

Consistency of Sentencing in New Zealand's Tax Evasion Prosecutions

Ranjana Gupta* and Akshay Yerra

The public must believe that the laws of a country are legitimate. To assist with this, the present paper investigates the parameters considered by the judiciary when deciding on the appropriate degree of sanctions by analysing the selected published legal cases.

The stratified random sampling method was utilised to select the cases. The qualitative data analysis package NVivo 12 was used to analyse the evasion cases. The paper examines 70 tax evasion cases from 2007 to 2022.

The reference to various cases in the present research demonstrates that the non-custodial sentences were imposed on taxpayers who had pleaded guilty at the earliest opportunity; were of good character; took responsibility for their actions; were cooperative with the Inland Revenue Department (IRD); had severe medical issues; had no previous convictions; were the sole income earners in their family or did not use the evaded money themselves. A custodial sentence was imposed when the taxpayers did not show remorse for their actions; had gone to 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 for the tax evaders convicted under the Crimes Act 1961 were much higher. The issuance of a reparation order depended on the taxpayers' financial circumstances. Further, the analysis found that in the cases involving 'pay as you earn' tax (PAYE), income tax and Goods and Services Tax (GST), the courts treated the GST and PAYE more harshly than income tax. It is asserted that this research will give an overview for policymakers or tax authorities to consider if looking at sentencing.

I INTRODUCTION

Tax evasion has become a significant issue for many countries across the globe. The High Court in *Taylor v Attorney-General*¹ stated that evasion implicitly requires “an intention to endeavour to avoid payment of tax known to be chargeable”.² Gottschalk defined tax evasion as “the willful attempt to defeat or circumvent the tax law to illegally reduce one’s tax liability.”³ Tax evasion drains limited public resources that are essential to economic development and depletes the funds for much-needed services. It often hurts the most vulnerable population. Tax evasion harms the social fabric by fuelling inequality and eroding trust in public institutions and the rule of law.⁴

* Dr Ranjana Gupta is a senior lecturer in Taxation at Auckland University of Technology.

¹ *Taylor v Attorney-General* [1963] NZLR 261 (SC).

² *Taylor v Attorney-General* [1963] NZLR 261 (SC) at 262 per McGregor J.

³ Peter Gottschalk *Policing White-Collar Crime: Characteristics of White-Collar Criminals* (Taylor & Francis, United Kingdom, 2013) at 17.

⁴ Jean-Pierre Brun and others “Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes” (Stolen Asset Recovery Initiative Series (StAR) World Bank Group, Washington, DC, 2022).

According to a 2020 report published by the Tax Justice Network, countries across the globe are losing about US\$427 billion in tax revenue each year due to private tax evasion and corporate tax abuse.⁵ The report also revealed that New Zealand loses about US\$400 million yearly due to tax evasion, and OECD countries are accountable for nearly half of the global tax losses.⁶ Various international tax scandals such as the Luxembourg Leaks⁷, the Swiss UBS bank scandal⁸, the Paradise Papers,⁹ the Panama Papers leak,¹⁰ the Luanda Leaks¹¹ and the Pandora Papers leak¹² depict opaque offshore structures that are still widely available to those who wish to conceal untaxed wealth. A common misconception is that tax offences are “victimless” crimes and are not treated as harshly as other fraud and dishonesty offences. 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. Additionally, the cost of investigating tax crime, the cost of the judicial process and so forth can impede the government’s ability to obtain more taxpayer revenue.

In the last few years, many studies have been conducted on the factors influencing tax evasion and the enforcement of tax penalties in various countries. Tax evasion has persistently carried severe penalties, although its intended deterrence effect is highly doubtful.¹³

Between 2007 and 2016, the number of tax evasion prosecutions in New Zealand declined by 31 per cent, whereas the number of tax convictions for employer-related offences increased by almost 134 per cent.¹⁴ Most evasion cases prosecuted by the IRD over the last decade have been linked to illegal activities taking place in the shadow economy.¹⁵ Given this, tax evasion might not necessarily be the main reason for forcing taxpayers to enter the shadow economy.

⁵ “The State of the Tax Justice 2020: Tax Justice in the time of COVID-19” (Tax Justice Network, November 2020).

⁶ Tax Justice Network above n 5 at 31.

⁷ A financial scandal revealed in November 2014 by a journalistic investigation conducted by the International Consortium of Investigative Journalists. It is based on confidential information about Luxembourg’s tax rulings set up by PricewaterhouseCoopers from 2002 to 2010 to the benefits of its clients. This investigation resulted in making available to the public tax rulings for over three hundred multinational companies based in Luxembourg.

⁸ The Hongkong and Shanghai Banking Corporation (HSBC) files in 2015. Arthur J Cockfield “Big Data and Tax Haven Secrecy” (2016) 18(8) Florida Tax Review 483 at 508–509.

⁹ Paradise Papers (October 2017) are a set of 13.4 million confidential electronic documents. The documents have revealed information about offshore activities of blue-chip clients, celebrities and multinationals and how they took advantage of offshore jurisdictions.

¹⁰ The Panama Papers (April 2016) were obtained from the server of a law firm based in Panama that specialises in setting up offshore companies. The papers reveal links to 72 current or former heads of state, including names of world leaders, drug peddlers and high wealth individuals; B Obermayer and F Obermaier “The Panama Papers: Breaking the Story of How the Rich and Powerful Hide Their Money” (Oneworld Publications Ltd, London, 2016).

¹¹ Sunit Bagree “Luanda Leaks are an anti-corruption landmark” (23 January 2020) The Guardian <www.theguardian.com>.

¹² The Pandora Papers, published in October 2021, are the result of 11.9 million records leaked from 14 offshore service providers. The records implicated more than 330 politicians from over 90 countries and territories, as well as 130 billionaires and countless celebrities and other high-profile individuals.

¹³ Robert W. McGee, Wendy Gelman and Thomas J. Tarangelo “How Serious Is Tax Evasion: An Empirical Legal Answer” (2014) 1(1) Indonesian Journal of International & Comparative Law 218.

¹⁴ “Number of Tax Convictions from 2007 to 2016” Inland Revenue <www.ird.govt.nz>.

¹⁵ “CA ANZ Submission on the Future of Taxation” (April 2018) Chartered Accountants Australia and New Zealand <www.charteredaccountantsanz.com> at 22.

Several studies¹⁶ have indicated that public attitudes were less hostile towards criminal activities relating to tax evasion compared to welfare benefit frauds,¹⁷ and welfare fraudsters are being punished more severely by the courts than tax evaders. Evidence from Australia and New Zealand indicates that tax evaders are less likely to be charged or receive harsher penalties than welfare fraudsters.¹⁸ For example, between 2008 and 2010, 60 per cent of welfare fraud prosecutions in New Zealand resulted in imprisonment, compared to only 22 per cent for tax evasion prosecutions.¹⁹ During the same period, approximately 64 per cent 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 stricter stance against tax evaders, and public attitudes are reflected in sentencing.

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. However, they could still receive a much lower punishment under the criminal justice system in both countries.²⁰

A study conducted by Okafor and Farrar found that in Canada, under-reporting involving excise tax would result in harsher penalties than under-reporting involving income tax.²¹ In Ireland, the number of people jailed for severe tax offences increased significantly in 2012.²² According to the Revenue Commissioners Office, nearly 38 per cent of individuals convicted of tax evasion were sentenced to imprisonment in 2012, compared to an average of 18 per cent between 2008 and 2011.²³ 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, societal privilege has been a critical factor that enabled many white-collar criminals to receive less punitive treatment under the justice system in New Zealand.²⁴ 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).²⁵ 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,

¹⁶ 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; Mirko Bagaric and Theo Alexander “A Rational Approach to Sentencing White-Collar Offenders in Australia” (2014) 34 *Adelaide Law Review* 317.

¹⁷ People fraudulently claim social security benefits without working, while others on lower incomes work very hard to make ends meet and undoubtedly want to pay the least tax possible to the government.

¹⁸ Lisa Marriott “Justice and the Justice System: A Comparison of Tax Evasion and Welfare Fraud in Australia and New Zealand” (2013) 22(2) *Griffith Law Review* 403; Greg Marston and Tamara Walsh “A Case of Misrepresentation: Social Security Fraud and the Criminal Justice System in Australia” (2008) 17(1) *Griffith Law Review* 285.

¹⁹ Marriott, above n 18, at 415.

²⁰ Marriott, above n 18..

²¹ Oliver Nnamdi Okafor and Jonathan Farrar “Punishing in the Public Interest: Exploratory Canadian Evidence Pertaining to Convictions and Incarcerations for Tax Offences” (2021) 40(5) *Journal of Accounting and Public Policy* 1.

²² Sean Mccarthaigh “Big rise in people jailed for serious tax offences” (25 February 2013) *The Irish Examiner* <irishexaminer.com>.

²³ Mccarthaigh, above n 22..

²⁴ Marriott and Sim, above n 16.

²⁵ Lisa Marriott “Pursuit of White-Collar Crime in New Zealand” (2018) 20 (2) *Journal of Australian Taxation* 35.

education and social status is unethical.²⁶ Meanwhile, it is reasonable to assume that the legal system is based on the relationship between crimes and the punishment that is meted out to criminals.

A well-known legal scholar stated:²⁷

[I]t is vitally important to determine whether the law is based on sound assumptions about how the world works and to what extent a particular law or process is achieving its stated objective and at what cost.

Accordingly, 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.

Tax evasion cases have attracted much media attention with the increasing use of technology. However, it is questionable if the increased media attention on the punishments imposed on tax evaders has changed taxpayers' 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 Alexander 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.²⁸ Similarly, Marriott recommended that an offender's "good character" should not be a mitigating factor in white-collar cases.²⁹ After all, their good character allowed them to perpetrate such crimes since they were in a position of trust and responsibility. Furthermore, the authors assert 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.³⁰

Therefore, the objective of the present study is to comprehensively analyse the reasons for the variations in punishments imposed for criminal tax evasion. Specifically, to achieve the research objective, the paper develops from the premise that in tax evasion cases more profound insights into the drivers of penalties imposed by the courts can be gained from analysing the amount of tax evaded by individuals and businesses, punishments imposed by the courts, the severity of the tax offences, the background of the taxpayers and remorse of the offender and judge's remarks at the sentencing stage. Drawing on the concept of sanctions imposed for tax evasion, deeper insights into the parameters considered by the judiciary when deciding on the appropriate degree of sanctions are identified by analysing the selected published legal cases.

The study findings are significant because this area has not been directly investigated by previous studies and brings new insights to the discipline. This paper considers the rationale for imposing different sentences for tax evasion from a judicial perspective, which inhibits our understanding of the parameters the judiciary considers when deciding on the appropriate degree of sanctions.³¹ While analysing the reasons for the imposition of different sentences for evasion offences, along with the amount of tax evaded, all the material facts and circumstances of the case must be considered. They play an essential role in evaluating the justification behind a court's decision to impose specific sentences, whether custodial or non-custodial. By providing a solid overview of criminal tax

²⁶ Samuel W Buell "Is the White-Collar Offender Privileged?" (2014) 63(4) *Duke Law Journal* 823.

²⁷ N William Hines, President of the Association of American Law Schools "Opening Speech" (AALS 2005 Annual Meeting, January 2005), as quoted in Tracey E George, "An Empirical Study of Empirical Legal Scholarship: The Top Law Schools" (2006) 81(1) *Indiana Law Journal* 141 at 141.

²⁸ Bagaric and Alexander, above n 16.

²⁹ Lisa Marriott "White-Collar Crime: The Privileging of Serious Financial Fraud in New Zealand" (2020) 29(4) *Social & Legal Studies* 486.

³⁰ Marriott, above n 29.

³¹ Ken Devos "Do Penalties and Enforcement Measures make Taxpayers more Compliant? The View of Australian Tax Evaders" (2013) 12(1) *Far East Journal of Psychology and Business* 1.

offending sentencing over several years, this study attempts to provide an outline for a policymaker or tax authority to consider if looking at sentencing.

The paper is structured with Part 2 undertaking a succinct review of the literature relevant to treating tax evaders (white-collar offenders) in the justice system and sanctions/punishments for criminal tax evasion. Part 3 sets out a review of New Zealand's tax penalties and punishments regime. Part 4 of the article details the research design and methodology employed. The analysis of the findings is outlined in Part 5. Finally, Part 6 provides conclusions emerging from this study and limitations and suggests future research directions.

II CURRENT SCHOLARSHIP

A considerable body of research exists that examines the relevance of taxpayers' attitudes towards tax compliance or noncompliance in various countries since the beginning of psychological studies on taxation.³² However, to the author's knowledge in tax and law literature in New Zealand and overseas, few studies have investigated sanctions imposed by courts for white collar offences.

This section presents the literature on treatment of tax evaders (white-collar offenders) in the justice system and sanctions/punishments for criminal tax evasion.

A *Treatment of white-collar offenders in the justice system*

A considerable body of literature currently exists, which overwhelmingly indicates that "white-collar" crimes are treated less harshly by the courts than "blue-collar" crimes, eg burglary and theft.³³ Hence it could be argued that 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.³⁴ Blue-collar criminals, eg burglars, do not have this opportunity.³⁵ However, the terms "white-collar" and "blue-collar" crime are vague in nature and scholars have criticised that outcomes should not depend on resources available to the offender and extraneous factors but on the public attitudes being reflected in the sentencing.³⁶

Weisburd and others investigated the federal courts' punishments for white-collar offences, eg bribery, antitrust violations, bank embezzlement, credit fraud, mail fraud, securities fraud and tax fraud.³⁷ The results revealed that white-collar offenders are less likely to receive a sentence of imprisonment than other criminals. Similarly, Hagan and others found that white-collar offenders were treated more leniently in the criminal justice

³² Icek Ajzen and Martin Fishbein *Understanding attitudes and predicting social behavior* (Englewood Cliffs, US: Prentice-Hall, Inc., 1980).

³³ 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, 1994); John Hagan, Ilene H Nagel, and Celesta Albonetti "The Differential Sentencing of White-Collar Offenders in Ten Federal District Courts" (1980) 45(5) *American Sociological Review* 802; Marriott, above n 18.

³⁴ Hagan and others, above n 33.

³⁵ Hagan and others, above n 33.

³⁶ Kristy Holtfreter, Shanna Van Slyke, Jason Bratton, and Marc Gertz "Public perceptions of white-collar crime and punishment" (2008) 36(1) *Journal of Criminal Justice* 50.

³⁷ Weisburd and others, above n 33.

system.³⁸ 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 status.³⁹ Thus, it can be argued that 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. Blue-collar criminals, eg burglars, do not have this opportunity. However, outcomes should not depend on resources available to taxpayers and extraneous factors.

In particular, studies have shown that courts have penalised some white-collar crimes more severely, considering public attitudes towards various white-collar criminal activities.⁴⁰ Case law in Australia indicates that “a prison sentence is usually considered to be the starting point for cases involving social security fraud.”⁴¹ 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”.

Marriott investigated the differences in public attitudes toward welfare fraud and tax evasion in New Zealand.⁴² In contrast to previous studies, the findings suggest that people had harsher attitudes toward tax evaders than welfare fraudsters. Given this, between 2008 and 2010, 60 per cent of welfare fraud prosecutions in New Zealand resulted in imprisonment compared to only 22 per cent for tax evasion prosecutions, which shows that the public attitudes are not reflected in the sentencing.⁴³ During the same period, 64 per cent of prosecuted tax evaders in Australia received a custodial sentence suggesting that Australia has taken a stricter stance against tax evaders.

Moreover, Marriott and Sim’s study in the context of the punishments imposed on welfare fraudsters and tax evaders in Australia and New Zealand reports that more punitive treatment of welfare fraudsters than tax evaders in the justice system is not an accurate reflection of the overall public perception of the crime.⁴⁴

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 courts 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. In contrast, others on lower incomes work hard to make ends meet.

B *Enforcement of tax penalties*

³⁸ Hagan and others, above n 33..

³⁹ Marriott, above n 25.

⁴⁰ Marta Orviska and John Hudson “Tax Evasion, Civic Duty and the Law-Abiding Citizen” (2003) 19 *European Journal of Political Economy* 82; and Murray Evans and Jonathan Kelley “Are Tax Cheating and Welfare Fraud Wrong? Public Opinion in 29 Nations” (2001) 3(4) *Australian Social Monitor* 93.

⁴¹ Marston and Walsh, above n 18, at 292.

⁴² Lisa Marriott “An Investigation of Attitudes towards Tax evasion and Welfare Fraud in New Zealand” (2017) 50(1) *Australian & New Zealand Journal of Criminology* 123.

⁴³ Marriott, above n 18, at 415.

⁴⁴ Marriott and Sim, above n 16.

Jackson and Milliron study on taxpayers' compliance studies (1970–1985) found that attitudes are more important than opportunities in determining taxpayer behaviour.⁴⁵ Their findings suggest that the influences of demographic variables are not clearly related to taxpayer behaviour, and this could be due to exogenous variables which were not controlled for. Their study found that sanctions encourage compliance but severity of sanctions on tax compliance was not examined in their study.

Richardson and Sawyer comprehensive review (1986–1997) of taxpayers' compliance attitudes reported that the degree of certainty held regarding the relationship with taxpayer compliance behaviour and demographic variables has been virtually non-existent for most of the variables.⁴⁶ Most studies reviewed in their study found positive effect of increased sanction level on compliance. However, a significant number of studies found no relationship between the two factors. These mixed findings may be a consequence of the fact that that very few studies have examined the sanction compliance variable from the viewpoint of a taxpayer's perceptions. Further, there is a conflict in the findings of the relative effectiveness of different sanction types. The results of their study also found significant relationship between the probability of detection and taxpayer compliance.

Yong and others' comprehensive review (1998–2017) of taxpayers' compliance attitudes reported the concept of tax evasion is highly connected to the probability of detection (tax audit), tax system, tax morale and tax rate.⁴⁷

Hasseldine and others' study reports a positive relationship between the severity of tax penalties and taxpayers' non-compliance attitudes.⁴⁸ The findings suggest that taxpayers are more likely to comply with their tax obligations if the monetary penalties or custodial sentences for evasion are very high.

Mohamad and others' study reports that taxpayers were less likely to engage in tax evasion if the tax authorities took a stricter approach to enforcing tax laws.⁴⁹ The results revealed that increased audits and penalties played a significant role in reducing tax evasion in Malaysia. Mohdali and others investigated the impact of enforcement actions such as audits and penalties on Malaysia's taxpayers' compliance and non-compliance behaviour.⁵⁰ The findings suggest 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 about mistreatment by the tax authorities.⁵¹

Devos investigated whether introducing new tax offences or imposing harsher penalties for the existing ones affected the level of tax non-compliance in Australia.⁵² The results revealed that imposing harsher sanctions on tax evaders did not necessarily prevent them from evading taxes in the future. In addition, many tax evaders re-

⁴⁵ BR Jackson and VC Milliron "Tax Compliance Research: Findings, Problems and Prospects" (1986) 5 *Journal of Accounting Literature* 125.

⁴⁶ Maryann Richardson and Adrian J Sawyer "A Taxonomy of the Tax Compliance Literature: Further Findings Problems and Prospects" (2001) 16(2) *Australian Tax Forum* 137.

⁴⁷ Sue Yong, Karen Lo, Brett Freudenberg and Adrian J Sawyer "Tax Compliance in the New Millennium: Understanding the Variables" (2019) 34(4) *Australian Tax Forum* 766.

⁴⁸ John Hasseldine, Peggy Hite, Simon James, and Marika Toumi "Persuasive Communications: Tax Compliance Enforcement Strategies for Sole Proprietors" (2007) 24(1) *Contemporary Accounting Research* 171.

⁴⁹ 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) *Journal of Global Business and Economics* 241.

⁵⁰ 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.

⁵¹ At 295.

⁵² Ken Devos "Penalties and Sanctions for Australian Taxation Crimes and the Implications for Taxpayer Compliance" (2002) 17(3) *Australian Tax Forum* 257.

offended multiple times, even after serving a prison term of more than 12 months. Devos' other study reports 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.⁵³ Devos' later study, on the contrary, reported that law enforcement measures and the probability of detection by tax authorities had influenced the behaviour of tax evaders in Australia.⁵⁴ Most tax evaders surveyed in the 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 very 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.

In contrast with these findings, Gangl and others suggest 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.⁵⁵ This was because some taxpayers might perceive the higher level of enforcement in the tax system as unjust. Bagaric and others' study also found no evidence to support the assumption that introducing harsher sanctions for evasion offences would reduce non-compliance levels in Australia.⁵⁶ Their findings suggest 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 taxpayers would be caught for abusing the tax system.

McLisky investigated whether the current tax penalties in New Zealand effectively combat tax fraud and influence the behaviour of tax evaders.⁵⁷ The research showed an upsurge in criminal tax fraud after establishing the new compliance and penalty framework in 1997. Ashcroft's study pointed out that New Zealand needs to increase the maximum penalties for some tax offences to reflect the seriousness of those offences.⁵⁸

Most previous studies have shown mixed results in deciding the degree of punishment for tax evasion or similar offences.⁵⁹ The reasons for not imposing harsher sanctions on tax evaders remain unclear.

Therefore, it is particularly worthy of investigating the drivers of punishments imposed by the courts. Consequently, the present study addresses these gaps and contributes to the published literature by reporting whether an association exists between the parameters considered by the courts and the decision on the degree of punishment.

III AN OVERVIEW OF THE TAX PENALTIES AND PUNISHMENTS REGIME

A Introduction

⁵³ Devos, above n 52..

⁵⁴ Devos, above n 31..

⁵⁵ 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.

⁵⁶ Mirko Bagaric, Theo Alexander and Athula Pathinayake "The Fallacy of General Deterrence and the Futility of Imprisoning Offenders for Tax Fraud" (2011) 26 (3) *Australian Tax Forum* 511.

⁵⁷ Ian McLisky *The Compliance and Penalty Regime: Its role as a Compliance Instrument in Combating the Criminalisation of Tax Fraud in New Zealand* (M Bus Thesis, Massey University, New Zealand, 2011).

⁵⁸ Philip Ascroft "The Criminal Aspects of Tax Evasion in New Zealand" (2010) 16(1) *NZJTL* 21.

⁵⁹ Ken Devos "The Role of Sanctions and other Factors in Tackling International Tax Fraud" (2013) 42 *Common Law World Review* 1.

Section 143B creates the criminal offence of tax evasion. Tax evasion is a “true crime” in that it has an *actus reus* and a *mens rea* element. The *actus reus* is the evasion of tax through one or more of the five ways specified in s 143B(1)(a)–(e) (for example by providing falsifying financial records, under-reporting income, claiming illegal deductions and concealing income or assets in offshore bank accounts). To obtain convictions for tax evasion, 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 s 143B(2) of the Tax Administration Act 1994 (TAA 1994).⁶⁰ The *mens rea* element for tax evasion requires that the evasion was committed with *intent* to evade tax.⁶¹

Before 1997, an ad hoc system of penalties enforced taxpayer compliance in New Zealand. This resulted in flaws in the design of the rules, with sanctions often inappropriate for the offences committed. There was also an over-emphasis on monetary penalties, almost to the virtual exclusion of non-monetary penalties.⁶²

In the mid-1990s, the New Zealand Government realised the need to improve the penalties regime. Since the 1996 amendments to the TAA 1994,⁶³ the penalties for tax evasion have changed from those that existed under the original TAA 1994.⁶⁴ Sections 143 and 143A establish absolute liability and knowledge offences, for which the penalties are fines of varying amounts. As an absolute liability offence, s 143 only requires proof of the *actus reus* for conviction. The knowledge offences require that the person deliberately carried out the actions compromising the *actus reus*.⁶⁵ Apart from changes to civil penalties, there has been an increase in the level of custodial sanctions in an attempt to combat the growth of tax evasion. Section 143B(4)(a) of the TAA 1994 introduced a five-year maximum term of imprisonment and/or a fine not exceeding \$50,000 for tax evasion or similar offences. Under the new taxation penalties regime, tax evasion may result in both civil and criminal penalties.⁶⁶ Section 149 of the TAA sets out the guidelines for imposing criminal and civil penalties.⁶⁷ Under s 149(4) of the 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.⁶⁸ However, 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) of the TAA.⁶⁹ The civil penalties for tax violations include shortfall penalties,⁷⁰ late payment penalty,⁷¹ non-electronic filing penalty⁷² and late filing penalty.⁷³ If a civil and/or criminal

⁶⁰ Tax Administration Act 1994, s 143B(2). Section 143B(2) functions as a general provision that is used to prosecute tax evasion that is not covered by s 143B(1)(a)–(e). Refer to: “Criminal Offence – Evasion or Similar Offences: Standard Practice Statement INV-225” (1998) 10(3) Tax Information Bulletin 22 at 23.

⁶¹ Tax Administration Act 1994, s 143B(1)(f)–(h).

⁶² “Penalties” (1996) 8(7) Tax Information Bulletin 1–35, deals with the legislative changes to compliance penalties.

⁶³ The Tax Administration Amendment Act (No 2) 1996, enacted 26 July 1996 (with effect from the 1997–1998 income year).

⁶⁴ The previous penalties were prosecution for filing false return (s 199(1)(b)); penal tax (s 186); and publication of names in the New Zealand Gazette (Tax Administration Act 1994, s 223).

⁶⁵ Philip Ascroft, above n 58, at 24.

⁶⁶ Prior to 1997, prosecutions for tax evasion were initiated under the Crimes Act 1961, s 220 (theft), s 257 (defraud), s 229A(b) – and the Serious Fraud Office Act 1990, s 45.

⁶⁷ Tax Administration Act 1994, s 149.

⁶⁸ Tax Administration Act 1994, s 149(4).

⁶⁹ Tax Administration Act 1994, s 149(5).

⁷⁰ Tax Administration Act 1994, ss 141–141k.

⁷¹ Tax Administration Act 1994, s 139B.

⁷² Tax Administration Act 1994, s 139AA.

⁷³ Tax Administration Act 1994, ss 139A and 139AAA.

penalty is imposed for tax evasion, the offender's name was also published in the *New Zealand Gazette* as per s 146 of the TAA 1994. This was a continuation of the policy that was already in place.⁷⁴ But when a taxpayer fully disclosed the offence during audit under s 146(2) of the TAA 1994, the IRD was prevented from publishing the names of non-compliers. However, s 146 has been repealed since 21 June 2005.

A review of the new penalties regime under the TAA 1994 was conducted in 2001.⁷⁵ The review was primarily concerned with whether the legislation effectively deterred non-compliance and encouraged remedial action. Several accounting firms and commentators initially criticised the penalties for being unduly harsh. However, these concerns were firmly defended by Graham Holland, the previous Commissioner, when the penalty regime was introduced, and Kevin Woodley, the National Manager (Business Direct).⁷⁶ Some researchers had reservations about the new penalties regime, indicating that penalties were perhaps too lenient in some respects.⁷⁷ Specifically, it was suggested that imprisonment sentences should be able to exceed five years for severe cases of tax evasion to be consistent with the Crimes Act 1961; otherwise, tax fraud may be viewed as less serious than other forms of fraud. In particular, fines for criminal penalties should be higher for companies, particularly to facilitate consistency with the Companies Act 1993.

Similarly, with the new penalties regime, although comprehensive, there is concern that Inland Revenue seems to lack any formal prosecution policy other than the guidelines indicated in the Standard Practice Statements (SPS). In particular, "Shortfall Penalties – Evasion or Similar Act: Standard Practice Statement INV-220"⁷⁸ covers civil penalties, while "Criminal Offence – Evasion or Similar Offences: Standard Practice Statement INV-225"⁷⁹ deals with prosecutions by the Commissioner for defaults of "evasion or similar offences."⁸⁰ The Commissioner can apply SPS INV-225 only when a taxpayer has knowledge and intent. However, SPS INV-225 does not state the specific criteria that should be considered by Inland Revenue for prosecution action or when more serious cases should be referred to the Serious Fraud Office. This suggests that further work is still required to achieve a workable regime.

The IRD prosecution guidelines on the decision of which Act to lay charges under states:⁸¹

The choice of charges depends on the evidence, the avoidance of technicalities and the ease of explaining specific crimes to juries. Public interest factors also bear on the choice of charges. A serious obstruction of the Commissioner may be more suitably prosecuted as perverting ... the course of justice under the Crimes Act rather than obstructing the Commissioner

⁷⁴ Inland Revenue "IRD Releases Latest Penal Gazette" (press release, 17 July 1996).

⁷⁵ *Taxpayer Compliance, Standards and Penalties: A Review – A Government Discussion Document*, (Inland Revenue, Government discussion document, August 2001) at Part I: Compliance and Penalties: A Review, Ch 2: Context of the Review at 8.

⁷⁶ Inland Revenue "IRD Welcomes Tax Law Changes" (press release, 16 July 1996).

⁷⁷ Adrian J Sawyer "Raising the Threshold for Taxpayer Compliance: A New Era of Compliance Standards and Penalties" (1994) 48 *Bulletin for International Fiscal Documentation* 655.

⁷⁸ "Shortfall Penalties – Evasion or Similar Act: Standard Practice Statement INV-220" (1998) 10(3) *Tax Information Bulletin* 20.

⁷⁹ "Criminal Offence – Evasion or Similar Offences: Standard Practice Statement INV-225" (1998) 10(3) *Tax Information Bulletin* 22.

⁸⁰ Tax Administration Act 1994, s 143B.

⁸¹ "Our Prosecution Guidelines" Inland Revenue <www.ird.govt.nz>.

under section 143H TAA. A person who phoenixes companies as part of systematic program of tax evasion may be more effectively dealt with by a Crimes Act charge that upon conviction disqualifies the person from being a company director.

In more severe cases of tax evasion, the IRD can apply New Zealand's Crime Act 1961 to prosecute taxpayers for offences, such as obtaining by deception or causing loss by deception;⁸² aiding and abetting someone to commit an offence;⁸³ or dishonestly taking or using a document to gain a pecuniary advantage.⁸⁴ Section 228 of the Crimes Act provides:

- (1) Everyone is liable to imprisonment for a term not exceeding 7 years who, with intent to obtain any property, service, pecuniary advantage, or valuable consideration, —
 - (a) dishonestly and without claim of right, takes or obtains any document; or
 - (b) dishonestly and without claim of right, uses or attempts to use any document.

Section 228 of the Crimes Act is applicable to TAA offending because of the document-based nature of the tax systems. The tax system is based on supporting documents, and any attempt by a taxpayer to defraud the tax system is likely to involve filing some sort of false document.⁸⁵ The Commissioner must be satisfied that there is sufficient evidence to provide a reasonable prospect of conviction. The onus of proof is on the Commissioner and they must prove each element beyond reasonable doubt.

The courts follow the criteria in s 8 of the Sentencing Act 2002 to determine the appropriate punishments in each case.⁸⁶ Under the Sentencing Act 2002, there is a presumption that the courts must always impose (financial) reparation⁸⁷ in favour of the victim where there has been loss, damage or emotional harm, unless such reparation may result in undue hardship to the offender or dependants of the offender, or other exceptional circumstances would make it inappropriate.⁸⁸ The Sentencing Act specified the sentences that are available to judges. The Sentencing Amendment Act 2007 appears to have had significant impact on sentencing outcomes; the rates of imprisonment after 2007 notably decreased. This is likely due to the availability of home detention as a viable alternative for less serious offending. In addition, for the first time, there is also some guidance regarding the purposes for which sentences should be used.⁸⁹ Since 2007 the Sentencing Act has established a clear hierarchy of sanctions in terms of severity as follows:⁹⁰

- tier 1—imprisonment⁹¹

⁸² Crimes Act 1961, s 240.

⁸³ Crimes Act 1961, s 66.

⁸⁴ Crimes Act 1961, s 228(1)(b).

⁸⁵ Ascroft, above n 58.

⁸⁶ Sentencing Act 2002, s 8.

⁸⁷ Reparation means recompense given to one who has suffered legal injury at the hands of another.

⁸⁸ Sentencing Act 2002, s 12.

⁸⁹ See, e.g., s 46 of the Sentencing Act 2002, which provides guidance on the purpose of a supervision sentence and s 56 of the Act, which provides guidance on the purpose of a sentence of community work.

⁹⁰ Sentencing Act 2002, s 10A.

⁹¹ See Tax Administration Act 1994, s 149A.

- tier 2—home detention⁹²
- tier 3—curfew with electronic monitoring and/or intensive supervision⁹³
- tier 4—community work and/or supervision⁹⁴
- tier 5—monetary penalties (fines and/or reparation); and
- tier 6—discharges with or without conviction.

A sentencing judge would need to apply an offence-based guideline in combination with one or more generic guidelines when deciding on the appropriate sentence. The generic guidelines cover matters that apply across offence types—for example, the extent to which a sentence should be reduced to take account of a guilty plea or the application of the guidelines to such inchoate offences as conspiracies and attempts. The generic guidelines are primarily narrative. The guidelines provides guidance about the way in which the judges are to approach sentencing for multiple offences,⁹⁵ the provisions about the extent to which the views of the victims should be taken into account,⁹⁶ financial reparation in favour of victim where there has been loss, damage or emotional harm⁹⁷ unless such reparation may result in undue hardship to the offender or dependents of the offender, or other special circumstances would make it inappropriate. For example, in sentencing, any offer of amends for the harm caused by the offence, whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim the judge must consider whether the victim has accepted that offer as expiating or mitigating the wrong.⁹⁸

B *Remorse*

Additionally, displays of remorse⁹⁹ by offenders have long been linked to preferences and objectives for sentencing.¹⁰⁰ Remorse may be displayed differently in a court setting, and different forms of remorse may affect offenders' perceptions or preferences for sentencing.¹⁰¹ Existing literature suggests that remorse may be demonstrated via emotion, speech or behaviour. "Affective remorse" refers to negative emotions about offending

⁹² Home detention is both a punitive and rehabilitative sentence. It requires an offender to remain at a suitable and approved residence at all times and be monitored 24 hours a day, seven days a week.

⁹³ It is a punitive sentence that restricts an offender's movements during their curfew also known as Community detention. Supervision is a community-based rehabilitation sentence that requires offenders to address the causes of their offending through targeted programmes.

⁹⁴ Community work offenders do unpaid work in the community to pay something back for the offence they have committed. It also gives offenders an opportunity to take responsibility for their offending and learn new skills and work habits. Offenders can be required to do between 40 and 400 hours of community work.

⁹⁵ Sentencing Act 2002, ss 84 and 85.

⁹⁶ Sentencing Act 2002, s 10.

⁹⁷ Sentencing Act 2002, s 12.

⁹⁸ Sentencing Act 2002, s 10.

⁹⁹ Emily P Corwin, Robert J Cramer, Desiree A Griffin and Stanley L Brodsky "Defendant remorse, need for affect, and juror sentencing decisions" (2012) 40(1) *Journal of the American Academy of Psychiatry and the Law* 41 at 45 defined remorse as the "moral or emotional distress resulting from past transgressions."

¹⁰⁰ Michael J Proeve and Kevin Howells "Effects of remorse and shame and criminal justice experience on judgements about a sex offender" (2006) 12(2) *Psychology, Crime & Law* 145; Corwin and others, above n 99..

¹⁰¹ Jennifer A Tallon, Tarika Daftary-Kapur and Steven Penrod "Defendant remorse and publicity in capital trials: Is seeing truly believing?" (2015) 42(12) *Criminal Justice and Behavior* 1282; Corwin and others, above n 99..

such as guilt and shame and is associated with more lenient sentencing.¹⁰² Emotional displays may provide insight into individuals' enduring traits, including moral character.¹⁰³ "Verbal remorse" refers to statements of confession, regret or apology and is associated with less punitive sentencing.¹⁰⁴ "Restitutive remorse", which has some support from the public as a factor in sentencing,¹⁰⁵ takes the form of voluntary reparations to victims, which may demonstrate "acceptance of responsibility for [the defendant's] offence"¹⁰⁶ or a desire to make amendments.¹⁰⁷

The judges examine each case's aggravating and mitigating factors when deciding whether to issue any previous behaviour discounts or uplifts parallel with prior taxpayer offending. Despite the seriousness of some tax offences, sentence discounts play a crucial role in a judge's decision to impose the least severe penalties 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.

A 2019 report published by the Tax Working Group (TWG) 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.¹⁰⁸ These sanctions will mainly apply to situations where custodial sentences or shortfall penalties exceed the gravity of some tax violations.¹⁰⁹ 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.

IV METHODOLOGY

This section describes the research method employed in this paper and then outlines the research process.

A *The Research method*

This paper adopts a study of various published legal decisions on tax evasion cases. This method "generates an in-depth, multi-faceted understanding of a complex issue in its real-life context."¹¹⁰ According to Yin case study,

¹⁰² Alfonso Picó and others "How visible tears affect observers judgements and behavioral intentions: Sincerity, remorse, and punishment" (2020) *Journal of Nonverbal Behavior* 215; and Theodore Eisenberg, Stephen P Garvey and Martin T Wells "But was he sorry? The role of remorse in capital sentencing" (1998) 83(6) *Cornell Law Review* 599.

¹⁰³ Deborah C Stearns and W Gerrod Parrott "When feeling bad makes you look good: Guilt, shame, and person perception" (2012) 26(3) *Cognition and Emotion* 407; Picó and others, above n 102..

¹⁰⁴ Corwin and others, above n 99..

¹⁰⁵ Paul H Robinson, Sean E Jackowitz and Daniel M Bartels "Extra-legal punishment factors: Study of forgiveness, hardship, good deeds, apology, remorse, and other such discretionary factors in assessing criminal punishment" (2012) 65(3) *Vanderbilt Law Review* 737.

¹⁰⁶ Robinson and others, above n 105..

¹⁰⁷ Charlotte V Witvliet and others "Apology and restitution: Offender accountability responses influence victim empathy and forgiveness" (2020) 48(2) *Journal of Psychology and Theology* 88.

¹⁰⁸ *Hidden Economy: Background Paper for Session 14 of the Tax Working Group* (Tax Working Group, release document, 20 July 2018) at 15.

¹⁰⁹ Tax Working Group above n 108 at 15.

¹¹⁰ Margaret McKercher *Design and Conduct of Research in Tax, Law and Accounting* (Thomson Reuters, 2010); Robert K Yin "Case study methods" in Harris Cooper and others (eds) *APA handbook of research methods in Psychology, Vol. 2. Research designs: Quantitative, qualitative, neuropsychological, and biological* (American Psychological Association, Washington, DC, 2012); and Sarah Crowe and others "The Case Study Approach" (2011) 11(100) *BMC Medical Research Methodology*.

research is a “linear” but iterative process.¹¹¹ The cases decision-based approach is used extensively by researchers in various disciplines, such as psychology, sociology, medicine, business and law.¹¹² 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 various evasion offences. It is considered that this approach has the potential to uncover ideas that might inform the research.

The next section considers the process of identifying and collecting the sample for the analysis.

B Data Collection

The focus of the study was on the degree of punishment imposed for tax evasion. The New Zealand Courts website and University library databases, including Westlaw New Zealand, Lexis Advance and CCH Intelliconnect, were scanned to find the potential cases. 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 publicly accessible cases.¹¹³ The author contacted the Ministry of Justice and relevant District courts, but the files of those cases were unavailable as they were disposed of cases. A case disposed means the case is completed in the terminology of court proceedings and removed from the docket of the court. The common reasons for case disposal include a dismissal, a guilty plea or a finding of guilty or not guilty at trial by either a judge or jury. Therefore, those cases 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.¹¹⁴ Given the high volume of relevant cases and the time constraints of this research, particular consideration was given to selecting representative cases. Random sampling is one of the simplest forms of collecting data from the total population but there is always a possibility that the group or the sample does not represent the population, and due to the sampling error, some variations may arise when drawing results.¹¹⁵ The results may be less reliable and biased. Hence, the range of cases was limited by selecting tax evasion cases heard in the District and High Courts across New Zealand from the year 2007 to 2022. The researchers aimed to ensure that the sample was mixed in terms of the severity of the punishments issued by the courts. The emphasis was not on the number of cases selected but on why these were selected and what they represent.¹¹⁶ A crucial limitation is that the sample of cases is biased towards cases which went on to appeal as they are publicly accessible cases.

¹¹¹ Yin, above n 110.

¹¹² Lioness Ayres, Karen Kavanaugh, and Kathleen A Knafel “Within-Case and Across-Case Approaches to Qualitative Data Analysis” (2003) 13(6) *Qualitative Health Research* 871.

¹¹³ For example, *CIR v Kapoor and Menon* (2021) Napier District Court case. Amount of tax evaded \$1,761,675, Duration of offending- 11 years, creating one company after another and providing false information to IR, Kapoor 39 charges for Income tax, GST, PAYE, Imprisonment 48 months, Menon 12 charges, home detention 9 months. This information is collected from IRD media release but the case is not published on the Napier District Court website.

¹¹⁴ Hamed Taherdoost “Sampling Methods in Research Methodology; How to Choose a Sampling Technique for Research” (2016) 5(2) *International Journal of Academic Research in Management* 18 at 21.

¹¹⁵ Floyd Fowler Jr *Survey Research Methods* (2nd ed, Sage Publications, Thousand Oaks, 1993).

¹¹⁶ Uwe Flick *An Introduction to Qualitative Research* (6th ed, Sage Publications, 2018).

Further, the cases were divided into two categories to understand the punishment severity. After the cases were divided, the random selection function in Microsoft Excel was used to select 70 cases randomly across two groups.

The two groups 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 and/or fines.

The qualitative data analysis package NVivo 12 was used to analyse the evasion cases. First, all the selected cases were examined individually and the necessary data was coded using NVivo. This is a useful tool which aids researchers to organise the materials by nodes. It can be understood as being containers of the research material and thoughts around it.¹¹⁷ The initial coding process involved assigning keywords and short phrases to the key elements relevant to the present study, eg tax evasion, imprisonment, home detention and community work. This process allowed the researcher to identify any common patterns from the cases and link them to the variations in tax evasion penalties. Based on this initial coding, some specific information segments emerged from the texts and were grouped. In addition, it could ensure transparency and the defensibility of the research design. Finally, based on a careful reading of all the free themes, four core themes (types of taxes, number of charges, duration of offending, amount evaded) and their sub-themes were developed to incorporate the research findings (see Tables 1 and 2). All these themes reflected issues from the cases and were regarded as the key stages of the sentencing process.

Additionally, all the summarised information from the cases was compiled into a Word document to condense the raw text into a summary format, which mainly aims to build clear connections between research objectives and research findings. Several of the cases were concerning the construction and hospitality industry and knowingly had been providing false information to Inland Revenue with the intent to evade payment of taxes. The following section will present the findings from this research approach.

V ANALYSIS

This section analyses the reasons for imposing various court punishments in the selected cases.

Tables 1 and 2 illustrate the data collected from the cases examined in this study. The cases have been arranged in alphabetical order by the year 2022–2007 because recent cases are often more relevant to people’s immediate concerns and interests. Generally, people are more interested in current events and how they may affect them directly. By prioritizing the recent cases the paper could provide the latest information to the readers which is most pertinent to the decision-making process.

Table 1 shows data for non-custodial sentences, whereas Table 2 presents data for custodial sentences.

(Insert attached Table 1 and 2 here)

¹¹⁷ Nigel King “Using templates in the thematic analysis of text” in Catherine Cassell and Gillian Symon (eds) *Essential Guide to Qualitative Methods in Organisational Research* (London, Sage Publications, 2004).

The most common evasion offences committed by taxpayers mainly relate to the failure to file the necessary tax returns, providing false and misleading information to IRD and failing to pass on the tax deductions made from employees' earnings. The data collected for the cases selected in Tables 1 and 2 shows that 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 severe 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 IRD, the number of charges and the amount of tax evaded for each type of tax and duration of offending.

The selection of cases examined in this study (Table 2) shows that only in three cases (*Allan*,¹¹⁸ *Suckling*¹¹⁹ and *Robinson*¹²⁰), under the Tax Administration Act 1994, did the court impose a prison sentence of less than or equal to 12 months and also full reparation in *Allan*. In *Bracken*¹²¹ and *Rowley & Skinner*,¹²² the court imposed the highest prison sentence of 102 months.

The selection of cases examined in this study (Table 1) shows that only in four cases (*Archibald*,¹²³ *Buisson*,¹²⁴ *Ali*,¹²⁵ *Neil Gautam*¹²⁶) did the court impose the highest home detention of 12 months and community work, considering the amount of reparation and other circumstances, ranging from 300 hours, 200 hours, 150 hours to zero. The lowest home detention was of three months and community work of 150 hours; no reparation was issued in one case, *Kamal*.¹²⁷

Judges are expected to follow the law and apply it impartially. Judges are individuals with their own backgrounds, professional experiences and perspectives, which can influence their decision-making process. Each case is unique, with its own set of facts, evidence and legal arguments. Judges may evaluate these factors in a number of ways and may have different interpretations of legal statutes and precedents which can lead to variances in how judges apply the law to specific cases and reach their judgments. Considering this, an analysis of punishments issued by the judges in the cases covered in Tables 1 and 2 was conducted, but no significant difference was found in the judges' approaches.

Further, the availability and quality of legal resources and expertise may vary according to the location of the court, eg larger cities often have access to more specialized legal professionals and experts. Different regions may have different legal precedents and different quality of legal representation that may influence the interpretation and application of the law and judgments. Therefore, an analysis of punishments issued by the courts in different locations for the cases covered in Tables 1 and 2 was conducted but location was not playing a significant role in shaping the outcome. The results show no significant variation in penalties imposed by different judges compared to courts in different locations.

¹¹⁸ *R v Allan* [2009] 24 NZTC 23,815.

¹¹⁹ *R v Suckling* [2015] NZDC 14634.

¹²⁰ *Commissioner of Inland Revenue v Robinson* [2017] NZDC 19068.

¹²¹ *R v Bracken* [2021] NZHC 1032.

¹²² *R v Rowley & Skinner* [2012] NZHC 2087.

¹²³ *R v Archibald* [2019] NZDC 4490.

¹²⁴ *Commissioner of Inland Revenue v Buisson* [2018] NZDC 13244.

¹²⁵ *Inland Revenue Department v Ali* [2017] NZDC 4295.

¹²⁶ *Commissioner of Inland Revenue v Gautam* DC Hamilton CRI-2009-019-0011364, 31 May 2010. In *Gautam*, the Court found a misplaced level of filial duty to father.

¹²⁷ *Commissioner of Inland Revenue v Kamal* DC Wellington CRI-2012-085-8280, 15 February 2013.

Additionally, an analysis of punishments issued in cases covered in Tables 1 and 2 shows that:

- The punishments were mostly severer in cases involving income tax and GST than in cases with only GST.
- In cases involving both GST and PAYE, the punishments were generally more severe 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 were significantly larger than the amount of income tax evaded.

Further, the analysis of the cases covered in Tables 1 and 2 demonstrates that over the past 15 years, the courts have only issued a prison sentence of less than or equal to 12 months in three cases. This suggests that the courts have taken a harsher approach concerning giving 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 IRD and making efforts to repay the outstanding tax. In numerous cases covered in Tables 1 and 2, taxpayers were given credit for the guilty plea at the earliest opportunity, their previous good character and a degree of cooperation.¹²⁸

From Table 1 in *Archibald*,¹²⁹ *Isherwood*,¹³⁰ *Luo*,¹³¹ *Mclaren*,¹³² and *Bench*,¹³³ and Table 2 in *Barton*¹³⁴ and *Chahil and Gupta*,¹³⁵ the taxpayers showed remorse for their offending. However, in custodial cases, eg *Suckling*,¹³⁶ *Dhillon*,¹³⁷ *Rowley & Skinner*, *Tane*,¹³⁸ *R v Chahil and Gupta*,¹³⁹ *Bracken*¹⁴⁰ and *Pome'e*,¹⁴¹ the taxpayers did not show any remorse over their offending. Several judges have still issued custodial sentences even though some taxpayers were very remorseful for their actions and claimed to be of “good character”. This was

¹²⁸ *Commissioner of Inland Revenue v Dempsey* [2011] 25 NZTC 20-001. No assets were obtained through offending; *Inland Revenue Department v Kinimont* [2016] NZDC 4880; *Commissioner of Inland Revenue v Blake* [2017] NZDC 28773; *Inland Revenue Department v Mackay* [2017] NZDC 22038; *R v Malu* [2017] 28 NZTC 23-045; *Inland Revenue Department v Mauigoa* [2017] NZDC 24816; *Commissioner of Inland Revenue v Mitchell* [2017] NZDC 24907; *Inland Revenue Department v Pearce* [2019] NZDC 8348; *Inland Revenue Department v Basalaj* [2020] NZDC 19345; *Commissioner of Inland Revenue v Robinson* [2017] NZDC 19068; *Mehmood v R* (2015) 27 NZTC 22-020; *Inland Revenue Department v Isherwood* [2016] NZDC 21726; *Commissioner of Inland Revenue v McLaren* [2017] NZDC 16275; and *Inland Revenue Department v Bench* [2017] NZDC 635.

¹²⁹ *R v Archibald* [2019] NZDC 4490.

¹³⁰ *Inland Revenue Department v Isherwood* [2016] NZDC 21726.

¹³¹ *R v Luo* [2017] NZDC 13445.

¹³² *Commissioner of Inland Revenue v McLaren* [2017] NZDC 16275.

¹³³ *Inland Revenue Department v Bench* [2017] NZDC 635.

¹³⁴ *R v Barton* [2018] NZDC 17502.

¹³⁵ *R v Chahil and Gupta* [2020] NZHC 317. Defendant 3, Gupta, received credit for remorse.

¹³⁶ *R v Suckling* [2015] NZDC 14634.

¹³⁷ *R v Dhillon* [2010] 24 NZTC 24,030.

¹³⁸ *Inland Revenue Department v Tane* [2016] NZDC 17578.

¹³⁹ *R v Chahil and Gupta* [2020] NZHC 317. Chahil did not receive any credit for remorse.

¹⁴⁰ *R v Bracken* [2021] NZHC 1032.

¹⁴¹ *Commissioner of Inland Revenue v Pome'e* [2022] NZDC 8579.

common in cases where the offending took place over a lengthy period, the number of charges was higher and the amount of tax evaded was significant, eg *Mclaren*,¹⁴² *Barton*¹⁴³ and *Bench*.¹⁴⁴

The courts have primarily issued community-based sentences in cases where the offending was less severe considering the amount of tax evaded and the number of charges, eg *Pandey v R*.¹⁴⁵

Nonetheless, the courts have used imprisonment as the “starting point” in almost every case. Apart from reparation orders, the courts have not issued fines in most cases. The judges usually examined the financial background of the taxpayers to determine the appropriate reparation amount for each case. Therefore, they could not issue reparation orders in situations where the taxpayers were bankrupt and/or had no financial means to repay IRD. The punishments were lower in cases where the taxpayers have offered to make significant reparation, eg *Pearce*,¹⁴⁶ *Balasaj*,¹⁴⁷ *Ali*,¹⁴⁸ *Malu*,¹⁴⁹ *Archibald*,¹⁵⁰ *Sellers*,¹⁵¹ *Klintcharova*¹⁵² and *Sula-Wongsee*.¹⁵³ In *Lamelangi*,¹⁵⁴ the reason for low reparation was that the taxpayer had a student loan and children in her family to look after.

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 made imprisonment unsuitable, for example, *Chen*,¹⁵⁵ *Williams*¹⁵⁶ and *Pearce*¹⁵⁷ and health conditions precluded the court from sending them to prison, eg *Dempsey*,¹⁵⁸ *Smith*¹⁵⁹ and *Archibald*,¹⁶⁰ Nevertheless, the aggravating factors in some cases did not necessitate a sentence of home detention, eg *Robinson*¹⁶¹ and *Khalon*¹⁶² although a few taxpayers were eligible for it. In *Khalon*, the taxpayer wrote a false invoice as a non-existent subcontractor and received a commission for it and evaded payment of GST and PAYE.

Many taxpayers were allowed 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

¹⁴² *Commissioner of Inland Revenue v Mclaren* [2017] NZDC 16275.

¹⁴³ *R v Barton* [2018] NZDC 17502.

¹⁴⁴ *Inland Revenue Department v Bench* [2017] NZDC 635.

¹⁴⁵ *Pandey v R* [2013] 26 NZTC 21-058.

¹⁴⁶ *Inland Revenue Department v Pearce* [2019] NZDC 8348.

¹⁴⁷ *Inland Revenue Department v Basalaj* [2020] NZDC 19345.

¹⁴⁸ *Inland Revenue Department v Ali* [2017] NZDC 4295.

¹⁴⁹ *R v Malu* [2017] 28 NZTC 23-045.

¹⁵⁰ *R v Archibald* [2019] NZDC 4490.

¹⁵¹ *Sellers v Commissioner of Inland Revenue* [2016] NZHC 60, (2016) 27 NZTC 22-038.

¹⁵² *R v Klintcharova* [2013] NZHC 2778, (2013) 26 NZTC 21-046. Community work was not a realistic option given the taxpayers’ work hours.

¹⁵³ *Sula-Wongsee v Inland Revenue Department* [2012] NZHC 974.

¹⁵⁴ *R v Lamelangi* [2010] DC Tauranga CRI-2010-070-002390.

¹⁵⁵ *Inland Revenue Department v Chen* [2022] NZDC 1382.

¹⁵⁶ *Commissioner of Inland Revenue v Williams* [2019] NZDC 13124.

¹⁵⁷ *Commissioner of Inland Revenue v Pearce* [2019] NZDC 8348.

¹⁵⁸ *Commissioner of Inland Revenue v Dempsey* [2011] 25 NZTC 20-001.

¹⁵⁹ *R v Smith* [2010] DCR 440.

¹⁶⁰ *R v Archibald* [2019] NZDC 4490.

¹⁶¹ *Commissioner of Inland Revenue v Robinson* [2017] NZDC 19068. The taxpayer was aged 72. The court decided to impose a lower prison term due to his serious health conditions.

¹⁶² *R v Khalon* DC Tauranga CRI-2007-070-004709, 25 June 2010. The taxpayer failed to file 46 PAYE tax returns (monthly) and 23 charges for GST return (bimonthly). The taxpayer was receiving sickness benefit.

alternative than imprisonment in most aspects, eg *Kininmont*,¹⁶³ *Malu*,¹⁶⁴ *Mauigoa*,¹⁶⁵ *Mitchell*,¹⁶⁶ *Barikov*,¹⁶⁷ *Klitcharov*,¹⁶⁸ *Pearce*¹⁶⁹ and *Balasaj*.¹⁷⁰

A few taxpayers had their sentences uplifted due to their previous convictions for fraud and dishonesty offences, eg *Pearce*,¹⁷¹ *Allan*,¹⁷² *Smith*,¹⁷³ *Mclaren*¹⁷⁴ and *Barton*.¹⁷⁵ However, even though several defendants had prior convictions for various offences, some judges opted not to apply any uplifts due to those convictions. In *Sula-Wongsee*, the taxpayer was an IRD employee and knowingly provided a false tax return to obtain a tax refund to which she was not entitled and dishonestly accessed the IRD computer system.¹⁷⁶ In some ways, the judges were generous to the taxpayers by not granting any uplifts, eg *Ali*,¹⁷⁷ *Luo*,¹⁷⁸ *Bracken*,¹⁷⁹ *Tane*¹⁸⁰ and *Eade*.¹⁸¹ However, one could argue that it is the judges' responsibility to impose the least severe punishments under the law unless they consider the offences extremely serious, in which case a harsher sentence should only be imposed.

In most cases, the courts have been lenient in issuing the least restrictive punishments. 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 IRD involving substantial amounts of tax evasion on a sophisticated scale,¹⁸² as well as those who have not fully cooperated with IRD during the investigative phase of their tax affairs, eg *Buisson*¹⁸³ and *Allan*.¹⁸⁴ This mainly applied to cases where the offending occurred over a more extended period. In most cases,

¹⁶³ *Inland Revenue Department v Kininmont* [2016] NZDC 4880.

¹⁶⁴ *R v Malu* [2017] 28 NZTC 23-045.

¹⁶⁵ *Inland Revenue Department v Mauigoa* [2017] NZDC 24816. The taxpayer repaid \$2,000 prior to the sentence. It allowed the taxpayer to continue running his business and repay the outstanding tax.

¹⁶⁶ *Commissioner of Inland Revenue v Mitchell* [2017] NZDC 24907. Mitchell was required to continue working to support his family.

¹⁶⁷ *Inland Revenue Department v Barikov* [2018] NZDC 12633.

¹⁶⁸ *R v Klitcharov* [2013] NZHC 2778.

¹⁶⁹ *Inland Revenue Department v Pearce* [2019] NZDC 8348. The taxpayer pleaded guilty and filed all her outstanding returns prior to sentencing.

¹⁷⁰ *Inland Revenue Department v Basalaj* [2020] NZDC 19345. The taxpayer needed to run his business to make reparation payments.

¹⁷¹ *Inland Revenue Department v Pearce* [2019] NZDC 8348.

¹⁷² *R v Allan* [2009] 24 NZTC 23,815.

¹⁷³ *R v Smith* [2009] 24 NZTC 23,004.

¹⁷⁴ *Commissioner of Inland Revenue v Mclaren* [2017] NZDC 16275.

¹⁷⁵ *R v Barton* [2018] NZDC 17502. He received credit for contributions to the community, remorse and filing all the outstanding returns.

¹⁷⁶ *Sula-Wongsee v Inland Revenue Department* [2012] NZHC 974.

¹⁷⁷ *Inland Revenue Department v Ali* [2017] NZDC 4295. The taxpayer did not file any personal and company tax returns over an eight-year period. He had previous conviction for using forged documents.

¹⁷⁸ *R v Luo* [2017] NZDC 13445.

¹⁷⁹ *R v Bracken* [2021] NZHC 1032. The aggravating factor in this case was the submission of false invoices worth approximately \$133 million to the IRD. The judge imposed the maximum punishment under the law due to the severity of this case. The assets obtained from the offending were under a restraining order by the court.

¹⁸⁰ *Inland Revenue Department v Tane* [2016] NZDC 17578.

¹⁸¹ *R v Eade* [2009] DC Auckland CRI-2008-004-024403, 9 July 2009.

¹⁸² *Department of Inland Revenue v Kumar* [2018] NZDC 24405.

¹⁸³ *Commissioner of Inland Revenue v Buisson* [2018] NZDC 13244. The taxpayer failed to provide the necessary information as requested by IRD during two separate audits.

¹⁸⁴ *R v Allan* [2009] 24 NZTC 23,815. The taxpayer failed to cooperate with the IRD by intentionally delaying the filing of the necessary returns. The court uplifted his sentence for his previous convictions for dishonesty offences.

these taxpayers were aware of their tax obligations, eg *Rowley & Skinner, Pome'e*,¹⁸⁵ *Naisbitt*,¹⁸⁶ *Kampeng*¹⁸⁷ and *O'Connor*.¹⁸⁸ However, they chose not to follow them, even though IRD had repeatedly advised them to file the requisite tax returns or provide the necessary financial records for investigation purposes. In *Rowley & Skinner*, both taxpayers were accountants who used their accounting knowledge to take advantage of the tax system.¹⁸⁹ They both claimed fictitious expenses of more than \$9 million by submitting false invoices to IRD. Similarly, in *O'Connor*, the taxpayer entered into a bogus invoice scheme and dishonestly valued the business's Intellectual property. In *Prakash*, the taxpayer fraudulently used a de-registered GST number when invoicing and charging his clients.¹⁹⁰

The criminal penalties were substantially higher in some of the evasion cases due to the additional charges laid by IRD using the Crimes Act, which has a higher maximum penalty. Table 1 shows that tax evaders received an average non-custodial sentence of six to nine months of community or home detention. Table 2 shows that the average imprisonment sentence issued to tax evaders was between one to three years and in more severe cases the prison sentence increased to 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. For example, in *Gell*, the taxpayer provided one entity on payment basis, invoices for services to the other entity on an invoice basis, and then claimed the GST refunds.¹⁹¹ The courts further investigated whether the taxpayers made any personal or financial gains from their offending and the number of cash sales or income the businesses did not disclose to the IRD, eg *Pandey*,¹⁹² *Mackay*,¹⁹³ *Barikov*,¹⁹⁴ *Balasaj*,¹⁹⁵ *Mitchell*,¹⁹⁶ *Mclaren*,¹⁹⁷ *Lasek*, and *Barron*.¹⁹⁸ A custodial sentence was issued as the taxpayer had used the evaded money for his personal expenses, eg *Smith*,¹⁹⁹ *Rowley & Skinner*,²⁰⁰ *Mehmood*,²⁰¹ *Kampeng*,²⁰² *Sorm*,²⁰³ *Pome'e*²⁰⁴ and *Eade*.²⁰⁵ In *Eade*, during the three-year period of his bankruptcy, Eade used the GST number of another company of a similar name (which was struck off the company

¹⁸⁵ *Commissioner of Inland Revenue v Pome'e* [2022] NZDC 8579.

¹⁸⁶ *Commissioner of Inland Revenue v Naisbitt* [2017] NZDC 25304.

¹⁸⁷ *R v Kampeng* [2019] NZHC 2500. A Thai restaurants owners concealed approximately \$12 million in cash sales from IRD over a seven-year period.

¹⁸⁸ *R v O'Connor* [2013] NZHC 2393.

¹⁸⁹ *R v Rowley & Skinner* [2012] NZHC 2087.

¹⁹⁰ *Prakash v Commissioner for Inland Revenue* [2012] DC Auckland CRI-2012-004-004420.

¹⁹¹ *Inland Revenue Department v Gell* [2010] DC Wellington CRI-2010-085-000530.

¹⁹² *Pandey v R* [2013] 26 NZTC 21-058.

¹⁹³ *Inland Revenue Department v Mackay* [2017] NZDC 22038.

¹⁹⁴ *Inland Revenue Department v Barikov* [2018] NZDC 12633.

¹⁹⁵ *Inland Revenue Department v Basalaj* [2020] NZDC 19345.

¹⁹⁶ *Commissioner of Inland Revenue v Mitchell* [2017] NZDC 24907.

¹⁹⁷ *Commissioner of Inland Revenue v McLaren* [2017] NZDC 16275. The money obtained from the IRD was used to fund a luxurious lifestyle.

¹⁹⁸ *Inland Revenue Department v Barron* [2014] DC Christchurch CRI-2014-009-1495. The taxpayer was charged in relation failing to file the GST and income tax returns and using documents for pecuniary gain.

¹⁹⁹ *R v Smith* [2009] 24 NZTC 23,004.

²⁰⁰ *R v Rowley & Skinner* [2012] NZHC 2087.

²⁰¹ *Mehmood v R* [2015] 27 NZTC 22-020.

²⁰² *R v Kampeng* [2019] NZHC 2500.

²⁰³ *R v Sorm* [2019] NZDC 23650. The taxpayer received credit for his contributions to the community, hard work, and the difficulties that he would face in prison.

²⁰⁴ *Commissioner of Inland Revenue v Pome'e* [2022] NZDC 8579.

²⁰⁵ *R v Eade* [2009] DC Auckland CRI-2008-004-024403, 9 July 2009.

register) and issued tax invoices. The company's clients paid in Eade's personal bank account, and company's nil returns were filed with IRD. Eade was charged under the Crimes Act for knowingly using forged documents to obtain a pecuniary advantage. However, in *Barikow*, the PAYE funds were used to pay for the medical expenses of a family member with a life-threatening condition and the sentence was less harsh at six months home detention.²⁰⁶

The amount of tax evaded or GST refunds claimed potentially *does* reflect an increased degree of culpability amongst certain tax cases, if the increased monetary figure for tax cases is obtained through more active dishonesty. For example, in *Lindup*, the defendant procured his company to make false GST refund claims and defrauded IRD of \$866,777.²⁰⁷ The fraud continued over nine months and the amount claimed steadily increased over that time. In such cases, the amount dishonestly obtained reflects increased severity of the offending. The punishment imposed in various cases discussed above shows that the amount of tax evaded is not the only factor considered by the judges. The judges also consider saving costs and court time before deciding the punishments to impose. The present study's findings shed some light on the fact that the courts gave the requirements of deterrence, denunciation and accountability in imposing sentences primary weight and were reluctant to issue discounts in cases where the taxpayer is undeserving of the leniency.

Notwithstanding, most of the cases mentioned in Tables 1 and 2 were appealed. However, there has been no miscarriage of the sentencing process in most of the cases and sentences were not amended except in *Zaheed*,²⁰⁸ *Tahaafe*,²⁰⁹ *Rangitawa*²¹⁰ and *Wang and Liu*.²¹¹ The Judge at District Court in *Zaheed* indicated a sentence of home detention but later, while sentencing, departed from his earlier indication without giving notice of his intention to impose a fully custodial sentence. At the Court of Appeal, the sentence of 19 months imprisonment was quashed. Mr Zaheed had served three months of his sentence, equivalent to six months' time served, with an allowance for a right to apply for probation. After allowing for time served, Zaheed was sentenced to home detention for six months and reparation of \$20,000. Tahaafe's sentence of three years imprisonment was quashed and replaced with a sentence of two years imprisonment, and Rangitawa's sentence of 14 months' imprisonment was substituted by four months' home detention. The convictions entered in the District Court on all charges against Ms Liu were quashed.

VI CONCLUSION AND LIMITATIONS

This New Zealand-based study contributes to the literature by considering that a more focused approach is necessary when taxpayers wilfully decline to meet their obligations under the law and the Commissioner's corresponding susceptibility to harm.

²⁰⁶ *Inland Revenue Department v Barikow* [2018] NZDC 12633.

²⁰⁷ *Lindup v Inland Revenue Department* [2008] 23 NZTC 22,025.

²⁰⁸ *Zaheed v R* [2010] NZCA 573; [2011] 25 NZTC 20-018.

²⁰⁹ *Tahaafe v Commissioner of Inland Revenue* [2009] HC Auckland CRI 2009-404-102.

²¹⁰ *Rangitawa v Commissioner of Inland Revenue* [2016] NZHC 444; CRI-2016-470-3.

²¹¹ *Wang v R* (2016) 27 NZTC 22-043; CA695/2015, CA698/2015, [2016] NZCA 56.

To evaluate the various aggravating and mitigating factors considered by the New Zealand courts while issuing penalties for tax evasion, this study includes 70 tax evasion cases between 2007 and 2022. 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. The data in Tables 1 and 2 shows an increase in the length of prison terms as the monetary amount of taxes evaded increases, as expected. However, the fact that the same trend is not also seen in the rate of imprisonment suggests that allowances for personal circumstances or other elements of the offending in question is properly being taken into consideration when judges are sentencing offenders and accordingly judges may adopt a less restrictive sentencing approach.

The results show 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 co-operation with IR; had severe 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 cooperate with IR; breached trust 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. Accordingly, by pleading guilty, the taxpayers could save money and time by avoiding a protracted trial. The courts have issued uplifts for taxpayers with previous convictions for tax-related and dishonesty offences. On the other hand, some judges decided not to issue any uplifts for past convictions unrelated to tax evasion. The findings suggest that the courts treat cases involving income tax and GST more harshly. 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 provides meaningful insights into criminal tax offending sentencing over several years by identifying the parameters considered by the courts while deciding the degree of punishments for tax evasion. It appears that the sentencing exercise for tax offending is more greatly influenced by factors other than the monetary value. Based on the results in *Marriott*, 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.²¹² This is not to suggest that tax evaders should not receive any discounts but considering the premise that the punishment should fit the crime, they should not be treated differently based on their social standing. The seriousness of the offending should not be demeaned; the personal benefit derived by an offender is a relevant consideration.

This article is not without its limitations. The principal limitation is that the study has not established the linkage to the penalty framework being modified or new strategies developed to combat tax evasion. Most of the tax evasion prosecutions from the media releases were unreported cases, were not available on the New Zealand Courts website and could not be considered. This means that it is not possible to track and identify a sentencing

²¹² *Marriott*, above n 29.

trend for all the cases of tax offending. However, sanctions like the publication of names of tax evaders on IRD media releases are particularly effective where the business and professional reputation and integrity of taxpayers are vital to maintaining customers and suppliers with the potential to improve compliance. This paper recommends that Inland Revenue should consider that with all media releases, the cases are available on the Courts of New Zealand website.

The second limitation is that this study did not consider evasion cases in other countries due to the explorative nature and need to focus and the like, 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 compared to other countries. However, it is also likely that some countries have milder penalties than New Zealand, or considering gender, lack of understanding etc, they might take a different approach towards sentencing tax evaders.²¹³

Another limitation is that this study did not consider the punishments issued for blue-collar offences in New Zealand. Therefore, the study calls for further investigation to determine why the courts issue harsher sentences to blue-collar criminals than tax evaders, as evidenced by previous studies.²¹⁴ Examining the aggravating and mitigating factors in other crimes would give us a better understanding of what the courts may consider ensuring that tax evaders are treated no differently to white-collar criminals.

Notwithstanding these limitations, this study establishes that policymakers must think creatively to make their systems more agile (brisk, adaptive) and able to respond promptly and effectively to persistent and emerging risks linked to the proceeds of crime. In 1927, the United States Supreme Court ruled in *United States v. Sullivan* that illegally earned income was subject to income tax. On June 16, 1931, Chicago gangster Al Capone famously pled guilty to tax evasion and eventually was sentenced to prison for 11 years. The authors hope that this research will provide sentencing guidelines or an overview for policymakers or tax authorities to consider if looking at sentencing.

²¹³ Whether women received more lenient sentencing than men.

²¹⁴ Marriott, above n 18.

APPENDIX 1

Reference for the cases for custodial sentences and non-custodial sentences covered in Table 1 and Table 2 is provided by case name.

1. *Commissioner of Inland Revenue v Blake* [2017] NZDC 28773
2. *Commissioner of Inland Revenue v Buisson* [2018] NZDC 13244
3. *Commissioner of Inland Revenue v Dempsey* [2011] 25 NZTC 20-001
4. *Commissioner of Inland Revenue v Gautam* [2010] DC Hamilton CRI-2009-019-011364
5. *Commissioner of Inland Revenue v Ili* [2012] DC Upper Hutt CRI-2011-078-001573
6. *Commissioner of Inland Revenue v Karaitiana* [2017] NZDC 7361
7. *Commissioner of Inland Revenue v McLaren* [2017] NZDC 16275
8. *Commissioner of Inland Revenue v Mitchell* [2017] NZDC 24907
9. *Commissioner of Inland Revenue v Naisbitt* [2017] NZDC 25304
10. *Commissioner of Inland Revenue v Pome'e* [2022] NZDC 8579
11. *Commissioner of Inland Revenue v Rangitawa* [2016] NZHC 444; CRI-2016-470-3
12. *Commissioner of Inland Revenue v Robinson* [2017] NZDC 19068.
13. *Commissioner of Inland Revenue v Serchan* [2017] NZDC 17773.
14. *Commissioner of Inland Revenue v Williams* [2019] NZDC 13124.
15. *Inland Revenue Department v Ali* [2017] NZDC 4295
16. *Inland Revenue Department v Barikov* [2018] NZDC 12633
17. *Inland Revenue Department v Barron* [2014] DC Christchurch CRI-2014-009-1495
18. *Inland Revenue Department v Basalaj* [2020] NZDC 19345
19. *Inland Revenue Department v Bench* [2017] NZDC 635
20. *Inland Revenue Department v Calvert* [2019] NZDC 10634
21. *Inland Revenue Department v Chen* [2022] NZDC 1382
22. *Inland Revenue Department v Coleman* [2019] NZDC 23779
23. *Inland Revenue Department v Gell* [2010] NZDC Wellington CRI-2010-085-000530
24. *Inland Revenue Department v Gray* [2017] NZDC 5075
25. *Inland Revenue Department v Isherwood* [2016] NZDC 21726
26. *Inland Revenue Department v Lasek* [2018] NZDC 7473

27. *Inland Revenue Department v Kamal* [2013] NZHC 3474
28. *Inland Revenue Department v Kinimont* [2016] NZDC 4880
29. *Inland Revenue Department v Kumar* [2018] NZDC 24405
30. *Inland Revenue Department v Mafuta* [2020] NZDC 14056
31. *Inland Revenue Department v Mauigoa* [2017] NZDC 24816
32. *Inland Revenue Department v Mackay* [2017] NZDC 22038
33. *Inland Revenue Department v Murray* [2017] NZDC 22348
34. *Inland Revenue Department v Ovenden* [2017] NZDC 4914
35. *Inland Revenue Department v Pearce* [2019] NZDC 8348
36. *Inland Revenue Department v Pranesh Nandan* [2017] NZDC 24175
37. *Inland Revenue Department v Tane* [2016] NZDC 17578
38. *James v R* [2010] 24 NZTC 24, 271
39. *Jukich v R* [2012] NZCA 231
40. *Lindup v Inland Revenue Department* [2008] 23 NZTC 22,025
41. *Mehmood v R* [2015] 27 NZTC 22-020
42. *Pandey v R* [2013] 26 NZTC 21-058
43. *Pearce v NZ Police* [2015] NZHC 3104
44. *Prakash v Commissioner for Inland Revenue* [2012] DC Auckland CRI-2012-004-004420.
45. *R v Allan* [2009] 24 NZTC 23,815.
46. *R v Archibald* [2019] NZDC 4490.
47. *R v Barton* [2018] NZDC 17502.
48. *R v Bracken* [2021] NZHC 1032.
49. *R v Chahil and Gupta* [2020] NZHC 317.
50. *R v Dhillon* [2010] 24 NZTC 24,030.
51. *R v Eade* [2009] DC Auckland CRI-2008-004-024403
52. *R v Kahlon* [2010] DC Tauranga CRI-2007-070-004709
53. *R v Kampeng* [2019] NZHC 2500
54. *R v Klintcharov* [2013] NZHC 2778
55. *R v Lamelangi* [2010] DC Tauranga CRI-2010-070-002390
56. *R v Luo* [2017] NZDC 13445

57. *R v Malu* [2017] 28 NZTC 23-045
58. *R v O'Connor* [2013] NZHC 2393
59. *R v Robin Smith* [2009] DC Wellington CRI-2007-032-005070
60. *R v Rowley & Skinner* [2012] NZHC 2087
61. *R v Smith* [2009] 24 NZTC 23,004
62. *R v Sorm* [2019] NZDC 23650
63. *R v Suckling* [2015] NZDC 14634
64. *R v Top International Trading Ltd & Ors* [2015] DC New Plymouth CRI-2013-043-562
65. *Rajesh Sami v Commissioner of Inland Revenue* [2022] NZHC 2436
66. *Sellers v Commissioner of Inland Revenue* [2016] 27 NZTC 22-038
67. *Singh v New Zealand Police* [2007] HC Rotorua CRI 2007-470-23
68. *Sula-Wongsee v Inland Revenue Department* [2012] NZHC 974
69. *Tahaafe v Commissioner of Inland Revenue* [2009] HC Auckland CRI 2009-404-102
70. *Zaheed v R* [2010] NZCA 573; [2011] 25 NZTC 20-018