

AN EXPLORATORY STUDY OF MALAYSIAN TAX PRACTITIONERS' PERCEPTION ON THE PRACTICE OF AGGRESSIVE TAX AVOIDANCE

Nur Fikhriah Binti Takril, and Sri Wahyu Sakina Ahmad Sanusi
Department of Accounting
Faculty of Management and Muamalah
Kolej Universiti Islam Antarabangsa Selangor
nurfikhriah@kuis.edu.my, sriwahyu@kuis.edu.my

ABSTRACT

Malaysian tax research has put little attention on the tax morale of Malaysian tax environment. Therefore, the objective of this study is to explore the perception of Malaysian tax practitioners in giving tax advice to tax clients whether to promote aggressive tax avoidance or to promote tax compliance. It is accordance to the implementation of SAS which had given taxpayers freedom to declare their income and compute their own tax liability. This self-determination in tax assessment had given them the opportunity to manipulate the tax account which resulted to lower or minimum tax paid. Aggressive tax avoidance is a non-compliance behavior by exploiting tax law ambiguity, playing with accounting figures and transactions to reduce tax. Moreover, the SAS had increases the demand of tax practitioners services as most taxpayers especially from the corporate sector feel incompetence and unqualified to file their own tax affairs appropriately. A survey approach is used to obtain information from tax practitioners practicing in public accounting firms in urban towns. Tax practitioners who perceived leniently on the practice of aggressive tax avoidance signify a likelihood of aggressive tax avoidance participation. The finding of this study shows that Malaysian tax practitioners perceived aggressive tax avoidance as unethical behavior. The aggressive tax avoidance practice is contributed by the tax clients' incomplete documentation and competitive tax environment. However, the results also indicate that tax practitioners are at the state of dilemma whether to satisfy their tax clients request to minimize tax or to the society demand for a fair tax share. The results also indicate that there is a need for collaborative and collective effort from various parties such as taxpayers, tax practitioners and tax authority to shape and sustain a good environment of tax practices.

Key words: *perceptions, Malaysian tax practitioners*

INTRODUCTION

Over the years, the globalized market had given a progressive impact to the socio-economic development of Malaysia. The market exchange, import and export, merging businesses and others had given a significant impact to the government administration. Subsequent to the rapid development, the business sector also reforms to keep pace to the development of a more globalized business environment. It also generates more opportunities for companies to expand, thus increases tax complexity as the tax law is frequently revised and reformulated to suit the changes. The rapid development of the economic environment had driven the Inland Revenue Board of Malaysia (IRBM) to issue and to formulate new tax policy and public rulings to supervise and guide businesses and taxpayers in filing tax return. The issuance of new policy and complexity affected the accounting entries; consequently increase taxpayers compliance cost. The cost associated to the tax compliance such as time spent to plan and understand the changes in tax law, purchasing books and materials related to the tax changes will subsequently increase. Therefore, taxpayers especially from the business sectors seek for tax practitioners' assistantship to advice and manage their tax matters.

Consequent to the globally changes in tax position, the role of the tax practitioners become important in boosting the tax compliance among taxpayers. According to Asher and Rajan (2001) the globalization process has changed the level of accountancy firms' services such as audit and assurance, financial advice, tax planning and the manner of the administration and compliance. Sikka and Hampton (2005) pointed out that until 1960s, accounting and auditing services were the only core business for accountancy firms but the globalization had pushed this profit making organization to expand the related services to a wider prospect including tax advisory services. Moreover, the services provided by tax practitioners are comprehensive starting from the filing, record maintaining, aligning tax with authority and others. Besides, tax practitioners also solve taxpayers' tax anxiety by providing advice and consultation in managing and minimizing tax liabilities. Minimizing tax or the tax game playing requires skills and expertise and must be within the legal constraint. Therefore, tax practitioners play a significant role in the collection of taxes as the advice and suggestion may influence taxpayers' decision making. This phenomenon had turned tax practitioners to become client advocates unlike auditor who needs to be independent of their clients in giving opinion (Bobek, Hageman and Hatfield, 2010).

Looking at the crucial role of tax practitioners in determining and influencing taxpayers' compliance, the IRBM should think of the mechanism on how to supervise and guide the tax practitioners to act on behalf of the government and not to satisfy their clients' needs. However, Kirchler (2007, p.5), mentioned that tax laws are not always clear and it is further highlighted by Slemrod, Blumenthal and Christian (2001), that although legality can assert the differences between evasion and avoidance, in practice the line is indistinguishable either because the law is clear but not known by to the taxpayers or due to the tax administration's ignorance. In this study, attention is given on the tax compliance focusing on tax practitioners' tax morale i.e. on the practice of aggressive tax avoidance in advising tax clients. This is because; tax practitioners are persons who are acting on behalf of taxpayers. The unethical tax practitioners will utilize the loopholes or the grey area in the tax law to minimize their clients' tax liability unethically.

The concerns are given on the position of clients in influencing the ethical judgment of tax practitioners in providing tax advisory services and the position of tax practitioners whom act

as the intermediaries between taxpayers and IRBM. Added by D'Ascenzo (2005) tax practitioners are able to influence compliance behaviour among taxpayers as they are the intermediaries between clients and the authority. Nevertheless, Slemrod, Blumenthal and Christian (2004) wrote that, tax practitioners' effects on taxpayers compliance is evident as "rule enforcers but ambiguity exploiters". Some of tax practitioners will utilize their expertise to aggressively minimize their clients' tax liability by exploiting tax law ambiguity, playing with accounting figures and transactions in order to satisfy the demands to reduce tax. The creative tax design will eventually increase the profit of the tax firm. As noted by Kirchler (2007, p.5), business will make use of the loopholes and grey areas in the tax law and find ways and means to reduce tax, even moving into concealing income or inflating expenses by creating fictitious figure.

Basically, there are two types of tax resistance which are tax avoidance and tax evasion, the former is legal and the latter is an illegal action. According to Kassipilai (2003) tax avoidance denotes the ingenuity to arrange tax affairs in a proper manner as to reduce tax payable, while tax evasion is a deliberate action of non-compliance resulting in lower tax payment. Therefore, it can be suggested that tax practitioners are professions that stimulate the tax evasion to tax avoidance by aggressively minimize clients' tax liabilities. This can be done by manipulating the loopholes and tax laws ambiguity using their expertise and knowledge in tax accounting. Generally, there are two points related to tax avoidance, first, it occurs across the tax spectrum and is not a peculiar to any tax types and second, the legislation that addresses the avoidance is imprecise (Kierchler,2007). The lacks of imprecision will in turn create uncertainty and therefore motivate tax avoidance practices. Nevertheless, the practices of aggressive tax avoidance can easily be considered as tax evasion as according to Marshall, Smith and Armstrong (2006) aggressive tax avoidance refers to events that tax practitioners choose to report situations favorable to the clients when that position is ambiguous.

It is a crucial element to recognize the moral issue in communicating and presenting truthful data in disclosing tax information to the government and the public. As pointed out by Sikka and Hampton (2005) the moral issue needs to be acknowledged when couched with accounting context because the ability to those with knowledge to manipulate to the desired end without deliberation is immense. Ethical issue arises among the tax practitioners are mainly related to the need to satisfy clients' request to minimize tax and at the same time to protect the interest of the government and the public. As highlighted by Alm and Mckee (2004), the needs to satisfy multiple interest groups lead to ethical conflict among the accountants. It indicates that tax practitioners are at the state of dilemma whether to serve the demand of the clients or to fulfill the responsibilities to the government and the public by promoting tax compliance among taxpayers.

In certain condition, aggressive tax avoidance practice among the accountancy firms is rationalized as helping the clients to reduce their tax responsibility. However, it is at the expense of reducing government tax collection. As noted by Sikka and Hampton (2005), that accountancy firms are identical as the key players in the rules avoidance industry. Therefore, the aggressive tax avoidance practice is compromising tax practitioners' ethical conduct and jeopardizing the government tax collection. This study is intended to explore the perception of Malaysian tax practitioners in giving tax advice to clients whether to promote aggressive tax avoidance or to promote tax compliance in attending to their clients' tax affairs. As a result it brings out the research objectives as follows:-

- RO1 To explore the perception of Malaysian tax practitioners towards the practice of aggressive tax avoidance.
- RO2 To seek Malaysian tax practitioners' perception on tax clients documentation as a factor in influencing the aggressive tax avoidance practices.
- RO3 To seek Malaysian tax practitioners' perception on the advocacy of competitive tax environment as a factor in influencing aggressive tax avoidance practices.

To meet the objectives of the study, three research questions were developed to explore the ethical conduct of Malaysian tax practitioners in giving advice and consultation to the clients. The research questions are as follows:

- RQ1. What is the perception of Malaysian tax practitioners' towards the practice of aggressive tax avoidance?
- RQ2. Do taxpayers' improper documentation influences Malaysian tax practitioners' practices?
- RQ3. Do tax practitioners take into consideration of competitive tax environment in practicing aggressive tax avoidance?

Based on the past studies, despite the fact that IRBM had streamlined the tax administration such as Self Assessment System (SAS) and e-filing, thus far, there are no empirical studies conducted to investigate the perception of Malaysian tax practitioners towards the practice of aggressive tax avoidance in giving tax advice.

LITERATURE REVIEW

Development of Malaysian tax system

Year 2000 has been a stepping stone to IRBM to modernize and streamline the tax system in Malaysia. It started with the movement of tax return from the preceding year (PY) basis to current year (CY) basis. Previously, tax assessment will be made by IRBM by way of an Official Assessment (OAS) where the taxpayer will have to submit the annual tax return under a prescribed date and the IRBM will then issue a notice of assessment payable within 30 days (Hijatullah and Pope, 2008). Consequent to the simplification of business basis period, the IRBM took another step by introducing the SAS. Hijatullah and Pope (2008) mentioned that the SAS was implemented in stages starting with companies in year 2001 and followed by other tax payer like self-employed, partnership, cooperatives and employment income in year 2004. The rise of the internet and its commercialization has transformed the manual return of SAS to the electronic SAS return which also known as E-Filling. The E-Filling system was introduced in year 2005 to all tax payers where they have to file their tax return (Form C, Form B and Form BE) online.. With the introduction of the E-Filling, taxpayer can submit their forms easily through internet and at the comfort of their own house. All these feasible improvements had lessened the burden of taxpayers and improve the image of Malaysia tax administration. However, the real challenge faced by IRBM is to inculcate and maintain public confidence upon the organization.

Aggressive tax avoidance

The tax planning, tax avoidance and tax evasion affected the three groups of the social system in a government tax policy namely the tax authorities, tax practitioners or professionals and taxpayers. According to Kirchler (2007, p.1) the Classic Economic Theory portrayed taxpayers as individual that are binds to the rational cost and benefit behaviour. The market of tax evasion or tax avoidance under the name of tax planning had been marketed due to the globalized business environment. An economically motivated taxpayer will easily engaged in a

tax shelter or aggressive tax avoidance scheme in an event when the benefit gained is more than the cost incurred without considering the effect of the engagement. As noted by Scanell (2005), large public accounting firm had facilitate clients with tax evasion through the aggressive and questionable tax shelters in order to avoid or evade the corporate tax obligation. It is further added by Book (2008), the decision made by tax practitioners can contribute to taxpayers failing to comply with the internal revenue laws in a number of ways, for example by actively facilitating taxpayer intentional misconduct, failing to apply the law to a client's circumstances, misunderstanding the law (including overstating a taxpayer's liability), or failing to obtain relevant facts from clients.

However, different findings were discovered in the study by Collins, Milliron and Toy (1990) where taxpayers prefer the tax practitioners that prepare correct tax return and the desire to engage tax practitioners service is to reduce the tax burden of preparing own return not to minimize tax liabilities. The sample study by Collins et.al (1990) was on household taxpayers only where the effort of minimizing tax liability is limited due to the small income earned as compared to corporate sectors which involved sophisticated business transaction, globalised businesses and higher tax rate.

Tax clients' documentation

Marshall, Armstrong and Smith (1998) had examined the perception of ethical conduct in tax practice on Western Australia tax agents. The study had determined that the most ethical issue among practitioners was the inability to acquire information and documentation from clients in the events of incomplete and inaccurate information. From the study, the most highly important issue to be addressed in ethical issue was the failure to conduct reasonable enquiries among clients and technical incompetence. The study reveals that practitioners' education, technical competence and credibility are the major tax practitioners' ethical issues in carrying out their professionals conducts.

Bobek and Radtke (2007) objective of the research was to examine the organizational culture influence to tax practitioners' ethical conduct. The result showed that more than half of the participants had encountered the dilemma of undue reliance on the prior year's return. On the other hand, the least frequently encountered dilemma was problem in completing all the work necessary during the engagement. Furthermore, respondents reported that the most ethical dilemmas were dealing with clients. Client pressure, client retention concerns, and late delivery of information were the primary causes of tax practitioners' dilemma.

Competitive tax environment

A study by Sakurai and Braithwaite (2001), examined the Australian taxpayers' perception on the ideal tax adviser whether the taxpayer preferred creative accountant whom can aggressively minimize tax or tax adviser whom cautiously minimize tax. The result of the research found that, opportunistic taxpayer will rather choose creative tax agent and taxpayer who abide by the law will choose cautiously minimize tax agents. Other than that, the result shows that 77% of the sample agreed that tax agents are the most influential person in clarifying their tax anxiety rather than the tax authority.

The study of Cloyd (1995) seek to understand the effects of financial accounting conformity associated with aggressive or reducing taxable income on tax practitioners' advice of

aggressive tax position. The recommendations made by tax practitioners on corporate tax and financial accounting treatment usually were associated with ambiguous transaction and reporting. The study argued that tax preparers' advice may be influenced by the cost and benefit to the accounting firm, clients intended financial accounting treatment and client attitude on aggressive tax return position.

Sharing the same area of research, Murphy (2004) attempted to understand the collaboration between high risk taxpayer and opportunistic tax practitioners by looking at the aggressive taxpayers' attitudes and perception on the Australian tax system. Results indicated that there were differences between aggressive and non-aggressive taxpayers, and it was important to be noted by the authority to formulate better tax policy. The study had compared taxpayers that wanted to have aggressive tax practitioners between those who refuse to have an aggressive tax practitioners. It is to be found that, aggressive taxpayers were those from younger age, earn more and are less educated than non-aggressive taxpayers.

A recent study by Bobek, Hageman and Hatfield (2010), further examined the client advocacy influence in tax practitioners' advice. The result was consistent to the past studies where clients' characteristics influenced tax practitioners' advocacy attitudes, judgment and decision making. It indicates that tax practitioners sometimes are in the state of dilemma or unintentionally making judgments in favour of client characteristics. It may due to the difficulties in separating clients' importance and evidence evaluation roles.

METHODOLOGY

In order to explore the perception of aggressive tax avoidance practice among tax practitioners in Malaysia, survey method was employed. In general, the questionnaire was separated into four sections. Part A is the questions which cover the demographic data of the respondents for example gender, age, years of experience in tax consulting, designation in the accounting firm and others. In the second part (section B,C and D), respondents were asked to indicate their perception on the practice of aggressive tax avoidance based on five point likert scale with 1 indicates strongly disagree and 5 point indicates strongly agree. The questions were designed to gain additional information on the way Malaysian tax practitioners deal with tax clients' issues or problems. The questionnaire had been distributed using three methods namely, mail survey, online survey and personal administered survey to 380 accounting firms across peninsular Malaysia.

The data analysis used in this study is the frequency analysis aims to discover the information on demographic profile of the respondents. In order to analyze the data of the current study, a descriptive analysis was used to identify the means for each questionnaire items. Moreover, descriptive analysis was run to analyze the data based on the frequency table, percentage distribution, measure of central tendency and measure of dispersion.

FINDINGS

A total of 131 questionnaires were received, 10 sets were rejected due to incomplete information making the useable sets of 121 respondents which represented 32% of the sample. The demographic detail of the respondents was summarized in table 1.

TABLE 1

Category	Variables	Frequency	Percentage
Gender	Male	50	41.3
	Female	71	58.7
Age	<20 years	3	2.5
	20 to 29 years	64	52.9
	30 to 39 years	45	37.2
	40 to 49 years	8	6.6
	>50 years	1	0.8
Marital status:	Married	62	51.2
	Single	59	48.8
Specialization:	Taxation	24	19.8
	Taxation and other accounting services	97	80.2
Tax consulting experience	<5 years	51	42.1
	5 to 10 years	49	40.5
	11 to 15 years	19	15.7
	16 to 20 years	2	1.7
Position	Associates Senior	24	19.8
	Manager	49	40.5
	Partner	28	23.1
	Others	9	7.4
		11	9.1
Qualification	Diploma	19	15.7
	Bachelor	90	74.4
	Master	2	1.7
	Others	10	8.3
Religion	Islam	95	78.5
	Buddhism	17	14.0
	Hinduism	7	5.8
	Christianity	2	1.7

One of the objectives of this study is to explore the perception of Malaysian tax practitioners towards the practice of aggressive tax avoidance. Tax practitioners whom perceived aggressive tax avoidance leniently would address a likelihood of participation on the aggressive avoidance scheme. On the other hand, tax practitioners whom perceived aggressive tax avoidance as unethical would reflect that non-participation in the aggressive avoidance scheme. In other words, it means that the higher the mean score the more likelihood of participation or agreement to the statement.

TABLE 2

Rank	Description	Mean	SD
1	Taxpayer would prefer to appoint a creative tax practitioners in advising their tax matters	3.94	0.778
2	Tax practitioners play a significant role in tax minimization	3.74	0.854
3	Abusive tax avoidance is morally wrong.	3.71	0.961
4	I enjoy the challenge of minimizing my clients' tax due	3.60	0.802

The results of table 2 answered the RQ1 in a way that Malaysian tax practitioners perceived that the aggressive tax avoidance is widely practiced in the market. The highest mean which is 3.94 and standard deviation (SD) of 0.778 indicated an agreement on the statement and might reflect the true practice in tax advising. The view that tax clients prefer creative tax practitioners is also supported by the second mean of 3.74, SD 0.854 in which respondents were also agree that tax practitioners play a significant role in tax minimization. Abusive tax avoidance is morally wrong had a considerable high mean at 3.71 and SD of 0.961. Moreover, tax practitioners enjoy play with the rules at a mean of 3.60 and SD at 0.802.

Documents kept are essential in computing tax chargeability as it is the evidences for tax **TABLE 2** practitioners to refer at in the process of determining the expenses and income to be accessed in tax computation. From table 3, it can be seen that the tax practitioners are committed in ensuring that the sufficient evidence and full documentation are available before tax assessment by scoring the highest mean of 4.32 and SD of 0.673 for statement that tax practitioners need sufficient evidence and full documentation on the information given by clients. However, it is contradict to the second statement on the ability of tax practitioners to create supporting documents to meet the proposed tax chargeability from the tax clients score a high mean of 3.49 and SD of 1.141 which indicate agreement on the statement. These two different results from the first and second statements signify that tax practitioners were trying to comply with the rules and ruling of the ITA 1967, but at the same time consider the position of the tax clients in making judgements.

TABLE 3

Rank	Description	Mean	SD
1	Tax practitioners needs sufficient evidence and full documentation on the information given by clients	4.32	0.673
2	Tax practitioners should be able to create supporting documentation in order to meet the proposed tax chargeability.	3.49	1.141

3	I would withdraw from the engagement and terminate professional relationship to unethical client who ask me to aggressively minimize his tax liability	3.34	0.909
4	Tax practitioners should rely 100% on facts given by a client without independent verification or audit.	2.17	0.937

In a globalize market condition, accounting services had provided a one stop centre for business management services, beginning from accounting, secretarial, audit and tax planning. Consequently, accounting firms need to compete in the market to attract new clients and retain the existing clients due to the fact that these firms depend on the services and consultation fees. In accordance to that, table 4 explored the influences of competitive tax environment in tax practitioners' decision making. From the table, tax practitioners were agreed that ethics and/or social responsibilities are essential in the survival of the business by scoring a high mean of 3.79 and SD of 0.849. The result demonstrates that ethics and social responsibility are important elements to stay relevant in the market. Conversely, the second mean rank indicate that competitive tax environment had influence in the decision making of tax practitioners with a mean score of 3.63 and SD of 0.787.

The overall results may suggest that aggressive tax avoidance is practiced at a minimum level and upon the tax clients' requests. The overall result also may indicate that competitive tax environment and document kept influences tax practitioners decision making. In order to be competitive, some accounting firm viewed that aggressive tax avoidance practices leniently and therefore indicate a higher likelihood of participating. However, from the result discussed it can be suggested that Malaysian tax practitioners are abide by the tax laws and promote compliance among their clients and due to some reasons such as competitive tax environment, document kept and clients position may jeopardize the ethical decision making of the practitioners. Sharing the same views are, Reckers, Sanders and Wyndelts (1991), where they found that clients' importance have an influence in the aggressiveness of tax practitioners' willingness in giving aggressive tax advice. Therefore well regulated tax practitioners can play a critical role in an efficient and effective operation of the tax system and it may suggest that the tax audit and investigation is a good supervision mechanism in curbing the aggressive tax avoidance and evasion practices. Another study by Cruz, Shafer and Strawser (2000) on tax practitioners' ethical judgement and behavioural intention in managing clients' pressure to opt for aggressive reporting found that only equity dimension was found significantly influenced ethical decision making whereas the utilitarianism and relativism were isolated in the relationship between ethical judgement and behavioural intention. The moral equity is related to the concept of fairness and justice in which the belief of tax practitioners can influence the willingness to encourage aggressive reporting.

TABLE 4

Rank	Description	Mean	SD
1	Being ethical and/or socially responsible is the critical factor to the survival of business enterprise.	3.79	0.849
2	Tax practitioners' judgements are always influenced by the competitive tax environment.	3.63	0.787
3	Making profit is the priority goal of every firm even if it means bending or breaking the rules	3.02	1.151
4	Firm may be disregarded corporate ethics and/or social responsibility in order to be competitive in the globalise business environment.	3.01	0.953

CONCLUSION

The objective of the study is to explore the perception of Malaysian tax practitioners towards the practice of aggressive tax avoidance based on clients' documents kept factor and competitive tax environment. There is a connection between ethical decision making and aggressive avoidance scheme in which the facilitation of overly aggressive avoidance indicate disregard on the corporate ethics and social responsibility because such behavior will affect public interest and public facilities in term of lower tax collection. Therefore, the study attempted to explore the factors that influences ethical decision making of tax practitioners consequently the result can be linked to the practice of aggressive tax avoidance. Aggressive avoidance is always rationalized as mechanism to minimize tax but it in turn reduces the amount of tax collection. Hence, the problem of non-compliance is universal and according to Kirchler (2007) that tax avoidance are is the major growing concern where it is a non-compliance behavior which is not necessarily illegal but conceive a larger problem than illegal behavior. However, it is need to be highlighted that Malaysian tax practitioners only perceived a likelihood of participation. Nevertheless the result of the study also may signalling that Malaysian tax practitioners are in the state of dilemma whether to satisfy the needs of the clients or the needs of the society. This middle position affects both the integrity and profession of tax practitioners.

In the nut shell, there is a lot room for the betterment of the tax system; however, it needs the cooperation from all the three important players in the tax environment whom are tax practitioners, taxpayers and tax officers. The issue of non-compliance can be combated in a way people are willing to declare the true income tax return voluntarily. It is undeniable that building a perfect tax system is a difficult task, yet a fair tax system is important to ensure the stability of economic growth. The issue of trust, respect and confidence is essential to ensure taxpayers pay their tax share truthfully. Therefore, the perception of aggressive tax avoidance among tax practitioners who played a dual role as government agent and clients advocates need to be addressed to ensure an efficient and effective tax administration. It can be suggested that the aggressive avoidance among Malaysian tax practitioners are at a moderation level and can be supervised carefully and effectively as to ensure the trust and confidence towards the authority is maintained. Future research may explore further on the psychological factor of tax practitioners by incorporating the other factors such as influence on the job satisfaction, role ambiguity and role conflict of tax profession whether it influence the tax advice given to clients. The ethical

environment of the accounting firms can also be included in the future study for instance the culture or acceptance of peers and colleagues on the involvement of unethical behavior, leadership and management influence, reward and sanction on the involvement in unethical behavior and social practice can be further tested.

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