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Tax compliance and the public disclosure of tax information: An Australia/Norway comparison

Ken Devos¹ and Marcus Zackrisson²

Abstract

A combination of both persuasive and enforcement measures have been applied by governments in attempting to tackle tax non-compliance. With increasing pressure to raise revenue in the current economic climate, governments need to assess the effectiveness of various compliance measures. This paper presents and analyses the strategies adopted by tax authorities globally and specifically in Australia and Norway, regarding the public disclosure of tax information and the likely compliance impact. The paper provides an insight into how public disclosure could indirectly improve compliance in the setting of one country, while some limited disclosure may supplement other compliance strategies in another.

Key Words: Tax compliance, public disclosure, deterrence

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1. INTRODUCTION

It is evident that a large volume of research into the factors that act as a deterrent and impact upon tax compliance has been conducted over many years (Kirchler, Hoelzl, and Wahl, 2008; Slemrod, 2007; Raskolnikov, 2006; Feld and Frey, 2003 & Dubin, Graetz, and Wilde, 1987). However, of the different factors employed within various research studies, an investigation into the impact of public disclosure of tax information has also been critical (Mazza, 2003; Laury & Wallace, 2005; Kornhauser, 2005). Arguably, while there is evidence of public disclosure at the corporate level limited findings have appeared with regards to individual income tax reporting (Slemrod, Thoresen, Thor, and Erlend, 2013). A key reason for this is that very few countries practice public disclosure of tax information at the individual level (Slemrod, et al., 2013, p 5). The debate over whether public disclosure of tax information or tax privacy promotes greater deterrence and thereby improves taxpayer compliance is as old as the income tax itself (Bittker, 1981).³

This paper argues that public disclosure of taxpaying is potentially useful for improving compliance in Australia. Public disclosure is identified as an addition to 'traditional compliance strategies'—audits, simplifications and guidance. The theoretical reasons for why or why not compliance may be improved as a result of increased public disclosure are discussed in section 2 of the paper. Section 3 discusses the impact of public disclosure of tax information globally, citing specific countries which have employed various measures. The paper then proceeds to compare the strategies of two countries which are relatively at the extremes with respect to individual income tax reporting and disclosure in sections 4 and 5. The comparison encompasses the Norwegian system, where public disclosure of individual tax information is now accessible via the internet and the Australian situation, where privacy principles still protect this information from disclosure. A comparison of the strategies pertaining to the disclosure of corporate tax information in both countries is also undertaken, given the recent changes prompted by the *Tax Laws Amendment Bill (2013)* in Australia. Based on current global practices and the Norwegian and Australian comparison, section 6 then discusses how public disclosure improves deterrence and supplements other compliance strategies. In particular, tax policy recommendations are proposed, regarding what combination or mix of disclosure may be the most effective in improving compliance. Finally, Section 7 concludes the paper.

2. BRIEF REVIEW OF THE THEORY ON PUBLIC DISCLOSURE OF TAX INFORMATION

The reasons for why or why not compliance may improve as a result of increased public disclosure generally relate to good governance and tax administration. Specifically, in favour of disclosure are the principles of transparency, accountability and fairness. The overarching principle or reason against disclosure is privacy. As indicated by Bittker (1981), the debate over privacy verses public disclosure of tax information is not new. Although the literature extends over a number of years, more

³ Boris Bittker commented in 1981 that this question "was not invented yesterday".

recent studies have been examined in this section. A critical analysis of the above principles and the respective theory follow.

Transparency is defined as that which can be clearly seen through, easily understood and free from affectation or disguise.⁴ In the tax context it would refer to situations where tax figures could be easily reconciled and working papers and accounts easily followed when viewing the final tax return. Showing or revealing the true taxation position without hindrance or bias would be critical in building public confidence and assisting the revenue authorities in carrying out their compliance activities. Consequently in the absence of transparency, individuals and corporations may run foul of the revenue authorities in establishing credibility.

Lenter, Shackelford, and Slemrod (2003) provided a brief history of the US federal tax disclosure laws and then debated the advantages and disadvantages of public disclosure. The arguments in favour of disclosure included: aiding regulators to police corporate governance; improving the functioning of financial markets; promoting tax compliance; and applying political pressure for good tax policy. The disadvantages put forward were that disclosure violates confidentiality, may create confusion with regards to transparency, provides too much power to the Federal government and may have unintended behavioural responses, such as, increasing the cost of business. Overall, the authors did not support full disclosure but were sympathetic to partial disclosure—in particular, disclosure of total tax liability alone, or along with a small number of bottom line items or public reconciliation between tax and book concepts of income.

The point to note with regards to the study by Lenter et al. (2003) is the possible negative affect of increased disclosure upon transparency. That is, the actual level of disclosure could create a problem in itself, in that different taxpayers become more transparent than others. Some taxpayers may become unsure as to the level of their own reporting, creating uncertainty.

Tax fairness is another principle which impacts upon the level of public disclosure. Indeed the Australian Taxation Office (ATO) and the Australian government need to improve the fairness of the tax system, a finding generally supported by the literature (for example, Hite and Roberts, 1992; Chan, Troutman, and O'Bryan, 2000; Tan, 1998). Specifically, the ATO continues to pursue and address issues of horizontal, vertical and exchange inequity, as well as the problems associated with taxpayers legally avoiding payment of their fair share of tax.

In the public disclosure context, increased information provides the tax authority with the opportunity to reveal those who are not paying their fair share, whether this is done through normal enforcement measures or through public detection. In this regard the perception of fairness is as important to taxpayers as fairness itself. If the taxpaying community believes that being privy to other taxpayer information will ultimately improve compliance behaviour, the value of disclosure is enhanced.

Accountability is defined as a counting or reckoning of money entrusted.⁵ In the public disclosure context it requires those taxpayers who have been entrusted through the system of self- assessment, to honestly contribute the amount of correct tax

⁴ As defined in the Oxford Dictionary

⁵ As defined in the Oxford Dictionary

payable based upon their taxable income. According to Kornhauser (2005) the increasing accountability of governments is also a vital factor to show how money was received and used in these current times of revenue shortages.

However, the capability of the government to carry out the task of revenue collection can also be difficult to assess. There are changes in revenue collections as reported in the ATO Annual Reports and Australian National Audit Office (ANAO) Reports which indicate performance levels, but the accuracy of these figures could validly be questioned. Aggregate statistics in Annual Reports say nothing about the ATO's unfairness in focusing on some taxpayers more than others. Further to this, Australians have long been sceptical of high wealth individuals (HWI) paying their fair share of tax and the lack of accountability generally. Consequently, increasing disclosure measures to make the work of the ATO more visible is also important.

On the other hand, privacy is defined as being withdrawn from society or public interest⁶ which would be completely opposite to that of public disclosure. In the tax context, privacy rules prohibit governments from publicly releasing details of any specific taxpayer's tax return or audit history unless the taxpayer consents. However debate over this question surfaces often, especially when the government seeks innovative ways to address the "tax gap"⁷ (Blank, 2013). The notion of whether privacy has been used as the rationale for not asking questions and looking too hard for tax discrepancies is a valid one.

Opposed to public disclosure have been the defenders of tax privacy. For example Blank (2011; 2013) argued that tax privacy enabled the US government to inflate taxpayers' perceptions of the probability of detection and the expected costs of non-compliance. On the other hand, public disclosure could lead to tax-enforcement weaknesses and lower individuals' perceptions of the magnitude of penalties (Blank, 2013).

Blank 2013 proposed that a strategic-publicity function would support two models of taxpayer behaviour. Firstly, a traditional deterrence model of taxpayer behaviour where individuals weighted up the expected costs and benefits. Secondly, a reciprocity model of behaviour where individuals were happy to contribute to the public good if they believed others was doing the same. Overall, Blank concluded that individual tax return information should remain private other than when enforcement action is instituted against an individual taxpayer. It was suggested that the government could employ the strategic-publicity function of tax privacy to increase voluntary compliance.

However, many scholars have questioned the hypothesis that, in the absence of tax privacy, individuals would withhold important personal information from the revenue authority (Kornhauser, 2005; Linder, 1990; Mazza, 2003; Schwartz, 2008; Thorndike, 2009; Bernasek, 2010). Several of these scholars have suggested that tax privacy no longer plays as critical a role in fostering tax compliance as it did in the past (Kornhauser, 2005, pp. 101-103; Thorndike, 2009, p. 691; Schwartz, 2008, pp. 895-896). By lifting the curtain of tax privacy these scholars argue that public access to tax

⁶ As defined in the Oxford Dictionary

⁷ The "tax gap" is the difference between the tax payable according to the tax law and the amount of tax actually collected.

return information would cast “millions of eyes” (Thorndike, 2009, p. 691) on tax returns serving as an “automatic enforcement device” (Bernasek, 2010, p.11).

Kornhauser (2005) reevaluated publicity as a tax compliance tool in light of legal and social changes regarding privacy that had occurred over time. It was suggested that a redefined concept of publicity would be a better tool to attack both intentional and unintentional non-compliance. In particular, Kornhauser suggested that a form of partial disclosure be adopted. This incorporates a moderate approach that minimizes the invasion of privacy while still publicizing enough information to promote increased compliance. In other words, a balance between having total and no disclosure that would provide the tax authorities with further limited information only. This would enhance good governance and tax administration as tax authorities are able to target and use their limited resources more productively.

A modern day “pink slip”⁸ was suggested by Kornhauser that incorporated the taxpayer’s name, a non-specific address, gross and taxable income within narrow income ranges, any capital gains, particular deductions and credits and finally the taxpayer’s marginal and effective tax rates. As much of the publicity was considered educational only, it encroached far less on privacy than traditional publicity. A sense of wider and more effective dissemination of information was the aim while advocating for limited disclosure.

Mazza (2003) was also an advocate for limited disclosure. Mazza’s thorough review of the literature revealed that restricted disclosure of return information for narrow purposes can be part of an effective compliance strategy while at the same time preserving taxpayers’ reasonable expectations of privacy. Empirical evidence suggested that publicity could play a positive role in discouraging non-compliant behaviour and increasing the public’s commitment to the system. In particular, Mazza proposed disclosure exceptions authorising the Inland Revenue Service (IRS) to publicize its enforcement efforts aimed at three specific types of non-compliance including: criminal tax evasion; failure to pay assessed taxes; and investments in abusive tax shelters. Mazza believed that the benefits to government in each case of disclosure would outweigh any threats to taxpayer privacy interests.

Taking a slightly different perspective to public disclosure by the tax authority was the situation of increased disclosure by taxpayers themselves, as advocated by Pearlman (2002). Pearlman indicated that mandatory tax disclosure of information relating to tax-relevant transactions may serve three enforcement and compliance functions. First, audit function where information would assist the IRS to evaluate the effect of a transaction on a disclosing party’s tax liability. Second a tax policy function where disclosure could provide important information regarding administrative and legislative responses to current law. Third deterrence function which discouraged taxpayer investment in particularly questionable transactions. Supporting the latter was the apparent strong association between public information disclosure (that is, non-tax information reporting by public companies) and high compliance (Pearlman, 2002, p. 308).

⁸ In 1934 a pink slip required six pieces of information to be disclosed including; name, address, gross income, total deductions, taxable income and tax liability see Act of May 10 1934, s 55(b), 48 Stat, 680, 698 (1934).

However, the literature is vague on how public disclosure actually increases compliance. In summary, the pro-arguments fall into two tracks—public disclosure of tax information can cast millions of eyes on the tax returns and will generate tips or in other ways alert tax administrations. Secondly, the shaming-factor makes taxpayers provide accurate information to the tax administrations. The idea being, those taxpayers do not want to show neighbours and colleagues that they are evading taxes. Associated with this, is the lack of evidence as to what degree public disclosure actually generate tips. Although the extent to which the shaming-factor has been investigated in relation to large scale public disclosure of tax information is uncertain, there has nevertheless been evidence⁹ in some cases of a shaming-factor.

Overall, the argument against public disclosure is mainly based on the invasion of privacy, but Blank (2011) provides further arguments as to how public disclosure actually decreases compliance. While both Blank (2011) and Kornhauser (2005) raise the question of what public disclosures could (or should) include, there is evidence that suggests that the type of disclosed information has an effect on taxpayer behaviour and compliance. There is also evidence to suggest that the cultural contexts matter, (that is, disclosure of tax information in a society with high compliance may have a different effect than disclosure in a society with low compliance). It is this concept of tax culture which also requires further investigation.

Tax culture could be described as the beliefs and attitudes a particular nationality hold about paying tax to the authorities. A more extensive definition of a country-specific tax culture includes “the entirety of all relevant formal and informal institutions connected with the national tax system and its practical execution, which are historically embedded within the country’s culture, including the dependencies and ties caused by their ongoing interaction” (Nerre, 2001). From this working definition it becomes evident that to understand a specific country’s tax culture requires a lot of research effort, because a lot of actors and institutions have to be studied as well as the procedures and processes when they interact. Consequently good policy advice should not disregard the national tax-cultural constraints (Nerre, 2001).

The success of any major tax changes and reforms, such as increased disclosure levels, does depend on a country’s tax culture and how the taxpaying public responds to them. That is, a highly compliant tax culture may be more accepting of increased disclosure levels whereas a less compliant tax culture could be more resistant or react through game playing. The resistance to change or greater tax disclosure could result in taxpayers of some countries to find further ways to avoid tax. Whether this involves manipulating disclosure thresholds or entering into avoidance schemes, the potential outcomes could defeat the purpose of the tax change all together.

The relationship between tax compliance and nationality or culture has also been subject to prior empirical research. A literature review by Roth, Scholz, and Witte (1989) found studies which used whites and non-whites as a proxy variable and found whites to be more compliant. However, Beron, Tauchen, and Witte (1992) suggest the results are dependent upon other variables used in the studies. In particular, the income variable was found to have a distorting effect. Other studies of commitment to compliance using indices by Song and Yarbrough (1978) found the largest differences

⁹ As indicated in section 3 of the paper, see the list of evaders exposed in Ireland and New Zealand.

between races. In their study, race explained 19 per cent of the scale variance by itself, while controlling for other relevant variables such as income and education (p. 445).

On the other hand, other econometric results have failed to find strong relationships between nationality and tax compliance. For example, Witte and Woodbury (1983) found statistically negative coefficients on 'per cent non-white' in two audit classes, but insignificant coefficients in the other five classes. Likewise, Beron et al. (1992) found a significant negative coefficient on percentage non-whites in only one audit class in their regression analysis. Nevertheless, despite the mixed empirical findings, it is considered that overall one's nationality and culture does influence taxpayer compliance attitudes and behaviour. It is with this background that the paper proceeds to examine how public disclosure of tax information has been perceived globally and then specifically from an Australian and Norwegian cultural context.

3. PUBLIC DISCLOSURE OF TAX INFORMATION-GLOBALLY

As there are various forms and levels of individual disclosure of tax information, it is apparent that this may result in varying degrees of deterrence that ultimately impact upon compliance. However, the experience of individual public disclosure on a global scale has been limited (Slemrod et al., 2013). At one extreme we have the Nordic countries where personal level public disclosure is displayed with Norway (analysed in detail in Section 5) leading the way. At the other extreme we have the majority of western countries which honour privacy principles with some exceptions in Europe and the US which has trialled limited spells of public disclosure. In between the extremes, other countries have adopted and then discarded various forms of disclosure or as in the case of Australia (analysed in detail in section 4), have adopted limited disclosure measures for corporations only. The following section provides a brief overview of disclosure measures adopted in selected countries and the impact, if any these measures have had upon taxpayer compliance.

Investigating both Sweden and Finland as fellow Nordic countries it is apparent that both corporate and personal level disclosure exists. In Finland not only can one apply to the tax authority for information about individuals but the media also publishes the top 1000 income earners and provides personal details including how much tax has been paid as a portion of salary (Catanzariti, 2004). There are also boutique publications that publish guides on everyone who earns about 40,000 Euros, but otherwise it is just a long list of people the Finns would know of. Given there are only five million people in the country and very few foreigners, it is highly likely that many tax evaders would be known or identified (Catanzariti, 2004, p. 2). Consequently, the transparency in the Finnish system is accepted and has generally a positive effect on compliance rates.

Slemrod, Hasegawa, Hoopes, and Ishida (2012) investigated the empirical evidence regarding the effect of public disclosure of tax reports of individuals and businesses in Japan up until its abolition in 2005. It was discovered that where there was a threshold of disclosure (that is, taxable incomes above about 40,000 yen for individuals, \$400,000AUD equivalent and 75,022,000 yen for corporations) many taxpayers whose liability would otherwise be close to the threshold chose to under-report income so as to avoid disclosure. However, the strong result only applied to disclosure systems with a threshold and the financial statements of companies provided no

evidence that taxable incomes declined after the end of the disclosure system. Overall, it was concluded that public disclosure had the power to change behaviour.

Other European countries such as Italy and France have experienced short spells of public disclosure. For example, in Italy in 2008 the tax authorities put all 38.5 million tax returns for 2005 up on the internet before being blacked out following widespread protest (Slemrod et al, 2013).¹⁰ No doubt the taxpaying culture in Italy had an impact upon this compliance measure which potentially could have produced exaggerated revenue results. Providing details of tax evaders has been another popular form of disclosure. Under Greek law the presentation of a new budget is accompanied by the names of tax evaders in the previous year compiled by the finance ministry (Slemrod et al., 2013, p. 6). However, given the culture of taxpaying in Greece as evidenced by the recent European financial crisis and austerity measures put in place by the European Union (EU), there is limited evidence that the disclosure of these tax evaders has had a deterrent impact upon non-compliant behaviour.

The issue of disclosing tax evaders as a tax compliance tool has also been adopted with varying success in other Commonwealth countries. Up until the early 2000s the Commissioner of Inland Revenue in New Zealand, regularly released a document entitled “Tax Evaders Gazette” which listed those taxpayers who had either been prosecuted or had penalty tax imposed for evading their tax obligations. Since 1997 the Commissioner was able to publish the names of those taxpayers involved with “abusive tax avoidance” (Slemrod et al., 2013, p. 6). This measure has now been withdrawn despite fulfilling a deterrent role and assisting the generally high taxpaying culture evident in New Zealand. The motivations of the Inland Revenue Department (IRD) in this regard were not clearly specified. Despite obvious privacy issues around releasing taxpayer details, the naming and shaming of offenders has been successful both as a deterrent and a revenue raiser in Portugal for example,¹¹ and has received support in the literature.¹²

However, the theoretical support for naming and shaming should be qualified in this regard. Naming and shaming of individuals, if stigmatizing does enormous harm and can create enemies for life. This is neither desirable nor an objective of punishment itself. Instead for individuals, naming and shaming can be employed in a non-stigmatising fashion. For example mediation could be conducted between those found cheating on their taxes, and their accountant, employer or industry association. The

¹⁰ The Economist May 8, 2008. Before being blacked out, vast amount of data were downloaded and transferred to other sites or burned on to discs and sold.

¹¹ Portuguese Tax Authorities publish a list of debtors, and their categorization, in accordance with the amount of the debt, on their website <<http://www.e-financas.gov.pt/de/pubdiv/de-devedores.html>>. In April 2010, the Portuguese Government officially announced that it had recovered more than a thousand million Euros due to publication of the list of taxpayers (individuals and corporations) with tax debts.

¹² The reintegration shaming literature, see for example, J, Braithwaite, “Crime, Shame and Reintegration; Braithwaite, J and Drahos, P, “Zero Tolerance, Naming and Shaming: Is There a Case for it in Crimes of the Powerful?” (2002), 35, 3 *Australian and New Zealand Journal of Criminology*, 269-288, 275, where it was concluded that naming and shaming was a bad policy for the powerless but could be a strategic policy with regards to corporate or organizational crime. See also Van Erp, J, “Naming without Shaming: The Publication of Sanctions in the Dutch Financial Market,” <<http://onlinelibrary.wiley.com/doi/10.1111/j.1748-5991.2011.01115.x/full>, 1-9, 7>, where it was found that exposing the offender raises the expectation of a moral message about the inappropriateness of certain behaviour. The Study showed that regulatory enforcement provides an opportunity to express what is morally right and to change perceptions as to what is meant by appropriate behaviour.

matter could be discussed and an action plan could be put in place to ensure it doesn't occur again.¹³ In regards to corporations (mainly larger ones) the naming or shaming is not personal and is a risk factor in their business models. Ultimately it has the desired effect of curbing undesirable behaviour by the corporate as reputational damage can impact on future business.

The Canadian Customs and Revenue Agency compliance strategy also involved publicizing court convictions for tax fraud and releasing the names of offenders. In Ireland a list of tax defaulters was formally published on an annual basis in the Revenue Commissioners Annual Report, but recently the list is published on a quarterly basis in *Iris Oifigiuil*¹⁴ in which several legal notices including insolvency notices are required by law to be published and reported in the national and local newspapers. According to the tax agency this measure “aims to raise the profile of compliance and provide a continuous deterrent to other potential tax evaders. Frequently, taxpayers make a full disclosure of irregularities to auditors at the commencement of an audit to avoid the possibility of being punished for tax offences”. Moreover, the well-publicised quarterly list is “more likely to be spotted by suppliers, customers, business associates and friends” and would need to be avoided at all costs (Tax Agency as cited in Slemrod et al., 2013, pp. 6-7).

In Korea, only a few non-compliance statistics audited for certain limited taxpayers are irregularly released to the public. Likewise individual tax return information for randomly selected anonymous taxpayers is released for public use in limited circumstances (for example, academic research). This level of tax compliance information (TCI) disclosure has led to conflicts and heated debates between the tax authority and various parties. Hyun and Kim (2007) propose that it is the bad equilibrium that has trapped some countries such as Korea, into a “very low degree of TCI disclosure” and a “pervasive level of tax evasion” (p. 4). Likewise in Mongolia national statistical information is published under the Prime Minister, not the tax authority and contains only a small amount of tax information which has nothing to do with TCI. Arguably, this has done nothing to promote greater deterrence and improve compliance.

In the United States of America (USA) the history of public disclosure of tax information has been gradual. Initially disclosure laws of one form or another were enacted in 1862, 1864, 1909, 1924 and 1934 demonstrating that confidentiality as a general rule is a relatively recent phenomenon. The shift came in 1976 following allegations that the Nixon Administration had improperly used tax return information against political opponents. Since 1976 as per s 6103 of the Internal Revenue Code, disclosure of return information is forbidden, except under limited circumstances. Public disclosure rules of tax information for corporations at the state and local levels have nevertheless been permitted in Massachusetts, West Virginia and Kansas since the 1990s. The IRS has also occasionally in the past made public the names of tax offenders (Lenter et al, 2003). Whether the deterrent impact of this limited form of disclosure has been effective in influencing compliance over the years is uncertain and continues to be challenged.

¹³ Also described as reintegrative shaming. See Braithwaite, J and Braithwaite, V “*Revising the theory of Reintegrative shaming*” in Ahmed E, Harris, N Braithwaite, J and Braithwaite, Shame Management through reintegration, Cambridge: Cambridge University Press, pp 315-330, 2001.

¹⁴ The *Iris Oifigiuil* is the official newspaper of record in Ireland.

4. PUBLIC DISCLOSURE OF TAX INFORMATION ADOPTED IN AUSTRALIA

As it is evident that the level of disclosure of tax information varies from country to country, the following section focuses on the current state of play in Australia. In particular, both individual and corporate disclosure rules will be discussed in line with the current privacy principles which operate. Particular strategies that have been adopted by the Australian government will be outlined and analysed for their potential effectiveness and future as a deterrent measure and compliance tool.

4.1 Disclosure of individual taxpayer information

The disclosure of individual taxpayer information has generally been non-existent in Australia. Other than the public having access to tax information via court records and other documents in the public domain it is difficult to acquire knowledge of a taxpayer's dealings. Access could be sought under the *Freedom of Information Act 1982* but this is limited somewhat by the National Privacy Principles. In particular, *National Privacy Principle Number 2—Use and disclosure* indicates in 2.1 (a) that an organisation must not disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless (a) both of the following apply:

- i. the secondary purpose is related to the primary purpose of collection and if the personal information is sensitive information, directly related to the primary purpose of collection,
- ii. the individual would reasonably expect the organisation to use and disclose the information for the secondary purpose or

(b) the individual has consented to the use or disclosure ...

This severely limits the tax authority in divulging any type of personal tax information unless as per 2.1(f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in and uses or discloses the personal information as a necessary part of its investigation of the matter ... Also in 2.1(h) where the organisation believes that the use or disclosure is reasonably necessary for ... (i) prevention, detection, investigation, prosecution or (ii) punishment of criminal offences, breaches of law imposing a penalty or sanction ... (iii) the protection of the public revenue ... Consequently, we see the ATO and other government agencies publish via media releases¹⁵ and press outlets, the details of tax evaders who have been caught, in an effort to get the message out and create a general deterrent. How effective this has been over the years is unknown, given its indirect and somewhat infrequent occurrence.

Further invasion of individual taxpayer information is protected by the *Tax Laws Amendment Bill (2013)*, which was introduced to increase the disclosure of company information. Specifically, *Chapter 3: Improving the transparency of Australia's corporate tax system* Paragraph 3.10 indicates that the government is committed to maintaining the confidentiality of taxpayer information of natural persons. The amendments contain express protections for natural persons. This is in line with the

¹⁵ For example, see Australian Federal Police Media Release: Three charged in joint tax evasion and money laundering investigation, October 16, 2013.

Statement of Compatibility with Human Rights (Parliamentary Scrutiny) Act 2011, paragraph 3.74 which indicates that information is not capable of being used to identify an individual ... recognises the importance of affording privacy to individuals personal affairs ... and promote the prohibition on interference with privacy under article 17 of *International Covenant on Civil and Political Rights*. As indicated in the Explanatory Memorandum to the *Privacy Amendment (Privacy Alerts) Bill 2013* Second Reading Speech, the right of an individual to control what happens with his or her personal information is an important aspect of the right of privacy.¹⁶

4.2 Disclosure of corporate taxpayer information

Similar to the situation with individuals, the disclosure of corporate tax information in Australia up to 2013 had been limited¹⁷ but this has changed recently with the introduction of the *Tax Laws Amendment Bill (2013)* since 1 July 2013, discussed above. The main objectives of the new legislation were to discourage aggressive tax avoidance practices; promote greater tax policy debate; enable better public disclosure of aggregate tax revenue collections despite taxpayers being potentially identified; and to allow improved sharing of tax information between government agencies.¹⁸

Specifically, the new legislation aims to improve the transparency of Australia's business tax system by publishing certain information from tax returns where the corporate has a total income of \$100 million AUD or more for an income year. Separately, the Commissioner of Taxation will also have a duty to publish the final amount of the entity's annual Minerals Resources Rents Tax (MRRT)¹⁹ or Petroleum Resources Rent Tax (PRRT) payable, regardless of total income. Importantly, the second measure amends the taxpayer confidentiality provisions to ensure publication of aggregate tax information to fulfil its financial reporting obligations, unless the entity is an individual. The third measure enhances information sharing between government agencies by allowing a tax officer to disclose confidential taxpayer information to the Treasury with regards to decisions concerning the *Foreign Acquisitions and Takeovers Act (1975)* or Australia's Foreign Investment Policy.²⁰

The implications of the new disclosure legislation will vary for Australian listed entities, privately held large businesses and Australian subsidiaries of foreign owned multi-national groups. It will also depend on the cash tax profiles of the large businesses. From a deterrent perspective, public perception issues may arise from the disclosures. For example, if businesses have low cash tax payable due to factors such as carry-forward losses or R&D deductions, increased queries may arise in the absence of full information, from analysts, the public or social welfare groups (Ernst & Young, 2013). Another danger for business is that mandatory disclosure of tax information may adversely affect consumers' buying behaviour (similar to the recent

¹⁶ *Privacy Amendment (Privacy Alerts) Bill, 2013*, Second Reading Speech, House of Representatives, 29 May 2013, 4230.

¹⁷ Only a few large businesses and multi-nationals publicly disclosed the taxes they paid, see for example, Rio Tinto.

¹⁸ *Tax Laws Amendment Bill (2013 Measures No 2) Bill 2013*, 76.

¹⁹ It should be noted that the *Minerals Resources Rents Tax Repeal and Other Measures Bill 2013* was introduced and passed in 2014 directly impacting on the disclosure rule.

²⁰ *Tax Laws Amendment Bill (2013 Measures No 2) Bill 2013*, 77-78.

protests directed at Starbucks in Britain).²¹ In addition, governments themselves are large consumers of goods and services and may take information on tax contribution into account when making purchasing decisions. There have also been reports about “ethical investors” who ignore purchasing shares in companies that are not viewed as tax compliant (Grieve, Bertram, and Smith, 2013).

4.3 Effectiveness and future of disclosure strategies adopted

To gauge the benefit and effectiveness of the improved disclosure requirements on corporations involves considering factors other than just increased revenue. Importantly the new legislation will update Australia’s tax rules to be able to cope with the modern global economy. In the digital age the ability to conduct business over the internet anywhere in the world has highlighted the inadequacy of the residency and source rules. Consequently, the new disclosure measures may be a first step to diagnosing deficiencies in the tax system and pave the way to aligning it to a digital and global economy (Grieve et al., 2013, p. 2).

To some extent the new legislation also replaces the deterrent that was removed from individual taxpayers in the late 1990s. That is, the “naming and shaming” of large businesses and multi-national taxpayers that do not pay their fair share of tax in Australia given the qualifications discussed previously that apply to individuals.. The bad publicity could have financial implications and may influence the investment decisions of companies currently operating in Australia and those considering establishing a business in Australia. In this regard, it is vital corporations review the appropriateness of their business and entity structures and transfer pricing policies so that they are not exposed to legitimate criticism. Potentially the legal costs of large business and multi-nationals will rise if they need to take advice on whether disclosure under the new legislation breaches any legal or commercial confidentiality obligations. Consequently, one danger the more onerous disclosure obligations could bring is a ‘race to the bottom’²² as enterprises discover they are paying more tax than their competitors (Grieve et al., 2013, p. 2). This could negate the overall benefits derived from increased disclosure.

Apart from improving corporate compliance the revenue projections of the new legislation are nevertheless important to government. In this regard it was impossible to obtain any information (statistical data) directly from the ATO concerning the revenue projections of future disclosure requirements.²³ However, an inspection of the 2011–12 Annual Report of the Commissioner of Taxation did reveal a trend in company profits and income tax payable since 2002²⁴ giving some idea of past performance. A comparison of the profits and net income tax reported in corporate tax returns with a corporate profit estimate from the Australia Bureau of Statistics (ABS) indicated that overall company tax performance was generally in line with improving

²¹ Coffee chain Starbucks agreed to voluntarily pay an additional 20 million pounds in tax over the next two years after it was revealed that, despite having generated over 3 billion pounds in sales since 1998, it had only paid 8.6 million pounds in income tax.

²² This is where companies deliberately under-perform and report less income so as to avoid disclosure requirements.

²³ Enquiry made with the ATO statistics team on 8 October, 2013 revealed no such statistics were kept.

²⁴<http://www.annualreport.ato.gov.au/ourperformance/protecting-people-and-the-community/income-tax/Reporting>

profits. Further to this, the ATO's 2012–13 Compliance Program revealed that the companies' income tax reporting was generally accurate.²⁵ Based on these past figures it is suggested that the increased disclosure requirements may have an even greater impact upon the visibility of ATO activity and future revenue projections as the majority of corporate taxpayers choose to comply.

However, because of the strict privacy principles²⁶ in place with respect to the disclosure of individual tax information it is suggested that there will be little, if any deterrent effect and impact upon compliance at this level. For individual taxpayers, the ability of the revenue authority will be limited in disclosing tax information publically, other than when investigating unlawful activity and criminal offences. Consequently, this may affect future revenue collections and even have a negative impact upon taxpayer behaviour. For instance, even compliant taxpayers may choose to hide other tax information behind the strict privacy rules.

5. PUBLIC DISCLOSURE OF TAX INFORMATION ADOPTED IN NORWAY

The following section focuses on the current state of play in Norway. Again both individual and corporate disclosure rules will be discussed along with their potential effectiveness and future as a deterrent measure and compliance tool. Initially, it should be noted that there is no measure of tax gap or other measurements of tax compliance in Norway and neither are there reliable international comparisons, but the extensive use of third party reporting and pre-filled tax returns, in combination with payroll withholding tax generally ensures a high degree of compliance.

The main strategies available for the Norwegian Tax Administration are the volume and types of audits conducted and information and guidance efforts. However, disclosure of tax data is determined by law and is therefore outside the direct control of the Norwegian Tax Administration and consequently has not been part of the Administration's efforts to increase compliance. A long standing tradition in Norway, as well as in other Nordic countries, is openness in public affairs/administration (*offentlighetsprinsippet*).²⁷ It basically means that all public documents should be available for the public, if the document is not deemed confidential.

Taxation in Norway is levied by the central government, the county municipality and the local municipality. The tax level in Norway is high. In 2014, the total tax revenue was 42 per cent of the gross domestic product (GDP). The most important taxes, in terms of revenue, are income tax and Value Added Tax (VAT). Most direct taxes are collected by the Norwegian Tax Administration and most indirect taxes are collected by the Norwegian Customs and Excise Authorities.

5.1 Disclosure of individual taxpayer information

Since the middle of the nineteenth century there has been public disclosure of individual taxpayer information in Norway. It has historical roots and cannot be solely

²⁵ Large business in 2011–12 accounted for 36% of total ATO collections.

²⁶ See n 16, *Privacy Amendment (Privacy Alerts) Bill 2013*.

²⁷ An equivalent in English speaking countries is the "Freedom of Information Act".

contributed to tax compliance.²⁸ Public disclosure of tax data should therefore be seen in the light of freedom of information. In the latest revision of the *Tax Assessment Act (1980)* it was argued that public disclosure of tax lists is contributing to transparency in the tax assessment, and to the fairness of the system; increased compliance was not explicitly mentioned.

Information on individual Norwegian taxpayers' taxable income, paid taxes and taxable wealth have been available in the tax lodges located at the local tax office since the early 20th century, so anyone interested could access this information. Arguably, most people did not visit the local tax office for a manual search of the tax lists. However, in a number of municipalities tax information about local residents was widely distributed through sales of paper copies of the tax lists. The sale was usually a fundraising activity for local soccer teams or other local associations. Unfortunately, there is no measure as to how widespread these were, but since most of the municipalities with sales of paper copies were small, it can be assumed the penetration in most cases was fairly high (Slemrod et al., 2013, pp. 2-3).

In 2001, the tax lists were distributed electronically and newspapers started to present searchable lists on their websites.²⁹ Basically anyone with internet access could obtain information on taxable income, paid taxes and taxable wealth for any individual Norwegian taxpayer. The organization of the tax data is search friendly since it was organized by individuals' names, zip codes and city. The transition from paper to electronic distribution was not primarily driven by any concerns about compliance, but rather as a consequence of the Norwegian government's digitalization strategy.³⁰ Although this practice raised the debate on privacy, no detailed studies on the effect of this level of disclosure had been carried out until Slemrod et al. (2013). Slemrod's study showed that compliance increased more in municipalities where tax information was not distributed widely through paper catalogues. On average Slemrod et al. (2013, pp. 26-27) found that publication of tax lists increased reported income among business owners by approximately three per cent. The increase among wage earners was lower.

Assuming a change in policy to disclose tax information has had the impact suggested by Slemrod et al. upon compliance this would have resulted in an increase in tax revenue of 10 billion NOK (approx. \$1.4 billion USD) since the opening of the tax lists. In the last ten years Norway has also had an increase in the number of self-employed persons. Significantly, the Slemrod et al. study shows a higher compliance effect on self-employed persons than for regular employees. The effect on tax revenue and compliance might therefore be higher still. There are also reasons to believe there would be some dynamic effect over time. However, Slemrod et al. do not discuss the issue of psychological changes in taxpayer behaviour. While on one hand the probability of public detection increases the more years' tax lists are published, on the

²⁸ A discussion of historical explanation for openness in public affairs is outside the scope of this paper, but a good introduction (in Norwegian!) to the matter can be found in NOU (2009).

²⁹ In 2007, the list became indexed for internet search, which meant that in a search of a person (on Google for instance) his/her tax information would appear high on the search result.

³⁰ The Norwegian Government has for the ten last years had a digitalization strategies (with different names) which in summary means that as many public services as possible should be available on digital format in order to improve service to the citizen and reduce costs (Digitizing Public Sector Services: Norwegian e-government program).

other hand, disclosure of income, wealth and taxes paid may provide incentives to 'hide' income and wealth to avoid public scrutiny and thereby decrease compliance.

5.2 Disclosure of corporate taxpayer information

In line with the openness for individual taxpayers, annual reports for all (public and private) registered companies are publicly available. For a fee (approx. \$10USD) any annual report is available for download from the national business register. This register and most of the national registers are administrated by The Brønnøysund Register Centre.³¹ This has been in the Norwegian legislation since their independence from Sweden in 1905 and this practice has not been questioned or been subject to political debate.

However, it has been argued that the access to annual reports makes it easier for foreign companies to analyze and eventually enter the Norwegian market. It is also argued that a possible compliance effect is primarily on small companies and this decreases with an increase in the size of the company, but there are no studies which confirm that perception.

In Norway, as in other countries there is a lot of focus on tax payments from multinationals.³² There have been very limited attempts to compile tax data for multinationals, although it is publicly available in Norway. However, the recent international debate on tax avoidance and multinational corporations has resulted in attempts to estimate tax payments from large Norwegian corporations.³³ Norway does not have a long tradition of 'tax activism' but the issue is being addressed in the on-going Norwegian Public Inquiry on Corporate Taxation.³⁴ Yet up to now, it has been considered to be outside the role of the Norwegian tax authority to compile and disclose lists of taxes paid by corporations.

5.3 Effectiveness and future of disclosure strategies adopted

Overall, the current disclosure requirements for Norwegian taxpayers may be subject to change in the near future. A recent change in government (in October 2013) raised the issue of limiting the internet access to individual tax data. In addition to privacy arguments, the possibility the tax lists assist criminals identify rich individuals has been an important argument in the debate although there is no evidence. Several models for limiting internet access have been discussed but the new law effective from 2015 is that the taxpayer will be informed through their personal governmental web accountants to who is looking into his or her tax information. Currently there are no plans to make changes in the disclosure of corporate tax data.

Likewise, public disclosure of tax data is outside the scope of the traditional components of compliance strategies—audits, simplifications and guidance. Although

³¹ The Brønnøysund Register Centre develops and operates many of the Norway's most important registers and electronic solutions. The Brønnøysund Register Centre is a government body under the Norwegian Ministry of Trade and Industry, and consists of several national digital registers.

³² See for example the Starbucks and Google cases in the UK.

³³ A master thesis has looked into the issue, see Selseth (2013).

³⁴ www.regjeringen.no/nb/dokumentarkiv/stoltenberg-ii/fin/Nyheter-og-pressemeldinger/pressemeldinger/2013/nytt-offentlig-skatteutvalg.html?id=717804

public disclosure is assumed to generate a substantial number of tips, largely due to resource constraints, the Norwegian Tax Administration does not investigate the origin of the tips so it is impossible to know what role public disclosure has played. The system of public disclosure of tax data on the internet has been in place for twelve years in Norway and while there is some evidence it actually increases compliance, further studies need to be undertaken on the subject to increase validity and reliability..

It is important to note that only taxable income, taxes paid and taxable wealth³⁵ is disclosed. Consequently, the tax lists include just a small fraction of data available for the Tax Administration. However, it is also worth noting that there have been no suggestions made to increase the information disclosed. For instance, if disclosure included specific deductions or the particular source of income, arguably there may be an even greater impact upon compliance.

To take the Slemrod et al. study further would be to investigate what caused the income to increase. One explanation might be that the taxpayers reduced the size and/or numbers of deductions or alternatively the income increases were due to a larger part of the revenue being reported. Due to technical limitations, it is not possible (or at least very difficult) to study changes in deductions over time for specific Norwegian taxpayers. However, a preliminary and limited investigation was conducted of the deductions amongst self-employed/small business owners in four municipalities before and after the internet access of tax list were introduced, which did not have the circulation of catalogues. The findings did not reveal any pattern of changes in deductions, but as there were so few cases it was impossible to come to any firm conclusions. Unfortunately, the restrictions in the accessibility of data also made such a follow-up study difficult. Consequently, the reasons for why taxpayers' income increases when tax lists get published are still largely a mystery.

6. RECOMMENDATIONS BASED ON GLOBAL PRACTICES AND THE AUSTRALIA/NORWAY COMPARISON.

Consequently, based on a comparison of the current Norwegian and Australian disclosure practices and the level of disclosure of tax information globally, some suggestions regarding what measures might be best in terms of increasing deterrence and improving tax compliance are put forward. In advocating a case for limited disclosure, the following section initially briefly outlines how disclosure can improve deterrence and compliance bearing in mind the social values discussed earlier. This is followed by a discussion of how disclosure supplements other strategies thereby providing a suite of compliance mechanisms from which certain tax policy recommendations are put forward.

6.1 How public disclosure of tax information can improve deterrence and compliance

Advocates of publicity see disclosure as increasing taxpayer confidence in the tax system which in turn has the salutary effects of increasing compliance and revenues. The visibility of information improves transparency and the ability to be accountable.

³⁵ Taxpayers have to report 'wealth' since Norway has a wealth tax. The imposition of this tax has been heavily debated and suggestions have been put forward for its removal. The base for reporting wealth will in this case disappear, as it has in Sweden.

Likewise publicity can improve taxpayers' knowledge of the tax law which in turn can diminish both intentional and unintentional non-compliance (Kornhauser, 2005). As ignorance and laziness when it comes to carrying out legal obligations should not be tolerated, disclosure may be able to assist when it comes to facilitating a system of voluntary compliance as exists in most modern economies. The prefilling of tax returns certainly alleviates the taxpayer from potential incorrect returns. Also corporate taxpayers may think twice before engaging in more tenuous legal tax avoidance because of the shaming and reputational damage which follows. That is, as everyday taxpayers have access to this information the detection if not enforcement function is increased as the public may discover schemes not caught by tax officials. Despite the limited resource capacity of the revenue agency non-compliant activity could nevertheless be revealed.

6.2 How public disclosure of tax information supplements other compliance strategies

There are indeed a number of deterrent strategies available to a tax authority which are utilised to improve compliance, a discussion of which is outside the scope of this paper. However, the more common strategies adopted include: legal sanctions (Raskolnikov, 2006); audits (Dubin, 2007); media advertising (Hite, 1997); education and tax knowledge (Ern Chen Loo, 2006; James and Alley, 1999); rewards and incentives (Callihan and Spindle, 1997); and certainly a consideration of the morals and social norms of taxpayers (Wenzel, 2003; Kirchler et al., 2008).

As most compliance strategies embrace a combination of both persuasive and punitive measures it is suggested that public disclosure of tax information could also be incorporated therein. Particularly where resources are limited, disclosure offers the opportunity of public involvement to enhance detection, and increase public stigma of non-compliers and tax evaders. Targeted disclosure also has the capacity to improve education and tax knowledge as advocated by Kornhauser (2005) and Mazza (2003). The media exposure employed to enhance a general deterrent can be amplified through disclosure of tax evaders such as the issuing of a 'dirty dozen: list of scams' and highlighting the tax fraud of high wealth individuals (HWI) in the community Blank (2013). However, a strategy of publicly shaming corporates would need to be balanced against the re-integrative shaming of individuals discussed earlier. So while Blank (2013) may advocate stigmatizing HWI's this course of action may prove counter-productive and mediation may be a more appropriate alternative in this case.

6.3 Tax policy recommendations

Despite legitimate concerns over taxpayer privacy and the standards that must be adhered to under the National Privacy Principles, there appears to be a valid case for increasing disclosure requirements in Australia for individual taxpayers. Apart from supplementing other compliance strategies as indicated above the bold move to a greater disclosure of corporate taxpayer information could be accompanied by some future limited exposure of individual taxpayer information. In the interests of increasing transparency and accountability as was found in other countries Australia could adopt stronger individual disclosure rules than it currently has. In this regard a limited/partial form of exposure as suggested by Kornhauser (2005) that minimized the evasion of privacy while still publishing enough information to promote increased compliance is recommended.

The recommendation for a modern day ‘pink slip’ which includes the taxpayer’s name, a non-specific address, gross and taxable income within narrow income ranges, capital gains, particular deductions and credits and finally the taxpayer’s marginal and effective tax rates, is suggested. This could then be assessed at a later date to gauge its effectiveness not just in terms of increased tax dollars but also improved taxpayer education (Kornhauser, 2005; Mazza, 2003).

If the level of disclosure suggested by the modern day ‘pink slip’ appears to be a drastic measure, possibly the naming and shaming of corporate tax offenders should be considered. This approach has acted as a strong deterrent for non-compliant behaviour as evidenced in both the Irish and Portuguese experiences. As indicated by Blank (2013) in the USA at the state level, the taxing authorities publish the identities of business and individuals that have failed to pay outstanding taxes on time. Employing websites to conduct the shaming campaign, taxpayers receive a pending internet posting warning them of the proposed disclosure. State revenue agencies indicate that taxpayers have responded positively to the shaming warnings resulting in millions of dollars of outstanding taxes in recent years (Blank, 2013, p. 25).

At a corporate level it may be worthwhile reconsidering the listing in the Commissioner’s Annual Report of, by name and offence, large corporate tax evaders who risk reputational damage. However, for individual tax evaders in Australia the re-integration strategy discussed earlier, involving mediation and consultation, would be a more measured approach capable of producing the desired results.

In order to enhance the reliability and validity of disclosure in increasing compliance it is further recommended that disclosure be combined with the more traditional and direct compliance strategies such as cash economy benchmarks, raising of default assessments and conducting more BAS³⁶ refund checks. Likewise, the ATO should continue with, and step-up, their current practices which include: targeted education campaigns for specific industries and occupations; voluntary disclosure initiatives and amnesties;³⁷ strengthening of the proof of identification requirements; and disruption activities (for example, interception of tax refunds).³⁸

As mentioned previously, these deterrent and prevention strategies should also be balanced with more media advertising and visibility within the community, which has been found to be very effective in previous studies (Hite, 1997). According to an Australian National Audit Office (ANAO) report,³⁹ while the ATO has been able to raise the awareness of tax fraud through the use of community perception surveys and media releases, in order to substantiate the deterrent effect, it was suggested that certain criteria and international benchmarking ought to be employed to measure the effectiveness of these strategies. These criteria or indicators include: the number of investigations and prosecutions completed; the revenue protected, and feedback

³⁶ BAS (Business Activity Statements)

³⁷ The ATO recently offered a voluntary disclosure initiative ‘Project Do it’ providing a chance for those with overseas assets and income to come back into the tax system before the end of 2014. The Chairman of the Parliamentary Tax Committee, John Alexander, welcomed the ATO’s decision to look overseas to countries like Norway and Denmark for examples of best practice and ways to improve the Australian system. (Media Release 2013/08 27 March 2014.)

³⁸ See the Australian National Audit Office Report No. 34, 2008-09, Australian Taxation Office, Management of Serious Non-Compliance, pp. 58-59.

³⁹ ANAO Report No. 34, 2008-09, pp. 62-66.

received from stakeholders. It is suggested that such measures would also better inform future planning and targeting of risks by the ATO.

However, other evidence suggests that the ATO is addressing its detection capabilities by building risk profiles and identifying risk characteristics among taxpayer groups, as well as employing rather sophisticated data-matching techniques.⁴⁰ In this regard, it is suggested that strengthening these strategies would also improve taxpayers' awareness of audit and detection rates.

7. CONCLUSIONS AND FURTHER STUDIES

Public disclosure should be considered as part of an integrated compliance strategy as ultimately it will be the fine balancing of a mix of compliance tools which will have the greatest deterrent effect and potential for increasing taxpayer compliance. Australia should therefore consider a form of limited disclosure for individual taxpayers post the introduction of the new disclosure rules for corporations in 2013. Considering the possible future dilution in the disclosure of individual taxpayer information in Norway, primarily based on privacy concerns and where tax culture differs from that in Australia, there is also a strong argument that full disclosure is not appropriate or feasible. Perhaps a version of the modern day 'pink slip' as suggested by Kornhauser (2005) as a form of limited disclosure incorporating the taxpayer's name, and more general tax information could be used as an educational tool whilst having the potential to increase compliance.

It is surprising how little is known about the compliance effect of public disclosure and consequently more empirical studies are desperately needed. Possible avenues for future research may include considering what type of taxpayers react to public disclosure measures, and actually what type of information tax administrations should make public in order to increase compliance. Overall, in carrying out future studies it is also suggested where possible, that tax administrations should be involved in their design and implementation.

⁴⁰ ANAO Report No. 34, above n 34, pp. 58-59.

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