

Aggressive tax planning: Differentiating those playing the game from those who don't

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Abstract

The study reported in this paper examined a group of Australian taxpayers who have expressed a preference for a creative and aggressive tax agent. The study attempted to understand how high-risk taxpayers and high-risk practitioners form their partnerships by examining aggressive taxpayers' attitudes and perceptions of the Australian tax system. Data were taken from 2040 Australian taxpayers who had responded to a national survey on tax issues. Results from a series of independent sample t-tests revealed that there are a number of important differences between 'aggressive' and 'non-aggressive' taxpayers. Finally, a logistic regression analysis was used to determine which variables most effectively differentiated aggressive taxpayers from non-aggressive taxpayers. The findings are discussed in a regulatory context and possible solutions for how tax authorities might deal with this high-risk group of taxpayer are suggested.

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1. Introduction

There are many reasons why taxpayers choose to use a tax agent. These reasons range from taxpayers wanting to file an accurate return, not having the knowledge to complete a complex return, wanting to minimise the tax they are required to pay, or simply not having enough time to complete their own return. Whatever the reason, taxpayer demand for tax agents has increased substantially over the past few decades. For example, in Australia approximately 70% of taxpayers now choose to use a tax practitioner (Braithwaite, Reinhart, Mearns & Graham, 2001; Australian Taxation Office, 1997).

The role that tax agents play in taxpayer compliance has received increasing attention over the past 15 years. Research in the United States has shown that professionally prepared returns tend to be more non-compliant than self-prepared returns and tax practitioners have stated that their clients demand such work (e.g., Coyne, 1987; Erard, 1993; Helleloid, 1989; Klepper & Nagin, 1989a). In contrast, a number of studies have reported that taxpayers demand cautious behaviour and accurate returns from their tax agents (Hite & McGill, 1992; Murphy & Byng, 2002; Sakurai & Braithwaite, 2001; Tan, 1999). This debate is far from being resolved. The aim of the study reported in this paper will be to identify the factors that lead taxpayers to seek the services of an aggressive tax practitioner. This will be done by examining a sub-sample of Australian taxpayers; namely, those who reported having an aggressive tax agent.

2. Theories of non-compliance

A number of theories have been proposed to explain non-compliant behaviour, both in the taxation context and in regulatory fields in general. The most dominant model of non-compliance in the regulatory field portrays the subject as an 'amoral profit-seeker

whose actions are motivated wholly by rational calculation of costs and opportunities' (Kagan & Scholz, 1984, p. 69; see also Kirchler & Maciejovsky, 2001). In the taxation literature, this assumption underlies the deterrence theory approach (Grasmick & Green, 1980). The central explanatory proposition is that a taxpayer is likely to break the law unless anticipated legal penalties exceed the additional earnings that could be made by evading tax.

One of the main limitations of the deterrence theory approach, however, is that it does not satisfactorily explain the high levels of observed compliance. For example, Smith and Kinsey (1987) have shown that the majority of American taxpayers are compliant even when the possibility of detection and punishment for non-compliance is obviously slim. Australian research has also shown that taxpayers report being generally compliant even when they believe others are not (Braithwaite et al., 2001). These findings suggest that taxpayers' attitudes towards the tax system, rather than (or in addition to) purely economic calculations or fear of punishment, are important in explaining taxpayers' non-compliance (see also Kirchler, 1999). Wallschutzky (1984) also indicates that attitudes are more important than opportunities in determining taxpayers' behaviour. The incorporation of attitudes into theoretical accounts of non-compliance is the basic contention of Kagan and Scholz's (1984) political citizen model.

The basic idea of Kagan and Scholz's (1984) model is that when 'amoral calculators' fail to comply, it is because they calculate that the costs of compliance exceed the benefits. For 'political citizens', however, non-compliance arises because they are not persuaded that compliance is a just obligation of citizenship. Kagan and Scholz's political citizen model also incorporates the idea that unreasonable behaviour by regulators generates resistance to compliance. Unreasonableness may involve disrespect for citizens, or arbitrary refusal to take their concerns into account in the enforcement process. Citizen response is likely to be weakened respect for compliance with the law. In the context of taxation, non-compliance could be interpreted as taxpayers' expressive rebellion against tax authority enforcement actions, or laws that are perceived to be illegitimate. Smith and Kinsey (1987) have also argued that people's social networks and

associations help shape their perceptions, norms and attitudes, which then influence their responses to imagined and actual sanctions. Recent research has highlighted the importance of using these socio-psychological factors to explain taxpayers' non-compliance, with some authors showing taxpayers' perceptions about evasion and fairness have a direct influence. For example, Porcano (1988) discussed how individuals who perceive evasion as prevalent, and/or to be an insignificant crime, tend to be less compliant. Taken together, the results of these studies suggest that taxpayers' attitudes towards tax authorities and tax systems in general need to be taken into account when attempting to explain non-compliance.

3. The role of tax practitioners in taxpayer compliance

The effect that tax practitioners have on taxpayer compliance has also received substantial attention in recent years (e.g., Ayres, Jackson & Hite, 1989; Jackson, Milliron & Toy, 1988; Klepper & Nagin, 1989a, 1989b; Reckers, Sanders & Wyndelts, 1991). Until recently, tax compliance research did not consider the potential impact of tax agents on the compliance decision.

While tax practitioners alleviate many of the informational and computational barriers to tax compliance, they also possess the expertise to assist their clients in exploiting opportunities for tax non-compliance. In fact, Klepper, Mazur and Nagin (1991) suggest that tax agents have a dual role. Given that they have unique knowledge of tax law, tax agents can be both 'exploiters' and 'enforcers' of the law. Klepper et al. suggest that in unambiguous situations tax agents tend to be enforcers of the law. In these situations, they tend to ensure compliance by recommending cautious tax minimisation strategies. In contrast, when a tax agent is faced with an ambiguous situation, they tend to be exploiters of the law, in that they encourage tax avoidance.

Given that tax agents do have the knowledge and expertise to exploit the grey areas of tax law, a number of studies have examined whether professionally prepared returns are more non-compliant in nature than self-prepared returns. Findings from these

studies have in fact suggested that professionally prepared returns are more non-compliant. For example, Smith and Kinsey (1987) found that audited tax returns prepared by Certified Practicing Accountants and attorneys tended to have much higher dollar audit adjustments. Erard (1993) also found that paid-preparer returns exhibited greater non-compliance. Similar findings have been reported in many other studies (e.g., Ayres, Jackson & Hite, 1989; Kaplan, Reckers, West & Boyd, 1988; McGill, 1988). Klepper and Nagin (1989a) reported that in 1979 in the United States about 44% of all tax returns were prepared by tax practitioners, yet these returns accounted for 74% of all non-compliance. As noted earlier, 70% of Australians now choose to use a tax practitioner to prepare their tax return. Thus, the potential loss of tax revenue due to non-compliant reporting poses a serious problem for the Australian Taxation Office (ATO). The question of who instigates this non-compliant reporting – the tax agent or taxpayer – is therefore an important question and is discussed in the next section.

4. Aggressive tax reporting

In the ATO's 1999–2000 annual report, the Commissioner of Taxation highlighted the importance of continuing to pursue the issue of aggressive tax planning. In this paper, the term 'aggressive tax planning' refers to the situation where there is a reasonable probability that a particular tax return stance will not be upheld by an audit and subsequent legal challenge. Thus 'an aggressive position is a risky choice due to the uncertainty of its final disposition' (Hite & McGill, 1992, p. 400). Despite the strategies that have been put in place to combat the rise of aggressive tax planning, the ATO is continuing to see intense activity among those who devise, promote, market and participate in such activities.

While many in the aggressive tax planning industry argue that they are simply responding to the demands of their clients, there have been many situations where participants in aggressive tax planning schemes have been led to invest based on trust in the proposals marketed to them (Australian Taxation Office, 2000; Murphy, 2002a; Murphy & Byng, 2002). Thus, the question of who instigates aggressive tax reporting –

whether it is driven by demand or supply – is complex, albeit interesting and important. Studies exploring this question have yielded contradictory results.

Results from a number of surveys (e.g., Collins, Milliron & Toy, 1990; Hite & McGill, 1992; Murphy & Byng, 2002; Sakurai & Braithwaite, 2001; Tan, 1999) indicate that the majority of taxpayers want their tax agent to assume an honest role and prepare an accurate return. Collins et al. (1990) concluded that approximately 70% of their sample used tax agents to file an accurate return, with only 25% indicating that minimising their tax liability was their primary objective. Hite and McGill (1992) and Tan (1999) found that taxpayers tend to agree with conservative advice offered by their tax agent, and to disagree with aggressive advice. Sakurai & Braithwaite (2001) also reported that taxpayers generally want an honest tax agent who files an accurate return.

In contrast, studies performed on tax agents themselves indicate that they view their clients as the initiators of aggressive tax reporting (Attwell & Sawyer, 2001; Klepper & Nagin, 1989a; Schisler, 1994; Tooley, 1992). This point of view is also supported by Sakurai and Braithwaite's (2001) research on a sample of 2040 Australian taxpayers. Sakurai and Braithwaite identified three types of tax adviser sought by taxpayers. The most popular type sought was one who was honest and risk-averse. The second most popular type was one who engaged in 'cautious minimisation of tax'. These practitioners avoid conflict, yet are sophisticated about identifying opportunities to minimise tax. The third type of tax practitioner sought by taxpayers was the 'creative accountant, aggressive tax planning type'. Here, the taxpayer wants a practitioner who is well networked and knows what issues a tax authority is targeting at that time. Unlike the second type of practitioner, the creative practitioner is not threatened by conflict. According to Sakurai and Braithwaite, this is by far the least popular preference among ordinary taxpayers, but identifies a niche market that is significant and of great concern to tax authorities.

Sakurai and Braithwaite (2001) also showed that taxpayers are likely to find tax practitioners who have the attributes they value most highly (see also Murphy & Byng,

2002). This finding suggests that a small number of taxpayers do in fact look for, and ultimately find, an aggressive tax agent who will aggressively minimise the tax they are required to pay. The present study aimed to further examine this group of taxpayer in an attempt to identify which factors are important for predicting when a taxpayer will seek such advice.

5. The present study

The study reported here used data from the Community Hopes, Fears and Actions Survey (Braithwaite, 2001) to study those taxpayers who have expressed a preference for a creative accountant of the aggressive tax planning type and who actually have an aggressive tax agent. In other words, this group of taxpayers has found a tax agent who corresponds with their ideal. It is assumed that these taxpayers will pose a greater threat to tax authorities than taxpayers who prefer to use an honest and risk-averse practitioner.

The study attempts to understand how high-risk taxpayers and high-risk practitioners form their partnerships by examining aggressive taxpayers' attitudes and perceptions of the Australian tax system. Specifically, it asks if the views of aggressive taxpayers differ from those of others in the general population. Following the argument of Braithwaite (forthcoming) – taxpayers who distance themselves from a tax authority tend to develop critical attitudes towards that tax authority to justify their behaviour – it is hypothesised here that taxpayers who have an aggressive tax practitioner will be more critical of the ATO and of the tax system in general. By providing a psychological profile of this sub-sample of taxpayers, policy-makers will be able to develop more appropriate policies for dealing with taxpayers in this high-risk group.

6. Method

6.1 Participants

The data used in this article came from the Community Hopes, Fears and Actions Survey (Braithwaite, 2001), which was a national tax survey conducted by the Centre for Tax System Integrity at The Australian National University. The survey was posted to a stratified random sample of 7754 Australians who had been selected from publicly available electoral rolls. After repeated appeals for participation, 2040 completed surveys were received. When adjusted for out-of-scope taxpayers who had died, moved address, or who were incapable of completing a survey (N=751), a response rate of 29% was obtained. While 29% seems somewhat low, such a response rate is not unusual in the tax context, with some arguing (e.g., Wallschutzky, 1984; 1996) that tax surveys of the general population cannot be expected to yield higher than a 30% to 40% response rate. More importantly, however, the respondents to this survey were a representative sample of the general population (for details see Mearns & Braithwaite, 2001).

6.2 Procedure

Survey data were collected over a seven-month period between June and December 2000. The initial survey package was posted to each taxpayer in the sample and comprised a covering letter, the questionnaire and a reply-paid envelope. The covering letter explained the intent of the study and also guaranteed participants strict confidentiality of responses. Participants were referred to a free-call number should they have any questions. The survey process was modeled on the Dillman Total Design Method (Dillman, 1978) which involved following up non-respondents over a period of time. The follow-up of non-respondents after the first mailing was accomplished using an identification number attached to each questionnaire, which was in turn linked to the sample name. A total of six mailings were made and by the end of December 2000, a total of 2040 useable responses had been received (see Mearns & Braithwaite, 2001 for a detailed discussion of the survey's methodology).

For the purposes of this study, two groups of taxpayers were of interest. The first was a group of taxpayers who reported that they preferred a creative accountant and who actually had an aggressive tax agent ($n = 539$). The second group of interest was a group of taxpayers who did not prefer a creative accountant and did not have an aggressive tax agent ($n = 861$). How survey participants responded to various questions in the Community Hopes, Fears and Actions Survey determined to which group they belonged. The Appendix provides detailed information on how each of these two groups was constructed.

7. Analyses and results

The data used in the present article consisted of taxpayers' responses to a variety of variables designed to measure beliefs and attitudes towards the ATO and the Australian tax system. The group that want and have an aggressive tax agent was compared to taxpayers who did not want or have an aggressive tax agent in terms of the following five constructs: their demographic profile, their world views; their motivational postures; their evaluation of the ATO and tax system; and their individual experiences (see Braithwaite, 2001, for a detailed description of these constructs).

Prior to conducting the present study, a number of scales measuring these five theoretical constructs had already been developed by Braithwaite (2001)¹. The scales were developed using principle components factor analysis with a varimax rotation. These already established scales were therefore taken and used for analysis in the present study. It should also be noted here that only the scales that appeared to highlight important differences between the two groups of taxpayers were examined. These differences are reported in the following sections.

7.1 Demographics

A number of demographic variables have been shown to play a role in tax non-compliance (for a discussion see Jackson & Milliron, 1986). Based on the data collected in the Community Hopes, Fears and Actions Survey, taxpayers who reported that they want and have an aggressive tax agent were differentiated from taxpayers who do not have an aggressive tax agent on three demographic variables: age, education and family income. As can be seen in Table 1, findings show that taxpayers who want and have an aggressive tax agent tend to be slightly younger on average, tend to be less educated, and tend to have family incomes significantly higher than those who do not have an aggressive tax agent. There were no other demographic differences between taxpayers who want and have an aggressive tax agent and other taxpayers².

7.2 World views

World views are a person's underlying beliefs about the world they live in and want to live in. The Community Hopes, Fears and Actions Survey operationalised this construct by measuring taxpayers' social and personal values in general, their values towards paying tax, and their priorities for tax reform. Table 1 compares the mean scores of taxpayers who want and have an aggressive tax agent with non-aggressive taxpayers in terms of a number of world view scales.

Insert Table 1 about here

7.2.1 Social and personal values. As can be seen in Table 1, two social value scales were found to differentiate the two groups of taxpayer; they were the status scale and the effectiveness scale (Braithwaite & Law, 1985). Those taxpayers who want and have an aggressive tax agent scored significantly higher on the status variable than other taxpayers. The 5-item status scale (Cronbach's $\alpha = 0.81$) measures the importance people place on economic prosperity, power and having high standing in their community. The results show that those involved in aggressive tax planning are more status-oriented, in

that they are more likely to view these attributes as important. The 5-item effectiveness scale ($\alpha = 0.85$) measures participants' resourcefulness and efficiency in using the best methods to get the best results. Results from the survey showed that those involved in aggressive tax planning thought this value was more important than those not involved in aggressive tax planning.

7.2.2 Tax morality. A number of scales were measured in an attempt to gauge the level of tax morality held by a taxpayer. For example, Michael Wenzel of the Centre for Tax System Integrity developed a 4-item scale labeled 'honesty in taxpaying' ($\alpha = 0.62$) to measure whether taxpayers believed they should honestly declare all cash earnings and not overstate deductions on their tax returns. As can be seen in Table 1, aggressive taxpayers are less honest than non-aggressive taxpayers. Results showed specifically that taxpayers who want and have an aggressive tax agent are less likely to think one should honestly declare cash earnings, are more likely to think working for cash without paying tax is a trivial offence, and are more likely to think it acceptable to overstate tax deductions.

Friedrich Schneider designed a multi-item scale labeled 'admiration of tax evasion'. Again, this 3-item scale ($\alpha = 0.57$) was designed to measure a taxpayer's overall level of morality towards paying tax. Specifically, this scale measured how a taxpayer would respond if they found out an acquaintance was working for cash payments without paying tax (i.e., whether they would care, whether they thought it was wrong, and whether they thought the acquaintance was clever). Table 1 shows that taxpayers who want and have an aggressive tax agent are more likely to view this acquaintance as smart for evading tax, suggesting that aggressive taxpayers are less likely to judge the behaviour as immoral.

7.2.3 Priorities for tax reform. A number of multi-item scales were developed to measure taxpayers' priorities for tax reform (Braithwaite, 2001). These scales were the cut administration scale ($\alpha = 0.69$), the simplification scale ($\alpha = 0.63$), and the make the

rich pay scale ($\alpha = 0.70$). Not surprisingly, compared to non-aggressive taxpayers, those taxpayers who want and have an aggressive tax agent thought it more important that taxes be kept as low as possible and thought it more important that the costs of administering the tax system should be minimised (see Table 1). Further, compared to the non-aggressive taxpayer, they thought the tax system should be simplified. Table 1 also shows that taxpayers who want and have an aggressive tax agent do not differ from non-aggressive taxpayers in believing that the rich should pay more in tax.

7.3 Motivational postures

Motivational postures represent the ways in which individuals position themselves in relation to a regulatory authority, and are predispositions to compliant or non-compliant conduct (Braithwaite, 1995). Using multi-item scales adapted from previous work, Braithwaite et al. (2001) showed that taxpayers adopt five different motivational postures in the taxation context: commitment ($\alpha = 0.82$), capitulation ($\alpha = 0.63$), resistance ($\alpha = 0.68$), disengagement ($\alpha = 0.64$) and game-playing ($\alpha = 0.69$). The posture that received the strongest endorsement in the overall sample was commitment, followed by capitulation, resistance, game-playing and disengagement. Table 2 compares the mean scores of taxpayers who want and have an aggressive tax agent with non-aggressive taxpayers on each of these motivational postures.

Insert Table 2 about here

As can be seen from Table 2, taxpayers involved in aggressive tax planning are less committed to the tax system than non-aggressive taxpayers. If a taxpayer adopts a commitment posture towards the tax system, it means they feel a sense of moral obligation to pay their taxes and pay their taxes with good will because they believe paying tax ultimately advantages everyone.

The posture of capitulation means that a taxpayer may not be happy with the ATO or tax system, but they acknowledge it is a part of life and they must accept that taxes

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need to be paid. Capitulation signals an intention to be cooperative with the ATO. The two groups of taxpayer do not differ significantly on this motivational posture.

Findings also showed that taxpayers involved in aggressive tax planning are significantly more resistant towards the tax system than the general taxpayer (see Table 2). According to Braithwaite (forthcoming, p. 18), resistance reflects ‘doubts about the intentions of the ATO to behave cooperatively and benignly towards those it dominates, and provides a rhetoric for calling on taxpayers to be watchful, to fight for their rights, and to curb tax office power’. Thus, taxpayers who adopt a resistance posture are likely to view the ATO with antagonism because they feel the ATO pushes them around.

A particularly interesting motivational posture to examine is game-playing. Taxpayers who adopt a game-playing posture enjoy the game of finding the grey areas of tax law and the challenge of minimising tax. In fact, they believe the ATO respects them for being creative in their tax affairs. As one might expect, findings from the survey show that those involved in aggressive tax planning score significantly higher on this posture than taxpayers not involved in aggressive tax planning. This result is hardly surprising in the present context, given that those involved in aggressive tax planning seek to minimise their tax by exploiting loopholes in the tax law.

The fifth motivational posture measured in the Community Hopes, Fears and Actions Survey was that of disengagement. Taxpayers who are disengaged from the tax system are those who do not care that they are not doing the right thing by the ATO and they believe the ATO cannot do anything to them if they choose not to pay their taxes. Further, they do not really want to know what the ATO expects from them. As can be seen in Table 2, those taxpayers who want and have an aggressive tax agent are more likely to be disengaged from the tax system than others.

7.4 Evaluation of the tax system

The results from a number of scales were analysed with the aim of gauging taxpayers' attitudes towards the tax system and the way in which the ATO operates. Table 2 presents the relevant scales that differentiated taxpayers who want and have an aggressive tax agent from others. Of particular interest was whether those involved in aggressive tax planning see themselves as receiving less favourable outcomes in relation to their tax affairs than taxpayers in general.

Distributive justice (Tyler, 1997) refers to the perceived fairness of outcomes. In the taxation context, if a taxpayer were to view a decision made by the ATO as being unfair or unjust, then they are likely to view their outcomes as unfavourable. The 2-item outcome favourability index ($\alpha = 0.76$) measured in the Community Hopes, Fears and Actions Survey was designed to ask taxpayers how often they agreed with decisions made by the ATO and how often the decisions had been favourable to them.

Sutton's (1997) 3-item material loss index was also analysed ($\alpha = 0.76$). This index was designed to ask taxpayers how they felt about paying tax and whether they believed paying tax removed the incentive to earn more income.

Based on the work of Tyler (1997), a 3-item legitimacy scale was constructed to test the perceived legitimacy of the ATO ($\alpha = 0.59$). While the ATO may have legal legitimacy, this does not guarantee them psychological legitimacy and, according to Tyler (1997), having psychological legitimacy influences the degree to which an authority is or is not effective.

Table 2 presents the group comparisons for each of these three scales. With respect to the outcome favourability index, taxpayers involved in aggressive tax planning are less likely to agree with ATO decisions than are other taxpayers. Taxpayers who want and have an aggressive tax agent are also more likely to think they would be better off working less given the rate of tax they have to pay (as measured by the material loss index) and are also less likely to view the ATO as a legitimate institution.

7.5 Individual experiences

According to some deterrence theorists a number of factors, other than the likelihood of getting caught, need to be taken into account when investigating taxpayers' non-compliance (Grasmick & Bursik, 1990). Braithwaite et al. (2001) argue that one needs to consider people's perceptions of the probability of getting caught, the perceived probability of receiving particular punishments, and the psychological and social problems posed by being caught. The psychological and social facets of how an individual interprets punishment were measured in two ways. Respondents were first asked two questions asking them how big a problem it would be to them if different types of punishment were received (Cronbach's α for this 2-item scale = 0.88). As can be seen in Table 2, taxpayers involved in aggressive tax planning are just as likely to view receiving punishment as a problem as those not involved in aggressive tax planning.

Next, respondents were asked how they would feel if they were given a particular type of punishment (i.e., a fine). Of interest was the extent to which they anticipated feeling shame if they were caught and punished for a tax offence. Ahmed (1999) argues that if regulatory action does not result in reactions of shame acknowledgment (e.g., feeling remorse, wanting to put things right), compliance is an unlikely outcome. Findings from the Community Hopes, Fears and Actions Survey reveal that taxpayers involved in aggressive tax planning are less likely to have reactions of shame acknowledgment than taxpayers not involved in aggressive tax planning (Cronbach's α for this scale = 0.97). In other words, they appear not to feel remorse for avoiding their tax obligations.

Ahmed also argues that those who do not feel shame for wrongdoing are likely to displace their shame. Shame displacement undermines compliance as it leaves people feeling angry and resentful towards the authority imposing the punishment. An individual who displaces their shame does not accept responsibility for wrongdoing and they blame others for what has happened to them. The shame displacement scale (α = 0.86) was formed by combining responses to eight individual statements (see

Braithwaite, 2001). Results showed that taxpayers who want and have an aggressive tax agent are more likely than others to blame the ATO if they are punished and they appear more likely to want to get even with the ATO. This is worrying because, according to Ahmed (1999), it could potentially manifest itself in more serious non-compliant behaviour.

7.6 Summary of findings

The study reported in this paper examined whether taxpayers involved in aggressive tax planning are different demographically, hold different world views, adopt different motivational postures, evaluate the ATO differently, or have different individual experiences than taxpayers not involved in aggressive tax planning. To summarise, it appears that taxpayers who seek out and have an aggressive tax agent are slightly younger, earn more and are less educated than the non-aggressive taxpayer. They are also more status-oriented, and believe they are more resourceful and efficient in using the best method to get the best results. The overall level of morality towards paying tax is also much lower in taxpayers who have an aggressive tax agent. They appear to be more against the idea of paying tax and are less likely to think that nothing is wrong with evading tax. In fact, this group of taxpayers appears to think evading tax is the smart thing to do. Taxpayers involved in aggressive tax planning are less committed to the tax system, are more resistant in their dealings with the ATO, and are more likely to feel disengaged from tax authorities. Not surprisingly, these taxpayers are more likely to adopt a game-playing posture, whereby they enjoy seeking out the grey areas of tax law.

Taxpayers who want and have an aggressive tax agent place less value on the tax system and ATO. Compared to taxpayers in general, they believe the tax system should be simplified and the costs of administering it should be minimised. They are less likely to view the ATO as a legitimate institution and are more likely to disagree with ATO decisions.

The findings also suggest that deterrence may be limited in its effect with this group of taxpayers. Taxpayers who want and have an aggressive tax agent are more likely to blame the ATO and feel unfairly treated under circumstances where they are caught and punished for a tax offence. This was coupled with the finding that taxpayers involved in aggressive tax planning are less likely to feel ashamed or responsible if caught and punished for a tax offence.

8. Logistic regression analysis

In the previous section, 15 scales and 3 demographic variables were found to discriminate taxpayers who want and have an aggressive tax agent from those who do not. A logistic regression analysis was chosen to identify which of these 18 items had the most predictive power in differentiating the two taxpayer groups. However, before proceeding with the multivariate analysis, the relationship between the 18 items was first assessed. It was found that some of the bi-variate correlations among items were somewhat high (r ranged from -0.64 to 0.55); the commitment scale, in particular, was found to have high correlations with many of the other items. Thus, due to a foreseeable multicollinearity problem, fourteen of the 15 scales (the commitment scale was not included) were entered into a principle components analysis with varimax rotation, with the aim of developing several higher order scales (for use of this technique in a non-tax context see Lea, Webley & Walker, 1995; Braithwaite, 2000)³. As can be seen in Table 3, the principle components analysis revealed four independent scales: the (a) ‘do not like paying tax’ scale; (b) ‘efficiency’ scale; (c) ‘conscience’ scale; and (d) ‘social distance’ scale.

Insert Table 3 about here

With taxpayer group (aggressive vs. non-aggressive) being the dependent variable, a total of seven predictors were therefore entered into a logistic regression analysis. The aim was to identifying which of these seven variables could reliably differentiate aggressive taxpayers from non-aggressive taxpayers. The predictors entered

into the analysis were: age, education, family income, and the four newly constructed second order scales developed above. Predictors were retained in the regression if they were significant at the 0.05 level or less. Table 4 presents the unstandardised regression coefficients (B), standard errors of B, Wald statistics and their level of significance for the analysis.

As can be seen in Table 4, a test of the full model with all seven predictors against a constant-only model was statistically significant, $\chi^2(7) = 157.68$, $p < 0.001$, indicating that the seven predictors, as a set, reliably distinguished between taxpayers who had an aggressive tax agent and those who did not. A total of 61% of taxpayers who used an aggressive tax agent were correctly classified by the function, and 68% of taxpayers who did not have an aggressive tax agent were accurately classified. The overall correct classification rate was 65%. It can also be seen in Table 4 that five items made significant contributions to the logistic regression. These results are important to note because they indicate that it is possible to find markers that significantly differentiate taxpayers involved in aggressive tax planning from taxpayers not involved in aggressive tax planning.

Insert Table 4 about here

First of all, the ‘conscience’ scale was found to be negatively related to the dependent variable, confirming that taxpayers who have an aggressive tax agent tend to have a lower level of honesty towards paying tax, and are less likely to feel shame if caught cheating tax. The positive relationships between family income, the ‘don’t like paying tax’ scale, the ‘efficiency’ scale and the ‘social distance’ scale with the dependent variable indicate that taxpayers who have an aggressive tax agent tend to have higher family incomes, are more likely to see paying tax as a burden, are more likely to want an efficient tax system, and are more likely to place social distance between themselves and a tax authority.

These findings were cross validated by randomly splitting the overall data file into two equal halves. The logistic regression analysis, with taxpayer group (aggressive vs. non-aggressive) as the dependent variable, was then re-run separately on each half. Findings from this validation analysis, like in the full sample, revealed that the ‘conscience’, ‘efficiency’, and ‘social distance’ scales were consistently significant across the two samples. The ‘family income’ variable and the ‘don’t like paying tax’ scale, however, were inconsistent across the two separate samples. Thus, discussion will be limited to those variables that consistently differentiated the two groups.

9. General Discussion

In previous studies, the debate over whether tax agents encourage taxpayers to take more risks by exploiting the grey areas of tax law, or whether taxpayers demand that tax agents explore these areas, is far from resolved. Findings have been reported to support both sides of the argument. While not directly addressing this question, the present study attempted to profile a group of Australian taxpayers who said they wanted and used an aggressive tax agent. The results of a large multivariate analysis of the data indicated that only three second-order scales—conscience, efficiency and social distance—reliably differentiated these aggressive taxpayers from non-aggressive taxpayers. The procedure of identifying these differences provides tax authorities and tax practitioners with useful information for developing strategic policies aimed at reducing aggressive tax planning.

While the family income variable was not found to reliably differentiate the two taxpayer groups, the contradictory finding between the overall logistic regression analysis and the cross-validation results seem noteworthy. In the overall analysis, taxpayers involved in aggressive tax planning were found to have higher family incomes than those not interested in aggressive tax planning. This finding alone would seem to suggest that interventions geared towards taxpayers at the upper end of the income scale would be more effective in reducing aggressive tax planning. However, cross validation of the data revealed that aggressive and non-aggressive taxpayers could not be reliably

distinguished by this income variable. This contradictory finding can perhaps be explained by considering recent trends that have occurred in the Australian tax market. These trends show that middle income taxpayers are now being lured by aggressive tax minimisation arrangements that were once only reserved for the extremely wealthy (see Australian Taxation Office, 2000; Murphy, 2002a; Senate Economics References Committee, 2001). One possible reason for this recent upturn in aggressive tax planning by ordinary taxpayers might relate to Hobson's (forthcoming) notion of 'rolling back the state'. Population projections in most developed countries indicate that 21st century retirement aged citizens will substantially out-number working aged ones. This will result in welfare resources being pushed to breaking point (see Hobson, forthcoming). The past decade in particular has seen an increasing political emphasis on Australians investing more of their income in superannuation, as well as other long-term investments, as a way of securing personal financial security in the future. With the ever increasing message to taxpayers being 'invest for your future', there seems little wonder why aggressive tax planning is now starting to become a popular option among middle income earners. Tax authorities will need to keep these issues in mind when dealing with the increasing problem of aggressive tax planning.

The efficiency scale was found to reliably distinguish aggressive taxpayers from non-aggressive taxpayers. The efficiency scale encapsulates the view that government and tax systems should be efficient through simplifying taxes and cutting administration. Taxpayers who expressed an interest in aggressive tax planning were more likely to express the view that the tax system should be more efficient. This finding is not unexpected. For decades, taxpayers around the world have been concerned about the increasing complexity of tax systems (e.g., Australian Taxation Office, 2001; Cuccia & Carnes, 2002; McKercher, 2002; Vogel, 1974). There is also evidence to suggest that complexity affects compliance with tax obligations (e.g., Collins, Milliron & Toy, 1992; Roth, Scholz & Witte, 1989; Vogel, 1974). With evidence such as this, coupled with the finding that 'aggressive' taxpayers are more critical of complex tax systems than 'non-aggressive' taxpayers, it is surprising that the attempts made by governments around the world to reform tax systems do not appear to be addressing the complexity issue

adequately. In fact, in both Australia and the United States, for example, income tax law has become increasingly complex in recent years, despite these reforms (e.g., Inglis, 2002; Slemrod, 1992).

The conscience scale that reliably differentiated aggressive from non-aggressive taxpayers included the individual scales of honesty in taxpaying, tax evasion admiration and shame acknowledgment. These items combined appear to measure the concept of a taxpaying conscience. This item therefore captures what we know about other work in the deviance literature which shows that conscience is developed through positively identifying with law abiding behaviour, and is controlled through feelings of shame and guilt (e.g., Ahmed, Harris, Braithwaite & Braithwaite, 2001). A number of other studies in the taxation context have also shown that taxpayers' personal conscience (e.g., Schwartz & Orleans, 1967; McGraw & Scholz, 1991; Wenzel, 2001; 2002), and the anticipation of experienced guilt over non-compliance (Grasmick & Bursik, 1990; Scott & Grasmick, 1981) can subsequently affect taxpaying behaviour. Taken together, these findings suggest that a strategy that aims to increase a person's taxpaying conscience may be particularly effective in curbing aggressive tax planning. Strategies that aim to increase compliance with the spirit of the law through reference to social norms and widely shared views about the importance of paying taxes honestly appear promising (see Wenzel, 2002). A practical example of how this could be achieved would be for tax authorities to work closely with tax practitioners in a joint effort to help spread the word that paying one's fair share of tax is a duty that should be embraced by all.

The finding that taxpayers involved in aggressive tax planning are less likely to have a taxpaying conscience also has implications for the way in which tax authorities deal with this high-risk group of taxpayers. With aggressive taxpayers being less likely to feel ashamed or guilty if caught cheating, bullying and issuing indiscriminate threats to those suspected of engaging in aggressive tax planning may be ineffective, and may in fact lead to higher levels of non-compliance. This suggestion supports Brehm and Brehm's (1981) research into reactance, which has shown that the use of threat and coercion, particularly when perceived as illegitimate, can produce the opposite behaviour

from that sought (see Murphy, 2002a; 2002b for a real example of reactance in the aggressive tax planning context).

This does not mean, of course, that strict enforcement and legal sanctions are unnecessary or inappropriate for those involved in aggressive tax planning. Punishment and deterrence of unjustifiable violations are essential even under a cooperative enforcement strategy. Perhaps a more appropriate strategy would call for discriminating as opposed to legalistic rule enforcement (see Kagan & Scholz, 1984; also see Murphy, 2002b). This could be achieved by focusing on taxpayers (and their advisers) who are engaging purposefully in unusual manoeuvres. Twenty-five years ago, Grbich (1976, p. 238) forcefully made the point that tax authorities should be concentrating on taxpayers who are purposefully involved in ‘artificial tax avoidance devices’. Taxpayers with a legitimate excuse or with a mistaken interpretation of the law might view responsiveness from a tax authority in a positive manner and, as a result, the gesture may act to bring this otherwise honest group of taxpayer back into the system voluntarily.

Finally, the social distance scale was found to reliably differentiate taxpayers involved in aggressive tax planning from those who were not. According to Braithwaite (forthcoming), in the regulatory context, ‘social distance indicates liking and the ascription of status to the regulatory authority’ (p. 18). When individuals and groups decide how much they want to associate or be aligned with an authority, and how much they want to be out of reach of and out of contact with the authority, they are indicating the social distance they wish to place between themselves and the authority. Findings from the present study show that taxpayers involved in aggressive tax planning are more likely to place more distance between themselves and a tax authority because they are more likely to be disengaged from the tax system and are more likely to be involved in game-playing whereby they use grey areas of tax law to minimise tax. How might we interpret these findings? Coupled with the finding that aggressive taxpayers are less likely to have a taxpaying conscience, these findings support the argument that taxpayers themselves may be the instigators of aggressive tax reporting. Caution is needed, however, in generalising this conclusion to all taxpayers involved in tax minimisation.

Sakurai and Braithwaite (2001) discussed how taxpayers open to low-risk tax minimisation strategies often find themselves with tax agents who serve taxpayers open to high-risk minimisation strategies (see also Murphy & Byng, 2002). Tax agents are usually expected to correctly interpret the level of risk their clients are willing to take and are also expected to judge what is acceptable minimisation behaviour. Often, however, this does not occur. Tax agents tend to be more adventurous than their clients in thinking a particular minimisation strategy will be upheld by a subsequent legal challenge (Hansen, Crosser & Laufer, 1992); so what is high risk for a taxpayer may be considered low risk to the agent.

Two possible solutions for dealing with these potential communication problems are apparent. First, eternal vigilance is obviously needed against the opening of tax loopholes. The integrity of overarching principles, which aim to bring about compliance with the spirit of the law, as opposed to the letter of the law, needs to be defended (see McBarnet, 2001; McBarnet & Whelan, 1999). However, as discussed by McBarnet (2001, p. 10), it is no easy task to sustain overarching principles and prevent them from being converted or reduced to rules that can then be used once again as material to creatively avoid tax. John Braithwaite of the Centre for Tax System Integrity at the Australian National University is currently working on this challenging topic.

Another approach for dealing with the issue of aggressive tax planning (or high-risk minimisation strategies) would be to develop formal guidelines and accreditation or registration procedures for the professional conduct of tax advisers and practitioners. Surprisingly, guidelines such as these have not yet been developed and only recently has the general area of professional ethics and responsibility received attention (for reviews see Cranston, 1995; Preston, 1996; Ross, 1998).

Woellner, Barkoczy, Murphy & Evans (2001, pp. 1771–1773) have recently put forth a proposal for the formulation of general guidelines for the ethical obligations of tax advisers in Australia. Their suggestion is to divide the tax adviser's role and ethical

responsibilities into four areas: tax planning advice; preparation of tax returns and dealing with the Tax Office; ‘the adviser as advocate’; and the adviser’s obligation to society. Some of the specific ideas put forth in their proposed guidelines include: (a) ensuring that advisers not recommend a course of action merely because the reality is that the client will probably get away with it; (b) making sure that advisers have an obligation to their clients and community to ensure that a proposed ‘scheme’ not be a paper arrangement only, but have commercial and family reality; and (c) where a client intends to file a false return or statement, the adviser should attempt to dissuade them from doing so. It is proposed that if the client insists on proceeding, the adviser should cease to act for the client in that matter. Of course, guidelines are not enough. Moses did not come down from the mountain with the ten guidelines; he also led the development of accreditation, education, confession (shame acknowledgment as an alternative to shame displacement) and excommunication processes of the church. Tax integrity still awaits its Moses.

The development of guidelines such as those suggested by Woellner et al. would be a start, however, in providing a safeguard for tax practitioners who feel pressured into developing clever strategies for minimising their clients’ tax obligations. They will also protect taxpayers from tax agents who may misinterpret their clients’ wishes or lack the ability or integrity to prepare accurate and correct tax returns.

10. Conclusion

While there is no clear and easy solution to the problem of aggressive tax planning this paper has attempted to provide the reader with a broader understanding of how taxpayers involved in aggressive tax planning think and operate in the tax system. The results are consistent with a number of the theories of non-compliance discussed in the paper, including deterrence, reactance, and shame management theory. The results suggest that the motivational drivers of aggressive tax planning may be multiple, with a number of interconnected theories each contributing a little to the explanatory power. The results have demonstrated that taxpayers who say they prefer high-risk advice, and

who have actually sought out an aggressive tax agent, differ substantially from other taxpayers. Their tendency towards engaging in aggressive tax planning may be seen as a reaction towards an organisation they perceive to be illegitimate.

While the findings of this study appear to support the notion that taxpayers with an interest in high-risk tax minimisation strategies instigate aggressive tax reporting, further work needs to be done on a sample of taxpayers who are actually known to be involved in high-risk tax-effective schemes to see how these taxpayers come to be involved in such activities (see for example, Murphy, 2002a; Murphy & Byng, 2002). In addition, much remains to be done in the area of the relationship between taxpayers and their tax agents; specifically, a question of interest would be to identify how tax agents and their clients broach the idea of aggressive tax reporting. In order to more fully understand the intricacies of this interesting group of taxpayers, these and related strategies will be the topic of future research conducted by researchers at the Centre for Tax System Integrity.

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12. Appendix

Two groups of taxpayer were of interest for the present paper.

- taxpayers who reported that they preferred a creative accountant and who actually had an aggressive tax agent (target group), and
- taxpayers who did not prefer a creative accountant and did not have an aggressive tax agent.

This appendix describes the procedure used to determine inclusion in these two groups.

12.1 Taxpayer group construction

Survey participants were asked the following two sets of questions (see Braithwaite, 2001, for a full description of the Community Hopes, Fears and Actions Survey).

1. If you do generally use a tax agent or advisor to prepare your income tax return, how well do the following statements describe his/her approach to taxation matters?

- I have a tax agent who is clever in the way she/he arranges my affairs to minimize tax (1 = strongly disagree, 2 = disagree, 3 = neither, 4 = agree, 5 = strongly agree)
- My tax agent helps me interpret ambiguous or grey areas of the tax law in my favour (1 = strongly disagree, 2 = disagree, 3 = neither, 4 = agree, 5 = strongly agree)
- My tax agent has suggested complicated schemes I could get into to avoid tax (1 = strongly disagree, 2 = disagree, 3 = neither, 4 = agree, 5 = strongly agree)

An aggressive tax planning scale (Scale 1) was constructed by combining responses to the three parts of Question 1. This particular scale determined if the taxpayer actually had an aggressive tax agent.

2. What priority would you place on the following qualities if you were to choose a tax agent or advisor?

- Someone who knows their way around the system to minimize the tax I have to pay (1 = low, 2 = medium, 3 = high, 4 = top)
- Someone who will take advantage of grey areas of the law on my behalf (1 = low, 2 = medium, 3 = high, 4 = top)
- Someone who is well networked and knows what the Tax Office is checking on at any particular time (1 = low, 2 = medium, 3 = high, 4 = top)
- A creative accountant (1 = low, 2 = medium, 3 = high, 4 = top)
- Someone who can deliver on aggressive tax planning (1 = low, 2 = medium, 3 = high, 4 = top)

In order to determine if a taxpayer wanted to have a creative accountant, two additional scales were constructed using parts of Question 2. The first scale (Scale 2) assessed the priority taxpayers would place on having a tax agent who has a cautious minimising and conflict avoidance style. This scale was measured by combining responses to parts 1 and 2 of Question 2. The second scale (Scale 3) assessed the priority taxpayers would place on having a creative accountant with an aggressive tax planning style. This scale was measured by combining responses to parts 3, 4 and 5 of Question 2.

12.2 Conditions for group inclusion

12.2.1 Taxpayers who want and have an aggressive tax agent. If a taxpayer scored greater than 2.5 on Scale 2 or scored greater than 2 on Scale 3, and also scored greater than 2.7 on Scale 1, they were classified as a taxpayer who reported that they preferred a creative accountant and who actually had an aggressive tax agent (target group). A total of 539 taxpayers were classified into this group.

12.2.2 Taxpayers who did not want and did not have an aggressive tax agent. If a taxpayer scored less than 2.5 on Scale 2 and scored less than 2 on Scale 3, or scored less

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than 2.7 on Scale 1, they were classified as a taxpayer who did not prefer a creative accountant and did not have an aggressive tax agent. A total of 861 taxpayers were classified into this group.

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Footnotes

1. All individual items used to construct the scales used in the present paper can be found in Braithwaite (2001).
2. Given the large number of t-tests conducted in this paper, bonferroni adjustment was used within each of the theoretical constructs to control for inflations in Type I error rates. For example, the resulting alpha level used to assess the demographic variables was 0.017; for world views it was 0.007; for motivational postures it was 0.01; for evaluation of the ATO and tax system it was 0.017; and for individual experiences it was 0.017.
3. Given the 15 scales were already well established in the literature, I was reluctant to deconstruct them and create new scales. Creating several second order scales was therefore seen to be an appropriate solution to the problem.

Table 1. A comparison of demographic variables and world view scales for taxpayers who want and have an aggressive tax agent (aggressive) and other taxpayers (non-aggressive) (standard deviations are given in brackets)

Variable/Scale	Aggressive	Non-aggressive	t value
<u>Demographics</u>			
Age	46.37 (14.24)	48.33 (14.07)	2.51**
Education (1 to 8 scale)	2.82 (1.61)	3.05 (1.69)	2.55**
Family income ('000s)	55.16 (43.94)	49.96 (32.47)	-2.44*
<u>Social and personal values (scores on a 1 to 7 scale)</u>			
Status	4.69 (0.95)	4.34 (1.02)	-6.42***
Effectiveness	5.58 (0.81)	5.44 (0.83)	-3.00**
<u>Tax morality (scores on a 1 to 5 scale)</u>			
Honesty in taxpaying	3.39 (0.70)	3.69 (0.69)	7.82***
Tax evasion admiration	2.83 (0.88)	2.51 (0.85)	-6.69***
<u>Priorities for tax reform (scores on a 1 to 5 scale)</u>			
Making the rich pay	3.96 (0.84)	4.00 (0.87)	ns
Cutting tax & administration	3.90 (0.76)	3.71 (0.85)	-4.25***
Simplifying the tax system	3.10 (0.95)	2.89 (0.94)	-4.08***

*p<0.017 **p<0.01 ***p<0.001

Table 2. A comparison of taxpayers who want and have an aggressive tax agent (aggressive) and other taxpayers (non-aggressive) on a number of scales designed to measure motivational postures, evaluation of the ATO and tax system, and individual experiences (standard deviations are given in brackets)

Variable	Aggressive	Non-aggressive	t value
<u>Motivational postures (scores on a 1 to 5 scale)</u>			
Commitment	3.76 (0.56)	3.91 (0.55)	5.19***
Capitulation	3.37 (0.53)	3.37 (0.54)	ns
Resistance	3.29 (0.51)	3.11 (0.55)	-6.24***
Game-playing	2.41 (0.53)	2.26 (0.52)	-12.60***
Disengagement	2.61 (0.58)	2.21 (0.57)	-5.37***
<u>Evaluation of the ATO and tax system (scores on a 1 to 5 scale)</u>			
Outcome favourability	3.52 (1.00)	3.73 (1.02)	3.63***
Material loss	3.25 (0.84)	3.00 (0.89)	-5.29***
Legitimacy	2.66 (0.64)	2.78 (0.70)	3.25***
<u>Individual experiences (scores on a 1 to 4 scale)</u>			
Problem of punishment	3.46 (0.73)	3.55 (0.66)	ns
Shame acknowledgment	2.92 (0.89)	3.13 (0.82)	4.29***
Shame displacement	1.94 (0.75)	1.70 (0.64)	-6.01***

p<0.01 *p<0.001

Table 3. Factor scores revealed when all 15 scales were entered into a second order factor analysis

Scale	Factor			
	Do not like paying tax	Efficiency	Conscience	Social distance
Legitimacy	-0.79			
Resistance	0.77			
Outcome favourability	-0.65			
Material loss	0.61			
Shame displacement	0.42			
Effectiveness		0.76		
Status		0.75		
Cutting tax & administration		0.58		
Simplifying the tax system		0.51		
Tax evasion admiration			-0.83	
Honesty in taxpaying			0.81	
Shame acknowledgment			0.54	
Game-playing				0.79
Disengagement				0.65

Note: Principle-components analysis, varimax rotation. Only factor loadings ≥ 0.40 are displayed.

Table 4. Unstandardised coefficients (B), standard errors of B and Wald statistics for the logistic regression analysis for discriminating between taxpayers who have an aggressive tax agent and those who do not

Independent variable	B	S.E	Wald statistic
Age	−0.01	0.01	3.46
Family income	0.01	0.00	8.90**
Education	−0.05	0.04	1.36
Don't like paying tax	0.18	0.07	7.80**
Efficiency	0.41	0.07	34.52***
Conscience	−0.35	0.07	27.65***
Social distance	0.54	0.07	56.56***
<u>Constant</u>	−0.18	0.30	0.38
Chi-squared for model			157.68***
Degrees of freedom			7
Sample size			2040
Proportion of respondents assigned to correct group			65.3
Nagelkerke R squared			0.18
*p<0.05 **p<0.01 ***p<0.001			