

UNDERSTANDING THE ROLE OF THE TAX PRACTITIONER WITHIN THE TAXPAYER AND TAX PRACTITIONER RELATIONSHIP

by

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ABSTRACT

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Tax practitioners can play an important role in assisting taxpayers to meet their compliance obligations. The increased use of tax practitioners over the past decade suggests that more and more taxpayers are seeking their advice on the application of tax legislation and assistance to ensure that they file accurate returns. This confirms that tax practitioners are well positioned to influence the compliance decisions of taxpayers. However, studies have shown that there is a disparity between the type of advice preferred by taxpayers and that provided by tax practitioners. Since research that explores the reasons for this disparity, particularly from a South African perspective, was found to be limited, the objective of this study was to identify potential reasons for the disparity by examining the factors that influence the behaviour of tax practitioners in the hope that this might assist in managing the expectation gap between the type of advice desired by taxpayers versus the type of advice provided by tax practitioners.

Using semi-structured interviews conducted with tax practitioners employed at a Big 4 firm, a number of potential factors identified in previous studies were tested. The results proved that the behaviour of tax practitioners is influenced by various factors that may all affect the manner in which advice is given to clients and the nature of such advice.

The conclusion drawn from this study confirms that tax practitioners operate in a highly complex environment where the provision of advice to taxpayers is shaped by many factors. In order to be able to appreciate and understand their tax practitioners' advice, taxpayers must be aware of these factors, which should also be considered in the on-going development of a system for the regulation of tax practitioners in future.

OPSOMMING

BEGRIP VIR DIE ROL VAN DIE BELASTINGPRAKTISYN IN DIE VERHOUDING TUSSEN BELASTINGBETALERS EN BELASTINGPRAKTISYNS

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Belastingpraktisyns kan 'n belangrike rol speel deur belastingbetalers te help om hul belastingverpligtinge behoorlik na te kom. Die toename in die gebruik van die dienste van belastingpraktisyns gedurende die afgelope dekade dui daarop dat al meer belastingbetalers raad oor die toepassing van belastingwetgewing soek, asook hulp om die akkuraatheid van hul belastingopgawes te verseker. Dit bevestig die feit dat belastingpraktisyns in 'n gunstige posisie verkeer om belastingbetalers se besluite in verband met die nakoming van hul verpligtinge te beïnvloed. Navorsers het egter bevind dat die soort raad wat belastingspraktisyns aanbied dikwels verskil van die raad wat belastingbetalers graag wil hê. Aangesien navorsing wat hierdie verskille ondersoek beperk is, veral vanuit 'n Suid-Afrikaanse perspektief, was die doel van hierdie studie om moontlike redes vir die verskille te identifiseer deur die faktore wat die gedrag van belastingpraktisyns beïnvloed te ondersoek ten einde die gaping tussen die soort advies wat belastingbetalers begeer en die soort advies wat belastingpraktisyns aanbied beter te kan bestuur.

Deur gebruik te maak van gedeeltelik gestruktureerde onderhoude wat met belastingpraktisyns in die diens van 'n Big 4-firma gevoer is, is verskeie potensiële faktore

wat in vorige studies geïdentifiseer is getoets. Die resultate het bewys dat die gedrag van belastingpraktisyns beïnvloed word deur verskeie faktore wat almal 'n uitwerking kan hê op die wyse waarop advies aan kliënte verskaf word, asook op die aard van die advies wat aangebied word.

Die gevolgtrekking wat op grond van hierdie studie gemaak is, bevestig dat belastingpraktisyns in 'n uiters komplekse omgewing funksioneer waar die verskaffing van advies aan belastingbetalers deur baie faktore gevorm word. Ten einde die advies van hul belastingpraktisyns te verstaan en waardering daarvoor te kan hê, moet belastingbetalers van hierdie faktore bewus wees en moet dit ook in ag geneem word tydens die toekomstige voortgesette ontwikkeling van 'n stelsel vir die regulering van belastingpraktisyns.

TABLE OF CONTENTS

CHAPTER 1.....	1
INTRODUCTION	1
1.1 BACKGROUND.....	1
1.2 PROBLEM STATEMENT	3
1.3 PURPOSE STATEMENT	3
1.4 RESEARCH OBJECTIVES/RESEARCH QUESTIONS	3
1.5 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY	4
1.6 DELIMITATIONS	4
1.7 DEFINITION OF KEY TERMS.....	5
1.8 CHAPTER OUTLINE	7
CHAPTER 2.....	8
LITERATURE REVIEW	8
2.1 INTRODUCTION	8
2.2 THE ORIGIN OF THE RELATIONSHIP BETWEEN TAXPAYERS AND TAX PRACTITIONERS	8
2.3 THE ROLE OF THE TAX PRACTITIONER IN A SYSTEM OF TAX COMPLIANCE.....	9
2.4 THE HISTORY AND NEED FOR THE REGULATION OF TAX PRACTITIONERS IN SOUTH AFRICA	13
2.5 TAX PRACTITIONERS: ROLE CONFLICT	14
2.6 THE EFFECT OF REGULATORY AND LEGISLATIVE FACTORS ON PRACTITIONER BEHAVIOUR.....	15
2.6.1 <u>Legislation</u>	15
2.6.2 <u>Professional bodies</u>	17
2.6.3 <u>Perceived probability of an audit by SARS</u>	20
2.7 THE EFFECT OF CLIENT FACTORS ON PRACTITIONER BEHAVIOUR.....	20

2.7.1	<u>Client importance</u>	21
2.7.2	<u>Client pressure</u>	21
2.7.3	<u>Client payment status</u>	22
2.8	THE EFFECT OF PRACTITIONER FACTORS ON PRACTITIONER BEHAVIOUR	23
2.8.1	<u>Tax practitioner experience</u>	23
2.8.2	<u>Tax-practitioner education</u>	24
2.8.3	<u>Tax-practitioner allegiance</u>	24
2.9	CONCLUSION.....	26
CHAPTER 3.....		27
RESEARCH DESIGN AND METHODS.....		27
3.1	INTRODUCTION.....	27
3.2	DESCRIPTION OF INQUIRY STRATEGY AND BROAD RESEARCH DESIGN.....	27
3.3	SAMPLING	29
3.3.1	<u>Target population and units of analysis</u>	29
3.3.2	<u>Sampling method and sample size</u>	30
3.4	DATA COLLECTION	30
3.4.1	<u>Data-collection method</u>	30
3.4.2	<u>Overview of the interview discussion guide</u>	32
3.4.2.1	Demographic factors.....	32
3.4.2.2	Legislative factors	33
3.4.2.3	Professional bodies	34
3.4.2.4	Perceived audit probability.....	35
3.4.2.5	Client factors.....	35
3.4.2.6	Practitioner factors.....	36
3.5	DATA ANALYSIS	37
3.6	ASSESSING AND DEMONSTRATING THE QUALITY AND RIGOUR OF THE PROPOSED RESEARCH DESIGN.....	39
3.7	RESEARCH ETHICS	40

3.7.1	<u>Ethical clearance from the Research Ethics Committee</u>	40
3.7.2	<u>Obtaining written permission from the firm's tax business unit leader</u>	40
3.7.3	<u>Informed consent and anonymity</u>	40
CHAPTER 4.....		42
ANALYSIS OF DATA.....		42
4.1	INTRODUCTION	42
4.2	OVERALL RESPONSE TO THE INTERVIEWS.....	42
4.3	SPECIFIC FEEDBACK FROM THE INTERVIEWS.....	43
4.3.1	<u>Demographic profile of the group</u>	43
4.3.2	<u>Legislative factors</u>	43
4.3.3	<u>Professional bodies</u>	50
4.3.4	<u>Perceived audit probability</u>	54
4.3.5	<u>Client factors</u>	56
4.3.6	<u>Practitioner factors</u>	64
CHAPTER 5.....		68
CONCLUSION.....		68
5.1	INTRODUCTION	68
5.2	SUMMARY OF MAIN FINDINGS	68
5.2.1	<u>Legislative factors (regulation)</u>	70
5.2.2	<u>Professional bodies</u>	71
5.2.3	<u>Perceived audit probability</u>	71
5.2.4	<u>Client factors</u>	72
5.2.4.1	Importance of and pressure from a large fee-paying client.....	72
5.2.4.2	Year-end payment status of the client	72
5.2.5	<u>Practitioner factors</u>	73
5.2.5.1	Tax practitioner experience	73
5.2.5.2	Educational requirements	73
5.2.5.3	Practitioner allegiance	74
5.3	CONTRIBUTIONS MADE BY THIS STUDY.....	74
5.4	SUGGESTIONS FOR FUTURE RESEARCH	74

5.5 CONCLUSION.....	75
7. LIST OF REFERENCES.....	76

APPENDICES

APPENDIX A: Interview discussion guide.....	83
APPENDIX B: Informed consent form.....	101

LIST OF TABLES

Table 1: Abbreviations used in this document	6
Table 2: Summary of main findings.....	68

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

The current trying economic conditions have led the governance structures of large businesses to focus increasingly on tax risk management as part of their overall strategy to ensure good corporate governance (Organisation for Economic Cooperation and Development, 2009:4). Tax risks originate from conflicting interpretations of tax legislation, which implies the possibility of submitting incorrect/misstated returns and consequently the risk of having to pay penalties and interest, which can have serious financial and reputational implications for a company (KPMG, 2004:19). In essence, it would appear that large businesses seek certainty around their tax affairs and how their transactions and behaviours would be interpreted by the South African Revenue Service (SARS) (OECD 2007:9). It is no wonder that given the above ramifications, more and more taxpayers opt to engage the services of tax practitioners in the hope of mitigating these risks and achieving the desired certainty (Stephenson, 2007:411).

Studies have shown that tax practitioners play an important role in the overall compliance system. The investigation into the Role of Tax Intermediaries that was conducted by the Organisation for Economic Cooperation and Development's Forum on Tax Administration in January 2008, for example, found that tax advisors serve a fundamental function in assisting taxpayers to meet their compliance obligations (KPMG, 2008:40). According to Book (2008:3), tax practitioners can assist taxpayers to overcome the circumstances that prevent effective compliance, such as the legal interpretation of intricate tax legislation and the associated complexities. It is clear from the findings of these studies that a well-functioning tax system is dependent upon a healthy relationship between taxpayers and their tax advisors. The nurturing of this relationship will encourage retention and increased consultation with these knowledgeable professionals by taxpayers and will result in greater compliance being achieved (KPMG, 2008:9).

In an attempt to understand and enhance the relationship between taxpayers and tax practitioners, numerous studies have been conducted worldwide to broadly analyse the impediments to achieving harmony between the two parties. These studies firstly examine the reasons for taxpayers engaging the services of a tax advisor. According to Tan (2006:15), these services comprise tax-return preparation and submission, assistance in resolving ambiguous tax positions, reducing overall tax liabilities and legal representation in litigations with revenue authorities. Further studies conducted by Tan and Stephenson attempt to understand whether taxpayers' objectives are aligned with and are being met by their tax advisors. These studies indicate that in determining the type of advice preferred by taxpayers, there is a distinct disparity between taxpayer expectations and the service received from their advisors. Certain studies by Tan (2008:26), for example, indicate that taxpayers prefer aggressive advice when tax legislation is ambiguous, but that tax advisors' provision of such advice is not always satisfactory. Reckers, Sanders and Wyndelts (1991:43) argue that key clients could certainly influence their tax advisors to take a more aggressive position than they would normally take. The OECD study of the Role of Tax Intermediaries (KPMG, 2008:40) also suggests that taxpayers themselves determine their own tax-risk tolerance and adopt certain tax-planning strategies.

Whilst the above studies have focused predominantly on exploring the relationship between taxpayers and tax practitioners, it is imperative to attempt to understand the factors that create the disparity between what taxpayers want and what tax practitioners are providing with a view to eventually bridging the gap. Previous studies conducted from the perspective of the tax practitioner have contributed to this understanding by addressing several aspects of tax-practitioner behaviour that can cause disparity. Killian and Doyle (2004:16) state that tax practitioners often operate within a conflict of interest since they have to be loyal to their client whilst remaining within the boundaries of professional codes of conduct. Nienaber (2010:33) adds to this analysis by examining further factors that could influence the decisions and conduct of tax professionals. This suggests that in order for taxpayers to be able to understand and appreciate the type of advice given by their tax practitioners, they have to understand the factors that drive these decisions.

1.2 PROBLEM STATEMENT

As it is clear that the tax practitioner plays an important role in the overall system of tax compliance, understanding the factors that drive their ethical behaviour could assist in managing the expectation gap between themselves and taxpayers, and in improving the overall relationship. The research problem that this study therefore aims to address is to create an insight into the factors that drive the professional behaviour of tax practitioners, with a view to bridging the above documented expectation gap. Whilst the above studies have contributed to our understanding of the behaviour of tax practitioners, further research needs to be done to gain better insight into the tax practitioner as a variable in the relationship.

1.3 PURPOSE STATEMENT

The main purpose of this study is to create an understanding of the relationship between tax practitioners and their clients by examining the factors that affect the professional conduct of these practitioners, as seen by them.

1.4 RESEARCH OBJECTIVES/RESEARCH QUESTIONS

The objectives of this research study are:

- to conduct a literature review of studies previously done on practitioner behaviour in order to ascertain the factors that drive professional behaviour;
- to do a case study by conducting semi-structured interviews with tax practitioners in a Big 4 accounting firm to explore the existence and prevalence of the factors that they perceive to have an influence on their responsibilities to clients and its role in a system of tax compliance.

1.5 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY

The study contributes to the existing body of South African tax practitioner research by expanding the above-mentioned studies done by Killian and Doyle, and also Nienaber. It provides a unique approach in that it attempts to curtail the disparity between the expectations and objectives of taxpayers and their tax practitioners by creating a greater understanding of the factors that influence the behaviour of tax practitioners.

From a practical perspective, the in-depth insight provided will assist taxpayers to better understand the factors that influence the type of advice given. Tax practitioners will also benefit from this understanding. According to Tan (2008:26), a taxpayer who is satisfied with the service received from a tax practitioner is more likely to retain the services of that practitioner.

The retention and strengthened involvement of practitioners acting on behalf of taxpayers will most likely also hold benefits for SARS, as a return prepared or reviewed by a practitioner is likely to be more accurate and compliant, given the level of qualification and experience of the practitioner. The study will also assist SARS in establishing whether tax practitioners actually have an influence on the tax decisions made by clients, and the reasons for/extent to which tax practitioners find themselves conceding to the demands of their clients. As revenue bodies worldwide seek to develop an overall strategy on how to minimise aggressive tax planning by tax practitioners (KPMG, 2008:12), the study could provide further insight into how South African practitioners can be positively influenced to contribute to a healthier system of compliance. As recommended by Nienaber (2010:42), these factors should be taken into account by SARS in developing a system for the regulation of tax practitioners in the future.

1.6 DELIMITATIONS

In conducting this study, the following delimitations will apply:

- Since the study will be conducted among tax practitioners in a Big 4 accounting firm, training or internal policies specific to this firm may influence the responses of

participants. The term 'Big 4' refers to the four largest global accounting and auditing firms (BusinessDictionary, 2013).

- The results of this study may not be generalised to other professionals that provide specific tax services, such as lawyers, as they may be governed by different codes of conduct or ethical frameworks.
- The study intends to test specific factors that appear to be the most prevalent factors, as identified from existing literature. Furthermore, only those factors that were considered to be applicable to a South African tax practitioner will be considered. There may well be other matters that influence tax practitioners, as well as mechanisms that mitigate the severity of these factors, but they will not be explored in this study.
- The study was conducted prior to the promulgation of the Taxation Administration Act No 28 of 2011, and therefore reflects the views of participants on proposed legislation as opposed to enacted rules relating to the regulation of tax practitioners.
- The data will be collected by way of semi-structured interviews and will therefore reflect the views of the participants at a point in time. The findings may therefore not reflect the views of the population over a longer time frame (Leedy & Ormond, 2010: 187).
- Semi-structured interviews could possibly contain an element of participant bias, which will be addressed in the chapter on research design and methodology (Saunders, Lewis & Thornhill, 2009:156).

1.7 DEFINITION OF KEY TERMS

For the purpose of this study, the following terms should be defined as indicated:

Tax practitioner: The Organisation for Economic Cooperation and Development ('OECD') defines 'tax advisors' as professional firms, including law and accounting practices, that provide advice that assist clients in comprehending and complying with tax legislation (KPMG, 2008: 9). In South Africa, tax services may be provided by a wide variety of professionals ranging from accountants to lawyers. The Tax Administration Act No 28 of 2011 defines a tax practitioner as a natural person who 'provides advice relating to the

application of any Act administered by the Commissioner or who completes or assists in the completion of any document to be submitted to the Commissioner' (2011). This definition has been adopted for the purposes of this study, but only as it may apply to practitioners who are employed by an accounting firm. Although the terms 'tax practitioner' and 'tax advisor' are used in this study, they should be understood to include tax professionals, tax advisors and agents.

Tax services: The Income Tax Act No 58 of 1962 (hereafter referred to as 'the Act') currently does not define the term 'tax services'. For the purposes of this study, the tax services provided follow the definition of 'Relevant South African Tax Work' proposed by SARS in its Discussion Paper on Regulating Tax Practitioners (2003: 20), which includes the following services:

- Assisting a client to prepare and submit income tax returns
- Responding to queries from SARS that are of a non-routine nature
- Assisting clients in drafting objections to tax assessments
- Assisting clients in appealing tax decisions or assessments raised by SARS
- Providing advice by way of written technical tax opinions

Taxpayer: A taxpayer is defined in section 1 of the Act as 'any person chargeable with any tax leviable under this Act, and includes every person required by this Act to furnish any return'. The terms 'taxpayer' and 'client' are used interchangeably in this study.

The abbreviations used in this study are detailed in Table 1.

Table 1: Abbreviations used in this document

Abbreviation	Meaning
OECD	Organisation for Economic Cooperation and Development
SAICA	The South African Institute of Chartered Accountants
SAIPA	The South African Institute of Professional Accountants
SAIT	The South African Institute of Tax Professionals

Abbreviation	Meaning
SARS	The South African Revenue Service
The ITA	Income Tax Act No 58 of 1962
The TAA	Tax Administration Act No 28 of 2011
The TALAA	Tax Administration Laws Amendment Act No 21 of 2012

1.8 CHAPTER OUTLINE

Chapter 1

The main purpose of this chapter was to set out the background to the study and the research objectives identified to address the research problem.

Chapter 2

Chapter 2 contains a detailed review of relevant literature conducted to explore the role of tax practitioners and provides an analysis of the findings of various studies to investigate the factors that drive their behaviour.

Chapter 3

The design and methodological approaches of the study are discussed in detail in Chapter 3.

Chapter 4

The feedback obtained from the participants by means of the semi-structured interviews is then discussed in Chapter 4.

Chapter 5

Lastly, Chapter 5 sets out the conclusions drawn from the data obtained in order to achieve the stated research objectives.

CHAPTER 2

LITERATURE REVIEW

2.1 INTRODUCTION

This chapter aims to contextualise the study by first examining the origin of the relationship between taxpayers and tax practitioners. This is followed by a discussion of the role of the tax practitioner in the overall system of tax compliance, and the recognition of this role is then supported by analysing the history of and need for the regulation of the tax profession in South Africa as a way to enhance the credibility of the profession. The findings of previous studies that dealt with the conflicting roles of tax practitioners are then explored. This is followed by an examination of further studies that seek to identify specific factors that drive practitioner behaviour in an attempt to further understand the conflict. The factors identified from these studies will then be used in the development of the questions to be used in the semi-structured interviews with the selected tax practitioners.

2.2 THE ORIGIN OF THE RELATIONSHIP BETWEEN TAXPAYERS AND TAX PRACTITIONERS

‘Pay your taxes and set your country free.’ This slogan of the Kenyan Revenue Authorities precisely reflects the importance of tax revenue to a country (Taxjustice Network, 2005). Taxes are vital in enabling a government to face the challenges of funding investment, creating economic growth and development, and combating poverty (National Treasury, 2012:32). It is thus clear that taxes constitute a critical link between the state and the citizens of its country. As mentioned in SARS’ Compliance Programme 2012/13 – 2016/17 document, compliance and contributions from both individual and corporate taxpayers to fund such initiatives are vital in sustaining our economy (SARS, 2012:1).

The South African Revenue Service (SARS) is constantly exploring techniques to improve the levels of compliance in South Africa (SARS, 2012:3). In order to achieve this, it is important for our revenue body to understand the factors that impact taxpayer compliance behaviour (Tan 1999:433). As taxpayers often engage the services of tax practitioners to

serve as an intermediary between themselves and the state, it is no wonder that these practitioners have been identified as one of the factors that can influence the compliance behaviour of taxpayers (Tan, 2006:27). To understand the factors that drive the compliance behaviour of taxpayers, it is therefore critical to understand the impact that tax practitioners have on taxpayer compliance behaviour (Tan, 1999:434).

2.3 THE ROLE OF THE TAX PRACTITIONER IN A SYSTEM OF TAX COMPLIANCE

In the past decade, the number of tax practitioners in South Africa has steadily increased. In its Briefing Note to the Revised Draft Regulation of Tax Practitioners Bill in 2008, SARS reported that its number of registered tax practitioners was close to 23 000 (SARS, 2008:1). By 2012 this number had increased to approximately 34 000 practitioners (Visser, 2012). It is estimated that these registered practitioners represent approximately three million taxpayers in South Africa (SARS, 2012:17). Global figures mirror this with, for example, approximately 74% of all income tax returns having been filed by tax practitioners in New Zealand in 2004 (Tan, 2006:16). Similarly, it is estimated that in 2007, 65% of all individual taxpayers in the USA enlisted the services of tax practitioners (Book, 2008:1).

Existing literature attributes the increased use of tax practitioners to a variety of factors. According to Killian and Doyle (2004:160), the increased use of tax practitioners is the result of tax legislation having become increasingly intricate over the years. Other studies indicate that taxpayers engage tax practitioners as they do not have the time to prepare returns on their own, or fear that their returns may be audited by the revenue authorities (Book, 2008:10). As Stephenson (2006:6) points out, when the costs of preparing your own tax return, measured in time or money, exceed the costs of hiring a tax practitioner to prepare your return, a taxpayer would normally engage such services. Tan's study (2006:15) of the role of tax practitioners supports this contention, citing that taxpayers use tax practitioners for a multitude of reasons, including assistance with tax-return preparation and submission, resolving ambiguous tax matters, minimising a client's overall tax liability, and legal representation in litigations with the revenue authorities. With increasing numbers of taxpayers opting to engage the services of a tax practitioner for a variety of

reasons, it becomes increasingly important to understand their function in a system of voluntary tax compliance (Book, 2008:22).

The OECD recognised this crucial role played by tax practitioners and commissioned a Study into the Role of Tax Intermediaries in 2008. In a draft working paper of the study (OECD, 2007:1), the team conceded that tax practitioners could indeed influence taxpayer decisions by providing advice and by engaging with revenue authorities to represent the interests of their clients. The primary objective of the main study was to create a deeper awareness of the role of tax practitioners in a system of tax compliance, with a view to exploring various approaches to strengthening the relationship between these practitioners and revenue authorities globally (KPMG, 2008:6). It was intended that this 'enhanced relationship' would provide revenue authorities with valuable insight into what drives the behaviour of tax practitioners, with a view to deriving strategies on how these practitioners could be persuaded to contribute to a better system of tax compliance (KPMG, 2008:24). Like Tan's study (2006:15), the OECD study also found that tax practitioners are indeed well positioned to influence the tax decisions of their clients and that, in doing so, they may well be contributing to non-compliance (KPMG, 2008:40).

It appears that SARS also shares this view, and in their Compliance Programme 2012/13 – 2016/17 document (SARS, 2012:17) they stated that tax practitioners are in instances certainly guilty of facilitating tax evasion by their clients by providing advice to this effect. Besides providing advice of this nature to clients, tax practitioners are likely to contribute to non-compliance with tax legislation in many other ways, for example by not understanding tax legislation sufficiently, by not ensuring that the facts obtained from the client are correct so as to be able to apply the law correctly, and by failing to act with due diligence by not verifying information provided by the client (Book, 2008:29). The OECD Study also detailed several approaches followed globally to curb this, including registration and regulation of tax practitioners, requiring the advance disclosure of certain tax avoidance arrangements prior to finalising a tax return, preparer penalties and other sanctions, such as the suspension of a practitioner (KPMG: 2008:12-13). As Book points out (2008:4), many of these measures are aimed at reducing practitioners' propensity to engage in unethical behaviour.

Before one can consider solutions to reducing a tax practitioners' propensity to engage in unethical conduct, it is important to understand why such a tendency may even exist. Several studies that have been undertaken to examine the relationship between tax practitioners and their taxpayer clients may cast light on this. These studies seek to determine the type of advice that taxpayers request from their advisors in varying circumstances, as well as whether tax practitioners are providing the type of advice sought by taxpayers.

Broadly speaking, the type of advice provided by tax advisors can range from being 'aggressive' to being 'conservative'. Aggressive advice is defined as the adoption of a position in an ambiguous situation that favours the taxpayer, even where there is a probability that such a position may not be supported by the revenue authorities (Hite & McGill, 1992: 400). In contrast, a conservative position is one in which support by the revenue authorities is certain (Tan, 1999:432).

A study conducted by Hite and McGill (1992:390) established that taxpayers hire tax practitioners mainly to ensure that they submit an accurate return. The results of this study support this theory and indicate that taxpayers prefer conservative advice from their tax advisors (Hite & McGill, 1992:399). The study further indicates that tax advisors are likely to provide more aggressive advice as their education and experience increases (Hite & McGill, 1992: 399). This research implies that it is the tax practitioners who instigate the provision of aggressive advice, perhaps against the wishes of their clients. These results were corroborated in a study conducted by Stephenson (2007:419), which found that tax practitioners often assume that their clients' primary objective is tax minimisation, and thus tend to offer more aggressive advice than their clients would prefer.

However, this was contradicted by a study conducted by Schisler (1994), which found that tax practitioners adopt an aggressive stance only when faced with an aggressive client, which suggests it is in fact the taxpayers that drive the provision of aggressive advice. The OECD study supports this to some extent, by stating that taxpayers often set their own appetite for tax risk and form the demand side of the relationship (KPMG, 2008:5). Reckers, Sanders and Wyndelts (1991:43) agree with this contention when they state that key clients can certainly influence their tax advisors to take a more aggressive position

than he would normally take. This and other client factors, such as the importance of a client, are considered further in point 4.6.2 below.

Research conducted by Klepper and Nagin (1989:190) indicates that tax practitioners play a dual role, depending on the circumstances. Their study suggests that tax practitioners exploit tax law when the legislation is ambiguous, and that under such circumstances they often provide aggressive advice. In contrast, when the law is clear, tax practitioners assume the role of enforcers of tax law. As Hite and McGill (1992: 399) suggest, the provision of aggressive advice by tax practitioners may thus be autonomous of a client's request, or may stem from a misunderstanding of a client's need to minimise his/her tax liability. In essence, tax practitioners' compliance decisions may well depend on factors other than a client's request (Hite & McGill, 1992: 391).

On the whole, these studies confirm that there may be a mismatch between the needs and objectives of a taxpayer and those of their tax practitioner. The above studies, which examine the views of taxpayers, tend to suggest that their main objective is that of an accurate return, and thus a preference for conservative advice. Those that seek the advice of tax practitioners suggest that taxpayers drive the provision of aggressive advice, which may indicate a misunderstanding on the part of tax advisors regarding client advocacy being the cornerstone of the relationship. Other studies explored below suggest other factors, apart from client wishes, that may impact a tax practitioners' decision to provide advice that may be in contrast to the kind of advice sought by clients. This study seeks to further understand this possible mismatch by examining these other factors that could influence tax practitioner behaviour. As taxpayers have been found to rely significantly on the advice provided by their tax advisors and to accept it as correct regardless of whether it is conservative or aggressive, it is essential to explore these factors to fully understand the influence exerted by tax practitioners on the compliance behaviour of their clients (Tan, 1999:445).

2.4 THE HISTORY AND NEED FOR THE REGULATION OF TAX PRACTITIONERS IN SOUTH AFRICA

Regardless of the conflicting views on whether tax practitioners are the initiators of aggressive tax advice or whether the taxpayers demand such advice, it is clear that tax practitioners are indeed well positioned to influence the level of compliance behaviour of their clients (Tan, 1999:445).

SARS also identified the tax practitioner as a key variable in achieving compliance and sought to address this through the regulation of tax practitioners. It was against this background that SARS released a draft Regulation of Tax Practitioners Bill ('the Bill') in 2003. In drafting this legislation, it drew on existing regulatory frameworks in Australia, Malaysia and the United States of America, where practitioners are generally required to be registered with a relevant body and to have passed specific entrance examinations depending on the scope of services that they wish to provide. Similarly, the Bill sought to promote the integrity of the tax practitioner profession by ensuring that registered tax practitioners meet certain educational and experience requirements, and adhere to a legislated code of conduct. More recently, in the TAA, SARS has introduced provisions whereby tax practitioners are required to be registered with a 'recognised controlling body'. Section 243 of the TAA also provides for a mechanism by which SARS is able to report unprofessional conduct by tax practitioners to the 'controlling body' to which they belong and to request that the 'controlling body' take disciplinary action against such member. Subsequently the TALAA was promulgated and includes certain provisions from the draft Regulation of Tax Practitioners Bill 2003 that list specific types of unprofessional conduct.

A similar view is supported by the SAIT (2012), whose overall mission is to protect the public interest by strengthening ethical and professional standards among tax professionals. This was done to enhance taxpayers' confidence in tax professionals so that they would be more likely to make use of their services. In an attempt to establish a code of conduct and system of recommended behaviours, the SAIT issued a series of South African Tax Standards as Exposure Drafts in May 2011. The organisation recognised that standards of behaviour form the basis of any profession and serve as a measure against which professional performance can be evaluated, which gives credibility

to the professionalism of its members (2011). The SAIT standards mirror the Statements of Standards for Tax Services issued by the Tax Executive Committee of the American Institute of Certified Public Accountants (2009) and appear to safeguard their members against the types of misconduct listed as Punishable Offences in SARS Discussion Paper on regulating Tax Practitioners (SARS, 2003:20). Such offences focus mainly around the provision of tax services to clients without the exercising of due care or diligence, and in general conducting oneself in a manner that discredits the profession. Similarly, the Codes of Conduct of other professional bodies, such as SAICA (2008:66) and SAIPA (2009:37), contain guidance on recommended behaviours when providing tax advice to ensure that members act responsibly and with integrity towards their clients.

More recently, in its Compliance Programme 2012, SARS designated the tax practitioner as a priority area to be focused on in its five-year plan in an attempt to achieve better compliance (SARS, 2012:9). The document stated that their future strategies in this regard include encouraging tax practitioners to join professional bodies (such as SAICA and SAIT) and resuming legislative proposals to regulate tax professionals in 2013 (SARS, 2012:17). However, as is evidenced by the introduction of the TAA and the TALAA, these legislative proposals had already commenced in 2012.

2.5 TAX PRACTITIONERS: ROLE CONFLICT

Despite the presence of legislative and regulatory frameworks globally, it is clear from the existing literature that conflicting views exist regarding the exact effect of tax practitioners on the tax compliance behaviour of their clients and the possible reasons for this (Book, 2008:4). As Hite and McGill (1992:391) point out, although client preferences may influence tax practitioner decisions, there may be other factors that contribute to a tax practitioner's susceptibility to engage in unethical behaviour. In the light of these conflicting findings, one needs to be aware of these additional factors to understand why a tax practitioner may be either aggressive or conservative in varying circumstances.

It is widely accepted that tax practitioners operate in a system of role conflict. According to Killian and Doyle (2004:162), the conflict arises mainly from the practitioners' duty to promote the interests of their clients versus maintaining full compliance with tax legislation.

Yetmar and Eastman (2000:271) add to this assertion by listing other factions, such as clients, colleagues, employers and professional organisations, whose requirements practitioners may need to satisfy simultaneously. With so many conflicting sources of influence, it is only plausible that tax practitioners face ethical challenges that may influence their own decision making and could potentially result in non-compliance in the event of the practitioner not making the correct ethical decision.

Many studies tend to support the view that such a complex system of conflicting factors does indeed influence tax practitioner behaviour. Whilst a number of factors have been identified from the vast expanse of international research, this study focuses on the main factors that have been identified as they may be relevant to a South African tax practitioner. In essence, these factors can be grouped into three main categories:

- Regulatory and legislative factors
- Client factors
- Practitioner factors

2.6 THE EFFECT OF REGULATORY AND LEGISLATIVE FACTORS ON PRACTITIONER BEHAVIOUR

2.6.1 Legislation

In its Budget Review 2002, SARS stated that when it initiated consultations on regulating the tax profession, the intention was to promote better compliance with tax legislation by ensuring that taxpayers receive advice that is within the parameters of the law (SARS, 2003:2). By inference this implies that by putting in place the various requirements contained in the Bill (and subsequently the TALAA), namely educational and experience requirements, as well as a framework for stipulating the types of conduct that it deems 'unprofessional', a greater level of compliance should result. Ayres, Jackson and Hite (1989:301-306) also argue that regulation may result in taxpayers receiving better service since the registration of tax practitioners would require that certain educational requirements be met, which would presumably ensure a better knowledge of tax law. Their

study on the Economic Benefits of Regulation also indicates that a regulatory framework could in fact facilitate the provision of more favourable advice to the taxpayer than is the case in an unregulated system, where limitations would be placed on unregistered practitioners with regard to the scope of services that they are allowed to provide. Their research is endorsed by the 'capture' or 'interest group' theory, which states that a system of regulation actually benefits the tax practitioner. However, the results of their study show that regulated Certified Professional Accountants (CPA) in the USA were more pro-taxpayer than their unregulated counterparts. This seems to indicate that regulation does not guarantee that tax practitioners will be more pro-state.

A survey conducted among tax practitioners in Australia by Marshall, Armstrong and Smith (1998:1273) also indicated that participants agreed only to some extent with the contention that a professional code of conduct raises the ethical standards of tax practice. Despite this, most of the participants in this study expressed general support for the development of such a system.

In South Africa, there is currently no legislated code of conduct to guide the behaviour of tax practitioners. In its Discussion Paper on regulating tax practitioners (SARS, 2003: 20), SARS lists a number of proposed punishable offences that would result in charges of improper conduct being brought against registered members. Several of these offences relate to the provision of tax services without exercising due diligence in determining the accuracy and reasonability of representations made by clients. Section 241 of the TAA, as amended by the TALAA, introduces a broader requirement to exercise due diligence in the preparation of any return submitted to SARS (2012). This factor appears to be of concern to tax practitioners internationally as well. In a study that focused on the ethical issues facing Certified Professional Accountants (CPA), conducted in the United States by Yetmar, Cooper and Frank (1998:31), the prominence of this factor was listed as the third highest of the 54 factors tested. Marshall *et al.* (1998:1265) revealed similar findings, with this factor being the most frequently reported ethical issue among practitioners in Western Australia.

In South Africa, guidance on the extent to which tax practitioners are required to determine the accuracy and reasonability of client representations can be found in the various

professional bodies' Codes of Conduct. These are contained within Section 410 of the SAICA Code of Conduct (2008:66), Section 6 of the SAIPA Code of Conduct (2009:37) and the South African Taxation Standards SATS 3000 (in Exposure Draft) issued by the SAIT (2011). Both the SAICA and SAIPA codes stipulate that in general a member may rely on information provided by a client, as long as it appears reasonable. A review of the supporting documents is not required. The SAIT standard contains similar provisions and states that unsupported information may be used to prepare a tax return, unless it appears to be incorrect (SAIT, 2011).

In light of SARS already having introduced legislative measures to regulate tax practitioners in 2012, the inclusion of the requirement to exercise 'due diligence' in respect of client representations becomes significant. Tax practitioners in the USA (Dunn, 2000:5) have indicated that the interpretation of the term 'due diligence' and how it applies in tax litigation remains a concern. This would pose a concern for South African tax practitioners as well. Should a tax practitioner not examine a client's supporting documents (on the basis that the representation was 'reasonable' as per SAICA or SAIPA's guideline), could this be interpreted by SARS as not exercising 'due diligence'? In the absence of guidelines around the interpretation of the term 'due diligence', would tax practitioners safeguard themselves by more frequently examining evidence to support representations?

These issues raise interesting considerations as to whether such legislation in general and any specific provisions contained therein would indeed impact the behaviour of South African tax practitioners.

2.6.2 Professional bodies

As stated earlier, a formal system for the regulation of tax practitioners has been newly established through legislation contained in the TAA and the TALAA. These provisions stipulate, *inter alia*, that all tax practitioners will soon be required to be registered with a recognised 'controlling body' with which a SARS official can lodge a complaint if the perception exists that a tax practitioner is guilty of any of the forms of misconduct listed in section 241 of the TAA. The intention of this requirement is to enable the 'controlling body'

of which the tax practitioner is a member to take disciplinary action should a complaint be received.

Although current legislation recognises specific organisations as ‘recognised controlling bodies’, other professional bodies, such as SAICA (2013), and SAIT (n.d.), still have to be recognised.

It is estimated that of the 34 000 tax practitioners registered with SARS, approximately 45% are not members of a professional organisation, with the remaining 55% belonging to organisations such as the SAIT and SAICA (SARS, 2012:17). Each of these organisations has its own Code of Conduct governing its members. For example, members of SAICA are bound by a Code of Professional Conduct (SAICA, 2008:4) and members are guided by the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. As mentioned earlier, the Code also provides guidelines for members engaged in the provision of tax services (SAICA, 2008: 66). In general, it makes provision for a practitioner to present the best position that favours a client, provided that it complies with the above-mentioned fundamental principles and is consistent with the law. It also states that, should any doubt exist in this regard, a member may adopt a position that is in favour of the client, provided that there is ‘reasonable support’ for that position. The South African Tax Standard (SATS 2000) issued by the SAIT contains similar guidance. This standard states that a tax practitioner should only recommend a particular position to a client if there is a ‘realistic possibility’ of withstanding an enquiry by SARS (2011). However, these principles provide only a limited guideline and it is left to the tax practitioner to decide, for example, what ‘reasonable support’ and ‘realistic possibility’ are.

With regard to the Code of Conduct of the Institute of Chartered Accountants of New Zealand, Tan (2006:24) comments that despite this code of conduct being in place, tax practitioners may still concede to their clients’ demands for aggressive advice, depending on their interpretation of the code and the meaning of the term ‘reasonable support’ contained therein. This view is supported by Marshall, Smith and Armstrong (2006:499) who state that certain phrases contained in Australian legislation, for example ‘reasonably arguable’, are open to varying interpretations by tax practitioners.

Cuccia, Hackenbrack and Nelson (1995:228) concur with this view. In their study they state that the justification of the adoption of aggressive positions by practitioners as a result of the leeway provided by the vague wording of these standards is a concern. Their study first sought to determine whether practitioners did in fact take advantage of such wording in US standards. As a secondary consideration, they set out to determine whether replacing vague wording with more precise numerical benchmarks would be effective in reducing the likelihood of practitioners adopting aggressive positions. Such numerical benchmarks would be, for example, to specify that a position needs to have a 'one-in-three' chance of success if challenged by revenue authorities. Their study confirmed that tax practitioners do take advantage of the ambiguity of such terms to rationalise aggressive tax positions. However, a more significant finding was that even the replacement of these terms with numerical thresholds was ineffective in reducing this practice as practitioners simply circumvented the threshold by evaluating the supporting evidence more leniently to justify their chosen position (Cuccia *et al.*, 1995:227-243).

In South Africa, no such numerical threshold exists to guide practitioners in the application of terms such as 'reasonable support', contained in the SAICA code of conduct, or 'realistic possibility', contained in the SAIT standard. The SAIT standard (SATS 2000) provides some degree of guidance regarding the interpretation of this phrase by specifying the steps that a practitioner should follow, such as confirming background facts and conducting appropriate research (SAIT, 2011). Whether such guidance does indeed mitigate the ambiguity of the 'realistic possibility' requirement to any extent could not be determined with certainty.

Despite the above considerations, SARS seems to still hold the view that membership of a professional body has a positive effect on the behaviour of tax practitioners. In its Compliance Programme, it stated that tax practitioners that are not registered with a professional body are four times more non-compliant than those that are members of a professional body (SARS, 2012:17). This could be as a result of the internal disciplinary processes of the professional organisation to which they belong. Whether or not a code of conduct could actually influence the behaviour of tax practitioners then becomes a noteworthy area of interest.

2.6.3 Perceived probability of an audit by SARS

In recent years, SARS has increased the resources dedicated to conducting audits and the number of investigative audits have increased from 5 629 cases in 2010 to 6 472 in 2011 (SARS, 2011:22). Although the body admits that despite taxpayers receiving assistance from tax practitioners, the final responsibility for the return lies with the taxpayer. However, it also acknowledges that the unethical conduct of a practitioner may nonetheless result in financial and reputational risks for the taxpayer (SARS, 2003:2).

According to Marshall *et al.* (2006:501), if the unethical conduct of a practitioner is exposed as a result of such an audit, this would translate into various costs to the practitioner, such as the cost of defending clients' legal claims, damage to the practitioner's professional reputation, and loss of clients. One would therefore expect the threat of an audit to be a significant factor in driving tax practitioner behaviour. However, Killian and Doyle's (2004:185) study conducted among South African tax practitioners and the study conducted by Marshall *et al.* (2006:513) in Australia both surprisingly found no support for this in practice, although the respondents in the Killian and Doyle (2004:178) study did initially list this as an important factor to be considered in making tax-related decisions. Given the increased focus on audits by SARS in recent years and its intention to conduct more multi-tax audits going forward (SARS, 2012:17), the findings of these studies (which were conducted before SARS' concentrated effort in this area) may no longer be accurate.

2.7 THE EFFECT OF CLIENT FACTORS ON PRACTITIONER BEHAVIOUR

According to existing literature, by far the most common factors influencing tax practitioners revolve around various client issues. The most common factors listed are the size/importance of the client, client pressure/attitude to risk, and the client's payment position at year end.

2.7.1 Client importance

The importance of a client has been described in a study by Reckers, Sanders and Wyndelts (1991:31) as its significance in terms of its income-generating potential for the tax practitioner and the firm in which he operates. Like any businessman, the tax practitioner would naturally be concerned about maintaining and increasing his own tax practice income and, in doing so, would seek to preserve client satisfaction among his most valuable clients. The aforementioned study by Reckers *et al.* (1991:40), which involved tax specialists in the USA, seems to support this since their findings indicate that tax practitioners are more likely to adopt an aggressive tax position with more important clients. However, according to the findings of the study done by Killian and Doyle (2004:177) among South African practitioners, more than 90% of the participants indicated that the relative importance of a client in terms of its income-generating potential for the tax practice does not affect the decisions of tax practitioners. In this study, even when applied to specific scenarios as part of the study, the importance of the client was not found to impact the decisions of the tax practitioners in any significant manner.

In terms of the SAICA Code of Professional Conduct (SAICA, 2008:51) applicable to accountants in public practice, over-dependence on a client due to the proportion of fees generated by this client, relative to the practice's total income, impairs the ability of an accountant to act objectively and independently. In this event, the accountant is obliged to put in place safeguards to reduce the dependency on the client in order to mitigate this risk. However, this Code applies only to tax practitioners who are members of SAICA and does not specifically pertain to tax services provided by these members. Furthermore, neither the SAIPA code nor the SAIT standards contain similar requirements. In the absence of a framework that applies specifically to tax practitioners, the importance of a client, based on the fees generated by that client, could influence decision making.

2.7.2 Client pressure

Another common factor that has been identified in various studies deals with the pressure placed by clients on tax practitioners to adopt an aggressive tax position. Given that any tax practitioner would naturally seek to maintain a healthy level of client satisfaction in an

attempt to maintain the profitability of the tax practice, this factor could certainly influence the ethical conduct of a tax practitioner. In fact, Finn *et al.* (in Cruz, Shafer & Strawser, 2000:223) report that this concern was rated the most challenging ethical problem facing public accountants in the USA. Schisler's study (1994) found that tax practitioners were more willing to adopt an aggressive position with an aggressive client, and a conservative position with a conservative client, which indicates that practitioners are generally willing to concede to the preference of their clients. However, a study conducted by Kardous and Magro (2001:469) found the complete opposite, i.e. that tax practitioners are less likely to recommend an aggressive position to high-risk clients, whereas Killian and Doyle's (2004:178) study found that only 44% of respondents reported that their actions would be affected by the tax aggressiveness of their clients, even when applied to specific scenarios.

2.7.3 Client payment status

The payment status of clients at year end has also been found to influence the ethical decisions of tax practitioners in certain instances. According to Killian and Doyle (2004: 163), taxpayers who have made sufficient provisional tax payments during the year, and as a result do not need to make a tax payment at year end, are less inclined to concentrate on tax saving and are likely to be more conservative in their approach, while those who are required to make a significant tax payment at year end are more likely to be aggressive in their approach so as to minimise the tax due. Schisler's study (1994) supports this contention, in which it was found that tax practitioners are likely to support aggressive tax positions when their clients are in a tax due situation. In contrast, more than 80% of the practitioners in the Killian and Doyle study (2004:178) said that the year-end payment status of their client did not affect their approach in preparing returns.

Given that tax practitioners operate in a highly competitive environment, client satisfaction would rationally play a key role in determining tax practitioner behaviour. As stated by Yetmar and Eastman (2000:272), tax services are a buyer's market, and with taxpayers having the option of obtaining these services from a wide variety of service providers, tax practitioners would certainly endeavour to 'go the extra mile' in order to satisfy and retain

their clients. It would be crucial to ascertain whether the above factors form part of an overall strategy applied by tax practitioners to maintain client satisfaction.

2.8 THE EFFECT OF PRACTITIONER FACTORS ON PRACTITIONER BEHAVIOUR

Marshall *et al.* (2006:500) assert that the value of tax services is dependent upon factors such as the practitioners' technical competence and the integrity, experience and personal values with which he exercises his professional judgement when making tax decisions. Killian and Doyle (2004:167) affirm this by stating that both the quality of the tax advice given and the general decision-making capability of a practitioner are likely to improve with experience. It appears that SARS agrees with this view. In its Discussion Paper on Regulating Tax Practitioners, one of the concerns listed is that currently no minimum requirements in respect of education or experience are in place for an individual to practise as a tax practitioner (SARS, 2003:2). In developing a possible regulatory model for South Africa, it lists detailed minimum academic requirements and minimum experience requirements that a practitioner would have to meet in order to be registered with the Association of Tax Practitioners (SARS, 2003:18). This infers that SARS also considers education and experience as important factors in ensuring that tax practitioners are professionals of a high calibre who provide high-quality advice that conforms to tax legislation.

2.8.1 Tax practitioner experience

The impact of education and experience on practitioner behaviour has been explored by several researchers. Killian and Doyle (2004:182) found that, in the tax profession, experience was the most significant variable affecting tax practitioners' tendency to provide aggressive advice to their clients. Lowe, Reckers and Wyndelts (1993:353) also found that tax practitioners with less experience tend to be more conservative in certain instances, such as when clients are in a tax-due situation at year end. These studies indicate that more experienced practitioners are more likely to be aggressive.

2.8.2 Tax-practitioner education

Several studies conducted among tax practitioners reveal that educational requirements are a key concern in the profession. In a study conducted by Marshall *et al.* (1998:1270), the failure to maintain technical competence was ranked the second most important ethical issue facing Australian tax practitioners, and according to Yetmar *et al.* (1998:31), who tested 54 issues, misrepresenting or accepting limitations in a practitioner's ability to provide services was ranked the second most important ethical issue facing tax practitioners, with the lack of knowledge or skills to perform an assignment being ranked seventh. As mentioned earlier, no minimum educational requirements are currently in place for persons practising as tax practitioners in South Africa. SAICA and other professional bodies to which members may belong, offer Continuing Professional Development Programmes and members are obliged to attain a stipulated number of technical hours per annum to keep abreast of current developments in the profession. It should be noted, however, that this training need not be tax specific. Furthermore, this applies only to members attached to professional organisations, which represents a mere 55% of tax practitioners in South Africa (SARS, 2012:17). The aforementioned study by Yetmar *et al.* (1998:32) also reveals that when competition is strong, practitioners may resort to either falsifying their capabilities or accepting engagements for which they are not adequately skilled. In the light of the current absence of regulations regarding the educational requirements for tax practitioners in South Africa, a key question would be whether South African practitioners are also guilty of not maintaining their technical tax knowledge at the level required to ensure the rendering of effective services to their clients, or distorting their level of skill in order to retain clients, both of which will detract from quality of tax services provided to taxpayers.

2.8.3 Tax-practitioner allegiance

As stated earlier, tax practitioners often operate in a position of role conflict, having to simultaneously satisfy the requirements of several parties, such as clients, colleagues and professional organisations. A key concern that has been raised in the literature is that society in general and tax practitioners have a different view of what a tax practitioner's duties are (Nienaber, 2010:39). A key debate centres on whether tax practitioners should

remain loyal to clients, or whether they have a dual commitment to serve their clients well while also maintaining a healthy tax system (Marshall *et al.*, 2006:498).

Based on the objectives of the OECD Tax Intermediaries Study to improve relations with tax practitioners (KPMG, 2008:6), one may infer that revenue bodies consider practitioners to be a key medium in achieving compliance. SARS has also indicated its desire to partner with and build relations with practitioners to achieve greater compliance in South Africa (SARS, 2012:17). In the light of the various compelling factors listed above, which indicate varying sources of commitment, it becomes fundamental to ascertain where tax practitioners believe their main allegiances lie.

For the 55% of tax practitioners that belong to professional bodies such as SAICA and SAIT, an indication of their allegiance could be found in the respective organisations' Codes of Conduct and professional standards. The SAICA code places particular emphasis on the need for members of this organisation, as professionals, to acknowledge that they have a responsibility to the public and that the needs of their clients should not be their sole concern (SAICA, 2008:4). In its 2006 version of the Code, the body states that tax practitioners should contribute towards building certainty in the tax system and ensure that it is equitably applied (SAICA, 2005:73). The South African Tax Standard (2011) issued by the SAIT echoes a similar viewpoint. This standard states that members have a duty towards their clients, the tax system and South Africa as a whole (SAIT, 2011).

Research conducted by the IRS in the USA among Certified Professional Accountants in 1987 indicates the opposite. Although governed by similar standards and codes of conduct, the study found that this group were more likely to assert that their allegiance is with their clients, particularly when dealing with ambiguous tax legislation (Erard, 1993: 167). In reporting on these findings, Hite and McGill (1992:391) stated that this group was classified as the practitioner body that is 'least compatible' in upholding the IRS's quest to achieve better compliance.

In understanding the role of the tax practitioner in the taxpayer/tax practitioner relationship, it becomes imperative to ascertain whom tax practitioners regard as having the greatest

claim to their allegiance. Once this has been established, it will provide taxpayers with valuable insight into the reasons for the type of advice given.

2.9 CONCLUSION

The studies referred to above clearly show that the relationship between tax practitioners and taxpayers is of a complex nature, with many diverse aspects shaping their interactions and providing possible explanations for the differences in the quality of advice given by practitioners. The factors identified from these studies will be used to develop questions to be explored through semi-structured interviews with South African tax practitioners.

CHAPTER 3

RESEARCH DESIGN AND METHODS

3.1 INTRODUCTION

In the previous chapter, the existing literature was used to identify factors that could influence the behaviour of tax practitioners. Those factors were then categorised as regulatory/legislative factors, client factors and practitioner factors and were used to develop questions for use in the semi-structured interviews conducted with tax practitioners. This chapter aims to describe how this was done by detailing the general research design of this study, the inquiry strategy that was implemented, and the associated methods of identifying and selecting units of analysis. An explanation of the data-collection plan and the means by which the data were analysed will then be discussed, after which the criteria and techniques for assessing the quality and rigour of the research will be considered. To conclude, the ethical considerations underlying the study will be specified.

3.2 DESCRIPTION OF INQUIRY STRATEGY AND BROAD RESEARCH DESIGN

The specific inquiry strategy that was utilised to obtain the data presented in this study is that of case study research. A case study is defined as a type of research in which detailed information is obtained on a single individual with the objective of obtaining a better understanding of a phenomenon (Leedy & Ormond, 2010:108). This study was, however, an embedded case study involving the study of several individuals within a single organisation as the chosen case (Saunders *et al.*, 2009:147).

Semi-structured interviews were used as the data-collection method to support this inquiry strategy. A semi-structured interview is one that is based on a pre-determined set of interview questions which may be varied as the interview progresses, depending on the circumstances (Saunders *et al.* 2009:601). It is a commonly used strategy in exploratory and explanatory studies (Saunders *et al.*, 2009:322). An exploratory study is defined as research that aims to create a new understanding into phenomena and to assess the

phenomena from a different perspective (Saunders *et al.*, 2009:592). An explanatory study is one that deals with studying a situation with a view to explaining the correlation between different variables (Saunders *et al.*, 2009: 591). Since the data that was obtained through the study is expected to provide new insights into the presence and severity of the specific factors identified, it can be classified as an exploratory study. The use of this inquiry strategy, and in particular the data-collection method of semi-structured interviews, also made it possible to understand the reasons behind a respondent's point of view and assisted in inferring causality as envisaged in an explanatory study.

Owing to the multifaceted nature of the study, this inquiry strategy was considered the most appropriate for addressing the research problem and objectives. By using semi-structured interviews to obtain the required data, the interviewer is able to probe or to modify questions to provide greater clarity to the respondents (Saunders *et al.*, 2009: 325), thus obtaining data of a better quality than would have been possible if a questionnaire had been used.

The fact that personal contact could be established by conducting semi-structured interviews was also considered to be important as tax and the ethical conduct of tax practitioners is a sensitive topic and respondents might have been more reluctant to share their opinions and experiences in answering a questionnaire than they were during an interview (Saunders *et al.*, 2009:324).

This research is an empirical study as it seeks to obtain new data and information relating to the research objectives. It furthermore represents basic research, i.e. research that is undertaken to understand a specific phenomenon, for an academic audience (Saunders *et al.*, 2009:588).

The study is a cross-sectional study as it obtained the views of the respondents at the time when the interviews were conducted, as opposed to over a period of time (Saunders *et al.*, 2009:155). Primary data, namely data collected specifically for the purposes of this research project, was obtained (Saunders *et al.*, 2009:598).

Since the data was collected by way of semi-structured interviews that have generated non-numeric data, which will be used to analyse the prevalence of the factors identified, the study is a qualitative study (Saunders *et al.*, 2009:151).

3.3 SAMPLING

3.3.1 Target population and units of analysis

In order to perform the study as described above, the target population and the units of analysis had to be identified. The respondents consisted of tax practitioners employed by the Durban office of a Big 4 accounting firm during the period 1 September 2012–30 September 2012. In keeping with the definition of tax practitioner provided in Chapter 1, the units of analysis in this population comprised employees at the levels of senior managers, associate directors and directors in specific service lines at this firm. Although all advice and returns are ultimately reviewed by and signed off by a director, employees at the senior manager and associate director levels are often in a position to adopt and recommend certain tax positions to their clients and give advice that will be reviewed by one of the directors.

The office where these practitioners were employed was chosen because it was readily accessible. For reasons of confidentiality, the name of the firm cannot be disclosed. The firm itself is a large practice with offices throughout the country and provides a variety of taxation services ranging from corporate taxes, Value-added Tax (VAT), customs, incentives, international tax, mergers and acquisitions, and transfer pricing. For the purposes of this study, only the above-mentioned levels of employees in the Corporate Tax and VAT service lines were selected. The services provided by these departments include compliance services and the provision of technical advice, which corresponds with the definition of 'tax services' in Chapter 1. The service offerings of the other divisions listed above are of a specialised nature and may not necessarily correspond with the type of services envisaged in said definition; therefore many of the factors to be explored may be not be applicable to those employees.

3.3.2 Sampling method and sample size

Once the respondents had been identified, it was necessary to consider whether to use sampling, and also to decide on the sampling method to be applied. Since it would be impractical to collect data from every tax practitioner in South Africa, sampling was applied (Saunders *et al.*, 2009:210). However, as the study is predominantly exploratory and is focused on a single tax practice, it is not intended that the data collected be generalizable in a statistical manner to the entire population of tax practitioners in South Africa (Saunders *et al.*, 2009:213). Non-probability sampling was therefore considered to be the most suitable approach, taking into account the research problem and objectives, as well as the chosen research strategy (Saunders *et al.*, 2009:233).

As the sample size is reasonably small, purposive sampling has been applied as the chosen sampling method (Saunders *et al.*, 2009:234). Purposive sampling requires that cases be selected judgements in a manner that will best enable the research objectives to be met (Saunders *et al.*, 2009:237). In particular, typical case sampling was applied since the data collected will provide an illustrative profile of a typical tax practice (Saunders *et al.*, 2009:240). As the respondents in the study were selected on the basis of easy access, convenience sampling has also been applied (Saunders *et al.*, 2009:589). Taking into account the purpose and focus of the research, and the fact that generalisations will be made about the themes of the interview as opposed to the population, the conducting of semi-structured interviews with all the senior managers, ADs and directors at this practice was considered sufficient to obtain the kind of data that would provide significant insight. This resulted in a sample of eight practitioners to present a holistic illustrative profile of a typical tax practice.

3.4 DATA COLLECTION

3.4.1 Data-collection method

Primary data was collected by way of semi-structured interviews conducted by the researcher with the identified employees. A predetermined set of questions was formulated, based on the results of various studies explored through the literature review.

This data-collection method offered a high degree of credibility in that the researcher was certain that the questions were being answered by the correct respondent and that the likelihood of the responses being materially distorted or contaminated was low (Saunders *et al.*, 2009:364). According to Saunders *et al.* (2009:365), a researcher using personal interviews, rather than questionnaires or other data-collection methods, will probably achieve a higher response rate. A further advantage of this method is that the interviewer is present and can rephrase or clarify any questions that the respondent may not have understood, thus allowing for data of a higher quality to be gathered (Saunders *et al.*, 2009:324). However, a limitation of this method is that participants may potentially discuss their responses with participants who have already been interviewed, thus contaminating their response (Saunders *et al.*, 2009:365). There may also be an element of interviewer bias whereby the interviewer's own frame of reference is imposed through the manner in which questions are asked, or the manner in which responses are interpreted (Saunders *et al.*, 2009:326). There may also be an element of interviewee bias, for instance when the interviewee chooses not to answer a question comprehensively in order to avoid further probing questions (Saunders *et al.*, 2009:327). These limitations are addressed in the following section, which deals with the means by which the rigour and quality of the study have been ensured.

In order to obtain physical access to the target population, the research objectives and intended approach were clearly detailed to the national taxation service-line leader of the firm and a local business-unit leader. After explaining the benefits of the proposed investigation to the organisation, and giving the assurance that identity of the firm and the respondents would not be divulged, the required approval was obtained. As suggested by Saunders *et al.* (2009: 175), contact was made with the intended participants by means of a cover email outlining the purpose of the research, the role of the potential participant and the type of questions that would be asked. This was intended to create an awareness of the study and contextualise it for the intended respondents so as to encourage meaningful participation. This step was also considered crucial in building the necessary credibility among the respondents (Saunders *et al.*, 2009:328).

The interview discussion guide is attached as Appendix A on page 83.

3.4.2 Overview of the interview discussion guide

As stated above, the questions to be asked in the interview were based on the factors identified in the various studies discussed in Chapter 2. The factors were grouped into five broad themes, namely legislative factors, professional bodies, perceived audit probability, client factors and practitioner factors. The structure of the discussion guide is such that each main theme consists of various closed questions that deal with each of the factors identified in the literature review, followed by an open-ended question to allow for more detailed discussion. The wording of the questions was kept straightforward to ensure that they would be interpreted correctly and consistently by participants (Saunders *et al.*, 2009:364).

The interview sought to explore a combination of opinion and behaviour variables with a view to identifying the existence and significance of specific factors (identified during the literature review) as influencing tax practitioner behaviour. Saunders *et al.* (2009:368) define opinion variables as a record of an individual's beliefs, whereas behavioural variables contain data about an individual's past, present or future actions. Each factor identified in the literature review was therefore translated into specific investigative questions designed to test the existence and significance of these specific factors in the provision of tax services.

The manner in which the interview discussion guide was generally tested for validity and reliability is discussed under Section 5.6 below.

3.4.2.1 *Demographic factors*

The introduction of the interview dealt with establishing the demographic and educational profile of the respondent in terms of the following attributes:

- Gender
- Number of years in the tax profession
- Qualifications
- Membership of a professional body

- Type of tax service provided, namely compliance and/or technical advice
- The service line, namely VAT or Corporate Tax
- The level of the employee

These questions, which dealt with participant attributes, were fairly straightforward and demonstrated a level of interest in the interviewee (Saunders *et al.*, 2009:331). It was also necessary to establish what these attributes were as they might have been relevant to other questions included in the interview.

The remainder of the interview dealt with each factor that had been identified as influencing tax practitioner behaviour. Each factor that was tested commenced with a statement that sought to contextualise the questions. This was then followed by a question relating to this factor and participants were requested to indicate whether they agreed or disagreed, and provide reasons for their responses.

3.4.2.2 Legislative factors

The second section of the interview (Questions 8-14) was aimed at establishing participants' views on the impact of the proposed legislation to regulate tax practitioners. The section commenced with a statement that SARS intends to resume legislative measures to stipulate mandatory educational and experience requirements for all registered tax practitioners. The questions required the respondents to provide feedback on:

- whether this would improve the standard or quality of the services rendered to clients;
- whether this would raise the standard of ethical behaviour among tax practitioners;
and
- whether this would result in greater compliance being achieved in the overall tax system in South Africa.

Each of the above questions was then followed by probing questions that sought to determine on what participants had based their responses.

The general objective of these questions was to establish whether tax practitioners believe that the proposed legislation would have a positive impact on their behaviour and would therefore be amenable to it.

Respondents were then asked to give their views on the exercising of 'due diligence' in relation to verifying the accuracy of representations made by clients. These questions were intended to ascertain whether they felt that this was currently a key ethical issue in practice, and also why they felt that way. It was also important to understand whether and why they considered this term to be ambiguous in its application. Lastly, the responses were supposed to indicate whether the proposed legislation of this requirement was likely to result in practitioners requesting more supporting information from clients in the future.

3.4.2.3 Professional bodies

The third section of the interview guide (Questions 15–18) dealt with establishing whether the codes of conduct already put in place by the professional bodies to which the practitioners belonged had any effect on the manner in which they provided tax services. The section commenced with a statement contained in the SAICA Code of Conduct which stipulates that a practitioner is entitled to present the best position in favour of a client, provided that it complies with the fundamental principles of the code, that it is consistent with the law, and that there is 'reasonable support' for the position. The questions on which the respondent was required to elaborate related to:

- whether they considered the fundamental principles of their professional body's code of conduct when providing tax services;
- whether the term 'reasonable support' could be open to different interpretations by different practitioners;
- whether practitioners could use the vagueness of the term 'reasonable support' to justify aggressive tax positions; and
- whether replacing the term 'reasonable support' with a more numerical threshold, such as a 'one-in-three chance of success', would improve the clarity of this term.

The objective of these questions was to establish tax practitioners' views regarding the practical applicability of specific terms, such as 'reasonable support', contained in existing codes of conduct, and also whether tax practitioners actually considered these codes in practice, which would provide insight into whether codes of conduct have any significant influence on their behaviour.

3.4.2.4 Perceived audit probability

This section (Questions 19–21), which dealt with the effect that the probability of an audit by SARS has on tax practitioners' approach to providing tax services, was introduced by stating that there has been an increased audit focus by SARS in recent years. The questions that sought to establish the effect of this related to:

- whether the threat of an audit by SARS was an important consideration when giving advice to a client;
- whether they would apply a greater standard of care to a client's current return if the client was currently under audit by SARS on a return relating to a previous year of assessment; and
- whether an increased focus on audits by SARS was likely to result in a greater standard of care being applied in the provision of tax services going forward.

The objective of these questions was to assess whether the threat of an audit by SARS is considered by practitioners as an important factor influencing the manner in which tax services are provided and to examine the impact of an increased audit focus by SARS on the behaviour of a tax practitioner.

3.4.2.5 Client factors

The next section (Question 22–31) dealt with the impact of various client factors, i.e. the size/importance of the client, client pressure to adopt a particular tax position and the client's payment status at year end. A definition of an 'important client' was provided for the sake of clarity. Respondents were presented with various questions about these influences and were asked to explain why they answered as they did.

Question 22 sought to establish whether tax practitioners are influenced by an important client in terms of the amount of time/resources dedicated. The responses to this question provided an indication of whether tax practitioners apply a greater standard of care to clients that generate more revenue for the firm and could also be used to indicate that there may be disparities in the quality of advice given to important clients versus less important clients.

Questions 23, 25 and 26 examined the impact of pressure applied by important clients to adopt an aggressive tax position. In particular, these questions explored the possibility that the strain on client relations or the threat of losing such clients might result in a tax practitioner conceding to their demands.

Questions 24, 27 and 28 sought to establish whether there are any mitigating considerations in dealing with such pressure from clients. The responses could help clients to better understand why their demands for aggressive advice are not being met.

Questions 29, 30 and 31 were intended to establish whether a client's payment position at year end is likely to impact a practitioner's advice in any way.

3.4.2.6 Practitioner factors

The remaining questions dealt with practitioner experience and educational factors. Questions 32 and 33 were intended to establish whether practitioners felt that technical skills play an important role in providing a high-quality service, and whether maintaining these skills posed a challenge. It was vital to establish the degree of importance attributed to this factor by tax practitioners, as the answers would indicate whether it influences their behaviour.

Question 35 dealt with how practitioners respond in situations in which they lack the required technical skill to service the client. As this is a sensitive question, it was phrased differently, so that the respondent was presented with two alternative courses of action. If the respondent favoured the first option, which was to accept the assignment, it could be

an indication that the desire to retain the client was given greater importance than the provision of quality service to that client.

The impact of practitioners' experience was assessed by comparing the number of years of experience of a participant, established upfront, to his/her responses to various questions in the survey that were indicative of a propensity to provide aggressive advice.

The final question (Question 35) sought to establish whether tax practitioners' loyalties lie with their clients or with the tax system. If practitioners chose to recommend the tax minimisation strategy to their clients, despite the loss to the *fiscus*, it would indicate that their primary loyalty lies with their clients.

The responses to each of the factors tested were compared to the findings of the various studies mentioned in the literature review in order to confirm or disprove their existence and impact.

The data was collected over a period of approximately two weeks. The average time per interview was forty minutes.

3.5 DATA ANALYSIS

A deductive approach was followed to analyse the data. A deductive approach is one where a framework of specific research questions and objectives are formulated on the basis of the relevant existing theory and literature and are then tested against the responses of the participants in the study (Saunders *et al.*, 2009:489). The studies reviewed in Chapter 4 were first used to develop the initial framework of factors that could potentially influence the behaviour of tax practitioners. Specific interview questions relating to each of those factors were then formulated, based on the existing literature, and were then compared to the responses provided by each participant to enable conclusions to be drawn.

Each interview was audio-recorded and subsequently transcribed to record the responses to each question provided by the participant (Saunders *et al.*, 2009:485). In the

transcription, different coloured fonts were used to distinguish between the interviewer and the respondent. Each transcript was saved as a word-processed file and was given a title that did not contain the identity of the interviewee in order to ensure that the anonymity of the participant was maintained (Saunders *et al.*, 2009:485). Each audio recording was then checked against the transcript to ensure accuracy and to correct any errors (Saunders *et al.*, 2009:485). The completed transcripts were not sent back to the participants so as to prevent participants from wanting to amend their responses.

Separate analysis templates were created for each section of the interview, namely demographic, legislative, professional bodies, perceived audit probability, client factors and practitioner factors. The responses provided by each participant to each question were then copied onto the analysis templates to create a data set made up of the eight responses to each question (Saunders *et al.*, 2009:492) on which a semantic analysis could be performed.

The responses to each question were analysed by first reading through all eight responses to obtain a general overview of the feedback. Common responses among the participants were then highlighted and provided with a descriptive keyword using comment boxes. These served as labels that facilitated with the further grouping of the data (Saunders *et al.*, 2009:492). The responses of each participant for each keyword/label were then grouped to create further data sets relating to each keyword. These data sets were used to draft an account of the responses to each question in a manner that made it possible to report on the most dominant themes/trends. Finally, these themes were tested against the findings of previous studies in the literature review to enable conclusions to be drawn.

Interviews were arranged so that there was sufficient time between them to perform a preliminary data analysis to ascertain whether it would perhaps be helpful to modify the approach and the questions asked during subsequent interviews (Saunders *et al.*, 2009:489).

3.6 ASSESSING AND DEMONSTRATING THE QUALITY AND RIGOUR OF THE PROPOSED RESEARCH DESIGN

The quality and rigour of the proposed design were ensured by employing various techniques to ensure the validity of the interview and to minimise the impact of any bias.

In general, the validity of a study relates to the extent to which the data-collection instrument correctly measures the intended attribute (Saunders *et al.*, 2009:603). Specifically, the interview discussion guide will have internal validity if the questions themselves are able to correctly measure the intended attribute (Saunders *et al.*, 2009:372). Furthermore, the interview will display content validity if it provides sufficient coverage of the investigative questions (Saunders *et al.*, 2009:373). To ensure the validity of the interview, the specific investigative questions used in the discussion guide were formulated after a thorough review of the available literature, which provided an indication of the factors that should be tested.

The questionnaire should also display an adequate degree of reliability. In the case of a qualitative study, reliability refers to whether other researchers would obtain similar findings and is linked to various sources of bias that could impact the study (Saunders *et al.*, 2009:328). As detailed in section 5.4.1 above, a semi-structured interview could be subject to both interviewer bias and respondent bias. These types of bias were addressed mainly through the application of sound interviewing skills. As suggested by Saunders *et al.* (2009: 332), predominantly open-ended questions were put to each participant and, if necessary, were followed up by more investigative questions in order to reduce bias. Respondent bias will be mitigated by establishing credibility with the participants upfront, in particular by emphasising the fact that the responses provided will be treated confidentially (Saunders *et al.*, 2009: 331).

A further concern related to reliability is that the findings of the study cannot be repeated by other researchers (Saunders *et al.*, 2009: 327). It should be noted that since these findings reflect the views of the participants at a particular point in time, they are not intended to be repeatable, which is an inherent limitation of the study.

As stated above, participants may potentially discuss their responses with others who have already been interviewed, thus contaminating their response to some extent. This will be addressed by requesting participants not to discuss the interview questions with those who have not yet been interviewed. It is an underlying assumption of the study that participants will adhere to this.

3.7 RESEARCH ETHICS

The study was subject to various ethical considerations and procedures, as discussed in the subsections below.

3.7.1 Ethical clearance from the Research Ethics Committee

An application for permission to conduct this study was obtained from the Research Ethics Committee at the Faculty of Economic and Management Sciences. This application contained a description of the research design and methodology applied. The letter of permission obtained from the tax business unit leader of the Durban office of the firm, as well as copies of the informed consent forms and questionnaires were provided. Data collection did not commence until after the study had been formally approved by this Committee.

3.7.2 Obtaining written permission from the firm's tax business unit leader

As stated earlier, the study had been discussed with the tax service line leader of the firm and a local business unit leader, and the necessary permission to conduct such a study had been obtained. This was formalised in a written letter of permission that was submitted to the Research Ethics Committee.

3.7.3 Informed consent and anonymity

Each participant was required to sign an informed consent form which addressed a number of ethical considerations as specified by Saunders *et al.* (2009:185). First,

participants were assured that the interview would be completely anonymous, and that the answers given would be treated as strictly confidential. They were also informed that the study would be conducted for purely academic purposes and that the results might be published in an academic journal. Voluntary participation was emphasised, meaning that participants were given the right to withdraw from the study without any ramifications. No incentives were offered to the respondents to encourage participation.

The informed consent form used in this study is included as Appendix B on page 101.

In addition to the above considerations, participation in the survey would not cause any potential harm (e.g. physical, psychological, legal, and social) to the respondents. Integrity and objectivity in ensuring that the above ethical considerations are adhered to, was maintained throughout the study.

CHAPTER 4

ANALYSIS OF DATA

4.1 INTRODUCTION

The objective of this chapter is to provide an analysis of the feedback given by the participants during the semi-structured interviews with a view to achieving the second research objective listed in Chapter 1, which was to explore the existence and prevalence of factors identified in the literature review that may influence tax practitioners' responsibilities to clients and their role in a system of tax compliance.

The chapter commences with a brief overview of participants' general responses to the interview questions and process, including the level of upfront preparation by the participants. The responses to each question are then explored, first by listing participants' responses to each closed question and discussing the detailed feedback provided. The comments are then compared to the findings of previous studies detailed in the literature review in order to conclude whether such factors do in fact influence the behaviour of tax practitioners and to determine to what extent this occurs.

4.2 OVERALL RESPONSE TO THE INTERVIEWS

Most participants expressed interest in the study and looked forward to contributing to the research. A few participants were somewhat nervous about the content of the interviews, in particular with regard to any preparation that might be required. To alleviate this stress, the proposed questions were distributed to the participants ahead of the interview so as to provide them with an opportunity to consider the questions and prepare their responses. However, participants were advised that it was not compulsory to prepare for the interview. Five participants went through the questions prior to the scheduled interview and prepared draft responses, taking into account their past experiences with specific clients. The remaining three participants opted to provide more spontaneous responses.

4.3 SPECIFIC FEEDBACK FROM THE INTERVIEWS

4.3.1 Demographic profile of the group

The group consisted of five male and three female tax practitioners. Of the group, four were directors of the practice, two were associate directors and the remaining two were senior managers. The majority of the participants specialised in business taxes, with only one participant providing services related to value-added tax. All the participants indicated that they provided both compliance services and technical advice to their clients. Five participants indicated that they had more than fifteen years' experience in the tax profession, whilst the remaining three had between 10 and 15 years' experience. Of the group, five participants listed their highest academic qualification as an honours degree, two practitioners had master's degrees and one a bachelor's degree. The participants were all qualified chartered accountants and members of SAICA, and two were also members of the Independent Regulatory Board of Auditors (IRBA).

4.3.2 Legislative factors

The general objective of these questions was to establish whether tax practitioners believe that proposed legislation would have a positive impact on their behaviour, and would thus be amenable to this legislation.

The interview commenced with a discussion of the effect of impending legislation aimed at regulating tax practitioners, in particular the requirement for tax practitioners to be registered with a 'recognised controlling body'. The introduction provided to participants also suggested the possibility that such legislation could introduce mandatory education and experience requirements in the future. The responses to each question were as follows:

Q8A: Would this, in your opinion, improve the standard or quality of services rendered to clients?	
Yes	No
8	0

Q8B: If so, how do you think it will improve the quality of services rendered to clients? If not, why do you believe that these legislative proposals will not improve the standard of services provided to clients?

All the participants unanimously agreed that these legislative proposals would raise the standard or quality of services provided to clients in general, although some cautioned that other factors needed to be in place for such measures to be effective. One factor mentioned was that the enforcement of such legislation would be key to ensuring that the above objectives of better service to clients and greater compliance are achieved. Four participants mentioned that introducing such legislation would eliminate unqualified practitioners that are currently unregulated and who target unsuspecting taxpayers. Such a process would, at the very least, assist in identifying those practitioners and provide SARS with a means of instituting some form of disciplinary action against them if they continue to provide services of an unacceptable standard to clients. Four respondents also felt that such legislation would ensure that registered tax practitioners possess the required level of education and experience, which they felt was crucial to providing a service of high quality to clients.

One participant, however, pointed out that whilst such legislation would be a positive move, it is aimed at addressing issues such as ethics and compliance, which are largely behavioural factors. This participant was of the view that since such legislation can merely influence behaviour through appropriate sanctions, compliant behaviour cannot be guaranteed.

Overall, the participants felt that such a measure would improve the quality of services provided to clients, predominantly as this would eliminate those practitioners that are currently unregulated and are providing poor quality advice to clients. This corresponds with the findings of Ayres, Jackson and Hite (1989:306) that regulation may result in a better service being provided as tax practitioners would presumably be more knowledgeable as a result of these requirements.

Q9A: Do you believe that this would raise the standard of ethical behaviour among tax practitioners?

Yes	No	Both
5	1	2

Q9B: If so, how do you think it would raise the standard of ethical behaviour among tax practitioners? If not, why do you believe that these legislative proposals will not result in a higher standard of ethical behaviour among tax professionals?

Participants appeared to be divided in their views on this question. Once again, most participants stated that there are at present a group of unregulated, unqualified tax practitioners whose standard of ethical behaviour may be improved by such legislation or who may be eliminated altogether from the system. Three participants specifically mentioned that sanctions provided for in the legislation, such as the threat of being deregistered, would likely curb unethical behaviour. Some felt that such legislation is likely to have little impact on registered tax

practitioners, albeit for different reasons. One participant felt that those practitioners who are currently registered and are members of a professional body should already possess a high standard of ethical behaviour by virtue of the educational requirements of that body.

However, another participant disagreed with this contention, stating that even those who are members of a professional body often do not ensure that they remain informed on the ethical requirements of their professional body. Another response was that even a registered practitioner may choose to act unethically, and that the legislation may not necessarily address this.

The majority view among the participants was that the new legislation would raise the overall standard of ethical behaviour among tax practitioners as the sanctions contained in the law would serve as a deterrent against unethical behaviour. However, this indicates the need for the enforcement of the sanctions contained in the proposed legislation to ensure that unethical practitioners are held accountable for their actions in order to raise the ethical standard among tax practitioners.

Q10A: Do you feel that this would result in greater compliance being achieved in the overall tax system in South Africa?

Yes	No	Both
3	3	2

Q10B: Why?

Participants once again provided mixed responses as to whether such legislation would result in greater compliance being achieved in the overall tax system in South Africa.

Three participants were of the view that such legislation will not affect overall compliance in South Africa, as even where a tax practitioner is involved, it is ultimately left up to the client to choose whether to follow the advice given by the practitioner.

Whilst some acknowledged that practitioners can influence their own clients' behaviour, two participants stated that relatively few corporate taxpayers actually use practitioners, therefore regulating practitioners may influence only a very small proportion of the total taxpayer population that contribute to the total tax revenue collected.

Another participant mentioned that legislation alone is not sufficient to achieve greater compliance; enforcement of the sanctions contained in such legislation is crucial. Some felt that regulation will ensure that practitioners have the required education and experience to promote compliance among taxpayers, whilst others listed the possibility of sanctions acting as a deterrent to unethical behaviour.

Overall, the feedback indicated that participants were not convinced that legislation alone would result in greater compliance being achieved. The main reason provided was that the decision to adhere to the advice provided by a practitioner still remains with the taxpayer. This may be indicative of taxpayers determining their own appetite for tax risk, as suggested by the OECD study (KPMG, 2008:5). The fact that there are relatively few taxpayers that make use of (and can thus be influenced by) tax practitioners is significant in light of the regulation of tax practitioners being considered one of SARS's focus areas to achieving greater compliance in South Africa (SARS, 2012:17). These comments imply that such benefits may not be as widespread as SARS intends it to be.

The next section of the interview focused on the exercising of 'due diligence' in determining the accuracy and reasonability of representations made by clients, as required by the TALAA.

These questions were intended to ascertain whether they feel that this is a key ethical issue in practice currently and why. It was also important to understand whether and the reasons for which they consider this term to be ambiguous in its applicability. Lastly, the responses also indicated whether the proposed legislation of this requirement is likely to result in practitioners requesting more supporting information from clients in future.

Q11A: Do you feel that the exercise of 'due diligence' is currently a key ethical issue facing tax practitioners in South Africa?		
Yes	No	Both
4	3	1

Q11B: Why do you feel this way?
<p>Overall most participants agreed that this is an ethical issue facing practitioners in South Africa. This is mainly because sufficient guidance is not provided on the applicability of the term, nor is the term formally defined in legislation or professional bodies' codes of conduct. As a result, they felt that such a term is somewhat ambiguous and subject to varying interpretations by practitioners.</p> <p>The participants listed several possible ancillary reasons for the exercising of due diligence being challenging in practice. These included the possibility that some staff members at a tax practice may not understand what is meant by due diligence, coupled with time and capacity constraints in servicing a large client base. One participant mentioned that the increasing complexity of tax legislation increases the cost of providing tax services, and that the exercising of due diligence is often compromised in an attempt to curb such costs. This</p>

indicates that the type of advice provided by practitioners may vary depending on the practitioners' individual interpretation of the term. Other factors, such as a lack of skill, time and costs may well result in some practitioners compromising in respect of exercising adequate due diligence, as a result of which the quality advice provided to clients may suffer.

Two participants disagreed with the contention that this is an ethical issue for tax practitioners at present. The first participant felt that such a term should not pose a concern to practitioners, as it is not the duty of a practitioner to go to great lengths to determine whether client representations that appear to be reasonable are in fact accurate. The second participant was of the view that the term is already adequately understood by the majority of practitioners, particularly those with sufficient experience and knowledge of their clients.

Overall, the participants agreed that the exercising of due diligence is an ethical issue currently facing tax practitioners in South Africa. This corresponds with the findings of Yetmar *et al.* (1998:31) and Marshall *et al.* (1998:1265).

Q12A: In your opinion, is the term 'due diligence' subject to varying interpretation by practitioners?

Yes	No
8	0

Q12B: How do you think practitioners interpret this term in practice?

The participants unanimously agreed that the term is subject to varying interpretation by practitioners.

Six participants stated that the interpretation of the term is very much dependent on the experience, qualifications and personal ethical standards of the tax practitioners concerned and their knowledge of their clients, and would thus vary depending on the circumstances. One participant mentioned that some practitioners would most likely interpret the term in a manner that would suit their own personal ethical standards or the process followed in dispensing advice.

Two participants were of the view that differences in the way the term is interpreted are unlikely to be a concern in the larger accounting firms due to the stringent internal quality standards and control procedures that are in place. These individuals felt that practitioners in smaller firms where such controls are lacking were more likely to interpret the term with greater subjectivity. This indicates that there may be a difference in the type of advice given by individual practitioners in smaller firms compared to those in larger firms.

The overall feedback provided was that the term 'due diligence' is subject to varying interpretation by individual practitioners, depending on their experience, qualifications and personal ethical standards. Differences in the manner in which practitioners interpret this

term could therefore result in different processes being followed and conclusions reached in dispensing advice.

Q13A: Do you think that the legislation of the above requirement is likely to cause practitioners to conduct more frequent or thorough examinations of data to support client representations?

Yes	No
6	2

Q13B: If so, why do you feel this way?

Most participants were of the opinion that legislating the requirement to exercise 'due diligence' in determining the accuracy and reasonability of representations made by clients was likely to result in practitioners examining data more thoroughly.

Five participants attributed this to the potential sanctions that may be enforced against practitioners who do not comply with this requirement. Most participants also agreed that legislating this requirement would ensure that practitioners who do not follow due care in dispensing advice would be held accountable for their actions. Two participants mentioned that such legislation should clearly define the meaning of the term to ensure that practitioners are aware of what is required to satisfactorily discharge their obligations in this regard.

Two participants were not convinced that the incorporation of this requirement into legislation would result in more thorough examinations of data. The first participant was of the view that any sanctions for non-compliance provided for in such legislation would probably not be severe enough to curb such behaviour. The second participant mentioned that despite the introduction of such legislation, costs remain a major factor in how practitioners conduct their business. Since more frequent or more thorough examinations of data will increase the time spent in dispensing tax advice, and thus also the costs, this will adversely affect the profitability of a practice and will result in practitioners being less amenable to complying. Therefore, despite such legislation, some practitioners may still compromise on quality to keep costs under control.

In general, the participants felt that the legislation of the term 'due diligence' was likely to result in practitioners conducting more frequent and thorough examinations of data provided by their clients due to the possible sanctions they might face for non-compliance with this requirement. Given that the TALAA has now introduced the requirement for practitioners to exercise 'due diligence' in preparing returns, taxpayers could well see practitioners requesting supporting data more frequently. This is likely to increase the time spent by practitioners on preparing and reviewing returns, and consequently the costs of such services.

Q14A: Do you agree with the following statement? ‘As long as a client’s representation appears reasonable, I am not required to examine underlying supporting data.’		
Yes	No	Depends
1	3	4

Q14B: Why do you agree/disagree?

The majority of the participants did not agree with this statement and listed various factors that should be taken into consideration before a practitioner can be satisfied that a detailed examination of underlying supporting data is not required.

The majority of the participants stated that decisions in this regard depended largely on the context and scope of the advice being given. Such a situation may arise, for example, if the examination of supporting documentation was necessary to determine the tax consequences of a transaction. Four participants also stated that the practitioner’s knowledge of the client and the quality of the information provided often impact the assessment of whether representations made by a client appear reasonable. Two participants were of the view that it is necessary to apply some degree of professional scepticism in evaluating client information.

Another consideration relates to whether the client expects the practitioner to examine underlying data, in which case the practitioner is required to comply with the scope. If there is no such expectation, the practitioner has to advise the client that the underlying data had not been verified and that the advice provided was based on the given facts.

The overall responses to this question indicates that the examination of a client’s supporting data is not dependent solely on whether the representation appears reasonable, but rather that various factors need to be taken into account. Although guidance provided in the SAICA Code of Conduct states that members are not required to examine supporting documents if the client’s representation appears reasonable, participants appeared to take a more conservative, considered approach.

Concluding remarks on the impact of legislative factors on the behaviour of tax practitioners

In general participants were not convinced that legislative proposals to regulate tax practitioners would result in greater compliance or higher tax revenues collected, but conceded that it may raise the quality of services rendered to clients. Ultimately such measures might not alter the behaviour of unethical tax practitioners, as these could easily be ignored for the sake of earning fees from clients. This result is in line with the findings of the study conducted by Marshall *et al.* (1998:1273). Participants emphasised the fact that

the appropriate enforcement of such legislation with sanctions is crucial to ensure that the SARS's objectives are met.

4.3.3 Professional bodies

The objective of these questions was to establish respondents' views on the practical application of specific terms, for instance 'reasonable support', contained in existing codes of conduct. It also sought to establish whether tax practitioners consider these codes in their day-to-day practice, which in turn provided insight into whether this is a significant behavioural influence.

This section of the interview commenced with an extract from the SAICA Code of Conduct, which states that a practitioner is entitled to present the best position in favour of a client, provided that it is consistent with the law. The Code also states that should any doubt result in this regard, a member may adopt a position in favour of the client, provided that there is 'reasonable support' for the position. The responses to the questions were as follows:

Q15A: Do you consider the fundamental principles of your professional body's code of conduct when providing tax services?	
Yes	No
3	5

Q15B: How does this impact your behaviour?
<p>Most practitioners admitted that they do not consciously consider the fundamental principles of their professional body's code of conduct when providing tax services on a daily basis. However, the majority stated that these principles are inherent in their behaviour and have shaped their individual ethical standard over time. Two participants mentioned that they follow their firm's principles instead, which to a large extent embodies and encourages the same doctrines as their professional bodies' codes of conduct. Those that do consciously consider their professional bodies' codes indicated that such a code influences the process that they follow in dispensing advice and provides a framework to which members can refer to assess whether they are conducting themselves ethically.</p>

From the above comments it appears that the codes of conduct of the professional bodies to which these members belong have shaped their behaviour over time, even if they do not always consciously consider them.

Q16A: Do you feel that the term 'reasonable support' lends itself to different interpretations by practitioners?	
Yes	No
8	0

Q16B: How do you feel practitioners interpret this in practice?
<p>The participants unanimously agreed that different practitioners are likely to interpret the term differently. The majority considered reasonable support to mean that an appropriate amount of evidence has to be obtained by way of research, enquiries and concurring reviews to support a particular tax position, and also indicated that the extent of such evidence and research will vary from one practitioner to the next.</p> <p>The amount of evidence that is considered to be appropriate is largely subjective and different practitioners are likely to be satisfied with different amounts of evidence in order to justify the tax position taken.</p> <p>The amount of evidence required will also vary according to the complexity of the client's query, and a practitioner would need to apply his/her professional judgement to decide whether the evidence obtained is sufficient. One participant mentioned that the ability to apply such judgement is likely to improve with education and experience, and with guidance from the professional body to which the practitioner belongs.</p>

Q17A: Do you feel that practitioners are able to use the vagueness of the term 'reasonable support' to justify aggressive tax positions?	
Yes	No
8	0

Q17B: In your opinion, how would they be able to do this?
<p>The entire group agreed that practitioners could use the vagueness of the term 'reasonable support' to justify aggressive tax positions. They reiterated the points made in response to the previous question, i.e. that in the absence of a formal definition or guidance the term is ultimately subject to individual interpretation. This allows practitioners to attribute their own individual meanings to the term and construe it in a manner that justifies the process followed in advising clients.</p> <p>Two participants also mentioned that practitioners can sometimes justify the extent of 'reasonable support' for a position by taking advantage of poorly drafted legislation. These participants recalled instances where the wording of the legislation and the Treasury's intentions, as expressed in the accompanying Explanatory Memorandums to such legislation,</p>

did not correspond. Practitioners could thus adopt a position that goes against those intentions on the basis that the strict interpretation of the law provides ‘reasonable support’ for such a position.

The responses provided to Questions 16 and 17 indicate that the term ‘reasonable support’ is subjective and may be interpreted differently by different practitioners, which is in line with the findings of Tan (2006:24) and Marshall, Smith and Armstrong (2006:499). Participants also agreed with the findings of Cuccia *et al.* (1995:228), i.e. that that some practitioners can use the vagueness of the term to justify aggressive tax positions. The different amounts of evidence accepted by different practitioners in support of a position may result in their advice to clients not necessarily being compliant with the law.

It is interesting to note that one participant queried whether recommending a position to a client without reasonable support could result in disciplinary action being taken against a tax practitioner by his/her professional body. Since this requirement is contained in the professional body’s Code of Conduct, such a member could indeed be held accountable by that body. This comment could indicate that practitioners who are members of a professional body might not be aware of the fact that they are already being regulated to some extent and are therefore accountable to the professional bodies to which they belong.

Q18A: Do you think that the clarity of this term could be improved by replacing the term ‘reasonable support’ with a more numerical threshold, such as ‘a one-in-three chance of success’?

Yes	No	Maybe
1	6	1

Q18B: In your opinion, what measures could be taken to improve the clarity of the term?

The majority of participants did not think that the clarity of the term ‘reasonable support’ would be improved if replaced by the more numerical ‘one-in three chance of success’ threshold.

They expressed the opinion that such a benchmark is still subjective and fails to adequately provide guidance on the amount of evidence required to support a position, with many considering it altogether impossible to comprehensively define the term. One participant felt that certain areas in tax legislation are by nature subjective, and that it would be difficult to ascertain whether there was a ‘one-in-three chance of success’ if challenged. Two participants felt that a numerical threshold was not an appropriate guideline as its application is dependent upon tax practitioner behaviour. In their opinion, such a threshold would most likely result in practitioners

providing advice on the basis of the chances of being caught out by the revenue authorities, rather than whether they have sufficient evidence to support their advice. Those participants who viewed the numerical threshold in a more positive light were of the view that it may make the term easier to understand, and that some practitioners already applied the 'chance-of-success' approach in deciding whether reasonable support has been obtained.

Rather than try to define the term, which participants felt could result in far greater exploitation, the majority felt that practical examples should be provided to give practitioners a general idea of what the term means. One participant suggested that a series of tests based on the well-established 'reasonable man' test could be built into the legislation to assist practitioners in determining whether reasonable support has been obtained. Another participant felt that if the term is eventually legislated, practitioners should rely on the guidance already provided in the various professional bodies' codes of conduct, rather than create a new code for tax practitioners. One participant felt that as the term 'reasonable support' relates to the process followed in arriving at the correct tax treatment, more training on the process was required.

The general opinion expressed by the participants was that the replacement of the term with a more numeric threshold would not improve the clarity or ease the practical application of the term in any manner, which is in line with the findings of the study conducted by Cuccia *et al.* (1995: 227).

Concluding remarks regarding the impact of professional bodies on the behaviour of tax practitioners

In general participants felt that the main role of professional bodies is to instil a culture of ethics among its members and enforce a set of disciplinary measures by which tax practitioner behaviour can be controlled. However, one participant was not convinced that professional bodies were completely effective in influencing a certain type of behaviour as some members deliberately choose to ignore these measures. Another participant felt that professional bodies currently tend to be ambiguous in their enforcement of disciplinary measures against unethical members. This view was supported to some extent by two other participants, who said that they had over time lost sight of their professional bodies' oversight role and that instead they focused on their firms' internal rules. These comments call into question SARS's view that members of a professional body are more compliant than non-registered practitioners. Given that SARS intends partnering with professional bodies in assisting with the regulation of tax practitioners in future, these professional bodies should play a more visible role in order to be able to add to the credibility of the proposed system of regulation.

4.3.4 Perceived audit probability

The objective of these questions was to assess whether practitioners consider the threat of an audit by SARS to be an important factor in the manner in which they provide tax services and to examine the impact of an increased audit focus by SARS on tax practitioner behaviour.

This section of the interview commenced with a statement indicating that over the past few years, SARS has increased the resources dedicated to conducting investigative audits and intends to intensify its efforts in this regard going forward. Participants were then asked several questions relating to the impact of this approach on the manner in which they provide tax services. Their responses were as follows:

Q19A: Do you consider the threat of an audit by SARS to be an important consideration when giving advice to a client?

Yes	No
4	4

Q19B: How would this threat influence your behaviour in practice?

The responses provided by the participants to the above question indicated that the group was fairly divided with regard to their views on whether the possibility of an audit by SARS is an important consideration when providing tax advice. However, when asked how the threat of an audit by SARS would impact their behaviour, most participants raised similar points despite their initial response. The majority stated that their overriding objective when providing advice is to ensure that it is correct and within the law, regardless of whether SARS is likely to conduct an audit or not. These participants felt that the adoption of a particular tax position should not be governed by the likelihood of it being challenged by SARS, but rather that the position must be correct.

Most participants in this group stated that they would make their clients aware of areas that SARS was currently querying in an attempt to ensure that reasonable support is obtained for positions taken on these issues. A few participants mentioned that whilst the threat of an audit might not affect the advice they provide to clients, they would use such a threat as a deterrent should a client wish to adopt a tax position that the practitioner feels is not within the law. One participant felt that the threat of a SARS audit does indeed influence the manner in which tax advice is provided since the manner in which SARS might challenge such a position is often used as a test to determine whether reasonable support has been obtained.

Overall the threat of an audit by SARS did not appear to be a significant factor driving practitioner behaviour, which corroborates the findings of Killian and Doyle (2004:185) and Marshall *et al.* (2006:513). The use of a potential challenge of a position by SARS as a test of reasonable support ties in with Killian and Doyle's (2004:178) finding that participants initially listed the threat of an audit as an important factor to be considered in making tax related decisions.

Q20: If your client is currently undergoing an audit on a previous year of assessment, would that cause you to apply a greater standard of care to the current year's tax return?

Yes	No
1	7

Q20B: Why?

Most participants felt that a current audit conducted by SARS on their clients' previous tax return would not alter the standard of care that they apply in the current year's tax return as they would always apply the highest standard of care regardless of the circumstances. However, the audit may result in the practitioner revisiting the positions that SARS had challenged to ensure that they such a position can be justified. Similarly, a practitioner may re-evaluate the positions that SARS had found to be incorrect. One participant felt that this may result in a practitioner taking a closer look at aspects of the return that are subjective.

Q21A: In your opinion, would an increased audit focus by SARS result in a greater standard of care being applied by practitioners going forward?

Yes	No
7	1

Q21B: Why do you feel this way?

In general, most participants were confident that more frequent audits by SARS are likely to improve the standard of care applied by practitioners. Many felt that such measures will serve as a deterrent to those practitioners who normally adopt unduly aggressive tax positions, or who have a cavalier approach to the possibility of being challenged by SARS.

The participants also felt that an increased likelihood of being audited would result in practitioners being more stringent in ensuring that sufficient care is applied in advising clients. Three participants mentioned that an increased audit focus by SARS is likely to have an impact on taxpayer behaviour in that it would encourage greater compliance. One participant expressed the opinion that such plans may result in more taxpayers engaging the services of

tax practitioners to ensure that they are in compliance with the law.

Overall, the comments provided in response to questions 20 and 21 indicate that an audit by SARS is unlikely to influence these tax practitioners to apply a greater standard of care in future as an acceptable standard is applied regardless. However, an increased audit focus by SARS is likely to improve the standard of care applied by practitioners going forward, particularly in the case of practitioners who currently do not apply an acceptable standard of care in providing advice to their clients.

Concluding remarks on the impact of a perceived audit probability by SARS on the behaviour of tax practitioners

Three participants reiterated their view that an increased audit focus by SARS is likely to alter the behaviour of certain practitioners who do not currently apply an appropriate standard of care in providing tax services to clients, and one participant indicated that this applies mainly to practitioners in smaller practices, since those in large firms are already being regulated by stringent internal rules.

4.3.5 Client factors

The objective of these questions was to test the significance of various influences, such as the importance of a client in terms of the revenue generated by that client, pressure from a client to adopt an aggressive tax position, and the payment position of a client at year end.

The term ‘important client’, used in several questions, was defined as one that is ‘significant in terms of its income-generating potential for the both the tax practitioner and the firm in which the practitioner operates’. The participants responded as follows:

Q22A: Do you feel that a tax practitioner will devote more time and resources to an ‘important client’ than to one who generates less revenue for the firm?	
Yes	No
7	1

Q22B: Why do you feel this way?

Most participants stated that ultimately a tax practice is a business, and is therefore driven by profitability and the amount of fees generated. For this reason, it stands to reason that a practitioner will spend more time and resources on those clients that contribute the most to its profitability, as opposed to those that generate less fees. One participant, however, felt that the same standard of quality is applied in providing tax services to all clients, regardless of the amount of fees generated.

Overall, the participants conceded that a tax practitioner would devote more time and resources to an 'important client' than to one who generates less revenue for the firm.

Q23A: In your opinion, would a tax practitioner concede to pressure from an 'important client' to adopt an aggressive tax position?

Yes	No
5	3

Q23B: Why?

This appeared to be an uncomfortable question for some of the participants.

Overall, the responses to this question were fairly mixed, with most participants neither fully agreeing nor disagreeing. Instead, the majority of the participants detailed how they would manage the risk associated with such a situation.

Generally the participants reiterated the points raised in response to the previous question, pointing out that a tax practice is ultimately a business. A practitioner would therefore not want to risk losing an important client by not conceding to pressure to adopt an aggressive tax position as this would have an adverse effect on profitability. However, one participant felt that this is more likely to be a risk to smaller practitioners with a smaller client base than to practitioners in a large firm. The majority emphasised the fact that tax practitioners do not adopt tax positions on behalf of taxpayers. As tax practitioners, their role is to advise on all the possible tax treatments of a transaction and the risks associated with each option. Ultimately the taxpayers themselves determine the tax position they would like to adopt, based on their appetite and attitude towards tax risk. By presenting various options, tax practitioners neither concede nor reject an aggressive tax position, thereby ensuring that any risk of being seen to be recommending such a position is managed whilst still retaining the client. Some practitioners mentioned that the risk of a practitioner conceding to pressure of this nature depends on various factors. One such factor is the strength of the relationship between the client and the practitioner and the latter's ability to persuade the client against adopting an aggressive position. The strength of a practitioner's own ethical standards would also influence the ease with which he/she may be swayed by a client's insistence.

The initial reaction of the participants to this question confirms that this is an ethical issue facing tax practitioners, which is in line with the findings of the study by Finn *et al.* (in Cruz, Shafer & Strawser, 2000:223). Furthermore, it appears that a key client can influence a practitioner to take a more aggressive position than he normally would, which is supported by the findings of the study conducted by Reckers *et al.* (1991:43).

Q24A: When faced with a client that demands the adoption of an aggressive tax position, do you feel that a tax practitioner is likely to rather provide conservative advice?

Yes	No
0	8

Q24B: Why do you think so?

The responses indicate that tax practitioners would not automatically provide conservative advice if a client demands the adoption of an aggressive tax position.

The majority of the participants stated that in these circumstances they would try to meet a client's demand for aggressive advice as far as possible by trying to develop an argument in favour of such a position that is within the law. They again emphasised that, should this not be possible, their role would be to suggest various possible tax treatments to their clients, highlighting the risks associated with each option. Ultimately the decision as to which tax treatment to adopt would be left to the client. One participant mentioned that the type of advice provided should not depend on the client's preference, but rather on whether it is a reasonable position that is within the law, even if it is an aggressive position.

From the respondents' comments it appears that they would not automatically provide conservative advice to a client who demands the adoption of an aggressive tax position. This contradicts the findings of Kardous and Magro (2001: 469), which indicates that tax practitioners are less likely to recommend an aggressive position to a high-risk client. To some extent the feedback also contradicts the findings of Killian and Doyle's (2004:178) study in which only slightly less than half the participants indicated that their actions would be affected by the tax aggressiveness of their clients.

Q25A: Do you feel that refusal to concede to an 'important' client's demand to adopt an aggressive tax position is likely to strain client relations?

Yes	No
7	1

Q25B: How would this impact the relationship between a tax practitioner and his/her client?

On the whole, participants agreed that practitioners could lose important clients as a result of their refusal to give in to a client's demand for an aggressive tax position. Two participants felt that in such circumstances, taxpayers would seek alternate service providers who would be more willing to provide the type of advice that they require. This indicates that taxpayers would choose a tax practitioner that would satisfy their own needs for a particular type of advice.

Once again, most participants stressed that ultimately it is the taxpayer that decides on the tax position to be adopted. As mentioned in the above responses, the tax practitioner does not make any decisions on behalf of the client, but rather explains various courses of action or possible tax treatments. Participants felt that in order to mitigate the risk of straining their relationships with clients, it is important to clearly explain this role upfront. The overriding principle should be that a practitioner must maintain a strong ethical standard and continue to provide tax advice that is within the law, despite pressure from a client. One participant suggested that when a client persistently demands aggressive advice, the practitioner should consider whether he/she would actually want to continue to provide services to that client.

It would appear that refusal to concede to an 'important' client's demand to adopt an aggressive tax position is likely to strain client relations, and that taxpayers may well seek alternative tax practitioners should their demands not be met.

Q26A: In your opinion, would a tax practitioner concede to pressure from a client to adopt an aggressive tax position to avoid losing the client?

Yes	No	Depends
3	3	2

Q26B: How would you deal with such a situation?

The group's responses were fairly divided and some were of the opinion that it is too risky for a practitioner to concede to such pressure, due to the various sanctions contained in the codes of conduct of the professional bodies to which they belong.

Others felt that tax practitioners could certainly find themselves conceding to client demands to avoid losing clients, as this would have an adverse effect on the profitability of their practice. Some participants felt that a practitioner's decision to concede to such pressure was not easily taken and depended on many factors, such as the aggressiveness of the position, the importance of the client in terms of fees and the potential risk of sanctions. When asked how they would deal with such a situation, some participants responded that they would try to find reasonable support for the position suggested by the client. In doing so, a practitioner would consult widely and obtain concurring reviews to ensure that such a position is acceptable.

Others indicated that they would detail all the possible treatments and associated risks, but would ensure that the final decision on which position to adopt was taken by the client.

It appears that generally a tax practitioner would most likely concede to pressure exerted by a client to adopt an aggressive tax position, but only after a careful consideration of the factors listed above.

Q27A: Do you think that your firm has adequate risk management procedures in place to mitigate undue pressure from a client to adopt a particular tax position?

Yes	No	Unsure
7	0	1

Q27B: If so, what types of procedures are in place, and how does this influence your behaviour in dealing with such pressure from a client?

The majority of the participants were confident that their firm has adequate risk management procedures in place to mitigate undue pressure from clients to adopt a particular tax position. However, when asked to elaborate on these procedures, most of them listed measures that do not directly prevent such pressure, but rather ensure that the advice given is within the law, even if the practitioner was pressured into recommending such a position.

Many participants stated that the normal risk management procedures in a large firm include obtaining concurring reviews and the involvement of experts, particularly when a practitioner is required to provide advice on an area outside of his field of expertise. Having numerous levels of review ensures that the advice provided is within the law and that there is reasonable support for the tax position recommended. This process may well result in more time being spent to ensure that the advice is in line with the law, which increases the cost of the advice given. Other participants stated that they mitigate undue pressure from a client by clearly specifying their role in engagement letters. This contract confirms that the role of the practitioner is to provide advice on various possible tax treatments and that the responsibility for the final return/tax position taken rests with the client. The practitioner would also take steps to document his/her views as evidence of the advice given.

One participant stated that, as another measure adopted to prevent such pressure from a client, it is often possible in a large firm to leverage off relationships that other professionals in the firm have with the client. These other professionals may have a closer relationship with the client and may be more successful in persuading the client against taking an aggressive tax position. Other participants mentioned that an assessment of a potential client's risk profile is normally performed upfront, which enables the practitioner to decline the assignment if the client is considered to be too aggressive. Another approach mentioned by one of the participants was that of simply advising the client that the internal rules of the firm prohibit him/her from recommending the tax position sought.

Overall it would appear that there are numerous indirect safeguards in place at this firm to mitigate undue pressure from a client to adopt a particular tax position.

Q28A: Do you think that your firm has adequate risk management procedures in place to reduce dependency on a particular client in terms of the fees generated by this client?

Yes	No	Unsure
3	4	1

Q28B: If so, how do these procedures achieve this?

This question was linked to Questions 22 and 23, which asked whether a practitioner is likely to spend more time and resources on a client that is significant in terms of the revenue generated, or to concede to pressure exerted by such a client to adopt an aggressive tax position. Based on the responses to those questions, it is clear that being too dependent on a single client in terms of the fees generated by that client can compromise the independence of a tax practitioner and his/her ability to maintain strong ethical standards. It is therefore important to know whether effective procedures are in place to mitigate such risk.

The group provided mixed responses to the question about whether effective procedures are currently in place in the firm to reduce dependency on a client that represents a significant income in the form of fees. Whilst some participants stated that such dependency is unavoidable, others felt that procedures to mitigate the risk are unnecessary as the firm has a large client base and is not dependent on any single client.

Some were of the opinion that in the absence of specific procedures the risk is managed by other factors. These include limitations on fees paid for tax services imposed by audit committees and internal risk management procedures such as concurring reviews by experts. Other internal risk management procedures such as upfront assessments of a client's risk profile also served to mitigate this risk. One participant stated that dependency on a significant fee-paying client did not pose a risk to the practitioners' independence. The provision of tax services is regulated to some extent by the Income Tax Act, and as such is not a subjective area that requires judgement.

Overall there seems to be no specific procedures in place to reduce dependency on a particular client in terms of the fees generated by this client, which may compromise the objectivity of a tax practitioner.

Q29A: In your experience, is a client who is required to make a significant provisional tax payment at year end more likely to adopt an aggressive approach to minimise the payment?

Yes	No	Maybe
1	6	1

Q29B: Why do you think this is so?

The majority of the participants stated that in their experience clients who are required to make a significant provisional tax payment at year end are not likely to automatically try to minimise such a payment by being more aggressive in their approach. On the contrary, such clients tend to be more conservative in these circumstances and tend to rather focus on looking at the tax computation in greater detail to ensure that the tax positions taken are correct.

However, three participants mentioned that the type of tax decisions made by clients are driven by their general approach to tax risk, which would apply in all circumstances not only to provisional tax payments. Recent amendments to tax legislation that require the estimate of taxable income for the year-end provisional tax return to be within 80% of the actual taxable income has also curbed the tendency for clients to be overly aggressive in minimising this payment. Clients may, however, in certain circumstances, try to minimise this payment owing to operational cash flow constraints such as year-end bonus payments and profitability targets.

Based on the experiences of the respondents, it appears that clients are less likely to automatically adopt an aggressive tax position when required to make a significant provisional tax payment at year end. The findings that taxpayers are more likely to be conservative in estimating their year-end tax payment are consistent with the findings of Hite and McGill's (1992:390) study, where taxpayers listed being able to submit an accurate return as their main objective when hiring a tax practitioner. The responses also contradict the findings of Killian and Doyle (2004:163), which indicated that taxpayers are likely to be more aggressive in a tax due situation.

Q30A: In the event of a client being in a tax due position at year end, would this cause you to be more aggressive in your approach when assisting to minimise the tax due?

Yes	No
3	5

Q30B: Why?

Most of the participants indicated that a client's tax due position would not result in them being more aggressive in trying to minimise the tax due at year end. The overriding principle that is applied when preparing a client's year-end tax computation is to ensure that the position taken can be supported and is within the law. This results in a standard process being followed by the practitioner regardless of whether the client is in a tax due or refund position. One participant mentioned that the 80% rule mentioned in the response to Question 29 above serves as a deterrent to being too aggressive when calculating the tax due at year end. Those practitioners who were in favour of a more aggressive approach felt that it is their duty to assist taxpayers in paying the least amount of tax, provided it is within the law.

The responses indicate that the tax practitioners in this group are not likely to automatically provide more aggressive advice to try to minimise the taxes due by their clients.

Q31A: Would you be less concerned about tax minimisation strategies at year end if a client has paid sufficient provisional taxes during the year?	
Yes	No
2	6

Q31B: Why?
<p>Most participants felt that if a client has paid sufficient provisional taxes during the year, this will not automatically result in the practitioner putting less effort into tax minimisation strategies at year end.</p> <p>The majority of the participants emphasised that, regardless of circumstances, the objective of preparing a tax computation remains to ensure that the correct amount of tax payable is calculated. This implies that the tax practitioner will always make sure that reasonable support is obtained for the tax positions taken and that these positions are within the law – a process that remains unaffected by the client’s payment status.</p> <p>One participant also felt that it is a practitioner’s duty to consider tax minimisation strategies throughout the year and not only at year end. Another participant mentioned that the legislated requirement of ensuring that the year-end estimate of taxable income for provisional taxes is within 80% of the actual taxable income tended to encourage a more conservative approach in calculating the tax due. Two participants felt that if a client had paid sufficient provisional taxes during the year, tax minimisation was unlikely to be a priority. One stated that in such circumstances there was no risk of understatement penalties being levied, but that the practitioner would still look at the calculation in more detail when preparing the tax return. Another participant stated that time pressures at year end may also result in tax minimisation opportunities being deferred until the preparation of the final return.</p>

Based on the responses, it appears that the fact that a client has paid sufficient provisional taxes is unlikely to result in practitioners being less concerned about tax minimisation strategies, and that the overriding factor to be applied is that the correct amount payable be determined. The feedback provided by the participants to Questions 30 and 31 corroborate the findings of Killian and Doyle’s (2004:178) study, which report that the majority of the practitioners stated that the year-end payment status of their clients did not affect their approach in preparing returns.

Concluding remarks on the impact of client factors on the behaviour of tax practitioners

One participant re-emphasised that the manner in which a practitioner engages with a client is to a large extent dependent on the risk attitude of the client. Certain clients who have an aggressive approach expect their tax practitioner to consider means of reducing their tax liability, whilst conservative clients are unlikely to have such expectations. These

comments correspond with the findings of Schisler's (1994) study, which indicated that tax practitioners would only recommend an aggressive approach when faced with an aggressive client. The OECD study on the Role of Tax Practitioners stated a similar finding, which was that taxpayers themselves often set their own appetite for tax risk (KPMG, 2008:5).

4.3.6 Practitioner factors

The final section of the interview dealt with personal factors affecting practitioners. The objective of the first question was to establish whether practitioners feel that technical skills play an important role in the provision of a high-quality service, and whether maintaining this poses a challenge for them. Participants were also questioned about whether they would accept an assignment even if they did not possess the required skill, which may indicate that the desire to retain the client is more paramount than the provision of a high-quality service to that client. The final question sought to establish whether tax practitioners' loyalties lie with their clients or with the tax system.

The responses to the questions were as follows:

Q32A: Do you believe that maintaining an adequate level of technical proficiency is a challenge currently facing tax practitioners?	
Yes	No
7	1

Q32B: If so, why do you feel that this a challenge?
<p>The overwhelming majority of participants stated that maintaining an acceptable level of technical proficiency is a significant challenge in their roles as tax practitioners. The difficulty lies in keeping abreast of the large volume of legislative amendments of a complex nature that are frequently introduced.</p> <p>One participant also felt that in some instances these amendments are poorly drafted, which complicated their interpretation and practical application. Others felt that the focus on servicing clients results in practitioners not having sufficient time to dedicate to technical updates.</p> <p>Despite these challenges, participants acknowledged that sufficient training sessions are offered within the firm to ensure that practitioners are kept up to date. Maintaining technical proficiency is likely to pose a more significant challenge to practitioners in smaller firms that may not necessarily have access to such internal training.</p>

Q33A: Do you feel that maintaining an advanced level of technical proficiency is crucial to providing a high-quality service to clients?

Yes	No
8	0

Q33B: Why do you feel this way?

The entire group agreed that having an adequate degree of technical proficiency is fundamental in providing a high-quality service to clients.

Most participants felt that this enabled the provision of advice that is correct and in compliance with the law, which is synonymous with quality. One participant felt that a high-quality service includes a tax practitioner's ability to provide a client with the correct advice quickly and cost effectively, which can only be achieved if the practitioner has an advanced level of technical proficiency.

It is clear from the answers provided in response to questions 32 and 33 above that the frequency and complexity of legislative amendments currently makes it very difficult for tax practitioners to maintaining an adequate level of technical proficiency. These responses correspond with the findings of the study conducted by Marshall *et al.* (1998:1270) in which the failure to maintain technical competence was listed as the second most important ethical issue facing tax practitioners in Australia. However, the participants all agreed that such proficiency is an absolute necessity if clients are to be provided with a high-quality service.

Q34A: If a client approaches you with a technically challenging assignment for which you do not possess the required technical skills, would you

▪ accept the assignment and try to obtain the required skills during the assignment, or	7
▪ refer the client to another tax practitioner who has the required skills?	1

Q34B: Why would you choose this option?

Seven participants responded that they would accept the assignment and try to obtain the required skills during the assignment. The remaining participant chose the second option, i.e. to refer the client to another practitioner. This response was influenced to a significant extent by the fact that the participants are part of a national practice which employs professionals with a wide range of expertise. A technically challenging assignment would therefore be accepted by the practitioner as he/she will have access to the expertise of other professionals within the firm who do have the required skills. Most of the participants stated that in these circumstances they would enlist the services of experts within the firm to ensure that any advice given is correct.

Contrary to the findings of Yetmar *et al.* (1998:32), the respondents in this group indicated that they would not accept an assignment for which they personally do not possess the required skill, unless they were able to access another individual within the firm who did possess the required skills to satisfactorily deliver a quality product to the client.

Q35A: If you are aware of an unintended tax minimisation strategy within the Income Tax Act that has not yet been addressed by legislation, are you likely to	
▪ recommend it to clients as it is within the law, or	5
▪ not recommend it to clients as it would cause a loss to the fiscus?	1
▪ Your decision would depend on various factors	2

Q35B: Why would you choose this option?
<p>Five participants stated that they would recommend such a strategy to clients as it is within the law. Two stated that their decision would depend on various factors, and one stated that he would not recommend it to clients.</p> <p>Most of the participants felt that it is their duty to make clients aware of tax minimisation opportunities contained within the Act, notwithstanding that such consequences were not intended by Treasury. However, clients would be alerted to the possibility that such strategies are likely to be challenged by SARS and corrected by way of legislative amendments. The final decision on whether to take advantage of this opportunity would then be made by the client.</p> <p>Some participants felt that the decision to recommend these strategies depended on the nature and significance of the benefit, as well as the client's own level of aggressiveness towards tax planning. Encouraging clients to take advantage of such a benefit may also pose a reputational risk to the firm, which strives to maintain good relations with Treasury and the general business community. This comment corresponds with the objectives reflected in the 2008 SAICA Code of Conduct which states that members must acknowledge their responsibility to the public and not only to their clients (2008:4).</p> <p>One practitioner felt that it would be too risky to recommend such strategies to clients, particularly if SARS enforces retrospective legislative corrections and levies additional taxes and penalties on offenders.</p>

Based on these responses, it is clear that tax practitioners feel that their obligations lie with their clients, since even if the strategy is not recommended it is their duty to ensure that clients are not exposed to the risk of additional taxes for non-compliance. None of the participants specifically stated that the impact on the *fiscus* would be a concern in such circumstances.

The allegiance to their clients exists despite the system of regulation which these participants are currently subject to in terms of the internal rules of the firm and the codes of conduct of professional bodies. This corresponds with the findings of Ayres *et al.* (1989:301) and the study conducted by the IRS in 1987 (Erard, 1993:167). It is doubtful whether subjecting these tax practitioners to further regulation would make them more pro-fiscus in any way.

The above responses also contradict the findings of Stephenson's (2007:419) study to some extent. Her study found that tax practitioners assumed that their clients' primary objective is tax minimisation and consequently offered more aggressive advice. However, based on the above feedback, participants would make their clients aware of such opportunities, but would also advise them of the risks and then allow them to make their own decisions.

Concluding remarks on the impact of these factors on the behaviour of tax practitioners

None of the participants had anything further to add.

CHAPTER 5

CONCLUSION

5.1 INTRODUCTION

The overall objective of this study was to achieve a thorough understanding of the role of the tax practitioner by examining the factors that can potentially influence the manner in which practitioners provide advice. These factors were first identified through an analysis of other studies conducted worldwide and were detailed in Chapter 4. The presence and prevalence of these factors were then explored further through semi-structured interviews conducted among practitioners at a Big 4 accounting firm.

This chapter contains a summary of the main findings based on these interviews, as well as a discussion of the conclusions arrived at regarding whether each of the identified factors does indeed influence the behaviour of tax practitioners, why it may influence behaviour, and the possible impact of such influence on the advice provided to clients. The contributions made by the study are then discussed in detail. Finally, potential areas for future research are discussed.

5.2 SUMMARY OF MAIN FINDINGS

The table below summarises the findings regarding the factors tested during the interviews to determine whether they influence the behaviour of tax practitioners in the provision of tax services to clients.

Table 2: Summary of main findings

Factor tested	Influencing factor?
New legislation to regulate tax practitioners	
Would this improve the standard or quality of services rendered to clients?	Yes
Would this raise the standard of ethical behaviour among practitioners?	Yes
Would this result in greater compliance being achieved in South Africa?	No
Exercising 'due diligence'	
Is this a key ethical issue facing tax practitioners in South Africa?	Yes

Factor tested	Influencing factor?
Is the term subject to different interpretations by practitioners?	Yes
Will legislating the term result in more frequent examinations of data?	Yes
Consideration of professional bodies' codes of conduct	
Do practitioners consider their professional bodies' codes of conduct when providing tax services?	Yes – indirectly
Application of the term 'reasonable support'	
Can the term be interpreted differently by practitioners?	Yes
Can the vagueness of the term be used to justify aggressive tax positions?	Yes
Can the clarity of the term be improved by using a numeric threshold?	No
Threat of a SARS audit	
Is this an important consideration when providing advice to clients?	No
Will an audit result in greater care being applied in subsequent returns?	No
Will more audits result in greater care being applied by practitioners in future?	Yes
Client factors	
Will a practitioner devote more time/resources to an important client?	Yes
Will a practitioner concede to pressure from an important client to adopt an aggressive tax position?	Yes
Will a practitioner provide conservative advice to a client who demands aggressive advice?	No
Will a refusal to concede to an important client's demands strain client relations?	Yes
Will tax practitioners concede to client pressure to avoid losing a client?	Yes
Are there procedures in place to mitigate pressure from a client?	Yes
Are there procedures in place to mitigate financial dependency on a client?	No
Are clients likely to adopt an aggressive approach to minimise year-end payments?	No
Will practitioners be more aggressive to minimise clients' year-end payments?	No
Will practitioners be less concerned about tax minimisation if a client is not required to make a tax payment at year end?	No
Practitioner factors	
Is maintaining an adequate level of technical proficiency a challenge?	Yes
Is maintaining an advanced level of technical proficiency crucial to providing a high-quality service to clients?	Yes
Are practitioners likely to recommend unintended tax minimisation strategies to clients?	Yes, with a caution issued to clients

The reasons for these factors possibly influencing the behaviour of tax practitioners and the possible impact on the type of advice provided to clients are set out below.

5.2.1 Legislative factors (regulation)

The responses to Questions 8, 9 and 10 indicated that the majority of the participants would welcome the proposed system of regulation of tax practitioners, which would require them to be registered with a controlling body and meet certain education and experience requirements. Most felt that such legislation would impact the quality of advice given to clients by ensuring that only suitably qualified tax practitioners would be allowed to provide advice. Many stated that there is at present a group of unregulated, unqualified tax practitioners who act unethically and provide advice of a low quality to clients, and that these persons are likely to be eliminated by such a system of regulation. Taxpayers can expect to be more effectively protected against unethical tax practitioners by virtue of the various proposed sanctions and disciplinary measures implemented against such persons, provided that is adequately enforced.

The specific requirement to exercise 'due diligence' in determining the accuracy and reasonability of representations made by clients, which was tested in Questions 11-14, was identified as an ambiguous concept in practice. Practitioners felt that, owing to various factors, such as the lack of guidance regarding its meaning, the lack of skill at a practice, time and cost, this term lends itself to different interpretations. This could well result in advice of varying quality being provided by different practitioners. Going forward, the legislation of the term may result in practitioners spending more time on meeting this requirement, which may increase the costs of tax services.

From the feedback provided, it appears that the proposed system of regulation and the requirement to exercise adequate 'due diligence' is a factor that will influence the manner in which tax practitioners deal with their clients and the type of advice that taxpayers can expect to receive. Taxpayers should appreciate that the threat of sanctions contained in this legislation is likely to result in tax practitioners being more cautious in their approach to providing advice. Although this may see an increase in the costs of tax service, such measures are likely to result in clients receiving more conservative, compliant advice.

5.2.2 Professional bodies

The responses to Question 15 indicate that the codes of conduct of professional bodies do indeed influence the behaviour of tax practitioners, even though they do not consciously think about them while performing their daily work. However, the responses to Questions 16 and 17 suggested that certain elements of the guidance provided in these codes are ambiguous, for example the requirement that a member may adopt a particular tax position in favour of the client, provided that there is reasonable support for the position. Different practitioners may have different ideas regarding ‘the amount of evidence accepted as constituting reasonable support’, which may give rise to situations where the advice provided may not necessarily be compliant with the law. Unless further guidance/training on the application of the term is provided by the respective professional bodies, taxpayers can expect such ambiguity to result in tax practitioners offering advice of varying quality.

5.2.3 Perceived audit probability

The responses to Question 19 indicated that the threat of an audit by SARS was not a significant factor influencing the type of advice given and the manner in which it is provided to clients. The responses indicated that practitioners are not governed by the likelihood of a position being challenged by SARS, but rather by whether the position taken complies with the law. Furthermore, based on the responses provided to Question 20, a previous audit conducted by SARS on a taxpayer would not impact the standard applied in preparing the subsequent year’s tax return, but the participants indicated that they would revisit positions pronounced by SARS to be incorrect. The threat of an audit may, however, serve as a deterrent to unethical practitioners who currently adopt unduly aggressive positions.

Although in the case of practitioners that already apply an acceptable standard of care an increased audit focus by SARS is unlikely to impact the manner in which tax advice is provided, the responses to Question 21 imply that taxpayers can expect to see a shift in behaviour towards a more cautious approach among aggressive practitioners.

5.2.4 Client factors

5.2.4.1 Importance of and pressure from a large fee-paying client

According to the responses to Questions 22-26, a client that, in terms of its income-generating potential, is significant for both the tax practitioner and the firm in which the practitioner operates could influence the behaviour of a tax practitioner. Practitioners would devote more time and resources to the clients that contribute the most to the profitability of the practice. These clients could, in certain instances, influence practitioners to recommend aggressive positions since refusal to concede to such demands could strain relations with the client or result in the practitioner losing the client. However, these factors are more likely to influence practitioners in smaller firms, which may be dependent on a single large fee-paying client, than practitioners in a larger practice with a wider client base. As indicated by the responses to Question 28, there are no specific rules applicable to tax practitioners to reduce dependency on a particular client in terms of the fees generated by this client. This may result in large fee-paying clients receiving preferential treatment over smaller clients.

According to the response to Question 27, practitioners mitigate the risk of being pressured into recommending a position by trying to find reasonable support to justify such a position. Further research and consultation undertaken by practitioners to obtain such reasonable support will increase the time required to be able to provide an opinion, and consequently the cost of the advice provided. Most importantly, practitioners use engagement letters to make their clients aware of the fact that their role is to provide advice on various possible tax treatments and that the responsibility for the final return/tax position taken rests with the client. Should reasonable support not be found for the specific position sought, the taxpayers could instead find themselves receiving advice on various possible tax treatments from which they may then choose one that satisfies their needs.

5.2.4.2 Year-end payment status of the client

The responses to Questions 29–31 indicated that a client's payment status at year end did not influence the behaviour of tax practitioners in any way. Regardless of whether a client is in a tax-paying or a tax due-position, the overriding principle applied by practitioners in

preparing the year-end tax computation is to ensure that the tax positions taken can be supported by law, and that the correct amount of tax payable is determined. Practitioners are to a large extent influenced by provisional tax legislation, which provides for a 20% understatement penalty if the taxable income declared at year end is less than 80% of the actual taxable income for the year. This rule resulted in both practitioners and clients being more conservative in their approach to calculating the taxes due at year end.

5.2.5 Practitioner factors

5.2.5.1 Tax practitioner experience

Despite the considerable differences that existed with regard to the number of years of experience that the participants have had in their profession, their responses did not lead to any of them being identified as being overly aggressive. There is thus insufficient evidence to suggest that there is a link between a practitioner's experience and the tendency to offer aggressive advice.

5.2.5.2 Educational requirements

The challenge of maintaining an acceptable level of technical proficiency was identified in Question 32 as a factor that influenced the behaviour of tax practitioners. Practitioners find it difficult to keep abreast of the large volume of complex legislative amendments while simultaneously dedicating sufficient time to client service. In their responses to Question 33, the participants indicated that maintaining an acceptable level of proficiency was considered crucial to being able to provide a high-quality service to clients. The inability to constantly remain adequately informed on legislative amendments may result in practitioners providing incorrect advice, particularly if there is no concurrence by another tax practitioner.

Based on the responses to Question 34, the practitioners in this group would also not accept an assignment unless they themselves or another person employed by the firm possessed the skills required to deliver on the assignment. It is questionable whether practitioners in a smaller firm with limited in-house expertise would have responded in the same way.

5.2.5.3 Practitioner allegiance

The responses to Question 35 indicate that the primary allegiance of tax practitioners lies with their clients, rather than with the state or the fiscus. Even though various professional bodies' codes of conduct suggest that practitioners have a duty towards the tax system and to South Africa in general, practitioners are more likely to attribute greater importance to the interests of their clients.

5.3 CONTRIBUTIONS MADE BY THIS STUDY

The findings of this research builds on the studies conducted by Nienaber (2010) and Killian and Doyle (2004) by exploring in further detail the practical impact of key factors identified specifically from a South African perspective. The research has provided further insight into why particular factors influence the behaviour of tax practitioners and how this could impact on the type of advice given, which should provide taxpayers with a better understanding and acceptance of the framework within which practitioners have to operate.

The feedback also indicates how and to what extent tax practitioners can influence the compliance decisions of their clients in practice, thus providing information that can assist SARS in refining their focus on tax practitioners as a compliance priority area in the future.

5.4 SUGGESTIONS FOR FUTURE RESEARCH

Since the study was limited to a small group of tax practitioners, the research could be extended to a larger group in order to confirm or disprove the findings of this study. The impact of the factors that were examined on practitioners in other Big 4 companies should also be explored, as their responses may differ from those of the participants in this study. Such findings would also contribute to our understanding of the role of the greater tax practitioner body that constitutes this tier of tax advisors.

From the feedback provided, it appears that some of the factors explored through these interviews may be more influential in smaller firms than they were found to be in this Big 4

firm. A similar study should therefore be conducted among practitioners in smaller firms, given that these individuals may be subject to different internal firm rules and may serve a different client base than the practitioners interviewed as part of this study.

Given that the TAA was promulgated after the completion of these interviews, a follow-up study could be conducted to ascertain how the participants view the newly enacted legislation. Further research should also be conducted to determine whether this regulatory framework for the regulation of tax practitioners adequately takes into account the impact of the factors explored in this study.

5.5 CONCLUSION

Tax practitioners can certainly play an important role in influencing the compliance behaviour of their clients, thus contributing to some degree to the strength of the tax system in South Africa. However, this study has shown that these practitioners operate under a complex system of conflicting factors, which impacts the type of advice given to clients and the manner in which it is given.

By outlining the influences of these factors, this research has created a greater understanding amongst taxpayers of the boundaries within which tax practitioners operate and will contribute towards making them more accepting of the type of advice given.

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APPENDIX A

-Interview Discussion Guide-

Interview discussion guide

UNDERSTANDING THE ROLE OF THE TAX PRACTITIONER

The purpose of this interview is to ascertain the existence and prevalence of various factors that influence the behaviour of tax practitioners.

SECTION 1: DEMOGRAPHIC PROFILE

Q1. Please indicate your gender

- Male
- Female

Q2: Please indicate your level

- Senior Manager
- Associate Director
- Director

Q3: Please indicate your service line

- Business taxes
- Value-added tax

Q4: What type of services do you provide to clients?

- Compliance
- Technical advice
- Both

Q5. How many years of experience do you have in the tax profession?

- Less than 10 years
- 10-15 years
- More than 15 years

Q6: What is your highest academic qualification?

- Bachelor's degree
- Honours degree
- Master's degree

Q7: Please indicate the professional body to which you belong

- None
- The South African Institute of Chartered Accountants
- The South African Institute of Professional Accountants
- The South African Institute of Tax Professionals
- Other

The remainder of the interview deals with various factors that have been identified as influencing the behaviour of tax practitioners. Each factor commences with an introductory paragraph that

contextualises the questions. This is then followed by several questions relating to the potential effect of this factor.

Please consider each question carefully before answering, and provide detailed feedback to substantiate your response.

SECTION 2: LEGISLATIVE FACTORS

The South African Revenue Services (SARS) has stated that legislative proposals to regulate tax practitioners will be resumed in 2013. We have already seen amendments contained in the Tax Administration Act No 28 of 2011, in which SARS has introduced provisions whereby tax practitioners are required to be registered with a 'recognised controlling body'. Going forward, new legislation may well be introduced that includes mandatory requirements in respect of education and experience that must be met in order to qualify for registration as a tax practitioner.

Q8A: Would this, in your opinion, improve the standard or quality of services rendered to clients?

Yes	No
-----	----

Q8B: If so, how do you think it will improve the quality of services rendered to clients? If not, why do you believe that these legislative proposals will not improve the standard of services provided to clients?

Q9A: Do you believe that this would raise the standard of ethical behaviour among tax practitioners?

Yes	No
-----	----

Q9B: If so, how do you think it would raise the standard of ethical behaviour among tax practitioners? If not, why do you believe that these legislative proposals will not result in a higher standard of ethical behaviour amongst tax professionals?

--

Q10A: Do you feel that this would result in greater compliance being achieved in the overall tax system in South Africa?

Yes	No
-----	----

Q10B: Why?

--

In its Discussion Paper on Regulating Tax Practitioners, SARS lists as a punishable offence the provision of tax services without exercising 'due diligence' in determining the accuracy and reasonability of representations made by clients.

Q11A: Do you feel that the exercise of 'due diligence' is currently a key ethical issue facing tax practitioners in South Africa?

Yes	No
-----	----

Q11B: Why do you feel this way?

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--

Q12A: In your opinion, is the term 'due diligence subject to varying interpretation by practitioners?

Yes	No
-----	----

Q12B: How do you think practitioners interpret this term in practice?

--

Q13A: Do you think that the legislation of the above requirement is likely to cause practitioners to conduct more frequent or thorough examinations of data to support client representations?

Yes	No
-----	----

Q13B: If so, why do you feel this way?

--

--

Q14A: Do you agree with the following statement? 'As long as a client's representation appears reasonable, I am not required to examine underlying supporting data.'

Yes	No
-----	----

Q14B: Why do you agree/disagree?

--

General: Do you have any further comments on the impact of legislative factors on the behaviour of tax practitioners?

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SECTION 3: PROFESSIONAL BODIES

The SAICA Code of Conduct states that a practitioner is entitled to present the best position in favour of a client, provided that it is consistent with the law. It also states that, should any doubt

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Q17A: Do you feel that practitioners are able to use the vagueness of the term 'reasonable support' to justify aggressive tax positions?

Yes	No
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Q17B: In your opinion, how would they be able to do this?

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Q18A: Do you think that the clarity of this term could be improved by replacing the term 'reasonable support' with a more numerical threshold, such as 'a one-in-three chance of success'?

Yes	No
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Q18B: In your opinion, what measures could be taken to improve the clarity of the term?

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General: Do you have any further comments regarding the impact of professional bodies on the behaviour of tax practitioners?

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SECTION 4: PERCEIVED AUDIT PROBABILITY

In recent years, SARS has increased the resources dedicated to conducting investigative audits. The body has indicated its intention to intensify its audit efforts going forward.

Q19A: Do you consider the threat of an audit by SARS to be an important consideration when giving advice to a client?

Yes	No
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Q19B: How would this threat influence your behaviour in practice?

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Q20: If your client is currently undergoing an audit on a previous year of assessment, would that cause you to apply a greater standard of care to the current year's tax return?

Yes	No
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Q20B: Why?

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Q21A: In your opinion, would an increased audit focus by SARS result in a greater standard of care being applied by practitioners going forward?

Yes	No
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Q21B: Why do you feel this way?

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General: Do you have any further comments on the impact of a perceived audit probability by SARS on the behaviour of tax practitioners?

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SECTION 5: CLIENT FACTORS

The following statements relate to various client influences. For the purposes of this section, an 'important client' is defined as one that is significant in terms of its income-generating potential for the both the tax practitioner and the firm in which the practitioner operates.

Q22A: Do you feel that a tax practitioner will devote more time and resources to an 'important client' than to one who generates less revenue for the firm?

Yes	No
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Q22B: Why do you feel this way?

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Q23A: In your opinion, would a tax practitioner concede to pressure from an 'important client' to adopt an aggressive tax position?

Yes	No
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Q23B: Why?

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Q24A: When faced with a client that demands the adoption of an aggressive tax position, do you feel that a tax practitioner is likely to rather provide conservative advice?

Yes	No
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Q27A: Do you think that your firm has adequate risk management procedures in place to mitigate undue pressure from a client to adopt a particular tax position?

Yes	No
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Q27B: If so, what types of procedures are in place, and how does this influence your behaviour in dealing with such pressure from a client?

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Q28A: Do you think that your firm has adequate risk management procedures in place to reduce dependency on a particular client in terms of the fees generated by this client?

Yes	No
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Q28B: If so, how do these procedures achieve this?

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Q29A: In your experience, is a client who is required to make a significant provisional tax

payment at year end more likely to adopt an aggressive approach to minimise the payment?

Yes

No

Q29B: Why do you think this is so?

Q30A: In the event of a client being in a tax due position at year end, would this cause you to be more aggressive in your approach when assisting to minimise the tax due?

Yes

No

Q30B: Why?

Q31A: Would you be less concerned about tax minimisation strategies at year end if a client has paid sufficient provisional taxes during the year?

Yes

No

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Q33A: Do you feel that maintaining an advanced level of technical proficiency is crucial to providing a high-quality service to clients?

Yes	No
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Q33B: Why do you feel this way?

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Q34A: If a client approaches you with a technically challenging assignment for which you do not possess the required technical skills, would you

- accept the assignment and try to obtain the required skills during the assignment, or
- refer the client to another tax practitioner who has the required skills?

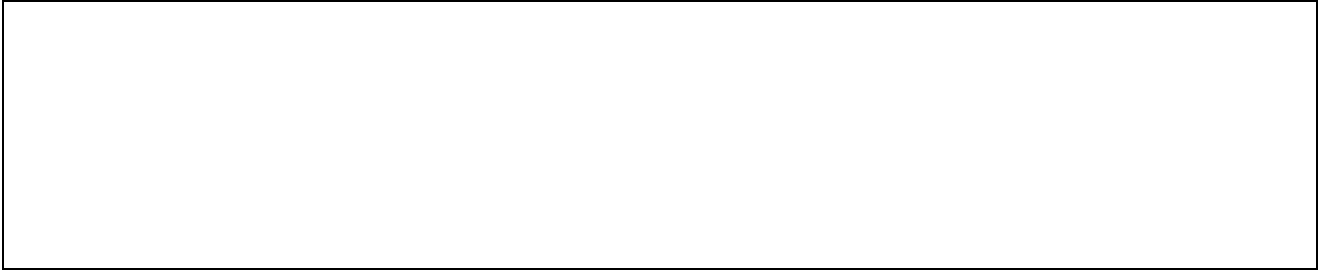
Q34B: Why would you choose this option?

Q35A: If you are aware of an unintended tax minimisation strategy within the Income Tax Act that has not yet been addressed by legislation, are you likely to

- recommend it to clients as it is within the law, or
- not recommend it to clients as it would cause a loss to the fiscus?

Q35B: Why would you choose this option?

General: Do you have any further comments on the impact of these factors on the behaviour of tax practitioners?



**Thank you for participating in this interview.
We appreciate your assistance.**

APPENDIX B
- Informed consent form -



Informed consent for participation in an academic research study

Dept. of Taxation

UNDERSTANDING THE ROLE OF THE TAX PRACTITIONER WITHIN THE TAXPAYER AND TAX PRACTITIONER RELATIONSHIP

Research conducted by:

Ms. R Mahomed (10596802)
Cell: 083 694 1514

Dear Respondent

You are invited to participate in an academic research study conducted by Raeesa Mahomed, a master's student in the Department of Taxation at the University of Pretoria.

The purpose of the study is to ascertain the existence and prevalence of various factors that influence the behaviour of tax practitioners

Please note the following:

- This study involves an anonymous survey. Your name will not appear on the questionnaire and the answers you give will be treated as strictly confidential. You cannot be identified in person based on the answers you give.
- Your participation in this study is very important to us. You may, however, choose not to participate and you may also stop participating at any time without any negative consequences.
- Please answer the questions in the attached questionnaire as completely and honestly as possible. This should not take more than 20 minutes of your time
- The results of the study will be used for academic purposes only and may be published in an academic journal. We will provide you with a summary of our findings on request.
- Please contact my supervisor, Mr G Nienaber (Gerhard.Nienaber@up.ac.za) if you have any questions or comments regarding the study.

Please sign the form to indicate that:

- You have read and understand the information provided above.
- You give your consent to participate in the study on a voluntary basis.

Respondent's signature

Date

