

EDITORIAL NOTE

Emer Mulligan (Guest Editor), Lynne Oats (Managing Editor)

Co-operative Compliance (CC) has become a ‘hot topic’ in recent years for taxpayers and their advisers, tax administrators, and supranational bodies such as the OECD, as well as for academic researchers. This special issue had its origins in a workshop on this topic held in London in May 2017, which was organised by Lynne Oats under the auspices of the EU-funded FairTax project (see Review section for more information on FairTax).

Going beyond the pragmatic to discussions which focus on the mechanics of such things as implementation and processes in relation to cooperative compliance programmes, we can read the papers in this special issue as offering new ways of thinking about these phenomena in action in terms of both the focus of our attention and the way in which we gather our evidence. Several of the papers draw on theoretical insights from the social sciences and humanities, providing valuable examples of how we can borrow from other strands of scholarly work to improve our understanding of tax matters, and examine the wide-ranging implications of tax administration initiatives such as CC for the tax administration and taxpayers alike.

Two papers draw on the Swedish experience to inform quite different analyses, one taking a legal perspective and another drawing on moral anthropology. Not only are the two papers different in focus, they are also different in terms of the methodology employed.

Anna-Maria Hambre, a legal scholar, examines the Swedish attempt to introduce co-operative compliance that was ultimately thwarted by constitutional law. The legal framework within which regulatory policy initiatives are implemented is a significant issue. The Swedish context is carefully described, especially the careful separation between politics and administration and the long Swedish tradition of transparent government which underpins confidentiality of access to sensitive information about individuals while supporting public access to public body, including tax agency, decisions. The tension between confidentiality and transparency is pervasive in the case of the Swedish cooperative compliance programme. In addition, the capacity of an agency to act independently of Parliament to introduce administrative rules may be constrained by the legal tradition. Hambre concludes that the spread of cooperative compliance as an international norm makes the initiative too important to be dismissed and that closer attention to the legal framework would allow such a programme to be introduced in the future.

In contrast, Lotta Björklund Larsen, a fiscal anthropologist, considers the failure of the Swedish model through the lens of moral anthropology; looking at the moral reasonings as expressed by various stakeholders in the tax arena. Going beyond the legal arguments and objections to cooperative compliance in Sweden, she considers the broader philosophical underpinnings of the opinions expressed. The important point is made that proponents and opponents of the initiative appear amongst all stakeholders; there was no simple dichotomy between the tax administration as proponent and MNEs as opponents.

Two papers draw on the Dutch experience, once again to inform quite different analyses, and notably the Dutch tax administration was one of the first to introduce a CC programme. Sjoerd Goslinga and colleagues focus, in particular, on the tax control framework (TCF) that is a core component of the Dutch Horizontal Monitoring programme and is increasingly becoming embedded in CC programmes elsewhere. By means of two questionnaire-based studies,

conducted in 2011 and 2014 with senior officials responsible for tax matters in large organisations, the authors explore the relationships between the quality of TCFs, willingness to comply and certainty. The studies produced slightly divergent results, which the authors suggest may in part be attributable to the increased publicity surrounding the tax affairs of multinationals during the time elapsed between the two surveys. The study nonetheless shows that the need for certainty prompts improvements in the quality of tax control frameworks. It would be interesting to see if this has changed given subsequent events, which see an ever-increasing focus on the tax affairs of multinationals, although it seems likely that the desire for certainty among large organisations is now stronger than it was previously.

Esther Huiskers-Stoop and Hans Gribnau examine the Dutch co-operative compliance model from a legal perspective, focussing on principles of reciprocal trust, understanding and transparency. They observe that the Dutch model differs in focus from the OECD's model in its emphasis on reciprocity and conclude that there is a need for ongoing reflection and improvement in the Dutch model. The paper provides careful analyses of both the OECD model for enhanced relationships and the Dutch model, which will be a useful reference point for future scholars researching similar phenomena.

Alicja Majdanska and Jonathan Leigh Pemberton provide a comparative study, considering whether co-operative compliance in practice is consistent with principles of equality before the law and procedural fairness. They use Italy, the Netherlands and the United Kingdom as examples and suggest that in a post-BEPS world, in which tax compliance obligations are significantly increased globally, the benefits to both taxpayer and administrations of entering into co-operative compliance arrangements are increasingly attractive. Drawing on both philosophy and legal jurisprudence, the authors explore the question of equality more broadly, as well as equality before the law, before testing the efficacy of the specific programmes in the selected jurisdictions.

The final paper in this special issue considers the case of another early adopter of a co-operative compliance initiative, namely the US, whose co-operative compliance programme is known as the Compliance Assurance Process (CAP). De Widt, Mulligan and Oats draw on a framework developed under the auspices of regulation theory by Etienne and consider the motivation for entering into co-operative regulatory arrangements from the perspective of both the regulator and regulatee, and address the implications of different motivations for the success of an initiative such as CAP.

In combination, the papers in this special issue provide a rich picture of co-operative compliance in various tax jurisdictions. As the landscape in which interactions between large business taxpayers and tax authorities across the world continues to change, sometimes in unpredictable ways, there is plenty of scope for future analysis of these arrangements, especially in relation to less developed countries and those with more authoritarian administrative regimes, along with the OECD's recently announced international compliance assurance programme.