Chapter 9

Large Business and the Compliance Model

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Setting the Scene

In April 1998 the Cash Economy Task Force (1998) produced an influential Australian report entitled *Improving Tax Compliance in the Cash Economy*. *Improving Tax Compliance in the Cash Economy* proposed a new Compliance Model for the Australian Taxation Office (ATO) with four elements: (a) understanding taxpayer behaviour; (b) building community partnerships; (c) increased flexibility in ATO operations to encourage and support compliance; and (d) more and escalating regulatory options to enforce compliance. During late 1998 and early 1999, the question was asked whether or not the Cash Economy Compliance Model was relevant to tax compliance for the large business market segment. At the time there were doubts.

This chapter opens up some issues for consideration about applying the model to the ATO's compliance work on large business. Preliminary examination revealed that the four elements of the model mentioned above all have relevance to large business, though a different kind of relevance than in the case of the cash economy. This chapter is structured around considering each of these elements in turn. The spirit of the chapter is to identify a number of policy ideas that might give meaningful content to the model in the large business context.

The Compliance Problem in Large Business?

'Compliance means that taxpayers are meeting their obligations in accordance with the *Income Tax Assessment Act*, regulations and court decisions.' This is the definition adopted by one influential ATO large business report on 'Staff Perceptions of the Compliance Behaviour of the Top 100 Companies Audited Under the Large Case Program' (Australian Taxation Office, 1995). The report went on to show that in the large corporate domain ATO staff adopted a more purposive view of compliance than the somewhat literalist view in the above definition. That is, ATO staff working on the Large Case Program were looking for compliance with the spirit of the law or the policy purpose intended by the parliament. Doreen McBarnet's (1992) British work (see McBarnet, Chapter 11, this volume) has shown that large corporates themselves tend to be literalists because their modus operandi is to choose, depending on their interests, among

five options: (a) comply with the intention of the law; (b) compromise by negotiating how a particular law works under particular circumstances and making a deal on how it will be applied; (c) comply with the letter of the law in such a way that the declared objectives of the law may not be met (McBarnet calls this compliance in form); (d) transform the legal rules, through lateral thinking, into positive routes for tax avoidance; and (e) break or ignore the law and hope not to be caught. This could include the preparation of secondary accounts to cover any tracks (Williams, 1995). McBarnet (1992) found that large corporations tended to pursue a strategy of compliance in form to achieve two things:

> If successful, it allows taxpayers to escape tax...But at the same time, whether successful in that first goal or not, it allows them to escape any risk of stigma or penalty (p. 334).

In light of the above, an ATO compliance objective could be *compliance with the purposes of tax law, while working to increase the certainty with which those purposes can be applied in practice*. An alternative objective would focus on 'dollar-based information...as potentially ambiguous risk management data rather than unambiguous taxpayer compliance data' (Wickerson, 1993, p. 7). Such an objective that bypasses the concept of compliance might be *reducing risks to the revenue while upholding the requirements of tax law and increasing the certainty of that law*.

Enforcement

Although this chapter will argue that the ATO Compliance Model provides a valuable framework for large business compliance work, the concepts and enforcement strategies through which one escalates in a large corporate compliance pyramid will be found to be quite different from those in a cash economy compliance pyramid. For example, at the peak of the ATO's Compliance Model enforcement pyramid, the ATO confronts disengagers from the tax system using a prosecutorial strategy. Many individual taxpayers and small businesses do opt out of the tax system altogether. Even some larger businesses that we call organised crime (but that in reality is rather disorganised) do this. They do not play the game, sometimes because they are so cynical or disenchanted about it, sometimes to evade it in a calculative way. But some large businesses, on the other hand, are quintessential game players. At the peak of the large business enforcement challenge are the most entrepreneurial of the players of the tax planning game. Disengagement is not a major source of non-compliance here.

There is no problem with adapting the ATO Compliance Model to this reality of large corporate compliance. The idea of a compliance pyramid is that all compliance staff will discover a content for it that is relevant to the context in which they work. It is not a recipe book but a model to guide strategic thinking. The deeper question about the model for the compliance of large businesses is that

it tends to assume that the majority of taxpayers want to comply and as we move up to more and more serious tax evasion, there are fewer and fewer taxpayers in this category. Evidence on individual taxpayers suggests that this assumption is fairly accurate. For example, US audit evidence has been used to conclude that about two-thirds of individual taxpayers intend to pay the right tax (some of them inadvertently cheat), but only a third of individual taxpayers actually set out to cheat in a significant way (and then to varying degrees) (Andreoni, Erard and Feinstein, 1998, p. 820).

With large corporations in Australia, it is clear that many more than two-thirds of taxpayers intend to comply with the letter of the law, or at least to have a 'reasonably arguable position' that they have done so most of the time. However, it seems equally clear that there are many who do not intend to comply with what the ATO regards as the policy purposes of the parliament's tax laws. The evidence for this is that more than half of them pay no tax, some for many years, which is certainly not parliament's intention.[2] Australia collects more than the Organisation for Economic Cooperation and Development (OECD) average in company tax as a proportion of all tax revenue and as a proportion of Gross Domestic Product (GDP) and is one of the few countries in the late 1990s that saw corporate tax revenues increase at a faster rate than the increase in company profits. The corporate tax collection crisis is not distinctively an Australian one.

From these known patterns of taxpaying, the fact that compliance policy must confront squarely is that while the pattern of individual compliance is broadly pyramidal, the pattern of large corporate compliance is egg-shaped, with most taxpayers playing for the grey (see Figure 9.1). Large corporate compliance strategy might be conceived as pushing the large grey bulge in the middle of the egg downwards into the white zone – so that the egg becomes a pyramid.

It is hard to make compliance strategies work when compliance behaviour is egg-shaped. As corporate compliance behaviour takes on more of a pyramidal shape, the compliance policies discussed in this chapter will progressively become more effective. The task is more daunting than for tax collection with small business and individuals because the reality of the challenge is majority non-compliance with the policy purposes of the law (at least as they are conceived by many officers of the ATO). The argument to be made here is that law reform is the first of three key circuit breakers to move that grey bulge down into the white. Two further circuit-breakers are proposed in this chapter: One is for the compliance debate to take a more democratic turn, the other is for it to take a more international turn. This chapter seeks to show that once these three circuits are broken, there are a number of more specific policy options for improving compliance.

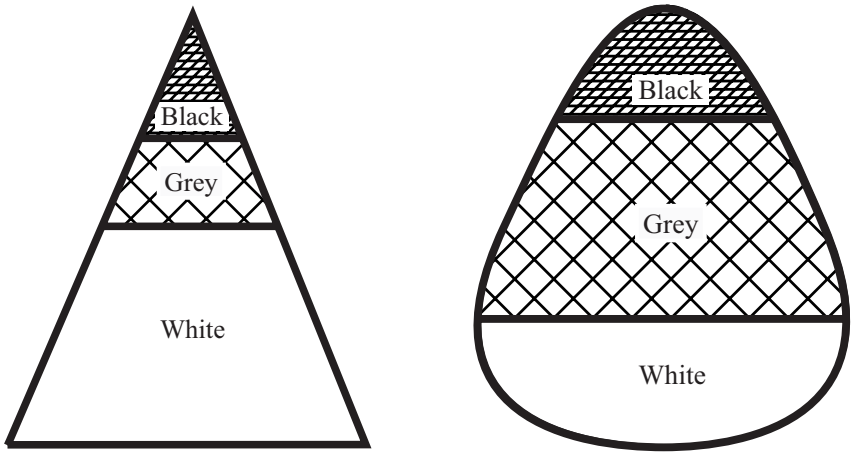

Figure 9.1 Patterns of individual and corporate tax compliance

Tax Compliance in a Democracy

The Australian people increasingly believe that large corporations and high wealth individuals do not pay the share of tax that the law says they should (Braithwaite, Reinhart, Mearns and Graham, 2001). A June 1998 community survey of 1000 Australians, commissioned by the ATO, found that only 32 per cent believed that 'Tax laws are effective in making sure large companies pay their share of tax' declining to 27 per cent for 'very wealthy people'. Only 20 per cent believed 'The ATO does a good job of stopping tax avoidance by large companies', falling to 15 per cent believing 'The ATO does a good job stopping tax avoidance by very wealthy people' (see also Wirth, 1998).

Such perceptions are a major risk to voluntary compliance by individual taxpayers. The reason is that there is evidence that individuals are more willing to pay their taxes honestly when they perceive most others to be honest; this evidence suggests that the direction of causality here is that when citizens perceive most others to be cheating, they are more likely to cheat themselves (Levi, 1988; Scholz, 1998; see also Cowell, 1990).

Perceptions are so entrenched that it is past the point of government trying to pretend to the Australian people that all large corporations are paying a share of the tax burden commensurate with the share of Pay-As-You-Go (PAYG) taxpayers. The better way to manage this risk to the revenue is to be open with the Australian people about the depth of the problem. This means explaining to them that it is

not that companies are cheating in large numbers. It is that some large corporations are aggressively planning their way around Australian law and moving profits and losses around the globe to limit tax liability.

The Judiciary in a Democracy and Tax Compliance

Of equal importance, a full and frank public debate about the nature of the problem is the way to begin to bring the Australian judiciary to an understanding of their central importance to solving the problem. The behaviour of the judiciary in the aftermath of tax reform is ultimately the most critical risk in the new ATO environment. History teaches us that when judges are literalist in the way they interpret tax law, legal entrepreneurs will open up more and more loopholes in the law. Yet because judges are properly independent of the executive government, it is not appropriate for the ATO to 'tackle' the judiciary when they fail to interpret tax law in a more purposive way.

So another path is needed. Most Australian judges believe in the sovereignty of parliament or the sovereignty of the Australian people or both. A tax compliance debate that engages the parliament with the desire of its people, openly expressed, that the law be interpreted to require large corporations to pay the share of tax the law intends is the best way to seek to move judges who believe in a sovereign parliament responding to a sovereign people. The judges understand that a literalist approach to tax adjudication can survive while tax law remains arcane to the people; equally, they understand that judicial repute suffers in the democracy when this approach is later discredited in the eyes of the people and their parliament, as happened to the Australian judiciary in the 1980s (Levi, 1988). In the long run, court cases like the recent Packer saga, which led to Australia's richest person being accused in the press of paying virtually no tax, are corrosive of respect of the people for the law and the courts.[3] The more open the public debate on tax law, the more clear it will be to the judiciary why this is so, and the more pointedly will they grasp the necessity and propriety of their being more purposive and less literalist readers of tax law.

Margaret Levi's (1988) analysis of the 1983-85 tax reform debate is that it engaged the Australian people in a way that increased their preparedness to comply with the tax laws. Part of this accomplishment was that they did see the Barwick (literalist) era of judicial interpretation in tax matters, of which they came to disapprove, come to an end.

Understanding Taxpayer Behaviour

Perhaps this first element of the compliance framework should be conceived more broadly as 'Understanding the Tax System'. The ATO Compliance Model does take a broad view of what understanding taxpayer behaviour means, that is, understanding individual and business behaviour in the context of an industry, macroeconomic and sociological environment. This is what is referred to as

BISEP[4] in the ATO Compliance Model. The key addition for the large corporate sector is understanding compliance in an international environment. There needs to be understanding, for example, that the taxpaying behaviour of a Japanese transnational corporation in Japan is different from its taxpaying behaviour in other countries.

The ATO approach to understanding taxpayer behaviour is risk management of a tax system. The ATO has been influenced by voluntary Australian Standard 4360, which identifies the stages in risk management in Figure 9.2.

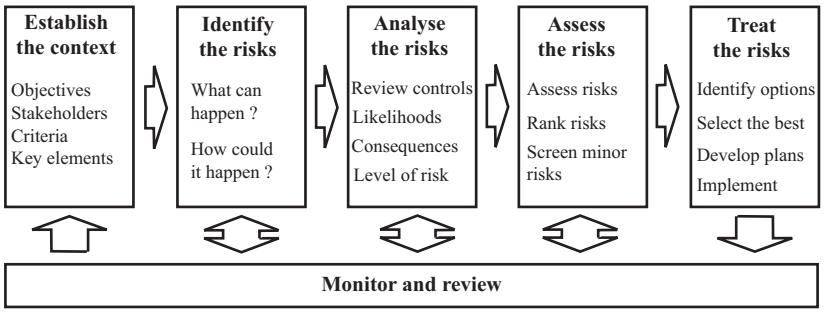

Figure 9.2 Stages of risk management (from Grey and Cooper, 1998)

The ATO generally has done a good job of the first four stages of this process, particularly at a strategic and organisational level, but is only beginning to do a good job on the fifth stage (Treat the Risk), and is still doing a poor job on the final stage (Monitor and Review). In establishing the context, identifying the risks and analysing the risks, the ATO has the advantage of being an unusually knowledge-rich organisation. It takes research seriously. While there are gaps in this knowledge which need to be filled, the bigger challenge is to find existing knowledge and synthesise its implications.

While ATO staff are increasingly on top of risk analysis and assessment, mostly they do not operate by searching and seizing opportunities to leverage those risks. Ask in a large business industry segment in the ATO whether they have assessed and ranked risks and they will pull out a document that shows where they have done that. This is genuinely impressive. But ask fieldwork or management staff to tell you the best stories of how they have leveraged each of those risks and only some will enthuse with their triumphs.

Risk leveraging is a creative activity. It requires creative staff. It is a bad idea to provide a formula for how to do it because advisers will soon learn that formula. Continuous reinvention of risk leveraging is what will keep them guessing and therefore complying. A culture of continuous reinvention of risk

leveraging seems to us to require taking storytelling more seriously within a tax authority. The ATO has begun to move away from being a business run according to a procedures manual (see Job and Honaker, Chapter 6, this volume). At the level of informal staff interaction, ATO culture is no longer just a rulebook, it is also a storybook.

Some staff see ATO management culture, in contrast, as a thicket of models (an observation also made by Job and Honaker, Chapter 6, this volume). The challenge is to value stories that make sense of models and models that provide a conceptual scheme for generating better stories. One staff response to the roll-out of the ATO Compliance Model was: 'Oh no, not another model. Now a [ATO] Compliance Model to add to Risk Assessment,…System Analysis and Planning, Strategic Direction, Performance Management, Business Systems models, Accountability and Governance, and on and on'. Our suggestion is that the approach to moving the ATO risk management model beyond risk assessment to risk leveraging is to create a framework for storytelling about compliance successes. Some leading corporations, such as 3-M, have come to the conclusion that an excess of abstraction is their problem and have taken the remedy so far as to write their strategic plan in storytelling fashion (Shaw, Brown and Bromiley, 1998). The rationale for the storytelling approach lies in optimising human capacity for not only digesting information but also acting on it.

> Stories are central to human intelligence and memory. Cognitive scientist William Calvin describes how we gradually acquire the ability to formulate plans through the stories we hear in childhood. From stories, a child learns to 'imagine a course of action, imagine its effects on others, and decide whether or not to do it'...Cognitive scientists have established that lists, in contrast, are remarkably hard to remember...(Shaw, Brown and Bromiley, 1998, p. 42).

There are two interconnected staff morale rationales for considering a storytelling culture. One is that staff grapple with many models that are often presented to them abstractly rather than as stories. The second is that there is the feeling that those who are playing an aggressive game are winning. Hence, a framework for storytelling *with stories of success* that bring to life models, such as the ATO risk management model, are needed. A suggestion is therefore that parts of the ATO that are not already doing so conduct regular informal workshops which give staff a platform to share their latest success stories. This means a different kind of best practice workshop than sometimes happened in the past, one that is less oriented to concepts and models of best practice and more oriented to stories of best practice (from which an understanding of models flows). Each ATO large business segment would then select its best success stories and the ones that supply lessons of more general applicability for best practice workshops. A consequence of such a culture change would be that 'heroes' of risk leveraging success stories would be noticed in a way that would percolate into their performance reviews.

Our analysis, in summary, is that the abstractness of ATO risk assessment might be a roadblock to the contextual staff creativity that moves into risk leveraging. In the next stage of the development of a compliance framework, one suggestion would be for a document more dotted with success stories than this one. Perhaps that is an imprudent suggestion given the difficulty in rendering large

business stories anonymous. Perhaps it would be more appropriately cautious about confidentiality to sustain storytelling only as an oral tradition for those staff dealing with large business tax compliance. But at the least, our recommendation would be that it be a more deeply institutionalised oral tradition – a proliferation of storytelling best practice workshops that illuminate broad strategic issues.

A move to institutionalising ATO culture more as a storybook (Shearing and Ericson, 1991) than a rulebook or a model-book is not to downplay the importance of rules and models. Internal rules and models will be more sensible when they connect with a more bottom-up process of reflection on accumulations of success stories. Risk leveraging occurs at two levels. One is at the level of clinical analysis of cases of single corporations – for example, diagnosing patterns of imbalance among corporate PAYG receipts and wages paid, Goods and Services Tax (GST) receipts and income tax to inform a risk leveraging prognosis to heal the ailing taxpayer. The second level is cross-case leveraging through more quantitative analysis of strategies (see Braithwaite, Pittelkow and Williams, Chapter 10, this volume).

The risk leveraging skill at the first level is the skill of the clinician who heals one patient. That is the level most informed by storytelling. The second level requires the skill of the medical researcher who finds generic therapies that will be valuable for curing many patients. That is the level most informed by number crunching.

Tax authorities worldwide develop statistical models akin to a regression equation. For example, given what is known about the income of this company, the proportion of its activities based offshore, the industry sector it is in, movements in its stock price, the various ratings it has received by ratings agencies, and certain other pieces of known information, is it paying less company tax than the model predicts or more? Those that are paying a great deal less tax than the model predicts can then be approached to seek explanation and possibly be audited.

Watching an industry or other group of taxpayers can also be done to diagnose risk with the techniques of the detective, akin to the clinical skills of the doctor discussed earlier. The officer scans the horizon for information on industry developments that might have tax implications. A new subsidiary is opened in the Bahamas. Three industry leaders have a secret meeting in which they agree not to compete on tax planning; they will all pay around 10 per cent so that they have enough for their franking credits. A new CEO with a reputation for aggressive tax planning is appointed to a formerly conservative company. Detection of these developments leads to real time enquiries (as opposed to an audit years later) that prevent tax losses before they occur.

Building trust is and should be a fundamental value of tax authorities. When a relationship of trust is built with a particular client, this can be drawn on to leverage compliance. Once there is trust, that trust is a resource that has benefits to both sides (Ayres and Braithwaite, 1992, Chapter 2). Those benefits imply a cost to breach of trust. Good tax office staff learn how to use their relationships to make judgments as to when they can rely on that trust to leverage risk (just ask

that it be done), when it is best to 'trust but verify', and when it is best to withhold trust. We should never forget that cooperative relationships are the best source of evidence of what is going on in the business world. Even the best detectives are trusted by a lot of criminals. More importantly, however, the evidence from the research program of the Australian National University research group on business regulatory compliance is that when regulators treat regulatees as trustworthy, they actually behave in a more trustworthy fashion (Braithwaite and Levi, 1998). More specifically, treating business as trustworthy does increase their subsequent compliance with the law (Braithwaite and Makkai, 1994).

It would be a mistake to see the regression-, detective-, and trust-based risk leveraging approaches as only about the targeting of taxpayers. If regression analyses show that all 30 of the clients of a particular adviser are way below the regression line, it may be more efficient to target enforcement against one adviser than 30 taxpayers. The same point applies with detective- and trust-based analyses of intelligence. So there may be virtue in considering a strategic intelligence matrix of the form illustrated in Table 9.1.

Table 9.1 Illustrative matrix of regression-based, detective-based and trust-based leveraging of risks posed by imaginary taxpayer, agent and adviser to that taxpayer

	Taxpayer	Agent	Adviser
Regression	Below line	Average	90% of clients below line
Detective	No intelligence	No intelligence	Rumoured to be promoting a new dubious scheme
Trust	Trust but verify	Trustworthy	Breach of trust with ATO in past

An intelligence assessment of this table quickly leads to the conclusion that this taxpayer is not a good target for audit or some other form of monitoring. Nor is the agent who submits the taxpayer's return. However, the adviser this taxpayer uses is a prime target for risk leveraging, one reason being that our presently honest taxpayer may be at risk of being tempted by the adviser's dubious new tax planning scheme. For certain kinds of compliance strategies (e.g. a letter to request that a certain matter has been checked), the trustworthy agent may be the better target precisely because they have a stronger interest in maintaining their reputation with the ATO as trustworthy than does the taxpayer. There is a growing literature on when it is better to target gatekeepers and when it is better to target principals (Kraakman, 1984; Braithwaite, 1997). Our main point here is that the 'Understanding Taxpayer Behaviour' element of the ATO Compliance Model

should be conceived broadly to include an understanding of the behaviour of gatekeepers to taxpayers.

Evidence Based Tax Administration: Learning from Medicine

It was not until 1914 that in the average encounter between a doctor and a patient the patient was more likely to come away better off than worse off. Unfortunately with law enforcement, we have probably not yet reached 1914. If we put more police into a neighbourhood, we are just as likely to increase the crime rate as to reduce it. The reason is that, like doctors with leeches, police do a lot of things that make crime worse (as well as a lot that makes it better).

Law enforcement needs to learn two things from medicine. One big step medicine took toward making us healthier early this century was a research investment in randomised controlled trials of its risk leveraging strategies. If it believed a particular therapy or a particular pill would outperform existing therapies, it would randomly assign a large group of patients to the new treatment versus the old. In effect, this meant tossing a coin to decide whether patients got the currently popular therapy or the new one. With a large enough sample, the miracle of randomisation delivered two groups that were exactly comparable in every way other than the treatment. If fewer patients died under the new therapy, then we could be fairly sure that the therapy was the reason. This was the big advance over the old science that allowed quacks to delude themselves into believing that when patients got better after being treated with leeches that it was the leeches that cured them. Or when they died that the leeches had not been applied early and often enough.

As more and more therapeutic advances increased our life expectancy, medicine's new problem was of *too much* knowledge. Most doctors were not up-to-date with what science was finding. So a new evidence-based medicine movement to get the results of science through to doctors in a digestible form began: A science of diffusing science through soft networks of revered peers. The nation that ventures into an evidence-based tax administration comparable to evidence-based medicine is likely to become the cutting edge. Evidence-based tax administration will be much cheaper than evidence-based medicine and much less fraught with ethical dilemmas.

Imagine a tax authority comes up with an idea for a new auditing product, which it believes will improve compliance at lower cost. Some people think they are wrong, others that they are right. A new evidence-based Commissioner sees that there are some good arguments on both sides. Moreover, they both have equally good arguments as to why their approach would be procedurally fairer and cheaper for taxpayers, so there are no ethical arguments against experimentation. There are resources available for 200 audits where this kind of audit is relevant. So the Commissioner requires that a risk analysis select the 200 most suitable targets for audit. A random number generator then assigns 100 of these cases to the new audit product and 100 to the old audit.

Where there are one or two extremely large or atypical corporations these might be excluded from the experiment on grounds that if both ended up in the same group, this would skew the results. Or the randomisation can block on them, so that it is guaranteed that one will go into the experimental group, the other into the control group. Absent such extraordinary lumpiness, the laws of probability prove that randomly assigning two hundred companies or two hundred individuals is almost certain to produce two groups with almost identical breakdowns on average income, age, sex, in fact anything we can measure and check (and everything that we cannot measure and check). The only reason for a difference in tax paid by the two groups is that one gets the old style audit rather than the new style audit. There is no need for complicated multiple regression analysis. Tax officers just count how much money comes through the door from the new audit group compared to the old audit group.

An even better research design will require a risk assessment to identify the 300 best targets for auditing. Then the computer will assign 100 to the new audit, 100 to the old audit, 100 to no audit. It might be that even though the new audit brings in more tax than the old audit, over a three year follow up, neither group outperforms the 'no audit' group. The reason might be that the 'no audit' group are afraid of an audit in years two and three, while the audit groups believe they get a free kick for those two years.

Under both research designs it is possible to test which is the cheaper process to run without having to contend with doubters who say the new process was cheaper only because it was tried out on less complicated audits. Randomisation will have assured that on average the new and old groups are of equal complication.

In few areas of problem-solving could randomised controlled trials be more viable than in tax administration. It has been necessary to the advancement of medicine to randomly assign sick patients to a placebo (an inert pill) or to no treatment when they might have been helped. While many of us are alive today because this was done, it raised awful ethical dilemmas. There is not this level of ethical dilemma in randomly assigning a high risk taxpayer to miss out on an audit. There would be in a world where the community regarded it as just that all high risk taxpayers should be audited. The world of tax is not such a world – the supply of compliance work is always less than the need for it; a high risk company that is randomly assigned to no audit this year can always be purposively assigned to audit next year or the year after or both. However high their risk, a tax authority cannot afford to audit them every year.

Many other kinds of compliance initiatives have the same character as audit in these regards. Consider, for example, an interesting initiative of simply writing to companies in the manufacturing sector that have paid no tax for three years to say that the ATO is concerned about this situation and requests them to write with an indication of whether they think their circumstances will change such that they will be paying some tax next year. The hypothesis is that the fear that they are being monitored in some special way will cause them to pay more tax in the next year. 100 companies could be randomly assigned to no letter and no audits; 100 companies to the letter and X audits for those who fail to reply with an indication that they expect to pay tax next year; 100 to no letter and X audits; 100 to the letter and no audits. This design would enable an assessment of whether the (practically costless) strategy of getting the computer to send a hundred letters

increases tax receipts even without backing them up with audits for those who ignore them. Or whether this would only work when coupled with a commitment to do something if tax did not come in.

A major advantage that tax has in enabling randomised controlled trials in comparison with medicine is that it has the entire population of taxpayers on the computer, so randomisation with high external validity can be done at low cost. Most people who do not have experience of randomisation doubt that with corporations you would get an experimental group and a control group that would be identical on relevant characteristics. A needed confidence-building measure is to ask the doubters to name the variables on which the experimental group might end up different from the control group. The data would be collected to show that the two groups had the same value on average for these measures.

Building Community Partnerships

Building community partnerships is the second element of the ATO Compliance Model. Indeed this model itself was the product of a community partnership, with active and constructive participation by business, non-government organisations (NGOs) and professions.

In the next section on increasing the flexibility of tax office operations we consider the idea of not only co-designing compliance strategies with industry in the way this is already being done, but also using external stakeholders as 'test pilots' of the new designs when they are first put into the field. Partnership with the judiciary is out of the question from a separation of powers perspective. However, as argued in the early part of this chapter, there is a need for a richer dialogue among community-ATO-parliament, carried forward at public conferences and in the media, to which the judiciary is exposed and chooses to respond as it sees appropriate.

A dilemma of business-industry partnership is that business norms are not pro-tax, but anti-tax (witness the egg-shape of compliance in Figure 9.1). A risk of partnership, therefore, is that the tax office will be captured by an anti-taxpaying culture. One idea for a new paradigm of community partnership to respond to this change of capture would, we suspect, be premature until some of the other strategies in this chapter were given more time to work. This is the idea of the government negotiating with the business community a *compliance-tax-rate-spiral*. The reason it may be a bad idea at this time is that there are too many corporations presently paying no tax who therefore have no interest in trading off higher compliance for lower company tax rates. However, floating the possibility of a *compliance-tax-rate-spiral* as something that might work in future could encourage public-regarding business taxpayers to see that in the long run there is much that Australian business could gain from a more cooperative compliance culture.

So how would a *compliance-tax-rate-spiral* work? The tax authority would set say five quantitative corporate compliance benchmarks. They would be benchmarks

that involved an estimate of the extra dollars brought in by improved compliance. As each benchmark was met, the government's promise would be to reduce company tax rates by 2 per cent. If all five corporate compliance benchmarks were surpassed, the company tax rate would fall by 10 per cent. The compliance benchmarks would be set so that the aggregate increase in revenue from increased tax and increased penalties on non-compliers at each benchmark would be calibrated at the cost of a 2 per cent tax cut. It would be highly desirable to incorporate tax penalties into the formula because this would give community-minded businesses an incentive to lend political support to higher penalties for non-compliers (that would be returned to compliers in lower tax rates). Business partnerships might be built on reversing the existing reality where non-compliers do not pay and compliers make up for it, with a mechanism where non-compliers pay monies that are channeled directly to compliers.

While the government would generate no extra revenue by giving back all the gains from higher compliance and higher penalties in lower tax rates, it would generate a little extra revenue as the compliance rate moved up between benchmarks. Both business and the ATO would benefit from lower tax administration costs as the system moved to a more cooperative, less combative, compliance regime. But most importantly, business and government would both benefit from the higher income that a low tax, low litigation, high compliance compact would bring.

The idea for the moment would be to do no more than introduce this into the debate. Not something that seems plausible, but something that signals the kind of world that might one day be possible if only we can learn how to forge a more meaningful business-community-government partnership toward a decent tax system.

Why call this a *compliance-tax-rate-spiral*? We assume two things. First, once the difficult challenge of achieving the first compliance benchmark had been met and the first tax cut delivered, momentum toward achieving the second benchmark would be easier – a virtuous circle that would feed upon itself. Once cooperative businesses had tasted the benefits of an initial 2 per cent tax cut, they might even lobby for higher tax penalties (all of which would be returned to them) to deliver more quickly the next 2 per cent cut. Increased compliance would not depend upon industry associations compelling their members to improve their compliance. It would depend on: (a) changing the nature of the social bargain between business and government (Levi, 1988) so that business actually wanted to comply with the law; (b) changing business culture so that business leaders disapproved of their business colleagues who did not comply with the law (as free riders on the rest of the business community and obstructers of national economic growth); and (c) business leaders politically supporting higher tax penalties and other measures to enforce the law against the grey economy (such as providing intelligence on dubious tax planning schemes to the ATO).

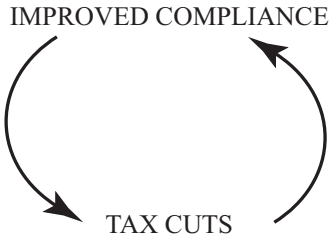

Figure 9.3 The Compliance-Tax-Rate-Spiral

There is also an economic analysis of why the idea advanced here is a *compliance-tax-rate-spiral.* There is empirical evidence that as tax rates fall, compliance becomes economically rational for more individual taxpayers and voluntary compliance increases (Friedland, Maital and Rutenberg, 1978; Clotfelter, 1983; Baldry, 1987; Alm, Jackson and McKee, 1992; Williams, 1995; Joulfaian and Rider, 1996; Andreoni, Erard and Feinstein, 1998; but see Feinstein, 1991; Alm, Bahl and Murray, 1993). Hence the virtuous circle is set up (see Figure 9.3). A cut in the tax rate increases voluntary compliance and the increase in voluntary compliance moves the system down the path to the next 2 per cent tax cut.

Increased Flexibility in ATO Operations to Encourage and Support Compliance

The approach of the ATO Compliance Model values flexibility, showing that there are many ways of delivering on compliance and objectives of the Taxpayers' Charter. Institutionalising a storytelling culture is one way of fostering flexibility. Success stories that grab people's interest will be stories of innovation, of more flexible responses than have been attempted in the past.

A growing source of flexibility is to take problems to international forums. The Advance Pricing Arrangement (APA, called Advanced Pricing Agreements in many countries) is one approach to locking in higher tax receipts from transnational corporations (Killaly, 1996). APAs are negotiated arrangements between the ATO and corporations on transfer pricing methodologies negotiated at the OECD, which result in an appropriate allocation of income and expenses between related parties that are selling goods or services between different countries. Negotiating APAs is painstaking work, but because they lock in higher returns than audits do and because they shift the rules of the game to more cooperative ones with business, the investment is well justified.

On the other hand, the ATO needs to monitor the cost of keeping APAs up to date in the face of company-, product- and time-specific changes that make the parameters of the APA obsolete. In addition, there was a worry that only 'squeaky

clean' companies would ask for APAs, hence skewing ATO activity to areas of low risk. Initially, companies were reluctant to enter into APA negotiations because they feared this may have revealed tax liabilities going back over many years. However since then APAs have become widely used. The kind of flexibility of ATO response that could be examined is for the ATO to consider granting an amnesty on tax liabilities going back more than two years as part of the incentive for entering into negotiations. International tax competition can cause compliance problems that can only be addressed through international cooperation via forums such as the OECD and multi-lateral APAs. The same international imperatives apply with tax havens, E-commerce and a variety of other questions.

The real power to increase flexibility does not lie with senior managers so much as with fieldworkers who are daily at the coalface (Sparrow, 2000). Fieldworkers must be the key risk identifiers. Their performance reviews should give high priority to evidence of identifying wider risks in the course of their fieldwork, documenting them and following through to ensure that the risks are analysed and treated. In the view of some, this follow through is not their job. Their job is to report the risks they identify to their immediate boss so that management can take care of it. This is neither our view nor that of senior ATO management involved in large business compliance work. The ATO needs more leadership from below. Fieldworkers can often report risks to Segment Managers who can be too busy to follow through on them. It is often more efficient for the fieldworker with the direct experience of the risk to chase it up through the bureaucracies, to participate in the senior discussions there on what can be done to treat it and then to offer to be a 'test pilot' for the treatment – to report back whether the treatment is working with the initial kind of risk they identified. Better still, the fieldworker might recruit one of the clients they work with to be an external test pilot as well, and also participate in the discussion at senior levels concerning the problem they have decided to own.

If tax professionals at all levels of the ATO from fieldworkers up are encouraged to be leaders (see Job and Honaker, Chapter 6, this volume), to own risks with a commitment to follow through all the stages of risk management, then loop closing will improve. Most critically, the law reform loop will respond faster, and fieldworker morale will improve compared to a situation where they sit on their hands and grumble about management dropping the ball. What follows is that the tax authority storytelling culture needs to be about stories of junior employees being rewarded in performance reviews for following risks right through to treatment and evaluation. In few areas is this more important than law improvement.

Flexible Adjustment of Tax Law

In the midst of the wave of tax law reform currently being experienced in Australia we must remember that it is naïve to believe that we can ever reform tax law and get it right in a way that will remain right for long. Nothing is more important to improving corporate tax compliance than law reform. But the reality is that as soon as the new law is in place, there will be legal entrepreneurs who will be at work to open up loopholes in it, and globalisation will over time deliver changes

that will make it progressively obsolete. So law reform is not the task of an historic moment, but a continuous process.

The ship of tax reform needs to be continually rebuilt at sea as legal entrepreneurs open up one leak after another. Every decade or so the accumulation of extra pieces added to the ship to plug these holes will start to weigh it down with an excessive burden of complexity. The ship then has to be taken into dock and rebuilt from the ground up in a more simplified way. The most crucial assessment of the health of the system must involve a sophisticated group looking periodically at the ship to assess whether the overall pattern of its complexity justifies such a systemic legal refit. Plugging holes at sea and periodic simplifications of the whole structure are both recurrently necessary because an accumulation of new rules to plug old loopholes can be a resource for opening up new loopholes. Complexity favours the legal entrepreneurs. The objective is to give the judges only as much detail as they need to apply the policy purposes of the law with as much certainty as is possible for the contrived uniqueness of the circumstances with which they are continually presented (see McBarnet, Chapter 11, this volume).

The job of fieldworkers is to be the antennae that detect those risky new contrivances as early as possible. A good auditor has the ability to see that an issue that has come up in an audit will be a risk to the revenue in many other cases unless the law is clarified or improved. Provision exists for auditors to identify risks on case files that are available for computer analysis to group problems that are looking for common solutions. The culture change needed is one where writing down the risk is just the beginning of a process for the fieldworker of following the risk through to ensure there is a ruling or litigation to clarify the case law, an actual change in the law, or a principled decision to let the risk sit there until the next comprehensive reform of the law. At every stage the fieldworker has a role as a reality tester for the lawyers, as an antenna to detect the latest manoeuvre of the other side and as a test pilot for the proposed legal remedy.

Tax law will become more certain and effective when fieldworkers are engaged with the daunting challenge of continuous improvement of a living law rather than the narrow challenge of enforcing a static law. It will become even more certain and effective if fieldworkers engage the public-regarding side of large business at the coalface, where the problem in the law breaks out, to help repair the law in the public interest. Law reform in the past has been too top-down and insufficiently continuous. Also, as argued at the beginning of the chapter, it has not engaged the people of Australia in public discussion and understanding often enough. The ATO needs to persuade the people of Australia that more equitable and certain enforcement of the tax law is something they can reasonably demand of their institutions – the parliament, the judiciary and the ATO. By articulating forcefully to the Australian people that the ATO does not want to be let off the hook for tax integrity, it makes it harder for the parliament and judiciary to be allowed off the hook (which to a significant extent they have been in the past).

It is doubtful that any amount of synoptic brilliance in re-configuring tax law at one point of history can deliver Australia a high integrity tax system. Rather,

what is required is for us to be more pre-emptive through a continuous improvement process of simplification-clarification-resimplification-clarification. This iterates endlessly. Commitment to excellence in the pre-emptiveness and responsiveness required for continuous improvement of tax law is the key. Australia can have a high integrity tax system, but only if the ATO, the parliament and the judiciary jointly end the buck-passing. My plea is that the ATO publicly put up its hand and force the hands of the other institutions.

Flexible Dispute Resolution

Improved disputing can improve compliance considerably. The reason is the now substantial evidence that when people and companies believe they have experienced fair procedures, they are more likely to comply with the law (Lind and Tyler, 1988; Tyler, 1990, 1998; Tyler and Dawes, 1993; Makkai and Braithwaite, 1996). The Large Corporate volume of the ATO Professionalism Survey does show procedural fairness to be a concern of large corporates with ATO staff (Donovan Research, 1998).

Adversarialism arises often in tax fieldwork. Procrastination as an alternative to resolving disputes commonly uses delaying tactics such as manipulating the administrative privilege of accountants, Freedom of Information requests, administrative law hearings, holding back on assistance with providing requested records, providing only parts of the information requested, and failing to attend meetings. Good tax office practice is to refuse to tolerate failure by either party to resolve disputes. Otherwise the agency hands victory to the people who practice 'Defer, Delay, Defeat'. Headbutting or delay that is obstructing resolution can be dealt with by widening the circle involved in the dispute. Some large businesses are alert to this option themselves as they regularly go over the head of fieldworkers to their superiors. Experience demonstrates it to be a good option for the large business fieldworker as well (and so does theory, Braithwaite, 1997). If a matter is important enough, the fieldworker's senior manager can write to the CEO saying, in effect, 'We need you to supply this information in a timely fashion so we can settle this matter. We can use our powers to compel you to do so and stand ready to go to court to enforce this. But this is not the way we like to do business. Can we meet and exchange the information we need to get this dispute over with?'. At lower levels, an auditor having difficulty with the tax manager of a company can ask for a meeting with the tax manager and his boss together, and then with the boss's boss if that meeting accomplishes no reconciliation.

The rationale for this path to flexible dispute resolution is that large businesses are full of many adversarial people and many cooperative people. The trick is to move up the organisation through various layers of adversarial managers until the tax officer reaches a cooperative manager who insists that the matter be settled rather than take up more of everyone's time. Actually, the grounds for optimism that this works are even stronger than suggested so far. Even the most adversarial of executives have a cooperative, socially responsible self as well as a combative self (see Braithwaite, Chapter 2, this volume). The gifted tax officer has the ability to treat clients with a respect that persuades even the most combative of them to put forward their socially responsible self. If she has a bad day where she fails to pull this off, she knows how to retreat, widen the circle for another day on which

she hopes to catch the new player when his socially responsible self is to the fore. Moving up the organisation until a more senior cooperative person is found who will instruct the junior obstructionist to cooperate can be time-consuming. But it is less time-consuming than escalating prematurely to setting up an arbitration or litigation, or leaving the problem to fester.

More and Escalating Regulation Options to Enforce Compliance

The ATO has in recent years made considerable movement down this path recommended by the ATO Compliance Model. Following the external evaluation of the Large Case Program[5] (Pappas, Carter, Evans and Koop, 1992), the ATO moved from full audit as a more or less standard single compliance product to a suite of audit products: roll-over audits, pre-lodgment audits, last year lodged audits, specific issues audits, loss tracking audits, new legislation/ruling reviews and record retention audits. Industry watching briefs and tax strategy reviews (which are risk assessments rather than audits) also became important fieldwork tools. The suite of products provide greater choice and flexibility to better target risk treatments; and taxpayers, subject to enforcement, can experience varying types of fieldwork contact, making them more careful in their tax affairs. Even if they have a full audit in one year, they cannot rule out some special purpose audit in the next year.

The ATO Compliance Model is a compliance pyramid, with cooperative and educative compliance options at the base escalating to progressively more enforcement-oriented and punitive options as we move up the pyramid. The philosophy is to consider cooperative strategies first and only escalate up through each layer of the pyramid as each lower level of the pyramid fails to deliver compliance. This raises the question of why not try reward at the base of the compliance pyramid.

Some ATO staff and corporates considered it improper to reward large business for what was seen as meeting their legal obligations. This concern seems especially apt in light of experience with other areas of regulation where financial incentives to meet legal obligations have engendered some perverse incentives to deliver the form, but not the substance, of what is intended to be rewarded. The ATO, however, can make a special effort to give a service 'beyond the call of duty' to clients who have an exemplary record on compliance and cooperation in making the tax system work. For example, they could be given extra quick turnaround of advisings. Indeed, it might only be as particularly trustworthy taxpayers that they could be given this: Mutual trust enables an advisings process to be transacted more time-efficiently. The time-efficiency can be achieved by increasing ATO preparedness to accept the corporate's tax analysis and relying on verification of selected key components of that analysis. The service of the Key Client Manager, an officer dedicated to one corporate taxpayer, could also be viewed in this light.

Indeed, in light of the desirability of rewarding greater compliance with better service where this is a principled thing to do, Key Client Managers could be allocated to the largest 100 corporate *taxpayers* in the country, measured by amount of tax paid over the past five years, rather than to the largest 100 corporations in *income*.

The Canadian Audit Protocols (Revenue Canada, 1996) are not just about a move to real time and better coordinated audits; they are also about building cooperative relationships. Negotiated Protocols offer the potential to reduce compliance costs for business and increase compliance effectiveness for the ATO. This might involve scheduling visits by different areas of the ATO so that disruption to business is minimised, holding concurrent audits, and assisting business with knowing in advance the form in which financial records might be kept to avoid double handling. The key idea is that a tax administrator and participating large businesses can jointly produce a written framework that establishes guidelines and standards for building and maintaining a relationship for managing compliance.

While financial rewards that are identified as rewards for compliance can be dangerous in the signal they give, this is not true of the informal rewards of praise and giving credit where credit is due. Moreover, most people underestimate how important these are to assisting business regulatory compliance. In Makkai and Braithwaite's (1993) study of Australian nursing home regulation, the use of informal praise by government inspectors was associated with improved compliance over the next two years after controlling for other causes of compliance. An activity that could be underestimated in its value is a letter from the Commissioner to a large corporation that has moved from an obstructionist to a cooperative approach to compliance. Such a letter could thank the relevant executives of the corporation for the cooperation they afforded to ATO staff in doing their job and for the reasonableness they displayed in assuring that agreement could be reached on a just tax assessment. On all manner of smaller things, thank-you letters by more junior ATO staff and face-to-face expressions of appreciation are important compliance activities.

Large businesses that have exemplary corporate compliance systems and governance processes especially merit positive recognition both verbally and/or in writing. In a storytelling regulatory culture, success stories should not be restricted to good things tax officers do; they should include stories of best practice among large business, such as corporate compliance systems and governance processes put in place by corporates. This can be institutionalised by nurturing tax compliance professionalism in the way the Australian Competition and Consumer Commission has done with Trade Practices professionalism (through establishing the Association of Compliance Professionals in Australia) and consumer affairs (through initiating the Society of Consumer Affairs Professionals in Business).

Informal recognition in the form of expedited service (e.g., advisings), praise and recognition as a public-regarding corporate citizen (as by involvement in the co-design of ATO policies) are therefore possible at the base of a compliance pyramid (see Figure 9.4). They can be combined with educative measures, the most important of which is advice and encouragement to establish credible corporate compliance systems. Accreditation is one path to nurturing tax compliance professionalism (or risk self-assessment).

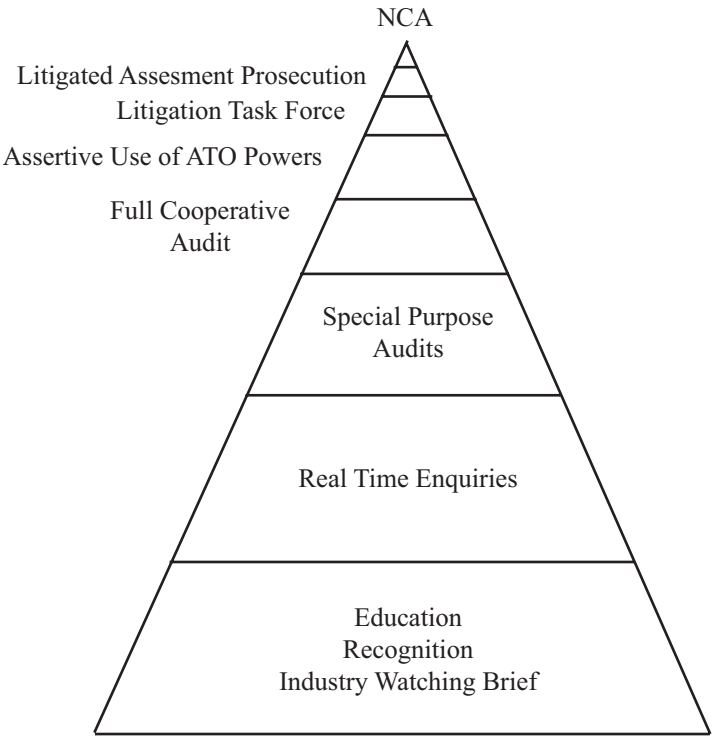

Figure 9.4 One illustration of a large business compliance pyramid

The first step up a large business compliance pyramid might be a Tax Strategy Review that checked directors' minutes, working papers, accounting and tax manuals, audit files, financial planning files, budgets/forecasts and the like. This is a small step up the pyramid for a large corporation. It is hardly an enforcement step at all, merely a risk assessment exercise. Nevertheless, it is a good first step to take when perhaps all that is required is a signal that the tax authority is reviewing the affairs of the business.

The second step might be Real Time Enquiries to clarify a concern; the third a Special Purpose Audit or other low-intensity cooperative audit; the fourth a Full Cooperative Audit (see Figure 9.4). When escalated cooperative audits meet with repeated obstructionism, escalation to what might be called 'Assertive Use of ATO Powers' could be deployed with little hesitation. This means use of formal powers to demand documents and answers to questions, and surprise visits to premises to

demand access to documents where this is necessary. Escalation from cooperative audit to assertive use of ATO powers should not normally occur until there has been opportunity for an ATO senior manager and the CEO to discuss cooperative dispute resolution options.

When both obstructionism and reasonable suspicion of serious non-compliance exists, a Litigation Task Force might be put on the case (see Figure 9.4). The litigation task force would be multidisciplinary, including a lawyer who would liaise with the Director of Public Prosecutions. The obligation of the head of the litigation task force would be to ensure that the necessary evidence was collected to pursue prosecution and other penalties. This is not to say that maximum legal action would be pursued; rather, the objective would be to make it clear that this was inevitable unless the taxpayer moved the relationship down the pyramid to more cooperative problem resolution. There has been a view that the evidence rarely exists to warrant higher penalties or for prosecution to be successfully pursued. Doubts exist about this assumption. Rather, an alternative view is that a large corporation which has escalated this far up the pyramid will be vulnerable somewhere in its complex of activities to false and misleading statements having been made, among other vulnerabilities. In part, this view on tough enforcement may itself stem from a perceived lack of support from ATO managers, the ATO itself and even the Director of Public Prosecutions. The use of a litigation task force could help crystallise this support and more tangibly signal to the staff and the taxpayer involved that swift and sharp enforcement will be taken.

The next rung in the compliance pyramid will be assessments/penalties that trigger litigation by the taxpayer and/or prosecution by the Director of Public Prosecutions (see Figure 9.4).

The final rung of the compliance pyramid could be referral to the National Crime Authority (NCA).[6] This occurs rarely at the moment, a situation that should continue. The NCA's superior powers and criminal enforcement capabilities should not be employed even on the most hardened criminals, but only on uncooperative hardened criminals who are believed to be major tax evaders.

The pyramid in Figure 9.4 is an illustrative pyramid that may be useful in navigating the compliance options available in large business compliance at this point in time. No compliance pyramid can be effective without changing over time, with context, and in response to research findings from evidence-based risk leveraging. Nor should this compliance pyramid, or any other, be prescriptive. They are no more than a guide to compliance decisions that should never be allowed to trump contextual wisdom. It should never be a criticism of an officer that they are not following the ATO pyramid. It should be cause for praise when the idea of the pyramid is used flexibly to display an utterly original array of innovative risk leveraging strategies through which the ATO might escalate in dealing with a tough case (as Job and Honaker, Chapter 6, and Hobson, Chapter 7, argue in this volume). Rather than slavish implementation of 'the Model' we should want success stories of innovation in pyramidal thinking about leveraging compliance.

By thinking pyramidally about the enforcement options available, the tax officer engenders confidence and motivates cooperative compliance through

showing a willingness to escalate up the pyramid. A regulator who believes that her pyramid is credible and who is willing to escalate up it if necessary rarely actually finds it necessary to escalate far up the pyramid. Confidence about the authority of the pyramid of enforcement capabilities projects an image of invincibility to the corporation that is the subject of tough enforcement. This rarely fails to engender cooperative compliance at low levels of the pyramid, enabling de-escalation to even lower levels. The effective regulator is cooperative and trusting at first, tough if that trust is abused, tougher and tougher if it is still abused, but forgiving if trust and cooperation is finally restored (Ayres and Braithwaite, 1992, Chapter 2). It does not matter that escalation at lower levels of the pyramid has very little bite with large corporations; at that level the objective is to *signal* escalation rather than cutting deeply into the corporate's interest. The crunch is whether the tax authority is willing to escalate until it does reach something that bites.

For the pyramid to work, fieldworkers must be confident that they will get senior management backing if they escalate. They have that confidence because they do not escalate or threaten escalation of a particular type unless they get backing at a level that can support that level of escalation. Fieldworkers would not escalate to an enforcement option and would not initiate assertive use of ATO powers without getting the backing of their leaders in advance. Fieldworkers, however, should not assume their leader's support when they want to escalate to assertive use of ATO powers and beyond. They must be able to count on their backing when the fieldworker and leader agree in advance on the circumstances of the escalation. Once a litigation task force is established, control passes out of the fieldworker's hands into the hands of the head of the task force (usually a lawyer). Assurance that at some point the lawyers take over as a matter of policy adds to the confidence and authority of the fieldworker who can say: Look, unless we can sort this out, the conflict will escalate to the point where ATO policy requires that it be taken over by a Litigation Task Force. Near the peak of the pyramid, no promises of escalation would be made without the backing of the Commissioner.

Of course, many of the strategies in Figure 9.4 will be deployed for risk management reasons rather than out of any desire to give a signal that the behaviour of the taxpayer is causing their case to be taken more seriously. Sometimes when escalation up the pyramid is occurring, the circumstances will warrant a jump up several rungs of the pyramid. The pyramid represents a preference for resolving matters at lower levels, not a rule to do so. Starting at the base of a pyramid and moving up progressively is a presumption that can be overridden by compelling evidence, for example, of criminal behaviour or aggressive tax planning, that this is a case that should go straight to the peak of the pyramid. But we should be extremely reluctant to do that.

It is a challenge to educate people that there is no single or correct pyramid, but that there is virtue in having the professionalism that comes from having thought through the range of responses through which a regulator can escalate when faced with non-cooperation. For example, one way to meet the challenge could be to build various compliance pyramids that deal with access to

information. A workshop would get a group of fieldworkers who confront a similar group of clients with similar access difficulties to co-design their own pyramid of escalated response to denial of access. In the course of the workshop, they would be shown the compliance pyramids designed by other access workshops. Seeing their differences would both give them ideas and assurance that they could design their own. Indeed, there would not have to be agreement at the workshop. Different participants could go away with different pyramids that suited their contexts. The objective would be that each participant would develop a pyramid that she thinks would work for her and that she could get her supervisor to back her on.

Conclusion

The four elements of the ATO Compliance Model: (a) understanding taxpayer behaviour; (b) building community partnerships; (c) increased flexibility; and (d) more and escalating regulatory options have been found to have relevant meanings for large business tax policy. This is so even if it is the case that improving compliance is a less satisfactory way of planning large corporate tax objectives than reducing risks to the revenue and increasing legal certainty. There is a long way to go before large business tax enforcement achieves problem-focused flexibility informed by bottom-up storytelling and top-down demands for evidence-based risk leveraging. The field has a long way to go before it is genuinely a regulatory craft (Sparrow, 2000). An egg-shaped form of compliance behaviour where most enforcement effort is directed at grey areas of avoidance rather than evasion makes the challenge especially difficult. It also makes it a challenge where law enforcement and law reform must be integrated instead of separated functions. My argument is that a combination of escalated responsive enforcement integrated with responsive law reform has some hope of shifting much of the grey bulge of tax avoidance into tax compliance.

Notes

1 This is a revised version of a longer paper by John Braithwaite and Andrew Wirth, 'Towards a Compliance Framework for Large Business Tax Compliance', Centre for Tax System Integrity, Working Paper No. 24, The Australian National University, Canberra.

2 In a 29 May 1998 presentation to the NSW Annual State Seminar of the Taxation Institute of Australia, LB&I (Large Business and International, ATO) reported that 'almost 60 per cent' of its companies were non-taxpayers. Consolidation would doubtless reduce this proportion substantially because one large corporate group might include a number of entities that pay no tax and others that pay large amounts.

3 Kerry Packer's taxpaying behaviour has been subject to public scrutiny on a number of occasions. See, for instance, House of Representatives Select Committee on the Print Media Inquiry (1992) and *The Australian* (2000), 'Packer Sues over Internet Tax Ads', 5 September, A. McGilvray and A. McKenzie, p. 1.

4 BISEP represents the idea that to understand the compliance of an individual or group, one needs to understand the environment in which they operate. The initials

of this acronym stand for B = Business profile, I = Industry factors, S = Sociological factors, E = Economic factors and P = Psychological factors.

5 The Large Case Program focused ATO audit activity on the largest corporate taxpayers and was conducted during the later half of the 1980s and early 1990s.

6 This is a body akin to Crime Commissions that have special evidence-gathering powers against serious organised crime in a number of countries. Indeed the National Crime Authority in Australia is in transition to becoming a National Crime Commission.

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