

CENTRE FOR TAX SYSTEM INTEGRITY



Responsive regulation, multilateralism,
bilateral tax treaties and the continuing
appeal of offshore finance centres

Gregory Rawlings



WORKING PAPER 74 • JUNE 2005

**RESPONSIVE REGULATION, MULTILATERALISM,
BILATERAL TAX TREATIES AND THE
CONTINUING APPEAL OF OFFSHORE
FINANCE CENTRES**

Gregory Rawlings

Centre for Tax System Integrity
Research School of Social Sciences
Australian National University
Canberra, ACT, 0200

ISBN 0 642 76874 9
ISSN 1444-8211

WORKING PAPER No 74

June 2005

© Centre for Tax System Integrity, Research School of Social Sciences,
Australian National University 2005

© Commonwealth of Australia 2005

National Library of Australia
Cataloguing-in-Publication data:

Rawlings, Gregory.
Responsive regulation, multilateralism, bilateral tax
treaties and the continuing appeal of offshore finance
centres.

Bibliography.
ISBN 0 642 76874 9.

1. Tax havens. 2. Double taxation - Treaties. 3. Taxation.
4. Tax evasion. I. Centre for Tax System Integrity.
II. Title. (Series: Working paper (Centre for Tax System
Integrity); no. 74).

343.05238

If you would like to make any comments on this working paper please contact the author directly within 90 days of publication.

Disclaimer

This article has been written as part of a series of publications issued from the Centre for Tax System Integrity. The views contained in this article are representative of the author only. The publishing of this article does not constitute an endorsement of or any other expression of opinion by the Australian National University or the Commissioner of Taxation of the author's opinion. The Australian National University and the Commissioner of Taxation do not accept any loss, damage or injury howsoever arising that may result from this article. This article does not constitute a public or private ruling within the meaning of the *Taxation Administration Act 1953*, nor is it an advance opinion of the Commissioner of Taxation.

THE CENTRE FOR TAX SYSTEM INTEGRITY WORKING PAPERS

The Centre for Tax System Integrity (CTSI) is a specialised research unit set up as a partnership between the Australian National University (ANU) and the Australian Taxation Office (Tax Office) to extend our understanding of how and why cooperation and contestation occur within the tax system.

This series of working papers is designed to bring the research of the Centre for Tax System Integrity to as wide an audience as possible and to promote discussion among researchers, academics and practitioners both nationally and internationally on taxation compliance.

The working papers are selected with three criteria in mind: (1) to share knowledge, experience and preliminary findings from research projects; (2) to provide an outlet for policy focused research and discussion papers; and (3) to give ready access to previews of papers destined for publication in academic journals, edited collections, or research monographs.

Abstract

Regulatory dialogue between states with widely diverging tax systems has emerged as a key feature of OECD, IMF and EU initiatives on Offshore Finance Centres or Tax Havens. This has brought together states of differing dimensions in size, population, economy and power. Where there is such a discrepancy in power between states there is often a temptation to assert a command and control regulatory approach. This was the initial reading of the OECD's Harmful Tax Practices Project that identified 35 tax havens - small states in Europe, the Pacific, Indian Ocean and the Caribbean - and demanded that they repeal financial secrecy legislation and commit to exchange of information agreements. As these initiatives have unfolded there has been a transition away from regulation by command and control towards responsive regulatory dialogue in which tax havens have been encouraged to cooperate through engagement and active participation. Based on qualitative research with key stakeholders in OFC jurisdictions and multilateral organisations, this paper explores this transition. It argues that the preservation of tax bilateralism has limited the capacity of multilateral organisations to deploy the full range of regulatory techniques, particularly those involving penalty and coercion. Instead all parties, tax haven states and multilateral institutions, have been confined to the broadest base of the regulatory pyramid. It suggests that while responsive regulation and meta regulatory principles may not provide 'quick-fix' solutions to international tax avoidance, they may offer more enduring policies to manage the sovereign states that seek to legislate for offshore 'loopholes'.

Responsive regulation, multilateralism, bilateral tax treaties and the continuing appeal of offshore finance centres

Gregory Rawlings

Introduction

In 2003 Marc Forme, the Prime Minister of Andorra, commenting on the European Commission's (EC) Savings Tax Directive, observed that ... 'The whole thing does not end with Andorra, Monaco or Liechtenstein. I would like to know what other countries like the United States, Singapore and Taiwan think about the fiscal directive on savings, *because money is volatile and if in the end Europe applies the directive it will see capital flee to these other countries*' (Forme, cited in Lomas, 2003, emphasis added).

The Prime Minister was pointing to the fact that while financiers may use global circuits for transnational business transactions they still follow bilateral routes, moving from country to country in the pursuit of the most advantageous conditions for tax-free investment. The mobility of capital is bound by few multilateral agreements, but is rather liberated by the multiple bilateral policies and conditions set by national governments and their tax systems.

Since 1990, Offshore Finance Centres (OFCs), more commonly known as tax havens such as Andorra, have come under pressure to abolish excessive bank secrecy and implement exchange of information agreements with countries that believe their tax revenues are being undermined by offshore products and services. Tax orientated initiatives pursued by the Organization for Economic Cooperation and Development (OECD) and the European Union (EU) are paralleled by the Financial Action Task Force (FATF) and the International Monetary Fund (IMF), the former concerned with money laundering, the latter with the systemic risk that poorly regulated OFCs pose to the world's financial markets.

This article is concerned with three multilateral initiatives in offshore finance: the OECD's Harmful Tax Practices Project, the EU's Savings Tax Directive and the IMF's offshore finance assessment program. These initiatives have brought together states of widely

differing dimensions in size, population, economy and power. Where there is such asymmetry between states there is often a temptation to assert a command and control regulatory approach. As these initiatives have unfolded however, there has been a transition away from regulation by control and command towards responsive regulatory dialogue in which OFC states have been encouraged to cooperate through engagement and participation.

After discussing its qualitative methodology and reviewing these international initiatives in taxation, this paper covers three main areas. First it suggests that it is erroneous to consider tax haven states as completely unregulated financial spaces. They are regulated but in an asymmetrical alignment to the regulations of OECD countries. Second, these initiatives have moved away from a command and control approach to responsive regulation because a number of key actors, namely the OECD and the EU, lack the enforcement capacities at a multilateral level to ensure compliance if persuasion and cooperation fail. These initiatives have become confined to the broadest base of the regulatory pyramid. Third, this paper discusses the way tax haven states have made commitments through Memoranda of Understanding (MOU) rather than legally enforceable treaties. Due to the international public law principle of estoppel, this makes the enforceability of these commitments even more doubtful. Consequently what started out as multilateral initiatives designed to reduce falling tax revenues in OECD and EU countries, has ended up reinforcing the bilateral system of double taxation treaties, which have become a model for exchange of information agreements. This reinvigorated bilateralism has enhanced the sovereignty of many of these OFC states, leading to their continued appeal as locales from which to organise low tax multinational business ventures.

This article argues that through allowing OFCs to demonstrate their good governance to the world they maintain their client base and sustain an on-going fiscal competition between states for tax revenues. They build upon existing bilateralism in international taxation and the diffuse and fragmented character of international capitalism (Braithwaite & Drahos, 2000, pp. 97-99 & 108-114; Palan, 2003, pp. 181-191). This article concludes by suggesting that responsive regulation and metaregulation of the offshore has the best

chance for success if it moves away from a continued reliance on fiscal bilateralism and towards truly multilateral tax principles.

Methodology

This paper is partly based on interviews with 48 accountants, lawyers, regulators, fund managers, insurers, CEOs, legislators and fiduciaries in Australia, Andorra, Guernsey, France, Samoa and Singapore in a series of research trips between December 2002 and October 2004. Most research participants were either lawyers or accountants. Interviews were semi-structured and open-ended, allowing interlocutors to raise issues that were meaningful and relevant to them. These interviews canvassed the effects of multilateral initiatives to regulate OFCs, changes in client profile and market response, motivations for using offshore structures and cross-border tax planning techniques.

McCahery and Picciotto (1995) show that the specialised knowledge of professionals, particularly lawyers, allows them to mediate the abstract domain of formal rules on the one hand and the financial aspirations of their clients on the other. They are able to interpret unclear laws and take advantage of regulatory diversity that characterises OFC states and national tax regimes for wealthy individuals and corporate clients. Through the practice of lawyering (and this can be extended to cognate professions such as accountancy), rules and regulations can be transformed by a process of ‘indeterminacy’, taking advantage of legal ambiguity (McCahery & Picciotto, 1995, p. 244). This is crucial in understanding multilateral initiatives aimed at curtailing tax haven use. The principles (such as transparency) and rules (for instance, that records must be maintained to an acceptable standard) devised by multilateral organisations and offshore financial authorities are subject to divergent interpretations between regulators and regulatees. It is social actors – lawyers, accountants, fund managers, tax compliance regulators – who frame these contests, through their daily deeds and narrated reflections on their practices.

Methodologically, this paper emphasises the narratives that a cross-section of stakeholders involved in the offshore sector articulate. It is concerned with the stories they tell. These actors are in an ideal position to comment on the offshore, because their practices and

social networks make macro structures possible. It allows the micro to be reconciled with the macro. As Braithwaite and Drahos (2000, p. 14) affirm:

The methodological prescription is to gather data on the most macro phenomena possible from the most micro source possible – individuals, especially individuals who act as agents for larger collectivities.

These agents report that the offshore has embraced regulatory strategies that are both responsive in character and meta in implementation. This has not however, damaged their industry. Rather it has enhanced both offshore finance and offshore statecraft alike.

Offshore Finance Centres and multilateral initiatives: A review

In 1998 the OECD released a report arguing that OFCs encourage tax evasion, facilitate questionable aggressive tax planning strategies, undermine revenue raising systems in member and non-member countries alike, and distort global investment decisions. The OECD identified 12 key features of ‘harmful preferential tax regimes’ (OECD, 1998, p. 33). The report noted that the existence of bank secrecy ‘may constitute one of the most harmful characteristics of a regime. The availability of protection from enquiries by tax authorities is one of the biggest attractions of many harmful regimes’ (OECD, 1998, p. 33). The OECD urged jurisdictions to abolish such laws in the interests of international tax cooperation and information sharing. If they did not commit to ending harmful tax practices then these countries would face ‘defensive measures’ or financial sanctions.

Authorities in the listed jurisdictions expressed concern that this would lock them out of the world’s financial system through placing restrictions on inward/outward bound payments and transactions. They argued that the OECD’s initiatives were an infringement of sovereignty, took advantage of their relative vulnerability as small states, would undermine their economies and offered no alternative development strategies or financial compensation in the wake of lost revenue upon abandoning their financial services industries.

The leaders of the 35 jurisdictions¹, along with regulators and fund managers located in these territories, also argued that the OECD's initiatives would unfairly restrict competition in financial services that would benefit OECD members, particularly those with active 'on-shore off-shores' located in the UK, USA, Japan and Ireland. The OECD was accused of unwarranted intervention in the 'most jealousy guarded aspect of national sovereignty' of all: taxation (Picciotto, 1999, p. 70). Owen Arthur the Prime Minister of Barbados, described the OECD as 'institutional imperialists' and the proposals as 'tyrannical' (Hetherington-Gore, 2000). Prominent politicians on the Isle of Man threatened a unilateral declaration of independence in response to the OECD initiative (O'Sullivan, 1999). The Premier of the South Pacific island nation of Niue, Sani Lakatani, asked rhetorically 'what about Switzerland ... Luxembourg ... and the US state of Delaware?' (Australian Broadcasting Commission, 2001). The Premier was alluding to the fact that Switzerland and Luxembourg, both leading world finance centres and prominent members of the OECD, refused to endorse the organisation proposals and avoided inclusion on the list of tax havens.

Despite this initial opposition, the OECD and 30 of the listed tax havens entered into dialogue over these proposals, leading to a series of global and regional fora and meetings with OECD officials and offshore regulators between 2000 and 2004. They are now engaged in on-going talks to establish common principles of transparency, and standards for exchange of information. The OECD has moved away from a command and control regulatory style to one involving dialogue, with prospects for coercion moved into the background.

The OECD was joined by the European Union in 2001 when it announced plans to standardise the cross-border taxation of non-resident interest payments to individuals with bank accounts and other interest bearing investments within the EU (Commission of the

¹ These are as follows (by geographical area): Pacific Ocean - Cook Islands, Marshall Islands, Nauru, Niue, Samoa, Tonga and Vanuatu. Europe - Andorra, Gibraltar, Guernsey/Sark/Alderney, Isle of Man, Jersey, Liechtenstein and Monaco. Caribbean - Anguilla, Antigua and Barbuda, Barbados, Aruba, Bahamas, British Virgin Islands, Dominica, Grenada, Montserrat, Netherlands Antilles, St Lucia, St Kitts and Nevis, St Vincent and the Grenadines, Turks and Caicos Islands and the US Virgin Islands. Central America - Belize and Panama. Indian Ocean - Maldives and Seychelles. Africa - Liberia. Middle East - Bahrain (OECD, 2000).

European Communities, 2001, p. 1). In 2003 the European Commission issued the EU Savings Tax Directive (Commission of the European Communities, 2003). This was to be applied within the EU from 1 January 2005. However, Austria, Belgium and Luxembourg objected to its exchange of information requirements and succeeded in modifying the directive. They have been permitted to levy a withholding tax on non-resident accounts in lieu of releasing client information and/or will offer account holders the option of withholding tax or exchanging information (PriceWaterhouseCoopers, Luxembourg, 2003). This option of exchanging information with EU member states or levelling a withholding tax on interest income was then extended to non-EU member states (Switzerland, Liechtenstein, Andorra, Monaco, San Marino, the British Overseas Territories and the Crown Dependencies of Guernsey, Jersey and the Isle of Man) in an effort to encourage their cooperation with the directive. These non-member states (with the possible exception of the British Overseas Territories) are under no obligation to implement EU directives, but it would be limited in its efficacy if it were confined to EU member states, as residents of the EU could shift their money outside of the Union. However, the EU has limited its negotiations to only a small number of non-member jurisdictions. It does not apply to independent Caribbean, Pacific or South East Asian OFCs.

Because offshore banking had been implicated in currency and financial crises in Latin America in 1994 and South East Asia in 1997, the IMF has become concerned that OFCs, as conduits for poorly supervised speculative transactions, have the capacity to destabilise financial markets on a global scale (Erico & Musalem, 1999). They carried the risk of ‘contagion’, the so-called ‘tequila effect’, where runs on offshore establishments used as investment vehicles into emerging markets lead to rapid financial collapses across markets. Since 2000 the IMF has been making detailed assessments of financial regulation and supervision. It assesses OFC regulation according to international best practice standards such as the Basel Core Principles for Effective Banking Supervision. Where there are deficiencies, the IMF suggests a course of action designed to remedy these. The IMF is interested in capacity building, and concentrates on financial risk and Anti Money Laundering (AML) policies, rather than tax minimisation. Most of its reports are welcomed by OFCs as they usually assert that their regulatory systems are sound or could be

improved. For example, following its assessment of Guernsey's financial sector, the States of Guernsey Advisory and Finance Committee and the Guernsey Financial Services Commission (2003) issued a joint statement affirming:

Guernsey's financial regulation and law enforcement standards are commended in a report published today by the International Monetary Fund (IMF) ... All of these standards have been adopted by Guernsey as the foundations on which to build its reputation as a leading finance centre.

All these three initiatives have brought powerful states and multilateral institutions into negotiations with small OFC states. As one regulator from an OECD country remarked in an interview with the author in Paris in February 2004:

At least once a year governments of places where you'd normally think 'where is that?' basically get to sit down with the large economies and discuss issues that are relevant including tax legislation. At least they get the attention of people they normally wouldn't get the attention of. This has two advantages for them. For one they are at the table with the largest, most developed countries. Second, they are inside the process and they can influence it.

The transition away from enforcement to a management regulatory approach, whereby the 'largest most developed economies' have moved from attempting to dictate policy to small OFC states to incorporating them into policy formulation has been a key characteristic of OECD efforts in offshore tax regulation. The EU has taken a similar approach. The IMF has gone even further, and arguably augmented the market position of key OFCs, through its collaborative capacity building assessments of offshore regulatory regimes. The explanation for this transition does not necessarily lie in either OFC opposition or a decision by multilateral organisations to be more conciliatory in their approach. Rather, enforcing uniform fiscal standards at the top of the regulatory pyramid in a global system of bilateral tax treaties is fraught with difficulties. It has made regulation by persuasion and cooperation at the base of the regulatory pyramid vital.

Regulating responsively offshore

Regulation is not homogenous. Instead there are competing regulatory orders, nodes of governance that Shearing and Wood (2003) have identified, intersecting at vital moments. They also diverge. The regulatory agenda of the OECD, the Australian Taxation Office (Tax Office) or the Internal Revenue Service (IRS) is likely to diverge from the regulatory agenda of a financial services' authority located in an OFC state. The offshore financial services authority is mandated to provide a 'tax neutral' (no or minimal taxes) regulatory environment that is conducive for business. The national revenue authority is commissioned to collect correct amounts of taxation, while multilateral organisations act as a forum to facilitate regulatory coordination between national revenue systems. These are divergent regulatory interests, reflecting multiplicity at national (the revenue authority and the offshore financial services regulator) and supranational (the multilateral organisation) levels. There may be points of convergence between these competing regulatory agendas. For example, all might agree that transparency is important. It is at these points of convergence that collaborative strategies of regulation can be devised. It is these intersections of interest that give the best opportunity for building responsive regulation.

Sensationalist media accounts of tax havens usually imply that they are forms of unregulated fiscal space permitting almost any form of financial dealing imaginable. By implication they are centres of hot money, which is transmitted and remitted across and through their porous borders with no regulatory oversight. Industry stakeholders in leading OFC states disagree with these assessments. One interviewee on Guernsey, commenting on the OECD initiative remarked:

Initially some thought that we were some sort of cowboys who came from Texas, but they soon discovered that we are as professional as anywhere else in the world (Author interview, Guernsey, January 2004).

OFCs could not successfully operate if they were completely unregulated as more sensationalist reports imply. For example the decision by the British government to turn Vanuatu, then the New Hebrides, into a tax haven in 1971-1973 was not evidence of deregulation, but rather regulation. From 1906-1970 there were no banking regulations in

the New Hebrides. When investors started noticing the potential of the New Hebrides as a tax haven in the 1960s there were few regulations of any kind controlling business activity over and above the British Companies Act of 1948. Banks could be incorporated under this act even though it was never designed for that purpose. It was the lack of regulation in the New Hebrides that encouraged the British colonial authorities to pass legislation to convert the territory's tax free status into an OFC (Rawlings, 2004, p. 30).

OFC states therefore are regulated. Their regulations may be at variance with OECD states and they maybe minimal, but they do provide for security of contract and for the protection of property. Andorra for example, has bank reserve requirements to guarantee deposits (IMF, 2002). Guernsey has a comprehensive system of trust regulation (the only formal regulation of trusts anywhere in the world over and above common law provisions of equity and property), while Jersey has an income tax rate of 20 percent. It is thus a misnomer to suggest that all OFC states represent unregulated or poorly regulated spaces. Ayres and Braithwaite (1992, pp. 9-11) demonstrate that many claims of wholesale deregulation are overstated because it is accompanied by the formation of regulatory agencies to monitor and supervise new entities that emerge in the wake of privatisation or deregulation.

When a government decides to take an existing state of fiscal affairs (for instance, no or low taxation) and enacts legislation to provide for an OFC, this is enhanced by the formation of a regulatory authority to supervise transnational business. Leading OFC states, namely the Cayman Islands, British Virgin Islands (BVI), Bermuda, Jersey, Guernsey, and the Isle of Man have followed this pattern. It has also been the case with more specialised private banking centres such as Andorra or niche service providers such as Samoa. By contrast, OFC states that have not been able to effectively supervise offshore business have not been successful. For example Tonga, which had a complete suite of offshore legislation in 2000, did not have effective regulatory capacities to monitor offshore business. The fact that the few ships flying the Tongan flag outside the Pacific were found to be gun-running for the Palestinians further undermined the reputation and viability of the kingdom's OFC. After the OECD published its list of Tax Havens in 2000,

Tonga went further than any other listed jurisdiction and closed down its offshore facilities altogether.

Responsive regulation in the absence of deterrence

In leading OFC states the responsibility for regulation lies with local financial service authorities. Responsive regulation emphasises voluntary compliance through persuasion and cooperation (Ayres & Braithwaite, 1992, pp. 4-5). It takes into account the motivations, problems and conditions of the regulated. Assistance and capacity building are promoted. Threats are de-emphasised. Sanctions should be available and imposable, escalating in ever increasing intensity with recalcitrant non-compliance (Job & Honaker, 2003, p. 113).

Principles of responsive regulation are evident in relations between states. This is most notable within the EU. Individual states have transferred aspects of sovereignty to supranational entities (the EC and the European Court of Justice (ECJ)) making responsive regulation between states possible and effective. It is the supranational EC and ECJ rather than individual member states that have regulatory authority. Tallberg (2002) demonstrates empirically through an analysis of Commission directives, that rule compliance within the EU involves both management (persuasion, negotiation and capacity building) and enforcement (the prosecution of states through the ECJ and the imposition of fines and other financial penalties for non-compliance). However, this capacity to deploy the full range of regulatory techniques is not readily available outside the EU, because of state reluctance to transfer sovereignty for effective rule supervision. While Tallberg has evidence for the efficacy of a combined management and enforcement strategy, he cautions that ‘What is particular about the EU in this comparative perspective is its supranational organisation of enforcement and management’ (Tallberg, 2002, p. 639).

However, the EC cannot enforce its directives outside the EU. As a multilateral institution, the OECD does not possess powers equivalent to either the EU or the UN Security Council. In its 2000 report on harmful tax practices, the OECD listed a number of defensive measures or sanctions that could be taken against non-compliant OFC states

(OECD, 2000, p. 35). These were fiscal and focused on disallowing tax deductions and levelling withholding taxes on remittances to and from OFC states. They were proportionate to the amount of revenue that OECD states felt they were losing to OFC states. The OECD argued that these defensive measures should be coordinated because bilateral or unilateral measures would be limited given ‘a problem that is inherently global in nature’ (OECD, 2001, p. 13). However, while the OECD could propose these coordinated defensive measures, it had no power to enforce them. This has given OFC states considerable leverage in their negotiations. It has also made responsive regulation more salient, partly because command and control regulatory policies are not available to these multilateral and supranational organisations in their dealings with tax havens. This is particularly clear in the way OFC states have been able to ‘comply’ with these initiatives.

Compliance by press release and preclusion by estoppel

Listed jurisdictions could make a commitment to the OECD’s harmful tax practices project by way of Memoranda of Understanding (MOU) using a press release or a public letter. This included a time-line on commitments to transparency, information exchange, the abolition of ring fencing² and refraining from introducing additional harmful tax measures. While commitment by MOU signalled an intention of compliance it was not legally binding like a treaty. Gilmore (2002, p. 555) shows that this has significance for public international law. He suggests that agreement between states using an MOU can have legal consequences given the public international law principle of estoppel. That is if state A signals an intention of commitment to state B and state B relies on it (and relies on it to its detriment if state A reneges on its commitment) then state A is precluded, or estopped, from rescinding its obligation. However, estoppel is only relevant in bilateral relations between states. Gilmore (2002, p. 555) points out that the legal position of the listed OFC states and their MOU commitments is unclear given that the OECD initiative is

² Ring fencing is where domestic companies are taxed at a different rate to offshore companies that might not be taxed at all. This may include differences between local companies that carry out business in a jurisdiction and are taxed on profits and International Business Companies (IBCs) that conduct offshore business and are not taxed on any profits. However, this practice is not restricted to OFC states, but is evident in almost all OECD members as well. For example Australia has an Offshore Banking Regime that taxes non-residents at a lower rate than residents, New Zealand has a category of tax exempt non-resident trust and the United Kingdom does not tax non-resident bond income traded on the London money markets.

multilateral and that it initially emphasised participation by the OECD as an organisation rather than its member states.

Compliance by MOU also assumes that there is a set international standard for cooperation in civil and criminal matters. There is not. There is variation within the OECD itself. For example the OECD Model Tax Convention on Income and Capital circumscribes cooperation between member states. A state can refuse to exchange information on the basis that there is a lack of reciprocity³, if the risk of disclosure would jeopardise business secrets and if disclosure is contrary to public policy (Gilmore, 2002, p. 559). The OFC states, through their MOUs, are asked to go beyond the existing minimum standards that apply to and between OECD states themselves. The listed jurisdictions argued that this was unfair because there was no level playing field between themselves and the OECD. They were asked to implement policies that OECD countries, notably Switzerland and Luxembourg, were not committed to. Most interviewees emphasised that a level playing field was fundamental, and MOU commitments were ultimately contingent on its materialisation. One interviewee on Guernsey said that a level playing field was ‘absolutely vital’ (Interview, Guernsey, 18 December 2003). Another added ‘we have insisted throughout our negotiations that we won’t implement these commitments if the OECD members don’t do so themselves. These larger countries do not enforce the laws that they have sought to impose on other countries such as ourselves’. (Interview, Guernsey, January 2004).

This provision was made explicit in some of the commitment MOUs. For example, in 2002, the commitment from Anguilla stated that the British territory ‘considers the establishment of a level playing field among all OECD countries and also those non-member jurisdictions with which it is materially in competition in the provision of cross-border financial services to be essential’ (Banks, 2002, p. 2). The lack of a level playing field globally has been a major impediment to implementing the commitments in the MOUs. One interviewee, noting this, remarked that ‘the concept of a global level playing field will take a long time, if ever, to achieve’. In the absence of a level playing field ‘there

³ See Braithwaite & Drahos (2000, pp. 20-23) on the principle of reciprocity.

are still a lot of opportunities' for finance centres such as Guernsey to take advantage of (Interview, Guernsey, 18 December 2003). Gilmore (2002) suggests that the commitment to the OECD sets a framework within which dialogue can take place. He states that commitment by MOU can "more appropriately be described as reflecting either standards of an evolving or aspirational nature of perceived 'best practice'" (Gilmore, 2002, p. 560).

With limited multilateral enforcement capacities the OECD and the jurisdictions have now established a framework whereby bilateral exchange of information treaties can be negotiated and ratified between individual and OFC and OECD states. Vanuatu was one of the last jurisdictions to commit by MOU. In its letter to the OECD on 7 May 2003, Vanuatu's Finance Minister, Sela Molissa, affirmed 'Such exchanges shall be achieved under bilaterally negotiated tax information exchange agreements that require the effective exchange of information on specific tax matters pursuant to a specific request' (Molissa, 2003).

Hence what started out as multilateral initiatives have unfolded in such a way as to reinforce bilateralism in international tax relations. The OECD (2002, p. 2, emphasis added) model agreement on Exchange of Information on tax matters affirms that:

The agreement is presented both as a multilateral instrument and a model for bilateral treaties or agreements. The multilateral agreement is *not a 'multilateral' agreement in the traditional sense. Instead, it provides a basis for an integrated bundle of bilateral treaties.*

This goes to the core of the problem as it allows OFC states to make a number of important modifications using bilateral conventions. The OFC states have been brought into the negotiations and in doing so have succeeded in changing a number of OECD requirements on a state-by-state basis, providing precedence for other states to follow suit. For example, in its June 2004 Global Forum on Taxation, which brings OFC states and the OECD together, St Vincent and the Grenadines successfully pushed through two proposals. The first was that the imposition of defensive measures be suspended until a level playing field was achieved. The second was that the discourse of OECD policy was changed. The

requirement that countries ‘should’ exchange information by 2006 has been replaced. They are now ‘encouraged’ to exchange information by that date. St Vincent and the Grenadines interpreted this by deciding not to exchange information by 2006 until the issue of a level playing field was resolved (Lomas, 2004). The MOU commitments signed by 30 out of the 35 OFC states have been substantially modified by these negotiations. This reflects the difficulty of encouraging meta-regulatory principles within a global system of bilateral tax treaties that use OFC states.

Meta principles

International initiatives aimed at ending harmful tax practices effectively transfer regulatory oversight to OFC states. Offshore finance designed to minimise taxes involve volatile risks. As discussed above, it is a misnomer to suggest that OFC states are completely unregulated spaces. Rather, their regulatory frameworks are established in an asymmetrical relationship with onshore regulations (Palan, 1999). By establishing best practice principles these regulatory standards are enhanced and given increased credibility. OFC states that can not implement these principles face crisis and in some cases (for instance Tonga) have closed down. However, this is by no means a predicament for all OFC states. OECD, IMF and EU initiatives involve meta-regulation. Braithwaite (2003, p. 1) defines meta-regulation as the ‘risk management of risk management’ The IMF sees OFC states as potentially destabilising markets and they must be strengthened in order to minimise this risk. Tax administrators in OECD and the EU see them as risks to the integrity of national revenue collection systems. These two risks are not identical, and, in the arbitrage between the two, OFC states reposition themselves as viable entrepots. Multilateral organisations and supranational institutions invest self-regulatory capacities in the OFC states. Tax havens thus regulate themselves with organisations such as the OECD and IMF having broad monitoring functions.

As Braithwaite (2003, p. 3) notes meta-regulation involves ‘shaping the risk management systems of other organisations in the taxpaying environment’. For the OECD this means that OFC authorities must provide a regulatory framework for fund management companies, banks, insurers, trustees and stock exchanges that is transparent. They must

enforce rules for Due Diligence that establish the true identity of their clients. Know Your Customer (KYC) rules need to be implemented. Offshore financial provider firms must demonstrate that they can identify the beneficial owners of the entities that they manage. Meta regulation involves reflexivity, consultation, dialogue, and a responsive appreciation of industry sector. This transfers trust and accountability to local offshore states. For example, as one regulator observed, they used focus on money transfers to and from the Netherlands Antilles. Now that the Netherlands Antilles have committed to the OECD's Harmful Tax Initiative, that 'jurisdiction is not so much of a problem' (Interview, Sydney, August 2002). It does not follow however, that the Netherlands Antilles can no longer offer attractive tax concessions to transnational citizens.

Strategies of regulatory devolution are most successful when the meta regulator has the capacity to escalate 'interventions of ever-increasing intrusiveness' (Ayres & Braithwaite, 1992, p. 6; see also Braithwaite, 2003, p. 13). Braithwaite (2003, p. 14) shows that in their monitoring competencies, meta-regulators scan for risks and move to those areas of highest risk. However, when dealing with OFC states this option is problematic because they are protected by the barrier of sovereignty and the option of bilateralism. These international initiatives have brought small OFC states into a fiscal conversation and in this dialogue the Caribbean nation of St Vincent and the Grenadines has won important concessions from an organisation representing some of the powerful nations on earth. Braithwaite and Drahos (2000, p. 7) affirm that 'Through devising and proliferating alternative models of regulation, the weak create opportunities for themselves to change existing regulatory orders'. However, this sometimes has unintended consequences.

Fiscal bilateralism and the global market for double taxation agreements

Weak states are particularly adept at developing their own alternative regulatory models when they build into a pre-existing system (Duursma, 1996). Globally taxation has been the preserve of the nation state, emblematic of national sovereignty (Braithwaite & Drahos, 2000, p. 89; Picciotto, 1999, p. 70). Braithwaite & Drahos (2000, p. 89) show that the national system of separate taxation systems has 'cost states dearly'. Yet multinational corporations and High Wealth Individuals (HWIs) are not constrained by sovereignty.

Contrasts in national tax regimes, sustained by the intersection of state sovereignty, generate opportunities for tax minimisation on a massive scale. In 1998 a British Parliamentary report estimated that over US\$6 trillion is kept offshore (Edwards, 1998, p. 4). Approximately US\$800 billion alone is domiciled in the Cayman Islands (US\$20 million per island resident) (Sikka, 2003, p. 367). Between US\$3 and US\$4 trillion of HWI (High Wealth Individual) savings are believed to be domiciled in tax havens (Oxfam, 2000, p. 3). In 2000 the IMF estimated that there was a US\$1.7 trillion discrepancy between reported portfolio assets and liabilities caused by channelling funds through OFCs (IMF, 2000). In 2001 the US Internal Revenue Service (IRS) estimated that it loses US\$70 billion per annum due to tax haven activity (IRS, 2001, p. 1). In a study of tax return data from 235 HWIs, Braithwaite, Pittelkow and Williams (2003) found that the use of offshore entities in a jurisdiction that may be a tax haven is a significant risk factor in aggressive tax planning strategies.

These OFC states exist at the 'interface' of world wide tax regimes (Hampton, 1996). They, in fact, take advantage of the bilateral system of Double Taxation Treaties, or Double Taxation Agreements (DTAs) concluded between states. There are now some 1000 DTAs between states (Braithwaite & Drahos 2000, p. 106). They were designed as a way of giving relief to companies for foreign source income to ensure that they would not be taxed twice. While commendable in some respects, the bilateral system of DTAs is fraught with dilemmas for national authorities, and rich with opportunities for transnational citizens.

As tax regulation was never internationalised by way of a multilateral agreement, but rather dichotomised between states in an ever increasing number of DTAs, multinationals could take advantage of diversity in types, rates and definitions of tax. Braithwaite and Drahos (2000, p. 94) note that one consequence of this was that 'Poorly designed and enforced double tax treaties often meant that tax was paid in neither state'. OECD states responded by introducing ever more complex legislation, such as Controlled Foreign Corporation (CFC) rules, which simply exacerbated the problem for them and created more opportunities for multinationals and HWIs to engage in arbitrage and reduce their tax liabilities (Burns, 1992; OECD, 1996; Inglis, 2002). One interviewee explained it by

saying ‘In Singapore you have gift and estate tax, but in the US you only have estate tax, and there, there you have it; the difference in between the two immediately creates opportunities for tax planning’ (Interview, Singapore, February 2004). In Andorra, accountants interviewed specialised in using DTAs. All transactions had to be declared to a client’s home revenue authority. DTAs could then be invoked to reduce tax liabilities in one’s home country from 35 percent to five percent (Interview, Andorra La Vella, December 2003).

Between 2002 and 2004, these multilateral initiatives have unfolded in such a way as to encourage bilateralism rather than multilateralism. As Braithwaite and Drahos (2000, p. 109) affirm ‘Mutual Assistance and information exchange have followed the same pathways laid down by bilateral treaties’. These bilateral treaties have conferred more meta regulatory independence to tax haven service authorities, while renouncing the capacity for enforcement that regulators of self-regulation require, precisely because their own members do not abide by the same standards being asked of the OFC states. This allows OFC states to build upon a key resource that has been deployed in attracting HWI and multinational clients for the past half century: political stability and its accompanying ‘good reputations’.

Compliance and sovereignty

Through complying with these initiatives OFC states reinscribe their reputation and political soundness in the eyes of investors, and they remain jurisdictions characterised by ‘good governance’ meeting the highest international standards and continue to be ideal locales for structuring transnational business ventures. Thus these multilateral initiatives, in creating the possibilities for bilateralism may have the reverse effect of what they originally intended: through allowing OFCs to demonstrate their good governance to the world they maintain their client base and sustain an on-going fiscal competition between states for tax revenues. The preservation of fiscal sovereignty and a redefinition of reputation and governance enhances the viability of key OFCs. These initiatives reinforce the sovereign, because they demonstrate that their systems are robust and well-regulated. MOU declarations followed by the more discrete, confidential and private negotiations

involved in drafting bilateral exchange of information treaties end up legitimising many of the key features that make OFC states so attractive to transnational business and HWIs.

These international initiatives actually strengthen the position of many of these states because they allow them to play upon their own constitutional ambiguity. For example, the capacity to conclude bilateral and multilateral treaties is usually confined to fully independent states. In the case of Guernsey, the United Kingdom would normally sign treaties on behalf of the island. In February 2003 however, Guernsey (together with the Isle of Man and Jersey) signed a bilateral tax information exchange agreement with the United States. While 60 percent of respondents on Guernsey reported that these initiatives, leading to greater participation in bilateral exchange of information agreements, were having an impact on their firms, not one said that they were affecting the long-term viability of their business or the offshore sector. The most noticeable effect was increased compliance costs associated with due diligence checks, an increased number of mergers and acquisitions and a consolidation of the very wealthy end of the market. One trustee said that these initiatives are ‘going to be good for Guernsey’, because they are proving that small trust companies can compete and retain clients, while enabling them to diversify into the HWI market (Interview, Guernsey, 30 January 2004). Another said these initiatives allow OECD and EU countries:

... to strike up bilateral relationships with smaller territories. The EU Savings Tax Directive allows us to have treaties of information exchange with the EU members proving that the island can deal internationally. The EC can make prejudicial rulings that disadvantage members in their international relationships, for example a tax agreement between Dublin or Luxembourg and Brazil. This does not apply to the Channel Islands. We can deal directly with Brazil if we want to. The more bilateral relationships we have the better. They also provide a contribution as to how one should regulate to the best standards internationally. This is good for Guernsey (Interview, January 2004).

Conclusion

When these initiatives were first announced scholars argued that the offshore faced a significant threat of erosion (Hampton & Christensen, 2002, p. 1667). This assessment is salient as a number of states have abolished their offshore facilities, reduced the number of offshore financial products or experienced a serious loss of business to the point where their continued viability is doubtful. Reports from some Caribbean OFC states indicate that the compliance costs of enhanced due diligence now exceed government earnings from hosting an offshore facility. Yet other OFC states continue to prosper, particularly Guernsey, Jersey, the Isle of Man, Bermuda, the BVI and the Cayman Islands, alongside unlisted centres of international private banking such as Singapore.

Through complying with the OECD, the EU and the IMF, Guernsey and other jurisdictions enhance their own positions in the international community. They reinscribe their reputations as ideal centres from which to base and trade highly mobile financial capital. Meta-regulation is encouraged by placing trust in the self-regulatory capacities of offshore financial service authorities, while following a pre-existing bilateral model. Their behaviour, as Palan (2003) suggests, is a response to the contemporary fusion of modern capitalism and the paradoxes of international relations. Important changes are taking place however. Due diligence and KYC procedures mean that transparency has been improved. It is not completely unforeseeable that OECD revenue departments will not be able to exchange information with OFC states on tax matters. Secrecy can no longer be used as a sacrosanct veil concealing complex tax planning strategies. However, secrecy and transparency may not be necessary in a fiscal world of competing national bilateralisms on the one side, and global business transactions that dissolve national borders on the other. Through preserving a system based on two contradictory trends – sovereignty and fiscal mobility – national governments may increasingly lose control of their ability to tax multinational profits. What may be needed is not a continued reliance on bilateral treaties, but a truly multilateral approach that goes beyond a reliance on shaky MOUs and the assurances of good corporate governance offshore. Only then will the onshore regulators of offshore regulators be able to devise a truly meta format that brings the taxes in for all to fairly partake.

REFERENCES

- Australian Broadcasting Commission. (2001). *Pacific island states may escape OECD sanctions*. Asia-Pacific Report, June 1 Radio Broadcast.
- Ayres, I., & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Deregulation Debate*. New York: Oxford Univ. Press.
- Banks, V. (2002). *Commitment of Anguilla*. The Valley: Government of Anguilla.
- Braithwaite, J. (2003). Meta risk management and responsive regulation for tax system integrity. *Law and Policy*, 25, 1–16.
- Braithwaite, J., & Drahos, P. (2000). *Global Business Regulation*. Cambridge: Cambridge Univ. Press.
- Braithwaite, J., Pittelkow, Y., & Williams, R. (2003). Tax compliance by the very wealthy: Red flags of risk. In V. Braithwaite (Ed.), *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Burlington: Ashgate.
- Burns, L. (1992). *Controlled Foreign Companies: Taxation of Foreign Source Income*. Melbourne: Longman Professional.
- Commission of the European Communities. (2001). *Proposal for a Council Directive to Ensure Effective Taxation of Savings Income in the Form of Interest Payments within the Community*. Brussels: Commission of the European Communities.
- Commission of the European Communities. (2003). *Taxation: Commission Welcomes Adoption of Package to Curb Harmful Tax Competition*. Brussels: Commission of the European Communities. Press Release 09 June 2003. Available at http://europa.eu.int/pol/tax/index_en.htm.

Duursma, J. (1996). *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood*. Cambridge: Cambridge Univ. Press.

Edwards, A. (1998). *Review of Financial Regulation in the Crown Dependencies: A Report*. London: Home Office of the United Kingdom of Great Britain & Northern Ireland.

Errico, L., & Musalem, A. (1999). Offshore Banking: An Analysis of Micro and Macro Prudential Issues, *IMF Working Paper WP/99/5*. Washington DC: International Monetary Fund (IMF).

Gilmore, W. (2002). The OECD, harmful tax competition and tax havens: Towards an understanding of the international legal context. *Commonwealth Law Bulletin*, 27, 548–571.

Hampton, M. (1996). *The Offshore Interface: Tax Havens in the Global Economy*. Houndmills & New York: MacMillan Press & St. Martin's Press.

Hampton, M., & Christensen, J. (2002). Offshore pariahs? Small island economies, tax havens and the re-configuration of global finance. *World Development*, 30, 1657–1673.

Hetherington-Gore, J. (2000). Barbados PM leaps to defend Offshore Financial Centres. *Tax-News.com June 2*. Available at <http://www.tax-news.com>.

Inglis, M. (2002). Why the ATO is auditing again. *Butterworths Weekly Tax Bulletins*, September, 1–9.

International Monetary Fund (IMF). (2000). *Global Portfolio Investment Survey*. News Brief No. 00/8. Washington DC: International Monetary Fund (IMF).

International Monetary Fund (IMF). (2002). *Andorra: Assessment of the Supervision and Regulation of the Financial Sector*. Washington DC: International Monetary Fund (IMF).

Internal Revenue Service (IRS). (2001). *IRS Commissioner Charles O. Rossotti's Oral Statement Before the Senate Finance Committee*. IRS News Release: Release No: IR-2001-45, Washington DC. IRS, April 5 2001.

Job, J., & Honaker, D. (2003). Short-term experience with responsive regulation in the Australian Taxation Office. In V. Braithwaite (Ed.), *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Burlington: Ashgate.

Lomas, U. (2003). Europe's Low-Tax Territories Watch and Wait. *Tax-News.com* January 21. Available at <http://www.tax-news.com>.

Lomas, U. (2004). OECD backs off sanctions on offshore jurisdictions. *Tax-News.com* November 24. Available at <http://www.tax-news.com>.

McCahey, J., & Picciotto, S. (1995). Creative lawyering and the dynamics of business regulation. In Y. Dezalay, & D. Sugarman (Eds.), *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets*. New York: Routledge

Molissa, S. (2003). *OECD Harmful Tax Initiative*. Port Vila: Government of the Republic of Vanuatu.

Organization for Economic Cooperation and Development (OECD). (1996). *Studies in Controlled Foreign Company Legislation*. Paris: OECD.

Organization for Economic Cooperation and Development (OECD). (1998). *Harmful Tax Competition: An Emerging Global Issue*. Paris: OECD.

Organization for Economic Cooperation and Development (OECD). (2000). *Towards Global Tax Co-operation: Report of the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs: Progress in Identifying and Eliminating Harmful Tax Practices*. Paris: OECD.

Organization for Economic Cooperation and Development (OECD). (2001). *The OECD'S Project on Harmful Tax Practices: The 2001 Progress Report*. Paris: OECD.

Organization for Economic Cooperation and Development (OECD). (2002). *Agreement on Exchange of Information on Tax Matters*. Paris: OECD.

Organization for Economic Cooperation and Development (OECD). (2004). *The OECD'S Project on Harmful Tax Practices: The 2004 Progress Report*. Paris: OECD.

O'Sullivan, J. (1999). It's not all cats and kippers. *The Canberra Times*, 3 March.

Oxfam. (2000). *Tax havens: Releasing the hidden billions for poverty eradication. Oxfam Briefing Paper*. Oxford: Oxfam.

Palan, R. (1999). Offshore and the structural enablement of sovereignty. In M. Hampton, & J. Abbott (Eds.), *Offshore Finance Centres and Tax havens: The Rise of Global Capital*, Basingstoke: Macmillan.

Palan, R. (2003). *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*. London: Cornell Univ. Press.

Picciotto, S. (1999). Offshore: The state as legal fiction. In M. Hampton, & J. Abbott (Eds.), *Offshore Finance Centres and Tax havens: The Rise of Global Capital*. Basingstoke: Macmillan.

PriceWaterhouseCoopers. (2003). *European Council Adopts the Savings Directive*. Luxembourg: PriceWaterhouseCoopers.

Rawlings, G. (2004). Laws, liquidity and eurobonds: The making of the Vanuatu tax haven. *The Journal of Pacific History*, 39, 325–341.

Shearing, C., & Wood, J. (2003). Nodal governance, democracy and the new 'denizens', *Journal of Law and Society*, 30, 400–419.

Sikka, P. (2003). The role of offshore financial centres in globalization. *Accounting Forum*, 27(4), 365-399.

States of Guernsey Advisory & Finance Committee and Guernsey Financial Services Commission. (2003). *Guernsey Secures Independent, International Commendation for Regulatory and Law Enforcement Standards*. St. Peter Port: States of Guernsey.

Tallberg, J. (2002). Paths to compliance: Enforcement, management, and the European Union. *International Organization*, 56, 609–643.

**THE CENTRE FOR TAX SYSTEM INTEGRITY
WORKING PAPERS**

- No. 1. Braithwaite, V., & Reinhart, M. *The Taxpayers' Charter: Does the Australian Taxation Office comply and who benefits?* December 2000.
- No. 2. Braithwaite, V. *The Community Hopes, Fears and Actions Survey: Goals and Measures.* March 2001.
- No. 3. Braithwaite, V., Reinhart, M., Mearns, M., & Graham, R. *Preliminary findings from the Community Hopes, Fears and Actions Survey.* April 2001.
- No. 4. Mearns, M., & Braithwaite, V. *The Community Hopes, Fears and Actions Survey: Survey method, sample representativeness and data quality.* April 2001.
- No. 5. Sakurai, Y., & Braithwaite, V. *Taxpayers' perceptions of the ideal tax adviser: Playing safe or saving dollars?* May 2001.
- No. 6. Wenzel, M. *The impact of outcome orientation and justice concerns on tax compliance: The role of taxpayers' identity.* June 2001.
- No. 7. Wenzel, M. *Misperceptions of social norms about tax compliance (1): A prestudy.* June 2001.
- No. 8. Wenzel, M. *Misperceptions of social norms about tax compliance (2): A field-experiment.* June 2001.
- No. 9. Taylor, N. *Taxpayers who complain about paying tax: What differentiates those who complain from those who don't?* June 2001.
- No. 10. Wenzel, M. *Principles of procedural fairness in reminder letters and awareness of entitlements: A prestudy.* June 2001.
- No. 11. Taylor, N., & Wenzel, M. *The effects of different letter styles on reported rental income and rental deductions: An experimental approach.* July 2001.
- No. 12. Williams, R. *Prosecuting non-lodgers: To persuade or punish?* July 2001.
- No. 13. Braithwaite, V. *Tensions between the citizen taxpaying role and compliance practices.* July 2001.
- No. 14. Taylor, N. *Understanding taxpayer attitudes through understanding taxpayer identities.* July 2001.
- No. 15. Shover, N., Job, J., & Carroll, A. *Organisational capacity for responsive regulation.* August 2001.

- No. 16. Tyler, T. R. *Trust and law-abidingness: A proactive model of social regulation*. August 2001.
- No. 17. Genser, B. *Corporate income taxation in the European Union: Current state and perspectives*. August 2001.
- No. 18. McBarnet, D. *When compliance is not the solution but the problem: From changes in law to changes in attitude*. August 2001.
- No. 19. Schneider, F., Braithwaite, V., & Reinhart, M. *Individual behaviour in Australia's shadow economy: Facts, empirical findings and some mysteries*. September 2001.
- No. 20. Taylor, N., & Wenzel, M. *Assessing the effects of rental property schedules: A comparison between self-prepared tax returns lodged via paper and e-tax*. March 2004. (A version of this paper appears as 'Comparing rental income and rental deductions for electronic versus paper lodgers: A follow-up investigation'. Working Paper No. 20, 2001).
- No. 21. Braithwaite, J. *Through the eyes of the advisers: A fresh look at tax compliance of high wealth individuals*. September 2001.
- No. 22. Braithwaite, J., Pittelkow, Y., & Williams, R. *Tax compliance by the very wealthy: Red flags of risk*. September 2001.
- No. 23. Braithwaite, J., & Williams, R. *Meta risk management and tax system integrity*. October 2001.
- No. 24. Braithwaite, J., & Wirth, A. *Towards a framework for large business tax compliance*. November 2001.
- No. 25. Murphy, K., & Sakurai, Y. *Aggressive Tax Planning: Differentiating those playing the game from those who don't?* October 2001.
- No. 26. Morgan, S., & Murphy, K. *The 'Other Nation': Understanding rural taxpayers' attitudes toward the Australian tax system*. December 2001.
- No. 27. Ahmed, E., & Sakurai, Y. *Small business individuals: What do we know and what do we need to know?* December 2001.
- No. 28. Hobson, K. *Championing the compliance model: From common sense to common action*. December 2001.
- No. 29. Savage, M. *Small Business rural taxpayers and their agents: Has tax reform affected their relationship?* November 2004.

- No. 30. Job, J., & Honaker, D. *Short-term experience with responsive regulation in the Australian Taxation Office*. May 2002.
- No. 31. Frey, B. *A constitution for knaves crowds out civic virtues*. June 2002.
- No. 32. Feld, L., & Frey, B. *Trust breeds trust: How taxpayers are treated*. June 2002.
- No. 33. Wenzel, M. *An analysis of norm processes in tax compliance*. July 2002.
- No. 34. Wenzel, M. *The social side of sanctions: Personal and social norms as moderators of deterrence*. October 2002.
- No. 35. Murphy, K. *Procedural justice and the Australian Taxation Office: A study of tax scheme investors*. October 2002.
- No. 36. Hobson, K. *Financing Australia: A 'post-modern' approach to tax compliance and tax research*. August 2002.
- No. 37. Hobson, K. *'Say no to the ATO': The cultural politics of protest against the Australian Tax Office*. December 2002.
- No. 38. Wenzel, M. *Altering norm perceptions to increase tax compliance*. December 2002.
- No. 39. Murphy, K., & Byng, K. *A User's Guide to 'The Australian Tax System Survey of Tax Scheme Investors'*. December 2002.
- No. 40. Murphy, K., & Byng, K. *Preliminary findings from 'The Australian Tax System Survey of Tax Scheme Investors'*. December 2002.
- No. 41. Webley, P., Adams, C., & Elffers, H. *VAT compliance in the United Kingdom*. December 2002.
- No. 42. Wenzel, M. *Principles of procedural fairness in reminder letters: An experimental study*. December 2002.
- No. 43. Murphy, K. *'Trust me, I'm the taxman': The role of trust in nurturing compliance*. December 2002.
- No. 44. Braithwaite, J. *Making tax law more certain: A theory*. December 2002.
- No. 45. Murphy, K. *Moving towards a more effective model of regulatory enforcement in the Australian Taxation Office*. November 2004.

- No. 46. Murphy, K. *An examination of taxpayers' attitudes towards the Australian tax system: Findings from a survey of tax scheme investors*. November 2004.
- No. 47. Cooper, G., & Wenzel, M. *Does the Tax Value Method increase 'certainty' in dealing with tax? An experimental approach*. November 2004.
- No. 48. Geis, G. *Chop-chop: The illegal cigarette market in Australia*. January 2005.
- No. 49. Murphy, K. *The role of trust in nurturing compliance: A study of accused tax avoiders*. November 2004.
- No. 50. Murphy, K. *Procedural justice, shame and tax compliance*. November 2004.
- No. 51. Sakurai, Y. *Comparing cross-cultural regulatory styles and processes in dealing with transfer pricing*. November 2004.
- No. 52. Rawlings, G. *Cultural narratives of taxation and citizenship: Fairness, groups and globalisation*. February 2004.
- No. 53. Job, J., & Reinhart, M. *Trusting the Tax Office: Does Putnam's thesis relate to tax?* February 2004.
- No. 54. Braithwaite, V. *Perceptions of who's not paying their fair share*. February 2004.
- No. 55. Geis, G., Cartwright, S., & Houston, J. *Public wealth, public health, and private stealth: Australia's black market in cigarettes*. February 2004.
- No. 56. Murphy, K. *Procedural justice and tax compliance*. February 2004.
- No. 57. Wenzel, M., & Taylor, N. *Toward evidence-based tax administration*. February 2004.
- No. 58. Torgler, B., & Murphy, K. *Tax morale in Australia: What shapes it and has it changed over time?* January 2005.
- No. 59. Wenzel, M., Murphy, K., Ahmed, E., & Mearns, M. *Preliminary findings from 'The what's fair and what's unfair survey about justice issues in the Australian tax context'*. April 2004.
- No. 60. Rawlings, G. *Offshore Finance Centres: Institutions of global capital and sites of cultural practice*. January 2005.

- No. 61. Rawlings, G. *English laws and global money markets: The rise of the Vanuatu tax haven*. January 2005.
- No. 62. James, S., Murphy, K., & Reinhart, M. *The Taxpayers' Charter: A case study in tax administration*. February 2005.
- No. 63. Wenzel, M. *Motivation or rationalisation? Causal relations between ethics, norms and tax compliance*. May 2005.
- No. 64. Wenzel, M., & Jobling, P. *Legitimacy of regulatory authorities as a function of inclusive identification and power over ingroups and outgroups*. May 2005.
- No. 65. James, S., Murphy, K., & Reinhart, M. *The Citizen's Charter: How such initiatives might be more effective*. May 2005.
- No. 66. Ahmed, E. *Preliminary findings from the Graduates' Hopes, Visions and Actions (GHVA) Survey*. May 2005.
- No. 67. Ahmed, E., & Braithwaite, V. *When tax collectors become collectors for child support and student loans: Jeopardizing the revenue base?* May 2005.
- No. 68. Braithwaite, V., & Ahmed. *A threat to tax morale: The case of Australian higher education policy*. May 2005.
- No. 69. Ahmed, E., & Braithwaite, V. *Emotionally intelligent tax policy: The case of higher education funding*. May 2005.
- No. 70. Braithwaite, V. *Are taxpayers' charters 'seducers' or 'protectors' of public interest? Australia's experience*. June 2005.
- No. 71. Murphy, K. *Regulating more effectively: The relationship between procedural justice, legitimacy and tax non-compliance*. June 2005.
- No. 72. Braithwaite, V., Murphy, K., & Reinhart, M. *The threat of taxation: Management by responsive regulation*. June 2005.
- No. 73. Wenzel, M. *The multiplicity of taxpayer identities and their implications for tax ethics*. June 2005.
- No. 74. Rawlings, G. *Responsive regulation, multilateralism, bilateral tax treaties and the continuing appeal of offshore finance centres*. June 2005.