactive rulemaking may still make sense in the tax context as a mechanism for combating tax shelters or other abuses. Given the extent to which Treasury regulates in areas less obviously related to the tax system's traditional revenue raising mission, however, further study is warranted to assess how Treasury and the IRS exercise their discretionary authority under I.R.C. § 7805(b). Rather than leaving Treasury and the IRS with such broad authority to make all of their regulations retroactive, Congress could and perhaps ought to consider further curtailing that power. For example, authorizing retroactivity only to counter abusive transactions could protect the revenue raising function while bringing other, less revenue-oriented aspects of the tax system into closer alignment with general administrative law norms. In the meantime, however, greater judicial awareness of the scope of Treasury and IRS administrative efforts in other, non-revenue raising areas may prompt the courts to examine Treasury and IRS decisions to adopt retroactive regulations with a more critical eye.

170. *E.g.*, Gehl Co. v. Comm'r, 795 F.2d 1324, 1332–34 (7th Cir. 1986); Baker v. United States, 748 F.2d 1465, 1467 (11th Cir. 1984); Wilson v. United States, 588 F.2d 1168, 1173 (6th Cir. 1978); Anderson, Clayton & Co. v. United States, 562 F.2d 972, 981 (5th Cir. 1977); Chock Full O'Nuts v. United States, 453 F.2d 300, 302 n.6 (2d Cir. 1973); *see* Dixon v. United States, 381 U.S. 68, 80 (1965) ("Congress has seen fit to allow the Commissioner to correct mistakes of law, and in § 7805(b) has given him a large measure of discretion in determining when to apply his corrections retroactively. In the circumstances of this case we cannot say that this discretion was abused."); John S. Nolan & Victor Thuronyi, *Retroactive Application of Changes in IRS or Treasury Department Position*, 61 TAXES 777, 783 (1983) ("More recently, courts have taken the approach that any retroactive application of a regulation may be reviewed for abuse of discretion, although such abuse is rarely found.").

171. Treas. Reg. § 1.752-6 (2005).

172. Maguire Partners-Master Invs., LLC v. United States, No. CV 06-07371-JFW(RZx), 2009 WL 4907033, at *19 & n.4 (C.D. Cal. Dec. 11, 2009) ("[T]he Treasury Department simply applied the pre-existing rule contained in Revenue Ruling 88–77 *to address the possibility of abuse* . . . ." (emphasis added)).

173. Sala v. United States, 552 F. Supp. 2d 1167 (2008), *rev'd on other grounds*, 613 F.3d 1249 (10th Cir. 2010); Murfam Farms, LLC v. United States, 88 Fed. Cl. 516 (2009); Stobie Creek Invs., LLC v. United States, 82 Fed. Cl. 636 (2008).

174. For an interesting discussion of judicial review of Treasury regulation retroactivity under the current I.R.C. § 7805(b), see generally Shannon Weeks McCormack, *Tax Abuse According to Whom?*, 15 FLA. TAX REV. 1 (2013).

175. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988).

IRS reform

Although the study documented in this Article evaluated only Treasury regulations rather than IRS resource utilization more broadly, the division of Treasury's priorities has implications for the IRS that are worth at least preliminary consideration. In particular, despite occasional nods to customer service and a spiffy, separate website focused on the EITC and other refundable tax credits,[176] the IRS's cultural orientation toward raising revenue and collecting taxes may risk undermining the effectiveness of programs and provisions aimed at alleviating poverty and providing financial support to working families.[177] But aspects of that culture, too, may make the IRS less than ideal choices to serve a wide array of regulatory functions that have historically fallen to other, more traditional administrative agencies.

As David Weisbach and Jacob Nussim have argued, the decision to utilize the tax system to implement government spending programs is fundamentally a choice about institutional design.[178] To date, Congress seems not to have thought too deeply about the matter, instead simply seeing the IRS as an existing and convenient bureaucracy for administering many seemingly small, as well as some rather large, nontax programs. As a result, the IRS has transitioned over time from a mission-driven agency that collects taxes to an omnibus agency that does many things, without careful consideration of the administrative consequences of that transition. Is it too much to ask the IRS to maximize congressional goals of serving low-income families, providing health care, protecting pensions, monitoring the non-profit sector, and encouraging economic growth while simultaneously serving as the federal government's accounts receivable department? At a minimum, applying the old revenue-collection toolbox in pursuing all of these government programs, purposes, and functions seems likely to achieve suboptimal outcomes. Although this study alone may not impel a restructuring of the IRS, and I will leave further thoughts about IRS reform for future work, it at least seems plausible at this point to suggest that the tax system may be reaching an organizational tipping point of being stretched too thin between too many, arguably competing goals—not just in terms of raw resources, but with respect to institutional capacity.

CONCLUSION

It is important to underscore that this study offers only a preliminary analysis of the allocation of Treasury and IRS administration efforts between raising revenue and other programs, purposes, and functions. In particular, the IRS does much more than help Treasury draft regulations. Further study is warranted.

Nevertheless, the outcome of this study ought at least to give some pause to defenders of tax exceptionalism who base their arguments on the importance of raising revenue and protecting the fisc from abusive transactions and structures. Courts should approach such arguments sceptically, and Congress should contemplate more seriously the potential administrative law implications of situating nontax programs in the IRC.

176. *EITC & Other Refundable Credits*, *supra* note 65.

177. For acknowledgement of scholarly debate over this issue, see *supra* note 64 and accompanying text.

178. *See* Weisbach & Nussim, *supra* note 65, at 957 ("[T]he tax expenditure decision, which we will also call the integration decision or the decision to combine tax and spending programs, is solely a matter of institutional design.")

Appendix 1:
Methodology – Defining a Treasury Regulation Project

As noted in Part II of the Article, for most Treasury regulation projects, Treasury and the IRS will publish at least one NOPR and one TD. A standard regulation project will contain only one of each, as Treasury and the IRS first propose a set of regulations and then finalize them after giving the public an opportunity to comment. For many other projects, Treasury and the IRS publish a TD with legally binding, temporary regulations simultaneously with the NOPR, and then replace or withdraw the temporary regulations with a second TD that contains the final regulations.[179] Sometimes, Treasury and the IRS will publish more than one TD with temporary regulations and more than one NOPR before issuing a final TD. On very rare occasions, Treasury and the IRS publish a TD with final regulations without also publishing a NOPR or allowing an opportunity for public comment. Some NOPRs, and even certain TDs with temporary regulations, are withdrawn without ever being finalized. Some NOPRs remain open, seemingly in perpetuity. As previously documented, Treasury occasionally publishes documents with other titles that nevertheless contribute substantively to a regulation project.[180] In short, a single Treasury regulation project may contain anywhere from one to several major documents.

The most useful way of identifying which major rulemaking documents constitute a single project is to compare one or both of the CASE-MIS number and the RIN listed on each document. [181] The Internal Revenue Manual instructs IRS attorneys to obtain a CASE-MIS number when opening a regulation project and to continue using that project number until Treasury publishes a final regulation or closes the project without issuing regulations. Most NOPRs include the project's CASE-MIS number in their title sections, although most TDs do not. Most TDs do, however, mention the project's CASE-MIS number when referring to the associated NOPR in the background section of the preamble text. Separately, the Internal Revenue Manual instructs IRS attorneys to use the RIN in the heading of any regulation published in the Federal Register and also to use that same RIN for both final regulations and their associated NOPRs.[182]

With a very straightforward project that contains a single NOPR and TD, all of the documents will bear the same RIN. The Internal Revenue Manual goes on to instruct, however, that if a single NOPR leads to more than one TD containing final regulations, new RINs should be obtained for the later TDs.[183] Also, when Treasury publishes a TD with temporary regulations and simultaneously publishes a NOPR that proposes those same regulations by cross-referencing the TD, the Internal Revenue Manual calls for the TD and the NOPR to have different RINs.[184] Consequently, it is not uncommon for a Treasury regulation project with one or more sets of temporary regulations to bear multiple RINs. Often, references to the CASE-MIS number remain consistent throughout, thereby facilitating grouping.

Nevertheless, even with the CASE-MIS numbers and RINs, idiosyncrasies occasionally present additional grouping challenges. For example, Treasury and the IRS sometimes

179. *See* IRM 32.1.1.3 (Aug. 11, 2004) (describing IRS use of temporary regulations).

180. For discussion of other major rulemaking documents evaluated in the study, see *supra* notes 121–123 and accompanying text.

181. *See* IRM 32.1.2.2 (Aug. 11, 2004) (explaining the purpose of the CASE-MIS); *id*. 32.1.2.2.5 (Aug. 11, 2004) (instructing drafting attorneys to obtain an RIN for each regulation project from the Regulatory Information Service Center of the General Services Administration).

182. *Id.* 32.1.2.2.5.

183. *Id.*

184. *Id.*

will pursue simultaneously more than one project interpreting a particular I.R.C. section. Even if different Treasury and IRS attorneys work on these simultaneous projects, one would expect them to confer with one another. Should two projects that overlap with respect to both timing and I.R.C. section, but do not cross-reference one another in their NOPRs and TDs, be treated as a single project? If Treasury formally identified the documents as comprising two separate projects, for example by assigning different CASE-MIS numbers, I did as well.

Also, Treasury and the IRS sometimes will publish a TD with final regulations that explicitly leaves open a particular issue and then, on the same day or shortly thereafter, will publish another NOPR, or even a TD with temporary regulations, addressing that same issue and discussing the first TD as part of its background section. Again, the two successive projects presumably are staffed by the same Treasury and IRS attorneys who might reasonably consider the latter NOPR or TD as simply continuing a larger project that includes the earlier documents. On other occasions, it may be months or even years before Treasury and the IRS issue a NOPR or TD with temporary regulations to address an issue left open by an earlier TD. The longer the break between the two events, the less likely it seems that the same team of attorneys were involved. Yet, the later NOPR or TD may still cross-reference and describe the earlier regulation project. Should two successive projects that address related issues and cross-reference one another in this way ever be combined? If so, then is there some point at which too much time has passed between projects to consider them so related? Again, I have generally followed the government's lead: where Treasury and the IRS formally classified the documents as separate projects, for example by assigning different CASE-MIS numbers, so did I. On at least one occasion, however, Treasury and the IRS finalized one set of temporary and proposed regulations in the same TD as it adopted a new, second set of temporary regulations, which it then simultaneously proposed with a NOPR in the same edition of the Federal Register. In that case, because Treasury and the IRS combined the two, arguably separate projects into a single TD, I treated these efforts as a single project.

APPENDIX 2:
DETAILS REGARDING TDS AND NOPRS INCLUDED IN THE STUDY

Although Treasury and the IRS typically publish all TDs in both the Federal Register and the Internal Revenue Bulletin, publication in the Internal Revenue Bulletin typically occurs some weeks after publication in the Federal Register. Consequently, as listed in Figure A2.1, the study includes seven TDs published in the Federal Register in 2007, but in the Internal Revenue Bulletin in 2008.

Figure A2.1. TDs Included Despite 2007 Federal Register Publication

Treasury Decision	Internal Revenue Bulletin Cite	Federal Register Cite
T.D. 9374	2008-10 I.R.B. 521 (Mar. 10, 2008)	72 Fed. Reg. 74,175 (Dec. 31, 2007)
T.D. 9373	2008-8 I.R.B. 463 (Feb. 25, 2008)	72 Fed. Reg. 74,192 (Dec. 31, 2007)
T.D. 9372	2008-8 I.R.B. 462 (Feb. 25, 2008)	72 Fed. Reg. 73,261 (Dec. 27, 2007)
T.D. 9371	2008-8 I.R.B. 447 (Feb. 25, 2008)	72 Fed. Reg. 72,592 (Dec. 21, 2007)
T.D. 9370	2008-7 I.R.B. 419 (Feb. 19, 2008)	72 Fed. Reg. 72,606 (Dec. 21, 2007)
T.D. 9369	2008-6 I.R.B. 394 (Feb. 11, 2008)	72 Fed. Reg. 72,929 (Dec. 26, 2007)
T.D. 9368	2008-6 I.R.B. 382 (Feb. 11, 2008)	72 Fed. Reg. 72,582 (Dec. 21, 2007)

Also, as listed in Figure A2.2, the study includes six TDs published in the Federal Register in 2012, but in the Internal Revenue Bulletin in 2013.

Figure A2.2. TDs Included Despite 2013 Internal Revenue Bulletin Publication

Treasury Decision	Internal Revenue Bulletin Cite	Federal Register Cite
T.D. 9608	2013-3 I.R.B. 274 (Jan. 14, 2013)	77 Fed. Reg. 76,400 (Dec. 28, 2012)
T.D. 9607	2013-6 I.R.B. 469 (Feb. 4, 2013)	77 Fed. Reg. 76,380 (Dec. 28, 2012)
T.D. 9606	2013-11 I.R.B. 586 (Mar. 11, 2013)	77 Fed. Reg. 75,844 (Dec. 26, 2012)
T.D. 9605	2013-11 I.R.B. 587 (Mar. 11, 2013)	77 Fed. Reg. 76,382 (Dec. 28, 2012)
T.D. 9603	2013-3 I.R.B. 273 (Jan. 14, 2013)	77 Fed. Reg. 72,923 (Dec. 7, 2012)
T.D. 9601	2013-10 I.R.B. 533 (Mar. 4, 2013	77 Fed. Reg. 66,915 (Nov. 8, 2012)

Similarly, although Treasury and the IRS typically publish all NOPRs in both the Federal Register and the Internal Revenue Bulletin, publication in the Internal Revenue Bulletin typically occurs some weeks after publication in the Federal Register. Consequently, as listed in Figure A2.3, the study includes eight NOPRs published in the Federal Register in 2007, but in the Internal Revenue Bulletin in 2008.

Figure A2.3. NOPRs Included Despite 2007 Federal Register Publication

CASE-MIS Number	Internal Revenue Bulletin Cite	Federal Register Cite
REG-111583-07	2008-4 I.R.B. 319 (Jan. 28, 2008)	72 Fed. Reg. 74,233 (Dec. 31, 2007)
REG-139236-07	2008-9 I.R.B. 491 (Mar. 3, 2008)	72 Fed. Reg. 74,215 (Dec. 31, 2007)
REG-147290-05	2008-10 I.R.B. 576 (Mar. 10, 2008)	72 Fed. Reg. 74,213 (Dec. 31, 2007)
REG-104946-07	2008-11 I.R.B. 596 (Mar. 17, 2008)	72 Fed. Reg. 73,680 (Dec. 28, 2007)
REG-104713-07	2008-6 I.R.B. 409 (Feb. 11, 2008)	72 Fed. Reg. 72,970 (Dec. 26, 2007)
REG-141399-07	2008-8 I.R.B. 470 (Feb. 25, 2008)	72 Fed. Reg. 72,646 (Dec. 21, 2007)
REG-114126-07	2008-6 I.R.B. 410 (Feb. 11, 2008)	72 Fed. Reg. 72,645 (Dec. 21, 2007)
REG-147832-07	2008-8 I.R.B. 472 (Feb. 25, 2008)	72 Fed. Reg. 74,246 (Dec. 21, 2007)

Also, as listed in Figure A2.4, the study includes three NOPRs that were published in the Federal Register in 2012, but in the Internal Revenue Bulletin in 2013.

Figure A2.4. NOPRs Included Despite 2013 Internal Revenue Bulletin Publication

CASE-MIS Number	Internal Revenue Bulletin Cite	Federal Register Cite
REG-155929-06	2013-11 I.R.B. 650 (Mar. 11, 2013)	77 Fed. Reg. 76,426 (Dec. 28, 2012)
REG-141066-09	2013-3 I.R.B. 289 (Jan. 14, 2013)	77 Fed. Reg. 74,798 (Dec. 18, 2012)
REG-122707-12	2013-5 I.R.B. 450 (Jan. 28, 2013)	77 Fed. Reg. 70,620 (Dec. 18, 2012)

Finally, although Treasury publishes most TDs and NOPRs in both the Federal Register and the Internal Revenue Bulletin, as listed in Figures A2.5 and A2.6, one TD and one NOPR published in the Federal Register seem inadvertently to have missed publication in the Internal Revenue Bulletin.

Figure A2.5. TD Not Published in Internal Revenue Bulletin

Treasury Decision	Internal Revenue Bulletin Cite	Federal Register Cite
T.D. 9578	n/a	77 Fed. Reg. 8725 (Feb. 15, 2012)

Figure A2.6. NOPR Not Published in Internal Revenue Bulletin

CASE-MIS Number	Internal Revenue Bulletin Cite	Federal Register Cite
REG-101826-11	n/a	76 Fed. Reg. 32,822 (June 7, 2011)

APPENDIX 3: BREAKDOWNS OF LARGEST CATEGORIES

The following tables supplement Figures 2, 3, and 4 of the Article by elaborating the makeup of the three largest categories.

Figure A3.1. Breakdown of Tax Expenditures Category

Subcategory subject	Major Rulemaking Documents: Jan. 2008 – Dec. 2012		Number of Regulation Projects (All Studied)
	Number of Documents	Document Pages	
Net exclusion of pension contributions and earnings plans for employees and self-employed individuals	26	307	19
Items falling under the general business credit	16	73	10
Items related to state and local government bonds, including exclusion of interest on public purpose bonds and credit to holders of qualified zone activity bonds	5	29	4
Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument	4	29	2
Deduction for certain qualified film and television products	4	12	2
Deduction for domestic production activities	2	21	2
Special tax rate for nuclear decommissioning funds	3	38	1
Election to expense certain refineries	3	12	1
Amortization of business start up costs	3	10	1
Income averaging for farmers and fishermen	3	8	1
Deduction for mortgage interest on owner-occupied residences	3	5	1
Exclusion for health savings account contributions	2	9	2
Deduction for small refiners with capital costs associated with EPA sulfur regulation compliance	2	6	1
Exclusion of damages on account of personal physical injury	2	3	1
Deduction for charitable contributions	1	11	1
Disaster relief provisions	1	3	1
Totals	80	576[a]	50

[a] The total for this column differs from the corresponding item in Figure 4 due to rounding.

Figure A3.2. Breakdown of Corporate/International That Is Primarily Corporate Category

Subcategory subject	Major Rulemaking Documents: Jan. 2008 – Dec. 2012		Number of Regulation Projects (All Studied)
	Number of Documents	Document Pages	
Affiliated and controlled groups (§§ 267, 382, 1502, 1561, 1563)	24	161	14
Subchapter C corporate/shareholder transactions and corporate reorganizations (§§ 301–368, 381)	22	131	15
Transfer pricing (§ 482)	6	159	3
Subchapter I insurance companies (§§ 801–848)	2	8	2
Source rules relating to foreign income (§§ 861–863)	5	8	2
Tax on income of foreign corporations/branch profits tax (§§ 881–884)	4	16	3
Foreign tax credits (§§ 901–909)	1	23	1
Controlled foreign corporations (§§ 951–965, 1248)	14	69	5
Information return for taxpayers filing Form 5472—25% foreign owned U.S. corporations or foreign corporations engaged in U.S. trade or business (§ 6038A)	2	3	1
Classification of foreign business entities (§ 7701)	3	3	1
Expatriated entities and their foreign parents (§ 7874)	6	30	3
Total	89	611[a]	50

[a] The total for this column differs from the corresponding item in Figure 4 due to rounding.

Figure A3.3. Breakdown of Administration and Procedure Category

Subcategory subject	Major Rulemaking Documents: Jan. 2008 – Dec. 2012		Number of Regulation Projects (All Studied)
	Number of Documents	Document Pages	
Regulation of tax practice (including Circular 230)	16	98	9
Tax return preparer penalties	4	81	2
Third party information reporting and withholding:			
Basis reporting by securities brokers	3	76	2
Other withholding matters	12	67	6
Other third party information reporting	7	45	4
Assessment and collection matters	9	43	7
Filing and reporting matters	17	68	11
Taxpayer penalties	9	27	4
Whistleblower program	6	26	3
Taxpayer privacy	11	24	6
Awards of administrative costs and attorneys fees	1	8	1
Taxpayer assistance orders	2	6	1
Measuring organizational and employee performance inside the IRS	1	1	1
Total	98	570[a]	57

[a] The total for this column differs from the corresponding item in Figure 4 due to rounding.

Global Trends in Tax Administration

Michael D'Ascenzo AO[1]

Abstract

This paper starts with the proposition that the descriptor, 'tax reform' can apply to different elements of a tax system. It argues that reforms affecting one aspect of the tax system often, but not always, provide the incentive or opportunity for reform of other components of the tax system. Within this broader context, sustainable tax reform requires good policy, an empowered, effective and efficient tax administration of high integrity, and community trust in the tax system. Trends in tax policy and the international tax environment impact on the strategies used by tax administrations to protect their revenue. At the same time, leading tax agencies seek to promote an investment climate by providing high levels of certainty and service to taxpayers. How well the tax agency is able to achieve these two, often disparate, objectives is of critical importance to the economy. This article outlines modern trends in tax administration that help leading tax administration reconcile these twin objectives.

INTRODUCTION

At its core a taxation system sustains the rights of citizens and investors, as well as funding the public and social infrastructure necessary for economic development and social equity. However, the tax system is made up of different components and these different threads are often intertwined and interdependent on each other. The scope of this paper is limited to the interaction between the tax law, including the laws governing administration, and tax agency reforms. Issues of policy or the wider context are merely touched upon. The focus of the paper is on global trends in tax administration; albeit that the wider cultural, political and social environment provides the backdrop as to what reform might be possible in any particular jurisdiction. The purpose of this paper is to outline trends in modern tax administration. At a time when governments want more with less from their tax authority, global trends in tax administration provide benchmarks for the modernisation of tax agencies.

The interaction between key elements of the tax system

When one speaks of reform in the tax arena such a reference could apply to different and often symbiotic elements of the tax system. For example, the reference could be to the laws that impose taxation, or to the laws that govern the administration of the tax system. The tag tax reform is sometimes also given to major changes to the tax administration, particularly the modernisation of the tax authorities of developing countries.

More often than not, major change to one aspect of the tax system is accompanied by changes in the other variables which together make up the system. For

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example, substantial reform of the tax law invariably necessitates changes to the tax administration. For example, in Australia the introduction of the Goods and Services Tax under the banner of *'Not a new tax – A new tax system'* gave rise to substantial change at the Australian Tax Office (ATO) under the mantra *'A new tax office for a new tax system'*.

In the context of countries seeking to modernise their tax system, necessary prerequisites to tax reform are appropriate rules governing how the tax law will be administered. These administration powers are important both from the perspective of providing certainty and procedural fairness to taxpayers, and for the purposes of ensuring that the tax agency has the necessary powers to carry out its tax collection responsibilities. For example, the People's Republic of China is reviewing its tax administration laws to promote a positive investment climate as a prelude to significant policy changes aimed at reforming its personal tax system.[2]

Similarly breakthrough changes in tax agencies often need to be supported by legislative changes to the laws dealing with tax administration. So it was when the ATO moved to self-assessment that new administrative regimes were eventually introduced to make the operation of the tax system fairer and more certain for taxpayers.[3]

While there is often interdependence between legislative change and improved tax administration, this is not always the case. For example, if legislative changes are introduced that are beyond the capacity of the tax agency to implement, the government's policy intent is likely to be frustrated. Leading tax administrations invest in information technology and seek to attract high quality recruits to provide them with the capability and agility required in modern economy.

Breakthrough improvements to tax administration can also be achieved without complementary legislative change. Often this requires the alignment of values and strategic directions, or the application of new thought paradigms regarding the relationship between the revenue authority and taxpayers.[4] Vision and values are important to major cultural change or to the effectiveness and responsiveness of the tax authority. This is because good tax administration starts from the philosophy that underpins the thinking and actions of the tax agency. It's about the framework of the agency's corporate values; it's about its willingness to work with the community; it's about its ability to build trust in its administration by taking a fair and professional approach; it's about the agency's integrity; it's about being transparent; and it's about being empathetic as well as vigilant. Where these features coalesce, the agency's passion to enhance its performance becomes manifest.

[2] The State Administration of Taxation(SAT) has begun a major tax administration modernization program for the period 2014-2020 guided by the goals set by the Third Plenary Session of the 18th Central Committee of the Communist Party of China held on November 12, 2013. To provide a firm foundation for modernizing tax administration, the SAT is seeking as a first step to review its core tax administration processes and revise the Tax Collection Law. As in other countries, this law sets out the common administrative provisions that apply to the main substantive tax laws (including the enterprise profits tax, the individual income tax, and the value-added tax).

[3] Joint Committee of Public Accounts, *'Report 326: An Assessment of Tax'*, AGPS, Canberra, 1993, at p.70-71.

[4] See for example new paradigms in the OECD's Forum on Tax Administration reports: 'Working Smarter: Executive Overview' (www.oecd.org/dataoecd/53/10/49428156.pdf); 'Corporate governance and tax risk management' (www.oecd.org/dataoecd/37/19/43239887.pdf); and 'Study into the Role of Tax Intermediaries' (www.oecd.org/dataoecd/28/34/39882938.pdf).

Nevertheless, leaving aside the tax agency's own drive for reform, and disregarding the difficulties associated with the political aspects of wider tax reform, successful and sustainable reform of the tax system will usually require three key elements:

Firstly, good tax policy.[5] From an administrative perspective, tax laws that lock in high levels of compliance are preferred, and many jurisdictions are buttressing their tax system with specific and/or general anti-avoidance provisions.[6] Similarly, a tax law that is not administrable is not good policy. Accordingly it is desirable to have the voice of the administrator involved in the development and drafting of policy.

Secondly, the tax agency needs to be able to efficiently and effectively administer the tax system in a manner that builds taxpayer trust and confidence. Its ability to do this will impact on a taxpayer's propensity to comply and on the level of voluntary compliance with the tax system. As a general rule, this means that the tax agency needs to be sufficiently modern in its utilisation of technology so as to be able operate efficiently and effectively. It also means that the tax agency should exhibit high levels of integrity and provide taxpayers with service, certainty and procedural fairness. In this way the tax agency can help to enhance taxpayer trust and confidence in the tax system.

Thirdly, to be able to administer the tax system well, the tax agency needs to have the powers that facilitate efficient and effective administration, thus promoting high levels of voluntary compliance. For example, the tax agency needs adequate information gathering and debt collection powers, both for the purposes of deterrence and to underpin practical tax collection. Importantly, features of the tax system should provide taxpayers with certainty and the tax agency with legitimacy. Mechanisms that further this purpose include a robust integrity framework for the tax agency and the availability of taxpayer rights of objection and appeal.[7] Moreover, the tax system should be supported by a wider infrastructure of checks and balances that protect taxpayer rights, including an independent judiciary and appropriate oversight of the tax agency. Underpinning tax administration with the rule of law, taxpayer rights to independent review and external scrutiny of the tax agency enhances the legitimacy of the tax agency and of the tax system.

TAX POLICY

The main aim of this paper is to outline global trends in tax administration.[8] Nevertheless, a country's tax mix impacts on the strategies that a tax agency might use to promote high levels of compliance. For example, if there is heavy

[5] From a political perspective the policy will need to be supported by the electorate. What represents good tax policy is outside the scope of this paper, other than to note that good tax policy has to be able to be administered by the tax agency.
[6] See for example, the United Kingdom's general anti-avoidance rule, and Brazil and Chile's new controlled foreign corporation laws.
[7] See OECD Forum on Tax Administration (FTA), 'Taxpayers' Rights & Obligations' (www.oecd.org/dataoecd/24/52/17851176.pdf).
[8] See also, Chris Evans, *'The fiscal outlook for South Africa: challenges and opportunities'*, South African Institute of Tax Professionals, Tax Indaba 2014.

reliance on personal income tax, the compliance risks for individuals are likely to be different from those in relation to multinational enterprises. The tax administration practices are also likely to be different and tailored to particular market segments and to tax system risks identified in each market or taxpayer type. Accordingly, the tax mix will be influential on the risk management approach adopted by the tax agency and the consequential resource allocations that follow.

In these circumstances one cannot generalise on tax administration without noting the global trend away from company tax and the increased reliance on consumption taxes. These trends were observed back in 2004 by Warren in relation to the experiences of OECD member countries. [9] They have tended to become more prominent in recent times.

Firstly taxes such as company taxes have declined

Many commentators would argue that the mobility of capital makes the corporate tax base fragile.[10] This is exacerbated under the current global architecture for international taxation. Hence the current focus on the OECD's Base Erosion and Profit Shifting (BEPS).[11] The current OECD and G20 focus on BEPS highlights the problem of double non-taxation and the impact of tax competition on the size of the corporate tax base. There is growing concern that the current international tax framework, based as it is on the concepts of source and residency, is not fit for purpose in an increasingly global and e-commercial world.

The BEPS action plan has, amongst other things, recommended the use of general anti-avoidance and anti-profit shifting provisions and controlled foreign corporation provisions to support the corporate tax base. How well these provisions operate from the perspective of taxpayers, especially large business, and from the perspective of the revenue will be relevant to both the relationship that exists between these groups, and their effectiveness in protecting the existing corporate tax base. The judiciary will also be pivotal as to the effectiveness of these provisions over time.

On the other hand, policy making in most countries recognises the importance of large businesses and multinational enterprises to the economy. Accordingly, tax agencies should only seek to recover the tax that is payable in accordance with the legislative policy as reflected in the tax law. It is not the tax agency's role to claw back revenue which the legislature, either by statute or treaty, has excluded from a country's tax net.

The broader measure of tax agency performance is its ability to secure high levels of compliance in accordance with the law, while fostering an environment conducive to investment. The tax agency's ability to do this will be of critical importance to a country's finances. In terms of effectiveness there is no substitute for a professional tax administration of high integrity that follows the rule of law.

[9] Neil Warren, 'Tax: Facts, Fiction and Reform', Australian Tax Research Foundation, Research Study No. 41, 2004.
[10] Report to the Treasurer, *"Australia's Future Tax System"* (December 2009), Commonwealth of Australia, 2010.
[11] OECD (2013), *Action Plan on Base Erosion and Profit Shifting,* OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en.

In this way the agency provides consistency and certainty to taxpayers. On the other hand, the tax agency needs to be vigilant to abuses of its tax system. Global experience shows that the corporate tax base is likely to diminish if the anti-avoidance and anti-profit shifting provisions are not effective for whatever reason.[12]

With the trend for reduced company taxes (and lower corporate revenue), the residual question that arises is what should take its place? While a 'growing the revenue pie' philosophy might succeed in securing needed revenue, that is not always the case, particularly as competitor countries retaliate with their own reductions in the company tax rate. Moreover there is usually a significant lag between tax rate reductions and substantial improvements in economic activity.
Often countries faced with this dilemma resort to indirect taxes to meet budget requirements. For example, in most European countries, indirect taxes now represent a large proportion of the total tax take, and corporate taxes usually represent only a small percentage of the tax mix.

The trend away from global income tax and an increased role for consumption taxes

Related observations made by Warren (2004) were a trend away from global income taxes to different source of income taxed at different rates, as well as increased reliance on indirect taxes, particularly consumption taxes. A shift away from global income tax represents policy settings by the government, including increasing or decreasing the burden of taxation on particular segments or activities. The policy settings in effect pick winners and losers, based on economic or social assumptions and objectives, and arguably have a distortive effect. Scheduler approaches also raise their own complexities such as the allocation of income to a particular schedule item.

The reduced reliance on company taxation, the shift to scheduler approaches, and the increased role of consumption taxes have implications for a country's tax mix. [13] For example, most OECD countries now have an increased role for consumption taxes in funding government expenditure. [14] While technological changes have reduced the compliance costs of Value Added Tax (VAT) systems, they remain regressive in nature. They are often tied to some sort of compensation package to assist people on lower incomes. In addition some VAT systems have carve-outs for items such as food and education. In developing countries many low income groups are excluded from the tax net by high thresholds, given the difficulties of administration, compliance cost issues and social policy.

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[12] See for example, The House of Commons Committee of Public Accounts, Management of Large Business Corporation Tax, Thirtieth Report of Sessions 2007-08 page 11. See also Q83 and Q84 in the Oral Evidence before the House of Commons Committee of Public Accounts, 28 January 2008, in relation to transfer pricing.

[13] Australia's tax mix has shifted in recent times towards personal income tax, mainly as a result of bracket creep: Martin Parkinson, *'Fiscal Sustainability & Living Standards – The Decade Ahead'*, This Sydney Institute, 2 April 2014. Cf. Mathew Lester, *'Simple demonstrations of the tax mix dilemma facing RSA'*, South African Institute of Tax Professionals, Tax Indaba 2014.

[14] John Preston, *'Shaping the Tax System'*, PWC Tax administration: Global Trends, 2012.

REVENUE REQUIREMENTS

The high demand for the whole range of public goods and services shows no sign of abatement in most countries. Developing countries have to invest in new infrastructure to promote a positive investment climate and to attract much needed foreign investment. Developed economies generally face increasing expectations from their citizens in the level and quality of services provided by government. For some countries these issues are exacerbated by high levels of public debt and/or an aging population. Most countries are looking to find sustainable sources of revenue to fund their public policies. Given this demand for revenue, the trends identified by Warren (2004) have intensified in recent times, and particularly in the aftermath of the global financial crisis.

Governments around the world have been under significant pressure to address the need for increased tax revenues, a situation likely to continue long term, with tax authorities continuing to step up efforts to improve global cooperation, reduce tax avoidance and evasion, and improve the efficiency and effectiveness of their approaches to tax audit controversies.[15]

OECD forum on tax administration

Over the last decade the OECD’s Forum on Tax Administration (FTA) has shone the spotlight on tax administration issues. Within the context of a global economy, rapid technological change and fiscal challenges for government, the forum aims to improve taxpayer services and tax compliance – by helping revenue bodies increase the efficiency, effectiveness and fairness of tax administration and reduce the costs of compliance. It seeks to do this by sharing experiences of revenue bodies, promoting co-operation between member countries, and developing joint programmes of action on key tax administration issues. For example, at the Ninth Meeting of the FTA (Dublin 23-24 October 2014) participants agreed:

- A strategy for systematic and enhanced co-operation between tax administrations;
- To invest the resources needed to implement the new standard on automatic exchange of information; and
- To improve the practical operation of the mutual agreement process.

The work of the FTA is helping tax agencies to improve their administrations. For example, given the challenging cost reduction targets set for many tax agencies, and the expectation that they also maintain or even improve their standards of service delivery and the effectiveness of their of their activities, the search for best practice is being facilitated by the FTA. The FTA is undertaking a project, ‘Working Smarter’ to examine measures taken by revenue bodies to reduce costs and increase efficiency in the areas of structuring, compliance, service delivery, and legislation.[16] More generally, the FTA has provided thought leadership on modern tax administration.[17]

[15] KPMG's 2009 Tax Department Survey, Good, Better, Best: The race to set global standards in tax management.
[16] FTA, ‘Working Smarter: Executive Overview’ (www.oecd.org/dataoecd/53/10/49428156.pdf).
[17] See for example, FTA’s ‘Co-operative Compliance: A Framework from Enhanced Relationship to Co-operative Compliance’ (http://www.oecd.org/tax/administration/co-operative-compliance.htm); ‘Right from the Start: Influencing the Compliance Environment for Small and Medium Enterprises’ (www.oecd.org/dataoecd/41/14/49428016.pdf); ‘Corporate

GLOBAL TRENDS IN TAX ADMINISTRATION

Tax agency legitimacy

As Evans (2014)[18] observes there has been a trend to give the tax agency greater legitimacy, and also to quicken their pace of change. In some countries these objectives underpin moves to make tax agencies autonomous or semiautonomous structures that provide independence of tax administration from the political sphere. There is in these situations an assumption that a change in status would provide the tax agency with more flexibility and speed of response in terms of pay outcomes, recruitment and other administrative processes, and importantly, independence in decision making. Whether this assumption holds true will depend on the realities of the particular jurisdiction.

With greater autonomy comes greater responsibility, and accordingly any change in the status of the tax authority is usually accompanied by a suite of additional checks and balances. This trend towards tax agency independence is often accompanied by taxpayer appeal rights, external scrutiny of the tax agency, for example, the government audit office and a tax ombudsman, as well as parliamentary reviews.

Leading tax agencies often have at the centre of their reform initiatives improvements in the skill level of their officers. This has been sought to be achieved through flexible recruitment practices designed to induct quality applicants, a focus on training and development, and the development of systems that capture and allow the repetition of best practice. The modern trend for tax agencies is for more highly skilled officers, with merit-based promotion, and performance management and development systems.

Self-assessment

For any country with a sizable tax population, self-assessment is a more efficient system for administering the income tax system. Full assessment models tried to scrutinise all tax returns to determine the tax owing by the taxpayer or the refund due to the taxpayer. This approach is resource intensive and, to do properly, usually requires more resources than are available to the tax agency. The nature and criticality of this activity results in a time lag for the issue of refunds, and limits the resources available for other compliance activities.

Under self-assessment, tax returns (if they need to be lodged) are accepted on their face with follow up action taken subsequently if required. The exception is in relation to high risk returns, particularly VAT refund requests, where risk filters require prior review of the more risky claims.

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governance and tax risk management' (www.oecd.org/dataoecd/37/19/43239887.pdf); 'Study into the Role of Tax Intermediaries' (www.oecd.org/dataoecd/28/34/39882938.pdf); and 'Standard Business Reporting' (www.oecd.org/dataoecd/36/52/43384923.pdf).

[18] Chris Evans, *'The fiscal outlook for South Africa: challenges and opportunities'*, South African Institute of Tax Professionals, Tax Indaba 2014.

One criticism of self-assessment is that it shifts compliance costs onto the taxpayer or their agent. In order to soften this impact, the move to self–assessment is often accompanied by legislative change to make the system fairer and more certain for taxpayers (that is, changes often have to be made to the interest and penalty regimes of the existing system to compensate for the shift of responsibilities to taxpayers and their agents).

In addition there is an implicit expectation that the tax agency will assist and provide services to taxpayers and their agents to help them carry out their tax responsibilities. In a self-assessment tax system the risk is that taxpayers may be intentionally or accidently apply the law incorrectly. When taxpayers do not fully understand the law that applies to them, they run the risk of being in error. Modern tax agencies have a range of specialised approaches for each of their taxpayer markets to assist them in getting it right, from personal tax payers right through to their large companies and high net wealth individuals. In many countries, particularly those which operate VAT systems, small business is a particular segment of focus given the importance of this sector to the effective operation of these regimes.

As well as the provision of services, such as guides, websites, call centres, ruling systems and the like, self-assessment also requires new thinking in relation to the tax agency's compliance strategies. When taxpayers choose not to apply the law correctly, they obtain an unfair advantage over honest taxpayers and run the risk of later detection by the tax administrator. The administrator seeks to facilitate a level playing field but works in an environment of information asymmetry - it isn't immediately obvious who may not have complied or the underlying reasons why they have not done so. The administrator can, to an extent, control risk exposure of the broader community by building systems, such as risk engines to detect potential errors, and by conducting expensive risk assessments and audits to detect and correct positions which do not accord with the law. These actions are typically after the fact, although they do have a deterrent effect.

Many countries now use compliance models which differentiate between the economic, psychological, and social circumstances of taxpayers. This responsive regulation approach is based on the proposition that effective enforcement requires a dynamic and gradual application of less to more severe sanctions and regulatory interventions. In more recent times countries have placed increasing emphasis on 'Right from the Start' and 'Prevention is better than cure' strategies. The modern trend is to regard service and enforcement as part and parcel of a more holistic approach for improving levels of compliance.

Review of the administration act

The tax administration provisions, whether situated in a separate Tax Administration Act or in the substantive tax laws, should support effective and efficient tax administration.[19] However it is critically important that they strike the right balance between administrative efficiency and taxpayer rights. For example, the introduction of self-assessment in Australia necessitated wholesale changes to

[19] See for example, Australia's *Taxation Administration Act 1953*, including Schedule 1 to that Act.

the penalty and interest provisions and the introduction of binding public ruling and reviewable and binding private ruling systems.[20]

An on-going focus on tax administration provisions is appropriate because they calibrate the scales in terms of the relationship of the tax authority with the community. The style and effectiveness of tax administration is often governed by what these provisions allow or do not allow. Just as important however, is the culture of the tax administration and the integrity of its officers.

Modernisation of tax administrations including the use of technology and analytics

Given the call to do more with less, modern tax administrations are making greater use of technology and analytics to improve both their efficiency and their effectiveness. For example, data matching has become an increasingly effective tool for tax agencies - providing a powerful deterrent strategy; helping to detect non-disclosure of income; and facilitating the pre-filling of returns.

Increasingly the role of any modern revenue authority, indeed any business, is about making sense of data that is now available more readily and more completely. For tax administrators worldwide, this world of near infinite data and emphasis on management of intelligence has arrived. A key role of tax administrations in this environment is to manage information in a way that allows differentiated approaches in providing assistance to people and in protecting people from those that default on their legal and civic duties. The effective use of digital information and the employment of analytics - including data and text mining and visualisation tools - are at the centre of modern tax administration. Optimising the potential of data can also help spur innovative thinking and new approaches.

Beyond maintaining the integrity of the tax system, there is a growing community expectation of excellent service. Leading tax agencies are looking at ways to reduce compliance costs for taxpayers by keeping taxpayers out of the system (for example using withholding arrangements) or at ways to make their tax responsibilities easier, cheaper and more personalised for them such as the pre-filling of tax returns.

In the Web 2.0 world, those community expectations will only grow. People expect technology to provide them with more than passive viewing of static pages of information. They expect to be increasingly able to interact online seamlessly with tax agencies and with government more generally, and to interact in non-traditional and non-bureaucratic ways. In such a world there is a premium for tax agencies to have a close working relationship with software developers. Given the touch of most tax agencies, it is desirable that they be influential in the development of the government's digital strategy – promoting taxpayer-friendly digital processes and standards that help make the country more efficient. It is increasingly argued in academic literature that the proliferation of internet connected devices and digital communications should be viewed as the initial

[20] Taxation Laws Amendment (Self Assessment) Act 1992.

phase of a fundamental shift in global social interaction, personal participation and corporate productivity, with implications akin to the introduction of the printing press and the Industrial Revolution. Modern tax administrations need to be responsive to this changed environment, and indeed should seek to be at the forefront of some of these developments.

Market segmentation, risk management and differentiation

Increasingly, leading tax agencies are building closer relationships with their communities. Structurally this trend often starts with them organising themselves around different groups of taxpayers, commonly referred to as "market segments", such as large businesses, medium businesses, small and micro businesses, and high wealth individuals.

The rationale for a differentiated approach is that the various market segments have different needs in relation service, assistance and guidance, and they present different types of tax risks. The breakthrough here is to conceptualise compliance management in terms of all the levers that could help address the causes of a particular compliance risk or taxpayer need. This means that if, for example, the cause of non-compliance involved misunderstandings as to what was required, then service, assistance, technical guidance and public rulings could be the best cures. Similarly if the processes associated with fulfilling one's responsibilities made compliance difficult then the best strategy might be to make the processes easier. Naturally, in order to protect honest taxpayers, harder edged strategies such as reviews, audits and prosecution action are also necessary to foster high levels of voluntary compliance – the stick and the carrot are integral parts of a coherent and targeted compliance programme.

The guiding principle to keep in mind is that the tax agency's strategy for administering the tax system should determine its organisational structure and not the other way around. What leading tax administration are now doing is to harness the power of analytics to better understand taxpayer needs and risks to the revenue.[21] Analytics is used to predict and analyse areas of risk and emerging patterns in behaviour. It is fast becoming central to supporting and protecting taxpayers, tailoring service delivery and operating an efficient tax administration. Leading tax agencies are structuring themselves based on this better understanding of taxpayer need and risks to the tax system. They are then devoting their scarce resources to meeting taxpayer needs and to addressing the highest risks. This approach not only optimises the return on resource usage by the tax agency but also reduces compliance costs of honest taxpayers.

Enhanced risk management systems

Like any government agency, a tax authority's resources are limited. In order to optimise levels of compliance many leading tax agencies operate on a risk-management basis. This means that they make informed choices as to how they allocate their scarce resources to best serve the community. This involves anticipating potential risks (help and assistance activities, information and

[21] Australian Commissioner of Taxation, *'The effective use of analytics in public administration: The ATO Experience'*, Australian Institute of Company Directors, June 2012.

guidance, and prevention is better than cure strategies), as well as detecting and dealing with existing risks (again by addressing the causes of the risk as well as the symptoms).

Risk management simply means the development of a systematic approach for identifying and prioritizing the largest risks to the tax system, and developing comprehensive strategies for managing these risks. Behind this simple concept, leading tax agencies have made significant investments in enhancing their analytical systems, core tax administration processes, and information systems to better support risk management. In doing so, effective tax agencies commonly manage their risks through three different 'lenses' or perspectives.

1. The Tax lens: This involves identifying the biggest risks for each major tax, regardless of the taxpayer segment and industry, and developing comprehensive compliance strategies for controlling these risks. The compliance strategy might entail a balanced set of treatments for addressing the tax risk. This could involve the issuance of technical guidance or regulations, customised taxpayer service products, or a specialised enforcement approach, for example developing risk filters to identify the presence of the risk in specific tax returns.

2. Market segment and Industry lenses: Having identified the main risks for each major tax, tax agencies would then assess within each tax the risks that are specific to each segment (e.g., large, medium, and small enterprises, and individuals) and within each segment strategic industries. For the large enterprise segment, it is common for the tax agency to create permanent industry teams for the country's major industries; for small enterprises—which typically operate in many industries— benchmarks could be developed outlining the financial ratios that might be expected from selected industries. National plans would be developed to address the risks that have been identified and relevant strategies would be based on an appropriate mix of service and enforcement applicable to the high priority risks.

3. The Taxpayer lens: Leading tax agencies determine higher risk taxpayer at the entity level. In doing so, each taxpayer might be assigned to a particular risk group based on their risk level and a set of treatments proportionate to the risk will be developed for each group (for example, strategies comprising both services and audit activities). At the entity level, under a risk management approach, the higher risk taxpayers would tend to receive a greater audit focus while lower risk taxpayers would receive more of a service focus. Some tax agencies have set up separate areas for dealing with large companies and high net wealth individuals. The entity in these situations for say companies includes the company's subsidiaries and affiliates. For high net worth individuals, the analysis includes other entities controlled by the individual.

Best practice tax risk management practices focus on preventing and resolving tax risk issues as efficiently and effectively as possible. This requires the risk treatment plan to consider the appropriate mix of activities that prevent a tax risk as well as resolving the risk once it arises.

Greater focus and cooperation on international tax avoidance

A global trend that has been evident, particularly since the global financial crisis, has been the attention given by tax agencies to cross-border tax avoidance issues, in part to secure additional taxes to make up for falling revenues associated with the economic slowdown. Associated with rising community expectations, there is also a need to secure funding for improvements in public sector services and infrastructure.

The global economic downturn led to an overt international focus on good corporate governance and tax risk management by banks and multinational enterprises. This was underpinned by increasing public and government scrutiny of the tax system and of the role and responsibilities of large business. Within this climate, tax administrations have responded with a united call for increased disclosure and transparency, while encouraging and promoting robust tax governance processes within company risk management frameworks. This increased attention on international avoidance has taken place at three levels:

1. Within tax agencies, countries are developing comprehensive strategies for dealing with international tax compliance risks. These strategies have included requiring taxpayers to make greater disclosures on their tax returns of their international dealings and foreign bank accounts.

2. Across countries, tax agencies have improved cooperation, have agreed to new international exchange of information protocols, and some have moved to coordinated approaches with other tax agencies, including the conduct of joint audits.

3. At a global level, the OECD and G20 countries have focused on base erosion and profit shifting issues and country-by-country reporting.

For some time now the OECD FTA has recognised the importance of improving tax compliance through cooperation. There is now unprecedented co-operation amongst many of the FTA members, including significant sharing on information on offshore arrangements using tax secrecy jurisdiction. More recently many countries have signed up to the OECD's exchange of information protocols which should see a step improvement of information flows between tax agencies.

Making it easier, cheaper and more personalised for taxpayers

Leading tax agencies describe in detail the rights of taxpayers as well as their responsibilities. In Australia this approach is supported by a Taxpayers' Charter. If the Taxpayers' Carter is given relevance in the tax agency then it helps to shape culture in a way that helps to bridge the gap between the tax agency and taxpayers and their advisers.[22]

The quality of service that tax agencies provide to their taxpayers is dependent on the values of the organization. In essence the staff of the tax agency must believe in treating taxpayers in the way that they would expect to be treated if an ideal relationship is to be established between the tax authority and citizens. It is the values of the tax authority that allow it to be empathetic to the needs of taxpayers.

As part of a culture of providing assistance to taxpayers, tax agencies are expanding their electronic service offerings. These include expanding the take up rates for electronic-filing and electronic payment as well as providing electronic portals that allow taxpayers and their advisors to self-manage various aspects of their tax affairs on-line such as such as registering on-line, checking their account balance online, requesting refunds, accessing previous tax returns, submitting enquiries by email and accessing responses to their queries online.

The website of leading tax agencies provide easy to follow step by step guidance for taxpayers, particularly for individuals and small businesses. These websites also include decision trees, calculators and self-help tool to make compliance easier. These tools are complemented by a telephone help service and a 'no strings attached' purely assistance visits for small businesses.

In developing these tools and other products leading tax administrations apply user-based design principles to ensure that they are designed from the perspective of the taxpayer. User-based design helps to ensure that the activities of the tax agency are user-friendly and apt to minimize compliance costs for taxpayers. In some counties the legislature seeks to minimize the tax compliance burden on personal income tax payers through the use of withholding arrangements, including final withholding at source. In other countries the tax agency uses third party information to pre-fill the return forms of individual taxpayers to make tax compliance easier and cheaper for them. [23] Pre-filling is dependent on the electronic lodgement of returns and electronically acquired third party data. Tax administrations working on-line and promoting digital approaches to both service and compliance is itself a global trend.

A focus on registered tax agents

Taxpayers' agents and advisers are a key group for influencing the behaviour of their clients. Proving them with easy to us electronic interfaces with the tax agency such as the ATO's Tax Agent Portal, and providing them with advice and technical and procedural guidance are ways to assist them and to streamline and promote the proper compliance of their clients. In other words, by assisting the tax

[22] Simon James, Kristina Murphy and Monika Reinhart, *'Taxpayer' Charter: A Case Study in Tax Administration'*,7 Journal of Australian Taxation, 336 (2004).

[23] Pre-filling is designed to make the process of preparing tax returns easier, quicker and more accurate for both tax agents and self-preparers which means there is less chance of surprises down the track. See OECD FTA, 'Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations: Country Experiences With the Use of Pre-populated Personal Tax Returns' (www.oecd.org/dataoecd/42/14/36280368.pdf).

agents the tax authority can leverage that assistance across all the tax agents' clients.[24]

The tax profession needs to be capable, professional and of high integrity is if is to positively influence their client in terms of proper compliance behaviour in accordance with the law. While perhaps not yet a global trend, the regulation of the tax profession is likely to be a future global agenda. For example, Australia has recently revised its regulatory rules for promoting a capable tax profession of high integrity.[25]

Developing an enhanced relationship, particularly with large business

There has been a discernible shift away from command and control to risk management approaches designed to foster voluntary compliance. This trend includes the use of prevention rather than cure strategies aimed at the causes of non-compliance, and the use of compliance models that differentiate the different postures of taxpayer to compliance. The trend is towards responsive regulation.[26] Consistent with this trend, an increasing number of tax administrations are seeking to enhance their relationship with large business:

"An adversarial relationship between tax administrations and multinational corporate taxpayers serves neither of our purposes well and is contrary to our common goals, which are earlier and greater certainty, consistency, and efficiency. To this end, we agreed that we need to create innovative strategies for issue resolution that are less time and resource intensive for both, while still promoting a climate that encourages compliance with tax laws."[27]

Co-operative compliance

Mutual transparency is being increasingly recognised globally as a means to mitigate tax risk. Australia for example has for some time coined the term 'cooperative compliance' and the Netherlands has pioneered 'horizontal monitoring'. The premise of these approaches is dependent on a professional tax administration that demonstrates the attributes of commercial awareness; impartiality; proportionality; openness; and effective risk-management. This level of professionalism and integrity should encourage taxpayers, and large corporate taxpayers in particular, to engage in a positive relationship with the revenue agency.

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[24] Commissioner of Taxation, *'Tax Practitioner Action Plan'*, CPA Sydney Professional Accountant's Group, 2012: http://www.ato.gov.au/content/00307038.htm.
[25] *Tax Agent Service Act 2009.*
[26] Anuhka Bakker and Sandor Kloosterhof, *'Tax Risk Management: From Risk to Opportunity'*, IBFD ed., 2009. See also Sagit Leviner, '*A New Era of Tax Enforcement: From 'Big Stick' to Responsive Regulation'*, Michigan Law School, 2006; and Valerie Braithwaite, *'Responsive Regulation and Taxation'*, Law & Policy, Vol. 29, No 1, January 2007.
[27] See '*Study into the Role of Tax Intermediaries'*, OECD Forum on Tax Administration, 2008.

Tax in the boardroom

To make tangible the benefits of an enhanced relationship some tax agencies has sought to bring material tax risks to the attention of company boards.[28] Recently the OECD updated its 'Guidelines for Multilateral Enterprises'. These Guidelines are recommendations by governments to multinational enterprises to promote responsible business conduct in a global context. They include a Tax Chapter that reads as follows:

"1. It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

2. Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated."

These Recommendations are further elaborated in the Commentary to the Guidelines. In particular, as regards the role of corporate boards, the new Commentary provides as follows:

"102. Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies. In the case of enterprises having a corporate legal form, corporate boards are in a position to oversee tax risk in a number of ways. For example, corporate boards should proactively develop appropriate tax policy principles, as well as establish internal tax control systems so that the actions of management are consistent with the views of the board with regard to tax risk. The board should be informed about all potentially material tax risks and responsibility should be assigned for performing internal tax control functions and reporting to the board. A comprehensive risk management strategy that includes tax will allow the enterprise to not only act as a good corporate citizen but also to effectively manage tax risk, which can serve to avoid major financial, regulatory and reputation risk for an enterprise."[29]

Risk differentiation framework

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[28] See *'Tax Risk Management'*, 2007, Lexis Nexis/Butterworths; Ernst and Young, '*Tax risk: External change, Internal Challenge-the Australian perspective: Global Tax Risk Survey 2006-2007'*, 2007; and OECD (2011), '*OECD Guidelines for Multinational Enterprises'*, OECD Publishing: http://dx.doi.org/10.1787/9789264115415-en.

[29] OECD (2011), OECD Guidelines for Multinational Enterprises, OECD Publishing. http://dx.doi.org/10.1787/9789264115415-en.

A further strategy is to use a risk differentiation framework to promote greater transparency about the tax agency's risk profile of the taxpayer. This could involve sharing with the company the tax agency's view of tax risk associated with the particular taxpayer group. This move towards a more cooperative, real time, risk management approach has been called a 'game-changer'.

Risk Differentiation Frameworks assign a risk category (based on an objective assessment of the likelihood and consequences of non-compliance) to a particular taxpayer within a market segment (for example, large companies). By informing the taxpayer of how they are viewed by the tax agency, often facilitates dialogue that helps both parties to better manage their risk profile.

As tax agency resources are finite, they need to make choices about where to allocate their resources, while increasing transparency. The RDF allows them to make more informed choices, so that the focus is on taxpayers presenting the highest risk to the integrity of the tax system. Approaches such as Australia's Annual Compliance Arrangements invite companies to a mutual sharing of perceived tax risks. They offer a "no surprises" approach that minimises the risk of subsequent audit activity.

Strategies of this nature work well in complementing the risk management frameworks of large businesses. The sunlight of transparency provides a new paradigm that could change cultures:

"Companies told us that they have already started responding to the new era of risk and uncertainty; they are embedding tax risk management more prominently within their corporate governance approach, opening more lines of communication with their board and audit committee and tax policy-makers and tax administrators. 72% of companies say they are pursuing a more open and collaborative relationship with a tax administrator."[30]

The focus on small business

Small business is a key sector for many economies. However it is prone to significant risks, such as the challenges posed by the cash economy and because of the role played by businesses in the operation of VAT systems. As a result many tax agencies devote a high percentage of their resources to this sector.
Support for small business broadly falls under three key themes:

1. Firstly through tangible assistance, such as business assistance visits and an empathetic approach to businesses in short term financial difficulties (including payment arrangements for tax debts).

2. Secondly, tax agencies help businesses facing unfair competition by protecting them from businesses abusing the tax system. For example, compliance activities such as audits and firmer debt action (as appropriate) ensure that honest businesses are not disadvantaged by the non-compliant

[30] EY 2011-12 Tax risk and controversy survey, '*A new era of global risk and uncertainty'*, 2012.

behaviour of others. Data matching and the publication of financial benchmarks are being used increasingly to counter evasion practices.

3. Thirdly, leading tax agencies are constantly seeking to make it easier and cheaper for businesses to comply, through better ways of reporting information. [31] Another way to make it easier for taxpayers is by improving the design of the tax agency's processes and products, utilizing user-based design. Compliance costs can be reduced by working with the community in designing products and processes that are user friendly and rely on natural systems.

Providing certainty and consistency

Perhaps the two key features which single out tax administrations as being of a gold class standard are the degree of consistence and the level of certainty they provide in their operations. The best way to provide certainty and consistency is to apply the rule of law.[32]

A tax administration that operates in accordance with the law has legitimacy and is able to collect the tax that is properly payable. Such an administration provides the consistency in its activities that is conducive to a positive climate for investment. Importantly, in such an environment the rights of taxpayers are safeguarded by their ability to appeal to the courts.

There are two counterfactuals to a tax administration that operates in accordance with the law. One is of a tax agency that deals with taxpayers arbitrarily, capriciously or oppressively. Such an approach will overtime disengage the community from their ownership of the tax system and alienate or dissuade investment.

A different counterfactual sees the tax office operating in the domain of an elected government. Even with the best of intention tax agencies that supplement the law without legal authority are in effect making tax policy on the run. Their actions can result in the reshaping of the law to what the tax agency thinks it ought to be, rather than what the legislature intended.

A proper purposive interpretation of the law may be able to make the law work, and is to be encouraged. However, unsanctioned extra statutory concessions, which in effect are *ultra vires*, are likely overtime to create considerable uncertainty.[33] Administrative practices that are not underpinned by the law can create an uneven playing field. Moreover they remove the taxpayer's redress to the courts if taxpayer-benign practices (which often tend to be abused) are subsequently removed by the tax agency.

[31] For example, through the use of Standard Business Reporting (SBR).
[32] Australian Commissioner of Taxation, *'The Rule of Law: a corporate value'*, Law Council of Australia - Rule of Law conference, 2007.
[33] See *Bellinz Pty Ltd v FCT*, 98 ATC 4634.

CONCLUSION

The rate and pace of change is accelerating. On the policy front it is likely that the short to medium term will continue to be volatile and evolutionary. Tax policy-makers foresee even more change ahead as they seek to protect the tax base and raise revenue from an evolving mix of taxes.

Leading tax administrations embrace change and channel it into innovative ways to add value. They are refining and fine tuning their understanding of taxpayer needs and risks. Building on this knowledge they are developing differentiated responses. They are taking a holistic and integrated approach in addressing the causes of non-compliance, preferably through preventative strategies. In addition they are working with the community and key leverage groups, such as tax practitioners and software developers, to make the tax system easier, cheaper and more personalised for taxpayers. And they are cooperating globally to reduce international tax risks. Leading tax administrations are transparent and accountable, building trust and confidence in the community they serve. They foster a positive investment climate. In an era of global risk and uncertainty, they provide the consistency and certainty that is the pot of gold at the end of the rainbow.

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Models of Tax Administration – Key Trends in Developed Countries

Jonathan Leigh Pemberton[1]

This article is based on the remarks I made at the October 2014 meeting of the Foro Fiscal at the Institut d'Economia de Barcelona. The views expressed here are my own and do not necessarily reflect those of the OECD or of its member countries. However, in describing the current trends in tax administration in OECD and other advanced and emerging economies, I have drawn extensively on the work of the OECD's Forum on Tax Administration (FTA) and on the publication "Tax Administration 2013" in particular[2]. The discussion is primarily descriptive, rather than prescriptive but I do explore some of the challenges and opportunities facing revenue bodies at the moment.

In the late 1990's the European Union developed a "Fiscal Blueprint"[3] to assist accession countries to review how well their revenue bodies matched up to best practice within the EU. This remains a robust overall framework for thinking holistically about tax administration and it has influenced the way in which the FTA's Tax Administration Series is structured. The blueprint described five key aspects of good tax administration. There needs to be a clear operating structure supported by underpinning legislation. This aspect includes features such as the revenue body's organisational model and the country's tax legislation, including the administrative rules specifying the responsibilities of taxpayers and the powers of the revenue body. The revenue body will need to have a strategy to manage the people who work within it, embracing ethical standards and human resource management. The revenue body will also need to have certain essential functional capabilities, ranging from revenue collection, the processing of large amounts of tax related data and tax audit, through to dealing with serious fraud and sophisticated tax avoidance. Alongside these capabilities the revenue body is also responsible for the provision of a range of service to taxpayers that will help them to comply with their tax obligations. Finally, the whole operation is

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[1] Head of OECD's tax administration unit until April 2015, now an independent adviser.

[2] http://www.oecd.org/ctp/administration/tax-administration-series.htm. At the time of writing the OECD is finalising the next edition of this series and it will be published in April 2015.

[3] The blueprints were updated in 2007: http://ec.europa.eu/taxation_customs/resources/documents/common/publications/info_docs/taxation/fiscal_blueprint_en.pdf.

supported by cross-cutting functions, such as information technology and communications.

The FTA's Tax Administration Series is a comprehensive survey of tax administration systems in countries from across the globe; the 2013 edition covered 52 countries and the 2015 edition will extend the scope to 56 countries. This publication brings together key data relating to all the aspects of tax administration identified in the EU blueprint. Fundamental differences in the way revenue bodies are structured, and in the taxes for which they are responsible, mean that a simplistic overall "ranking" of revenue bodies is neither possible nor informative. However, the data collected for the Series does enable comparative analysis of performance in some areas and also reveals some overall trends and emerging best practice in the more advanced economies of the world. So countries can use the Series not just to see how they compare with their peers, but also to see how the art of good tax administration is evolving. Understanding these trends and developments is increasingly important for the leaders of tax administrations as they are operating in a very challenging environment. Like many parts of public service across the world, following the global financial crisis revenue bodies are being required to do more with less. Sustaining, or better still improving, the flow of tax revenue has an important part to play in rebuilding public finances. In countries where the revenue body is seen as a successful branch of government, it is often being asked to shoulder new tasks, not all of which are closely linked to its core responsibility for tax collection.

Furthermore, the issue of taxation is itself both highly dynamic and topical. The perception that the wealthy and very large corporations are managing to shirk their responsibilities as taxpayers threatened to undermine public confidence in the world's tax systems. That confidence is critical to securing the generally high levels of tax compliance observed in most advanced economies. As a result, taxation is a key priority for the leaders of the G20 nations. The OECD project on Base Erosion and Profit Shifting (BEPS) is addressing directly the shortcomings in the international tax systems that make it possible for multinational enterprises to shift profits to locations where it will be lowly taxed and that are not where the substantive activities that give rise to those profits are undertaken. The work is currently policy focused but all 15 actions will have been completed by September 2015 and the focus will shift to implementation, and that means tax administrations. At the same time another G20 priority, the Automatic Exchange of Financial Account

Information, is also moving from design to delivery. This is a major step forward in the fight against offshore tax evasion and bulk data will begin to be exchanged between around 50 countries in 2017. For tax administrations this means they need to be ready not just to receive, but to keep secure and make effective use of, the very large volumes of data involved. In addressing this challenge and the others facing them, leaders of tax administrations know that learning from one another is going to play an important part in securing the successful outcomes they are seeking. That is why the FTA Commissioners underlined their determination to work more closely together to implement these global initiatives in the communiqué they issued after their meeting in Dublin in October 2014[4].

The work on BEPS and Automatic Exchange illustrates the close relationship between tax policy development and effective tax administration. The allocation of responsibility for tax policy development and tax administration within the government of a country will be affected by a number of factors, including its constitutional arrangements. While it is possible to allocate responsibility for both tax policy and tax administration to a single body, as is the case in New Zealand for example, in most countries we have looked at the two functions are separated. It is more usual for the tax policymaking role to be allocated to the Ministry of Finance in OECD and non-OECD G20 countries and for tax administration to be undertaken by a separate body. Whatever the institutional arrangements, it is important that there is a very close relationship between policy development and administration. If policy making becomes detached from the realities of how those policies need to operate in practice and how taxpayers actually behave, there is a real risk that the outcomes delivered will not be those that were intended. It is equally important that the revenue body understands what those intended outcomes are, so that its administrative efforts and goals can be properly aligned.

The structure of tax administration is affected by the extent to which taxes are levied at the sub-national, as well as the national level. Where this is the case, the tax administration function within the country can be organised in a number of different ways. The precise arrangements adopted by a country will be influenced by a variety of factors, including the constitutional history of the country, the subject matter of the taxes involved, geography and the complexity of the system. In a number of countries revenue bodies at the national and

[4] http://www.oecd.org/ctp/administration/fta-2014-communique.pdf

sub-national level operate relatively independently from one another. This may reflect differences in the types of taxes being levied. For example, if the sub-national taxes are mainly property taxes, while the national taxes are taxes on income, there may not be a great need for close co-ordination of activities. Where both tiers of government are taxing the same thing, such as business profits, the case for co-ordination will be stronger, particularly if it helps to reduce the costs of compliance for taxpayers. In a small number of countries the administration of taxes is fully decentralised, with the sub-national tier taking responsibility for the administration of both national and sub-national taxes. This tends to be the case where the sub-national tier has a high degree of autonomy under the constitution of the country. It is also possible for the administration of all taxes to be centralised in the hands of one body, even if policy responsibility for certain taxes is allocated to sub-national tiers of government. In practice a number of countries have adopted a mix of centralised and decentralised elements in their approach to tax administration.

While the precise structure of tax administration is likely to vary from country to country for the reasons discussed, the FTA's research has identified certain key features that are associated with successful tax administration. To be effective a revenue body needs to have sufficient autonomy and independence. The first Chapter of the 2013 edition of the FTA's Tax Administration Series discusses this in more depth and enumerates some of the typical powers of autonomous revenue bodies. These include discretion over the allocation of the overall budget between the different functions of the revenue body and responsibility for its internal organisation, including the geographical distribution of tax offices. Ideally the revenue body should also have the ability to set policies regarding the recruitment, development and remuneration of its personnel, to set the performance standards it will work to, and have the authority to exercise enforcement powers associated with the tax system (powers to obtain information and to collect tax debts for example). The purpose and specific missions and responsibilities of the revenue body should be clearly and explicitly stated. To be successful a revenue body will also need to be allocated sufficient resources and be working within a stable legal framework. The correct level of autonomy will help ensure that the decisions of the revenue body are, and are seen to be, the result of an independent and objective application of the rules of the tax system to the facts of each case.

Overall, more than half of OECD member countries have entrusted the task of tax administration to semi-autonomous bodies. Alongside this increased autonomy it is important revenue bodies are clearly accountable for the results of their operations and the integrity of their decision making processes, through a process of independent oversight and assessment. This has led to the creation of management boards to govern the day to day operations and external agencies to oversee the operation of the tax system.

When it comes to the scope of the responsibilities allocated to revenue bodies, one trend is very clear and that is unification of responsibility for the collection of direct and most indirect taxes (the exception being excise duties, which are generally administered by the body that collects customs duties). The collection of social security contributions on the other hand is still administered separately from taxation in the majority of OECD countries with social security regimes. However, the trend is to integrate the collection of tax and social security contributions, with an increasing number of countries making this change.

The way revenue bodies are organised internally is also changing. Many original organisational models were focused on the different tax types that the revenue body managed, as were the IT systems introduced towards the end of the last century to achieve savings in processing costs. So, different organisational units would deal with direct and indirect taxes, or corporate taxes and payroll taxes, for example. Over time there was an increased emphasis on functional excellence, with the organisational focus shifting to disciplines such as compliance (enforcement activity), collection and processing, or account management. As revenue bodies have begun to understand more about the ways in which different types of taxpayer behave differently, they have also begun to organise some functions, especially compliance, around broad segments of taxpayers, such as large business, small businesses and taxpayers involved in serious criminal activity. There has been some experimentation with matrix management arrangements, designed to combine the benefits of functional excellence with a greater focus on the customer, but these are quite difficult to implement in practice. More recently, revenue bodies have recognised that a focus on the end to end processes that are central to the operation of the tax system is the best defence against the silo mentality that can grow up in any large organisation, regardless of the specific organisational model it has adopted. Following the way in which work progresses, step by step, through an organisation can help to identify the problems that arise when processes cross internal management boundaries. Taking this a step further, revenue bodies have begun to look at the process from the taxpayer's point of view. This will reveal when processes that seem coherent from an internal perspective, make no sense at all to the taxpayer on the outside of the organisation. It also reminds revenue bodies that the process of good tax compliance starts some time before the submission of a tax return, which is the end of a process from the taxpayer's point of view.

Some revenue bodies are also rethinking how they are organised geographically. It has been commonplace for revenue bodies to have a presence in every major population centre and to allow taxpayers to make unscheduled visits to the tax office to obtain advice and submit returns and other documents. In many countries this remains an essential feature of the way tax administration is managed but some revenue bodies have questioned this model. Norway surveyed the people making unscheduled visits to their local offices and one of the findings was that people living in close proximity to a tax office were much more likely to call in. Taxpayers living further afield generally preferred to transact over the telephone, or electronically. This finding may not be particularly surprising but it helped demonstrate that a local presence was not essential to providing taxpayers with the services they need. Detailed figures about the relative costs of dealing with taxpayers face to face, over the telephone and electronically are not easy to obtain. If countries calculate these costs, they do not do so on a comparable basis. However, the analysis that is available suggests that the cost of dealing with people face to face is highest, particularly if the real estate costs of having a presence in a location that would otherwise not have a tax office are taken into account. That is why we have seen a number of countries moving to rationalise their physical locations and restrict or remove the ability to call into a tax office unannounced. Clearly restricting face to face access makes it even more important that alternative forms of contact work well for taxpayers[5].

The management of revenue bodies has also been evolving. In part this reflects a general trend towards greater transparency in government and increasing expectations from politicians and the citizens they serve in terms of efficiency and service. It is now quite

[5] The FTA recently published a report on improving self-service offerings to taxpayers: http://www.oecd.org/ctp/administration/increasing-the-use-of-self-service-channels-by-taxpayers-9789264223288-en.htm

usual for revenue bodies to publish their forward plans and to report publically how well they have performed against those plans. We make extensive use of these publications when preparing the Tax Administration Series.

I have already mentioned the extent to which the Global Financial Crisis has increased the pressure on revenue bodies to improve their performance. At the same time, the question of how best to measure performance, and what success actually looks like, has become more complex. In the past a revenue body would typically focus on a relatively small number of readily understood metrics. So overall efficiency would probably be measured in terms of the revenue body's own costs as a percentage of the revenue collected and it would discuss the "value added" by its operations primarily in terms of the extra money secured from auditing tax returns. However, if the desired outcome is that taxpayers make prompt payment of the correct tax at the outset, it is not clear that increasing audit yield is a measure of success. Arguably it is a measure of failure, especially if the increase in audit yield coincides with a reduction in the overall tax take that is not fully explicable in terms of policy changes, or reduced economic activity. In practice revenue bodies increasingly recognise the value of investing in measures that will prevent non-compliance occurring in the first place. However, these preventative measures score badly against performance metrics that only count audit yield.

Revenue bodies have begun to develop performance measures that are more balanced and better aligned with the desired outcomes. Some countries have developed measures designed to track the "tax-gap", which is the difference between the taxes actually collected and the taxes that should have been paid. This is not straightforward and tax gap measures tend to be backward looking, as the results take some time to compute. As a result, they are of limited value to operational managers. Other measures are needed to help guide day to day operational decisions; measures that focus on maximising the amount of tax that is paid correctly and on time[6]. Measures of compliance are also commonly complemented by measures of the quality of service provided to taxpayers (is the revenue body both timely and accurate when dealing with correspondence and telephone calls for example). Increasing use is being made of surveys designed to test the levels of taxpayer satisfaction with, and confidence in, the revenue body. These

[6] This subject is explored in much greater detail in the FTA's report on Measures of Tax Compliance Outcomes: http://www.oecd.org/ctp/administration/measures-of-tax-compliance-outcomes-9789264223233-en.htm

provide indirect evidence of how likely taxpayers are to comply fully with their obligations.

Measures of the cost to taxpayers of complying with their tax obligations are less well developed. Where they are used, they are often quite stylised and mainly intended to encourage simplification of the tax system at the policy level. Measuring the actual costs of compliance is not easy, particularly in the small business sector, and yet the cost of compliance is a real concern for small businesses. Small businesses are numerous and diverse and surveying the actual cost would be costly and potentially a further burden for the businesses. This is an issue that would repay closer examination. It should be looked at in the context of the compliance burdens imposed by government as a whole. There are real opportunities to eliminate the burdens that arise from duplicated demands and overlapping processes. In the meantime, revenue bodies have taken steps to simplify a number of key processes, taking advantage of technology to do so. The majority of revenue bodies we survey have enabled electronic filing of tax returns and on-line payment is increasingly widespread too. Pre-filling of the tax return for individuals is becoming more common. Some revenue bodies are now exploring how they can make tax compliance an integral part of the systems businesses use to transact and manage their affairs and this has real potential to both improve compliance and reduce the costs for business[7].

Successful tax administration is dependent on having the right staff with the right skills and staff salaries are the single largest cost for revenue bodies. It is therefore not surprising that the vast majority of revenue bodies have a formal HR strategy (88%). Staff development is also vital and most revenue bodies continue to focus on the areas of commercial awareness (63% is the latest figure) and/or risk management (89%). In terms of staffing numbers, the dominate trend is to reduce the overall size of the workforce (around 60% of revenue bodies taking part in the latest survey reported staffing reductions, while just a third increased staffing). The age profile of staff varies considerably. In the Nordic countries and a number of other European countries (Belgium, Italy, the Netherlands, Portugal and Spain) 50% or more of staff are over 50 years of age. Staff are younger on average in Eastern European countries, Asian countries, Russia, Saudi Arabia and South Africa. Where the majority of staff are under the age of 50,

[7] The concept of "Tax Compliance by Design" is discussed in a recent FTA report: http://www.oecd.org/ctp/administration/tax-compliance-by-design-9789264223219-en.htm

there is a tendency for a higher proportion of them to hold academic qualifications at degree level.

Revenue bodies with an ageing staff profile face a challenge and an opportunity. The challenge is that several revenue bodies will see large numbers of their more experienced and senior staff retire in the near future. This is potentially a significant loss of knowledge and expertise, and requires careful management if it is not to disrupt operational effectiveness. In many cases financial constraints will mean that is it not possible to replace all retirees but there is still an opportunity to refresh the workforce. We have already noted that a younger workforce tends to be better qualified. But this is also an opportunity to diversify the skills and capabilities of the staff working on tax administration. Revenue bodies are increasingly aware that the levels of compliance observed in most advanced economies cannot be explained by reference to an economically rational model of taxpayer behaviour. The economically rational model assumes that taxpayers calculate the objective risk that any non-compliance will be detected and dealt with. In reality most taxpayers do not have the data on which to base that kind of calculation, and several other factors are in play, particularly social norms. Understanding what actually drives taxpayer behaviour and how to influence it, requires insights from diverse disciplines, such as analytics, social psychology and behavioural economics. Refreshing the workforce is an opportunity to recruit people with those skills. Unfortunately in many economies demand for people with these skills is high and revenue bodies may need to accept that a smaller workforce will also have to be one in which individuals are better rewarded.

Whatever staffing model revenue bodies adopt, it is likely to be one element in an overall drive to reduce the costs of the revenue body as a proportion of the taxes collected. It is typical for this cost of collection ratio to be used as the basis for comparing the relative efficiency of tax administration in different countries. The 2013 edition of the FTA's Tax Administration Series suggests that the cost of collection is generally around 1% of the revenue collected. However, these figures need to be treated with care, both when making comparisons and when looking at trends over time. For example, if social security contributions are not included in the revenue total in one country, it is very hard to compare the figures with another country that does include this income. The 2015 edition of the Series will provide more recent figures and discuss the various factors that make it unwise to make crude comparisons based on these raw figures. Comparing total costs with GDP provides an alternative basis for comparison. This helps balance the picture but it too can be influenced by abnormal factors-for example the one-off capital costs of putting in a new IT system, or of implementing a brand new tax. The 2015 edition will provide the latest figures we have. The results vary significantly but there is a concentration of around one third of revenue bodies whose costs consistently fall in the range 0.15-0.25% of GDP over most, if not all, of the years surveyed.

The functional analysis of staff usage, which is a proxy for total costs, is not straightforward as definitions of what is audit, or verification, as distinct from account management, do vary. Even so, the range of results is striking. The 2015 Edition will show that some countries devote a very large percentage of their staff resources to verification-30-40% and in one case over 65%. On the other hand, some figures are much less, with the lowest being 9%. The proportion of staff allocated to account management also varies from less than 20% to over 40%. Debt management seems to be more consistent at around 10% but there are some countries with significant tax debts that are spending less than the average on debt collection.

In looking at key trends in operational performance in the 2013 edition we noted an increasing trend in the proportion of tax being refunded to taxpayers. The 2015 Edition will return to this issue and note that the there is an overall increasing trend in OECD countries but that the incidence of refunds is generally much lower in non-OECD countries included in the survey. The figures on tax debt reveal a wider variation in the amounts of debt outstanding as a proportion of total revenue. This suggests that there is significant variation in the effectiveness of debt collection strategies across the countries surveyed[8]. The results of verification activities (essentially any actions taken to check that tax liabilities have been properly reported) vary as proportion of revenue collected from 2% (or less) to over 8%. The reasons for these variations are not entirely clear.

The contribution that tax intermediaries can make to effective tax administration is something that we have highlighted in the Tax Administration Series. In the 2013 edition we noted that relatively few countries have comprehensive laws in place regulating the activities of tax intermediaries. The 2015 Edition will describe a number of recent

[8] The FTA published a report on modern tax debt collection methods in October 2014: http://www.oecd.org/ctp/administration/working-smarter-in-tax-debt-management-9789264223257-en.htm

developments that suggest more countries are moving to regulate tax intermediaries but that is just one element of a strategy to make more effective use of tax intermediaries to improve the operation of the tax system. The role of intermediaries is likely to be a focus for future work by the FTA.

As I noted at the outset, the environment in which revenue bodies operate is both challenging and increasingly dynamic. This is not just because tax administrations will need to address some major challenges of implementation as the G20 priorities around BEPS and Automatic Exchange move from design to delivery. To be successful revenue bodies will have to look at the challenges of tax administration in different ways. Increasingly they will need to look beyond the confines of their own organisations in order to deliver the outcomes expected of them. This reflects the fact that good tax compliance outcomes require revenue bodies to work with taxpayers to improve the processes they use to deliver accurate tax returns and timely tax payments. It will be reinforced by the realisation that a good understanding of what drives taxpayer behaviour enables the development of cost-effective ways of encouraging high levels of compliance. Revenue bodies will also need to look beyond pure tax administration too. Governments are becoming increasingly serious about joining up delivery across government and citizens' expectations are rising. This has implications for the core functions of revenue bodies, such as debt collection. Future Editions of the Tax Administration Series will follow these developments closely.

The role of social norms in tax compliance: theoretical overview and practical implications

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Abstract

Within fields as diverse as psychology, economics, sociology, and law, tax researchers have become increasingly interested in how societal norms influence individuals to comply (or not) with tax laws. However, it is not always apparent how these insights may contribute to tax administration and tax policy. First, this paper will present an overview of current research on social norms and tax compliance, bringing together results from a variety of research traditions. Rather than aiming to provide an exhaustive presentation of all research on social norms and compliance, we aim to highlight primary trends in past research, provide conceptual clarification, and highlight future research directions. Second, the paper will discuss avenues for employing knowledge about social norms in improving tax compliance. We review the social norms approach to changing individuals' behaviour, including insights from relevant health and environmental campaigns, and discuss several options for designing future social norms campaigns for tax compliance, including potential caveats.

SOCIAL NORMS – DEFINITION

The way society defines right and wrong and influences individuals to 'do the right thing' has preoccupied scholars for as long as they attempted to understand social organisation. In their works on the nature of politics and citizenship, Aristotle and Plato both emphasised that virtuous behaviour of citizens is essential for the functioning of society (Yu, 1998). A century earlier, Confucius also discussed the nature of laws and norms in guiding individuals in society:

"If people be led by laws, and uniformity sought to be given them by punishments, they will try to avoid the punishment, but have no sense of shame. If they be led by virtue, [...] they will have the sense of shame, and moreover will become good." (Legge, 2001, p. 146)

Although a range of later philosophical works were concerned with the place of societal norms in guiding individuals, systematic analysis of the role of social norms in society began with modern sociology. Two of the discipline's founders regarded social norms in rather different ways. For Emilé Durkheim, social norms ensured the functioning and cohesion of society, regulating individuals' place and role in social life (Durkheim, 1949). Karl Marx, on the other hand, regarded social

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norms as mechanisms to reinforce social hierarchy, contributing to a 'false consciousness' that maintains the lower classes in an unfair subordinate position (Marx, 1988). Regardless of the positive or negative value ascribed to social norms, the consensus is that social norms are strong drivers of individuals' actions, ensuring a functional society.

As a working definition, we construe social norms, in line with Cialdini & Trost (1998), as "rules and standards that are understood by members of a group and that guide and/or constrain social behaviour" (p. 152). Recent decades have seen mounting interest and empirical research on the role of social norms across the social sciences, including psychology (see Cialdini & Goldstein, 2004), economics (e.g., Fehr & Fischbacher, 2004; Ostrom, 2000), law (e.g., Ellickson, 1998; Posner, 1997), communication (e.g., Lapinski & Rimal, 2005). Given the growing interest in the social sciences regarding social norms and their effect on behaviour, it is unsurprising that tax researchers turned to social norms in order to understand individuals' tax compliance.

SOCIAL NORMS AND TAX COMPLIANCE – EARLY RESEARCH

Social and psychological factors entered the spotlight of tax compliance research in the late 1950s, with Günter Schmölders' (1959) pioneering article that introduced 'fiscal psychology' as a new branch of public finance. Schmölders proposed as an object of study individuals' 'tax mentality', which is in turn dependent on the broader 'tax mentality' of their nation, profession, or social class, a concept akin to social norms. The 1970s and 1980s saw the development of a variety of psychological tax compliance models, many of which factored in constructs similar to social norms as determinants of compliance (e.g., normative expectations in Smith & Kinsey, 1987; identification with a group in Vogel, 1974; social norms and social controls in Weigel, Hessing, & Elffers, 1987). More recently, interest in the concept of societal norms stemmed from cross-cultural research finding differences in 'taxpaying culture' across countries, differences that are thought to be attributable in part to societal norms regarding evasion (Alm & Torgler, 2006; Cummings, Martinez-Vazquez, & McKee, 2001; Cummings, Martinez-Vazquez, McKee, & Torgler, 2006).

Although fiscal psychology approaches have made important contributions to understanding the drivers of compliance, they have been far from dominant in the field of tax compliance research. The dominant stream of research in the last decades has placed greater emphasis on deterrence factors (fines, audit probability, etc.) than on social factors as determinants of compliance (Kirchler, 2007), a stream of research that originated in the classic model of tax compliance of Allingham and Sandmo (1972). Although Allingham and Sandmo placed particular emphasis on monetary deterrence factors, they did include reputation effects (the consequences of committing evasion on one's reputation as a member of the community) as a factor involved in evasion decisions.

The 1990s saw increased interest in tax compliance from behavioural economists, including a range of experimental studies related to the effect of social norms (see Torgler, 2002). Experiments which simulated the submission of income tax forms were carried out in different countries to show that, under the same penalty rate and the same audit probability, there were country differences in terms of how much participants complied (e.g., Alm, Sanchez, & de Juan, 1995; Cummings et al., 2001), pointing to different societal norms regarding taxpaying (see also Bosco & Mittone, 1997).

Although these results collectively suggest that social norms play a role in tax compliance, their role will depend on the nature or type of social norms involved, and of factors that may facilitate or hinder the effect of social norms. We discuss below the types of norms and the factors involved in tax compliance behaviour.

TYPES OF SOCIAL NORMS

Personal norms and social norms

Psychological approaches to tax compliance have emphasised both the role of social norms in driving compliance (as discussed above), but also the role of taxpayers' personal values and personal norms (e.g., Braithwaite, 2009; Porcano, 1988; Schwartz & Orleans, 1967; Weigel et al., 1987). Past research has largely focused on either personal or social norms. One exception is the work of Bobek, Roberts, and Sweeney (2007), who compared the distinct effects of personal and social norms, to find that personal norms had a stronger effect on compliance intentions than social norms. In a later study, Bobek, Hageman, and Kelliher (2013) found that personal norms has a significant direct impact on compliance, while social (injunctive and descriptive) norms only had an indirect effect, via influencing personal norms.

Although it may seem worthwhile to differentiate the effects of personal and social norms on compliance, such a distinction is problematic since personal and social norms are interdependent. Personal norms (i.e., those based on one's own personal standards of 'right' and 'wrong' behaviour) are a product of socialisation and likely to have been influenced by the social norms of the groups one belongs to. In a series of studies, Michael Wenzel (2004a, 2004b) examined the inter-relationship between personal and social norms. He argued that personal norms are, in fact, internalised social norms (showing that the effect of social norms on compliance disappears when controlling for personal norms). Moreover, when social norms are internalised as personal norms, they render deterrence factors irrelevant for compliance (i.e., the individual complies because they believe it is the right thing to do, and modifications of penalty rate or audit probability have no effect on compliance; see Wenzel, 2004c). However, when social norms are not internalised, they do impact on the effect of deterrence factors. Specifically, if the social norm is perceived to be strongly against evasion, but the person has not internalised this norm, then harsher sanctions will increase compliance rates (because such sanctions are supported by informal norms against evasion). Another illustration of the interdependence of personal and social norms is modelled by Alm and Torgler (2011), who discuss the role of ethics (i.e., personal norms) in tax compliance decisions; they model the influence of ethics on compliance decisions as a result of the psychological loss incurred in breaking existing social norms.

Subjective norms

A particular type of norms that has not received much attention in the field of tax compliance is the subjective norm, defined as the norm held by the individual's referent others (friends, family, close co-workers) about the behaviour (i.e., in this case, whether they disapprove of or condone tax evasion). The importance of subjective norms is postulated by Theory of Planned Behaviour (Ajzen, 1991; Ajzen & Fishbein, 1980), thus it is unsurprising that the role of subjective norms has been investigated in studies applying Theory of Planned Behaviour to tax compliance. Of these, empirical investigation supports a role of subjective norms in tax compliance (Bobek & Hatfield, 2003; Bobek et al., 2007; Hanno & Violette, 1996), although only in relation to self-reported tax compliance (Hessing, Elffers, & Weigel, 1988). By contrast with reported compliance, Hessing and colleagues (1988) also examined the relation between subjective norms and respondents' documented status with the tax authority (compliant versus non-compliant) and found no relation between taxpayers' actual status and subjective norms.

Injunctive and descriptive norms

While a few studies looked at the subjective norms held by people's close friends and family, most theoretical and empirical inquiries into social norms have dealt with norms at a broad societal level, often referring to the social norms held by all taxpayers within a country. When referring to the social norms of large groups, there are two distinct categories of norms that may produce different consequences: (1) injunctive norms, describing what the group approves or disapproves of (e.g., society may sanction tax evasion as highly immoral) and (2) descriptive norms, describing what group members actually do (e.g., many people may not report their full income) (Blanton, Köblitz, & McCaul, 2008; Cialdini & Trost, 1998; Lapinski & Rimal, 2005). Descriptive and injunctive norms often co-occur, so that if an individual perceives the percentage of people who are compliant with tax obligations to be high (descriptive norm), they will infer that people strongly disapprove of tax evasion (injunctive norm). This dynamic is captured in Hashimzade, Myles, & Tran-Nam's (2013) theoretical analysis of social factors in tax compliance, where widespread evasion (i.e., descriptive norm; termed by the authors as 'social norm') undermines social disapproval of evasion (i.e., injunctive norm; termed 'social custom'). While it is important to acknowledge that descriptive and injunctive norms co-occur, the distinction is essential since the two norm types are influential in different situations. The descriptive norm (what others do) is likely to guide our actions in situations of uncertainty (Cialdini & Goldstein, 2004; Lapinski & Rimal, 2005). For instance, if people are unsure whether to declare tips as part of their income or not, they are likely to be influenced by what other colleagues do. Injunctive norms (what others believe is right), on the other hand, influence behaviour because people do not want to be the target of social disapproval, so they are effective when it is clear what the norm is and when the transgression can become known to others (Cialdini & Trost, 1998; Lapinski & Rimal, 2005). Furthermore, distinguishing descriptive from injunctive norms is important in designing norm-based interventions (which are discussed in the last section).

The distinction between injunctive and descriptive norms has rarely been addressed in tax compliance research. However, some empirical evidence to the distinction of the two types of norms is provided by Donna Bobek and colleagues. Bobek and colleagues (2007) assessed both injunctive and descriptive norms and found injunctive norms to be associated with compliance, but not descriptive norms. In a later study, Bobek and colleagues (2013) found both injunctive and descriptive norms to not be directly related to compliance intentions, but to influence compliance indirectly via personal and subjective norms.

Further research

As shown above, different types of norms may produce different effects on compliance behaviour. Rather than asking if social norms influence people to comply with tax obligations, one could ask which type of norm affects compliance levels, and under which conditions. Many past studies have assessed people's perceptions of what others in society do (the descriptive norm), by asking research participants if they know of others who evade taxes (Torgler, 2005), or whether they agree with statements such as 'Many small businesses do not report all of their income' (Beers, Nestor, & San Juan, 2013), or 'In your view, how widespread do you think income or corporation tax is among small and medium-sized business' (Zahid, 2012). Other studies have focused on how people are influenced by what society disapproves of or condones (the injunctive norm), asking questions such as 'Do most people think one should be honest in one's tax returns?' (Wenzel, 2004b) or more indirectly, asking whether people would feel guilty if others found out they evaded tax (Beers et al., 2013) . Finally, consistent with the view that people are most influenced by the approval or disapproval of close friends and family (the subjective norm; Ajzen, 1991), studies such as the work of Hessing and colleagues (1988) assessed the influence of social norms on tax compliance by asking people to state whether 'most people who are important to me would think it was wrong' to evade taxes (for discussions, see Bobek et al., 2013, 2007). Although different norm types produce different effects on individuals' behaviour, only two previous studies have measured a range of norm types in order to compare their effects (descriptive, injunctive, subjective, and personal, Bobek et al., 2007, 2013). Given the limited empirical work on the comparative effect of different norm types, further research is needed in order to establish how descriptive, injunctive, or subjective norms relate to tax compliance, and how they compare and interact in influencing behaviour.

Some norm types are likely to be more important in particular situations. Descriptive norms are more likely to influence behaviour in situations of uncertainty about the correct behaviour (Cialdini & Goldstein, 2004); for example, if an individual is unsure whether they should declare tips as part of their income, they will be likely to be influenced by what others around him do (the descriptive norm). Injunctive norms, however, are particularly effective when the behaviour is public rather than private. For instance, a societal norm against tax avoidance will be more likely to deter an individual from joining a tax avoidance scheme if her involvement in the scheme could become public. Although such predictions are consistent with norm theory, they have not been directly assessed empirically, and there is need for further research to show which norms are more powerful and under which conditions. The distinction between descriptive and injunctive norms is also important in analysing situations when these norms are in conflict (Cialdini & Trost, 1998; see also J. R. Smith & Louis, 2008), but there is no research on the interplay of descriptive and injunctive norms of tax compliance. This interplay seems particularly pertinent for tax evasion, where injunctive norms against evasion exist (that one should not evade), but media campaigns targeting tax evasion or avoidance may create the impression that the descriptive norm favours evasion (that many people do evade). The conflict between injunctive messages and the descriptive norm is particularly relevant for designing effective norm-based media campaigns, which we will discuss in the last section (Bernthal, Rose, & Kaufman, 2006).

WHOSE NORMS? – NORMS IN OCCUPATIONAL GROUPS

Norms in occupational groups

In discussing social norms and tax compliance, the vast majority of studies have investigated the role of social norms at a national level (Ashby, Webley, & Haslam, 2009), an interest stemming at least in part from attempts to understand cross-country differences in tax compliance (e.g., Alm & Torgler, 2006; Cummings et al., 2001; Schmölders, 1959). However, if country-wide norms were indeed strong drivers of compliance and operated for all citizens of a country, it would be difficult to account for variation in taxpayer behaviour (i.e., if norms for compliance are strong – everyone would comply; if norms are loose or nonexistent – everyone would evade, Webley, 1991). Therefore, some authors began directing their attention to the norms of subgroups in society, and in particular occupational groups. Carrying out interviews with self-employed individuals in the UK, Sigala, Burgoyne, and Webley (1999) found that taxpayers were referring to taxpaying norms within the profession (e.g., 'what builders do', 'what computer consultants do', etc.) as an important influence of their own tax compliance intentions; these norms form an occupational taxpaying culture in which individuals are socialised as they begin their career in a particular profession (Ashby & Webley, 2008). However, follow-up studies have shown equivocal support for the role of taxpaying culture. Ashby et al. (2009) found that occupational taxpaying culture plays a role in taxpayers' stance towards the tax office, but is not related to compliance. In a follow-up study, the authors argued that taxpaying norms are likely to influence behaviour if they are a central (i.e., defining) feature of the occupational identity; they argue that even if some professions endorse a norm of non-compliance, this norm is likely to be peripheral to how people define themselves as members of their occupation, and thus will be ineffective (Ashby, Haslam, & Webley, 2009). Supporting the findings of Ashby and Webley (2008), Wenzel (2007) also found that a strong identity as a member of the occupational group predicted an antagonistic stance in relation to the tax authority.

Offering a different perspective on the relationship between occupation and tax behaviour, Hashimzade, Myles, Page, & Rablen (2013) simulated the formation of beliefs and attitudes about tax in occupational groups. Based on the premise that a heterogeneous population of taxpayers will self-select in employed or self-employed occupations based on their risk-aversion and skills (self-employment providing opportunities for tax evasion), the authors combine factors such as perceived audit probability (which depends on actual audits and interactions with other taxpayers) and social norms within the profession to explain the formation of occupation-specific beliefs about audits and compliance levels.

Further research

Tax administrations recognise that occupational cultures are essential to understanding compliance, and employ data relating to individuals' business sector as part of building a compliance profile (e.g., 'Individuals prioritisation', 2009). Tax administrations also run campaigns targeting certain business sectors, recognising that change in occupational culture is paramount to driving compliance. Academic research on occupational cultures, however, has not given as much focus to understanding how occupational cultures emerge, are maintained, and how they influence members of the profession. Of the few existing works, results relating occupational taxpaying cultures to individuals' tax compliance are inconclusive, with some results suggesting that people are influenced by taxpaying practices in their profession, while others find no effect of occupational norms on reported compliance. Specifically, the effect of occupational taxpaying culture on compliance is present in interview studies (Adams & Webley, 2001; Ashby & Webley, 2008), but not supported by a large-scale survey of taxpayers in Australia (Ashby, Webley, et al., 2009). The reason for this discrepancy may be that the measure of occupational taxpaying culture used in the large-scale survey was not refined enough to capture the complexity of this construct; the authors suggest that an important avenue for future research is to develop a more meaningful measure of occupational taxpaying culture (Ashby, Webley, et al., 2009).

WHEN DO NORMS INFLUENCE BEHAVIOUR?

Given the collection of results discussed so far, it is apparent that social norms do not always predict compliance behaviour in a straight-forward manner, and their effect depends on the context in which they operate. We discuss below some of the conditions under which norms are particularly effective drivers of tax compliance.

Communication

Social norms may be more effective in social groups when members have the possibility to communicate (Ostrom, 2000). Communication serves multiple functions; on the one hand, by communicating, group members can clarify the social norms that apply to the group; on the other hand, they can receive verbal assurance that other group members are following the norm. In a laboratory experiment looking at tax compliance, Alm, McClelland, and Schulze (1999) arranged for participants to play a 'tax game' with realistic audit and penalty rates. When experimenters proposed a higher level of enforcement, participants were allowed to vote in order to accept or reject greater enforcement. Initially, participants voted to reject greater levels of enforcement and, after each such rejection, compliance levels fell. The authors proposed that participants interpreted the rejection vote as a signal that compliance is not valued by the group (i.e., that there is no social norm in support of compliance), and thus their compliance levels fell. However, in some of the rounds, participants were allowed to communicate before voting. When allowed to communicate, they voted in favour of increased enforcement, and following the vote outcome, compliance levels rose to approach full compliance. These results point to the importance of communication to ensure the effectiveness of social norms.

Communication does not only serve to clarify and set the group norm, as above, but also to check to what extent others in the group are following the norm. Stalans, Kinsey, and Smith, (1991) found that those who communicated to their co-workers about tax evasion reported they would feel less guilt if they evaded taxes than those who did not communicate to their co-workers. By contrast, those who talked to their family about tax evasion reported they would feel guiltier about evading taxes than those who did not discuss tax with family. These results suggest that the social norm against evasion is particularly effective when communicating with those who uphold the norm, but that the norm is eroded by communicating with those who express disdain for it.

Social identification

People may not be equally influenced by group norms because they differ in the extent to which they hold their group membership as important and meaningful. It is not sufficient for one to be a member of a group (such as a national group or a professional group), but they also need to identify with that group in order for them to be sensitive to the group's norms (Turner, Hogg, Oakes, Reicher, & Wetherell, 1987). Since people follow social norms because they aim to maintain social relationships (Cialdini & Trost, 1998), they will respond to norms of groups that are important to them. Analysing norm processes in reported compliance, Michael Wenzel (2004a) indeed found that Australian taxpayers reported higher compliance when they perceived the national social norm to be strongly opposed to tax evasion, but this effect was only true for those who strongly identified with being Australian.

Centrality

Building on the work of Wenzel (2004a, 2007), Ashby, Haslam, and colleagues (2009) note that the relationship between norms and identification may also depend on how important or central taxpaying is in the context of the group identity. They argue that taxpaying may be a peripheral feature of many occupational identities. As such, individuals who are strongly identified with their profession would not necessarily be influenced by taxpaying norms within that profession because taxpaying is peripheral to what it means to be a member of the profession. Across two studies, they show that the concept of income tax is more central to national (British) identity than to occupational identity, and propose this centrality effect may account for why national taxpaying norms seem to have a more reliable effect on tax compliance than occupational norms (Ashby, Webley, et al., 2009).

Further research

Communication between taxpayers in general, and communication about taxpaying norms in particular, is an area where further research is needed. Communication underlies relationships and interactions between taxpayers, which are essential in understanding compliance patterns. Despite their importance, taxpayer interactions are not well understood given the difficulty to study them empirically. Past research has attempted to study taxpayer communication by asking participants how much they discuss tax with others, in an interview setting (Ashby & Webley, 2008) or through surveys (Stalans et al., 1991), or by theoretical modelling of taxpayer interaction (for a discussion, see Pickhardt & Prinz, 2013); however, these are all indirect methods and do not capture taxpayer communication as it occurs. A particularly fruitful approach to understanding how taxpayers realistically communicate social norms may be to employ an ethnographic method (Oats, 2012) and to observe taxpayer interactions with as little researcher interference as possible. Future research may also employ virtual ethnography (the cultural study of online interactions and communities, see Hine, 2000) of taxpayer interactions. Without such in-depth studies providing empirical evidence of how taxpayers communicate social norms, indirect survey evidence and theoretical modelling are strongly limited in their capacity to provide a realistic and meaningful account of taxpayer norm communication.

Social identification, as discussed above, is important in understanding why the norms of certain groups are particularly influential, and why not all group members respond equally to those norms. Past research on identification with groups has focused mostly on national identification, and much less on other identities. In order to propose that the same mechanism of strong identification applies to any other groups that the taxpayer is part of (e.g., that those who strongly identify with their region will be influenced by regional taxpaying norms, those who identify strongly with their profession will be influenced by occupational taxpaying norms, etc.), more research is needed to explore how identification with a range of groups relates to tax compliance. It may be that national norms (as opposed to local norms or occupational norms) are more relevant to tax behaviour, and therefore particularly important in driving compliance.

Such an explanation is proposed by research discussed above on the centrality of taxpaying for group identity (Ashby, Haslam, et al., 2009). It seems plausible that taxpaying is more important to national identity than it is to the occupational identities included in the study (e.g., cosmetic and hairdressing). But in order to generalise this effect, future research should look at other types of groups where taxpaying is central to the group identity (perhaps political groups, or professions such as tax accountants), in order to find other identities in addition to national identity where centrality plays a role. If people do indeed only respond to taxpaying norms of groups when taxpaying is central to that group's definition, it is important to identify these groups for designing effective norm-based interventions, otherwise interventions may target types of groups that are irrelevant for tax compliance.

An essential prerequisite for social norms to be effective is that they are salient when people make decisions (Cialdini & Goldstein, 2004); however, norm salience has not received any attention in the tax compliance literature. As shown above, taxpayers may be more likely to be compliant when they identify highly as nationals or citizens, as paying tax is normative for this identity. However, when filing a tax return, one's citizenship may not be salient; instead, an individual may think of herself as an entrepreneur, a category linked to a norm to act in a profit-maximising, self-interested manner (Miller, 1999). Therefore, in order for citizenship norms to operate, the link between taxpaying and citizenship would need to be salient at the time that (non)compliance decisions are made. The next sections will discuss in more detail how norm-based interventions could be designed based on these insights.

NORM-BASED INTERVENTIONS IN TAX ADMINISTRATION

The relationship between social norms and tax compliance has attracted the interest of tax administrations in recent years. In particular, social norms are assessed as part of large-scale surveys among other factors involved in compliance (Barham & Fox, 2011; Beers, LoPresti, & San Juan, 2012), and particular reports focus on occupational social norms ('Social Norms and Networking', 2010) and the norms of particular geographical areas (Beers et al., 2013). The recognition that social norms are an important factor in driving compliance has led to the design of norm-based interventions. Below, we review past norm-based interventions in tax administration. In the following section, we discuss insights from norm-based campaigns in other fields, and make recommendations for applying these insights to tax compliance.

A first attempt to employ normative information in order to influence taxpayers was carried out by the Internal Revenue Service as part of the 1995 Minnesota Tax Experiment (Blumenthal, Christian, & Slemrod, 2001). Letters sent to taxpayers included the following normative information:

According to a recent public opinion survey, many Minnesotans believe other people routinely cheat on their taxes. This is not true, however. Audits by the Internal Revenue Service show that people who file tax returns report correctly and pay voluntarily 93 percent of the income taxes they owe. Most taxpayers file their returns accurately and on time. Although some taxpayers owe money because of minor errors, a small number of taxpayers who deliberately cheat owe the bulk of unpaid taxes. (Blumenthal et al., 2001, p. 138)

However, the campaign evaluation showed no overall effect of the normative message. Some slight increase in reported income occurred for the middle-upper-income taxpayers following the normative appeal, but at the same time the message seemed to have had a perverse effect on the highest-income taxpayers, perhaps because the letter might imply a lack of ability of the IRS to detect evasion (Blumenthal et al., 2001).

More recently, a range of norm-based interventions was designed by the UK Cabinet Office Behaviour Insights Team and ran by HM Revenue & Customs with the aim to recover tax debt, using national and local normative messages. 140,000 taxpayers were included in the trial, allocated to either a control condition or to several normative appeals. All normative messages included the national descriptive norm (‘‘9 out of 10 people in Britain pay their tax on time’’). Some of the treatments also included references to the local norm, stating that many people in the local area, or postcode, had already paid. This trial proved successful, raising the percentage of taxpayers who paid outstanding debt from 67% in the control condition to 83% when the local area norm was included. A further similar trial of 1,400 taxpayers using a localised norm letter proved effective in raising the percentage of individuals paying their tax debt. Finally, a third trial investigated the effect of contrasting the norm with the individual’s own behaviour (stating that “9 out of 10 people pay their tax on time”, and adding that “you are one of the few people who have not paid yet”, showing a greater effect of the norm in this case than in the case of solely mentioning the norm (‘Applying behavioural insights to reduce fraud, error and debt’, 2012, pp. 22–24).

Despite the success of the three trials above, a further trial involving doctors with outstanding tax debt showed no effect of including the social norm. In the social norm treatment, the letters included a descriptive norm (“97% of doctors have filed all their tax returns for the last four years”) and added that their profession is widely perceived as trustworthy, but the percentage of people who responded to the letter was similar to that of people who received a similar letter that did not contain the normative message (‘Applying behavioural insights to reduce fraud, error and debt’, 2012, pp. 24–25).

Such normative campaigns have been popular in the last decades in a range of fields, such as health behaviour, environmental behaviour, driving behaviour, etc. (further discussion of such campaigns in related fields follows in the next section). One of the important insights of these campaigns is that they may be ineffective or actually produce the opposite effect if people perceive the undesirable behaviour to be less widespread than it actually is. For instance, people could have thought ‘9 out of 10 pay on time, that means 10% do not pay on time, I thought it was much less than that!’, reasoning that may have produced the opposite to the desired effect (Schultz, Nolan, Cialdini, Goldstein, & Griskevicius, 2007). One practice that mitigates such possible boomerang effects is to first survey the population and find out what their perception of the norm is. If they perceive the relevant norm to be less strong than it actually is in reality (e.g., if people mistakenly believe that 1 of 3 taxpayers do not pay on time), then finding out that the norm is stronger should influence their behaviour in the desired direction. One such campaign was designed by Michael Wenzel and ran by the Australian Tax Office (Wenzel, 2004b). The design of the campaign is based on the assumption that people misperceive the extent to which other taxpayers follow the norm of honesty in tax declarations. It was assumed that although most people value honesty, they will underestimate the extent to which others value honesty, and believe a large proportion of taxpayers are dishonest. The assumption is that if they were told that more people than they thought value the honesty norm, then they would become more strongly influenced by the norm.

In a first phase of the study, a survey was sent out by the Australian Tax Office asking people various questions, including (1) how much they value honesty in filing their tax return, and (2) to what extent they believe most taxpayers value honesty (i.e., the perceived injunctive social norm). As expected, a higher percentage of people answered that they valued honesty than the average estimation, in other words, people thought that other taxpayers would value honesty less than they actually do. For the second phase of the study, the sample of 1,500 randomly selected taxpayers was divided into three treatment groups: (1) the feedback group; this group received the survey and, three weeks later, received the survey results describing that people have underestimated the honesty norm among other taxpayers, (2) the no-feedback group; this group received the survey, but not the survey results, (3) a control group who did not receive the survey or results. To assess the impact of the intervention, the researchers assessed the change in work-related expenses (equipment, work travel, etc.) and non-work-related expenses (deductions for interests/dividends or gifts/donations), expecting a reduction in both categories following the intervention. The intervention only showed an effect on non-work-related expenses, with significantly less expenses claimed in the survey and feedback condition compared with the other two conditions. However, no such effect occurred on work-related expenses, and the effect on reported income was not tested.

In the final section, we discuss in more detail the ‘social norms approach’ as it has been applied in a variety of fields, as the insights of this approach are essential to designing effective future interventions in tax administration. Before discussing the approach and how it applies to the tax field, we briefly review some of the potential norm-based interventions discussed in the taxation literature.

POTENTIAL FOR FUTURE NORM-BASED INTERVENTIONS

Insights from the tax compliance literature

Researchers concerned with the relationship between social norms and tax compliance have proposed several avenues for norm-based interventions. First, several works (Alm & Torgler, 2011; Bobek et al., 2007; Kornhauser, 2008; Wenzel, 2004a, 2004c) recommend national media/advertising campaigns to promote compliance by strengthening existing social norms. Such campaigns would aim to strengthen the association between paying tax and citizenship (Wenzel, 2004c), while at the same time reinforcing the societal benefit of paying taxes (Kornhauser, 2008). Second, some works propose normative campaigns targeting certain groups. For instance, Alm and Torgler (2011) suggest campaigns targeting new firms or employees to establish taxpaying as ‘the right thing to do’. Such campaigns targeting different occupational groups should ideally be supported by existing prestigious businesses in those domains that would be willing to promote tax compliance. Third, consistent with work showing that not punishing non-compliance can erode compliance with social norms (Fehr, Fischbacher, & Gächter, 2002), Alm and Torgler (2011) warn against condoning non-compliance through policies such as tax amnesties. Finally, Kornhauser (2008) recommends that tax administrations should dedicate specialised teams to investigate normative aspects of tax compliance, and to design and evaluate field intervention. Alm and Torgler (2011) consider that an approach to taxpayer behaviour based on the role of social norms leads to tax authorities adopting a 'trust' paradigm, a paradigm that focuses on creating a positive societal culture of tax compliance.

However useful these suggestions are, they lack the detail of how proposed media campaigns or interventions targeting certain groups should be implemented. Although normative interventions targeting tax compliance are rare, the 'social norms approach' has been more widely employed to target unhealthy behaviours (e.g., smoking, alcohol abuse) and environmental behaviour (e.g., littering, recycling). We discuss below the most important insights of social norms campaigns in such fields, and how these insights may be employed in designing tax compliance campaigns.

The "social norms approach"

Several seminal psychological works in the 1950s revealed the powerful effect of conformity to group norms and practices on individuals' behaviour, who may conform to what other group members do, even when conforming may go against their best judgement (e.g., Asch, 1955; Deutsch & Gerard, 1955). Conformism to group practices may explain why individuals perform behaviours that may potentially be harmful to them – for instance, it may explain why many university students abuse alcohol because 'this is what students do' or because 'everyone does it'. Looking at the influence of social norms on alcohol consumption in students, Perkins and Berkowitz (1986) observed the interesting effect of norm misperception. Asking college students about alcohol consumption, they found that while most people held moderate attitudes towards drinking, they perceived most other students to be much more liberal about alcohol consumption. The authors proposed that if people were told that the actual drinking norm was more conservative than they think, then they would adjust their drinking levels downward in order to 'fit in' with the norm. This 'social norms approach' quickly became popular in tackling student alcohol consumption, but also many other behaviours such as tobacco use, drink driving, seat-belt use, etc. (see 'National Social Norms Institute', n.d.). As discussed above, Wenzel (2004b) carried out a tax compliance campaign based on the social norms approach.

Such social norms interventions typically include two phases, a survey phase where researchers seek to establish the prevalence of a target behaviour (e.g., smoking, littering, tax evasion) or people's attitudes towards that behaviour, and also assess what the perceived norms are in relation to that behaviour. If there is a norm misperception, then people are informed what the true norm is, with the expectation that they will adjust their behaviour according to the norm. There are two types of campaigns that attempt to communicate the actual descriptive norm in order to change behaviour: (1) social norms campaigns, which target an entire population by communicating the accurate descriptive norm (e.g., a drinking awareness campaign message may communicate: 'A student survey found that 80% of students drink less than once a week'), or (2) personalised feedback campaigns, where a specific group is targeted (e.g., heavy drinkers) and people are given individual feedback regarding the mismatch between their overestimation of existing norms and the actual norms (e.g., such a message may read: 'You estimated that only 20% of students drink less than once a week. In fact, a student survey found that 80% of students drink less than once a week'). The evidence for the effectiveness of such campaigns is mixed, with some successful but also some ineffective interventions reported; the evidence is somewhat more favourable for the personalised feedback campaigns (for an overview, see Blanton et al., 2008).

It seems that although social norms campaigns are promising, they do not always affect behaviour as predicted. Several explanations have been proposed to account for the mixed evidence on the effectiveness of social norms campaigns. One reason for some social norms campaigns proving ineffective may be that they target a population that is too large; people are likely to be more influenced by the 'local norm' (e.g., the norms of the peer group, the neighbourhood, etc.) than 'global norms' (e.g., the norms in the wider organisation, the national norm, etc.) (Miller & Prentice, 1996), and therefore campaigns that target a wide group may lack relevance, since people may not identify with the large group that the campaign is aimed at (Blanton et al., 2008). Another possible explanation is that some groups may respond paradoxically to the campaign and increase their behaviour to contrast the existing norm, for instance there is evidence that social norms campaigns to reduce alcohol consumption may actually increase the behaviour for the heaviest drinkers, while lowering consumption for those merely 'contemplating' the behaviour; such contrasting effects in the different groups may account for why the campaigns are ineffective at changing the average consumption of the population as a whole (Blanton et al., 2008). Finally, campaigns that communicate the average norm to a population may not only encourage those above average to adjust their behaviour downwards, but may signal to those below average that it is fine to adjust their behaviour upwards. This effect of convergence towards the norm was demonstrated by Schultz et al. (2007) in a norm-based environmental campaign. The authors provided households with information about the average energy usage in their neighbourhood. While households consuming above average showed a decrease in energy consumption, household below average increased their energy use following the intervention.

Such paradoxical effects of wide-reaching social norms campaigns seem as they may be mitigated by targeting a 'problematic minority' (e.g., heavy drinkers, heavy smokers, etc.) rather than the whole population. However, this approach poses the problem of choosing which norms to present – the descriptive norm for the entire population may be irrelevant and thus ineffective as shown above, while the descriptive norm for the target-group will indicate a very high prevalence of the problematic behaviour and presenting it will be ineffective or damaging. It may thus be difficult to conduct campaigns based on descriptive norm misperceptions with groups who are high in displaying a problematic behaviour. Although campaigns described above focus on descriptive norms (i.e., what people actually do), two alternative types of campaigns may: (1) address misperceptions about the injunctive norm (what people approve/disapprove of), or (2) address misperceptions about the affective norm (how people feel about the behaviour) (for an overview, see Blanton et al., 2008). The first type of campaign addressing misperceptions of the injunctive norm is based on the idea that people might misperceive the extent to which others condone a negative behaviour (rather than misperceive the prevalence of that behaviour). Such a campaign was conducted by Wenzel (2004b) in the field of tax compliance, by showing taxpayers that they have underestimated the extent to which other taxpayers value honesty when filing a tax return. The second type, campaigns aiming to address the affective norm, are based on people's underestimation of how others feel about a particular behaviour; for instance, people often underestimate how many smokers regret having started smoking, and giving them accurate information about how many people regret smoking (despite continuing to do so) may prevent them from starting to smoke. Although promising, such campaigns addressing the affective norm are relatively recent and have not yet acquired significant evidence to support their effectiveness (Blanton et al., 2008). Below, we illustrate how lessons from the social norms approach may apply to tax compliance, along with potential caveats.

Tax compliance social norms interventions – potential and caveats

A small number of past tax compliance campaigns have employed social norms messages, as described in an earlier section. The majority have focused on descriptive norms, communicating the percentage of people who are compliant with deadlines ('9 out of 10 people pay on time', see 'Applying behavioural insights to reduce fraud, error and debt', 2012) or report their income accurately ('Audits [...] show that people who file tax returns report correctly and pay voluntarily 93 percent of the income taxes they owe', see Blumenthal et al., 2001). Although some of these campaigns have proved successful, none seem to have assessed taxpayers' prior beliefs about these norms, a process considered essential within the social norms approach outlined above. It is important to note that people will have prior beliefs about the descriptive norm, beliefs that may influence their behaviour and which need to be assessed. For instance, someone may believe that they are one of the few taxpayers who have not been able to file a tax return on time, and thus be motivated to file one as soon as possible. On receiving a letter stating that an entire 10% do not file a return on time, this person may feel a sense of relief and delay completing their tax return for even longer than if they had not received the letter. Therefore, it is important for future campaigns employing descriptive norms to survey the population and assess existing beliefs about norms, and only run the campaigns if they would address an existing norm misperception, such as an overestimation of the prevalence of evaders or deferrers.

For particular campaigns, it may also be relevant to consider whether the social norm communicated will not only influence those less compliant than the average to be more compliant, but also signal to those above average that it is fine to be more liberal with declaring their income (as shown in household energy use behaviour by Schultz et al., 2007, discussed earlier). For instance, communicating that most people pay voluntarily 93% of taxes they owe, may signal to those who are very attentive to pay 100% of taxes they owe that the average taxpayer only pays 93%, so it is acceptable to not declare some income. In their study on energy use, Schultz and colleagues (2007), mitigated against this boomerang effect on those who are already highly compliant by adding an injunctive norm (approval/disapproval) to the descriptive norm communication. In a tax compliance campaign, this would translate into reinforcing that tax compliance is 'the right thing to do' (Alm & Torgler, 2011), in addition to providing a descriptive norm.

An alternative avenue to mitigate the possible boomerang effect of social norm communication on those who are already highly compliant is to provide personalised feedback only to those individuals who overestimate non-compliance rates. For example, following a survey, a taxpayer may receive a personalised letter informing them that "You estimated that 80% of people pay their tax on time. In fact, our records show that over 90% of people pay their tax on time."

A particular issue surrounding potential descriptive norms campaigns on tax compliance is that exact information on compliance levels is often unavailable. If information on energy use per household, for example, is objectively available, messages such as 'x% of people report their full income accurately' are based on often-contested estimations, and thus may not be believable. An alternative is to conduct campaigns addressing misperceptions of injunctive norms (levels of approval of compliance or noncompliance); for example, taxpayers may be informed that 'You estimated that 50% of taxpayers strongly disapprove of tax evasion. In fact, survey research shows that 80% declare they strongly disapprove of evasion'. We described in an earlier section a tax compliance campaign conducted in Australia that addressed injunctive norms misperceptions, achieving mixed results (see Wenzel, 2004b). As Bobek Schmitt notes, the use of descriptive norms may be further complicated by the fact that these norms will interact with people's opportunity to be noncompliant. Not only that campaigns based on descriptive norms may backfire for those who have the opportunity to evade, they may also create resentment for those who lack this opportunity (e.g., employees who receive wages that are taxed at source). As such, campaigns based on injunctive or personal norms may prove more fruitful for changing behaviour (D. Bobek Schmitt, personal communication, 30 January, 2015).

Although social norm campaigns usually target a large section of taxpayers, tax administrations may be interested in running campaigns with particular populations (occupations, geographical areas, etc.) that display low compliance levels. If a campaign targets a specific non-compliant population, then it would be counter-productive to communicate the descriptive norm of low compliance among the population, while the general norm (e.g., the national descriptive norm on compliance) may be too general and even produce reactance effects (for a discussion, see Blanton et al., 2008). In such case of a high descriptive norm of non-compliance, some authors have proposed that it may be more appropriate to only communicate the injunctive norm (i.e., 'paying tax is the right thing to do', 'tax evasion is wrong', etc.) (see Cialdini et al., 2006, who describe a campaign employing injunctive norms to prevent theft from a national park). To make the injunctive norm relevant to the population in question, Alm and Torgler's (2011) suggestion seems useful that the tax authority may partner with compliant members of the target-population in spreading the compliance message, for instance professional associations or prestigious companies or individuals in with the targeted profession or geographical area.

Finally, future social norms campaigns should take into account the various factors that facilitate the effect of social norms on behaviour. Appealing to a relevant group identity (e.g., national/citizenship) and making sure this identity is salient may facilitate the effect of normative messages. Understanding communication patterns among taxpayers and how normative information is spread may help the design of effective campaigns, as well as understanding factors such as the ambiguity or visibility of compliance and how these conditions impact on understanding normative messages (as discussed in earlier sections) (see Lapinski & Rimal, 2005, for a discussion on communicating normative messages). When planning media campaigns, it is also important to recognise that their effectiveness can be influenced by other messages in the media. For example, imagine a campaign message such as 'the vast majority of taxpayers pay their fair share' being published in a newspaper, adjacent to an article about widespread tax avoidance. Such message interference will undermine the effectiveness of the campaign (Bernthal et al., 2006), and should be avoided as much as possible through choosing appropriate communication channels.

Once completed, social norms campaigns will require an evaluation of their effectiveness. Two evaluation stages are recommended for social norms campaigns ('National Social Norms Institute', n.d.). At the campaign implementation stage, ongoing market research is recommended to monitor the extent to which the message reaches the target population, whether it is recalled and how it is reacted to. After the campaign has finished, an evaluation stage is required in order to assess its impact. Although a mix of attitudinal measures and behavioural outcomes are required, it is important to note that people often underestimate the extent to which norms impact on their behaviour (Nolan, Schultz, Cialdini, Goldstein, & Griskevicius, 2008), and thus changes in actual behaviour are preferred in order to demonstrate the effectiveness of campaigns.

CONCLUSION

There is growing interest from both academics and practitioners of tax administration and tax policy in the effect of social norms, and in employing normative messages to promote compliance. This paper has aimed to address some theoretical aspects and knowledge gaps that are important in understanding the role of social norms in tax compliance, and in designing effective norm-based interventions.

In the first part of the paper, we discussed a number of under-investigated theoretical aspects. First, we drew attention to differences in norm types (injunctive, descriptive, subjective), and the importance of considering these distinctions for understanding the impact of norms on behaviour. With little research distinguishing the effect of different norm types on tax compliance, and the implications of norm conflict, we outlined avenues for further research. Second, we stressed the importance of considering a range of group identities and group norms. Past research has focused primarily on national norms when theorising the role of social norms (i.e., looking at what taxpayers in a country do, or approve of), but there is increasing interest in how the norms of other categories (e.g., occupational groups) influence compliance behaviour, and we discussed the potential for future research to investigate the norms of a range of groups. Third, we considered some of the conditions that facilitate or hinder the effect of norms on behaviour and pointed out gaps of knowledge regarding the role of factors such as communication, identity, or norm salience.

In the second part of the paper, we focused on interventions aimed at increasing tax compliance that employ social norm messages. After detailing past tax compliance campaigns employing normative messages and discussing their effectiveness, we focused on potential future interventions. Given that social norms campaigns have been employed in a range of fields over the last two decades (such a health prevention or environmental behaviour), we included a general discussion of the mechanisms underlying social norms campaigns, their success in other fields, but also their unintended consequences. Finally, we integrated the lessons on social norms campaigns from other fields and the theoretical insights on social norms from the tax literature, to propose potential avenues for future tax compliance campaigns.

We hope that this work will prove useful to tax researchers and practitioners alike, and that it highlights the importance of considering insights from a range of fields about the nature of social norms when attempting to theorise their role in tax compliance, and that it illustrates how lessons from social norms campaigns in other fields may be applied to tax compliance campaigns in order to design effective interventions and to avoid potential unintended consequences.

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Review of the Tax Administration Reform in India – Spirit, Purpose and Empowerment Govt. of India, Ministry of Finance, Tax Administration Reform Commission, 2014, 1264 pp[1]

Zakir Akhand[♦]

The Indian Tax Administration Reform Commission, chaired by Dr Parthasarathi Shome, was mandated "to review the application of tax policies and tax laws in the context of global best practices and to recommend measures for reforms required in tax administration to enhance its effectiveness and efficiency'. The resulting four part report is a comprehensive review of tax administration reforms in India, lucid and well-structured, with a remarkable coverage of practice and theories. It is an essential reference work for those concerned with tax reform in South Asia, India in particular. The report has four substantive parts, each being comprised of several terms of reference discussed on three major themes – reviewing current status, identifying gaps compared with international best practice, and recommending actions.

Part I addresses the reform issues of organizational structure, business process, dispute resolution and taxpayers services. Currently, the tax administration structure of India is divided into direct and indirect tax wings, based on a tax-type territorial jurisdiction, with little administrative and financial autonomy. Lack of robust accountability structure and operational business model are argued to be the major reasons for organizational inefficiency. Suggested reforms include segmenting taxpayers into different groups, large and small, and designing a functional work structure. Integration of direct and indirect taxes through data sharing is proposed as the immediate best solution instead of unification, which will take place over the next five years. Around the axis of integration and unification attention is drawn on lateral entry to infuse expertise in the tax administration and defined careers progression for civil servants with a well-framed code of ethics. In the case of business process: where the present system of registration and assessment are separate for direct and indirect taxes- a system of unification and integration is essential– most effectively through the development of e-systems and digitalization to streamline collection and refunds. Equally, simplification in documentation and audit procedure are essential to ensure that the customs clearance and cross border transactions run properly; the mere existence of a manual system is not enough. Tax disputes have been mounting, owing to the lack of accountability in making arbitrary demands by the assessing officers, who enjoy huge discretionary powers. Retrieving confidence among taxpayers, with a collaborative approach and improving legislative clarity with sufficient staff training are recommended. In respect of taxpayer service: the present service structure is 'individual tax officer-driven' accompanied by ad-hoc roll-out of some services without any feedback from taxpayers. Specialized service delivery mechanism – supported by adequate budgetary allocation, independent jurisdictional Ombudsman and customer focused citizen charter would be essential to make things better. Pre-filing consultations 'used to assist

[1] The original publication for this review can be found at http://finmin.nic.in/the_ministry/dept_revenue/index_tarc.asp

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taxpayers when they need it rather as an enforcement tool after the event' (p.57), as in the case of the UK, Australia and Italy, are considered important. The point is that taxpayers are to be seen as valued customers, not as robbers, to make the tax system responsive and responsible.

Part 2 reviews the capacity building and database issues for the customs department. Given the resources, emphasis on user-friendly modern technologies backed by risk management tools is needed to prevent fraud and smuggling, which requires massive regional and international cooperation. To make the database readily analysable and exchangeable, legislative enactments with layered authorisation should be in place.

Part 3 deals with three crosscutting issues –impact assessments, widening the tax base and enforcement mechanisms. An underdeveloped area of India's tax administration is that 'neither of the two Boards carries out an ex-ante impact assessment' (p.735). The tax base is narrow and overwhelmed with inadequate enforcement efforts. The Commission recommends ex-ante and ex-post stakeholder consultation, using both quantitative and qualitative methods, to identify the potential impact of tax policy changes. For the tax base to expand, suggestions include increased attention to withholding taxes, high net individuals, presumptive taxes, and bringing large agricultural firms and other informal sector business into the tax net. The synergy in base expansion and tax collection would be higher if the enforcement schemes focus on both enhancing trust and a collaborative relationship with the taxpayers along with verification audits of complex transactions tracked down using risk rating tools. Search and seizure can only be used in special cases.

The final substantive part is part 4, which has chapters on developing forecasting models for revenue targets and fraud detection as well as overall research capacity building for the tax administration. In the case of revenue and arrears forecasting, a combination of short and long term conditional/causal tax specific models, using transparent data with periodic review of macroeconomic changes, could be applied to replace the current unstructured budget making practices. Similarly, the currently practised silo data and skills management pools need to be better integrated and buttressed with risk based analytical tools, knowledge sharing and mutual cooperation. Practical research for tax policy making, except for some scattered and sporadic attempts, is at a budding stage in the tax administration of India. A multi-disciplinary evidence-based research body, funded adequately and linked with external research bodies, is recommended to carry out meaningful works on all important areas, ranging from compliance tracking to tax disputes. Knowledge gaps and training needs have been focused as usual in revitalizing the research units.

These are the bare bones of the analysis and recommendations made in the report. The power of the report is in the simplicity of presentation and painstaking coverage of the tax administration, not as much in the theoretical originality of tax reform literature: none of the recommendations is new – deriving much from international best practice, without seriously delving about the usability of the reforms proposals in the Indian context. For this reason, this review will probably have less impact, while being a useful reference work.

The report's single structural weakness is that it is top-heavy. While 'impact assessment' is a useful addition for tax reform, and 'forecasting models' have proved themselves significant, several other recommendations seem redundant: ' research in tax governance' could be the single platform to conduct all predictive analysis on policy impacts and forecasting revenue targets. The chapter on tax research governance is not an improvement over 'impact assessment' and forecasting models, and the same issues arise repeatedly – staff training and knowledge gaps, collaboration and trust, integration and mutuality of interest, data management and techniques, funds and budgetary allocations. All of them could be discussed precisely in a single chapter for a more user-friendly presentation and to develop a common conceptual understanding. Taxpayer services, as a concept, are used loosely and have been much emphasized without drawing a borderline between service and enforcement, in a country of widespread tax evasion 'with a population of over 120 crore …, only 3.3 per cent …pays tax', (p. 775), and massive tax administration corruption. The report did not add much on the depth and levels of corruption, an issue India has been long combating.

Two weaknesses in the report are apparent: First, the fragility of the integration argument rather than unification, a concern more with civil service reforms than the tax administration. The report remains silent about the inter-cadre rivalry in India and the vehement opposition to unification, owing to seniority conflicts and related pecuniary benefits. The VAT-tax merger in Bangladesh failed mainly because of the strong commotion and the apparent 'superior to thou' attitude of the VAT administration. Moreover, the provision for lateral entry in the civil service, an HR practice mainly followed among the Semi-Autonomous Revenue Authorities, and CFO rather provoke and entrench the segregation of the income tax and customs wing even further. Second, India's tax legislation is notoriously complex, one of the lengthiest in the world, recently overtaken by the UK. Tax complexity issues have been treated rather lightly, accused of overconcentration on enforcement oriented approach (p.881), and portrayed as a sub-topic of compliance management (appendix chapter XII), a chapter borrowed heavily from international literature, and added almost nothing around the political dynamics on tax simplification in India. India has yet to find a way to end its protracted complex tax system, and the tax revenues that are lost as a result.

Despite these few weaknesses, this review should end by re-affirming the overall strength of the report, which lies in the wealth of well-documented, practical and theoretical discussions across the range of tax reforms issues.

Review of Recent Literature

One of the difficulties faced by researchers, practitioners and policy makers with an interest in tax administration is that relevant scholarship is dispersed across a wide range of outlets. In this section, a brief overview of selected recent (2014) peer reviewed publications is presented (in no particular order) in an attempt to bring together a diverse range of work from a variety of disciplinary backgrounds. We don't purport to present a comprehensive list; rather try to give a flavour of the rich diversity of work being undertaken under the broad umbrella of tax administration.

Tax authorities

Osofsky (2014) - Concentrated Enforcement

Tax authorities face a constant battle to allocate resources efficiently to the various activities they are required to undertake. Drawing on scholarship from a variety of disciplines, Osofsky develops a new theory for the allocation of scarce resources to tax enforcement activities. Worst first methods commonly employed seek to target the most noncompliant in the first instance, but this may not be the most efficient approach. Osofsky sets out a case for "microdeterrence", which can enhance deterrence, by categorising low or non-compliers into subsectors to which targeted enforcement projects can be applied on a rolling basis. Importantly, Osofsky suggests that direct and public announcements of such projects should be followed by quiet or even unannounced withdrawals.

Bowler (2014) - HMRC's Discretion: The Application of the Ultra Vires Rule and the Legitimate Expectation Doctrine

This discussion paper, written for the UK Tax Law Review Committee of the Institute for Fiscal Studies, considers the way in which the courts limit the exercise of discretion by Her Majesty's Revenue and Customs (HMRC) and how this affects the interaction between taxpayers and the taxing authority. The question of administrative discretion in the tax area is contentious, and not well understood by the wider public. In particular, Bowler examines the issue of legitimate expectation, for example in relation to the use of HMRC guidance and statements of practice. Bowler calls for a review of the application of the ultra vires rule, and a more general recognition that HMRC pronouncements represent current views of the law, which may change over time. She also suggests a need for a more user-friendly complaints process, given the lengthy delays in appeals to the Tribunal or Adjudicator.

Yin (2014) - Reforming (and Saving) the IRS by Respecting the Public's Right to Know

The current controversy in the US involving the Internal Revenue Service (IRS)'s administration of the tax laws relating to exempt organisations has run on for an extraordinarily long period. In this paper, Yin suggests that too little attention is given to the public's right to know and that greater transparency about the actions of the IRS in relation to exempt organisations would go some way to restoring public confidence.

Hayes and Barker (2014) - A participant observation study of the resolution of audit engagement challenges in government tax compliance audits

Hayes and Baker report on a participant observation qualitative study of tax compliance audits. The empirical evidence on which the paper is based was gathered by one of the authors whilst working as an auditor for the Alcohol and Tobacco Tax and Trade Bureau of the US Department of Treasury. The paper provides fascinating insights into the resolution of audit engagement challenges and the auditor/auditee communication and negotiation process. Differences between the work of government auditors in the tax compliance environment and that of independent external auditors are observed, in particular the pattern of communication between auditor and auditee.

Tax Adjudication

Alarie and Green (2014) - Policy Preferences and Expertise in Canadian Tax Adjudication

Canada has a specialized tax court dedicated to hearing appeals from decisions of the tax administration. This article examines appeals from tax assessments to understand the relative influence of judicial tax expertise and the policy preferences of judges on decisions at the Tax Court of Canada and the Federal Court of Appeal. The authors analyse the impact of judicial expertise and policy preferences on outcomes of tax appeals, drawing on approximately 3,400 decisions of the Tax Court of Canada in the period 2000-2006. The authors arrive at and discuss three main results of the study: "(1) policy preferences of judges matter, but not that much; (2) resources matter—a lot; and (3) there are dynamics relating to affirmation of appeals by the Federal Court of Appeal that are difficult to explain, although a desire to avoid the apprehension of bias is possible".

Tax Complexity

Bowler (2014) - The Office of Tax Simplification: Looking Back and Looking Forward

In this paper published by the UK Tax Law Review Committee of the Institute for Fiscal Studies, Bowler discusses the benefits achieved through The Office of Tax Simplification (OTS) that was established in July, 2010. She concludes that the OTS has the potential to be an important driver of change but that its considerable expertise is currently underutilised. The work of the OTS is hampered by limitations on its remit, for example being able to only consider existing law, and not being able to reconsider issues where its proposals have been rejected by government. Bowler concludes that a significant increase in resources would be required in order to achieve any significant simplification.

Tran-Nam and Evans (2014) - Towards the Development of a Tax System Complexity Index

This paper explores a summary measure of overall tax system complexity, which the authors consider to be an important first step towards tax simplification. Following a review tax complexity and of index number theory, they propose a composite index that reflects the multidimensional nature of the tax complexity phenomena, with two separate indices for business and personal taxpayers respectively.

Tax Compliance

Madison (2014) - Futility of Tax Protestor Arguments

In this paper Madison discusses the arguments mounted by tax protesters: those who refuse to pay income tax based on a nonsensical argument that no tax is due, none of which has succeeded. Despite the futility of the protester arguments, however, their existence poses problems for tax administrations, in this case the IRS, including a waste of resources. After reviewing US history and various protester arguments, Madison concludes that there is a need for would be protesters to be made aware of the likely consequences of their refusal to pay, beyond the publication of the IRS annual report.

Manhire (2014) - There is No Spoon: Reconsidering the Tax Compliance Puzzle.

In this paper, Manhire considers that tax compliance puzzle, that is, the difficulty in explaining relatively high compliance levels under self-assessment and audit administrative strategies. He describes an agent based computational model that suggests that there may, in fact, be no compliance puzzle to solve. Manhire finds a non-linear correlation between the perceived strength of the tax authority and voluntary compliance rates. He concedes, however, that other factors may be at play such as social norms, and that the model does is not yet complete enough to support changes to administrative policies.

Blank (2014) - Collateral Compliance

Prior analyses of the role of sanctions in securing taxpayer compliance have focused primarily on monetary penalties. In this paper, Blank suggests collateral sanctions, that is, non-monetary penalties such as licence revocation, may be a more productive pathway to improved enforcement, especially with appropriate publicity. In reaching this conclusion, Blank discusses a range of behavioural and experimental research not only in tax but also in other areas.

Hashimzade et al (2014) - Social Networks and Occupational Choice

The authors use agent based simulations to analyse the emergence of group-specific attitudes and beliefs about tax compliance (evasion) within social network interactions. They find different compliance behaviour across occupational groups and contend that taxpayers self-select into occupations concluding that the weight attached to social customs differs across occupations.

Krever (2014) - Combating VAT fraud: Lessons from Korea?

In this paper, Krever analyses the Korean VAT system, which was largely modelled on European systems with some interesting divergences, most notably the collection of comprehensive data collection and matching undertaken by the tax authority and the creation of a 'cash receipts' system that rewards consumers for insisting on a cash receipt.

Kirchler et al (2014) - Cooperative compliance: From deterrence to deference

The authors reprise the slippery slope framework which integrates empirical findings on tax compliance behaviour from both economics and psychology. The framework shows that both tax authority power and taxpayer trust in the authority are important determinants of compliance, leading to the conclusion that tax authorities should promote cooperation rather than relying heavily on deterrence strategies. Examples from several countries are presented to demonstrate the adoption of more deferential approaches to securing compliance.

Hoffman et al (2014) - Enhancing Tax Compliance through Coercive and Legitimate Power of Tax Authorities by Concurrently Diminishing or Facilitating Trust in Tax Authorities

In this paper the authors observe the lack of empirical studies of the effects of using both coercive strategies and legitimate strategies, such as providing assistance, in tandem in order to improve compliance. They draw on two experimental studies which provide support for the view that coercive power does not reduce implicit trust in tax authorities. They conclude that if coercion or supportive procedures are applied in isolation, some tax revenues could be secured, but applied together, increasing and voluntary contributions could be expected.

Corporate Compliance

Blank (2014) - Reconsidering Corporate Tax Privacy

The question of whether corporate tax returns should be made publicly available has become more pressing in recent years due to calls for more transparency, primarily from civil society. In this paper, Blank examines the question from an 'intercorporate perspective', which considers the potential compliance implications of allowing corporate stakeholders and agents to observe *other* corporations' tax returns. He offers a set of guidelines to policymakers to enable them to better evaluate specific proposals for publication of corporate tax returns.

Blouin (2014) - Defining and Measuring Tax Planning

In this paper, Blouin questions the assumption that low effective tax rates are necessarily associated with risky or uncertain tax planning and calls for researchers to develop better empirical proxies for capturing aggressive tax planning. She observes the difficulties in determining what constitutes aggressiveness in this context and explores the relationship between tax aggressiveness and tax risk, providing also an overview of the various attempts to measure both.

Knuutinen (2014) - Corporate social responsibility, taxation and aggressive tax planning

This paper presents an overview of corporate social responsibility (CSR) in the context of tax law and asks whether CSR sets limits on the tax planning activities of companies. The author canvasses a range of issues from finance and corporate reporting to BEPS, concluding that not only CSR but also responsibility and fairness in tax competition is needed if we are to achieve inter nation equity.

Dowling (2014) - The curious case of corporate tax avoidance: is it socially irresponsible?

Dowling approaches this issue from the perspective of CSR, asking why corporate taxpaying has previously been neglected by CSR scholarship. He explores, mainly by reference to US developments, the issue of corporate tax avoidance and its implications for defining and measuring CSR. His stated aim is to "start a debate in mainstream business ethics literature about the fundamental assumptions and boundary conditions of CSR."

Cross Border Compliance

Kaye (2014) - Innovations in the War on Tax Evasion

The US unilateral Foreign Account Tax Compliance Act (FATCA) has attracted considerable attention and concern worldwide that has led to the negotiation of bilateral International Governmental Agreements (IGAs) requiring reciprocity from the US. In her analysis of the implications of IGAs, Kaye urges the US to take a leadership role to foster global transparency and demonstrate commitment to the principles of global information exchange.

Zucman (2014) - Taxing Across Borders: Tracking Personal Wealth and Corporate Profits

Here, Zucman argues the case for the creation of a world financial registry, which would significantly constrain personal tax evasion as well as corporate use of loopholes. He analyses US corporate profits longitudinally as well as global wealth of households held in tax havens, and concludes that such a registry would provide a transparent way to achieve a fair distribution of corporate tax revenue, although its implementation would not be without difficulties, in particular cost and political obstacles such as privacy concerns.

Sawyer (2014) - Comparing the Swiss and United Kingdom cooperation agreements with their respective agreements under the Foreign Account Tax Compliance Act

Here Sawyer compares the UK Switzerland agreement that came into force in 2013 with the enactment of FATCA and speculates as to likely future developments. He suggests that these developments will lend themselves to future research as part of the analysis of broader changes in the landscape of intergovernmental information sharing agreements, for example behavioural changes that are expected to flow from these developments.

The Tax Gap

Gemmel and Hasseldine (2014) - Taxpayers' Behavioural Responses and Measures of Tax Compliance 'Gaps': A Critique and a New Measure

In this paper the authors suggest that conventional tax gap formulations are flawed in that they fail to take into account behavioural responses of taxpayers, which has the effect of exaggerating non-compliance. Behavioural responses need to be taken into account for both direct and indirect tax gap measurement in order to more accurately estimate the revenue raising potential of measures introduced to combat non-compliance. While the tax gap measure that the authors propose requires information about which there is some doubt, it will nonetheless improve tax gap measurement accuracy when compared to conventional measures.

Administrative Burden

Braunerhjelm and Eklund (2014) - Taxes, Tax Administrative Burdens and New Firm Formation

Using data from the World Bank, the authors of this paper measure the administrative burden that tax policy complexity places on new firms, finding that new firm formation, measured by entry density, is reduced by tax administrative burden. The administrative burden therefore constitutes a barrier to entry that has previously been neglected in the literature.

Tax Professionals

Christians (2014) - Regulating Tax Preparers: A Global Problem for the IRS

In this brief paper, Christians observes that attempts to regulate tax preparers in the US are fraught, because of the global reach of the US income tax system, catching as it does citizens living abroad and potentially using non US return preparers.

Afield (2014) - A Market for Tax Compliance

In this paper, Afield reviews actions in the US to better regulate paid tax return preparers, and the challenge to their efficacy, which was not upheld. The role of paid preparers in tax compliance is under increasing attention from scholars and their regulation is generally acknowledged to be important to the integrity of tax administration. Affield canvasses the idea of a voluntary compliance certification regime which would incentivise preparers to seek certification for competitive advantage. He argues that by rewarding certified preparers with lighter touch scrutiny, better alignment of taxpayer and preparer compliance incentives would result, with additional potential for a more general shift in norms towards compliance. In this regard, a voluntary registration scheme would appear to have advantages over a mandated scheme.

Fogarty and Jones (2014) - Between a Rock and a Hard Place: How Tax Practitioners Straddle Client Advocacy and Professional Responsibilities.

This paper presents findings from a qualitative study involving semi-structured interviews with US tax practitioners. The authors provide a review of behavioural research relating to tax practitioners and suggest that as a matter of research design, it generally fails to adequately capture the 'dilemmas of practice', whereas qualitative methods are able to provide insight into the lived experiences of practitioners. They conclude that tax practice is a contested terrain, where tax practitioners must work between clients who are determined not to overpay taxes and the potential for government imposed penalties and reputation loss which constrain their client relationships.

Walpole and Salter (2014) - Regulation of tax agents in Australia

In this paper the authors provide an overview of the history of, and a critique recent developments in, the regulation of Australian tax agents, observing a shift in the relationship between agents and their clients through the increasing alignment of agents interests with those of the Australian Tax Office in securing taxpayer compliance.

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