

DEFINING ACCEPTABLE TAX CONDUCT:

**THE ROLE OF PROFESSIONAL ADVISERS
IN
TAX COMPLIANCE**

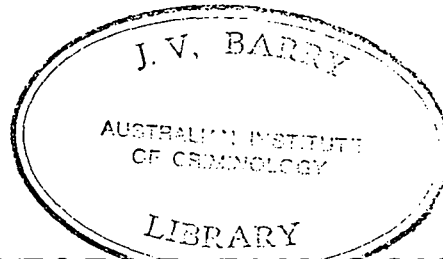
A Progress Report to the Criminology Research Council

by

Professor Roman Tomasic and Brendan Pentony
Centre for National Corporate Law Research
Faculty of Management
University of Canberra

November 1990

343.042
0994
f
TOM
2



DEFINING ACCEPTABLE TAX CONDUCT:

**THE ROLE OF PROFESSIONAL ADVISERS
IN
TAX COMPLIANCE**

A Progress Report to the Criminology Research Council

by

**Professor Roman Tomasic and Brendan Pentony
Centre for National Corporate Law Research
Faculty of Management
University of Canberra**

November 1990

This report presents the findings of a research project funded by the Criminology Research Council. The research was undertaken by the authors during 1989 and 1990. Details of the project and its methodology are set out in the Appendix.

1. Introduction

Tax practitioners play a pivotal role in the Australian taxation system¹. Not only do they act as intermediaries between the Australian Taxation Office (ATO) and the majority of taxpayers, especially business taxpayers, but they also influence the ethical climate and level of compliance with taxation laws. This article discusses this role by reference to data derived from an empirical study of tax practitioners and tax officials from around Australia. The study sheds light on the nature of the compliance problem and the factors which affect the administration of Australian taxation law generally. The study was funded by a grant from the Criminology Research Council and also received support from the Australian Taxation Office.

Tax compliance is more than an academically interesting issue. It is basic in the achievement by government of its economic and social goals. It is probably true to say that the improvement in the Australian federal budgetary position is due in some measure to the improved level of compliance.

At the outset, it should be said that the notion of tax compliance is a social construct. There is no objective standard of what is the appropriate level of compliance. The level of compliance is a product of the negotiation of law and legal institutions. This involves a number of processes, in addition to that of legal interpretation. Organizational factors within the regulatory agency as well as the content of prevailing legal and cultural values will affect the perception of what constitutes an acceptable level of tax compliance. Because there is no objective criterion of what is an acceptable level of tax compliance, the notion of compliance is often a political one and consequently, what is perceived to be an acceptable level of compliance at one time may not be acceptable at another. The uncertainty and complexity of many tax laws, as well as the range of discretions which are invested in tax officials accentuates the uncertainty of what is an acceptable level of compliance. In this situation, the role of professional tax advisers will be crucial.

¹ Some of the material in sections 1 and 2 of this paper was originally prepared for the "Tax Compliance: Intensive Weekend Workshop" conducted by the University of New South Wales Faculty of Law, Taxation Business and Investment Research Centre, held at Bowral on 25-27 August 1989.

Research into compliance with tax laws has now been underway for over two decades. This has largely been in the United States, although research in this area has also begun in Britain, Canada and Continental Europe. In Australia, researchers have been backward in making a contribution to policy oriented research in this area. One major explanation for the increase in interest in tax related research has been the change in the attitude of the regulatory agencies and policy makers. In the United States, for example, the 1980s have seen a major commitment by the Internal Revenue Service (IRS) to supporting and encouraging research into tax compliance issues. In part, this has been motivated by the realisation of the significant shortfall in tax collections, the so-called tax gap, and the existence of a significant "black economy" which has not been readily susceptible to traditional regulatory strategies.

In the past, researchers, such as Schwartz and Orleans (1967) and Susan B Long (1980), have experienced difficulties in gaining access to information from tax enforcement agencies to allow them to develop theories and research methodologies in the area of tax compliance. This has been a major inhibitor to progress in the type of tax research which had sought to monitor actual tax conduct. Alternative strategies such as the resort to laboratory simulations and experiments have been a useful alternative up to a point, as have been surveys of taxpayer attitudes. It is essential that research in this area also focus directly upon tax compliance behaviour. It is vital that criminological research methods do not lose sight of the law or of legal rules. Thirty years of behavioural research into law has shown that it is essential to relate legal behaviour to the rules in the area in question (see further, Tomasic (1985)). This is nowhere more true than in regard to tax behaviour itself. By straying too far from legal rules in studies of tax compliance the danger arises that law, the key organizing variable in this area, will be ignored.

Studies of regulation and of regulatory agencies have done much to assist researchers interested in the issue of compliance and in particular, tax law compliance. This literature has stressed the nature of rules and how rules are handled in different segments of the organisation, as well as at different periods in the life cycle of the agency. ² Australian studies of the behaviour of regulatory agencies in this

² See for example, Bardach and Kagan, (1982); Hawkins, (1984); Hawkins and Thomas (Eds), (1984); Kagan, (1978); Katzmann, (1980); Kaufman, (1960); Lipsky, (1980); Shapiro, (1984); Stone, (1977).

country are of more recent origin³. North American tax compliance research has benefited from this rich tradition of regulatory research. It has also drawn upon the significant body of research into the legal profession⁴, the role of lawyers, and dispute processing, although there is potential to considerably extend the reliance which has been placed upon this body of work. Nevertheless, the body of American tax compliance research catalogued by Roth, Scholz and Witte (1989) in their two volume work on *Taxpayer Compliance* represents a watershed in this line of research and provides an excellent opportunity to learn from the lessons of the past decade and to reflect upon appropriate future lines of research in this area. In contrast, in regard to tax compliance, Australian research is still in its infancy.⁵

³ See for example, Grabosky, & Braithwaite, (1986); Tomasic, (Ed), (1984). Also see generally, Cranston, (1979); Braithwaite, (1984).

⁴ See for example Heinz and Laumann, (1982). Also see generally Tomasic, (1985), Ch 2.

⁵ See however Freiberg, (1986), and Sutton (pp 1-14) in Grabosky and Sutton (Eds), (1989). Also see generally the McKinsey & Company (1990) report prepared for the Australian Taxation Office. That report contains some empirical data which is not readily available from other sources.

2. Research on the Role of Tax Advisers

It is possible to approach the problem of tax law compliance from a number of different directions. For example, research into regulatory agencies and research dealing with the work of lawyers and other professional advisers can provide a useful starting point as it suggests that professional advisers play a central role in the transmission and translation of legal rules and meanings for the tax-payer (see e.g., Cain, 1980: 106-130) ⁶. Professional advisers also play a key role as the intermediaries between the agency and the taxpayer for a very large proportion of taxpayers. Furthermore, an empirical study of tax advisers is more controllable than a larger study of taxpayers. It also avoids the problems of confidentiality and the insurmountable practical problems which would arise from attempts to survey tax returns directly.

Tax advisers play a central role in the whole system of tax compliance, both from the point of view of the taxpayer and in respect of the definitions of acceptable levels of compliance which tax enforcement agencies adopt. Some advisers are likely, directly or indirectly, to influence the shape of tax law itself by seeking to structure new tax laws and administrative policies, and by challenging laws and agency decisions in the courts. Even more significantly, advisers are well placed to influence the attitudes of taxpayers themselves to the payment of tax and to tax compliance generally. In the United States, Jeffrey Roth (1987: 10) has observed that tax practitioners are central characters in taxpayer compliance research in that they provide a network through which information and values in regard to tax matters are distributed throughout the community. Jackson and Milliron (1987) made the self-evident point that, "practitioners are the principal link to the tax system for a majority of taxpayers" (Also see Klepper and Nagin, 1987).

It is useful to briefly refer to some other studies which have looked at this area. Surprisingly, despite the large body of taxpayer compliance research cited by Roth, Scholz and Witte (1989: 265-306), a relatively small body of work has focussed upon tax advisers as such. Probably the largest of the studies of this type was the official 1986 US Internal Revenue Service survey of over 1900 tax preparers and tax

⁶ Also see generally, Danet, Hoffman and Kermish, (1980).

advisers, compiled by Patricia White (hereafter the White (1987) report). This was an empirical survey based upon face to face interviews, each of about one and a half hours duration, and using a 58 item multiple choice questionnaire. Attitudinal data was also collected regarding such matters as the loyalty of tax advisers to clients, their perceptions of the conduct of the IRS and attitudes regarding the tax preparers' role in the tax system. For example, 38% of the paid tax preparers stated that their loyalties "are completely with their clients" when dealing with grey areas of tax law (White, (1988: 33)). The White report also found that 40% of paid preparers had a highly favourable attitude to the IRS in 1986. Those preparers who disassociated themselves from clients because their demands would result in an inaccurate return did so an average of six times a year, or on less than 2% of the returns that they signed (White, (1988: 65)). On the whole, the findings from this study, as summarised by White, do not provide an analysis which goes beyond a description of the results from this large survey. The findings are primarily behavioural in nature and say very little about the relationship between tax laws and tax compliance.

Another study which sought to explore this nexus more fully has been underway for some years in the United Kingdom under the direction of Doreen McBarnet and Graham Mansfield. This research has been summarised in the following terms :

"This project is studying how the lines are drawn between criminal tax evasion, legally unacceptable but non-criminal avoidance, legally acceptable avoidance and compliance. These boundaries are drawn not simply in statute, case law or revenue policy but also in the professional practice of taxpayers' advisers. In-depth interviews are being used by the team to explore the attitudes, roles, strategies and dilemmas of accountants, solicitors, barristers and tax consultants. The project is focussing on recent attempts, by both statute and case law, to restrict avoidance and on the responses of the professionals involved in this work. It is trying to explain why grey areas exist in law and the balance of certainty and uncertainty within which tax authorities, tax advisers and taxpayers operate"(Centre for Socio-Legal Studies (1985-86: 8)).

Few substantive findings have yet been reported from this line of research (See however, McBarnet, (1984)).

Although there are a number of other recent studies which have dealt with various aspects of the role of tax practitioners ⁷, largely as a product of the 1987 IRS Conference on the Role of Tax Practitioners in the Tax System, probably the most impressive body of work in this area has been underway at the American Bar Foundation (ABF) ⁸

Two 1987 papers produced by ABF researchers draw together disparate research which has been undertaken on the American legal profession and on the work of American regulatory agencies. They apply insights from these areas to data derived from a survey of tax practitioners in the Chicago area. The studies were based on open ended interviews with 43 tax practitioners in the Chicago area (Karyl Kinsey (1987) went on to conduct interviews in other parts of the United States). According to Mary Coyne and Kent Smith (1987), this project explored "the structure of tax practice and the factors influencing practitioners' attitudes toward regulations governing their practices". The Chicago study although not large, raised important issues about the role of tax advisers which merit scrutiny in a larger national study.

One of the issues to arise in this Chicago study was the nature of client expectations and preferences. As Coyne and Smith (1987: 18) aptly point out: "Client expectations and preferences...provide incentives and constraints on tax practitioners." The "prevalent" client attitude was found to be a desire "to avoid any possibility of problems with their tax returns" (1987: 18). This was found to be particularly so in respect of clients of smaller tax practitioners. Clients of larger firms expect to take risks to reduce their tax liability (Coyne and Smith (1987:22-23)). It is well known that professional advisers will be heavily influenced by the characteristics of their clients (See for example Tomasic, (1981); and Tomasic, (1983)).

The 1987 ABF study, as reported by Coyne and Smith, also found considerable resentment amongst tax practitioners about being used as agents for the IRS in seeking to achieve compliance. Many practitioners argued that the IRS did not

⁷ See for example, Ayers, et al, (1987) ; Helleloid (1987) ; Hite, (1987); Mazur and Nagin, (1987); O'Neil and Collins, (1987); (1987)

⁸ Also see generally, Appendix A of *American Bar Association Commission on Taxpayer Compliance Report and Recommendations*, July 1987, for a useful description of the studies produced by the American Bar Foundation Taxpayer Compliance Project.

appreciate the positive role which the tax practitioners already played in supporting the achievement of the goals of the tax system (Coyne and Smith (1987:35-36)). Major differences in attitudes were perceived to exist between different types of tax advisers. Research on regulatory agencies is relevant here, for as Bardach and Kagan (1982) have found, the most effective regulations are likely to be those which are generally consistent with accepted work practices within a regulated industry. The ABF data suggests that this would no doubt also apply to tax practitioners. Thus, as Coyne and Smith (1987: 17) note, unreasonable regulations tend to exacerbate the resentment of the regulated industry. They add that, "Practitioners' resentment of regulatory unfairness and unreasonableness may have significant long-term consequences if they undermine practitioners' unwillingness to co-operate with the IRS" (1987: 38).

In further analysis based upon this data set, Kinsey went on to examine differences in encounters between tax practitioners and the IRS. Drawing upon earlier research, by Galanter on litigation patterns and by Felstiner on patterns of dispute-processing, Kinsey was able to divide interviewees between the "repeat players" and those whose contacts with the IRS were infrequent. Kinsey found that:

"The most vocal critics of tax officials were those who have the most contact with them...[i.e.]...the repeat players...among tax practitioners are the most disaffected. These repeat players tend to be the high-powered tax lawyers and CPAs in large accounting firms, although they also include a smattering of public accountants representing entrepreneurial clients. While repeat players have the advantage over one shot players of greater knowledge of internal IRS workings, the reason they have this knowledge is by virtue of the fact that their clients are more likely to have taken aggressive tax positions that trigger IRS scrutiny. While the 'haves' may on average come out ahead in terms of minimizing tax liabilities, they do so at the cost of greater confrontation with the tax agency" (Kinsey (1987: 17)).

Kinsey found that the IRS officials were the least critical of the repeat player tax practitioners, tending to be most critical of "storefront" practitioners and lawyers in general practice. Whilst Kinsey attributes this to the perception that the repeat players have a better knowledge of the law, it may also be the fact that the agency has tended to be captured by the repeat players, as regulatory theory would suggest.⁹

⁹ See references in Breyer (1982) at p 9 and fn 32 and fn 33.

The ABF research also casts light on the impact of the interaction between tax advisers and tax agencies. Kinsey, for example, reports that organizational incentives and constraints within the IRS which are reflected in revenue collection goals "...can result in tendencies towards developing interpretations of the law, and their application to specific areas, that serve to yield additional assessments. The very complexity of tax laws lend themselves to discretionary applications and interpretations" (Kinsey (1987: 11)). This is also consistent with findings from the regulatory literature which suggests that different approaches to rules are taken depending upon an official's position in the agency structure as well as the official's proximity to the centre of the agency. Thus it has been suggested that there is usually a "top-down" approach to rules and a "bottom-up" approach (Diver (1980)). The former sees rule enforcement as a process of strict application of rules, whilst the latter perceives rule enforcement as a production process (e.g. how much revenue did you bring in?). In the area of taxation, as Kinsey (1987: 11) observed, "...it should also come as no surprise that tax practitioners interpret the law in terms of their own and their clients' priorities and incentives." Kinsey (1987: 23) went on to record a fairly obvious feature of the taxation system which was that "One of the major sources of tension between the IRS and tax preparers and practitioners derives from different definitions of what the law requires and how tax laws, rules, and regulations apply to the particular facts of a taxpayer's situation." In grey areas of the law there will be the greatest scope for variations in interpretations and consequent compromises between tax advisers and officials.

As Kinsey concludes, there is a major gap in our knowledge of factors which influence differences in the perceptions of tax laws as involving issues which are grey, and those which are black and white. As she puts it, our "cognitive map" of agreed grey issues, and of agreed and disagreed black/white issues is quite incomplete. Consequently, "This severely limits the ability of researchers to investigate tax compliance" (1987: 27). Kinsey concludes by observing that this ABF research project "suggests that important variables to examine are the relative balance of power between participants in tax encounters, their varying goals and values, and the cognitive processes by which they interpret the actions of others" (1987: 34-35). This presents a major challenge for tax researchers concerned with issues of compliance.

3. Perceptions of the Roles of Advisers in the Australian Tax System

"Tax practitioners play a lot of roles in the Australian tax system. Their major role lies in the field of revenue collection. They also try to protect the client. The ATO leans more heavily on us. The agent then tells the client to get on with the task of paying the tax. We have been called the unpaid employees of the ATO, but that is not very much so."

(Adelaide accountant)

"The essential role of the tax practitioner is to support the administration of the tax system."

(ATO Officer)

There is a widespread perception amongst tax practitioners and ATO officers that the role of the tax practitioner in the Australian taxation system has changed. An example of the extent of the change is that assisting clients in understanding and complying with tax laws is now probably as important as minimizing the amount of tax paid. Tax practitioners now see themselves as fulfilling a number of different roles in the Australian taxation system. Some roles are more important than others but all practitioners would be involved in each of them to varying degrees.

The following roles of tax practitioners can be identified from the data collected in this project:

(i) As independent advisers of their clients: Although advising clients is commonly seen as the traditional and most important role of the tax practitioner, it is no longer their sole role. The client advisory orientation of many tax practitioners is largely directed to achieving client compliance with existing laws rather than with exploiting the grey areas of tax law or seeking to devise artificial paper schemes. This dimension of the relationship was often explained as "to ensure that the client pays the amount of tax expected of him."

The client advisory role of large firms can be much wider than that of small firms. A large firm accountant in Perth said that "the principal responsibility is to advise our clients. In addition, clients look to us to lobby government and policy makers on

practical aspects of the system and on problems which exist in the legislation." In contrast, a not uncharacteristic small firm accountant's view was that "tax practitioners are now *de facto* assessors. In the past we played a more adventurous role, as the client had to wear the cost much later." Another small practitioner reaffirmed this attitude and commented on its impact upon clients when he said that: "basically, tax practitioners are agents of the ATO. We take this seriously. We are responsible for lodging returns competently and correctly. Clients do not like it when you say you are an agent of the ATO."

Although many practitioners resisted falling into the role of the ATOs unpaid help, they saw their role as being to advise clients on the tax obligations arising from particular transactions. As one tax lawyer explained, "the role of tax practitioners is to advise taxpayers and to assist them to meet their obligations." Much tax advice is reactive rather than proactive in nature in the sense that practitioners are often presented with a completed transaction by the client. In such cases there are relatively few options available to the practitioner.

Traditionally the giving of advice was perceived in terms of the interpretation of tax rules but it is now only the tax lawyers who adopt such a basic perspective. This role has become much more complex and the present situation was described by a Sydney tax lawyer in the following terms:

"The roles of the tax practitioners are to interpret tax laws and to advise non-practitioners as to the meaning of the law and to obtain the best advantage for clients without leading clients up the garden path, that is, to utilize the law and the system to their best advantage. When I started tax work, ATO officers were thorough gentlemen. Now they tend to ignore cases and rely on guide-lines and rulings as if they were the law. You need to know both the law and what the Commissioner says. This is unusual in law. In tax you have two sets of laws".

For most accountants, including those in the large firms, efforts to interpret tax laws go hand in hand with their roles as intermediaries between their clients and the ATO and their role in assisting with the administration of the overall tax system.

(ii) As unpaid employees of the ATO: One of the roles of the modern tax practitioner was described as being an unpaid officer of the ATO. There is an element of truth in this view especially in relation to solo practitioners and the very small firms.

This view derives to some degree from a misunderstanding of the significance of the registration of tax agents under s 251J of the *Income Tax Assessment Act 1936*. A person not registered as a tax agent is prohibited by s 251L from charging fees for taxation work and many of the smaller scale practitioners see themselves at the mercy of the ATO in that, without registration, their livelihood is removed. The registration of practitioners in this way creates a significant difference in the practitioner / agency relationship in Australia in comparison with that in the United States.

Practitioners complained that they were "virtually the unpaid employees of the ATO." An Adelaide tax lawyer had no doubt that "accountants are the unpaid employees of the ATO" and he added that "the ATO organization would not work without them." Many practitioners complained that the introduction of self-assessment unfairly placed additional burdens on them, when the work should really be the responsibility of the ATO.

This description of the role of tax practitioners suggests that the ATO is probably equally dependent on the practitioner. As one ATO officer explained:

"Tax practitioners are an integral part of the foundation of our tax system. When you look at the complexity of our system and its volume components, tax practitioners have to be the key people. Practitioners are vital in playing the following roles: the taxpayer assistance role, an educative role, selling the tax system to their clients and influencing government policy in larger bodies."

These views were echoed by other ATO officers, although some argued that practitioners were not the unpaid employees of the ATO because, as one explained, "tax advisers are being paid by the client." One Sydney tax officer noted, however, that tax practitioners "are the ATO's only means of coping with the task we must do. Without practitioners, there would be less understanding of, and compliance with, tax laws in the community. Agents do a lot of work for the ATO."

Sometimes tax officers talked about the existence of "almost a partnership" between the ATO and the practitioner. One Sydney ATO officer added that "there is a partnership between the ATO and tax practitioners due to our inability to deal with the volume of inquiries ourselves." Another ATO officer observed that "I prefer to regard practitioners as partners in the tax system. Most practitioners consider themselves to

be partners. Practitioners want the ATO's help in telling clients of their obligations under the law." He added however, that "there is a lack of support from the ATO in this regard."

Practitioners were however somewhat uneasy about the use of the term "partnership" to describe their relationship with the ATO, even if this appeared to be the case. A Melbourne accountant in a medium sized firm observed that "the 'partnership with the ATO is more rhetoric than action. It would be marvellous if there was a partnership between the ATO and the practitioner. The only action is compliance. Due to the weight of complexity, a lot of advisers just advise on how to comply. This is a waste of resources." Where ATO officers did not use the language of "partnership", other similar language was commonly used. As a Melbourne officer argued, "their role is looking after clients' interests, but it's not just a one way business as they are also representing the ATO."

(iii) As intermediaries between the ATO and the taxpayer: Tax professionals function as agents for taxpayers. In this way they see themselves as being "the meeting point between the taxpayer and the ATO." The criticism was often made by practitioners that they were being taken advantage of by the ATO in this role. As one accountant said, whilst "tax practitioners are the intermediaries between the taxpayer and the ATO, more and more ATO work is being done by us." As part of this role, practitioners disseminate information about the tax laws and the tax system in two directions. As one Perth tax lawyer explained this role: "First, tax practitioners play an intermediate role which is to translate the complexity of the law into an understandable form. Secondly, there is a policy input component which is to relate matters to the ATO through professional bodies such as the Taxation Institute." Another accountant nicely expressed the tensions in this role when he pointed out that "tax practitioners are messengers of bad news. They explain to taxpayers what the law means. They explain and justify legislation to clients."

(iv) As compliance advisers: A basic role assumed by many tax practitioners is to advise clients whether or not they were complying with tax laws. Accountants seemed to identify most with this role, with most tax lawyers saying that, strictly speaking, they did not do any compliance work. To some extent, the prominence of the compliance role of tax practitioners can be contrasted with the emphasis which in the past was

given by practitioners to their tax reduction role. This point was well made by an Adelaide large firm accountant who said:

"Tax practitioners play many and varied roles in the Australian taxation system. These roles have been changing dramatically over the last 12 years. In the late 1970s, the tax practitioner's role was to save tax. There has been a remarkable turn-around. Now, most effort is directed towards ensuring that people comply with tax laws. People are terrified by the level of penalties. Tax practitioners make sure that things are done correctly. They advise their clients on the tax consequences of their operations."

Practitioners were aware of the critical role which they played in regard to tax law compliance. As one Perth accountant observed, "tax practitioners are absolutely essential to the success of the voluntary compliance system." As a tax lawyer added "tax practitioners, especially tax agents and accountants, increasingly make the system work. Accountants have coped with the changes in the law and have made the system work. Lawyers just give specialized advice." The compliance role is often seen by practitioners, particularly small accountants, in very instrumental terms. One Sydney accountant noted that "a tax practitioner's role is to try and advise clients on current requirements, lodgement procedures, times of lodgement and the ATO's attitude in the context of tax returns. The compliance role of tax professionals is usually linked in the minds of practitioners with some other role, as is illustrated by the following observation of a large firm accountant in Perth: "the main roles of practitioners are to ensure that taxpayers pay the correct amount of tax and to take advantage of legal means of minimizing tax."

The increased importance of the compliance role is due to a number of factors, such as the complexity and uncertainty of the law, the fear of penalties and a change in the attitude to paying tax. Whereas in the tax avoidance era tax was treated as a discretionary cost, it is now seen as a cost to be reduced and managed like any other commercial cost. Seeing it in these terms helps to avoid the unsavoury connotations of terms such as "tax avoidance" and "tax minimization". As one Melbourne accountant put this position, "tax is an expense of business to be controlled. We as experts help them control it and assist clients to meet their legal obligations." A Melbourne ATO officer also confirmed that taxpayers "take the view that tax is a business expense and that you do anything to reduce your business expenses." Clients seem to be reluctant to enter into tax arrangements, even if the client's adviser

was convinced that the arrangement was a perfectly legal, where it was clear from an ATO Advance Opinion or an Income Taxation Ruling that the Commissioner would frown on such an arrangement. Consequently, as a Perth accountant said of tax practitioners, their role is to help clients manage their affairs in the most efficient and effective way. Tax is treated like any other cost. If it is a significant cost, more effort goes into it." Taxpayers have adopted a resigned but commercial attitude to taxation and in doing so they have been significantly influenced by their tax advisers who have counselled simple compliance rather than elaborate, dubious tax avoidance schemes.

(v) As protectors of their practice: Although practitioners usually referred to their traditional relationship with the client as being of primary importance, they sometimes saw the protection of their practices as being almost as important. A partner in a large accounting firm explained that "the first role of the tax practitioner is to be in a position to inform the client of the law and the implications of the law for the client. The second role of the tax practitioner is to protect the firm. You don't always give the client exactly what he wants." Practitioners also tended to remark that they were in business for the long term and that individual client demands should not be allowed to threaten their firm or business. Another accountant pointed out that "we are not prepared to allow clients to claim wrongly. We know our livelihood could be affected if anything is wrongly claimed. We put the full facts before the ATO...Sometimes we take a conservative approach and don't make a claim; the penalties are too severe."

Practitioners also pointed out that where clients came in with unrealistic expectations about how tax could be reduced, the role of the practitioner was to inculcate more realistic expectations. We were frequently told that clients, especially business clients, have become significantly more realistic in this regard and for this reason, few practitioners found it necessary to disassociate themselves from clients who made unrealistic or improper demands. Furthermore, many practitioners, especially large accountants, carefully vet their clients before accepting them, in order to minimise the need to disassociate the firm from the client. Vetting was also undertaken for the client's ability to pay. As one Perth large firm accountant remarked, "we insist that clients comply with the law. We will vet our clients and get a credit reference." A medium accountant told us that:

We vet clients on (1) where they come from, ie who are their previous advisers; (2) ethical clearance; (3) whether the fees paid are higher than those of a sole practitioner; and (4) we look at their attitude to tax

compliance matters. Whilst we don't make moral judgments, if the client will create a risk for us, we won't deal with him.

A variation of this theme of protecting the firm is provided by focussing on the incentive structures of tax accountants. Just as taxpayer clients see tax as an expense to be minimized, tax practitioners see tax work as a business from which profits are to be made. A lawyer reminded us that "the most important role [of the tax practitioner] is the one that earns most money from the practitioner's viewpoint." A Sydney accountant expressed this sentiment in more detail:

"As a business man, the most important role is turning knowledge into fees, keeping our heads down and bums up. From the client viewpoint, they generally want a quality product; they do not want to pay too much tax, but they want to obey the law."

Practitioners are afraid of being sued by their clients for giving incorrect advice and as a consequence, they tend to give conservative advice to their clients. A practitioner observed that "In the past, practitioners were less likely to be helpful in relation to tax compliance. They would assist clients to use the law in a way bordering on abuse. Currently, the Big Eight give extraordinarily conservative advice. This is perhaps a result of the fear of being sued. Practitioners now tell it as it is."

(vi) As influencers of the system: Some tax practitioners described themselves as having a role in the formulation of tax legislation. While this is true in the case of a small group of influential practitioners, the truth is that they contribute more to discussions about the administration of the tax system. Some are consulted about proposed legislation. An accountant in a medium sized firm believed that "the tax practitioners should have a role in assisting the government by formulating tax policy. It is important as the practitioners have to implement the legislation. We have views as to whether new legislation is practically workable." Some ATO officers also admitted that "practitioners have a role in developing the tax laws themselves." If tax practitioners feel that they have a stake in the formal structuring of the tax system, they might be more likely to seek to justify that system to their clients. This is suggested by the view of many ATO officers. A Sydney ATO officer fairly typically described the perceived importance of the practitioner in the following terms:

"Tax agents have an educative role, but they also have a wider role in terms of trying to influence their clients in relation to the need to comply with the law. The integrity of the system is very much dependent on the attitude of practitioners. If they criticise the system, their clients will also do so and vice versa."

4. The moral dimensions of tax work

"Most large practitioners would be loathe to be associated with artificial schemes. In the old days, schemes were easier than trying to solve tax planning by a commercial transaction. We are pleased to see the tax planning days put aside as we now structure tax around commercial transactions. Taxpayers should pay their share, but we don't lecture or hector clients."

(Melbourne large firm accountant)

"The starkness of moral issues 10 years ago was much clearer, ie in the days of the paper schemes. These days in litigation over business practice, it is more a process of clarification, not moralising. There is some hangover from the tax avoidance days in the ATO. You can count on one hand the number of old crusaders [in this office] and their influence is waning. You keep them away from large corporations."

(Melbourne ATO officer)

"I am being paid by clients for my advice and not for my moral views."

(Sydney accountant)

Unlike other areas of legal work, there has been a continuing debate about the moral dimension of tax practice (see further, Myers (1990)). It seems that moral ambiguity characterises the legal world inhabited by tax practitioners and ATO officers. This is especially the case with tax practitioners. In general terms, most practitioners acknowledge that tax compliance has some moral dimensions. But, when pressed, it became clear that this view was either very vaguely conceived or that it was controlled by other more powerful factors. When asked about the impact of the moral dimension on their work, few practitioners or ATO officers were prepared to acknowledge that morality had a great deal to do with this.

However, of the 104 practitioners from whom responses were obtained to the general question asking whether tax compliance had a moral dimension, 68 said that tax compliance did have some moral dimensions, 11 were neutral and 23 said that it did not. have any such dimension Practitioners often associated this perceived moral

dimension with social or community concerns, such as the payment of "one's fair share of tax" and references were frequently made to the changes which had taken place in community attitudes since the Barwick High Court era. As one Sydney accountant put it, "Yes, tax compliance does have a moral dimension. We live in a country in which tax cheats are no longer seen as desirable." Another common response was reflected in the statement by an Adelaide tax lawyer who believed that "tax compliance does have a moral dimension. It is part of the civilized society that we have to provide services not provided by private enterprise and so the society has to pay taxes."

Those who adopted the neutral position on this issue made observations such as those of a Perth accountant who said: "I don't think that money and morals have anything to do with each other." Similarly, an Adelaide lawyer observed that "theoretically it does [have a moral dimension], when you are reading explanatory pieces about legislation. But when you come down to a client-solicitor relationship, rarely do you see a client swayed by morals." Those who did not feel that tax compliance had a moral dimension stressed the importance of law and they also often criticised the moralising which was identified with the ATO. The perception of tax compliance in terms of adherence to law was reflected in the view of the accountant who said "I believe that tax compliance does not have a moral dimension. It is merely a question of applying the law." The tension between the legal and moral bases for tax compliance was well summarised by the Sydney accountant who noted that "tax compliance definitely does have a moral dimension. The difficulty, however, is whether we have a moral system or a legal system." An Adelaide accountant added that "there is a difficult fine line between morality and servicing clients." As a Perth lawyer also admitted, whilst tax compliance does have a moral dimension, "it is difficult to define its scope."

The Commissioner of Taxation was often criticised for "moralising". As a Sydney accountant observed, "The ATO would have you believe that tax compliance has a moral dimension. I don't think there is anything moral about it." A Melbourne lawyer answered that: "Boucher does think this, but it's a legal issue, that is, to the extent that the law requires us to do it we should, but we are not morally bound to pay it."

The typical response from practitioners when asked about the effect of moral values upon compliance was that while they would "not advise anyone to act illegally", morality is rarely part of the advice given, unless clients specifically ask for it, which

would be rare. A small firm accountant told us that "the issue of morality does not come into what I am doing. People do not pay me for this, they come to me to get advice as to what to do. Clients want to know what is safe and what is risky. If I can reduce tax I will." A Sydney large firm lawyer captured the mood of many tax practitioners in regard to this issue when he observed that:

"As a lawyer you ask is it legal or is it not. It comes down to commercial considerations. You are not being paid to bring a moral consideration to bear. Your test has to be whether it is legal or not and whether it is commercial."

Not surprisingly, none of the lawyers or accountants said that they advocated less than an exemplary standard of morality. In the hard light of practice reality the temptation and pressure to cut corners can be very great for the smaller practitioner. Many small to medium firms have little desire to come to the attention of the ATO even though they are probably less able to resist client pressure than are the larger firms. The smaller firms tend to deal directly with the owners of small businesses and they are likely to be placed under greater pressure than are the larger firms. The corporate clients of larger firms tend to be represented by an employee who, inevitably, has less financial stake in the result of the tax advice given by the larger firm than will the owner of the smaller business. The representative of the corporate client of a large firm is likely to be sophisticated in tax matters and consequently aware of the constraints operating in the tax system.

ATO officers tended to be more convinced that there was a significant moral dimension in tax compliance. Almost all of the ATO senior officers stressed the moral dimensions of tax compliance. One ATO officer expressed views more characteristic of many private tax practitioners when he observed that "there is no place for morals in the tax Act, but we are people and to some extent our mutual obligations to the country should play some part."

The ATO has tried to eliminate the moral crusader style from its audit staff but most of them saw an important moral dimension in tax compliance. In the words of one audit officer:

"Tax compliance does have a moral dimension. Over the years it was almost part of the Australian tradition to cheat and brag with reference to

tax. This is starting to change in that if another guy cheats, it will come out of your pocket. We get a high level of 'dob-ins' in audit."

Another officer made a similar point in saying that "There would not be many who do not want roads and schools. Tax compliance is more of a social obligation." Some officers thought that their perception of the moral dimension did not reflect a widely shared view and many would probably appreciate the sentiment of the officer who said that "It is morally wrong for people who derive some benefit from [community] services not to pay tax."

Despite their personal views of the moral aspects of tax compliance most ATO officers said that morality had no or little impact upon the way in which they did their job. The conventional position was expressed by an auditor who said that the moral dimensions of tax compliance "generally have no impact upon my work. As an auditor, my job is to look at the facts. I do not make judgments." As could be expected in an organisation as large as the ATO there are some officers who rigourously apply their moral perspectives to the job. A Sydney officer confirmed what we had discovered in other cities, that "we do attract some over-zealous staff who are mainly young cynical males." Another officer noted that "auditors are concerned and upset that the system is being abused. Sometimes you get a Rambo approach." It might be the case that for many in the ATO there is nothing improper in adopting a moral stance. We were told that "the staff see their work as moral and of benefit to the country."

The emergence of morality as an issue is a measure of the success of the government and the ATO in taking control of the compliance debate. The fact that the professional advisers should associate morality and taxation is unusual. It is significant, however, that, even where morality is recognised, very few of the professional advisers or regulatory officials allow it to influence their performance.

5. Tax Practitioners and Tax Compliance

"Our role is to advise that the client pay the minimum tax within the law."

(Adelaide accountant)

"Tax practitioners should be committed to improving the level of compliance. Anyone practising any administration of law should get it right."

(Perth ATO officer)

If tax practitioners see themselves as helping to ensure that their clients comply with the law how far should they be involved in improving the level of compliance by their clients ? There were mixed views on this matter. It was agreed by many that tax practitioners do have an obligation to ensure compliance but most practitioners would not be too concerned unless there was obvious illegality involved. One small firm accountant said that "we try to encourage them to toe the line, but we don't take a hard stance." The characteristic view of lawyers was that "it is not the tax practitioner's job" to improve the level of compliance. Accountants did not always share this view. A Perth accountant saw his role as being "to ensure that clients comply up to a level where the clients do not get into trouble." Many large firm accountants expressed comfort with their compliance function. One said that "to the extent that people use our services, it is axiomatic that our clients comply" but this did not mean that they saw themselves as being "an extension of the ATO". The relationship between practitioner's compliance activities and the ATO was also alluded to by another large firm accountant when he observed :

"I regard compliance as lodging returns, that is proper returns. That is our policy and therefore there is no room for improvement. If I had a client who I thought was cheating I would disassociate myself from him. However, I would not dob a client in to the ATO."

It is expensive to comply and improving the level of compliance would be very costly. Some clients would be unprepared or unable to pay such costs simply because they see tax as non-productive expenditure. Many accountants said that they would prefer

to undertake thorough tax audits of their clients in order to minimise the risk of penalties but clients are rarely willing to pay for this kind of service.

It appears that the ATO depends very heavily on tax practitioners to improve the level of tax compliance. One ATO officer observed that "if tax agents did not assist, we would be in a lot of trouble as we only audit 2% of taxpayers". Some ATO officers expressed other reasons for the compliance role of practitioners. A Sydney officer remarked of practitioners that "they have a duty to try to influence their clients in relation to the need to comply with the law." Another officer also suggested that "it is in a practitioner's own interest to be involved in improving the level of compliance." It is clear that in a system that is based on self assessment, the dependence of the ATO on practitioners will inevitably increase. An ATO officer starkly explained that practitioners "could destroy the whole system if they wanted."

There are practitioners at all levels who resent the degree to which the ATO relies on them in compliance matters. A large firm accountant in Melbourne remarked that "its not my role to improve compliance with the system" and in a similar vein a small firm accountant observed that "you can't force a client to prepare a correct tax return. The ATO doesn't pay the fee." A solicitor explained that practitioners were in the hands of their clients and that tax practitioners could "only make decisions on the basis of information made available by clients. This may differ from the real facts. So there is a limitation to the extent to which practitioners can improve compliance." It should be said that practitioners often take clients through a detailed questionnaire to ensure that all relevant information is included in the return. Where clients are less than frank in their disclosures and this is evident to practitioners, the ethical pronouncements of the accounting profession require that the practitioner terminate his or her relationship with that client.

6. Compliance and the Law in Practice

The Australian taxation system has undergone major changes since the mid 1980s. New laws have introduced capital gains tax, fringe benefits tax, a cash transactions reporting system, tax file numbers, an imputation system, self assessment and, associated with them, a statutory substantiation scheme and a new penalty regime. But not only have new bodies of law and procedure been introduced; the Australian Taxation Office itself has undergone significant structural and operational changes and it is strongly supported by a government which understands that, if taxation policy is to achieve its goals, tax evasion and avoidance must be brought under control. The Australian Taxation Office has adopted a policy of voluntary compliance which means that every Australian is responsible for paying the correct amount of tax and will be penalised whether they know the law or not. The role of professional advisers and tax return preparers will grow as taxpayers find that, inadvertently, they have broken the law and have been penalised by the ATO. The way in which the imposition of penalties is entrusted by s 221 of the Income Tax Assessment Act to the ATO gives that agency wide powers in determining the practical operation of the tax law. The cost of challenging a decision by the ATO gives the ATO's views even greater importance.

As a consequence of the passage of the *Freedom of Information Act 1982* the Commissioner's Income Tax Ruling system became publicly available and began to play an increasingly important role as the tax system became more complex. The availability of these rulings to the public saw a change in their role and in the way in which practitioners carry out their professional roles. There are many tax practitioners who have found it extremely difficult to cope with the changes and some have simply decided to cease to undertake tax work, others have resorted to other survival strategies, such as placing increasing reliance on the ATO and on the Commissioner's Income Taxation Ruling system. In 1988-89 over sixty Income Tax Rulings were issued by the ATO (Australian Taxation Office, *Annual Report 1988-89* at pp 102-104).

The Income Taxation Rulings system formally assumes that rulings do not constitute the law. The courts have from time to time made that point and it is specifically stated

in Income Taxation Ruling 1 which is referred to in all subsequent rulings. IT Ruling 1 came into effect from 1 December 1982 and states that:

"In using Taxation Rulings it should be recognised that they cannot supplant the terms of the law. It is now well established that statements or declarations by the Commissioner of Taxation or his officers do not have the effect of an estoppel against the operation of the taxation law. While Taxation Rulings are compiled with care and are intended to assist in the interpretation of taxation law in given circumstances, they must be overruled by legislative amendment to the law or by decisions of appellate tribunals. Furthermore, where a Ruling is given in respect of a particular fact situation it will be operative in a circumstance of that fact situation. Taxation Rulings are issued subject to these necessary reservations."

The 1987 *Report on Income Taxation Rulings* by the Senate Standing Committee on Legal and Constitutional Affairs recommended that "each ruling issued by the Commissioner of Taxation should contain a caveat to the effect that: (1) the ruling does not have the force of law, and (2) each decision made within the Australian Taxation Office will be considered upon its individual merits as well as pursuant to any relevant ruling." (Recommendation 2.48). Subsequently, in paragraph 6 of Taxation Ruling IT 2500, the ATO pointed out that :

"the basic administrative policy of the Australian Taxation Office is to stand by what is said in a Taxation Ruling and to depart from a Taxation Ruling only where there are good and substantial reasons. Any departure would be confined to situations where:

- (i) there have been legislative changes;
- (ii) an applicable tribunal or court overturns or modifies an interpretation of the law on which a Taxation Ruling is predicated;
or
- (iii) the approach adopted in a Taxation Ruling is otherwise no longer considered appropriate."

In addition to the Taxation Rulings system, the Advance Opinion system is an important point of contact between the ATO and practitioners. Like Taxation Rulings, Advance Opinions are not legally binding on the ATO. Income Tax Ruling 2500 states at paragraph 14 that :

"Advance Opinions are subject to the necessary reservation that they are not binding on the Commissioner. As in the case of Taxation Rulings, when the time comes to assess liability to tax, the law as it then exists must be applied to the facts as established at that that time (cf *Wade's* case). Accordingly, while it is the administrative policy of the Australian Taxation Office to adhere to the advice supplied to a taxpayer in an Advance Opinion, and then only in relation to the particular case to which it relates (see para 17 below), it would generally be necessary to depart from the advice in circumstances similar to those warranting departure from Taxation Rulings as outlined in para 6. Normally departure would be on a prospective basis only unless the particular circumstances warranted..."

A further important qualification on the operation of Advance Opinions is set out in para 17 of Taxation Ruling IT 2500, which states:

"An Advance Opinion applies only to the taxpayer for whom it is given and cannot be taken as a precedent for other cases. It is also important to remember that where an Advance Opinion is given the views expressed will have application only in relation to the fact situation presented by the taxpayer from whom the request was received and only in respect of the transaction specified in the Advance Opinion. If the transactions are subsequently found to be part of a series of transactions not disclosed in the original request for an Advance Opinion - or the rights and obligations of all the parties to disclosed transactions are not fully stated in the request - the Opinion may have no application. Similarly, if a transaction is implemented differently from the proposal put to the Taxation Office the opinion may have no application."

Section 169A of the *Income Tax Assessment Act* which was introduced as part of the self assessment scheme provides for a question to be asked of the ATO in a return signed by the taxpayer or made on behalf of a taxpayer. It provides, *inter alia*, that "where, in a document furnished with a return of income of a taxpayer of a year of income and signed by or on behalf of the taxpayer, a question is raised that is relevant to the liability of the taxpayer to tax in respect of the year of income, the Commissioner shall give attention to that request." Income Tax Ruling 2500 sets out the procedure for seeking section 169A interpretations of the law from the Commissioner.

The corollary of informal mechanisms such as Rulings and Advance Opinions is of course the formal system of tax law and tax adjudication. The attitude of practitioners to the interpretation of tax laws seems to have changed since the schemes era which reached its high water mark in the later years of the Barwick High Court. A marked

contrast is now apparent between that era and the present attitude of the courts and tax practitioner community. If this can be expressed in terms of a pendulum, it seems that the pendulum has moved from one extremity to almost the other extremity. Today, both the courts and the practitioner community seem to share an abhorrence for artificial and contrived interpretations of tax laws, particularly where the tax transaction involved lacks clear commerciality. In this context, a legalistic and adversarial approach seems to have given way to a more informal and co-operative approach between practitioners and the ATO. It is relevant to note that during this period the powers of the ATO have been considerably enhanced and there has been a period of sustained governmental support for the activities of the ATO.

7. Practitioner Knowledge of Tax Law

"The Big Eight people would leave ATO people for dead. The fellow in Footscray is struggling".

(Melbourne ATO Officer)

The significant changes which have occurred within the Australian taxation system since the mid-1980s have made it increasingly difficult for many practitioners and for many in the ATO itself to keep up to date with the details of tax laws. One consequence of the demand for knowledge about new areas of tax law has been a serious drift of experienced staff from the ATO into better paid positions in the private professions. The large accounting firms by virtue of their resource base have become the repository of tax expertise, but even this sector is not immune to significant gaps in tax knowledge. There is still scope for mistakes, and as an ATO officer pointed out, "in the large case program we are amazed at the advice given by the best experts in the country, that they could make such mistakes." In some of the many new areas of law there is a widespread level of ignorance. An Adelaide officer noted that, "in areas like CGT very few of us are experts". Small tax practitioners might not need the same level of tax knowledge as larger practitioners, but they have experienced significant problems in even keeping abreast of developments in tax law. In both large and smaller practices there has been a tendency to specialize. In the case of smaller practices, practitioners in one area form alliances so that expertise over a wide range of areas is established and shared. The alliance, in effect, creates the expertise of a much larger firm. Smaller firms also rely for tax advice on larger firms in order to

service their clients and to provide insurance against subsequent litigation. The provision of tax advice to small firms of tax agents has become a significant source of income for many middle range to larger firms of accountants. The capacity of smaller firms of tax practitioners to cope at all in this area was often commented on. As a Sydney ATO officer observed, "I sometimes wonder how sole practitioners cope with their clients and with keeping up to date."

The experience of senior ATO officers as a group gives them a broader perspective of changes in tax knowledge than is available to most private practitioners and it is significant that they pointed to a decline in the level of tax knowledge in recent years. As one Perth officer noted, "Once upon a time you could talk of a good knowledge of the law, but this is no longer so. There are vast slabs which are not understood by the ATO or tax agents, and which many do not even know exist." Practitioners, especially small suburban practitioners, were said not to be as knowledgeable of the law as they used to be. An officer in Sydney attributed this to the fact that "[t]hey have suffered from the same thing as us, that is, being swamped by new legislation." The same fall off in knowledge was reported by Melbourne based officers.

It was a matter of concern to hear a tax officer say "I'm surprised at how little knowledge they have. People on the tax enquiries counter can't believe that some agents are in the profession given the nature of their inquiries." Another officer reported that "some older practitioners give up trying to keep up with the law." A colleague's view was that "We are particularly concerned with the lower end of the profession who can't keep up." A Sydney officer noted that "a lot more work needs to be done in professional development, especially in small firms." The low level of knowledge of many of the smaller firms of practitioners was referred to by several officers one of whom said that "smaller accountants rely on Rulings" for their knowledge of tax law. Indeed, in the course of the interviews it was clear that the small practitioners are influenced more by the Rulings and the attitude of the ATO than by the decisions of the courts.

Within the ATO itself, it is also recognised that the level of expertise has dropped sharply. The creation of new branch offices has diluted the level of expertise and the impact of that dilution has been accentuated by the devolution of responsibility from the National Office to the branches. At the branch level, the Deputy Commissioner is more a manager than a technically skilled and up to date tax practitioner. As one

admitted, "senior managers in the ATO devote minimal time to tax law compared with tax partners." This is not surprising in view of the pressures that are placed on deputy commissioners to manage a large number of staff, in many cases to preside over a very large geographical area and to play a public relations role with the community and in particular with the professions. At middle levels of the ATO there has been a considerable loss of experienced staff. The loss of this staff, very often to accounting practices, is a compliment to their standard of knowledge and professional skill.

8. Practitioners and the ATO

"You shouldn't be on the wrong side (of the ATO) if you want success
in your practice".

(Albury Tax Accountant)

The nature of the relationship between tax practitioners and the ATO says a great deal about the nature of contemporary tax work in Australia. This relationship has become much more friendly and co-operative than it was during the days of the paper schemes and the period of blatant tax avoidance. For most tax practitioners it is extremely important to be well regarded by the ATO. One New South Wales large firm accountant took the view that it is important "to establish one's reputation as a reputable firm." Other reasons for not making an enemy of the ATO covered a wide range. An Adelaide solicitor observed that it was very important because "it assisted in negotiation and settlement before trial." As a large firm solicitor in Adelaide also observed, "I think if you impress them as someone with credibility, integrity and reliability, they treat you better than someone who doesn't have those qualities."

Sentiments like this were repeated time and again by practitioners across Australia especially by those in small to medium accounting firms. One reason for this attitude to the ATO is the timetable set by the lodgement program for tax returns. An accountant in a medium sized Perth firm provided some insight into the attitude of agents when he told us that "keeping on the right side of the ATO is an important consideration in this practice. I have a tax agent's licence. It would not be hard for the Commissioner to withdraw my licence on any of half a dozen matters." It was surprising that even in what were once referred to as Big 8 firms some partners were anxious to be on the right side of the ATO. One large firm accountant probably

summed up the attitude of that sector of the profession saying that "[i]t is necessary, however, to keep a balance, that is, if the ATO is wrong one should stand up to them. It is not often that you need to have to stand up to them." Another large firm accountant denied that it was necessary to make special efforts to keep on the right side of the ATO as "you do not have to get on the side of the ATO if you comply." He pointed out the risks of becoming too close to the ATO :

"There is substance to the view that many practitioners are unpaid employees of the ATO. Too many practitioners seek rulings and use the ATO as a sounding board for advice. That is unhealthy. We are paid our fees for independent views."

It was almost an article of faith amongst the accountants in all of the centres we visited that the ATO maintains a 'black book' in respect of tax agents. None of the people who told us that it existed had any evidence but that did not sway them from their conviction that one false step was enough to gain an entry in the book. The ATO officers just as passionately denied the existence of the 'black book'.

The reaction of solicitors, which was to take exception to the suggestion that it was important for them to keep on good terms of the ATO, suggests that they perform a quite different role to that of most tax practitioners. As a large firm Sydney tax lawyer stated "No, keeping on the right side of the ATO is not an important consideration in this practice. It can, in fact, be a bad thing. It is necessary to be civil toward the ATO, to have their respect and be seen as trustworthy...Accountants are different, they want to have a good relationship with the ATO." A Perth lawyer in a large firm reported that he had "never felt threatened by the ATO. They do their job and I have no complaints." The difference between tax accountants and tax lawyers was also highlighted by a Melbourne accountant when he observed that "accountants have to be more careful than lawyers as we are dealing with them (the ATO) all the time. We have more to lose. Lawyers have a different training and go in boots and all." Lawyers are different in another way, they very often do not enter into a tax matter until it has reached the stage of a dispute and at that stage being any more than professionally civil to the adversary is not appropriate.

An important difference between contemporary tax practitioners and those of the 1970s is that few today wish to be involved in adversarial relationships with the ATO. As one Adelaide accountant characteristically put it, "I don't believe in direct

confrontation." Although many practitioners were keen to be on the right side of the ATO it should be said that many practitioners took that view in order to further, not jeopardise, client interests. As one Sydney accountant put it, "if an awkward situation arises, it is helpful to have a good reputation. Having a good reputation enables problems to be solved in the client's interests" and, as a Perth accountant expressed the same point, "[i]t is necessary to remain on good terms with the ATO so that our clients are treated reasonably." Although it affects the professional pride of some practitioners, especially the large firm accountants and lawyers, there is no doubt that it is an extremely important consideration for all tax practitioners to have a workable relationship with the ATO. The greater the number of contacts that a practitioner has with the ATO the more dependent she or he becomes on the ATO. It could perhaps be said that this would also be influenced by the amount of tax that might be affected by a poor relationship. Even lawyers, who seem to be most uncomfortable about their independence being questioned, generally saw little to be gained from adopting an adversarial attitude to the ATO. There was an air amongst some of the respondents that in dealing with the ATO one should humour rather than antagonise.

9. Practitioners and Tax Schemes

"I am never involved in any schemes - they smell wrong. Commercial viability is the first criterion and tax liability is the second".

(Melbourne suburban accountant)

The likely attitude of the ATO is also a factor which most practitioners take into account when contemplating tax planning advice. Generally, most practitioners were critical of the value of paper schemes. This was especially evident from the responses of small firm tax practitioners. At its most extreme, as one practitioner explained "there are no methods which can be used to reduce tax. Taxpayers are fooling themselves if they think there are any methods of reducing tax." Any tax reduction strategies would have to be seen to be "legitimate" before most practitioners would countenance them. The likely attitude of the ATO seems to play a very significant part in determining whether an arrangement is perceived to be legitimate. An accountant from a medium sized firm in Adelaide observed, "[w]e always take the attitude that any arrangement would have to be OK after the ATO looks at it. In other words, arrangements must be capable of surviving ATO scrutiny." Usually practitioners claimed that any arrangement which

was "artificial" would be avoided and only arrangements which had a "commercial effect" would be recommended to clients. In this context, practitioners repeatedly stated the view that "schemes are dead". A small firm Perth accountant reported that his firm "has taken the attitude that we do not want to be involved in anything that could not be substantiated in an audit as it will cause problems for both us and our clients." While schemes may be dead, tax shelters such as negative gearing, superannuation and primary production investments were far from dead but even these are, in the words of a Sydney accountant, "only tax deferral schemes."

Some large firm accountants were a little impatient with the ATO's concern about schemes, such as when a Perth tax partner exclaimed:

"There is so much rubbish in the media. Boucher's propaganda machine promulgates misconceptions of tax avoidance. The only things around are forestry and wild flower schemes. These are not tax issues, rather, they are commercial issues. In relation to off-shore transactions, I have always believed that there is nothing wrong with off-shore planning for off-shore income. I do not approve of the artificial derivation of profits. This is wrong."

A tax partner in the Sydney branch of a national accounting firm also highlighted the virtual irrelevance of schemes for contemporary tax practice when he observed:

"Borderline schemes are only useful to steely spined clients who have the nerve to enter into such schemes. My clients are not like that. People no longer say to me 'wipe out my tax liability'. People still send me things on schemes, but, there is no certainty with them. They may only work for a while."

A Melbourne large firm accountant provided further insight into the apparent abandonment of schemes on the part of practitioners when he noted that "[s]chemes are pretty much dead; perhaps an aggressive approach might not suit the corporate ethos." Similarly, a tax lawyer in a large Melbourne law firm observed that ultimately, it was "a question of judgment as to what's proper and what's not. I'm sure there are people who are prepared to give 'gung-ho' advice, but not in the big firms. It would be much less prevalent now." If this was the attitude of the large firms, it is clear that the vast majority of the smaller firms are even less inclined to be involved in tax advice which is artificial, improper or likely to bring them into conflict with the ATO. The practitioners are kept in a state of uncertainty about tax planning, tax minimisation and

tax effective financing arrangements because of the ominous threat of Part IVA - the general anti-avoidance provisions of the Income Tax Assessment Act which was introduced after the previous anti-avoidance provision had largely been interpreted out of existence. At the time of the survey, there had been no cases on this part of the Act.

Practitioners distinguished tax avoidance schemes and tax shelters. They were almost unanimous in reporting that paper schemes - the artificial form of tax planning - were dead and they seemed grateful for that. The larger accounting firms were not as critical of "going off-shore". The issues of off-shore transactions and tax havens have been the subject of reports by the House of Representatives Committee on Finance and Administration.¹⁰ The Committee's interest was aroused by an efficiency audit on the ATO conducted by the Australian Audit Office in 1985. The report, *International Profit Shifting*, indicated that transfer pricing associated with intra-corporate trade resulted in significant losses of revenue - the precise extent of which is unknown. In another report, *Taxpayers or Taxplayers?*, the Committee examined the use of tax havens by Australian companies. It concluded that the use of havens has resulted in losses of revenue but the size of the losses could not be estimated. The Committee recommended that the government "pursue at the appropriate international forums the methods by which the operations of tax havens can be reduced". Significantly, the Committee also concluded that the Income Tax Assessment Act "is in need of urgent review with the aim of not only reducing the complexity of the Act but also increasing its certainty". These shortcomings were identified by several witnesses before the Committee.

¹⁰ See *Shifting the Tax Burden?* (November 1988), *Taxpayers or Taxplayers?* (May 1989)

10. Informal Contacts with the ATO

"The problem with informal advice is that you have to know who you are talking to."

(Sydney tax lawyer)

Practitioners working in the tax field rely to varying degrees upon informal contacts with the ATO to obtain information and guidance. Some practitioners prefer not to make such contacts at all, but these are a relatively small minority. Many are being discouraged from continuing this practice, especially if the matter is at all complex, by Tax Office requirements that the request be put in writing. According to a practitioner in Perth, "we often seek advice from the ATO on an informal basis to get their view as to how they will approach certain matters. We especially seek their advice on capital gains tax matters." An Adelaide practitioner who relied on informal contacts with the ATO cautioned that their value "depends upon who you go to, you have to find the right person. I go to persons I know and whose opinions I respect." Victorian practitioners seem to have become the most disenchanted with the value of informal contacts with the ATO. Perhaps Adelaide is at the opposite extreme. In Melbourne, a not uncharacteristic response was that informal contacts were "a waste of time in Victoria. You can't act on the advice you get, it's not worth relying on. But written advice can take six months." Another Melbourne practitioner remarked that although he did seek informal advice, "you can't telephone except for procedural questions. They can't tell you on legal questions. We would never ring up with a hypothetical as the ATO doesn't have the expertise." This has created frustration for some Melbourne tax accountants one of whom observed, "we basically have given up. Its not much use, for example, in CGT, the Commissioner of Taxation is as much in the dark as we are. If necessary we take a solicitor's advice and then counsel."

There are a variety of reasons why different groups of practitioners seek informal advice from the ATO. Smaller practitioners are the most dependent on such advice for guidance. Large to medium firms seek informal advice for different reasons - "to find out their general attitude on a matter, not to find out their view of the law." Similarly, a small firm Sydney accountant who made use of informal contacts said that he made such contacts "as a second opinion. It is the next best thing to Advance Opinions." Large firms of accountants and lawyers make more limited use of this style and are conscious of the ATO's reluctance to engage in it.

The circumstances in which informal advice is sought vary considerably. Where a particular law is new, informal advice is often sought, even by large firms to "determine the intention of the legislation." A large firm partner said that :

"I do seek advice from the ATO on an informal basis, particularly when a transaction involves a new area of law. I discourage people from contacting the ATO on an informal basis where an area of settled law is involved."

Of those who do not make it a practice to seek informal advice from the ATO, the following comments from a Perth lawyer would be a fairly characteristic explanation:

"No. I never take advice from the government. I am a professional person who is there to interpret the law and advise clients accordingly. It is professionally incorrect to do so as the client wants your advice and not the advice of the ATO."

A Sydney large firm tax lawyer took a similar position when he observed

"I don't seek advice from the ATO on an informal basis. The tax practitioner has two duties to the client: firstly, to advise what he thinks the law is, and secondly, to advise what the ATO thinks the law is."

Tax accountants are not as rigid as these two statements suggest and tend to explain their reluctance to make informal contacts in terms of their preference for private rulings or Advance Opinions. One accountant in a medium sized firm who did not make informal contact with the ATO observed that "we have a policy that unless we request rulings, we will not seek informal advice as it is not necessarily correct. We formulate our own view. If necessary we seek a formal opinion."

11. The Tax Rulings System: Views From the ATO

"I don't encourage informal contacts, given the workloads we have got. Our role is to give advice on serious problems, not on Master Tax Guide stuff."

(Melbourne ATO officer)

The extent to which tax practitioners informally consult the ATO for tax related advice depends on the level at which the ATO is approached. Most of the senior ATO branch officers say that they are infrequently consulted, but at lower levels within the ATO approaches could be much more common. One Sydney ATO officer observed that such informal contacts were common because "practitioners like to get the network linkages in place - but not so much in the case of the bigger agents. They love to use our people as sounding boards - 'the what ifs'". An apparently common pattern was that "once a practitioner has got your name he or she will seek advice on a regular basis. It becomes a bit of a nuisance as there are genuine requests which must be dealt with." As to the kinds of practitioners who tend to initiate informal contacts, these are according to one officer, "all of them - if they have your name and the opportunity to do so. You provide a service and everyone will take advantage of it."

A Deputy Commissioner pointed out that although he is not consulted much by practitioners, it "occurs in the advisings area" and added that:

"We are being asked to do the practitioner's work. Practitioners have a reluctance to take responsibility for things. I wonder what they are being paid for if they don't want to take responsibility for the return."

Another senior ATO officer criticised practitioners who sought informal advice from the ATO as being involved in "queue jumping". He added that "For the Big Eight, we have now set in place mechanisms to ensure that this doesn't occur. If its so complex they should write in to us."

A Perth officer said "I do not like to be used and for that reason I do not encourage informal contacts. I have got enough work of my own." A similar view was expressed by a Sydney officer who observed that "we do not really encourage informal contacts as we find it difficult to get through day to day work. There are more formal channels."

We prefer that these be used." Several other ATO officers commented about the drain on time and the bad habit that informal contact can become. The problem that contact creates in terms of time is one thing, another is a tendency by the practitioners to "ask advice on one aspect and then they will put together a compromise. In effect, a ruling by pieces." Despite the criticisms, informal contact provides a basis for building a "rapport" with practitioners.

12. The Tax Rulings System: Views From Practitioners

"The Rulings system is very important. For the vast bulk of transactions it is helpful to know what the Commissioner's attitude will be. Most taxpayers want to know that. Clients want an easy life, they don't want disputes."
(Adelaide large firm accountant)

"Its an absolute disgrace because of the way its used. Theoretically, its a good idea that you have the FCT's opinion, but in practice its used as holy writ. Clients accept these as being in reality the rules that will be applied until the courts decide otherwise."
(Melbourne tax lawyer)

These two quotes illustrate the very diverse views held amongst practitioners about the importance of the Rulings system. The tensions evident in these attitudes reflect both the success and the failures of the system. It has been successful to the extent that it has come to be relied on heavily by many tax advisers, particularly in the smaller accounting sector. Rulings are regarded as far less complex than tax laws and they have the added advantage of being a useful guide to the ATO's interpretation of the law. They provide a good indication of the likely risks which face a particular course of action. An Adelaide accountant explained that "they guide you as to what you can and cannot do. They warn you if they are against you. They are in effect a set of rules, or a set of laws." Rulings are also very useful for practitioners in dealing with and advising the client about an arrangement. A small firm accountant said that:

"Rulings are vital in understanding the Commissioner's stance. They are extremely helpful in dealing with the client. You can go to the client and you can say that the Commissioner will fight us if we don't agree with the view expressed in the Rulings. This influences the client's decision commercially. The client then checks to see if it is worthwhile."

Lawyers tend not to have the same attachment to the Rulings as the accountants do but the following statement from a lawyer in Adelaide suggests that even the lawyers are affected:

"The Rulings system is of great importance in our advisings. We are obliged to find what the Commissioner has said to be relevant. It is the simplest way to go. We take a very pragmatic view of the Rulings and treat them as if they are the law because the client's accountants treat Rulings as if they are the law. The Rulings have become a sub-culture for accountants. They have threatened our integrity [as lawyers]."

The success of Rulings has meant that they have come to be treated as *de facto* law by both practitioners and ATO officers. Lawyers and the larger accountants in particular are uneasy about this development. A Perth accountant reflected the uneasiness by saying that "[t]he danger is that you tend to treat Rulings as the law. They are used to limit challenges or disputes with the ATO and to provide certainty." The problem of uncertainty in tax law is of course not an easy matter to resolve. One practitioner thought that "the Commissioner uses the Rulings system as a way to patch up deficiencies in the law, for example, by refusing to apply or limiting the application of a decision." A more critical assessment was that "the Rulings system is out of control. All we get is pseudo legislation. Rulings are often at odds with real life."

The *de facto* law status of the Rulings extends to the ATO and a large firm accountant criticised the system "because within the ATO Rulings are used as law...Too many people put too much store on them. The Commissioner tries to promote them as authoritative." Although the practitioners had mixed feelings about the Rulings there was also a great deal of irritation, not with the Rulings as such, but with the fact that the Rulings were not binding upon the Commissioner.

13. Taxation Rulings and the Tax System

"The Rulings for all intents and purposes are the law."

(Melbourne ATO officer)

Judging from the responses to this survey, the Income Tax Ruling system has become a fundamental part of the tax system both for the ATO and for most practitioners. Although many practitioners are critical of the significance that the Rulings system has assumed, there is no doubt that the ATO sees the system as a key part of its tax compliance strategy. A senior ATO officer summarised the value of the system in this way: "The ATO Rulings make the tax system a lot easier to administer. They achieve greater conformity to tax law. They are a readily accessible source of knowledge of tax law. Further, they also quickly solve areas of dispute." Another officer told us that "Rulings make a fairly substantial contribution to the administration of the tax system. Its one way we can get consistency of interpretation. Most Rulings are practical dissertations on how we would apply the law. Rulings have to be helpful. But different people try to make facts fit Rulings. Rulings are handy to both practitioners and the ATO officer."

The advantages of the Rulings system listed below are closely related but are sufficiently different to present differences in practice:

(i) The creation of greater certainty: As discussed earlier, the Rulings are stated not to be authoritative statements about the meaning of the law but they are frequently seen as such by both practitioners and officers. In so far as the meaning of tax law is what the Commissioner will do about a matter, the Rulings do constitute the law for all practical purposes where no judicial action takes place. Leaving aside the issue of whether the *de facto* law status of the Rulings is appropriate, they are widely accepted as valuable because they signal to practitioners the attitude of the ATO to a particular state of affairs. That process allows practitioners to plan clients' affairs in the almost certain knowledge that a transaction that observes the ruling will be most unlikely to be the subject of a subsequent dispute.

(ii) Rulings lead to consistency within the ATO: The ATO's national coverage presents major problems of achieving consistency in the administration and application of the law and the ATO sees the Rulings as being of great value internally. Originally, they were of course only intended for internal use. An officer told us that Rulings "have had a stabilising effect in our office. They are designed to do this." A Sydney officer remarked that "Rulings make our job much easier."

(iii) Dealing with disagreements between the ATO and practitioners: The ruling system is also seen by the ATO as an important means of eliminating potential conflict between itself and the taxpayer. It is a rare practitioner who will be prepared to challenge a ruling, even where it is perceived to be wrong. This is recognised by the ATO. As one Sydney officer remarked "Practitioners are unlikely to challenge Rulings and those who do are brave."

14. Taxation Rulings and the Role of the Taxation Commissioner

Many practitioners believe that the Commissioner of Taxation has moved from administering tax law to actually making laws through the ruling system. These views probably reflect a narrow conception of administration and the role of the head of a government agency and are no doubt influenced by the special criticism that is often reserved for taxation authorities. Commissioner Boucher was often criticised for having too high a profile and for taking a moralizing approach to his job. A Perth accountant asserted the critical view that "the Commissioner has moved greatly from administering to making tax law. This is a cause for concern as Parliament should be making law. This turns us into a police state. No bureaucrat should have that power." A Sydney accountant with a similar view described it as "contrary to the whole Westminster system." It was usually the Income Tax Ruling System that was singled out as evidence of the law making activities of the Commissioner. In one respect this example is surprising because, almost in the same breath, many practitioners were at pains to point out that the Rulings were only the opinion of the Commissioner and that they were not law. If the Rulings are seen as administrative guidelines there is nothing sinister about them. Administrative agencies have of course long had law making powers in the form of the power to promulgate regulations and by-laws, so that there is nothing unusual about law making by administrative agencies. Some practitioners who agreed that the Commissioner had moved in this way to a greater involvement in

law making thought that the Commissioner should not be blamed because the need for Rulings was the result of poor drafting of the law.

The Commissioner was also criticised for being "instrumental in determining the course of legislation." This misunderstands the principle that it is the Government which introduces legislation and has to defend it. Many practitioners saw little difficulty with this process. As one Adelaide accountant observed, "the Commissioner still administers law. We don't know how much say he has in law making. He ought to have a say in the legislative process." It is hard to avoid the conclusion that there was an ideological component in some of the criticism of the Commissioner for being involved in the process of law making. Some practitioners recognised this, as did one Sydney accountant who remarked that "It is a myth that the Commissioner is moving from administering to making taxation laws." Others pointed out that this has always been the role of the Commissioner, except that the current Commissioner has a higher profile and there has been more legislative and administrative activity in this area in recent years.

15. Tax Rulings and Tax Compliance Levels

"The Rulings system does contribute to compliance levels in that practitioners follow them."

(Perth ATO officer)

It is not possible to precisely quantify the level of tax compliance or, as the IRS calls it, the tax gap, and it is equally difficult to measure with any precision the impact of Rulings on the level of compliance. From the course of our research it is possible to draw some impressionistic conclusions. Senior ATO officers seem to have no doubt that the level of tax compliance has been enhanced by the the Rulings system. This improvement reflects the impact of Rulings on the practitioners for it is they rather than everyday taxpayers who are the "consumers" of the Rulings.

Across the country, the attitude of tax officials to the Rulings System was similar. They see it as contributing certainty to the law which, in turn, improves compliance if only in the sense of reducing the risk of inadvertent non-compliance. The universal application of the Rulings System brings consistency to the ATO's interpretation of the law so that previously widespread forum shopping has largely been eliminated and

non-compliance arising from exploiting wrong, but favourable, ATO opinions is reduced significantly. The availability of the Rulings publicises the ATO view and thus presents to practitioners a ready made interpretation which allows for a relatively trouble free resolution of any dispute or uncertainty. The force of the Rulings system is such that tax practitioners follow the Rulings even if they do not agree with them and it is little wonder that the Rulings are treated as *de facto* law. The attitude of the ATO is reflected in the comment of an officer who said that "agents who are trying to do the right thing will follow them." A variation of this view came from an officer in Melbourne who said that as a result of the Rulings "[o]nly a minority of cases will be tested in the courts, so a majority of Rulings are accepted as the cheapest way." Another Melbourne officer noted that Rulings "give greater certainty to the law and psychologically, they force people to comply."

16. Advance Opinions

"Ordinary practitioners probably may not have time to be stuffed about so they wing it. Suburban practitioners don't have any choice."

(Melbourne ATO officer)

I have sought two Advance Opinions in the last 20 years. The answers I have received have been garbage."

(Perth small firm accountant)

Advance opinions are sought from the ATO in order to reduce risk and to instil greater confidence in the advice being given to a client. One ATO officer explained the reasons in the following terms:

"There are three main reasons for the use of the formal advance opinion system. Firstly where a tax practitioner is faced with lack of time for research and lack of confidence to make a decision, the formal advance opinion system is a good way out of the problem. Secondly, the formal advance opinion system assists greatly in a situation where the tax practitioner is not sure of the law. And thirdly, the tax payer and the tax practitioner are frightened of a penalty if their claim is wrong".

The ATO seems keen to continue to provide this service because, according to one senior ATO officer, "[b]y continually providing this service we maintain the expertise of our staff." And of course the ATO is able to gather fresh and timely intelligence about

the way in which the market is operating. An opposite view from a Sydney ATO officer was that the ATO "should not encourage it as it will be a millstone around our neck. It will take us back to the old assessment system." The system has not however been used as extensively as many in the ATO first thought that it would be.

Few of the practitioners said that they sought Advance Opinions very often. Some practitioners seem to prefer to rely upon informal contacts with the ATO. As one Perth accountant explained, "[w]e use the old boy network." The reluctance to seek such opinions more frequently seems to be due to the perception that they take too long and that they are not of a very high quality. A Perth solicitor explained that he did not make greater use of Advance Opinions because "they are not feasible due to the delay which occurs in a lot of cases." This view was echoed by many other practitioners and was the occasion of much criticism. The ATO when asked about the delay acknowledged that the opinions were not given on a 'same day' basis but pointed out that in most cases the issues were complex, the matter had probably been with the practitioner for some time and that it was unreasonable for practitioners to expect that opinions on serious matters could be given as quickly as the professions demanded. Another criticism was in respect of the poor technical quality of the opinions and a large firm accountant in Perth told us that:

"I have not sought Advance Opinions as a matter of course. With Advance Opinions you must bare all. They are dreadfully slow and officers are technically incompetent. This all adds up to making such opinions unhelpful."

A Sydney tax partner in a large accounting practice identified another perceived shortcoming of the Advance Opinion system as being that the opinions are not binding on the ATO as they are in the USA.

They were also criticised for being generally unfavourable to clients. An accountant in Adelaide said that "they (the ATO) seem to bend over backwards to make them unfavourable" and a Perth accountant said, "I have a cynical view that they will always give an anti-client view." A Melbourne large firm accountant wondered "if they are worth it. If it's a fine line, the ATO will always favour revenue." Generally speaking, the ATO was not thought of highly as an interpreter of tax laws. A Sydney solicitor characteristically explained that "The ATO is very unreliable in interpreting the laws. They are, however, consistent with their role of collecting revenue." The generally

negative view of the ATO's competence should however be seen in context. Many of those who criticised the ATO also acknowledged that at the higher levels the standard was very impressive.

Although there appears to be no analysis of the extent to which different classes of practitioners use the advance opinion system, the preponderance of opinion is that larger firms of accountants make the greatest use of it. The type of client, the size of the practitioner and the relationship with the local ATO seem to be the factors which determine the frequency of use of the system.

The use of Advance Opinions is explained by the following closely related reasons

(i) To control risk and uncertainty: The advance opinion system is widely seen as a means of reducing "the risk factor before going into a transaction, e.g. an international financing transaction." One officer saw Advance Opinions being used to protect the client "particularly where it is uncharted. It costs them nothing. Why not?" Uncertainty in the law is a serious problem and this means that some comfort may be gained by knowing the ATO's views on the matter. According to one officer "practitioners use the advance opinion system because they are unsure of the law, as we are. For example, the capital gains tax provisions are a mine field. Advance opinions will give the agent a clue as to the Commissioner's view."

(ii) To satisfy and placate the client: There are circumstances where an advance opinion will be sought at the insistence of the client. A Perth ATO officer confirmed this, saying that "the more complex ones are client initiated. Client driven ones make sound business sense. They do not want to take on the tax implications until the ATO has confirmed them." Even where the law is not uncertain, opinions are sought not so much with a view of ascertaining the law, but because "clients want the comfort of knowing they will not end up in court with the Commissioner of Taxation." The system can also be used by the practitioner to convince a client of a particular issue, for example, whether an expense is deductible. This was confirmed by a Sydney officer who told us that "where the client is adamant that a deduction is allowable the system is used to satisfy the client." Convincing the client was a common factor in the case of small or solo practitioners. One of our respondents who reported an inordinate number of requests for Advance Opinions explained that he did so in order to convince clients that his view and advice was correct.

Another common explanation was that the system is used "[t]o get a second opinion and to support their own views. In a lot of cases there is very big money involved. They don't want to be sued by their client and some of their clients are very hard to convince....largely its a prop, a security blanket."

Comfort for clients, insurance for the practitioner against a negligence action and the support of an external party to assert the practitioner's position in technical matters are important factors in the Advance Opinion system.

(iii) The complexity of the transaction involved: The complexity of transactions may be such that the tax implications are far from clear and the very reason for the transaction in its particular form could be its tax effectiveness. This is commonly the type of case where an advance opinion is necessary. In many cases the transaction is conditional upon a satisfactory opinion from the ATO or an "ATO tick" or an "ATO clearance".

(iv) As a protective tactical device: The penalty system, itself a product of an income tax ruling (IT2517), punishes mistakes in tax returns even where the mistake is honest or where it is in relation to a contentious issue of law, for example, the interpretation of a particular section. For this reason, practitioners use Advance Opinions, or the section 169A procedure, in order to protect their clients, and ultimately themselves, against penalties and claims of negligence. We were told that having an opinion from the ATO is helpful in the case of an audit.

17 Perceptions of Law and the Courts amongst Tax Practitioners

"If the arrangement doesn't have a *bona fide* commercial reality then forget about it, don't even bother about it".

(Melbourne private practitioner)

There is a widely held view within the tax practitioner community that the legalism and formalistic interpretation of tax laws that were characteristic of the scheme era and of the Barwick High Court are things of the past. We detected in the course of the project a widespread reluctance by contemporary practitioners to use the courts in their dealings with the ATO. Whereas in the scheme era the courts were perceived as friendly to taxpayers that is not the feeling that currently prevails. There are other factors which explain the reluctance to use the courts.

To a large degree, the perceived cost of challenging the ATO inhibits litigation. There is little incentive to engage in litigation, least of all in uncertain or test case litigation, unless the economic benefits are clearly warranted. Strong legal opinions from tax advisers that the ATO is wrong on a point of law apparently do not impress clients, especially where the Commissioner has expressed a different view in a ruling.

The significance of the cost of litigation was a matter on which there was a unanimity of view. Practitioners in all parts of Australia repeatedly confirmed that the cost of contesting a legal point was the major consideration in the decision to challenge the ATO. A large firm accountant in Adelaide remarked that "[t]he cost of contesting a point of dispute is absolutely the only consideration. I've never run a case." In many cases practitioners reported that they frequently disagree with the ATO on a point of law but clients are usually more impressed by the view of the Commissioner if the cost of litigation is likely to be high and the amount of tax at stake is not all that great. Another large firm accountant observed that "[w]hen we have an advisory opinion or ruling which goes against a taxpayer, our client won't bother about challenging it even if we think he has a strong case. It's a very strong system weighted in favour of the ATO. The Commissioner gets the money by default". In regard to the capacity of the ATO to engage in protracted litigation, it was not uncommon to hear statements such as that the "Commissioner has a bottomless pocket with no sense of accountability." We were told that business cannot afford the luxury of a legal fight on a point of principle. In

these circumstances, where there is a dispute with the ATO, the incentive for a negotiated settlement and for the use of informal mechanisms is all the greater. A Sydney tax lawyer nicely encapsulated the significance of the cost of disputing a claim when he noted that:

"Any litigation is an investment decision. Those who fail to see this end up unhappy. Often it is better to concede the point. Sometimes it is cheaper to give in. People do fight on principle. We try to persuade them out of it. There are lawyers who will exploit clients with litigation."

The obstacles to litigation by taxpayers work to the advantage of the tax authorities. The ATO can be almost certain that a dispute will be resolved by economic criteria and that virtually nobody will challenge it on a matter of principle.

Practitioners are conscious of the shift in the attitude of the courts in taxation cases since the Barwick era. Many spoke in terms of the swing of a pendulum such as an Adelaide practitioner who distilled the views of many practitioners when he observed that "the pendulum has swung completely from Barwick to the present day and may have gone too far in taking the purposive approach too far. Their attitude is now far more pragmatic than in the early years. Barwick's approach would have wrecked the tax system. It was doomed to fail, it had to change." The professions' perception of the current attitude is revealed in the observation of a Perth practitioner that "[t]he approach taken by Australian courts depends on the arrangement involved. If it is a blatant contrivance, the courts are quick and decisive in knocking out the structures. Even if it is commercial, the courts have an anti-arrangement sentiment. The courts now adopt a pro-revenue approach." Not all practitioners shared the view that the courts were pro-revenue. If anything, they were said to have adopted a middle ground position. A summary of the professions' understanding of the courts is that "[t]here has been a massive swing from Barwick...They are not pro revenue. The approach taken by the Australian courts is more pragmatic, reasonable, realistic and business-like. The courts look at commerciality." A lawyer explained that, in advising clients about litigation over particular arrangements, he imagines himself in court and measures how convincing he would be in explaining to the judge why the transaction was carried out in a particular way. If the explanation is not convincing on the grounds of commerciality and realism the client is advised to accept the ATO's decision. The robust approach taken by the Courts in tax matters has been a significant deterrent to litigation.

The tax practitioners made the following range of observations about the courts:

- (i) they now look at the social consequences; judges are more susceptible to community opinion and attitudes; courts have taken a social stand rather than a purely legalistic stand; the courts have been affected by public opinion;
- (ii) they appear to take a government oriented line; the courts have moved from leaning the taxpayer's way to leaning the revenue's way, but are moving back to the middle;
- (iii) they are much less literalistic; taking the purposive approach too far; there is now less black letter law than in the Barwick days; the courts are making determined efforts to get some purpose back into the legislation;
- (iv) they are more realistic; more reasonable; and adopt a commercially pragmatic approach;
- (v) they put substance over form; non - arms length schemes are thrown out; artificial schemes would be looked right through;
- (vi) they seek the 'right ' rather than the 'legal' decision.

18. Legalism and the Spirit of the Law

"If you followed the strict letter of the law and ignored the spirit, you might fall foul of the law. You have to have regard to the spirit of the law. The days of strict interpretation are gone."

(Perth large firm solicitor)

Practitioners are reluctant to be involved in tax arrangements which are artificial and which do not have a clear commercial basis. This reflects the less literalist, more purposive attitude of the courts and in this context it is interesting to examine practitioner attitudes to legalistic interpretations of the legislation. Most practitioners professed to be influenced by the "spirit" of the law but some wondered what this meant precisely. One Perth tax lawyer in a large firm expressed this concern:

"The spirit of the law does influence my tax planning advice. According to Boucher, the spirit of the law is to pay more tax. I do not agree. It is a case of interpretation. It is necessary to give attention to the spirit, given

the attitudes of the courts. It is now necessary to read the explanatory memoranda which are very important but are not very useful".

A large firm solicitor in Sydney took a similar approach when he observed that:

"These days, the spirit of the law influences my tax planning advice to a larger extent. This is due to the attitude of the court which now looks at the substance of the law rather than taking a black letter approach. However, you still have to be a black letter lawyer. You have to consider what the intention of the law is and apply common sense."

Very few would challenge the ATO on a different interpretation of the spirit of the law. A large firm accountant in Sydney explained that "[i]f you believe that the letter of the law means one thing but that meaning was not intended, you may win five years later but this may make the transaction unviable." This reflects the generally more practical or pragmatic approach taken by accountants where there is any doubt about the interpretation of tax law. As another large accounting firm Sydney tax partner put it:

"I always tell the client what I think the spirit of the law is. The spirit of the law can be determined from the explanatory memorandum and second reading speeches, although it is sometimes hard to define the spirit. It is necessary to reach a conclusion on what the most likely result will be with the ATO. No one wins in court and so the client must be aware of our view and of the Treasurer's view."

This kind of fear was reiterated by an accountant from a medium sized Sydney firm who told us that "I'm not prepared to take a formal approach because at the end of the day it will cost taxpayers too much. I'm not in favour of form because the court will not take that view. There's a fear of loopholes being closed, especially by retrospective law." Sometimes, however, the ATO was criticised for not taking the spirit of the law into account in the same way as most practitioners are urged to do. A Melbourne small firm accountant expressed some frustration about the possibility of identifying a clear rational purpose in tax legislation when he remarked that he didn't "accept that the tax system is logical and equitable. It is arbitrary and capricious and I accept it as that." Many accountants in smaller firms tended to see the spirit of the law in a different way. One told us that "[o]bviously there is a meaning to it all; the spirit of the law is that 'everyone shall pay his due taxes.' But we should not take the spirit too far. Your primary obligation is to your client and not to the broader community." It seems that tax lawyers and tax partners in the larger accounting firms see the spirit of the law in the

more technical sense of how the courts will read the legislation and the intent of the legislature, but the smaller firm accountants tend to see it in terms of how the ATO will react or read the legislation.

Rather than the spirit of the law, accountants like to talk of the "smell test" as a guide as to whether an arrangement is acceptable or not. While many would see "the law" as providing the border between acceptable and unacceptable tax minimization arrangements, this has to be qualified by the additional criterion as to whether the arrangement is artificial. The common approach was explained by an accountant in a medium sized firm in Perth who told us that "we do not strive for technical excellence, rather we go for commercial reality." In practice that means, as an Adelaide large firm accountant observed, "[w]e start with the 'smell test'. Is it likely that the courts will accept this arrangement and not apply the general anti-avoidance provisions? That's the acid test. We would also consider the ATO view."

The smell test is used by solicitors such as one from a medium sized firm who said that "the smell test should be used if the ATO is likely to challenge it." A tax partner from a large Sydney firm of solicitors likewise used the "smell test" and applied it to anything which was "artificial, blatant and contrived". He added that "the smell test is the best test for s 260. Part IVA is based on the smell test." Another Sydney solicitor thought that "the courts will apply the smell test". A tax partner from a large Sydney accounting firm said that "the smell test, and whether an arrangement is artificial, can determine the border between acceptable and unacceptable tax minimization arrangements." While the smell test is often referred to, it is of course a most indefinite measure. A Melbourne accountant in a large firm observed that he applied the smell test, but "some people's noses are more sensitive. The position has to be legally credible." When it came down to it, for many practitioners, the smell test is the way of determining if the arrangement would stand up to scrutiny from the ATO and the courts. In the words of a Canberra accountant "the smell test is not the border between what is acceptable and unacceptable, it is the test of what is acceptable to the Commissioner, and also of what will pass the judge. Many schemes that pass the smell test are legal but too risky."

Legality alone is not a sufficient criterion on which to base tax advice. Practitioners seek to discern the spirit or intention of the legislation, they are also concerned by the likely attitude of the ATO and the effect that the proposed tax arrangement has

metaphorically on their professional nostrils. Time and again the issue of commerciality of the transaction was stressed. It seems that, ultimately, this factor must be seen as the real basis for tax advice. Legalism *per se* is eschewed by Australian tax practitioners . It would not be true to say that all tax practitioners are driven by or even interested in the spirit of the law but there is, nevertheless, a widely shared ethic amongst these practitioners that other considerations are at least as important as the terms of the tax laws themselves. This seems to reflect the spirit of the times rather than merely the spirit of the law.

19. Conclusions

In the view of tax professionals, the level of compliance in relation to taxation laws, or obedience to the law, has improved considerably during the 1980s. How extensive that improvement is cannot be adequately measured. If there is a weakness in the knowledge of the revenue authorities, it is that they do not have an accurate measure of how much revenue is lost to non-compliance. The black economy is a black hole - estimates of its scale vary widely and ideas of how to combat it through the income taxation system are scarce. Losses through off-shore transactions are also difficult to measure. Notwithstanding the lack of quantification, it is agreed on all sides that attitudes to compliance have undergone a significant change. Many factors have contributed to that change and many of those factors are inter-connected.

At the practitioner level, the anti-ATO aggression of the 1970s has been replaced by a closer, more professionally courteous relationship which reflects several influences. The accounting profession has been anxious to overcome the stain suffered as a legacy of the tax avoidance era. Practitioners are under pressure from their clients and the ATO. Clients, for the most part now understand that tax advisers cannot work miracles. They are more realistic about their tax options and commercial attitudes but they still expect that accountants will provide the best possible service and will control the cost of taxation as much as possible. Accountants understand that their primary professional responsibility is to their clients. The ATO has successfully impressed upon taxpayers that there is no real advantage in taxation fraud or artificial transactions. Clients therefore expect accountants to do whatever is necessary for them to comply. In this respect the accountants are forced into a relationship, not of partnership but more of interdependence with the ATO. Both parties are working, for different reasons, towards the same objective. There is little doubt that a large measure of the improvement in compliance can be traced to this coincidence of interests.

In dealing with clients the accounting profession has, it seems, taken the view that in the long run compliance is the wiser option. That is not to say that they would otherwise have advocated a breach of the law. Nor does it suggest that they are taking the easy option at the expense of the client. Rather, it could be argued that the

client benefits in the long run by eliminating artificial, non-commercial, tax driven business decisions and concentrating on the business as a whole rather than on its tax dimension.

The legal profession is not so closely involved in the compliance aspect of taxation. That area is dominated by the accounting firms. Lawyers tend to become involved at a later stage, in more complex matters and usually when the matter has developed into a dispute. The relationship between the ATO and the legal practitioners is not as close as it is with the accounting profession.

The ATO has emerged differently in the 1980s. It has taken a more forthright approach, it has undergone significant changes in its systems and it might not be too much to say that it has undergone considerable modernisation. The attitude of the government has been a significant source of support for the ATO. The government has recognised the economic and social damage inflicted by a culture of non-compliance. It reformed the law in fundamental ways. It provided for legal changes such as substantiation, which have contributed to major changes in the efficiency of the administration of the taxation system. The personal impact of the Federal Commissioner of Taxation has been substantial and his style, and that of senior ATO officers, has significantly affected the attitude of practitioners. They tend to be annoyed by what they say is a very aggressive approach but they acknowledge that the approach has been effective.

Even though the ATO is very powerful in the sense that it can confidently expect that the system will be altered to suit its goals, it is very dependent on the professional practitioners. They process approximately 66% of the tax returns lodged and they submit themselves to the discipline of the lodgment program. Withdrawal of their co-operation would create administrative chaos. The fact that practitioners significantly influence taxpayer compliance makes them a critical factor in the compliance process. A breakdown in the profession's commitment to compliance would have seriously adverse effects on the way in which the taxation system operates. For these reasons it is appropriate for the ATO to pay more attention to practitioners through the provision of better service, more consultation and less aggression.

The Courts have played a significant role in the emergence of a more compliant culture. They have been perceived by the profession as being more purposive in their

interpretation of the law and less tolerant of transactions that have no commercial integrity. The role of the Courts has been a decisive factor in the compliance process. Whereas in the tax avoidance era the High Court was perceived as encouraging tax avoidance, the modern judicial approach to taxation law has had a similar impact but in an entirely different direction.

Taxpayers ultimately decide whether the tax laws will be obeyed. It would be wrong to say that Australians pay tax cheerfully. It appears that they pay with a sense of resigned inevitability and in this regard they have been influenced by several factors. The successful political campaign against tax avoidance changed public attitudes - tax avoiders lost their hero status. To some extent Australians pay tax not because of patriotism or a sense of community responsibility but because they wish to escape the label of "bludger". Another, more significant factor is that of fear. The aggressive attitude and high profile of the ATO and the new penalty regime have been effective. In this regard the accounting profession has reinforced the ATO's campaign through its advice and through its attempts to educate clients to a more commercial approach to business affairs.

The ATO describes its goal as voluntary compliance. Voluntary compliance assumes that the subject group is able to understand the rules or, if not, has access to appropriate advice. In the taxation context it would be reasonable to say that most taxpayers have no detailed understanding of the law and for a high proportion of them the services of a practitioner are necessary. It is however significant to note that professional advisers have serious misgivings about the law. The complexity, the lack of certainty and the frequent changes to the law contribute to a climate of serious uneasiness among practitioners, even those in the major firms. Practitioners refer to a real risk of inadvertent non-compliance. The concern about the state of the law has made tax advising a less attractive area of practice. Small practitioners express a desire to leave the field because of its complexity; medium size firms seek second opinions; and the large firms warn of problems that will emerge in ten years' time. The ATO, it is said, is in a similar state of ignorance about new laws but it seeks to guide the profession by way of its rulings. The rulings have developed into *de facto* law. The ATO does not claim infallibility and respects the right of taxpayers to challenge the rulings but the cost of doing so is prohibitive and so, by default, the rulings are followed. In this way the ATO has emerged as the dominant force in the compliance process.

The improvement of compliance levels has been achieved by a combination of administrative and social means. It might well be argued that there is no more scope for improvement using that approach. The almost unanimous view of practitioners that a form of broad based consumption tax was a more appropriate way of introducing the black economy to the taxation system suggests that this style of taxation should be re-considered. The ability of what appears to be a sizable proportion of the population to evade taxation raises serious questions about the equity dimension of the current taxation system. It was also the widely held view that compliance would be improved if the law were simplified.

Maintenance of the generally satisfactory compliance level will require the continuous attention of the major players. The ATO needs to develop appropriate ways of measuring the level of compliance and the effectiveness of its strategies. In this respect there is considerable scope for research and consultant services. It needs also to pay attention to the professions to ensure that their goodwill is preserved and that the major role they play in maintaining the taxation system is respected.

The accounting profession is in a sense a passive participant in the compliance process. It has an ethical responsibility to obey the law while at the same time protecting the interests of its clients. Its capacity to ensure that clients do not over comply is affected by its confidence with the law and with the operations of the system. The government for its part needs to ensure that the cries for help from the practising profession, and others, about the unsatisfactorily complex and uncertain laws are heeded. Its law making process, especially "legislation by press release", appears to be unsatisfactory and creates resentment amongst practitioners.

The reaction between the regulator and the professions in the taxation arena reflects the fragile nature of the relationship. Even though the ATO might often have the upper hand it appears that the ATO would prefer not to antagonise the practitioner community if that can be avoided. Observers of white collar and corporate crime have much to learn from this position. Observers of regulatory techniques also have an excellent model in the form of the taxation system to see how the combination of a determined government and an ably administered agency can achieve the policy objectives of the legislation.

Appendix

1.The Project Methodology

The survey involved interviews of a total of 141 persons actively engaged in the tax field. This figure included 75 tax accountants in firms of different sizes, 33 solicitors generally in large to medium practices and 33 ATO officers in the National Office and in 11 branch offices in six cities. Tables 1, 2 and 3 provide a breakdown of those interviewed by reference to variables such as city, firm size and ATO branch office.

Table 1: Number of interviews conducted by location and practitioner.

| | Accountant | Solicitor | ATO | Total |
|--------------|------------|-----------|-----------|------------|
| Albury | 3 | 1 | 2 | 6 |
| Adelaide | 15 | 8 | 3 | 26 |
| Perth | 19 | 5 | 3 | 27 |
| Sydney | 15 | 6 | 12 | 33 |
| Canberra | 4 | 5 | 4 | 13 |
| Melbourne | 19 | 8 | 9 | 36 |
| TOTAL | 75 | 33 | 33 | 141 |

Table 2: Number of interviews of Accountants and Solicitors by location and size.

| | Accountants | | | Solicitors | | |
|--------------|-------------|-----------|-----------|------------|-----------|----------|
| | Large | Medium | Small | Large | Medium | Small |
| Albury | 1 | 0 | 2 | 0 | 0 | 1 |
| Adelaide | 5 | 2 | 8 | 1 | 7 | 0 |
| Perth | 6 | 7 | 6 | 2 | 3 | 0 |
| Sydney | 4 | 4 | 7 | 3 | 3 | 0 |
| Canberra | 2 | 1 | 1 | 3 | 1 | 1 |
| Melbourne | 5 | 5 | 9 | 3 | 5 | 0 |
| TOTAL | 23 | 19 | 33 | 12 | 19 | 2 |

Table 3: Number of ATO staff interviewed by branch office.

| <u>Branch Office</u> | <u>Number</u> |
|----------------------|---------------|
| Albury | 2 |
| Adelaide | 3 |
| Perth | 3 |
| Chatswood | 3 |
| Parramatta | 3 |
| Sydney | 3 |
| Sydney South | 3 |
| National Office | 2 |
| ACT Office | 2 |
| Melbourne | 3 |
| Victoria North | 3 |
| Dandenong | 3 |
| TOTAL | 33 |

The private practitioners in the survey had been practising in the tax field for an average of about 17 years. The ATO officers had on average been working in the tax area for a little over 25 years. Of the accountants, 23 were tax partners drawn from large accounting firms, 19 tax partners came from medium sized accounting firms and 33 were accountants who undertook tax work in smaller accounting firms. As very few small firm lawyers practice in taxation law, the study concentrated on larger firms of lawyers which employed a taxation law partner and on those working in "boutique" law firms. If there was a bias in the process of selecting interviewees for this study it was to draw upon the more experienced and the more professionalised end of the tax advisory community.

2. Funding and Support

The project was made possible by a grant of \$41,869 from the Criminology Research Council. The project was also supported by the Australian Taxation Office which made available a research officer who assisted in those parts of the project which required access to the ATO. The University of Canberra provided the bulk of the cost of travel to the United States of America and Canada. On these visits we visited Revenue Canada and the United States Internal Revenue Service in connection with the project and met a large number of academics from the United States, the United Kingdom and other European countries who are working and researching in the taxation compliance area. The University has also funded our attendance at conferences in Australia where papers on aspects of the project were presented.

3. Acknowledgments

It is impossible to undertake a project of this scale without the co-operation and support of many people. Foremost among them are the interviewees who gave up their time, reorganised their schedules and were prepared to answer a range of questions on matters of some sensitivity. We thank all of them sincerely.

We also wish to thank Mr J R Robertson, Director General Compliance Research and Investigations Directorate and Mr R S Hall Director Compliance Research Division of

Revenue Canada who graciously gave us their time and the value of their observations. We thank Mr W Lefbom and Mr J Weikel of the Internal Revenue Service whose discussion, advice, insights and professional comity made our visit to Washington worthwhile.

Bibliography

- American Bar Association, (1987), *Commission on Taxpayer Compliance - Report and Recommendations*, (July 1987);
- Centre for Socio-Legal Studies, *Annual Report, (1985-86)*, Wolfson College, Oxford ;
- Ayers, FA et al, (1987), "Factors Related to Tax Return Positions Recommended by Professional Tax Preparers in Ambiguous Situations", mimeo, University of Oklahoma;
- Bardach, E & RA Kagan, (1982), *Going By the Book: The Problem of Regulatory Unreasonableness*, Temple University Press, Philadelphia;
- Braithwaite, J, (1984), *Corporate Crime in the Pharmaceutical Industry*, Routledge & Kegan Paul, London;
- Breyer, S , (1982), *Regulation and Its Reform*, Cambridge, Harvard University Press;
- Cain, M., (1983), "The General Practice Lawyer and the Client: Towards a Radical Conception" (pp 106-130) in Dingwall, R and P Lewis (eds) (1983), *The Sociology of the Professions: Lawyers, Doctors and Others*, Macmillan, London;
- Coyne, ML and KW Smith, (1987), "A Conceptual Framework of the Incentives and Constraints of Tax Practice", mimeo, American Bar Foundation;
- Cranston, R, (1979), *Regulating Business*, Macmillan, London;
- Danet, B , KB Hoffman and NC Kermish, (1980), "Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure", *Law and Society Review*, 14(4):905;
- Diver, CS , (1980), "A Theory of Regulatory Enforcement", *Public Policy*, 28(3): 257-299;
- Freiberg, A., (1986), "Enforcement Discretion and Taxation Offences", *Australian Tax Forum*, 3: 55 ;
- Grabosky, P. & J Braithwaite, (1986), *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, Oxford University Press, Melbourne;
- Hawkins, K, (1984), *Environment and Enforcement: Regulation and the Social Definition of Pollution*, Clarendon Press, Oxford;
- Hawkins, K and JM Thomas (Eds), (1984), *Enforcing Regulation*, Kluwer-Nijhoff, Boston;

Heinz, JP and EO Laumann, (1982), *Chicago Lawyers: The Social Structure of the Bar*, Russell Sage Foundation, New York;

Helleloid, RT, (1987), "Ambiguity and the Evaluation of Client Documentation by Tax Professionals", mimeo, University of Michigan;

Hite, PA, (1987), "Characteristics of taxpayers who use Preparers: An exploratory study", mimeo, University of Kansas;

Jackson, B. and VC Milliron, (1987), "Research on the Practitioner's Role in the Compliance Process: State of the Art", mimeo, October 1987.;

Kagan, RA, (1978), *Regulatory Justice: Implementing a Wage-Price Freeze*, Russell Sage Foundation, New York;

Katzmann, RA, (1980), *Regulatory Bureaucracy: The Federal Trade Commission and Antitrust Policy*, The MIT Press, Cambridge;

Kaufman, H, (1960), *The Forest Ranger: a study in administrative behavior*, Johns Hopkins Press, Baltimore ;

Kinsey, KA, (1987), "The Social Dynamics of Tax Encounters: Perspectives of Practitioners and Officials", mimeo, ABF;

Klepper, S and D Nagin , (1987), "The Role of Tax Practitioners in Tax Compliance", unpublished paper, Department of Statistics and School of Urban and Public Affairs, Carnegie-Mellon University;

Lipsky, M, (1980), *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, Russell Sage Foundation, New York;

Long, SB , (1980), *The Internal Revenue Service : Measuring Tax Offences and Enforcement Response*, Document DOJ -11, National Institute of Justice, Washington, DC, US Department of Justice.;

Mazur, M and D Nagin, (1987), "Tax Preparers and Tax Compliance: A Theoretical and Empirical Analysis", mimeo, Carnegie Mellon University ;

McBarnet, D , (1984), "Law and Capital : The Role of Legal Form and Legal Actors," *International Journal of the Sociology of Law*, 12:231-238;

McKinsey & Company (1990), *Improving Services to Tax Agents and Large Companies on a Sustained Basis*, Australian Taxation Office, Task Force Report, March 20, 1990;

Myers, A., (1989), "Tax Advice - The Lawyer's Ethical Responsibility", *Australian Law News*, 25(2): 17-20;



- O'Neil, C and K Collins, (1987), "The Impact of Return Preparer Penalties on Small Tax Practices", mimeo, Virginia Polytechnic;
- Roth, JA , (1987), "A status report on the National Research Council Panel on Taxpayer Compliance: Tax Practitioners," mimeo, (p 10), 1987 IRS Research Conference;
- Roth, JA, JT Scholz and AD Witte, (1989), *Taxpayer Compliance, Volumes 1 and 2*, University of Pennsylvania Press, Philadelphia;
- Schwartz, RD and S Orleans , (1967), "On Legal Sanctions", *University of Chicago Law Review* , 34: 274-300;
- Shapiro, SP, (1984), *Wayward Capitalists: Target of the Securities and Exchange Commission*, Yale University Press, New Haven;
- Skadden, KM, (1987), "Are Professional Guidelines Important to Tax Practitioners?", mimeo, 1987 IRS Research Conference;
- Stone, A., (1977), *Economic Regulation and the Public Interest: The Federal Trade Commission in Theory and Practice*, Cornell University Press, Ithaca;
- Sullivan Review , (1988), "Improved Relationships with Tax Practitioners", Internal Revenue Service, November 15;
- Sutton, A., (1989) "The Bottom of the Harbour Tax Evasion Schemes" (pp 1-14) in Grabosky, P and A Sutton (Eds) (1989), *Stains on a White Collar : 14 Studies in Corporate Crime or Corporate Harm*, Sydney, Century Hutchinson and Federation Press;
- Roth JA, JT Scholz and AD Witte (Eds), (1989), *Taxpayer Compliance*, University of Pennsylvania Press, Pittsburgh;
- Tomasic, R (Ed), (1984.), *Business Regulation in Australia*, CCH Australia, Sydney;
- Tomasic, R, (1981), "Criminal Lawyers and Their Clients", *Australian and New Zealand Journal of Criminology*, 14:147-156;
- , (1983), "Social Organisation Amongst Australian Lawyers", *Australian and New Zealand Journal of Sociology*, 19: 447-475;
- , (1985), *The Sociology of Law*, Sage, London;
- White, P, (1987), *Survey of Tax Practitioners and Advisers: Summary Results by Occupation*, June , Office of the Assistant Commissioner (Planning, Finance and Research), Research Division, Internal Revenue Service, Washington DC.