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## CONTENTS

- 5 Benchmarking Tax Administrations in Developing Countries: A Systematic Approach  
**Jaime Vázquez-Caro and Richard M. Bird**
- 38 Listed Corporations and Disclosure: Australia and New Zealand – A Contrasting Yet Converging Dynamic  
**Kalmen Datt and Adrian Sawyer**
- 59 VAT on Intra-Community Trade and Bilateral Micro Revenue Clearing in the EU  
**Christian Breuer and Chang Woon Nam**
- 71 Traveler and American Express: A Tale of Two Countries – The Australian and New Zealand Treatment of Identical Transactions Compared for GST  
**Kalmen Datt and Mark Keating**
- 89 Tax Risk Management Practices and Their Impact on Tax Compliance Behaviour – The Views of Tax Executives from Large Australian Companies  
**Catriona Lavermicocca**
- 116 Towards Effective and Efficient Identification of Tax Agent Compliance Risk: A Stratified Random Sampling Approach  
**Ying Yang, Esther Ge, Ross Barns**

**Atax**



# Tax Risk Management Practices and their Impact on Tax Compliance Behaviour – The Views of Tax Executives from Large Australian Companies

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## **Abstract**

This paper presents the results of in-depth interviews with 14 tax managers from large Australian corporations and constitutes a part of the ongoing research for the purposes of the completion of a PhD. The results detailed in this paper give an insight into the tax risk management practices of large corporations in Australia, tax risk decision making and the variables that impact tax risks and the ability to manage those tax risks. The views of tax managers on the impact of tax risk management practices on compliance behaviour are also discussed and used to identify issues requiring further research.

## **1. INTRODUCTION**

Revenue authorities around the world have identified that the management of tax risks by large corporate taxpayers is an important part of an effective tax function, one that will assist in improving tax compliance.<sup>2</sup> Specifically the Australian Taxation Office (ATO) emphasise in numerous announcements and statements that directors need to be informed concerning tax risks and corporate governance practices of a large corporation require a comprehensive tax risk management system. The significance of tax risk management is demonstrated in the number of surveys by large international

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<sup>2</sup> Carmody, M. Commissioner of Taxation 'Large Business and Tax Compliance; A Corporate Governance Issue' Leaders' Luncheon 10 June 2003; D'Ascenzo, M. Commissioner of Taxation 'Top End Tax Risk Management-The Journey Continues' Speech to the PricewaterhouseCoopers Boardroom Dinner, Brisbane 28 June 2006; Killaly, J. Deputy Commissioner of Taxation Large Business and International 'Tax Risk Governance: The Corporate and Personal Dimensions' Australian Institute of Company Directors Sydney 18 July 2007; HMRC (UK) 'Approach to Compliance Risk Management for Large Business' March 2007; Butler, D. New Zealand Commissioner of Inland Revenue 'Corporate Insolvency-Tax Risk Management' at the New Zealand Law Society Taxation Conference September 2006; OECD Forum on Tax Administration 'Seoul Declaration' 2006; Ireland Revenue Authority 'The Cooperative Approach to Tax Compliance' 2005

professional firms concerning tax risk management practices and in the responses to those surveys by respondents.<sup>3</sup>

Globalisation and more sophisticated financial markets put pressure on revenue authorities to deal with more complex risks and, although new technology improves the ability to monitor those risks, Braithwaite identified that 'a shift is needed in tax compliance strategy to risk analysis of the risk management systems of taxpayers and tax agents'.<sup>4</sup> The identification of tax risk management as a responsibility of directors by the ATO reflects such a shift in strategy as identified by Braithwaite.<sup>5</sup>

The ATO has stated that, in carrying out their risk review of large corporate taxpayers, the tax risk management practices of the taxpayer will be a consideration in the determination of the level of risk to the revenue and the extent to which that taxpayer would be subject to ATO scrutiny.<sup>6</sup> The ATO expects that as a result of directors being informed concerning tax risks there will be consequential improvements in tax compliance by the large corporate sector. Further in identifying tax risk management as an integral part of ensuring tax compliant behaviour it is possible that there will be savings in the audit costs incurred by the ATO. The review of large corporate tax compliance by the ATO may increasingly be limited to ensuring that a good tax risk management system is in place.<sup>7</sup>

Ultimately the in-depth interviews with tax decision makers in large Australian corporations conducted as part of this research give an insight into the motivators and consequences of the demand for information concerning tax risks.

Whilst it is anticipated that the directors and tax managers in a large Australian company will consider, and in many cases apply the ATO's recommendations concerning tax risk management, this research looks at what large corporations are actually doing from a tax risk management perspective, who the tax decision makers are and the views of tax managers as to the impact on tax decision making as a result of the adoption of a tax risk management system.

Where a tax risk management system has been adopted by a participant this research investigates what motivated the company to adopt the particular tax risk management system and develop an understanding of the variables that have an impact on corporate decision making with respect to tax risks.

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<sup>3</sup> Henderson Global Investors 'FTSE350 Survey Report' (2005) and their 'Responsible Tax Report' (2005); Ernst and Young 'Tax Risk Management: The Evolving Role of Tax Directors' (2004); Ernst and Young 'Tax Risk: External Change, Internal Challenge, Global Tax Risk Survey' (2006); Ernst and Young 'Tax Risk: External Change, Internal Challenge-The Australian Perspective, Global Tax Risk Survey' 2006-2007; Ernst and Young 'Global Tax Risk Survey 2008'; Ernst and Young 'Steady Course, Unchartered Waters- The Australian Perspective from the Third Ernst and Young Global Tax Risk Survey 2008'; KPMG 'Tax Department Survey' (2005)

KPMG 'Tax Department Survey' (2006); KPMG 'The Rising Tide-Regulation and Stakeholder Pressure on Tax Departments Worldwide' (2006)

<sup>4</sup> Braithwaite, J. 'Markets in Vice, Markets in Virtue' 2005 Federation Press 85

<sup>5</sup> Ibid

<sup>6</sup> D'Ascenzo, M. Commissioner of Taxation 'Top End Tax Risk Management-The Journey Continues' to the PricewaterhouseCoopers Boardroom Dinner, Brisbane 28 June 2006 2; Killaly, J. Deputy Commissioner, Large Business and International, The Australian Taxation Summit, 15-17 February 2006, The Grace Hotel Sydney

<sup>7</sup> D'Ascenzo, M. 'Individual Interests and Community Needs-Focus on Legal Professional Privilege' The Australian Italian Lawyers Association Tax Seminar, Melbourne 18 September 2003 2

Based on the views of the tax managers interviewed, this research indicates that the management of tax risks does not in itself result in a lower level of tax risk but rather that the directors and tax decision makers are more informed about the tax risks that the organisation faces and that the tax position ultimately taken should not result in any surprises for the board of directors.

This research also gives an insight into the impact of ATO statements and announcements on tax decision makers in a large corporation. The views of the ATO concerning tax risk management practices have been considered and in many cases adopted by large corporate taxpayers despite the fact that to a large extent the requirement to manage tax risks is not based on a piece of legislation or case law but rather on what the ATO considers is best practice. The adoption of a tax risk management system by large corporate taxpayers suggests that the ATO's views on best practice are considered and adopted by large corporations.

## **2. LITERATURE REVIEW**

Literature on tax compliance behaviour almost exclusively focuses on individuals rather than corporations. Listed corporations in which the shareholders and directors are not the same individuals require a different conceptual framework.

### **2.1 Models of tax compliance behaviour**

In establishing the impact of tax risk management practices on large corporate tax compliance behaviour the existing literature gives only limited indication as to the likely impact of a tax risk management system on compliance behaviour.

Economic deterrence models of tax compliance are based on an assumption that the taxpayer, in making decisions concerning tax compliance, aim to maximise utility. Accordingly the tax compliance question can be viewed as a question of risk preferences in respect of which econometric equations could be used to predict taxpayer behaviour if sanctions for non-compliance and the likelihood of audit are varied. The ultimate incidence of corporate tax however is uncertain and depends on how the corporate taxes are redistributed between shareholders, customers and employees.

Shareholders may not bear the consequences of a tax adjustment where the company operates in a market that would allow the increased costs to be passed on to the customer. Alternatively those costs could be borne by employees in reduced bonuses or wages or in a reduction in the number of employees. With respect to a corporation no absolute or predetermined link exists between additional tax and or penalties and the ultimate individual who bears the increased liability.

Slemrod argues that the assumption of risk aversion that underlies economic deterrence models of tax compliance, are not appropriate for listed corporations in which the shareholders hold diversified portfolios. As a result of diversified shareholdings the corporation should make decisions as if it is risk neutral even if individual shareholders are not.<sup>8</sup>

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<sup>8</sup> Slemrod, J. 'The Economics of Corporate Selfishness' *National Tax Journal* Dec 2004 877

Social and psychological deterrence models of tax compliance argue that the decision concerning tax compliance is more than just a cost-benefit calculation and other factors like morality, characteristics of the taxpayer and perceptions of fairness of the tax system amongst other factors play a part in an understanding of the tax compliance decisions. The separation of ownership and control in a corporation suggests that social and psychological deterrence models need to consider individual tax decision makers within the corporation rather than the corporation itself. Individual tax decision makers have a duty to make decisions within the tax laws in the best interests of the company as a whole.

Tax morality may not have a role in understanding a corporation's tax compliance behaviour where the corporate objectives are based on purely financial or economic goals. Usually decisions by corporate managers are based on economic or financial measures and management that does not take advantage of legal opportunities to minimise tax may breach their duty to shareholders to act in the best interests of the corporation as a whole.

Decisions with respect to tax compliance depend largely on corporate policy. It is expected that the existence of a comprehensive tax risk management system would ensure that decisions concerning tax risks are based on director approved policy.

## 2.2 Impact of Decision Making Structures in a Large Corporation

The actions and interactions of directors and employees of a company influence the tax behaviour of a company so in looking at factors that impact on tax compliance it is necessary to look at decision making structures within the organisation and at the decision maker themselves. The interests of decision makers within a corporation may very well differ from those of the shareholders due to differing risk and decision outcomes although a variety of measures, including good corporate governance practices, are usually put in place so that the decision maker's interests are aligned with those of the shareholders.

A listed company, in which the shareholding is spread widely amongst a number of shareholders, is going to see a greater divergence between the interests and responsibilities of the directors and shareholders than a private, closely held company.<sup>9</sup> In imposing financial penalties on a company for tax non-compliance, a director's role in the approach taken is not recognised. As noted by Slemrod in his research into corporate income tax compliance,

'Little is known about how and why, holding constant the chance of getting caught and the penalty for non-compliance, corporations differ among themselves in their aggressiveness, regarding pushing the envelop of the tax law, and whether their behaviour would respond to initiatives designed to strengthen intrinsic motivation.'<sup>10</sup>

During 2006 the HMRC in the UK funded a qualitative study comprising interviews with the tax managers responsible for corporate tax in 37 large groups in the UK and identified that tax managers were not receiving bonuses or incentives that were based

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<sup>9</sup> Keinan, Y. 'Corporate Governance and Professional Responsibility in Tax Law' *Journal of Taxation and Regulation of Financial Institutions* 2003 17(1) 10, 18

<sup>10</sup> Slemrod, J. above n 7, 882

on their ability to reduce the corporation's tax bill.<sup>11</sup> In addition there is evidence that the emphasis on taxation as an important risk area within a corporation has had an impact on performance measurement in tax departments within a large corporation as tax managers become more risk averse and greater emphasis is placed on accuracy and compliance as apposed tax minimisation as a contributor to shareholder returns.<sup>12</sup>

As highlighted by Ernst and Young in a report detailing results of its worldwide survey of tax directors '2004 Tax Risk Management'

The shift in emphasis to tax risk management has become more pronounced such that tax directors are now being measured on it-they are expected to deliver in this area more than in some of the traditional measures such as effective tax rates. This perhaps, more than any other finding in our survey, emphasizes the profound change and expectations companies have for tax directors and the global tax function.<sup>13</sup>

To effect a change in the tax compliance behaviour of a large corporation, models of organizational decision making suggest that there needs to be a change in the tax compliance priorities of the leaders of that corporation.<sup>14</sup> It is anticipated that the identification of directors as accountable for tax decision making would have a positive impact on compliance because it produces personal liability concerns for the decision makers within the corporation. The ATO tax governance guidelines and other publications giving tax decision makers clear guidelines on what they need to do to manage tax risks provide an indication of what is acceptable and helps tax decision makers avoid ethical uncertainty and reach consensus.

Research in relation to the reduction in the popularity of tax shelters in the US suggests that ATO announcements concerning tax risk management practices, the requirement for directors to be informed concerning tax risks, as well as specific guidance on the issues that director's should be considering in relation to tax risk, will encourage the development of a more tax compliant or less tax aggressive group norm within large corporations in Australia.<sup>15</sup>

Changes introduced in the UK by the HMRC, in which the HMRC identified the importance of the tax risk profile that a large corporation takes in the determining the detail of investigation by HMRC has influenced the behaviour of UK companies in terms of tax governance, transparency and openness.<sup>16</sup> However research by Freeman, Loomer and Vella identified that the attitude of respondent UK companies to tax planning had not changed as a result of the risk rating process.<sup>17</sup> The fact that the risk

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<sup>11</sup> Prepared for HM Revenue and Customs by FDS International 'Large Groups' Tax Departments: Factors that influence Tax Management' A Qualitative Study, September 2006

<sup>12</sup> Ernst and Young 'Tax Risk: External Change, Internal Challenge, Global Tax Risk Survey 2006'

<sup>13</sup> Ernst and Young 'Tax Risk Management The Evolving Role of Tax Directors' 2004, 6

<sup>14</sup> Morse, S. C. 'The How and Why of the New Public Corporation Tax Shelter Norm' *Fordham Law Review* (2006) 75, 961; Lavermicocca, C 'Managing Tax Risk and Compliance' (2009) 13(2) *Tax Specialist* 66

<sup>15</sup> Ibid

<sup>16</sup> Freedman, J., Loomer, G and Vella, J. 'Corporate Tax Risk and Tax Avoidance: New Approaches' (2009) 1 *British Tax Review* 74, 88

<sup>17</sup> Ibid

rating approach did not have a significant impact on the approach to tax planning by large business in the UK was also supported by the HMRC's own research.<sup>18</sup>

Freeman, Loomer and Vella suggest that the risk rating approach has not been successful in altering attitudes to tax planning in the UK because of a failure of the HMRC to demonstrate that a more conservative approach to tax planning, no matter the type or size of the corporation, would result in a low risk rating and the lack of significant and clear incentives to alter tax planning behavior.<sup>19</sup> Of the respondents that did take a conservative approach to tax planning they did so, not purely as a matter of choice, but as a result of other factors such as 'the industry or line of business they are in, their particular legal structure, or their low corporate tax bill.'<sup>20</sup>

### 2.3 Changing role of tax departments

A review of tax reporting by the FTSE 350 in the UK by PricewaterhouseCoopers in 2007 identified the changing role of tax departments within a large corporation. The PricewaterhouseCoopers review suggests that information concerning a corporation's taxes is being used by a wide range of stakeholders and as a result there is a need for more information about the taxes a corporation pays.<sup>21</sup>

Whilst historically many multinational corporate groups took a decentralised approach to tax compliance the requirement for boards to take a more active interest in ensuring compliance with the tax laws has seen a move to more centralised decision making in the global tax director.<sup>22</sup> A move towards tax decision-making at a more senior level highlights a need to ensure that appropriate information is provided to tax decision makers on a timely basis.

## 3. RESEARCH AND CONDUCT

This qualitative research project consists of in-depth interviews with tax managers from large Australian corporations (turnover exceeding \$250 million). The purpose of this research project was to gain an understanding of the tax risk management practices and the tax manager's views as to the impact of those practices on tax decision making and tax compliance behaviour. A total of 15 in-depth interviews were carried out in which 19 open ended questions (Attachment 1) were asked relating to tax risk and tax decision making. Ultimately the results of this research will be used to inform the drafting of a subsequent large scale survey instrument to collect data on this research topic for the purposes of completion of a PhD.

Participants were recruited through a number of avenues. The Corporate Tax Association was contacted via email to determine whether any of their member companies would be interested in participating in this research. Similarly the author contacted professional accounting bodies and advisory firms in an effort to recruit participants. In addition the author ascertained potential participants based on

<sup>18</sup> *Research to Support the Implementation of proposals in the Review of Links with large Business* HMRC Research Report 58 (December 2007), 27

<sup>19</sup> Freedman, J., Loomer, G and Vella, J. above n 15

<sup>20</sup> Ibid 89

<sup>21</sup> PricewaterhouseCoopers 'Tax Transparency Framework- a suggested framework for communicating your total tax contribution' May 2007

<sup>22</sup> Lambert, C. and Lucas, J. 'Managing Global Tax Compliance' July 2006 *International Tax Review* 34

turnover and contacted the relevant tax manager via telephone or email. Each potential participant was provided with a copy of the letter of consent (Attachment 2), details of the research topic and proposed questions to be addressed during the interview. Participation was voluntary, there was no coercion and participants were advised that all individual responses would remain confidential.

Interviews were conducted face to face or via telephone depending on the participant's preference. Of the 15 participants, 12 were large public companies and 2 were large private companies each with a turnover exceeding \$250 million. In addition a tax partner with a large 'Big 4' international accounting firm was interviewed to obtain their view on tax risk management practices of large corporate clients and the impact of those practices on tax compliance behaviour. All interviews were carried out between October 2009 and June 2010 and lasted between 45 minutes and 1 hour 30 minutes. Interviews were conducted and notes taken by the author of this paper.

Due to the small scale of this research the results are not held out to be representative of all large Australian corporations. The participants were selected from a variety of industries, including mining, transport, retailing, construction, banking, manufacturing and utilities and responses reveal a broad range of opinions and approaches to tax risk management. The tax risk management practices identified and the views of participants on the impact of those practices were used as a basis for analysis and the identification of propositions relating to the demand for information concerning tax risks. The responses to open ended questions were analysed by coding responses then isolating key concepts and themes. The propositions arising from this research are qualitative in nature only.

The views of the tax partner participant and the results of the *Ernst and Young Global Tax Risk Survey (2008)* provide an additional insight into the approach to tax risk management by large Australian corporations and were used in this research as a source of validation of the views of tax managers.<sup>23</sup>

#### 4. TAX RISK MANAGEMENT SYSTEMS IN LARGE AUSTRALIAN CORPORATIONS

All of the 14 corporate participants advised that they evaluated tax risks and that tax risk management was an important part of the tax function. Seven participants had a comprehensively formalised and documented tax risk management system and a further four participants said that their tax risk management system was only partially formalised and that the documentation of their tax risk management was still in progress. Interestingly of the three participants that had a completely informal and undocumented tax risk management system two were private companies. All participants were aware of ATO statements on tax risk management.

Those participants with an entirely informal and undocumented tax risk management system said that they do comprehensively manage tax risks but that they did not feel the need to formalise or document the process. The management of tax risks in those organisations required a more informal approach in which 'gut instinct' and the 'smell test' was applied to determine the tax risk applicable to a transaction. All participants

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<sup>23</sup> Ernst and Young 'Steady Course, Uncharted Waters- The Australian Perspective from the Third Ernst and Young Global Tax Risk Survey 2008'



felt that they were inherently ethical in their approach to tax compliance and as a consequence tax risks were minimised.

In the case of private company participants there was a strong and clear line of communication between the tax manager, the directors and shareholders and this may explain why those participants did not feel the need to document the procedure. The number of tax staff employed by the private company participants was limited to two or three persons including the tax manager and each staff member had a comprehensive understanding of the tax issues facing the organisation and a mandate from directors and shareholders to ensure that the company was tax compliant.

One participant who had experience with tax risk management systems in a number of large Australian corporations noted that in some cases the tax risk management system is formalised and documented but not actually being put into practice. In addition the tax partner participant, who was interviewed for the purposes of this research, referred to a problem he saw with clients when the overseas parent company had drafted the tax risk management policies but they were not operationalised in the Australian entity.

What the comments of all participants indicate is that effective tax risk management requires decision makers within the relevant organisation to enforce and apply a culture of identifying and considering tax risks rather than just ensuring the existence of a formalised and documented tax risk management system. Whilst a variety of documented tax risk management procedures were identified an over arching risk policy within the organisation to comply with all laws, combined with operational procedures to ensure compliance with that risk policy, are required to minimise tax risks.

All participants did give the impression that tax risk management is still an emerging issue and as pointed out by the tax partner participant 'surprises still do arise where a client has not addressed the issue'. All tax risk management systems of participants were based on a culture of compliance within the organisation. Further the *Ernst and Young Global Tax Risk Survey (2008)* identified that increasingly large Australian companies have in place a broad risk assessment program for tax however only 36% have documented procedures for managing tax risk that extend beyond specific statutory requirements.<sup>24</sup>

## 5. TAX RISKS DEFINED

Tax uncertainties give rise to regulatory and compliance risk and dealing with those risks pose a significant challenge for corporations. Until recently tax risk management and tax internal controls were rarely discussed or written about and the tax department within a corporation tended to operate in isolation from the board of directors.

Tax uncertainties create tax risks and managing tax risk is about managing those uncertainties. A narrow view of tax risk would include 'uncertain tax positions and vulnerabilities in tax financial controls and reporting'.<sup>25</sup> In comparison a broader definition and one that reflects the current view on risks includes,

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<sup>24</sup> Ibid 5

<sup>25</sup> Ernst and Young above at n 12, 5

any event, action, or inaction in tax strategy, operations, financial reporting, or compliance that adversely affects either the company's tax or business operations or results in an unanticipated or unacceptable level of monetary, financial statement or reputational exposure.<sup>26</sup>

PricewaterhouseCoopers in their publication, 'Tax Risk Management' outline seven broad categories of risk associated with taxes<sup>27</sup> including transactional, operational, compliance, financial accounting, portfolio, management and reputational risk.

Effective tax risk management by a large corporation requires a clear definition of what constitutes a tax risk. An evaluation of any tax risk management system would include an understanding of what tax risks were actually being managed. Only five of the participant companies managed tax risks based on a clear definition of what constitutes a tax risk. All five participants that had a clear definition of what constitutes a tax risk were public companies.

Participants who did not have a definition of tax risk said that the systems they have in place ensure that they consider all scenarios that give rise to uncertainty in relation to tax outcomes. Four participants who did not have a definition of tax risk noted that the criteria they used to identify a tax risk is very much based on an application of the 'smell test' or 'gut feeling' whilst one participant worked on a rough rule of thumb in establishing the existence of a tax risk where the tax consequence of a transaction was uncertain. All tax managers that were interviewed were very experienced tax professionals and a number felt that experience allowed them to be a good judge of the tax risks associated with a transaction.

Three participants expressed concern with the ATO's definition of tax risk and noted that the corporation's definition is likely to be quite different. The ATO statements concerning tax risk have focused on the risk that a tax position may not comply with the law but does not address the fact that from the company's perspective a tax risk includes not only the risk that the organisation may adopt a tax position that does not comply with the law but also the risk that they may fail to take up a concession or tax approach that does comply with the law and would result in a tax saving (eg a failure to apply for a research and development concession that the organisation would qualify for).

The view of the tax partner participant was that to a large extent large companies are concentrating on financial tax risk and really only consider other tax risks like reputation when there is a major or unusual transaction. The lack of a comprehensive evaluation of all types of tax risks suggests that there are some limitations in a corporation's ability to manage tax risks and accordingly the tax decision maker's ability to make informed decisions.

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<sup>26</sup> Ernst and Young above at n 12, 12

<sup>27</sup> PricewaterhouseCoopers 'Tax Risk Management' (2004) -This analysis is not by type of tax and they include all types of tax under tax risk management

## 6. KEY TAX RISK DECISION MAKERS

Key tax risk decision makers identified by participants include the following;

- Board of directors
- Chief financial Officer/Director
- Tax manager (Australia)
- Tax manager(Global)
- Risk Management Committee

Participant's responses indicate that the board of directors are usually involved in the adoption and approval of a tax risk management system but the day to day application of that system to the organisation's transactions occurred in the tax department within the corporation.

Of the 12 public company participants, 11 indicated that the board of directors were a driving force in the adoption of a tax risk management system. Where a formal tax risk management system had been adopted, typically the tax department within the organisation was responsible for its formulation and subject to approval by the board of directors. Consistent with participant responses the *Ernst and Young Global Tax Risk Survey (2008)* reported that 96% of large Australian company respondents have an individual with overall responsibility for managing tax risk.<sup>28</sup>

One public company participant noted that the tax risk management system that was put in place was based on a system adopted by the group internationally. In the case of the two private company participants the tax risk management systems were informal and the tax manager within the organisation was responsible for the development and application of tax risk management practices without the board of director's approval. Thirteen of 14 directors did send out a clear directive in these instances that there are to be no surprises in relation to tax.

All participants emphasised that the decisions in relation to tax risk management are based on a culture of compliance so although the directors are not involved in the day to day consideration of tax risks the tax managers know the approach to tax risks that they should take. The tax manager reports material tax issues to the Board and there are clear directives from the Board that they want to be informed concerning material tax risks. The tax managers who participated in this research emphasised that it was an important part of their role within the organisation to keep directors fully informed concerning tax risks.

Participants were asked what performance measures were used to evaluate their performance and whilst a myriad of factors were considered in evaluating the performance of the tax manager only one participant advised that it did include an evaluation of the effective tax rate for the period amongst a number of other variables. The responses concerning evaluation of performance of tax managers in large Australian corporations indicate that there is no overriding pressure on tax managers to minimise tax to maximise their remuneration.

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<sup>28</sup> Ernst and Young above at n 12, 9

Participants did point out however that performance measures do not necessarily want to reward a reduction in tax risk all the time as an integral part of a successful business is the taking of informed risks. Interestingly, one participant highlighted that there is such a demand for franking credits by shareholders in the relevant corporation that the tax manager is encouraged to pay more income tax than the company is strictly required to under the law.

## 7. KEY MOTIVATORS TO CONSIDER AND EVALUATE TAX RISKS

Key motivators to consider and evaluate tax risks identified by participants include the following;

- Directors
- ATO
- Good business practice
- SOX Reporting
- Reputational concerns
- High profile tax disputes
- Staff other than directors
- Pressure from business units
- Shareholders
- ASX listing rules
- History of problems in the past
- Fin 48

### 7.1 Directors

Responses from all participants emphasised that directors are concerned about tax risks and that they want to be informed in relation to material tax risks. The majority of tax managers stated that the directors are the most important driving force in the identification and management of tax risks in Australia although some of the other motivators listed may be the reason why the directors have put tax risk management on the agenda.

Comprehensively there was an acceptance by participants that directors consider tax risk management as an essential part of good business practice. Arguably a large company that does not consider and evaluate tax risks would be considered in breach of good business practice and ultimately the directors may be held accountable for that failure.<sup>29</sup>

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<sup>29</sup> Section 180 of the *Corporations Act* applies to both directors and officers of a corporation and imposes a statutory duty to act with due care and diligence. There is no definitive standard that applies to all

Thirteen of the 14 corporate participants noted that there had been an increased demand by directors for information concerning tax risks and clear indications from the Board that they do not want any surprises in relation to tax. The management of tax risks was considered by participants as a means by which any potential tax risks could be identified and to ensure the ultimate tax position that is taken by the corporation is one based on informed decision making. *The Ernst and Young Global Tax Risk Survey (2008)* identified that 80% of Australian company directors surveyed have full and timely involvement in material tax transactions.<sup>30</sup>

## 7.2 ATO

All participants were aware that the ATO had identified tax risk management as part of good corporate governance practice and that the existence of a tax risk management system would be a variable in the evaluation by the ATO of the corporate taxpayer's risk to tax revenue. Tax managers felt that the board of directors were aware of the ATO's view that directors be informed concerning tax decision making and the level of tax risk (with one exception) and that this was an important motivation for the adoption of a formalised tax risk management system. Despite comments by participants that the ATO announcements had motivated adoption of a formalised tax risk management system the majority of participants said they already had a tax risk management system in place and that the impact of ATO announcements was largely with respect to the improved documenting of what was already being done.

One participant noted that the pressure to adopt a tax risk management system had come from the global tax manager located overseas and that the corporate group had adopted a formalised system internationally based on pressures from the revenue authorities in Australia and other foreign jurisdictions in which they carry on business.

All participants said that they were managing tax risks before the ATO focus. Four participants emphasised that ATO statements and announcements had not had an impact on the tax risk management practices whilst four other participants did believe that the ATO had put tax risk management on the agenda of large companies in Australia. As a result of ATO statements and announcements directors recognised that they were considered by the ATO as the persons ultimately responsible for the tax position the organisation takes and in recognising that they would need to be informed concerning the tax risks.

Ideally the risk profile adopted by an organisation that had a comprehensive tax risk management system would be one that was based on informed decision making. Importantly all participants did not consider the ATO focus on tax risk management caused the directors and consequentially the organisation to take a position that was more or less tax risk averse.

Five participants felt that the ATO views were an important consideration in any decision as to the systems and procedures that would be put in place to manage tax risks and a further four felt that the ATO focus only led to improved documentation of what they were already doing.

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directors and officers as the test in Section 180 is determined by considering the circumstances of the particular company and also the individual director's responsibilities within the company.

<sup>30</sup> Ernst and Young above at n 12, 5

Two participants pointed out that a consequence of the ATO focus on the management of tax risk was that, individuals employed within the organisation but outside the tax department, were more likely to listen to the tax department's concerns or comments with respect to a particular transaction or strategy. That is, the ATO raised the profile of tax within the organisation.

What the comments of participants suggest is that the ATO focus on tax risk management and the adoption of tax risk management best practice by large corporations has resulted in more informed tax decision making but not necessarily a lower risk profile. A company may choose to take a high or low risk profile and the tax risk management system ensures that the directors and tax managers are aware of the potential variables and consequences of that decision. According to the *Ernst and Young Global Tax Risk Survey (2008)* 'Australian companies have become neither more nor less risk averse regarding tax planning in recent years.'<sup>31</sup>

### 7.3 Good Business Practice

All participants identified tax risk management as a key element of good business practice. That is, tax risk is just one of the risks that the corporation faces and accordingly it needs to be managed like any other risk. Six participants identified good business practice as a key motivator for establishing a tax risk management system.

### 7.4 SOX Reporting

The Enron collapse in the US in 2001 put corporate governance on the business and political agenda and one of the responses of the US Federal government was to introduce tough new legislation in the form of the Sarbanes-Oxley (SOX) Act of 2002.

Most listed US corporations have been affected by Section 404 of the SOX Act which requires an annual report by management regarding internal controls, procedures for financial reporting and an attestation as to the accuracy of the internal control report by the company's auditors. The requirements in Section 404 impact on a corporation's risk management systems including tax risk management, as directors are required to attest to the internal control systems that are in place.

The impact of SOX has also been felt in Australia, as Australian subsidiaries of US-registered reporting entities are obliged to comply with Section 404 for financial years ending after 15 November 2004. Also Australian entities issuing securities in the US must comply with Section 404 after 15 July 2006 or 2007 depending on the characteristics of the securities issued.

As a result of Section 404 there has been a focus on internal control systems in relation to tax risk and accounting for income taxes because of the formal requirement to report material weaknesses. The four participants who were required to report in the US identified that SOX reporting was a motivator in the decision to adopt a tax risk management system.

### 7.5 Reputational Concerns

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<sup>31</sup> Ernst and Young above at n 12, 8

Three participants felt that the importance of the organisation's good reputation had been a key motivator in establishing a tax risk management system. Each participant who highlighted reputational concerns said that the organisation would be most concerned if they were perceived as non-compliant with the tax laws or considered to have taken an aggressive tax position. All participants commented on the importance of the organisation's reputation and demonstrated a real concern that any negative publicity concerning tax compliance would affect the organisation's profitability.

The importance of reputation to large business and the consensus that aggressive or non-compliant tax behaviour will negatively affect that reputation and ultimately the profitability of the business, suggests that any measures by the ATO to improve large corporate tax compliance should incorporate the publication of details of taxpayers who are aggressive or non-compliant. No participant indicated that they do take an aggressive tax position but rather that they made every effort to comply and one of the motivators was the concern for the organisation's reputation.

Interestingly the participant's concerns expressed for the negative impact on reputation of a tax aggressive or non-compliant position was not demonstrated in a Pilot Study of large corporations in the UK.<sup>32</sup> Few of the respondents in the Pilot Study of large UK corporations were concerned with the public's perceptions of their tax policy and planning behaviour. The authors of the Pilot study suggest that the lack of concern for negative publicity concerning tax compliance behaviour could be due to the fact that in the UK there had been very little reporting of corporate tax compliance issues, perhaps on the basis that the issues are too complex or obscure for the media or public to understand.<sup>33</sup>

## 7.6 High Profile Tax Disputes and History of Problems in the Past

Two participants (one public company and one private company) felt that a number of high profile tax disputes that had been publicised in the past forced them to think of the organisation's tax risk position and to ensure that the organisation or its directors were not exposed. Further one participant had been involved in tax disputes in the past and wanted to ensure that they were fully informed as to any tax risks in the future as they wanted to avoid further tax litigation.

What these responses and those relating to reputational concerns indicate is that corporate decision makers want to know what the tax risks are and believe a comprehensive tax risk management system is a means by which business decisions can be based on full and complete information. Again the participant's responses indicate that tax risk management is about informed decision making not necessarily the reduction of tax risk.

## 7.7 Other Motivators

Other motivators include, pressure from staff, business units and shareholders, ASX listing rules that require good corporate governance practices, a history of problems in the past and Fin 48 reporting. One participant noted that the business units of the

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<sup>32</sup> Freedman, J., Loomer, G and Vella, J. *'Moving Beyond Avoidance? Tax Risk and the Relationship between Large Business and HMRC'* Report of a Preliminary Study June 2007 Oxford University Centre for Business Taxation

<sup>33</sup> Ibid

organisation are always pushing a variety of products and money making ventures and the existence of a tax risk management system allows tax to go back to them with concerns from a tax perspective and as a result the tax department is more likely to be listened to.

### **7.8 Views of a Big 4 Tax Partner**

Based on the tax partner participant's experience with a range of large Australian corporations, the extent to which clients were evaluating tax risk depended to a large extent on the industry in which they operate and whether they operate internationally. In addition the tax partner participant felt that the introduction of International Financial Reporting Standards (IFRS) in Australia will have a significant impact on the need to identify and manage tax risks in the future. Tax reporting of uncertain tax positions for IFRS is based on a weighted average compared to the previous FIN 48 which had limited application to Australian subsidiaries of US corporations because in many cases the Australian entity was not material and so the tax risks were not reported.

Also the tax partner participant felt that the increase in information sharing as a result of the creation of the G20 group of countries will have implications on tax risk and compliance behaviour as information exchange will provide greater certainty as to the application of the tax laws to member countries.

## **8. FACTORS THAT AFFECT THE LEVEL OF TAX RISK**

The tax risks faced by large corporate taxpayers can ultimately result in the organisation failing to comply with the tax law. It is anticipated that measures aimed at reducing the tax risks an organisation faces would result in an improvement in the level of tax compliance and is of interest to the organisation and the relevant revenue authority. This research gives an insight into the tax manager's views as to the factors that impact the level of tax risk that a large corporation faces in seeking to comply with the Australian income tax laws.

Importantly not all tax risks can be controlled by the organisation and as demonstrated in the responses of participants, tax risk management is largely about ensuring that decision makers are informed as to the tax risks that do exist, on a timely basis.

Participants were asked what, in their view, were the factors that affected the level of tax risk that the organisation faced and the responses of participants include:

- Uncertainty/complexity of tax laws
- Limitations of ATO staff
- Complexity of business transactions
- Staff turnover
- Staff not following guidelines
- Limited information provided to tax staff by other divisions
- Time constraints



- Demand for franking credits
- Change in ATO interpretation /approach to a tax issue
- Level of concern for reputation
- Size of the transaction
- Growth of the business
- Global nature of the business
- Economic environment

### **8.1 Uncertainty/complexity**

These results suggest that the uncertainty and complexity of the income tax laws in Australia are a major contributor to tax risk and ultimately contributes to a failure of the organisation to comply with the income tax laws. This was the view of all tax managers even though all participants were highly qualified and experienced in the application of the income tax laws in Australia and in most instances had a significant amount of staff in the tax department.

All participants used expert external advisors (Big 4) to get a tax opinion where they were unsure of the correct tax treatment and a majority of participants regularly applied for a private ruling from the ATO in an attempt to obtain some certainty. Of some interest was the fact that only one of the participants was interested in entering into an Annual Compliance Agreement (ACA) with the ATO. On the whole participants felt that the costs of preparing and negotiating an ACA with the ATO would be so high without sufficient consequential benefits. The tax partner participant also noted that on the whole clients were not interested in entering into an ACA with the ATO as they are seen as too costly and time consuming.

A number of participants noted that no matter how good a tax risk management system the limitations of ATO in understanding, interpreting and applying the tax law to their business and the uncertainty/complexity of the tax laws mean that the best tax risk management system cannot foresee the risks that a particular tax treatment will not be accepted by the ATO or considered incorrect in the courts. The tax partner participant also expressed concerns with the expertise of the ATO staff. The level of complexity of business transactions was also noted as a limitation in the ability to manage tax risks.

The significance of uncertainty and complexity of the tax laws as a major contributor to tax risk suggests that the acceptable level of tax risk, to a large extent, is not within the control of the large corporate taxpayer in Australia. This is supported by the fact that participants also identified uncertainty and complexity of tax laws as a factor that limits the ability of participants to manage tax risks effectively. A reduction in the complexity and uncertainty of the tax laws it is anticipated, would reduce tax risk, allow better management of tax risks and more informed tax decision making. Ultimately in a review of Australian income tax laws the benefits of less complexity and uncertainty must be evaluated against the potential loss to revenue of a more simplified approach to taxation.

This research does highlight that the lack of certainty as to how the laws will apply is a real concern and in a number of instances participants noted that negotiations with the ATO have resulted in acceptance of the ATO position despite the fact the participant had obtained advice to support their original alternative position.

## 8.2 Staffing

Factors internal to the organisation that have an effect on the level of tax risk relate to staff turnover and the flow of information to the staff in the tax department. Six participants said that at times other business units of the corporation may fail to provide tax with full and complete information to determine the correct tax treatment and this is a significant limitation in the ability to manage tax risks. In addition three participants noted that the pressure from other business units of the organisation on the tax department to accept new products or arrangements limit the ability of the tax department to manage tax risks.

However by way of contrast a number of participants commented that the fact that the ATO had put tax risk management on the agenda had resulted in other sectors of the organisation listening to the issues raised by the tax department where they had not been so receptive in the past.

Staff turnover was an issue with participants that had a large tax department as well as those with a small tax department. What participants did highlight was that good systems for recording transactions would minimise the tax risk impact of this variable. Staff turnover affects the ability to manage tax risks because, although the tax risk management system ensures informed decision making, if the person who is informed concerning tax risks leaves the organisation there will be a gap in knowledge within the organisation. A number of tax managers pointed out that they enforce detailed record keeping in the tax department in an effort to limit the effect of staff turnover on tax risk management.

Time constraints is an issue for one of the private company participants who felt there was so much time consumed on tax compliance issues that tax risk management was more of an after thought. The same participant noted that, because the organisation takes a conservative approach to tax compliance and that there are very few unusual transactions, the level of tax risk was anticipated to be very low and as a result the informal approach to tax risk management was most appropriate.

By way of comparison the third party tax partner participant's view was that the extent and quality of tax risk management systems can at times be limited because of the lack of technical qualifications of the in-house tax person as their skills remain static and are quite often not up to date. The *Ernst and Young Global tax Risk Survey (2008)* identified that 76% of Australian respondents to that survey felt that they had insufficient resources to cover tax function activities.<sup>34</sup>

## 8.3 Demand for Franking Credits

Interestingly four participants highlighted that the organisation may very well be reporting a taxable income more than they would if they had applied appropriate and comprehensive tax planning to their business and made use of all available

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<sup>34</sup> Ernst and Young above at n 12, 5

concessions. One participant said that at times the decisions the organisation makes in relation to transactions is 'crazy' and if the transactions had been done another way significantly less income tax would have been paid. The demand for franking credits, that reflect the payment of tax at the corporate level and passed on to the shareholders, suggests that in some instances the organisation will pay more tax than it should under the tax laws because of the demand from shareholders in Australia for fully franked dividends. This appeared to be most relevant for Australian ASX listed companies.

In addition it was suggested by one participant that, a corporation with significant carry forward tax losses is less likely than a corporation with a large taxable income to be concerned about tax planning and tax minimisation and accordingly the level of tax risk is likely to be inherently lower.

#### 8.4 Other factors

Other factors that affect the level of tax risk include change in ATO interpretation of the tax laws, concern for reputation, size of business transactions, business growth, the increasingly global nature of the business and economic environment. To a large extent the corporate taxpayer has limited control over these variables. Interestingly when tax managers were asked about the greatest challenges they faced over the next 24 months, 72% of Australian respondents to the *Ernst and Young Global Tax Risk Survey (2008)* indicated transaction activity or other business changes as most important compared to 43% globally.<sup>35</sup>

The political, legal and business systems of the country in which the corporation carries on business does have implications on the ability to manage tax risks. Where the participant carries on business in countries where the legal systems are undeveloped and political systems are subject to corruption the ability to manage tax risks is limited.

The creation and application of a tax risk management system is a cost to the organisation and four participants noted that the cost, time and staffing required for a comprehensive tax risk management system is a concern to them and limits their ability to put in place the appropriate tax risk management measures. The costs need to be compared to the benefits of a tax risk management system and some participants did not see any substantial financial benefits of a formalised tax risk management system. The tax partner participant observed that although the costs to the ATO are potentially reduced by the reduction in audit field work and an emphasis on the review of risk management systems those costs savings are reflected in additional costs incurred by large corporate taxpayers in managing tax risks.

Certainly a comprehensive tax risk management system will assist in identifying risks and ensuring the tax decision makers are informed as to the risks when making a decision but does not necessarily reduce those risks or ultimately improve tax compliance. If you consider uncertainty and complexity of the tax laws and the other factors highlighted by participants as affecting the level of tax risk, significant tax risk will remain for large corporate taxpayers in Australia despite the existence of a comprehensive tax risk management system.

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<sup>35</sup> Ernst and Young above at n 12, 7

## **9. CRITERIA USED TO DETERMINE THE ACCEPTABLE LEVEL OF TAX RISK**

Participants identified the following criteria used to determine the acceptable level of tax risk;

- No acceptable level of tax risk
- Materiality
- Disclosure requirements
- Likely impact on reputation
- Gut instinct, experience and judgement

Whilst directors clearly want to be informed concerning the tax risks facing an organisation all participants indicated that that would not necessarily result in a lower level of acceptable tax risk. Decision makers in a large corporation are required to take risks in making business decisions and risk management seeks to ensure that business decisions are based on knowledge of the potential risks. Participants were asked what they considered to be relevant in the determination of acceptable risk that is, what characteristics of a particular transaction or arrangement would be considered by the tax decision maker in deciding the level of tax risk that is acceptable.

Whilst seven participants indicated that no level of tax risk is acceptable, a review of the tax risk management systems and responses to this question indicate that participants recognise that there will always be some risk and the criteria they use to establish whether the risk is acceptable includes a consideration of the materiality of the transaction and any requirement to disclose the transaction under relevant reporting requirements. Four participants stressed the importance of maintaining their reputation as good corporate taxpayers and that the potential impact on a firm's reputation of any negative publicity concerning tax compliance would result in a lower level of acceptable tax risk.

Three participants had clear guidelines on the relevant variables to be considered in determining whether a transaction had an acceptable level of tax risk and these variables were given a variety of weightings and acceptable scores. Four participants noted that the overriding criteria used to evaluate acceptable tax risk included 'gut instinct', experience and judgement of the tax experts within the organisation.

An interesting and relevant view of the tax partner participant was that, in his experience and after working extensively overseas, the ethical nature of Australian business people was an important factor in the inherently tax compliant behaviour that he sees in advising large corporate taxpayers in Australia.

An understanding of the variables that a large corporation considers in determining acceptable tax risk would be relevant in the formulation of measures by regulators and companies to reduce tax risk and ultimately improve compliance.

## **10. TAX MANAGER'S VIEW AS TO THE IMPACT OF TAX RISK MANAGEMENT PRACTICES**

All participant tax managers said that they did not believe that the corporation was more or less tax risk averse as a result of the identification and management of tax

risks. All participants said that they had always adopted a low tax risk profile irrespective of the existence of a tax risk management system.

The consequences of adopting a tax risk management system identified by participants include:

- No impact
- More informed tax decision making
- Better documented risks
- Tax risks minimised
- Greater range of risks being identified
- Better managed tax risks

Six participants felt that a tax risk management system had no impact on the corporation's tax decision making as those participants believed that they had always managed tax risks and that the identification of a process or system that had always occurred informally in the past resulted in a change in form rather than substance to the management of tax risks and tax decision making.

Five participants felt that the tax risk management system had resulted in more informed tax decision making and better documented risks were also identified by five participants. Two participants identified that a comprehensive tax risk management system would ensure that tax risks would be minimised. Additional consequences including a greater range of and better managed tax risks were identified by two participants.

A number of participants felt that although they had adopted a low tax risk profile the ATO was still regularly reviewing, contacting and requesting information from them. All participants who made this observation said that they had a good relationship with the ATO but questioned the connection between low risk and a low level of inquiry by the ATO. This is consistent with research in the UK, including a Pilot and Main Survey, regarding the HMRC (UK) risk rating approach aimed at improving tax compliance and reducing tax avoidance by large corporations.<sup>36</sup>

The tax partner participant in this research noted that, based on his experience with a broad range of clients from different industry groups, even if the corporation's tax risk management system adopts a low tax risk approach the ATO will still audit and investigate the detail of transactions. The tax partner participant view was that the consideration of a large corporation's tax risk management systems by the ATO will not change the tax risk behaviour of those corporations unless the decision makers within the corporation see evidence of real benefits to a lower tax risk approach.

## 11. CONCLUSIONS

The views of participants highlight who are the key tax risk decision makers and give an insight into the tax risk management practices of large corporations in Australia. Tax managers and directors are interested in tax risk and a variety of systems are used by corporations to ensure that the tax manager and directors are informed of any

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<sup>36</sup> Freedman, J., Loomer, G and Vella, J. above n 15, 88

potential tax risks as well as the corporation's tax risk profile. Directors did not want surprises in relation to tax and participants felt that the impact of a tax risk management system was primarily in relation to significant improvements in documentation in relation to tax risks and more informed tax risk decision making. All participants felt that the theory concerning good tax risk management had been put into practice within the organisation however some participants were still in the process of formalising the tax risk management system.

What does not appear to be a consequence of tax risk management is a reduction in the acceptable level of tax risk. Directors accept that good governance requires them to be informed about tax risks and to be involved in tax decision making and a tax risk management system will assist in this process but will not change the acceptable level of tax risk for that corporation. Significantly all participants indicated that tax decision making was based on a low risk profile.

This research notes the difference in approach to tax risk by the ATO compared to tax decision makers in a large corporation. Tax risk from the ATO's perspective relates to the risk to revenue as a consequence of a taxpayer failing to comply with the tax laws whilst the tax decision makers in a large corporation are concerned not only with a failure to comply with the tax laws but also a failure to apply a tax concession to which the organisation was eligible.

Participants gave some insight into the variables that affect the level of tax risk a large corporation faces and the ability to manage them. Many variables identified are external to the organisation including complexity and uncertainty in the tax laws, reputational concerns, as well as the size and complexity of transactions. Measures aimed at influencing external variables that have an impact on the level of tax risk could be used by governments to reduce tax risk and as a consequence improve the level of tax compliance.

Despite the fact that many variables impact tax risk this research indicates that well qualified staff employed in the tax department are essential to ensure that the tax risk management system provides useful information to the directors. 'Gut instinct' and the 'smell test' are still used by the tax managers in large corporations to evaluate transactions and arrangements even though there may be a formal tax risk management system operating in the organisation. Arguably the effective management of tax risks will always include some informal or undefinable element.

Interestingly comments by the tax partner participant and the *Ernst and Young Global Tax Risk Survey (2008)* of large Australian corporation's tax risk management practices offer support for a number of the observations made in this paper.

## 12. FURTHER RESEARCH

As noted at '3. Research design and conduct' the purpose of this research was to gain an understanding of the tax risk management practices and the tax manager's views as to the impact of those practices on tax decision making and tax compliance behaviour. The understanding gained from these in-depth interviews will be used to draft a subsequent survey of relevant tax managers from Australian corporations for the purposes of the author's PhD data collection.

As this research was small in scale generalisations cannot be made in relation to the wider population of large Australian corporations. This research does however give

the author an understanding of the key issues and practices relating to tax risk management and the potential impact on tax decision making as a result of those tax risk management practices. This understanding will inform the subsequent survey.

## **ATTACHMENT 1**

**Interviewer : Catriona Lavermicocca  
PhD student UNSW**

### **Project description: In-depth interviews**

This research project forms part of the data collection for the purposes of completion of a PhD in Taxation at the Australian School of Taxation (ATAX) at UNSW. The title of the PhD thesis is 'Tax risk management as a corporate governance issue in Australia and the impact on income tax compliance by large corporate taxpayers'.

#### **Proposed questions for in-depth interviews concerning tax risk management**

1. To what extent does your organisation consider/evaluate tax risks?
2. Does your organisation have clear statements/guidelines on what constitutes a tax risk?
3. Who (not by name but by title) in the organisation determines the acceptable level of tax risk?
4. Do the organisation's corporate governance guidelines require tax risks to be managed?
5. Does your organisation have a tax risk management system?
6. What systems/procedures does your organisation have in place to ensure that tax risks are managed? To what extent are those systems/procedures documented and reviewed for compliance?
7. Have there been any recent changes in the approach the organisation takes to tax risk management?
8. What criteria are used to determine the acceptable level of tax risk in your organisation?
9. What factors do you consider have an impact on the level of tax risk that the organisation faces?
10. What limitations, if any does the organisation face in managing tax risks?
11. What pressures do you believe have had an impact on the organisation's decision to adopt/not adopt a tax risk management system?
12. To what extent have the following had an impact on the organisation's decision to adopt/not adopt a tax risk management system?
  - ATO
  - Shareholders
  - Customers
  - Stock market/listing rules
  - Directors
  - SOX legislation



13. What influence have the ATO announcements had on your organisation's tax risk management practices?
14. Have you received any correspondence from or entered into discussions with the ATO concerning tax risk management and tax decision making practices?
15. Who (not by name but by title) are the key tax decision makers in your organisation? Is there any board/director involvement in tax decision making and if any, what is the level of that involvement?
16. What are the performance measures in respect of the key tax decision makers in your organisation?
17. What do you consider to be the impact of tax risk management systems on the determination of the acceptable level of tax risk?
18. Is the organisation more or less tax risk averse (or has there been no change) after the introduction of a tax risk management system?
19. To what extent does the organisation consider corporate social responsibility issues and if so does that include a consideration of the organisation's tax compliance profile?

**ATTACHMENT 2**

**UNSW**



FACULTY OF LAW

**THE UNIVERSITY OF NEW SOUTH WALES  
PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM**

**In-depth interviews concerning tax risk management as a corporate governance issue in  
Australia and the impact on income tax compliance by large corporate taxpayers**

**Participant selection and purpose of study**

You are invited to participate in a study of the tax risk management practices of large Australian corporations. We hope to learn what are the tax risk management practices adopted by large Australian corporations, the motivators for the adoption of a tax risk management system and the impact of those systems on the corporation's income tax compliance behaviour. You were selected as a possible participant in this study because we understand that you are employed by a large Australian corporation (turnover in excess of \$100 million per annum) and have some knowledge of the tax risk management practices adopted by the organisation.

**Description of study and risks**

If you decide to participate, we will contact you to organise an appropriate time and place to conduct an interview. It is envisaged that the interview will be either face to face or via telephone depending on what is most appropriate determined by your preference and location. A copy of the questions that will be asked can be provided prior to the interview if requested. The interview will run for a maximum of two hours and will not be recorded although the investigator will take notes during the interview. If requested a copy of the notes taken will be provided to you for approval. All notes will be kept securely in a locked filing cabinet and all responses will remain confidential.

**Confidentiality and disclosure of information**

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, except as required by law. If you give us your permission by signing this document, we plan to use the results of the interview with you to develop a survey instrument to collect data on tax risk management practices for the purpose of preparation and completion of a PhD on 'Tax risk management as a corporate governance issue in Australia and the impact on income tax compliance by large corporate taxpayers'. In any publication, information obtained in the interview with you will be provided in such a way that you or your organisation cannot be identified.

Complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA (phone 9385 4234, fax 9385 6648, email [ethics.sec@unsw.edu.au](mailto:ethics.sec@unsw.edu.au)). Any complaint you make will be investigated promptly and you will be informed of the outcome.

**Feedback to participants**

If requested a copy of the notes taken during the interview will be provided to you for your approval.

**Your consent**

Your decision whether or not to participate will not prejudice your future relations with the University of New South Wales. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice.

If you have any questions, please feel free to ask us. If you have any additional questions later, Ms Catriona Lavermicocca Ph: 0414895924 will be happy to answer them.

You will be given a copy of this form to keep.

**THE UNIVERSITY OF NEW SOUTH WALES  
PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM (continued)**

**In-depth interviews concerning tax risk management as a corporate governance issue in  
Australia and the impact on income tax compliance by large corporate taxpayers**

**You are making a decision whether or not to participate. Your signature indicates that, having  
read the information provided above, you have decided to participate.**

.....  
Signature of Research Participant

.....  
Signature of Witness

.....  
(Please PRINT name)

.....  
(Please PRINT name)

.....  
Date

.....  
Nature of Witness

**REVOCAION OF CONSENT**

**In-depth interviews concerning tax risk management as a corporate governance issue in  
Australia and the impact on income tax compliance by large corporate taxpayers**

I hereby wish to **WITHDRAW** my consent to participate in the research proposal described above  
and understand that such withdrawal **WILL NOT** jeopardise any treatment or my relationship with  
The University of New South Wales, (*other participating organisation[s] or other professional[s]*).

.....  
Signature

.....  
Date

.....  
Please PRINT name

The section for Revocation of Consent should be forwarded to Dr Margaret McKerchar, Atax, Faculty  
of Law, University of New South Wales, Kensington NSW 2052