

# Tax Risk Management and the Paradox of Cooperative Compliance

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## Programme

- Need for Tax Risk Management
- Taxpayer Attitudes
- Different Strategies for Tax Risk Management
- Cooperative Compliance
- Pillars of Cooperative Compliance
- Expected Benefits for Tax Administrations and Companies
- Mechanisms and Steps
- 2013: Evaluation of Experiences
- 3 Key Issues
- Importance of Tax Control Frameworks
- Controlling the Process of Cooperative Compliance
- Evaluating the Value of Cooperative Compliance
- Conclusions and Future of Cooperative Compliance

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**“Shining light on the Shadow Economy, Opportunities and Threats”****OECD Report, 2018**

- OECD definition of shadow economy:  
“Economic activities whether legal or illegal, which are required by law to be fully reported to the tax administration but which are not reported and which therefore go untaxed unlike activities which are so reported”
  - Estimate: 1% - 20% of GDP per country
  - Less revenue collected
  - Wider economic and social impact
  - Additional tax losses resulting from (legal but) aggressive tax planning
- Need for tax compliance risk management

**Traditional Tax Auditing:****Tax Administration as Night Watch**

### Tax Compliance Risk Management

Definition of Compliance Risk Management:  
 (European Commission’s Compliance Risk Management Guide, 2010)

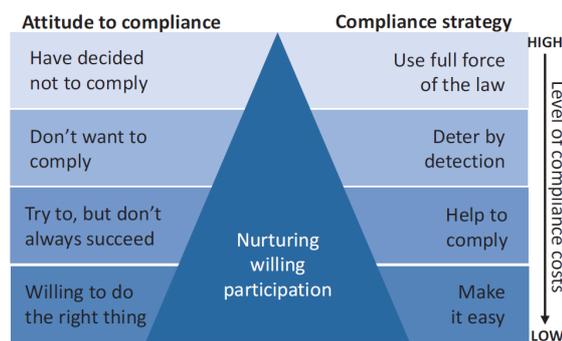
*“It’s a systematic process in which a revenue body makes substantiated choices on which interventions could be used to effectively stimulate compliance and prevent non-compliance, based on the knowledge of the behaviour of all taxpayers and related to the available capacity.”*

Important role for Taxpayer attitudes (Singapore’s categorization):

- a) Voluntarily compliant
- b) Unaware
- c) Negligent
- d) Errant

### Australian compliance strategy: influencing taxpayers’ behaviour

Figure 2.1 Compliance Model<sup>1</sup>

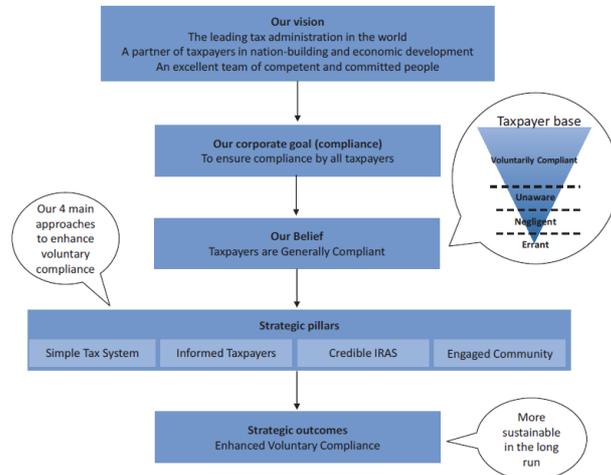


Source: Australian Taxation Office, Example of co-operative compliance model

1. [www.ato.gov.au/Tax-professionals/Compliance-for-tax-professionals/In-detail/Compliance-program/Compliance-program-2011-12/?default=&page=5](http://www.ato.gov.au/Tax-professionals/Compliance-for-tax-professionals/In-detail/Compliance-program/Compliance-program-2011-12/?default=&page=5) , accessed in June 2013.

**Singapore's strategic Compliance Framework**

Figure 2.3 Strategic Compliance Framework



Source: Inland Revenue Authority of Singapore, [www.iras.gov.sg/irasHome/page03a.aspx?id=7986](http://www.iras.gov.sg/irasHome/page03a.aspx?id=7986)

**Different strategies of OECD States to obtain better tax compliance**

- Taxpayer education and simplicity of compliance
  - a) easy registration and payment of tax
  - b) easy channels of communication for taxpayers
- Reducing the opportunities and increasing detection
  - a) Use of available data
  - b) Advanced analytics
  - c) Technology to reduce ID fraud
  - d) Whole of government approach
  - d) International cooperation
- Reinforcing social norms

### Co-operative Compliance

- “Cooperative compliance”: a paradox?
- 2008 OECD Report:  
Cooperative compliance: “a relationship with revenue bodies based on cooperation and trust, with both parties going beyond their statutory obligations.”
- Cooperative compliance is a way of voluntarily chosen cooperation between a taxpayer and a tax administration which is based on mutual trust and transparency (and goes in that respect beyond statutory obligations) with the aim to assure that the taxpayer is compliant with existing tax laws in exchange for receiving early certainty in tax matters and a problem-solving attitude from the Tax Administration.
- The aim is “Compliance”: in substance within the boundaries of tax laws
- The form is cooperation: going beyond statutory obligations on providing information and service

### Conditions for Co-operative Compliance

#### a) Approach of the Tax Administration

**“Large corporate taxpayers want early certainty and a ‘problem-solving attitude’ from the Tax Administration.”**

1. Understanding based on commercial awareness
2. Impartiality
3. Proportionality
4. Openness
5. Responsiveness

## Conditions for Co-operative Compliance

### b) Approach of Taxpayer

6. Disclosure of information

7. Transparency

### ***Supervision agreement (The Netherlands, 2008)***

“(b) With regard to the future: [taxpayer] X :

- **shall actively notify** the Tax Administration of any issues with a possible and significant tax risk;
- **shall without any restraint and without any conditions notify** the Tax Administration of any relevant facts and circumstances;
- **shall provide** the Tax Administration with **its view** on the legal consequences pertaining to the facts and circumstances and adopted standpoints;
- shall facilitate that, if required, staff of the **Tax Administration may contact staff** of the large enterprise of the Tax Administration's choice. The presence of the tax consultant and/or person dealing with tax matters of the large enterprise during the meeting shall not meet with any resistance;
- shall **provide requested information** forthwith and as complete as possible;
- shall submit a tax return concerning an expired period as soon as possible after expiry of that period.”

### **Expectations about Advantages for Taxpayers**

- An enhanced relationship
- Reputation
- Risk management
- Opportunity to highlight problems with tax laws
- Certainty in advance
- Reduction of administrative burdens

### **Expectations about Advantages for Tax Administrations**

- An enhanced relationship
- Understanding the business
- Risk management
- Certainty in advance
- Reduction of administrative burdens
- Improved real time information
- Better use of resources
- Improved confidence in tax system and fair play by all parties

## Forms of adoption of Co-operative compliance

- A unilateral statement by Tax Administration
- A charter adopted jointly
- A formal or informal agreement

### **Example of a supervision agreement (The Netherlands, 2008)**

#### **Preamble**

Parties aim at realising effective and efficient working procedures based on transparency, understanding and trust. They aim at getting lasting insight into current tax risks and at swiftly determining up-to-date standpoints within legal, regulatory and case-law in order to increase legal certainty. This agreement contains the basic principles and the way in which we wish to deal with each other, both with regard to the future and settling the past.

#### **1. Basic principles**

- This agreement concerns Dutch taxation of X (hereafter: X) with regard to all taxes and the tax collection;
- Legal and regulatory rights and obligations remain applicable without any restrictions;
- Parties express their intention to base their mutual relationship on transparency, understanding and trust.

#### **2. Agreements between the Tax Administration and X**

(a) With regard to the past:

(b) With regard to the future:

X:

- shall actively notify the Tax Administration of any issues with a possible and significant tax risk;
- shall without any restraint and without any conditions notify the Tax Administration of any relevant facts and circumstances;
- shall provide the Tax Administration with its view on the legal consequences pertaining to the facts and circumstances and adopted standpoints;
- shall facilitate that, if required, staff of the Tax Administration may contact staff of the large enterprise of the Tax Administration's choice. The presence of the tax consultant and/or person dealing with tax matters of the large enterprise during the meeting shall not meet with any resistance;
- shall provide requested information forthwith and as complete as possible;
- shall submit a tax return concerning an expired period as soon as possible after expiry of that period.

#### **3. The Tax Administration**

- shall as soon as possible after having been notified of an adopted or to be adopted standpoint state its views concerning any legal consequences, as much as possible in consultation with X;
- shall when stating its views on the legal consequences take into account real commercial deadlines; if necessary, the procedure shall be expedited;
- shall assess the corporate tax assessment as soon as possible after submission of the return and as much as possible in consultation with X;
- shall discuss any fiscal risks it may perceive at (regular) intervals with X;
- shall provide information at hand on reported tax risks so far as the requirements for confidentiality allow;
- shall and is able to clarify and explain at all times why certain information is requested from X; the time within which a response is required shall be determined in mutual consultation;
- shall at all times when starting an audit specifically state which tax risks are investigated, unless prevented by the obligation to observe confidentiality.

#### **4. Duration, regular evaluation and termination**

This agreement shall be evaluated annually by (the management board of) X and the Tax Administration/Office.

If, in the interim, a party objects to this agreement, parties will confer in order to determine the possibilities for adapting the agreement before taking any steps to terminate this agreement.

Both parties may terminate this agreement with immediate effect. However, they shall not do so before having notified the other party of their intention in writing, stating the reasons of their intention. Besides, termination shall not become effective until oral discussion has taken place if at least one of the parties has expressed the wish to that purpose.

#### **5. Entry into force**

This agreement shall enter into force upon signing of both parties.

For the management board of X  
[signature]

For the Tax Administration  
[signature]

### Experiences with Cooperative compliance

- 2008 OECD Report: Ireland, USA, Netherlands
- 2013 OECD Report: *Co-operative compliance: A framework, From enhanced relationship to co-operative compliance*
  - Confirms importance of impartiality and responsiveness
  - Within the boundaries of law
  - Large taxpayers
  - Application or invitation
  - Excluding high risk taxpayers
  - Communication about impact
  - Addressing cultural issues
  - Maintaining the contact

### Key issues:

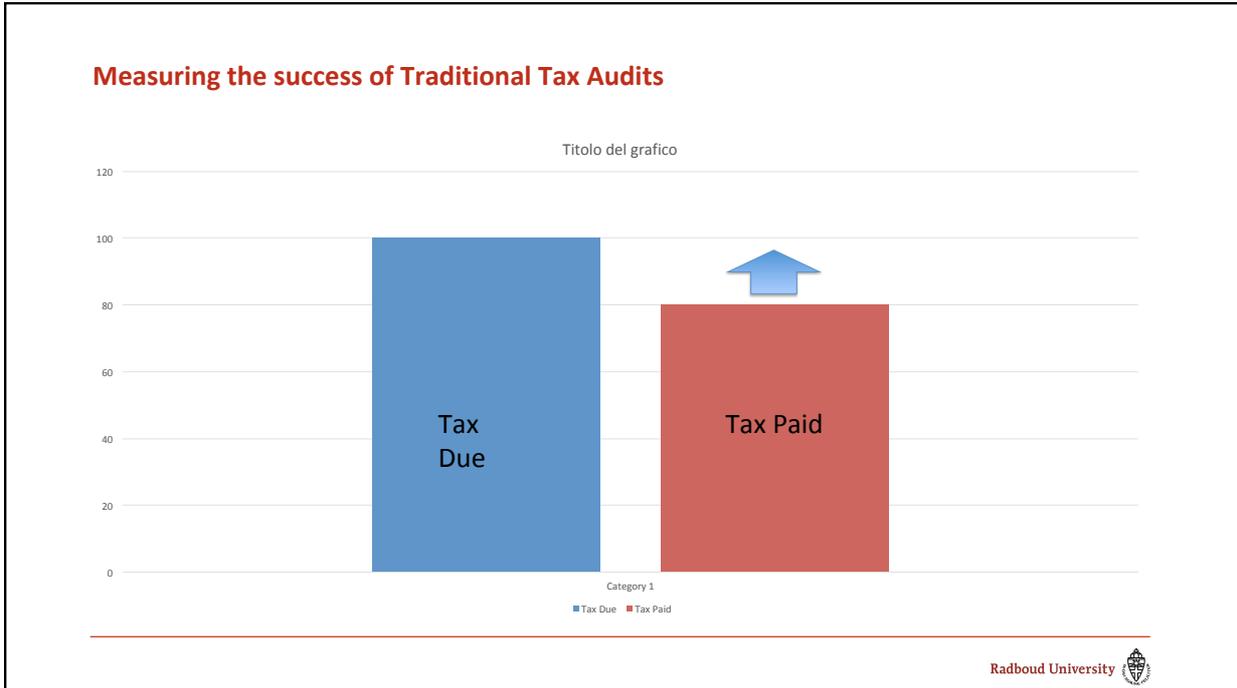
- Cooperative Compliance as part of tax compliance strategy
- Equality before the law
- The letter and the spirit of the law
- Managing disputes within Cooperative Compliance

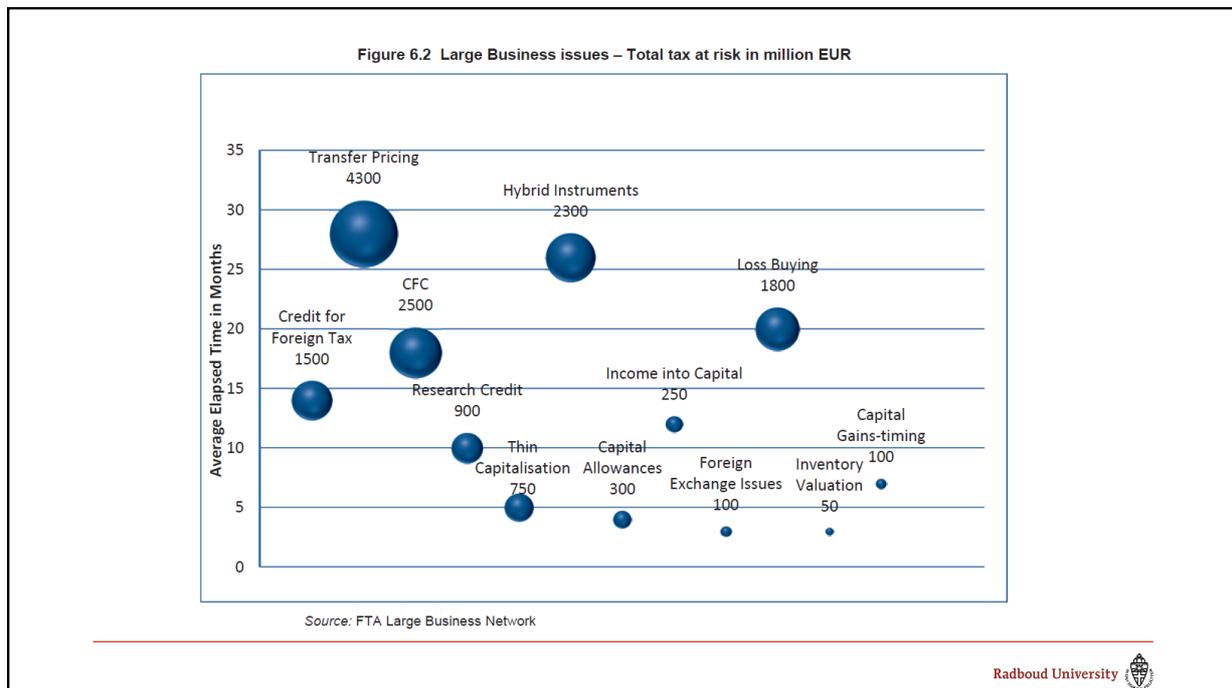
### Importance of Tax Control Frameworks

- “Tax Control Framework” (TCF): the internal control of all processes and transactions with possible tax consequences.
- Be able to detect, document and report any relevant tax risks
- OECD Guidelines for responsible business conduct of multinational companies
- Uncertainties about design of a TCF
- Relevant aspects:
  - Enterprise
  - Tax
  - Risks

### Tax Administrations: how to control the process of Cooperative Compliance?

- Impartiality of Tax Inspectors and their various roles
- Measures to manage co-operative compliance aspects and risks
  - integrity rules and core values;
  - Standard working programmes, operating Systems written guides
  - A second pair of eyes
  - Training programmes
  - Rotation systems of tax officials
  - Review and monitoring systems





### Evaluating Co-operative compliance

- Costs for Tax Administrations
- How to measure success?
  - Degree to which tax base is assured
  - Control over value of uncertain tax positions
- Qualitative benefits

### Future developments of Co-operative Compliance

- 2018 start of International Compliance Assurance Programme
  - Focused on Multinational Enterprises
  - Limited to Transfer pricing and Permanent Establishment Issues
  - Pilot handbook
  - Joint Tax Risk Assessments
  - Limited level of legal certainty

### Co-operative Compliance:

Common  
Interests  
of  
Taxpayers  
and the  
Tax Administration

