

The Application of Penalties for Tax Evasion by the New Zealand Courts

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A dissertation submitted to
Auckland University of Technology
in partial fulfilment of the requirements for the degree of
Master of Business (Accounting)

2021

Faculty of Business, Economics and Law

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Abstract

The main objective of this research was to investigate the reasons for the variations in punishments imposed for the evasion of different types of taxes. Previous studies have found that tax evaders are treated less harshly by the New Zealand courts. However, most of the prior literature remains under-informed about the rationale for imposing different penalties for tax evasion from a judicial perspective. This study examined 37 tax evasion cases between 2009 and 2021.

The findings show that most tax evaders are treated leniently by the courts, as represented by the various sentence discounts issued to them despite the seriousness of their offending. However, the courts were also reluctant to issue discounts in cases where the taxpayer is undeserving of the leniency. Based on the analysis of the cases, non-custodial sentences were mostly issued to taxpayers who had pleaded guilty at the earliest opportunity; were of “good character”; took responsibility for their actions; demonstrated full cooperation with the IRD; had serious medical issues; had no previous convictions; were the sole income earners in their family; or did not use the evaded money for their personal expenditure. A custodial sentence was imposed when the taxpayers did not show any remorse for their actions; had gone into extreme lengths to conceal their offending; had previous convictions; did not cooperate with the IRD; and had used the proceeds of their crime to fund a luxurious lifestyle. The prison sentences were much higher in cases where the tax evaders were convicted under the Crimes Act. The issuance of a reparation order was dependant on the taxpayers’ financial circumstances. The study found that cases involving income tax and GST are treated more harshly by the courts.

This study contributes to the existing literature by identifying the parameters considered by the courts while deciding the degree of punishments for tax evasion. Future research should explore the punishments issued to tax evaders in other countries. The aggravating and mitigating factors in other blue-collar crimes in New Zealand should be examined to determine the reasons behind the courts issuing harsher sentences to blue-collar criminals than white-collar criminals.

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Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

Signed:

A handwritten signature in dark ink, appearing to be 'ALBA' with a stylized flourish at the end.

Date: 31/01/22

Acknowledgements

Pursuing a master's degree at Auckland University of Technology (AUT) has been an opportunity of a lifetime. It was an amazing and unforgettable experience that I would always cherish for years to come.

I want to take this opportunity to acknowledge the following people for their tremendous support throughout my dissertation journey:

I would like to express my sincere gratitude to my supervisor Dr Ranjana Gupta for giving me the opportunity to carry out my research project. It has truly been an amazing experience to work under her supervision. She has been very friendly and supportive throughout this whole journey. She thoroughly reviewed my dissertation draft and provided me with useful suggestions for improvement. I was also fortunate to have her as my lecturer for one of my postgraduate papers at AUT. Her knowledge and experience played a key role in facilitating the completion of my research.

I am extremely grateful for the amazing support I've received from my parents over the course of my tertiary studies. I want to thank them for instilling in me the importance of higher education and hard work right from an early age. They have always stood by me during the most difficult periods of my life. Without their encouragement, this dissertation would have been unachievable.

I Introduction

A Background

Tax evasion has become a significant issue for many countries across the globe. It can significantly reduce the revenue available for governments to spend on public services, such as education, healthcare, law and order, social security, and transport. According to a 2020 report published by the Tax Justice Network,¹ countries across the globe are losing about US\$427 billion in tax revenue each year due to private tax evasion and corporate tax abuse. The report also revealed that New Zealand roughly loses about US\$400 million each year due to tax evasion, and OECD countries are accountable for nearly half of the global tax losses.² Between 2007 and 2016, the number of tax evasion prosecutions in New Zealand declined by 31 percent, whereas the number of tax convictions for employer-related offences increased by almost 134 percent.³ The majority of evasion cases prosecuted by the Inland Revenue Department (IRD) over the last decade have been linked to the illegal activities taking place in the shadow economy.⁴ However, tax evasion might not necessarily be the main reason for forcing taxpayers to enter the shadow economy.

Thus, the punishments issued to tax evaders have attracted the attention of several academics. Evidence from Australia and New Zealand indicates that tax evaders are less likely to be charged or receive harsher penalties than welfare fraudsters.⁵ Both crimes are similar and produce the same outcomes for society and the government. The only key difference is that welfare fraud defrauds government revenue, while tax evasion does not contribute to government revenue. It may be argued that a tax evader can commit an offence with a similar financial value to welfare fraud, but they could still end up receiving a much lower punishment under the criminal justice system in both countries.⁶ A study conducted by Okafor and Farrar⁷ found that in Canada, under-reporting involving excise tax would result in harsher penalties than under-reporting involving income tax. However, because every country has its

¹ Tax Justice Network “The State of the Tax Justice 2020” (November 2020) <<https://taxjustice.net>>.

² Tax Justice Network, above n 1, at 31.

³ Inland Revenue “Number of Tax Convictions from 2007 to 2016” <www.ird.govt.nz>.

⁴ Chartered Accountants Australia and New Zealand “CA ANZ Submission on the Future of Taxation” (April 2018) <www.charteredaccountantsanz.com> at 22.

⁵ Lisa Marriott “Justice and the Justice System: A Comparison of Tax Evasion and Welfare Fraud in Australia and New Zealand” (2013) 22(2) GLR 403; Greg Marston and Tamara Walsh “A Case of Misrepresentation: Social Security Fraud and the Criminal Justice System in Australia” (2008) 17(1) GLR 285.

⁶ Marriott, above n 5.

⁷ Oliver N Okafor and Jonathan Farrar “Punishing in the Public Interest: Exploratory Canadian Evidence Pertaining to Convictions and Incarcerations for Tax Offences” (2021) JAPP 1.

own set of rules for prosecuting tax-related offences, some offences may be punished more severely by the courts in other countries. In Ireland, the number of people jailed for serious tax offences increased significantly in 2012.⁸ According to the Revenue Commissioners Office, nearly 38 percent of individuals convicted of tax evasion were sentenced to imprisonment in 2012, compared to an average of 18 percent between 2008 and 2011.⁹ This phenomenon suggests that the judiciary has responded to the societal shifts in attitudes towards tax evasion, which is no longer regarded as a "victimless crime". Over the past several years, the level of societal privilege has been a key factor that enabled many white-collar criminals to receive less punitive treatment under the justice system in New Zealand.¹⁰ Mitigating factors, such as good character, community standing, reputation damage, and strong references of support, have played an integral part in the sentencing stage for many white-collar cases prosecuted by the Serious Fraud Office (SFO).¹¹ In most cases, these factors have resulted in some offenders receiving less punitive sentences despite the severity of their crimes. It is widely acknowledged that treating people differently in the justice system based on their income, education, and social status is unethical.¹²

Overall, the question arises whether the courts are overly generous with sentence discounts for tax evaders and whether the criminal penalties are proportional to the severity of the tax offences. It is questionable if the increased media attention on the punishments imposed on tax evaders has changed people's views on this subject and whether they would take the information published by the media seriously enough to argue for an increase in penalties. Bagaric and Alexander¹³ have suggested that the sentencing practices for white-collar offenders in Australia and other jurisdictions should be revised to ensure that all offenders receive the same level of justice. Similarly, Marriott¹⁴ recommended that an offender's "good character" should not be a mitigating factor in white-collar cases. After all, their good character allows them to perpetrate such crimes since they were in a position of trust and responsibility.

⁸ Sean Mccarthaigh "Big rise in people jailed for serious tax offences" *The Irish Examiner* (online ed, Ireland, 25 February 2013).

⁹ Mccarthaigh, above n 8.

¹⁰ Lisa Marriott and Dalice Sim "Tax evasion and Welfare fraud: Do punishments fit the crime or the perception of the crime?" (2017) 29(4) *Pacific Accounting Review* 573.

¹¹ Lisa Marriott "Pursuit of White-Collar Crime in New Zealand" (2018) 20 *J Aust Tax* 1.

¹² Samuel W Buell "Is the White Collar Offender Privileged?" (2014) 63(4) *Duke LJ* 823.

¹³ Mirko Bagaric and Theo Alexander "A Rational Approach to Sentencing White-Collar Offenders in Australia" (2014) 34 *Adel L Rev* 317.

¹⁴ Lisa Marriott "White-Collar Crime: The Privileging of Serious Financial Fraud in New Zealand" (2020) 29(4) *Soc Leg Stud* 486.

Furthermore, the author asserts that restitution should not be used as a mitigating factor for white-collar offences but rather as an aggravating factor for the absence of restitution.¹⁵

B The objective of this study

This research investigates the reasons for the variations in punishments imposed for the evasion of different types of taxes. In particular, this study will examine the various factors considered by the New Zealand courts when imposing different penalties for evading taxes. To achieve the research objective, the researcher will analyse the following information in the evasion cases:

- Amount of tax evaded by individuals and businesses;
- Punishments imposed by the courts;
- The severity of the tax offences;
- Background of the taxpayers;
- Judge's remarks at the sentencing stage.

C The importance of this study

From 2000 onwards, many studies have been conducted on the factors that influence tax evasion and the enforcement of tax penalties in various countries. However, most of the prior literature remains under-informed about the rationale for imposing different penalties for tax evasion from a judicial perspective.¹⁶ Therefore, this study will address that gap in the existing literature. To better understand why the courts are imposing different penalties for evasion offences, we need to examine all the facts and circumstances in the cases. They play an important role in evaluating the justification behind a court's decision to impose specific sentences, whether custodial or non-custodial. From a public standpoint, the amount of tax evaded should not be the only factor to consider when judging whether or not the punishments imposed by the courts are harsh. The findings of this study can provide valuable information to policymakers, tax authorities, taxpayers, and future researchers. First, it can help policymakers and tax authorities understand why many taxpayers are dissatisfied with the treatment that tax evaders are receiving under the criminal justice system. As a result, they may modify the penalty framework or develop better enforcement

¹⁵ Marriott, above n 14.

¹⁶ Ken Devos "Do Penalties and Enforcement Measures make Taxpayers more Compliant? The View of Australian Tax Evaders" (2014) 5(2) JBE 265.

tools to combat tax evasion. Secondly, the research findings will provide taxpayers with a better understanding of why some tax convictions have not resulted in custodial sentences, even though some of the offences are severe. Lastly, this study can help future researchers to synthesise the topic and identify the gaps that need to be explored in future studies.

D Outline of the study

The remainder of this study is organised as follows. Section II reviews the relevant literature on the attitudes towards tax evasion, the treatment of white-collar and blue-collar offenders in the justice system, and the enforcement of tax penalties. Section III describes the research methods and the procedures for collecting and analysing data. Section IV discusses the criteria for prosecuting evasion offences in New Zealand. Section V provides a discussion of the findings from the selected cases. Section VI concludes the overall study, identifying the limitations and suggesting future research directions.

II Literature Review

A Attitudes towards tax evasion

Several studies have found that most people view tax evasion as a less serious crime compared to other offences. In some of those studies, the participants were asked to rate the severity of different crimes. For example, in a United States field study, Song and Yarbrough¹⁷ investigated the perceptions of tax evasion as a "serious crime" against eight other crimes. They found that 87 percent of those surveyed agreed with the assertion that "tax dodging is a very serious offence and it hurts nobody but the government". Nevertheless, most participants in this study did not rank tax evasion as "very serious" compared to other violent crimes, such as mugging, drink-driving, and kidnapping. Moreover, tax evasion was considered less severe than bribery and embezzlement as financial crimes.

A study conducted by Gupta¹⁸ found that tax evasion was perceived to be a less serious offence in New Zealand than other white-collar offences, including minimum wage violations, insider trading, welfare fraud, accounting fraud, and breaches of child labour laws. The results showed that tax evasion was ranked 12th out of the 21 crimes surveyed in the study. Herzog and Rattner¹⁹ investigated the public attitudes towards crime in Israel. Their findings revealed that more than half of the respondents believed tax evasion is less severe than drug dealing, false testimony, and illegal abortion.

Devos²⁰ surveyed 450 Australian tertiary students to examine their attitudes towards tax evasion. The results showed that 65 percent of the respondents did not consider tax evasion a severe crime. The demographic variables, such as income level, age, occupation, and educational qualifications, were positively associated with the compliance attitudes of the students. McIntosh and Veal conducted a similar study²¹ on tertiary students in New Zealand. Their findings revealed that 16 percent of the respondents believed that tax evasion was fully accepted within society, while 30 percent said it was entirely unacceptable. We can

¹⁷ Young-dahl Song and Timothy E Yarbrough "Tax Ethics and Taxpayer Attitudes: A Survey" (1978) 38(5) PAR 442.

¹⁸ Ranjana Gupta "Perceptions of Tax Evasion as a Crime: Evidence from New Zealand" (2006) 12(3) NZJTL 199.

¹⁹ Sergio Herzog and Arye Rattner "Public Perceptions of Crime Seriousness in Israel: Native-Born Versus New Immigrants" (2003) 31(4) IJCP 323.

²⁰ Ken Devos "The Attitudes of Tertiary Students on Tax Evasion and the Penalties for Tax Evasion – A Pilot Study and Demographic Analysis" (2005) 3(2) eJournal Tax Res 222.

²¹ Ruth McIntosh and John Veal "Tax Evasion and New Zealanders' Attitudes Towards It" (2001) 7(2) NZJTL 80.

argue that younger people do not fully understand the consequences of evading taxes due to their age and limited tax knowledge. Indeed, a majority of the previous studies examined by Richardson and Sawyer²² revealed that older people are usually more compliant than younger people with their tax obligations. Wallschutzky²³ conducted a survey to investigate taxpayers' attitudes towards tax avoidance and evasion in Australia. The study reported that 86 percent of the respondents believed that the income tax rates were relatively high compared to the public services provided by the Australian Government, which was the main reason for the increasing levels of tax evasion. Crane and Nourzad²⁴ examined how different income tax rates could influence people's willingness to engage in tax evasion. Their study revealed that individuals with higher incomes tend to evade more taxes than those with lower incomes. On the other hand, we can argue that people from all socioeconomic backgrounds commit tax evasion.

Spicer and Lundstedt²⁵ investigated the attitudes of taxpayers towards tax evasion in the United States. The results indicated that most respondents' opinions on tax evasion were highly influenced by income level, age, and prior experiences dealing with tax audits. In addition, Spicer and Hero²⁶ reported that taxpayers who had been audited by the tax authority at least once were less inclined to participate in tax evasion because they believed the likelihood of getting caught was very high.

Overall, these studies give us the impression that people are not very sensitive towards tax evasion because they don't consider it a serious crime. The surveys indicate that the average person is not worried about breaking any tax laws and getting caught. However, the results from these surveys may not necessarily reflect the actual penalties imposed by the courts. A common misconception is that tax offences are "victimless" crimes and are not treated as harshly as other fraud and dishonesty offences. Although many people believe that tax evasion is a less severe offence, it can impede the government's ability to obtain more revenue from taxpayers. It also affects honest taxpayers who pay their fair share of taxes because governments may impose higher taxes in the future to recover the lost tax revenues.

²² Maryann Richardson and Adrian J Sawyer "A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects" (2001) 16 ATF 137.

²³ Ian Wallschutzky *Taxpayers Attitudes to Tax Avoidance and Evasion* (Australian Tax Research Foundation, Sydney, 1985).

²⁴ Steven E Crane and Farrokh Nourzad "Tax Rates and Tax Evasion: Evidence from California Amnesty Data" (1990) 43 NTJ 189.

²⁵ Michael W Spicer and Jonas Lundstedt "Understanding Tax Evasion" (1976) 2 Public Finance 295.

²⁶ Michael W Spicer and Rodney E Hero "Tax evasion and Heuristics: A Research Note" (1985) 26 J Public Econ 263.

B Treatment of white-collar and blue-collar offenders in the justice system

As mentioned previously, most of the prior research overwhelmingly indicates that "white-collar" crimes are treated less harshly by the courts compared to "blue-collar" crimes.²⁷ Weisburd et al.²⁸ investigated the punishments issued by the federal courts in the United States for white-collar offences. They include bribery, antitrust violations, bank embezzlement, credit fraud, mail fraud, securities fraud, and tax fraud. The findings show that white-collar offenders are less likely to receive a sentence of imprisonment than the common criminals. The authors suggested that common criminals benefit enormously if the white-collar sentencing criteria were applied to them.

Similarly, Hagan et al.²⁹ found that white-collar offenders were treated more leniently in the criminal justice system. In some cases, they would even avoid prosecution altogether if they had the financial resources to settle their cases with the tax authorities before the commencement of court proceedings. Both studies support the perception that the courts treat people with higher social standing more leniently than people with lower social standing.³⁰ It can be argued that these punishments are sending a wrong signal to society. There is an unequal level of justice as some white-collar criminals with enormous financial resources can sometimes bargain their way out of the judicial system. The blue-collar criminals do not have this opportunity.

In Orviska and Hudson,³¹ it was found that public attitudes were less hostile towards criminal activities relating to tax evasion compared to welfare benefits. Evans and Kelly³² reported that welfare fraud was strongly condemned compared to tax cheating in nearly all the 29 countries surveyed in their study. In a survey conducted by the Australian Institute of Criminology,³³ the participants were asked to rate the severity of 13 different crime scenarios and choose their preferred punishment for each crime. They included offences, such as "illegally acquiring \$1000 in social security payments", "evading \$5000 in income tax", and "fraudulently claiming \$5000 in medical expenses". Interestingly, most participants believed

²⁷ Marriott, above n 5.

²⁸ David Weisburd, Stanton Wheeler, Elin Waring, and Nancy Bode *Crimes of the Middle Classes: White-collar Offenders in the Federal Courts* (Yale University Press, New Haven (CT), 1991).

²⁹ John Hagan, Ilene H Nagel, and Celesta Albonetti "The Differential Sentencing of White-Collar Offenders in Ten Federal District Courts" (1980) 45(5) ASA 802.

³⁰ Marriott, above n 11.

³¹ Marta Orviska and John Hudson "Tax Evasion, Civic Duty and the Law Abiding Citizen" (2002) 19 Eur J Political Econ 82.

³² Murray Evans and Jonathan Kelley "Are Tax Cheating and Welfare Fraud Wrong? Public Opinion in 29 Nations" (2001) 3(4) Australian Social Monitor 93.

³³ Paul Wilson, John Walker, and Satyanshu Mukherjee "How the Public sees Crime: An Australian Survey" (01 October 1986) Trends and Issues in Crime and Criminal Justice <www.aic.gov.au>.

that “acquiring \$1000 in social security payments” was more serious than “evading \$5000 in income tax”. Marriott³⁴ examined the differences in public attitudes toward welfare fraud and tax evasion in New Zealand. In contrast to previous studies, the responses from 1500 survey respondents suggested that people had harsher attitudes toward tax evaders than welfare fraudsters. For example, between 2008 and 2010, 60 percent of welfare fraud prosecutions in New Zealand resulted in imprisonment compared to only 22 percent for tax evasion prosecutions.³⁵ During the same period, approximately 64 percent of tax evaders in Australia received a custodial sentence despite the average amount of benefit fraud being lower than the average amount of tax evasion. This trend suggests that Australia has taken a tougher stance against tax evaders. Nevertheless, these statistics may only reflect the most serious tax evasion cases.

In a survey conducted by Marriott and Sim,³⁶ the respondents were asked about their opinions on the punishments imposed on welfare fraudsters and tax evaders in Australia and New Zealand. The findings showed that 58 percent of the respondents could not distinguish between people who commit benefit fraud and those engaged in tax evasion. When presented with several scenarios involving different crimes and criminals, most respondents opined that welfare fraud was a more severe offence than tax evasion. The case law in Australia indicates that “a prison sentence is usually considered to be the starting point for cases involving social security fraud.”³⁷ However, this does not usually apply to tax evasion cases except for the most severe offences in which the courts use imprisonment as the “starting point”.

Although most of these studies show that welfare fraudsters are being punished more severely by the courts than tax evaders, the reasons for not imposing harsher sanctions on tax evaders have not been fully explored by researchers. Furthermore, it remains unclear why the majority of participants in these surveys preferred welfare fraudsters to be penalised more severely than tax evaders. Some may argue that welfare fraud is a severe crime because people fraudulently claim social security benefits without working, while others on lower incomes work extremely hard to make ends meet. From an individual perspective, taxpayers with average incomes undoubtedly want to pay the least tax possible to the government.

³⁴ Lisa Marriott “An Investigation of Attitudes towards Tax evasion and Welfare Fraud in New Zealand” (2017) 50(1) ANZJC 123.

³⁵ Marriott, above n 5, at 415.

³⁶ Marriott and Sim, above n 10.

³⁷ Marston and Walsh, above n 5, at 292.

C *Enforcement of tax penalties*

Most of the previous studies have shown mixed results on the effectiveness of criminal penalties in combating tax evasion.³⁸ Mohdali et al.³⁹ examined the impact of enforcement actions such as audits and penalties on Malaysia's tax compliance and non-compliance behaviour. The findings from their research suggested that stricter penalties and increased audits by the tax authorities persuaded taxpayers to become more compliant with their tax obligations. However, this can potentially lead to a decline in compliance levels as some taxpayers may complain against mistreatment by the tax authorities.⁴⁰

Devos⁴¹ conducted a study to examine whether introducing new tax offences or the imposition of harsher penalties for the existing ones affected the level of tax non-compliance in Australia. The findings revealed that imposing harsher sanctions on tax evaders did not necessarily prevent them from evading taxes in the future. On the contrary, many tax evaders re-offended multiple times, even after serving a prison term of more than 12 months. Furthermore, Gangl et al.⁴² found that severe enforcement measures had reduced tax compliance levels in Austria, even in cases where the relationship between the taxpayer and the tax authority was solid. This was because some taxpayers might perceive the higher level of enforcement in the tax system as unjust.

McLisky⁴³ examined whether the current tax penalties in New Zealand effectively combat tax fraud and influence the behaviour of tax evaders. The study found an upsurge in criminal tax fraud after establishing the new compliance and penalty framework in 1997. The results in Devos⁴⁴ suggested that an increase in criminal sanctions alone did not directly or indirectly affect taxpayer non-compliance levels in Commonwealth nations, such as Australia, New Zealand, and the United Kingdom. Ashcroft⁴⁵ reported that the maximum penalties for some

³⁸ Ken Devos "The Role of Sanctions and other Factors in Tackling International Tax Fraud" (2013) 42 Common Law World Review 1.

³⁹ Raihana Mohdali, Khadijah Isa, and Salwa H Yusoff "The Impact of Threat of Punishment on Tax Compliance and Non-compliance Attitudes in Malaysia" (2014) 164 Social and Behavioral Sciences 291.

⁴⁰ Mohdali, Isa, and Yusoff, above no 39, at 295.

⁴¹ Ken Devos "Penalties and Sanctions for Australian Taxation Crimes and the Implications for Taxpayer Compliance" (2002) 17(3) ATF 257.

⁴² Katharina Gangl, Benno Torgler, Erich Kirchler, and Eva Hofmann "Effects of Supervision on Tax Compliance: Evidence from a Field Experiment in Austria" (2014) 123(3) Economics Letters 378.

⁴³ Ian McLisky "The Compliance and Penalty Regime: Its role as a Compliance Instrument in Combating the Criminalisation of Tax Fraud in New Zealand" (MBus Thesis, Massey University, 2011).

⁴⁴ Ken Devos "Penalties and Sanctions for Taxation Offences in Anglo Saxon Countries: Implications for Taxpayer Compliance and Tax Policy" (2004) 14 Revenue Law J 32.

⁴⁵ Philip Ashcroft "The Criminal Aspects of Tax Evasion in New Zealand" (2010) 16(1) NZJTL 21.

tax offences in New Zealand needed to be increased to reflect the seriousness of those offences. Bagaric et al.⁴⁶ found no evidence to support the assumption that introducing harsher sanctions for evasion offences would reduce non-compliance levels in Australia. The authors suggested that the tax penalties should not be increased to deter would-be offenders, and more audits need to be conducted to promote public awareness that abusing the tax system would get them caught.

Devos⁴⁷ reported that increased audits had no significant impact on tax compliance levels in Australia over 20 years, despite an increase in criminal penalties during that period. This result implies that tax evasion has increased, and the penalties have not been very effective in improving tax compliance levels. Previous studies conducted in Australia, the United Kingdom, and the United States have found that around 70 percent of tax evaders who are released from prison and 60 percent of those sentenced to community service are more likely to re-offend within the next two to three years.⁴⁸

Other studies have found that harsher sanctions effectively combat tax fraud. While the punishments for tax evasion have increased over a period of time in most countries around the world, it is not the only factor affecting tax compliance levels. Devos⁴⁹ reported that law enforcement measures and the probability of detection by tax authorities had influenced the behaviour of tax evaders in Australia. The majority of tax evaders surveyed in this study acknowledged that they were less likely to evade taxes in the future since the penalties they received were very severe, and the likelihood of getting caught was extremely high. The findings revealed that harsher sanctions were particularly successful in deterring future tax evasion by first-time tax evaders who had received monetary penalties.

Mohamad et al.⁵⁰ reported that taxpayers were less likely to engage in tax evasion if the tax authorities took a stricter approach to enforce tax laws. The authors found that increased audits and penalties played a significant role in reducing tax evasion in Malaysia. This outcome does not necessarily mean that everyone will comply with the tax laws. There are always loopholes in any tax system globally, no matter how strict the laws are or how effective the enforcement systems are to catch tax evaders. Hasseldine et al.⁵¹ found a positive relationship

⁴⁶ Mirko Bagaric, Theo Alexander and Athula Pathinayake "The Fallacy of General Deterrence and the Futility of Imprisoning Offenders for Tax Fraud" (2011) 26 ATF 511.

⁴⁷ Devos, above n 41.

⁴⁸ Lisa Marriott "Tax Crime and Punishment in New Zealand" (2012) 5 BTR 623.

⁴⁹ Devos, above n 16.

⁵⁰ Marziana HJ Mohamad, Norkhazimah Ahmad, and Mohamad S Deris "Perceptions of Taxpayers with Level of Compliance: A Comparison in the East Coast Region, Malaysia" (2010) 1(1) GJEB 241.

⁵¹ John Hasseldine, Peggy Hite, Simon James, and Marika Toumi "Persuasive Communications: Tax Compliance Enforcement Strategies for Sole Proprietors" (2007) 24(1) CAR 171.

between the severity of tax penalties and the non-compliance attitudes of taxpayers. This finding implies that taxpayers are more likely to comply with their tax obligations if the monetary penalties or custodial sentences for evasion are very high.

Harsher penalties have played a significant role in improving tax compliance levels in various countries. However, they have not entirely deterred people from engaging in tax evasion again in the future. In some cases, excessive penalties have led to illegal activities, such as bribery and corruption, especially in developing and high-enforcement countries. Overall, the literature has been less persuasive on the impact of penalties for deterring tax evasion. Moreover, these studies have not particularly focused on how penalties such as fines and incarceration may influence taxpayers' decisions on complying with their tax obligations.

III *Research Methodology*

A *Research method*

A case-study method has been adopted for this research project. It is used "to generate an in-depth, multi-faceted understanding of a complex issue in its real-life context."⁵² The case-based approach is used extensively by researchers in various disciplines, such as psychology, sociology, medicine, business, and law.⁵³ Adopting this research approach enables the researcher to investigate various tax evasion cases to gain a broader understanding as to why the courts are imposing different penalties for a variety of evasion offences. Due to time constraints, this study adopted the qualitative approach, and the data was collected from secondary sources. Consequently, it does not require any ethics approval from the AUT Ethics Committee (AUTEC). Furthermore, it provides the researcher with adequate time to complete the study within the required timeframe from a practical perspective.

B *Data collection*

The required data for this study was obtained manually from various online sources, such as the New Zealand Courts website and AUT library databases, including Westlaw NZ, Lexis Advance, and CCH Intelliconnect. Tax evasion prosecutions were also collected from the media releases section of the IRD website. However, most of the cases from the media releases were not available in the library databases or on the New Zealand Courts website because they were not of public interest. Therefore, they have not been included in this study. The stratified random sampling method was utilised to select the cases. This method is beneficial for researchers attempting to study the relationships between different subgroups within a selected population.⁵⁴ The search criteria consisted of tax evasion cases heard in the District and High Courts across New Zealand between 2009 and 2021. The researcher first compiled a list of all the available evasion cases for each year in an Excel spreadsheet to select the cases. The cases were then divided into three subgroups based on the severity of the punishments issued by the courts. After the cases were separated, the random selection function in Excel was used to select 37 cases randomly from each of the three subgroups.

⁵² Sarah Crowe, Kathrin Cresswell, Ann Robertson, Guro Huby, Anthony Avery, and Aziz Sheikh "The Case Study Approach" (2011) 11(1) BMC Med Res Methodol 1.

⁵³ Lioness Ayres, Karen Kavanaugh, and Kathleen A Knafl "Within-Case and Across-Case Approaches to Qualitative Data Analysis" (2003) 13(6) Qual Health Res 871.

⁵⁴ Hamed Taherdoost "Sampling Methods in Research Methodology; How to Choose a Sampling Technique for Research" (2016) 5(2) IJARM 1 at 21.

The three subgroups for the case selection are as follows:

- Group 1 – Cases that have resulted in non-custodial sentences, such as community service, community detention, home detention, and supervision.
- Group 2 – Cases that have resulted in imprisonment greater than 12 months and/or fines above \$100k.
- Group 3 – Cases that have resulted in imprisonment less than or equal to 12 months and/or fines below \$100k.

C *Data analysis*

The NVivo 12 software was used to analyse the evasion cases. First, all the selected cases were examined individually, and the necessary data were coded using NVivo. The coding process involved assigning keywords and short phrases to the important information in the cases. This process allowed the researcher to identify any common patterns that emerged from the cases and link them to the variations in evasion penalties. Secondly, the coded data were categorised according to the facts and circumstances surrounding each evasion case involving different types of taxes. They included income tax, GST, PAYE, and other employer deductions. Lastly, all the summarised information from the cases was compiled into a Word document for discussion.

IV *The Criteria for Prosecuting Tax Evasion in New Zealand*

A *The definition of tax evasion*

For this study, we can define tax evasion as "the willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability."⁵⁵ In other words, tax evasion occurs when individuals and businesses attempt to cheat the tax system by not complying with their tax obligations. Anyone caught evading taxes could potentially face criminal charges and severe penalties. The IRD has the statutory authority to prosecute taxpayers who violate the tax laws in New Zealand. Falsifying financial records, under-reporting income, claiming illegal deductions, and concealing income/assets in offshore bank accounts are all examples of tax evasion offences.

The Tax Administration Act 1994 (TAA) does not contain a definition of tax evasion.⁵⁶ However, the three main categories of tax-related offences under the TAA are knowledge offences,⁵⁷ absolute liability offences,⁵⁸ and evasion or similar offence.⁵⁹ To obtain convictions for tax evasion, the IRD must prove beyond a reasonable doubt that the taxpayer intentionally evaded or attempted to evade the assessment or payment of tax; or tried to obtain a tax refund unlawfully (by themselves or others) as per section 143B(2) of the TAA.⁶⁰

Section 143B(1) of the TAA sets out the criteria for the IRD to determine whether a taxpayer has committed any offences that fall under the category of "evasion or similar offences".⁶¹

A taxpayer would commit tax evasion when he or she knowingly

- Fails to keep the documents required to be kept by a tax law;
- Fails to provide information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law;
- Provides false, altered, misleading, or incomplete information to the Commissioner or any other person in respect of a tax law;
- Pretends to be another person in relation to a tax law;
- Fails to make a deduction or withholding of tax as required by a tax law.

⁵⁵ Peter Gottschalk *Policing White-Collar Crime: Characteristics of White-Collar Criminals* (Taylor & Francis, United Kingdom, 2013) at 17.

⁵⁶ Tax Administration Act 1994.

⁵⁷ Section 143A.

⁵⁸ Section 143.

⁵⁹ Section 143B.

⁶⁰ Section 143B(2).

⁶¹ Section 143B(1).

B The distinction between tax evasion and tax avoidance

Although the focus of this study is predominantly on tax evasion, we always need to differentiate tax evasion from tax avoidance. Both terms are often used interchangeably, but they are completely different concepts. Therefore, if we ignore these two concepts, the rule of law in the country would be at risk. For example, on many occasions, the Australian government has ignored the distinction between tax evasion and tax avoidance when conducting investigations on offshore tax evaders, as part of Project Wickenby that commenced in February 2006 and ended in June 2015.⁶² As a result of their actions, many Australian taxpayers were wrongly accused of committing tax fraud through offshore tax-havens.⁶³

Tax evasion and tax avoidance are identical as they result in a lower tax bill, but they are legally distinct. From a legal standpoint, tax evasion involves using illegal methods to escape taxes. In contrast, tax avoidance consists of using legal means to reduce the amount of tax payable to the government.⁶⁴ Tax evasion is an illegal activity, while tax avoidance is entirely legal. Although tax avoidance is legal in many ways, it is against the spirit of the law as it can result in unintended consequences for individuals and businesses. Tax avoidance is generally accomplished by structuring your financial affairs in a way that would lead to a lower tax liability while staying on the right side of the law.⁶⁵ Some examples of tax avoidance include the following: lawfully claiming permissible tax deductions and credits within a country to avoid paying more taxes, shifting income/assets to countries with lower tax rates, establishing an offshore company in a tax haven, and setting up tax deferral arrangements.

C An overview of the tax penalties regime

Like many other countries, various criminal and civil options are available to the IRD for prosecuting tax-related crimes. For example, the New Zealand courts impose criminal penalties for tax evasion upon conviction of any offences, whilst the IRD imposes civil penalties. Under section 143B(4) TAA, the criminal penalties for "evasion or similar offences" usually range from a fine not exceeding \$50k and/or imprisonment for a term not exceeding

⁶² John McLaren "The Distinction between Tax Avoidance and Tax Evasion has become Blurred In Australia: Why has it happened?" (2008) 3(2) JATTA 141.

⁶³ McLaren, above no 62.

⁶⁴ Bashar H Malkawi and Haitham A Haloush "The Case of Income Tax Evasion in Jordan: Symptoms and Solutions" (2008) 15(3) J Financ Crime 282.

⁶⁵ Vilen Lipatov "Corporate Tax Evasion: The Case for Specialists" (2012) 81(1) J Econ Behav Organ 185.

five years.⁶⁶ Apart from imprisonment, the courts also have the authority to impose non-custodial sentences, such as community service, community detention, supervision, home detention, and reparation. In more serious cases of tax evasion, the IRD can apply the Crimes Act 1961 to prosecute taxpayers for offences, such as obtaining by deception or causing loss by deception;⁶⁷ or aiding and abetting someone to commit an offence;⁶⁸ or dishonesty taking or using a document to gain pecuniary advantage.⁶⁹ The courts generally follow the criteria laid out in section 8 of the Sentencing Act 2002 to determine the appropriate punishments in each case.⁷⁰ They examine all the aggravating and mitigating factors in each case when deciding whether to issue any sentence discounts or uplifts. Despite the seriousness of some tax offences, sentence discounts play a key role in a judge's decision to impose the least severe penalties possible for the crimes committed. In some cases, the judges have no choice but to impose the maximum penalty allowed under the law if the offence is more severe than all the previous cases before the court.

Section 149 of the TAA sets out the guidelines for imposing criminal and civil penalties.⁷¹ Under s 149(4) TAA, the Commissioner of Inland Revenue (CIR) can impose civil penalties after the prosecution of an offence, irrespective of whether the prosecution is successful or not.⁷² The civil penalties for tax violations include shortfall penalty,⁷³ late payment penalty,⁷⁴ non-electronic filing penalty,⁷⁵ and late filing penalty.⁷⁶ Like other countries, the two most common civil penalties issued to New Zealand taxpayers are late filing and late payment penalties.⁷⁷ If a taxpayer has previously received a shortfall penalty for taking an incorrect tax position, in that case, the CIR cannot prosecute the taxpayer for the same tax position as per s 149(5) TAA.⁷⁸ It was a requirement for the CIR to publish the names and details of the taxpayers who were convicted of various tax offences and/or charged with a shortfall penalty in the New Zealand Gazette as per s 146 TAA.⁷⁹ This requirement has been repealed and is

⁶⁶ Tax Administration Act, s 143B(4).

⁶⁷ Crimes Act 1961, s 240.

⁶⁸ Section 66.

⁶⁹ Section 228(1)(b).

⁷⁰ Sentencing Act 2002, s 8.

⁷¹ Tax Administration Act, s 149.

⁷² Section 149(4).

⁷³ Section 141-141k.

⁷⁴ Section 139B.

⁷⁵ Section 139AA.

⁷⁶ Section 139A, 139AAA.

⁷⁷ Norman Gemmell and Marisa Ratto "The Effects of Penalty Information on Tax Compliance: Evidence from a New Zealand Field Experiment" (Working Paper in Public Finance, 03/2017, Victoria University of Wellington, New Zealand, 2018) at 6.

⁷⁸ Tax Administration Act, s 149(5).

⁷⁹ Section 146.

no longer valid after 21 June 2005. Since the mid-1990s, several amendments to the tax penalties regime have been made.⁸⁰ The criminal penalties have remained unchanged after the 1996 TAA amendments,⁸¹ while the civil penalties have changed over the years. In 1996, the New Zealand government introduced a five-year maximum term of imprisonment to combat the rising number of evasion cases in the country. Before 1997, an ad hoc system of penalties enforced the taxpayer compliance system. There were many flaws in the design of the rules under that system, with sanctions often incompatible with certain tax offences.⁸² A 2019 report published by the Tax Working Group (TWG)⁸³ urged the New Zealand government to introduce new sanctions for taxpayers who engage in activities that are not criminal but fall within the mid-level range of the tax non-compliance spectrum. These sanctions will mainly apply to situations where custodial sentences or shortfall penalties are out of proportion to the gravity of some tax violations.⁸⁴ They include cases where the taxpayers were previously educated on their tax obligations but purposely provided false information to the IRD and failed to maintain appropriate records.

⁸⁰ Adrian Sawyer “Reviewing Tax Policy Development in New Zealand: Lessons from a Delicate Balancing of Law and Politics” (2013) 38 ATF 401.

⁸¹ The Tax Administration Act (No 2) 1996 (No 56), enacted 26 July 1996.

⁸² Inland Revenue “Taxpayer Compliance, Standards and Penalties: A Review” (August 2001) Government Discussion Document <www.ird.govt.nz> at 8.

⁸³ Tax Working Group “Hidden Economy: Background Paper for Session 14 of the Tax Working Group” (20 July 2018) Release Document September 2018 <www.taxworkinggroup.govt.nz> at 15.

⁸⁴ Tax Working Group, above n 83.

V *Analysis and Findings*

Tables A to C in the Appendix illustrate the data collected from the selected cases. The cases have been arranged in alphabetical order by year. Table A shows data for non-custodial sentences, whereas Tables B and C present data for custodial sentences.

The following subsections analyse the prementioned cases, as well as provide reasons for the courts imposing various punishments.

A *Non-custodial sentences*

In *Commissioner of Inland Revenue v Dempsey*,⁸⁵ the taxpayer received a sentence of six months' community detention and 200 hours of community service due to his old age. This was because an imprisonment sentence would have significant repercussions for a 65-year-old man, as well as his family. Other mitigating factors included the taxpayer's lack of prior convictions, his filing of all required tax returns prior to his sentence, and the fact that he did not obtain any assets through his offending. The court determined that a reparation order of \$39.9K was appropriate, based on the financial difficulties his company was facing due to substantial debts.

In *R v Smith*,⁸⁶ the taxpayer received ten months' home detention and 200 hours of community service as a result of a high number of tax evasion charges and his serious medical conditions, thereby making prison an unsuitable punishment for him. He received credit for no prior convictions and full cooperation with the IRD. This punishment allowed the taxpayer to continue operating his business and make reparation payments. A custodial sentence could have had several major implications for the employees who worked under him, since the business relied heavily on his involvement. The reparation order of \$138K was required to be repaid as the taxpayer had already made several repayments prior to sentencing.

In *Pandey v R*,⁸⁷ the court determined that the offence was of a less serious nature as the tax evaded was not particularly high; only a single false GST return of the club was filed; and the taxpayer did not personally gain any advantage from the offending. The taxpayer received 120 hours of community service after being considered to be not in a position to pay any fines. This punishment was given despite the fact that he had been previously convicted on 16 tax

⁸⁵ *Commissioner of Inland Revenue v Dempsey* (2011) 25 NZTC 20-001.

⁸⁶ *R v Smith* [2010] DCR 440.

⁸⁷ *Pandey v R* (2013) 26 NZTC 21-058.

evasion charges, pleading not guilty, and showed no remorse for his crime. The judge opted not to add any uplifts for his previous tax convictions.

In *Inland Revenue Department v Kininmont*,⁸⁸ the number of false GST returns filed (65) by the taxpayer was substantial. The court imposed a sentence of four-and-a-half months' home detention due to her personal circumstances and for making efforts to repay the outstanding tax. She received credit for pleading guilty at the earliest opportunity, cooperating with the IRD, and having no prior criminal convictions. This sentence allowed the taxpayer to continue working while making repayments to the IRD and seeking treatment for her gambling addiction, which was the primary motivator for her offending. The judge only issued a \$30K reparation order since the taxpayer earned less income.

In *Inland Revenue Department v Ali*,⁸⁹ the amount of tax evaded is significant, especially since the taxpayer did not file any personal and company tax returns over an eight-year period. Since the taxpayer had pleaded guilty and the aggravating factors in this case were not such that imprisonment was the only option, the judge imposed a sentence of 12-months' home detention and 150 hours of community service. The judge was lenient in his decision by not uplifting his sentence for his previous conviction for using forged documents.

In *Commissioner of Inland Revenue v Blake*,⁹⁰ the taxpayer received a sentence of eight-months' home detention and 200 hours of community service due to receiving credit for his early guilty plea and lack of prior convictions. The court did not issue a reparation order since the taxpayer was bankrupt, and the entire amount was unlikely to be recovered. The PAYE funds were utilised to keep his company afloat and pay off trade creditors rather than funding a lavish lifestyle.

Although the taxpayer claimed approximately \$65K in tax credits by providing false information to the IRD in the case of *Commissioner of Inland Revenue v Karaitiana*,⁹¹ the court imposed a sentence of five-and-a-half months' home detention after considering her early guilty plea. On the other hand, she did not receive any credit for her good character, since the offending had occurred over a seven-year period. The court did not issue any uplifts for her previous traffic convictions as they were unrelated to this case. The taxpayer was unemployed, and hence, it was unrealistic for the court to issue a reparation order.

⁸⁸ *Inland Revenue Department v Kininmont* [2016] NZDC 4880.

⁸⁹ *Inland Revenue Department v Ali* [2017] NZDC 4295.

⁹⁰ *Commissioner of Inland Revenue v Blake* [2017] NZDC 28773.

⁹¹ *Commissioner of Inland Revenue v Karaitiana* [2017] NZDC 7361.

In *Inland Revenue Department v Mackay*,⁹² the taxpayer received a sentence of five-months' home detention and 225 hours of community service after receiving credit for his good character and early guilty plea. Although the number of tax evasion charges in this case is significant, the court ruled that an imprisonment sentence would be unsuitable since the taxpayer is the sole earner in his family and has not benefited personally from the offending other than maintaining failing businesses. The court did not issue a reparation order since the taxpayer was bankrupt and unable to work.

The punishment in *R v Malu*⁹³ was unique, as the taxpayer received only 220 hours of community service and was ordered to pay \$26.2K in reparations for evading approximately \$178K in GST and income tax over a four-year period. Moreover, the taxpayer was granted a discharge without conviction to protect his future career prospects. He received credit for his early guilty plea, lack of previous convictions, and good character. Although the offending was moderately serious in this case, the court determined that a conviction would most certainly result in the taxpayer losing his job in a government agency and cause significant hardship to his family since he was the sole income earner. It was deemed that the taxpayer would be unable to make any reparation payments if his employment gets terminated.

In *Inland Revenue Department v Mauigoa*,⁹⁴ the taxpayer received a sentence of nine-months' home detention after receiving credit for his early guilty plea, good character, willingness to undertake volunteer work, and repaying \$2.2K prior to the sentence. It allowed the taxpayer to continue running his business and repay the outstanding tax. The judge only imposed a reparation order of \$12K as the entire amount was realistically unpayable since the taxpayer's business was in financial distress.

In *Commissioner of Inland Revenue v Mitchell*,⁹⁵ the taxpayer received a sentence of six-months' community detention and 200 hours of community service due to his early guilty plea, previous good character, and remorse. This punishment allowed the taxpayer to remain in the community and continue working to support his large family, being the sole earner. As the taxpayer was not considered to be in a position where he could make any reparation payments, he only had to pay \$130 in court costs. The number of charges in *Blake*⁹⁶ and *Mitchell* are the same. In both cases, the taxpayers did not use the PAYE funds for their

⁹² *Inland Revenue Department v Mackay* [2017] NZDC 22038.

⁹³ *R v Malu* (2017) 28 NZTC 23-045.

⁹⁴ *Inland Revenue Department v Mauigoa* [2017] NZDC 24816.

⁹⁵ *Commissioner of Inland Revenue v Mitchell* [2017] NZDC 24907.

⁹⁶ *Commissioner of Inland Revenue v Blake*, above n 90.

personal expenses. A home detention sentence was issued in *Blake* since the amount of tax evaded was higher than *Mitchell*.

In *Commissioner of Inland Revenue v Buisson*,⁹⁷ the taxpayer received 12 months' home detention and 300 hours of community service as a result of not showing any remorse for his offending, following the advice of people who promoted an anti-tax philosophy, and failing to provide the necessary information as requested by the IRD during two separate audits. The taxpayer's age (69) and personal circumstances prevented the court from issuing a custodial sentence. He did not receive any credit for his good character, since the offending had taken place over a nine-year period. Furthermore, the taxpayer was already bankrupt, and hence, the court did not issue a reparation order.

In *Inland Revenue Department v Barikov*,⁹⁸ the taxpayer received a sentence of eight-months' home detention in order to continue operating his business. He received credit for his early guilty plea. The court ruled that an imprisonment sentence would be irrelevant since the taxpayer had offered to pay full reparation and he did not benefit personally from his offending. The PAYE funds were used to pay for the medical expenses for a family member with a life-threatening condition, rather than funding a lavish lifestyle.

In *Commissioner of Inland Revenue v Serchan*,⁹⁹ the taxpayer received a sentence of eight-months' home detention for pleading guilty at the earliest opportunity. He did not receive any credit for his good character and lack of previous convictions, as he had previously received a shortfall penalty for failing to declare all PAYE and GST owing to the IRD. It was solely the decision of the CIR that allowed him to avoid prosecution. The court was unable to issue a reparation order as the taxpayer was already bankrupt. In *Mackay*,¹⁰⁰ the taxpayer received credit for his previous good character, regardless of the fact that the number of charges were higher than the charges in *Serchan*.

In *R v Archibald*,¹⁰¹ the court imposed a sentence of 12 months' home detention and 200 hours of community service as the taxpayer was 72 years of age, had serious medical conditions, and was deeply involved within the community. It could be argued that the judge treated the taxpayer leniently by imposing this punishment despite the evasion amount being excessive. Nevertheless, the taxpayer would have received a prison sentence if it hadn't been for his serious health issues, especially since the offending had occurred over an eight-year period.

⁹⁷ *Commissioner of Inland Revenue v Buisson* [2018] NZDC 13244.

⁹⁸ *Inland Revenue Department v Barikov* [2018] NZDC 12633.

⁹⁹ *Commissioner of Inland Revenue v Serchan* [2017] NZDC 17773.

¹⁰⁰ *Inland Revenue Department v Mackay*, above n 92.

¹⁰¹ *R v Archibald* [2019] NZDC 4490.

Despite having repaid \$650k prior to sentencing, the court did not issue a reparation order, as the taxpayer did not possess any assets to make repayments. The number of charges and the amount of tax evaded were lower in *Buisson*¹⁰²; however, the taxpayer did not show any remorse over his offending.

The court decided to impose a less restrictive sentence in *Inland Revenue Department v Pearce*¹⁰³ despite the taxpayer not filing any GST returns over a period of two years and eight months. The taxpayer's offending was serious but not egregious, as there was no alternative to incarceration. By pleading guilty and filing all her outstanding returns prior to sentencing, she received a sentence of six months' community detention, 100 hours of community service, and 12 months of supervision. The court added uplifts for her previous convictions for evading taxes by not filing any income tax and GST returns. This sentence would enable her to continue her employment as a courier driver while also making repayments to the IRD. The loss of the courier contract could have major financial implications to her family if the court imposed a custodial sentence. In contrast to *Kininmont*,¹⁰⁴ the judge in this case did not impose home detention as it would interfere with the taxpayer's working schedule.

In *Inland Revenue Department v Balasaj*,¹⁰⁵ the taxpayer received a sentence of six months' community detention and 300 hours of community service to continue running his business and repay the outstanding tax. He received credit for pleading guilty at the earliest opportunity, having no prior convictions, and cooperating fully with the IRD. The court did not impose a sentence of imprisonment due to the financial constraints that the taxpayer's business was facing by losing lucrative contracts and spending money on legal fees. The taxpayer offered to repay \$300K, and the court accepted this offer. The punishments in *Balasaj* and *Mitchell*¹⁰⁶ are very identical, while the amount of tax evaded is higher in *Balasaj*. The punishments were the same in both cases as there is only a small difference between the offending period and the number of charges; the mitigating factors were very similar; and the taxpayers did not use the PAYE funds for their personal expenses. The only key difference is that *Mitchell* was required to continue working to support his family, whereas *Balasaj* needed to run his business to make reparation payments. In *Mauigoa*,¹⁰⁷ the number of charges were higher, and the

¹⁰² *Commissioner of Inland Revenue v Buisson*, above n 97.

¹⁰³ *Inland Revenue Department v Pearce* [2019] NZDC 8348.

¹⁰⁴ *Inland Revenue Department v Kininmont*, above n 88, at [16].

¹⁰⁵ *Inland Revenue Department v Basalaj* [2020] NZDC 19345.

¹⁰⁶ *Commissioner of Inland Revenue v Mitchell*, above n 95.

¹⁰⁷ *Inland Revenue Department v Mauigoa*, above n 94.

PAYE funds were transferred into the taxpayer's personal bank accounts and regular cash withdrawals were made during the offending period.

B Custodial sentences

1 Imprisonment less than or equal to 12 months

In *R v Allan*,¹⁰⁸ the taxpayer received a sentence of 12 months' imprisonment due to the high number of tax evasion charges and for not showing any remorse for his offending. The court issued credit for his good character and uplifted his sentence for his previous convictions for dishonesty offences. This punishment was issued primarily as a result of the taxpayer failing to cooperate with the IRD by intentionally delaying the filing of the necessary returns. The second taxpayer was his wife, who received only nine-months' home detention since she only played a minor role in her husband's crimes. The court did not issue a reparation order, as the taxpayer's business was in liquidation, and he had no means to make any repayments. As discussed earlier in *Kininmont*,¹⁰⁹ due to more mitigating factors, and the taxpayer's personal circumstances, the court issued a non-custodial sentence.

In *R v Suckling*,¹¹⁰ the taxpayer received a sentence of 12 months' imprisonment as he showed a lack of remorse for his offending. The court determined that an imprisonment term longer than 12 months will be unsuitable since the taxpayer was 70 years of age and he will find it very difficult to survive in prison. The court did not impose a reparation order because the taxpayer was bankrupt.

In *Commissioner of Inland Revenue v Robinson*,¹¹¹ the taxpayer received a sentence of ten-months' imprisonment because he received credit for his early guilty plea, was aged 56, and had poor health. It was further deemed that he would be unable to undertake the hardships faced as a result of being imprisoned. The main aggravating factor was the filing of 40 false GST returns to the IRD. However, the court decided to impose a lower prison term due to his serious health conditions. The taxpayer had limited finances, and so the court did not issue a reparation order. In comparison to *Pandey*,¹¹² more charges and a high number of false GST returns filed are observed in this case. Although the number of charges is lower in *Allan*,¹¹³

¹⁰⁸ *R v Allan* (2009) 24 NZTC 23,815.

¹⁰⁹ *Inland Revenue Department v Kininmont*, above n 88, at [4].

¹¹⁰ *R v Suckling* [2015] NZDC 14634.

¹¹¹ *Commissioner of Inland Revenue v Robinson* [2017] NZDC 19068.

¹¹² *Pandey v R*, above n 87.

¹¹³ *R v Allan*, above n 108.

the taxpayer did not receive any discounts other than a reduction in sentence based on his good character. The amount of tax evaded was slightly higher in *Pearce*;¹¹⁴ however, the court imposed a community detention sentence to prevent the taxpayer from losing her job.

2 *Imprisonment greater than 12 months*

In *R v Smith*,¹¹⁵ the taxpayer received a sentence of two-and-a-half years' imprisonment due to the high number of charges and the period in which the offending took place. The court issued the taxpayer with credit for his good character and uplifted his sentence for his previous convictions for dishonesty offences. This sentence was issued as the taxpayer had used the evaded money for his personal expenses. His wife only received nine-months' home detention because she only played a minor role in her husband's crimes. The court did not impose a reparation order since the taxpayer had no financial means to make repayments.

In *R v Dhillon*,¹¹⁶ the taxpayer received a sentence of six-and-a-half-years' imprisonment since the amount of tax evaded was excessive. The taxpayer received credit for his good character; yet the court did not issue any other discounts as the offending had taken place over a nine-year period and the taxpayer did not show any remorse for his offending. The whole amount was impossible to be recovered, and therefore, the court did not issue a reparation order.

In *Zaheed v R*,¹¹⁷ the taxpayer was imprisoned for two years and seven months. He received credit for his early guilty plea; however, he failed to pay meaningful reparation. Although the taxpayer had made an offer to the court to repay \$75K before his sentencing in return for a reduced prison term, he had failed to do so. As a result, the judge increased his prison sentence and instead issued a reparation order of \$20K after examining his financial circumstances.

In *R v Rowley & Skinner*,¹¹⁸ both taxpayers were accountants who used their accounting knowledge to take advantage of the tax system. The aggravating factors were the number of charges and the fact that they both claimed fictitious expenses of more than \$9M by submitting false invoices to the IRD. They each pocketed about \$1.8M each and used it for their personal expenses. They both received a sentence of eight years' imprisonment as they were also charged under the Crimes Act for committing other offences, such as using a document for a

¹¹⁴ *Inland Revenue Department v Pearce*, above n 103.

¹¹⁵ *R v Smith* (2009) 24 NZTC 23,004

¹¹⁶ *R v Dhillon* (2010) 24 NZTC 24,030.

¹¹⁷ *Zaheed v R* (2011) 25 NZTC 20-018.

¹¹⁸ *R v Rowley & Skinner* [2012] NZHC 2087.

pecuniary advantage and perverting the course of justice. One of the taxpayers received a slightly longer sentence than his co-accused as he enjoyed the high life with the proceeds of their crime. The pair did not show any remorse for their offending, and the court did not impose a reparation order as they were bankrupt. Although the amount of tax evaded is higher in *Dhillon*,¹¹⁹ the taxpayer did not face any of the more serious charges under the Crimes Act.

In *Mehmood v R*,¹²⁰ the taxpayer received a sentence of three years' imprisonment after receiving credit for his good character, early guilty plea, and fragile depressive state. This sentence was issued primarily as a result of the taxpayer failing to disclose the cash wages paid to his employees, under-declaring sales of almost \$2.7M, and taking about \$1.7M for his personal use. The number of false returns (144) submitted to the IRD is significant, and he has not shown any remorse for his offending. The court did not issue a reparation order since the taxpayer does not have sufficient assets to make repayments. The taxpayer in *Smith*¹²¹ received a slightly lower sentence because the number of charges and the amount of tax evaded was lower than *Mehmood*.

In *Inland Revenue Department v Tane*,¹²² the taxpayer received a sentence of two years' imprisonment due to receiving credit for her early guilty plea. She did not receive an uplift for her previous convictions as they were historic and unrelated to this case. Moreover, the taxpayer did not show any remorse for her crime. The court did not impose a reparation order as the taxpayer lacked the financial resources to make repayments.

In *Inland Revenue Department v Isherwood*,¹²³ the taxpayer received a sentence of three-years' imprisonment following the credit received for her early guilty plea, remorse, family support, and taking steps to address her gambling addiction, which was the primary motivator for her offending. The court determined that the taxpayer was unable to repay the outstanding tax, so a reparation order was not issued. In *Smith*,¹²⁴ the taxpayer received less credit and the amount of tax evaded was also lower than *Isherwood*.

In *R v Luo*,¹²⁵ the taxpayer received a sentence of one-year-and-seven months' imprisonment after receiving credit for her early guilty plea, remorse, and personal circumstances. The judge opted not to add any uplifts for her previous tax convictions as the penalties imposed for those

¹¹⁹ *R v Dhillon*, above n 116.

¹²⁰ *Mehmood v R* (2015) 27 NZTC 22-020.

¹²¹ *R v Smith*, above n 115, at [1].

¹²² *Inland Revenue Department v Tane* [2016] NZDC 17578.

¹²³ *Inland Revenue Department v Isherwood* [2016] NZDC 21726.

¹²⁴ *R v Smith*, above n 115, at [35].

¹²⁵ *R v Luo* [2017] NZDC 13445.

offences was nominal relative to the present offending. A reparation order was not imposed by the court since the taxpayer was unable to make any repayments. Despite the amount of tax evaded being lower in *Zaheed*,¹²⁶ the punishment was higher than *Luo* since the taxpayer had only received credit for his guilty plea.

In *Commissioner of Inland Revenue v McLaren*,¹²⁷ the taxpayer received a sentence of two years and four months' imprisonment as a result of receiving credit for his early guilty plea, remorse, family support, and personal circumstances. The aggravating factors were the number of false GST returns (26) submitted to the IRD and the amount of tax evaded. The money obtained from the IRD was used to fund a luxurious lifestyle. The court uplifted his sentence due to his 22 previous convictions for a variety of offences under the Crimes Act. The court further imposed a reparation order of \$17.5K following the examination of the finances of the taxpayer. In *Tane*¹²⁸ and *McLaren*, the taxpayers pleaded guilty; however, there is a substantial difference in the amount of tax evaded and the number of charges, while the punishments are similar. This is because there were more mitigating factors in *McLaren*, and the offending period was longer. In *Tane*, the offences were committed simultaneously.

In *Inland Revenue Department v Bench*,¹²⁹ the taxpayer was imprisoned for a year and seven months after receiving credit for his guilty plea, good character, and remorse. The taxpayer had made no pecuniary gain from the offending. A fine of \$21.4K was imposed for 40 of the charges laid under s 143A(1)(e) and 147 of the TAA, as they are only fineable offences. The court did not impose home detention due to the gravity of the offending and the taxpayer's inability to pay meaningful reparation as a result of his bankruptcy.

In *Inland Revenue Department v Lasek*,¹³⁰ the taxpayer was jailed for a period of three years and four months. This punishment was given after considering his good character and guilty plea. The taxpayer had made no personal gains from his offending as it was committed primarily to address cash flow issues at his business. The court did not issue a reparation order since the taxpayer was bankrupt and had no income and assets to make repayments.

In *R v Barton*,¹³¹ the taxpayer was imprisoned for three years and two months. He received credit for contributions to the community, remorse, filing all the outstanding returns, and the repayment of \$43K prior to his sentencing. He also received further credit for offering to repay

¹²⁶ *Zaheed v R*, above n 117.

¹²⁷ *Commissioner of Inland Revenue v McLaren* [2017] NZDC 16275.

¹²⁸ *Inland Revenue Department v Tane*, above n 122.

¹²⁹ *Inland Revenue Department v Bench* [2017] NZDC 635.

¹³⁰ *Inland Revenue Department v Lasek* [2018] NZDC 7473.

¹³¹ *R v Barton* [2018] NZDC 17502.

\$37K. In this case, the taxpayer transferred the proceeds of his crime into the bank accounts for his mortgage consulting business. The court uplifted his sentence due to his previous convictions that consisted of 80 dishonesty offences and a conviction for not filing income tax returns. A reparation order was not issued by the court since the taxpayer was already bankrupt.

In *R v Kampeng*,¹³² five members of a family operated 21 Thai restaurants across New Zealand. They altogether filed 366 false GST, income, and personal tax returns over a seven-year period. They concealed approximately \$12M in cash sales from the IRD by not disclosing them in their returns. The cash deposited into their personal bank accounts was worth more than \$9M, which was used to fund a luxurious lifestyle. The main co-conspirator of this case was imprisoned for two years and eight months as she claimed Working for Families tax credits by declaring very low income over several years. The other taxpayers received varying sentences based on the amount of tax evaded and the number of returns filed by each individual.

In *R v Sorm*,¹³³ the taxpayer received a sentence of four years and nine months' imprisonment as the amount of tax evaded was excessive and the number of charges was significant. He received credit for his contributions to the community, hard work, and the difficulties that he would face in prison. The court issued this punishment primarily as the offending took place over a six-year period and the taxpayer failed to declare almost \$6.5M in cash sales to the IRD. The evaded amount was used to fund a luxurious lifestyle. The court determined that a \$500K reparation order was appropriate after considering the taxpayer's financial position.

In *Inland Revenue Department v Coleman*,¹³⁴ the taxpayer was imprisoned for four years and nine months due to being charged under the Crimes Act for offences such as using a forged document and dishonesty using a document. The use of a forged document was the lead charge in this case. The only credit he received was for his contributions to the community. The court did not issue a reparation order since the taxpayer was already bankrupt. In *Sorm*,¹³⁵ the number of charges were much higher, and the taxpayer received more sentence discounts than *Coleman*.

In *R v Chahil and Gupta*,¹³⁶ the taxpayer owned and operated 17 restaurants across New Zealand with the assistance of an employee. He managed to evade approximately \$702K over

¹³² *R v Kampeng* [2019] NZHC 2500.

¹³³ *R v Sorm* [2019] NZDC 23650.

¹³⁴ *Inland Revenue Department v Coleman* [2019] NZDC 23779.

¹³⁵ *R v Sorm*, above n 133.

¹³⁶ *R v Chahil and Gupta* [2020] NZHC 317.

a six-year period. The aggravating factors were the number of false GST returns (115) filed and the concealment of nearly \$6.5M in cash sales from the IRD. The taxpayer was imprisoned for three years and two months as he did not receive any credit for his good character, personal circumstances, and remorse. The taxpayer and his co-accused were also sentenced for nine charges of money laundering. The judge provided the taxpayer with a partial discount for his guilty plea because it was only entered after the crown amended 17 of the income tax charges. His co-accused received nine months of home detention since her culpability was lower than his and she was solely acting under his directions. The taxpayer's accountant helped launder the money overseas to evade taxes. He received ten months' home detention as he was 65 years of age and had health problems. The accountant received credit for his guilty plea, remorse, and good character.

In *R v Bracken*,¹³⁷ the taxpayer was the owner of a farming and exporting business. He received a sentence of eight-and-a-half-years' imprisonment as the amount of tax evaded was significant, and he was charged under the Crimes Act on 39 charges of dishonesty taking or using a document for a pecuniary advantage. It is presently one of the largest tax fraud cases to ever be prosecuted in New Zealand. The aggravating factor in this case was the submission of false invoices worth approximately \$133M to the IRD. The judge imposed the maximum punishment under the law because the tax evaded was far greater than any of the previous cases. Although the taxpayer had previous convictions for dishonesty offences, the court did not issue any uplifts due to the severity of this case. The taxpayer has not shown any remorse for his crime, and the court did not issue any discounts. Moreover, the court did not issue a reparation order considering the lack of offers made by the taxpayer. Nevertheless, the assets obtained from the offending were under a restraining order by the court. This allowed the IRD to take control of the assets and sell them to recover the outstanding tax. The punishments in this case are very similar to *Rowley & Skinner*¹³⁸, while the amount of tax evaded is substantially higher in *Bracken*. This is because both taxpayers were charged under the Crimes Act. The penalties issued by the courts in both cases suggests that eight years is roughly the maximum sentence imposed for more serious cases of tax evasion.

¹³⁷ *R v Bracken* [2021] NZHC 1032.

¹³⁸ *R v Rowley & Skinner*, above n 118.

C *The punishments issued for different taxes*

The courts have issued different punishments based on the various types of taxes involved in each case. The key findings on the punishments issued for different taxes are summarised as follows:

- The punishments were mostly higher in cases that involved both income tax and GST compared to cases with only GST being involved.
- In cases involving both GST and PAYE, the punishments were generally higher if the amount of PAYE evaded was significantly greater than the amount of GST evaded.
- The courts took a harsher approach towards cases involving only income tax than in cases involving only PAYE.
- In cases involving all three taxes, the punishments were more severe if the GST and PAYE evaded was significantly greater than the amount of income tax evaded.

While the courts have issued various penalties depending on the taxes involved in each case, this does not necessarily imply that one type of tax is more serious than the other. The judges have usually placed greater emphasis on aggravating factors, such as the number of false GST and income tax returns filed, the amount of PAYE withheld from the IRD, the number of charges, and the amount of tax evaded for each type of tax. In comparison to Okafor and Farrar,¹³⁹ the courts have mostly issued harsher penalties for evasion offences involving both income tax and GST, rather than only GST.

D *Summary of the findings*

In general, the analysis of the cases demonstrates that over the past 13 years, the courts have only issued a prison sentence of less than or equal to 12 months in only three cases. This suggests that the courts have taken a harsher approach with respect to issuing prison sentences to tax evaders. The most common sentence discounts issued to tax evaders were for lack of prior convictions, good character, being remorseful, pleading guilty at the earliest opportunity, major contributions to the community, cooperation with the IRD, and making efforts to repay the outstanding tax. Several judges have still issued custodial sentences regardless of the fact that some taxpayers were very remorseful for their actions and claimed to be of “good character”. This was common in cases where the offending took place over a lengthy period, the number of charges were higher, and the amount of tax evaded was significant. The courts have primarily issued community-based sentences in cases where the

¹³⁹ Okafor and Farrar, above n 7.

offending was of a less serious nature despite the amount of tax evaded and the number of charges being high. Nonetheless, the courts have used imprisonment as the “starting point” in every case. Apart from reparation orders, the courts have not issued any fines in most of these cases. The judges usually examined the financial background of the taxpayers to determine the appropriate reparation amount for each case. Therefore, they were unable to issue reparation orders in situations where the taxpayers were bankrupt and/or had no financial means to make any repayments to the IRD. The punishments were lower in cases where the taxpayers have offered to make significant reparation.

The common punishment issued to tax evaders as an alternative to incarceration was home detention, especially in cases where the offending was serious, but the taxpayers' personal circumstances and health conditions precluded the court from sending them to prison. Nevertheless, the aggravating factors in some cases did not necessitate a sentence of home detention, although a few taxpayers were eligible for it. Many taxpayers were given the opportunity to continue working and running their businesses while serving a sentence of home detention or community detention to repay the outstanding tax. Many judges decided it to be a better alternative than imprisonment in most aspects. A few taxpayers had their sentences uplifted due to their previous convictions for fraud and dishonesty offences. However, despite the fact that several defendants had prior convictions for a variety of offences, some judges opted to not apply any uplifts as a result of those convictions. In some ways, the judges were generous to the taxpayers by not granting any uplifts. However, one could argue that it is the judges' responsibility to impose the least severe punishments under the law, unless they consider the offences to be extremely serious, in which case a harsher sentence should only be imposed.

The most common evasion offences committed by taxpayers mainly relate to the failure of filing the necessary tax returns, providing false and misleading information to the IRD, and failure to pass on the tax deductions made from employee's earnings to the IRD. The courts have been lenient in issuing the least restrictive punishments in most of these cases. On the other hand, they have particularly taken a harsher stance towards tax evaders who have gone towards extreme lengths to keep their activities hidden from the IRD, as well as those who have not fully co-operated with the IRD during the investigative phase of their tax affairs. This mostly applied to cases where the offending took place over a longer period of time. In most cases, these taxpayers were aware of their tax obligations. However, they chose not to follow them, despite the fact that the IRD has repeatedly advised them on numerous occasions to either file the requisite tax returns or provide the necessary financial records for investigation purposes. The criminal penalties were substantially higher in some of the evasion cases due to the additional charges laid by the IRD using the Crimes Act. Tax evaders received an

average non-custodial sentence of 6-9 months of community or home detention. The average imprisonment sentence issued to tax evaders was between one to three years, and in more serious cases, the prison sentence increased to a period of four to eight years. Although the amount of tax evaded is positively linked to the penalties imposed by the courts, the judges also assessed other aggravating and mitigating factors while deciding on the appropriate punishments for different tax evasion violations. The courts further investigated whether the taxpayers made any personal or financial gains from their offending, as well as the amount of cash sales or income that the businesses did not disclose to the IRD. This implies that the amount of tax evaded is not the only factor considered by the judges prior to deciding the punishments to impose.

VI Conclusion

This study examined 37 tax evasion cases between 2009 and 2021 to analyse the various aggravating and mitigating factors considered by the New Zealand courts while issuing penalties for tax evasion. The findings show that most tax evaders are treated leniently by the courts, as represented by the various sentence discounts issued to them despite the seriousness of their offending. However, the courts were also reluctant to issue discounts in cases where the taxpayer is undeserving of the leniency.

The results demonstrate that non-custodial sentences were primarily issued to taxpayers who had pleaded guilty at the earliest opportunity; were of “good character”; took responsibility for their actions; demonstrated full cooperation with the IRD; had serious medical issues; had no previous convictions; were the sole income earners in their family; or did not use the evaded money for their personal expenditure. A custodial sentence was usually imposed when the taxpayer did not show any remorse for their actions; had gone into extreme lengths to conceal their offending; had previous convictions; did not co-operate with the IRD; and had used the proceeds of their crime to fund a luxurious lifestyle.

The prison sentences were substantially lower in cases where the taxpayer had pleaded guilty at the earliest opportunity and received credit for other mitigating factors, despite the amount of tax evaded and the number of charges being significant. By pleading guilty, the taxpayers were able to save money and time by avoiding a protracted trial. The courts have issued uplifts for taxpayers who had previous convictions for tax-related and dishonesty offences. On the other hand, some judges decided to not issue any uplifts for past convictions which were not related to tax evasion. The findings suggest that cases involving income tax and GST are treated more harshly by the courts. The judges did not issue reparation orders in cases where the taxpayers were bankrupt or did not possess enough income or assets to make any repayments.

This study contributes to the existing literature by identifying the parameters considered by the courts while deciding the degree of punishments for tax evasion. Based on the results in Marriott,¹⁴⁰ the courts must take a harsher stance against tax evaders by giving less importance to mitigating factors, such as good character, offers of restitution, and loss of employment opportunities. This is not to suggest that tax evaders should not receive any discounts, but that they should not be treated differently based on their social standing.

¹⁴⁰ Marriott, above n 14.

Some limitations circumscribe the findings of this research. This study did not consider evasion cases in other countries due to the limited timeframe, which should be assessed by future research. This would lead to a better understanding of the severity of the punishments granted by New Zealand's courts with respect to other countries. However, it is also likely that some countries have milder penalties than New Zealand, or they might take a different approach towards sentencing tax evaders, particularly with serious offences. This study did not consider the punishments issued for blue-collar offences in New Zealand. Further research is required to determine the reasons behind the courts issuing harsher sentences to blue-collar criminals than tax evaders, as evidenced by previous studies.¹⁴¹ By examining the aggravating and mitigating factors in other crimes, it would provide us a better understanding of what the courts may consider to ensure that tax evaders are treated no differently than white-collar criminals.

¹⁴¹ Marriott, above n 5.

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VIII Appendix

Table A: Cases involving non-custodial sentences

Case name	Year	Types of taxes	Number of charges	Duration of offending	Amount evaded	Punishment
Dempsey	2010	Income tax	8	4 years	\$180,000	6 months community detention + 200 hours community service + \$39.3k reparation
Smith	2010	Income tax GST PAYE	95	8 years	\$247,000	10 months home detention + 250 hours community service + \$138k reparation
Pandey	2013	GST	1	N/A	\$46,937	120 hours community service
Kininmont	2016	GST	21	1 year and 4 months	\$74,303	4 1/2 months home detention + \$30K reparation
Ali	2017	Income tax	11	8 years	\$263,433	12 months home detention + 150 hours community service + Full reparation
Blake	2017	PAYE	11	8 months	\$131,000	8 months home detention + 200 hours community service
Karaitiana	2017	Income tax	7	7 years	\$65,286	5 months and 2 weeks home detention
Mackay	2017	GST PAYE	61	3 years and 6 months	\$111,000	5 months home detention + 225 hours community service
Malu	2017	Income tax GST	3	4 years	\$178,000	220 hours community service + \$26.2k reparation
Mauigoa	2017	PAYE	28	8 months	\$342,000	9 months home detention + \$12k reparation

Mitchell	2017	PAYE	11	11 months	\$46,221	6 months community detention + 300 hours community service + \$130 court costs
Buisson	2018	Income tax GST	3	10 years	\$214,668	12 months home detention + 300 hours community service
Barikow	2018	PAYE	2	17 months	\$126,727	6 months home detention + Full reparation
Serchan	2018	GST PAYE	2	12 months	\$43,000	8 months home detention
Archibald	2019	Income tax GST	11	8 years	\$1.12m	12 months home detention + 200 hours community service
Pearce	2019	GST	27	2 years and 8 months	\$57,360	6 months community detention + 100 hours community service + 12 months supervision + Full reparation
Basalaj	2020	PAYE	9	9 months	\$491,447	6 months community detention + 300 hours community service + \$300k reparation

Table B: Cases involving custodial sentences less than or equal to 12 months

Case name	Year	Types of taxes	Number of charges	Duration of offending	Amount evaded	Punishment
Allan	2009	GST	9	1 year and 6 months	\$80,000	12 months imprisonment + Full reparation
Suckling	2016	Income tax GST	15	4 years	\$106,218	12 months imprisonment
Robinson	2017	GST	40	2 years	\$50,911	10 months imprisonment

Table C: Cases involving custodial sentences greater than 12 months

Case name	Year	Types of taxes	Number of charges	Duration of offending	Amount evaded	Punishment
Smith	2009	Income tax GST PAYE	94	5 years	\$570,000	<u>Defendant 1</u> 2 years and 6 months imprisonment <u>Defendant 2</u> 9 months home detention
Dhillon	2010	GST PAYE	50	9 years	\$3.3m	6 years and 6 months imprisonment
Zaheed	2010	GST PAYE	15	8 months	\$407,356	2 years and 7 months imprisonment + \$20k reparation
Rowley and Skinner	2012	Income tax GST	87	5 years	\$2.3m	<u>Defendant 1</u> 8 1/2 years imprisonment <u>Defendant 2</u> 8 years imprisonment
Mehmood	2014	Income tax GST PAYE	144	5 years	\$1.1m	3 years imprisonment
Tane	2016	GST	13	N/A	\$215,000	2 years imprisonment
Isherwood	2016	Income tax GST PAYE	3	6 years	\$603,000	3 years imprisonment
Luo	2017	GST PAYE	6	2 years and 6 months	\$423,909	1 year and 7 months imprisonment
Mclaren	2017	GST	26	2 years	\$795,000	2 years and 4 months imprisonment + \$17.5k reparation
Bench	2017	Income tax GST PAYE	78	6 years	\$399,827	1 year and 7 months imprisonment + \$21.4k fine
Lasek	2018	PAYE	44	3 years and 8 months	\$1.5m	3 years and 4 months imprisonment
Barton	2018	Income tax	81	9 years	\$400,000	3 years and 2 months imprisonment

Kampeng	2019	Income tax GST	64	7 years	\$2.3m	<u>Defendant 1</u> 2 years and 8 months imprisonment + \$900k reparation <u>Defendant 2</u> 12 months home detention + \$600k reparation <u>Defendant 3</u> 10 months home detention + \$400k reparation <u>Defendant 4</u> 9 months home detention + \$300k reparation <u>Defendant 5</u> \$500k reparation
Sorm	2019	Income tax GST	52	6 years	\$2.8m	4 years and 9 months imprisonment + \$500k reparation
Coleman	2019	Income tax GST	42	5 years	\$1.07m	4 years and 9 months imprisonment
Chahil and Gupta	2020	Income tax GST	34	6 years	\$702,667	<u>Defendant 1</u> 3 years and 2 months imprisonment + \$50k reparation <u>Defendant 2</u> 9 months home detention <u>Defendant 3</u> 10 months home detention + \$50k reparation
Bracken	2021	GST	39	4 years	\$17.3m	8 years and 6 months imprisonment