CHAPTER 5

DATA ANALYSIS AND RESULTS

Introduction

This Chapter presents the findings of the questionnaire survey. In addition to presenting the descriptive statistics, inferential statistics such as Correlation, Analysis of Variance (ANOVA), T – tests and Chi Square tests and Fisher Exact tests were performed to test the eight hypotheses explained in the preceding chapter.

Summary Statistics of Respondents

Descriptive statistics in respect of the respondents to the questionnaire survey are presented in the following table:

Table 5.1:Demographic Information of Respondents

	Frequency	Percentage
Gender		
Male	71	61.2%
Female	45	38.8%
Total	116	100%
Professional Affiliation		
MIT	116	100%
Also Other	66	56.90%
Working Environment		
Sole Practitioner	14	12.1%
Small Practice	15	12.9%
Medium Practice	7	6.0%
"Big Five"	80	69.0%
	116	100.0%
Designation		
Partner	22	19.0%
Director	11	9.4%
Manager	37	32.0%
Assistant Managers, etc.	10	8.6%
Others	36	31.0%
	116	100%

Despite an equal number of sample was selected from both categories, the response from the non-big five was only 31% of the total respondents Although the size of the big-five respondents is much larger than the non-big-five category, it will not affect the findings as the statistical analysis is based on proportions and not absolute numbers. Furthermore there are no published statistics of the actual proportion of tax agents in the big-five firms and non big-five firms. Needless to say that was beyond the control of the researcher although every effort was made to obtain the responses. This could probably be due to the lack of resources in smaller firms who may not have had the time to spare to stretch their thoughts for the questionnaire. The response from smaller firms was also slow.

Hypothesis HO_1: No Significant Difference on the Understanding of Reasonable Care Concept between Tax Agents of Different Levels of Experience

The scores obtained with one (1) showing the lowest score for a respondent and seven (7) as the highest score is reproduced below for all the 116 respondents. The frequencies and mean score are reproduced as below.

Frequency Distribution for Reasonable Care Score

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	5	4.3	4.3	4.3
	2	16	13.8	13.8	18.1
	3	28	24.1	24.1	42.2
	4	23	19.8	19.8	62.1
	5	25	21.6	21.6	83.6
	6	16	13.8	13.8	97.4
	7	3	2.6	2.6	100.0
	Total	116	100.0	100.0	

Descriptives

Reasonable Care Score

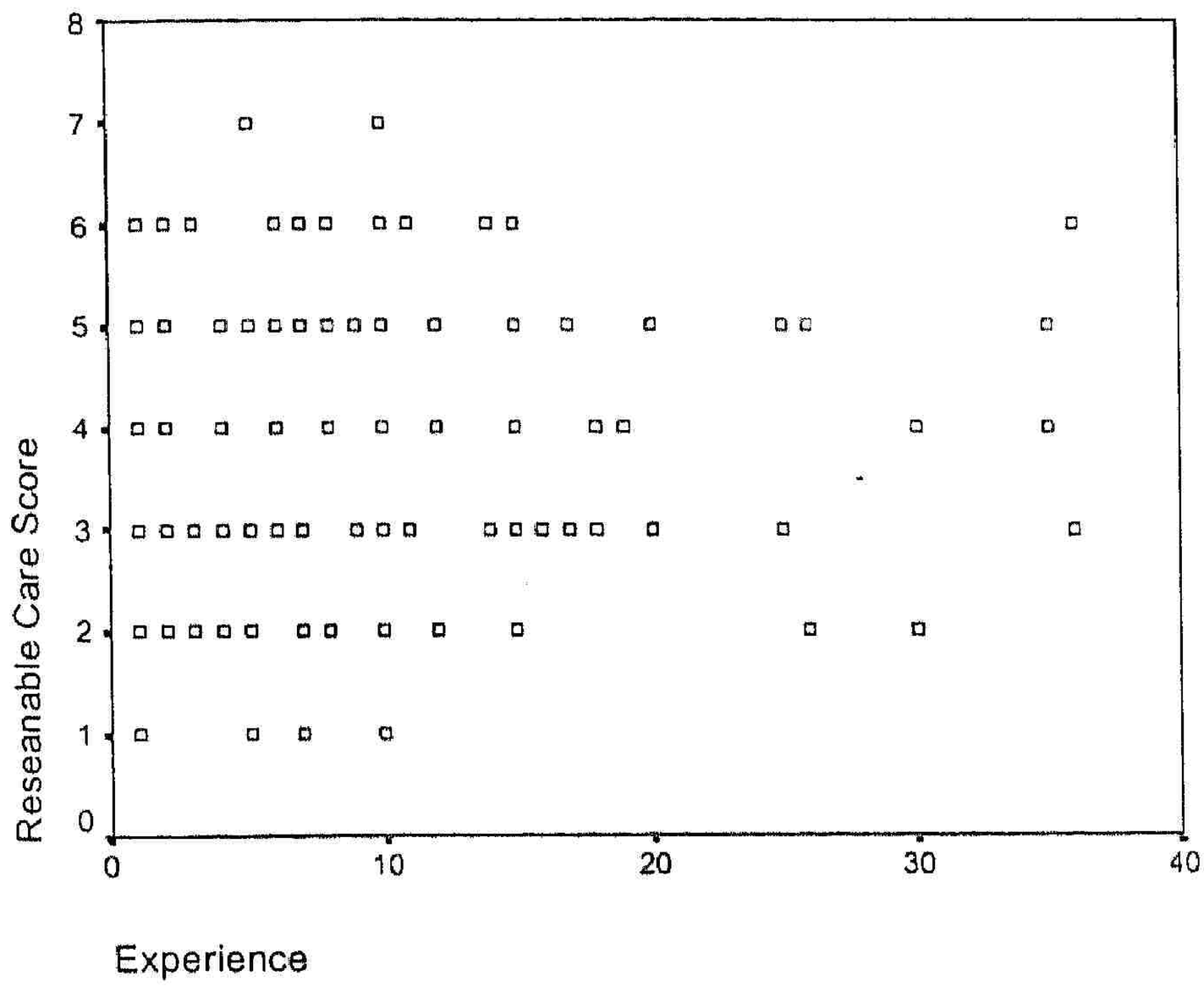
	Statistic	Std. Error
Mean	3.92	.14
95% Confidence Interval for Mean (Lower Bound)	3.65	
Upper Bound	4.19	
5% Trimmed Mean	3.93	
Median	4.00	
Variance	2.194	
Std. Deviation	1.48	
Minimum	1	
Maximum	7	.
Range	6	
Interquartile Range	2.00	
Skewness	.005	.225
Kurtosis	-.787	.446

The **mean** score is 3.92 and at 95% confidence interval the mean score is between 3.65 and 4.19.The skewness is not serious. This indicates that though being a professional and having the required qualification under the law to be referred as tax agents, the understanding of the concept is not very satisfactory. This would mean that on the average, tax agents pass this test only marginally. As professionals whose practice will be directly affected by this interpretation, a higher level of understanding is desired failing which an infringement will attract criminal sanction. To advise their clients with greater certainty, a higher level of understanding is required.

To test for association of this concept with levels of experience, the following tests – Scatter plot, Correlation and Chi-Square tests were done.

The scatter plot is shown below:

Association between Understanding of Reasonable Care and Levels of Experience



The results above indicate that there is no association between the Understanding of the Reasonable Care concept and tax agents of different levels of experience.

A **Correlation test** was also done to test for the above association. The result is as follows:

Correlations

		Reasonable Care Score	Experience
Reasonable Care Score	Pearson Correlation	1.000	-.003
	Sig. (2-tailed)	.	.974
	N	116	116
Experience	Pearson Correlation	-.003	1.000
	Sig. (2-tailed)	.974	.
	N	116	116

r-value = – 0.003

p-value = 0.974, which is > 0.05

Therefore there is no significant association between reasonable care score and experience.

To perform further tests to show association between groups, the scores obtained were categorised into three levels. Experience was also categorized into three levels as follows:

Reasonable Care Score		Experience	
Score	Level	Level	No. of Years
1 – 3	Low	Low Experience	1 – 4 years
4 – 5	Medium	Medium Experience	5 – 9 years
6 – 7	High Score	Very Experienced	10years and above

After categorizing experience into three levels, a cross tabulation was done to obtain a Chi-square test result and Analysis of Variance (ANOVA). The results are as follows:

Experience v Reasonable Care Score Cross tabulation
% within Experience

	Experience	Reasonable Care score			Total
		Low	Medium	High	
	< 5 years	46.4%	39.3%	14.3%	100.0%
	5 - 9 years	32.3%	45.2%	22.6%	100.0%
	10 years & above	45.6%	40.4%	14.0%	100.0%
Total		42.2%	41.4%	16.4%	100.0%

The above cross tabulation of the variables that have been grouped, shows that 46.4% of the tax agents surveyed in the below 5 years experience category have a low level of understanding; 32.3% in the medium level experience category and 45.6% of the very experienced category have a low

level of understanding of the concept. This shows that the groups do not differ much in their understanding of this variable.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.147[a]	4	.709
Likelihood Ratio	2.138	4	.710
Linear-by-Linear Association	.055	1	.814
N of Valid Cases	116		

a. 1 cells (11.1%) have expected count less than 5. The minimum expected count is 4.59.

The Chi-Square results shown above show the following results:

P-value = 0.709, i.e. > 0.05

Since the p-value is more than 0.05, statistically there is no significant association between the Reasonable Care Score and Level of Experience.

Frequency Distribution after Grouping

Descriptives
Reasonable Care Score

Level of Experience	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean	
					Lower Bound	Upper Bound
< 5 years	28	3.68	1.44	.27	3.12	4.24
5 - 9 years	31	4.32	1.64	.29	3.72	4.92
10 years & above	57	3.82	1.39	.18	3.46	4.19
Total	116	3.92	1.48	.14	3.65	4.19
Total	116	3.92	1.48	.14	3.65	4.19

The descriptive statistics shown above after grouping still does not show any marked difference in the mean scores as compared to when it was not grouped.

Analysis of Variance (ANOVA)

ANOVA

Reasonable Care Score

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	7.175	2	3.587	1.654	.196
Within Groups	245.127	113	2.169		
Total	252.302	115			

Finally, a One-Way (one factor) ANOVA was performed to test if there is a difference between mean scores of the three levels of "experience" categories, i.e. below 5 years experience(low experience); 5 to 9 years experience(medium level experience) and 10 and above years(very experienced) categories. The mean score for the low-level experience category is 3.68, the medium level is 4.32 and the very experienced category is 3.82.

As shown in the Anova Table above, we obtained P-value of 0.196 which is greater than 0.05. Therefore there is no significant difference between the three means i.e., reasonable care scores do not depend on the years of experience.

Summary of Analysis of $H0_1$

The frequency distributions for the Reasonable Care Score of the respondents were first obtained followed by the descriptives showing the mean, median and standard deviation. A scatter Plot for Reasonable Care Score and the Experience variable was analysed, which did not show any association between the two variables. The Correlation value(between actual score and actual experience) too did not show any significant association. After categorizing experience and the scores for "Reasonable Care", a Chi-Square Test and

ANOVA was performed. Even this did not show any significant association. In conclusion it can be said that statistically, there is no significant difference in the understanding of the concept of reasonable care under section 114(1A) between tax agents of different levels of experience. Therefore we do not reject the null hypothesis.

Analysis and Justification of Results

Although ordinarily the more experienced tax agents are expected to have a better understanding about the concept of 'reasonable care' envisaged in section 114(1A), the results indicated otherwise. Although the subjects are all qualified tax agents, the mean score of 3.92 against a full score of 7 for understanding and perception of 'reasonable score' indicates that the respondents surveyed only passed with a marginal score. As professionals, the score should be near perfect. The hypothesis tested also shows that there is no association between the perception and understanding of reasonable care and the different levels of experience and neither has it any association in the working environment of big-five accounting firms and non big five firms. This can be attributed to several reasons.

The fact that the concept itself is new to tax legislation could be the major reason. To make things worse, the amendment did not provide for a definition clause of the concept of reasonable care. Analysing the events leading to the issuance of a public ruling on the subject, it can be seen that the initial definition of reasonable care was a simple one. The professional bodies in their commentary on the Draft Ruling suggested another definition adopted by the Australian Tax Office. However IRB finally adopted a more detailed definition in Public Ruling Number 8 of 2001 as below:

> "Reasonable care" means the degree of care or conscientiousness in paying proper attention to a task that is expected, in a similar situation, of an ordinary person who, considering the circumstances and the foreseeable consequences, acts with reason, sound judgement and responsibility".

This definition has dropped the "due diligence" concept initially proposed and even expended on the definition proposed by the professional bodies by including 'foreseeable consequences considering the circumstances' although (as it will be submitted here that) there is no need for it. It further imposes that this ordinary person is one who acts with reason, sound judgement and responsibility. Such a turn of events indicate that the authorities did not themselves envisage the different scenarios under which a person can stray from adhering to the purported standards before enacting the law. It appears like the proverbial *cart before the horse* situation. A more detailed and concerted analysis appears to be made only after the comments by the professional bodies. There is no reported study yet on the understanding of this concept among revenue officers at the ground level. Although this concept has been discussed and dissected on in various tax seminars, the confusion is likely to continue until the local courts are called to interpret such a concept when the situation arises.

As mentioned in the second chapter, the IRB has assured the professional bodies that it will not be strict in its interpretation of this provision. Such an assurance raises many questions as to the actual interpretation of the concept of reasonable care. Is there a strict interpretation and a non-strict interpretation?

The concept of 'reasonable care' is one that is borrowed from common law , i.e., the law of tort, which is about a civil wrong. Such a breach of duty to a person who has proximity by the tortfeasor or the wrong doer occurs when another person suffers damage or injury due to the actions or omissions of the wrongdoer. The wrong doer is said to owe a duty of care to his neighbour or the person who is in proximity to him if his actions can cause damage. The duty of care in the law of tort is centred upon 'foreseeability' of damaging consequences, as such it goes without saying that the definition will not be reduced in scope without it. Acting with reason, sound judgement or responsibilities are all actions expected from a reasonable person. As such there is no need to include it in the

definition. These are words that could restrict the scope rather than be all encompassing as may be envisaged by the legislature.

The law does not prevent any person from assisting or advising in the preparation of tax returns. If one holds himself out to be a tax agent under the law, then the degree of skill required of him is that of a qualified tax agent even though he may be a novice in term of experience or works in a small public accounting firm. According to the American courts, tax preparers, in providing their services to taxpayers, are required to exercise that degree of care, skill, and diligence which is exercised by prudent members of their particular profession in that particular situation. Accountants are subject generally to the same rules of liability for negligence in the preparation of tax returns for others as member of other skilled professions are in the practice of their professions, according the court in *Lindner v Barlow, Davis & Wood (1962) 210 Cal. App. 2d 660 Cal. Rptr, 101.* As members of a skilled profession they are experts, the court declared, they have a duty to exercise the ordinary skill and competence of members of their profession, and failure to discharge that duty subjects them to liability for negligence.

In America, the Courts have relied on the standards set by the professional body (AICPA) to determine conformity to acceptable standards. Such an opinion was cited in *Est. of Emanel Trompeter, 111 TC (1998).* In a concurring opinion, Judge Swift cited SRTP (Statements on Responsibilities in Tax Practice) No. 1. Under SRTP No. 1, CPAs who follow the realistic possibility standard must believe in good faith that the position is warranted in existing law or can be supported by a good faith argument for an extension, modification, or reversal of existing law. The 'realistic possibility standard' is another level of standard in the same vein as the 'reasonable care' standard.

Another reason that can be attributed to the lack of a high level of understanding is that "reasonable care" is a legal term. A good understanding of

this term is not possible without a reasonable knowledge of Law especially in areas such as Revenue Law, Malaysian Legal System, Criminal Law, Law of Tort, Law of Evidence and Administrative Law. Taxation is a combination of Accountancy and Revenue Law. Tax agents specialise in the compliance aspects of Tax Laws and to a certain extent in Revenue Law. Where a greater depth is required in interpretation and enforcing, and adjudicating the law within the judicial system, members of the legal profession are better equipped to handle such situations. At any appeal at the Special Commissioners of Income Tax stage, a tax agent may represent a taxpayer at the hearing. Beyond that, i.e at the High Court and further, the tax agent has no *locas standi* to represent the taxpayer.

As seen in the comment on the draft public ruling in this issue, there appears to be numerous differences on the role and interpretation of section 114(1A) among the authorities and the professional bodies. The findings of this study have mirrored the unsettled situation in these issues. The differences in the understanding of this concept and section 114(1A) between the two parties, concern the following issues:

- The role and duties of tax agents.
- Interpretation of classifying the offence under existing legislations or the new section 114(1A).
- Liabilities of employees who are not in control.
- Liability of agents when returns are prepared from incomplete records.
- Liabilities of accountants who prepare accounts not knowing that it will be used for filing tax returns.
- Interpretation of "reasonable care" concept in the absence of any law specifying duties of tax agents under any law.

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Hypothesis HO_2: No Significant Difference on the Understanding of Reasonable Care Concept between Tax Agents from the "Big-Five" category and non "Big-Five category.

The second hypothesis tests the association of the understanding of the "reasonable care" concept with another demographic variable, which is the working environment of the tax agents. The questionnaire identified this into four groups i.e. sole proprietor; small practice, medium sized firm and "big-five" accounting firms. As explained in the preceding chapter they were classified into two categories for purposes analysis. A cross tabulation was done between the Reasonable Care Score and Working Environment which is classified into "big-five" and "non-big five" tax agents. The results are reproduced below:

Working Environment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Sole Practioner	14	12.1	12.1	12.1
	Small Practice	15	12.9	12.9	25.0
	Medium Practice	7	6.0	6.0	31.0
	Big Five	80	69.0	69.0	100.0
	Total	116	100.0	100.0	

Environment * Reseanable score Crosstabulation

			Reseanable score			Total
			Low	Medium	High	
Environment	Rest	Count	18	12	6	36
		% within Environment	50.0%	33.3%	16.7%	100.0%
	Big Five	Count	31	36	13	80
		% within Environment	38.8%	45.0%	16.3%	100.0%
Total		Count	49	48	19	116
		% within Environment	42.2%	41.4%	16.4%	100.0%

The cross-tabulation of the two variables of Reasonable Care Score and Working Environment shows that 50.8% of the non-big five category have a low level of understanding of the reasonable care concept and 38.8% of the "Big-Five" category have a low level of understanding. On the other hand both

categories do not show a marked difference in the High Level of understanding category, i.e 16.7% and 16.3%.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.563[a]	2	.458
Likelihood Ratio	1.574	2	.455
Linear-by-Linear Association	.556	1	.456
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 5.90.

The Chi-Square test shows a p-value of 0.458 which is greater than 0.05.

Therefore there is no significant association between the Reasonable Care Score and Working Environment.

T-Tests

Group Statistics

	Environment	N	Mean	Std. Deviation	Std. Error Mean
Reasonable Care Score	Rest	36	**3.78**	1.51	.25
	Big Five	80	**3.99**	1.47	.16

An independent t-test was performed to test if the raw reasonable care score differs between the big-five and non-big-five category. The mean score for big-five is 3.99 and the non-big five is 3.78.

Independent Samples Test

T-test for Equality of Means				
t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference
-.704	114	**.483**	-.21	.30
-.696	65.801	.489	-.21	.30

The p-value of the independent t-tests as shown above is 0.483 which is more than 0.05. Therefore there is no significant difference between the mean score of the big five and the rest. In other words, the Big-Five tax agents are no different from the rest in their understanding of the reasonable care concept. In conclusion, we do not reject the null hypothesis, HO_2.

Analysis and Justification of Results

The level of understanding and the perceptions of reasonable care appear to have transcended the 'environment' or firm type where the tax agents serve. Although one may expect a better understanding from tax agents in the big-five category who have better resources and international links, their understanding is swayed by the reasons and justification explained for the first hypothesis above. The views of the professional bodies represent that of the whole tax profession whether big-five or non-big five. The findings of this study supports this conclusion.

Hypothesis HO_3: No significant difference on the perception of **fairness** of section 114(1A) between tax agents of different levels of **experience**.

To test this hypothesis the responses relating to this variable were coded as fair (coded as one) and unfair(coded as zero). Then the counts were added for all 5 questions. Therefore the range is determined from 0 to 5. Zero being unfair on all counts and five being fair on all counts. As shown below, 66.4 % scored 0, i.e. totally unfair, while 29.3% said at least one aspect is fair. Only 4.3% said two aspects are fair and none said more than two aspects were fair. No one

had scores of more than 3. Needless to say that this provision, which may act against the interest of tax agents, elicited an emotional "unfair" outcry.

Fairness

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	77	66.4	66.4	66.4
	1	34	29.3	29.3	95.7
	2	5	4.3	4.3	100.0
	Total	116	100.0	100.0	

A Chi-Square test was performed to test if the perception of fairness depended on the level of experience category.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.989[a]	4	.738
Likelihood Ratio	1.926	4	.749
Linear-by-Linear Association	.357	1	.550
N of Valid Cases	116		

a. 3 cells (33.3%) have expected count less than 5. The minimum expected count is 1.21.

The result as shown above indicates a p-value of 0.738, which is greater than 0.05. Therefore there is no significant association between fairness and experience category. The level of experience does not determine the perception of fairness or unfairness of section 114(1A). Thus we do not reject HO_3.

Analysis and Justification of Results

The results reflect the initial reaction of tax agents and commentators who questioned the need for such legislations especially when there are existing legislations, which are sufficient to prosecute offenders relating to understatement of income. Some respondents claim that:- the relationship

between tax agents and the IRB is not at its best; the provision is an harassment of tax agents; the provision is not favourable to the professional development of the tax agent fraternity; this provision puts the tax agents under pressure and is retrogressive to the smart partnership advocated by the government between the private and public sector. So, why then the new provision?

The IRB's stand appears to be one of an additional level of compliance measure, required under the Self-assessment system. This appears to be in line with the Self-Assessment System in other countries such as Australia, which has adopted similar provisions, albeit having a civil penalty rather than a criminal penalty. However criminal penalties are not uncommon in other tax jurisdictions such as Germany and America. In fact in America, the profession is very highly regulated and the range of negligence and evasion penalties are more broad ranged and severe.

The law not only does not define 'reasonable care' but also ignored defining 'understatement'. An understatement may be innocent or planned. The subjectiveness of the law worsens the situation. Tax agents' fear of unfair implementation in the future if the law is ambiguous. There are no safeguards in the law to ensure that IRB officers do not abuse the provision.

One senior practitioner commented that such a provision is needed to focus upon the standard of tax agents in view of the shift in the burden of determining chargeable income on the taxpayers. This also indirectly increases the burden on tax agents. As literature shows, imposing penalties on those who aid and abet the understatement of income is one form of tax compliance measure under the Deterrence Theory.

As this provision affects both junior and senior practitioners, their opinions appear to be synchronised. Junior practitioners may even be more wary of such provisions. Furthermore peer influence could have affected their inclinations.

There is no evidence from extant literature to show that level of experience affect the perception of fairness of the law.

Hypothesis HO_4: No significant difference on the perception of **fairness** of Section 114(1A) between tax agents from the "big-five" category and the non "big-five" **category**.

The frequency distribution for this variable is shown below. From the response it can be seen that 69.4% of the respondents in the non-big five category felt that the section 114(1A) is unfair on all counts, while 65.0% of the big-five agents felt that it was totally unfair. These frequency distribution indicates that both the groups do not differ in their perception as to the fairness of the amendment to the law.

Environment * Fairness Crosstabulation

			Fairness			Total
			0	1	2	
Environment	Rest	Count	25	10	1	36
		% within Environment	69.4%	27.8%	2.8%	100.0%
	Big Five	Count	52	24	4	80
		% within Environment	65.0%	30.0%	5.0%	100.0%
Total		Count	77	34	5	116
		% within Environment	66.4%	29.3%	4.3%	100.0%

A Chi-Square test was performed to check whether the perception of fairness or the lack of it depends on whether tax agents are working in the "big-five" accounting firms or non big-five firms. The results are shown below.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.400[a]	2	.819
Likelihood Ratio	.424	2	.809
Linear-by-Linear Association	.340	1	.560
N of Valid Cases	116		

a. 2 cells (33.3%) have expected count less than 5. The minimum expected count is 1.55.

The results indicate a p-value of 0.819 which is more than 0.05, which means that there is no difference in perception between the "big-five" tax agents and the non-big five agents, i.e the big-five agents are no different from the rest. Therefore we do not reject HO_4.

Analysis and Justification

From the comments by the respondents, it can be gathered that the big-five accounting firms face problems of high staff turnover at the lower levels and face shortage of experienced tax personnel in a profession where such experienced personnel are small in number. The imposition of these penal provisions will compound the problem, as new entrants to the profession may be discouraged.

This provision imposes an onerous burden on the tax agents who have to shoulder the burden of taxpayers, albeit at a cost which will be shifted to the taxpayers. Increase in compliance costs is imminent, as the tax agents have to take precautionary measures to safeguard their position. For instance, communication between tax agents and taxpayers will now have to be documented. Such additional efforts will result in additional costs. The big-five firms charge fees in accordance with 'time costs'. A time cost is attached to each level of personnel. Such costs increase when higher-level personnel are assigned to handle tasks.

On the other hand smaller firms may absorb the additional costs arising from the additional measures. Smaller firms may have to deal with incomplete records and taxpayers who do not keep records. It will be upon them to accept or reject such cases. The task of educating these taxpayers may be an onerous burden. As such both the big-five and non big-five tax agents for identical reasons feel the provisions are unfair.

By this legislation, the assessment function of the IRB has been shifted to the taxpayers. The more complex the tax submission, the greater the role of the tax agent. The tax agent is now expected to help the government in preventing the leakages to the government coffers and towards this they are expected to assume the functions of a 'watch dog' to conduct investigative audits on behalf of the IRB.

The perception on fairness of the legislation is also affected by the interpretation of 'understatement', which may be as a result of a multitude of reasons. Tax agents perceive that this provision does not provide for bona fide errors and mistakes and other forms of unintentional understatement. Many reasons can be attributed to unintentional understatements, such as work pressure, shortage of experienced staff, etc. The law is also thought to be unfair because it does not cover understatements resulting from a 'reasonably arguable position' i.e., the scope of tax planning is restricted. The law does not seem to separate offences into various degrees of culpability and lumps all types of offences under the provision.

The scope of a tax agent's engagement may prevent him from obtaining the relevant information required to file an accurate return.

Some respondents lamented that the provision is a 'draconian' piece of legislation. Tax agents now are at the mercy of tax officers. The law is also

perceived to be unfair as there has been no widespread programme to educate the taxpayers before enacting the law. The need to educate the taxpayer is more important. This will prevent the taxpayers from pressuring tax agents to be involved in unethical practices. It now appears that it is left to the tax agents to undertake the task of educating the taxpayer and face the unpleasant task of rejecting taxpayers who engage in unethical practices.

Tax agents in the big-five firms feel that under current practice, it is easy to obtain a tax agents' licence under section 153. The law should impose higher levels of experience as a prerequisite before issuing such licences.

If the authorities had engaged in meaningful consultation and discussion with the professional bodies before the enactment of the law, most of these grouses could have been averted. A cultural change may be needed to move towards this direction. Currently, all proposed legislative changes are held as highly confidential until the bill is tabled in parliament. This gives the professional bodies limited time to state their objections and views to the legislature before the last reading in parliament. The post-enactment discussions can do very little in shaping the legislations or for any meaningful smart partnership between the public and private sectors.

HO_5 : No significant difference on the perception of imposing **penal sanctions** on tax agents under section 114(1A) between tax agents of different levels of **experience.**

First Scenario : **Penal sanctions improve tax compliance**

Second Scenario: **Penal sanctions should be imposed against tax agents.**

A different approach was used here as two types of direct questions involving the above mentioned scenarios were asked. The first question relates to the role of penalties in improving tax compliance, to which the **majority**

agreed that penal sanctions would improve tax compliance. Only 27.6% disagreed. However when tax agents were asked if penalties should be imposed against them for offences relating to understating tax liabilities of their clients, the **majority disagreed** that penal sanctions should be imposed against them. Only 7.8% of the 116 respondent tax agents agreed that penal sanctions should be imposed against them while 4.3% wished to remain neutral in their opinion. The response for this two situation is cross -tabulated and presented below:

Cross Tabulation of
Criminal Sanctions Help V Criminal Sanctions should be Imposed on Tax Agents

		Criminal Sanctions should be Imposed					Total
		strongly disagree	disagree	neutral	agree	strongly agree	
Criminal Sanctions Help	strongly disagree	5	2	-	1	2	10
		50.0%	20.0%	-	10.0%	20.0%	100.0%
	disagree	13	5	3	1	-	22
		59.1%	22.7%	13.6%	4.5%	-	100.0%
	neutral	9	7	2	-	1	19
		47.4%	36.8%	10.5%	-	5.3%	100.0%
	agree	23	18	-	3	-	44
		52.3%	40.9%	-	6.8%	-	100.0%
	strongly agree	16	4	-	1	-	21
		76.2%	19.0%	-	4.8%	-	100.0%
Total		66	36	5	6	3	116
		56.9%	31.0%	4.3%	5.2%	2.6%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	30.952[a]	16	.014
Likelihood Ratio	28.044	16	.031
Linear-by-Linear Association	4.749	1	.029
N of Valid Cases	116		

a. 16 cells (64.0%) have expected count less than 5. The minimum expected count is .26.

The Chi-Square test result shown above indicates p-value of 0.014, which is less than 0.05, therefore showing significant association between the two variables. Since the minimum expected count is 0.26, the conclusion is not valid statistically.

Following this the data was collapsed into three categories, i.e Disagree, Agree and Neutral categories. The Chi-Square test was performed again. The results are reproduced below:

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8.343[a]	4	.080
Likelihood Ratio	10.066	4	.039
Linear-by-Linear Association	3.280	1	.070
N of Valid Cases	116		

a. 5 cells (55.6%) have expected count less than 5. The minimum expected count is .82.

The p-value obtained is 0.08, which is more than 0.05. Therefore there is no significant association between both the variables.

A further test for association was done after collapsing the responses into two categories, i.e. by dropping those respondents who remained neutral. A

cross tabulation of only those agreeing(Strongly agree and Agree categories) and disagreeing (Strongly disagreeing and Disagreeing categories) was made. The result is reproduced below:

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	1.503[b]	1	.220		
Continuity Correction[a]	.682	1	.409		
Likelihood Ratio	1.398	1	.237		
Fisher's Exact Test				.246	.201
Linear-by-Linear Association	1.487	1	.223		
N of Valid Cases	94				

a. Computed only for a 2x2 table

b. 1 cells (25.0%) have expected count less than 5. The minimum expected count is 2.47.

The p-value now for the Chi-Square test is 0.220 which is greater than 0.05. Therefore there is no significant association between the two variables. This shows that no matter what the response was on imposing criminal sanctions to improve general compliance, a large majority of the respondent tax agents did not agree to penal sanctions against them.

The Fisher Exact Test showed a p-value of 0.246, i.e greater than 0.05, thus also indicating no association between those who feel that penal sanctions should be imposed to improve compliance and those who feel that criminal sanctions should be imposed against tax agents

First Scenario: Penal Sanctions Improve General Compliance

Perception v Experience

To test the hypothesis between the perception of penal sanctions and experience, the two variables, perception and different levels of experience were cross-tabulated. The results are shown below:

Chi-square tests were performed. First, all category of responses were considered, secondly after collapsing the responses into three categories, i.e. Neutral, Disagreeing and Agreeing responses and thirdly by collapsing into two categories of Agreeing and Disagreeing. The results are presented below:

First Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.841[a]	8	.871
Likelihood Ratio	4.243	8	.835
Linear-by-Linear Association	.077	1	.782
N of Valid Cases	116		

a. 4 cells (26.7%) have expected count less than 5. The minimum expected count is 2.41.

Second Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.656[a]	4	.957
Likelihood Ratio	.668	4	.955
Linear-by-Linear Association	.026	1	.871
N of Valid Cases	116		

a. 1 cells (11.1%) have expected count less than 5. The minimum expected count is 4.59.

Third Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.594[a]	2	.743
Likelihood Ratio	.608	2	.738
Linear-by-Linear Association	.039	1	.843
N of Valid Cases	97		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 7.59.

In the first category the p-value is 0.871; in the second category the p-value is 0.957 and in the third category, the p-value is 0.743. All the three results were greater than 0.05, indicating there is no significant association between the perception (of imposing penal sanctions) and experience (of different levels). Thus we do not reject the null hypothesis.

Second Scenario: Jail Sentence Should Be Imposed On Tax Agents:

Perception v Experience

The same method of analysis is used to test the second scenario, i.e analysing the responses at three stages. The first taking all responses as it is, from the five point Likert Scale, secondly by collapsing into three categories and finally into two categories. The results of the Chi-Square tests are shown below:

First Category: Cross Tabulation between responses and Experience Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	5.342[a]	8	.720
Likelihood Ratio	5.762	8	.674
Linear-by-Linear Association	.014	1	.907
N of Valid Cases	116		

a. 9 cells (60.0%) have expected count less than 5. The minimum expected count is .72.

Second Category: Cross Tabulation after categorising responses and Experience Category.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.700[a]	4	.951
Likelihood Ratio	.674	4	.954
Linear-by-Linear Association	.124	1	.724
N of Valid Cases	116		

a. 6 cells (66.7%) have expected count less than 5. The minimum expected count is 1.21.

Third Category: Categorised Agree/Disagree Responses and Experience Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.446[a]	2	.800
Likelihood Ratio	.421	2	.810
Linear-by-Linear Association	.253	1	.615
N of Valid Cases	111		

a. 3 cells (50.0%) have expected count less than 5. The minimum expected count is 2.19.

The above results show a p-value of 0.720 for the first category; 0.95 for the second category and 0.80 for the third category. Since all the results are above 0.05, it can be concluded that there is no association between perception on imposing criminal sanctions against tax agents and length of experience.

Analysis and Justification

The professional bodies argue that 'negligence' should not be part of the tax legislation, quoting the turn of events in Canada where the government reconsidered the implementation of similar provisions after strong protests from the tax practitioners. However they failed to appreciate similar provisions in other

developed countries. While some countries like Australia only have civil penalties, yet countries like America and Germany and China have jail penalties for offenders. Therefore it is not surprising to see that tax agents whether experienced or inexperienced not supporting penal provisions against them. However they do not mind if such criminal sanctions are imposed against taxpayers to improve compliance.

Criminal sanctions against taxpayers and tax advisers for tax evasion already exists in the Act. However section 114(1A) also imposes criminal sanctions against negligence by assistance providers and tax advisers. The penalty regime in the Income Tax Act is is reproduced below:

Section	Culpable behaviour	Person Chargeable	Penalties Civil/Criminal
Incorrect Returns			
113	Makes incorrect return otherwise than in good faith.	Taxpayer or other person making the return	(i)Tax under- charged (ii) ≤ 1,000 Fine ≤ 10,000 plus twice undercharged
Wilful Evasion			
114(1)	Wilful intent to evade tax with respect to: o income omision in return o false statement/entry in return o giving false advice o preparing false books and accounts o falsifying accounts /records o using fraud	Taxpayer or person	(i)≤RM1,000 fine ≥20,000 (ii)or ≤ 3 years jail or both +3 times tax undercharged
114(1A)	No reasonable care exercised in assisting and advising in preparation of return	Person assisting/advising	(i) ≤ 2,000 Fine <20,000 (ii) or ≤ 3 years jail or both

The above penalty regime indicates ordinary negligence arising from incompetence and not exercising reasonable care is punishable with equal severity as offences relating to wilful intention to evade tax. By placing the amendment under section 114, under the same footing with wilful evasion creates an anomaly. The reasonable care test ignores the intention of the assistance provider but rather uses an objective test. Punishing ordinary negligence and incompetence with equal severity to wilful evasion certainly points to an anomaly. Making this a criminal offence runs counter to the system of law which distinguishes this from dishonest acts.

HO_6 : No significant difference on the perception of imposing **penal sanctions** on tax agents under section 114(1A) between tax agents from the "big-five" category and non "big-five" category.

First Scenario: Penal Sanctions Improve General Compliance

Perception v Working Environment

The raw data on the Likert scale, before categorising shows the following results in the Chi-Square test. P-value is 0.251, i.e. above 0.05, showing no association.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	5.370[a]	4	.251
Likelihood Ratio	5.181	4	.269
Linear-by-Linear Association	1.184	1	.277
N of Valid Cases	116		

a. 1 cells (10.0%) have expected count less than 5. The minimum expected count is 3.10.

After categorising the data into three categories, i.e. Agreeing, Disagreeing and Neutral, the following results shown below were obtained:

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.338[a]	2	.188
Likelihood Ratio	3.229	2	.199
Linear-by-Linear Association	2.772	1	.096
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 5.90.

As seen above, the p-value is 0.188, i.e. greater than 0.05, again showing no significant association.

After collapsing the responses to disagreeing and agreeing categories, the following results were obtained:

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	3.053[b]	1	.081		
Continuity Correction[a]	2.298	1	.130		
Likelihood Ratio	2.986	1	.084		
Fisher's Exact Test				.106	.066
Linear-by-Linear Association	3.022	1	.082		
N of Valid Cases	97				

a. Computed only for a 2x2 table

b. 0 cells (.0%) have expected count less than 5. The minimum expected count is 10.23.

The p-value obtained is 0.081, still above 0.05, showing no association between perception of penal sanctions and working environment. In other words, the big-five tax agents do not perceive penal sanctions differently. Thus there is no association between perception of penal sanctions to improve general compliance and the demographic factor of environment, i.e. firm type.

Second Scenario: Jail Sentence Should Be Imposed On Tax Agents

The same method of analysis is used to test this variable, i.e analysing the responses at three stages. The first taking all responses as it is from the five point Likert Scale, secondly by collapsing into three categories and finally into two categories. The results of the Chi-Square tests are shown below:

First Category: Cross Tabulation between responses and Environment Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.605[a]	4	.462
Likelihood Ratio	4.547	4	.337
Linear-by-Linear Association	2.464	1	.117
N of Valid Cases	116		

a. 6 cells (60.0%) have expected count less than 5. The minimum expected count is .93.

Second Category: Cross Tabulation after categorising responses and Experience Category.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.940[a]	2	.379
Likelihood Ratio	2.268	2	.322
Linear-by-Linear Association	1.252	1	.263
N of Valid Cases	116		

a. 3 cells (50.0%) have expected count less than 5. The minimum expected count is 1.55.

Third Category: Categorised Agree/Disagree Responses and Experience Category

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	1.756[b]	1	.185		
Continuity Correction[a]	.899	1	.343		
Likelihood Ratio	2.080	1	.149		
Fisher's Exact Test				.271	.174
Linear-by-Linear Association	1.740	1	.187		
N of Valid Cases	111				

a. Computed only for a 2x2 table

b. 1 cells (25.0%) have expected count less than 5. The minimum expected count is 2.76.

The above results show a p-value of 0.462 for the first category; 0.379 for the second category and 0.185 for the third category. Since all the results are above 0.05, it can be concluded that there is no association between perception on imposing criminal sanctions against tax agents among big-five tax agents and 'non-big five' tax agents. In other words the 'big-five' tax agents are no different from the rest. Thus we do not reject the null hypothesis.

In both the scenarios, i.e the first which looks at perception on penalties to improve general tax compliance and second perception of imposing penalties on tax agents, the demographic factors of experience and environment has no significant effect. Although the results indicate that tax agents generally welcome increased penalties to improve tax compliance but disagree that penalties be imposed on them.

Analysis and Justification

This reflect the views of tax agents that it is the taxpayers who should bear any penalties for understating tax liabilities and tax agents merely act in an agency capacity. Tax agents, irrespective of their demographic attributes feel that: since the sole responsibility for the submission of a return is in law, the

taxpayer's, it is the taxpayer who should have primary responsibility for ensuring that the determination of the tax liability is made with reasonable care. Section 114(1A) appears to include the service provider in shouldering this responsibility.

As the law exists today, the role of an assistance provider or advisor (tax agent) is not statutorily defined unlike that of company auditors. To impose criminal sanctions in the absence of a well-defined statutory duty appears to be unacceptable to most tax agents.

Furthermore not all taxpayers engage tax agents. There is no compulsion for a taxpayer unlike that to engage a company auditor. What is the penalty for a taxpayer who does not exercise reasonable care and whose return results in an understatement of tax liability? It appears that there will be two standards, one for taxpayers who do not engage tax agents and another standard on returns where tax agents are engaged. This presents another anomaly.

HO_7 : No significant difference on the perception of tax agents in recommending **aggressive positions**, between tax agents of different levels of **experience** in view of the increased penalties under section 114(1A).

The responses were dichotomised into two categories. The variables are added together to measure the level of positive effect. A range of 0,1, and 2 was given. A cross tabulation was done to check whether perception on reducing aggressiveness depends on level of experience. The following results were obtained.

Positive effect

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	34	29.3	29.3	29.3
	1	47	40.5	40.5	69.8
	2	35	30.2	30.2	100.0
	Total	116	100.0	100.0	

Experience * Positive effect Crosstabulation

		Positive effect			Total
		0	1	2	
Experience	< 5 years	7	14	7	28
		25.0%	50.0%	25.0%	100.0%
	5 - 9 years	12	10	9	31
		38.7%	32.3%	29.0%	100.0%
	10 years & above	15	23	19	57
		26.3%	40.4%	33.3%	100.0%
Total		34	47	35	116
		29.3%	40.5%	30.2%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.880[a]	4	.578
Likelihood Ratio	2.815	4	.589
Linear-by-Linear Association	.301	1	.583
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 8.21.

The Chi-Square test result of 0.578, which is greater than 0.05, indicates that there is no association between perception on recommending aggressive tax advice and tax agents of different levels of experience, i.e. no significant association between perception and experience. Thus we do not reject the null hypothesis.

Analysis and Justification

Literature shows that aggressive reporting behaviour is influenced by many factors such as detection risk or perceived detection risk; inherent risk in planning and compliance decisions; level of experience; severity of penalty; ambiguity of legislation; whether it is income that is to be understated or expense that is overstated; accounting treatment; the risk propensities of the taxpayers,

etc. However, 'experience' has been singled out as an important variable that affects the decision making of tax agents. When researchers carefully link differences in experience among the participants to task requirements, experience emerges as a significant explanatory variable. Roberts (1998) study, confirmed the significance of the experience variable in Judgment Decision Making (JDM) as seen in earlier studies. He noted tax accountants behave in an economically rational manner to minimize risks and maximize perceived rewards in the decision context.

Christensen et.al., (1997) show that it is important to understand the factors that lead taxpayers to engage in risky or non-compliant behaviour. The results of their study indicate that taxpayers' risk propensities influence their reporting decisions. In addition, taxpayers' risk perceptions differ for income and deduction items, and those differences do influence tax reporting choices.

However this study provides evidence that the level of experience of tax agents does not affect aggressive reporting positions. This may be true in the face of the increased threat on tax agents imposed by section 114(1A) for negligence in return preparation which affects tax agents of all levels. In this initial reception to section 114(1A), tax agents may be adopting a cautious approach as the clients may transfer the blame on the tax agents for aggressive reporting positions that result in an understatement of tax liability.

In the writer's opinion such a perception may be affected in future if tax agents do not perceive the IRB's role as an effective enforcer of this provision. It will then depend on perceived detection risk. Tax agents may be inclined to pursue aggressive return positions for their clients if they do not perceive the negative risk highly. Further more the courts in this country have not taken a drastic approach in imposing jail sentences for tax offences as in other Asian countries like Singapore and China. The courts in China for instance consistently impose the death penalty for tax evasion. A recent AFP press report (The Star,12

May, 2001) reported four Chinese citizens, including one tax official were executed in the biggest ever tax fraud case involving RM14.8 billion. The four executed who were executed had set up paper companies that cheated the state out of export tax rebates by issuing fake tax receipts and tax invoices.

In another recent case in Singapore [CGH v PP (2000)MSTC 7387], a 65 five year old company director was sentenced to 3 months imprisonment and a fine of over a million dollars for wilfully evading tax by omitting to declare interest income from a private deal. However, there has been no reported case in Malaysia where the courts have imposed a jail sentence although the law provides for such sentences. The judicial attitude in imposing deterrent sentences will certainly influence the compliance attitudes of taxpayers and tax agents alike.

$H0_8$: No significant difference on the **perception** of tax agents in recommending **aggressive positions**, between tax agents from the **"big-five" and non "big-five"** category in view of the increased penalties under section 114(1A).

The responses were dichotomised into two categories as in the above hypothesis. The variables are added together to measure the level of positive effect. A range of 0,1, and 2 was given. A cross tabulation was done to check whether perception on reducing aggressiveness depends on working environment. Working environment is classified into big-five and non-big five firm tax agents. The frequencies and cross tabulation between the two category of tax agents are shown below:

Environment * Positive effect Crosstabulation

			Positive effect			Total
			0	1	2	
Environment	Rest	Count	12	16	8	36
		% within Environment	33.3%	44.4%	22.2%	100.0%
	Big Five	Count	22	31	27	80
		% within Environment	27.5%	38.8%	33.8%	100.0%
Total		Count	34	47	35	116
		% within Environment	29.3%	40.5%	30.2%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.580[a]	2	.454
Likelihood Ratio	1.634	2	.442
Linear-by-Linear Association	1.247	1	.264
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 10.55.

The Chi-Square result of 0.454, which is greater than 0.05, indicates that there is no association between perception of recommending aggressive positions among tax agents from the big-five category and the non-big five category. Thus there is no significant association between the dependent variable of perception and independent variable of environment. Thus we do not reject the null hypothesis.

Analysis and Justification

As explained for the earlier hypothesis above, many variables contribute to an aggressive reporting position. There is no evidence to show that the big-five tax agents will adopt a more/less aggressive tax position. In view of their international links and resources available in their organisations, they are probably better informed of developments around the world. The size of their

organization also enables them to specialise according to industries. Having international links, they are better equipped to serve international or multi-national companies. Advise to such clients may also depend on the risk propensities of the clients among other things. With this reputation behind them, they may not independently initiate aggressive tax positions for their clients unless there is a reasonably good arguable position in favour of the taxpayer.

As far as section 114(1A) is concerned their perception does not appear to statistically differ from that of the non big-five tax agents. The majority of the respondents whether big-five or non-big five, seem to think that the penalties will even affect general tax advice and cause tax agents to be less aggressive, especially in cases involving tax planning. Whether their actual work will reflect this perception can only be seen by examining cases that they handle. Such data may be beyond the reach of researchers in view of the confidentiality factor and the nature of the tax practice.

As for tax agents from smaller firms who lack the resources, they may be intimidated by this provision. It is probably the smaller firms who will have to deal with clients with incomplete records. Unless estimates are qualified and made to look like estimates, they may be exposed to liability. This may also expose taxpayers to further query and audit. Licensed tax agents may shun taxpayers who do not have complete records. Such taxpayers may resort to using bogus and unlicensed tax agents who may be ignorant of the law. Unless there is some level of publicised enforcement activity by the authorities, this law may not be taken seriously like many other provisions in the Income Tax Act.

SUMMARY OF RESEARCH RESULTS

The demographic variables of experience and environment were postulated as independent variables. Experience was classified to different levels of experience measured in terms of years of experience in tax work and

environment was classified into tax agents who are working in the big-five accounting firms and those who are not working in the big-five accounting firms. All the eight hypotheses tested with regard to four dependent variables on the perception and understanding of tax agents, of the reasonable care concept, perception of the fairness of the law, perception on imposing criminal sanctions and the perception on the recommendation of aggressive positions showed no association with level of experience or environment. This would mean that perception and understanding is not dependent on the demographic variables of experience and environment. Thus there is insufficient evidence to reject the null hypotheses.

All the findings are consistent with the null hypotheses. There are many studies that showed 'experience' as an important variable in the decision making process, especially in tax planning. However when it comes to perception of tax policy and legislation with regards to increased penalties an emotional and self-centered response is not unexpected. Although the professional bodies later succumbed to this provision by commenting that this may be good for the ethos, the general feeling at the ground level is not the same. These opinions did not differ, whether the tax agents were from big-five firms or the non big-five firms.