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Abstract

A common feature of taxation compliance policies is the existence of a formal penalty regime for taxation offences. This article investigates whether the level of non-compliance with taxation laws by taxpayers from selected Anglo-Saxon countries including Australia, New Zealand and the United Kingdom may have been affected by either the introduction of new criminal taxation offences or the imposition of heavier sanctions for existing criminal taxation offences. By examining taxpayer compliance theory and the Annual Reports of Revenue Authorities and other Regulatory Agencies, the study reveals that the level of taxpayer noncompliance in these selected Anglo–Saxon countries is neither directly nor solely affected by the presence or increase in criminal taxation penalties alone. Consequently, it is submitted that the imposition and increase in criminal taxation penalties should perhaps be considered as only one part of an overall effective tax compliance policy.

Keywords

taxation compliance, taxation, taxpayer, Australia

PENALTIES AND SANCTIONS FOR TAXATION OFFENCES IN SELECTED ANGLO-SAXON COUNTRIES: IMPLICATIONS FOR TAXPAYER COMPLIANCE AND TAX POLICY

*By Ken Devos**

A common feature of taxation compliance policies is the existence of a formal penalty regime for taxation offences. This article investigates whether the level of non-compliance with taxation laws by taxpayers from selected Anglo-Saxon countries including Australia, New Zealand and the United Kingdom may have been affected by either the introduction of new criminal taxation offences or the imposition of heavier sanctions for existing criminal taxation offences. By examining taxpayer compliance theory and the Annual Reports of Revenue Authorities and other Regulatory Agencies, the study reveals that the level of taxpayer non-compliance in these selected Anglo-Saxon countries is neither directly nor solely affected by the presence or increase in criminal taxation penalties alone. Consequently, it is submitted that the imposition and increase in criminal taxation penalties should perhaps be considered as only one part of an overall effective tax compliance policy.

Introduction

Arguably one of the most controversial issues in global tax administration and tax compliance policy development has been the role of penalties and sanctions for taxation offences. This article investigates whether the level of non-compliance with taxation laws by taxpayers from selected Anglo-Saxon countries including Australia, New Zealand and the United Kingdom may be affected by either:

- (1) (a) the introduction of new criminal tax offences; or
(b) the imposition of heavier sanctions for those criminal tax offences, and
- (2) whether in particular introducing or increasing sanctions acts as a deterrent against taxation crimes.

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These questions are examined using the following methodology:

- (1) A brief analysis of tax compliance theory and
- (2) Statistics derived from the Annual Reports of the Australian Taxation Office (ATO) and the Commonwealth Director of Public Prosecutions (DPP), the New Zealand Inland Revenue Department (IRD) and the Ministry of Justice (MOJ) and the British Board of Inland Revenue (BIR).

The samples of taxpayers examined were based on those who had been audited or investigated. Consequently, as only a small percentage of the taxpayer population is investigated each year the samples are unlikely to be representative of the whole taxpayer population. As such no major generalisations can be drawn from the study that is only exploratory in nature. Nevertheless, the article examines data compiled from Annual Reports published by these agencies over a 25-year period where possible (1976-2001). In particular, five tables are reproduce¹ based on the data extracted from the annual reports, indicating:

- (i) The general levels of taxpayer non-compliance;
- (ii) Maximum statutory fines and taxpayer non-compliance;
- (iii) Average fines imposed by the revenue authorities and taxpayer non-compliance;
- (iv) Maximum statutory term of imprisonment imposed by the legislature and taxpayer non-compliance; and
- (v) Convictions and sentencing for criminal tax offences and taxpayer non-compliance.

Better enforcement and greater public awareness and education are also viewed as vital ingredients in improving overall compliance. The effect of taxpayers' attitudes, perceptions and moral judgments on tax behaviour are also critical but are only dealt with briefly in the article. Also the use of traditional statistical analytical methods, such as correlations and regressions, in the interpretation of the data has also not been employed as this article is only intended to give the reader an impression of any impact that the increased sanctions regime may have had upon taxpayer compliance in these selected Anglo-Saxon countries.²

1 See sections 4-8 of this article.

2 The paper is part of on-going research and is by no means exhaustive in its findings. The author would also like to thank Keith Akers, a Research Assistant in the Department of Business Law and Taxation, for his contribution to the paper.

The analysis in this article includes a brief review of the literature on taxpayer compliance and what it represents in terms of this study in section two. Section three of the article will then outline the main legislative penalty provisions that deal with different types of criminal taxation offences in these selected Anglo-Saxon countries. Sections four to eight then present the various statistics in tabular form and the analysis of the data within the tables indicated above. Finally some comments, observations and tax policy implications from the analysis are offered in the conclusion.

Tax compliance theory

Definition of taxpayer compliance

Taxpayer compliance has been defined as compliance with reporting requirements, meaning that the taxpayer files all required tax returns at the proper time and that the returns accurately report tax liability in accordance with the internal revenue code, regulations and court decisions applicable at the time the return is filed.³ An alternative definition has been offered by James and Alley,⁴ that considers tax compliance in terms of the tax gap. This is the difference between 'true' individual income tax liability and that finally collected on a voluntary basis or by enforcement action. This definition has also been viewed as somewhat simplistic. Despite this there is no standard all embracing definition of compliance adopted across all tax compliance studies.

However, in order to achieve taxpayer compliance, many other factors besides the sanctioning behaviour of the courts and revenue agencies need to be addressed. This includes, public awareness and education, greater enforcement powers generally and the behavioural attitudes/tax morals of taxpayers themselves. As stated previously, these considerations are largely outside the scope of this article. Nevertheless, this

3 JA Roth, JT Scholz and AD Witte (eds), *Taxpayer Compliance- an Agenda for Research* Vol 1 (1989) 21. See also BR Jackson and VC Milliron, 'Tax Compliance Research: Findings Problems and Prospects' (1986) 5 *Journal of Accounting Literature* 125 – 165; M Richardson and AJ Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects' (2001) 16 *Australian Tax Forum* 137-320 and LM Tan and AJ Sawyer, 'A Synopsis of Taxpayer Compliance Studies – Overview Vis-à-Vis New Zealand' (2003) 9 (4) *New Zealand Journal of Taxation Law and Policy* 431-54.

4 S James and C Alley, 'Tax Compliance, Self Assessment and Tax Administration in New Zealand - Is the Carrot or Stick More Appropriate to Encourage Compliance?' (1999) 5 *New Zealand Journal of Taxation Law and Policy* 3-14, 11.

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section of the article will attempt to briefly summarise some of the findings of empirical studies on tax compliance undertaken to date.

Empirical evidence

One of the major approaches to compliance relies upon the element of coercion represented by the enforcement activities of the role of taxation, police, and taxation officials as well as the sanctioning behaviour of the courts and other agencies. Although enforcement activities only indirectly effect compliance and direct enforcement against the individual engenders hostility, widespread failure to enforce creates cynicism and distorts reference norms.

In England the Keith Committee⁵ argued that enforcement powers should be precise and logically formulated, consistent across the range of taxation legislation, should allow for the minimum of administrative discretion and should be subject to ultimate judicial control which in turn should be capable of being applied in a summary and expeditious way.⁶ Although the Keith Committee recommended that civil sanctions and surcharges should be the primary means of enforcing compliance, it argued that effective criminal sanctions should be available in cases of deliberate and serious fraud.⁷

Tax offences, however, have been treated as a special form of offending, quarantined from the general types of criminality, in that the non-enforcement of the law, together with the use of civil rather than criminal penalties has, in the past, allowed the taxation system to decay and fall into disrepute. Further, by allowing major illegalities to go unsanctioned, enforcement authorities have allowed the development of endemic cynicism and general disrespect for the law that may take years to reverse.⁸ In terms of achieving a deterrent effect, enforcement authorities also appear to have failed.

However, researchers have suggested that the whole notion of tax compliance is a social construct. There is no objective standard of the appropriate levels of compliance and that the level 'is a product of the negotiation of law and legal institutions.'⁹

5 Lord Keith of Kinkel, *Committee on Enforcement Powers of the Revenue Departments*, (London: HMSO, Cmnd 8822) (1983) Report Number 2, 9.

6 Ibid.

7 Ibid 9.

8 A Freiberg, 'Enforcement Discretion and Taxation Offences' (1986) 3 *Australian Tax Forum* 55, 59.

9 R Tomasic and B Pentony, 'Defining Acceptable Tax Conduct,' (*Discussion Paper No 2* Centre for National Corporate Law Research University of Canberra 1990) 1.

Ultimately, researchers argue that the notion of compliance is a political one so that what is perceived as an acceptable level of compliance at one time may not be acceptable at another.¹⁰

The economic definition of taxpayer compliance views taxpayers as 'a perfectly moral, risk neutral or risk adverse utility maximizing individuals who chose to evade tax whenever the expected gain exceeded the cost.'¹¹ Thus a pure 'cost-benefit' approach is given for why or why not taxpayers may comply with the tax laws. Other researchers propose that individuals are expected to weigh 'the uncertain benefits of successful evasion against the risk of detection and punishment.'¹² Consequently, a penalty structure has an impact upon compliance. Allingham and Sandmo published an early model of this theory.¹³

Studies of criminal behaviour have found that the probability of apprehension is more important than the sanctions actually imposed.¹⁴ Yet another influence may be the precision of information regarding the probability that punishment will be imposed. Consequently, vague information about the relatively low probability of detection and punishment enhances the low deterrent value.¹⁵

On the other hand, some studies have found that taxpayers are more sensitive to the magnitude of the penalty than to the probability of detection when the probability is very low, (ie 4 % or less).¹⁶ This could have implications for Anglo-Saxon countries

10 Ibid.

11 VC Milliron and DR Toy, 'Tax Compliance an Investigation of Key Features,'(1988) 10 *Journal of American Taxation Association* 84-104, 85.

12 CM Fischer, M Wartick and MM Mark, 'Detection Probability and Taxpayer Compliance: A Review of the Literature'(1992) 11 *Journal of Accounting Literature* 1-46, 2.

13 M Allingham and A Sandmo, 'Income Tax Evasion: A Theoretical Analysis' (1972) 1 *Journal of Public Economics* 323-38.

14 C Tittle and C Logan, 'Sanctions and Deviance; Evidence and Remaining Questions' (1973) Spring *Law and Society Review* 371-389.

15 N Friedland, 'A Note on Tax Evasion as a Function of the Quality of Information about the Magnitude and Creditability of Threatened Fines: Some Preliminary Research' (1982) *Journal of Applied Social Psychology* 54-59.

16 B Jackson and S Jones, 'Salience of Tax Evasion Penalties Versus Detection Risk,' (1985) Spring *Journal of the American Taxation Association*, 7-17. This research also added credence to congressional efforts to raise the magnitude of legal penalties a taxpayer faces for non-compliance (Code Section 6661).

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that have moved to a self-assessment environment.¹⁷ Other researchers have observed a significant relationship between the severity of the criminal sanctions and compliance by one group of taxpayers-high-income self-employed individuals.¹⁸ This has also been supported by similar work on sanctions.¹⁹ Within each of the groups this study covered, legal sanctions were most effective for the higher class and the better educated (not the best). These studies have also found that the threat of guilt feelings was a greater deterrent to tax evasion than the threats or stigma of legal sanctions.

Another potentially salient issue involves the existence of thresholds. Thresholds may explain in part, inconsistent findings on the deterrent effects of the certainty versus the severity of punishment. Studies have provided evidence that in reaching a threshold probability of detection, mild punishment may be as effective a deterrent as a more severe one.²⁰ The severity of sanction does not necessarily produce a linear effect with tax compliance. Other authors submit that the social cost of sanctions could outweigh the benefits. Taxpayers as a group may become alienated if sanctions are perceived as too severe, resulting in general antagonism and disrespect for the law.²¹

However, the positive effect of increased sanction levels on taxpayer compliance has been found to hold up even where relatively low (and realistic) penalty levels are used.²² What is of major concern, though, has been that taxpayers' perceptions of the true penalty levels are higher than what the penalties actually are. This has tended to skew research findings. Other research evidence suggests that a tax system that combines both penalties and rewards is more effective in maximizing compliance than a system that focuses solely on sanctions.²³ As such, positive inducements for

17 In the case of this study, self-assessment has been implemented in Australia, New Zealand and the United Kingdom.

18 A Witte and D Woodbury, *The Effect of Tax Laws and Tax Administration on Tax Compliance* (1983) (Working paper, Department of Economics, University of North Carolina Chapel Hill, North Carolina USA) 83.

19 R Schwartz and S Orleans, 'On Legal Sanctions' (1967) *Winter University of Chicago Law Review* 274-300.

20 Allingham and Sandmo, above n 13, 323-338.

21 BR Jackson and VC Milliron, 'Tax Compliance Research: Findings, Problems, and Prospects' (1986) 5 *Journal of Accounting Literature* 125-165, 142.

22 GA Carnes and TD Eglebrecht, 'An Investigation of the Effect of Detection Risk Perceptions, Penalty Sanctions and Income Visibility on Tax Compliance' (1995) 17 *Spring Journal of the American Taxation Association* 26-41.

23 J Falkinger and H Walther, 'Rewards versus Penalties: On a New Policy on Tax Evasion' (1991) 19 *Public Finance Quarterly* 67-79.

compliance may also have a key role to play. Whether these inducements come in the form of quicker tax refunds, or a percentage reduction in tax payable, is open to question.

The traditional economic deterrence models draw upon deterrence theory and expected utility theory to predict that a rational taxpayer will evade tax as long as the payoff from evading is greater than the expected cost of being caught and punished. However, there is only ambiguous empirical evidence to support the predictions of economic deterrence models as a whole. Researchers²⁴ summarise the effect of factors that determine the monetary cost of compliance as including the tax rate, detection probability, the level of income and penalty structure, and suggest, for all of them, that existing empirical evidence provides no firm conclusions.²⁵

On the other hand, social psychology models inductively examine the attitudes and beliefs of taxpayers in order to understand and predict human behaviour. Researchers indicate that taxpayers' behaviour is directly determined by their intentions that are a function of their attitude towards behaviour and perception of social norms.²⁶ From a tax administration viewpoint, researchers²⁷ have concluded that compliance could also be improved, by educating taxpayers of their social responsibility to pay and thus their intention would be to comply.

As a behavioural problem the success of income tax depends on the cooperation of the public.²⁸ Consequently, there are greater gains in assisting compliant taxpayers meet their fiscal obligations rather than spending more resources pursuing the minority of non-compliers. Assisting taxpayers by improving the flow and quality of information or educating them into becoming more responsible citizens (eg TV campaigns) might yield greater revenue rather than if it were spent on enforcement activities. Some Anglo-Saxon revenue authorities support taxpayers through a range of easily accessible explanatory leaflets and provide a useful site on the Internet. While the author strongly agrees with this approach it is largely outside the scope of this article.

24 Roth and Scholz, above n 3, 22.

25 J Hasseldine, 'Linkages between Compliance Costs and Taxpayer Compliance,' (2000) 54 *Bulletin for International Fiscal Documentation* 299-303.

26 I Ajzen and M Fishbein, 'Understanding Attitudes and Predicting Social Behaviour' (Englewood Cliffs, Prentice Hall, 1980).

27 RB Cialdini, 'Social Motivations to Comply: Norms, Values and Principles' in JA Roth, JT Scholz and AD Witte (eds), 'Taxpayer Compliance Social Science Perspectives' (1989) 2 Philadelphia, PA: *University of Pennsylvania Press*: 200-227.

28 G Schmolders, 'Fiscal Psychology: A New Branch of Public Finance' (1959) 12 *National Tax Journal* 340-345.

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The work of Hite²⁹ suggests that both gender and education impact on taxpayer compliance. Hite points to an example of where in reducing the amount of litter in America, instead of the authorities increasing penalties, the real improvement came when there was the slogan uplifted to keep 'America Beautiful.'³⁰ Nevertheless, it is difficult to find direct associations between compliance and these demographic variables.

Other social and psychology models also effect compliance by way of exchange equity (where taxpayers believe they are not receiving the benefits from the government in exchange for taxes paid). Although tax fairness is only one factor in achieving overall compliance, the NZ Government, for example, has continuously placed great emphasis on this criterion.³¹ Consequently, fiscal psychologists maintain that a taxpayer's belief in the tax system rather than the penalty structure is more salient in generating compliance.³²

Certainly, considerable empirical research has been conducted to examine the link of perceptions of fairness and tax evasion, but the findings of various researchers therein are inconsistent. Nevertheless, the effect of demographic variables, such as age, gender, marital status, education, culture and occupation, has an effect on fairness perceptions that ultimately effects compliance. The responsible citizen approach³³ also covers behavioral aspects of taxpayer compliance and includes the major works of Meier and Johnson,³⁴ and Jackson and Milliron.³⁵

Indeed, much of the empirical work that has been carried out tends to refute the economic model of compliance in its basic form. For example, it has been demonstrated by means of laboratory experiments³⁶ that, even where the deterrence factor is so low that evasion makes obvious economic sense, some individuals will

29 PA Hite, 'Identifying and Mitigating Taxpayer Non-Compliance' (1997) 13 *Australian Tax Forum* 155-180.

30 Ibid 161.

31 LM Tan, 'Taxpayers Perceptions of the Fairness of the Tax System – A Preliminary Study' (1998) 4 *New Zealand Journal of Taxation Law and Policy* 59-71, 60.

32 Ibid 61.

33 The citizen having a responsible attitude to paying their share of taxes.

34 RF Meier and WT Johnson, 'Deterrence as a Social Control: The Legal and Extralegal Production of Conformity' (1977) 42 *American Sociological Review* 292-304.

35 Jackson and Milliron, above n 21, 125-165.

36 J Alm, I Sanchez and A De Juan, 'Economic and Non-Economic Factors in Tax Compliance' (1995) 48 *Kyklos* 3-18.

nevertheless comply. Such findings may be particularly relevant in the context of a self-assessment environment that operates in all three of the Anglo-Saxon countries investigated in this article. Where random audits exist, or where it is planned that only a small percentage of returns are selected for audit, a purely rational taxpayer would still be able to virtually discount audit as a serious deterrent factor.³⁷

Both US and UK research indicates mixed results regarding the effectiveness of criminal punishment as a deterrent to non-compliance by taxpayers. That is, the level of punishment alone has not been the sole determinative factor in shaping the level of taxpayer compliance. There is a similar lack of consistency in the results of other studies testing the relationship of the probability and severity of penalties with the level of compliance.³⁸

Although researchers have found general support for the idea that sanctions encourage compliance, there is conflicting evidence on the merits of legal sanctions and interpersonal sanctions. Furthermore, the impact of the severity of sanctions was found to be unresolved.³⁹ Given the empirical theories and findings on tax compliance, it is evident that the relative effectiveness of the perceived severity of legal sanctions alone remains open to question. It is this uncertainty that demands further research into the appropriateness of increasing penalties and sanctions in order to improve taxpayer compliance. The statistical tables that follow (albeit from a limited sample of audited taxpayers) will at least provide some further insight into taxpayer non-compliance from an Anglo Saxon perspective. Before proceeding with the statistical analysis, the main criminal tax penalty provisions examined within the tables and the amendments to those provisions will be briefly outlined.

37 C Pilkington, 'Taxation and Ethical Issues' in C Growthorpe and J Blake (eds), *Ethical Issues in Accounting* (London, Routledge, 1998).

38 KA Kinsey, *Theories and Models of Tax Cheating* (American Bar Foundation Working Paper No 8717, 1988).

39 M Richardson and AJ Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings Problems and Prospects' (2001) 16 *Australian Tax Forum* 137-320, 149.

Main legislative penalty provisions dealing with the different types of Criminal Taxation Offences in selected Anglo-Saxon countries

Australia

In Australia the analysis of the criminal tax penalty provisions for the purposes of this study include the years prior to 2000. Since then a number of specific sections of the *Crimes Act 1914* have been repealed and replaced by the *Criminal Code Act (1995) (Cth)* (CCA). While not directly considered, the new provisions of the *Criminal Code Act (1995)* have nevertheless been included below for the purpose of comparison.

Crimes Act 1914 (Cth)

- s 29A [intent to defraud by false pretences] (1980). It imposed a term of imprisonment of up to 5 years. Replaced by Division 135, (135.1) of the *Criminal Code Act (1995)*.
- s 29B [impose upon the Commonwealth by untrue representation to gain advantage, money, benefit, etc] (1980). It imposed a term of up to 2 years imprisonment. Offences for false or misleading statements are now found in Division 135 and 137 (135.2, 137.1, 137.2) of the CCA.
- s 29C [in support of an application to the Commonwealth for a grant, etc makes written or oral untrue statements] (1980). It imposed a term of up to 2 years imprisonment. Replaced by Division 136 (136.1) of CCA.
- s 29D [Obtaining a financial advantage by deceiving the Commonwealth or a public authority] Enacted on 25 Oct 1984 imposed a maximum term of 5 years imprisonment and/or fine of \$50,000. From 1 October 1986, the penalty was raised to a maximum of 10 years imprisonment and/or \$100,000. The level of penalty for such conspiracies was increased following judicial criticism of the inadequate penalty level, to a level that was considered to reflect the seriousness of the offence. The penalty reflected the governments concern that persons convicted of large-scale conspiracies to defraud the Commonwealth will be appropriately dealt with by the courts.⁴⁰
- s 86(1)(e) [Conspiracy to obtain a financial advantage by deceiving the Commonwealth] (1980). It imposed a term of up to 2 years imprisonment. Replaced by Division 135, (135.4) of the CCA.

40 Commonwealth, *Parliamentary Debates*, House of Representatives 1986, 2365.

- S 86(1) [Conspiracy to commit an offence against the law of the Commonwealth]. Enacted on 15 September 1995 it imposed a maximum penalty of 12 months imprisonment and/or a fine of 200 penalty units [\$20,000]. The Government decided that this was a more appropriate limit to offences of conspiracy. In particular the monetary limit had been set at the lower level following an examination of these penalties that reflected a more realistic division between serious and less serious offences.⁴¹ However, as from 7 April 1997, the maximum fine was increased to \$22,000 due to an increase in the amount of one penalty unit from \$100 to \$110.
- s 86(2) [Conspiracy to commit an offence against s. 29D of the *Crimes Act*] Enacted on 15 September 1995 it imposed a maximum penalty of 20 years imprisonment and/or a fine of 2,000 penalty units [\$200,000]. As from 7 April 1997 the maximum fine was increased to \$220,000 due to an increase in the amount of one penalty unit from \$100 to \$110.
- s 86A [Conspiracy to obtain a financial advantage by deceiving the Commonwealth or a public authority]. Enacted on 25 October 1984 it imposed a maximum term of 5 years imprisonment and/or fine of \$50,000. From 1 October 1986 the penalty was raised to a maximum of 20 years imprisonment and/or \$200,000 fine following judicial criticism about the inadequacy of quantum of penalties.⁴²

Crimes Taxation of Offences Act 1980

- s 9 [Any offence against the Act]. Enacted on 4 December 1980 it imposed a maximum term of 5 years imprisonment and/or fine of \$50,000. When the *Crimes Taxation Offences Bill* was introduced the Treasurer acknowledged that the penalties were much more substantial than those existing under the *ITAA 1936*. It was regarded that the penalties were not inappropriate, given the enormous tax loophole that had opened up.⁴³ The Treasurer also indicated that this legislation would act as an impediment to people in the future from trying to devise similar schemes for tax avoidance of a fraudulent kind⁴⁴. From 1 October

41 Crimes Amendment Bill 1994 (Cth).

42 Commonwealth, *Parliamentary Debates*, House of Representatives, Second Reading Speech 1986, 2929.

43 Commonwealth, *Parliamentary Debates*, House of Representatives, Second Reading Speech 1980, 262. The loophole was referring to the 'bottom of the harbour' tax avoidance schemes that prevailed during the 1970s.

44 Ibid.

42

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1986 the penalty was raised to a maximum of 10 years imprisonment and/or \$100,000 fine.

Income Tax Assessment Act 1936

- s 251L (1) [Unregistered tax agent not to charge fees] (1980). It imposed a fine of between \$4 and \$200. From 13 December 1984 the maximum fine was \$2,000 and then in 2000 it was raised to a maximum of \$22,000.
- s 251O [Unregistered tax agent representing themselves as a tax agent] (1980). It imposed a fine of between \$4 and \$100. From 13 December 1984 the maximum fine was raised to \$1,000.

Taxation Administration Act 1953

Sections 8E to 8V were enacted on 13 December 1984. In order to deal with habitual tax offenders, a tiered penalty structure was introduced for second and subsequent offenders and included a liability to imprisonment. The monetary penalty imposed on companies was five times that applicable to individuals for offences, which also carried a term of imprisonment. The aim was to bring the deterrent effect of those penalties closer together.⁴⁵

- s 8E (1) [convicted of offence against sections 8C or 8D] imposed a maximum fine of \$2,000. s 8E (2) where the person has been previously convicted of a relevant offence, a maximum fine of up to \$4,000 will be imposed.
- s 8E(3) [convicted of offence against sections 8C or 8D(1) or (2)] where the person has been previously convicted of 2 or more relevant offences, a maximum penalty of 12 months imprisonment and/or a fine of \$5,000 may be imposed.
- s 8H [refusal or failure to comply with a court order under section 8G (1)] imposed a maximum penalty of 12 months imprisonment and/or a fine of \$5,000.
- s 8M (1) [convicted of offence against sections 8K (1) or 8L (1)] imposed a maximum fine of \$2,000.
- s 8M (2) [convicted of offence against sections 8K (1) or 8L (1)] provides that where a person has previously committed a relevant offence] imposed a maximum fine of \$4,000.

45 Commonwealth, *Parliamentary Debates*, House of Representatives, Second Reading Speech, 1984, 1280.

- s 8R (1) [convicted of offence against sections 8N, 8P or 8Q] imposed a maximum fine of \$2,000.
- s 8R (2) [convicted of offence against sections 8N, 8P or 8Q] where the person has been previously convicted of a relevant offence imposed a maximum penalty of 12 months imprisonment and/or a fine of \$5,000.
- s 8V (2) [convicted of offence against sections 8T or 8U] where the person has been previously convicted of a relevant offence, imposed a maximum penalty of 2 years imprisonment and/or a fine of \$10,000.

Provisions in sections 8WA to 8WC of the *TAA (1953)* were enacted in January 1989. This range of specific privacy safeguards was introduced to further toughen the law against disclosure and provide a very comprehensive scheme to protect the privacy of individuals.⁴⁶

- s 8WA (1) [unauthorised requirement etc. that a tax file number be quoted] imposed a maximum penalty of 2 years imprisonment and/or a fine of \$10,000.
- s 8WB (1) [unauthorised recording of tax file number] imposed a maximum penalty of 2 years imprisonment and/or a fine of \$10,000.
- s 8WC (1) [conducting affairs so as to avoid tax file number requirements] imposed a maximum penalty of 2 years imprisonment and/or a fine of \$10,000.

Consequently the key dates for legislative changes to Australian criminal tax sanctions during the period examined were therefore:

December 1980

Section 9 of the *Crimes Taxation Offences Act 1980*, which imposed a maximum fine of 5 years imprisonment and or fine of \$50,000, was enacted on this date.

46 Commonwealth, *Parliamentary Debates*, House of Representatives, Second Reading Speech, 19988, 859 and 2210.

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December 1984

Sections 8E (2), 8H, 8R (2) and 8V (1) of the *TAA 1953* were introduced; all of which impose a maximum sanction of 12 months imprisonment. Section 8V (2) imposed a maximum of 2 years, imprisonment. Sanctions for sections 251L and 251O of the *ITAA 1936* were also increased to \$2,000 and \$1,000, respectively.

October 1986

Section 29D of the *CA (1914)* was increased to 10 years imprisonment and/or \$100,000 fine. Section 86 A of the *CA* was raised to 20 years imprisonment and/or a \$200,000 fine. Section 9 of the *Crimes Taxation Offences Act (1980)* saw the sanction increased to 10 years imprisonment and/or \$100,000 fine.

January 1989

Sections 8WA, 8WB, 8WC of the *TAA 1953* were introduced, and imposed a sanction of 2 years imprisonment and /or fine of \$10,000 for various tax file number breaches.

Given the above key dates for legislative changes to criminal tax offences in Australia (see the appendix for the NZ and UK jurisdictions) the article now investigates whether these amendments had any implications for improving the level of taxpayer compliance during the time period examined. In particular, the tables that follow will illustrate that a cause and effect relationship between the level of taxpayer compliance and the severity of penalty is difficult to establish.

The level/rate of taxpayer non-compliance amongst those selected for audit/investigation

Australia

Table 4.1 Levels of Taxpayer Non-compliance 1976-1996 ⁴⁷

(1) Year	(2) No of Taxpayers Audited by ATO ⁴⁸	(3) No of Non- complying Taxpayers	(4) % of Taxpayer Non- compliance	(5) Annual % variation in Taxpayer Non- Compliance
1976/77	25,959	21,591	83	-
1977/78	22,836	16,635	73	-10
1978/79	22,258	15,119	68	-5
1979/80	28,667	24,068	84	+16
1980/81	42,718	34,117	80	-4
1981/82	52,981	42,754	81	+1
1982/83	54,984	43,178	79	-2
1983/84	75,892	48,854	64	-15
1984/85	65,605	57,063	87	+23
1985/86	14,804	9,919	67	-20
1986/87	29,392	21,456	73	+6
1987/88	33,103	22,510	68	-5
1988/89	28,449	21,337	75	+7
1989/90	58,428	39,731	68	-7
1990/91	45,185	26,659	59	-9
1991/92	72,223	46,223	64	+5
1992/93	73,203	47,582	65	+1
1993/94	87,210	54,070	62	+3
1994/95	125,479	87,835	70	+8
1995/96	5,121	3,636	71	+1

47 Figures are derived from the *Annual Reports of the Australian Taxation Office (Cth) 1976-96* inclusive and extracted from the Appendix to these Reports entitled, *Breaches and Evasions of the Acts*.

48 The number of taxpayers audited each year represents approximately 0.5-2 per cent of the taxpaying population since the introduction of self-assessment in 1985-86. In the 2001-2002 year 594 Audits were carried out on cases of serious non-compliance alone. (*ATO Annual Report 2001-2002*, 102.)

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In Table 4.1 taxpayer non-compliance has been identified by reference to the breaches of the more common provisions of the *Tax Administration Act 1953*, as indicated in the ATO's Annual Reports 1976-96 (*Appendix: Breaches and Evasions of the Acts*). This includes understatement of income and overstatement of deductions and rebates, other general omissions and the failure to furnish returns. Schemes and other forms of evasion and avoidance were also considered in the sample. The audits conducted by the ATO are a consolidation of Large Case (Complex) audits, Strategic or Special audits, Business audits and Primary audits. Source Deduction audits have been omitted from the table, due to the figures being unavailable. Figures regarding taxpayer non-compliance were not available to the public for the 1996-97 year onwards.

Table 4.1 reveals that taxpayer non-compliance remained static and at quite a high level during the 20-year period examined. As the figures represent the number of taxpayers audited it also reveals that the ATO achieves a very good strike rate when it comes to detecting non-complying taxpayers. The range indicates a high rate of 87 per cent non-compliance, in 1984-85 and a low rate of 59 per cent in 1990-91. With the introduction of self-assessment in 1985-86, there was also an increase in the level of audit activity. (approximately 0.5- 2 per cent of the taxpaying community were audited). However, the initial introduction self-assessment appears to have had no impact on the level of taxpayer non-compliance. (The level increased marginally by 5 per cent to 73 per cent during 1986-87 year). Interestingly, the high rate of 87 per cent non-compliance experienced during 1984-85 appears to have dramatically improved when compared to the 1995-96 rate of 71 per cent and the figures in between.

The penalties and sanctions introduced in October 1986 for s 29D and s 86A of the *Crimes Act 1914* appears to have had little, if any, impact on taxpayer non-compliance. This also appears to be the case, for the sanctions and penalties introduced under *the Crimes Taxation Offences Act 1980*, in December 1980. The introduction and increase in penalty provisions in December 1984 was undertaken with the intension of increasing the deterrent effect. However, this has failed to affect the level of non-compliance amongst audited taxpayers. The number of audits that increased with the introduction of self-assessment from 1985-86 revealed an unusual decrease in 1995-96, to 5,121. It is possible that the move of resources to the public education and advising sections of the ATO may have impacted upon the resources of the audit sections in that particular year and produced this result.

New Zealand

Table 4.2: Levels of Taxpayer Non-compliance 1985-2001⁴⁹

(1) Year	(2) Number of Taxpayers Audited/Inves- tigated by the IRD ⁵⁰	(3) Number of Non-complying Taxpayers ⁵¹	(4) % of Taxpayer Non-compliance	(5) Annual % variation in taxpayer non- compliance
1985/86	23,440	15,236	65	-
1986/87	27,222	19,328	71	+6
1987/88	35,940	24,439	68	-3
1988/89	74,698	49,300	66	-2
1989/90	131,734 ⁵²	97,483	74	+8
1990/91	124,037	80,624	65	- 9
1991/92	71,488	50,042	70	+5
1992/93	58,067	33,679	58	-12
1993/94	36,608	23,063	63	+ 5
1994/95	28,281	16,685	59	-4
1995/96	77,099	46,259	60	+ 1
1996/97	82,411	51,095	62	+ 2
1997/98	92,540	44,419	48	- 14
1998/99	50,953	30,062	59	+11
1999/00	43,479	21,740	50	-9
2000/01	53,657	28,438	53	+3

In Table 4.2 taxpayer non-compliance has been defined with reference to the general breaches of the more common provisions of the TAA 1994, as indicated in the IRD's Annual Reports, 1985-2001 inclusive.⁵³ This includes offences such as, failing to furnish income tax returns, failure to account or deduct for Pay as You Earn (PAYE)

49 Figures are derived from the *Inland Revenue Department Annual Reports* (NZ) 1985-2001 inclusive. Refer Taxpayer Audit – Statistical Tables, Audit volumes-Audits conducted under the headings of Business Audits, Non-Business, Investigations and Corporate.

50 The figures do not include GST audits/investigations.

51 Performance Delivery - effective case selection results in material discrepancy being identified in this number of cases. These taxpayers are selected because they are likely to be more at risk of being non-compliant.

52 The 1989/90 figures include investigations and checks.

53 See *IRD Annual Reports*, Appendix: Statistical Tables; and under the Audit and Compliance sections of the Annual Report generally.

TOPICAL ISSUES IN CORPORATE TAX LOSSES

deductions, willfully misleading the Commissioner, and aiding, abetting or inciting the making of false returns. Although tax evasion and tax avoidance have also been considered indirectly in the sample, there were no actual reported cases of defrauding the public revenue or false accounting for instance, as stipulated in the Crimes Act 1961.⁵⁴

The figures reveal audit results in all audit categories including, Corporate, Business Audit, Non-Business Audit, investigations and checks. However, figures for GST audits have been specifically omitted from the analysis where possible to allow further comparison with other revenue authorities without a GST (for example, the United States). Pursuant to the section on quality of the audits, indicated in the annual reports,⁵⁵ are figures that reveal the effectiveness of case selection results that show where a material discrepancy was identified. These figures form the basis of those taxpayers who are therefore non-complying in terms of this analysis. In most cases a percentage figure is included in the reports.

Table 4.2 reveals that the percentage of IRD audits that yield non-compliance dropped marginally but has remained at a reasonably high level⁵⁶ during the 16-year period examined. As the figures represent the number of taxpayers actually audited/investigated it also reveals that the IRD achieves a very good strike rate when it comes to detecting non-complying taxpayers. The range indicates a high rate of 74% non-compliance in 1989-90 and a low rate of 48% in 1997-98. Consequently the actual rate of non-compliance amongst the whole taxpaying population would be relatively low given that only a small percentage of the taxpaying population are actually audited each year (approximately between 1-2%). Consequently, given it is a small sample any conclusions that are drawn from these statistics need to be appropriately qualified.

The fact that New Zealand has been in an informal state of self-assessment throughout the period of analysis may have contributed to the improvement in the rate of non-compliance found (a drop of some 26% between 1989-90 and 1997-98).⁵⁷ This may be supportive of the NZ Government's move to self -assessment, in line

54 Refer to section 3 of the article.

55 Found both in the Appendix under Statistical Tables or in the body of the Reports.

56 The average for the 16- year period was 62% non-compliance.

57 It should be noted that New Zealand formalised self-assessment with the Taxation (*Taxpayer Assessment and Miscellaneous Provisions*) Act 2001, with effect from 24 October 2001.

with other OECD countries.⁵⁸ However, whether the improvement in taxpayer non-compliance came about solely as a result of the increase in penalties under the TAA 1994 for the 1997/98 income year is more difficult to establish.

A tax amnesty held in NZ in 1988-89 also appears to have had no immediate impact upon taxpayer non-compliance, with the detected non-compliance rate actually climbing 8% (from 66% in 1988-89 to 74% 1989-90) in the following year. This is of a concern, particularly as the IRD were pleased with their monetary result.⁵⁹ It also supports the claim by Fisher et al.⁶⁰ that a tax amnesty does not necessarily turn taxpayers into tax compliers.

On the other hand, the high levels of tax evasion experienced prior to 1994⁶¹ appear to have been somewhat curtailed with the rate of non-compliance dropping from 60% to 53% in the ensuing years of the analysis. This may have been due, in part, to the implementation of the new penalties regime post 1997, but it may have also resulted from the IRD's recognition of taxpayer behaviour of giving incentives⁶² to New Zealanders to help them meet their tax obligations while also identifying non-compliers,⁶³ as indicated in the IRD's *Statement of Intent*.⁶⁴ It may also be possible that the IRD's Strategic Plan 1998-2001 has also played some part in increasing the effectiveness of the audit system and improving the compliance attitudes of New Zealanders.⁶⁵

Nevertheless, there is no room for complacency. There still exists a high rate of non-compliance given that well over half the taxpayers audited/investigated have had some discrepancy in their returns. This may well have been expected by the IRD

58 However, an estimated 1.2 million taxpayers who derive income only from employment and NZ sourced interest and dividends are, from the 2000 tax year, no longer required to perform any tax calculation or file a return if their income has had tax deducted at source.

59 In August 1989 IRD released results including a lodgment of 24,685 amnesty returns that resulted in total tax assessed of \$26.6 million and \$3 million in refunds. The IRD indicated they were pleased with the results given that the amnesty collections exceeded their own collections by \$22 million.

60 R Fisher, J Goddeeris and J Young, 'Participation in Tax Amnesties: The Individual Income Tax,' (1989) 42 *National Tax Journal*, 15-28.

61 Evasion was estimated to be \$3.2 billion or 3.5% of GDP.

62 IRD *Tax Compliance – Chapter 7 'Tax Evasion and the Hidden Economy,'* Paragraph 7.29.

63 IRD, *Annual Report* Wellington, NZ (1998) 10.

64 IRD, *Our Statement of Intent*, Wellington, NZ (2000).

65 IRD, *Strategic Business Plan 1998-2001*, Wellington NZ (1998) 35.

TOPICAL ISSUES IN CORPORATE TAX LOSSES

given its audit strategies but whether it is acceptable to the government or community in general is another issue.

United Kingdom

Table 4.3: Levels of taxpayer non-compliance 1985-1993⁶⁶

(1) Year	(2) No. of Taxpayers investigated by BIR ⁶⁷	(3) No. of non-complying Taxpayers	(4) % of non- compliance ⁶⁸	(5) Annual % variation in Taxpayer Non- compliance
1985/86	69,491	24,310	35	+2
1986/87	70,638	28,328	40	+5
1987/88	69,095	29,381	42	+2
1988/89	66,601	29,452	44	+2
1989/90	62,688	30,859	49	+5
1990/91	56,967	30,777	54	+5
1991/92	45,472	29,582	65	+9
1992/93	46,191	35,295	76	+11

In Table 4.3 taxpayer non-compliance has been defined with reference to the general breaches of the more common provisions of the *Tax Management Act (1970)* (TMA), as indicated in the Annual Reports of the BIR 1985-93⁶⁹. Figures regarding taxpayer non-compliance were not available for the 1993-94 year onwards and consequently the analysis could not incorporate more recent years. Interestingly, communications with the staff of the BIR have revealed severe gaps in the availability of statistics since the introduction of self-assessment.⁷⁰ Consequently, further attempts to gather the missing data were unsuccessful as the information was not in the public domain.

66 Figures are derived from the *Annual Reports of the Board of Inland Revenue (UK) (Appendix)* (Cmnd 9927 1985) (Cmnd 1 1993).

67 Figures are for PAYE Audit Inspections. This is a very specialist enquiry and it is when the employer is investigated. Since the move to Self Assessment in 1996/97, it was planned that 0.1% of tax returns would be selected for audit.

68 This may also be interpreted as a change in audit strategy. Communications with an IRS Officer suggested that this interpretation might also be the reason for these results.

69 Figures illustrated do not include Value Added Tax (VAT) cases. The Customs and Excise Authorities handle these cases separately.

70 Based on communications with John Compson, SDS London COMP (International Assistance Revenue Policy- International Division).

In particular, specific mention is made of the term “irregularities” when discussing taxpayer non-compliance and this falls into two categories. The first category of irregularities is Schedule E emoluments and benefits. These discrepancies are identified when comparing the amount the taxpayer declared on the return with the amount shown on the employer’s P11 D return. Enquiries or audits into emoluments tend to be in respect of directors. They are either linked to an investigation into the business affairs of the company or to ensure PAYE has been correctly deducted from a director’s remuneration. Since self-assessment was introduced in 1996-97, clerical-staff undertake this type of inquiry when figures do not match,⁷¹ rather than a formal audit. The second category of irregularities is expenses in employment. Investigations into expenses reveal whether all amounts claimed are in fact wholly, exclusively and necessarily incurred, in the performance of employment⁷².

Table 4.3 reveals that taxpayer non-compliance under PAYE inspections increased by 41 per cent over the 8- year period examined. In particular the range indicates a high of 76 per cent non-compliance, in 1992-93 and a low rate of 35 per cent in 1985-86. The figures reflect the frequency of non-compliance amongst PAYE audits it does not correspond to the level of non-compliance in monetary amounts. Nevertheless, the trend is worrying given that the percentage of non-compliance amongst taxpayers in this category has more than doubled in that short eight-year period. However, as the figures represent the number of taxpayers investigated it also reveals that the BIR achieves a good strike rate when it comes to detecting non-complying taxpayers. Consequently the actual rate of non-compliance amongst the whole taxpaying population may be relatively low given that only a small percentage of the taxpaying population are actually audited each year (approximately 0.1%). Consequently, as it is a small sample any conclusions that are drawn from these statistics also need to be appropriately qualified.

Nevertheless the figures represent the number of taxpayers investigated prior to the introduction of self-assessment (SA) in 1996-97. This indicates that prior to SA when taxpayers’ returns were examined more thoroughly and fewer audits existed, taxpayers were breaching their obligations and responsibilities under the tax law in relatively high numbers. Unfortunately, more current figures since the implementation of SA were not available to give an indication of what effect potentially increased audit activity would have had upon taxpayer compliance rates.

71 This could be due to the return being sent in before the P11 D is issued (ie, different due dates or the taxpayer simply gets the figures wrong or forgets to put them on the return – Telephone Communications, with an IRS officer in the UK.)

72 Above n 70.

TOPICAL ISSUES IN CORPORATE TAX LOSSES

Despite the actual number of audits being conducted, the figures in Table 4.3 indicate an increasing level of taxpayer non-compliance that may suggest that British taxpayers failed to show a basic willingness to comply during the years analysed. Consequently, the compliance strategy put forward by James at al⁷³ in regards to pursuing the minority of non-complying taxpayers may be unsuitable given the British experience. As such, the BIR's intention to act impartially with their taxpayer's charter rather than concentrate on putting right non-compliance⁷⁴ may not be a wise policy stance.

It is evidential that a high rate of non-compliance existed, given that well over half the taxpayers' audited/investigated had some discrepancy in their returns. Although this may well have been expected by the BIR in its audit strategies, whether it is again acceptable to the government and community in general is another issue.

73 S James et al, 'Developing a Tax Compliance Strategy for Revenue Services' (2001) *International Bureau of Fiscal Documentation Bulletin* 158.

74 See the *Board of Inland Revenue Annual Report 1990/91*, 26.

Maximum statutory fines and taxpayer non-compliance amongst those selected for audit/investigation

Australia

Table 5.1: Maximum Statutory Fines & Taxpayer Non Compliance 1985-1996 ⁷⁵

(1) Year	(2) Non Comp Rate [in %]	(3) Annual % var in T/P Non- Comp	(4) Avg Annual Income [\$]	(5) Max. Fine under CA s 29D [\$]	(6) Max Fine under CA s86(1) [\$]	(7) Max Fine Under CA s.86(2) [\$]	(8) Max Fine under CA s 86A [\$]	(9) Max Fine under CTOA s. 9 [\$]	(10) Max Fine under TAA s. 8E, 8H, 8R 8V[\$]	(11) Max Fine under TAA s8WA 8WB 8WC [\$]
'85/86	67	-20	19,750	50,000	N/a	N/a	50,000	50,000	5,000	N/a
'86/87	73	+6	21,000	100,000	N/a	N/a	200,000	100,000	5,000	N/a
'87/88	68	-5	22,500	100,000	N/a	N/a	200,000	100,000	5,000	N/a
'88/89	75	+7	24,000	100,000	N/a	N/a	200,000	100,000	5,000	N/a
'89/90	68	-7	25,500	100,000	N/a	N/a	200,000	100,000	5,000	10,000
'90/91	59	-9	27,500	100,000	N/a	N/a	200,000	100,000	5,000	10,000
'91/92	64	+5	28,300	100,000	N/a	N/a	200,000	100,000	5,000	10,000
'92/93	65	+1	28,800	100,000	N/a	N/a	200,000	100,000	5,000	10,000
'93/94	62	+3	30,250	100,000	N/a	N/a	200,000	100,000	5,000	10,000
'94/95	70	+8	30,400	100,000	N/a	N/a	200,000	100,000	5,000	10,000
'95/96	71	+1	32,500	100,000	20,000	200,000	200,000	100,000	5,000	10,000

List of Abbreviations used in the Table 5.1:

- CA= *Crimes Act 1914(Cth)*
- CTOA= *Crimes Taxation Offences Act (1980)*
- ITAA = *Income Tax Assessment Act (1936)*
- TAA= *Tax Administration Act (1953)*
- Avg = *Average*
- Comp = *Compliance*
- Var = *Variation*
- T/P = *Taxpayer*
- N/a = *Not applicable*

75 The provisions of the *Crimes Act (1914) (Cth)*, *Crimes Taxation Offences Act (1980) (Cth)*, *Income Tax Assessment Act 1936 (Cth)*, and the *Tax Administration Act (1953) (Cth)*. The Commonwealth Annotations 1999 & 2000 supplement, the reprints of those Acts 1980, 1982-1984-2000 and the relevant volumes of the *Consolidated Acts (1973) (Cth)*.

TOPICAL ISSUES IN CORPORATE TAX LOSSES

The legislative provisions analysed in Table 5.1 include: sections 29D, 86(1), 86(2) and 86A of the *Crimes Act (1914)*, now the *Criminal Code Act (1995)*. Other sections examined include, section 9 of the *Crimes Taxation Offences Act (1980)*, and sections 8E, 8H, 8R, 8V, 8WA, 8WB, 8WC of the *Tax Administration Act 1953*. The rationale for selecting these provisions was partly based on the availability of figures regarding these provisions extracted from the Annual Reports of the ATO and Commonwealth DPP and that these provisions appeared to be the more frequently encountered taxation offences. Average annual income was derived from taking the December average weekly income as an average for the year and multiplying by 52 weeks.

There was a dramatic increase in fines from 1985-86 to 1986-87 under s 29D of the *Crimes Act* (\$50,000 to \$100,000), and s 86A of the *Crimes Act* (\$50,000 to \$200,000), and s 9 of the *Crimes Taxation Offences Act 1980* (\$50,000 to \$100,000). Despite this, taxpayer non-compliance slightly increased by 6 per cent during that period. The introduction of self-assessment may well have had a negative result, given that taxpayers were asked to submit tax return information based on a honesty system with this system found wanting at the audit stage. Despite what might have been the behaviour of taxpayers in a self-assessment environment, taxpayers' attitudes to the increased penalties did not appear to change compliance levels.

It is interesting to note that the fine of \$50,000 under s 29D of the *Crimes Act 1914* was 131 times (\$50,000/\$380) the average weekly earnings (AWE)⁷⁶ in 1985-86, compared to the fine of \$5,000 for breaches of sections of the *TAA 1953*,⁷⁷ which was only 13 times AWE. In 1995-96 fines under sections 86(2) and 86(1) of the *Crimes Act 1914*, dramatically increased with a fine of \$200,000 under s 86(2) representing 320 times the AWE. The fine for breaches of the *TAA 1953* in the same year of \$5,000 was only 8 times AWE. Overall, the increase in fines and non-custodial sanctions as evidenced in Table 5.1 appears to have had little impact on the rate of taxpayer non-compliance, in Australia.

76 Australian Bureau of Statistics, *Australian Year Book and Average Weekly Earning* (1982) 153.

77 See the 10th column of Table 5.1.

New Zealand

Table 5.2: Maximum Statutory Fines and Taxpayer Non-Compliance 1985-2001⁷⁸

(1) Year	(2) Non Comp Rate [in%]	(3) Annual % var in T/P non- comp	(4) Avg Annual Income [\$]	(5) Max Fine under TAA s143C s143D [\$]	(6) Max Fine under TAA s143H [\$]	(7) Max Fine under TAA s143F [\$]	(8) Max Fine under TAA s143A [\$]	(9) Max Fine under TAA s143(1) s 145 [\$]	(10) Max Fine under TAA s 145 [\$]	(11) Max Fine under TAA s143B [\$]
1985/86	65	-	21,102	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1986/87	71	+6	22,319	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1987/88	68	-3	23,178	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1988/89	66	-2	24,102	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1989/90	74	+8	25,196	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1990/91	65	- 9	27,828	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1991/92	70	+5	28,659	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1992/93	58	- 12	28,886	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1993/94	63	+5	29,544	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1994/95	59	-4	30,365	15,000	15,000	6,000 ⁷⁹	25,000 ⁸⁰	6,000 ⁸¹	25,000 ⁸²	50,000
1995/96	60	+1	31,412	15,000	15,000	6,000	25,000	6,000	25,000	50,000
1996/97	62	+2	32,368	15,000	50,000	6,000	50,000	12,000	25,000	50,000
1997/98	48	- 14	33,800	15,000	50,000	6,000	50,000	12,000	25,000	50,000
1998/99	59	+11	35,984	15,000	50,000	6,000	50,000	12,000	25,000	50,000
1999/00	50	-9	36,816	15,000	50,000	6,000	50,000	12,000	25,000	50,000
2000/01	53	+3	37,856	15,000	50,000	6,000	50,000	12,000	25,000	50,000

List of Abbreviations used in Table 5.2

- Max = Maximum
- Comp = Compliance
- Var = Variation
- T/P = Taxpayer
- Avg = Average
- TAA = Tax Administration Act 1994

78 Figures derived from the relevant provisions of the *Tax Administration Act (1994)* (NZ) as amended by the *Tax Administration (Amendment) Act 1995* (NZ), *Tax Administration (Amendment) Act 1996* (NZ) *Tax Administration (Amendment) Act 1998* (NZ).

79 For every other occasion after the second offence, the fine was increased to a maximum of \$6,000 or up to \$150 for each day of default or both.

80 A maximum of \$25,000 for a second and subsequent offence.

81 A maximum of \$6,000 for a third and subsequent offence.

82 A maximum of \$25,000 for a second and subsequent offence.

TOPICAL ISSUES IN CORPORATE TAX LOSSES

The legislative provisions analysed in Table 5.2 include: ss 143(1), 143A, 143B, 143C, 143D, 143F, 143H and 145 of the TAA 1994. The rationale for selecting these provisions was also partly based on the availability of these figures for these provisions extracted from the Annual Reports of the IRD and that these provisions appeared to be the more frequently encountered criminal taxation offences. Average annual income was derived by taking the average quarterly income published in the Government statistics for all industries,⁸³ dividing by 13 to give a weekly figure and multiplying by 52 weeks to give an annual total.

There was a dramatic increase in statutory penalties during the 1996/97 year with the introduction of the new penalties regime. See in particular, s 143H of the TAA 1994 (\$15,000 to \$50,000), s 143A of the TAA 1994 (\$25,000 to \$50,000), and s 143(1) of the TAA 1994 (\$6,000 to \$12,000). Notwithstanding these increases in penalty the level of taxpayer non-compliance for those taxpayers who were audited increased marginally by 2% in 1996/97. The results are not materially different for the ensuing years given that there was no other increases in the penalty provisions stated throughout the rest of the period analysed. As such, it is apparent from Table 5.2 that increasing the penalties for criminal tax offences or introducing new penalty provisions for that matter was not at the forefront of the Legislature's mind during the period analysed.

However, it is interesting to note that the fine of \$50,000 under ss 143H and 143A of the TAA 1994 was 80 times ($\$50,000/\622) the average weekly earnings (AWE) in 1996/97 while the fine of \$12,000 under s 143(1) of the TAA 1994 was only 19 times ($\$12,000/\622) the AWE in the same year. The original penalty of \$15,000 under s 143H of the TAA 1994 for instance, was 37 times ($\$15,000/\405) AWE back in 1985/86. So notwithstanding these increases in penalty, arguably the real deterrent effect from the perspective of the ability to pay is not substantial.

The data also indicates that in terms of a non-linear punishment schedule (i.e. having a higher penalty for more serious evasion/fraud and lower penalties for minor offences) ss143H and 143A of the TAA 1994 have not greatly assisted in the purpose of shaping tax morals.⁸⁴ That is, the deterrence factor for preventing people from

83 Statistics New Zealand, *Key Statistics*, 1985-2001. Also see <http://www.stats.govt.nz> under 'Economy, Labour Market'.

84 LP Feld and B S Frey, 'Deterrence and Tax Morals: How Tax Administrations and Taxpayers Interact,' (Conference paper presented at 3rd Annual Conference of the Centre for Tax System Integrity (CTSI), Australia National University, Canberra, July 2003) 1-19.

committing tax fraud has not been significant. The weight of heavy legal sanctions may be a factor here that will be examined later in the article. The data also suggests that heavy reliance on purely monetary fines, as is the case with the majority of criminal tax provisions analysed here within NZ, may not be the most appropriate strategy for minimising non-compliance.⁸⁵ In cases where there is a combination of both a monetary fine and a term of imprisonment the results may well have been different. Nevertheless, overall the increases in monetary penalties as evidenced in Table 5.2 appear to have had little impact on the level of taxpayer non-compliance, in New Zealand.

United Kingdom

Table 5.3: Maximum statutory fines and taxpayer non-compliance 1985-1996⁸⁶

(1) Year	(2) % of non- comp	(3) Annual % var in T/p Non- comp	(4) Avg Annual Income £	(5) Max Fine Under TMA s 93 £	(6) Max Fine Under TMA s 95(1) (c) £	(7) Max Fine Under TMA s 98 £	(8) Max Fine Under TMA s 99A £	(9) Max Fine Under ICTA S 23(8) £	(10) Max Fine Under ICTA Sch 19A £	(11) Max Fine Under ICTA s 653 £
1985/86	35	+2	8,893	50	50+	3000	3000	N/a	N/a	N/a
1986/87	40	+5	9,573	50	50+	3000	3000	N/a	N/a	N/a
1987/88	42	+2	10,356	50	50+	3000	3000	N/a	N/a	500
1988/89	44	+2	11,325	50	50+	3000	3000	50	500	500
1989/90	49	+5	12,454	50	50+	3000	3000	300	500	3000
1990/91	54	+5	13,161	50	50+	3000	3000	300	3000	3000
1991/92	65	+9	13,951	50	50+	3000	3000	300	3000	3000
1992/93	76	+11	14,264	50	50+	3000	3000	300	3000	3000
1993/94			16,936	100	50+	3000	3000	300	3000	3000
1994/95			17,488	100	50+	3000	3000	300	3000	3000

List of Abbreviations used in Table 5.3:

- TMA = Tax Management Act (1970)
- ICTA = Income and Corporations Taxes Act (1988)
- Avg = Average
- Comp = Compliance
- Var = Variation
- T/p = Taxpayer

85 Hite, above n 29, 155-180, 161.

86 Figures derived from the relevant provisions of the *Tax Management Act (1970)*(UK) and the *Income and Corporations Taxes Act (1988)*(UK) and the *Tax Management (Amendment) Acts (1988)-(1991)*(UK) and the *Income and Corporations Taxes (Amendment) Acts (1988-1991)* (UK).

TOPICAL ISSUES IN CORPORATE TAX LOSSES

- N/A = Not Applicable
- s = section
- Sch = Schedule
- Shaded rows = Figures were not available for those years
- + = 50 pounds plus the difference between the taxpayers assessment of the tax payable and the correct amount payable.

The legislative provisions analysed in Table 5.3 include: sections 93, 95(1) (c), 98 and 99A of the *Tax Management Act (1970)* (TMA). Also included are sections 23(8), 653 and schedule 19A of the *Income and Corporations Taxes Act (1988)* (Taxes Act). Again the rationale for selecting these sections was partly based on the availability of the figures regarding these provisions extracted from the Annual Reports of the BIR and that these provisions appeared to be the more frequently encountered criminal taxation offences. These provisions were also the only ones to indicate a statutory penalty and change in that penalty during the time period examined. Average annual income was derived from taking the average weekly earnings⁸⁷ for a particular year and multiplying that figure by 52 weeks.

During the years investigated 1985-86 to 1995-96 the level of penalties for the sections examined herein generally increased. The most dramatic increases arose under section 653 of the Taxes Act (1988) during 1989-90 (£500 to £3,000). Also under Schedule 19A of the Taxes Act, the penalty increased from (£500 to £3,000) during 1990-91. Other notable increases in penalties included, section 23(8) of the Taxes Act (1988) which went up from (£50 to £300) in 1989-90 and section 93 of the TMA (1970) that saw a minor increase of (£50 to £100) during the 1993-94 year. Despite the more salient increases in penalty during the period 1989-91, taxpayer non-compliance increased by 10 %, going from 44% to 54%.

It is also interesting to note that the penalty of £50 under section 93 of the TMA (1970) is just 30% (£50/£171) of the average weekly earnings (AWE)⁸⁸ in 1985-86. Arguably this is hardly a deterrent in terms of a significant financial burden, especially when this figure is compared to a penalty of £3,000, for a breach of sections 99A or 98 of the TMA (1970)⁸⁹ which was over 17 times AWE in the same year. The other change in penalty given in the table was the increase in penalty under Schedule 19A of the TMA (1970) in 1990-91 from (£500 to £3,000) that represented approximately 12 times AWE.

87 UK Government Statistical Service, *'Annual Abstract of Statistics'*, 1994-2002 (eds)

88 Ibid 1991 (ed) 123.

89 The 7th and 8th columns of Table 5.3.

Consequently, despite these increases in penalty the real deterrent effect from the perspective of the ability to pay the penalty appears to be lacking.

In particular, the increase in penalties introduced under the Taxes Act (1988) and amended by the *Finance Acts* of 1989 and 1990, for breaches of various taxation offences mentioned previously, also appears to be out of sequence with the sentencing principle of proportionality⁹⁰. This is evidenced by the severity of the sanctions imposed having little impact upon the individuals' ability to pay. If the increase in these penalties were undertaken with the intention of improving the deterrent effect upon taxpayer non-compliance, this appears to have failed, based on the figures presented in Table 5.3.

However, the fact that there was no evidence of discussion regarding the motive for increasing these penalties in the Parliamentary Debates⁹¹ may indicate that the principle of deterrence was not at the forefront of the legislatures' mind during the period of time analysed. Indeed, when one considers the comments of the Attorney General⁹² when the Penalties Bill of (1960) was introduced, there appears to be inconsistency as to the purpose and effect of penalties in tackling taxpayer non-compliance in the United Kingdom.

On the other hand, as the legislature's failed to introduce more and heavier penalties, their actions may support the general studies on criminal behaviour which indicate that the probability of apprehension is more important in reducing non-compliance⁹³. Likewise, the figures may again suggest that heavy reliance on purely monetary fines as is the case with the criminal tax provisions analysed herein may not be the most appropriate strategy for minimising non-compliance.⁹⁴ In cases where there is a combination of both a monetary fine and a term of imprisonment the results may well have been different. Nevertheless, the increases in monetary penalties as evidenced in Table 5.3 appear to have had little impact upon the level of taxpayer non-compliance in the United Kingdom.

90 The proportionality principle prohibits judicial offices from imposing sentences exceeding what is commensurate with the gravity of the offence.

91 United Kingdom, *Parliamentary Debates*, House of Commons, *Finance Bill 1960*.

92 *Ibid Second Reading Speech*, 1042, where the Attorney General stated, 'We have provided penalties on top of that which will generally be regarded as fair, and at the same time operate as a satisfactory deterrent to deter people from being careless and neglectful and indeed fraudulent, in discharging their obligations under the Income Tax Acts'.

93 Tittle and Logan, above n 14, 371-389.

94 Hite, above n 29, 155-180, 161.

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AVERAGE FINES IMPOSED BY THE COURTS AND TAXPAYER NON-COMPLIANCE AMONGST THOSE SELECTED FOR AUDIT/INVESTIGATION

Australia

Table 6.1: Average Fines Imposed by the Courts and Taxpayer Non Compliance 1985-96⁹⁵

(1) Year	(2) Non Comp Rate [in %]	(3) Annual % var in T/p Non- Comp	(4) Avg Annual Income [\$]	(5) Avg Fine Imposed under CA s. 29D 86(1) s. 86(2) 86A [\$]	(6) Avg court fine expressed as a % of the Max fine set by legisl under CA (ie \$20,000)	(7) Avg court fine expressed as a % of the Max fine set by legisl under CA (ie \$100,000)	(8) Avg Fine under ITAA s251L s 251O [\$]	(9) Avg court fine expressed as a % of the Max fine set by legisl under ITAA (\$2,000)	(10) Avg Fine under TAA s. 8E, 8H, 8R 8V [\$]	(11) Avg court fine expressed as a % of the Max fine set by legisl Under TAA s 8E, 8R, 8V, 8H (\$5,000)
'85/86	67	-20	19750	1,057	5%	1%	N/A	N/A	1,200	24
'86/87	73	+6	21,000	N/AV	N/AV	N/AV	1,040	52	382	7
'87/88	68	-5	22,500	N/AV	N/AV	N/AV	409	20	669	13
'88/89	75	+7	24,000							
'89/90	68	-7	25,500							
'90/91	59	-9	27,500	12,089	60	12	1,340	67	1,157	23
'91/92	64	+5	28,300	1,057	5	1	169	8	1,200	24
'92/93	65	+1	28,800	1,328	6	1	12,000*	6	2,112	42
'93/94	62	+3	30,250	5,464	27	5	466	23	733	15
'94/95	70	+8	30,400	680	3	0.6	415	21	444	9
'95/96	71	+1	32,500	5,932	30	6	176	8	329	7

List of Abbreviations used in the Table 6.1:

- CA= Crimes Act 1914 (Cth)
- ITAA = Income Tax Assessment Act (1936)
- TAA= Tax Administration Act (1953)
- Avg = Average
- Comp = Compliance
- Var = Variation
- T/p = Taxpayer

⁹⁵ Figures are derived from the *Annual Reports of the Australian Tax Office (1985-96)* inclusive and extracted from the Appendix to these Reports entitled, *Breaches and Evasions of the Acts*.

- N/av = Not available
- Shaded rows = figures were not available for those years
- * = This is an unusually high penalty given the maximum is only \$2,000 and was raised to \$22,000 only in the year 2000.
- Max = Maximum
- Legisl = Legislature

In Table 6.1 the average fine per taxpayer was calculated by dividing the figure for total fines imposed under legislation by the number of taxpayers receiving a fine or conviction. The figures do not include details of cases that were still in progress or under appeal at the time.

The results in Table 6.1 indicate that in the sample period, the average fine imposed for taxation offences under s 86(1) of the *Crimes Act 1914* was \$12,089, in 1990-91, which represents a high of (60% of the \$20,000 maximum). Likewise \$12,089 represents (12% of the \$100,000 maximum fine) under s 29D of the *Crimes Act 1914*. In 1994-95 however, the fine was a low \$680 which represented only 3 per cent of the \$20,000 maximum fine under s 86(1) of the *Crimes Act 1914* or 0.6 per cent of the \$100,000 maximum fine under s 29D of the *Crimes Act 1914*. The figure of \$680 in 1994/95 is also, only marginally higher than the AWE of \$585 in that year, while the figure of \$12,089 represents 21 times AWE.

The results in Table 6.1 also indicate that the average fine imposed under sections 251L and 251O of the *ITAA 1936*, was \$1,340 in 1990/91 (excluding the anomaly in 1992/93 of \$12,000) representing a high 67% of the \$2,000 maximum possible. However, a low of \$169 was revealed in 1991-92, representing only 8% of the \$2,000 maximum fines for those tax agent offences. The figure of \$169 is also only a fraction of the AWE of \$544 for that year. Likewise the figure of \$1,340 was only 2.5 times the AWE for that year. Given this analysis the fines could hardly be considered a deterrent in the financial sense.

Finally, the figures in Table 6.1 show that the average fine imposed for the offence sections 8E, 8H, 8R and 8V of the *TAA 1953* went from a high of \$2,112 in 1992-93 which represents 42% of the \$5,000 maximum fine possible, to a low of \$329 in 1995-96, which represents only 7% of the \$5,000 maximum fine. The figure of \$329 was just over half of the AWE for that year of \$625. Likewise the figure of \$2,112 was less than 4 times AWE for that year. Consequently the policy aim of achieving deterrence and proportionality in sentencing appears to be in question as revealed by these results.

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New Zealand

Table 6.2: Average Fines imposed by the Courts and Taxpayer Non-compliance 1985-2001⁹⁶

(1) Year	(2) Non Comp Rate [in%]	(3) Annual % var in T/P non- comp	(4) Avg Annual Income [\$]	(5) Avg Fine impos under TAA s143- s145 [\$]	(6) Avg fine Expres As a % of the Max fine set by the legislat under TAA s143C s143D \$15,000	(7) Avg fine Expres As a % of the Max fine set by the legislat under TAA s143H \$15,000 (\$50,000 Post 1995/96)	(8) Avg fine Expres As a % of the Max fine set by the legislat under TAA s143F \$6,000	(9) Avg fine Expres As a % of the Max fine set by the legislat under TAA S143A(8) \$25,000 (\$50,000 Post 1995/96)	(10) Avg fine Expres As a % of the Max fine set by the legislat under TAA s143(1) \$6,000 (\$12,000 Post 1995/96)	(11) Avg fine Expres As a % of the Max fine set by the legislat under TAA S145 \$25,000
1985/86	65	-	21,102	1,105	7.3	7.3	18.41	4.42	18.41	4.42
1986/87	71	+6	22,319	1,165	7.76	7.76	19.42	4.66	19.42	4.66
1987/88	68	-3	23,178	1,729	11.52	11.52	28.82	6.92	28.82	6.92
1988/89	66	-2	24,102	1,770	11.80	11.80	29.50	7.08	29.50	7.08
1989/90	74	+8	25,196	3,729	24.86	24.86	62.15	14.92	62.15	14.92
1990/91	65	-9	27,828	3,274	21.83	21.83	54.57	13.10	54.57	13.10
1991/92	70	+5	28,659	3,897	25.98	25.98	64.95	15.59	64.95	15.59
1992/93	58	-12	28,886	4,446	29.64	29.64	74.10	17.78	74.10	17.78
1993/94	63	+5	29,544	5,088	33.92	33.92	84.80	20.35	84.80	20.35
1994/95	59	-4	30,365	9,833	65.55	65.55	100	39.33	100	39.33
1995/96	60	+1	31,412	5,861	39.07	39.07	97.78	23.47	97.78	23.47
1996/97	62	+2	32,368	5,201	34.67	10.40	86.68	10.40	86.68	20.80
1997/98	48	-14	33,800	15,965	100	31.93	100	31.93	100	63.86
1998/99	59	+11	35,984	31,464	100	62.93	100	62.93	100	100
1999/00	50	-9	36,816	12,370	82.46	24.74	100	24.74	100	49.48
2000/01	53	+3	37,856	33,075	100	66.15	100	66.15	100	100

List of Abbreviations used in Table 6.2

- Max = Maximum
- Comp = Compliance
- Var = Variation
- T/P = Taxpayer
- Avg = Average
- TAA = Tax Administration Act 1994
- Impos = Imposed

96 The figures presented in Table 6.2 indicate the penal tax imposed for various criminal tax offences in New Zealand and their relationship to the maximum fines.

- Expres = Expressed
- Legislat = Legislature

In Table 6.2 the average fine per taxpayer was calculated by dividing the total amount of penalty tax imposed under the legislation by the number of cases in which penal tax was imposed.⁹⁷ The figures do not include cases that were still in progress or under appeal at the time. Percentages were then derived by expressing the average fine as a percentage of the maximum fine possible under the various provisions examined to gain an idea of the severity of the actual fines imposed.

The results indicate that in the sample period the average fine imposed for taxation offences in 2000/01 under ss 143 to 145 of the TAA 1994 was \$33,075. This figure represents 100% of the maximum fines of \$15,000, \$25,000 and \$12,000 respectively and 66.15% of the \$50,000 maximum imposed under ss 143H and 143A(8) of the TAA 1994, post 1995/96. It also represents 45 times (\$33,075/\$728) AWE for 2000/01.

In 1985/86 the average fine was a low \$1,105 which represented only 7.3% of the maximum fine of \$15,000 under ss143C and 143D of the TAA 1994 and only 4.42% of the maximum fine of \$25,000 under s 143A(8) and s 145 of the TAA 1994 in the same year. The average fine was also only 2.7 times (\$1,105/\$405) the AWE for the 1985-86 year. In the middle of the sample period, the average fine imposed for taxation offences in 1993/94 under ss143 to 145 of the TAA 1994 was \$5,088. This figure represents 33.92% of the maximum fines of \$15,000 imposed under ss143C, 143D and 143H of the TAA 1994, also 84.80% of \$6,000 maximum fine under ss143F and 143(1) of the TAA 1994 and 20.35% of the \$25,000 maximum imposed under ss143A(8) and 145 of the TAA 1994. The average fine in 1993/94 also represented only 9 times (\$5,088/\$568) the AWE. An analysis of the figures at this time suggests that monetary penalties tended to be on the lenient side, with the majority of fines imposing less than half the maximum available. The relatively low deterrent effect of the fine, when compared to figures for AWE, is of a concern as this again highlights the failure to reflect the sentencing principle of proportionality.

Nevertheless, during the sample period the average fine imposed tended to increase as a percentage of the maximum fine, which may indicate the willingness of the courts to try and impose appropriate monetary sentences where possible. Certainty as criminal tax offences under the TAA 1994 stipulate mainly monetary penalties as opposed to custodial sentences, it is not surprising that the level of penalty imposed

97 Annual Reports of the Inland Revenue Department (NZ) 1985-2001 inclusive, *Statistical Tables, Part II: Penal Tax Imposed under Nature of Offence Prosecutions*.

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has increased over the years in the absence of any strong mitigating factors. In terms of the overall effect, if any, the increased penalties has had on taxpayer non-compliance is difficult to gauge but there is a hint that some impact may have been evident, particularly post 1996/97 as stated previously within Table 4.2.⁹⁸ However, it would appear that alone, the level of average penalty has been unable to significantly effect non-compliance in New Zealand.

United Kingdom

Table 6.3 Settlements and Taxpayer Non-Compliance 1985-1996⁹⁹

(1) Year	(2) % of non- comp	(3) Ann % var T/P Non- comp ¹⁰⁰	(4) Invest resulting in settlements with interest / penalties ¹⁰¹	(5) % of Total BIR Invest	(6) Invest settled for additional tax only	(7) % of Total BIR Invest	(8) Total Invest
1985/86	35	+2	37,484	58	27,105	42	64,589
1986/87	40	+5	38,707	63	22,949	37	61,656
1987/88	42	+2	40,751	66	20,702	34	61,453
1988/89	44	+2	44,261	69	20,296	31	64,557
1989/90	49	+5	49,416	70	20,705	30	70,121
1990/91	54	+5	51,668	69	22,809	31	74,477
1991/92	65	+9	52,669	71	21,326	29	73,995
1992/93	76	+11	46,759	69	21,291	31	68,050
1993/94			46,056	66	24,103	34	70,159
1994/95			42,429	63	25,462	37	67,891
1995/96			40,280	61	25,578	39	65,858

List of Abbreviations used in Table 6.3:

- BIR = Board of Inland Revenue
- Invest = Investigations
- Comp = Compliance
- Var = Variation
- T/p = Taxpayer
- Ann = Annual

98 The non-compliance rate decreased by 9% between 1996/97-2000/01.

99 United Kingdom, *Annual Reports of the Board of Inland Revenue* (Cmnd 880, 1989) 44 and (Cmnd 2328, 1993) 69 and (Cmnd 1, 1996) 96.

100 Non-compliance figures in the United Kingdom taken from Table 4.3 are not necessarily indicative or reflective of other figures in Table 6.3.

101 Communications with officers of the Board of Inland Revenue revealed that penalties are often heavily mitigated, and are normally just charged on full enquires where more than one year is involved.

- Shaded cells = Figures were not available for those years

Table 6.3 illustrates the culture of the BIR to settle disputes with the emphasis being on maximizing the economic utility of the organization and the government's revenue. In particular the number of audits or investigations that resulted in settlements of interest and penalties was generally twice that of those that were settled for additional tax only during the 11-year period examined. The exception to this general trend would be the 1985-86 year where settlements within the two categories were similar. It is also evident that settlements have not varied greatly in total in the period examined, ranging from a high of 74,477 cases in 1990-91 to a low of 61,453 cases in 1987-88. Despite the increase in taxpayer non-compliance, settlements have been at the forefront of BIR taxation/prosecution policy¹⁰². It should also be noted that the BIR accepts that in some cases the tax is irrecoverable, and effectively writes this amount off as lost revenue. This is where the BIR make a judgment call as to how best to utilise the scarce resources.¹⁰³

It is also interesting to note that in Table 6.3 the figures show a steady rise in the settlements resulting in interest and penalties, from 1985 up until 1992, followed by a fall in settlements resulting in interest and penalties and a corresponding rise in settlements for additional tax only, from 1992 to 1996. The BIR has put forward that getting "*the money in and to not lock people up in prison and prosecute them*",¹⁰⁴ has been their desire. However, there was no information in the BIR Annual Reports regarding the seriousness of the actual offences and hence the relative appropriateness of these settlements from a proportionality perspective. Likewise the general deterrent effect of increased penalties may have been jeopardised, if many taxpayers have accepted settlements knowing full well that if they re-offend and are found guilty of a similar offence in the future, a similar outcome could take place.

By providing these settlements, the BIR continues to have faith in a high level of voluntary compliance by the majority of UK taxpayers. This may be a dangerous presumption given the figures in Table 4.3 regarding the levels of taxpayer non-compliance. The figures in Table 6.3 indicate that non-compliance increased amongst the PAYE taxpayers despite the increase in the number of settlements during this 11 - year period, other than the 1992/93 year onwards which saw a fall in settlements with interest and penalty. Consequently there is no indication based on these figures that

102 United Kingdom, *Annual Report of the Board of Inland Revenue* (Cmnd 8822, 1983) 457.

103 United Kingdom, *Annual Report of the Board of Inland Revenue* (Cmnd 880, 1989) Document C 46.

104 D Cook, *Rich Law, Poor Law – Different Responses to Tax & Supplementary Benefit Fraud* (Open University Press 1989) 149.

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the BIR maintains an active presence in all parts of the tax system that it claims it does.¹⁰⁵

The prosecution policy of the BIR that is supported by the judiciary¹⁰⁶ means that taxpayers are only prosecuted in those exemplary cases most likely to serve as a deterrent. What may be of a concern is the possible over-emphasis on settlements by the BIR in order to increase the revenue, to the detriment of likely prosecution and criminal conviction. Where this strategy of virtual non-prosecution¹⁰⁷ falls down may be evident from the increased levels of taxpayer non-compliance during the period investigated. That is, the real deterrent effect of reducing taxpayer non-compliance may have been hampered by the BIR's decision to settle particular tax cases rather than to prosecute in those cases. Nevertheless, it still remains difficult to gauge categorically from these limited results that the overall level of taxpayer non-compliance has been affected by number of tax investigations resulting in settlements.

105 United Kingdom, *Annual Report of the Board of Inland Revenue* (Cmnd 1, 1990/91) 26.

106 *R v IRC ex Mead* [1993] 1 All ER 772.

107 D Cook, above n 104, 149.

MAXIMUM STATUTORY TERMS OF IMPRISONMENT AND TAXPAYER NON-COMPLIANCE AMONGST THOSE SELECTED FOR AUDIT/INVESTIGATION

Australia

Table 7.1 Maximum Statutory Term of Imprisonment and Taxpayer non-compliance 1976-96¹⁰⁸

(1) Year	(2) Non-comp level %	(3) Annual % var T/p Non-Comp	(4) No of tax Offence with 1 year max Impris Term	(5) No of Tax Offence with 2 year max Impris Term	(6) No of Tax Offence with 5 year max Impris Term	(7) No of Tax Offence with 10 year max Impris Term	(8) No of Tax Offence with 20 year max Impris Term	(9) Total No of Offence which carried a Impris term Total (4) to (8)
1976/77	83	-	N/A	3	1	N/A	N/A	4
1977/78	73	-10	N/A	3	1	N/A	N/A	4
1978/79	68	-5	N/A	3	1	N/A	N/A	4
1979/80	84	+16	N/A	3	1	N/A	N/A	4
1980/81	80	-4	N/A	3	2	N/A	N/A	5
1981/82	81	+1	N/A	3	2	N/A	N/A	5
1982/83	79	-2	N/A	3	2	N/A	N/A	5
1983/84	64	-15	N/A	4	4	N/A	N/A	8
1984/85	87	+23	4	4	4	N/A	N/A	12
1985/86	67	-20	4	4	4	N/A	N/A	12
1986/87	73	+6	4	4	1	²¹⁰⁹	¹¹¹⁰	12
1987/88	68	-5	4	4	1	2	1	12
1988/89	75	+7	4	7	1	2	1	15
1989/90	68	-7	4	7	1	2	1	15
1990/91	59	-9	4	7	1	2	1	15
1991/92	64	+5	4	7	1	2	1	15
1992/93	65	+1	4	7	1	2	1	15
1993/94	62	+3	4	7	1	2	1	15
1994/95	70	+8	5	7	1	2	1	16

108 The provisions of the *Crimes Act (1914)* (Cth), *Crimes Taxation Offences Act (1980)* (Cth), *Income Tax Assessment Act 1936* (Cth), and the *Tax Administration Act (1953)* (Cth). The Commonwealth Annotations 1999 & 2000 supplement, the reprints of those Acts 1980, 1982-1984-2000 and the relevant volumes of the *Consolidated Acts (1973)* (Cth).

109 Commonwealth, *Parliamentary Debates*, House of Representatives, 1986, 2365. The Level of Penalty for such conspiracies was increased following judicial criticism of the inadequate penalty level to a level that was considered to reflect the seriousness of the offence.

110 Commonwealth, *Parliamentary Debates*, House of Representatives, Second Reading Speech, 1986, 2929. The penalty was raised to a maximum of 20 years imprisonment following judicial criticism of the inadequacy of quantum penalties.

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(1) Year	(2) Non-comp level %	(3) Annual % var T/p Non-Comp	(4) No of tax Offence with 1 year max Impris Term	(5) No of Tax Offence with 2 year max Impris Term	(6) No of Tax Offence with 5 year max Impris Term	(7) No of Tax Offence with 10 year max Impris Term	(8) No of Tax Offence with 20 year max Impris Term	(9) Total No of Offence which carried a Impris term Total (4) to (8)
1995/96	71	+1	5	7	1	2	2	17

List of Abbreviations used in the Table 7.1:

- Comp = Compliance
- Var = Variation
- T/p = Taxpayer
- N/a = Not applicable
- Max = Maximum
- Impris = Imprisonment

The figures in Table 7.1 reveal that notwithstanding the introduction of stiffer sanctions in December 1980, December 1984, October 1986 and January 1989 for the various tax offences covered in this sample, there was little or no change in the overall level of taxpayer compliance. In particular, during the period 1976-77 to 1983-84 the only two sanctions that were prevalent were both the 2- year and 5- year term of imprisonment. A 1-year term of imprisonment was introduced in 1984-85, while 10-year and 20- year terms of imprisonment were introduced in 1986-87. The heavier term of imprisonment resulted from both the move to self-assessment in the mid-eighties and also as a repercussion of the "bottom of the harbour" anti-avoidance schemes that existed throughout the earlier 1980's¹¹¹. (ie relevant sections of the *Crimes Act 1914* and *Crimes Taxation Offences Act 1980*)

It is also noticeable that the most common sanction in 1995/96 was the 2-year term of imprisonment with seven legislative sections imposing it, no doubt, a direct result of the tax file number provisions in the *TAA 1953*, which were introduced in January 1989.

The issue of whether the sanctions had a real deterrent effect is questionable, given that only two provisions currently impose both a 10-year or 20-year term of imprisonment. Despite the Legislature's intention¹¹² to increase the deterrent effect by

111 Commonwealth, *Parliamentary Debates*, House of Representatives, Second Reading Speech, 1980, 262.

112 Ibid 266.

increasing the number of offences carrying a term of imprisonment from four offences in 1976-77 to seventeen in 1995-96, there has been little change in non-compliance rates. What is even more important in terms of proportionality would be whether the judiciary has invoked the full 'letter of the law' in its sentencing practices. That is, the maximum statutory penalty that is appropriate for the offence should be imposed where there are no mitigating circumstances. Some indication of whether the judiciary has been consistent in their imposition of penalties is revealed in the next section.

New Zealand

Table 7.2: Maximum Statutory Term of Imprisonment and Taxpayer Non-Compliance 1985-2001¹¹³

(1) Year	(2) Non Comp Rate [in%]	(3) Annual % var in T/P non- comp	(4) No of tax/crim offences with 6 mths max Impris term	(5) No of tax/crim offences with 1 year max Impris term	(6) No of tax/crim offences with 2 year max Impris term	(7) No of tax/crim offences with 5 year max Impris term	(8) No of tax/crim offences with 10 year max Impris term ¹¹⁴	(9) No of tax/crim offences with 20 year max Impris term ¹¹⁵	(10) Total no of tax/crim offences which carried an Impris term (column 4-9)
1985/86	65	--	N/A	1	1	N/A	3	N/A	5
1986/87	71	+6	N/A	1	1	N/A	3	N/A	5
1987/88	68	-3	N/A	1	1	N/A	3	N/A	5
1988/89	66	-2	N/A	1	1	N/A	3	N/A	5
1989/90	74	+8	N/A	1	1	N/A	3	N/A	5
1990/91	65	-9	N/A	2	2	N/A	3	N/A	7
1991/92	70	+5	N/A	2	2	N/A	3	N/A	7
1992/93	58	-12	N/A	2	2	N/A	3	N/A	7
1993/94	63	+5	N/A	2	2	N/A	3	N/A	7
1994/95	59	-4	N/A	2	2	N/A	3	N/A	7
1995/96	60	+1	N/A	2	2	N/A	3	N/A	7
1996/97	62	+2	3	1	1	2	3	N/A	10
1997/98	48	-14	3	1	1	2	3	N/A	10

113 Table 7.2 indicates changes to custodial sanctions imposed under the New Zealand *Income Tax Assessment Act 1976*, *Tax Administration Act 1994* and *Crimes Act 1961*.

114 The maximum 10-year sentence includes ss 257, 258 and 260 of the New Zealand *Crimes Act 1961*.

115 Column 9 has been included for the purposes of comparison with other jurisdictions that do impose a 20-year term of imprisonment.

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1998/99	59	+11	3	1	1	2	3	N/A	10
1999/00	50	-9	3	1	1	2	3	N/A	10
2000/01	53	+3	3	1	1	2	3	N/A	10

List of Abbreviations used in Table 7.2

- Impris = Imprisonment
- No = number
- Tax/crim = tax and criminal
- Max = maximum
- N/A = Not applicable
- T/P = Taxpayer

The data in Table 7.2 reveal that the number of tax and related criminal offences for which a statutory term of imprisonment is imposed, doubled (from five offences to ten offences) over the period investigated. For the eleven years between 1985/86 and 1995/96, there existed up to 7 offences that imposed custodial sanctions. Specifically, former s 416B (1) of the Income Tax Act 1976 (ITA) imposed up to a maximum term of 12 months for offences against ss 324(1) (b), 327V (1) (b) and 368(1) (b) of the ITA 1976. Also s 416B (2A) of the ITA 1976 imposed up to a 2-year term of imprisonment for offences against ss 416 (1) (ba), (bb) or 416A (3) of the ITA 1976.

During that eleven year period there also existed and there continues to exist, custodial sanctions for tax related offences under the Crimes Act 1961. These include, false accounting pursuant to s 260, forged documentation pursuant to s 257 and altering, destroying and reproducing documents with the intent to deceive, pursuant to s 258, all of which impose a maximum term of up to 10 years imprisonment. Likewise, the Serious Fraud Act 1990 contains penalty provisions for obstruction of investigations pursuant to s 45 and for destroying, altering or concealing records pursuant to s 46, which imposes maximum terms of imprisonment of 12 months and 2 years, respectively.

Since the 1996 amendments to the TAA 1994,¹¹⁶ penalties for tax offences have changed from those, which existed under the original TAA 1994 and prior to that, the penalties that had been removed from the ITA 1976. Specifically, new statutory terms were introduced to the TAA 1994 for offences such as, s 143C (2) (a) for officers who fail to maintain secrecy, s 143D (4) (a) for other persons who failure to maintain secrecy and failure of other secrecy requirements pursuant to s 143E (2) (a), all of

116 *Tax Administration Act 1994* as amended by the *Tax Administration (Amendment) Act (No2) 1996* (NZ).

which impose a maximum sentence of up to 6 months. Also since 1996/97 there has been an increase in the level of custodial sanction for certain tax offences under the TAA 1994. In particular, s 143A(8)(d) of the TAA 1994 knowledge offences, indicate an increase in the term of imprisonment to a maximum of 5 years, up from 2 years under the former s 222(3) of the TAA 1994. Likewise, s 143B (4) (a) of the TAA 1994 now introduced a 5-year maximum term for evasion or similar offences.

However, it is evident from the data in Table 7.2 that there has not been a heavy reliance by the Government and the Legislature in New Zealand on establishing more statutory terms of imprisonment for various taxation offences.¹¹⁷ Rather, the emphasis has been on establishing monetary penalties. The sanctioning results contained in Table 8.2 (which follows), give a clearer picture of the Judiciary's attitude regarding imposition of custodial sanctions. Overall, despite the slight improvement in the level of taxpayer non-compliance over the total period investigated, it is difficult to establish that the change in custodial sanctions alone had an impact on those levels.

The substitution of the one and two year sanctions under the original TAA 1994 for 6 month sanctions under the TAA 1994 post 1996, may have been compensated for by the replacement of the 2 year sanctions under the original TAA 1994 with 5 year terms under the TAA 1994. Notwithstanding the changes to those sanctions in the 1996-year, taxpayer non-compliance increased by 2%. In the following year, there was a dramatic drop in taxpayer non-compliance of 14%, (i.e. from 62% in 1996/97 to 48% in 1997/98). Nevertheless, the non-compliance rate climbed back up to 53% by 2000/01.

It is also noticeable that both a 6-month and 10-year term was common amongst the sanctions listed in Table 7.2. However, the 10-year maximum term imposed under the Crimes Act 1961, rarely appeared.¹¹⁸ Maximum terms of imprisonment of anything up to 4 years appeared to be handed down by the Judiciary and were meant to be examples of the supposedly harsh stance that was to be taken against tax fraud.¹¹⁹ One could question whether a deterrent effect was present given the 10 year maximum term, yet there is little evidence of sentences anywhere near the maximum being imposed. In terms of proportionality, the issue of whether the Judiciary has invoked the full 'letter of the law' in its sentencing practices also remains uncertain. That is, it could well be proposed that the maximum statutory penalty that is

117 Column 10 of the Table 7.2 reveals that a total of only 10 offences currently carry a term of imprisonment.

118 See generally, *R v Petherick* [1994] 18 TRNZ 662, *R v Fuller* [1991] 1 NZLR 323, *Maxwell v CIR* [1959] NZLR 708, where supposedly heavy sentences were handed out.

119 See *R v Jones*, Unreported District Court, Auckland, T 65/94 and Inland Revenue Department, Media Release 7, 'Tax Agent Jailed for Tax Fraud' February 2002.

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appropriate for the offence should be imposed where there are no mitigating circumstances. Consequently there may be a question mark over the appropriateness of sentences for tax fraud. Given this assertion, some further indication of the Judiciary's trends in sentencing for criminal tax offences in New Zealand will be revealed in Table 8.2.

United Kingdom

Table 7.3 Maximum Statutory Term of Imprisonment and Taxpayer non-compliance 1985-1996

(1) Year	(2) Non-Comp Level %	(3) Annual % var T/p non-comp	(4) No of tax Offence With less than 1 Year max Impris Term	(5) No of tax Offence With 2 Year max Impris Term	(6) No of tax Offence With 5 Year max Impris Term	(7) No of tax Offence With 10 Year max Impris Term	(8) No of tax Offence With 20 Year max Impris Term	(9) Total No of Offence which carried an Impris Term (colm 4-8)
1985/86	35	+2	N/A	1	2	2	N/A	5
1986/87	40	+5	N/A	1	2	2	N/A	5
1987/88	42	+2	2	1	2	3	N/A	8
1988/89	44	+2	2	1	2	3	N/A	8
1989/90	49	+5	2	1	2	3	N/A	8
1990/91	54	+5	2	1	2	3	N/A	8
1991/92	65	+9	2	1	2	3	N/A	8
1992/93	76	+11	2	1	2	3	N/A	8
1993/94			2	1	2	3	N/A	8
1994/95			2	1	2	3	N/A	8
1995/96			2	1	2	3	N/A	8

List of Abbreviations used in Table 7.3.

- Comp = Compliance
- Var = Variation
- T/p = Taxpayer
- N/A = Not Applicable
- Max = Maximum
- Imprison = Imprisonment
- Shaded cells = Figures were not available for those years

The legislative provisions analysed in Table 7.3 include, sections 2, and 16 of the *Theft Act (1968)*, section 5 of the *Perjury Act (1911)*, sections 4, 5 and 6 of the *Forgery and Counterfeiting Act (1981)* and sections 2, 12 and 20 of the *Criminal Justice Act (1987)*. The rationale for selecting these sections was also partly based on the availability of the figures regarding these provisions extracted from the Annual Reports of the BIR and that these provisions appeared to be the most common taxation offences which indicated a term of imprisonment. (Section 17 of the *Theft Act 1968* for false accounting, which imposed a 7 year term, was deliberately omitted as was s 144 of the *Finance Act 2000*, as the analysis only examined years to 1996.)

The data in Table 7.3 reveals that notwithstanding the introduction of harsher sanctions in 1987-88 for tax offences, during the 11-year period examined taxpayer non-compliance continued to increase. In particular during the 1987-88 year, offences with a term of imprisonment of less than one year were introduced while offences with a ten-year maximum term increased. It is evident that the ten-year terms appear to be the most common but this is also the maximum term of any of the sanctions detailed herein, with only a total of eight offences in all carrying a term of imprisonment. The issue of whether the increase in sanctions have had a deterrent effect on taxpayer non-compliance is difficult to establish, despite the fact that the most severe sentence is a ten-year maximum and that the total number of sanctions only rose by three over the 11 year period examined.

As stated previously, researchers have found that the severity of sanctions has a stronger negative relationship and thus possible deterrent effect when social norms are strong¹²⁰. If British taxpayers are perceived by the BIR as largely compliant and that they identify with their national group to a larger extent, there may be a case for not increasing the sanctions from what they are indicated to be in Table 7.3. However, given the figures for taxpayer non-compliance in Table 4.3 this may be a dangerous presumption. Also personal norms can be more important than social norms in determining severity of sanction and this is what may need to be considered, given the number of high profile taxpayers who are being sentenced under the *Forgery and Counterfeiting Act (1981)* and *Criminal Justice Act (1987)* in the UK.

Likewise, the steady increase in taxpayer non-compliance when compared with the increase in the number of sanctions indicated in Table 7.3 may also be of a concern when one considers the 'Rational Actor' approach in taxpayer behaviour¹²¹. That is, taxpayers' behaviour will only be influenced when legal sanctions appear to be very

120 Allingham and Sandmo, above n 13, 323-38.

121 Ajzen and Fishbein, above n 26, 84.

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severe. Judging from the sanctions imposed in Table 7.3 arguably this severity could well be lacking. Given this assertion, some indication of the number of cases brought forward for the different types of taxation offences, for various legislation examined in this analysis, will be revealed in the following tables.

CONVICTIONS AND SENTENCING FOR TAX OFFENCES AND TAXPAYER NON-COMPLIANCE AMONGST THOSE SELECTED FOR AUDIT/INVESTIGATION

Australia

Table 8.1: Convictions and Sentencing for Tax Offences and Taxpayer Non Compliance 1985-96¹²²

Type of Stat Offence and year	Annual Non-Comp Rate [in %]	Annual % var in T/P Non-Comp	Max. Term Set by Stat	Num of Persons Rec Sanct	Term of Imprison Impos by Court	Num of Persons Rec Suspnd Imprison Terms	Period of Suspnd Imprison Term	Num of Per Rec GBB	Num of Per Rec CSO
85/86 CA s29B s 86A	67	-20	2 y 5 y						
86/87 s 29B s 86A	73	+6	2 y 20y	5	(3 per) 2y,3m,2y	1	6m	1	N/a
87/88 s 29B s 86A	68	-5	2 y 20y	3	(2 per) 18m,18m	1	10m,	0	N/a
88/89 s 29B s 86A	75	+7	2 y 20y	7	(5 per) 2y, 8m,15m 9m 2y8m	4	8m6m 6m 8m	2	repeat offender
89/90 s 29B s 86A	68	-7	2 y 20y	1 1	(1 per) 9 m 0	0 0	0	0 1	N/a
90/91 s 29B s 86A	59	-9	2 y 20y	2 8	(5 per) 2 y 3y, 2y 18m, 3m	1 4	6 m 18m, 2y 2y 6m	1 4	N/a

122 Statistics of cases were derived from the Commonwealth, *Australian Taxation Office and Director of Public Prosecutions Annual Reports (1985-96)* inclusive and from the *Commonwealth Statutes Annotation Service*.

Type of Stat Offence and year	Annual Non-Comp Rate [in %]	Annual % var in T/P Non-Comp	Max. Term Set by Stat	Num of Persons Rec Sanct	Term of Imprison Imposed by Court	Num of Persons Rec Suspnd Imprison Terms	Period of Suspnd Imprison Term	Num of Per Rec GBB	Num of Per Rec CSO
91/92 s 29B s 86A	64	+5	2 y 20y	1	(1 per) 2y	1	10 m	N/a	N/a
92/93 s 29B s 86A	65	+1	2 y 20y	8 6	(8 per) 14mths 0	0 6	N/a Fines only	N/a	1/208hrs
93/94 s 29B s 86A	62	+3	2 y 20y	2	(2 per) 18ms	1	9m	N/a	N/a
94/95 s 29B s 86A	70	+8	2 y 20y	1	(1 per) 12 m	0	N/a	N/a	N/a
95/96 s 29B s 86A	71	+1	2 y 20y	5	(1 per) 3.5 y	0	N/a	N/a	N/a

List of Abbreviations used in the Table 8.1:

- CA= *Crimes Act 1914(Cth)*
- GBB = Good Behaviour Bond
- CTOA= *Crimes Taxation Offences Act (1980)*
- ITAA = *Income Tax Assessment Act (1936)*
- TAA= *Tax Administration Act (1953)*
- CSO = Community Service Order
- Stat = Statutory
- Comp = Compliance
- Var = Variation
- N/a = Not Applicable
- Num = Number
- Max = Maximum
- Rec = Received
- Impos = Imposed
- Sanct = Sanction
- m = months
- y = years
- Per = Persons

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- Shaded area = indicates that figures were not available for those years

In Table 8.1, 87 cases were cited from both the ATO and DPP Annual Reports and Commonwealth Statutes Annotation Service, between the 1985 and 1996 years for various taxation offences in Australia. Of the provisions cited, the two offences for which there was the most data and relevance to the sample selected were s 29 B of the *Crimes Act 1914* (making untrue representations to gain advantage, money or benefit) and s 86A of the *Crimes Act 1914*, (conspiracy to defraud the Commonwealth or public authority). These two provisions were analysed in Table 8.1 that indicates the sanctioning results in the 87 cases over the 11 year period examined.

Unfortunately, no figures were available for the 1985-86 year of income for sections 29B and 86A of the *Crimes Act 1914* which carried maximum terms of imprisonment of two and five, years respectively. The increase in the penalty in 1986-87 under s 86 A of the *Crimes Act 1914* to 20 years imprisonment, appeared to have had an immediate impact with people receiving terms of imprisonment. The heaviest sentence imposed was only two years with two offenders receiving a suspended sentence or a good behaviour bond. Likewise, for the years 1986-87 to 1993-94 inclusive, it was evident that both the number of offenders receiving either suspended terms of imprisonment, (some as much as two years), good behaviour bonds and community service orders, was quite high.

This is most noticeable in both the 1988-89 and 1990-91 years where the number of offenders receiving terms of imprisonment was five, yet the longest term of imprisonment imposed by the court was only three years. A sentence of three and half-years for a s 86A offence was imposed during the 1995-96 year, yet this represented less than 20 per cent of the maximum 20 year sentence available. During the 1992-93 year six persons received sanctions pursuant to s 86 A of the *Crimes Act 1914*, however, all six inevitably received suspended terms of imprisonment or monetary fines only. The foregoing analysis could arguably be viewed as a somewhat lenient approach taken by the judiciary with regards to sentencing.

New Zealand

Table 8.2: Convictions and Sentencing for Tax Offences and Taxpayer Non-compliance 1985-2001¹²³

(1) Year	(2) Annual Non- comp rate	(3) Annual % var in T/p Non- comp	(4) No of persons receiving convict ¹²⁴	(5) Convict And Discharge	(6) Custodial And Periodic Detention ¹²⁵	(7) Commun Service Program	(8) Super vision	(9) Monetary	(10) Defer ment	(11) No of cases where penal tax impos (total columns 5-10) ¹²⁶
1985/86	65	-	3,133	50	279	21	56	796	13	1,215
1986/87	71	+6	2,430	45	273	18	55	637	21	1,049
1987/88	68	-3	1,927	49	254	38	50	590	24	1,002
1988/89	66	-2	2,487	39	331	57	65	606	58	1,156
1989/90	74	+8	1,419	58	459	90	70	642	65	1,384
1990/91	65	-9	1,344	32	11	4	5	260	4	316
1991/92	70	+5	2,850	64	22	8	5	467	7	573
1992/93	58	-12	6,814	104	35	12	12	930	12	1,105
1993/94	63	+5	5,096	130	34	14	9	1,308	12	1,507
1994/95	59	-4	4,389	122	34	15	10	1,224	12	1,417
1995/96	60	+1	3,710	74	20	10	8	870	8	990
1996/97	62	+2	2,471	53	28	14	14	480	8	597
1997/98	48	-14	2,464	62	39	14	8	418	10	551
1998/99	59	+11	2,105	40	24	13	9	336	10	432
1999/00	50	-9	2,282	39	43	14	12	386	11	505
2000/01	53	+3	3,823	29	41	12	14	389	12	497

123 The figures in Table 8.2 are derived from the *Ministry of Justice Reports* – See, P Spier, *Convictions and Sentencing of Offenders in New Zealand: 1990-2000, 2001*; See Table 3.42: ‘Convicted cases involving miscellaneous offences’ and ‘Convictions and Sentencing of Offenders in New Zealand: 1985-1994’, 36, 46.

124 *Ministry of Justice, Report 2000*: See Table 2.1 ‘Number of convictions for miscellaneous offences 1991-2000’. The figures include convictions for offences committed under the *Income Tax Assessment Act (1976)* and *Inland Revenue Act (1974)*, the *Goods and Services Tax Act (1985)* and the *Tax Administration Act (1994)*.

125 Custodial and periodic detention is defined as a jail term over a period of time. It is designed to protect the community from those who pose a continuing risk.

126 *Ministry of Justice, Report 2000 (NZ)* See Table 3.44 convicted cases resulting in an offence under the Revenue Acts.

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List of Abbreviations used in Table 8.2

- Comp = Compliance
- Convict = Convictions
- Commun = Community
- Impos = imposed

Table 8.2 indicates the number and type of sanctions that have been imposed upon taxpayers by the judiciary for committing criminal taxation offences in NZ. Specifically the number of convicted cases involving miscellaneous offences resulting in a particular type of sentence was derived from the Reports of the Ministry of Justice. Of the total miscellaneous offences, figures for offences under the various Revenue Acts were extracted and the percentage of those tax offences was then applied to the various categories of sentence that appear in Table 8.2 to produce the figures therein. The actual legislative provisions analysed in Table 8.2 include the relevant criminal penalty sections of the TAA 1994, and the provisions of the former ITA 1976 referred to in section 3 of the article.

Of the total number of persons convicted (column 4) it is evident that penal tax is only imposed in a percentage of the cases of those convicted, as revealed in (column 11). For example, in 1990/91, 24% (316/1344) and 1997/98, 22 % (551/2464), of those convicted received either penal tax or a sanction. The exception to this general trend was probably the 1989/90 year which yielded nearly 98% (1384/1419) of people convicted having a sentence or penal tax/other penalty imposed. It is also noticeable that the most common sentence imposed on offenders is monetary (column 9). In 1993/94 monetary fines accounted for 87% (1308/1507) of all sanctions imposed. Similarly in 1991/92, monetary fines amounted to 82% (467/573) of all sanctions in that year. This is not surprising given that there are only a few criminal taxation offences that actually impose a term of imprisonment under the TAA 1994.¹²⁷

For all the other sentencing results other than those of a monetary nature, displayed in Table 8.2, it is evident that there has been little variation throughout the period 1985-2001. Apart from numbers in excess of 100 being indicted for conviction and discharge between the 1992-95 years (column 5), for all the other years in that category the number of cases ranged between 29 and 74 convictions. However, overall convictions for tax related offences increased considerably between 1991 (1,344 cases) and 1993 (6,814 cases) then decreased to nearly the same extent in the

127 Refer to section 3 of the article.

next seven years (2,282 cases in 2000). Apparently over two-thirds (69%) of these convictions in 2000 related to failure to furnish an income tax or GST return.¹²⁸

Leniency in sentencing may be expressed through the number of cases receiving community service programs, supervision or deferment of sentence, and it may be of concern to see a relatively small percentage of cases actually receive custodial or periodic detention from a purely deterrent perspective (Column 6). For instance, in 1990-91 only 3% (11/316) of cases resulted in a custodial sentence or periodic detention. Recently in the 2000-01 year this figure has only climbed marginally to 8% (41/497). This is perhaps surprising given the Judiciary's supposedly harsh stance in finding and punishing tax fraud.¹²⁹ Nevertheless, while the number of convictions may not necessarily give an accurate picture of any impact sanctions have upon taxpayer compliance it does give an impression of the Judiciary's attitude regarding the sentencing of tax offenders and the Judiciary's preference for a monetary penalty over a custodial sentence. As stated previously, this preference for a monetary penalty may not be the best strategy for minimising taxpayer compliance.¹³⁰ Contrary to this argument is that it may well be the court's intension to reduce custodial penalties in order to reduce the costs associated with imprisonment, which is also a policy supported by compliance theory.¹³¹

128 Above n 123, 2. The impact of GST returns has not been examined in this analysis.

129 *Maxwell v CIR* [1959] NZLR 708, 714.

130 In *R v Jones*, Unreported District Court Auckland, T 65/94, the Court felt that a monetary penalty was wholly inappropriate.

131 GS Becker, 'Crime and Punishment: An Economic Approach,' (1968) 76 *The Journal of Political Economy*, 169-217, 209.

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United Kingdom

Table 8.3 Criminal Proceedings for Taxpayer Non-Compliance 1985-2001¹³²

(1) Nature of offence And relevant legisl And Year	(2) False accounts or returns of Income s 95(1)(a) TMA	(3) False claims to allowances or deductions s 95(1) TMA	(4) PAYE false Returns s 98A TMA	(5) Sub-contractor s exemption s certificate fraud s 99A TMA	(6) Contrived Liquidation s Forgery and Counterfeit Act	(7) Internal Fraud Forgery and Counterfeit Act	(8) Theft of payable orders and Giro cheques s 17 of Theft Act	(9) Assaults on IR Officers Criminal Justice Act	(10) Miscellaneous	(11) Total
85/86 a) ¹³³ b)	22	3	19	264	N/A	4	101	0	1	414
86/87 a) b)	17	3	18 1	185 89	N/A	4 1	0 138	1 1	0 1	459
87/88 a) b)	11	4	9	138 32	N/A	5 0	0 119	0	0 4	322
88/89 a) b)	9	3	9	101 53	N/A	11 1	0 157	1	2 16	363
89/90 a) b)	13	1	10 1	132 54	N/A	5 1	0 89	0	4 17	327
90/91 a) b)	11	3	28 6	85 36	N/A	10 2	0 45	0	10	236
91/92 a) b)	11	0	13 4	110 29	N/A	0 1	0 70	1 0	10	249
92/93 a) b)	15	0	9	65 17	N/A	1	98	1	11	217
93/94 a) b)	9	0	14 1	43 9	0	4 1	122	0	13	216
94/95 a) b)	19	1	19 1	27 11	0	9 1	1 228	1	38	356
95/96 a) b)	8	1	25	9 1	0	7 1	123	1	1	177
96/97 a) b)	24	2	21	12 4	0	8 2	92	0	2	167
97/98 a) b)	14	2 1	19 4	2 1	5	13	54	0	1	116
98/99 a) b)	9	1	7	6	1	8	N/A	N/A	0	32
99/00 a) b)	21	1	4	4	2	2	1	N/A	2	37

132 The statistics are derived from the United Kingdom, *Annual Reports of the Board of Inland Revenue*, (1985-2001) inclusive. See Appendix, Table 5 'Criminal Proceedings.'

133 Figures have been sub-classified into:

- a) Cases brought by the Board of Inland Revenue and
- b) Cases brought by the Crown Prosecution Service, Director for Public Prosecutions Northern Ireland, or Procurator Fiscal, where available.

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(1) Nature of offence And relevant legisl And Year	(2) False accounts or returns of Income s 95(1)(a) TMA	(3) False claims to allowances or deductions s 95(1) TMA	(4) PAYE false Returns s 98A TMA	(5) Sub- contractor s exemption s certificate fraud s 99A TMA	(6) Contrived Liquidation s Forgery and Counterfeit Act	(7) Internal Fraud Forgery and Counterfeit Act	(8) Theft of payable orders and Giro cheques s 17 of Theft Act	(9) Assaults on IR Officers Criminal Justice Act	(10) Miscell- aneous	(11) Total
00/01 a) b)	14	0	3	10	0	24	0	N/A	5	56

List of Abbreviations used in Table 8.3:

- TMA = Tax Management Act (1970)
- N/A = Not Applicable
- s = section
- Sch = Schedule
- Legisl = legislation

The data in Table 8.3 indicates the nature and number of prosecution cases dealt with by either BIR or Crown Prosecution Service (CPS) during the period 1985-86 to 2000-01 inclusive. Criminal proceedings represent the number of alleged tax offences for which the various prosecuting agencies actually commenced proceedings. It should be noted that the Annual Reports of both the BIR and CPS were quite detailed and complete when it came to revealing these types of statistics, as opposed to other statistics examined in this article. The figures reveal that during the 16-year period analysed, total criminal proceedings for taxation offences decreased dramatically. In particular, there was a high of 459 cases reported in 1986-87 compared to a low of just 32 cases reported in 1998-99.

One of the most common offences from those published in the Annual Reports, were those under s 99A of the TMA (1970) for sub-contractors exception certificate fraud. This was particularly evident during the 1985-86 and 1986-87 years with most cases being initiated by the BIR. Table 8.3 also indicates those cases under s 17 of the Theft Act (1968) for payable orders and Giro-cheques were also common with the CPS being responsible for most of the proceedings. There were very few cases brought for contrived liquidations under the Forgery and Counterfeiting Act (1981) with no figures been registered at all between the 1985-86 and 1996-97 years.

The reduction in the number of cases brought before the courts over the years again highlights the policy of the BIR to settle cases in the first instance rather than prosecute. From the perspective of a deterrent, the decrease in number certainly sends a message to all taxpayers that prosecution may well be rare. The figures certainly

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add weight to the notion of a non-prosecution policy put forward earlier¹³⁴. The Report of the Keith Committee also indicated that it was a resource issue of the BIR that weighed against a large number of prosecutions.¹³⁵ If this is the case, arguably the imposition of new and harsher penalties is warranted to compensate for this lack of enforcement.

Table 8.3 indicates that the CPS brought forward a low number of cases. This may be a concern, given that unlike the BIR who have as their main objective the collection of taxes, the CPS's main objective is to prosecute and convict those taxpayers found guilty of tax fraud. Also, in terms of proportionality the issue of whether the judiciary has invoked the full 'letter of the law' in its sentencing practices remains uncertain. That is, the maximum statutory sanction that is appropriate for the offence should be imposed where there are no mitigating circumstances. Consequently there may also be a question mark over the appropriateness of sentences for tax fraud in the United Kingdom.

SUMMARY, CONCLUSIONS AND TAX POLICY IMPLICATIONS

The findings reveal that between 1976 to 1996 taxpayer non-compliance in Australia amongst those that were selected for audit, remained both relatively static and at quite a high level. Specifically, the level of non-compliance ranged from a low of 59 per cent in 1990-91 to a high of 87 per cent in 1984-85. The annual average variation revealed an overall decrease in non-compliance of 6 per cent over the testing period, with an average non-compliance rate of 72 per cent per year. The relatively high levels of non-compliance have remained despite the increase in the number of tax offences with statutory terms of imprisonment going from 4 to 17 during this period (see Table 7.1) and the increase in statutory fines ranging from \$5,000 to \$200,000 (see Table 5.1). Table 6.1 indicated that the majority of penalties awarded for taxation crimes lack the element of proportionality when compared to the figures given for AWE.

In NZ the findings reveal that notwithstanding the fact that taxpayer non-compliance decreased marginally over the period examined (65% in 1985/86 to 53% in 2000/01) it remains that for over half of the taxpayers audited, a material discrepancy was discovered. It must again be highlighted that when considering these figures that only a small percentage (ie 1-2%) of the total population actually does get audited each year. Nevertheless, the range indicates a high rate of 74% non-compliance in

134 D Cook, above n 107, 149-50.

135 United Kingdom, *Board of Inland Revenue Annual Report* (Cmnd 8822, 1983) 379.

1989-90 and a low rate of 48% in 1997-98. The annual average variation revealed an overall decrease in non-compliance of 5% over the testing period with an average non-compliance rate of 62% per year. The relatively high levels of non-compliance have remained notwithstanding the increase in the number of tax offences with statutory terms of imprisonment, doubling from 5 to 10 during the period (see Table 7.2) and an increase in statutory fines post 1996/97, ranging from \$6,000 to \$50,000 (see Table 5.2). Similar to Australia, Table 6.2 also indicated that the majority of monetary penalties imposed for criminal taxation offences lacked the element of proportionality when compared to figures given for AWE.

In the United Kingdom the findings reveal that between 1985 and 1993 taxpayer non-compliance amongst those that were investigated under the PAYE system, increased by 41 per cent. Specifically, the level of non-compliance ranged from a low of 35 per cent in 1985-86 to a high of 76 per cent in 1992-93 with an average non-compliance rate of 51% per year. (See Table 4.3) The relatively high levels of non-compliance have remained despite the increase in statutory fines ranging from £50 to £3,000 (See Table 5.3). Table 5.3 also indicated that the majority of penalties imposed for taxation offences lacked the element of proportionality when compared to the figures given for AWE. Table 6.3 illustrated the emphasis the BIR places on the settlement of tax offences. The number of investigations resulting in interest and penalties went from a low of 37,484 in 1985-86, to a high of 52,669 in 1991-92, during the period examined. Consequently, the focus of the BIR appears to be very much on the economic aspect of revenue collection, which is perhaps to the detriment of any overall compliance policy.

Interestingly a common theme amongst all the jurisdictions was the severity of sanctions imposed for taxpayer non-compliance, particularly by the judiciary. The figures reveal that many offenders received suspended sentences, or good behaviour bonds in Australia (See Table 8.1) or likewise in NZ many offenders received only monetary fines or were discharged (See Table 8.2). These results also reveal a clear lack of deterrence and proportionality. This is particularly so when one considers the comments of Jacobs J in *Griffith*¹³⁶ regarding the 'certainty of punishment' and the Victorian Full Court in *Moffat*,¹³⁷ regarding the certainty of imprisonment following an offence, which did not come to pass in the majority of cases examined. The findings also defy the article of faith put forward by King C J in the case of *Dube and Knowles*¹³⁸ that the punishment that courts impose does operate as a deterrent. Also if

136 *Griffith* (1977) CLR 293, 327. See also *Dixon* (1975) 22 CLR 13, 18-19.

137 *Moffat* (1992) 71 A Crim R 161. See also *Martin* (1994) 74 A Crim R 252.

138 *Dube and Knowles* (1987) 46 SASR 118, 120.

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imprisonment is the form of punishment that fits tax fraud as indicated by the court in *Maxwell v CIR*¹³⁹ there appears to be little support for this notion from the tables presented herein.

However, as stated previously, from a Revenue Authorities perspective the above levels of taxpayer non-compliance in these Anglo-Saxon jurisdictions would be expected, indicating that their audit programs are working well and providing a good 'strike rate' amongst those who have committed taxation offences. Nevertheless, from a community perspective and government point of view, this rate of taxpayer non-compliance is arguably still unacceptable. Despite what researchers may say¹⁴⁰ is an acceptable level of non-compliance, rates of 50% or more non-compliance is a concern. The author supports the notion that tax evasion is not a victimless crime and indeed, as evasion increases honest taxpayers shoulder an increased burden that includes the taxes not paid by the evaders plus the resources consumed by the revenue authorities in its attempts to collect those taxes.¹⁴¹

Consequently it is submitted that the level of taxpayer non-compliance with taxation laws in these selected Anglo-Saxon countries examined herein is not directly or solely affected by either the introduction of new criminal tax offences or the imposition of heavier sanctions for those offences. Given this conclusion it must be borne in mind that there is no unequivocal conclusion that penalties have a positive relationship with taxpayer compliance.¹⁴²

Likewise this study also needs to be further qualified due to its limitations. In particular, the compliance figures derived from the audited samples are unlikely to be representative of the whole taxpayer population and biases may even exist in the figures reported in the Annual Reports. Notwithstanding, the results nevertheless provide preliminary evidence of the possible effect of penalties upon maintaining and improving taxpayer compliance.

In achieving an overall deterrent against taxation crimes, from a tax policy perspective it appears that a combination of factors may indeed be warranted. Traditionally Anglo-Saxon countries have preferred to assist citizens with their tax obligations rather than introduce new and more severe penalties. Some researchers argue that the former course of action is the best way forward for tax administration

139 *Maxwell v CIR* [1959] NZLR 708.

140 Tomasic and Pentony, above n 9, 1.

141 BR Jackson, 'Stemming Income Tax Evasion: The Hole in the Dike is Widening' (1985) 159 (1) *Journal of Accountancy* 76.

142 See generally, Jackson and Milliron, above n 21, 125-165.

in these countries.¹⁴³ Other factors such as enforcement, public education and the behavioural aspects of taxpayers mentioned earlier in the article¹⁴⁴ are critical and must also be considered. Inevitably there must be a right balance between encouraging voluntary compliance and deterring willful non-compliance. Therefore the imposition and increase in penalties alone, perhaps, should rightfully be seen as only one part of an overall tax compliance strategy.

APPENDIX

The Main Legislative Penalty Provisions for Criminal Taxation Offences within New Zealand and the United Kingdom.

New Zealand

Tax Administration Act 1994

It was acknowledged by the then Minister of Revenue, Peter Dunne, that in introducing the *Tax Administration Bill No 5 1996*, there was at that time a number of weaknesses in the compliance and penalty provisions of the IRD, including a lack of sanctions to deal with many forms of non-compliance.¹⁴⁵ The main criminal tax provisions follow:

- s 143(1) [absolute liability offences such as, failure to keep books and documentation, and failure to provide information to the Commissioner etc..] imposed a maximum fine of \$4,000 for the first offence. This was increased to \$8,000 for a second offence, up to a maximum of \$12,000 for three or more offences (1996). This was an increase from the previous penalty under former s 222(2) of the TAA 1994 which imposed a maximum fine of \$2,000 for the first offence, \$4,000 for a second offence, up to a maximum of \$6,000 for three or more offences. The then Minister for Revenue, Peter Dunne, indicated that the changes to the penalty structure would provide greater incentive for taxpayers to calculate their tax liabilities more accurately, to file their returns on time and pay their tax on time.¹⁴⁶

143 James and Alley, above n 4, 14.

144 Refer to section 2 of the article.

145 New Zealand, *Parliamentary Debates*, Second Reading Speech, 1996, 13549.

146 Ibid.

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- s 143A (8) [Knowledge offences with respect to withholding and deduction of tax] imposed a maximum fine of up to \$50,000 or maximum term of imprisonment of 5 years or both (1996). This was an increase from the previous penalty under former s 222(1) (a) of the TAA 1994 of \$15,000 or maximum term of imprisonment of 12 months for the first offence and for every other occasion after the first, the fine was increased to \$25,000.
- s 143B(4) [Evasion or similar offences such as, knowingly not keeping books and documents, or providing information to the Commissioner, providing misleading information, evasion and attempted evasion of assessment or payment of tax etc..] imposed a maximum fine of up to \$50,000 or a maximum term of imprisonment of 5 years or both.¹⁴⁷ The then Minister of Revenue, Peter Dunne stated that these penalty changes would mean more effective enforcement of the tax law. In particular, he mentioned that administration would be more efficient and the revenue protected as taxpayers paid their fair share of tax, while removing opportunities for abusing the system.¹⁴⁸
- s 143C (2) and s 143D (4) [Offences for failure for officers of the Department and other persons to maintain secrecy] imposed a maximum fine of \$15,000 or maximum term of imprisonment of 6 months.
- s 143E [Breaches of secrecy requirements in communicating restricted information given by the Department] imposed a maximum fine of up to \$15,000 or a maximum term of imprisonment of 6 months or both.
- s 143F (2) [Offences in relation to inquiries before the District Court Judge and the Commissioner] imposed a maximum fine of \$2,000 or up to \$50 for each day of default or both for a first offence. This increases to \$4,000 or a fine of up to \$100 for each day of default or both for a second offence. For every other occasion after the second offence, the fine is increased to \$6,000 or up to \$150 for each day of default or both.
- s 143G [Offences in relation to court orders] imposed penalties similar to that imposed under s112 of the *District Courts Act 1947*, namely a maximum fine of up to \$1,000 or a maximum term of imprisonment of up to 3 months for each offence. The Minister for Timaru, Mr Sutton, indicated that the introduction of

147 Above n 145, 13550. *Second Reading Speech*, The Minister for Revenue, Peter Dunne, stated that a term of 5 years imprisonment would be introduced. Comments made regarding the Taxpayer Compliance, Penalties and Disputes Resolution Bill.

148 Above n 145, 13549.

this provision was essential, as the existing powers and sanctions of the IRD have proven unwieldy and ineffective.¹⁴⁹

- s 143H (2) [Offences of obstruction of departmental functions] imposed a maximum fine of \$25,000 for the first offence and \$50,000 for subsequent offences (1996). This was an increase in the previous penalty of \$15,000 under the former s 221(2) of the TAA 1994.
- s 145(a) & (b) [Penalties for offences under this Act for which no specific penalty is imposed] imposes a maximum fine of \$15,000 for the first offence with a maximum of \$25,000 for more than one offence.
- s 146(1) [The Commissioner must publish in the *Gazette* a list of persons who have been convicted of an offence of supplying false information, aiding and abetting, taking an abusive tax position or evasion.]
- s 146(2) [The Commissioner must omit from any list published under this section any reference to any taxpayer that is guilty but has disclosed to the Commissioner full particulars as to the offence or evasion.]
- s 147(1) [Employees and officers of a body corporate who commits an offence against this Act will be liable to the same penalties as those imposed for the principal offence.¹⁵⁰]
- s 148(1) [A person who aids, abets, incites or conspires with another person to commit a principal offence against this Act will be liable to the same maximum fine or term of imprisonment that applies to the person that commits the principal offence].

Crimes Act 1961

- s 257 [Using forged documents] imposes a term of imprisonment for up to a maximum of 10 years.
- s 258 [Altering, concealing, destroying and reproducing documents with the intent to deceive] imposes a term of imprisonment for up to a maximum of 10 years.
- s 260 [False accounting] imposes a term of imprisonment for up to a maximum of 10 years.

149 Above n 145, 13557.

150 This is defined in s 147(1)(b)(i) of the *Tax Administration Act 1994* as an act done or carried out by an omission of or through knowledge attributable to, the employee agent or officer or (ii) is evasion committed by the employee agent or officer.

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- Former s 229A [Taking or dealing with certain documents with intent to defraud] (Repealed and replaced by new section 228 by the *Crimes Amendment Act 2003*, with effect from 7 July 2003).

Consequently the key date for legislative change to criminal tax sanctions in New Zealand during the period examined was July 1996.

United Kingdom

Tax Management Act (1970)

- s 93 [Failure to make a return for Income tax or CGT] (1970).¹⁵¹ It imposed a penalty of £50 (maximum) and £10 a day where the failure continues. This penalty was raised to £100 maximum by schedule 19 Item 25 of the *Finance Act 1994*.
- s 95(1) (a) [Fraudulent or negligent delivery of any incorrect return] (1970).¹⁵² £50 maximum. In the case of negligence and fraud it imposed a penalty of £50 plus the difference between the taxpayer's assessment of the tax payable and the correct amount payable.¹⁵³
- s 95(1) (b) [Fraudulent or negligent making of any return statement or declaration re income tax or CGT] (1970) imposed a penalty of £50 maximum. For negligence and fraud it is £50 plus the difference between the taxpayer's assessment of the tax payable and the correct amount payable.
- s 95(1) (c) [Fraudulent or negligent submission of incorrect accounts to an Inspector or the Board or any Commissioner] (1970) imposed a penalty of £50 maximum. For negligence and fraud it is £50 plus the difference between the taxpayer's assessment of the tax payable and the correct amount payable.
- s 98 (1) [Failure to deliver any return or document; furnish particulars or information; produce any document; make anything available for inspection; comply with notice] (1970) it imposed a penalty of £300 maximum and £60 a day where the failure continues. Under s 98(2) negligence is £3000 and fraud is £500.

151 The penalty provision was originally introduced by s 46 of Part III of the *Finance Act 1960* (UK) 470.

152 The penalty provision was originally introduced by s 47 (1) of Part III of the *Finance Act 1960* (UK) 472.

153 This difference in tax is also referred to as the tax shortfall.

- s 98A [Failure to make return under ss 203(2) PAYE or s 566(1) Sub-contractors] (1970) as amended by s 165 of the *Finance Act 1989*. It imposed a penalty of the relevant monthly amount for each month failure continues to a maximum of one year. £100 or more depending on whether less than 50 people were involved.
- s 99A [Fraudulent or negligent giving of a certificate of non-liability to income tax or failure to comply with the certificate] (1970). It imposed a penalty of up to £3,000. As amended by s 82(1) of the *Finance Act 1991*.

Income and Corporations Taxes Act (1988)

- s 23 (8) [Failure of Agent to make payments on behalf of principle] (1988) it imposes a maximum fine of £50 for each failure. This section was amended by s170 (1) of the *Finance Act 1989* which increased the penalty to £300.¹⁵⁴ This provision was repealed by schedule 6, item 4 of the *Finance Act 1995*.
- s 653 [False statements or representations as to tax relief in respect of payments of tax under personal pensions schemes] (1988) it imposes a maximum penalty of £500. This section was amended by section 170 (4) of the *Finance Act 1989* which increased the penalty of £500 to £3,000.
- Schedule 19A [incorrect return by Lloyd's agent] (1988)¹⁵⁵ it imposed a maximum fine of £250 pounds for negligence and £500 for fraud. This schedule was amended by section 170 (4) of the *Finance Act 1990* which increased the penalty of £250 or £500 to £3,000.

Consequently the key time for legislative change to criminal tax sanctions in the United Kingdom during the period examined was 1987/88 along with other minor amendments via the *Finance Acts*.

The Common Law Offence of 'Cheating'

In addition to the statutory provisions for taxation offences in the United Kingdom discussed above, it should be noted that the common law offence of cheating the revenue, could also be invoked in certain cases. This gives the UK authorities and judiciary a unique fall back position in the absence of a statutory penalty. Specifically, the common law offence of cheating covers just about all tax fraud offences and can

154 There was no discussion in *Hansard* as to why there was an increase in penalty.

155 The penalty provision was originally introduced by s 50 of Part III of the *Finance Act 1960* (UK) 473.

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impose unlimited penalties. The offence of cheating has been described in the following way,

Cheating the public revenue does not necessarily require a false representation either by words or conduct. Cheating can include any form of fraudulent conduct which results in diverting money away from the revenue [BIR]....' That is to say, deliberate conduct by the defendant to prejudice or to take the risk of prejudicing the revenues [BIR] right to the tax in question, knowing that he has no right to do so.¹⁵⁶

The offence of cheating has been justified given the lack of strength in the statutory penalty regime, which may be apparent from the above. Certainly, the argument that cheating cannot co-exist with statutory offences has met with little success in the courts as the tax legislation has failed to supersede this common law offence.¹⁵⁷

156 'Cheating the Revenue' *The Times*, London, UK March 30, 1993.

157 D Ormerod, 'Cheating the Public Revenue' (1988) *Criminal Law Review*, 627-45.