REVENUE APPROACHES TO INCOME TAX EVASION: A COMPARATIVE STUDY OF IRELAND AND SOUTH AFRICA

Sheila Killian*
Maeve Kolitz

Abstract

Tax evasion represents a serious loss to the exchequer in most developed and developing economies. Various approaches to combat this problem have been put forward, including increasing penalties for non-compliance, boosting revenue powers of search and discovery, the use of amnesties to bring errant taxpayers into the net, high-profile public prosecutions and other "name and shame" techniques, and appeal to the ethics of taxpayers. This paper looks at the approaches adopted in two contrasting economies, South Africa and Ireland, examines the strategies which were adopted in each case, and concludes that similarities in approach outweigh differences, suggesting some universality in Revenue techniques.

Keywords: tax evasion, tax avoidance, South Africa, Ireland

I : Introduction

Tax avoidance can be described as the avoidance, reduction or postponement of a taxpayer's liability for tax by means that are legal and within the provisions of the law. It has long been accepted by the courts in many countries, including both South Africa and Ireland that tax avoidance is a legitimate

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* Sheila Killian is a professor at the University of Limerick in Ireland and Rhodes University in South Africa. Maeve Kolitz is a professor at the University of Witwatersrand in Johannesburg, South Africa.

activity that taxpayers are entitled to pursue, however unpopular the results of their activities may be to the fiscal authorities. A major influence in both countries was the seminal UK judgment in IRC v Duke of Westminster, in which Lord Tomlin stated:

> Every man is entitled, if he can, to so order his affairs so that the tax attaching under the appropriate Acts is less than it would otherwise be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. (IRC v Duke of Westminster 1936, 19)

In contrast, tax evasion can be described as an illegal, dishonest activity that entails the evasion of a taxpayer's existing liability for tax on income, for example, either by the taxpayer not declaring the income or by claiming deductions against income to which he is not entitled. Tax evasion is simply a fraud against the fiscus for which appropriate penalties are usually provided in tax legislation.

Much tax research is dedicated to the question of whether or not taxes can, or should influence behaviour. Central to the idea of tax neutrality is that taxes do not impact on taxpayer behaviour, and this neutrality is often cited as a goal in an efficient tax system. However, tax systems are rarely truly neutral. Mintz (1996, 41) observes that:

> Governments rarely try to achieve [tax] neutrality … they purposely try to influence investment behaviour by giving special exemptions or deductions.

Governments in all jurisdictions use the tax system, not only as a source of revenue, but also as a tool to influence taxpayer behaviour, despite the associated costs. For example, Scholes and Wolfson (1992, 4) identify three such non-neutral purposes, as follows:

> Among other things, taxes are designed to (1) finance public projects …(2) redistribute wealth … and (3) encourage a variety of economic activities that are deemed to be in the public interest.

Cooke (1995) argues that such tax incentives constitute a deliberate case of the government exploiting the taxpayers' natural inclination towards tax avoidance, and that this weakens the moral position of government introducing general anti-avoidance legislation.

The scale of tax evasion is by its nature difficult to quantify. Franzoni (1998) in a review article notes that previous studies have estimated evasion levels at 5% to 25% for Western industrialized countries, and up to 30% to 40% for developing countries. While this represents a serious loss of revenue to the government, it also creates moral hazard for taxpayers wishing to avoid a free rider problem, increasing the likelihood that more taxpayers will understate their income. In short, evasion begets evasion.

The techniques used by governments to tackle tax evasion can be categorised into those which define and criminalise tax evasion, those which punish evasion, those which forgive evaders and allow them to re-enter the formal economy, and those which appeal to, or seek to create group norms of compliant behaviour. The first category includes the development of anti-avoidance legislation and case law, which define the boundary between legitimate avoidance and criminal non-compliance. The second includes revenue powers of detection, the threat of audit and financial and custodial penalties for evasion. The third category comprises settlements and amnesties. The fourth category is more nebulous, and includes efforts by government to appeal to the ethics of taxpayers, to stigmatize evasion by "name and shame" techniques, and to create a climate in which most taxpayers will voluntarily report full income.

The paper is set out as follows: Section II considers theoretical issues around each of the four approaches to tax evasion, and reviews the relevant literature. Sections III and IV analyze the cases of South Africa and Ireland in turn, setting

out the institutional context within each country, the background to and application of use of each of the four categories of anti-evasion techniques, and appraising the success or otherwise of the measures. Section V concludes.

II : Approaches to Tax Evasion

Clearly, the powers of the taxing authorities to penalize evasion should influence the level of compliance. (Franzoni 1998) identifies four influences on taxpayers' attitudes to compliance and evasion. These are the attitude to government and public institutions, the fairness or perceived fairness of the tax system, prevailing social norms and the chances of incurring penalties for non-compliance. Most research in this area has focused on the last of those factors.

Allingham and Sandmo (1972) analyze tax evasion as a portfolio issue. Their idea is that taxpayers and potential tax evaders decide, based on their risk-preferences, how much of their income to declare as low-risk, low-return "declared and taxable" income, and how much to allocate to the higher-return, and higher-risk "non-declared" category. The amount of risk associated with the latter category depends, inter alia on the risk of an audit and the penalties attaching to non-compliance. The rewards for non-declaration depend on the tax rate. The interesting conclusion from their analysis is that since the penalties for evasion tend to correlate with the amount of tax evaded, a high tax rate actually gives rise to lower evasion, so long as there is a reasonable chance of detection and prosecution.

Under this model, and given a set tax rate, enforcement policy must center on improving the detection rate through more audits, and/or increasing penalties for evasion. Franzoni (1998) points out that since increasing audits has resource implications for government, while increasing penalties does not, this leads to the conclusion that the optimal policy is to infrequently impose draconian fines. Some researchers argue that a slightly more sophisticated policy, which uses the revenue audit selectively, is preferable. For example, Reinganum and Wilde (1985) show that where an audit results directly from reported income being low relative to taxpayer

norms, this will have a deterrent effect, which will increase net revenue from the tax concerned.

Settlements and amnesties are complementary tools used by the taxing authorities to maximise revenue. Settlements occur where that part of the revenue service charged with collecting tax reaches an agreement with a particular taxpayer, based on the individual circumstances of the case, whereby the taxpayer will "settle" his tax liability by payment of an agreed lump sum which is less than the full tax and penalties which could accrue under the anti-evasion rules in force. The taxpayer agrees to pay, and not contest or appeal the facts of the case, and the revenue service agree not to pursue the full potential liability.

An amnesty is a more general form of settlement, applying identical terms to a wide range of taxpayers. It may apply to a particular class of income, such as offshore accounts, to specific non-compliance such as filing of returns or record-keeping, or to under-declared income more generally. The terms offered may be a waiver of interest and penalties, or in some cases the application of a lower than statutory tax rate to the income concerned. In all cases amnesties are introduced without prejudice to the government's powers to collect tax, and with a set time limit in which taxpayers are invited to avail of their terms. Tax amnesties have been applied in many countries, including Argentina, Australia, Austria, Belgium, Bolivia, Chile, Columbia, Ecuador, Finland, France, Greece, India, Italy, Pakistan, Panama, Peru, Portugal, Mexico, Switzerland, and more than half of the United States of America[1].

A standard criticism of both settlements and amnesties is that they foster opportunism among taxpayers, providing an incentive to under-declare income, secure in the belief that officially-sanctioned penalties will not be applied in full. Macho-Stadler and Perez-Castrillo (2002) disagree, applying a principal-agent model to settlements, and concluding that even where settlements are widely anticipated by taxpayers, it may be ex-ante optimal for the tax administration to commit to their

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[1] Source: Intriago 1999.

use when they have some credible signal about the true level of the taxpayers' income.

Amnesties are often held to have stronger demotivation effects on compliant taxpayers, since they apply across the board and do not rely on any taxpayer-specific information. However, researchers such as Marchese and Privileggi (1999) provide an economic justification for their use, drawing on the economic theory of plea bargaining, noting that they save the tax administration the time and effort involved in convicting tax evaders. They further observe that most amnesties offer greater savings in terms of tax, interest and penalties to those taxpayers who have most undeclared income. Because of this, in the same way as plea-bargaining, amnesties induce self-selection among the taxpayers who choose to avail of the amnesty, maximising participation by the more "guilty".

Marchese and Cassone (1998) have an interesting approach to the analysis of tax amnesties, seeing them as a form of price discrimination by government. Their thesis is that by paying tax, taxpayers are effectively buying immunity from prosecution for tax evasion. In this context, an amnesty can be seen as offering the same "service" to previously non-compliant taxpayers at a discount. Thus in the same way as price discrimination can be an optimal strategy commercially, as long as the premium market is unaffected by the presence of the discount product, even perfectly-anticipated tax amnesties can be a sound government strategy.

Against this must be set the more qualified support for amnesties in Torgler and Schaltegger (2002) who find them to be most effective when combined with an increase in penalties for non-compliance, and when they do not recur, so that taxpayers' anticipation of a future amnesty does not induce further under-reporting of income.

The Allingham and Sandmo (1972) model earlier described has been criticized[2] on the basis that it assumes taxpayers are perfectly amoral. To the extent that ethics or social factors influence compliance rates, the level of evasion could be far lower than previously predicted. Galbati and

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[2] For a discussion on this topic, see Franzoni (1998:7)

Zanardi (2001) in an empirical analysis of Italian taxpayers' attitudes find that the decision of taxpayers on how much income to declare and how much to evade is centred, rather than on risk-aversion and the likely penalties for non-compliance, on attaining an average after-tax income close to the mean for their socio-economic peers. In this model, where evasion is prevalent and after-tax income is correspondingly high, more taxpayers are encouraged to mirror the "normal" behaviour and evade some tax. Tyran and Feld (2002) use an experimental model to reach similar conclusions, finding that even where sanctions against tax evasion are not severe, taxpayers tend to report income fully if they expect others to do the same.

Achieving this level of social norming on tax compliance is clearly desirable from a government. Tyran and Feld (2002,4) note that the work of social psychologists suggests that social norms must be activated, or brought to mind before they can influence behaviour. They observe that this can be achieved either by deliberate reminders or by more subtle measures, such as observation of the behaviour of others. For example, several field studies[3] find that people are far less likely to litter in a clean, non-littered environment. This latter effect can only be applied to tax compliance if the revenue or government makes compliance levels overtly visible to taxpayers. One way to approach this is by publishing aggregate data on tax compliance, where this is high. Arguably, however, higher visibility can be obtained by stigmatizing tax evasion through "naming and shaming" of high-profile individuals. This approach has been followed in both South Africa and Ireland, as discussed further below.

A further contribution to taxpayer alienation may perversely lie in the very legislation introduced to encourage compliance. Franzoni (1998) recommends that legislatures avoid countering evasion by increasing the complexity of tax regulations, because this will increase compliance costs for taxpayers. He notes that:

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[3] See for example (Cialdini et al 1990).

> High compliance costs, which may be due to complex tax schedules and rates, not only tilt the "cost-benefit analysis" towards evasion, but may also generate resentment, weakening taxpayers' moral conscience or even prompting them to evade as a form of "punishment" for the tax administration.
> (Franzoni 1998, 16)

Some researchers[4] argue that it is unlikely that taxpayers will use evasion as a form of protest, given that this could more easily and effectively be achieved by voting the offending government out of office. However, McGee (1999, 156) points out that:

> … .. a wasteful public sector or government cannot easily be changed via the ballot box. The literature that has been generated by the Public Choice School of Economics over the last thirty years makes that clear.

Given that anti-avoidance legislation tends to take over-arching precedence over a complex array of specific provisions in the tax code, this is a real risk in both South Africa and Ireland.

III : The Case of South Africa

3.1: Background

The birth of the new democratic South Africa in April 1994 when the ANC government was installed with President Nelson Mandela at its head, brought to an end an era of isolation and economic sanctions for the country. Since 1994, many aspects of South African society have undergone significant reform, including the tax system.

The aggressive use of tax avoidance schemes, often based on sophisticated financing structures, had become widespread in South Africa during the 1980s and involved significant losses of tax revenue. The tax reform process during

[4] Mainly arguing from an ethical perspective, such as Tamari (1998).

the years 1994 to 1999 was mainly concerned with the administration of the tax system, the collection of taxes and closing the tax-gap.

3.2: Tax avoidance and evasion

The South African Income Tax Act 58 of 1962 contains a general anti-avoidance provision and a number of specific anti-avoidance provisions that the Commissioner for the South African Revenue Service (SARS) may use against tax avoidance schemes. These provisions have been introduced and have evolved over many years, often in response to decisions of the courts.

Section 103(1) is the general anti-avoidance provision. The Commissioner may use its provisions to determine the liability of a taxpayer who has entered into a transaction which has the effect of avoiding his tax liability if there is an element of abnormality about the transaction and if his sole or main purpose in entering into the transaction was to avoid, postpone or reduce his tax liability. Where the provisions of s 103(1) can be applied to a tax avoidance scheme, the Commissioner is entitled to determine the taxpayer's liability tax as if the transaction had not been entered into or in whatever manner he deems appropriate.

As the use of tax avoidance schemes became widespread, the successful application of the provisions of s 103(1) to counter the schemes became more difficult because various elements of the schemes were so commonplace that it was difficult for the Commissioner to argue that they were abnormal. A business purpose test was therefore introduced into s 103(1) in 1996. In the case of a transaction entered into in the context of business, the requirements of the business purpose test will be satisfied if either the transaction was entered into in a manner which would not normally be employed for bona fide business purposes, other than the obtaining of a tax benefit, or if the transaction has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction of the nature of the transaction in question.

Although the Duke of Westminster principle that a taxpayer cannot be compelled to pay an increased tax has been

accepted by the courts in South Africa, tax avoidance schemes have been under attack in South Africa in recent years.

Gordhan (1999), the Commissioner for the South African Revenue Service, in an article written whilst he was still Deputy Commissioner, quoted from Plato's Republic in support of the view that paying less tax is unjust:

> When there is an income tax, the just man will pay more and the unjust less on the same amount of income.

Outright disapproval of tax avoidance has been shown in the judgments in a number of cases involving tax avoidance schemes, for example, in CIR v Ocean Manufacturing Ltd tax avoidance was referred to as a mischief that needs to be suppressed.

The South African courts have concerned themselves with the question of the substance of a transaction as opposed to its form and have not hesitated where appropriate to rend aside the veil in which a transaction is wrapped and to examine its true nature and substance. In Erf 3183/1 Ladysmith (Pty) Ltd and Another v CIR, the principle of substance over form was applied to ignore the tax avoidance scheme in question: it was therefore not necessary for the court to consider whether the anti-avoidance provisions of s 103(1) could be applied to the scheme.

3.3: Revenue Powers and Penalties

The Commissioner for the South African Revenue Service has extensive powers that enable him to obtain information for the purposes of an audit or inspection and to call on a taxpayer's business premises during normal working hours, with reasonable prior notice, in order to obtain information or documents. In addition, on application to a judge of the High Court, a warrant may be issued authorizing an officer to enter and search any premises or to search any person on the premises for the purposes of obtaining any documents or information. Any relevant information or documents may be seized during a search. (Sections 74A and

74B.) These powers reflect the solution identified by Franzoni (1998) of draconian powers that are rarely applied.

SARS makes extensive use of audits to improve collections. The 2003 SARS Annual Report states that risk profiling has been introduced to improve audit effectiveness. The audit process has been enhanced by the use of the SESAM audit tool that enables auditors to scrutinize and select from data within a taxpayer's business systems. The value of additional assessments raised by the SARS auditors amounted to R20.7 million for the 2003/03 fiscal year, being an increase of 101% on the amount for the 2001/02 fiscal year. The findings of Reinganum and Wilde (1985) are clearly being applied by SARS: audit is being used both as a deterrent and as a detection tool.

The Income Tax Act provides for penalties for tax evasion that include fines or imprisonment for a period of up to five years (section 104). Additional tax of up to twice the amount properly payable on the amount evaded may be levied (section 76).

3.4: Settlements and Amnesties

The South African Income Tax Act provides remedies for taxpayers who are aggrieved by their tax assessments. Subject to certain requirements, an aggrieved taxpayer may object to an assessment (section 81). If the taxpayer's objection is unsuccessful, he may then appeal either to the special board for hearing income tax appeals (if the tax in dispute is below a certain amount, currently R30,000) or to the tax court. From the tax court both the taxpayer and the Commissioner have the right of appeal to the High Court and on to the Supreme Court of Appeal, where necessary.

To expedite the settlement of disputes between SARS and taxpayers without the necessity of going to court, there is a dispute resolution process that enables the Commissioner to settle disputes with taxpayers where this would be to the advantage of the state (section 107B).

There have been two amnesties in South Africa since the change of government in 1994. The first amnesty, announced in 1995, was aimed at persons who had not previously registered as taxpayers. The Katz Commission had

recommended in its first interim report that an amnesty be introduced, for a number of reasons.

There was a possibly valid argument that previously disenfranchised people should not have had to pay taxes under the prior system of government and should be encouraged to come forward and register without being penalized. The attraction of additional people into the tax system would result in additional revenue for the fiscus.

The concept of an amnesty was familiar as the introduction of the new political dispensation had resulted in the use of amnesties in other spheres of human activities in South Africa. An extensive media campaign was launched to promote the amnesty that resulted in a response described by government as gratifying although there were many people who chose not to take advantage of the amnesty. By the time that the period for making amnesty applications closed 23,200 applications had been received.

The second amnesty was announced in 2003 and was aimed at assisting taxpayers who had transgressed the South African exchange control regulations by transferring funds offshore without proper authorization. As a result of the introduction of the worldwide basis of taxation in South Africa in 2001, those taxpayers found themselves in the difficult position that if they declared their offshore earnings for tax purposes, their transgression of exchange control regulations would be revealed.

As the final date for the submission of amnesty applications is 29 February 2004, it is not possible at the time of writing this article to assess the success of this amnesty, either in terms of the number of taxpayers who take advantage of it or in the amounts of offshore funds declared and effectively brought into the tax net.

3.5: Group Norming Techniques

SARS is committed to broadening the tax base and improving the tax compliance culture of South Africans. In its 2003 Annual Report, SARS estimates that of an estimated 11.3 million individuals economically active in South Africa, only 7.4 million are known to SARS, leaving 3.9 million individuals who are not registered for tax purposes.

The two amnesties that were made available to errant taxpayers were highly visible ways of attempting to encourage them to come into the tax system and to influence attitudes to tax compliance generally.

Naming and shaming is another of the tools that have been used by SARS in its efforts to broaden the tax base. The ability of SARS to utilize this tool is, however, restricted by the secrecy provisions in the tax legislation. The Commissioner and officers employed by SARS are bound by strict secrecy provisions with regard to the tax affairs of taxpayers (for example, section 4 of the Income Tax Act that prohibits disclosure of information except in limited circumstances).

Provision is, however, made for the publication of the names of offenders in certain circumstances (section 75A) and for the reporting of unprofessional conduct by tax advisers to their professional bodies (section 105A). Despite frequent complaints by SARS that professional advisers assist taxpayers in their transgressions, few reports in terms of section 105A have been made by SARS in the past.

In recent years, a number of high profile taxpayers who have been involved in disputes with SARS have found themselves in the media spotlight whilst still in negotiation with SARS. It appears that eagerness to 'make an example' of errant taxpayers has sometimes resulted in secrecy provisions being somewhat overlooked.

IV : The Case of Ireland

As in the case of South Africa, this section sets out a brief background to the tax system in Ireland, outlines the distinction as it applies between tax avoidance and evasion, and describes the use of the various techniques to combat the problem of evasion.

4.1: Background

Since Ireland's independence from Britain in 1922, it has followed a number of fiscal strategies to improve the economy, the most recent of which centres on attracting foreign direct investment through low corporate tax rates and a

generous system of grants to new businesses[5]. Personal Income tax rates have been, by contrast, rather high, with marginal rates as high as 56% in the 1990s. This has created considerable incentives over the years to under-declare personal income. Most employees pay tax at source,[6] while self-employed individuals and company directors have always had wider scope for evasion.

4.2: Avoidance and Evasion

Specific anti-avoidance rules in Ireland have largely developed as a response to case-law, with legislation hastily introduced to close loopholes highlighted by cases found in favour of the taxpayer. Since the legal and tax rules in Ireland and Britain share a common origin, it is not uncommon for Irish legislation to be introduced in reaction to a UK case. The general anti-avoidance provisions arose indirectly, in a similar way.

As in South Africa, the original guiding case was that of the IRC v The Duke of Westminster, ruling every taxpayer is entitled to take reasonable steps to arrange affairs so as to minimise his or her tax liability. The landscape changed following the UK cases of W.T. Ramsay Ltd. v. IRC, Eilbeck (IoT) v Rawling (1981, STC1 74) and Furniss v Dawson (1984, STC 153)[7] in which the principle of fiscal nullity was applied by the UK courts to look through the legal form of the transactions, and to infer that the substantial purpose was to avoid tax. In a subsequent landmark Irish case, McGrath vs McDermott (3 ITR 683)[8], in which a paper loss was offset against a real gain, the Irish courts diverged from their UK counterparts, and found in favour of the taxpayer, rejecting fiscal nullity.

This led directly to the introduction in Ireland of general anti-avoidance legislation in section 86 of the Finance Act 1989 (now 811 of the 1997 Taxes Consolidation Act), with the stated

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[5] See Gottheil (2003) for a comprehensive review of the evolution of the Irish economy.
[6] Under the PAYE (pay as you earn) system.
[7] All available in Saunders and Dolton (2003).
[8] Available in Irish Tax Reports, Butterworths.

purpose of counteracting schemes with little or no commercial reality, motivated primarily by a desire to avoid tax.

Essentially, S.811 allows the revenue commissioners, where they form the opinion that a transaction or series of transactions amounts to a "tax avoidance transaction", to calculate the tax advantage arising therefrom, and make whatever adjustments necessary to recover the lost revenue. The primary test is that of commercial purpose. An arrangement cannot be categorised as a tax avoidance transaction if the primary purpose was business rather than tax planning, or if it is a response to a specific tax incentive. The legislation is sweeping in its scope, affording the Irish Revenue Commissioners a great deal of discretion to look through the legal form of any series of deals to divine the underlying substance of transactions.

Clearly this has posed a significant threat to aggressive tax planning. However, Judge (1998,427) notes that almost ten years after its introduction, there were no known cases in which it had been fully applied to the point of a final settlement. This may be a deliberate policy on the part of the Revenue Commissioners. Cooke (1995, 1363) argues that the general anti-avoidance legislation constitutes "a far more potent instrument as long as it remains an untested threat".

Certainly the threat remains. Current advice in practitioner journals is typified by Fitzgerald (1999, 182) which recommends taking advantage of all possible legislative opportunities, "while sailing close to the S.811 wind". O'Hanlon (1999) describes the legislation as hanging like a sword of Damocles over tax avoidance schemes. He also questions the fact that it has never been tested, and notes that it would be ironic if it were rejected by the courts and found to have more form than substance. Unsurprisingly, there is widespread opposition to the law among Irish tax practitioners. Carr (1998) describes it as bad law, suggesting that the professional institutes should campaign for its removal.

While the Irish tax authorities officially distinguish between tax avoidance and evasion, their attitude to both appears equally jaundiced. Taylor (2003, 13) quotes Michael O'Grady, one of the three Irish Revenue Commissioners as saying:

> What is objectionable to Revenue is an attitude that regards the tax code as fair game to be combed through for gaps or unintended effects

This illustrates what Kelly (1999) calls the "Irish Revenue's obsession with legitimate tax avoidance and tax planning rather than evasion".

4.3: Revenue Powers and Penalties

Revenue audits were introduced in Ireland in 1988, and can range from a desk audit covering a specific tax head or aspect of compliance to a full comprehensive field audit, involving a visit to the taxpayer's premises, and examination of records. It was widely known at the time of introduction that the probability of incurring an audit was increased if reported income was low relative to industry norms, exploiting the revenues informational advantage.

The number of field audits has declined slightly but steadily in recent years, while total return from the audits has increased, as taxpayer selection becomes less random. In March, 2003 the Irish tax authorities commissioned risk analysis software will be introduced in early 2004 for selection of cases for audit. All taxpayers are assigned a risk score, by reference to their filing and payment records, and their reported income is compared to that of taxpayers in similar industry/size categories.

Inter alia, the system aims to target risky cases in a timely way, and reduce contact with compliant taxpayers. In this way, as in South Africa, the Irish Revenue are applying the findings of Reinganum and Wilde (1985), and using audit as a deterrent as well as a detection tool. Random audits also continue to feature, with each tax district selecting some taxpayers for audit at random in each year, accounting for a total of about 2.5% of all audits.

On an audit, the revenue officials have power to enter a premises, demand records going back six years, and to enquire from anyone on the premises who might reasonably have information on the taxpayers liability, including employees and customers. The powers are sweeping, but seldom used. In that

respect they echo the optimal solution identified by Franzoni (1998) of draconian powers, rarely applied.

The most recent report by the Office of the Comptroller and Auditor General[9] into the anti-avoidance measures taken by the revenue commissioners suggests that the system is “under pressure to cope” and in need of further resource allocation. A particular cause of concern was that up to one third of fines remained uncollected at year end.

4.4: Settlements and Amnesties

The Irish Revenue has always had a policy of assessment, appeal and settlement. A taxpayer who disagrees with a Revenue estimate of tax due may appeal within 30 days to have the case heard before an appeal commissioner, appointed by the Minister for Finance under Section 850 of Taxes Consolidation Act, 1997 (previously Section 156 of Income Tax Act, 1967). If unhappy with the decision of the appeal commissioners, the taxpayer can appeal to the circuit court on a point of fact, or the high court on a point of law. The vast majority of cases are settled at the appeal commissioner stage, however, and in general, some waiving of interest and penalties is implicit in the settlement.

Two general amnesties have been introduced. The first, in 1988, was a general amnesty, under the terms of which errant taxpayers were invited to declare income previously under-reported, and pay a low rate of 15% with no interest or penalties. The amnesty was enormously successful. Over 170,000 people availed of it, and it raised revenue equal to 2.5% of gross domestic product in the year, facilitating cuts in income tax rates over the following years. The response was more than 15 times that which had been anticipated.

A second amnesty was introduced in 1993. The terms were less attractive, and uptake was generally lower. In addition, the amnesty attracted controversy, as the media had begun to cover stories of high-profile political figures involved

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[9] Available online at http://www.irlgov.ie/audgen/PublicationsPDF/2002%20Annual%20Report/Chapter%202.pdf

in tax evasion. All the major political parties in Ireland are now generally against tax amnesties, as a matter of policy.

4.5: Group Norming Techniques

The Irish Revenue's policy is to encourage voluntary compliance:

> Our whole strategy as tax administrators is built around the idea of voluntary compliance – of increasing the stock of "social capital" that prompts people to comply with their tax obligations even when they're unlikely to be found out if they don't. (O'Grady 2003, 8)

In spite of this stated objective, they have taken relatively few steps to shift attitudes to tax evasion in the country. The names of taxpayers who have reached settlement with the tax authorities are published in Iris Oifigiúl[10], the official publication of the Revenue Commissioners. However, this is a paper consisting solely of official government notices, with no circulation outside of professional offices, and is unlikely to achieve social norming through the "name and shame" technique.

In cases where the decision of appeal commissioners in a particular case is of general applicability, and concerns interpretation of some statute, the main findings are published online at http://www.appealcommissioners.ie/ However, this is done in such as way as to protect the anonymity of the taxpayer as far as possible.

More mainstream media coverage was given to a number of high-profile enquiries held into tax evasion through the holding of offshore and non-resident bank accounts. Many of these have come to light indirectly through tribunals of enquiry into government corruption, particularly in the area of planning. In the case of many payments from companies to politicians it was unclear where the money had come from, or whether or not it arose from taxed profits. This led to some

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[10] Available online at http://www.irisoifigiuil.ie/

individual businesses and politicians being castigated in the media for tax evasion.

Since 1986, interest earned on bank deposits held by Irish residents has been subject to a withholding tax called Deposit Interest Retention Tax (DIRT) at the standard rate of 21%, while interest on non-resident accounts is paid free of DIRT. Throughout the 1980s and 1990s, a number of Irish banks encouraged their Irish-resident customers to open non-resident deposit accounts, in order to evade this tax.

Other methods of evading tax being promoted at the time by Irish banks involved depositing funds in accounts held offshore, with a credit facility in place to effectively make the money available in the customers local branch in Ireland. The most notorious of these schemes was operated by Guinness and Mahon, a private bank in Dublin, and involved a number of high-profile political figures holding accounts in Ansbacher Bank in the Cayman Islands. This scheme was co-coordinated by the financial advisor to a former prime minister of Ireland, Charles Haughey, and the political fallout from the uncovering of the list of account holders was substantial. Again, a tribunal was set up to deal with the issue and several individuals were "named and shamed".

A recent example of successful social norming by the Irish Revenue authorities was the environmental levy on plastic bags introduced by the Waste Management Act, 2001. Under this legislation, a 15c levy was imposed at the point of retail sale on lightweight plastic shopping bags. Prior to the introduction of the tax, an extensive media campaign was undertaken, explaining the problems caused by plastic bags entering the waste stream, and exhorting taxpayers to pay the levy or avoid the use of plastic bags, and help to preserve the environment.

Studies such as Killian (2003) show that the advertising campaign helped change taxpayers' attitudes, and reduce dramatically the number of plastic bags in use, with minimal evasion of the levy. Such an approach would be more difficult, though not impossible, for evasion of more mainstream taxes. However, Taylor (2003) explains that as of November 2003, the Irish Revenue intend to start a process to change taxpayer attitudes by appealing to large firms and high-income taxpayers

to adopt "co-operative frameworks" in the spirit of social responsibility. However, he also quotes Michael O'Grady, one of the three Irish Revenue Commissioners as saying:

> If it is wishful thinking to believe that aggressive tax avoidance can be moderated by this approach, then it seems inevitable that there will be an ongoing escalation in both legislative and administrative counter measures. (Taylor 2003, 13)

V : Conclusions

Clearly, Ireland and South Africa have followed a similar path in framing general anti-avoidance legislation in response to case law. Both jurisdictions have granted their tax authorities sweeping powers, and in both cases these are seldom used. In that respect, they follow what Franzoni (1998) described as the logical optimal solution. Senior figures in both taxing authorities have publicly expressed their distaste for tax avoidance as well as tax evasion, and indicated an eagerness to pursue both activities, even though the courts in both countries have recognized the Duke of Westminster principle that a taxpayer cannot be compelled to pay an increased tax.

Both jurisdictions use the threat of audit as a deterrent, in accordance with practices outlined by Reinganum and Wilde (1985), although the Irish Revenue are moving to select audit cases more on the basis of likely underpayment. Both countries use settlements, and have had two general tax amnesties. In Ireland the first amnesty was more successful than the second, in common with international experience. In South Africa the second amnesty has not yet run its course at the time of writing and its success cannot yet be measured. Both jurisdictions are moving towards the wider application of group norming techniques.

To some extent these similarities may be due to the fact that UK common law forms the basis for case precedent in both countries. Nevertheless the contrasts between the countries arguably outweigh this common bond. Ireland is a small homogenous country of four million citizens which has enjoyed political stability for eighty years. South Africa is a very young

democracy, a rainbow nation, with eleven official languages and a population of forty-four million. Given these contrasts, it is striking that two countries have such a similar approach to the issues of evasion and avoidance. It suggests that some universality in Revenue approaches exists.

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