The Tax Policy-Making Process in Practice:

A Field Study in Chile

Submitted by

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to the University of Exeter

as a thesis for the degree of

Doctor of Philosophy in Accountancy

November 2014

I certify that all material in this thesis which is not my own work has been identified and that no material has previously been submitted and approved for the award of a degree by this or any other University.

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Abstract

The purpose of this research project is to examine the technical, political, social, organisational and cultural 'practices' of tax policy making in order to gain an in-depth understanding of certain tax rules in the Chilean context.

Consistent with a qualitative interpretivist approach, this study is informed by documents and three phases of face-to-face interviews with a range of actors engaged in the process of (re)making tax regulation. Through the views of a wide spectrum of participants, including policy makers (broadly defined), tax administrators, academics, tax practitioners and taxpayers, theoretical concepts were inductively developed. These concepts were combined with related tax policy literature and Bourdieusian concepts to construct a theoretical/conceptual framework which was later applied in interpreting the findings.

The findings reveal how an élite group of agents forms a social space connected with the field of power. In this space, these agents define tax policy, draft legislation and budget for economic effects. This thesis illustrates how these agents mobilise different forms of capital from their respective fields in order to reach and access this social space. Transfer pricing processes highlight the fluidity of these spaces, allowing the access and influence of external forces. The research also shows that other stages are more distant from the field of power.

The findings suggest the importance of tax knowledge and information in the development of tax regulation. Tax knowledge and information become a capital at stake which agents struggle to acquire. Empirical data show that the amount of tax knowledge and information in the space relating to the field of power is connected with the content and robustness of the transfer pricing rules under analysis. This research also suggests a high concentration of transfer pricing tax knowledge in very few agents across the bureaucratic, professional services and corporate/business fields.

This research also shows the influence of social capital in the tax policy-making field. The findings show that bureaucrats and politicians consult with those connected with them who are subjects of trust. In the particularities of transfer pricing, the findings illustrate the importance of social capital in defining the

content of tax rules. Finally, the study also shows how domination and two forms of violence are present and exercised across the tax policy-making field.

This is one of only a few studies that have examined the practice of tax policy making holistically, from the very early stages to the application of the rules in practice, broadly contributing in this respect to the tax policy strand of literature. In contrast to previous descriptive and partial studies, this study captures the views of actors responsible for making tax rules. It also contributes to theory development by translating Bourdieusian tools to analyse tax policy making.

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Abbreviations

APA	Advance Pricing Agreements
CIAT	Inter American Center of Tax Administrations
CUP	Comparable Uncontrolled Price
DIPRES	Budget Office
DTA	Double Taxation Agreement
GDP	Gross Domestic Product
IMF	International Monetary Fund
IRS	Internal Revenue Services
OECD	Organization for Economic Co-operation and Development
UK	United Kingdom
US	United States
VAT	Value Added Tax
WTO	World Trade Organization

Acknowledgments

When you finish a long and exciting, but challenging period like this, it is difficult to decide whom to mention first, as all the ‘souls’ mentioned here are responsible for this personal achievement. Firstly, I would like to thank the big architect for coordinating all that has brought me to this point, and for introducing me to significant individuals who have proved invaluable to my life and research.

My sincere and deepest gratitude goes to my first supervisor, Professor Lynne Oats. Thank you for agreeing to be the ‘captain’ on this journey, and also for giving me freedom and encouraging me to think differently. Thank you for your expert and friendly guidance and support, as well as your reassurance throughout my time as your student. Your support was especially crucial when things were not going as well as expected. Special thanks go to my second supervisor, Dr Gregory Morris, for your critical and constructive comments that also helped to give shape to this project.

Thanks to all those interviewees who generously participated by giving me some of their time and knowledge in order to conduct this study. Unfortunately, the confidentiality agreement precludes individual identification.

I also thank academics and friends whose approach has been a source of inspiration for further study at an advanced level. Professor José Yáñez, thank you for your friendship and academic support throughout the years. Sergio Endress, thank you for your inspiring and critical way of studying tax law. Finally, Javier Jaque, thank you for your friendship, advice and backing, and for providing a forum for discussion since I embarked on this important endeavour.

A big thank to you all in the Department of Accounting and administrative staff at the University of Exeter. Dr Kim Soin and Professor John Burns, thank you for contributing to my research development through your well thought out seminars and workshops which helped me in different ways during my period as a doctoral student. Thank you also to Helen Bell for all your enthusiasm and willingness to help, from the application process through to submission. Special thanks go to the Tax Administration Research Centre (TARC) for providing an academic space in which to develop and share knowledge.

Last, but not least, I would like to thank my pillars, my family, as without you this project could not have been completed. Thanks to my mum, Patricia, for your unconditional and 'foolproof' support; Rosa, Andrea, Alfredo and others for your love, support and belief in me. I would like to thank my special friend and colleague, Carlene for making this lonely period a happy one! Also thanks to all my friends in Chile who have constantly been sending me 'good vibes' since I came to the United Kingdom. Thanks Silvia, Macarena Andrea, Mariela, Uranía, Claudio, Pablo and many others.

This thesis is dedicated to my mums, Patricia and Marta (1918-2004).

Chapter One: Introduction

1.1 Overview of the research

This thesis is concerned with the ultimate influence of different forms of power on the content and robustness of tax legislation and its application in practice. This study illustrates the influence of design, drafting and deliberation stages on the implementation of tax legislation in practice. This chapter presents an overview of the content of this doctoral project. Section 1.2 introduces the objective of the study, the limitations of previous research on the subject and the nature of the research problem addressed here. Section 1.3 provides an overview of the research design, Section 1.4 presents the contribution of the research project and Section 1.5 briefly describes the structure of the thesis.

1.2 Background to the research, research objective and questions

A significant body of literature taking a black letter law approach (e.g. Freedman, 2005) has analysed features of tax regulation and its application. Features that have been extensively discussed in this tradition include complexity (e.g. Bittker, 1989; Eustice, 1989; McCaffery, 1990; Partlow, 2013; Paul, 1997; Pollack, 1994; Rady, 1989; Surrey & Brannon, 1968; Woodworth, 1969), uncertainty (e.g. Lawsky, 2013; Osofsky, 2010) and, more generally, desirable characteristics of legislation (e.g. Thuronyi, 1996). However, reasons for legislation being the way it is are not embedded in the law itself, but in the tax policy processes that originate them.

There is a relationship between good tax policy-making processes and better legislation (Ryan, 1999; Wales & Wales, 2012). Some scholars have accused the former of being responsible for poor, complex and unfair legislation (e.g. Eustice, 1989; Paul, 1997; Pollack, 1994; Rady, 1989; Surrey, 1969). These studies highlight the importance of good tax policy-making processes in improving tax legislation; however, these processes remain under-studied as the main object of inquiry, despite the importance of tax to society (Boden *et al*., 2010; Martin *et al.*, 2009; Steinmo, 1993; Stoianaff & Kaidonis, 2005).

The few studies addressing this topic have been general and/or myopic. Some have neglected the social, cultural and organisational nature of taxation (Boden

et al., 2010; McKerchar, 2008) and its context dependence. For example, one strand of literature splits tax policy processes into a sequence of stages leading to a tax rule (e.g. Gould & Baker, 2002; Richardson, 1994; Sawyer, 2013b), but does not show how different characteristics of specific agents involved in the tax policy-making process and different power relations may affect the policy and legislative outcome. Others have examined particular stages/steps in producing tax regulation, such as policy development (e.g. Marriott, 2010; Philipps, 2006), the drivers of tax reform (e.g. Oats & Sadler, 2011), the role of individuals in tax law making (e.g. Christians, 2010a; Heij, 2007; Kraal, 2013; McGrath, 2002), the role of institutions in tax reform (e.g. Steinmo, 1989, 1993), consultation procedures (e.g. Burton, 2006, Sawyer, 1996; Stewart, 2007), lobbying activities (Fairfield, 2010; Rady, 1989; Roberts & Bobek, 2004), and parliamentary debates on tax rules (e.g. Hanna, 2006). This second branch of studies has isolated one particular component or stage, failing to trace how particular processes lead to specific legislation and its application in practice.

In contrast to the above studies, this research project responds to calls in tax research to study how tax policies, rules and procedures play out in practice (Lamb, 2001; Oats, 2012b). Hence, this study seeks to enhance understanding of how legislation is made in practice by examining all stages leading to tax legislation and its application (design, legislation and implementation). In particular, this project studies how agents make decisions and how some inputs in the process affect legislation and its implementation. The technical, social and political nature of the processes examined here was a salient theme during the fieldwork. The following two quotations offer a preliminary insight into the uniqueness of this project in relation to prior research:

> *I've always thought that it's not right that the economic or technical logic will run the steamroller over the political logic because, when that happens, politics always take revenge. Likewise, I also believe that it is very unwise for the political logic to run the steamroller over the economic logic, because when you use the bulldozer, the economy alone rematches* [to politics] *later and the costs are paid. Then the field of action you have is in those issues where it is possible to combine the political logics with the economic logics. Well, that intersection is not fixed; it is something that moves over time and it is possible* [to move] *with good bargaining … and even also extend it, because if there is something that is very valued to someone, that for me is not so valued, then you can always ... exchange...* (PM06).

> I*ndeed, the* [tax policy] *discussion is very professional* [technical] *and political. One cannot say that the tax aspect is not political ... but technical too* (TA05)*.*

These quotes highlight not only the technical side, but also that tax policy making involves social and political decisions (Boden *et al.*, 2010; Infanti & Crawford, 2009; Radaelli, 1997; Roberts & Bobek, 2004), and that power relationships are central (Boden *et al.*, 2010), although misrecognised, in these processes.

A second uniqueness of the project is the context in which it was conducted. For a number of reasons, tax research in Chile is very limited. Chile is a small country in terms of inhabitants – the estimate for 2014 was 17.8 million (INE, 2014) – and the proportion attaining tertiary education is one of the lowest among OECD countries (OECD, 2014c). The scenario is more distressing regarding research: the number of individuals holding doctoral degrees is also lower than other OECD countries (Abate, 2014). Consequently, the volume of academic research in the country is low. With regard to tax research, many tax specialists prefer to work in the private and public sectors where they can secure higher remuneration, leading to low research output. Most tax professionals who have an academic interest teach a few hours a week, spending most of their time in the private or public sector. In the economics discipline, research has addressed macro-economic aspects of tax. In the law discipline, tax research has taken a black letter law approach. On the other hand, in the public sector, the Department of Economic and Tax Studies of the Internal Revenue Service (IRS)[1] takes a predominantly positivist economic approach to research. Therefore, with a few exceptions (e.g. Fairfield, 2010; Sanchez, 2011), there has been very little tax research in practice. In this context, this study aims to contribute to an improved understanding of how tax policy processes develop in practice.

A third uniqueness of the project is the timely study of the transfer pricing phenomenon. From a policy perspective, there is increasing interest in transfer pricing, as noted in the Base Erosion and Profit Shifting (BEPS) Project led by the OECD (2013a). It has been argued that transfer pricing generates opportunities to erode tax bases and shift profits between jurisdictions, for

[1] http://www.sii.cl/aprenda_sobre_impuestos/estudios/tributarios.htm

example through the allocation of 'significant risks and hard-to-value intangibles to low-tax jurisdictions' (OECD, 2013a, p.42). Accordingly, transfer pricing has been considered to be a key pressure area, and efforts are being made to improve and clarify transfer pricing rules (OECD, 2013a). In the Chilean context, the first transfer pricing rule was enacted in 1997 but was deemed to be severely flawed, being repealed and substituted in September 2012 with a new rule drawing heavily on the most up-to-date OECD Guidelines (2010a). The temporal space in which the fieldwork for this study was conducted largely overlaps with the enactment of this new and improved transfer pricing rule.

From an academic perspective, the literature on transfer pricing is voluminous (Hanlon & Heitzman, 2010). Some law studies have addressed, for example, technical specificities of the law (e.g. Ainsworth & Shact, 2012), the adequacy of underlying principles (e.g. Avi-Yonah, 2010; Avi-Yonah & Benshalom, 2011; Burke, 2011) and disputes (e.g. Baistrocchi & Roxan, 2012). In accounting, a series of studies has examined the effect of different tax rates, the establishment of prices and subsequent income shifting (e.g. Bartelsman & Beetsma, 2003; Eldenburg *et al.*, 2003; Sansing, 1999; Sikka & Willmott, 2010; Smith, 2002) and audits (e.g. Chan & Chow, 1997). Others have integrated tax considerations with internal divisional performance and coordination (e.g. Baldenius *et al.*, 2004) and management centralisation (e.g. Chan *et al.*, 2006; Martini *et al.*, 2012). Two black letter law studies have analysed Chilean legislation (e.g. Massone, 2011; Salcedo, 2009). On the other hand, interpretive/in-practice accounting studies have looked at how particular companies have implemented transfer pricing regulation (e.g. Cools *et al*., 2008; Plesner Rossing, 2013), how uncertainty is managed through technical agreements between tax authorities and multinational companies (e.g. Rogers & Oats, 2013), and how different tax authorities implement transfer pricing rules (e.g. Sakurai, 2002). This study joins the academic conversation and adds to this policy by illustrating how transfer pricing rules are designed, drafted and implemented in practice.

This academic interest is combined with the researcher's professional experience. Prior to joining academia, the researcher held positions in the tax field as an auditor for a Big Four firm and as an external tax advisor to several SMEs, and also held a senior in-house post in accounting and taxation. The use

of loopholes and the manipulation of uncertainty raised questions about why laws are sometimes flawed. This research project emerges from the combination of policy-related, academic and practical interest.

Research questions

In order to fill the gap in research on the tax policy-making process in practice, this work posits the following overarching research question:

How do power relations shape practices within the tax policy-making field?

This question is broken into three sub-questions.

Research Sub-Question One: *How does the tax policy-making process relate to the field of power across its different stages?*

The tax policy-making process can be split into three stages: design, legislative and implementation (Gould & Baker, 2002). For the purposes of this study, the design stage is where tax policy is formulated, legislation drafted and its economic effects calculated. At the legislative stage a bill is discussed in parliament, and at the implementation stage a law is in place and is applied by taxpayers and tax authorities. Through mobilisation of Pierre Bourdieu's concept of 'field of power', this question aims to illustrate how these stages are connected to the field of power to different degrees. At stages where élite members of society have more complete control and large amounts of capital at their disposal, it is shown how some actors relate, coalesce and exchange, while others aim to access control and struggle for the power at stake.

Research Sub-Question Two: *What is the role of tax knowledge and social capital in the tax policy-making field?*

It has been observed that the 'expertise of bureaucrats gives them policy-making power' (Page, 2010, p.255), that parliamentarians lack tax knowledge (e.g. Gribnau, 2009), that corporate taxpayers acquire tax knowledge to comply with and plan tax obligations (e.g. Hasseldine *et al.*, 2012), that tax authorities perform a technical activity using the law and produce tax knowledge in the form of administrative guidance (e.g. Gill, 2000; Hasseldine *et al*., 2011), and that tax practitioners use tax knowledge to render professional services (e.g. Keppler *et al*., 1991; Morris & Empson, 1998). This question explores the role of

tax knowledge throughout the Chilean tax policy-making process. It shows how knowledge is possessed, acquired and mobilised by bureaucrats, politicians, taxpayers and tax advisors through independent strategies and through consultation with those who are believed to have the necessary knowledge to dominate the field. It also explores the specificities of transfer pricing tax knowledge and its use across the policy-making process.

This question also explores the Bourdieusian notion of social capital and its variant, political capital, in the tax policy process. The role of social connections has previously been explored in the transmission of global norms worldwide (Christians, 2010a). This study extends this literature by exploring how social and political capital affect tax policy design and drafting, parliamentary debate and the implementation of general corporate tax and transfer pricing legislation in Chile.

Research Sub-Question Three: *How are violence and domination manifested in the tax policy-making field?*

This question explores how domination is exercised through symbolic mechanisms (e.g. Alawattage, 2011; Carter & Spence, 2014; Cooper *et al*., 2011; Farjaudon & Morales, 2013; Gracia & Oats, 2012; Stringfellow *et al.*, 2015) and structures (e.g. Farmer, 2004; Galtung, 1969) throughout the policy-making field. It examines, for example, the role of agents in attributing particular characteristics to other individuals granting access to the tax field; how the IRS retains information through regulation to maintain an uncertain environment; and how tax advisors use language to distinguish from other entrants in the policy field.

1.3 Overview of the research design

This research project investigates the tax policy-making process in practice, answering the three research sub-questions explained in Section 1.2. Each question aims to meet particular objectives which are discussed further in Section 4.2. These questions, their objectives and different perspectives emerged from a wide-ranging and detailed review of the literature on tax policy making (Chapter Two), the results of a survey conducted in July 2012 (see Chapter Four) and the theoretical framework developed in Chapter Three.

A non-positivistic approach was considered appropriate to meet the research objective of gaining a better understanding of the social, political, organisational and cultural practices of tax policy making and answer the research questions presented in Chapter Four. Accordingly, the face-to-face/one-on-one interview method constituted the main research technique to obtain this type of data. Drawing on concepts taken from the literature and constructs from strands of various compatible theories, appropriate interview guides were prepared to match particular interviewees' participation in the process. Participants at each stage of the tax policy process in Chile were interviewed in three rounds, totalling fifty-seven interviews/meetings. To support this technique, publicly available documents were also systematically searched and examined, including parliamentary session reports, IRS administrative guidance, media coverage and interviewees' biographies, where available.

Interview transcripts and documents were first manually coded and later computationally analysed using NVivo. This iterative analysis informed the choice of theory, and together informed the theoretical framework presented in Chapter Three. This framework is the result of a snapshot of the interplay between the tax policy-making literature and Bourdieusian theoretical constructs (Bourdieu, 1977, 1990, 1991; Bourdieu & Wacquant, 1992; Swartz, 2013).

This theoretical framework constitutes the backcloth against which the findings are interpreted and presented in Chapters Five, Six and Seven. There is a social space in which very powerful agents make decisions on the final course of tax policy and drafting. This space is connected with Bourdieu's field of power concept. Although parliament is powerful, given the political capital it draws from the support of parties and citizens, both parliament and agents participating at the implementation stage are less connected to the field of power than the executive branch, which accumulates higher levels of economic, cultural/informational and symbolic capital (Bourdieu, 1998a; Cooper *et al*., 2011). Tax knowledge and information are identified as a central theme in the production and application of tax legislation. This investigation suggests the concentration of a high level of transfer pricing tax knowledge in very few actors who are powerful throughout the tax policy-making field. Social capital is perceived to have an influence on the design and drafting of tax regulation, and its absence is likely to produce negative outcomes, as illustrated by the former

transfer pricing rule. On the other hand, this study also suggests that high levels of social capital influenced the robustness of the former transfer pricing rule. The empirical data suggest the exercise of structural violence through legal and institutional factors that allow the executive branch to dominate parliament, and similarly allow the committee of finance to dominate the rest of the legislative branch. Symbolic violence is also present throughout the process in the recognition of actors, such as external advisors and specialist teams within the bureaucratic field, as different from and more powerful than others. This symbolic violence is also manifested at the implementation stage through the use of language and withholding of information.

1.4 Contributions

This research contributes to tax scholarship in three respects. First, it adds to the literature on tax policy by examining how tax policy making operates in practice. In contrast to the partial/fragmented and general perspectives of the previous research described above, this study takes a more holistic approach to examine the general tax policy-making process and a particular and important provision in the international scenario in a dynamic setting.

The second contribution is empirical. Although the methodological literature stipulates no hard and fast rule on the required number of interviews or time spent in the field (Kvale & Brinkmann, 2009; Tracy, 2010, p.841), interviewing a wide range of actors allows the provision of a big picture of the tax policy-making process in practice, from diverse and rich perspectives. In addition, interviewing actors directly involved in tax policy development and legislative debate is significant, as their views are neither readily available in the public domain, nor to studies like this doctoral thesis. In this sense, direct explanations are more likely to be provided when ‘why did you do…?’-type questions are asked, rather than asking a third party or analysing documents (Langley, 1999).

The third contribution is conceptual. This research project advances a theoretical framework for the analysis of tax policy making in practice, as described in Chapter Three. This theoretical framework draws on the political-sociological work of Pierre Bourdieu (Swartz, 2006; Wacquant, 2004), whose concepts have been little used in tax research (e.g. Gracia & Oats, 2012; Kraal, 2013). The framework has the power to interpret the findings presented in

Chapters Five, Six and Seven. It shows how structural legal, political, economic and social factors influence the tax policy-making process. It also shows interactions between various semi-autonomous fields and how some are more significant at some stages of the tax policy-making process than at others. The framework also portrays the rise of actors within fields, as well as access to and movement between fields, to increase their capital and reach higher levels of privilege and dominance.

1.5 Structure of the thesis

The remainder of this thesis has seven chapters. Chapter Two reviews the literature on tax policy making, tax knowledge and social connections. Chapter Three presents Bourdieusian concepts and the conceptual framework developed for this research project. Chapter Four then defines the research problem with its associated research questions and objectives, explaining in detail the fieldwork activities conducted to execute this project. Chapters Five, Six and Seven answer the three research sub-questions posited. Chapter Five explains the general tax policy-making process for taxable income under democratic governments in Chile; Chapter Six presents the development and implementation of the first transfer pricing rule in Chile, enacted in 1997; and Chapter Seven presents the development and early implementation stages of the transfer pricing rule enacted in September 2012 that superseded the former rule. These three chapters draw on themes such as power, tax knowledge, information and social capital, developed after careful data analysis intertwined with the theoretical framework, offering further theoretical development on tax policy making. Finally, Chapter Eight draws conclusions and elaborates on the contributions of the study, as well as setting the agenda for further research.

Chapter Two: Tax Policy Making

2.1 Introduction

Chapter One provided a general overview of the necessity for this research project. This chapter looks at existing research on the practice of tax policy making following the 'simplified method' approach (Aveyard, 2010, p.128), which consists of combining quantitative and qualitative studies with different worldviews and disciplines (Creswell, 2009). Section 2.2 presents the literature on tax policy making, Section 2.3 presents research regarding engagement with the environment. Section 2.4 presents the concept of transparency and Section 2.5 introduces the concept of trust. Finally, Section 2.6 summarises the content of the chapter.

2.2 Tax policy making

In order to understand the central object of study of this thesis – the tax policy-making process – this section examines various strands of research concerned with aspects of the process. In line with the findings of the thesis that practices differ at different stages of the policy-making process, this section considers the relevant literature dealing with three key stages: design, legislation and implementation.

Broadly speaking, policy making is 'an episode of political authorities acting within a formal or informal process to make a binding decision for a polity' (Gould & Baker, 2002, p.88). This policy process 'translates policy ideas into actual policies that are implemented and have positive effects' (Birkland, 2011, p.25).

The related literature has distinguished two approaches to studying policy processes. The first, known as the 'stages model', is portrayed linearly and includes the phases of issue emergence, agenda setting, selection of alternatives, enactment, implementation and evaluation (Birkland, 2011, p.26). A main criticism of this approach is that processes are not necessarily linear and may not go through all stages.

The second approach studies policy processes as ‘systems’. The inputs to these systems include elections, public opinion, communications with elected officials, media coverage of issues and personal experiences of decision makers, to which actors in the system react, producing outcomes which involve decisions about doing or not doing something (Birkland, 2011, p.26). Generally, outputs comprise laws, regulations and decisions. Both inputs and outputs are to a certain extent identifiable; however, the process of transforming inputs into outputs is treated as a black box. The ‘stages model’ is usually used to open that black box (Birkland, 2011, p.27).

Researchers in this second tradition have argued that policy processes are embedded in larger contexts in which the environment influences and is influenced by policy processes. Birkland (2011) suggests that four forces, or environments, affect and are affected by processes: structural, social, economic and political. The s*tructural environment* comprises both basic formal features of government, such as the separation of powers, systems of state and federal government (federalism), and rules that delineate how governments operate, such as laws on open public meetings, and the Administrative Procedure Act and Freedom of Information Act in the United States. These laws have opened government practices to detailed scrutiny. However, this openness may cause conflict and delay (Birkland, 2011, p.28); therefore, citizens and policy makers must balance legislative speed and efficiency with democracy and citizens’ right to participate (*ibid.*). The *social environment,* refers to the ‘nature and composition of the population and its social structure’ (Birkland, 2011, p.28), in which concepts such as age, race and gender are of interest. The *political environment* affects and is affected by policy processes. Here, public opinion polling data on the ‘most important problem’ (MIP) gain relevance, reflecting the area in which greater levels of activity occur (Birkland, 2011, p.37). Finally, the *economic environment* includes variables such as economic growth, rate of growth, distribution of wealth, size and composition of industry sectors, inflation, the cost of labour and raw materials, and unemployment (Birkland, 2011, pp.42-6).

2.2.1 Tax policy-making process approaches

The literature examining tax policy making as a central object of study is scarce, and all such studies have applied a 'stages model'. Two examples are the heuristic model and the generic tax policy process.

The heuristic model (Gould & Baker, 2002) is a 'stylised view' (p.88), in which the process is presented as three sequential/linear stages: design, law making and implementation. The design stage involves the specification of policy goals, definition of priorities and ways of achieving the stated goals. The law making stage involves the drafting of legislation, debate, inclusion of amendments, voting and signing into law (p.89). Finally, the implementation phase is often described as the sole mission for tax authorities.

The Generic Tax Policy Process (GTPP) is an administrative/customary or 'soft law' practice (Sawyer, 2013b, p.423), adopted in New Zealand in 1994 following recommendations made by a government-commissioned study to the tax administration (Inland Revenue Department). Conducted by a committee, the Organisational Review of the Inland Revenue aimed to evaluate and remedy problems with previous tax legislation and with the way in which the tax policy process was carried out. It is argued that the GTPP provides a 'comprehensive and robust structure for the development, refinement and enactment of tax policy into legislation' (Sawyer, 2013c, p. 584). The GTTP has five stages: strategic, tactical, operational, legislative and implementation (Richardson, 1994).

Others have studied adherence to the GTTP and its effectiveness in producing better legislation. For example, Vial (2012) argues that political expediency has dominated over due process. In practical terms, Sawyer (2013a) argues that the GTTP has been successful in developing New Zealand's international tax regime. Sawyer (1996, 2013b, 2013c) has studied the tax policy-making process in New Zealand, drawing on this model in a descriptive and generic manner and without the support of empirical data or theorisation.

These secondary research studies share two central features: generality and descriptiveness. Both Sawyer (2013b) and Gould and Baker (2002) present a simplistic view of tax policy making, focusing exclusively on structural elements such as the institutions involved and the activities carried out in each phase,

and disregarding inherent social practices. These studies pay closer attention to what is expected to occur in each phase, rather than explaining how agents make decisions regarding policy, law and its subsequent implementation, providing a limited understanding of how power relationships shape tax policy and legislation. Although the question of how to improve tax policy and law making to improve both tax law and governance outcomes has been posed by scholars (Stewart, 2006, p.1), an holistic and empirical approach to how tax policy stages develop in practice is noticeably absent from academic research. The present literature review confirms Gould and Baker's (2002, p.88) finding that 'current scholarship concentrates on one stage at the expense of the others, missing opportunities for additional insights'. In contrast to these partial views of tax policy processes, this thesis offers an integrated view of how tax policy is designed, drafted, debated, enacted and implemented.

The next section summarises the key studies in the area of tax policy making. As previously mentioned, no published studies have covered the whole process; however, to identify gaps in the existing literature, the remaining section is organised according to Gould and Baker's (2002) and Sawyer's (2013b) phases of tax policy making.

2.2.2 Design stage

Economic study of tax systems has been extensive (Oats & Sadler, 2011), investigating the role of taxes in matters such as the redistribution of wealth (e.g. Alesina & Angeletos, 2003, Atkinson, 1971; Chamley, 2001; Judd, 1985; Kaplow & Shavell, 1994) and revenue raising (e.g. Smart, 2007), and also in setting mechanisms to 'encourage savings, stimulating growth, ... penalizing consumption, directing investment and rewarding certain values while penalizing others' (Steinmo, 1993, p.3), as well as their role in promoting, or not restricting, development and correcting market failures (Stiglitz, 2010). As the use of taxes is wide and varied, governments need to take into account factors such as distortions, collection costs and the effects of taxes on growth, as these factors may affect the 'quality of taxation' (European Commission, 2011). Political and fiscal policy economists have focused primarily on fiscal policy design, ignoring its underlying processes (Gould & Baker, 2002).

Some authors suggest that the design stage is a stage of trade-offs regarding issues concerning the tax administration, efficiency, equity, political acceptability and revenue collection (Burgess & Stern, 1993; Dagan, 2013; Ganghof, 2006; OECD, 2010b). It is at this stage that governments define the breadth and scope of tax reform, estimated revenue levels and timing (Gillis, 1989). Decisions regarding comprehensive or incremental tax reform are also set at this stage (Gillis, 1989; Jenkins, 1989). From a theoretical viewpoint, as these decisions concern the tax system, the 'way that different taxes fit together matters, as does being clear about the role of each tax within the system' (Mirrlees *et al.*, 2011, p.45). However, this does not always happen in practice.

Once policy makers have identified the people affected by tax policies, the objectives to be achieved are defined (Dagan, 2013). Dagan's (2013) secondary research reveals that defining objectives is not easy, as these tend to conflict with each other, requiring policy makers to balance their decisions. At this point, policy makers decide on the tax base and tax rates (Ganghof, 2006; OECD, 2010b; Sanchez, 2006).

The research described so far has adopted a positivist/objective approach based on quantitative data and the measurement of effects, ignoring the extent to which the design of tax policy is a social and political practice. Utz (1993) highlights that policy debates are not totally 'objective/quantifiable' but are dominated by economists' assumptions and interests. Their views may relate, for instance, to the design of progressive or flat income tax systems aligned with left- or right-wing ideologies (Ganghof, 2006). This type of influence on tax policy is discussed below.

Political considerations

Tax policy design is not only the result of economic/public finance considerations such as those discussed above, but is also a political exercise (Bird & Zolt, 2008; Hanlon & Heitzman, 2010; Heij, 2007) linked to administrative and political costs (Ganghof, 2006). For example, Profeta (2007) finds that tax reforms were announced in Italy in order to attract uncertain voters (swing voters), and these reforms targeted a large number of voters in order to gain political support (Profeta, 2007). Alt *et al.* (2010) argue that political support may be retained non-transparently by levying taxes not entirely visible to

taxpayers. In a quantitative study using a large database containing information on several democracies, Gould (2001) found that policy makers are not only interested in the maximisation of revenues but also in increasing the possibility of re-election. Levi's (1988) historical analysis of Australia's compliance with Commonwealth tax rules suggests that prime ministers (rulers) will only propose tax reforms supported by their powerful constituents. Secondary research conducted by the OECD (2010b) groups a number of studies and argues that policy makers' aspirations to retain voters are achieved by implementing incremental tax reforms in which there are no losers. However, such actions may, in the long run, be detrimental to tax revenues and/or the complexity of the tax system (Bradford, 1999). A second political element relates to policy makers' vested interests. Policy makers are also citizens potentially affected by adopted policies, such as tax or environmental policy, and may be motivated to introduce policies to support initiatives less damaging to themselves (Wittman, 1977; Besley, 2006). A third, more structural component is corruption, which should also be considered in tax design, especially in developing countries where it seems to be more prevalent (Stiglitz, 2010).

These studies show that tax rules are not simply the result of economic considerations; however, how decisions are made in practice is largely absent from the related literature. Questions such as how an idea reaches or disappears from the tax policy agenda, who are the mobilisers of ideas for tax law change, how the space in which these decisions are made is formed, how actors from different institutions, such as parliament, access the space in which tax policy is changed, and how partisan discourses shape tax policy, are discussed in Chapters Five, Six and Seven.

Human agency considerations

Several studies have examined the role of agents as holders of ideas. Drawing on institutional analysis, Steinmo (1993, p.10) comments that different decision-making systems shape the formulation of tax policy by influencing 'who dominates the tax policy-making process, the strategic choices and ultimately the policy preferences of these same actors'. In analysing differences in tax policy direction in Ireland and New Zealand, Christensen (2013) argues that real-world policy making does not occur in a vacuum and that politicians closely interact with bureaucrats and other actors, bringing expertise and policy ideas to

the discussion. He suggests that the significant role of economists in New Zealand's bureaucracy impacted on the neoliberal tax policy direction adopted by the country. In contrast, this openness was not found in Ireland, which adopted a more pragmatic approach dominated by civil servants, with little participation by economists.

The role of experts is also highlighted by Philipps (1996), who suggests that the group involved in tax law and fiscal policy formation is relatively small and made up of élite experts whose language marginalises certain groups. In the same vein, Marriott (2010) suggests that, if these experts are well positioned, they are able to exert considerable influence over the tax policy-making process, and that policy suggestions need to be aligned with their thinking in order to be heard and adopted.

Christians (2010a) examines the role of agents in translating global norms into national practice in tax reforms in China, Brazil and Turkey, arguing that, as a first condition for success, these agents need credibility, supported by academic credentials and élite affiliations; they also need political effectiveness to access the political leadership, achieved through ties with the media and political networks; and, as 'agents of change', they need financial resources to perform their tasks.

Heij (2007) also examines the role and features of individuals in promoting tax reforms in Indonesia and Vietnam. She finds that senior officers had some freedom to promote tax reform but were constrained by the regimes' rulers. Similarly, Kraal's (2013) ongoing two-stage research examines the role of a particular politician in successful and failed tax reforms in Australia.

These studies suggest that the number and features of individuals involved in designing and drafting tax legislation differ between developing and industrialised nations. These individuals are generally professional lobbyists, policy analysts, lawyers, accountants and economists (Thuronyi, 1996, p.1), of which there are fewer in developing countries. Consequently, tax policy processes become a battle in which different actors compete to impose their own views on which policies should be adopted and passed through the legislature (Thuronyi, 1996). A large number of actors with different views on fairness, growth or competitiveness makes trade-offs more difficult.

Therefore, a combination of economic, political, human-agency and international developments may explain why tax policy differs between countries. Stein *et al.* (2006) illustrate this well, stating that, although countries may face the same economic environment, 'there is clearly no economic model that explains tax policy outcomes' (p.185). In contrast, they suggest that different political institutions and political actors determine policy outcomes. In a similar vein, Avi-Yonah and Margalioth (2007) argue that it is impossible to design a generalised tax system, as each country has particular features. Bird *et al.* (2008) argue that tax policies that work for one country may not necessarily work in another.

International tax policy developments

In other cases, domestic tax policies converge with international tax policy. Oats and Sadler (2011) refer to this homogeneity in international development as a source of tax rule change, arguing that tax systems do not operate in isolation and need to be attuned to other jurisdictions. In this respect, countries tend to benchmark and imitate what others are doing: supranational institutions, such as the OECD, the International Monetary Fund (IMF) and the European Union, have a significant impact on the diffusion of international tax policy and its subsequent adoption in domestic contexts (Sharman, 2012; Tanzi, 1994). For instance, in examining the influence of the OECD on domestic tax policies, Christians (2010b) argues that, as a result of transnational networks, this institution is recognised as 'an expert body entitled to reference', becoming a 'credible source of information' that countries draw upon to create domestic norms through the mechanism of 'emulation' (p.27). In tax policy design, some OECD countries align with or try to compete with others, and use the fact that other countries are using a certain mechanism to justify the need for a domestic law change (p.28). Some pertinent examples of the influence of the OECD on domestic regulation for the purposes of this thesis include the model tax conventions on negotiation of double taxation agreements and transfer pricing guidelines (Sharman, 2012).

In summary, taxation choices depend on the level of development, the need and desire for more public services, the capacity to levy taxes effectively, the availability of other sources of revenue such as natural resources and foreign

aid, preferences about the distribution of income, wealth and economic growth (Bird & Zolt, 2008, p.75).

Despite a high level of economic understanding, these studies are highly descriptive, overlooking the underlying processes involved in the design phase (Gould & Baker, 2002). These processes are varied in nature, including social, political and cultural. At this stage, two studies overcome some of the limitations by adopting a multidisciplinary perspective, uncovering tax policy-making processes in practice.

The first study is by Heij (2007), who studies factors in practice and actors who influenced the 1983 Indonesian income tax reform and the 1987-1994 Vietnamese corporate income tax reform. Using qualitative data in the form of documents and interviews, her study aims to explain the role of international influences, the economic situation, crisis, state structure, interest groups and political responses in these reforms, adopting a fiscal sociological lens. Although it provides a comprehensive, general and macro overview of the design phase, both legislation and implementation are cursorily discussed. A full account of how decisions were made in parliament or by the tax authority is absent.

The second study is Marriott's (2010) research on retirement savings policy development in Australia and New Zealand, which examines the impact of individual and institutional power, as well as the influence of interest groups on the course of policy direction in both countries. Informed by extensive qualitative data and theoretically inspired by historical institutionalism, the study highlights the extent of consultation and access to the development of tax policy. However, this study does not distinguish the different forms of power at play, nor does it explain the subsequent phases of drafting, debate and implementation.

Although these two studies are relevant to the content of this research, a number of questions are not fully answered. How does a policy/idea reach the technical and political agenda? How is the configuration of participants/interested parties established in practice beyond the structural elements or institutions of tax policy making? What are the necessary conditions for participation in this stage? Why and how are certain principles

preferred over others? This thesis aims to answer these questions in practice, in particular with regard to legislation on profits and transfer pricing.

2.2.3 Legislative stage

Once agreed, tax policy is translated into written legislation according to the rule of law which states that taxes 'can be levied only if a statute lawfully enacted so provides' (Vanistendael, 1996, p.1). This sub-section commences with the drafting sub-phase, followed by parliamentary debate.

Drafting

Drafting practice has been more carefully examined by the legal discipline, which has suggested that a clear underlying policy is likely to be successfully translated into legal statutes (e.g. Sortie, 2010). This idea is shared in the specific field of tax. Some scholars have commented that the simplicity/complexity and articulation of underlying tax policy influence the drafting of a good tax rule (e.g. Freedman, 2010; James & Wallschutzky, 1997; McKerchar *et al.,* 2008a; Sawyer, 2013a). Although a link between policy and good law has been identified, how that link is achieved in practice is noticeably absent from academic research. Questions such as how the articulation of policy is achieved, what are the mechanisms used in practice to assess whether policy is properly translated into tax statues, and what are the competences required to do so have been little explored in practice.

Another group of studies has examined who drafts policy. Law scholarship has suggested that drafts may be prepared by domestic specialists or foreign draftsmen, in a centralised or decentralised way (Sortie, 2010). Competences required by draftsmen to produce good legislation include extensive knowledge of the law and its adoption processes, mastery of the language, and intellectual depth to carry out the task properly (Karpen, 2008; Sortie, 2010). The legal literature suggests that knowledge is a key ingredient for drafting law adequately. In the field of tax, knowledge seems usually to be found domestically in drafters in a working group of the ministry of finance (Gordon & Thuronyi, 1996) or in the tax authorities that draft tax statutes in some countries (Stein *et al*., 2006). More than one agency may be responsible for drafting legal statutes (Sortie, 2010). These studies fail to provide a detailed account of how knowledge is acquired and the consequences of lack of knowledge. Questions

may be posited about whether the drafting group is a site of struggle and competition or collaboration, and about the mechanisms for coordination if more than one organisation is involved in the drafting, in order to gain a deeper understanding of the tensions to which Goode (1990) refers.

If bureaucrats, broadly speaking, are not experts (Page, 2010), then tax knowledge must be sought elsewhere. Foreign drafters are sometimes appointed to work closely with a local drafter, providing supervision and support, as found by Heij (2007) in a study of the 1983 tax reform in Indonesia, given the low levels of education of the population. Heij (2007) provides some insights into how the economic environment drove tax reforms in Indonesia and Vietnam, making some references to the drafting process; however, how knowledge influenced the drafting and how the drafting procedure itself was conducted were not a central theme in the research. Foreign drafters/advisors are expected to have knowledge of comparative law and tax policy, language skills and drafting experience (Gordon & Thuronyi, 1996). These foreign draftsmen/advisors may also be supranational institutions. For example, the IMF provides assistance in drafting simple and clear legal statutes (IMF, 2007b). Although it might be deduced that knowledge is a key competence for an external drafter, Heij (2007) suggests that these appointments may also serve a political purpose, demonstrating the legitimacy of the legal outcomes. As previously noted, these studies tend to describe the type of knowledge sought in these external members, whereas the social and political reasons for their appointment have not been examined in detail in the related literature. A number of questions deserve further examination, as this study does in practice. For instance, what are the consequences of appointing an external member who is also an actor in the professional services field? Is there conflict or domination between internal and external drafters? What mechanisms are used to solve disagreements in the drafting group? How do power relationships affect the content and robustness of tax legislation?

Another strand of research has examined characteristics of the tax statutes produced. Some scholars argue that simple language is an important attribute of tax legislation, although opinions differ (Cooper, 2010). McBarnet and Whelan (1991) suggest that complex legislation arises from a desire for extra precision and explicitness in the rules. Other scholars are more concerned with

certainty and length. Freedman (2010), for example, argues that a principle-based approach would result in shorter legislation (see also McBarnet, 2002, 2006; but see Cooper, 2010 in relation to the Australian and UK experiences). In the UK, the Office of Tax Simplification (OTS) uses the length of legislation as an index of complexity. Sawyer (2013a) disagrees with this measure, arguing that it is not length that reduces simplicity but unstable underlying policy. More broadly, Thuronyi (1996) has listed four features that tax laws should meet: understandability, organisation, effectiveness and integration. These umbrella concepts include more specific features of research, such as brevity (e.g. James & Wallschutzky, 1997), reader-friendliness (Sullivan, 2001), sentence structures (e.g. Thuronyi, 1996), transparency (IMF, 2007a), use of diagrams (e.g. Woellner *et al.*, 2007), numbering and headings (Thuronyi, 1996), organisation (e.g. Thuronyi, 1996; Vanistendael, 1996), effectiveness (e.g. Mulligan, 2008; Tan, 2011; Thuronyi, 1996), ambiguity (e.g. Thuronyi, 1996), drafting models (IMF, 2007b), and costs (e.g. Sandford, 1992). Vording *et al.* (2007) group some of these concepts to refer to 'quality of tax legislation'. One practitioner suggests that quality of legislation refers to 'anomalies' and 'complexity' (Sanger, 2012). Some research has suggested how to assess and improve the standard of the legislation. Gordon and Thuronyi (1996) suggest that involvement of the ministry of justice might improve the adequacy of legislation. Karpen (2008) proposes that the quality of legislation should be assessed using the 'regulatory impact assessment' technique (see Appendix 1).

These features are important during the drafting decision-making process. Previous studies have identified desirable and undesirable features of tax regulation, whereas the role of knowledge and cooperation, as well as the mechanisms used to improve the standard of legislation, have been little explored in the literature. This study explores how such decisions are made in practice.

Parliamentary debate

In the context of general law, it has been suggested that the robustness of legislation depends on the level of education and experience of legislators and politicians (Karpen, 2008). In an accounting study, Hoffmann and Zulch (2014) suggest that, in Germany, parliamentarians have insufficient knowledge and expertise and are therefore considered as lay people. The situation may be

similar in the taxation field. Gribnau (2009, p.3) comments that members of the Dutch parliament generally lack expertise in taxation and are unable to deal with the complexities of tax law in drafting tax bills. Wales and Wales (2012) provide qualitative evidence showing that most politicians are not experts in 'tax law, tax policy or economics. They are simply professional politicians'.[2] Similarly, Eustice (1989, p.13) argues that 'congressmen are not primarily technicians; they are generalists. They certainly do not fully understand all the technical implications of the provisions ... Nor do they always have the practical viewpoint of how the law is going to be applied'.

Another group of studies show the effects of knowledge on access to the policy-making process. Parliamentarians' lack of knowledge allows interest groups to influence parliamentary discussion of (accounting) standards (Hoffmann & Zulch, 2014). Specialist knowledge on matters under discussion would allow parliamentarians to evaluate the information provided by technical experts or interest groups; however, that would not always be efficient. In this respect, Burns (1999, pp.174-9) argues that states and elected representatives cannot afford to acquire and maintain specific knowledge in all areas with which they deal. Specific knowledge in parliament could be acquired by reading documents or through instruction by others. Lobbyists use these methods to intervene in debates (Hofmann & Zulch, 2014). With regard to tax policy making, it is argued that those negatively affected by tax policies attempt to prevent their implementation by exerting influence and blocking enactment in parliament, or by persuading parliamentarians to maintain the status quo (Olofsgard, 2003). Accordingly, parliamentarians are able to alter the course of tax policy significantly during parliamentary debates (Bird, 2004; Gould, 2001; Steinmo & Tolbert, 1998).

Although these studies have improved understanding of the work conducted in parliament and outsiders' efforts to access parliamentary decisions, they have ignored the underlying process of knowledge acquisition and the types of decisions made in passing tax legislation when knowledge is entirely absent. To

[2] Wales and Wales' (2012) qualitative study analyses tax policy-making processes in various countries up to the production of legislation, including consultation. Although their study includes the legislative stage, there is no detailed analysis of how certain courses of action produce specific tax rules.

what extent do they consult experts in the field? What conditions must these experts meet to be considered as legitimate sources of knowledge and information? And how useful is that knowledge acquisition in passing legislation? These questions are addressed in Chapters Five, Six and Seven of this thesis.

A third group of studies examines the political role of parliamentarians. Cowley's (1995) study shows how the British parliament became a channel for manifesting 'post hoc' discontent with the poll tax. In this case, parliamentarians decided to repeal the poll tax in order to keep their seats in parliament and power in their political parties. In order to maintain dominance, parliamentarians are more likely to listen to those funding their political campaigns and those whose votes may help with or guarantee re-election (Olofsgard, 2003). Procedures for influencing tax policy and law have been also studied. For example, Hanna (2006) examined two ways in which US parliamentarians passed tax legislation: gimmicks and fakes. Gimmicks refer to actions such as when the legislation passed involves changes that are hidden from general view and may benefit certain taxpayers through the use of non-code provisions, alternative minimum tax rates to lower revenues, and delayed effective dates and transition rules to diminish revenue costs. These regulations are not part of the code and cannot be found in the tax act itself or in its legislative history (Hanna, 2006, pp.657-8). On the other hand, fakes involve changes to tax laws that are not hidden from general view. In fact, such changes are open and straightforward, but may accomplish a purpose not easily understood by taxpayers and tax advisors. This study adds to this literature by examining different factors – cultural, legal, economic and political – and how they are weighed up by parliamentarians in passing legislation. Although previous studies have shown how parliamentarians are dominated by their constituents, they overlook how members of parliament dominate their peers. This study analyses these questions by looking at general processes and transfer pricing policy making.

2.2.4 Implementation

The legislative stage produces a tax statute that is implemented in practice by tax authorities and taxpayers, whose relationship is sometimes mediated by tax

practitioners or intermediaries (OECD, 2008). This sub-section presents a range of studies concerned with the practices of these actors.

Tax administration

The implementation stage is concerned mainly with the tax administration and its capacities. Casanegra de Jantscher (1987, p.25) asserts that 'tax administration is tax policy'. This suggests that adequate implementation of tax policy requires a strategy and political support (Gordon & Thuronyi, 1996, p.3; Bird & Zolt, 2008). Sometimes this political support is manifested through the recognition of a tax authority as a technical force, allowing it to perform its functions in tackling tax evasion independently (Sanchez, 2011). Alternatively, tax authorities may not be purely technical, but also political. For example, Kim (2008) discusses the connection between politics and tax authorities, showing how politicians exert influence through the appointment of personnel to high positions, affecting internal practices.

Tax authorities perform a number of functions, such as drafting tax legislation, and issuing administrative guidance to facilitate compliance and audits. These are discussed in turn. Hasseldine *et al.* (2011) conducted a qualitative study with interviews to understand how changes in legislation are brought about by tax authorities and captured by tax advisors and taxpayers. These authors equate the relationship between these three actors to a market: the tax administration is a knowledge seller, tax advisors are brokers, and taxpayers are buyers. Knowledge produced by tax authorities includes the provision of notes, guidance, articles and publications (Gribnau, 2009 refers to this material as a form of soft law), which flow to users of tax information such as taxpayers. Hasseldine *et al.*'s study enhances academic understanding of the practices of tax authorities; however, the production of such guidance is rather ignored. Their analysis focuses on the technical aspects of corporate tax in the UK context, overlooking the role of politics in making and implementing regulation. How administrative guidance is issued and how power relations shape content are areas analysed in the present study.

A large body of scholarship deals with attempts by tax authorities to secure compliance from taxpayers. Tax authorities conduct audits to enforce compliance (e.g. Allingham & Sandmo, 1972; Braithwaite, 2003) and adopt a

range of strategies to encourage compliance, including persuasive communications (e.g. Hasseldine *et al*., 2007; Hite, 1989, 1997) and the strategic selection/sampling of tax returns for audit (Alm *et al.*, 1993). Many of these studies have deployed surveys and experimental techniques which assume a narrow view of rationality, thereby potentially failing to reveal the power relationships at play between taxpayers and authorities.

In contrast to the more positivist/quantitative approach to the study of tax compliance, a growing body of critical-interpretive tax literature is addressing tax audits in practice. Using data from 142 interviews with revenue agents in four different locations in the US, Pentland and Carlile (1996) give a full account of how tax audits are conducted in practice. Their study highlights the emotional and rational/economic perspective in the domain of asymmetric information between inspectors and taxpayers. Other scholars have adopted ethnographic methods to explore audit practices. For example, Boll (2011) shows how audits are planned and conducted by the Danish Revenue Service (SKAT) in small businesses, and how the latter defend their non-compliant behaviour. In a later study, Boll (2014a) examines how tax inspectors in Denmark make decisions on what/who to audit in an inverted invoice project relating to sales of cars. Theoretically inspired by Foucauldian and Latourian concepts, Boll's analysis focuses on how tax inspectors construct narrow images of taxpayers, disregarding other areas in which fraud may be more severe and never seeing all aspects of taxpayers' transactions. In another ethnographic study, Boll (2014b) shows how tax compliance embeds a 'socio-material assemblage' of heterogeneous entities, including humans, to construct a network that leads to judgments of compliance or non-compliance in tax audits. These studies focus on audit procedures when legislation has some degree of certainty, but the mechanisms used by tax authorities when specific legislation is uncertain are absent from this strand of research.

The effects of these audits on taxpayers have been also examined in practice. A seminal critical tax study conducted by Preston (1989), inspired by Foucauldian concepts, examined how the British tax authority influenced, intentionally or otherwise, the adoption and development of accounting practices in a record company. Focusing on individual taxpayers, Lamb (2001),

also inspired by Foucauldian concepts, examined tax practices and their accounting effects in mid-nineteenth-century Great Britain.

Some scholars have been concerned with the role of tax inspectors. Bird (1999), for example, comments that recruiting and training people with knowledge and adopting institutional structures is slower than writing new laws. Tax inspectors need certainty about the law in order to enforce statutes (Newbery, 1987), and this is gained through training (Bird, 1999) – although, importantly, real practices may differ from the legal statutory system (Mansfield, 1988). As noted, knowledge plays a pivotal role in the implementation of tax legislation; however, these studies adopt a generic/context-independent and descriptive approach, ignoring how knowledge is acquired and accessed by tax officials in practice, and how such knowledge acts as a power resource to secure compliance.

In contrast to this abstract approach, Oats and Tuck's (2008) critical tax study examines how overlap between accounting and tax profits forced the British tax authority (HMRC) to recruit professionals with accounting knowledge and experience in order to secure the compliance of large corporates. Also within the interpretive tradition, Tuck (2010) examines the role of technical competence, which gives some sense of legitimacy by making the official appear 'skilled and knowledgeable' (p.594), mixed with other capabilities of a strategic and marketing nature. Chapters Six and Seven examine the restructuring of the Chilean tax authority (IRS) in order to access technical knowledge and other skills to implement transfer pricing regulation.

Regarding the use of technology by tax authorities, Newbery (1987, p.200) states that one of their most difficult problems is to 'collect and process the information efficiently'. Information technology makes their practices more efficient (van den Noord & Heady, 2001). These studies differ from the critical-interpretive approach as they are descriptive, rather than explaining the underlying processes and struggles confronting tax administrations in collecting and using tax information. As will be shown in Chapter Six, gathering information on taxpayers' international transactions has become a real challenge for tax authorities.

Bird (2004) argues that, overall, it is interaction between people, material and information (including law and procedures) that produces revenues. This interaction is viewed similarly by Alm and Torgler (2011, p.645), who see tax authorities as having a 'production function'; the inputs mentioned by Bird (2004) not only produce revenues, but also taxpayer satisfaction and equity considerations as outcomes. McKerchar and Evans (2009) argue that tax authorities need to strengthen their organisational, institutional and managerial structures to perform their work adequately. In this respect, for example, Eissa and Jack (2010) show how Kenya reformed its organisational structure, creating a Large Taxpayer Office (LTO) to monitor taxpayers that contribute significantly to revenues. Nonetheless, transferring greater responsibilities and power to this LTO met with some internal resistance, as other departments/units perceived their loss of taxpayers as detrimental to their prestige and influence. In contrast to these general statements about how tax authorities work and partial accounts of their constituent elements, this study examines the interaction in practice between knowledge, technology, inspectors' personal characteristics, organisational structure and the law, providing a holistic view of attempts by the IRS to implement specific laws.

One body of work considers the relationship between features of tax legislation and the way it is implemented. Hume *et al.* (1999) suggest that ambiguity in tax legislation acts as a source of dilemma, constraining enforcement capacities. In the Australian context, the complexity of a specific rule hindered the tax authority's work, as it had to issue extensive administrative guidance in order to implement it (Kenny, 2010). In contrast, good regulation appears to improve the scenario. Simple legislation is a 'blessing' (Gribnau, 2009, p.4). If tax inspectors find it difficult to determine whether or not a taxpayer is compliant (Erard, 1997), tax collection costs increase (Torgler *et al.*, 2008).[3] There is evidence to suggest that governments that collect with low administrative costs are more successful (Lindert, 2003, p.936). It is believed that administrative costs are generally higher in developing countries (Gallagher, 2005). Functionalist

[3] These costs are generally referred to as administrative/administration costs. Turner *et al.* (1998, p.63) define administration costs as follows: 'these are the costs to the government of collecting the tax. They include staff salaries and labour on-costs at all levels in the relevant tax collection agency; accommodation costs; information technology costs, travel, and sundry administration'.

accounts of these studies are largely abstracted from practical processes. In contrast, the present study shows the IRS' struggle, in practice, to implement transfer pricing regulation over a number of years.

A more recent strand of scholarship based on economic psychology is concerned with trust in tax authorities (Kirchler *et al.*, 2008). Wahl *et al.* (2010) suggest that higher levels of trust could be gained through 'fair procedures' (e.g. citizens' participation in legislation), or through friendly and service-oriented behaviour by tax authorities (e.g. offering help with filling in forms correctly). On this last point, the concept of a 'service paradigm' in tax administration has emerged, emphasising the role of the tax administration as a 'facilitator and service provider to taxpayer-citizens' (Alm & Torgler, 2011, p.646). Tax authorities' provision of low-cost information to taxpayers to complete their tax returns positively affects tax compliance (Alm *et al.*, 2010). A customer-unfriendly tax authority has higher compliance costs (Eichfelder & Kegels, 2014). In contrast to these positivist studies focusing on individuals, this research examines in practice how IRS-educated corporate taxpayers and their advisors complied with a new rule (see Chapter Seven).

The trend for rebranding taxpayers as customers has also been examined in the literature. Tuck *et al*.'s (2011) interview-based UK study argues that this trend is problematic and entails a high degree of ambiguity in the definition of customers. Rebranding is not just about the name but also about concrete actions carried out by the HMRC, such as customer segmentation strategies, customer relationship management techniques, and measurements of satisfaction levels. These researchers argue that, in any case, rebranding taxpayers as customers alters the relationship between the state and the users of its services. Continuing this research, Tuck (2013), mobilising Foucauldian concepts, examines how the taxpayer is being 'remade' as a visible customer, despite resistance from large taxpayers who do not understand what is the service being delivered. HMRC has 'embedded' (p.127) the discourse of the customer, and has subsequently adopted new practices such as negotiation, leading to more intimate connections with large corporates. This new relationship has been criticised for being too 'cosy' (p.127). In this relationship, Tuck argues that the regulatee reconstructs the regulator.

Writing from a behavioural economics perspective, Alm and Torgler (2011) propose the 'trust paradigm', which incorporates the roles of morality, social norms and other factors. This new paradigm works by, for example, using mass media to highlight tax compliance as ethical behaviour, targeting groups to introduce them to the notion of compliance as the right thing to do, emphasising the relationship between tax payments and services provided by government, and re-educating individuals who think that tax evasion is right. This model suggests that by leveraging the trust paradigm the tax administration may achieve its goals and foster compliance. In the end, citizens who trust their tax authorities will be voluntarily compliant and refrain from evasion when the probability of detection is low, while evasion is likely to occur if they distrust the tax administration (Wahl *et al.*, 2010, pp.400-1).

Taking a more structural perspective, Bird (1999, p.73) lists various factors that have an impact on tax administration, such as institutionalisation of corruption, criminalisation of politics, standards of public morality, attitudes toward peers' compliance, and modernisation of the economy and the legal environment as a whole.

Taxpayers

A second participant in the implementation stage is the taxpayer, either a corporation or an individual. This study focuses on the literature on corporations. In order to implement legislation, corporations capture 'tax knowledge and implement informal and/or formal systems to enable routine tax compliance while engaging in volitional planning and avoidance activity as determined by various factors' (Hasseldine *et al.*, 2012, p.535). This suggests that knowledge is necessary to implement tax legislation. One mechanism used by companies to organise tax knowledge is organisational structure. Porter's (1999) UK survey found that large companies are more likely to have an in-house tax department, and that those with in-house departments spend most of their time on tax compliance activities rather than on tax planning.

Technologies and organisational structures have changed how transactions are reported to tax authorities. Modern computers have made information control easier, while easing the burden on the tax collector (Stiglitz, 2010). Taxpayers use simple artefacts and procedures to comply with regulation. Boll (2014b)

studied how IT systems, IT reminder messages, procedures, documents, pens and ring-binders assisted taxpayers' compliance in Denmark. What these studies have in common is that they focus on general aspects of compliance with legislation, rather than on a particular piece of legislation.

Other interpretive research in management accounting has examined the implementation of specific tax rules in multinational companies. For example, Plesner Rossing (2013) conducted an interview-based study of how and to what extent management accounting and management control systems are contingent on organisational and environmental circumstances, specifically transfer pricing. Using a single multinational enterprise (MNE) which was implementing a compliance-oriented transfer pricing strategy, he shows how a company transformed its management control systems to be compliant with the external environment, paying attention to belief systems, interactive control systems and the role of agents in accessing and sharing information on transfer pricing within inter-organisational networks in order to reduce uncertainty. Similarly, Cools *et al.* (2008) studied the influence of transfer pricing tax compliance on the design of management control systems in an MNE based in the US which was implementing transparent tax-compliant transfer pricing policies. In particular, this company used a single set of transfer pricing methods and records for management control and for tax purposes. In implementing such a strategy, this study highlights the cohesion of all managers in designing a tax-compliant strategy and adhering to that plan. As shown, these studies have focused on management accounting practices, but not on the actual reporting of tax obligations to tax authorities, as the present study does.

Features of the law have an impact on the way in which taxpayers relate to it. Uncertainty may prevent taxpayers from completing tax returns by themselves, making the system less fair as they resort to tax practitioners (Murphy, 2004b). PwC (2011) has shown a positive relationship between the perception of complicated/very complicated legislation and hours spent on compliance activities. Transfer pricing is a type of legislation that carries a high level of uncertainty, and one way of protecting against such uncertainty is through signing advance pricing agreements (APAs). Rogers and Oats (2013) examined the use of this mechanism in practice in the UK and the US and found that the

mechanism is not widely used. Another feature of some legislation is ambiguity, which serves as a source of power to dominate at the implementation stage. Suchman and Edelman (1996) argue that ambiguity may be used by regulatees as 'political resources' to serve their interests by negotiating the content of legislation and reconstructing the content and themselves in a reciprocal relationship. In a qualitative study regarding the use of power and vested interests, Covaleski *et al.* (2005) analyse how stakeholders interpreted, negotiated and agreed on the meaning of tax incremental financing programmes in the US, even though they were concrete with little uncertainty. In those cases where uncertainty and loopholes are more evident, taxpayers use these flaws in legislation to reduce tax payments (Gracia & Oats, 2012; Hasseldine & Morris, 2013). Fairfield (2010) suggests that large firms use this mechanism to reduce tax liabilities. In an international context, Sikka and Willmott (2010) extend these arguments, arguing that multinationals use transfer pricing to retain wealth.

These studies have provided valuable knowledge on how taxpayers deploy a series of techniques to comply with or avoid tax obligations. However, none has discussed the forms in which specific legislation is applied for tax purposes in more than one organisation. Plesner Rossing (2013) and Cools *et al.* (2008) discuss the connection between transfer pricing and management accounting systems, and how the latter are affected and transformed in practice; however, little attention is paid to the tax compliance processes and the relationship established with tax authorities in doing so. How is uncertain legislation applied in practice? How does such uncertainty affect the relationship between taxpayers and tax authorities? What forms of power are present in implementing particular legislation? These are questions which this thesis aims to address.

Tax practitioners

Tax practitioners are a third actor visibly involved in the implementation phase, acting as intermediaries between tax authorities and taxpayers (OECD, 2008). Their role has received considerable attention in the tax compliance literature (Murphy, 2004a). Their intermediary position may be justified by lack of technical knowledge (Morris & Empton, 1998) or as a form of insurance pending a response from tax authorities (Hasseldine *et al*., 2011).

Tax practitioners are known for playing a dual role at the implementation stage of tax rules (Keppler *et al.*, 1991). On the one hand, these intermediaries allegedly exploit loopholes (e.g. Sikka & Hampton, 2005; Sikka, 2010; Tan, 2011), and on the other hand, they transfer knowledge to taxpayers (Hasseldine *et al*., 2011), enforcing compliance (Keppler *et al.*, 1991). From a more critical perspective, Gracia and Oats (2012) comment that tax advisors inculcate existing tax practices into taxpayers.

Several scholars have examined the ethical dimension of the work of tax practitioners. For example, Shafer and Simmons (2008) analyse the participation of tax professionals in tax avoidance schemes and suggest that the facilitation of strategies such as aggressive or questionable tax shelters is connected with ethics and professionalism. Similarly, Stuebs and Wilkinson (2010) argue that ethical breakdowns are the consequence of the increased and explicit pursuit of commercial gain at the expense of emphasis on the public interest. Although these views may portray an image of selfish professionals focusing almost exclusively on financial gains derived from the execution of the profession, they also worry about their reputation. In a qualitative interview-based study conducted by Doyle *et al. (*2009), advisors highlighted the importance of reputation in providing tax advice and how they consciously avoid unnecessary conflicts with authorities in the UK and Ireland.

Attempts have been made to resolve tax advisors' misdoings through explicit regulation. McKerchar *et al.'s* (2008b) study reveals how regulation of tax advisors proved to be effective in lodging individual taxpayers' returns in Oregon in the US. In particular, they examined the effect of tax practitioner regulation from three aspects: mathematical errors, and potential reporting discrepancies of $10 or more for interest income and audit income. Their conclusions suggest that imposing penalties for non-compliance directly on practitioners might lead to a more accurate service and a lower probability of supplying aggressive tax advice.

As this sub-section has illustrated, there is some level of understanding of the roles performed by tax advisors, but not of the way these are performed in practice. This study examines the role of knowledge and its use as a currency of exchange for other forms of value and legitimacy. It aims to provide a more

nuanced understanding of how knowledge is mobilised and how consultancy firms dominate the implementation stage (Stringfellow *et al.*, 2015).

2.2.5 Post implementation review

At the implementation stage, tax revenues may be reduced, the tax authority may face an increasing number of problems, compliance and administrative costs may increase (Bird, 1999), or the courts may be unable to impose the tax (Vanistendael, 1996). These aspects may indicate that legislation is not meeting its policy goals. Various scholars have suggested that problems with legislation arise from the inability of policy makers to foresee all extensions and impacts of legislation on business, as a result of a disorderly legislative process, or chaotic amendments at the last minute, leaving gaps and loopholes in the tax law (Logue, 2006; Vanistendael, 1996, pp.29-30; Weisbach, 1999). As a consequence of these deficiencies, 'tax law is not always precise' (James *et al.*, 2001, p.160). Although stability of tax rules and policy is a desirable feature of the tax system (House of Commons Treasury Committee, 2011, p.22), tax law change is sometimes inevitable to maintain the functioning of the system. Silvani (1992) indicates that, having detected how taxes are being under-reported, the problem might be overcome by refining the legal provisions.

A tax law change requires further state intervention. In the UK and Australia, there have been efforts to improve legislation through rewrite projects. In the UK, the project was first called a 'simplification' project, but its focus then changed to rewriting legislation to accomplish its goals (Rogers, 2008). The wording was also important in this rewrite project, in which modern language was accompanied by formulae, tables and method statements where appropriate (Salter, 2010, p.680). Others view this rewording task with caution. Sawyer (2013a) questions whether new words may lead to greater uncertainty over whether the new phrase is the same as in previous legislation.

Other solutions to improve the standard of legislation include the enactment of anti-avoidance provisions. Weisbach (1999) argues that these provisions cause concern as they eliminate the certainty and reliability of the tax law. Weisbach sees these rules as relatively unfair, as they benefit the government through discretionary administration and through the analysis of taxpayers' thoughts rather than actions.

However, legislative change may encounter barriers. In a descriptive study, Newbery (1987) states that some of these barriers, including a lack of political will to change the tax system, along with bureaucratic inertia such as uniform salary scales and security of tenure, are important factors in preventing such change. How and why tax rules are maintained over time has received little attention in tax research in practice (e.g. Marriott, 2010). This thesis aims to illustrate how knowledge, political barriers, personal agency and other factors have been catalysts for and barriers to tax law change (see Chapters Six and Seven).

2.3 Engagement with the external environment

The design and legislative stages of tax policy do not occur in a vacuum and are connected with the external environment (as, of course, is the implementation stage, given the nature of the participants, i.e. citizens), in at least two ways: consultation and lobbying. These are discussed in turn.

In broad policy terms, the OECD (2002) argues that when law creation processes are open to public scrutiny, hidden and undesired policies are less likely to emerge. It suggests that consultation is able to produce better public policy, increase trust in governments and strengthen democracy (OECD, 2001). In the Australian context, Eccleston (2012) argues that a tax reform will succeed and will be able to resist opportunistic political attacks if it has broad-based engagement with stakeholders and the community.

In law making in general, Tyler (1990) argues that if people perceive the process to be fair, they are more likely to comply with the statutes. The benefits of this engagement with the external environment have been highlighted in the tax compliance literature. Schnellenbach (2006, p.130) argues that, if the political process is perceived to be fair and transparent, tax morale, in other words the intrinsic motivation to pay taxes (Torgler & Murphy, 2005), should be more stable, regardless of whether the political outcome is desired. Similarly, Feld and Frey (2007) add that affluent citizens may accept income redistribution when the ‘political process is perceived to be fair and the policy outcomes legitimate’ (p.104). This engagement with citizens as partners in tax policy making/implementation is ‘rewarded by better tax legislation, a better informed polity and voluntary tax compliance’ (Burton, 2006, p.188). Others have pointed

to limited and ineffective consultation procedures as causes of ineffective tax regulation in Australia (Kenny, 2010).

An opposite view of public engagement and transparency is held by proponents of elitist public policy formation (Burton, 2006). In their view, sometimes a less open process is preferable, maintaining reserve (OECD, 2001) in order to avoid influence by interest groups (e.g. Heij, 2007; Shaviro, 1990). Even the IMF's Manual on Fiscal Transparency (IMF, 2007a, p.37) recommends that tax changes should not be pre-announced if tax avoidance is expected. However, little or no engagement may produce negative effects, such as dissatisfaction with the rules created, as reported by Stewart (2007, p.193) with regard to Ghana's 1995 VAT reform, where a high level of disengagement led to the repeal of the tax.

As there are elements common to the design and legislative phases, the topic is discussed jointly in this section. The second part discusses the literature on actions undertaken by interest groups where government/parliament is less active.

2.3.1 Information, consultation and active participation

The OECD (2001) argues that governments strengthen their relationship with citizens through information, consultation and active participation. Information flows from government to citizens and includes public records, official gazettes and government websites. In consultation procedures, the government seeks feedback on a certain policy and citizens provide input on policy making. In active participation, citizens propose ways for policy making through open working groups, laymen's panels and dialogue. Experiences of this third form are limited and are mostly 'experiments' conducted at the local level (OECD, 2001, p.36).

2.3.2 Consultation

Consultation is part of fiscal transparency (IMF, 2007a), on policy matters as well as on scrutinisation of legislative drafts (HM Treasury & HMRC, 2010). Consequently, consultation occurs in the design of tax policy and at the legislative stage of drafting and parliamentary debate. Consultation may be internal (with members of the same organisation) or external (with outsiders). At

the design stage, internal consultation may target macroeconomists, tax policy specialists, lawyers and administrators involved in the design and implementation of tax policy. It is recommended that communication and consultation with these actors is conducted on an ongoing basis (Gordon & Thuronyi, 1996). External consultation targets other government experts and other working groups in the ministry of finance (Gordon & Thuronyi, 1996). External consultation and education of parliament are recommended because they will generate positive responses from members of parliament in the preparation of a bill (Gordon & Thuronyi, 1996).

Gordon and Thuronyi (1996) suggest that the private sector should also be consulted. It is argued that those consulted should be those immediately and directly affected by the proposals, i.e. stakeholders (OECD, 2001). Bullock *et al.* (2001, p. 47) call these individuals the 'usual suspects'.

Although most of the literature on tax policy making addresses consultation during the design stage, consultation is also conducted by parliament. Consultation within parliament may involve specialists in other departments and other parliamentarians. Parliament may consult advisors from the private sector, other governmental agencies and people invited to public hearings (Adams, 2004).

In tax policy making, whom and how much to consult is a sensitive matter of balance, as external groups' interests may differ from the public interest (Gordon & Thuronyi, 1996). For example, accounting and law firms demand greater access to tax policy on corporation tax rates, environmental taxes and international tax rulings (as shown in PwC, 2006) whilst promoting benefits to clients derived from their own expert knowledge (Hasseldine *et al.*, 2011). However, at the same time, engagement with a larger number of individuals allows the government to access new information, increase the possibility of greater voluntary compliance (OECD, 2001), achieve better policy proposals (Dunne, 2006) and contribute to producing law reasonably right first time (Law Society, 2010, p.4). However, consultation is not a free activity in terms of time and economic resources (OECD, 2001).

Consultation may be conducted directly by a core group working on tax policy proposals, including the tax authority (Gordon & Thuronyi, 1996), or by setting

up a consultative committee or agency (Burton, 2006; Marriott, 2010). Ritually, this independent group gives a sense of greater independence and objectivity; however, this is not necessarily the case. Marriott (2010) shows that in tax policy formulation in New Zealand, the consultative committee privileged élites and the outcome was politically predetermined.

Burton (2006) suggests that any parties engaged in the policy process should be provided with feedback about the impact of their inputs. If the consultation procedure is formal and a consultative report is issued as a result, Burton (2006) suggests that feedback should be included as part of this document. Burton (2006) goes further to suggest that individuals who make a substantial contribution are entitled to a direct and detailed response, as sharing this information also benefits the community at large.

Sometimes broad consultation has an effect, and policy may revert towards the needs of those consulted (e.g. Stein *et al*., 2006, p.200). In contrast, Hale (2002) argues that ideas emerging from consultation that are out of line with mainstream government thinking are frequently marginalised. For example, Kenny (2010) illustrates that comments submitted by industry bodies on the content of an Australian tax law were ignored (p.203). Similarly, Adams (2004) finds that, in the case of public hearings, citizens' comments are not taken into account as officials may already have made up their minds. On this, Philipps (2006, pp.151-2) comments that 'a cynic might conclude that the [finance] hearings are little more than a public relations exercise designed to give the budget process a veneer of democratic legitimacy'. Officials/parliamentarians tend to want to maintain public hearings because they give the policy process a sense of legitimacy (Adams, 2004).

These consultation procedures are not only conducted in producing legislation which may not be 'reasonably right first time' (Wheatcroft, 1968), but also in redrafting processes at the post-implementation stage (see Section 2.2.7). An important consideration is how much to consult. Dirkis and Bonfield's (2005) report on New Zealand argues that too much consultation may cause disengagement. In the UK rewrite project, the irony of 'consultation fatigue' emerged, since one of the pillars of the project was engagement with citizens (Salter, 2010, pp.680-1).

This brief section has presented the ritual/procedural nature of consultation. The main shortcoming of this body of literature is that it is highly descriptive and normative, suggesting how the task should be conducted without paying attention to the social and political nature of these procedures. As will be shown in Chapters Five, Six and Seven, judgments on whom to consult depend on the amount of knowledge and political compatibility. Interviewees tended to call such judgements 'trust'. This research aims to explain how these judgements made by policy makers develop in practice.

2.3.3 Interest groups and lobbying

Hellman *et al. (2000)* suggest that firms may connect with government/parliament in three ways: state capture, influence and administrative corruption. *State capture* is concerned with shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials. *Influence* refers to the capacity of an organisation to impact on the formation of the basic rules without recourse to private payments to public officials. This influence results from factors such as firm size, ownership ties with the state and repeated interactions with state officials. Finally, *administrative corruption* is defined as private payments made to public officials to alter the implementation of rules and policies.

It is not only firms that try to access policy-making processes (Oats & Sadler, 2011); therefore, a better terminology for these agents is 'interest groups' (Campbell, 1996). The level of impact of these groups depends on the structure of institutions (Risse-Kappen, 1996).

For instance, the structure of the electoral system may allow greater access to the tax policy-making process. Roberts and Bobek (2004) studied the social and political powers of corporations in the formulation of tax accounting laws in the US. They found that companies allocated contributions to both members of parliamentary chambers and holders of influential positions to alter the provisions of a bill. Companies used their economic resources to access and influence the tax policy-making process and received economic benefits in return. Similarly, Steinmo's (1989, p.512) institutional analysis found that individual members of congress became 'independent political entrepreneurs',

seeking support from interest groups concerned with particular legislative outcomes, and ended up acceding to pressures from these groups whilst drafting tax bills in the US. In the same vein, Fairfield (2010), drawing on the concept of instrumental power – a 'deliberate political action to effect policy such as lobbying' – found that interactions between businesses and politicians removed from the agenda all substantial reforms to income tax and bank secrecy disclosure in Chile.

As these examples suggest, financial élites and richer taxpayers are able to influence and protect themselves from the vagaries of tax policy reform and the political system (Christians, 2010a). This is referred to as the 'élite resistance hypothesis' (Stein *et al*., 2006, p.187).

Uneven access to the policy process means that some groups win and others lose (Hall & Taylor, 1996). This depends on internal cohesion within interest groups and their ability to negotiate with government. Marriott (2010, p.604) shows that the cohesion of unions gave them greater access, leading to the development of a 'real social partnership between government and unions'. Steinmo (1989) found that, in Sweden, the government negotiated with interest groups to move tax policy forward. Nonetheless, government and interest group require a degree of political compatibility to agree on policy issues (Appel, 2000).

Burton (2006) states that the effects of interest groups on tax policy making are not fully disclosed, calling for greater transparency for the Australian community in this respect.

2.4 Transparency

Transparency has been mentioned as a requisite for good tax policy processes (Sawyer, 2013b). It is a key concept of good governance (IMF, 2007; OECD, 2002) and is concerned with the availability of information about an actor that allows others to monitor that actor's performance (Meijer, 2013). The concept of transparency involves three elements: an observer, an object of observation and a method for that observation (Oliver, 2004, p.2). Citizens (the observer) usually demand transparency about 'policy intentions, formulation and implementation' (the object) (OECD, 2002).

Kopits and Craig (1998, p.1) extend the object and observer and define fiscal transparency as:

> *...openness toward the public at large about government structure and functions, fiscal policy intentions, public sector accounts, and projections. It involves ready access to reliable, comprehensive, timely, understandable, and internationally comparable information on government activities – whether undertaken inside or outside the government sector – so that the electorate and financial markets can accurately assess the government's financial position and the true costs and benefits of government activities, including their present and future economic and social implications.*

Grimmelikhuijsen and Welsch (2012) and Heald (2006) distinguish three objects of transparency: decision-making processes, policy content, and policy outcomes or effects. Transparency with regard to the decision-making process is the degree of openness about the steps taken to make a decision and the reasons for that decision. Examples include open meetings and open minutes of parliamentary meetings, allowing citizens to know why a decision is made. Policy content transparency relates to information disclosed by governmental agencies about the policy itself, including information about the measures, their connection with the policy problem, the implementation path and how that policy affects citizens. As policies are the result of decision-making processes, policy content transparency arises from decision-making transparency. Finally, policy outcome transparency refers to information about policy effects.

In analysing central banks, Geraats (2001) proposes five areas of transparency, which overlap with the previous classification:

1. Political transparency: openness about policy objectives.
2. Economic transparency: openness about data, models and forecasts.
3. Procedural transparency: openness about the process of deliberation.
4. Policy transparency: openness about policy decisions.
5. Operational transparency: openness about the implementation of policy decisions.

Transparent information should in any case be complete, coloured and usable (Grimmelikhuijsen *et al*., 2013). Completeness refers to the level of disclosure of information. The colour of information is the level at which information on certain issues is interpreted favourably. Finally, usability refers to the understandability of information.

Regarding tax policy making, Burton (2002, pp.10-1) suggests that transparency could be improved by disclosing assumptions behind estimates, ensuring public access to data resources, and improving data and availability.

Although transparency is desirable, some actors may have few incentives to disclose information. With reference to budgetary transparency, Benito and Bastida (2009) argue that political incumbents have incentives to hide taxes, over-emphasise the benefits of spending and hide government liabilities. Being transparent makes politicians fiscally responsible.

The IMF takes a broader view of transparency, including policy-making processes and laws. Four measures to increase transparency are given in its Manual on Fiscal Transparency (IMF, 2007a): clarity of roles and responsibilities, open budget processes, public availability of information, and assurances of integrity. Regarding tax issues, the Manual suggests that the 'collection, commitment and use of public funds should be governed by comprehensive budget, tax and other public finance laws, regulations and administrative procedures'*;* that special tax treatments for particular investors should be public; that the budget should cover all central government transactions; that 'laws and regulations related to the collection of tax and non-tax revenues and the criteria guiding administrative discretion in their application, should be accessible, clear and understandable'; that revenue laws and other documentation regarding administrative interpretation should be accessible by the public at large; that laws should be clear and understandable to limit discretion in their application; that discretionary power in the application of tax incentives as well as negotiation between officials and taxpayers should be avoided; that tax audits should be accompanied by clear and complete statements indicating the reasons for adjustments; that tax authorities should make opportunities for collusion between taxpayers and tax officials difficult and may even organise their workloads accordingly; that information systems should provide audit trails of information saved in taxpayers' accounts and of officials who access that information; and that information on tax expenditures should be disclosed as part of budgetary documentation.

As previously noted, some of the IMF's recommendations are oriented to reducing opportunities for discretionary practices and corruption. In the tax law area, uncertainty in the law gives discretionary space to the tax administration

(Gribnau, 2009). Regarding corruption, Tanzi (2000) argues that complex laws allow space for inadequate interaction between tax inspectors and taxpayers in order to comply with the law. He adds that rules, laws and procedures that lack transparency leave grounds for corruption.

In contrast with this descriptive and generic research, and strongly intertwined with the concept of tax knowledge and information explained above, this research project aims to generate a deeper understanding of how transparency is used as a mechanism of domination in the tax policy-making field.

Interactions between individuals working in this field are also reinforced by trust. This is a concept to which many interviewees referred during the fieldwork to explain their part in decisions. This concept is discussed below.

2.5 Trust

Trust is closely related to social capital (Offe, 1999). Economists have even argued that trust might be the best available measure of social capital (Paldam & Svendsen, 2000, 2001). The importance of social capital and its decline has encouraged research on trust (Levi & Stoker, 2000), but definitions of trust are problematic, given the number of disciplines, perspectives and levels of analysis (Yang, 2005), as well as terminological problems. Other concepts such as cooperation, confidence and predictability have been 'synonymously' used to explain trust (Mayer *et al.*, 1995, p.712). However, existing definitions of trust (e.g. Barber, 1983; McEvily *et al.*, 2003; Neu, 1991a) tend to share a central element: 'expectations'. Neu (1991a) comments that expectations are necessary, because knowing others' actions with certainty is not always possible.

The type of expectations at play are both social and constitutive (Simmel, 1964; Zucker, 1986). Neu (1991b, p.296) refers to social expectations as:

> *practices that are taken for granted and accepted by the majority of society's participants. These practices have come to be accepted as the correct way of behaving in certain situations and therefore function as 'social rules' that govern our day-to-day actions.*

Neu (1991b) adds that these expectations are ubiquitous and weak, so some individuals do not follow them. In contrast, constitutive expectations depend

more on specific situations which are learned by observing the desired behaviour in a particular context.

In order to overcome the problems with definitions, Mayer *et al.* (1995, p.712) propose that trust is:

> *the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustor, irrespective of the ability to monitor or control that other party.*

At a conceptual level, two ways to study trust can be distinguished in the literature. At one extreme is the rational/economic position, and at the other a more social approach. Possibly one of the most theoretically developed examples of the rational perspective is that of 'encapsulated interest' (Hardin, 2006). This means that 'for us to trust you we must believe your motivations towards us are to serve our interests, broadly conceived, with respect to the issues at stake' (Hardin, 2006, p.68). The trusted makes the other's interest his own, or encapsulates it, based on the assumption that the relationship between him and the other is important and deserves to be maintained over time (Nannestad, 2008). In the same vein, Delhey and Newton (2005) refer to trust as 'the belief that others will not deliberately or knowingly do us harm, if they can avoid it, and will look after our interests, if this is possible' (p.311). On the other hand, and in contrast to the rational approach, the norm-driven approach is 'moralistic' (Uslaner, 2002). Here, trust is developed through processes of socialisation rather than acquisition, and is generally less dependent on personal experiences.

Another continuum on which trust must be understood is who is trusted. At one extreme lies the idea that trust lies in a particular person – particularised, known, or on which information is held – and over a particular 'issue or domain' (Nannestad, 2008, p.414). This form is closer to encapsulated trust. At the other extreme of the continuum is the 'generalised' form of trust, which relates to unknown people over uncertain traits. Generalised trust is closer to Uslaner's (2002) conception of trust. He argues that generalised trust is more important than the particularised form of trust at the societal level. Offe (1999) suggests four dimensions of who trusts and is trusted:

1. Citizens trust their fellow citizens.

2. Citizens trust in élites.

3. Political élites trust in other élites.

4. Political élites trust in citizens.

This distinction suggests that trust is multilevel, applicable to individuals, bureaucracies and nations (Levi & Stoker, 2000). Yang (2005) notes that citizens' trust in their fellow citizens has been extensively studied in writing on social capital.

Citizens' trust in élites has been examined in the literature of trust in governments (Yang, 2005), referred to as political trust (see Levi & Stoker, 2000 for a review). Trust in governments has been examined at the national level (e.g. Miller, 1974; Richardson *et al.*, 2001) and at the local level (Cooper *et al.*, 2008). It should also be noted that trust in government has a partisan component; for example, Citrin (1974) notes that democrats trust democrats more than republicans. This second strand also encompasses trust in certain professions, such as accounting, examined by Neu (1991b).

Yang's (2005) research focuses on the fourth dimension, finding that public officials hold a neutral view of citizens, neither trusting nor distrusting them. In the tax setting, it has been argued that mutual trust between taxpayers and tax authorities has an impact on tax compliance (e.g. Kirchler *et al.*, 2008).

Another feature of trust is that it is not unconditional (Levi & Stoker, 2000). In this respect, Mayer *et al.* (1995) conclude that trust cannot be generalised from the performance of one task to another, or from one situation to another (see also Sitkin & Roth, 1993).

A third feature is that trust has a graduated nature, as noted by Levi and Stoker (2000). People may trust or distrust absolutely, or to a certain degree (p.476), or may neither trust nor distrust, as Cooper *et al.* (2008) suggest.

2.6 Summary

This chapter has reviewed the tax policy-making literature with reference to the different stages of the process and has highlighted shortcomings in the existing literature. Section 2.2 has presented tax policy making as a linear process comprising three stages: design, legislative and implementation. For each

stage, diverse literature has been reviewed to understand its social, technical and political nature. As tax policy making is not purely a decision of bureaucrats and politicians, but also a space in which citizens have a voice, Section 2.3 has presented an overview of how engagement with outsiders occurs. In particular, a procedural view of consultation and lobbying has been presented. Section 2.4 has presented the concept of transparency and its connection with the tax policy-making process. Finally, Section 2.5 has introduced the concept of trust in the tax policy-making process.

Chapter Three: Theoretical Lens

3.1 Introduction

Chapter 2 outlined the role of tax policy making in producing tax legislation with reference to various academic studies and related literature. Tax policy making is a site where agents compete to impose their views across all stages of the tax policy-making process, from design to implementation. As such, the process is a site of competition and power.

Much of the research conducted so far has hinted at a connection between good tax policy processes and good legislation, nonetheless disregarding the role of power in shaping these processes and subsequent legislation. Consequently, this chapter focuses on a specific view of power and how it infuses the tax policy-making process.

The structure of the chapter is as follows. Section 3.2 refers to the concept of theory and power. Section 3.3 explains the significance of theories of power to this particular project, and introduces the particularities of the theory of power selected for this research. Section 3.4 presents the conceptual model to be applied to the empirical findings reported in Chapters Five, Six and Seven. Finally, Section 3.5 summarises the key issues of this chapter.

3.2 Theory and power

Theory is a basic concept in social research. Silverman (1993, p.1) defines theory as 'a set of explanatory concepts', arguing that without it 'there is nothing to research'.[4] Theories provide a 'backcloth', 'rationale' and framework within which to understand and interpret research findings (Bryman, 2008, p.6). Through the mobilisation of theories, researchers contribute more broadly to the understanding of social phenomena (Oats, 2012a) by developing, transforming and discarding them (Silverman, 1993).

Theories may be hierarchically organised in terms of the magnitude and types of phenomena they contribute to explaining. One such categorisation has been

[4] For a debate about what a theory is and is not, see Sutton and Staw (1995), and for the process of building theory, see Weick (1995).

developed by DiMaggio (1995), who distinguishes between 'theory as covering laws', 'theory as enlightenment' and 'theory as narrative'. A similar and overlapping hierarchical category has been developed by Llewelyn (2003), who classifies theory into a five-level schema, from the lowest (metaphor) to the highest (grand theory). A grand theory operates at a more abstract and higher level by attempting to explain universal, ahistorical and large dimensions of social life (Bryman, 2008; Oats, 2012a).

Tax research has been criticised for being generally atheoretical (e.g. Wainwright & Rodgers, 2013). However, a body of well-respected interdisciplinary tax research (e.g. Boll, 2014a, 2014b; Campbell, 1993; Edgley, 2010; Heij, 2007; Hikaka & Prebble, 2010; James, 2010, 2013; Lamb, 2001; Marriott, 2010; Mulligan, 2008; Oats & Tuck, 2008; Preston, 1989; Tuck, 2010, 2013) draws on a variety of sociological, philosophical and political theories.[5] With regard to social and/or political theorists, Pierre Bourdieu has been less mobilised in accounting research (Malsch *et al.*, 2011), with a few notable exceptions.[6] In tax research, as a sub-specialism of accounting, very little published work (e.g. Gracia & Oats, 2012; Kraal, 2013) has put Bourdieusian concepts to work.

The main themes uncovered in the related literature and data revolve around different forms of power. The theory selected for this study – Bourdieu's theory of social practice – has to have a consistent element of power in order to match theory and data (Parker, 2012). Bourdieu's distinctive view on power was considered appropriate to the object of this study.[7]

In contrast to approaches closer to grounded theory, in which theory emerges from data analysis, this study follows a less inductive approach in relation to

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[5] See Vilaça (2012) for the problems of interdisciplinary research.

6 Some exceptions using Bourdieusian concepts include Baxter and Chua (2008), Carter and Spence (2014), Cooper and Joyce (2013), Farjaudon and Morales (2013), Hamilton and Hogartaigh (2009), Neu (2006), Neu *et al.* (2013), Oakes *et al.* (1998), Shenkin and Coulson, 2007, Stringfellow, 2010 and Stringfellow *et al.* (2015).

7 Other theories were analysed in detail to evaluate their appropriateness to the object of this study. These included new institutional sociology, historical institutionalism and Lukes' dimensions of power. Classical democratic theory, interest group theory, globalisation theory, the public policy model, the agenda-setting approach and fiscal sociology were reviewed in less depth (see Heij, 2007 for a review). All were deemed insufficient to answer the research questions. Bourdieu's theory integrates agency and structure and distinguishes different forms of power which seem pertinent to the data.

theory. Chua and Mahama (2012) recommend that theory should infuse the entire research process, rather than being applied only after data collection, which would result in an 'uncomfortable marriage' (p.81) between theory and data. This suggestion is considered throughout, infusing all stages of the research process with Bourdieu's theory. The next sub-section explains the appropriateness of a theory of power.

3.3 A Bourdieusian theory of power

Power is ubiquitous in all social life (Swartz, 2013), and 'all social interaction involves the use of power, as a necessary implication of the logical connection between human action and transformative capacity' (Giddens, 1981, pp.28-9). For Bourdieu, power is the core ingredient in the organisation of social life and in all types of human relations, including cultural and economic (Swartz, 2006).

The exercise of power also entails domination, which is a distinctive feature of Bourdieu's understanding of power (Swartz, 2013).[8] Bourdieu sees the social world as a stratified space 'where individuals, groups, institutions form inegalitarian structures of hierarchy and domination' (Swartz, 2013, p.80). Regarding power and domination, Bourdieu (1991, p.167) further argues that power is perpetuated by institutions with:

> *structure and structuring instruments of communication and knowledge that 'symbolic systems' fulfil their political function, as instruments which help to ensure that one class dominates another … by bringing their own distinctive power to bear on the relations of power which underlie them and thus by contributing ... to the 'domestication of the dominated'.*

Bourdieu developed tools to study three different but interconnected types of power:

1. 'power vested in particular resources (capitals)'
2. 'power concentrated in specific spheres of struggle over forms of capital (fields of power)'
3. 'power as practical, taken-for-granted acceptance of existing social hierarchies (symbolic power and violence)' (Swartz, 2013, p.45).

[8] Foucault (1977) also analyses domination.

The theoretical aspirations of this study are two-fold. First, Bourdieu's conceptualisation of different forms of power and domination feature prominently in the whole process of tax policy making. Equally importantly, agents in charge of designing and developing tax legislation are part of an élite group that holds significant amounts and diverse forms of power, calling for a deeper examination and theorisation of how these forms of power are mobilised in the process of tax policy making. Second, this study aims to make a theoretical contribution by extending the use of Bourdieusian concepts in the tax policy literature. This theoretical contribution is in line with Parker's (2012) argument that qualitative studies offer 'new theoretical frameworks' (p.68) to inform tax policy and 'practice' (Chua & Mahama, 2012, p.81, with reference to Ferraro *et al.*, 2005).

3.3.1 Bourdieu's Theory of Social Practice

Bourdieu (1930-2002) was a preeminent sociologist of the late twentieth century who contributed, *inter alia*, to social theory, sociology of art, culture and the media, sociology of education, research methodology and epistemology of social sciences (Rawolle & Lingard, 2013). Less prominent is the contribution he made to political sociology and the philosophy of democratic politics (Wacquant, 2004). Political sociologists and political scientists have generally neglected this area of contribution (Swartz, 2006), even though Bourdieu's work examined the actual accounts and practices of agents, the state and central agencies (Everett, 2002). In this respect, Bourdieu makes no distinction 'between the sociological approach to the study of the social world and the study of political power' (Swartz, 2006, p.87).

Philosophically speaking, Bourdieu's sociology acknowledges the duality of the social world, i.e. objectivism and subjectivism, referring to this as an artificial division of social science which is 'the most fundamental, and the most ruinous' (Bourdieu, 1990, p.25). This view of the world is simultaneously 'subjective and objective, internal and external, symbolic and material, individual and collective, free and constrained' (Swartz, 2010, p.9). It is in practice, i.e. in the actions of

people in society (Rey, 2007), that this duality is manifested.[9] Gracia and Oats (2012, p.306) argue that practices emerge from 'the relational interaction of subjective experiences and the objective social structures that frame those experiences'.

Bourdieu's framework is a unification of three theories – of social structure (the field), of power relations (capital) and of the individual (the habitus) – which together constitute Bourdieu's triad (Malsch *et al.*, 2011, p.198). Other sociological approaches have focused on how people behave based on the meaning that things and social interactions have for them (e.g. symbolic interactionism); however, Bourdieu's concepts also deal with social structure and macro-sociological issues, recognising interrelationships between systems and actors (Lunnay *et al*., 2011). Swartz (2010, p.3) clarifies that these concepts are not components of a grand theory, as other authors put it; indeed, Bourdieu himself rejected the idea of treating these concepts as '"theoretical" instruments ... in themselves and for themselves, rather than to put them in motion and make them work' (Bourdieu & Wacquant, 1992, p.228).

These three 'tools for research' (Swartz, 2010, p.4) are relational and inter-dependent; therefore, they should be mobilised together to achieve a better understanding of events (Cooper & Joyce, 2013; Malsch *et al.*, 2011; Swartz, 2008, 2010; Thomson, 2012). There is a reciprocal or 'dialectical' relationship between field and habitus (Ihlen, 2007, p.270), whereby habitus affects field and vice versa (Rey, 2007). Capital is also related to field (Bourdieu & Wacquant, 1992). It is in the intersection of field, capital and habitus that practices emerge (Swartz, 2008). These concepts are discussed below.

[9] In line with Wagenaar (2004, pp.643-4), this thesis does not understand work in the behaviourist sense, which views work as a sequence of 'related activities' such as 'pick up the phone, open a file on the computer, fill out a form', etc. In fact, these actions are 'just the surface manifestation of the whole ensemble of physical and mental skills'. Thus, the 'practical judgments, the everyday, taken-for-granted routines and practices, the explicit knowledge that is brought to bear on concrete situations, the moving about in the legal-moral environment of large administrative bureaucracies, the mastering of difficult human-emotional situations, the negotiating of discretionary space, and the interactive give and take with colleagues that, taken together, make up every day' tax policy-making as a practice.

3.3.2 Field

Bourdieu used three analogies for his broad conception of the field *(le champ)*: a field on which a game such as football is played (*le terrain*); a field as in science fiction; and a force field as in physics. However, his understanding was not reduced to any one of them (Thomson, 2012, p.66).[10] The field is a network or configuration of social relations – structured systems of social positions in which there are struggles over resources (Bourdieu & Wacquant, 1992; Madsen & Dezalay, 2002; Rey, 2007). These configurations may be portrayed as markets or games, in which actors have stakes and also 'trump cards' (Bourdieu & Wacquant, 1992, p.98). In this space of social relations, actors occupy positions of 'dominance, sub-ordinance or equivalence (homology)' (Ihlen, 2007, p.270) where they try to 'usurp, exclude and establish monopoly over the mechanisms of the field's reproduction and the type of power effective in it' (Bourdieu & Wacquant, 1992, p.106).

Bourdieu (1998b, pp.40-1) captures these ideas well by defining field as:

> [A] *structured social space, a field of forces, a force field. It contains people who dominate and people who are dominated. Constant, permanent relationships of inequality operate inside this space, which at the same time becomes a space in which various actors struggle for the transformation or preservation of the field. All the individuals in this universe bring to the competition all the (relative) power at their disposal. It is this power that defines their position in the field and, as a result, their strategies.*

Society is constituted by semi-autonomous fields with autonomous and heteronomous elements (Andon *et al.*, 2014) with their own hierarchy of agents (Bourdieu, 1977). Each field is 'shaped differently' depending on the 'game played' on it and each has its 'own rules, histories, star players, legends and lore' (Thomson, 2012, p.67). These individual fields are sites of contestation in which agents occupy dominant or dominated positions (Bourdieu & Wacquant, 1992).

Fields are delimited; 'what happens on/in the field is consequently boundaried' (Thomson, 2012, p.67). Field boundaries may be temporal, spatial, goal-related, technical, or related to the players involved (Gracia & Oats, 2012; Mutch, 2006).

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[10] Similarly, Martin (2004) identifies three dimensions to Bourdieu's view of field.

However, these boundaries are difficult to identify. The limits of the field are 'at the point where the effects of the field cease' (Bourdieu & Wacquant, 1992, p.100).

Social fields may be economic, juridical, political, bureaucratic, educational, in the field of arts, etc. The juridical, or legal, field is organised around internal protocols and assumptions, characteristic behaviours and self-sustained values (Bourdieu, 1987b, p.806), while the bureaucratic field is the 'set of impersonal public institutions officially devoted to serving the citizenry and laying claim to authoritative nomination and classification' (Wacquant, 2004, p.8).

The political field is a space of 'conflict over the definition and implementation of public policies that are struggled over by political professionals who are increasingly linked to the state' (Swartz, 2013, p.69). This field is structured around 'competition for control of the state apparatus' (Swartz, 2013, p.37), where the 'power of representation or manifestation' is exercised (Wacquant, 2004, p.6). The political field 'contributes to making what existed in a practical state, tacitly or implicitly, exist fully, that is, in the objectified state, in a form directly visible to all, public, published, official and thus authorized' (Bourdieu, 1991, cited in Wacquant, 2004, p.6). Like any other field, the political field exhibits a 'bipolar opposition'. At one extreme are those that 'defend the status quo, the incumbents, the conservatives, the orthodox'; at the other, 'the challengers, the progressives, the protagonists of change, the heterodox' (Swartz, 2013, p.71). In the political field the political parties also interact (Lagroye, 2002, cited in Swartz, 2013, p.69).

3.3.3 Field of power

In comparison with other Bourdieusian concepts, the field of power has received less attention (Maclean *et al.*, 2015). The field of power is an 'arena of struggle among the different forms of power (or capitals) for the power to be recognized as the most legitimate' (Swartz, 2013, p.36). Bourdieu (1996, p.264) refers to the field of power as:

> *struggles among the holders of different forms of power, a gaming space in which those agents and institutions possessing enough specific capital (economic or cultural capital in particular) to be able to occupy the dominant positions within their respective fields*

> *confront each other using strategies aimed at preserving or transforming these relations of power.*

Emergence of the field of power is part of a differentiation process in society giving rise to semi-autonomous social fields, including legal, bureaucratic, political, economic, university/academic and artistic (Bourdieu, 1996; Cohen, 2011), each governed by its own laws as mentioned above (Wacquant, 2004). There are exchange relationships between these fields, making them 'inter-dependent' (Thomson, 2012, p.69). In the field of power there are two dominant principles: domination, and legitimation of the dominant form of capital (Wacquant, 1993, p.25).

Bourdieu argues that there are two opposing poles of capital in the field of power: economic and cultural (Wacquant, 1993, p.23). The economic field, with economic capital, represents the 'dominant pole', while the artistic field, with cultural capital, represents the 'dominated' position (Swartz, 2013, p.63). At one extreme, there are agents 'very rich in economic capital but poor in cultural capital'; and at the other, agents 'very well endowed in cultural capital and poorly in economic capital', (Wacquant, 1993, p.23). In the middle of these opposing poles, there are agents who possess both forms of capital simultaneously, such as the professions and upper-level state bureaucrats. Swartz (2013) reflects that the administrative and university fields occupy intermediary positions, the former being closer to the economic field and the latter to the artistic field. The juridical field appears to be less autonomous and more closely related to the political field (Bourdieu, 1987b).

The field of power is inhabited by powerful agents who possess 'to a very high degree' one of a number of capitals (Wacquant, 1993, p.21), occupying 'more than one social field at a time' (Thomson, 2012, p.68). Maclean *et al.* (2015) refer to these agents as multi-positional 'hyper-agents', the most powerful of whom occupy positions in various arenas, such as public bodies, business associations, top cultural and sports associations and charities. Dominant agents are also referred to as the 'ruling class' or 'élite', as illustrated by Bourdieu himself (Wacquant, 1993, p.19). The concept of élites has been widely studied in politics and business (Mills, 1956). Pareto (1935, pp.1422-23) defines élites as follows:

> *Let us assume that in every branch of human activity each individual is given an index which stands as a sign of his capacity ... So let us make a class of the people who have the highest indices in their branch of activity, and to that class give the name of 'élite'.*

Those belonging to the élite group enjoy a position of 'pre-eminence' over other members (Nadel, 1956, p.415), as a result of having attributes that other recognise as superior (Nadel, 1956). These agents are able to exert 'influence or power' (Nadel, 1956, p.417).

These dominant agents/classes are distinguished from others by the *volume* of capital accumulated, and are also differentiated internally based on the *type* of capital accumulated – 'culturally originated versus economic forms of capital' (Swartz, 2013, p.36). There is also a 'macro-level arena of struggle' in the field of power (Swartz, 2008, p.50), in which significant volumes of economic, social and symbolic capitals are at play and are liable to be acquired by dominant actors (Harvey & Maclean, 2008). Dominant actors try to impose their form of capital as the most legitimate for the whole society (Swartz, 2013); they set 'the value of their initial capital and eventually convert part of this capital, thereby diversifying their portfolio of capitals in occupying dominant positions in other social fields' (Cohen, 2011, p.335).

These dominant agents are then able to control important facets of society, such as agenda setting and policy debates (Rhodes, 2007), and exercise discretion in promoting the 'ruling ideas' of the day, producing a 'theodicy of their own privilege' (Bourdieu, 1996, p.266, cited in Maclean *et al.*, 2010, p.332). These agents not only struggle, but also coalesce with others in order to achieve their goals, such as gaining the approval of favourable legislation or conceiving alternative possibilities (Maclean *et al.*, 2015).

There is a conceptual overlap between the field of power and the state (Swartz, 2013). However, power is concentrated not in the state but in the field of power and diverse fields (Swartz, 2013). The state is an arena of struggle over a particular type of capital, 'statist capital', which emerges from the concentration of a broad array of capitals, including physical, economic, informational (or cultural) and symbolic. Statist capital is 'a special type of capital ... a metacapital' (Swartz, 2013, p.131). The state is a 'set of partially overlapping

bureaucratic fields' (Bourdieu & Wacquant, 1992, p.113) whose culture is 'public service' (Bourdieu, 1996, p.379). Bourdieu defines the state as an:

> *ensemble of administrative or bureaucratic fields (they often take the empirical form of commissions, bureaus, and boards) within which agents and categories of agents, governmental and nongovernmental, struggle over the peculiar form of authority consisting of the power to rule via legislation, regulations, administrative measures (subsidies, authorizations, restrictions, etc.)* (Bourdieu & Wacquant, 1992, p.111).

However, the state lies 'within the broader arena of the field of power', in which there are struggles for power over statist capital (Swartz, 2013, p.135).

3.3.4 Capital

Struggles in the field arise over resources or capital. Here, success depends on the ability to define, access and acquire the form of capital valued within the field which, in the end, determines the position occupied by the agent in that field (Bourdieu, 1986; Everett, 2002). The structure of the field is:

> *given by the distribution of the various forms of capital, that is, by the distribution of the properties which are active within the universe under study – those properties capable of conferring strength, power and consequently profit on their holder* (Bourdieu, 1987a, p.4).

According to their capitals, agents are distributed in:

> *the overall social space, in the first dimension according to the global volume of capital they possess, in the second dimension according to the composition of their capital, that is, according to the relative weight in their overall capital of the various forms of capital, especially economic and cultural, and in the third dimension according to the evolution in time of the volume and composition of their capital, that is, according to their trajectory in social space* (Bourdieu, 1987a, p.4).

Bourdieu conceptualises four general species of capital: economic, cultural, social and symbolic (Bourdieu, 1977). These will be discussed in turn.

Economic capital is material, including monetary and material wealth, commodities and physical resources (Everett, 2002), and 'underpins other forms of capital' (Gracia & Oats, 2012, p.306). Bourdieu refers to economic capital as the 'dominant principle of hierarchy' (Swartz, 2013, p.58) and argues that, for example, companies control a larger part of the market when their capital is more significant (Bourdieu, 2008).

Cultural capital refers to the demonstration of 'competence in some socially valued area of practice' (Sallaz & Zavisca, 2007, p.23). It includes knowledge, skills, taste, lifestyle and qualifications (Bourdieu, 1991), as well as knowledge of how the political process works, how to lobby and how the media works (Ihlen, 2007). The acquisition of cultural capital is not a 'passive process of accumulation' (Haines *et al.*, 2009, p.68); there are struggles for capital and status in order to ascend within the field (Bourdieu, 1986), including organisations (Maclean *et al.,* 2010).

Cultural capital may be manifested in various ways, such as embodied, objectified and institutionalised cultural capital (Everett, 2002, pp.62-3). Embodied cultural capital is a product of external wealth transformed into an integral part of a person, such as muscular physiques, suntans, language skills, bodily comportment and personal familiarity with works of art (*ibid.*). This is incorporated through a process of 'embodiment, incorporation, which ... costs time, time which must be invested personally by the investor' (Bourdieu, 2006, p.107). Objectified cultural capital refers to cultural goods, such as pictures, books, dictionaries and writings, and institutionalised cultural capital refers to academic qualifications (Everett, 2002). Cultural capital is more durable and less 'susceptible to attrition' than economic capital (Everett, 2002, p.63). Cultural and economic capital are 'very strongly correlated' (Bourdieu, 1987a, p.4).

Social capital represents the sum of resources, be they actual or virtual, 'that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition' (Bourdieu & Wacquant, 1992, p.119). Social capital is extremely important in accessing the field of power, acting as a 'bridge building' factor connecting agents with distant realms (Burt, 1992, 2000; Maclean *et al.*, 2010, p.342).

A variant of social capital is *political capital*, which is related to the social networks of political parties (Everett, 2002). Political capital has the capacity to generate profits and privileges by 'operating a "patrimonialization" of collective resources' through political parties (Bourdieu & Wacquant, 1992, p.119) to mobilise 'social support' (Swartz, 2013, p.37). Political capital is delegated through its objectification in specific 'permanent institutions' and its

‘materialization in political machines’ (Swartz, 2013, p.65). Bourdieu (1991) distinguishes two types of political capital: personal and delegated. Personal political capital is connected with the person, his ‘fame and popularity based on the fact of being known and recognized in person’, and for having a good ‘reputation’ (Bourdieu, 1991, p.194). This suggests that political capital is simultaneously interpreted as a form of symbolic capital (Swartz, 2013). Personal political capital is also categorised based on two origins: ‘knowledge or experience accumulated through public service’ or from a ‘heroic or prophetic’ stance (Bourdieu, 1991, pp.184-94). In turn, delegated political capital refers to the ‘authority granted by a political organization’ (Swartz, 2013, p.66). This type of political capital comes from delegation. It depends more on organisational position than on the individual as such.

The last form of capital is *symbolic capital*, which is found in prestige, renown, reputation and personal authority. This form of capital emerges from other forms of capital which are converted into symbolic form and then deemed to be legitimate (Bourdieu, 1977).

In contrast to economic and cultural fields, organised around economic and cultural capital respectively, symbolic capital does not have its own field, operating as a ‘metacapital’ (Swartz, 2013, p.111).

Capitals do not exist in isolation but are relational to the field (Bourdieu & Wacquant, 1992; Swartz, 2013). Bourdieu (1990, p.123) suggests that in the economic field ‘wealth can function as capital only in relationship with a specifically economic field, presupposing a set of economic institutions and a body of specialized agents with specific interests and modes of thought’.

Agents may deploy different strategies in order to improve their position in the field, for example:

> *discrediting the form of capital upon which the force of their opponents rests (e.g. economic capital) and to valorize the species of capital they preferentially possess (e.g. juridical capital). A good number of struggles within the field of power are of this type, notably those aimed at seizing power over the state, that is, over the economic and political resources that enable the state to wield a power over all games and over the rules that regulate them* (Bourdieu & Wacquant, 1992, pp.99-100).

3.3.5 Habitus

This is the third concept developed by Bourdieu (1991) to theorise the relationship between structure and the individual. Agents generally do not act in an instrumental way (Shenkin & Coulson, 2007), obeying the 'express, explicit norm or rational calculation' (Bourdieu, 1990, p.11). Rather, they obey a different set of rules: 'they obey a certain "feel for the game"' (Bourdieu, 1990, p.11). Habitus is defined as:

> *...systems of durable,*[11] *transposable dispositions, structured structures predisposed to function as structuring structures, that is, as principles which generate and organize practices and representations that can be objectively adapted to their outcomes without presupposing a conscious aiming at ends or an express mastery of the operations necessary in order to attain them. Objectively 'regulated' and 'regular' without being in any way the product of obedience to rules, they can be collectively orchestrated without being the product of the organizing action of a conductor* (Bourdieu, 1990; p.53).

Actors produce 'sensible and regular thoughts and practices', but without the intention to behave meaningfully and without being conscious of obeying (explicit) rules (Bourdieu, 1990, p.69). In other words, habitus is the source of a series of moves 'which are objectively organized as strategies without being the product of a genuine strategic intention – which would presuppose at least that they are perceived as one strategy among other possible strategies' (Bourdieu, 1977, p.73). For Bourdieu, practice is 'not based on an explicit rule or law. This means that the modes of behaviour created by the habitus do not have the fine regularity of the modes of behaviour deduced from a legislative principle: the habitus goes hand in hand with vagueness and indeterminacy' (Bourdieu, 1990, p.77). Habitus is durable through a process of inculcation, because one cannot 'unlearn' one's dispositions; but it is not static since it is open to adaptation (Hamilton & Hogartaigh, 2009) or 'innovation' (Shenkin & Coulson, 2007, p.304).[12] Although habitus is usually understood to be part of human beings, the

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[11] Durable does not mean immutable (Sallaz & Zavisca, 2007).

[12] Bourdieu also analyses change through his concept of hysteresis. Bourdieu (1977, p.83) writes that 'The hysteresis of habitus, which is inherent in the social conditions of the reproduction of the structures in habitus, is doubtless one of the foundations of the structural lag between opportunities and the dispositions to grasp them which is the cause of missed opportunities and, in particular, of the frequently observed incapacity to think historical crises in categories of perception and thought other than those of the past'. For a summary of the application of the concept, see Hardy (2012).

concept is also applicable to groups of individuals such as organisations and institutions (Goddard, 2004). Participants enter the field with a certain amount and forms of capital, but also with habitus (Cooper & Joyce, 2013).

3.3.6 Doxa

Bourdieu sees most social practice as unconscious (Cooper & Joyce, 2013) due to the existence of the 'paradox of doxa'. Doxa is a term coined to refer to the passivity of individuals in accepting daily life as it comes. As noted by Bourdieu (2001, p.1):

> *the established order, with its relations of domination, its rights and prerogatives, privileges and injustices, ultimately perpetuates itself so easily, that the most intolerable conditions of existence can so often be perceived as acceptable and even natural.*

Field doxa 'takes the form of a misrecognized shared allegiance to the rules of the game on the part of agents' (Deer, 2012, p.117). Where doxa, or common sense (Rey, 2007, p.66), produces an unfair allocation of capital and a legitimisation of that production, the concept of symbolic violence appears.

3.3.7 Symbolic power, symbolic violence and symbolic capital

This is the third contribution of Bourdieu to the study of power. In this analysis, Bourdieu uses the concepts of symbolic power, violence and capital, sometimes distinctly and sometimes synonymously given the overlap between them (Swartz, 2013). Bourdieu (2000, p.172, cited in Swartz, 2013, p.81) states that domination 'always has a symbolic dimension'.

Swartz (2013, p.83) argues that symbolic power is the 'capacity to impose symbolic meanings and forms as legitimate'. It is 'an imposed power – a cultural form of domination ... in modern societies symbolic power tends to be monopolized by state institutions'. Symbolic power represents an internalised or incorporated form of power which undergoes a process of 'naturalization' (Swartz, 2013, p.83). This type of power entails the power of naming and classification, differentiating social reality. Language is important in this process (Swartz, 2013). Schubert (2012, p.179) refers to language as a device of 'power and domination'. Symbolic power is about 'producing social classifications among groups and rendering them legitimate' (Swartz, 2013, p.87).

Symbolic power requires recognised authority, which is captured by the concept of symbolic capital discussed above. Symbolic power shapes the habitus, and through the latter is embodied, generating a 'practical sense' for 'organizing perceptions of and actions in the social world' (Swartz, 2013, p.89).

Symbolic violence is intended to capture the effect of symbolic power (Swartz, 2013). Symbolic violence is 'misrecognized obedience in that symbolic power is accepted as legitimate rather than as an arbitrary imposition' (Swartz, 2013, p.83). Rey (2007, p.39) argues that symbolic violence is a mechanism by which distinctions between individuals and groups take place and 'forms of domination predicated thereupon are reproduced in society'. Bourdieu stresses that structures of domination are the product of an 'incessant (and therefore historical) labour of reproduction' called 'symbolic work' (Swartz, 2013, p.94). In contrast, Schubert (2012, p.180) argues that dominant actors need to invest 'little energy to maintain their dominance. Members of the dominant classes need only go about their normal daily lives, adhering to the rules of the system that provides them their positions of privilege'.

Bourdieu & Wacquant (1992, p.167) add that it is 'the violence which is exercised upon a social agent with his or her complicity'. There is also an element of passivity in the existence of symbolic violence, as those structures and processes that dominate individuals seem to them to be 'natural, self-evident and legitimate' (Emirbayer & Johnson, 2008, p.31). With reference to symbolic violence, Bourdieu (1990, p.127) states:

> *Gentle, invisible violence, unrecognized as such, chosen as much as undergone, that of trust, obligation, personal loyalty, hospitality, gifts, debts, piety, in a word, of all the virtues honoured by the ethic of honour, presents itself as the most economical mode of domination because it best corresponds to the economy of the system.*

Although the concept of violence usually denotes physical aggression, Gracia and Oats (2012, p.307) reason that it includes non-physical manifestations of violence, such as 'being denied access to resources, rights or opportunities or being treated as inferior'. Force does not have to be physical or complete to be effective (Oakes *et al.*, 1998). Indeed, Bourdieu (1977, p.196) argues that symbolic violence is the 'gentle, hidden form which violence takes when overt violence is impossible'. These acts of symbolic violence or domination are

normalised by participants in the field as intrinsic facets of the field (Gracia & Oats, 2012).

Actors misrecognise the existence of symbolic violence, which acts for dominant and dominated agents (Swartz, 2013, p.95). However it is more 'insidious for the dominated', because when misrecognised it makes the dominated group part of their own domination (*ibid.*). The dominated understand domination as 'normal, inevitable or natural and thereby misrecognize the true nature of their social inequalities by accepting rather than resisting them' (Swartz, 2013, p.38).

Symbolic violence is 'corporeal and cognitive and finds expression in all forms of body language' (Swartz, 2013, p.92). Structures of hierarchy and domination endure, and reproduce inter-generationally without resistance.

The next section explains the conceptual framework that has been developed drawing on these Bourdieusian concepts and that assisted in the data interpretation and analysis presented in subsequent chapters.

3.4 Conceptual model

The following conceptual model aims to portray a 'simplified representation of the real world' (Bill & Hardgrave, 1973, p.28), in this case a simplified representation of the tax policy-making process in practice. This model is presented in visual and narrative forms (Baran & Davis, 1995; Miles & Huberman, 1994).

Following Bourdieu's own approach to research, rejecting theoreticism and methodologism (Bourdieu & Wacquant, 1992), the constructs presented here emerged from close interaction between theory and data.

Drawing on the writings presented in this section, the tax policy-making process is conceptualised as a 'field' in which agents compete with each other for the types of capital valued within it. Although this specific field has a certain level of autonomy, it is influenced by external factors (fields), be they legal, political, economic or social, which 'together comprise the wider social field in which we all interact' (Oats & Gracia, 2012, p.115). These outside influences include, for example, supranational institutions, political constitutions, law making, parliament-specific regulation, funding of political campaigns, the economic

situation and citizens' demands. Some of these objective mechanisms/institutions may cause structural violence.

Structural violence is a term coined by Galtung (1969) and Latin American liberation theologians to describe 'sinful' social structures with deeply ingrained social inequality (Farmer, 2004). This violence is systematically exercised by those belonging to a certain social order and is connected with oppression (Farmer, 2004). Structural violence operates whenever individuals are harmed, maimed or killed by unjust social, political, legal, religious or economic institutions, systems or structures (Farmer, 1997; Farmer *et al*., 2006; Köhler & Alcock, 1976). Structural violence prevents individuals from reaching their full potential and tends to be overlooked and invisible (Farmer *et al.*, 2006).

The tax policy-making field emerges at the intersection of various individual and semi-autonomous fields, *inter alia* the bureaucratic, economic, juridical, political, business-corporate, professional services and academic fields.[13] Each of these fields has its own 'rules, norms and culture' (Bourdieu, 1998a, p.65). Given these 'cross-disciplinary relationships', the boundaries of the tax field are usually more complex than those in other fields (Gracia & Oats, 2012, p.308). As this model represents just a portion of reality (Shoemaker *et al*., 2004), only relationships between the tax policy-making field and other fields will be acknowledged as they go beyond this research.[14] Figure 3.1 illustrates the formation of the tax policy-making field.

'Participators' (Bourdieu, 1998a, p.65) in the tax policy-making field come from diverse fields. The bureaucratic field comprises presidents/prime ministers, cabinet ministries, the treasury, tax authorities and related entities, both domestic and international. The economic field is made up economists in the public and private sector. The juridical field consists of the legal apparatus, including lawyers and judges. The political field is made up of parliamentarians and political parties. The business-corporate field comprises individuals and

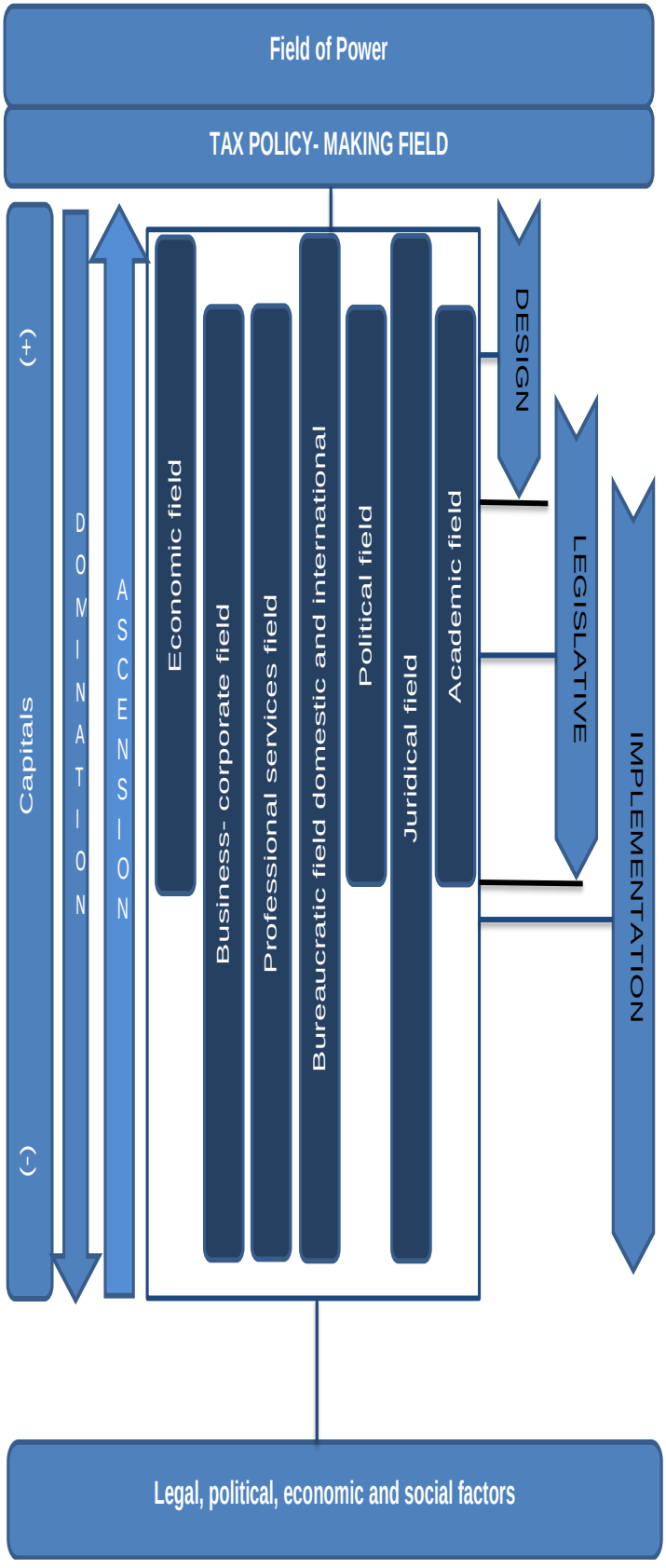
[13] Modern societies are characterised by having a larger number of fields compared with the pre-modern world (Sallaz & Zavisca, 2007).

[14] The creation and implementation of tax rules have an impact on other fields, such as the juridical, educational and economic fields. For example, court decisions in the implementation of tax rules affect the juridical field. Similarly, tax regulation affects the economic field in terms of investment and cost of regulation, and tax rules and their implementation impact on the educational field, specifically in the content delivered in academic programmes.

companies, regardless of their legal form, and their trade representatives. The professional services field is made up of professional advisors in different disciplines. Finally, the academic field comprises educational institutions, academics and students. As previously noted, agents may belong to more than one field at the same time. For example, the president/prime minister (bureaucratic field) may simultaneously be a lawyer (juridical field), an affiliate to a political party (political field), a part-time academic (academic field) and a taxpayer (business field).

Within each field, there are movements depending on the amount and composition of capitals. The more accumulated capital valued within the specific field, the more powerful the agent or institution becomes.

Figure 3.1: Theoretical Framework



As Figure 3.1 shows, higher amounts of capital allow agents to access spaces to make decisions at the top level of the design stage.

In the tax policy-making field, the state relates to other fields at different levels. The design stage of tax policy making (Gould & Baker, 2002) may be conceptualised as a site of power. Here, the most powerful agents in various fields relate and make the most important tax decisions that rule society. Figure 3.1 shows that at this level senior-level bureaucrats interact, filter and struggle over cultural capital, represented by the content of legislation, with a minority of 'hyper-agents' from the economic, juridical, professional services, business-corporate, academic and political fields. In this struggle, policy and tax legislation are defined but not necessarily agreed. Only the views of powerful agents are captured in written legislation. In this sense, what is not included in tax legislation is also part of legislation. Regarding the role of the political field, at the design stage it is overtly manifested in a timid way, as represented in Figure 3.1. However, its influence in changing the course of tax policy is considerable; in some cases its power is greater than that graphically presented in this model.

The legislative stage operates as a site of power, but with far lower intensity than the design stage. Although powerful in principle as a result of the political capital (Swartz, 2013) held by parliament, which can approve or reject tax rules, in some countries it cannot initiate tax reforms (e.g. Chile). Parliaments engage with society at large through public hearings and consultation procedures; however, political constitutions may allow any type of agent to access parliamentary discussion in passing tax legislation, regardless of the volume or type of capital they bring or whether they are part of an 'élite'. It is parliament that exchanges forms of capital, such as the right to be listened to and enter this dimension, and trust and information/knowledge; and it has the ability to filter opinions and deliberate accordingly. At this stage, parliament interacts with bureaucrats in order to gain a deeper understanding of the content of tax rules. In this interaction, members of political and bureaucratic fields may either coalesce or be in opposition.

At these two stages, the predominant role is played by the state (government), comprising executive and legislative branches. In general terms, the role of the state is significant as 'Governments appear to be in a powerful position to shape

the field' (MacMillan, 2013, p.14). Fligstein (1991, p.314) argues that by setting 'the rules of the game for any given organizational field', governments 'can, therefore alter the environment more profoundly and systematically than other organizations'. The boundaries of the state/government tend to be blurred in the tax policy-making process due to interactions with outsiders; governments should therefore no be longer be perceived as 'a set of buildings with staff in a capital – but a way of doing things, a way of interacting, of disciplining, of behaving ... it is the expression of a complex web of relationships, assumptions, subjective choices, beliefs and expert knowledge, etc.' (Boden, 2012, p.127). These complex interactions determine what can be done at the tax implementation stage and endow agents with certain capitals, and hence positions, in the field.

At the implementation stage of tax policy making, fewer fields interact than in the two previous steps. For example, the political and academic fields are no longer visible, as the capitals (power) that agents draw from these fields is irrelevant, showing that capitals exist in relation to a particular field as discussed above. This stage may be interpreted as the natural and initial environment of agents such as taxpayers (corporate-business field), tax officials in charge of the implementation of tax rules (bureaucratic field), professional services firms/individuals (professional services field) and the court as the ultimate authoritative voice of the content of tax legislation (juridical field). This stage is inhabited by dominant and dominated agents. Dominant agents are those able to mobilise their mix of capitals specifically at the implementation stage, but are also able to influence the content of tax rules at previous stages by mobilising capitals and by occupying positions in more than one field simultaneously. For example, designers and drafters of tax rules (bureaucratic field) and politicians (political field) may be affected by the tax rules as taxpayers (corporate-business field) and be policy motivated (Besley, 2006).

These movements and interactions show the dynamism of the tax policy-making field broadly understood. Some agents from individual fields mobilise to ascend in their respective field and access the field of power to set tax rules; and when that capital is no longer relevant, they draw no further power from it, returning to their specific individual fields to dominate within them and those that relate to them. These movements and loss of relevance are illustrated in Figure

3.1 by appearing or not appearing at each of the design, legislative and implementation specific stages. An important consideration is that the boundaries of each specific field are sometimes unclear. The economic field may comprise, for instance, the corporate-business, professional services and academic fields. This conceptual model is used in Chapters Five, Six and Seven to interpret the findings.

3.5 Summary

This chapter has introduced the concept of theory and its specific relevance to this study (Section 3.2). Power appears as a recurring theme in related critical literature and in data collected for this project; therefore, to transcend description and reach higher levels of explanation, a theory of power was selected to fit the data and theory.

Bourdieu's concepts of power and domination have been introduced (Section 3.3) and his three major contributions to the concept of power have been thematically organised and discussed. A review of Bourdieu's writings and other commentators on his work has been presented to introduce the concepts of field, capital and habitus with their ramifications of doxa and symbolic violence.

In Section 3.4, these concepts have been mobilised to construct a unique model of tax policy making, drawing on Bourdieu's work and concepts found in the tax policy literature. This model is deployed in Chapters Five, Six and Seven to analyse and discuss the empirical data.

Chapter Four: Methodology

4.1 Introduction

This chapter presents the research question and three research sub-questions accompanied by their attendant objectives, the methodological choices, and the fieldwork procedures and limitations. Section 4.2 presents the overarching research question with its related research sub-questions that will be answered in Chapters Five, Six and Seven. Section 4.3 describes the philosophical assumptions guiding this research project. Section 4.4 presents the fieldwork activities, including the choice of specific tax policy-making processes and research methods. Section 4.5 describes the data analysis process. Section 4.6 explains the writing style and coherence of this thesis. Section 4.7 presents its strengths and limitations, and Section 4.8 summarises the content of the chapter.

4.2 Research question, sub-questions and objectives

This study examines tax policy-making processes in practice in the Chilean context, positing one overarching research question with three sub-questions addressed in Chapters Five, Six and Seven. These research questions are the result of literature and data analyses and theoretical reflection.

The overarching research question is:

How do power relations shape practices within the tax policy-making field?

The three associated research sub-questions and their attendant objectives are:

Research Sub-Question One: *How does the tax policy-making process relate to the field of power across its different stages?*

Objectives:

- To identify the individual autonomous fields that participate in the process of tax policy making for income/corporate tax and transfer pricing legislation.
- To identify the key agents and their respective positions of domination in the field for corporate tax and transfer pricing legislation.

- To gain a better understanding of how actors move in their individual fields and how such moves influence the configuration of the field of power.
- To gain a better understanding of how actors abandon the field of power and lose dominance across the stages of tax policy making.
- To gain an insight into how tax policy, drafting and budgeting are carried out.
- To gain an insight into how the parliamentary debate develops in practice and how the space of debate is constructed.

Research Sub-Question Two: *What is the role of tax knowledge and social capital in the tax policy-making field?*

Objectives:

- To identify the different types of tax knowledge and social capital at play in the tax policy-making field, specifically at the stages of design and law making.
- To gain an insight into how tax knowledge allows agents to ascend in the field and how social capital confers access to agents located in different realms.
- To illuminate how possession of these forms of capital makes some agents more powerful and dominant in the tax policy-making field.
- To gain a better understanding of how mobilisation of tax knowledge and social capital may influence the content and robustness of tax legislation.
- To improve understanding of how social capital works as a driver for consultation procedures across the stages of tax policy making in general contexts and in transfer pricing legislation.
- To gain an insight into how social capital relates to lobbying in the development of and debates on tax policy.
- To conceptually relate transparency to different amounts of cultural capital and its use as a political weapon in the tax policy-making process.

Research Sub-Question Three: *How are violence and domination manifested in the tax policy-making field?*

Objectives:

- To explore domination between and within policy-making process stages.

- To identify the role of symbolic violence across the tax policy-making process.
- To identify the role of structural violence across the tax policy-making process.

4.3 Philosophical approach

This project adopts a qualitative interpretive approach (Ahrens & Chapman, 2006; Crotty, 1998; Grbich, 2007; McKerchar, 2010; Silverman, 1993) to answer the posited research questions, aiming to open the 'black box' of organisational processes and answer the 'who', 'how' and 'why' of human action over time and in context (Doz, 2011, p.583).

In an interpretivist approach, the researcher favours the view that 'we actually cannot know anything about such a real world. Everything we say and experience is through the medium of our constructs and ideas. Even the very idea of reality itself is a human construct' (Gibbs, 2007, p.7).[15] This perspective assumes that 'social reality is emergent, subjectively created, and objectified through human interaction' (Chua, 1986, p.615) and is helpful for interpreting human action and culture (Benton & Craib, 2010).

It is the researcher's belief that knowledge created by this type of approach is valuable but is different from explanation (6 & Bellamy, 2012, p.239).

4.4 Fieldwork activities

This section summarises the data collection and analysis techniques deployed to answer the research questions.

4.4.1 Objects of study

The first step in conducting this research was to select what to study. Hägg and Hedlund (1979) recommend making these choices transparent. The inputs to this investigation included three qualitative, informal, semi-structured exploratory interviews with experienced academics and professionals in the

[15] Interpretivism is the most commonly used term in research paradigms. Although this distinction would suggest a clearly defined boundary, Lather (2006) argues that there are movements within and across paradigms, making such boundaries more fluid. In referring to the so-called objectivity of quantitative approaches, Lather argues that 'objectivity debates are never, finally, settled and ... reflexive understanding about how politics, desire and belief structure scientific method (Harding, 1998) is needed across the paradigms' (p. 49).

field; an academic report prepared by legal academics entitled 'Manifiesto Académico por la Reforma Tributaria' (a review of the changed provisions of the 2012 tax reform) published in 2012;[16] the researcher's own theoretical and practical experience of dealing with the particular legislation; and the results of an electronic survey (Blaxter *et al*., 2010; Haslam & McGarty, 2003).[17] Despite the problems acknowledged in the survey literature (e.g. Buckingham & Saunders, 2004; Gillham, 2007), it was considered to be a good method for capturing the views and perceptions of users of income/corporation tax legislation in Chile. This technique was used with the aim of analysing tax policy-making processes of interest to a large number of users of tax legislation and then making a practical impact.

The survey procedure undertaken was as follows. An email survey supported by *Qualtrics* was sent during June and July 2012 to determine which tax provisions within the income tax code prior to September 2012 were perceived to be the 'most problematic' for its users. The target population included adult students with practical experience of taxation in private and public organisations, including the tax authority. This population was reached through a database of adult students enrolled on tax-related further education programmes and on the Master's in Taxation (N=990) at the University of Chile, along with affiliates to the two main tax-related professional bodies – the International Fiscal Association (IFA) and the Instituto Chileno de Derecho Tributario (IChDT). While the student group was targeted directly by the researcher, affiliates of the professional bodies were emailed directly by the secretaries of these bodies.

In order to increase the response rate, the questionnaire targeting students included personal greetings (Heerwegh, 2005), and two reminders were sent after the first email. The emails sent by the secretaries were not personalised and included an anonymous link.

The questionnaire (on file with the researcher) was divided into three sections. Section A gathered demographic information, Section B referred to their

[16] Available at http://www.ichdt.cl/userfiles/MANIFIESTO.pdf [accessed September 2012].
[17] The use of a quantitative survey should not be understood as contributing to a mixed methods rather than a qualitative study, as the results of the survey informed cases but were not used to answer the research questions.

subjective/objective tax knowledge, and Section C listed 18 provisions within the income tax code to be ranked according to their perceptions of difficulty. Subsequently, the provision selected as the 'most problematic' was evaluated in terms of understandability, integration, effectiveness and organisation (Thuronyi, 1996).

A total of 220 valid responses was received. The effective response rate obtained from the 990 emails sent was nearly 22 per cent, which is relatively high compared with the 12 per cent reported in the email survey literature. The results of the poll showed that the two most problematic provisions at that time were the tax profit fund (TPF), with 65 responses, and the transfer pricing rules, with 24 responses. In September 2012, the government in power enacted a tax bill which repealed the former transfer pricing rule and introduced a new one based on OECD guidelines; however, the TPF rules were not substantially or directly changed. For these reasons, analysis of the original and revised transfer pricing rules constitutes two-thirds of the empirical content of this research, allowing a historical and dynamic approach.

In order to gain a panoramic view of tax policy-making processes in practice, the researcher decided to examine income/corporate tax legislation broadly conceived (analysed in Chapter Five) and the two transfer pricing rule-making processes (Chapters Six and Seven). Once a decision had been made on what to study, the fieldwork procedures continued with the choice of research methods.

4.4.2 Research methods

The type of data gathered for this qualitative research is almost exclusively words (Hageman, 2008; Bryman, 2008) sourced from documents and interviews (Creswell, 2009; Eisenhardt, 1989; Gibbs, 2007; Yin, 2014).

Documents

The main documents examined included official reports, administrative records and newspaper articles (Bloor & Wood, 2006, p.58). For the transfer pricing cases, parliamentary documents of the legislative debate, administrative guidance issued by the IRS, newspapers containing biographies of particular agents and key commentaries at particular stages of the process were selected. This selection was justified by the fact that these documents produced large

quantities of data, unchanged by the presence of the investigator while constituting a rich source of primary data (Berg, 2007; Noaks & Wincup, 2004; Payne & Payne, 2004). These documents together were valuable in tracing the chronology of the process (Pettigrew, 1997) and then understanding and attributing meaning to social activities (Altheide, 1996) displayed within the tax field. The key documents examined are summarised in Table 4.1.

Table 4.1: Primary documents

Rule	Document	Source	Period	Number of words
Former transfer pricing	5 Reports Committee of Finance	Chamber of Deputies	Jul- Aug- 1996	21,225
Former transfer pricing	History of law No. 19.506	National Congress Library	Jul-97	255,415
Former transfer pricing	History of law No. 19.840	National Congress Library	Nov-02	118,120
Former transfer pricing	Administrative guidance	Internal Revenue Services	1998-2002	8,743
New transfer pricing	Presidential message No. 058-360	National Congress Library	Apr-12	29,125
New transfer pricing	12 Reports Committee of Finance	Chamber of Deputies	Apr- Aug-2012	95,981
New transfer pricing	History of law No. 20.630	National Congress Library	Sep-12	383,014
New transfer pricing	Administrative guidance	Internal Revenue Services	Oct 2012- Sep 2013	38,486
			Total	950,109

Histories of the law and finance committee documents were carefully examined in order to identify policy makers involved specifically in transfer pricing rule-making processes. Where deemed appropriate, the researcher contacted some actors for further interviews.

Interviews

Interviews were a critical source of data in this qualitative study (Bédard & Gendron, 2004). This technique allows a researcher to unravel complex interactions and influences that would otherwise remain obscure (Marriott, 2010), especially in the study of organisations and processes (Patton, 1990). In reading the documents mentioned above, the researcher noted the existence of undocumented phases or opinions which were in people's heads (Langley, 1999) but not in the papers, and one way of accessing that information was to conduct interviews. Through the 'speech, gestures and actions of competent participants' (Hassard, 1991, p.286), the core of their practices may be understood.

Interview participants were purposefully selected (Creswell, 2009; Patton, 1987) based on the researcher's perception of them as 'good' participants (Meadows & Morse, 2001, p.194), given their experience in the tax policy-making field. The researcher identified the various fields at play in tax policy making, described in

Chapter Three, and then identified the predominant actors in each. Their importance in the field was initially determined by examination of the documents above and their position in their respective fields/organisations. The initial plan was to interview at least five agents in each group, i.e. five individuals in charge of designing tax policy and estimating its economic effects, five agents in parliament, five in the tax authority, five working for professional services firms and five taxpayers.

Although there is no specific predetermined number of interviews to conduct (Kvale & Brinkmann, 2009) nor a 'magic amount of time in the field' (Tracy, 2010, p.841), for two reasons the researcher applied the maximum variation technique (Meadows & Morse, 2001), contacting and obtaining the views of as many people as possible for each stage – design, legislative and implementation – of the tax policy-making process. The first reason relates to credibility. Tracy (2010, p.844) argues that credibility may be assured by 'multivocality', which consists of including varied and divergent voices in the study. The researcher's position is that a larger number of diverse participants allows stronger claims and perspectives to be drawn upon. The second reason for targeting a large number of participants is that it was foreseen that not all of those invited would respond positively, as in fact happened.

Most of the interviews resulted from the researcher's mobilisation of different forms of capital, mainly cultural, social and symbolic (Bourdieu, 1977, 1990). The researcher 'knocked on the door' of very high-profile bureaucrats and politicians, who agreed to be interviewed possibly owing to the amount of the researcher's cultural capital converted into symbolic capital in the form of academic qualifications, occupying an academic position at a prestigious institution in Chile, being a doctoral student in the United Kingdom, having previously held a position as practitioner for Big Four firms and the industry, and also for the importance of the project itself. Other interviews were the result of previous forms of capital plus the researcher's social capital (Bourdieu, 1977, 1990), i.e. social connections. These connections were established whilst he held positions as a tax auditor for a Big Four firm, as a Master's in Taxation student and as academic coordinator of tax programmes at the University of Chile. In this way, access to less public agents in the bureaucratic and professional services fields was granted.

Once in the field, a ‘snowballing’ effect occurred: interviewees identified others with unique experiences in the field to be sampled and interviewed (Meadows & Morse, 2001, p.194). These more private actors were later contacted and invited to participate in the study.

With these techniques and strategies in place, around 70 people were initially contacted by email, with a letter attached introducing the researcher and the purpose of the study. The hot debate in tax reform at that time (2012) resulted in a very high number of participants among those contacted. At that time, there was great pressure from citizens to increase revenues and fund a substantial educational reform. As tax reforms are the result of the views of the most powerful actors, it appears that some of the winners in the political field were willing to take part in the study to justify their decisions. Equally, less powerful losers in the political encounter seemed to have an interest in highlighting their dominated position, as it will be illustrated in the empirical chapters. This stance is consistent with Alvesson’s (2011) view that:

> I*nterviewees may have other interests than assisting science by simply providing information. They may be politically aware and politically motivated actors. Many people will have a political interest in how socially significant issues are represented. This does not necessarily mean that they will cheat or lie. Honesty and political awareness do not necessarily conflict* (p.29).

Unlike the few participants in the political field, the researcher took a romantic view of most interviewees (Alvesson, 2003) as subjects at the service of science, being ‘honest, unselfish subject(s), eager or at least willing to share ... [their] experience’ (Alvesson, 2011, p.29). This assumption was demonstrated at the analysis stage, when actors in the bureaucratic and professional service fields, for instance, acknowledged their victories and defeats in technical aspects of the design, deliberation and implementation of tax rules. In other words, these agents appeared not to be acting as Alvesson (2011, p.29) suggests, as they did not ‘tell the (partial) truth as they know it but in favourable ways for them’ or ‘disclose truths disfavourable either to them or their group’, but in contrast were very critical of their own acts. For example, some agents reflected on their limited understanding of tax legislation, the lack of adequate staff and technological resources to implement tax legislation, and how these factors influenced their practices. The agents’ postures may have been the result of seeing the researcher as independent and not politically biased, but

rather as a ‘person who needs help in order to produce a dissertation’ (Alvesson, 2011, p.81).

Overall, 59 interviews/meetings were held in three periods: 21 September to 31 December 2012, 17 December 2013 to 7 January 2014, and 21 March 2014. Two interviews were discarded for research purposes because one was entirely concerned with a particular tax provision out of the scope of this research, and in another the interviewee gathered information about the project for 30 minutes and then booked another appointment which never occurred due to his unavailability. The final anonymised list of participants in this study is presented in Table 4.2.

This table shows a larger number of tax officials and policy makers; however, the researcher deemed there to be a balance for the following reasons. Firstly, the tax administration is organisationally structured into departments for general aspects of income tax, but also into specialist departments such as transfer pricing. Furthermore, taxpayers represent companies carrying out economic activities both in Chile and overseas, and these companies are liable to basic forms of income/corporate tax but also have to comply with transfer pricing legislation. Accordingly, the researcher deemed that the views of different actors were captured and balanced. Secondly, both high-profile bureaucrats and parliamentarians are presented in the analysis as policy makers, not just functionally but also to increase levels of anonymity.

Once the participants had been identified, the process continued by defining subjects to be addressed during the interviews. These questions were drafted in line with the purposes of this research, drawing broadly on the tax policy-making process regarding their perceptions of the process as well as ‘valid actual information’ (Kvale & Brinkmann, 2009, p.150). The emphasis was on technical knowledge, advisors’ roles, consultation activities, perceptions of transparency, trust, organisational aspects, compliance costs, perceptions of the robustness of legislation, and political aspects. Several sets of questions were drafted for each group to which the participant belonged. In this way, sets of specific questions were drafted for policy makers, tax administrators, tax advisors, taxpayers and academics.

Table 4.2: Interviews and participants

Interviews	Participant	Internal code	Role	Date
1	1	AC01	Academic	09/10/2012
2	2	AC02	Academic	22/10/2012
3	3	CA01	Professional Institute of Accounting	23/11/2012
4	4	ET01	Tax practitioner	03/10/2012
5	5	ET02	Tax practitioner	05/10/2012
6	6	ET03	Tax practitioner	11/10/2012
7	7	ET04	Tax practitioner	31/10/2012
8	8	ET05	Tax practitioner	27/11/2012
9	9	FT01	Tax administrator	02/10/2012
10	10	FT02	Tax administrator	29/10/2012
11	11	FT03	Tax administrator	10/12/2012
12	12	PL01	Professional Institute of Taxation	06/12/2012
13	13	PM01	Policy maker	21/09/2012
14	14	PM02	Policy maker	01/10/2012
15	15	PM03	Policy maker	04/10/2012
16	16	PM04	Policy maker	11/10/2012
17	17	PM05	Policy maker	18/10/2012
18	18	PM06	Policy maker	26/10/2012
19		PM06	Policy maker	28/11/2012
20	19	PM07	Policy maker	05/11/2012
21	20	PM08	Policy maker	06/11/2012
22	21	PM09	Policy maker	20/11/2012
23	22	PM10	Policy maker	04/12/2012
24	23	PM11	Policy maker	07/12/2012
25	24	PM12	Policy maker	10/12/2012
26	25	PM13	Policy maker	20/12/2012
27		PM13	Policy maker	26/12/2012
	26	PM13-1	Policy maker	27/12/2012
28	27	PM14	Policy maker	26/12/2012
29	28	PM15	Policy maker	31/12/2012
30	29	PM16	Policy maker	17/01/2013
31	30	TA01	Tax administrator	01/10/2012
32	31	TA02	Tax administrator	02/10/2012
33		TA02	Tax administrator	09/01/2014
34	32	TA03	Tax administrator	13/11/2012
35	33	TA04	Tax administrator	26/10/2012
	34	TA04-1	Tax administrator	27/10/2012
36		TA04	Tax administrator	14/11/2012
37	35	TA05	Tax administrator	29/10/2012
38	36	TA06	Tax administrator	30/10/2012
39	37	TPPT01	Taxpayer	23/10/2012
40		TPPT01	Taxpayer	09/01/2014
41	38	TPPT02	Taxpayer	29/10/2012
42	39	TPPT03	Taxpayer	04/12/2012
43	40	TPPT04	Taxpayer	04/12/2012
44		TPPT04	Taxpayer	08/01/2014
45	41	TPPT05	Taxpayer	18/12/2012
46	42	TPTA02	Tax administrator	15/11/2012
47	43	TPTA03	Tax administrator	15/11/2012
48		TPTA03	Tax administrator	20/12/2013
49	44	TPTA04	Tax administrator	23/11/2012
50	45	TPTA05	Tax administrator	10/01/2014
51	46	TPTE01	Tax practitioner	08/11/2012
52	47	TPTE02	Tax practitioner	09/11/2012
53		TPTE02	Tax practitioner	06/01/2014
54	48	TPTE03	Tax practitioner	12/11/2012
55		TPTE03	Tax practitioner	17/03/2014
56	49	TPTE04	Tax practitioner	13/11/2012
57	50	TPTE05	Tax practitioner	13/11/2012

Within these groups, further distinctions were made with respect to their particular expertise, for example transfer pricing, where appropriate. Questions were also drafted with certain theoretical considerations in mind (Parker, 2012, p.58), including new institutional sociology, historical institutionalism and Bourdieu's theory of social practice; otherwise, 'specific (theoretical) interpretations' may not have been possible (Kvale & Brinkmann, 2009, p.107).

Despite the benefits of circulating the questions in advance, such as gaining greater attention (Gillham, 2007) or credibility (Horton *et al.*, 2004), a freer approach, similar to that of Tuck (2007), was taken in order to avoid the 'defended subjects' problem (Hollway & Jefferson, 2000, cited in Blaxter *et al.*, 2010, p.195). Hollway and Jefferson (2000) refer to defended subjects as individuals who protect vulnerable aspects of themselves by investing in particular discourses. Nonetheless, only one interviewee asked for the questions in advance, and these were emailed prior to the appointment.

All interviews were semi-structured and conducted in Spanish. Fifty-five were recorded using two electronic devices, one responded by email, and one was not recorded at the request of the participant, so detailed notes of the responses were taken (Creswell, 2009). In most cases, field notes were also made about impressions of the interview setting (Gibbs, 2007), what had been learned and how that particular interview differed from others (Eisenhardt, 1989). These notes allowed the researcher greater flexibility in crafting questions *in situ* during the interviews about areas to which the actors might contribute further (Horton *et al.*, 2004).

Although most questions targeted contemporary practices, the former transfer pricing case, discussed in Chapter Six, involved the use of 'retrospective interviews' (Denis *et al.*, 1996, p.675) for some participants involved in the design and parliamentary debate. In these cases, the researcher provided detailed contextual information in order to situate the participant in the past and explore his inner world (Alvesson, 2003). For example, the researcher orally reproduced direct quotes taken from the *History of the Law*, No.19.506 (see Section 4.4.2.1 above) to locate the participant in the context and explore the meaning that s/he attributed to those social practices.

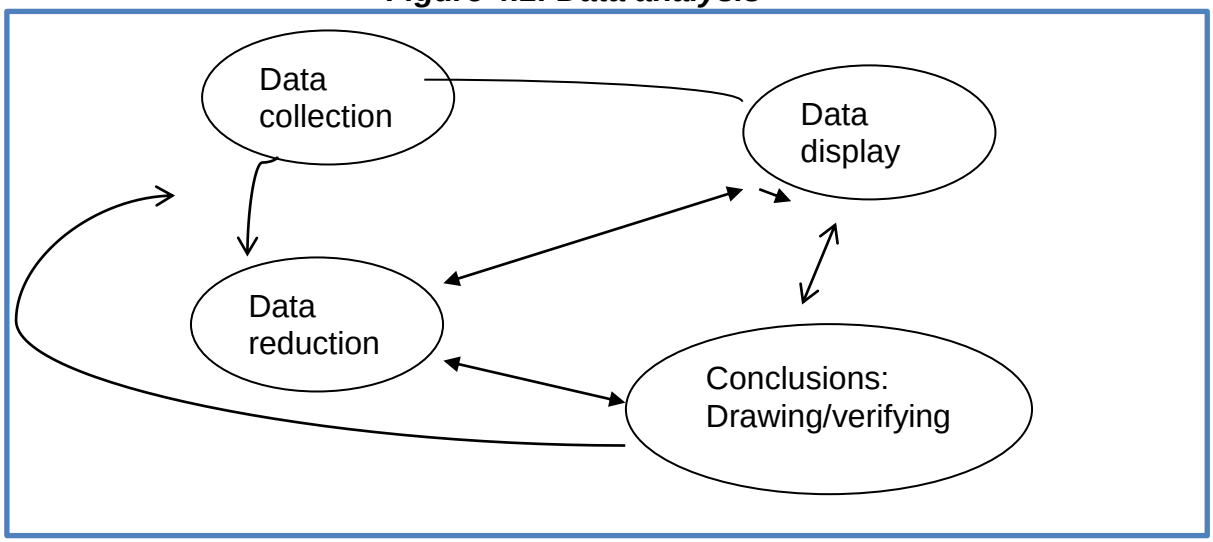
Recorded interviews were subsequently transcribed verbatim by the researcher and, in a very few cases, parts were professionally transcribed to contribute to this thesis. The transcription professional signed a confidentiality agreement containing a clause requiring deletion of the electronic files and destruction of all physical evidence relating to the transcription. These transcribed interviews assigned a personal code to each interviewee to guarantee anonymity, as shown in Table 4.2. Between interviews, the transcripts were examined in order to fill any gaps in further appointments. In cases where transcription time was constrained, the audio files were listened to and detailed notes taken prior to a new appointment, in order to refresh the researcher's mind, to confirm previous evidence, fill the gaps and trace the tax policy-making process. In other words, data 'saturation' was 'deliberately sought' (Meadows & Morse, 2001, p.193).

After the interviews had been concluded, only one interviewee (PL01) asked for a transcript (Blaxter *et al.*, 2010); however, no comments were received in response.

4.5 Data analysis

The data analysis for this research was conducted interactively and cyclically rather than linearly (Miles & Huberman, 1994). There was a joint and overlapping process of data collection, coding and analysis, as suggested by the related literature (e.g. Eisenhardt, 1989; Glaser & Strauss, 1967). Figure 4.1 illustrates the iterative type of analysis conducted in this investigation (Creswell, 2009).

Figure 4.1: Data analysis



Source: Adapted from Miles & Huberman (1994, p.12)

Documentary analysis was conducted, adopting both rational and interpretivist approaches similar to those applied by Kraal and Kasipillai (2014) in their historical analysis of the Dutch East India Company's tax farming practices in Malacca. The researcher first took a rational approach to analysing the Histories of the Law and other parliamentary documents to trace the different stages/chronology and the agents involved in the two tax transfer pricing policy-making processes. Adopting a similar approach, analysis of the black letter law was undertaken to capture the content of the administrative guidance issued by the IRS. At this stage, the researcher was heedful of relationships between these documents and other connected documents, i.e. 'intertextuality'. Failure to follow such an approach may have led to misinterpretation of the documents (Atkinson & Coffey, 2004).

The second stage involved the researcher's immersion in the corpus of data, i.e. the documents and interview transcripts (Braun & Clarke, 2006) by reading them theoretically. Theoretical reading consists of reading, reflecting theoretically and taking notes on the interpretations (Kvale & Brinkmann, 2009, p.236). This immersion provided the researcher with a general grasp of the content and significance of the data. This inductive approach, grounded in the data (Kvale & Brinkmann, 2009), allowed the identification of concepts such as tax knowledge, coordination, ideology, transparency, trust, consultation and forms of implementation.

Once this general understanding had been achieved, more structured methods of interpretive data analysis were followed (6 & Bellamy, 2012).[18] At this third stage, the corpus of data was analysed based on meaning, which involves 'coding, condensation and interpretation' (Kvale & Brinkmann, 2009). A code is 'a research generated construct that symbolizes and thus attributes interpreted meaning to each individual datum for later purposes of pattern detection, categorization, theory building and other analytic processes' (Saldaña, 2013, p.4).

[18] This study is concerned with the subjective form of interpretation which is 'the researcher's account of how the people being studied think and feel about a condition, an event, a problem or whatever' (6 & Bellamy, 2012, p.230).

Here, a manual open coding process was conducted, in which chunks of text were coded (Miles & Huberman, 1994) and notes were written on the hard copies to make further sense of the data. This first cycle of coding (Saldaña, 2013) included acts, activities, meanings, perceptions, strategies and relationships. These codes were entered in an Excel file as 'dictionary codes', with definitions based on first impressions of the data (Miles & Huberman, 1994).

Recognising the benefits of computer-based analysis, such as the efficient management of large quantities of data (Blaxter *et al.*, 2010; Grbich, 2007), QSR *NVivo* 10 was used to electronically replicate the manual codes of the interview transcripts. The parliamentary documents were manually analysed.

To achieve higher levels of differentiation of subtleties, the initial codes were regrouped and redefined in the form of parents and children (Gibbs, 2007) and the dictionary code was updated accordingly. At this point, the interview transcripts were grouped and codified for each stage of the tax policy-making process. Consequently, there were three codes with children under the phases of design, legislative and implementation. Some examples of codes at this point included the audit process, budgeting, consultation, coordination, drafting, information, organisational structure, ideology, scrutiny, technical specificities of the law, transparency, trust, compliance cost, and forms of implementation.

The analysis progressed to the identification of patterns of meaning, and these patterns were connected at a more conceptual level. These connected conceptual levels are graphically shown in the conceptual framework, and constituted the core of subsequent analyses. These patterns included information/knowledge, trust and power.

The final phase of analysis mentioned by Miles and Huberman (1994) – 'memoing' – was deployed to take notes of ideas and theoretical connections between patterns and with Bourdieu's theoretical artillery. Owing to time constraints, the researcher made notes in the margins of documents, whilst in other cases these notes were stored in *NVivo* through the 'Annotation' option.

Once this analysis process had been concluded, descriptive versions of Chapters Five, Six and Seven were drafted. Rein and Schon (1977) suggest telling a story of events in the first place, and then mapping out the elements of

the events and their interrelationships. Following this advice, these first drafts were subsequently recoded to reach higher levels of distinction and abstractness where required. In some cases, these changes led to changes to the theoretical framework presented in this chapter. In this respect, there was a move from Bourdieu's triad (field, capital and habitus) to include concepts more closely linked to Bourdieu's political sociology, with the concepts of the field of power and domination.

At this stage, other techniques were used to explore and describe cases (Miles & Huberman, 1994, pp.90-142). Specifically, a 'thematic conceptual matrix' was used (Miles & Huberman, 1994, pp.131-3), supported by an Excel file. The latter included columns of codes and sub-codes, such as cultural capital, transparency, social capital, political capital and power, for each stage of the tax policy-making process detailed in the literature review and the conceptual framework. Once this second type of analysis had been completed, the three empirical chapters were redrafted.

It was later decided to conduct a cross-case study of the transfer pricing cases, in order to 'enhance (theoretical) generalizability' (Miles & Huberman, 1994, p.173) and transcend radical particularism (Firestone & Herriott, 1983), increasing understanding and explanation (Miles & Huberman, 1994).

An important point to highlight is that the researcher's interpretations are the result of his own theoretical/epistemological assumptions and were restricted by connections between theory, data and research questions (Ahrens & Chapman, 2006). Indeed, the context was structured by several actors in different arenas, such as political, economic, social and material; therefore, favoured explanations might not find their place in this coherent context (Campbell, 1988). Nonetheless, interpretations were largely influenced by the researcher's background. Tax legislation is usually drafted and presented with several sub-categories of types of income, exemptions and penalties for each case of non-compliance. The forms of coding and analysis used largely reflect these structures inculcated in the researcher, which were brought to the research unconsciously.

4.6 Writing up and research coherence

Ethical considerations were considered in reporting the findings. One such consideration refers to anonymity, which was assured by using internal codes for each participant and by changing some personal pronouns but not altering the essence of the transcripts.

Secondly, to defend against criticisms of researcher bias in qualitative research, sources of data are quoted verbatim in order to support the claims made throughout the project (Hageman, 2008). Literal quotes are also used to provide further explanation (Grbich, 2007). These strategies are evident in Chapters Five, Six and Seven.

To conclude this section, it is important to refer to what good qualitative research is in relation to 'meaningful coherence'. One element of this coherence is the use of 'methods and representation practices that partner well with espoused theories and paradigms' (Tracy, 2010, p.848). Throughout this study, coherence was achieved by using qualitative data sources such as interviews and documents, analysing them based on meanings, and using compatible theories. Bourdieu's language is anti-positivist in nature (Swartz, 2010, p.2), which may imply more than one philosophical paradigm within the social sciences. Thus, whereas some researchers adopt a critical realist stance in conducting Bourdieusian research (e.g. Lunnay *et al.*, 2011), others adopt a social constructionist/interpretivist approach to understanding social phenomena (e.g. Gracia & Oats, 2012; Kraal, 2013). This work contributes to the interpretivist literature; therefore, all methodological elements presented in this project are coherently connected.

4.7 Strengths and limitations

This study has both strengths and limitations. A major strength is the techniques used to select the transfer pricing rules as the focus of study. Unlike some researchers' opportunistic approach to accessing particular organisations or events, transfer pricing was selected after gathering views from diverse, experienced and random participants. This is likely to make the findings presented in this research of greater interest to policy makers.

A second strength is that several members of élites directly involved in tax policy making took part in this study, which is rare for a doctoral dissertation. In

some cases, specific agents responsible for making crucial decisions were interviewed, increasing the quality of explanations as to how and why certain views and courses of action were preferred over others. This fact ensured a good fit with the conceptual framework presented in Chapter Three regarding configuration of the field of power and stages in the tax policy-making process.

A third strength is the timing of this study. As noted above, the tax reform was debated a couple of weeks before the fieldwork commenced. The longitudinal feature of one part of the study also allowed the researcher to capture views from taxpayers and tax practitioners shortly after the rule had gone through its first phase of implementation. This convergence in time benefited the study by bringing first-hand, and perhaps unfiltered, views of a type not previously generated in the Chilean context at all stages of tax policy making.

The study also has limitations. The first relates to the main research technique – interviews. Interviews make it difficult to generalise findings to a wider population (Hasseldine *et al*., 2011). They provide indirect filtered information through the views of interviewees, and the researcher's presence may bias responses (Creswell, 2009). There is also the above-mentioned risk of 'defended subjects', especially in the political field. A point strongly linked with the use of interviews is that the findings produced in this dissertation are very particular to the Chilean legal structure, institutions, agents and culture, and may not be generalisable to the history of all tax policy making in the country, or in other jurisdictions.

Timing also negatively affected the study of the former transfer pricing legislation. Given that several years had passed between the design and debate of the former (1996-1997) and amended (2002) legislation, some views may have been over-processed and filtered in these retrospective interviews. For this reason, the researcher asked for audio recordings of the relevant meetings of parliament, but unfortunately these debates are available only to parliamentarians.

A third limitation is connected with the type of analysis deployed. It is recognised that intensive coding may destroy the meaning of data (Eisenhardt, 1989, p.534), and that the richness and flow of arguments may be damaged by taking such an approach. To overcome these problems, the researcher

examined the original transcripts in order to capture the essence of each interview, but some issues may still have been overlooked in this type of analysis.

The final limitation relates to the nature of assertions made throughout this research. As noted above, the researcher brought his own beliefs and subjectivity to the project (McKerchar, 2010), which infused and shaped interpretations. Such interpretations may not produce true knowledge (Oats, 2012a). Furthermore, what were found to be influences in producing this type of legislation may simply be reasons rather than causes (6 & Bellamy, 2012, p.240).

4.8 Summary

This chapter has described and explained the key aspects of the approach adopted in this study. The chapter commenced by stating the research questions, followed by an introduction to the interpretive tradition used throughout. The selection of what to study has been explained in detail to justify these decisions. The chapter has explained the research methods used to answer the research questions, describing the documents and interviews that informed this research, along with their suitability for these purposes. A detailed account of how the documents and interviews were analysed has been provided, as well as addressing how the researcher's position may have influenced the interpretations made in the study. The chapter has also described the writing up process, the coherence of the study and its strengths and limitations.

The next three chapters present and interpret the findings, supported by the theoretical framework presented in Chapter Three, illuminating the understanding of the practice of tax policy making.

Chapter Five: General Tax Policy-Making Process

5.1 Introduction

This chapter provides a general overview of the context of this study and introduces the tax policy-making process relating to income tax for corporations in Chile in practice. Section 5.2 sets the scene for the tax policy-making process in Chile, commencing with some insights into Chilean culture, followed by a detailed account of the participants and practices in the process. Sections 5.3 to 5.6 present the findings in relation to the tax policy-making process, following a combination of Gould and Baker's (2002) heuristic model and the GTPP used in New Zealand, as discussed in Chapter Two. Finally, Section 5.7 summarises the chapter.

5.2 Background to Chile: Culture and tax policy-making framework

Chilean culture is hard to define as a result of contradictions and clashes of values (Subercaseaux, 1997). However, four main characteristics have been identified: paternalistic authoritarianism, legalism, fatalism and 'compadrazgo' (Gomez & Rodriguez, 2006). The level of authoritarianism in Chile is considered to be soft and hidden beneath paternalism, whereby a superior protects a subordinate (Godoy *et al.*, 1986). This type of relationship is a legacy of Spanish colonisation, in which the landlord provided property and other goods to the vassal in return for loyalty. Over time, this relationship evolved:

> *dominant political elites early established paternalistic relationships of protection and loyalty as appropriate dynamics of social interaction with subordinate classes, which resulted in what is recognised today as a benefactor and protective state* (Gomez & Rodriguez, 2006, p.46).

The notion of authoritarianism involves domination, whereby an individual can dictate to others what to do (Baars & Scheepers, 1993). Authoritarianism operates in the public and private fields in Chile (Gomez & Rodriguez, 2006) and is based on the assumption that Chilean people lack agency to exercise liberty, making others take leading roles (Di Girólamo & Gutierrez., 1984).

In this context of authoritarianism, people find available spaces of power and exploit them, constructing their own space in which the opinions of others are marginalised. Those who become subordinated accept it and reproduce the

structure with those under them (Gomez & Rodriguez, 2006). This situation is also replicated in the political sphere, where 'many political agreements are reached without major debate or consideration of the opinions of all affected parties and usually imply the neglect of opposing ideas and arguments' *(*Gomez & Rodriguez, 2006, p.47). This authoritarianism attributes considerable importance to certain professions and occupations, for example medical doctors (*ibid.*). Other professions dominant in Chile include lawyers and engineers, who are considered to be more traditional. Even economics and business administration form part of engineering degrees rather than being offered as degrees in their own right. Accounting degrees are considered to be beneath law and engineering degrees with business, and attempts have been made by some tertiary institutions to create programmes that have an accounting component but are nested within an engineering degree.

Legalism – behaviour framed by existing laws and rules – plays an important role in Chilean society (Fernández & Bello, 2004). In the context of a 'discourse that stresses that law is justice and reason whilst politics is passion and interest, behaviour compliant with the law is understood to be rational, appropriate and politically correct' (Gomez & Rodriguez, 2006, p.51). Gomez and Rodriguez (2006) argue that law is powerful, operating with punishment and rewards to control and intimidate individuals and groups. In opposition to this strict legalism, those that deceive others and the system have some recognition, seeing it as a virtue (Edwards, 1983).

The third component of Chilean culture is fatalism, understood as the idea that events in life are caused by exclusively external forces. This is internalised and transformed into pessimism about the future and frustration and impotence regarding society (Gomez & Rodriguez, 2006). Nonetheless, there is also a sense of optimism. According to Gomez Diaz (1997), Chilean fatalism fluctuates between optimism and pessimism.

The final component relates to *compadrazgo* and the need to belong to social networks. As a result of the class structure inherited from the Spanish Kingdom, Chileans aim to belong to different groups. *Compadrazgo* is 'a social institution that allows reinforcing links with relatives and friends through reciprocity' (Gomez & Rodriguez, 2006, p.56). These networks allow people to connect with others within and outside organisations in the private and public sectors

(Gomez & Rodriguez, 2006). In the public sector, this *compadrazgo* operates when higher authorities reserve a place for their followers and 'appoint the most loyal members of their *compadrazgo* network to positions of monitoring and control' (Gomez & Rodriguez, 2006, p.58). A potential result of *compadrazgo* is corruption between political groups and the private sector (Gomez & Rodriguez, 2006). A relevant theme in this component is trust. In an OECD (2011) survey, Chilean respondents to the question 'Generally speaking, would you say that most people can be trusted or that you need to be very careful in dealing with people?' reported the lowest level of trust (13%) amongst OECD countries. This concept plays an important role in the tax policy-making process, as will be shown throughout the empirical chapters.

National culture constitutes the backdrop to tax developments and should not be understood separately (Nerré, 2008). The term 'tax culture' has been coined to represent the 'entirety of all relevant formal and informal institutions connected with the national tax system and its practical execution, which are historically embedded within the country's culture, including the dependencies and ties caused by their ongoing interaction' (Nerré, 2008, p.155). This study is developed under these assumptions, as this and subsequent chapters illustrate. The next section presents the agents and functions involved in the tax policy-making process in Chile.

5.2.1 The Chilean tax policy-making framework

For the purposes of this thesis, the Chilean tax policy-making process is structured in three sequential stages following Gould and Baker's (2002) heuristic model. The design stage involves the statement of policy, drafting and budgeting for any economic effects. Although drafting is usually part of the legislative phase, for the purposes of this thesis it is presented as part of the design phase as it is carried out in the executive branch. In this stage, the principal agents are the president of the republic, who is head of state and government and democratically elected for a period of four years.[19] In contrast to the general law-making process, the political constitution confers on the president the exclusive initiative to 'impose, abolish, reduce or remit taxes of any kind or nature, to establish or modify existing exemptions and to determine

[19] Article 25, Political Constitution of the Republic of Chile.

their shape, proportionality or progression' (Article 65, Political Constitution of the Republic of Chile). The president is also able to control the pace of the discussion in the Chilean Congress, at any point during its discussion, through 'urgencies'.[20] Bills categorised as having *simple urgency* must be discussed and voted in the respective chamber of Congress within thirty days, whereas, if the bill is labelled as having *extreme urgency*, the period will be fifteen days, and if it is labelled as requiring *immediate discussion*, this period is reduced to six days.[21] As a consequence of these powers, the president has ultimate responsibility for tax law changes.

The ministry of finance is one of 23 ministries through which government is exercised.[22] Hierarchically, the highest authority is the minister of finance, followed by the deputy minister/undersecretary; both are posts privy to the exclusive confidence of the president.[23] Tax policy is one of the ministry of finance's work areas,[24] involving 'design, implementation and continuous improvement of the nation's tax policies, in the drafting of laws and other areas of the national tax system that are essential tools of fiscal policy'.[25] It also participates in the 'coordination and execution of tax policies with Chile's Internal Revenue Service and Customs Service', as well as representing the finance ministry before the fiscal affairs committee and the OECD.[26]

Four entities linked to the ministry of finance are important for this research, given their participation in the tax policy process: the tax authority (Servicio de Impuestos Internos – IRS), the customs service (Servicio Nacional de Aduanas), the budget office (Dirección de Presupuestos – DIPRES), and the treasury (Tesoreria General de la Republica). Their roles in tax policy making are discussed in turn.

The IRS controls and provides services oriented to the correct application of internal taxes efficiently, equitably and transparently in order to minimise evasion and to provide 'excellent services to taxpayers to maximise and

[20] Article 74, Political Constitution of the Republic of Chile.
[21] Article 27, Ley Organica Constitucional del Congreso de Chile.
[22] Article 1, Decreto con Fuerza de Ley No. 7912, published 5 December 1927.
[23] Article 40, Decreto con Fuerza de Ley No. 1.
[24] http://www.hacienda.cl/english/the-ministry/work-areas.html.
[25] http://www.hacienda.cl/english/the-ministry/work-areas/tax-policy.html.
[26] http://www.hacienda.cl/english/the-ministry/work-areas/tax-policy.html.

facilitate voluntary tax compliance, executed by competent civil servants committed to the Institution's results'.[27] IRS' duties are set out in the Tax Code and in the Organic Law of the IRS.[28] The IRS is composed of the national office, Large Taxpayers Directorate[29] and regional offices.[30] The highest authority in the IRS is the national director, or simply director, who is appointed by the president and is in his exclusive confidence.[31] The director's powers and responsibilities include: the administrative interpretation of tax rules by giving instructions and rules to control taxes; responding to queries from IRS staff regarding tax implementation; delegating certain tax matters to subordinates acting on his behalf; and issuing administrative resolutions oriented to making effective the administrative responsibility of tax administration civil servants.[32] A key responsibility of the director, connected with drafting legislation, is:

> *to advise and report to the Minister of Finance, when the latter requests it, in matters of competence of the Service (IRS) and in the adoption of measures which are deemed as necessary for the best implementation and enforcement of the tax laws, and to propose the legal and regulatory reforms that are desirable.*[33]

The customs service's responsibilities are 'to monitor and control the movements of goods across coasts, borders and airports of the Republic, to intervene in international traffic for the purposes of tax collection on imports, exports and other issues determined by law, and to generate statistics on this traffic across borders, without prejudice to the other functions assigned to it by law'.[34] DIPRES is required, *inter alia*, 'to estimate public sector inputs (income) and their projected performance and to optimise the capacity to mobilise resources for the achievement of the objectives of governmental action'.[35] In tax

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[27] http://www.sii.cl/sobre_el_sii/acerca/mision.htm.
[28] Decreto Ley No. 830, 'Tax Code'; Decreto con Fuerza de Ley No. 7, 30 September 1980.
[29] The Large Taxpayers Directorate comprises the following departments: Department of Control/Audit of Large National Enterprises, Department of Control/Audit of Large International Enterprises, Department of Law, and Department of Control/Audit Support and Foreign Trade.
[30] Article 2, Decreto con Fuerza de Ley No. 7; there are 18 regional offices across the country, located in Arica, Iquique, Antofagasta, Copiapó, La Serena, Valparaíso, Rancagua, Talca, Concepción, Temuco, Valdivia, Puerto Montt, Coyhaique, Punta Arenas and four offices in Santiago Centre, West, East and South.
[31] Article 8, Decreto Ley No. 830, 'Tax Code'; Article 6. Decreto con Fuerza de Ley No. 7.
[32] Article 7. Decreto con Fuerza de Ley No. 7; Article 6A. Decreto Ley No. 830, 'Tax Code'.
[33] This responsibility is also for the negotiation of double taxation agreements and their application (Article 7b bis, Decreto con Fuerza de Ley No. 7); Article No. 7p, Decreto con Fuerza de Ley No. 7.
[34] Article 1, Decreto con Fuerza de Ley No. 329, 'Organic Law of Customs Service'.
[35] http://www.dipres.gob.cl/594/w3-article-3677.html.

policy making, this estimate is contained in the financial report. Finally, the treasury is responsible for collecting taxes and other fiscal revenues, including interest and penalties for late payments, by judicial, extrajudicial and administrative means.[36]

In this way, the president, the minister of finance, the director of the IRS, the director of customs and the director of the budget office agree on tax policy, draft tax legislation and estimate its economic effects. Once these tasks have been completed, the tax bill and the financial report are submitted to parliament to continue with the *legislative stage*.

The Chilean National Congress participates in law formulation, represents constituents and controls government's actions. It is bicameral, with the Chamber of Deputies and the Senate acting together in tax law formulation.[37] The Congress operates with a system of committees, requiring both chambers to have a committee of finance.[38] The committees of finance of each chamber provide information on the impact of proposals on the state's budgetary and financial matters and its institutions and enterprises.[39] Tax bills can only be originated by the Chamber of Deputies, which means that the discussion process is as follows.[40] In the first place, the bill with a financial report is received by the committee of finance of the Chamber of Deputies, where it is discussed and voted on. Discussion takes place in two stages: 'general discussion', where the core idea of the project is discussed and the 'idea of regulating' is voted on; and detailed discussion, article by article. During the detailed discussion, it is possible for the executive branch to introduce 'amendments' to the bill by virtue of constitutional powers granted to the

[36] http://www.tesoreria.cl/web/quienesSomos/irPrincipalesFunc.do.
[37] The Chamber of Deputies is made up of 120 members democratically elected and renewed every four years (Article 47, Political Constitution of the Republic of Chile); the Senate is made up of 38 senators elected every eight years (Article 49, Political Constitution of the Republic of Chile); Article 46, Constitution of the Republic of Chile.
[38] Article 17, Organic Constitutional Law of the National Congress No. 18.918.
[39] The committee of finance of the Chamber of Deputies has 13 members (Article 213, Regulation of the Chamber of Deputies of Chile), and that of the Senate has five members (Article 29, Regulation of the Senate of Chile).
[40] Article 65, Political Constitution of the Republic of Chile.

president.[41] Voting results are decided by an absolute majority of participating deputies.[42]

Second, the bill, financial report and a report prepared by the committee of finance are submitted to the Chamber of Deputies to continue its debate and voting. A deputy, chosen as informant, will orally present information about the discussion to the Chamber of Deputies, and then the discussion stage takes place. Within each chamber, there may be 'general' and 'particular' discussion, similar to the discussion in the committee of finance. Voting results are calculated by an absolute majority of the members present.[43] Thirdly, the bill is submitted to the committee of finance of the Senate for its discussion and vote.[44] Voting operates under the same conditions as that of the Chamber of Deputies. Finally, the tax bill and financial report are revised by the Senate. If there are disagreements between the two chambers as to the outcome, a mixed committee is created to resolve them.

In general terms, the public cannot attend sessions of the committees of finance;[45] however, in order to make decisions, the committees may request the attendance of relevant staff and authorities able to assist in their discussions and may seek advice from specialists in their respective fields, as well as requesting reports or hearing appropriate institutions and individuals.[46]

Both chambers, including all types of committee, operate under the principle of transparency, which consists of allowing and promoting knowledge and publicity of the acts and resolutions adopted by deputies and senators in the execution of their activities in the chambers and committees, and the foundations and procedures they use.[47] Similarly, sessions held by the chambers, their

[41] Article 24, Organic Constitutional Law of the National Congress of Chile.
[42] Article 198, Regulation of the Chamber of Deputies of Chile.
[43] Article 7, Ley Organica Constitucional del Congreso de Chile; Article 66, Political Constitution of the Republic of Chile.
[44] Article 69, Political Constitution of the Republic of Chile.
[45] Article 211, Regulation of the Chamber of Deputies of Chile.
[46] Article 218, Regulation of the Chamber of Deputies of Chile; Article 38, Regulation of the Senate of Chile.
[47] Article 5A, Ley Organica Constitucional del Congreso de Chile.

documents and records, minutes of their debates, attendance, information about invitees and voting are publicly available.[48]

Once the project has been approved by both chambers, the bill is submitted to the president of the republic, who decrees its approval and promulgates it as a law.[49] Once published in the official journal, the law comes into force and goes through the *implementation stage*.

On the one hand, the IRS, customs service and the treasury must implement the law in force. On the other hand, taxpayers, whether or not assisted by tax advisors, must also enact practices to comply with the law. In the application of the law, problems may arise in terms of collection and/or collection procedures. In such cases, the process may commence again. The next section explains in general terms the practices concerned with tax on corporations.

5.3 General tax policy-making process

This section presents the tax policy-making process for income tax for corporations following the structural process delineated by Gould and Baker (2002): design, legislative and implementation. Given the particularities of the Chilean process, in which the drafting is conducted within the executive branch, this task is presented as part of the design phase, as mentioned above.

5.3.1 Design

In this stage, the bureaucratic and political fields converge to define tax policy, draft legislation and budget for its effects on the economy. The natural participants in this stage include the president of the republic, the ministry of finance, other ministries, the IRS and DIPRES. These participants hold the most senior positions in the bureaucratic field. However, they may also draw power from other spaces, such as the political field. For instance, the presidents during the period covered by this research (1990-2012) were members of political parties and were supported by political coalitions.[50] Some ministers had also

[48] Despite this high level of transparency, in some cases it is possible not to disclose information about sessions held in the chambers or committees when such disclosure may hamper the proper performance of the functions of these bodies, citizens' rights, national security or the national interest (Article 5A, Ley Organica Constitucional del Congreso de Chile).
[49] Article 72, Political Constitution of the Republic of Chile.
[50] Patricio Aylwin Azócar (1990-1994, Christian Democrat); Eduardo Frei Ruiz-Tagle (1994-2000, Christian Democrat); Ricardo Lagos Escobar (2000-2006, Socialist); Michelle Bachelet

been appointed based on their links with political parties. In this respect, respondent PM05 commented on the ministers' influence over political parties, arguing that it was strong because 'ministers came from [political] parties'. Regarding IRS national directors, social capital and political sympathy were commented on by PM06 and PM15 during the fieldwork as factors influencing their appointment. These are the actors that agree on tax policies, as TA05 commented:

> *First ... how much revenue is expected for a country regarding its strategy of development and the logic of the tax system? I think these are the central ideas. Do we want to favour direct or indirect taxes? ... I would say that these are the central questions, and the president, minister of finance and, to some extent, the national director of the IRS have to have this clear. This is the core thing for me.*

The small number of participants and the types of decision made here might be interpreted as a site of struggle linked to the most important decisions of the field of power. It is notable that this small and closed space blurred the separation between design and drafting of tax legislation, as confirmed in a second interview in January 2014 (TA02). TA05 also commented on how tax legislation was made in this small powerful group:

> *Now, normally tax laws are prepared between the minister of finance, the* [national] *director of the IRS, the advisors to the minister of finance and the advisors and the team of the director of the IRS.*

This quotation excludes the participation of the president of the country; however, there is evidence of presidential involvement in recent years. With regard to the 2012 tax reform, a couple of participants (PM12, TA02) commented that the president participated in making decisions on tax policy and law, as PM13 said:

> [Proposals] *emerged in the ministry of finance, these were discussed with the IRS but in the end it was the president who made the decision ... and the final version* [of the proposals] *was analysed by the president and it was he who made the decisions on what to include and exclude ... the ministry of finance provides information to the president in order to make the decision. Moreover, the president perfectly understands what each provision is about; he doesn't make ill-informed decisions.*

Jeria (2006-2010, Socialist) and Sebastián Piñera Echenique (2010-2014, National Renovation).

The role played by these different actors varied depending on the type of policy adopted. During the fieldwork, it was noted that economic conditions and requests from the tax administration had been the two major drivers of tax law change (Oats & Sadler, 2011). In the first group, it was noted that tax policy had been pivotal to increased revenue collection. The purposes of this type of reform included the need to fund a particular political programme, to respond to citizens' demands once governments were in office, and to provide resources for contingencies such as natural disasters (TA02). TA05 argued that this type of policy originated in the president of the republic and was the result of a 'political consensus, from a political need', corroborating the close link between tax and politics (Infanti & Crawford, 2009). Political consensus was necessary to move forward in the legislative process, and then agreement between the president and political parties was pivotal (TA05). In carrying out these economic reforms, authorities had been cautious and had refrained from increasing tax rates substantially, which might have caused citizens' dissatisfaction. PM06 commented that, in the period 1990-2010, tax reforms sought not to cause 'taxpayers' anger' through a steady tax rate increase because the 'costs of acceptance of this type of reform' were too high. These comments might be interpreted to mean that policy makers were aware of taxpayers' behaviour, and conscious that decisions were constrained by the potential for taxpayers' disapproval. This is consistent with the tax compliance literature, which has linked high rates of tax with unfairness, and has suggested that perceptions of unfairness have a negative impact on 'tax morale' (Torgler, 2005; Lago-Peñas & Lago-Peñas, 2010). As an alternative to avoid these problems, TA05 commented, for instance, that higher tax collection was planned through a reduction in tax evasion rates by conferring extra powers and resources on tax authorities.

In contrast, a technical rather than political approach had been taken to increasing competitiveness. Here, the ministry of finance had played a major role, for instance by lowering tariffs (TA05). Other ministries had entered this powerful space when tax policy had been used as an instrument to change economic behaviour. Change had been achieved through the preferential treatment of certain areas, taxpayers or transactions by using tax expenditures. Some activities targeted by these policies included mining, housing, capital

markets, labour markets, culture and public works, as reported by TA02 and TA05.

The second broad category of activity related to the amendment of flawed legislation. Such proposals were led by the national director of the IRS and the ministry of finance and their advisors, who constantly received information on the performance of the system. In this area, the IRS proposed:

> *improvements, changes, to broaden the tax base, greater powers to audit, greater access to tax information ... there, I would say, it is the IRS that is surveying the problems. It has to conduct audits and sees how tiresome the tax system is...* [the IRS] *proposes changes to simplify* [the system]... (TA05).

Whenever such flaws had become widespread, miscellaneous bills to prevent tax planning had been proposed (PM06). These corrective bills had also faced taxpayer resistance, as a perception of the current 'way of taking advantage of the system' as a right (PM06) was internalised by some members of society.

Whatever the driver of tax law changes, the basic framework in which tax rules operated must be maintained. TA05 referred to this coherence as the 'tax system's logic', which relates to expected revenue collection and the relative importance of each type of tax and reliefs, as well as other structural features of the tax system, such as integration between corporate and personal tax, in the collection of revenue. In his opinion, this 'logic' had helped the development of the country and, therefore, had been constant over the years. Once tax policy had been agreed within this structural logic, it was translated into written legislation.

5.3.2 Drafting

It was also in this closed and small powerful space that tax policy was translated into legislation by agents rich in cultural capital in the form of tax knowledge and information, as discussed in Chapter Three. Accordingly, this form of cultural capital was an important input in making tax legislation, as suggested by TA05:

> *There is where laws are made,* [tax laws] *are specialised, are done there with the technical men from the ministry of finance and IRS, because they understand taxes and their consequences and* [the ministry of] *finance analyses the micro- and macro-economic aspects…* (TA05)

This quotation suggests that tax knowledge and economic information were relevant to the creation of tax legislation. Given the specific roles of each institution within the bureaucratic field discussed earlier in this chapter, it is notable that coordination between the IRS and the ministry of finance was a feature in the design stage. Prior to 2006, economists in the ministry of finance were in charge of tax policy, the output of which informed the drafting phase, mainly because taxation is an economic phenomenon (PM15). In this way, the IRS gained autonomy over how to put tax policy into the written law, choosing from a set of available options, including adjustments to the tax base, changes to tax rates, and the introduction of credits or deductions (TA02). This autonomy was not unproblematic because the IRS ended up shaping tax policy, with biases towards increasing tax compliance and levels of control. Whenever a memo was received from the ministry of finance, the IRS commented on the 'need for information, the number of people, IT' needed and the way the tax audit departments were structured, and difficulties lay in whether the drafting accurately represented the stated policy (TA02). This closeness reinforced the idea of a blurred separation between policy and drafting commented on above.

In 2006, the IRS' monopoly over tax knowledge disappeared with the creation of a new post of 'tax policy coordinator' in the ministry of finance. This post was initially occupied by a tax lawyer with institutionalised cultural capital (Everett, 2002) through a law qualification from the oldest law school in the country and a master's degree from the US. This agent had also acquired practical experience in law firms and a Big Four firm, and drew on significant power as the post concentrated on several aspects of tax policy and other areas. With a new government in 2010, this agent returned to the professional services field to work in a law firm that he had been co-founded in 2004 (Obregón, 2010). It was believed that the level of specialisation of this post increased with the arrival of the new government in 2010 because there was more than one individual involved in tax policy making, as remarked on by PM13. Between 2010 and 2011, the lead role was played by a tax lawyer with high institutionalised cultural capital, with a law degree from a very prestigious university and an LLM in taxation from the US. This agent also moved from the professional services field to the bureaucratic field, with fifteen years of experience in a Big Four and a law firm. From 2011, another tax lawyer graduated from a prestigious university in

the country, with an LLM from the US, with eleven years of experience in a law firm and with experience in academic field as a lecturer occupied this position.[51]

Despite the specialisation in the bureaucratic field derived from this expert tax knowledge, other informants were critical of its effects on tax law making. PM15, for example, critically argued that economists had been, to some extent, displaced in the design of tax policy. It was also observed that these agents were not purely technical experts but also had some political – not necessarily partisan – interest in shaping tax law. These lawyers were believed to have brought their own technical agenda of closing loopholes, and then to have been able to influence tax policy design; however, it was believed that they had overlooked the deeper effects of those legal changes on the coherence of the tax system.

Since 2006, and as a natural consequence of gaining experience, the tax policy coordinator had gained the 'autonomy' to prepare the first drafts of law (TA02). Although this new actor entered the tax policy-making field formally through the creation of this post, this should not be interpreted as a loss of the IRS' power in its drafting role. For example, in the 2012 reform, 'notes' were written by the ministry of finance to the IRS instructing it on what should be drafted, but preliminary drafts had also been prepared by the tax policy coordinator's team (PM12).[52] Whenever the tax policy coordinator's team had prepared a draft, and acknowledging that there was no mechanism to evaluate the robustness of tax proposals, the team relied on 'technical support from the IRS', assessing its quality by looking at 'whether the [drafting] is going to work or not and if there is a contradiction with a [rule] that already exists' (PM13). As the IRS was the principal holder of tax knowledge, this assessment may have contributed to maintaining the integrity of the tax system (Thuronyi, 1996).

This cooperative relationship in the bureaucratic field had developed over years, and might have been based on the IRS' symbolic capital (Bourdieu, 1977, 1990), recognising that drafting was 'essentially a technical' activity and that its opinions impact on policy based on this assumption (TA02).[53] In terms of

[51] http://www.nld.cl/en/abogados/miguel-zamora/.
[52] Most income tax rules were drafted by the IRS (PM12).
[53] For example, opinions regarding the negative impact of new rules on audit processes or the extent to which new rules increase tax complexity were taken seriously in this process (TA02).

hierarchical structure, the IRS' senior positions reviewed and reported to the highest authorities in the ministry of finance on the IRS' position (TA02).

Historically, the group of draftsmen within the IRS comprised lawyers with a particular type of tax knowledge and was stable over a long time, allowing members to develop expertise in drafting tax law. It was also small, made up of three or four drafters. More recently, other types of tax knowledge had been brought to and shared in this small group. Professionals with a 'numeric' understanding of tax operations acted as advisors/reviewers, enriching the quality of tax bills in order to 'detect errors to make extra adjustments' (TA02). Draftsmen from the tax policy coordinator's unit also brought their knowledge and experience, rising to between six and eight individuals overall.

Regarding drafting procedures, drafters had some freedom as there was no formal procedure or handbook to follow. However, drafting practices were less disruptive when imitating older/wider legal tax text models. More broadly, drafters also followed the style of other more structural codes, such as the Civil Code, the Tax Code and the Organic Law of the IRS. This imitation may be interpreted as a way of gaining greater legitimacy for the current legislative outcome based on fundamental texts already in operation.

Although unstructured in nature, the drafters respected two main principles in writing legislation: *legality* and *simplicity*. Legality was respected by clearly stating the subject, tax rate, base and other features of the tax. Simplicity was the result of a trade-off between detailed and simple legislation, referring to the system as a whole and to the wording of legislation. It was argued that anti-avoidance, anti-evasion and tax relief provisions reduced the system's simplicity (TA02). Wording was a secondary aspect under consideration during drafting, as the purpose was to keep administrative and compliance costs low, regardless of who the drafters were. It was commented that simplicity was pursued by using existing 'words/definitions' in the legal corpus, since new terminology would increase complexity (PM13). This is consistent with the conflictual relationship between simplicity and certainty (Partlow, 2013). In this way, the integration of new legislation with existing legal texts would be achieved (Thuronyi, 1996).

The implementation of tax legislation was also influenced by consideration of the administrative costs regarding the appropriateness of staff numbers, staff specialisation levels, the financial resources to be invested in those human resources, the adequacy of current technology and evaluation of extra technological resources, evaluation of what type of information required control, assessment of the sufficiency of available information, examination of the need for extra information and of information matches, the impact of the rule on double taxation agreements, and the assessment of administrative procedures intended to reduce administrative costs, such as electronic invoices (TA02). This is in line with the 'reform-minded legislators' (Gould & Baker, 2002) mentioned in Chapter Two, and also with the notion that administrative capacity influences tax reform (Sakurai, 2002). On the other hand, compliance costs were reduced by allowing the taxpayer to comply with regulation without resorting to expert advice (TA02). Simplicity of language was the aim of the drafters who articulated the texts when initiating a tax bill; however, it was acknowledged that this was not always achieved as it was a difficult task (TA02). Conversely, other agents perceived that simplicity of wording was not a test of the robustness of tax legislation *per se* because it allowed room for 'abuse' through manoeuvre (PM12; Sanger, 2012). This finding is consistent with James and Wallschutzky's (1997) view that simplification of complex matters may lead to 'babble'. Another aspect that drafters took into account related to the way in which the courts interpreted legislation by creating hypothetical scenarios of how a court/jurisprudence worked in practice (TA02). This suggests that drafting tax regulation not only required in-depth technical tax knowledge, but also legal knowledge and knowledge/information on how tax authorities and taxpayers implemented tax legislation in practice.

A remarkable point in this phase was the supremacy of the IRS in drafting regulation. This form of symbolic capital (Bourdieu, 1977), sustained through tax knowledge, allowed the IRS to distinguish what to include in the text from what to leave out, and to supervise the drafting by the tax policy unit.

Tax knowledge and information was not only brought into this phase by drafters' direct involvement in tax affairs, but also through consultation with others that had this experience. There is evidence that the IRS conducted internal consultation within the bureaucratic field. For example, interviewees revealed

that consultations took place between the drafters and other IRS departments regarding the capacity to implement the tax rule under construction. For those newer and more 'innovative topics which involve a great deal of processing information or [where] there is no information', audit departments, for example, proposed ways by which those requirements could be included in the written rule (PM12).

Although the benefits of consultation are acknowledged in the existing literature discussed in Chapter Two, some agents disagreed about its effectiveness. TA02, for instance, argued that loopholes could not be resolved by listening to more people and, if they did, staff and time constraints prevented such action:

> *What happens later is that in the application of the law there are situations that were not foreseen* [by drafting teams]*, or how one rule combines with another rule and that* [combination] *generates creative interpretations for sure ...* [this] *risk may be reduced, if there is a risk,* [by consultation] *but always teams are limited in staff numbers,* [they] *were few ... there is little space to listen to all the people that one may like to and also there is little time.*

As this quote suggests, consultation was limited by the size of the team and time, especially when those targeted did not belong to the bureaucratic field. This was the Chilean experience during the drafting phase. TA02 stated that there was no consultation with external supranational institutions, such as the World Bank, the IMF or the Inter American Center of Tax Administrations (CIAT), although the OECD had some informal involvement. Such unstructured consultation depended largely on the leadership of the team, as commented on during the interviews.

Once a rule had been written, it was reviewed/scrutinised to assess its robustness and make amendments if appropriate. To do this, drafters required knowledge on the tax avoidance opportunities used by taxpayers and their advisors. There is evidence that, in the 2012 tax reform, drafters from the IRS and tax policy coordination unit shared knowledge based on their respective experience in the bureaucratic and professional services fields. This collaboration was used, for example, to improve the standard of anti-avoidance regulation, as the following quote shows:

> *What do we do now to avoid* [taxpayers] *infringing the rule? What if?' What these two groups did was use a whiteboard with several scenarios* [and asked] *well what can* [taxpayers] *do now?*

> [Taxpayers] *can do this other thing; then the rule has to be wider, a little bit more generic, not as precise, otherwise* [taxpayers] *circumvent this part* (PM12).

Involving a larger number of participants in testing legislation was positively perceived in the field. TA02 commented that 'it is a very good policy having more eyes looking at one drafting. It has been useful to detect errors [and] make additional adjustments'. Bringing experience from the bureaucratic and professional services field into this assessment was highlighted during interviews. In the 2012 tax reform, former private-sector professionals were familiar with the possible 'manoeuvres' available to reduce tax liabilities, while the IRS was aware of taxpayers' actual practices. These types of knowledge were supplemented to secure tax compliance but, in contrast to Oats and Tuck (2008), who evaluated tax compliance at the implementation stage, these now bureaucrats mobilised knowledge in the drafting phase by acting as if they were in opposite and adversarial trenches. The following quotation illustrates how this activity had been conducted in recent years:

> *Hey, we, as taxpayers/tax advisors, can do this thing here… well, yeah, but we, as tax administrators, can do this other thing here. One draftsman punched (and the other responded). This was the dialogue* (PM12).

This 'dialogue' increased the 'procedural quality of laws' (Karpen, 2008, p.157), as PM12 agreed. In contrast to this collaboration, the negative effects of not bringing this knowledge into the process were commented on. In a second stage of the 2012 tax reform, the ministry of finance led the process without the IRS, resulting in a reduction in the robustness of the law regarding integration and organisation (Thuronyi, 1996), as 'several problems [arose] because that left a lack of coordination in the law in terms of references, enforcement dates, etc.' (PM12). This shows how collaborative policy making had a positive influence on the standard of tax legislation.

Furthermore, there is evidence that higher levels within the bureaucratic and political fields carried out these activities. The IRS national director made comments on the bill as a form of 'quality assessment/control' (PM12). During the 2012 tax reform, even the president 'tested' the drafting and made suggestions about how things should be done (PM12). In this case, the president's knowledge was recognised as pivotal in conducting this

assessment. This president had 'institutionalised' cultural capital, as discussed above, in the form of a first degree and a doctorate in economics, and practical experience as a member of the Senate's committee of finance (PM05). In the Senate, he had built a good reputation for being knowledgeable and hardworking, as noted by one interviewee. During the fieldwork, these 'transposable dispositions' (Bourdieu, 1990, p.53) were referred to as personal features and a work style of being 'on top' of fiscal decisions (TA02).

Despite all this knowledge and expertise mobilised to enact robust legislation, it was acknowledged that possible and unforeseen implementation avenues emerged in practice. The law had its own lifecycle after enactment, as TA02 said:

> *The rule has an open texture, i.e. the text allows interpretations that the drafters were unable to foresee at the drafting stage and then the interpretation rules contained in the constitution and in* [other] *law*[s] *are very important. And therefore, what drafters wanted to do* [with the rule] *will not be what taxpayers or the courts interpret because legislation has its own life* (TA02)*.*

Some of the practices used by taxpayers and tax authorities to implement the law are discussed later in Section 5.6. Once a rule had been completed, the Chilean law-making framework stated that its impact must be budgeted. This phase is discussed below.

5.3.3 Budgeting

Within the powerful group involved in the design, DIPRES provided support to the IRS in preparing economic estimates, playing an 'advisor' role (PM08). These estimates were powerful (Graetz, 1985) because if economic figures contravened tax policy a bill might be withdrawn or thrown out (TA02). These estimates were not only technical in nature, but also had a political use for attacking or defending positions in the tax policy-making field. For example, regarding the 2012 tax reform it was mentioned that if the numbers had been proved wrong, adversaries would have used that against the executive, arguing that it was 'lying to the population' (PM13).

The report preparation process required coordination between DIPRES and the IRS, as the latter held internal information about various taxes. In 2012, for example, the IRS' Department of Studies prepared information that served as

an input to the bill's financial report. This information came from income tax and VAT returns and, for bank secrecy reasons, was subsequently transformed/grouped before its submission to the ministry of finance or DIPRES (PM09). Tax secrecy legislation prevented the IRS from being totally transparent in sharing this information with the two institutions. In Geraats' (2001, p.48) terms, this may be interpreted as a lack of 'procedural transparency'. This constraint gave the IRS department the purely 'technical' role of 'calculation', as numbers were deemed to increase objectivity (PM09). In performing this task, the Department of Studies tried to act rapidly and with (economic) transparency, providing the economic information required (PM09). DIPRES evaluated the adequacy and validity of the figures until it had 'certainty about what is being published … is good and it has reasonable [underlying] assumptions' (PM14) to prepare the financial report. Time was a barrier to extensive review and analysis, requiring DIPRES to 'trust in the specialisation of work' (PM14) of the IRS' experts in constructing the input. PM14, reflecting on the 2012 reform, said:

> *DIPRES accepts that there is tax secrecy with information that* [the IRS] *cannot pass onto* [DIPRES] *and* [the latter] *trusts that the IRS is doing its work in the best way possible and that they are the experts in the subject.* [DIPRES] *wouldn't question that functioning.*

This quote shows that the IRS was recognised as the main holder of tax knowledge and information in the preparation of these estimates, suggesting that 'trust manifests where knowledge ends' (Luhmann, 1979, cited in Neu, 1991a, p.296). Despite this internal secrecy, there was considerable openness, or economic transparency (Geraats, 2001), with the public at large who requested information during the 2012 tax reform, as commented on during the interviews.

It may be argued that these actors and the functions they performed at the closed and small design stage was connected with the field of power, given the amounts of capital at stake. The minister of finance, the IRS national director and the DIPRES director were identified as the most powerful agents at this stage because they 'hold the responsibility and management' of tax policy (TA05). Generally, this was a closed space with little interaction with the external environment (Mulligan, 2008), as noted by a member of the professional institute of accountants (CA01) and a member of the professional

institute of tax law (PL01). Nonetheless, there is evidence of interaction with other fields through consultation.

5.3.4 Consultation

There were a number of salient features of the consultation procedure. First, it was acknowledged that was very selective. As will be shown in Chapter Six, limited consultation with external members occurred in the policy-making process in the mid- to late ’90s. TA05, who was in office until the early 2000s, commented that, given the importance of tax matters, the number of those targeted was very small, using ‘one or two external advisors’. This resonates with the ‘usual suspects’ (Bullock *et al.,* 2001) mentioned in Chapter Two. Second, consultation in Chilean legislation was very informal and not institutionalised. During the 2012 tax reform, the ministry of finance held ‘informal meetings’, as PM13 commented. Third, those consulted were mostly lawyers. PM14 commented that external lawyers advised the ministry of finance during the 2012 tax reform.

Two conditions for having a voice at the design stage were identified during the fieldwork: tax knowledge and political compatibility. In the first place, those consulted were recognised as having high amounts of tax knowledge, being referred to as ‘experts in the market’ (PM13). These advisors had ascended in their respective fields (e.g. professional services), as shown in the theoretical framework in Chapter Three, and were recognised as trusted sources of tax knowledge. PM13 added that, during the 2012 tax reform:

> *There was technical trust. In fact, the people contacted* [in the ministry of finance] *did not necessarily share* [their] *political stance and were very open to help.*

There were conflicting views on the benefits of direct external consultation with knowledgeable individuals in the professional services field. PM12, for instance, saw it as a valuable way of gathering knowledge, information and experience from those in practice. In contrast, ET04 saw it as ‘utopic’ to believe that the external advisor would pour knowledge into the tax policy process. ET04 did not think that the advisor would tell the legislator ‘look, these are all the situations that give room for tax savings ... take note of them and eliminate them from the legal order’. ET04’s perspective was aligned with a rational perspective, stating

that the advisor had no incentives to take such a course of action, as shown in the following quotation:

> *In a free debate, in a free society, everyone is after his own interests which are all absolutely legitimate. Then it is utopic to say 'look, I am going to consult with the PwC tax partner and he will tell me all the fibs', or to say 'this guy is evil, he won't tell me all the fibs* [tricks in the tax system]*' – it is not his function. His function is to advise the taxpayer, possibly regarding tax savings using tax relief rules forgotten but totally in force … because he is called to provide a tax saving, so why would he tell you to eliminate all those aspects for which he has earned money all the year? Because it is not his function, he is not called to do himself a professional hara-kiri … even in other cultures, the advisors' role is not to reveal the fibs to the* [tax] *administrator.*

This view is in accordance with the idea that actors 'with high cultural capital can command extremely high wages' (Cooper & Johnston, 2012, p.612); therefore, they were unlikely to provide advice that would ultimately damage their economic capital, as that would place them in a less powerful position. In ET04's view, it would be naïve to expect that from advisors and from self-critical tax inspectors' analysis of their practices. Rather than relying on their will to tell the truth about problems in the tax system, ET04 believed that knowledge should come from the academic field through 'scientific analysis'. ET04 added that academia was a space in which a paid individual could comment independently without 'capture', whereas other actors, including practitioners and tax administrators, were always biased.[54] This view might be interpreted as suggesting that extensive tax knowledge was not a unique condition for being involved in the tax policy-making field, but an alignment of values, interests or ideology, broadly speaking, was also required. TA05 commented on the technical and political aspects of the appointment of these tax advisors:

> *But* [the IRS and the ministry of finance] *always looked for the most qualified people in the market. I mean, if one asks who the best tax experts are, the best advisors, maybe eight names appear, and from those eight, there were two that were 'related' to the political coalition. Then one looked for those related to the political coalition.*

[54] In ET04's view, practitioners' economic dependence on clients limited their possibilities to express opinions. In consultancy firms, other tax partners looked at the opinions of others, and these were ultimately aligned, given the hierarchical systems of these service firms.

This suggests that there must have been some closeness with those consulted, reflecting the concept of social capital in the Bourdieusian sense (see Chapter Three for a detailed explanation). On social capital, PM14 commented that:

> *Basically, you know, the people that have more renown are known by everyone who is dedicated to* [tax matters] *and also there was some trust based on the previous lives of each one of us that for different reasons ... we knew them, which gave us the possibility to reach out to them.*

Similarly, TA05 added:

> *It is usual to consult with ... people that work in the private sector that are trusted by the IRS national director,* [and/or] *the minister* [of finance]*, who have a look and make comments but in a very informal manner ... but they are two or three persons because these themes are a secret, they cannot filter out before* [submission to] *the parliament... I remember that* [it] *used to work with a pair of private sector advisors who worked in taxes who had the* [IRS] *national director's trust or the* [finance] *minister's trust and they asked them for their opinion, but it was not formal and it was very reserved.*

Other interviewees refereed to this social capital as political trust. For example, TA05 added:

> [The executive] *always looked for someone in whom it had political trust*[55] *in order to share opinions, because if someone (for example) is very much on the right wing and has the view that taxes should be lowered for everyone, he will hardly collaborate with a government that wants to raise taxes for certain activities, enterprises or people. Then there are two reasons why one looks for someone politically related in order to have a view about where the country wants to go, and then trust that that information will not end up in third parties' hands, because it is sensitive to arrive in a company and say 'look, I know this tax will be changed so do this now before it is levied'.*

This reveals a connection with transparency. The executive was not obliged to publish its tax bills prior to parliamentary debate. Doing so might result in taxpayers/advisors taking advantage of flawed current legislation, increasing their economic capital (Bourdieu, 1990). This highlights that a lack of policy and procedural transparency (Geraats, 2001) might have been desirable at this stage. It also shows the connection between knowledge and information, including transparency, and social capital in the tax policy-making process. This section has shown that knowledge, part of cultural capital, is a condition for

[55] Interviewees referred to political trust as 'political compatibility'.

ascending in the respective field, and that social capital grants accession to the distant and close tax policy-making field, as discussed in Chapter Three.

Despite all these efforts to increase the quality of tax regulation (Vording *et al.,* 2007), sometimes there were consequences unforeseen by those in charge of drafting provisions (PM15) but which were detected at later stages by economists who then, at the post-implementation stage, stated that the policy goals had not been totally met (TA).

Besides this active quest for knowledge and/or legitimacy of tax regulation, strategies were used by outsiders to access the design phase. These included hearing/lobbying activities and notes/letters sent to policy makers.

5.3.5 Hearings and lobbying activities

Attempts to access the tax policy-making process were not new. Shortly after democracy had been restored, many professionals had been interested in participating in the development of economic programmes, including tax policies. During this early period, the ministry of finance created committees for different matters, composed of officers and volunteers. The number of volunteers for the committee of taxation greatly exceeded those for other committees. PM06 estimated that around 'two hundred' individuals attempted to intervene, whose vested interests in participation became transparent shortly thereafter. The great majority of these volunteers were trying to 'get more information rather than providing information' (PM06). This view aligns with that of ET04 above, who mentioned that experts did not have real incentives to share tax knowledge as they would use it later for their own benefit, highlighting the dual role played by tax advisors mentioned in Chapter Two.

Parties directly affected by tax law changes might also raise their voices during tax policy-making processes, especially when bills were closing loopholes. When changes were being made to the presumptive income regime, the taxpayers affected had taken for granted that gaining from the tax system was a vested interest, and when the change was going to occur, they defended themselves in the same way as 'labour unions defend their workers' (PM06).[56]

[56] The outcome of this type of intervention in the presumptive income regime is beyond the scope of this thesis.

These taxpayers understood this regime as a 'right', and change was interpreted as a discriminatory practice arguing that they greatly contributed to the economy and society (PM06). This is consistent with PM01's view that interest groups that protected tax reliefs unaligned with the tax system were very powerful.

In the 2012 tax reform, other actors also attempted, unsuccessfully, to be part of the tax design stage. One tax inspector association prepared a tax reform proposal which was later submitted to the ministry of finance; however, its voice was not heard. According to TA04, after a few months the association received a note stating that it would be contacted in due course, but this did not occur. This silence was interpreted by the association as a sign of unfairness in access to the tax policy-making process. In this respect, the same interviewee commented:

> *This is the social dialogue with the ministry of finance, i.e. there are ears to listen to entrepreneurs, to the big entrepreneurs, there are ears to listen to independent organisations ... but there are no ears to listen to the tax inspectors who work directly in daily tax audits and know where the system flaws are ... and know how to solve them.*

Unlike this formal channel, the association's proposal was welcomed by other entities that were not part of this powerful space. In the association's view, not listening to them had an ideological component linked to a conception of the state and its role in society. In this respect, TA04 further commented:

> *The government has an ideological view on what the state is, on its role in subsidising entities and the role companies play in economic development. We* [the government and they] *hold different views. We may share some stuff ... as tax inspectors may not have a political view ... because what we do is very technical, but even within technicalities, even people that (ideologically) support the government ... say that, for instance, income tax should not be a credit* [against personal taxation]*. This is said by many people from both* [political] *sides because it is not an ideological view but a technical conception.*[57]

Although formally the association's proposal was read and may have been analysed within the ministry of finance, or even at higher levels in the IRS, it had no effect on change in tax policy. This suggests that granting minimal, or even

[57] According to their technical conception, companies should pay taxes and not use it as a tax credit (TA04-1).

full, access to policy development did not guarantee effective intervention. Government, through its cabinet and associated institutions, set and implemented policies which were unlikely to change without good reason (Adams, 2004). In this sense, institutions belonging to the executive branch remained strong and were not 'permeable' to forms of intervention or lobbying. In TA05's experience:

> *Certainly, there was lobbying, but there was great unity in the government, i.e. lobbying entered through parliamentarians ... and* [interested parties] *asked to be received and sometimes the* [executive] *received them but as part of the* [tax policy-making] *process, but that does not mean that things were going to change ...* [the executive] *received people but many times it did not hear them ... the government, in which I was, had an idea about where to go and kept on course, they talked* [with interest groups] *and received some interesting points, but keeping on course ... one thing is receiving them* [interest groups] *and another is listening to them.*

This should not be understood as the executive branch being stubborn. It listened to people and followed their opinions when it perceived that those opinions were reasonable and included aspects or consequences that had not been foreseen. In the same interviewee's view:

> *The important thing for authorities is not dialogue with interest groups, but it is dialoguing but keeping the course ... and if one learns after the meetings* [with interest groups]*, one changes* [opinion] *but not because they buy us, nor for the power they hold ... I always felt a lot of power in the president and in the minister of finance. I was never told 'be careful with these people because they are politically powerful', never... never.*

Likewise, during the 2012 reform, think tanks politically aligned with the government (executive) had no greater influence due to their connections, and their opinions were simply one additional view within the larger set of available opinions. PM13 argued that 'there are aspects that [the executive] takes and others not ... this is an impartial and technical treatment [of opinions]'. An overarching principle in democratic tax policy-making processes was highlighted by a policymaker, who stated that 'society has a voice, but society cannot be the legislator, although it has great influence' (PM06). As has been shown, the executive had a monopoly in dialogues with interest groups (PM01) and was then able to filter what was appropriate and what was not. These practices are consistent with Hale's (2002) perception that opinions outside mainstream policy are marginalised.

5.3.6 Notes/letters

This was a more subtle form of intervention noted during the fieldwork. During the 2012 tax reform, several comments, in the form of letters, were sent to the ministry of finance, and other comments were published in newspapers, highlighting or criticising aspects of bills under discussion in parliament. This shows that the policy-making process was not linear (Sawyer, 2013b), as actors might try to exert influence at any stage in the process. In 2012, it was acknowledged that there were no inappropriate appearances or direct influences by large taxpayers (PM13).

5.3.7 Pre-legislative stage

Before the bill was submitted to parliament, the three main institutions of the executive branch, i.e. the ministry of finance, the IRS and the budget office, made final decisions about its content. If any institution's team provided stronger technical arguments, the rest trusted this and agreed to follow that path of action (TA05).

In this final step in the design stage, two executive branch practices were uncovered during the interviews. Firstly, the executive designated an officer to convince/persuade parliamentarians to approve the bill as suggested. This nomination was based on trust, understood as an expectation that the officer would get the bill approved smoothly. His nomination was based on a balance between political and technical competence. In some cases, people's habitus was perceived to be inadequate and too 'rigid' to achieve the goals, as mentioned by PM15 with regard to the 2012 reform, which led to the executive replacing the officer concerned. In other cases, it was perceived that an experienced technical officer could appropriately negotiate with parliament, as mentioned by TA05.

The second practice was that of education of or communication with parliamentarians on the content of a bill, as mentioned by Gordon and Thuronyi (1996). In carrying out this activity, parliamentarians had the 'core ideas' explained to them, without entering into the full technical details of the bill, as mentioned by TA05.

5.4 Legislative

Although formal debate in the National Congress followed a sequence, as illustrated in Section 5.2.1, the ways in which deputies and senators made decisions were similar. For this reason, a combined overview is presented of how these actors made decisions on legislation.

In this phase, the executive branch and parliamentarians were the two main actors that made decisions on tax policy making and vied for control over the content of legislation (Mutch, 2006). However, the structure of the process and the allocation of capitals between these two participants created an imbalance between the two in the field. Firstly, as mentioned earlier in the chapter, the exclusive prerogative of the president of the republic to initiate a tax law change was perceived as an asymmetry of power, as acknowledged by PM10. In practical terms, PM01 argued that this asymmetry became objectified during analysis of the bill: parliamentarians were prevented from introducing an amendment to the bill which, in turn, had to be negotiated with the executive. Secondly, time pressures, called 'urgencies', to complete the parliamentary debate within a defined period of time restricted the temporal boundary of the field (Gracia & Oats, 2012; Mutch, 2006). With these impositions, parliamentarians were prevented from obtaining a detailed view of the content of legislation (PM10). Thirdly, the miscellaneous content of the bill also acted against a balanced debate in Congress, as mentioned by PM05. These structural elements may be interpreted as causes of *structural violence*, as explained in Chapter Three.

Besides these imbalances, there was an unequal distribution of resources between the executive and parliament. Tax knowledge was scarce in parliament compared with the executive. PM16 mentioned that 'whilst each minister comes to the parliament with ten different advisors and specialists in several subjects', Congress had few specialists from a limited number of disciplines to whom to resort. In this regard, PM04 added:

> *The great architect ... in tax matters especially, is the executive. As you understand, the executive has technical teams, has unmatched technical apparatus compared with that of the parliament.*

In this scenario, parliamentarians made decisions on tax legislation. Examination of tax bills was in two broad areas: economic/political and

technical. In the first area, a joint economic and political assessment of bills took place. For example, PM16 referred to revenue collection as a factor by which to determine the merits of a tax bill, while the 'political/ideological' component was notorious in discussions of the tax burden (PM03). Other participants in this study presented these two aspects as inseparable. PM01 commented that parliamentarians tried to 'understand what is proposed ... understand the impact it has on the tax structure and on the burden' as well as the consequences for growth and income distribution and whether it worsened the distribution of the burden. Economic and political/ideological components must match in order for a bill to be approved, as mentioned by PM03. This suggests that the analysis was influenced by dispositions internalised in the habitus, as explained in Chapter Three.

The second component was the technical analysis of legislation, which became tangled during tax debates. TA02, for instance, in commenting on the procedures of the 2012 tax reform, mentioned that debates on policy, revenue impact and distribution obscured technical discussion.[58] In carrying out technical examination of legislation, the possession of tax knowledge was pivotal. Regardless of the political affiliation of interviewees, there was a consensus that the possession of tax knowledge in parliament was low (PM01, PM02, PM04, PM07). This lack of knowledge led members of parliament to enact their practices more by 'feelings' (PM01) than by technical certainty. In this respect, PM01 added that there was:

> *darkness in the* [legal technicalities of] *tax procedures, which sometimes are the most important part* [of the debate] *...* [parliament] *is immersed in an immense, immense darkness in the tax procedures.*

Although some members of parliament held high amounts of symbolic capital in the form of reputation (Bourdieu, 1990), having held high positions in the executive in the past, parliamentarians 'are not tax specialists' (PM07). In the same vein, PM10 added that parliament did not have the 'specificity and technical competences adequately to address tax issues'. Technical discussion 'for those who are not specialist is not easy at all' (PM01), especially on tax

[58] A very debatable component of the 2012 tax reform was a tax credit for education.

practice and the ‘associated effects’ of legislation (PM02). The absence of tax knowledge arose from a lack of professional practice, as argued by PM02:

> *What happens is that the tax discipline has major complexities. I think that if you haven’t worked in the area, you don’t have to understand what an excessive withdrawal is, you don’t have to understand what goodwill is … these are concepts … and you have to study them. And moreover, the law has to be studied and it is not easy because it is* [disorganised] *… tax concepts, the tax code, the income tax code are not legislation easy to digest for people who do not know the issue.*

This also suggests that the existing complexity of the tax system had an impact on the enactment of new legislation. Despite this lack of or limited tax knowledge, other actors in the field argued that parliamentarians were not expected to be tax experts. In ET04’s words, a parliamentarian was in Congress to:

> *represent the popular will and then they do not have to be specialists ... it is not the task of the legislator to know about everything, his role is to represent political opinions, political trends… and to generate the political opinion according to the state’s long-term goals, of the democracy…*

In addition to this general lack of tax knowledge, there were asymmetries within Congress, ranging from parliamentarians who did not understand ‘anything at all’, to others with a ‘general legal view’, and others taking a political and technical perspective (PM01). Analysis of the interviews shows that asymmetries were alleviated in some cases and deepened in others. Learning was one way to reduce this cultural gap in tax. Some parliamentarians had learned over time by reading and had gained greater expertise in certain aspects of income tax and even VAT, as mentioned by PM01. This was influenced by parliamentarians’ habitus, as suggested by PM04, who argued that some individuals were ‘more studious and diligent’ than others. In other cases, the executive indirectly deepened tax knowledge asymmetries by providing access to the ministry of finance’s advisors by its coalition parliamentarians, as mentioned by PM02. This practice was oriented to aligning political partners with the content of a bill and succeeding at the legislative stage. Consequently, the executive became more powerful in getting the bill approved at the expense of deepening cultural capital asymmetries in tax. This partnership resonates with Neu (2006) and Gracia and Oats (2012) regarding

the formation of social groups, although in this case an informal one. These findings together are consistent with Hoffmann and Zulch's (2014) argument that knowledge is not static and can be transmitted in several ways.

Three consequences of this limited tax knowledge were identified from the interviews. First, parliamentarians with low levels of tax knowledge had fewer tools to contribute to the debate and ended up resorting to political/ideological arguments instead (PM02). Second, scrutiny of legislation was inappropriate for assessing whether a policy was as stated in the drafting stage, and whether loopholes were available. For example, referring to a particular provision in the income tax code, PM01 mentioned that parliamentarians never thought that that mechanism would be used by tax lawyers to avoid taxation. This resonates with Hall and Taylor's (1996, p.942) analysis of historical institutionalism in which 'the unintended consequences and inefficiencies generated by existing institutions' are of interest. Third, it caused inefficiencies at the legislative stage. PM07, referring to the 2012 tax reform, argued that this limited understanding made communication between parliamentarians and the executive slower, and sometimes technicalities were not fully understood by the former. PM07 added that the absence of knowledge led parliament to trust very strongly in the judgements of the IRS and the budget office.

Since tax knowledge was a key disadvantage for parliamentarians, there was a struggle for this form of capital in the tax policy-making field. When it was unavailable, it was sought in other fields through consultation and invitation.

5.4.1 Consultation

Consultation had become common practice in parliament (PM03), particularly in the committees of finance (PM05). This need had intensified with the time pressures that parliamentarians faced, making the role of tax advisors essential (PM10). Similarly, PM16 acknowledged that parliamentarians did not have 'enough time to study every project in detail'. These findings resonate with Burns (1999, p.179), who argues that 'elected representatives find it impossible ... to acquire the minimal technical knowledge entailed in the variety of problem areas' with which they are involved. Accordingly, tax experts provided the 'best technical solution' (ET04) to help parliamentarians develop a technical opinion

and then make informed decisions (PM04). Informed decisions, in turn, helped parliamentarians to counterbalance the power of the executive (TA05, PM10).

Consultation depended on factors such as whom to resort to, and both monetary and time resources (OECD, 2001). Regarding whom to consult, it was mentioned that parliamentarians looked for a person 'willing to tell the truth and to not induce parliamentarians in one sense or another' (PM01). As this quote suggests, there was a trust component in the appointment of consultants. The reasons for appointment will be examined later in this chapter.

Parliamentarians possessed economic capital, and some exchanged it for tax knowledge. For instance, paid professionals from several disciplines, including economics, law and accounting, supported parliamentarians during the 2012 tax reform (PM02), while others received free tax advice, as acknowledged by PM03 and PM05.[59] However, it was perceived that free tax consultation might not attract advisors who had studied the rules in detail. ET01 argued that advisors might have other commitments and might prefer to earn fees elsewhere, rather than attending free of charge. Those consulted might belong to either the private or the (former) public sector (PM03).

Time was another determinant of how much to consult. Evidently, extra time allowed parliamentarians to consult or listen to a wider spectrum of people, as reported by PM02. More than one opinion might be used to validate technical opinions. For example, PM02 tried to ask more than one person, looking for a second or even a third opinion because a parliamentarian 'may receive an opinion that may seem reasonable to him one day', but then that stance might change when other information was received.

Tax experts might provide their advice openly, in which case the history of each law acknowledged their names, as in the cases covered in Chapters Six and Seven, or privately. Private advice might take the form of personal advice, where links with the institution/firm for which the advisor worked were not made transparent. In the case of the 2012 tax reform, this type of non-transparent advice occurred, where the accounting/law firm did not want to appear to be

[59] In this case, there must have been other forms of reward for tax advisors which are beyond the scope of this chapter.

supporting any position in political terms and the advice took a personal form (ET05).

Procedurally, advisors carried out research and also used their networks, or social capital (Bourdieu, 1990), in order to provide advice (PM05). This advice might take a distant or close form. The first was by submitting a report to a parliamentarian (PM05), while the latter was a more close and collaborative approach. In referring to this second type of procedure during the 2012 tax reform, PM10 mentioned that parliamentarians checked the content of the bill 'sentence by sentence'.

Advisors' professional capital (Kurunmäki, 1999) had a significant impact on the content of tax legislation. For instance, in the 2012 tax reform, it permitted the identification of problems overlooked by the executive branch, as reported by PM03. Similarly, PM10 mentioned that their advice allowed parliamentarians to conclude that the rule was exceeding the policy in some way. PM10 argued that the executive was*:*

> *trying to shoot a butterfly with a cannon. Before specific problems were detected that could have had a narrower or specific solution, the fundamentals of the Chilean tax system were being changed and that seemed a mistake, and therefore the executive was told that.*

The case commented on by PM10 was later changed by the executive and withdrawn from the tax bill. This shows that some parliamentarians were able to access the design phase under some circumstances.

5.4.2 Invitation

The second type of involvement identified during the fieldwork was consultation by invitation. This practice of the committees of finance consisted of inviting people deemed appropriate to the tax debate, and also in response to suggestions of particular members of the committees of finance (PM10). This is consistent with the concept of 'usual suspects' (Bullock *et al.*, 2001, p.47) mentioned in Chapter Two.

Similarly to direct consultation, consultation by invitation posed time constraints. Historically, the availability of more time allowed members of the committees of finance to invite a larger spectrum of people, including economists and academics (PM16). Extra time also allowed some people to participate more

than once in the technical debate in order to delve into technicalities in the rules (PM01).

Examples of institutions invited over the years included accounting and tax associations. These institutions usually set up committees to analyse the technical content of legislation, as reported by CA01 and PL01. Despite this preparation, short-notice invitations prevented them from providing more detailed technical opinions (PL01). The impossibility of providing extensive technical input gave some agents the impression of false public engagement. PL01 used the metaphor 'pledge of allegiance' whenever the objective of sharing tax knowledge was not met. Nonetheless, PL01 recognised the positive role of public engagement in tax policy making if conducted appropriately, commenting that having a 'transparent process, the clarity and trust in the manner in which tax rules are made' would contribute to greater voluntary compliance (PL01). This is consistent with Feld and Frey's (2007) finding that tax compliance can be boosted by fair and legitimate political processes, as mentioned in Section 2.3.

The impact of consultation by invitation was not perceived to be very strong by CA01, who mentioned that opinions became an input when they matched parliamentarians' beliefs. This resonates with Marriott (2010), who argues that those aligned with policy direction and who influence policy are privileged by legislation.

Similarly to the conditions influencing the appointment of advisors in the design phase, tax knowledge and political compatibility influenced such decisions in parliament. Tax knowledge was mentioned by several interviewees (PM01, PM03, PM05, PM10 and PM16) as the primary reason for advisors' appointments, and took three different forms. First, these actors held some type of qualification, i.e. an institutionalised form of cultural capital (Everett, 2002). For instance, PM05 resorted to individuals with a PhD degree which denoted that these advisors had reached a top position, at least in the academic field. Having academic experience was a second dimension of this form of cultural capital in tax. In this respect, PM10 mentioned that people with 'professional excellence and academic experience' were sought after. Thirdly, professional experience in the field was highly valued by interviewees. PM03 resorted to lawyers from the private sector and former IRS officials. Similarly, ET05

commented that senior staff in accounting and law firms had participated, providing some types of advice to parliamentarians.

The second main reason for the appointment of advisors was political affinity. Although it was not mandatory to belong to the same political party to advise a parliamentarian, these outsiders had to 'hold a common view regarding the themes' on which they advised, as PM16 commented. A similar perspective was taken by PM03, who commented that, besides technical competence, political views were important:

> *Of course, and also they are people of your political affinity. I do not want a person with a doctorate in econometrics, but I need a person that I also believe in and that sees life – I don't mean the same, but with similar colours to me.*

Either direct advice or invitations from think tanks politically closer to parliamentarians were acknowledged in the field as inputs to the debate (PM02, PM03 and PM10). Although a distinction was made between technical and political factors, these two concepts operated inseparably in practice. In referring to the disadvantages of having a permanent, dedicated tax staff within Congress, PM04 commented that 'technical themes have an ideological background ... and that staff is contaminated by a [political] colour… and then, if I am not of that colour, [their advice] is not helpful at all and I don't trust anything they may tell me'. These two components together were converted into symbolic capital (Bourdieu, 1990), which influenced their habitus and the way in which these actors operated and influenced the tax debate.

5.4.3 Hearings, notes/letters and reports

Interest groups tried to provide tax knowledge/information to gain access to the tax policy-making field, influencing the debate by seeking attendance at hearings and submitting notes/letters and reports to parliamentarians.

In hearings, interest groups requested invitations (PM10) to finance committee sessions. This was allowed under the regulatory framework of law making, which allowed any group to participate by presenting its ideas (PM01) and influencing the debate (PM16) for its own vested interests (PM07).

Hearings had an effect on tax decision making. PM01 argued that interest groups' perceptions were 'powerful in the parliament ... especially technical

opinions which are sometimes covered by ideological postures'. Some groups were less biased than others. PM07 mentioned that senior staff from accounting/law firms were less biased as they did not depend on a particular client. In contrast, some tax lawyers were viewed with mistrust by other parliamentarians. In particular, PM01 commented that:

> *Different interest groups come to the Congress, look at things from their own perspective, how tax rules affect them and how they do not. The most powerful/dangerous interest groups that come are tax lawyers, whose business is tax planning and therefore they are always trying to keep loopholes that allow them to sell to enterprises ... and try to ensure that the rules that harm them do not change since they have sold that as a service.*

In order to counterbalance the knowledge of these lawyers, parliamentarians required greater expertise in tax. However, this was not the case. PM01 commented that:

> *the problem is that* [parliament] *discovers that, because parliamentarians don't always discover the trick. The government has more capacity to discover* [the tricks] *than parliamentarians because they have larger advisory teams.*

This resonates with Hoffmann and Zulch's (2014, p.710) statement that 'in public systems that involve a parliament as the decision-making body, the standard setter *per se* has less expertise (for example, tax knowledge) than the interest groups'. Time was again a factor in how many hearings were held. Obviously, more time allowed more people to be heard during the 2012 tax reform (PM16), including a presidential candidate, associations and students, as mentioned by PM02.

Another source of influence/knowledge for parliamentarians was notes/letters published in newspapers or directly submitted to parliamentarians. PM02 mentioned that 'during a period there were many letters from tax lawyers published in [name of newspaper] that every day were finding imperfections and loopholes, issues that could have a [negative] impact' on the tax system. PM01 reported that some parliamentarians had received comments on a tax provision in the 2012 tax reform, highlighting its rights and wrongs.

Think tanks also informed parliamentary debate through the research they conducted. It had become common practice for parliamentarians from both political sides to rely on these reports (PM03). Although think tanks had a

political ideology, their reports were read by members of the committees of finance, regardless of their ideology (PM04). These reports reached parliamentarians through their political parties (PM05). Political parties were not neutral to tax policy debates, giving instructions on what to decide. This point is discussed below.

5.4.4 Instructions from political parties

Political parties gave instructions to their parliamentarians, influencing the decision process. This aspect is relevant, as the funding of political campaigns was not entirely transparent in the Chilean context. This aspect forms part of the legal factors presented in the conceptual framework in Chapter Three.

The fieldwork revealed three ways in which parties were indoctrinated and then that information was transmitted to their parliamentarians. First, high-profile members of the executive branch informed political parties and their members on the committees of finance about which decision to make. In this respect, PM05 commented that:

> *Members of committees of finance met ministers of finance, deputy ministers and other people to conduct a detailed study of each bill. In this case, the influence of ministers on political parties, as ministers come from political parties, was greater than that of parliamentarians ... there were the members of the committees of finance of the Chamber of Deputies and Senate, and it was there where the technical analysis by the ministries and specialists was conducted ... in that way the members of the committees arrived* [at the meetings] *with a prejudice.*

Second, companies and business associations lobbied think tanks connected with with political parties in order to put pressure on them as well as the government to get bills approved in a certain way (PM05). A third way was for companies to fund political parties directly. PM01 commented that the existing political system was structured so that large economic groups funded both the right- and centre-left-wing parties. This funding entailed ‘commitments’ to the funders, which were met by approving rules in the most convenient way to those funders (TA04-1). This aligns with Roberts and Bobek’s (2004) finding that companies allocate contributions to fund parliamentarians in order to receive a legislative favour in return.

In this way, political parties were captured and instructions flowed to parliamentarians. The system in which candidates for a certain campaign were elected was a method used to pressure parliamentarians to follow such instructions. PM05 commented that parliamentarians were told '"look, I will not include you in the [electoral] list [as a candidate] because this is a dual system and I decide who the candidate is" ... in this way, parliamentarians are not interested in what citizens think'. Parliamentarians drew power from the political field, as presented in Chapter Three, and their decisions were influenced by partisan instructions. These instructions had an impact on the habitus of parliamentarians who were also interested in staying in office (Besley, 2006).

5.4.5 Decision-making process

Tax knowledge and political instructions served as inputs into the decision making process, but were weighted in different ways by parliamentarians. For example, some parliamentarians relied heavily on the technical reports given to them by their political parties; others relied on joint research conducted with their advisors and were not 'influenced' (PM05) by partisan instructions; others attached significant importance to work conducted by the National Congress Library, as commented by PM03; and others applied what they had learned from presentations made by outsiders in parliament (PM10). However, it was the parliamentarian himself who weighed and made the final tax decision. On this point, PM02 commented:

> *Parliamentarians made the balance in the end. I mean ... there are many things parliamentarians took from the discussion and others weren't taken. That's the parliament's work. ...evidently parliamentarians' advisors are closer, they tell the parliamentarian about the impact of what is being said (possibly by those listened to) and the consequences of certain comments made, but from that perspective ... the final decision is made by parliamentarians based on the weight they give to the arguments they have had over the table. This happens not only on tax ...parliamentarians have advisory* [support]*, and the community is also interested in participating, in opining on the positive or negative effects of the tax bills. They have the chance to do it and it was done for* [the 2012 tax reform] *in depth…*

The decisions made were not necessarily procedurally transparent (Geraats, 2001). In some cases, negotiation occurred outside parliament in order to understand the content of legislation and move forward, as mentioned by PM02. Similarly, ET04 commented that the 'debate is held outside the congress. The

technical discussion is held in the IRS, ministry of finance, in the corridors and with the interest groups'. Despite this practice, parliamentarians tried to gain more legitimacy, or symbolic capital, in making their decisions. For the 2012 tax reform, sessions held within the committees of finance were broadcast by television, which was understood as sign of [procedural] transparency, as commented by PM02 and PM10. Nonetheless, it was also acknowledged that some individuals 'make discourses for the television fuelled by more ideology than technical analysis' (PM02). This aspect may be linked to elections. PM04, in referring to elections, mentioned that 'every parliamentarian's decision is on the media and able to be channelled ...whilst the more aseptic the decision is, the less it is going to influence me, the more ethically right it is'.

Although procedural transparency was desirable, some policy makers took an opposite view. For example, PM04 opposed the publication of parliamentary reports because 'discretion makes the debate more genuine' and some aspects were not well received outside parliament. Without making any distinction in terms of transparency, TA02 commented that processes were made transparent by inviting people and publishing session reports, giving 'legitimacy to the processes'. However, as shown, for example in the instructions from political parties, transparency took a ritual rather than a genuine form.

Although the decision-making process was complex because of the number of inputs and there seemed to be 'careful examination' of tax bills, as mentioned by PM04, this was insufficient to make robust regulation or 'perfect' legislation (PM04).

Once decisions had been made in the committees of finance, these were communicated to their respective general chambers, either the Chamber of Deputies or the Senate. The next sub-section examines how this communication flowed and influenced other parliamentarians.

Communications from the committees of finance to the Chamber of Deputies and Senate

It was acknowledged that the substantial debate on tax bills was held in the committees of finance (PM01) and that decisions made by them were very unlikely to change in the Chamber of Deputies and Senate (PM08). The reasons for this were two-fold: technical and political.

Consistent with previous findings, there was a perception that tax knowledge was held by very few members of parliament (PM05). In this scenario, other parliamentarians tended to trust the work carried out by the parliamentarians in the committees of finance. In this regard, in a conversation with a non-member of committee of finance, PM04was told that:

> *If* [name of parliamentarian] *says that* [the bill] *is OK, it means that the bill had passed and was carefully examined by other parliamentarians… That's technical trust ... that other person knew that I had examined the bill. He had the trust that I had certain knowledge and that if I hadn't highlighted anything as wrong, he thought that the bill was irreproachable.*

Besides this trust in the technical competence of parliamentarians, the IRS' stance was also highly respected. TA05 commented that there was 'trust' in the technical work done by the IRS. This trust may also be interpreted as a factor in moving forward the debate in the Chamber of Deputies and Senate.

The second element was political affinity. There was consensus in the interviews that parliamentarians from the committees of finance led the rest in order to decide on tax bills, rooted in political affinity. PM05 commented on this:

> *Let's assume that I am communist and I belong to the committee of finance and there is another communist in the committee of agriculture. I trust that he will give me a right report on agriculture based on the political party's criteria.*

PM04 referred to this concept as political trust, adding that 'the parliamentarian of a particular political colour leads … [that is] political trust'.[60]

Although these quotes suggest that this always occurred, PM03 argued that members of the committees of finance had some power, but that would not necessarily influence the decision in the whole Chamber of Deputies or Senate:

> *In relation to political trends inside the parliament, many times what* [parliamentarians] *from a certain political colour from the committee of finance think, the rest of parliamentarians, I am not saying that they trust, but tend to listen to what* [x]*,* [name of parliamentarian] *or* [name of parliamentarian] *do inside the committee of finance. Then, the opinion of the members of the committee of finance has a weight for their political partners, but it is not determining at all. Here each one is the owner of his own decisions ... but there is a certain influence in that sense.*

[60] PM04 referred to political compatibility, as mentioned before.

The preceding sub-sections have shown how parliamentarians made decisions at the legislative stage. However, as acknowledged earlier in this chapter, another actor exerting influence on the content and pace of legislation was the executive branch. Through several mechanisms granted by the constitution, explained above and now revisited, the executive vied for control.

5.5 Practices of executive branch

Besides negotiation and reaching consensus with parliamentarians, other practices of the executive branch revolved around the use of several forms of (non-)transparency to control and get tax bills – the object of transparency (Oliver, 2004) – approved in parliament. Those found in the fieldwork are discussed here.

Within the law-making framework, and as mentioned earlier in this chapter, the executive was permitted to introduce time pressure and thus control the pace of discussions in the parliament. This may be interpreted as controlling through 'playing' with the temporal boundary of the field (Gracia & Oats, 2012; Mutch, 2006). It was noted that, when bills were examined very quickly, it was not possible to conduct a detailed analysis of the content of tax rules (PM05). In this case, parliamentarians were prevented from improving their position in the field by increasing the stock of tax knowledge to defend their postures over shorter periods of time.

A second mechanism was the use of miscellaneous bills, which were connected with the intention to hide a tax change. For instance, PM05 said that an income tax aspect was changed in a VAT bill with only minor comments, such as 'article X is modified and the colon and the following sentence is repealed'. PM05 rejected this approach and argued that full information should be provided in this respect.

A third mechanism was lack of openness about policy objectives, i.e. political (non-)transparency (Geraats, 2001). In this respect, PM01 said that the executive studied a large topic and went to parliament with a fraction of that and tried to 'prevent parliamentarians from realising that the problem is [bigger] and tries to block any [discussion]'. In PM01's view, parliament's limited tax knowledge made it difficult to understand the problem and analyse its ramifications more broadly. This practice was reinforced by the

political/constitutional power conferred on the executive to not disclose any contents of a tax bill before its submission to parliament. PM03 said that the executive did not have 'any obligation' to make the bill transparent at an earlier stage.

A fourth mechanism was obscuring of the content of economic estimates, which was economic (non-)transparency (Geraats, 2001). PM04 commented that DIPRES did not provide great detail on the bill in order to avoid questions being raised in the parliament. DIPRES' reports were described as 'inscrutable' and 'managerial', and in this way further discussion was blocked. This resonates with Lukes' second dimension of power in which non-decision making (blocking of discussion) may be considered as a form of decision making (2005). A stronger view was held by PM01, who argued that figures were manipulated to serve the objectives set by the executive. PM01 commented that:

> *always this is hidden and normally the ministry of finance distorts the revenue or manipulates the objective it has ... sometimes to the theoretical maximum, other times to the theoretical minimum depending on the objective intended to be achieved ...* [A]*s the parliament does not have the tools to make the estimations,* [it] *has to trust in what the executive delivers.*

A fifth form commented on during the fieldwork was a combination of political, economic and policy (non-)transparency (Geraats, 2001), specifically during the 2012 tax reform. These practices may be interpreted as a *selective* form of non-transparency because parliamentarians belonging to the coalition government were provided with 'content, information ... to align them with the bill' through access to advice from the ministry of finance, auditors and lawyers, amongst others (PM02), in order to play the executive's game (PM01). Accordingly, parliamentarians who received such inputs perceived the process to be transparent, as noted by PM10. In contrast, opposition parliamentarians did not receive such support (PM02) and, accordingly, perceived the process to be non-transparent, with the executive focused on their non-understanding and with little ability to intervene. Moreover, if the opposition had objected to the content of the tax bill, they would have been called 'obstructionists' (PM01).

Prior to submission to the executive, there was no formal procedure to evaluate the effects of the law to be enacted (PM03, PM04), which became known after implementation. The design and legislative stages produced tax rules with

specific features and flaws. The next sub-section presents the findings in relation to how those tax rules were implemented in practice.

5.6 Implementation

At the implementation stage, fewer fields were involved, including the bureaucratic (IRS), professional services (tax advisors), corporate/business (taxpayers) and academic fields, as shown in Chapter Three. These actors interacted and vied for control over the 'actual' content of tax legislation. This sub-section will show how these actors enacted practices in order to position themselves as more powerful in the tax policy-making field.

5.6.1 Implementation by the IRS

As noted above, the IRS was a dominant agent in tax policy making because it participated in designing and drafting tax rules and then implemented them. Three implementation practices were identified from the interviews: official administrative guidance, training and audits. These are discussed in turn.

Official administrative guidance

The IRS had a specialist department in charge of issuing administrative guidance, known as 'circulars', and questions from taxpayers, called 'notes' (*oficio*, in Spanish). Whereas circulars were compulsory for tax inspectors only and not for taxpayers (TA01), notes had to be followed by the taxpayer who requested them.

The object of circulars was to provide an interpretation of the content of legislation. This had its root in the fact that the IRS knew the 'spirit' of legislation and then 'in some way, has some right to interpret' (TA01). This guidance must never exceed the legal framework, and going further was understood as a mistake (TA01). This indicates the dominant position of the IRS in the field. On the one hand it produced legislation and, if flawed, had the right to interpret it. However, when a law was inadequate, the usefulness of circulars was doubtful. In this respect, FT02 acknowledged that circulars never analysed complex aspects of legislation. This may be interpreted as a sign of symbolic violence: the retention of information thus maintained a climate of uncertainty (Gracia & Oats, 2012).

In issuing circulars, there is evidence of internal and external consultation to improve the standard of the instrument. Internal consultation was conducted in order to avoid any 'counter-productive' effect on other legislation in force (TA01). External informal consultation with the association of accountants, law bar and others had been conducted with respect to certain legislation. Despite this external input, it was the IRS who made decisions on which opinions to take (TA05). This external consultation allowed the IRS to increase its knowledge of taxpayers' practices and related costs.

A connection between better tax policy processes and better legislation appeared during the interviews. TA01 argued that, if better debate were carried out in Congress, fewer circulars would be necessary to supplement the law:

> *I think that if there are good discussions in the Congress during the production of legal texts, I think there would be less administrative guidance issued by the IRS; because today there is no knowledge of the aim of the rules, but if there were good discussions, on the scope, etc., I think that everybody would better off, better informed about the scopes and object* [of legislation].

The second administrative rule was the note (*oficio*), which was a response from the IRS to questions formulated by taxpayers on particular issues. In the opinion of TA01, the volume of these responses was conversely related to the robustness of legislation, as the following quotation suggests:

> *If the IRS is always responding on the same issue, it means that the rule is not clear ... that it was ambiguous, that what it wanted to do was not achieved, and that makes the procedures more complex.*

These quotes together illustrate the connection between good tax policy-making processes and better standards of tax legislation.

Training and audits

The IRS developed training programmes for its tax inspectors in order to increase their tax knowledge to implement the rules. The topics covered in these training sessions were where the law and the content of various circulars were delivered (TA01).

Like other jurisdictions, the IRS segmented taxpayers by size (TA01), which allowed a better focus for audits. The formal procedure to be followed in tax audits was already regulated in the tax code, which detailed the sequence of

procedures and documentation to be completed and requested. Informally, the IRS had adopted the practice of reading newspapers to identify risks and potentially launch a tax audit (FT02).

Besides contributing to tax compliance, audits also contributed to establishing further controls and to improving the tax system when the rules were not working appropriately in practice (FT01). This type of assessment in terms of efficiency and efficacy was regularly made, which explains the number of changes to tax rules once enacted. TA02 mentioned that amendments and closure of loopholes followed the detection of new avoidance and evasion schemes. When such problems were identified, the tax policy-making process began again, as noted above. This evaluation highlights that legislation was not perfect and was ultimately tested once in operation.

5.6.2 Implementation by taxpayers

Taxpayers also implemented tax legislation, and in doing so enacted various practices at the organisational level, resorting to advisors on certain tax issues and using loopholes for tax planning, and in their relationship with the tax authority. These practices are discussed in turn.

Organisational features

The companies interviewed had small tax functions, as will be shown in Chapters Six and Seven. Those at higher levels in companies did not understand taxes (TPPT04) and tax knowledge was highly concentrated in few individuals within the expert department, as mentioned by TPPT03. Even further levels of specialisation might occur within companies. For example, TPPT05 commented on having people in charge of sub-units of tax compliance and tax planning. Likewise, TPPT01 mentioned that one area was in charge of tax compliance and payments, and other areas were more concerned with consultancy and planning.

Tax knowledge was an important condition for implementing tax legislation and was a form of capital at stake in the field. Some companies reported recruiting people with high tax knowledge in terms of experience and qualifications, whereas those already in office had taken postgraduate courses, as mentioned by TPPT05.

Besides knowledge, there was evidence of higher levels of automation in order to keep tax accounts in order. In this respect, for instance, TPPT05 mentioned attempts to improve efficiency through software. This company now had software to compute income tax, tax equity, deferred income taxes and effective tax rates, and to file affidavits. These practices and resources might reduce the number of errors in practice, avoiding fines and further work.

Tax advisors

The companies interviewed reported having resorted to tax advisors for different purposes (TPPT01, TPPT02, TPPT03, TPPT04, TPPT05). In some cases, companies sought more than one professional opinion to mitigate risks and to prepare for tax audits. TPPT01 mentioned having resorted to a succession of up to four Big Four firms for opinions, especially in more complex areas such as international taxation where knowledge seemed to be more scarce. The use of advisors was recognised as a risk management mechanism (Mulligan, 2008, p.262). This highlights the predominant role of the Big Four firms analysed elsewhere (Sikka & Willmott, 2009; Stringfellow *et al*., 2015).

Risks and tax planning

In the fieldwork, it was noted that taxpayers managed their tax risks using non-compulsory administrative guidance. One way of doing this was by using circulars issued by the IRS. TPPT01 acknowledged that since this guidance was public it could not be 'ignored'. At a broader level, a tax administrator commented on the wide use of circulars by taxpayers (FT01). This suggests an adverse attitude of taxpayers to risk.

Another mechanism used by taxpayers was to request a particular ruling, i.e. notes (*oficios*), which appeared similar to the 'advance ruling' mechanism identified by Mulligan (2008, p.261). This clarification issued by the IRS was usually used to confirm certain criteria and for tax planning, as reported by TA01.

Organisational coordination and validation seems to have been important in tax planning. TPPT01 mentioned having a legal department in Chile with headquarters in Europe. The latter was very much aware of risks, including non-technical reputational risk (Mulligan, 2008, p.247). In this respect, TPPT01 added that:

> *The tax aspect is much connected with reputational risk and sometime the thing is that the issue is not illegal but you are being used by clients to undertake, .for instance, inheritance tax planning ... which are topics that could be seen as politically wrong ... that the* [name of company] *is doing this ... then there is an issue over the legal risk, but it is a reputational risk.*

In this respect, this interviewee added that the company took a conservative stance and refrained from undertaking certain transactions that might generate a tax contingency, despite the interest of the commercial area, in order to protect their reputation:

> *Because the reputational risk is not very tangible, not very quantifiable ... it is a thing that we tell these* [commercial] *people … 'if a tax inspector asks you for this product, you cannot tell them what you are telling to us ... and it is not that it is illegal but it looks bad, it looks bad'. Regarding pensions, the commercial executives tried to put a product in the media, massively, but the tax area said not at all.* (The commercial area said), *'But why? This is in the law.' 'Yes, it is in the law but what the law intends is not this. What the law is trying to do is to encourage workers to invest in their pensions ... and that's it.'*

As this quote shows, reputation was protected by taking a conservative stance in interpreting the law according to its spirit to avoid problems, as the interviewee commented. This reputational risk overlaps with the concept of 'symbolic capital' (Bourdieu, 1977, 1990). In this case, the headquarters was not willing to shoulder the burden of legal costs to defend an aggressive tax plan. For this company, citizens' perceptions were highly valued, and being recognised as a company involved in aggressive tax planning was deemed not to be a good strategy to follow.

Perceptions of the IRS

There was some level of consensus on the high quality of the national tax authority, as will be shown in Chapters Six and Seven. With regard to the more general aspect of taxation, this positive perception remained. This is consistent with the view of the IRS' performance as one of the best in Latin America (Fairfield, 2010; Harberger, 1989). For example, TPPT01 perceived that the IRS was getting better prepared all the time, and that it was investing in training. Higher levels of specialisation and tax knowledge had helped to change the role of tax inspectors, as TPPT05 suggested:

> *You go to the IRS and you think you are at Harvard – only professionals aged 20-25 with masters' from everywhere…* [The IRS

> has] *high quality professionals and moreover they are account executives now; they are no longer tax inspectors, they are tax accounts executives. Then the IRS has very well qualified people behind the audit processes. Now you go there and you have to demonstrate with facts and documentation that you are right.*

This changing role of tax inspectors resonates with Tuck's (2010) finding that tax inspectors not only deal with detailed technical knowledge but are also part of an organisation with strategic and marketing aspirations, as mentioned in Chapter Two. In this scenario of a powerful IRS rich in tax knowledge, taxpayers defended themselves with higher amounts of tax knowledge (TPPT05), trying to project an image that they were not doing 'inadequate things' (TPPT01). This is consistent with Pentland and Carlile's (1996) finding that taxpayers try to project an image of themselves as good taxpayers. In this way, they defended their symbolic capital, understood as reputation as explained earlier in this chapter.

The final sub-section presents the findings in relation to the role of tax practitioners regarding the implementation of tax regulation.

5.6.3 Implementation by advisors

Intermediaries played a key role in the implementation of tax legislation. These actors supported and advised taxpayers on compliance with the norms in force, and at the same time provided tax planning services. The practices they enacted began with the interpretation of the content of tax legislation, and thus this sub-section begins with perceptions of features of income tax legislation. Thereafter, the way in which loopholes were used in tax planning is presented, concluding with the relationship with the tax authority and the way practices were disseminated in the field.

Income tax law features

Although, ambiguity, complexity and compliance costs were intertwined concepts, as shown in Chapter Two, the findings relating to each are presented separately as a result of the coding and sub-coding processes presented in Chapter Four.

Ambiguity

Some tax practitioners acknowledged that corporate income tax legislation in Chile had problems and that those problems resulted from a deficient tax policy-making process. ET01 commented that the absence of a long-term plan had produced legislation that had attempted to solve specific problems; however, in consequence the law overall was 'bad' and its objectives were unclear. In turn, this policy-making style had produced 'legislative hyper-inflation'. ET03 commented that tax rules emerged from Congress in a 'worse' state. The level of technical debate held in Congress was perceived to be 'nil' (ET04), which, combined with the low level of tax knowledge and expertise of the parliamentarians, had generated the current situation (ET02).

The preceding paragraph should not be understood as tax practitioners' pessimistic and general perceptions of income tax law. Although ET04 perceived that income tax legislation was flawed in terms of age, referring to it as 'not modern', and that it 'has flaws of language and concepts', this respondent's general view was that the legislation 'works well' from a technical perspective. This good functioning conformed with the features, or habitus in Bourdieusian terms, of taxpayers and tax inspectors who made the law work, such as tax morale (Torgler, 2003) and trying to make things right, as shown above.

Extensive administrative guidance was not well received in practice; instead, better processes were required, as ET01 commented:

> *I would like there to be less circulars, less notes* [oficios] *and for the law to be clearer. For me, that's the ideal. That is not necessary because at this moment the IRS is working on all the circulars ... then I would like the law to be so clear that the interpretation of the IRS is minimal ... because in the end, which is one beholden to? ... To the law … and the IRS should be beholden to the law, and what is happening is that as the* [national] *director may interpret the law,* [the IRS] *starts to think that the circulars and notes are above the law, i.e. when one tells a tax inspector 'the law says this', the inspector says 'yes, but Circular 48 says this and the note says this' ... and then one thinks, 'hey, but the head* [of the IRS] *enacted the circular and if this person* [tax inspector] *does not apply it, he is fired ... then, I insist this has the origin that the law is poorly done,* [it is] *obscure, that adequate wording is not used. Why? Because, at the same time, there is no time to study ... because, this* [tax rule] *comes from a political media thing. Then it is a sequence of things that produces bad law, and that allows the IRS to interpret in the way it wants, and*

> *then that means that when it is used, we will go to court and then I will make money.*

A similar view was held by ET03, who argued that circulars did not clarify the flaws in enacted legislation and generated 'grey areas'. These grey areas of the law opened room for tax planning. On this, ET01 added:

> *I think that tax planning is influenced, amongst other reasons, by bad law, by bad law made by the legislator ... On the one hand, that allows the IRS to interpret the law in a sense that is convenient for it and, at the same time, the taxpayers on the other hand.*

Complexity

Complexity was a second feature commented on during the fieldwork. ET01, ET02 and ET03 agreed that the income tax law was complex. ET01 referred to the number of different tax treatments within the income tax code as a source of this complexity. In referring to tax incentives, donations and credits, ET01 used a metaphor, arguing that the use of these instruments sometimes 'has a fraud-like odour'.

A second component of complexity was linked with the wording deployed in legislation. ET01 commented that it seemed that 'tax laws are made for a small universe of people that are involved in the topic and for the rest is a pain'. ET03 commented that it was difficult for those who were not devoted to the tax area and lacked practice.

A third component of complexity related to the organisation of legislation (Thuronyi, 1996) discussed in Chapter Two. ET01 mentioned that integration with other legislation was very complex, while ET02 added that income tax law was disorganised and that 'you read one article [provision] and have to read others as well to understand the former'. Ambiguity and complexity combined had an impact on compliance costs.

Compliance costs

These features had to some extent empowered tax practitioners, as they were holders of rich tax knowledge with mastery of tax legislation, or professional capital (Kurunmäki, 1999; Gracia & Oats, 2012). This was also linked with symbolic capital, as the following quotation suggests:

> *Then in the end one becomes a god. If one knows a little … that sells ... for advisors,* [this] *is really good because you present an image to taxpayers and the taxpayer reads the law and does not understand anything ... the fees are very important for tax advisors* (ET01)*.*

Since tax knowledge was relevant in determining the actual content of legislation, tax practitioners were rewarded with fees, the purest form of economic capital (Bourdieu, 1990), which was also evaluated by ET02:

> [These features of the law are] *negative, negative, totally negative. Well, negative for any person's eyes. If I am more individualistic, this is more interesting for me; it is more work for me and for all specialists, because in the end you have more work,* [taxpayers] *need you more. A greater need is generated than if* [the law] *was easier. But seeing this as a layperson, it is very complex, because in the end you frequently have to resort to an advisor.*

These features also raised the compliance costs relating to normal activities. The high reliance of the Chilean tax system on affidavits (PM15) had increased the 'administrative burden of tax compliance' (ET02). High compliance costs in the implementation field may be interpreted as an 'unintended consequence' (Marriott, 2010; Peters, 2005) of legislators, whose discourse contradicted the effects of tax rules in practice. Particular features of the law on tax planning are discussed next.

Tax planning

There was consensus among the interviewees that tax planning was a licit concept (ET01, ET02, ET03, ET04). In preparing tax plans, advisors exhibited high levels of conservatism. This aligns with the idea that Chilean taxpayers were in general very compliant (ET01). ET03 mentioned that taxpayers looked for tranquility and safety in their tax plans by appointing the best tax advisor to provide it. This suggests that advisors honoured the tax risk management mechanism of appointing advisors put into practice by taxpayers (Mulligan, 2008). The particular practices through which this conservatism was achieved, according to the interviewees, were:

- Using circulars issued by the IRS. ET02 acknowledged that circulars were a source of information. ET03 referred to this guidance as a source of risk 'mitigation tool, a tool of safety'.

- Informing taxpayers of all issues for them to decide which path to take (ET01). This is consistent with Hoffman's (1961) analysis that a tax practitioner must evaluate all contingencies and then inform the taxpayer.
- Applying the 'smell test' of tax planning (Mulligan, 2008). This is linked with dealing with both the letter and spirit of the law (McBarnet, 2002). In this sense, tax advisors tended to discard any tax plan that might be perceived as illegitimate. ET01 preferred to refrain from tax plans that 'smell like a tax crime' and, although favouring the taxpayer in the case of ambiguity, preferred to work in the middle, between the letter and spirit of the law.

From the analysis of these interviews, it may be suggested that these practices were oriented to protecting practitioners' reputations, or symbolic capital (Bourdieu, 1990), which, if damaged, might have a negative impact on their economic capital (Bourdieu, 1990). In this sense, ET01 mentioned that, as practitioners, any tax service offered should not damage the profession. Similarly, referring to an advisory firm, ET02 commented that the firm took care of its reputation and informed taxpayers of all potential tax planning contingencies. The reputation of the profession was taken seriously even by law associations, which would never encourage the widespread use of 'very reckless tax plans' (ET01).

Relationship with the tax authority

There was a level of consensus among tax intermediaries on the standard of the IRS. The interviews revealed a perception that the level of tax cultural capital had increased over time within the IRS (ET01, ET02). This higher level of competence translated in practice into unwinding the core of tax issues (ET02), but also made it harder 'to fight against the IRS' in defending taxpayers (ET01). This suggests that the IRS had become a more powerful actor in the field through tax cultural capital and, in response, tax advisors had to be equally or better prepared in determining the amount of tax liabilities.

Institutionalisation of practices

Once learned, practices were institutionalised and replicated in the field, as will be shown in Chapters Six and Seven. In general tax terms, it was acknowledged that tax knowledge in completing tax tasks flowed from more experienced toward more junior professionals through professional practice

within accounting and law firms. This was commented on by ET03 in explaining the operations of business restructuring with a junior accountant, who had gained knowledge through interaction with the senior staff. It was also acknowledged that there was imitation, or 'copying', of the practices of experienced staff by new entrants to the tax profession (ET03).

5.6.4 Post implementation review

DIPRES' work went beyond the preparation of the financial reports in the design of tax rules to include the formal evaluation of current legislation. Although there was no 'official mechanism to assess the quality of regulation' (PM13), measures relating to the success of revenue collection estimates over time were used once the rules were in operation (PM03, PM04). These evaluations might lead to a tax change, which would make the tax policy-making process commence again.

5.7 Summary

This chapter has conceptualised the relationship between the design phase and the field of power. It has also identified two important components in the creation of tax legislation in the executive and legislative branches: tax knowledge and social capital. In particular, it has illustrated how tax knowledge was held and acquired from different sources, including tax advisors. Regarding the latter, this chapter has illustrated how social capital acted as a connector between different fields. It has also illuminated how the possession of different forms of power led to domination. In particular, it has illustrated the concepts of structural violence and symbolic violence throughout the tax policy-making process.

Chapter Six: The Former Transfer Pricing Rule

6.1 Introduction

This chapter presents the findings relating to the three research sub-questions presented in Chapter Four. Section 6.2 provides a general overview of transfer pricing to enable understanding of the findings presented in this and Chapter Seven. Section 6.3 presents the findings in relation to the design stage. Section 6.4 describes the process that took place in parliament and the enactment of this rule. Section 6.5 illustrates the failed first implementation and amendment. Section 6.6 presents the findings in relation to the post implementation phase. Section 6.7 presents the initiatives for the new rule, and Section 6.8 summarises the chapter.

6.2 Background to transfer pricing

The creation of multinational enterprise groups was a response to cross-border decentralisation in the nineteenth century (Picciotto, 1992). MNEs are parts of groups of associated companies operating in two or more countries (OECD, 2010a). The phenomenon of transfer pricing occurs when goods are sold and services rendered between related parties (Groot & Selto, 2013; Hanlon & Heitzman, 2010). These parties may be located in the same or different tax jurisdictions. Transfer pricing allows companies to reduce their amount of payable taxes and is nowadays a tool for international tax planning (Adams & Coombes, 2007; Baistrocchi & Roxan, 2012).

In terms of regulation, transfer pricing is based on the arm's length principle which has been widely promoted by the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (1979, 1995, 1996, 1997, 1999, 2010). The arm's length principle states that when two divisions or business units within an MNE have an internal transfer of goods, services or intangibles, the price charged should be that set if the transaction had been between independent parties. This principle seeks to regulate market behaviour (Plesner Rossing, 2013) using comparable prices. However, a comparable value may not exist, in which case the OECD Guidelines establish different methods for its computation and comparison (see Appendix 2).

Countries have followed and adapted the arm's length principle in various ways in their domestic legislation. The achievement of uniformity may be unsuccessful, given the extent of and ways in which the principle has been adopted in domestic legislation, introducing uncertainty into international transactions (Avi-Yonah *et al.*, 2009). This uncertainty may be reduced through advance pricing agreements (APA) between the relevant tax authorities and multinationals in order to fix the prices for a number of years (see Appendix 2).

The next section presents the 1997 Chilean experience in adopting the OECD Guidelines.

6.3 Design stage

This section presents the tax policy-making process for the 1997 transfer pricing rule following the structural process delineated by Gould and Baker (2002): design, legislative and implementation. As in Chapter Five, the drafting stage is included in the design stage.

In transfer pricing policy design, the bureaucratic, political and professional services fields converged. The president and the minister of finance in the period were members of a centre-left-wing political party (Christian Democrat Party), whereas the deputy minister of finance was a member of the Socialist Party. Evidence suggests that the deputy minister's composition of capital (Bourdieu, 1990) allowed him to occupy a powerful, leading position in order to generate institutional and legal change in this period. First, the deputy minister held a high amount of 'institutionalised [tax] cultural capital' (Everett, 2002, pp.62-3) derived from training as an economist and doctoral studies in taxation in the US. Second, he had social capital through being a member of an influential think tank, described as his 'intellectual crab' (PM06), which during the years of democratic recovery generated economic and public policy proposals as well as contributing to the development of researchers who occupied senior political positions between 1990 and 2010.[61] Through these connections, the deputy minister provided advice to ministers and was recognised for his interests in international taxation (TPTE05), enabling him to access the tax policy-making field. As illustrated in Chapter Three, knowledge

[61] http://www.cieplan.cl/quienes_somos/historia.tpl.

and experience allowed the deputy minister to ascend within the professional/economic field, and social capital then allowed him to access the space in which tax policy was designed. These forms of capital were converted into symbolic capital, leading the minister of finance to delegate to the deputy minister, as the following quote suggests:

> *Politics is like a financial statement of a company. You have a political equity; but it is tight and you spend it on the fights you have, and in all things, but you also have to accumulate it, because, if you spend it all, eventually you will end up with no support to do anything… In general, tax and regulatory matters are very exhausting ... and I say that the consequence of that is that* [ministers of finance] *delegate a lot on these aspects. Then,* [the Deputy Minister of Finance and close team] *received a lot of trust from the minister of finance in order to not bother him all the time ... The minister and deputy minister ended up being a very strong duo* (PM06)*.*

Once in this leading position, the deputy minister was known for being an enthusiastic individual who had conducted institutional/legal changes that 'have a lot to do with him' (TPTE05). PM08 suggested that, at this point in time, the development of tax policy was more connected with the person than with the organisation:

> *nobody doubts that if there was a tax matter it would be led by* [the deputy minister]*, who would be ... in charge of everything from the undersecretary. If the deputy minister had been in the budget office,* [tax policy development] *would have been conducted from the budget office. It has more to do with the person...* [The deputy minister] *had a human capital that nobody could question and it was him who formulated* [tax] *policy.*

This is in line with Gordon and Thuronyi's (1998) proposal that the personality of specific individuals contributes to tax policy formulation when the groups are small (see also Christians, 2010a; Marriott, 2010).

Later, the deputy minister set up a small tax committee within the ministry of finance, occupying the post of coordinator. This committee also comprised two members of the bureaucratic field, specifically from the IRS. With regard to international tax matters, another member of the IRS joined, based on accumulated knowledge in theory and practice, ascending in the bureaucratic field, at least in terms of power. The following quotation notes the importance of this individual, especially in moving along the transfer pricing agenda:

> [This person] *had significant importance ... studied in England, is a Swedish lawyer, had worked for* [a former Big Four name] *and had an understanding of associated entities, transfer pricing … and then began to raise issues in this context … and the need to set a transfer pricing rule* (PM15).

Apart from this IRS official, transfer pricing knowledge was limited throughout the executive branch. In response, two members of the professional services field were invited to participate in setting the tax policy agenda. From the interviews, it may be inferred that the absence of detailed tax knowledge influenced their appointment. There were two reasons for the limited 'theoretical' and practical tax knowledge (PM15). First, until around 1992, the year in which the IRS accepted the use of other models, there was an idea that the Andean Pact framework of negotiation was the sole option for negotiating double tax agreements (PM15). Second, Chile was not a well-established participant in the international sphere. PM11 commented on the limited 'inclusion of Chile, neither of the ministry of finance nor IRS authorities in the global sphere. ... For example, Chile was not an OECD member, neither was it an observer; it didn't attend the OECD meetings.' This situation encouraged strong reliance on external advisors (PM11).

These two advisors were rich in tax knowledge. Both held a law degree from a prestigious Chilean university and master's degrees from US universities, and had held positions in Big Four firms. The junior advisor had also worked for a law firm. In addition to this experience, they had been tax lecturers at Chilean institutions for a number of years. It may be inferred that these individuals had reached senior positions in the professional services field and were also agents in the academic field. Their academic experience was well received in the executive branch, as PM06 commented:

> *In the case of lawyers' selection, the committee … worked more with those lawyers that also had an academic life through being university lecturers, who in spite of being lawyers for large lawyers' offices, had a slightly different approach. For these tax lawyers, finding a loophole or flaw is like solving a Sudoku. It's a wit problem, an intellectual challenge. Therefore, their reward is in finding* [the legal flaws] *rather than in doing business; it was to improve the law. Even* [they] *had some lawyers that were referees in a way that when there was any doubt about the law,* [they] *asked them and they started to think* [about the rule] *and suddenly they had a sparkle in their eyes and one realises that they had found the flaw and they remained being very collaborative, which doesn't happen with those* [lawyers]

> *working exclusively in the private sector ... who don't have this public interest thing…*

This quote reflects that the cooperative stance of these lawyers was aligned with the policymakers' ideas, and the belief that they would not retain information for private/business purposes was internalised at this higher level. It was commented during the fieldwork that these advisors had a sense of public vocation. Bourdieu (1990, p.126) argues that generous men exercise domination and violence by 'giving':

> *A man possesses in order to give. But he also possesses by giving. A gift that is not returned can become a debt, a lasting obligation; and the only recognized power – recognition, personal loyalty or prestige – is the one that is obtained by giving. In such a universe, there are only two ways of getting and keeping a lasting hold over someone: debts and gifts, the overtly economic obligations imposed by the usurer, or the moral obligations and emotional attachments created and maintained by the generous gift, in short, overt violence and symbolic violence, censored, euphemized, that is, misrecognizable, recognized violence. The 'way of giving', the manner, the forms, are what separate a gift from straight exchange, moral obligation from economic obligation. To 'observe the formalities' is to make the way of behaving and the external forms of the action a practical denial of the content of the action and of the potential violence it can conceal.*

These 'favours' may have been a source of symbolic capital to be converted into something else in future, but the ways in which these favours were paid back are beyond the scope of this research. Resorting to specialists when knowledge is not internally available has been found elsewhere (e.g. Gracia & Oats, 2012; Morris & Empson, 1998). In addition to their recognised tax knowledge, these professionals were holders of social capital at two levels. At a micro level, these two advisors knew each other from the academic and professional services fields through rendering services to the state on a tax task. These relationships established a social bond, allowing the more junior advisor to enter the tax policy-making field (PM15). At a macro level, there is evidence of social connections (social capital) between the junior lawyer and the deputy minister of finance through the think tank with which the latter was closely linked. As shown in Chapter Five, technical competence and political compatibility were conditions for entering the tax field. The combination of both increased the deputy minister's trust in this junior advisor. In fact, the deputy minister 'trusted very much and with good reason because [this junior external

advisor] is a very competent person and also because he was in the deputy minister's political trust' (PM15). It was known that the junior advisor was close to a left-wing political party and then to the Socialist party. These connections empowered the junior member to gain significance in the tax policy design and drafting stages. Although only an intermediary (OECD, 2008), this external lawyer altered the tax knowledge market, simultaneously playing the roles of knowledge intermediary and knowledge seller as part of the drafting team (Hasseldine *et al.*, 2011). Having a position in more than one field may be interpreted as being a 'hyper-agent', as mentioned in Chapter Three.

In this way, this powerful social space close to the field of power was formed and tax policy agreed. Transfer pricing policy responded to the surrounding economic environment (Birkland, 2011; Oats & Sadler, 2011) of the mid-1990s, characterised by an excess of funding in the domestic market. The executive branch of the time believed that an efficient economic policy for allocating these domestic resources was through promoting foreign investment. In practical terms, the executive branch used tax policies to influence economic behaviour (Birkland, 2011) by signing double taxation agreements (DTAs), which included a transfer pricing clause consistent with the OECD model. This is consistent with the instrumentalist approach to law, in which legislation is deemed to be a tool for introducing changes to economic and social levels (Griffiths, 1979). This international standard achieved what was explained in the theoretical framework of Chapter Three regarding the legal, political, economic and social factors affecting the field. With the inclusion of Article 9 in the OECD's DTA convention, and as Chile started to sign DTAs, a transfer pricing rule became 'essential' (TPTE02). In this sense, the Chilean tax system initiated a phase of isomorphism more closely to resemble those of other jurisdictions (Christians, 2010b; Oats & Sadler, 2011). Once agreement had been reached on the need for a transfer pricing rule, the next step was to define how it would operate and to draft it.

6.3.1 Drafting

It was intended that the rule would capture the international practice contained in the OECD Transfer Pricing guidelines. This action would serve as a signal for other countries so that 'at least it would appear that the international standard of the Chilean legislation was improving a little bit' (PM15), or as an impression

that ‘Chile was playing under the OECD rules, with global rules, but not knowing what it was about, and therefore international standards, that maybe were not well understood, were adopted and tried to be fitted into the income tax code without being certain about what was being done’ (PM15). This finding is consistent with the adoption of OECD guidelines by jurisdictions that recognised this institution as an expert body (Christians, 2010b) and also with the symbolic use of legislation. The symbolic legislation approach argues that, through laws, ‘abstract ideals are manipulated to disguise the impossibility of realising them in practice’ (Cotterrell 1986, p.108, cited in Heij, 2007, p.37). Heij (2007) suggests that the symbolic use of legislation is important in taxation where laws appear to be promoting a particular idea, although in practice they do not work. Heij (2007), with reference to Campbell (1996), states that the desire to belong to a particular community may be a driving force in the adoption of certain tax decisions (p.37).

In practice, however, some tax experts argued that the OECD principles were not successfully captured in the domestic legislation, which underwent a ‘Chileanisation’ process (TA06, TPTE02, TPTE05). The technical specificities of the rule will be discussed in Section 6.3.2.

The drafting working team was made up of two individuals and, as suggested by Gordon and Thuronyi (1996), was a sub-set of the committee set up by the deputy minister of finance and was familiar with the ‘laws and practices of the country’ (p.9). One drafter was part of the IRS (bureaucratic field), with extensive experience in drafting tax legislation within the legal technical department, and therefore was a holder of high tax knowledge, in line with Thuronyi’s (1996) suggestion. The second drafter was the junior lawyer with experience in consultancy firms whose appointment was explained in Section 6.3. Within this micro-level field, drafting decisions were made between these two members and subsequently approved by the coordinator, i.e. the deputy minister of finance. The latter not only administratively approved the work, but also questioned some agreements reached within the team based on his intelligence and experience, as commented during the fieldwork. Although it is often deemed desirable to concentrate the phases of ‘policy development, technical analysis and statutory drafting’ in a single agency, as Arnold (1990,

p.382) suggests, here they were separate and communicated through coordination.

Tax knowledge was a constraint within the IRS. At this time 'there was not the expertise within the IRS' on these international tax matters (PM11). The appointment of a tax expert indicates that people working with this rule lacked specialist knowledge on the rule, which prevented the team from drafting a rule that could be applied (TPTE05). In general terms, PM15 stated that:

> *The simple and basic nature of the rule is due to the ignorance of those who participated in this issue…* [The IRS drafter] *had no specific knowledge on the rule and* [it] *was created very quickly.*

This view was shared by a tax expert, who added that the working group tried to draft a rule that was simple because they had little knowledge of what they were doing (TPTE05).

In order to fill the tax knowledge gap, the IRS drafter embarked on a process of self-study of comparative tax systems, particularly in Hispanic heritage countries such as Spain, Mexico and Peru, whose experience was used as an input into the tax policy-making process. This input was valued in the process, as much could be learned from foreign experience to avoid potential problems (Gordon & Thuronyi, 1996). During this drafting stage, self-instruction was the main route used within the IRS to improve its position in the tax field. Consultation with foreign tax administrations was not used as a way of accessing additional tax knowledge, an explanation for which may lie in the limited integration of Chile in the international sphere, as mentioned above. Similarly, consultation by the IRS with the private sector was also absent from the process. Therefore, tax experts and the business community were 'caught unaware' (TPTE05) of the existence of the project until it was disclosed during the legislative stage in parliament. TPTE05 commented on this lack of consultation:

> *At that time there was no custom of discussion of tax bills nor their socialisation* [making them public through discussion] *in order for anyone to opine on it before its approval. In fact, the government of the time submitted its proposal to be discussed in parliament; then, when I personally knew about it, it was when it was in parliament and it shocked me because I knew of the topic, I had worked on that in the US ...* [T]*here was no consultation ... because* [name of Big 4] *is a specialist company and there were people* [who had knowledge of

> this] *but we were not many either, so if* [the government] *had asked, I would have heard about it even through rumours of other people that had been consulted, but I had no knowledge. I would say that we were surprised in the sense that we were not warned that it would be a proposal.*

Absence of consultation related to policy process transparency (IMF, 2007a), as the following quote suggests:

> [the process was] *internal, non-transparent. The truth is that the mark in twenty years of the* [centre-left-wing coalition government]*, tax proposals were always discussed behind closed doors and were never socialised. Very specific consultation procedures were made to certain specialists…* (TPTE05)

Although non-consultation was recognised during the interviews as a factor that jeopardised the quality of this tax rule (PM15; Burton, 2006), it was not deliberate on the part of the IRS. Time constraints arising from the normal tasks of the unit, which was not only dedicated to the drafting of tax bills, forced it to perform the tasks usually by 'half' (PM15). An important effect of time constraints was that, for instance, the proposal had to be amended the day after it had been sent to parliament. This amendment was done through an indication that was grammatically incorrect (*cobren a* instead of *cobren entre* in Spanish), making the bill incoherent.

This time constraint on consultation was also caused by structural violence exercised through 'urgencies', as discussed in Chapter Five. This is consistent with the time within which the transfer pricing article was included in the tax bill. As will be shown in the legislative stage, the transfer pricing rule was included for parliamentary discussion once the proposal was already in parliament, signalling that the drafting team may have experienced pressure by senior authorities within the executive to complete the task, preventing external consultation. These findings are consistent with the benefits and disadvantages of having a small drafting team. Although having a small group may lead to 'relatively coherent law' (Gordon & Thuronyi, 1996, p.1), it may also cause face problems such as the absence of adequate consultation (Gordon & Thuronyi, 1996), as related during the interviews.

In contrast to the IRS' absence of consultation, it was believed that the external advisor may have consulted his accounting/legal firm, generating an imbalance of power within the drafting team. Tax knowledge accessed through

connections with international professional services firms would have placed the junior advisor in a more powerful position than his counterpart. The inclusion of the professional services field in the process was viewed with caution by policymakers, given the dual role played by tax advisors:

> *They do have expertise but they don't disseminate it totally. I mean, they play for both teams. They provide advice, that of course opens* [the tax administration's] *eyes and makes the system less naïve, but on the other hand, they don't reveal all their secrets because this is their business. Indeed, they talked with managers or partners of their firms in Mexico or the US, but the tax administration didn't. The tax administration didn't receive any feedback from people with real experience in the application of this type of rule* (PM15).

Tax advisors had a dual role as enforcers of certain tax legislation and as exploiters of uncertain legislation (Klepper *et al.*, 1991), as explained in Chapter Two. This dualism was objectified in professional practice when accounting or law firms weighed up their vulnerability to losing clients, whose risks and preferences were taken into account when the advice was provided (Milliron, 1988).

The next sub-section provides an account of how limited tax knowledge, limited or no consultation and transparency, time constraints, and social capital influenced the content and robustness of the rule.

6.3.2 Technical specificities of the rule

Arm's length principle and uniformity

The rule was meant to adhere to OECD guidelines. The proposed legislation for discussion in parliament was made up of four paragraphs totalling 346 words. The first paragraph did not provide an explicit definition of transfer pricing, but simply stated that the IRS would be able to challenge the prices charged by a branch or subsidiary to its headquarters, or to another headquarters branch or related firm, when prices 'do not conform to the values that are charged for similar transactions between independent firms'.

Burden of proof and documentation

At a higher level in the ministry of finance, it was thought that this rule would operate for the most 'extreme cases of simulation' (PM06). In the case of simulations in the Chilean context, the burden of proof was placed on the IRS.

At that point in time, the IRS was simultaneously a party and the judge of first instance in a tax dispute; therefore, granting extra powers which would increase the possibility of IRS 'discretion' would have been more difficult to pass in parliament. Structural/institutional constraints thus influenced the allocation of the burden of proof and what the IRS was allowed to do. Chapter Three showed that legal factors influence the tax policy-making field. This decision was captured in the first paragraph of the bill, which stated that the IRS would 'challenge' (Article 38, Income Tax Law) any MNC transactions that did not follow the arm's length principle for tax purposes.

Strongly linked with the burden of proof were requests for documentation (OECD, 1995). The fact that the IRS did not ask for specific transfer pricing documentation, such as a transfer pricing study or specific affidavits, was influenced by two factors: economic and political. The economic factor related to efficiency, in particular administrative/compliance costs. The Chilean tax system relied heavily on the submission of affidavits to the tax authority, which had a cost for taxpayers. In this scenario, the executive had to decide between 'assuming the burden [of proof], which is evaluating whether the price set between related parties is alright' or 'that [taxpayers] demonstrate [their prices] through documentation' (PM15). It was decided not to make the taxpayer bear the burden of an extra compliance cost required to 'confirm the veracity [and] accuracy used to estimate and set the prices' (PM15).

The political factor related to trust. It was believed that the junior advisor's intention was that a transfer pricing study should be undertaken by large consultancy firms; however, the final decision was not to give extra work to this type of firm. As noted, the external lawyer's intention was interpreted with distrust as a form of over-representation of professional services firms in the tax policy-making field. This form of representation may even have been unconscious and internalised in the advisor's habitus, which had also been shaped by belonging to the professional services field. This is because 'habitus is transposable, in that people carry their dispositions with them as they enter new settings' (Sallaz & Zavisca, 2007, p.25). This over-representation may have been an attempt to favour 'commercialism' over more general concerns about the 'public interest' (Shafer & Simmons, 2008, p.696). Although, the IRS was a subordinate organisation, given its lack of knowledge on transfer pricing, it was

able to neutralise the advantages of the more knowledgeable tax advisor (Emirbayer & Williams, 2005). The 'dangerous power' granted to this 'homo novus' (Bourdieu, 2004, p.24) was reduced by the IRS, which positioned itself as a guardian of the public interest (Swartz, 2013).

Although the transfer pricing guidelines issued by the OECD in 1995 stated that cooperation between taxpayers and tax authorities should operate in relation to documentation 'in order to avoid excessive documentation requirements while at the same time providing for adequate information to apply the arm's length principle reliably', it may be inferred that compliance costs, along with trust in the role of the advisor, were more powerful than the official guidelines on which the Chilean legislation drew, leading to a high level of 'Chileanisation' (TA06) of the tax rule (see OECD, 1995, Para. 5.28-5.29). It is evident that any sort of documentation in the form of affidavits or transfer pricing studies would have increased compliance costs, a matter of permanent interest to taxpayers (McKerchar, 2008, p.401), making the process more complex. This aligns with the idea that advisors have vested interests in maintaining the complexity of the tax system (Hasseldine *et al.*, 2012, p.535, citing McKerchar *et al*., 2008a). Nonetheless, despite the privileged access that accounting and law firms had in the tax policy- and law-making process, their interests would have been 'privileged at the expense of others' (Marriott, 2010, p.610). The executive and the tax administration redistributed, or simply reduced, the high level of capital granted to the advisor in the field. An alternative interpretation is that a centre-left coalition of political parties (called 'Concertacion') was in power at that time. The deputy minister, in whom high trust had been placed, was a member of the Socialist Party, and therefore regulation conferring more 'economic capital' (Bourdieu, 1990) on large (consultancy) companies would have appeared ideologically contradictory, misaligning practices with expected habitus.

These components together were objectified in written legislation, which did not include any type of documentation request, either as an affidavit or a transfer pricing study.

Comparability

The second paragraph of the bill (Article 38) referred to comparability. In particular, it stated that:

> *If the agency does not perform such type of transactions with independent companies, the Regional Direction* [IRS] *may challenge the prices, considering the values of goods and services in the international market. In order to do this, the Regional Direction shall request reports from the Customs Service, from the Central Bank of Chile or from the agencies holding the information requested.*

The IRS lacked the necessary 'tools', both 'technical and legal' *(*TA01), over the entire period during which the rule was in force. Therefore, a mechanism that contributed to better enforcement was to share information from taxpayers with different agencies. These drafters' practices may be interpreted as 'reform minded' (Gould & Baker, 2002, p.90), acknowledging the information deficiencies of the IRS and looking to external sources to implement legislation accordingly.

Methods

This rule was criticised for its lack of clarity about the methods the tax authority would use to set prices within MNCs. In the case of the Chilean legislation, there was uncertainty about which methods were allowed. As previously mentioned, the rule underwent a process of 'Chileanisation', which was reflected in the methods chosen. In particular, there was no clear reference to the 'traditional transaction methods' or 'transactional profit methods' contained in the OECD guidelines (1995, Chapters II and III).

For example, the comparable uncontrolled price (CUP) was not readily identifiable (see Appendix 2 for fundamental concepts of transfer pricing). In contrast, the Chileanisation process was reflected in the undefined concept of 'reasonable profitability' (*rentabilidad razonable* in Spanish). The use of legal wording would have provided more precision (Thuronyi, 1996). Other identifiable methods in the provision were cost plus and resale (see Appendix 2).

The reason for the simplicity of the rule was the limited tax knowledge of those who participated in the design and drafting. It was commented that the IRS drafter had no specific knowledge of transfer pricing, which was solved by reading literature on transfer pricing methods, as noted above. In addition to the limited specialist tax knowledge during the design and drafting stages, the IRS did not have specialist tax inspectors to carry out and enforce transfer pricing audits. Foreseeing this important limitation, the drafters included methods they

would be able to administer with the human resources available at that time, and drafted the legislation accordingly. Again, their habitus and subsequent practices align with Gould and Baker's (2002) 'reform-minded' concept. In this respect, PM15 commented that the IRS:

> *…did not have the staff … to introduce more complex methods, where you need to have commercial engineers, economists … there weren't either human or financial resources. Then, the vision was to do something that would be administrable … in conversations with the sub-department of audit, it was concluded that they wouldn't be able to administer it.*

This shows that 'tax administrative issues might become an obstacle to the implementation of tax reforms if change would entail additional costs to the tax administration and taxpayers' (OECD, 2010b, p.57). Nor was current tax knowledge going to improve in the near future, due to a myopic strategy of not providing extra funds to the IRS to 'train people nor to send them abroad' to get that training (PM15). In this area, professionals were scarce and expensive (PM15).

This drafting approach is in line with previous research by the World Bank, which states that changes in tax policy need to be compatible with the administrative capacity to implement them (Bird, 1991), since 'policy without administrative change is nothing' (Bird, 1991, p.39). Similarly to the findings of Chapter Five, closeness between tax policy design and drafting biased the drafters toward control techniques rather than anything else.

Relationships

The former rule was very simple regarding relationships, referring to direct or indirect participation in direction, control or capital. However, this presumption had to be changed in 2002, as will be shown later in this chapter.

Advance Pricing Agreements (APA)

The rule did not contain an APA clause to reduce uncertainty. However, taxpayers requested administrative regulation on this topic, which was not provided.

6.3.3 Scrutiny: Quality assessment

The drafting team did not have any formal procedure to assess the adequacy of the tax rule prior to its enactment; therefore, evaluation occurred during the implementation stage. It was during tax audits that the standard of the rule was tested, as mentioned by PM15:

> [Implementation was the] *first check that in reality the rule was not very practicable, that it was easy for taxpayers to defend themselves or that it was a blank rule, and then, from the legal viewpoint in the court, it would be easy for taxpayers to defend themselves.*

Evaluation of the legislative outcome by the bureaucratic field was that it was not good; however, there was a self-satisfied argument that it was a 'starting point', as PM06 put it:

> *many times, in these institutional modernisation processes, it is not always possible to get something adequate in the first try, but nothing is worse than anything.*

Regarding the technicalities of the rule, comments referred to it as a 'discretionary rule' which was a 'repugnant feature … because certainty is what is required in legal codes' *(*PM15; see Chapter Two).

6.3.4 Budgeting

DIPRES acted as an advisor to the minister of finance, and estimates were calculated with joint data from both institutions (PM08). The transfer pricing rule was considered as an administrative mechanism of control which would have no revenue impact (*History of Law*, No.19.506, p.42).

6.4 Legislative stage

The executive branch exercised structural violence (see Chapters Three and Five) by including a miscellaneous bill in parliament.[62] The transfer pricing provision was included through an 'amendment'. As previously noted, the discussion began in the committee of finance. There is evidence that the ten parliamentarian members of the committee of finance had little tax knowledge on transfer pricing, except those with knowledge of the mining industry. A policymaker commented on this limited knowledge at that time:

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[62] The bill treated changes to the Income Tax Code, VAT Code, Tax Code, Law No.18.320 and others. The time urgency was 'simple' (*History of Law*, No.19.506, p.20).

> *I don't know, I think that there are not many people that have knowledge* [about transfer pricing] *… nobody knew very much about this* [in parliament] (PM01).

The documents reveal superficial examination of the rule in just two sessions of the committee, which may be explained by the limited transfer pricing tax knowledge. For example, Deputy A superficially stated 'that the mechanism proposed is adequate in general terms' (Session 20a, 1996, p.11); however, there is no evidence of detailed scrutiny of the provision.

In order to participate in the law-making process, additional tax knowledge on the topic could have been obtained through interaction between the bureaucratic/political field and other fields, as noted in Chapter Three, at the legislative stage. There is empirical evidence of this convergence through 'special invitations' (*History of Law*, No.19.506, p.30) to a representative of a business association (business/corporate field) and one association of IRS inspectors (bureaucratic field). However, this interaction seems to have been fruitless as the documents examined reveal no evidence of discussion of the rule. The silence of the association of IRS inspectors (*History of the Law*, No.19.506, p.40) may reflect the absence of detailed technical transfer pricing tax knowledge, which is consistent with the widespread limited understanding of these topics within the IRS discussed in Section 6.3.

Limited discussion may also be explained by the limited time available to discuss the rule. An extra 'amendment' to the draft rule was introduced in the last session of the committee of finance, which included two additional valuation methods (cost plus and resale).[63] These amendments were unanimously approved, i.e. there was no resistance to the content of the law. As these amendments were part of the legal framework described in Chapter Three, this may be interpreted as another sign of structural violence supported by the law by giving little time for discussion in parliament. This form of violence was recognised by policymakers. PM01 commented that the executive branch 'put this [rule] beneath the surface to avoid disclosure', and that 'way of passing laws' was attributed to the minister of finance, who was described as 'very nice' but not very transparent. There was a perception that the committee of finance

[63] The amendment also changed the words 'charges to' to 'charges between' (Session 21a, 1996, p.18).

was diligent in performing its work; therefore, this structural violence may have contributed to the absence of further analysis or search for extra knowledge. On this PM06 commented:

> [In that period] *there were laws whose impact was huge, but I would say that the committees of finance within the Chamber of Deputies and the Senate have always been of good quality. These are neither political celebrities nor anything like that. These are the ones who work more, they are pretty serious, they work well* [and] *they are profound … especially at that time.*

Another factor noted in the analysis that may have had an influence on the limited debate was the sense of legitimacy given by the OECD guidelines.[64] Christians (2010b) notes that the powerful stance of the OECD is recognised as an authority in tax matters. It was noted in the debate that the transfer pricing rule would confer new administrative powers on the IRS in order to challenge prices and expenses relating to international double taxation, and that these powers were 'generally accepted in the international field' (*History of Law*, No.19.506, p.46).

As noted, the committee of finance was dominated by structures imposed by the law and the executive, unanimously approving the rule with little resistance (*ibid.*). Consequently, the executive branch positioned itself as the main actor in this initial discussion.

In the Chamber of Deputies, the executive introduced extra time constraints (*History of Law*, No.19.506, p.82), once again controlling the temporal boundary of the tax policy-making field (Gracia & Oats, 2012; Mutch, 2006). A member of the committee of finance remarked on the complexities of international tax aspects of the bill, with which Chile had no experience (*History of Law*, No.19.506, p.87).

In the Chamber of Deputies there was evidence of domination and resistance regarding the discussion of a set of tax rules in which transfer pricing was included. On one side, members of the committee of finance tried to block the discussion of the set of rules, using the committee's symbolic capital. Deputy A (centre-right wing, National Renovation) said:

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[64] A further factor was mentioned by TPTE01, who argued that passing this poor law was a method used to protect multinational companies.

> *Mr President, the discussion can be clarified easily, because the committee of finance had no problems regarding Articles 1* [which included transfer pricing] *and 2, but the debate should incorporate some rules from Article 3 that amends the Tax Code, as they were not approved unanimously. I think that the discussion should start from Article 3 onwards. The provisions on double taxation are very complex, difficult to explain in the Chamber, but in the long debate held at the committee* [of finance] *there was unanimous agreement on all of them. Therefore, the discrepancy of opinions arises from Article 3* (*History of Law*, No.19.506, p.89)*.*

This may be interpreted as a type of self-recognition that the committee of finance was the most qualified agent to discuss tax bills and that others would not be able to understand them. The power of the committee of finance and the reward for being part of it was reinforced by PM01:

> *The committee of finance has certain power. There is always a certain... it generates anger because its members make more decisions … but it has a certain power. For some* [parliamentarians] *it is very important to be there for this reason.*

This attempt at domination was also structural because the rules of the Chilean Chamber of Deputies allowed the tax debate to be skipped if the rules had been approved by its committee of finance. As mentioned earlier, these rules shaped the tax policy-making field, as the conceptual framework illustrates.

This form of non-transparent policy making was resisted by a deputy who was a non-member of the committee of finance (centre-right wing, National Renovation), challenging the way in which policy was normally conducted. This deputy questioned parliamentarians' work if debate were not conducted, arguing that 'before voting we should discuss the project … [I]f we are not to discuss the issue, why are we here? In that case, we hear the informant deputy and then vote, but if that is to be the criterion, let's apply it to all projects' *(History of Law*, No.19.506, p.89).

From this point in the debate, a struggle for a form of political capital occurred, represented by having a voice in the tax law-making process. The president of the Chamber (Socialist Party) argued that structural components ('miscellaneous bill' and 'extreme urgency') made detailed discussion of the bill difficult (*History of Law*, No.19.506, pp.89-90). The dissenting deputy opposed non-discussion, adding:

> *but in a project of this nature and size, we, the 120 Deputies, have the right to give our opinion. However, those who are not members of the committee of finance, we are unable to discuss or study it, because we received it today. As projects are put on the table a few hours before the session, we don't have the opportunity to study each in depth. The government must understand that to make use of urgencies, it is necessary to analyse the complexity of each project, so that all parliamentarians can participate in its discussion. I think it is up to the Chamber to try to find a solution to this* (*History of Law,* No.19.506, p.90).

In principle, the dissenting deputy convinced the president of the Chamber to have a voice in discussion of the article, in which transfer pricing was included (*ibid.*).

However, domination attempts continued from other members of the committee of finance, who opposed this space for participation through the creation of (social) 'groupings' (Gracia & Oats, 2012; Neu, 2006). Deputy A suggested approving the articles relating to double taxation because they 'are positive and were unanimously approved in the committee [of finance] after a long debate' (*History of Law*, No.19.506, p.91). Later, Deputy B (centre left, Christian Democrat) reinforced Deputy A's arguments, adding that 'in the committee [of finance, this article was] notably improved, which benefits taxpayers by overcoming the double taxation problem' (*ibid.*). Finally, Deputy C (right wing) was stronger, suggesting approval of the article, given the unanimity reached in the committee of finance and 'in order to move forward' (*ibid.*) in the discussion. Finally, the Chamber of Deputies unanimously approved the article containing the transfer pricing provision (*ibid.*). This sealed the destiny of the transfer pricing rule, with no discussion in the Chamber of Deputies.

There is evidence to suggest that this struggle over the discussion of legislation was less related to a partisan struggle since the dissenting parliamentarians (Deputies A and C) were members of a right-wing party. There is no evidence to support the extent to which business power was influential in defending the committee of finance, as Fairfield (2010) concludes for tax reforms in Chile. In contrast, the quotations analysed suggest that there was rather a defence of symbolic capital and the work conducted in the committee of finance. Had these members of the committee of finance allowed room for more participatory scrutiny, it would have become evident that the discussion on transfer pricing held within the committee had been limited and 'not long', as Deputy A informed

the Chamber. Through concepts linked with efficiency, this site of power was defended. For example, Deputy C suggested approving the articles without further debate, with the intention of continuing with the rest, leading to a saving of resources.

These practices jeopardised the 'procedural' (Geraats, 2001) or 'decision making' transparency (Grimmelikhuijsen & Welsch, 2012) of the process, revealing a form of non-decision-making power (no scrutiny and debate) which was nonetheless still a form of decision making (Lukes, 2005, pp.22-5). This action blocked the legislative agenda, leaving no room for anything but trust. Since it is not always possible to be certain about others' actions (Neu, 1991a), trust comes into operation. This aspect resonates with Luhmann's (1979) argument discussed in Chapter Five. Non-members of the committee of finance did not have any exit route other than trusting the decisions made by that committee. The absence of discussion on the transfer pricing rule not only prevented the rest of the Chamber of Deputies from acquiring tax knowledge on the subject, but also reduced the quality of the rule (Karpen, 2008; Vording *et al*., 2007). Far more people would have been able to scrutinise the content of the legislation if room for debate had been opened up.

Due to a special arrangement, the process in the Senate was not linear but simultaneous. The associated committee of finance and the Senate held parallel sessions due to extra 'time constraints' (*History of Law*, No.19.506, p.233). The committee of finance of the Senate was composed of five senators whose stock of tax knowledge in general was considered to be good and sufficient. Nonetheless, extra knowledge was acquired from paid/non-paid advisors with similar political perspectives, and through reports prepared by political parties and think tanks from diverse political spectrums. Committee senators considered these reports (PM05), regardless of their embeddedness, 'because [tax] matters are not an ideological issue but a technical issue' (PM04). There was also knowledge sharing between senators of the same political stance who supplemented, for example, legal and economic knowledge. These three forms 'inculcated and socialised … [each other] into existing field doxa exerting influence over the development of their … habitus' (Gracia & Oats, 2012, p.313; Xu & Xu, 2008). A higher level of tax knowledge allowed the senators to make 'informed rather than come to feel decisions'

(PM04). Referring to the type of debate held within the committee as 'serious' and lasting for hours, PM04 commented that 'in general, the internal work within the committee [of finance] is rich, with arguments and with technical background'.[65] From a political perspective, informed decisions allowed senators to represent the interests of their voters and legitimise their political work in forms of symbolic capital (Bourdieu, 1990). This is consistent with Cooper and Joyce's (2013, p.126) interpretation that symbolic capital is gained through doing 'their work in a way which is consistent' with the interests of those represented (e.g. the electorate). This interaction between the professional services, academic, political and bureaucratic fields allowed a high level of tax knowledge and political support to ascend to the tax policy-making field, as shown in Chapter Three.

In contrast to the limited power held by the Chamber of Deputies at all levels, being prey to the executive's domination, evidence suggests that the Senate was able to access the social space connected with the field of power inhabited by the élite and influence the 'content' of the transfer pricing rule. One member (Senator A) and one non-member (Senator B) of the committee of finance proposed four amendments to the rule under discussion. Three related to how the IRS would challenge cross-border transactions. In the senators' view, the IRS should challenge transactions 'with good reason' (*fundadamente* in Spanish), which should be contained in the amended version of the rule (*History of Law*, No.19.506, p.261). The fourth amendment related to a number of domestic institutional providers of information to construct comparable prices and enforce legislation. These senators tried to restrict the institutions to just the Central Bank and Customs, eliminating the text 'or to the institutions that may hold the required information', as stated Section 6.3.2. The access granted to these senators to change the law may be explained by the existence of personal and delegated political capital (Bourdieu, 1991), as explained in Chapter Three. Senator A was 'known and recognised', had a 'name' and 'renown' (Bourdieu, 1991, p.194) and symbolic capital in the form of reputation

[65] Unfortunately, the parliamentary documents examined were not sufficiently transparent to disclose all the 'examination carried out' (PM04) in many cases, including the debate about the transfer pricing rule. The cursory nature of the reports in that sense may have resulted in inappropriate evaluation of parliamentarians' work in terms of accountability.

(Swartz, 2013). This personal political capital is explained by Bourdieu (1991, p.194):

> *the possession of a certain number of specific qualifications which are the condition of the acquisition and conservation of a 'good reputation', is often the product of reconversion of the capital of fame accumulated in other domains: in particular, in professions which … ensure that you have some free time and which presuppose a certain cultural capital.*

In the fieldwork, Senator A was described as a very active person holding a great amount of knowledge (PM04) derived from his doctoral studies in economics and 'possibly' from his connections with tax advisors (PM05). This knowledge, along with political intentions, translated into the proposal for amendments.[66] Analyses of transfer pricing were difficult for senators because it was not a common theme. PM04 referred to transfer pricing as a 'matter of difficult handling; [transfer pricing is] not [a topic] of daily handling'. The possession of knowledge placed Senator A in a more advantaged position than the other members of the committee of finance. This finding highlights the role of powerful individuals in the tax field, as discussed elsewhere (e.g. Kraal, 2013; Marriott, 2010). In an intra-organisational analysis of MNCs, Mulligan (2008, p.311) attributes the power that agents hold to sources such as the 'title held' (the more prestigious the better), and the 'raw tax knowledge and expertise gained through qualifications and experience', i.e. the tax 'knowledge experts'.

This personal political capital was supplemented by delegated political capital, which is derived from delegation 'as the representative of an organization (a party or trade union)' (Bourdieu, 1991, p.194) and requires 'investiture' (Bourdieu, 1991, p.195). This capital was dependent on and given by the committee of finance (Swartz, 2013). The amendment relating to the IRS' power to challenge transactions was unanimously approved by the five members of

[66] It is impossible to identify with certainty how this idea emerged. These two visible senators were members of right-wing political parties embracing a neoliberal ideology and had social networks with diverse companies. In this general respect and referring to reasons for tax law non-change in history, PM03 said that 'the Chilean right wing is aligned to the Chilean business world ... in perfect harmony'. In this specific case, their habitus may be explained by reference to the policy motivation concept detailed in the literature review section (Wittman, 1977). Broadly, their interest may have been guided by purely ideological reasons, defending those represented (Cooper & Joyce, 2013), but also, since these senators were themselves potentially affected by this provision as entrepreneurs, becoming policy motivated. However, there is no evidence to make claims for these two reasons.

the committee of finance, while the information exchange clause was rejected (*History of Law*, No.19.506, p.289).[67]

Evidence suggests that the Senate resisted the domination exercised by the executive branch through the latter's structural violence mechanisms. Based on analysis of the *History of Law*, both the miscellaneous nature of and the time constraints on the bill generated heated complaints during its debate in the Senate. For example, Senator C stated that the miscellaneous nature of the complex bill made it difficult to understand, given the little time allowed for discussion (*History of Law*, No.19.506, pp.224-5). Similarly, Senator D stated that a miscellaneous bill was very difficult to analyse in the general discussion (*History of Law*, No.19.506, p.228). In similar terms, Senator D, a member of the committee of finance, referred to the inclusion of a set of international taxation rules. Senator D discouraged the mix of ideas (domestic and international) in a single bill because this form of law making was 'dangerous' and never produced 'good legislation' (*History of Law*, No.19.506, p.248). Referring to haste, Senator D referred to asymmetry in the time allowed for detailed scrutiny between the Chamber of Deputies and the Senate, expressing regret:

> *that a legal initiative that has been one year in the Chamber of Deputies enters the Senate with extreme urgency, preventing us from a diligent analysis that this type of matter requires. There should be a longer period of time to formulate indications, because they must be properly studied* (*History of Law*, No.19.506, p.228).

Senator E referred to this asymmetry as a 'lack of respect towards the senate' (*History of Law*, No.19.506, p.259). According to Senator F, these time constraints on introducing 'amendments' harmed good legislative outcomes, i.e. legislation that 'lasts forever' (*History of Law*, No.19.506, p.250). The following quotation by Senator G summarises the diversity of matters analysed and the negative effects of time constraints on the 'quality of tax law' (Vording *et al.*, 2007):

[67] There is no evidence to explain the results of this vote. A potential reason for these habituses was that consensus on the role the IRS should play in the economy or instructions came as mandates from their respective parties, derived from technical agreement or business power to lobby. It was not possible to uncover these reasons during the fieldwork.

> *Regarding a proposal labelled as of extreme urgency, the time we have is short. And if we think about* [the bill]*, which is one whose several articles imply modifications of complex legal bodies, we realise that three or four days is very little time. Ultimately, if there is no other outlet, we must stick to it, but I think this undermines the quality of the law that is intended to be enacted* (*History of Law*, No.19.506, p.225).

With this political power, in the form of freedom to control what was discussed and the pace of scrutiny, the executive branch placed itself in a more powerful position than Congress in the law-making field. The latter held less capital in terms of economic resources, being prevented, for instance, from consulting tax experts on the content of legislation and its effects, and from exerting political control over the matters for and pace of discussion. Although there is no evidence to support the exercise of symbolic violence by the executive in the form of withholding relevant information (Gracia & Oats, 2012), Congress had far less time to participate actively in the law-making process. Through these mechanisms, the executive branch acted like a monopolistic agent in tax law making. In this particular tax law-making process, it was able to alter the economic, legal and social fields more profoundly. This resonates with Fligstein's (1991) argument (see Section 3.4).

There is also evidence of domination attempts by the Senate's committee of finance (at the top) against the Senate as a whole (at the bottom). Similarly to the discussion in the Chamber of Deputies, the whole senate was advised that, according to the Senate's regulation (Article 133), proposals unanimously approved by the committee of finance, such as the amended transfer pricing rule, should be voted directly without discussion unless opposed by a senator (*History of Law*, No.19.506, p.392).

In the discussion in Senate, Senator H, an acting member of the committee of finance, resisted and asked for an open discussion of those matters unanimously approved by the committee of finance, including the transfer pricing rule, due to the short time for analysis prior to voting (*History of Law*, No.19.506, p.392). Later, the same senator successfully blocked the discussion, making it non-procedurally transparent to the rest of the senators (Geraats, 2001). In particular, Senator H said: 'I just want to state that the suggestion from the committee [of finance] is approved' (*History of Law*, No.19.506, p.407). The whole Senate agreed and no discussion was held in the Senate regarding the

transfer pricing rule. This resonates with Lukes' (2005) second dimension of power, explained above.

During interviews with policymakers of the time, trust was identified as one reason for approving the bill without discussion in the Senate. It was believed that other senators trusted that Senator H had analysed (scrutinised) the rule, had acquired tax knowledge, had a politically unbiased view of the rule and was not a friend of the minister of finance (social capital). In contrast, it was believed that Senator H 'had studied the issue and [the rest of the senators] could be confident in voting' (PM04). From these statements, it may be inferred that the other Senators who were non-members of the committee of finance weighed the technical and political nature of the debate. Trust, a form of social capital discussed in the literature, led to acceptance of what the committee of finance said. PM04 stated that 'parliamentarians from a particular political colour guide the rest' (PM04). In this sense, members of the committee of finance legitimised their position in the field by using other forms of capital, such as cultural and social, including trust (Bourdieu, 1977). This is consistent with the discussion in Chapter Five.

In addition to these social practices, some research has argued that trust has an economic efficiency component that reduces information processing (McEvily *et al.,* 2003). On this, PM04 stated:

> *No, no, but regarding a rule, an article, a thing that may raise doubts … a discussion may last two hours and they* [senators] *may reach nowhere. Then, this issue was discussed in the committee,* [the other senators] *can be sure, because the committee reviewed it and it was good... Normally* [in the committee] *there were dissenting views but they reached the same conclusions and therefore,* [it was] *thought* [that the rule] *was fine.*

These findings should be considered in the context in which the bill was debated. The indication formally approved by the committee of finance and tacitly approved in the Senate on challenging 'with good reason' was interpreted as an attempt to avoid the discretionary practices of the IRS (PM15). This comment was contrasted with the discussion of other provisions in the same parliamentary debate. The bill proposed that tax inspectors should be able to conduct tax audits anywhere in Chile. As a precursor to the transfer pricing changes, Senator A questioned the tax administration's powers in general

terms. At this time, the IRS was judge of first instance and took part in tax disputes. On this point, Senator A argued that conferring extra powers on the IRS in this imbalanced scenario was not right, concluding that in Chile 'taxpayers are citizens, not the Internal Revenue Service's subjects' (*History of Law*, No.19.506, p.484).

Senator I, also a member of the committee of finance but from the government coalition, responded that there was a sort of 'phobia against the Internal Revenue Services' (*History of Law*, No.19.506, p.487). In general, senator I indicated that granting powers that would make the IRS' work easier 'face impassable resistance' in parliament, despite the large number of citizens that benefited from the public policies funded from taxes (*ibid.*). Senator B responded to this idea of resistance, stating that those representing the (right-wing) political sector had not tried to 'cut short' the IRS' powers contained in the bill under discussion, but to 'avoid the Internal Revenue Services´ growth for any reasons' because it was already big (*History of Law*, No.19.506, p.496). In Senator B's view, maybe the IRS had to be modernised in another way and, if tax evasion continued, this could be analysed and measures sought to stop it. Senator B's arguments were based on the economic revenues that the country had collected so far (*History of Law*, No.19.506, p.497).

In this respect, it may be interpreted that the proposed amendments to the transfer pricing rule were more political than technical, guided by the habitus of the right-wing participants (Bourdieu, 1990). Here the parliamentary debate concluded and the transfer pricing rule was promulgated and published in the official gazette in July 1997.

6.5 Failed implementation

As the conceptual framework shows, fewer fields participated at the implementation stage: the bureaucratic field (IRS and DIPRES), the corporate-business field and the professional services field.

6.5.1 Implementation by the IRS

Chapter Five illustrated the significant power held by the IRS, which first drafted legislation and then issued administrative guidance and conducted audits to implement legislation. The implementation of the former transfer pricing rule

was gradual, bearing different hallmarks over time. For this reason, the findings are discussed in periods.

First period, 1997-2002

The strategy of implementation for this period (Bird & Zolt, 2008) involved issuing administrative guidance, setting organisational strategies and undertaking audits.

Official guidance

In January 1998 the IRS published an administrative guidance document (Circular No.3) giving instructions relating to the changes introduced by the transfer pricing rule. From analysis of the document, three purposes/strategies are inferred:

- *Clarification of issues in the formal rule in order to complement it*. The administrative guidance provided a definition of transfer pricing for Chilean purposes. The drafters had failed to include this definition.
- *Remaining silent on key issues not contained in the rule*. Although the guidance made reference to the methods of valuation, it remained silent on what 'reasonable profit' was, maintaining the uncertainty. Similarly, the IRS' procedures for challenging prices 'with good reason' were not stated. For example, the IRS remained silent about interquartile ranges and adjustment points. However, it provided a limited explanation of what challenging 'with good reason' entailed: 'with records that according to reasoning, analysis and logical concordance allow another value to be set for the transfer'.

  These practices show how the IRS aimed to dominate the field with symbolic forms. As a respected authority, its silence and failure to clarify issues may be interpreted as symbolic violence (Gracia & Oats, 2012). This incomplete guidance helped the IRS to dominate by sustaining 'a climate of uncertainty' (Gracia & Oats, 2012, p.316).

- *Extension of the scope of the formal rule.* Through this guidance, the IRS attempted to resolve unregulated aspects of the official provision. The circular established new relationships with related parties that had not been explicitly contained in the rule, extending its scope. For example, this circular made reference to the Public Limited Company Law (Law No.18.046) and

the Stock Markets Law (Law No.18.045) to regulate 'agreements for joint action', which had not been included in the rule. In this way, it used its authority to interpret the law, trying to alter the legal hierarchy of rules and matching the level of administrative guidance to that of a law enacted following the constitutional procedure, explained in the preceding sub-section. The limited experience of the IRS in understanding business practices prevented it from producing law reasonably right first time (Law Society, 2010, p.4), as this practice illustrates.

These findings are consistent with the perception of a poor official provision. Retrospectively, PM05 referred to this provision as 'incomplete' and insufficient to address the transfer pricing phenomenon. This legal ineffectiveness translated into an incapacity to implement policy adequately (Thuronyi, 1996).

Organisational structure

As noted in Section 6.3.1, the ministry of finance was myopic in failing to provide extra funds to train inspectors abroad (TPTE05) or recruit people with tax knowledge and experience (PM15), which forced the drafters to exclude methods of valuation unlikely to be implemented successfully.

The IRS' strategy for applying the law was organisational, through the creation, shortly after the rule's enactment, of a department in Santiago (the capital) staffed with people inexperienced in transfer pricing. Although ambitious in size, the group was made up of around 50 professionals from different academic backgrounds, but with a lack of specific tax knowledge in transfer pricing and also inexperienced in the area of audits (TPTE05).

The operational level was not the only constraint in the implementation. The leader, an engineer, did not possess specialist knowledge on tax matters (TPTE05). In order to fill the tax knowledge gap of the newcomers, and since the IRS was unable to train people because of a general lack of experience, the solution was outsourced training. Professionals from a large accounting firm, with high amounts of tax knowledge and social capital, connected with specialists in the US, the UK and the Netherlands who provided training for a few days only, 'not weeks or months' (TPTE05). This shows that the professionals accessed new knowledge through social capital.

Audit procedures

The first period of implementation was difficult owing to the limited tax knowledge and experience in the IRS and also due to leadership issues (TPTA04, TPTE05). Inadequate leadership and guidance in aspects such as 'how the process [audits] should be done [and] how to implement the rule' (TPTE05) translated into ineffective audit procedures. TPTA04 commented on the inefficacy of audits during this period:

> *The extinct international audits department was created due to the 1997 rule ... groups were formed but transfer pricing was not addressed, nor was it possible to address until the year 2000. The issue of requesting information from other public institutions seemed obvious to me, but hasn't been done ... then, the group was set up to apply the rule, and in practice it addressed normal aspects of audits* [such as] *expenses, depreciation, but it didn't address transfer pricing from the sole occupation perspective. It may have been a leadership issue more than a lack of resources, but 13 years have passed so it is difficult to have a good trace of what happened.*

As this quote shows, the former group was unable to apply the rule to basic aspects contained in the act in order to construct comparable prices, such as requests for information from related public entities. Although learning in practice should have occurred in the daily execution of the work, the quote highlights that adequate audit practices were not achieved, preventing the IRS from becoming a powerful actor at the implementation stage. In this respect, its domination extended mainly to issuing administrative guidance, not to applying the rule in practice. This shows a gap in the IRS, where enacted laws differed from their actual implementation (Mansfield, 1988; Tanzi, 1987).

These aspects together led to failure in the implementation, so the norm was effectively 'deceased' (TPTE05) for a couple of years until the year 2000, when attempts were made to conduct audits in 'a very experimental way' (TA06). Until 2002, annual audit rates were low, totalling around 'four or five' (TPTA04).

Unfortunately, many audit attempts were unsuccessful and ended with no results. TPTE05 claimed to know about a company audited around 2000, in which the IRS 'collected information, tried to find an issue, but ended up with nothing'.

In conclusion, this period of implementation was not exemplary and has been described as a 'failed experiment' (TPTE05). The findings on the performance

during this period are consistent with previous research that has suggested that tackling transfer pricing in developing countries is difficult given 'the lack of institutional framework and the inadequacy of expertise and resources' (Chan & Chow, 1997, p.112).

2002 Amendment

In response to the problems identified with the former rule, the executive branch proposed an amendment in 2002. The documents suggest that the IRS and the ministry of finance designed the policy and did the drafting. Two reasons motivated change to this 'insufficient rule' (*History of Law*, No.19.840, p.7). First, tax avoidance had been detected during audits regarding relationships between related parties in cross-border transactions. In order to tackle this problem, the IRS proposed to 'extend the relationship presumption' (TPTE02) contained in the former rule, because existing schemes allowed taxpayers to avoid tax (*History of Law*, No.19.840, p.223). At this point, taxpayers had become the more powerful actors in the field, interpreting law to their economic benefit using these loopholes. Abreu (1996) refers to this as avoidance power, by which taxpayers, usually under professional advice, reduce their tax liability. On the other hand, the IRS' powers were limited in enforcing the rule.

A second reason for the tax law change concerned administrative costs. Given that no documentation was requested from taxpayers in the first place, audits imposed a high administrative cost on the IRS. In order to reduce these costs, the IRS proposed to reduce its administrative costs by making a request for an affidavit to report all of an MNC's participations and transactions, including information on related entities located overseas or in Chile.

There are no economic estimates for this rule (*History of Law*, No.19.840). The bill entered parliament with 'extreme urgency'.

Legislative stage

In the committee of finance of the Chamber of Deputies, the documents do not suggest the participation of other fields besides the IRS and the ministry of

finance (*History of Law*, No.19.840, p.23).[68] The deputies of the committee approved the legislative change.

In the Chamber of Deputies, the documents suggest limited technical scrutiny and debate, and a high level of political and partisan discourse. For example, Deputy D, from the centre-left-wing governing coalition, called the right wing to approve the bills, saying that*:*

> *all that* [the government] *is trying to do is to regulate in accordance with international standards. It is what a serious and responsible country with its finances is trying to do. No to secrets, no to upper-echelon agreements, no to seven entrepreneurs that meet with a minister, with a president or with whoever! ... I would prefer some of these investors to leave, because they don't leave anything in the country. There are many that come to us to use us. Let them go; we do not need them!* (*History of Law*, No.19.840, p.75).

This quote suggests that international regulation was held to be legitimate because others were using it. A centre-right-wing deputy, E, proposed to vote against the rules that contained the transfer pricing provision because they were not good (*History of Law*, No.19.840, p.78). The rule was approved by the Chamber of Deputies.

In the committee of finance of the Senate, the documents show no participation other than the bureaucratic field (*History of Law*, No.19.840, p.97). Similarly, the documents do not reveal the nature of the debate, if any, other than that it was approved (*History of Law*, No.19.840, p.105).

There is evidence of discussion in the Senate. Centre-right-wing senators opposed the amendment to the transfer pricing rule. For example, Senator J, a member of the committee of finance, said that changing the relationships aspect was inadequate:

> *Currently, it is increasingly frequent to see strategic alliances to access new technologies, distribution channels, major capital sources, and to exploit the know-how. In turn, there are investments that allow diversification of portfolio risks to which a company is exposed regarding its flows. It is also largely the case that exclusivity contracts are signed to avoid opportunistic behaviour; that is, that either party wants to take advantage of the investment. Therefore, the measures of this point distort transfers and negotiations between*

[68] Four parliamentary sessions were held on 30 July, 1 August, 7 August and 13 August 2002; however, these documents are not publicly available.

> *companies, which lead them to make sub-optimal decisions, diminishing the potential capacity of Chile* (*History of Law*, No.19.840, p.121).

Referring to the whole proposal, Senator K, a member of the committee of finance and from a right-wing party, said that it needed further analysis and asked for a second discussion (*History of Law*, No.19.840, p.128). Once again, time constraints prevented detailed scrutiny of the tax regulation, which right-wing Senator L, resisted, saying that there was not enough time to discuss the bill adequately. Senator L continued, arguing that the idea of 'relationships' was not contained in the central idea of the project and that the rule would alter the current treatment of operations in international commerce (*History of Law*, No.19.840, pp.154-5). This may be interpreted in the light of partisan links between businesses and right-wing parties made up of economic élites (Fairfield, 2010). 'Grouping' was also connected with the regulation in terms of political campaigns in which companies might fund politicians (Gracia & Oats, 2012; Neu, 2006).

Similarly to the former rule, the evidence suggests that the Senate was able to access the social space connected with the field of power inhabited by the élite to influence the 'content' of the transfer pricing amendment. Senators K and L had political capital (Bourdieu, 1991), enabling them firstly to propose the elimination of the two paragraphs relating to transfer pricing. Secondly, they proposed a revised version of the relationships paragraph, from which they proposed to delete the presumptive relationship of 'transactions in the absence of a genuine business reason' (*History of Law*, No.19.840, p.163). The third indication was proposed by the executive which, rather than requesting an affidavit with information on transactions, proposed that documentation must be kept until the IRS requested it (*History of Law*, No.19.840, pp.163-4). Following a process of negotiation between the executive and the Senate, the former withdrew its suggestion and introduced a consolidated suggestion, drawing together the proposal made by the two senators and its own suggestion about keeping documentation (*History of Law*, No.19.840, p.174). In terms of political affiliation, members of the right-wing political parties rejected the bill, whilst the coalition government approved the article.

Despite the problems encountered by the IRS during audits regarding its methods, it was told not to change anything else:

> *In general, in Chile it is very difficult to change the tax law. Then, for example … when the rules were modified adding the two paragraphs about the presumptions of the relationship rules and the obligation to keep documentation, there was an explicit instruction that nothing else could be modified. Then, the reasons for no change were more political than technical, because if they were modifying the rule, it was a good opportunity to do the rule again, but it was not. Normally, what is stated is that if this rule 'x' may cause a lot of 'noise', and therefore people may be affected, it will not be modified because they may be more important from the tax policy point of view* (TPTA04).

These instructions align with Fairfield's (2010, p.45) argument that large firms prefer to lower their tax burden through tax avoidance. The centre-left-wing government avoided conflicts with business (Fairfield, 2010, p.52), and therefore avoided tax traumas.

In the second discussion, Senator K referred to the powers granted to the Customs Service and the IRS, but did not mention the rule itself. Senator K labelled the relationship section 'senseless' (*History of Law*, No.19.840, p.222). The deputy minister of finance clarified this issue and said that the senator was referring to other powers granted to Customs. This may suggest an imprecise and undetailed knowledge of transfer pricing. Later, government Senator M, explained the scheme of transfer pricing and questioned the opposition senators' behaviour (*History of Law*, No.19.840, p.225):

> *Mr President* [of the Senate]*, the systematic interventions of the Opposition* [senators] *have come to my attention. All of them are aimed at not consenting to norms that allow the IRS do their job well. And this is the core issue: that companies pay* [tax] *as appropriate; that the Internal Revenue Service has the necessary tools to fulfil its mission.*

This attempt to defend businesses may be interpreted in line with the findings of Fairfield (2010, p.53), as the right-wing and business leaders were the same individuals.

Another opposition senator, N, argued that the transfer pricing rule was functioning and that what was under discussion was an extension of the IRS's power to challenge prices (*History of Law*, No.19.840, p.226). In his words, it was intended that the IRS would replace the market. This also suggests that knowledge was obscured by partisan discourses, as Chapter Five illustrated.

Restricting the scope of relationships was well received by right-wing deputies. Deputy E supported the new proposal approved in the Senate, arguing that it was better because the relationship called ‘transactions in the absence of a genuine business reason’ had been deleted from the bill. Deputy F also questioned the comprehensive powers being granted to the IRS. Nevertheless, the rule became law.

6.6 Post implementation

This section explains the post-implementation practices of the IRS, taxpayers and tax advisors.

6.6.1 IRS post implementation

Audit performance, organisational structure and non-documentation effects

2002-2009

Since the burden of proof was on the IRS and there was no mandatory documentation in form of an affidavit or transfer pricing study, audits had been very time-consuming and costly since 2002. This explains why the number of cases audited was very low. An informant reported that around four and five cases were investigated at that time, while a taxpayer’s payment derived from an adjustment was not received until 2004 (TPTA04). Lack of documentation was the main cause of poor audit performance that the IRS had to combat (Newbery, 1987). Although it is likely that no audits were conducted in the period 2005-2007, in 2005 the IRS started to request information on transactions between related parties based on its general powers, but not as a power granted by the transfer pricing rule. In that year, 200 entities were required to complete a form with information on their transactions, but the reporting was of ‘awful quality’ (TPTE01). However, the information received allowed a database to be built (TPTA04) which would help the conduct of future audits.

Audit performance remained poor, which drove further organisational changes. After the ‘non-audit period’, in 2007 a new transfer pricing group was created in the sub-department of audit, reporting to the national direction. During its existence, this group gained experience/tax knowledge on transfer pricing audits (TA06). In contrast to the former group created with the enactment of the

rule, which decreased in staff numbers over the years, this group was staffed with only seven professionals, with engineering and economics qualifications and a 'modelling' orientation. Legal advice was provided by lawyers from (an)other department(s). Despite this new attempt, the number of audits remained low.

From the interviews, it is possible to identify three aspects which impacted on this poor performance: the organisational dependence of the group, the staff's type of knowledge, and the rule itself. Whilst the first two were relatively easy for the IRS to change, the problems relating to the rule extended over the whole period in which the provision was in force. For this reason, the effects of the rule will be discussed later in this sub-section, as they transcend the sub-periods under analysis.

First, this team gained experience through almost two years of work which concluded in 2009, when the group was relocated in a regional department – the Large Taxpayers Directorate (see Eissa & Jack, 2010). This organisational change was made because the audits were conducted by regional departments, not by the national direction, making this reporting structure 'administratively' complex (TA06).

Second, as noted above, the type of knowledge and training that these inspectors had was deemed inadequate for conducting audits. In particular, this economic/market/mathematical view translated into trying to estimate prices (TPTE01), which were the easiest to refute (TPTA02). An interviewee portrayed this approach quite well:

> *So, what's the problem with engineers? Generally ... for engineers the estimates are not friendly for them; then, if you don't come with a one million dollar difference and a logarithmic model, a thing that seems very complex to them, they don't like it... I think that's why a lawyer was needed that really understood* [transfer pricing] *in the context that this is not a mathematical issue, but a legal issue ... the issue is to create legal cases with technical arguments* (TPTE01).

This organisational change shows attempts to dominate in the tax policy-making field.

2009-2011

This newly relocated and transformed group was also small, made up of six individuals who had conducted audits across the country since its formation. In contrast to the strong 'mathematical' background of the dismantled group, the new team was more diverse in terms of academic background, holding business administration, accounting, public administration and law degrees.[69] Six individuals made up the group: four tax inspectors, one lawyer and the head of group (TPTA05).

Although the core team was small, a feature that may explain the low audit rates (TPTA04), there was additional support from other areas such as the IT department, legal department and economists from the IRS national direction (TPTA04). Internal levels of specialisation and forms of knowledge exchange became evident during the interviews: there was one specialist in database analysis, the inspectors conducted the operational audits, the lawyer supported the legal analysis of cases, and everything was coordinated and supervised by the head of the group (TPTA05).

This team had increased its knowledge since its creation. Formal and informal methods of training were identified from the interviews. Formal training included transfer pricing sessions organised by the OECD, activities relating to technical collaboration between tax administrations, and online courses (TPTA04). In addition to this specific technical knowledge, to supplement this team's work, members had attended other courses deemed to be necessary, such as on IFRS (TPTA05). Knowledge in the team had also increased through practice. For example, the lawyer in the group worked for the OECD and his interaction with other members increased the knowledge of the team through social capital. Other knowledge had been gained through fieldwork. Referring specifically to mining industry audits, tax inspectors had learned how the London Metal Exchange works (TPTA05). Finally, procedural legal knowledge had been acquired in practice through relations with the court.[70] Much of this learning had been through 'trial and error', as referred to by one interviewee. In the past, the

[69] The professional business administration degree awarded by Chilean universities is called 'commercial engineering'.

[70] There were no court decisions at the time this fieldwork was conducted, although an interviewee recognised that these outcomes would be an important input in developing additional knowledge when addressing cases.

team never requested contracts in Spanish between related parties as their members had a good command of the English language; however, judges requested contracts in Spanish, which had encouraged the team also to request them in Spanish (TPTA05).

Despite greater amounts of tax knowledge, taxpayers perceived that this was concentrated in Santiago only (TPPT04). This may be explained by the fact that other regional departments had never conducted an operative transfer pricing study (TPTA02).

Until August 2011, the team had been in charge of the whole audit process, from the early stages of risk analysis, the selection of taxpayers and holding meetings with taxpayers, to the actual conduct of audits (TPTA05); however, the creation of a new department in the sub-department of audit in the national direction led to higher levels of specialisation and coordination within the IRS, as the next section will show.

August 2011 onwards

This new department, referred as to 'the brain', specialised in designing audit plans for distribution to the Large Taxpayers Department and other regional departments to conduct audits (TPTA02). Similarly to the team in the Large Taxpayers Directorate, this group was also small, made up of six individuals plus the head, who also led another department. Although these members held similar formal qualifications, such as business administration and economics, their expertise was diverse. This diversity was what the senior members of the group were specifically seeking during the recruitment process. Specialists able to 'think and identify economic sectors, understand how different industries and actors work and where these multinational groups are' (TPTA02) was the main selection criterion.

Besides this formal component of education, experience in the field was also sought. In contrast to former groups, this team had experienced individuals in the technicalities of transfer pricing. The new team was no longer made up of the 'professional that had read a little' (TPTE03) on transfer pricing; there were even members that had worked for Big Four firms (professional services field), had trained abroad and had gained international experience in practice. This practical component was highly valued. TPTA02 noted the difference between

knowing the content of guidelines, ‘reciting the description of the method’, and having worked with ‘papers and knowing what companies are doing’. With this experience, the group would be able to ‘read between the lines’ of the poor-quality information usually provided by taxpayers. In the opinion of TPTA02, this poor quality of reporting may have influenced the poor performance of the former groups.

The tax knowledge of the appointed members translated into knowing how to use IRS’ internal and external data and about finance and valuation, capital markets, econometrics, statistics and economics. These skills went beyond the standard tax inspector profile, as Tuck (2010) suggests.

The group undertook forms of internal training. At the end of 2012, for example, an economist in the group with practical experience trained the team on procedural issues of audits, such as what to search for and where to go (TPTA03). Further training would be provided in the future to supplement all these core skills.

In performing their work, these professionals took the role of the media as an input seriously. One interviewee reported that ‘two people in the group arrive earlier, check all the press in the morning and send a summary to everyone on anything potentially interesting for the group’ (TPTA02).

Collaboration between the two existing groups was also noted during the interviews. In 2011-2012, this new team took on incomplete cases to close them, with an associated payment (TPTA02).

This group had gained symbolic capital in its short existence. The market perceived the strengths of this group, which was expected to collect much more resources as a performance indicator based on their competitive salaries (TPTE03). The next section explains the effects of legislation on audit practices.

6.6.2 Features of the rule and their effects on audit procedures

The IRS had to deal with four particular aspects of the rule: the burden of proof/non-documentation requests, uncertainty in the methods, adjustment points and agreement procedures. These aspects are discussed below, along with the practices deployed by the tax authority to enforce this rule.

Burden of proof/non-documentation requests

The burden of proof and absence of specific documentation requirements made information on taxpayers' transactions the first capital at stake in the field. Although the IRS was increasing its tax knowledge over time, with better prepared staff, technology to set comparable prices and the legal power to request information, the taxpayer held the information on transfer pricing and had the power not to disclose it through an affidavit. This made the struggle for this form of capital very costly for the IRS. In this respect, the IRS resorted to information available from different sources, such as the press/media, and other information on the taxpayer and the industry (TA06). With regard to information requested by the administration based on its general powers, the IRS showed its dissatisfaction with the quality of information provided in other affidavits or forms informing the design of audit plans. An interviewee said that the IRS was 'disappointed about the information provided by taxpayers in affidavits. [They] submit anything, fill information in the wrong boxes, numbers that are useless or that can't be real' (TPTA02). Although a useful source of this information through the Central Bank and Customs was explicitly included in the rule, the former was not particularly keen to share/prepare information for these purposes (TA06).

Once some information had been gathered, the analyses started to identify which companies' performance was below the industry mean, and these cases were particularly selected (TPTA04) and the investigation taken further. With this information, tax inspectors started to prepare evidence, in a similar form to transfer pricing studies, which would be used to show taxpayers that they were not adequately following the arm's length principle. These tasks were particularly costly in terms of 'accuracy', given the volume of information involved (TPTA05). In contrast to the taxpayer, the tax inspector needed to understand the business, which was time-consuming, involving meetings with taxpayers across the process in order to understand the operational process of the transactions (TPTA05). In the case of transactions with related entities, there was no information available and the tax inspector started to wonder uncertainly, for example, whether tax losses might have been caused by a transfer pricing issue. In this scenario, sometimes the IRS simply risked initiating the analysis with the limited information available, making the audit

more time-consuming (TPTA05). These problems, derived from non-specific documentation requirements, meant that many audits failed to 'reach fruition' (PM11). Thus, auditors started an examination, spent many hours with high expectations of the outcome, but if it did not succeed, that time was 'lost' (TA06). Here, 'there was a lot of preamble [to the tax audits] for nothing' (TPTE01).

Nonetheless, it was recognised that this costly process brought some benefits for future practices. Substantial tax knowledge was gained through this process as a result of having the burden of proof (TA06, TPTA05). This resonates with Bergman's (2003) argument that stable tax policy, such as transfer pricing, contributed to the development of an efficient tax administration in Chile able to detect non-compliance, and enhanced tax compliance in the long term. TPTA04 described this process well:

> *There is an aspect that I consider relevant here… the issue of the burden of proof. When the IRS has the burden of proof on his back, that forces the IRS to study everything from scratch. Then, when they go to talk with inspectors in other countries that do not have the burden of proof, the differences of opinion and experience are enormous. I do not doubt that the guys who are in this group know much more than the inspectors from those countries because these inspectors grew up in the jungle and had to survive in the jungle.*

In this struggle for cultural capital, taxpayers were not particularly cooperative, as explained during the interviews. Usually, taxpayers provided basic financial statements, but contracts, directorate meetings and budget reports were unavailable to the tax authority (TPTA04). Holding this information may be interpreted as a form of symbolic violence, in equivalent terms to those explained by Gracia and Oats (2012).

Uncertainty of methods

Uncertainty was an issue regarding the methods of valuation. This uncertainty made the IRS read between the lines and observe the OECD Guidelines in the rule, although these methods were not explicit in the legislation (PM11). TPTA05 said that the IRS' operational group argued that the 'net profit is in the reasonable profit [concept contained in the rule] … so I say, over time [the tax inspectors] learned to read between the lines'. In TPTA05's opinion, in implementing the rule tax inspectors had to go beyond literal interpretation, otherwise they could not have applied the law. The IRS argued that the

‘reasonable profit concept’ was very broad and that the CUP, profit method or any other method would be included, but that was very legally uncertain (TA06). This was a major difficulty during audits. When told to use a certain method, the first thing taxpayers did was to read the rule and see whether it was specified. If the method was not contained in the law, the taxpayer replied ‘it does not say here that you can or cannot do this’ (TPTA05). Although not specifically referred to as such, the CUP method was used during audits (TA06, TPTE01).

In dealing with uncertainty in the methods, the IRS mobilised its increased tax cultural capital; however, this strategy was not always successful, as taxpayers also defended their capital at stake, as the quotations have evidenced.

Adjustment point

In terms of adjustment, the rule made no reference to price ranges or secret comparable prices, although the IRS used both (TPTE01, TPTE03). In terms of price ranges, the IRS tended to imitate the practices of other jurisdictions, as noted by TPTE01: ‘The IRS always used the interquartile range for analysis … because others use it’. This is consistent with Carruthers’ (1995) argument that ‘there is reassurance if not actual safety in numbers, and in the absence of a compelling reason to strike out on their own, organizations do what others are doing' (p.317). Through imitation, and with the assumption that that was the practice, the IRS would transform its capital into symbolic capital (Bourdieu, 1990), or legitimacy (Scott, 2001), establishing the doxa.

Regarding the point of adjustment, it was argued that the IRS’s practices should not be discretionary and should be perceived to be neutral and objective:

> [the IRS] *has not been discretionary up to now.* [Adjustments] *have been always to the median and I think that the IRS should keep that approach for now until an instruction is issued … because taxpayers may ask: why did you place me in the first* [quartile] *and not in the third?’ Or ‘why didn’t you place me in the middle point between the median and the quartile?’ I think that for everything, in general, the IRS should show a neutral, objective stance ... that does not favour anyone nor is detrimental to another or anything like that …* [the criterion] *should be the median* (TPTA02).

In the absence of a clear legal rule that the IRS could use to guide its practices, which were already ‘legitimate’ in other jurisdictions, it proceeded cautiously in order to protect its symbolic capital in the field. Otherwise, taxpayers could have

taken their case to court and, if an adverse decision had been made, besides the loss of economic capital in play, the IRS could have lost symbolic capital in the future. The IRS' habitus may explain why the number of cases brought to court was minimal during the existence of this rule.

Procedure for reaching agreement

Another aspect to note is that the rule did not include the possibility of reaching an agreement between the IRS and taxpayers. Again, the IRS did not follow any formal procedure and, if both parties accepted the adjustment, the payment was made (TPTA05). In this respect, reputation was important for taxpayers:

> *For example, if a company trades in the stock market in the US ... it is not nice having a dispute in Chile; then, in the end, taxpayers said 'take these two million dollars' and everyone was happy … the IRS played in that area and the law was not applied* (TPTE02).

As noted in this quotation, taxpayers were afraid of losing symbolic capital which would be followed by a loss of economic capital. In this process, the IRS identified the forms of capital at stake and taxpayers protected their position in the field through these less transparent agreement practices.

These problems in implementing the transfer pricing rule created a common view of its degree of robustness. One interviewee referred to the rule as providing 'very little' (TPTA05) and another as 'too little insightful' (PM12).

Administrative costs

According to TPTA05, this type of audit took place on-site, and as such it took time. For example, it was mentioned that tax inspectors had to travel to different regions in the country to attend meetings and get to know the operational process.

6.6.3 Taxpayers' implementation

This sub-section presents the findings on taxpayers' implementation practices.

Organisational structure

In general, the companies interviewed had small tax units in which tax work was conducted. This does not mean that they had a specialist, organisationally independent tax department; they were usually dependent on the accounting departments. The four interviewees reported that their groups comprised two

people (TPPT02), two people (TPPT03), four people (TPPT04) and seven people (TPPT01) respectively.[71] None of these companies had an in-house tax professional working exclusively on transfer pricing activities. This finding is consistent with the opinions of other tax experts interviewed, who stated that there were no people dedicated to this subject within organisations in general (TPTE01). In similar terms, another interviewee claimed that 'in Chile, there are not ... at least, I have not seen [them] and I could guarantee that there are no transfer pricing in-house (professionals)' (TPTE03). The situation would have been different for larger companies with exclusive transfer pricing units (TPTA02, TPTE02). Given absent or little tax knowledge, the role of tax advisors was increasingly important for taxpayers (OECD, 2008).

Role of external advisors

The absence of intra-organisational tax knowledge led to high levels of reliance on external advisors when information was requested by and reported to the IRS. Regarding information reporting, a dichotomy between tax advisor/good reporting and in-house/'not so good' reporting was empirically noted (TPTA03).

These intermediaries' positions were also related to the voluntary preparation of transfer pricing studies. There was a perception that mid-size companies, which tended not to have specialist transfer pricing units, generally relied entirely on auditors for the preparation of these studies (TPTE02), and that very large companies with in-house transfer pricing units prepared these studies internally, where the advisors' role was to validate and justify the figures with analyses carried out by their advisors (TPTA02). A very large company, which did not have a transfer pricing unit/specialist, reported that its advisors took all the 'burden of the work … in terms of [legal] interpretation as well as in defending the figures'.

The level of reliance on tax advisors was different when facing a tax audit. Tax advisors were becoming visibly more important during these processes. In this case, an interviewee said that it was a common practice that 'everything was left in [external] auditors' hands and [companies] were not involved in the process' (TPTA05).

[71] TPPT03 explained that one member had a 'monopoly' in income tax matters, whilst the other member was concerned exclusively with VAT compliance.

From the interviews it is possible to infer that this reliance did not change, mainly because of the high compliance costs of human resources and databases/information. On this second component, a tax expert (TPTE03) commented that, although companies might be interested in creating transfer pricing units, database costs were so high – US$20.000 per year – that ultimately companies decided to outsource, saving resources and also getting the advisors' 'benediction' by transferring the responsibilities to them. This heavy reliance created a need for and further dependence on tax advisors, who ended up dominating at this stage, given their expert tax knowledge.

Forms of implementation: Active and passive

From the data analysis, two forms through which taxpayers implemented the rule emerged. Whenever the taxpayer revised and adjusted the prices set in cross-border transactions for tax purposes in anticipation of a tax audit, an active implementation was being undertaken. Conversely, if the taxpayer did not revise or adjust the prices set in cross-border transactions for tax purposes and acted in response to a first move by the Chilean IRS, it was interpreted that a passive implementation had taken place. This differentiation operated at two levels, individual and group.

The *active* form was not prevalent in the companies interviewed when analysed individually in Chile, a finding that was consistent with the general perceptions of other interviewees that in general companies did not do anything active (TPTE01, TPTE02). Although the experience of each company was different in its approach to the core shared practice, the passive form of implementation derived from low audit rates and the absence of mandatory documentation requests. Regarding audits, the four interviewees (TPPT01, TPPT02, TPPT03, TPPT04) said that they had never been audited specifically for transfer pricing.[72]

Since the rule did not oblige taxpayers to submit any sort of documentation in the form of a transfer pricing study or affidavit, very few companies had voluntarily undertaken transfer pricing studies. However, the percentage of

[72] The IRS had audited TPPT04's company due to a significant tax loss. The IRS gained an understanding of the cause and there were no further consequences.

companies doing so was perceived to be very low, possibly around ‘ten per cent’ (TPTA03).

Two interviewees stated that their companies in Chile had undertaken transfer pricing studies. A Chilean headquarters said it had voluntarily prepared its first transfer pricing study with a Big Four firm in 2009, i.e. twelve years after the enactment of the rule. Similarly, a second company, with European headquarters, also reported having had a transfer pricing study done by another Big Four firm (TPPT02).

Despite these attempts, in some cases no change followed these reports. The Chilean headquarters reported that tax practice on transfer pricing did not change as a consequence of the report (TPPT04). Its ‘philosophy’ was to centralise operations, making no profits on transactions with related entities. In contrast, its related entities abroad had transfer pricing consciousness in their ‘DNA’. This finding highlights the passive form of implementation that this company undertook, seeing itself as a sole entity. If analysed globally, however, this group could be classified as active based on the number of entities abroad, but also as passive if considering the predominant role played by the headquarters.

Differences in decision-making power were noted during the fieldwork. In particular, in all cases the headquarters determined the decision of the whole group, conferring little or no power on their subsidiaries. In general, foreign headquarters tended to confer little autonomy on their Chilean entities, which tended to apply the foreign policy. In such cases, Chilean entities used a ‘master-file’ prepared abroad to support their transfer pricing policy (TPTE02). The weak power of these Chilean entities was well described by TPPT01, who reported that its decision on the method – cost plus margin – was ‘one hundred per cent imposed’ by its headquarters in Europe.

This limited autonomy described by TPPT01 may have been related to the presence of stricter regulation abroad, to which headquarters had to adhere. Accordingly, headquarters planned globally, making Chilean entities follow their plan. TPPT02 said that the definition of the method to be used for commercialisation was defined by its headquarters, which had to comply with very strict regulation in Europe. The instructions coming from foreign

headquarters were not only about the method of valuation but also about the prices with which the Chilean entity had to operate. Foreign headquarters told their Chilean entities to 'stay between this value and this value' (TPPT01, TPTA05, TPTA03). A very extreme case of low autonomy was reported by TPPT03, who said about its main imports of goods that*:*

> *prices are set abroad … and charged through invoices, but I do not know the price-setting procedures because they change yearly and that changes the margin configuration but I do not know the criterion and that is why I am asking for information* [from the European headquarters] *…* [I know] *nothing about the* [transfer pricing] *method used.*

This situation reflects the relatively little power the Chilean entity had as a result of having no information – understood as an absence of 'economic transparency' (Geraats, 2001) – on how the prices were set in comparison with the headquarters. Having no information to provide to the IRS in an audit, the Chilean entity was placed in a 'very difficult position'. These Chilean entities had mainly obeyed foreign orders, as reported by TPPT01 and TPPT02. As noted, interviewees referred to the 'strict' control that other jurisdictions exercised on their headquarters, which excluded them from having a voice in the price-setting process.

Transfer pricing was designed by foreign headquarters and Chilean entities accepted these instructions. This form of obedience was interpreted as a 'very advanced' form of implementation by one taxpayer (TPPT01). In this respect, TPTE03 highlighted the power of foreign headquarters to impose their wishes on Chilean entities, given the lack of documentary requirements in the Chilean legislation:

> *Also, for a long time, Chile was seen as the 'ugly duckling' …* (Foreign headquarters said) *'*[in] *Chile … transfer pricing does not matter, send the charges to them'. I heard several times that* [companies said] *'we are not reaching the* [required] *profitability in* [name of country]*, send Chile an invoice and it doesn't matter whether Chile reaches its market profitability'.*

In contrast, Chilean entities did not often plan transfer pricing as 'it is a very advanced [issue] for Chile' (TPTE01).

For Chilean entities with foreign headquarters, the transfer pricing rule was never an issue to worry about or a focus for the company (TPPT01); the rule

was labelled ‘toy-like’ (TPPT02). The underlying causes of this approach, on the part of the IRS, were the burden of proof and the sense of having no control. As shown above, the authority had to prove that taxpayers’ transactions were not following the arm’s length principle and had to ‘do the work of gathering proof, justifiably, and say that what [companies] were doing wasn’t right … then all that justification was bothersome and costly to implement’ (TPPT01). These reasons made the IRS reluctant to take action (TPPT01). There was a perception that audits were not carried out extensively and, if done, few industries were subject to examination. For example, TPPT02 said that ‘sometimes, the IRS attacked pharmaceuticals, mining companies … because money was really there’.

The effect of the rule on companies was that they expected an audit to comply with the rule under the Chilean terms. This was the approach adopted by all companies analysed individually/domestically. TPPT02’s company was compliant and then they ‘were quiet, waiting for the IRS to come’. However, TPPT02 acknowledged that in the past the company had had some transfer pricing issues quantified in a transfer pricing study commissioned from a Big Four firm. Although the report suggested a potential adjustment to their prices and the Chilean entity informed its headquarters abroad, they were waiting for the IRS to turn up and, if that happened, they would try to ensure that ‘the adjustment was the smallest possible’.

As has been shown, all companies reacted in a passive way, waiting for a first move by the IRS to make a change to their transfer pricing practices if they were detected as being non-compliant. However, viewed as a global group, the companies were compliant with stricter foreign regulation, adopting an active role in complying with the arm’s length principle, but for global processes. This undefined posture applied to Chilean headquarters which, if analysed locally, were not complying with the principle either locally or globally according to the power held by the Chilean headquarters; whereas, if classified according to the number of entities involved, the group tended to adopt an active approach to implementation of the rule. Table 6.1 summarises these comments:

Table 6.1: Forms of implementation

Taxpayer	Individually	Group
TPPT01	Passive	Active
TPPT02	Passive	Active
TPPT03	Passive	Active
TPPT04	Passive	Passive/ Active

People working within accounting departments were more aware of the technicalities of the rule in Chile (TPTE01) than higher managerial levels. In fact, 'there was a conviction that Chile did not have a transfer pricing rule or that it was never going to be applied. So they could have taken all the profits away and nobody would have done anything. That was the belief' (TPTE02). In this respect, TPTE01 commented that Chilean entities told their foreign headquarters that they were making profits but the IRS 'does not bother them about that, everything is fine then ... don't worry'. TPTE05 went further, saying that, given the IRS' lack of activity, 'people lost fear ... and thought that the issue [transfer pricing rule] had disappeared'. The following anecdote given by TPTE01 from the early 2000s summarises the perception of the absence of a transfer pricing rule:

> *I remember one of them in particular in which the CEO arrived late* [to a technical seminar on transfer pricing]*. I had done all the presentation of Article 38, everyone was silent and he arrived and said: 'ah, this is transfer pricing, and when is it going to be applied in Chile?' And indeed, I was explaining that the rule had been in force for a couple of years … and he replied 'and why has nobody told me about it? ... Well, tell us more about it.*

This passivity caused an inadequate level of knowledge of the transfer pricing issue (TPPT04) over the period in which the rule was in the income tax code up to 2012. This limited knowledge translated into a misconception of the role of transfer pricing, which was viewed as 'more an issue of financial planning' (TPTA03) and not just a tax issue. This misconception extended to the type of professional service provided by external advisors preparing transfer pricing studies. TPTE03 responded to clients' request to set a price with 'this is an estimation'.

However, more recent experience showed a greater level of concern about the issue. In subsequent years, 2005-2006, companies remained ignorant of the

topic and did not know how it was useful to them, what type of documentation they had to submit or what the legal requirement was (TPTA02). In the years 2010-2011, the scenario had improved in this respect, as large companies knew about transfer pricing, not in detail but cursorily about market prices, and that in some way the authority might audit them (TPTA02). The moment when 'paying attention' to transfer pricing rule occurred was when facing a tax audit and it was then that advisors were sought (TPTE01), reinforcing the passive approach to implementation of the rule. There was greater knowledge or awareness of the issue and greater expectations regarding its application. The media and 'noisy' international scandals about large companies' adjustments and payments (TPTA02) may have increased this interest. Nonetheless, other entities remained ignorant.

As there had not yet been any court decisions in Chile, there was little knowledge that the IRS could give to taxpayers about the application of the rule (TPTA02).

Ambiguity of the rule

Along with the burden of proof on the IRS and the absence of documentation requests, a particular feature of the law had contributed to the taxpayers' passive form of implementation – ambiguity. Although the rule underwent a 'Chileanisation' of the methods contained in the act, as explained in the design stage, the rule referred to methods of adjustment for use by the tax administration but not by taxpayers. Ambiguity acted against taxpayers when defending their compliance with the rule. TPTE01 commented on this:

> *On the other hand, the current* [at that time] *law says that if the IRS detects that you are not compliant, the IRS, as it has the burden of proof, will be able to use these methods to make the adjustment, but in any point it reads that you* [as taxpayer] *can use these methods to support* [your transactions] *… in the end if I want to know if I am doing well, I apply the same methods … and go to the IRS and tell them, 'look, here are my ranges, prepared in the same way* [that you do] *and I am within'. That's a way of saying, 'yes, I am good'. As currently there are two methods, nobody knows how to tell the IRS 'look, I am doing fine'. That's basically the problem with the methods.*

Ambiguity of the rule could have been reduced through the use of circulars issued by the administration; however, in TPPT02's opinion, this administrative guidance left 'things the same', providing no additional useful information about

the application of the law or how to prepare for a tax audit. From TPPT04's perspective, the law was ambiguous and, given that circulars supplemented the rule, in this case 'circulars were not going to make a miracle'.

Compliance costs

Non-documentation requests led to low compliance costs, as noted by TPPT01. In this sense, the objective stated during the design stage was met in practice.

The introduction of the 2002 amendment, which required documentation to be made available to the IRS if requested, was not mentioned as a cost in the interviews with taxpayers. Only a tax expert referred to this element (TPTE02).

The most frequently mentioned source of compliance costs was the voluntarily prepared transfer pricing study. The price of these reports was high and depended on the volume of transactions, although some companies voluntarily incurred these costs, as shown above (TPPT02, TPPT04).

6.6.4 Tax practitioners' implementation

Tax advisors acted as experts, and their implementation practices are discussed in this section.

Organisational structure

In the early years after its enactment, professionals with knowledge and experience of transfer pricing were scarce and those who had knowledge had worked in other countries (TPTE05). Consequently, consultancy firms started to adopt a set of strategies to increase the level of expertise. For instance, a Big Four firm adopted a route not replicated by other firms, consisting of funding studies abroad and undertaking secondments abroad (TPTE05).[73]

Another route followed by consultancy firms to bring knowledge from abroad was to bring holders of that knowledge to Chile. Focusing on the region, some accounting firms brought people from Argentina, a country with considerable experience of transfer pricing (TPTE05). For example, around 2004, a Big Four firm brought in a lawyer from its branch in Argentina. This lawyer, who had gained formal training and later professional experience in Europe, had

[73] For example, in 1999 a lawyer received financial support for study abroad.

managed to provide training on the subject in his home country for other people working in Chile in order to create a transfer pricing group (TPPT04). However, services in this area 'had very little flight [success]' (ET03), possibly due to the passivity of the rule caused by the lack of specific documentary requirements and low audit rates, as explained in connection with the tax administration.

Given the importance the topic was gaining over time as a result of media reports, documentation requests from the IRS, companies' own interests, and limited development of the transfer pricing market in Chile (TPTA03), consultancy firms continued with the practice of recruiting professionals from other Latin American countries such as Colombia, Ecuador and Mexico, as noted during the interviews (TPPT04; media comments), leading to a growth in the number of transfer pricing specialists working in these specific audit teams.[74]

Firms had continued to grow in the area. One firm, for instance, had created a specialist transfer pricing group between 2009 and 2010 (ET05). The trend for 'importing knowledge' had also remained. People felt motivated to migrate to Chile due to the perception that Chile had a transfer pricing rule as it was an OECD member (TPTE04).

Although the teams were small in number, as reported by TPTE04, until 2012 they were sufficient to provide adequate professional services (TPTA03). Firms also provided internal training to their personnel (TPTA03).

In terms of qualifications, it was noted during the interviews that teams were made up of economists, lawyers and accountants with a good command of English language and accounting knowledge, as well as databases, highlighting the importance of technology in administrative practices (e.g. Bird, 2004).

Services provided

The coding process allowed two types of service to be distinguished in terms of a first move by the IRS: response or anticipation. During the interviews two services were mentioned with regard to a *response* to a first move by the IRS. Given the generally late information requests made by the IRS, as noted for

[74] For media comments, see, for example, http://www.internationaltaxreview.com/Article/3218197/Winds-of-change-in-Chile.html.

instance by TPTE03, the first service consisted in the completion and submission of information to the IRS. The second service was representation during a tax audit.

In *anticipation* of a first move by the IRS, three services were evidenced during the interviews. The first was the preparation of a transfer pricing study through which taxpayers had their intercompany prices validated using the arm's length principle as a benchmark (TPTE04).[75] These studies were originated either domestically or by foreign headquarters (TPTE03). Preparation of these documents was a specialist and time-consuming process. Specialist services were provided by expensive resources devoted to their preparation in terms of databases and experienced professionals. On the other hand, the process was time-consuming because interviews were conducted with the parties involved in cross-border transactions, along with the revision of contracts. Consequently, the price of this service was higher than for audits or compliance (TPTE03).

The second service was that of tax planning, which always entailed moving prices within the range (TPTE05). Getting to know the range implied knowing the prices that aligned with medians, analysing assets and risks which might lead to reorganisation.

The third type of service, although less common, was called 'transfer pricing diagnosis', which was equivalent to an IRS tax audit (TPTE01). This service was provided in anticipation of an IRS tax audit with the aim of 'alerting' the company to potential risks in cross-border transactions and suggesting corrective measures.

These services had become very good income sources for accounting firms (ET03) and, although all advisors tried to maximise the economic capital from their services, they preferred to take a conservative stance. TPTE01, for example, tried to 'minimise controversies'. Another advisor preferred not to use the word 'conservative' but 'according to the rule' (TPTE03).

In trying to apply the rule, some tax practitioners commented on its features and those of the administrative guidance. A major problem with which advisors dealt

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[75] As noted above, there was a misconception about the role of transfer pricing studies, as some taxpayers expected prices to be set by the advisor (TPTE03).

was methods which were not clearly stated either in the legislation or in the administrative guidance (TPTE02). Problems also arose with the use of interquartile ranges and adjustment points. A third problem concerned the presumptive relationships included in the 2002 amendment. TPTE05 commented that the section on relationships was broadened too much, including concepts that 'nobody understood'. On these problems, TPTE02 went further, arguing that the problem of legislation lay in the process: 'the rule is bad, it was dreadfully conceived … giving [wide] space for interpretations'.

Institutionalisation of practices

From the interviews, it was possible to identify two ways in which tax practices were disseminated and internalised in the industry. The first set of activities related to seminars, through which experienced professionals affiliated to professional associations, such as the Chilean Institute of Tax Law and International Fiscal Association (IFA), 'illustrated to members' (PL01) certain aspects of interest. These seminars were not oriented toward giving instructions on what to do, but provided 'funded professional opinions' on the matter (PL01).

Another way in which practices were adopted and later taken for granted was through the professional service itself. Consultancy firms (accounting and law) offered their services and thereby gained experience in the client's industry. Discourses such as 'look, I have experience in this' were used by professional firms to attract clients, which finally contracted their services, trusting these advisors based on their technical experience. Internally, these firms replicated what client X was doing in the context of client Y in transfer pricing, but never disclosed information to clients. This experience was what the client was seeking and paying for (TPTE03). In the end, these practices made the advisors powerful agents in the field (Stringfellow *et al.*, 2015).

6.7 Post implementation stage II: The new rule initiative

As was shown in the implementation stage, the rule had several problems that prevented the IRS from implementing it properly. It was 'absolutely incomplete' (TPTE01) in terms of the methods and how to use them, generality of relationships, and powers conferred to the authority, as in any part the law stated that 'the tax inspector can do this and this, but not this' (TPTA02). Although, during audits, the IRS followed OECD guidelines, these criteria were

not explicitly contained in the rule, causing uncertainty for both IRS and taxpayers (TPTA04).

Despite the evident problems, no authority had the courage (TPTE02) to try to take the rule to the limit and propose a change until the arrival of a new national director of the IRS in 2006[76]. Nobody previously had suggested that, knowing how 'disastrous' the law was, the tax inspectors should have to suffer it (TPTE01). His instructions to the audit team at that time were:

> *build the case and don't inhibit yourself because you have the idea that you are going to lose it, because that's the idea … you are here to lose the case (TPTE01).*

The idea was to leave a trace of why audits were not successful in terms of specific powers conferred to the IRS, methods, lack of clarity in the rule, etc. The causes of 'failure' were raised as problems to propose legal changes to the ministry of finance. The director's initiative in going up against the wall, advised by a professional with substantial experience in Mexico, allowed the IRS to show that the rule should be changed, which was how the initiative to change the rule began.

6.8 Summary

This chapter has discussed the tax policy-making process for the 1997 transfer pricing rule in Chile. It has identified the powerful actors and shown how the policy reached the technical and political agenda. It has also shown the extent of parliamentary debate, as well as implementation practices by taxpayers, the IRS and tax advisors. Throughout the chapter, the concepts of field of power, tax knowledge, social capital and two types of domination have been explored.

[76] This national director was in office until March 2010.

Chapter Seven: The New Transfer Pricing Rule

7.1 Introduction

This chapter presents the findings with respect to the three research sub-questions presented in Chapter Four for the new transfer pricing rule enacted in 2012. Section 7.2 presents the findings in relation to the design stage. Section 7.3 presents the findings regarding the parliamentary debate. Section 7.4 presents the findings for the implementation stage, and Section 7.5 provides a summary of the chapter.

7.2 Design stage

The design of the transfer pricing rule occurred in two separate phases: technical and political. The first phase was mainly a technical activity in response to the uncertainty faced by the IRS and taxpayers in the implementation of the 1997 rule, as discussed in Chapter Six (TPTA04). There was a wide consensus within the tax administration and the private sector about the need for legislative change (TA02), a change that took a long time (PM13).[77]

The instigator of the tax law change was the IRS. Around 2004, a decision on 'what transfer pricing should be like' (TPTA04) had been made and preliminary drafting had commenced. However, the technical agenda had not reached the political space. The authorities of the time argued that it was 'not the time for a change; politically the [government] want something else' (TPTA04). The efforts reached a higher institutional agenda with the arrival of the new IRS national director in 2006.

As noted in Chapter 6, the national director was appointed on the basis of the confidence of the president and/or minister of finance. In the fieldwork, it was commented that personnel in the ministry of finance had suggested the director's appointment. This social capital allowed him to enter the tax policy-making field. This director had a mix of capitals that made him a powerful actor (Bourdieu, 1990). First, he held a law degree from the oldest university in the country and a master's degree from the US, funded by a Fulbright scholarship

[77] The private sector raised concerns about improvements to the rule through forums, written documents (TA02) and the media (PM11).

(Coddou, 2014), i.e. he had 'institutionalised cultural capital'. Second, he had significant experience in tax practice in the professional services field, in a former Big Four firm and then at one of the most prestigious legal bars in the country (*ibid.*). And third, he possessed considerable social capital as nephew of an ex-president and with connections to a think tank connected with former ministers of finance (*ibid.*). These capitals influenced his habitus: being very critical of the former rule, and with a 'public shirt on', he was convinced that it should be amended and made more 'useful' (PM15). The director said on his arrival that 'transfer pricing was a relevant issue' (TA02) and, as shown in Chapter 6, he was able to persuade the ministry of finance that the problem was real (TPTE01).

A tax lawyer specialising in international taxation who worked closely with the national director in the OECD accession process in 2006 also gained prominence. This actor entered the field through social capital when the director decided to restructure the functioning of the IRS, bringing in professionals from the professional services field.

A third actor was the team of IRS drafters. Within the team, hierarchy was established in the process, perhaps naturally, based on the amount of tax knowledge and habitus. One drafter assumed a leading role based on his personal characteristics and connections with the issue. This individual possessed institutionalised cultural capital in the form of a law degree from a highly respected university in the country and a master's degree in taxation. He also had experience of tax practice through a career developed within the IRS and as a delegate in OECD Working Group Six on transfer pricing and on the OECD's Committee on Fiscal Affairs. Moreover, this professional had been an agent in the academic field, teaching tax subjects for a number of years at postgraduate level. This experienced professional was recognised as having an interest in transfer pricing and a deeper theoretical knowledge than other members of the team. This experience was applied by working on the technical 'details' of the transfer pricing rule (PM15). A second drafter assisted the leader. This junior member held a law degree and an LLM in taxation from the UK and also participated as a delegate on the OECD's Working Group Six on transfer pricing. The third member was a senior member with substantial experience in legal drafting who had knowledge of the former transfer pricing rule process.

This senior drafter's involvement shows that past experience helped to shape new legislation and overcome problems, as will be shown below.

In March 2010, with the arrival of the first right-wing government since 1990, a new director coming from a Big Four firm arrived in the IRS. From then onwards, the ministry of finance through the tax policy coordination unit, along with the newly appointed director, started to intervene on a small scale as the text had by then almost been completed. As noted in Chapter Five, tax policy coordinators appointed in 2010 and 2011had institutionalised cultural capital and experience in the professional services and academic fields.

This small number of participants and the types of decision they made may be interpreted as a site of struggle linked to the field of power. The involvement of these powerful actors shows that the legal perfection started within the IRS (TPTA02), breaking the linear trajectory of tax policy making and supporting claims made in the related literature (Sawyer, 2013b). Here, the 'technical/regulatory' policy leading to the drafting stage occurred prior to the 'higher political' tax policy agenda of reform. In TA02's words:

> *People from the ministry of finance participated very little because this* [rule] *became, instead, a bill from the tax administration towards the design of public policy … but the team within the ministry of finance was aware and also thought that the* [transfer pricing] *problem existed and that it was necessary to tackle it and that it was an improvement for both the tax administration and the income tax regime standards.*[78]

The central idea behind the new rule was that it had to 'modify, update, supplement and perfect' the former legislation in order to increase certainty for both taxpayers and the tax administration (TA02) through the adoption of international practices (PM11) and the application of the 'full OECD standard' (TA02). The new rule should also match domestic legislation and not just 'transplant' or 'copy-paste' the OECD guidelines (TA02).[79] This was achieved with the inclusion of aspects taken from comparative legislation and the introduction of Chilean innovations, as will be shown later in the chapter.

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[78] As discussed in Chapter Five, from 2006 there was a specialist position/area in the ministry of finance. Although the official website referred to a single person in the post of 'coordinator of tax policy', more than one person was performing tax tasks. From 2010, the area comprised three lawyers – the coordinator and two advisors.

[79] However, the organisational field perceived the rule to be a very precise copy of the OECD guidelines (PL01).

The second design phase involved economic and political considerations. This second phase overlapped with the drafting after 2010. The need for tax reform arose in 2011, when Chilean society manifested its dissatisfaction with the educational system.[80] At this time the government coalition parties received signals that the right-wing government was preparing a tax reform aiming, at least, to increase the income tax rate for businesses (PM02). The government, 'pressured by these circumstances' (PM03), decided to embrace this citizens' demand, speeding up its effort to improve the quality and range of the education system at all levels (*History of Law*, No.20.630, p.5) through a tax reform oriented to funding the changes required in some way, but without 'endangering the economic development of the country' (*History of Law*, No.20.630, p.6).[81]

The act, which included the transfer pricing rule, aimed to 'perfect tax legislation and finance educational reform' (*History of Law*, No.20.630, p.1).[82] This bill had four central purposes: to raise revenue, to grant economic reliefs to the middle class, to create incentives for economic growth and to introduce mechanisms to improve the tax system, such as the elimination of unjustified exemptions and loopholes that allowed tax arbitrage (*History of Law*, No.20.630, pp.7-9). The first and fourth purposes matched the objective of the transfer pricing rule improvement (*ibid.*). Accordingly, this tax reform was seen as a 'great opportunity to include other perfections' (PM13) that aligned with the central ideas of the project. The transfer pricing rule would now increase revenues, justifying its inclusion in the reform. Secondly, the rule completed a couple of years previously (PM15, TA02) reached the political agenda for inclusion. On the latter, it was commented that part of the tax policy behind the reform was the inclusion of a 'set of anti-avoidance and control rules' (TA02), such as transfer pricing regulation.

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[80] Citizens – mainly secondary and tertiary students – made recurring protests demanding substantial reform to the education system in terms of quality and free access. The main leaders of the students' movement were members of the Communist party, linked to other centre-left-wing parties.

[81] There was heated debate regarding the sufficiency of funds to finance educational reform.

[82] In Chilean legislation, there is a principle of non-linkage between tax revenues and usage. Tax revenues go to the exchequer and cannot have a specific predetermined destination. There is a disconnection between legislation and practice.

7.2.1 Drafting

In parallel with the drafting phase, Chile was negotiating membership of the OECD, which recognised that the former rule 'was not contrary to the guidelines' and that the arm's length principle was there, but it was recognised that 'it was not the best law either' and that 'it takes a while to understand it' (TA02).[83] This support from the OECD for the former rule gave a certain sense of legitimacy, removing pressure and haste from the compulsory legal change required to become a full OECD member (PM11).[84] With this support, the drafting phase extended for years. Although the 'social field' should have 'clearly delineated boundaries' in terms of time, purpose and a set of players (Mutch, 2006, p.156), the temporal boundary was not delineated in consequence of this OECD support.

While the official drafting was ongoing, the senior professional working with the IRS director gave a list of technical points to the drafting team based on the OECD Guidelines. In principle, this shows a higher level of separation between policy design and drafting. These 'bullet points' (PM11) ratified that the policy was to move towards a complete OECD standard (Christians, 2010b). These points were taken by the team to capture those principles in written legislation.

The drafting team comprised the three knowledgeable persons identified above. This team remained stable during the period 2006-2010. This high tax knowledge was a positive characteristic of the process commented on during the fieldwork. For example, PM15 saw this drafting process as stronger in terms of the number of people involved and the depth of the technical study carried out. The role of each member was fluid, with no clear delineation of participation

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[83] The history of Chile's accession to the OECD was as follows: November 2003, Chile applies to become an OECD member (Zúñiga, 2004); May 2007, OECD opens discussions with Chile on becoming a member (OECD, 2007a); November 2007, OECD issues 'Roadmap for the accession of Chile to the OECD convention' (OECD, 2007b); 15 December 2009, OECD invites Chile to become a full member (OECD, 2009); 11 January 2010, Chile accepts invitation to join OECD (OECD, 2010c).

[84] The OECD Secretariat informed Chile that four reforms/legal changes should be implemented in order for the Council to be able to approve Chile's membership. These reforms related to companies' legal responsibility in public officers' bravery; information exchange of bank accounts with other OECD members' tax administrations; amendment of the corporate governance of the Chilean stated-owned copper mining company, CODELCO; and private corporate governance reform (for a review, see Sáez, 2010). Regarding the information exchange clause, in December 2009, the Chilean government passed a law amending the Tax Code to meet the requirements stated in Article 26 of the OECD Model Convention to avoid double taxation (Sáez, 2010, p.106).

in the drafting. This interaction permitted the exchange of different forms of specific tax knowledge, as will be shown in Section 7.2.7.

The national director was also directly involved in the drafting whilst in office until March 2010 (PM11). During his period in office, the rule was substantially drafted by the IRS. With the new government in 2010, the tax policy unit joined the IRS drafting team but did not play a significant drafting role. These high-profile bureaucrats played a checking role (PM11, PM13), asking for the introduction/deletion of aspects from the rule (PM11). As noted by an interviewee, the tax policy unit strongly trusted the work carried out by the drafting team (PM11).

Based on the evidence collected, it can be inferred that the IRS drafting team had a high level of autonomy. No tensions were evident or acknowledged between the drafting team and higher authorities within the IRS or ministry of finance in the process. There was a collaborative approach between these two groups, in which actors did not 'vie for control' over the content of the legislation (Mutch, 2006, p.157) because its purpose was shared by everyone, which was to follow the OECD transfer pricing guidelines. Members of the IRS and the tax policy unit remained cohesive and collaborative, as will be shown in Section 7.2.7.

In 2011, the IRS drafting team experienced a change. The junior drafter embarked on other transfer pricing professional endeavours within the IRS and a new member entered the field, who brought a different form of tax knowledge, given his possession of a public administration degree and ongoing study for a law degree. This new member's participation was concerned with making comments and assessing the standard of the law rather than with drafting, as commented in the fieldwork.

The drafting process was iterative. The first versions of the rule were short, containing around three to four paragraphs and leaving aspects untouched, such as APAs, fines and yearly affidavits, which were later included (TPTA04). However, the publication of updated OECD Guidelines (2010) with the international restructuring issue inspired further modifications to the bill. Decisions on how much to include in the rule about complexity/simplicity were not a formal process, but based on common sense (PM11). All these updates

and new requirements produced around six versions prior to the final bill (TPTA04).

It may be inferred that the IRS drafting team positioned itself as the most powerful actor in the drafting stage. The drafters gained trust (a form of social capital) from other members of the IRS, which was later internalised and legitimised institutionally as a form of symbolic capital (Bourdieu, 1977). This was mentioned by a professional member of an IRS tax inspectors' association that acted as an interest group while the tax reform was under discussion. This association refrained from suggesting changes to the proposed transfer pricing rule as a consequence of this trust. The interviewee acknowledged that, since the drafting group was made up of professionals that had worked in the IRS for some time, the association 'trusted that in any way, they [drafting team] were doing what was meant to be done' (TA04).

7.2.2 Consultation

Although the IRS was now part of an expert bureaucratic holder of transfer pricing knowledge/expertise (Page, 2010), there is evidence that new knowledge and information was sought outside the drafting team from two sources. First, some technicalities of the rule were the fruit of internal consultation with other departments within the IRS and the ministry of finance. Second, knowledge and information was gathered from outside the bureaucratic field through consultation conducted by the IRS itself. It has been suggested that consultation should be conducted by a single agency, e.g. the IRS, in order to reduce problems of fragmentation and disorganisation (Burton, 2006). This transfer pricing policy process followed that suggestion.

The extra time given by this 'no pressure' change to the law allowed the IRS to conduct external consultation as a novelty in tax policy making in Chile between 2010 and 2012 (PM11). Unlike in other jurisdictions (e.g. Marriott, 2010), this consultation process was not formal or 'institutionalised' (PM11a). Although informal, this form of transparency improved the policy-making process in the terms delineated by the OECD guiding principles for regulatory quality and performance (2005), as will be shown later in the chapter.

External consultation targeted the private sector, foreign and supranational institutions and academics in varous circumstances and forms. The people and

organisations consulted may be viewed as the 'usual suspects' (Bullock *et al*., 2001, p.47). This focused consultation may be explained by the limitations imposed by the former pricing rule on the transfer pricing tax knowledge market (Hasseldine *et al.*, 2011). As Chapter Six showed, transfer pricing knowledge was highly concentrated; therefore, open engagement with the public at large would be ineffective in making better legislation (Burton, 2006). The different fields consulted in the 2012 transfer pricing policy making are discussed next.

7.2.3 Consultation with the private sector: Accounting and law consultancy firms

A senior member within the IRS conducted external consultation with senior agents in the professional services field. This individual held institutionalised cultural capital in the form of an LLM degree from a European university and a Master's in Law from a Chilean university, and had experience as a lawyer in a Big Four firm. Although it might have been expected that his power drawn from social connections with professionals in accounting and law firms would have granted enormous access to these professionals, enabling him to exert influence on the policy-making process, the way in which the consultation was conducted prevented that level of influence.

The consultation format was through a sole official meeting/focus group with a few experts in transfer pricing from the Big Four firms and a specialist firm in Chile prior to submission to the Congress (PM13, TPTA02, TPTE02). The content of the bill was not disclosed as such; instead, bullet points with the essentials of the rule were shown (PM11, TPTE02). Therefore, these professionals knew of the scope and content of the rule at the same time as other citizens. In this respect PM11 commented:

> [The professionals] *were not presented with the bill of law; it was not a white paper like Europeans do, but what was done was a presentation of the essential aspects contained in the bill* [in order to] *ask for the opinions of the most important actors in international taxation in Chile* [on] *aspects they thought were flaws, aspects they considered necessary for inclusion ... and based on these comments, some modifications were made.*

This quote shows that the senior members consulted were known to have high levels of tax knowledge or experience (TPTE03) and to be familiar with the details of their clients (PM13). As those consulted were rich in tax knowledge,

they held dominant positions in the professional services field. As the conceptual framework shows, in order to access this social space in which the most important decisions on transfer pricing were made, it was necessary to have social capital. Social capital was already present in this interaction. Very importantly, there was a conviction that these agents would not represent their clients at all (Shafer & Simmons, 2008). In this sense, their invitation was purely technically motivated. TPTE02 commented on this:

> *What is going on here is that* [invitees] *operate as specialists. The Big Four don't go to defend their clients' interests because for them it's more work as well. All this was very technical.*

The meeting revolved around the 'premiere' aspects of the rule in a general way (TPTE02), including methodologies, relationship clauses, powers conferred on the IRS, advance pricing agreements (TPTA02), transfer pricing adjustments, fines and the non-mandatory nature of transfer pricing studies (TPTE02). Those consulted seemed satisfied with the content of the rule, making only a few comments in response (PM13, TA02, TPTA02).

In addition to this formal meeting, these professionals were asked to provide more detailed comments on the content of the bill once it had been made public in the Congress. In order to do so, these experts met to discuss and review the issues contained in the bill (TPTE03) and submitted a unique joint report with their opinions. The experts proposed several amendments to the bill, from minor to substantial, which were not fully considered by the authorities.[85] They suggested the inclusion of interquartile price ranges and adjustment points in the legislation, but the authorities disagreed (TPTE02, TPTE03).[86] Other suggestions were included during the parliamentary debate prior to discussion in the mixed committee. A minor change regarding the substitution of 'profit margins' for 'operating profit margins' in the methods sub-section was accepted by the executive (TPTE02). The concept of 'inapplicability of the rule' was also removed from the bill (TPTE02). Finally, a more favourable treatment of taxpayers regarding exemption from fines was accepted and included in the last

[85] For instance, the suggestion to amend the 'resale of services' wording (TPTE02) was not heeded. Other aspects were simply not analysed by anyone in this group. One was the enforcement date, arguing that they focused on technicalities of the rule, largely as a result of the 'late' invitation (TPTE02).

[86] On this point, the IRS said that this information would appear later in administrative guidance (TPTE03). The implementation stage shows that it was included in the circular.

stage of the mixed committee debate. This treatment favoured taxpayers who, although acting in 'good faith' and 'proactive' in providing information for an audit, were non-compliant with the arm's length principle (TPTE03).

The benefits of consulting with these 'main critics' of the former transfer pricing rule (TPTE03) were acknowledged by policy makers. For example, PM12 revealed that this consultation led to a softening of the IRS approach in terms of information requirements, making the rule more practicable as a consequence. It was also commented that having these knowledgeable individuals involved in transfer pricing law making was positive. PM15 said that, as this rule was 'agreed with people that are supposed to understand much more than [other] people…, the outcome is more comparable to the standard of transfer pricing rules in developed countries' (PM15).

Despite these perceived benefits, the participation of professionals in tax policy making did not guarantee that their suggestions would be fully incorporated, as noted above. TPTE05 opined that the impact of consultation on the bill was very low if the first and second bill submitted to the Congress were compared. According to Burton (2006), a consultative model should include feedback to the participants as a way of assuring them that their views have been taken into account. Despite this novel consultation procedure, the participants were not entirely aware of the extent to which their views had been included in the bill because they were not informed directly.

In addition to this ritual interaction with professional firms, the IRS and/or the ministry of finance also participated in several seminars to exchange ideas on aspects to be included in the rule (TA02).

7.2.4 Consultation with foreign tax administrations and supranational institutions

The conceptual framework shows the existence of an international bureaucratic field. In this case there is evidence that foreign tax administrations (PM13-01) and the OECD were consulted on the transfer pricing rule in informal ways (PM11). This consultation occurred more naturally through daily interactions, as TPTA04 notes:

> *The IRS works with people from the OECD where the recurrent themes are transfer pricing, restructuring, aggressive tax planning,*

> *etc. Then, you interact, there is no need to consult formally, and based on this, you adapt* [this international practice] *to domestic reality. You also interact with other tax administrations. The IRS has technical cooperation agreements … much information was gathered based on this relationship.*

These social connections allowed IRS members to access international tax knowledge and experience to bring into the drafting process. International tax practices were included in the legislation whenever the authorities deemed them to be appropriate (PM11). In general terms, decisions on what to include were made by senior IRS authorities that managed the consultation (TA02).

7.2.5 Consultation with academics

There is also evidence of consultation with the academic field. Academics from Chilean and European institutions had a say on the content of the transfer pricing rule (PM11, PM13, TPTE03). For example, a Chilean lecturer suggested applying transfer pricing to domestic transactions as well (PM11). In this way, the draft submitted to parliament in the first place included domestic valuation (PM11). However, that suggestion was later removed from the bill in order first to achieve a good implementation of the rule in international transactions, and then to move towards further domestic improvements (TPTE02). An academic working for a European university also participated in shaping the content of the rule, as will be shown later.

In contrast to direct consultation with academics, eight academics raised their voices through a document called 'Manifesto for tax reform', the purpose of which was to contribute to the legal debate oriented to the improvement of the Chilean tax system.[87] In their analysis, the importance given to international matters was reduced. The document simply called for 'Review, order and simplification of domestic rules on tax credits paid abroad, transfer pricing and thin capitalisation and of the norms for audit in that area', without addressing technical aspects of the rule.

7.2.6 Consultation with taxpayers

There is contradictory evidence on the inclusion of multinational companies in the debate. Whilst some stated that around 'five or six' MNCs were consulted,

[87] Available at http://www.ichdt.cl/userfiles/MANIFIESTO.pdf [accessed October 2012].

being trusted by the IRS (PM13, TPTA02), other interviewees reported that companies were not part of the process, leading to dissatisfaction at their exclusion from the process (PM11, TPTE02).[88].

The specific effects of the knowledge and information gathered from internal and external consultation by the IRS and tax policy coordinator on the final legislation are illustrated in the next section.

7.2.7 Technical specificities of the rule

The new rule is contained in Article 41 E of the Income Tax Code, repealing the former Article 38. In the next sub-sections the technicalities of the rule and the reasons for their inclusion are presented.

Burden of proof

The decision on the burden of proof allocation was made by the IRS (TPTE02), with no intervention by the ministry of finance, as the rule was 'mature' when the latter took over the tax reform after 2010 (PM13-1). Interviewees recognised that, although the decision was difficult to make, the burden of proof remained with the IRS (PM11, TPTA04).

Some private-sector professionals challenged this fact, arguing that the burden of proof was now on the taxpayers. A black letter law review suggests that the new article read 'exactly the same as was contained in Article 38' on the burden of proof, as was supported by one interviewee (TPTA02). These contradictory views may be explained by the new information requirements set out in the rule. As Chapter Six has shown in detail, the IRS faced several problems due to a lack of information; in response to these limitations, the new rule required taxpayers to submit an affidavit once a year.

Documentation: Affidavit and transfer pricing studies

The rule established mandatory submission of a yearly affidavit. In contrast to Article 38's documentation requirement simply to keep records of transactions, the new rule's affidavit required information on 'the methods applied for the

[88] TPTE02 said that business associations were surprised by the rule in parliament and, as an interest group, did not have time to prepare themselves for the parliamentary debate. Otherwise, in TPTE02's opinion, the rule would have faced resistance from the private sector, resulting in its rejection in parliament.

determination of prices and values of those transactions' (Article 41 E No. 6). This was perceived to be an 'important change' as taxpayers would have to prove the methods they had used (TPTA04). Accordingly, taxpayers' transactions would be visible to the tax authority, losing the non-disclosure power held under the previous rule. Information asymmetries between the taxpayer and the IRS would then be attenuated.

A fine for failure to submit and for wrong, incomplete and late affidavits was included in the bill, the amount of which would be as burdensome and 'similar' to other sanctions established in the tax code (TA02). In this way, the new rule would be better integrated with existing regulation (Thuronyi, 1996). The IRS decided to be flexible in the submission of the affidavit, granting a single extension of up to three months. This was conceived as a 'trial run' period, but was also based on acknowledgment that the preparation of the affidavit would be difficult and costly. TA02 commented on this:

> *...but also the fact that the team had the conviction that preparing this information is quite complex, then companies, reasonably, especially in certain periods, find it quite difficult to arrange this information. When you've been involved in the issue of the audit and tax consultancy, you realise that teams within companies that work on these issues are smaller … sometimes these things are concentrated in the people from accounting* [departments] *who are not necessarily tax experts. There is a real problem … people from accounting have no idea of how prices are set by the commercial area …. they have to assume responsibilities about the information* [and the team] *knew that it was a major challenge and some flexibility was necessary.*

In contrast to the affidavit, the new rule made transfer pricing studies to support the methods of valuation optional (Article 41 E No 3; TPTA04). Instead, the rule only mandated the retention of records on the way the methods had been applied and reported in the affidavit or transfer pricing study. This meant that taxpayers would have to have 'a policy, a handbook or transfer pricing report. Otherwise they will have no support for the affidavit' (TPTA04).

At first, it was thought that transfer pricing studies should be mandatory for the taxpayer (PM11); however, IRS internal debate led to a decision that only the affidavit should be so (TPTA05) in order to keep compliance costs as low as possible. The team also researched the costs of transfer pricing studies in order to establish a safe harbour for small and medium-sized companies. To avoid additional distinctions between taxpayers, it was thought that transfer pricing

studies should be voluntary for companies to avoid extra compliance costs (TA02). The compliance cost reason was interpreted differently by tax advisors. TPTE02 said that the IRS did not want advisors to earn money with the new rule.

Senior staff checked the rule's wording, raising doubts about its certainty. This related to 'certainty' for taxpayers about how to give credit to the information contained in these non-mandatory documents (PM15). Consequently, the drafting shifted from being 'very simple and not very legal', with words that looked as if they had been 'let drop' by non-lawyers, to a 'legal and administratively procedural' organised rule (PM15). This shows how the assessment of legislation, discussed in Chapter Five, operated for the transfer pricing rule, improving its standard and practicability.

Relationships

The OECD had commented that the relationships in the former rule were too broad (PM11). Although there was not total agreement as to whether these former relationships should have disappeared in the new draft, the attempt was to move towards a full OECD standard which would contain the presumptions of the former article (TA02).

The rule included an innovative clause regarding 'consanguinity', based on marriage or kinship for consanguinity or relationship up to the fourth degree. This was a later development taken from the Spanish transfer pricing legislation, which was considered interesting during 'conversations amongst OECD delegates' (PM11). This shows how connections (social capital) with OECD delegates allowed the flow of tax knowledge to the drafting team, improving the standard of the rule (Christians, 2010a). With this relationship, the team 'made the rule more complete ... for not massive or large cases … within family businesses' (TA02).

Regarding other relationships, there is evidence that internal consultation was conducted with the operational team at the Large Taxpayers Directorate. Audit experience showed that taxpayers were abusing the rule by using methods not contained in the OECD Guidelines or in any other legislation, and experience was brought into the drafting process (PM11). The audit team suggested a new relationship called 'mirror', in which a first party had transactions with a third

party carrying out ‘similar or identical operations’ to a party-related to the first party.

Methods

The former rule was known for its uncertainty over methods. The new rule attempted to solve that flaw by following the OECD Guidelines. Between 2010 and 2011, the ministry of finance, through the tax policy coordinator, requested that the methods should be listed, defined and mathematically explained where appropriate.

Coordination was not the only way in which the methods section developed. Individual agency was also predominant. The residual method was included owing to its prominence in the OECD Guidelines, but also as a result of knowledge gained through interaction with other OECD delegates. In OECD meetings, residual methods were recognised as important in the application of the rule (PM11). Similarly, it appears that social connections allowed the improvement of the new rule using internationally legitimised practices.

Another area of discussion was about the hierarchical application of methods. Although it was initially decided to apply hierarchy, further analysis suggested that, since Chile was adopting the OECD standard, hierarchy should be dismissed (PM11).

Regarding comparability, this analysis was not explicit in the rule as a result of its dynamic evolution in recent years. Given this constant change, its inclusion would have jeopardised the rule’s lifespan through ‘obsolescence’ (TA02). At the same time, the OECD Guidelines on comparability analysis were now more detailed, and inclusion in these terms would have increased the rule’s length and thus its complexity (TA02). For these reasons, a decision was made to regulate it in the near future through administrative guidance, because having no regulation at all would leave comparability in ‘limbo’ (TPTE02). The main benefit of ruling through administrative guidance was that changes could easily be incorporated, giving more flexibility in the application of the rule (TPTA05).

The rule established the use of theoretically comparable prices, which were not defined in the rule. During the drafting process the team was aware of the possibility of finding no comparable prices for certain transactions, such as

intangibles and services, and based on comparative legislation, such as the German income tax law (PM11), the theoretically comparable concept was coined. The aim was that this comparable should be rebuilt '[f]rom the independent enterprises' rational point of view of what they would have done in this situation' (TA02). Its complexity was recognised, but through its inclusion the drafting team avoided the rule becoming inapplicable in the absence of a comparable price (TA02).

In order to challenge prices, the IRS would have an obligation to arrange a meeting with the taxpayer to prove whether the transactions had followed the arm's length principle. This request would be made internally by the operational audit unit within the Large Taxpayers Directorate. This would improve the audit process efficiency as the TPTA05 reflected:

> [The Large Taxpayers Unit] *said that if they start to explain to the taxpayer who still does not understand what this is about, in the end* [the taxpayer] *will not understand what it means to say; however, if it is formally served a subpoena because* [the IRS] *is compelled to tell the taxpayer that differences were detected … it is easier. Luckily the Large Taxpayers Unit was heard.*

This shows that internal consultation was effective in introducing changes that increased the practicability of the rule. Once the IRS had cited and challenged the prices set in transactions with related parties, the taxpayer would have to prove it had followed a traditional transaction method, transactional profit method or the residual method.

Transfer pricing adjustments and taxation

If the taxpayer was unsuccessful in proving it had followed the arm's length principle, the IRS would determine the prices 'with good reason', using information provided by the taxpayer and third parties following the OECD methods.

Interquartile ranges and adjustment points were unregulated issues and sources of uncertainty in the former rule. The drafting team considered solving this uncertainty by making these concepts explicit in the new rule; however, the OECD Guidelines, in which these concepts were not explicit, prevailed. Although this practice may be interpreted as a sign of 'symbolic violence' by retaining information (Gracia & Oats, 2012), the policy of full adoption of the

OECD standards took priority over any alternative decision. Interviewees constantly referred to the OECD Guidelines that allowed the possibility of constructing arm's length ranges in order to improve the 'quality of the comparability analysis' (PM11), adjustments to which could be calculated using various statistical techniques. To follow the OECD Guidelines, the team kept that 'broadness' in the Chilean legislation (PM11), because interquartile ranges might not be 'the best measure' (TPTA02). In such a situation, it would be better not to regulate because 'supposing all the possible cases, there is always one case that would be left out. It is impossible to suppose all cases' (TPTA02). Consequently, inclusion of the interquartile ranges in the law was seen as a 'disadvantage' because evidence suggested that countries that had followed that path had ended up with their 'arms tied' in solving certain cases (TPTA04). On this issue TPTA04 said:

> *Transfer pricing is not the use of ranges; the use of ranges is one more technical instrument in transfer pricing. So, what was said is that the use of ranges is a technique that is based on a science that is commonly used and generally accepted, and from that point of view, the courts have always embraced the use of these techniques even when they are not stated in the law…*

Although adjustment to the median point was part of the transfer pricing field doxa (TPTA04), during drafting it was felt that it did not necessarily 'respect the arm's length' principle because in certain cases the real price could be higher or lower than the median (TA02). Consequently, the median point was not included, and the IRS was asked to 'make an extra effort' in setting the prices to strictly respect the arm's length principle (TA02), giving flexibility to taxpayers and the administration (PM11).

If, as a result of an audit, price differences were detected, these would be taxed at 35 per cent plus a five per cent fine (Article 41 E No. 4). The 35 per cent tax rate was set to maintain harmony with other control rules contained in the income tax code (TA02). The five per cent fine was conceived as a way of increasing the cost of transfer pricing strategies (because the 35 per cent tax rate was equivalent to the withholding tax for dividends paid to entities situated abroad), without constituting an expropriation (TA02).[89] As noted, these rate

[89] The IRS argued that not all domestic companies intended to avoid tax, but often it was the result of a policy adopted abroad and this factor also influenced the five per cent rate (TA02).

decisions were consistent with the existing legal and constitutional framework within which the tax policy-making process developed, as the conceptual framework in Chapter Three showed.

Advance Pricing Agreements

The rule established a clause on APAs with foreign tax authorities. In these multilateral negotiations, the drafting team and the IRS thought that a larger number of databases and staff would be necessary in the national direction to implement the rule (TA02; Gould & Baker, 2002).[90]

The new rule went beyond the basic framework given by the OECD Guidelines and included a significant innovation which encouraged taxpayers to disclose their 'criteria, economic, financial, commercial reasons, among others, and methods' (Article 41 E No. 6) in exchange for symbolic recognition from the state. This may illustrate the power that the state had to nominate. Bourdieu talks about the 'mysterious power of … nomination' to refer to the 'capacity of state officials to exercise power through bestowing honours or titles, such as the titles of nobility in the Old regime' (Swartz, 2013, p.138). This recognition was to be part of a list of 'socially responsible taxpayers'. The rewards for accepting this disclosure and subsequent jurisprudence, described as a 'social good, worth being rewarded or recognised', were that companies would 'be known by others who use that [information]' and would receive a certificate from the tax collector (TA02). However, it was believed that very few taxpayers would be willing to disclose their strategic information (PM12), as such disclosure might make them vulnerable (see Section 7.4). In addition to this form of symbolic capital (potentially a source of symbolic violence), taxpayers would receive an 'economic' exemption of any interest or fine relating to price differences detected by the authority during the period in which the agreement was in force.[91]

This idea emerged from a social connection between the drafting team and a visionary academic from a European university (TPTE03). This very experienced academic (with a law degree and two LLM degrees and also a

[90] As noted in the previous chapter, the IRS had been preparing to implement the rule prior to its final drafting and enactment, with the creation of a new department in August 2011.
[91] Unless there was a tax infraction punishable with a corporate penalty, in which case the taxpayer would be removed from the list.

teacher and active researcher) met some members of the IRS drafting team at a conference, where the idea was discussed, and was ultimately brought into the process by the lead drafter.[92] This academic entered the tax policy-making field through his connections (social capital) with the bureaucrats, as the conceptual framework shows. This knowledge was exchanged for other forms of recognition, e.g. symbolic capital, which was not fully evident at this stage. However, this academic was described in the field as a good friend. This idea would meet two purposes. First, it would create jurisprudence in the matter (TA02), and second, it would feed a database helpful for other IRS processes (PM12). Interviewees commented that this innovation put the Chilean transfer pricing rule a step ahead of many other jurisdictions.

Another APA change later included related to coordination between the IRS and Customs.[93] A new paragraph showing an 'embryonic state' of integration between the IRS and Customs regarding transfer pricing was included in the bill. Whilst much more emphasis had been placed on the effects of transfer pricing on direct taxation, its impact on indirect taxation such as VAT had been neglected in the Chilean context. The IRS had attempted to follow the OECD guidelines, whereas Customs had resorted to the World Trade Organization's rules on valuation. Time was a constraint in moving forward in the integration of the two institutions regarding transfer pricing. However, one of the first 'bridges' of connection[94] between these institutions was on goods imports in the APA procedure, in which both would have to sign the agreement to reduce disagreements in terms of 'methodologies, prices and profits' (TA02).

A final change in the APA procedure related to the 'administrative silence' concept. This clause established that, if the IRS did not inform the taxpayer about the outcome of an application within six months, this silence must be interpreted as a rejection. The rationale behind this clause was to protect the state financially (TA02). Considering the small number of staff and the 'amateur' profile of the IRS at that time (PM12), it was thought that this clause would

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[92] During the interviews, it was commented that this idea did not result from a profound sociological study.

[93] According to the interviewees, this additional amendment was apparently unrelated to the comments raised in Congress (see Section 7.3) on the inclusion of Customs in transfer pricing audits.

[94] Further steps would include equal staff training for both institutions, and amendment of the rules to make them at least compatible and allow unobstructed information exchange (TA02).

prevent the state from signing a ‘not good agreement’ (PM12). PM15 interpreted this as weighing the costs and benefits, where the core question was who would bear the burden of the problem. The response was that the taxpayer would. This may be interpreted as a sign of symbolic violence.

Corresponding adjustments

The IRS would recognise adjustments made in other states with which Chile had double taxation agreements in force. The underlying reason was that, if the Chilean rule was of the same standard as foreign legislation and the IRS agreed with the adjustment, double international taxation would be avoided, making the ‘transfer pricing system healthy’ (TA02). The rule also stated that, if an amount of tax favouring the taxpayer was determined, it would be reimbursed. Although the global trend was to protect domestic revenue, the drafters pursued protection of the arm’s length principle (TA02).

Other issues not included in the final drafting

There were also other aspects originally considered but not included in the draft. One was *cost sharing agreements*, which were not included because ‘it was too specific’ and because they affected other rules in the income tax code (PM11) which were ‘very strict and very anti avoidance’ and ‘very protective of fiscal revenues’ (TA02). In this respect, the drafting team was flexible and considered that this issue might be included in the future, and that so far the new rule was very innovative (TA02).

Similar analysis surrounded intra-group services and the treatment of intangibles. In these cases, the drafting team agreed that the arm’s length principle encompassed these situations, and also that this matter was changing and there was no consensus on comparative legislation in the OECD. These ideas led to exclusion of these subjects from the draft (TA02).

The inclusion of safe harbours was also analysed, as this would benefit both the tax administration and companies; however, the drafting team preferred to respect the arm’s length principle, stating that everyone should comply with the rule in terms of the amount of transactions (TA02, PM11).

7.2.8 Budgeting

Budgeting was the last phase of the design stage. Organisationally, DIPRES comprised three individuals to construct the economic estimates: the director of the institution and two professionals. This institution largely lacked tax experts and access to information protected by secrecy clauses. For this reason, DIPRES worked in close coordination with the ministry of finance. In estimates aspects of the tax reform, three professionals within the ministry of finance prepared/checked figures. In preparing transfer pricing estimates, DIPRES worked with the IRS' department of studies. On transfer pricing, the IRS was recognised as an important holder of tax knowledge/expertise (PM09). In this scenario, DIPRES had to trust that the IRS' personnel would perform their work well and that they knew the precise cost of each rule (PM14). During the interviews, no political aspects were commented on regarding this budgeting stage.

Using macroeconomic information collected by a Big Four firm (KPMG) on how much other Latin American countries – Argentina, Mexico and Venezuela (*History of Law*, No.20.630, p.88) – had collected based on audits and/or stricter documentation requirements, the IRS extrapolated the findings to Chile using GDP percentages. The estimation procedure was as follows. The experiences of both Argentina and Venezuela were taken into account and, through the 'rule of three', the IRS reached an estimate for the first years of implementation (PM14). In other words, an average of foreign collection was made for Chile; and, for subsequent years, when there would be more experience in the domestic context with the rule in application and with the technical teams conducting audits (PM09), the Mexican situation was also weighted and included. This meant that, for the forthcoming years, the estimate included the average of these three countries. The point in time at which 'maturity' (*History of Law*, No.20.630, p.88) would be reached in the application of the rule was determined based on the IRS' expert judgment about staff and audit efficiency (PM14). These estimates were included in a note or draft subsequently submitted to DIPRES for construction of the official financial report, for which the latter was ultimately responsible.

In the preparation of the financial report, there was communication and coordination between DIPRES, the ministry of finance and the IRS. The main

aspect under discussion, and over which DIPRES had more competence, was on the suitability of the countries selected and their related estimates. Based on their 'macroeconomic' cultural capital, DIPRES argued that it would have chosen other countries for comparative purposes, such as Colombia or Peru, or more developed nations such as Australia, Canada or New Zealand as exporters of raw materials (PM14). However, the nature of transfer pricing as a tax concern prevailed over economic considerations, as the following quote reveals:

> *One thinks of those countries when speaking in macro*[economic] *terms, but here what matters is the tax aspect, and that it is something to which one's not used to. As I say, it is striking comparing* [Chile] *with Argentina and Venezuela, and that is the bias one could have, but it is a bias that did not bother* [DIPRES] *majorly* (PM14).

Recognising the limited information available, DIPRES ended up accepting and validating what had been done by the IRS, suggesting only minimal changes to the final report (PM14). Both the IRS and DIPRES adopted a conservative stance in the construction of the estimates because it was recognised that estimations on transfer pricing were difficult to make (PM11) and might be less 'robust' (PM09) than other measures included in this tax reform, as revealed by PM09 and TPTA02. Accordingly, the institutions tried not to 'inflate' the tax reform revenue estimates (PM14). This conservatism was recognised by an experienced lawyer in the professional services field, who argued that transfer pricing revenue collection would be higher than all other measures included in the tax reform if these 'new modern and very good rules are well applied' (PL01).

The official financial report included in the *History of Law* (No.20.630, pp. 83-92) is made up of two sections. The first section briefly presents the transfer pricing rule and the second presents the estimates of the bill. The estimates are shown in Table 7.1

Table 7.1: Transfer pricing estimates

Year	2012	2013	2014	2015	2016	2017
Million US$	5	40	68	95	100	105

As noted, this social space was where the policy was created, the law drafted and economic figures budgeted. From interaction with other fields through consultation and daily contact, other agents also had a voice in the drafting of the rule. The second stage that occurred in parliament is discussed below.

7.3 Legislative stage

The documents reveal that the debate held in the committee of finance of the Chamber of Deputies was limited and superficial. The reports evidence discussion in four out of twelve sessions over the whole period of parliamentary debate. This limited debate was initially reflected in the first session: after the presentation of the transfer pricing rule by the ministry of finance and budget office, an opposition deputy member of the socialist party, A, asked whether the other mechanisms related to indebtedness and investment were part of the rule (Session No.175, p.12).

There is evidence of dialogue between the executive and parliamentarians in the fourth session. Three different types of intervention may be distinguished from the documents examined: technical, implementation-based and policy framework-related. The technical concern was presented by Deputy A, who had an economics degree, had been in the Chamber of Deputies since the return to democracy in 1990 and had been a member of the committee of finance while the former transfer pricing rule was being debated. Deputy A referred to the transfer pricing rule as one of the most important aspects of the bill raising legal and economic concerns (Session No.179, p.3), arguing that, based on his knowledge, the IRS faced problems in getting to know the 'real situation of companies', and proposing that the 'burden of proof' should be on taxpayers (Session No.179, p.5). The IRS director responded that the new rule mandated the submission of an affidavit regarding transactions with related parties, and thereafter the IRS would conduct audits.

The implementation concern was raised by government Deputy B, who held a business administration degree. Deputy B asked about the IRS' organisational capacity to apply the rule, to which the IRS director responded that there would be coordination between existing departments within the IRS (in which there were experienced people that had participated for years in the OECD's Working

Group 6), and that recruitment of experienced new staff had been difficult (Session No.179, p.5).

The policy/framework concern was raised by another government deputy, C, who held a law degree and a master's degree in tax management. Deputy C asked whether the new rule really matched the OECD standard, and the tax policy coordinator confirmed that this rule followed the international standard (Session No.179, p.6).

From the extent and depth of the technical/legal discussion, it is possible to infer that tax knowledge on transfer pricing within the committee of finance was limited, as confirmed by PM02. However, there were asymmetries between committee members. For example, Deputy A displayed a higher amount of tax knowledge which became legitimate and was turned into symbolic capital (Bourdieu, 1977, 1990). This symbolic capital positioned Deputy A as a more powerful actor whose form of control was 'accepted without question' (Kraal, 2013, p.92), as noted from the response given by the tax authority. Deputy A expected the IRS' position to improve in the field, producing higher revenue collection. Additionally, it may be interpreted that Deputy A's intervention sought to alter the field doxa (Bourdieu, 1977, 1990), which was characterised, on the one hand, by high administrative costs derived from the IRS' burden of proof and inefficient audits, and, on the other hand, by the privileged position of companies in the field, leading to symbolic violence against the IRS (Bourdieu, 1990). In contrast, the two other interventions were more general, concerning the need for extra resources and the match between the OECD guidelines and the Chilean rule. From these two interventions, it may be noted that 'institutionalised cultural capital' in the form of a master's degree (Everett, 2002) did not alter the habitus of its holder nor the depth of debate of this member. This highlights the specific nature and complexity of transfer pricing legislation. Tax knowledge asymmetry suggests that experience from previous positions in the congress and/or in practice was more effective than institutionalised cultural capital in increasing the levels of symbolic capital, as noted by PM01 and PM07, as well as in discussion of the tax bills.

Two views may explain why the debate in the committee of finance was limited. The first related to the generally limited amount of tax knowledge. In PM07's opinion, this low tax knowledge had its roots in the development of the tax

profession in the country. Being a tax expert was described as a 'very odd' (PM07) profession, in which only limited training was provided by academic institutions. This limited theoretical knowledge had led to knowledge concentration in the accounting/legal firms and the IRS. In contrast, very few people in the executive branch and in parliament had knowledge of tax issues. In PM07's view, this limited knowledge was even more notorious in all regulation pertaining to transfer pricing, which led to a 'very conceptual and very generic' debate. An alternative explanation was provided by PM10, who justified this limited debate in terms of consensus about the need for a regulation based on the OECD guidelines. This second perspective may be interpreted as a sign of legitimacy of the rule, where further domestic analysis was deemed unnecessary. Nonetheless, the risk of this approach would place parliamentarians in the terrain of unaccountability for failing to regulate as their mandate required.

Regarding economic estimates, the committee of finance and parliament in general had fewer possibilities to counterbalance the executive's capitals. With additional time constraints in the tenth session, transfer pricing was presented again after its reinstatement. There is evidence that only Deputy A asked about the certainty of these tax estimates (Session No.202, p.10). The tax policy coordinator mentioned that these extra revenue figures would be collected in an advanced implementation of the rule. Regarding this type of information, the parliament had no capacity to make estimations and had to 'trust' the government (PM01).

7.3.1 Invitations/hearings

The committee of finance of the Chamber of Deputies engaged with other fields through consultation, as illustrated by the conceptual framework in Chapter Three. Those consulted or heard may be classified as 'other government experts' in the 'private sector' categories suggested by Gordon and Thuronyi (1996, pp.6-7).[95]

[95] Notably absent from the discussion on transfer pricing was another interest group, the Chilean Chartered Institute of Accountants (Colegio de Contadores de Chile A.G.). During the debate, its representatives did not refer to transfer pricing, arguing that its focus was on medium-sized and small companies that did not have this type of transaction, and that the few large companies could 'defend themselves' without any help (CA01).

The forms and amounts of tax knowledge brought into the discussion were varied, as the documents show, including economic, legal and political/procedural knowledge. Economic discussion surrounded the inadequacy of the underlying assumptions of the transfer pricing estimates (pp.11, 13-14) and the marginal contribution to revenue collection (pp.13, 18).[96] Legal discussion was present in a presentation made by a tax partner from a Big Four firm, who highlighted the modernising role of the transfer pricing rule in that it provided greater precision in its application (p.9).[97] Finally, political/procedural discussion was about the need to strengthen the tax administration and Customs to conduct transfer pricing audits (p.6); the need for greater IRS political powers to conduct transfer pricing audits, for instance, in mining companies (p.15); and the lesser powers conferred on Customs vis-à-vis those conferred on the IRS in transfer pricing audits (pp.12-3).[98] There was no evidence on the usefulness of this participatory process in educating the committee of finance members on transfer pricing specificities.

The second stage in the Chamber of Deputies operated under the highest level of structural violence – 'immediate discussion' – exercised by the executive branch. Such discussion was very much about the size of the state required to fund it, rather than on the technicalities of tax rules (*History of the Law*, No.20.630, pp.162-234). On the one hand, the opposition deputies (centre-left and left politicians) argued that the government should have looked for greater

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[96] As previously explained, Mexico was used to make the estimations and its adequacy was questioned. Mr Micco, an economist and academic at the University of Chile, attended the seventh session No.183 held on 5 June 2012. Mr Coeymans, an academic at the Pontifical Catholic University of Chile, attended the eighth session No.184 held on 6 June 2012. Mr Frigolet, a member of the economic committee of the Socialist political party, attended the seventh session No.183 held on 5 June 2012. Mr Leiva, a representative of the University of Chile's student union, attended the seventh session No.183 held on 5 June 2012.

[97] Mr Greiber, a tax partner at E&Y, attended the ninth session No.186 held on 13 June 2012. Although not referring in particular to the transfer pricing rule, he stated that some enforcement dates were unclear. As shown in the technical aspects of the rule, this was an issue at the first stage of its implementation.

[98] Mr. Frigolet, a member of the economic committee of the Socialist political party, attended the seventh session No.183 held on 5 June 2012. Mr Insunza, president of the Internal Revenue Officials National Association (ANEIICH), attended the seventh session No.183 held on 5 June 2012. Mr Thibaut, president of the Customs Officials National Association, attended the seventh session No.183 held on 5 June 2012. Mining companies might be avoiding taxes through transfer pricing schemes. In this respect, two policymakers referred to the avoidant mining companies' behaviour in relation to transfer pricing. Similarly, a tax expert in the organisational field referred to transfer pricing schemes detected in due diligence on mining companies during his career. Transfer pricing practices in this particular industry were not studied in this research project.

consensus in implementing a tax reform (p.164); that the revenue collected was insufficient (p.169); that the opposition political parties had proposed a tax reform but the government had not listened to them (p.170); that they had not been able to vote against the proposal in the first stage, otherwise Chile would not have been able to collect revenue from the tax increases contained in the bill to finance the educational reform (p.183); that voting against the proposal equated to a vote against educational reform (p.187); that they would approve the tax increases but reject the tax reductions (p.200); and that the tax reform was customised to the wishes of a government political party (p.210). On the other hand, deputies supporting the bill argued that the bill needed to be approved because it would benefit many students from dispossessed backgrounds (p.167); that the executive had accepted the opposition's ideas on introducing amendments to the current bill (pp.173-186); that it was not fair to say that the proposal did not include anti-avoidance measures, because the transfer pricing rule was included (p.178); that rejecting the bill entailed denying access to education by the poor (p.194); that rejecting the bill was 'saying NO to Chile' (p.206); and that the bill contained measures to perfect tax rules such as transfer pricing (p.229).

Consistent with the findings discussed in Chapter Five, this shows that in some cases political debate eclipsed technical analysis. Only two short statements were made by supporters of the government. In essence, there was no real debate on the transfer pricing rule in the Chamber of Deputies.

7.3.2 Consultation

In addition to the invitations and hearings, professional advice, or professional capital (Gracia & Oats, 2012, p.313), was present throughout the debate in the committee of finance and during the debate in the whole Chamber as a result of consultation. Nonetheless, these advisors were unsuccessful in inculcating parliamentarians with the transfer pricing field doxa (Gracia & Oats, 2012; Xu & Xu, 2008). In this respect, PM01 commented that:

> *To me, what is said, is that what is now included in the law is OECD standard. That was what was said, that this is the international standard, and is therefore an objective system from which the Internal Revenue Service will be able to act. This is what I liked the most about the bill because I had studied this from different* [aspects]*. Then I heard the opinion of some lawyers who told me that*

> *this has an adverse effect on the procedure itself. I am unable to tell you if it is right or not. I have doubts, not about whether you have to regulate* [transfer pricing] *but on the procedure itself. I am unable to tell you whether* [it is good or not] *on the procedural issue. I do not know, frankly I do not know. I was not left with a strong concept* [knowledge]*. It* [the process] *was mediocre. I was told by other people, who know about it, that what was approved is almost irrelevant and that avoidance will happen in other ways.*

This limited knowledge was not restricted to a few parliamentarians, but was widespread in the Chamber of Deputies as a whole and apparently even amongst their advisors. Referring not to transfer pricing in particular, but to other aspects regarding this tax reform, a tax administrator commented that:

> [Parliamentarians] *pay advisors to get notes prepared on* [tax] *aspects; but, clearly, we could see that even advisors are not well prepared and do not understand all the issues because this is not the only work they do* (TA04).

However, effective advice might have improved and influenced parliamentarians' habitus. This limited consultation and scrutiny by transfer pricing experts was criticised by a tax advisor (TPTE02), who held that it was surprising that 'the politician who does not understand' transfer pricing had not sought extra advice to learn the 'truth' in 'dry' aspects such as this. It was in this scenario of absence of tax knowledge (TPTA05) that parliament voted and approved the rule (PM13). Parliamentarians' weak position in the policy-making field was determined by the political constitution, limited institutionalised (transfer pricing) cultural capital (Everett, 2002) and ineffective 'professional capital' (Gracia & Oats, 2012, p.313). Therefore, debate and voting was influenced by political perspectives present in the habitus. The debate focused on other aspects that only represented 'one … two or three per cent' of the whole project (TA02).

Regarding the process as such, absence of discussion of particular rules may be perceived as a non-transparent form of passing legislation, through which society as a whole might interpret the rule as technically adequate.

Only three sessions were held (on 13, 14 and 27 August 2012) at the third stage in the committee of finance of the Senate. After presentation of the transfer pricing rule, the senators did not ask any questions relating to the rule. Despite the attendance of advisors to three senators, consultation seemed to

focus on other aspects of the tax reform, such as the effectiveness of revenue collection, rather than on transfer pricing (*History of the Law*, No.20.630, p.368).

7.3.3 Invitations/hearings

Other parliamentarians attended these three sessions (*History of the Law*, No.20.630, p.301), as well as several officers from the ministry of finance and budget office, other members of cabinet, researchers from think tanks, analysts from the National Congress Library, representatives of student unions, advisors to three senators of the committee of finance, advisors to two senators who were non-members of the committee of finance, one advisor to the president of the committee of finance from the Chamber of Deputies, representatives of an NGO related to education, academics from the two most prestigious universities in the country, and the former head of the studies unit of the IRS, amongst others.[99] This shows the convergence of multiple fields at the legislative stage, as illustrated in Chapter Three.

The forms and amounts of tax knowledge brought into the debate included economics and law. The economic information provided was about the effectiveness of the measure to reduce tax evasion, which no senator questioned at all (*History of Law*, No.20.630, pp.378, 381).[100] Information on the underlying assumptions used to construct the revenue estimates, including the adequacy of Mexico as a comparable country, was also presented by the former head of studies of the IRS, who stated that the transfer pricing estimated revenue was zero (*ibid.*, pp.425-6). In response to this assertion, a senator member of the committee of finance, A, asked about the methodology deployed to estimate it as zero, to which the expert responded that the estimate was calculated from data obtained from the IRS.

Legal information was presented by two lawyers who were practitioners and academics (professional services and academic fields). The first held that the transfer pricing rule was a well-conceived piece of legislation considering its technicalities (*ibid.*, p.395).[101] The second presented a chart classifying the

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[99] For the complete list see *History of Law*, No. 20.630, pp.301-3.
[100] Economic information was provided by Vittorio Corbo and Jose Pablo Arellano, both economists, who made a joint presentation representing two think tanks, Centro de Estudios Públicos (CEP) and Corporación de Estudios para Latinoamerica (CIEPLAN).
[101] Mr Selamé was principal tax partner at PwC and lecturer in tax law at the University of Chile.

transfer pricing rule as an urgent matter for regulation, and therefore its inclusion was a strength of the tax reform (*ibid.*, p.405). This second lawyer's scrutiny was technical, addressing the fact that the terminology adopted in the rule was not contained in the OECD guidelines (*ibid.*, p.406). To neither intervention did any senator ask about the impact of the rule and its technicalities, either by themselves or through their advisors.

As the evidence shows, there were no references to the technicalities of the transfer pricing rule in the discussion of the committee of finance. The lawyers/academics were more aware of the impact of the transfer pricing rule than other groups that attended.

The lack of interaction between the committee and those invited or consulted is in line with Hoffmann and Zülch's (2014) claim that parliament has less expertise than interest groups. This was evident in the absence of transfer pricing tax knowledge (PM07). As noted by PM16, parliamentarians were not expert in tax matters, and therefore a 'team of experts on different aspects' was required which would allow them to regulate in a more equitable way with the executive. Accordingly, it was possible to suggest that the Senate would improve its position in the field by receiving transfer pricing advice that would influence the senators' habitus. In relation to this tax reform, as evidenced by the list of invitees, senators made use of tax advisors to evaluate the reform and the transfer pricing rule (PM03). However, the advisors' effectiveness in inculcating senators with the transfer pricing field doxa is questionable. An interviewee dubiously said:

> *Now, I do think that it is better than the previous rule; however, if it is the optimal rule, I don't know. To be frank, I think it is better than the previous one* (PM03).

In this scenario, with no technical debate, rejection of the bill was purely political (*History of Law*, No.20.630, p.478).

Once in the senate, a senator from the committee of finance, B, remarked that, while the Chamber of Deputies had had the bill for three and a half months, they 'only have four sessions in the Senate. There has not been time even to review each article because the document has more than fifty pages' (*ibid.*, p.500). This helps to explain how structural violence in terms of time prevented

parliamentarians from discussing tax bills. Note that the structural violence was part of the legal framework that affected the tax policy making.

Similar to the type of discussion held in the Chamber of Deputies, the Senate was characterised by a political tone unable to reach consensus, focusing on revenue collection, tax decreases for high income individuals, and on one measure relating to a tax credit for education, which was considered to be regressive in strengthening the private education system.[102] Since some opposing senators agreed to approve the tax increases and reject the tax reductions, one opposition senator, C, proposed rejecting the bill to resolve disagreements in the mixed committee (*ibid.*, p.514).[103] A second opposition senator, D, said that senators had reached an agreement with the government to reject the bill in order to start the third legislative step in the mixed committee (*ibid.*, p.517).[104] Despite this agreement, Senator A argued that opposition and government never appeared to have differences and highlighted that senators had not agreed to send the bill to the mixed committee for discussion and should have voted 'yes' or 'no' (*ibid.*, p.519). This practice may be interpreted as an attempt to make the senators' decision 'procedurally' transparent (Geraats, 2001) to others, even though the discussion ended up going to the mixed committee anyway. In Senator A's words, approval or rejection of the bill would allow differentiation between opposition and coalition, and he proposed to try to reach agreement in the mixed committee (*History of Law*, No.20.630, p.520).

Finally, the discussion concluded with a decision to reject the bill – an 'idea of legislating'. This agreement was sustained by a promise to introduce further changes, such as the creation of a fund for education.

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[102] For example, one opposing senator, Mrs Rincon from the committee of finance, stated that in that instance, the technical analysis concluded that some measures were useless (*History of Law*, No.20.630, p.526). She argued that the bill was 'absolutely insufficient, almost useless' because education experts estimated that funds of around 4,500 million dollars were necessary for the education reform (*ibid.*, p.527), in contrast to the estimated collection of the tax reform (*ibid.*, p.538).

[103] The tax increases were understood as an ideological practice by one government senator (*History of Law*, No.20.630, p.534). The opposition had a majority of members in the Senate (*ibid.*, p.802); therefore, their interests were able to be objectified in the law through the approval of increases and rejection of decreases.

[104] Rejection of the bill was interpreted as a non-transparent government practice in the sense that the executive possibly did not want a tax increase (*History of Law*, No.20.630, p.553).

Although the executive branch and the Senate tried to impose their views on the reform, neither became more powerful than the other. Consensus was sought (Gracia & Oats, 2012, p.317) rather than imposed to get the bill approved. A mixed committee had to be created to resolve the disagreement between the Chamber of Deputies and the Senate.

The mixed committee sessions were attended by its ten members, five from the committee of finance of the Senate and five deputies (*History of Law*, No.20.630, p.568), nine senators and nine other deputies, senior officers from the executive branch with their advisors, and advisors to the deputies and senators. In other words, the bureaucratic, political and professional services fields concurred. At this point the executive introduced a change to the transfer pricing rule, adding a suggestion made by tax advisors regarding the removal of penalties for taxpayers who, if taxed due to a difference resulting from an audit outcome, had behaved in 'good faith' and were 'proactive' in providing the information required during the audit (TPTE03). Again, debate at this third legislative step focused on revenue collection and on the aforementioned tax credit for education. However, the bill was approved.

This hot policy debate prevented discussion of tax matters. This deficiency in the process was remarked upon, although supported, by one opposition senator, E, who argued that:

> *It's very funny, because today we are discussing an initiative which in theory improves the tax legislation. But as these greater resources are intended for education, as it was raised from the beginning, basically we ended up talking more about this than about tax legislation. And it is legitimate that this is so* (*History of Law*, No.20.630, p.810).

In accordance with the point raised by the preceding senator, and as shown throughout the whole legislative process, transfer pricing was not technically discussed in Congress. This confirms Cowley's (1995, p.94) finding that parliament 'is not a policy-making body'. Rather than discussing every point of the bill, it was perceived that parliamentarians attended the sessions with 'clear and pre-conceived ideas… they had a clear idea of stamp tax, tax on persons. They knew about some measure and it was that that they were going to discuss' (PM14). According to Wales and Wales (2012), the discussion was partisan. In addition, it had been announced that parliamentarians were going to

approve the tax increases and reject the decreases; therefore, parliamentarians would approve any measure that involved a tax increase, such as transfer pricing. It is unclear what caused the failure to discuss or approve transfer pricing. It is reasonable to suggest that the absence of tax knowledge on transfer pricing, along with the pursuit of higher revenue collections, led parliamentarians to discuss other regulations on which they had greater expertise and which would place them in a more advantageous political position in the field. Similarly to Boll's (2014) findings, parliamentarians took an oligoptic view of the proposal, emphasising revenue estimates and other measures which would have a clearer political impact than the technicalities hidden in other measures such as the transfer pricing rule. This is consistent with the idea that:

> *actors in the political field struggle for the legitimate manipulation of a comprehensive view of the social world… politicians perform the function of making visible their perceptions, their visions of the divisions of the social world, and they work to transform them into categories applicable for all (Swartz, 2013, p.77).*

It may be suggested that opposition parliamentarians (centre-left wing) approved the reform containing the transfer pricing rule because to do otherwise would have made them lose forms of capital for further elections. This is in line with Bourdieu's (1990) argument that positions in the (political) field are 'positions of possibility' because they are not static but in constant flux. As noted by Hoffmann and Zülch (2014, p.13), 'parliamentarians generally prefer to use … arguments pointing to consequences for (potential) voters, which is particularly apparent when parliamentarians express their support for proposals' (see also Levi, 1988; Profeta, 2007). Thus, the transfer pricing rule became law.

7.4 Implementation stage

Similarly to the findings of previous chapters, the implementation stage was where the bureaucratic, corporate-business and professional services intersected.

7.4.1 Implementation by IRS

Three components were identified in the IRS' implementation strategy during the fieldwork: official guidance, organisational structure and audit procedures.

Official guidance

Three official documents were issued in order to interpret and administratively rule on transfer pricing practices.[105]

Resolution – affidavit

The main problem with Article 38 was the difficulty in choosing cases to audit (TPTA05) owing to the absence or low quality (TPTA02) of information on transactions between related parties in multinational enterprises. Such was the case that, before the enactment of the new rule, the IRS thought about standardising the information requested from taxpayers through an affidavit (TPTA03). There were expectations that the affidavit would contribute information to the audits. TPTA said 'at least [the IRS] is going to have a little bit more support'.

A professional from the economic field, formerly in the professional services field and now at the sub-department of audit of the national direction of the IRS, led the process and made a decision on what to ask taxpayers. In order to make the affidavit more effective, knowledge about the layout was sourced from foreign affidavits, and also the lead professional mobilised social capital to access known professionals in the professional services field. The experts consulted came from Argentina, Colombia, Mexico, Peru and Spain. Their input was believed to capture the best international practices for translation into the Chilean context. The questions asked of these foreign professionals included: What do you think about your affidavit? What do you not like about it? What is wrong with it? What do you think should be removed from it? What do you think should be included?

Along with this template, a user's manual was drafted explaining how to complete the affidavit form. During the fieldwork, the knowledge of the professionals in the IRS was highlighted. In contrast to other tax authorities, this manual was written by people with practical experience in the completion of transfer pricing affidavits; therefore, these individuals were able to foresee the types of question the taxpayer might have when filling it in, especially for the

[105] The IRS' website contains other resolutions linked to transfer pricing: Res. 114/29.10.2012 on derivatives and Res. 115/29.10.2012 on the need to keep a technical report indicating that the derivative contracts were set under the arm's length principle.

first year of application. According to TPTA03, the drafters were very careful in the process, and tried to make it simple for the taxpayer to understand and subsequently complete the affidavit himself, without the need for a tax advisor. This shows that the IRS was interested in keeping compliance costs low, as suggested in Chapter Two.

Although the affidavit required a substantial amount of information (TPTA03), it was expected that both companies with few transactions and large companies with frequent cross-border transactions would be able to comply without professional advice. For these large entities, the main requirement for keeping compliance costs low was having their records in order. In TPTA03's words, 'the best support is the daily [practices]. If companies keep daily documents of all transactions with related parties for the authority to review them, then they will not have any problem. That's the best [transfer pricing] study.' In other words, a better connection was expected between accounting and tax records (Preston, 1989).

Once the drafting had been completed, both documents (affidavit and manual) were discussed with other areas within the IRS to incorporate relevant aspects. It was commented that the legal team, the transfer pricing team in the Large Taxpayers Directorate and the Medium and Large Companies Department had access to the documents and could make comments on them (TPTA02). In other words, knowledge and information was accessed through internal consultation. There is evidence that the transfer pricing group within the Large Taxpayers Directorate provided input on practical matters such as the currency in which to report transactions. The original form had asked for all transactions to be converted into and reported in Chilean currency, despite the fact that most MNCs kept accounting books in a foreign currency (TPTA05). However, as a result of these concerns, the format changed. The differing views of the two specialist transfer pricing units related to the fact that they were pursuing different objectives. Whilst the affidavit designers' purpose was to 'shed light on whether or not there is a transfer pricing issue' (TPTA02) and assess risk (TPTA05), the operational unit had a focus on audits (TPTA05).

Although the rule came legally into force on 27 September 2012, according to Article 38 the IRS was given power to challenge the value of transactions with related parties before this date, but was also given power to challenge the value

from the date referred to above. In this context, the IRS interpreted that the affidavit should be presented for transactions occurring during 2012 and 'made a mix' of both situations (TA02), even though the intention was to keep them separate.

Circular

The second guidance was issued by the transfer pricing department of the national direction along with the legal department (TPTA02). Similarly to the previous experience, it had the following purposes:

- Clarification of issues in the formal rule in order to complement it

  In contrast to the formal act, the circular contained some definitions and other content not included in the former, such as transfer pricing taken from the OECD and cross-border transactions. It also explained in detail what the comparability analysis was about, with reference to the OECD guidelines.

- Rules issues not contained in the formal act

  The circular made reference to the possibility of price or profit ranges and the allied concept of interquartile ranges with their benefits for improving accuracy of analysis. The circular read that, where a range existed, the IRS 'will be able to make the transfer pricing adjustment, and such adjustment will have to be made to the range point that best reflects the circumstances of the case in question'.

Regarding this type of additional information and ruling through administrative guidance, the IRS adopted a lenient perspective, arguing that the flexibility that the circular allowed was beneficial for audits. TPTA05 said:

> *No, in fact we thought that there were many things that could be mentioned through the circular and not necessarily written in the law. We often think that to say that the Internal Revenue Service could adjust to the median, mode, or some statistical tool could be mentioned in an* [administrative] *regulation or circular and not in the law, because if later the IRS will not adjust to the median and this is in the law,* [the executive] *has to make a legal change to get that out of there. Whereas, if* [the IRS] *rules through a circular, it can get it more easily removed. The more explicit it is, the more difficult for* [the IRS]*.*

Other aspects were kept identical to the article, such as relationships and transfer pricing studies.

Other concepts were explained in further detail. For instance, additional explanations were given on the suitability of particular methods for certain types of transaction. A second example related to adjustments, on which it added that the fine would not be applied by the IRS if the taxpayer provided the information requested on time, such as the affidavit and other information. This had been promised by the executive branch in passing the act.

The circular also refreshed what had been stated in 2010, that the IRS had twelve months from when the tax inspector declared he had received all supporting documentation to conduct the audit. During that period, the IRS should also arrange a meeting with the taxpayer.

In relation to APAs, the circular stated that this was an ‘alternative and in advance audit mechanism’ for transactions. The circular also made a link with a further resolution on APAs.

Although the IRS had been working on drafting the rule for a long time, the circular and affidavit were not launched at the same time as the law was enacted. This may be explained mainly by limited resources, but also by the fact that other legislative changes gained more prominence in this scenario (TPTA04). TA02 added that this was because some bills had changed significantly in parliament in the past, and having the administrative guidance ready in advance could have meant a waste of man hours.

Resolution – advance pricing agreements

Similar to the affidavit, the APA procedure was also drafted by the same transfer pricing team within the national direction. The drafting was led by a lawyer with experience in transfer pricing and was assisted by the rest of the team. The same unit that drafted the resolution would be in charge of administering the procedure (TPTA03).

Similarly to the circular, additional information was included in the resolution, such as the possibility that the IRS would offer an alternative transfer pricing study to the taxpayer for these purposes.

Organisational structure

The two departments in charge of transfer pricing were still in operation. Both remained small until a second round of interviews was completed on 8 January 2014. It was believed that these groups would remain small, which might affect revenue collection as the number of audits would be restricted (TPTA04, TPTA05). However, it was also believed that greater legal certainty in the improved law would improve the IRS' work, with fewer disagreements with taxpayers in the interpretation of the law (TPTA05).

As noted in Chapter Six, these two groups had worked closely since August 2011 and their profiles were perceived to be complementary. Regarding the professional profile of professionals within the national direction, a policymaker commented:

> *I think* [the implementation] *will never be full, precisely because the transfer pricing aspect is focused on a very specific and limited sector and taxpayers … I think that the IRS stills need to move forward to recruit more professional experts in economics* [in the national direction]*, because tax inspectors make a secondary contribution. Those who can really contribute are economists, who have an in-depth knowledge of economic values, prices and transfer pricing studies, because at the end of the day it's an economic matter. Tax inspectors might be assistants, providing analyses to support audit … not even a lawyer, he does not have much to say, except for the interpretation of how a method is implemented. And sure, we are thinking in about four or five years' time it will be fully* [implemented]*, it is a reasonable time. At that point the IRS will work fine* (PM12).

This may be interpreted as a form of distinction between the two groups, one subordinated to the other. On the other hand, the tax inspector, who conducted audits in the field on transfer pricing, must meet particular conditions to be successful in his work. Some features highlighted during the interviews were that operative tax inspectors must 'like to study' and must 'be patient' as these cases took a long time to complete. An inquisitive eye was also deemed to be desirable, as 'sometimes there are things that superficially look very nice but on breaking them down to see the sense of the operation, they have nothing to do with what is on the paper'. In this respect, the tax inspector was expected not to trust and to be clever, features that are required where there is uncertainty (TPTA05).This resonates with Tuck's (2010) finding that tax inspectors are no longer only specialists in tax but also need to meet other conditions.

Further training in several areas was deemed necessary to implement the new rule; nonetheless, the interviewees revealed variable recent training on the subject. While the group in the national direction had not received recent specific training in transfer pricing (PM11), the tax inspectors had recently participated in such training and also in English language courses to conduct audits more efficiently (TPTA05).

In addition to human resources, technology is a powerful engine in transfer pricing audits (van den Noord & Heady, 2001). Both teams had access to common databases with companies' information, contracts, etc., reducing the time taken to search these inputs to the process, but their purposes were different. Whilst the national direction team accessed databases for risk assessment processes, the operations group used this information to set comparable prices for specific audits (TPTA05).

Audit processes and the first year of implementation

There is evidence that interested parties not only tried to affect the content of the law, as noted in Chapters Five and Six, but also tried to influence its implementation. Soon after the rule's enactment, some advisors made attempts to influence the enforcement date (Hellman *et al*., 2000). These attempts, a 'type of lobbying', were based on connections such as 'friendship' and 'personal trust' previously established with the IRS (PM15). However, this mobilisation of social capital was unsuccessful and the affidavit requested information for the whole year 2012, rather than for a shorter period as requested by these lobbyists.

Three interviewees agreed that there would be no substantial change in the 'concepts, procedures and conclusions' (TPTA04) applied by the IRS with the new rule (TPTA02, TPTA05). This can be explained by the fact that audits using Article 38 had followed the principles contained in the OECD guidelines (TPTA04), as shown in Chapter 6. Therefore, the changes were more on the operational side of audits, such as in the way in which proof was constructed (TPTA04) and in the drafting of notifications/citations (TPTA02). The difference now lay in the fact that what the IRS said was written in the law, giving more certainty to taxpayers who 'feel differently' due to this (TPTA05). This perception of legal equivalence between the two articles was based on the fact

that the IRS read Article 38 through the lens of the OECD guidelines, going beyond wording to the policy or 'spirit of the law'. This was sustained by TPTA05's comment that the 'IRS read Articles 38 and 41 E and for them they are the same'. In other words, for the IRS there was a 'form of shadowy parallel [income] tax code to which only a privileged few have access while everyone else has to make do with the "letter" of the law' (Hasseldine & Morris, 2013, pp.11-12). Despite Hasseldine and Morris' argument about the 'fruitless exercise' (2013, p.12) of going beyond the literality of the law, the IRS succeeded in doing so, as reflected in revenue collection applying the former rule. Despite this knowledge and success, audits were recognised as a difficult 'art':

> [Transfer pricing audits] *are not something easy because there is no certainty.* [The IRS] *always says that this is art because they look at a transaction and set a criterion regarding it and try to convince the taxpayer who does the same. Then, in the end it is always about agreeing and hopefully that you think the same as the IRS about the transaction* (TPTA05).

Affidavits, APAs and further audits

Taxpayers who had undertaken transactions with related parties under the terms set by the resolution had to submit an affidavit reporting these transactions and the methods deployed by 30 June 2013 for 2012 transactions. As noted in the technical aspects of the rule, it was possible to ask for an extension of up to three months, i.e. 30 September, for which most of taxpayers applied (TPTA05). Although the total number of taxpayers obliged to submit this document remains unknown, 2,365 affidavits were received by the IRS (Burr, 2013).

During the compliance process, both transfer pricing teams actively cooperated with taxpayers by answering telephone calls from them and their advisors (TPTA03, TPTA05). The IRS inculcated the taxpayers with the 'new field doxa' and then standardised the procedure for the future. This cooperative approach by the IRS was perceived to be rare but necessary for this first instance. Some questions were managed exclusively by the team in the national direction, especially those regarding IT problems. For these purposes, the transfer pricing team worked closely with the IT department. The team within the Large Taxpayer Department mainly managed operational questions such as 'What do

you mean by analysed party? How do I make the calculation for this? What figure do I have to put in here?' (TPTA05).

The evaluation of the first submission was good, although it was recognised that there might be errors, as with any affidavit during the first year (TPTA03). Errors might have been unintentional, but some were caused by late submission of the document, and when taxpayers were unable to complete it, they would 'fill in any figure or zero' (TPTA05).

Up to early January 2014, the affidavits had not been revised but had only superficially been examined, with no audits under this new rule. It was expected to start revisions in February or March 2014 (TPTA05).

Regarding APA signings, few applications, including bilateral arrangements with foreign tax authorities, had been received so far and these were in the early review stages. Although the team was small and the APA workload was high, involving 'many meetings and the review of lots of information', the six-month term was perceived to have been adequate for making a decision for now. In this process, there was strong collaboration in the team within the national direction in reviewing this information. For example, two lawyers supported the work of the economists/engineers in the team who checked the figures. In general, there were Big Four firm advisors behind these APA applications; however, taxpayers were getting more involved, which was better for the process because they 'know the details of transactions' (TPTA03).

7.4.2 Implementation by taxpayers

This sub-section presents some findings following the enactment and after the first submission of the mandatory affidavit discussed above. Shortly after enactment, the analysis suggests that this first period was one of 'passivity and expectations' for some taxpayers. At one extreme of passivity, TPPT03 reported that, at the time of the interview, 'there is no preparation … there is no interest' in transfer pricing.

Other interviewees reported their expectations of the application of the rule. Two companies referred to the probability of audits. For example, TPPT01's non-intensive transfer pricing industry would not be the first target for the IRS audit, so it took a more relaxed approach to this first stage of implementation. In

contrast, TPPT02 believed that tax audits were more likely to happen from now onwards, given the information available to the IRS. In other words, these two taxpayers weighed up the probability of audits in their operations (Allingham & Sandmo, 1972).

Another aspect of expectation was reported by TPPT04's company, in which around ninety per cent of transactions were subject to transfer pricing regulation. This company was waiting for administrative guidance to be issued in order to prepare for implementation and submission of the affidavit. At a more general level, it was found that the affidavit was perceived as 'just a form, without any added value' by 42 per cent of surveyed companies in December 2012 (EY Chile, 2013).

Organisational structure and the role of external advisors

Regardless of the intensity of transfer pricing transactions, implementation involved personnel and knowledge. All companies interviewed had small tax units, as shown in Chapter Six; therefore, their limited available personnel acted as a barrier to implementation. Recognising this limitation, companies had to decide between recruiting in-house tax professionals, which was very unlikely due to costs, as reported by TPPT04, or outsourcing tax compliance activities to professional firms (TPPT04). All interviewed firms except TPPT03 were considering or had already hired tax services from a Big Four firm.

The decision to outsource depended on time and trust in technical knowledge. With regard to time, TPPT05 stated that the company's corporate accounting manager had decided to outsource to a Big Four firm because these new compliance issues were 'new, complex, and therefore need a one hundred per cent level of concentration'. These professional services firms had high symbolic capital derived from their tax knowledge and expertise; as acknowledged by TPPT02 and TPPT05, and that was the reason for outsourcing.

The importance of these firms grew in the tax field to become, for example, the 'representatives' or 'visible face' of the companies on transfer pricing matters (TPPT02). Despite the peace of mind that these firms gave to companies, TPPT02 recognised the disadvantages of low company involvement, which continued with this new legal development:

> *The negative aspect of this is that one is becoming outdated because you leave all the burden to them* [advisors]*. But in any case they come, especially now this is coming; I meet them once a month and we talk for hours about the new aspects* [of the reform]*… on what happened, what the IRS is doing and how to face the first* [transfer pricing] *audit.* [Internally they were not doing anything else] *…I am limited to practical issues. If you pay for an international advisor, that is very expensive and competent, then they take away your opportunity to train and learn and then you have to* [learn]*, not as something you need to, but as something you personally have to. Because I don't need to; I am paying the advisor very well. But how do I question them* [if I don't have the knowledge]*?*

This suggests that the accounting and law firms continued to dominate in the tax policy field (Malsch & Gedron, 2013; Stringfellow *et al.*, 2015). Some companies had responded to or resisted this domination by attempting to develop in-house knowledge through training. For example, TPPT01 provided a booklet of a course they had attended in October 2012 in South America. At a more general level, TPTE02 reported that some taxpayers had attended courses on the subject; however, their scope was very limited and with few participants. Consequently, knowledge remained low (TPTE02). In other cases, training had stopped for unknown reasons or because of limited interest in the matter (TPPT03), and in others, financial constraints acted as a barrier to embarking on further training (TPPT04).

Compliance process: Submission of affidavit

Two interviewees reported their experiences of their first affidavit submission. The affidavit format was evaluated as 'very ambitious' (TPPT01) as it collected a lot of information. As expected, companies relied on professional services firms. Both companies were advised by Big Four entities. The domestic headquarters made the decision internally (TPPT04), whilst the domestic entity (TPPT01) agreed with its headquarters to do so.

The process was collaborative and responsibilities were delimited. Companies had to provide information to advisors to enable them to prepare the economic study and later complete the affidavit form. TPPT01 reported that the tax unit had to interview internal people directly involved with transfer pricing-related transactions for a two-month period. This 'non-theoretical' information on methods and comparable prices worked as an input into the compliance process. Similarly, TPPT04 had to collect practical information about its related

parties abroad that it did not previously have, such as the tax ID, full name, etc.[106] For the latter company, the process was more costly given the volume of transactions with different parties. This highlights that the importance of the affidavit process was not just the form itself, but the 'economic analysis that supports the affidavit' (Loy, 2013).

Opinions differed on the difficulty of the process. TPPT01 described the process as generally quiet and smooth, with only a few IT problems relating to the final submission of the affidavit. It was dealt with directly by the tax advisors and the IRS, confirming the cooperative approach mentioned earlier. In contrast, TPPT04 thought the process was complex, with unclear guidance. For the latter's company, with intensive transfer pricing transactions, things became difficult and costly due to limited staff and advisors' 'high' fees. The team worked long hours with the help of a member from another department highly skilled in IT. Although working long hours may be interpreted as a form of symbolic violence (Everett, 2002), the tone of this interview suggested that it was resistance rather than acceptance. In TPTA04's view, a 'regiment' of people would have been required to perfectly prepare and file the affidavit.

Changes of practice

This process taught both companies several lessons, leading to the implementation of changes in internal practices which can be divided into three sub-groups. Firstly, there were lessons about 'consciousness'. General administrative and commercial areas that executed transactions became fully aware of the importance of transfer pricing and that prices and procedures were not dependent on 'one's will' (TPPT04).

Secondly, the significant impact of the affidavit preparation on internal practices led to acknowledgement that 'dedicated staff' were required.[107] TPPT04's area was planning to recruit a non-area member to support the compliance process,

[106] This indicates the passive approach to implementation of the previous rule.
[107] The importance of dedicated people or in-house specialists was shared in the organisational field. Francisco Lyon, partner at KPMG, suggests that this preoccupation has led multinationals to creating specific in-house pricing departments (Lyon, 2013). Indeed, the results of a survey of 350 enterprises conducted by E&Y between 22 May and 14 June 2013 revealed that 55 per cent of consulted enterprises considered that in the mid-term it would be necessary to have an exclusively dedicated internal team (Celedón, 2013).

and had also decided to put an internal member in charge of the review of all contracts relating to these transactions.

Thirdly, daily changes had been implemented. TPPT01 stated that, for certain non-standardised transactions, the company had implemented better ways to generate ‘evidence’ documentation. The other company was now requesting basic third party details that had been difficult to obtain in the affidavit process as an integral part of their daily operations (TPPT04). TPPT04 also reported more profound changes to its operations. For example, the legal department was now also involved in transfer pricing and had to validate that contracts met the legal requirements of transfer pricing. Finally, a conceptual transfer pricing guide on contracts had been drafted with the help of tax advisors, delineating how to proceed under certain circumstances with worldwide impact. The latter measure was believed to give more importance to the tax unit. All these measures had involved much work, but at the expense of ‘rigour’ in the operations. This is consistent with previous studies of how tax responsibilities change accounting operations (Lamb, 2001; Plesner Rossing, 2013).

The future

These companies did not foresee any APA application in the near future. One was very reluctant to go first (‘there is no APA yet, and we are not going to go first’) because it would be like a voluntary tax audit, which was ‘senseless’ (TPPT01). Another aspect was that professional firms were likely to continue to provide this service to taxpayers (TPPT01).

7.4.3 Implementation by tax practitioners

Organisational structure

In preparation for the new rule and in response to more frequent and intensive IRS audits, professional firms had recruited more people. In this respect, a tax expert stated that ‘in Chile there are no transfer pricing experts … nor in consulting firms; they are importing the workforce’ (TPTE05). For the first affidavit submission process, workload grew in an ‘exponential’ way (TPTE02), leading to an increase in team size. Although some firms had recruited few extra people, another stated that its personnel had grown by four hundred per cent (TPTE03). Despite these efforts, transfer pricing teams remained small in comparison with other Latin American countries (TPTE02).

In this process, the advisors' profile grew in importance within MNCs. TPTE02 reported that they ended up in the middle of a disagreement between the Chilean entity and its headquarters abroad: 'the client … makes us argue with the headquarters and transfers the responsibility to us and we end up replying to England or the US … this goes beyond the service we provide … but in the end, they agree with us. It's a technical matter' (TPTE02). This may be interpreted as transfer pricing experts being able to 'exert … a certain amount of cultural authority as shapers of opinion' (Andon *et al*., 2014, p.78) which is accepted by their clients. This closeness – social capital (Andon *et al.*, 2014) – along with technical knowledge were converted into symbolic capital, and then these experts were able to dominate the MNCs.

Perceptions of the rule

The importance of this rule had come to be seen as vital. A tax expert mentioned that 'a country without a transfer pricing rule is nothing' (TPTE01). In general, the rule was perceived to meet the requirements of a globalised world. Some lawyers opined that the rule was 'very good and very modern' (PL01), 'much more complete' (TPTE05) and more understandable (TPTE02). TPTE03, an economist, remarked on its practicality, stating that it was 'an excellent rule, very applicable. I do insist, I am not a lawyer and have a distinct view.'

A few aspects were referred to as flaws or linked to aspects not contained in the rule. Most interviewees mentioned the absence of regulation of interquartile ranges (TPTE03) and the adjustment point (TPTE02), which might cause legal problems based on the principle of legality of taxes (TPTE05). TPTE01 feared that the IRS' discretion would result in a lack of certainty on how the adjustment would be made. Although contained in the rule, a feature that was negatively evaluated by advisors was the 'administrative silence' clause applying to APAs (PL01, TPTE05).

Compliance process: Submission of affidavit

During the affidavit submission process, IRS staff adopted a cooperative stance, and this was how practitioners perceived it. As most taxpayers needed to apply for the three-month extension provided in the rule, the IRS suggested that they 'need the information you provide to be the best possible … then ask for the extension, we will approve it' (TPTE03), leading to a high percentage of

taxpayers applying for this extension. Although, decisions on how to complete the affidavit were made internally by professional firms, the IRS' cooperative approach made the process smoother, as the following quote suggests:

> *...but also we had much communication with the authority, which was open to answer our calls, and had daily contact. They were always willing to answer. All the recognised advisors had the numbers of the international tax audit* [unit] *and we sent* [our inquiries] *to them because the general call centre did not have much clarity. It was easier and more direct to try the people really involved … the people from the international tax audit* [department] (TPTE03)*.*

The affidavit template was considered to be 'good … strong … it is evident that it has been discussed, that it was discussed abroad, it is a smart affidavit' (TPTE02).[108]

The first year of implementation was positively evaluated by professionals (TPTE03). One tax advisor enthusiastically described it as 'chaotic' in terms of workload, but also 'extraordinary' in terms of profits for professional firms (TPTE02). Some firms were hopeful that the second year would also be good, which would allow them to grow (TPTE02). Chaos was linked to the fact that advisors used information provided by companies as an input for preparing all the information for the affidavit, and the companies were usually 'slow' to do so (TPTE02, TPTE03). This was because the companies were unaware of the importance of transfer pricing, internal policies, contracts and supporting documentation but 'wanted the solution straight away' (TPTE02). The process was tough, characterised by 'sleepless nights', especially for auditors (TPTE02). Firms had to relocate professionals from other tax expertise into the transfer pricing teams to meet demand (TPTE02).

In addition, tax experts had to educate their clients during the process (TPTE03). Consequently, the importance of having a transfer pricing study to support the affidavit was remarked on by tax advisors (TPTE02, TPTE03). However, there was a misconception about its role:

> *There are companies that think that the transfer pricing study is a vaccine against the IRS, that you become immune, and that is not true, i.e. the transfer pricing study is a thing you use to communicate*

[108] Mauricio Loy of EY suggests that this new rule will allow the IRS to identify companies that manipulate their multinational transactions in order to obtain tax benefits (Loy, 2013).

> *with the IRS, you can refute … but later your study ends up in the bin. That's one of the problems … that the study does not guarantee anything. The study is your argument not anyone else's. Sure, up to now attempts have been made to try to sell the study, which is very difficult … consultants have the tendency to show you that the study is more than what it really is. The study takes your price policy and justifies it, but the IRS may not like that justification* (TPTE01).

In providing this service, professional firms preferred to be fully involved in preparing the figures, selecting the methods and then uploading the affidavit, rejecting services with limited scope that just checked what in-house professionals had prepared (TPTE03).

In this first year, opportunistic professionals, referred to as 'loudmouths' (*chanta* in Chilean slang) entered the field and made profits, which was criticised by more established professionals This discrimination and categorisation of small advisors as bad advisors (Ramirez, 2009) may be interpreted as a 'rite of institution' (Bourdieu, 1991) which 'tend to consecrate or legitimate an arbitrary boundary' (Bourdieu, 1991, p.118). Rites of institution 'assign, for instance, values or competences to individuals, and these serve as signifiers with symbolic power that transform individuals in terms of how they are perceived and how they perceive themselves' (Stringfellow *et al.*, 2015, p.89). This rite attributed 'negative symbolic capital' (Bourdieu *et al*., 1999, p.185) or a stigma (Swartz, 2013, p.106). This recognised predominant position of the more established professionals may be interpreted as a form of symbolic violence exercised through language (Bourdieu, 1991; Terdiman, 1987), as reflected in the following quotation:

> *What's the problem? It is that many loudmouths showed up. I think this is an important aspect … loudmouths that truly believed that because they had read the affidavit handbook they were prepared to advise companies. This was told to us by the tax authority. We were told that the IRS could not believe that these people asked everything and in the end said 'it is because I am learning with you but I have sixty clients' affidavits to submit'. Seriously. And they had no clue and were learning. I have seen very, very bad affidavits ... there are still companies that to save two coins risk more …* [Transfer pricing] *is not learned from one day to the next* (TPTE03).

Other services offered

Regarding tax planning, advisors stated that it was a difficult service, as companies had to be entirely right in tax aspects and, when offered, the

technique was to plan within price ranges. Any other type of tax plan was difficult (TPTE02).

Another feature contained in the rule was applications for APAs, on which there was no definite consensus regarding its success. Some agreed on its benefits, especially those derived from the social responsibility clause (TPTE03). However, it might not succeed because taxpayers might not want to make their practices transparent to the authority. TPTE05 said that nobody wanted to report themselves to the IRS and reveal their price policy. Others were persuading their clients to hold off for a while as 'it is very brave being the first' (TPTE02) and it was a voluntary 'tax audit … in which you show everything to the IRS and it can tax you … you get naked [in front of the IRS]' (TPTE01). TPTE01 suggested applying for an APA only when the foreign headquarters requested it or when tax audits became 'brutal', which was not yet the case in Chile because audit teams within the IRS remained small. Another reason for failure was the administrative silence clause, making the IRS-taxpayer relationship unequal:

> *What is going on is that with this background, I do not know if I would recommend applying for an APA in the first place. The APA would not be one of my most urgent recommendations. If a client asks me, I would say 'no', not least because, being the first one … you better prepare a good* [transfer pricing] *study and plan …*[because] *I think the APA regulation contained in the law … does not have enough guarantees for taxpayers. It is asymmetric for the taxpayers* (TPTE05).

Although in some cases very few taxpayers were requesting this service (TPTE02), some advisors had received more requests and believed that demand for this service would increase, as Chile was a 'very conservative country that likes to have certainty', and also due to the benefits that the rule provided (TPTE03). Up to January 2014, none of the clients had been audited in relation to affidavits submitted in September 2013.

7.5 Summary

This chapter has discussed the tax policy-making process for the new 2012 transfer pricing rule in Chile. It has shown who the powerful actors were and how the policy reached the technical and political agenda. It has also revealed the extent of parliamentary debate, and the implementation practices of

taxpayers, the IRS and tax advisors. Throughout the chapter, the concepts of field of power, tax knowledge, social capital and two types of domination have been explored.

Chapter Eight: Conclusions

8.1 Introduction

This study has been concerned with the under-researched practice of tax policy making, recognising both its procedural/structural and social, political, organisational and cultural dimensions (e.g. Boden *et al.*, 2010; Roberts & Bobek, 2004; Steinmo, 1989, 1993). Empirically grounded in the academically under-researched jurisdiction of Chile, it has analysed the whole process through which tax legislation on corporate income tax and transfer pricing came into being. Related critical and interpretive literature has recognised that taxation is not just a technical exercise, but also an exercise of power. This study has departed from this assumption to examine how power relations shape the practices of tax law making, the resulting legislation and its implementation. In particular, it has posited the following main research question:

How do power relations shape practices within the tax policy-making field?

This question was broken down into three research sub-questions:

How does the tax policy-making process relate to the field of power across its different stages?

What is the role of tax knowledge and social capital in the tax policy-making field?

How are violence and domination manifested in the tax policy-making field?

The objectives of these research questions were explained in Chapter 4. In the remainder of this chapter, Section 8.2 summarises the key findings of this research project, Section 8.3 discusses the theoretical and empirical contributions of the study, and Section 8.4 posits some questions for further research.

8.2 Findings

A number of findings have come out of this investigation and are presented here. Although the under-researched phenomenon is that of the process through which tax legislation is created, the findings are presented separately

and recognised as constituent elements relating to why legislation and its implementation are the way they are. Although Bourdieu calls for structure and agency to be integrated (Bourdieu, 1990), promoting 'constructivist structuralism' or 'structuralist constructivism' (Alawattage, 2011, p.4), these elements are presented separately to illustrate their influence on the 'quality of tax laws' (Vording *et al.*, 2007) in Chile. These elements are both structural, and social, political, organisational and cultural.

8.2.1 Structural elements of the tax policy-making process

The Chilean tax policy-making field is structured in ways that impact on the content and robustness of tax legislation. As Chapters Five, Six and Seven have illustrated, four elements shape the design and legislative stage: the exclusive initiative of the president of the republic, miscellaneous bills, the pace of discussions ('urgencies'), and the committee system/bicameral parliament.

In Chile, the exclusive initiative to propose a tax law change resides in the executive branch, a space where the bureaucratic and political fields intersect, especially in the period covered in this research between 1990 and 2012. During this period, all presidents were members of political parties and were supported by political coalitions. In legislative terms, this entailed that the executive was responsible for the agenda/policy and the legislation created, with the freedom not to disclose the content of tax bills prior to submission to parliament. This restriction prevented parliamentarians from promoting legislative changes that might benefit the geographical areas they represented, as commented on in Chapter Five (Perez Rodrigo, 2006). In other words, the executive exercised a kind of monopoly over the pace and content of tax law changes. This was a space which external agents aimed to access in order to negotiate on matters over which monopoly was exercised, turning this space into a site of struggle. In practical terms, parliament was prevented from introducing any tax law change without negotiation with the executive.

The executive had at its disposal two other tools to control the tax policy-making field. The first was the power to decide the number of matters included in a tax bill. A bill treating a diversity of topics is known as 'miscellaneous'. Although some proposals addressed a particular policy, others simultaneously addressed changes to income tax, value added tax and other tax concerns, which masked

the importance of each provision individually analysed, as evidenced in the general tax policy-making process described in Chapter Five. As noted in Chapter 6, this tool was used to obscure the role and impact of particular provisions, eventually impinging on the 'quality of tax laws', as found in the discourse of some senators in relation to the former transfer pricing rule.

The second tool was the power to control the pace at which the congress would discuss tax bills through 'urgencies'. This second element was used arbitrarily by the executive to get bills passed in parliament at will. In Bourdieusian terms, this tool redefined the temporal boundary of the tax policy-making field regarding discussion in parliament (Gracia & Oats, 2012; Mutch, 2006), limiting the extent to which bills proposed by the executive were reviewed, both in general and in relation to the former transfer pricing rule. As this tool could be used at any point in the parliamentary debate, it also generated asymmetries of time for discussion between the Chamber of Deputies and the Senate on the former transfer pricing rule.

The configuration of the field in the legislative phase was another element impacting on the content and robustness of legislation. As commented above, the Chilean Congress does not have power to propose a tax law change. Its role is limited to approving or rejecting the content of a tax bill. If the executive wants to get legislation passed and enacted, it is forced to negotiate, and sometimes accede to, parliament's demands in order to secure the necessary votes to accomplish its goal.

Internal parliamentary legislation also impacted on how much debate was held. On the one hand, the Chilean congress is bicameral, which would appear to contribute positively to a more extensive and deeper scrutiny of tax legislation, leading to more robust legislation. On the other hand, the committee system reduces the number of participants, and hence the number of views brought into the discussion. From the fieldwork, it was noted that a large part of the overall debate was held within the committees of finance of both chambers but, for the rules studied, little or no debate was held in the whole chambers with all members. A reduced number of parliamentarians formed part of each committee of finance, implying that these members were more powerful than their peers regarding tax policy making. They had space in each committee session to approve, negotiate or reject tax proposals. This structure allowed no

discussion in the chambers if bills had been approved in the respective committees of finance unless a parliamentarian opposed further debate. This was the situation with the former transfer pricing rule, on which no extra debate and analysis was conducted in the Chamber of Deputies or Senate, exerting structural violence on other parliamentarians.

These elements may be interpreted as causes of structural violence (Farmer, 1997, 2004; Farmer *et al*., 2006; Galtung, 1969; Köhler & Alcock, 1976). Chapter Six has illustrated how parliamentarian members of the committee of finance blocked the discussion. Those dominated resisted but were defeated by the structure, influencing the debate on and possible robustness of transfer pricing legislation.

Other elements that might be considered as part of the structure included consultation procedures, which were permitted but without guidance on how these should be conducted, access to parliamentary debates, which is part of the democratic institution, and the hierarchical levels of agents participating in the process. As these elements are deeply connected with social, political and cultural factors, they are discussed below.

All these structural elements of the tax policy-making field intersect with a set of social, political, organisational and cultural elements to produce the type of tax legislation available in Chile. These other elements are discussed in the next section.

8.2.2 Social, political and cultural findings

Power, in a variety of forms, was a recurrent theme in the fieldwork, calling for greater reflection and conceptualisation in this thesis. In order to analyse this broad concept, the three Bourdieusian notions of power were deployed in the empirical chapters. To summarise briefly, in Chapter Three it was commented that power may operate in specific spheres over particular forms of capital, for example the field of power over resources (capital) and power over acceptance of social structures through the mechanisms of symbolic power and violence. The research questions and findings presented in Chapters Five, Six and Seven are explored in these terms.

Field of power

The tax policy-making process has been identified as a site of struggle over the most important decisions that affect society. In this social space, there are agents who hold a significant amount of more than one form of capital, being able to decide on the course of tax policy. Chapter Five illustrated that this site of power is where the policy decisions are made; in other words, the design stage is closely connected to the field of power. The most powerful agents identified here were those actors in the executive branch, part of the bureaucratic field, including the president of the republic, senior members of the ministry of finance and other ministries, the budget office and tax authorities, and external consultants. As noted, in this phase a number of semi-autonomous fields intersected, including the bureaucratic, political, academic and professional services fields, as illustrated in the theoretical framework in Chapter Three. While these actors inhabited this social space following democratic elections, or as a result of appointments based on the trust of the president or promotion within the public apparatus, others tried to access it to persuade these agents to make decisions that would better serve their interests through requests for meetings, sending letters and reports, publishing news on the media, and even by requesting interventions from parliamentarians aligned with the government. The empirical data shows that these powerful actors were sometimes flexible and open to changes in policy direction when additional information was useful and improved the content and effects of the relevant policy. This élite group in the executive also had the ability and knowledge to stop attempts to influence policy. Although parliamentarians were generally powerful in other legislative matters, the structural component of the tax policy-making field that grants the exclusive initiative to the president to initiate tax reforms (see Chapter Five) distanced the parliamentary debate from the general field of power. Nonetheless, it was also observed in practice that some government parliamentarians were successful ‘mobilisers of expertise’ (Page, 2010) or carriers of habitus, and achieved a change in policy direction after convincing the executive that former ideas were inadequate. In practice, there is evidence of access to the process and negotiation in this site of struggle both in general tax reform and in the former transfer pricing rule. In 2012, for example, policymakers, with the help of tax advisors, were able to access this site, preventing changes to fundamental aspects of the tax system and maintaining

the status quo. In similar terms, Chapter Six illustrated how a right-wing senator, a member of the committee of finance, supported by another parliamentarian was able to affect the content of the transfer pricing rule regarding the IRS' power to audit transfer pricing transactions. A similar situation took place in the reform of the transfer pricing rule in 2002, when parliamentarians opposed, negotiated with the executive and succeeded in limiting the scope of documentary requirements. It was been noted that the space connected with the field of power was in constant flux, allowing newcomers in after certain conditions had been met, such as technical knowledge and political compatibility in terms of ideology and ideas.

In the 1997 transfer pricing policy process, the design phase was weakly connected with the field of power due to the composition of capitals present in the executive branch. Although the executive branch had the legitimacy and political capital to mobilise social support (Swartz, 2013) in order to conduct tax reform, it largely lacked one specific form of cultural capital, technical knowledge (Gracia & Oats, 2012), which is an essential requirement for producing good tax legislation. Specifically, the IRS staff involved in the drafting and implementation of tax rules were not technically competent in transfer pricing regulation, and members of the professional services and academic fields entered the policy-making field to craft this rule. This fact demonstrates that power was concentrated not in the state, but in the field of power connected with the design phase of the tax policy process (Swartz, 2013), as discussed in Chapter Three. These outsiders had reached high positions in their respective fields in terms of tax knowledge and were politically compatible with senior members in the bureaucratic/political field, which converted into symbolic capital, securing their entrance into the tax policy-making field (Burt, 1992, 2000; Maclean *et al*., 2010; Stringfellow, 2010). However, this caused an imbalance of this form of power and tensions within the bureaucracy, which are examined below.

The 2012 transfer pricing policy and drafting processes were different. This rule was produced entirely by members of the bureaucratic field. The IRS had accumulated substantial knowledge on the subject from theory, from practical experience through the failed implementation explained in Chapter Six, and through connections with the OECD, foreign tax authorities and academics.

This social capital allowed the IRS to connect with other realms and become an expert bureaucrat (Page, 2010), filling structural gaps. The role of social capital is discussed below. As noted from these findings, two elements are required for the production of tax legislation: cultural capital, in the form of technical tax knowledge and information, and social capital. These elements are discussed below.

Tax knowledge and information

The search for technical tax knowledge and information has been a constant struggle in the Chilean tax policy-making field. Diverse strategies have been deployed in the interacting fields that constitute the tax field. In the bureaucratic field, there is evidence of attempts to increase levels of expertise through the creation of new posts in the ministry of finance filled by professionals with experience in the private sector and in the IRS. Also, time has been devoted to understand theoretically the intricacies of the tax law in general and transfer pricing in particular by reading specialist material (OECD guidelines and papers) and foreign tax codes, consulting individuals, interacting with foreign tax authorities and supranational institutions, and through formal training in order to be the experts in designing, drafting and implementing tax regulation. In the IRS, knowledge has been accumulated through the long tenure of agents in key positions, such as those relating to drafting. These practices aimed to produce expert bureaucrats (Page, 2010).

Whenever knowledge has not been internally available in the bureaucratic field, it has been sought outside from agents who have reached higher positions in their respective fields (Maclean *et al.*, 2010), mainly the professional services field. This was noted in the general tax policy-making process in Chapter Five with the creation of the post of tax policy coordinator, which has generally been occupied by individuals who had reached senior positions in the private sector, providing legal tax knowledge to the policy processes. Their experience, described in Chapter Seven, was notable, as individuals in this unit were 'reform-minded' legislators (Gould & Baker, 2002) who foresaw problems with APA subscriptions giving greater power and flexibility to the tax authority. In similar terms, the newly-created specialist unit for transfer pricing in charge of risk analysis and audits has been staffed with professionals coming from the 'worldwide' professional services field, with substantial legal, accounting and

economic theoretical and practical knowledge on how to apply the 1997 and 2012 rules.

Following the previous point, the role of people with experience was crucial in the content and robustness of the former transfer pricing rule. Technical knowledge was not part of the bureaucratic field at all levels, so external experts were brought into the policy-making and drafting phases. These consultants became hyper-agents (Maclean *et al*., 2015) occupying at least three fields: bureaucratic, professional services and academic.

In the parliamentary debate, the amount of technical tax knowledge was empirically examined in Chapters Five, Six and Seven. Parliamentarians tended to lack tax knowledge and information on the rules under discussion during the period examined in this study. This imbalanced situation, in comparison with the executive branch, was attributed to the parliamentarians' inexperience of working with tax legislation in practice, the limited economic and time resources to study tax legislation and the way tax is taught in academic curricula. The last point suggests that the academic field is also responsible for the debate and quality of tax legislation. Absence of tax knowledge, or even its misunderstanding due to the levels of complexity in the current tax code, was pointed out in practice as a reason for the limited debate and standard of resulting legislation in incremental tax reforms (Jenkins, 1989). With these facts as starting points, technical debate was generic, superficial or non-existent, and obscured by ideological and partisan debate, as illustrated in the transfer pricing price policy processes examined in Chapters Six and Seven. Another point to highlight is that the acquisition of tax knowledge through consultation with advisors and through public hearings was ineffective in inculcating parliamentarians with the transfer pricing field doxa (Gracia & Oats, 2012; Xu & Xu, 2008), increasing the imbalance of knowledge between the executive branch and parliament. This shows that transfer pricing knowledge resided anywhere but in parliament.

Tax knowledge was also required in the implementation phase. In the Chilean context, this thesis has demonstrated that the IRS was knowledgeable in tax matters, ably performing its role as a knowledge seller (Hasseldine *et al*., 2011). It was perceived by taxpayers that more competent personnel and technologies for audit were being used to enforce compliance. Regarding the 2012 transfer

pricing rule, the IRS was recognised in the market as an expert agent, equipped with the necessary information derived from affidavits and also from auditors and tax officials with a deep knowledge gained through practice to implement the rule successfully. However, this had not historically been the case for the IRS. Chapter Six illustrated that lack of knowledge at all levels prevented the creation of a rule that fully met the OECD guidelines regarding methods, and that this, combined with non-documentation requirements, caused long-standing inefficiencies and lack of control over the implementation of the rule.

The few taxpayers interviewed commented that they relied heavily on tax advisors and that they even asked for more than one opinion in order to manage risks. The complexity of general tax legislation was perceived to be a desirable feature of tax legislation as that allowed them to increase their economic capital and positions as necessary players in the field. In transfer pricing, the role of advisors was even more significant, showing the dominance of professional services firms. This finding is consistent with previous research regarding the dominance of the Big Four firms in the accounting discipline (Sikka & Willmott, 2009; Stringfellow et *al.*, 2015). The perception of the IRS' lack of control relaxed taxpayers into accumulating little or no knowledge on transfer pricing, whereas professional services firms were acquiring knowledge over the years through the increasing number of audits and the importation of knowledge from foreign staff.

In general terms, it can be inferred that tax knowledge was related to transparency, becoming a tool for domination in the 'battle' between the executive and parliament to get legislation passed. It has been empirically proved that the executive used the structural elements discussed above, as well as withholding and non-disclosure strategies, to dominate the tax policy-making field. There was a perception that information was disclosed in a managerial and summarised way, that parliamentarians were not told the whole truth, that the economic estimates were subject to manipulation, and that full tax information was disclosed only to political allies. Information was also at stake at the implementation stage. With the legislation playing in the taxpayers' favour, the IRS was in a very disadvantaged position to enforce the 1997 transfer pricing rule. Taxpayers had the power not to disclose information compulsorily through an affidavit, but only after an audit had commenced and

based on the IRS' general powers. The IRS requested information and the taxpayers provided minimal information, generally of poor quality, incomplete and erroneous, as shown in practice.

Social capital

Power derived from social connections proved to be an important factor in producing tax legislation during the design and legislative phases. Bourdieu refers to social capital in general and to its variant in the political sphere, political capital. In the context of general tax policy processes, it was noted that in practice external agents entered the tax policy field through connections, i.e. social capital, with official/structural members of the tax policy-making field. Both the executive branch and parliament consulted agents they knew (social capital) and trusted politically (political capital).

These aspects were also present in the transfer pricing regulatory processes. In the formulation of the 1997 transfer pricing rule, external members were known to senior members in the bureaucratic field (social capital) through a think tank sharing political ideas (political capital) to access the field of power discussed above. Although it was expected that accessing knowledge in this way might fill the gap in the bureaucracy and hence improve the standard of the rule, the absence of trust, a form of social capital which has been studied in the literature, as well as a belief in the over-representation of the interests of the professional services field, blocked the impact of the input into the content of legislation regarding documentation requirements. The absence of documentation and information involved a big struggle between tax authorities and taxpayers in the implementation phase, as noted empirically in Chapter Six. In parliament, excessive trust reinforced by the structural violence commented on above limited the extent of debate, affecting the robustness of the rule. High levels of trust between members of the general chambers and members of the committees of finance diminished the extent of discussion in parliament, potentially affecting its robustness. Note that the content of tax legislation cannot be modified in the National Congress without a negotiation process between the latter and the executive branch, as discussed above.

Effective mobilisation of social capital was positively linked with the standard of the 2012 transfer pricing rule. During the design and drafting phases, access to

trustable sources – individuals belonging to the professional services, international bureaucratic, political and academic fields – allowed the IRS to improve the content and standard of tax legislation in aspects such as more beneficial fines regimes, improved and innovative relationship assumptions, and innovative methods to encourage information disclosure in APA procedures, as illustrated in detail in Chapter Seven. However, social capital (including political capital) was insufficient to improve the robustness of the legislation, as noted in the parliamentary debate, in which those consulted were unsuccessful in inculcating parliamentarians with the field doxa, as discussed above. In summary, it can be inferred that technical knowledge (an aspect of cultural capital) and social capital were relevant elements in producing good legislation, as noted in Chapters Five, Six and Seven.

Also important, but less evident, was the role of social capital in the implementation of tax regulation in Chile. A general aspect to highlight is the relationship between tax authorities and taxpayers. As noted in Chapters Five and Six, it was observed that tax authorities were well-perceived and trusted by taxpayers and tax advisors, which was relevant to tax compliance. The relationship between taxpayers and their advisors also deserves some space in these conclusions. Tax advisors protected their reputation (symbolic capital) through a strict adherence to legislation, avoiding unnecessary risks to become trustable sources of professional capital (Kurunmäki, 1999). In the transfer pricing implementation phase, it has been noted that this close relationship, sustained by trust (social capital) between taxpayers and tax advisors, was a constant over the years, granting dominance to specialist firms.

Domination and symbolic violence

Throughout the study it has been shown that some agents were able to dominate in each phase of the tax policy-making process, deriving their power from the amount and composition of capitals they had. The IRS, through its powers conferred by the Organic Law to draft, implement and interpret the legislation, as explained in Chapter Five, dominated in the tax policy-making field at more than one stage. The IRS had converted its capitals (e.g. economic, tax knowledge, information and trust) into symbolic capital, which legitimised its practices. An example of this symbolic power is that, in the 2012 drafting stage, interest groups did not challenge the IRS regarding the content of the law as it

was perceived that the course of action taken was correct. The IRS also attempted to dominate at the implementation phase through extensive interpretation of the law (Hasseldine & Morris, 2013), threatening taxpayers with shaming and international loss of prestige for non-compliance with the spirit of the law contained in the OECD guidelines. The IRS' domination was also present in issuing the 1997 and 2012 transfer pricing administrative guidance, aiming to extend the content of the law in its favour and remaining silent on other unregulated areas, thus maintaining the level of uncertainty in the field and exercising a form of symbolic violence, as suggested by Gracia and Oats (2012).

The role of specific individuals should not be neglected. Actors in the bureaucratic and political fields converted their cultural and social capital into symbolic capital, enabling them to dominate in their respective practices: the 1997 transfer pricing policy design in the case of the deputy minister of finance; the 1997 transfer pricing debate in the case of the two opposition senators; and the 2012 drafting and implementation teams in the case of the IRS. The junior tax advisor was an actor who, although he had converted his tax knowledge and social capital into reputation to access the 1997 transfer pricing policy process, was unable to dominate due to political barriers within the bureaucracy, where there was a perceived over-representation of professional services firms.

The findings also suggest the existence of rites of institution (Bourdieu, 1991), which attributed 'values or competences to individuals ... that transform individuals in terms of how they are perceived and how they perceive themselves' (Stringfellow *et al.*, 2015), favouring government parliamentarians. The executive provided these parliamentarians with additional tax knowledge and information in order to approve tax bills and dominate opposing parliamentarians in the debate in the National Congress. This form of distinction between government and opposition parliamentarians and its acceptance as an intrinsic feature of the tax policy-making field may be interpreted as a form of symbolic violence. This masked the authority of the executive branch and a tacit form of supremacy of government parliamentarians throughout this process.

There is also evidence to suggest that tax advisors were dominant actors in the transfer pricing field. This domination was exercised by not accepting any types

of professional service but only those over which they had full control from beginning to end of the process, denying their professional capital (Kurunmäki, 1999) and exercising symbolic violence (Gracia & Oats, 2012), given that taxpayers had no other choice but to consent to such domination in order to report their transactions. Acts of symbolic violence by tax advisors were also exhibited in the use of language (Terdiman, 1987). Established professionals used derogatory language – 'loudmouth/*chanta*' – to distinguish themselves from newcomers or beginners and maintain their dominance in the transfer pricing field, creating the belief that others were unable to render a good service (Ramirez, 2009).

8.3 Contributions

Firstly, in response to particular calls made in this respect (e.g. Lamb, 2001; Oats, 2012), this study adds to the growing body of literature on tax practice in its operating context. Most critical tax research in practice has examined the effects of tax legislation on society once in place. Other scholars and researchers have examined the 'behind the scenes' of tax policy-making; however, they have either referred to legislation in general terms, disregarding its specific technical effects in practice (e.g. Heij, 2007; Steinmo, 1993; Wales & Wales, 2012), or, in examining particular tax policy processes (e.g. Marriott, 2010), they have narrowed their analysis to a specific stage of policy-making. In contrast to the limitations of these studies, this research has examined both general income tax and particular transfer pricing legislation across all stages of tax policy making, providing additional insights into this practice (Gould & Baker, 2002) and illustrating how specific policy processes produce legislation with certain characteristics. This analysis of transfer pricing is timely and contributes to current debate and policy, especially with increasing interest in the subject given the profit-shifting phenomenon addressed by the OECD through the Base Erosion and Profit Shifting (BEPS) project (OECD, 2013a, 2013b, 2014a, 2014b).

Secondly, the empirical contribution of this study is based on interviewing 'good participants' (Meadows and Morse, 2011, p.193), or 'élites' (Mulligan, 2008, p.323; Wacquant, 1993, p.19) with substantial experience of different stages of the process who were able to provide exceptional and first-hand insights. Some of these insights were captured shortly after a tax reform was promulgated in

Chile in September 2012, which allowed the researcher to obtain from these interviewees clear and detailed accounts of why certain courses of action had been taken. Similarly, a second round of interviews was conducted shortly after the first stage of implementation of the transfer pricing rule, which allowed the interviewees to provide recent views of their experience. This qualitative interpretive work overcomes the limitations of positivist qualitative research on the tax policy-making process (e.g. Freedman, 2013; Richardson, 1994; Sawyer, 2013b).

Thirdly, this study has introduced Bourdieu's theory of social practice as a novelty in tax policy-making literature. By combining structural elements of the tax policy-making process, such as the different stages and other specific elements of the Chilean context, discussed in Chapter Five and reinforced in Section 8.2.1, with Bourdieu's three notions of power – power in specific spheres (field of power), power over resources (capitals), and power as acceptance and domination (symbolic power and violence) – a unique theoretical framework has been constructed and consistently applied to analyse and interpret the findings in Chapters Five, Six and Seven. Mobilisation of these theoretical constructs has allowed the researcher to answer the three theoretically-informed research questions.

Finally, the tax policy-making phenomenon addressed in this research project is directly linked with the daily practices of various actors (bureaucrats, politicians, parliamentarians, professionals, etc.) and, as such, has the potential to have a direct influence on how practices are executed in reality when making and remaking tax legislation.

8.4 Further research

This study has some limitations that might be a motivation for other researchers to conduct research in the practice of tax policy making. Firstly, this thesis focuses only on direct taxation. Although the transfer pricing legislation enacted in 2012 cursorily referred to indirect taxation, the process failed to include a detailed regulation on it in the provision. Accordingly, useful insights might be gained by analysing processes in the introduction of value added tax and excise duties. This might enhance scholars' and policymakers' understanding of how to formulate and enact better regulation.

Secondly, this study has been concerned with the Chilean democratic experience of making tax regulation in the period 1990 to September 2012 and the subsequent implementation in June/September 2013, with a clear distribution of powers between the executive, legislative and judicial branches. An interesting alternative study might be a study of tax policy making under dictatorships in Chile or other countries in order to examine how different forms of power produce legislation with certain features.

Thirdly, this study is limited to tax policy making in Chile, where the operation of institutions, broadly speaking, and culture may be different from interactions found in industrialised nations with the same holistic perspective adopted by this study. Further research in industrialised countries also adopting a critical-interpretivist approach would enrich our understanding of tax policy-making practice.

Fourthly, this study has examined the practices of a small number of MNCs. More diverse views might be obtained from a larger study on how these entities apply transfer pricing legislation or other provisions in Chile, using either face-to-face interviews or surveys.

Methodologically speaking, further research could be carried out through ethnographies as well as with reference to other data sources. Chile, for instance, has started to film and broadcast parliamentary sessions in order to legitimate its practices through greater claims to transparency. Video analysis might focus on other aspects neglected in the examination of words from documents and interviews.

Theoretically, as noted above, this research has drawn on Bourdieu's theory of social practice. Different insights might be drawn from mobilisation of other theoretical frameworks, such as new institutional sociology or historical institutionalism, or other social theorists, as some researchers have suggested (e.g. Llewelyn, 2003; Irvine & Deo, 2006).

Appendices

Appendix 1: Regulatory Impact Assessment

Regulatory impact assessment (RIA) is part of the smart regulation state (OECD, 2002) and, as such, is a coherent and mandatory type of administrative procedure used to evaluate how and to what extent proposed legislation (primary and/or secondary) affects stakeholders, economic sectors and the environment (Radaelli & De Francesco, 2010). This evaluation may take place before or after the implementation of regulation, although it is usually used before (Radaelli, 2010), and its scope of analysis is broad, including: the effects of administrative burdens, compliance costs or complex cost-benefit calculations; economic sectors ranging from type of firm competitiveness to the economic impact of regulations at large; and the effects of regulation on public administration (Radaelli & De Francesco, 2010).

RIA is used in problem definition, in identifying the range of available options, in the process of consultation, in the classification of benefits and costs, in plans for monitoring and review, and in the choice of options on the basis of decision-making criteria such as cost effectiveness, minimisation of administrative burdens, cost-benefit analysis ratios, and thresholds (Radaelli, 2010). RIA has been used in law-making processes in Europe (Radaelli, 2010) where, through independent evaluation, it has been found to be embedded in policy formulation processes (Radaelli, 2010).

Appendix 2: Fundamental Transfer Pricing Concepts

Market behaviour (Plesner Rossing, 2013) is operationalised through the arm's length principle contained in Article 9 of the OECD Model Tax Convention (OECD, 1992) to avoid double taxation.

- Arm's length principle

  This principle states that when two divisions or business units within an MNE undertake internal transfers of goods, services and intangibles, the price charged should be that set if the transaction had been between independent parties.

  The OECD (2010a, p.131) argues that the complexity of some transfer pricing issues and particular situations under analysis may lead to differences in the application of the arm's length principle and the subsequent determination of prices. Accordingly, these price differences raise uncertainty in the determination of the final tax liability for companies and authorities (Rogers & Oats, 2013). Other problems arise because a market price may not exist (Chan & Chow, 1997) or because transactions may share some common elements but are different (Eden *et al.*, 2005). Although many countries have attempted to follow the OECD standard, regulation across countries may differ, increasing uncertainty in the application of the principle (Cools & Emmanuel, 2007).

- Comparability analysis

  This is the core of the OECD methodologies (Adams & Coombs, 2007). It consists of comparison between a controlled transaction – within an MNE – with an uncontrolled transaction(s) – between independent parties.

- Transfer pricing methods

  In the determination of prices, some methods are deemed to reflect the underlying arm's length principle well. Two categories of method are distinguished: the traditional transaction method and the transactional profit method. The traditional transaction method has three sub-categories: the comparable uncontrolled price method (CUP), the resale price method and the cost plus method.

The CUP method ‘compares the price for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances’ (OECD, 2010a, p.24).

The resale price method is ‘based on the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. The resale price is reduced by the resale price margin. What is left after subtracting the resale price margin can be regarded, after adjustment for other costs associated with the purchase of the product (e.g. custom duties), as an arm’s length price of the original transfer of property between the associated enterprises’ (OECD, 2010a, pp.28-9).

The cost plus method uses ‘the costs incurred by the supplier of property (or services) in a controlled transaction. An appropriate cost plus mark-up is added to this cost, to make an appropriate profit in light of the functions performed (taking into account assets used and risks assumed) and the market conditions. What is arrived at after adding the cost plus mark-up to the above costs may be regarded as an arm’s length price of the original controlled transaction’ (OECD, 2010a, p.26).

Transactional profit methods include the transactional net margin and transactional profit split methods. The former ‘examines the net profit margin relative to an appropriate base (e.g. costs, sales, assets) that a taxpayer realises from a controlled transaction’ (OECD, 2010a, p.30). The latter ‘identifies the combined profit to be split for the associated enterprises from a controlled transaction … and then splits those profits between the associated enterprises based upon an economically valid basis that approximates the division of profits that would have been anticipated and reflected in an agreement made at arm’s length’ (OECD, 2010a, p.28).

- Burden of proof

Burden of proof is a legal term used to denote the duty imposed on a party to prove or disprove an assertion. Regarding transfer pricing, the allocation of burden of proof differs amongst OECD countries. In most cases, the tax authority proves or disproves the validity of a transfer pricing argument. In other cases, taxpayers bear the burden of proof (OECD, 2013a, p.134).

- Documentation

  The guidelines provide some recommendations for tax administrations in designing rules and procedures on documentation to be requested from taxpayers. It also provides some guidance to taxpayers on identifying helpful documentation to show that their transactions have followed the arm's length principle and to facilitate tax examinations.

  Although the tax administration has the burden of proof, it may oblige the taxpayer to submit some form of documentation (for example, an affidavit) to allow it to examine transactions adequately. It is suggested that the tax administration should not request documentation that is unrelated or costly to obtain or generate.

- Transfer pricing compliance practices

  In the implementation of transfer pricing rules, the OECD (2010a) acknowledges that domestic practices dominate. However, all these practices tend to reduce non-compliance (e.g. withholding taxes and information reporting), provide positive assistance for compliance (e.g. education and published guidance) and discourage non-compliance with penalties which should be in accordance with the whole tax system as a percentage of the unpaid tax.

  Tax audits are more difficult than other audits. These audits are described as 'fact-intensive' and require difficult analysis of comparability, markets and financial or other information (OECD, 2013a, p.133). In such circumstances, the administration may require specialist staff, and the procedures may take longer (OECD, 2010a, p.133).

  The application of the arm's length principle does not entail a certain unique price but a range of prices in certain circumstances. Judgments of the authority and taxpayers may differ and, as a result, different methods may be considered appropriate. Given these conditions, tax administrators are called to be flexible and not expect unrealistic precision from the taxpayer. Tax administrators should also take the business reality into account during the analysis (OECD, 2010a, p.34).

- Corresponding adjustment

  A corresponding adjustment is ‘an adjustment to the tax liability of the associated enterprise in a second tax jurisdiction made by the tax administration of that jurisdiction, corresponding to a primary adjustment made by the tax administration in a first tax jurisdiction, so that the allocation of profits by the two jurisdictions is consistent’ (OECD, 2010a, p.25).

- Primary adjustment

  A primary adjustment is ‘an adjustment that a tax administration in a first jurisdiction makes to a company’s taxable profits as a result of applying the arm’s length principle to transactions involving an associated enterprise in a second tax jurisdiction’ (OECD, 2010a, p.28).

- Secondary adjustment

  A secondary adjustment is ‘an adjustment that arises from imposing tax on a secondary transaction’ (OECD, 2010a, p.29).

Appendix 3: Codes Developed in NVivo

Principal codes	Sub-codes
Decision-making process in the executive	Audit processes Consultation Trust Transparency Coordination Drafting Negotiation Organization Debate Tax policy design Budgeting Quality of law Tax knowledge Field of power
Decision-making process in parliament	Consultation Trust Transparency Elections Quality of law Coordination Consensus Organisation Tax knowledge
Decision-making process by the IRS	Audit process Trust Transparency Organisation Consultation Quality of law Coordination Consensus Organisation Taxpayers Advisors Tax knowledge Administrative costs Administrative guidance
Decision-making process by taxpayers	Audit process Information Transparency Organisation Quality of law Tax advisors Tax administration Behaviour Implementation Tax knowledge Compliance costs Administratvie guidance

Decision-making process by tax advisors	Audit process Information Transparency Organisation Quality of law Taxpayers Tax administration Implementation Tax knowledge Compliance costs Administrative guidance

Appendix 4: Interview Topics

Design stage

Tax policy design

Who participates in this stage?

What factors do you consider in tax policy design?

Do you consult? Whom? How?

How transparent is the process?

What is the role of trust during this stage?

Do you consider taxpayers' behaviour at this stage?

What coordination is there with other entities?

Drafting

Who participates in this stage?

How is drafting carried out?

What considerations are made during drafting?

How is the quality of drafting assessed?

How and why was transfer pricing drafted in this way?

How was its quality assessed?

Do you consult? Whom? How?

What coordination is there with tax policy makers?

Budgeting

How is the budgeting process conducted?

Who participates in budgeting?

What consultation and coordination are there with other entities?

How was transfer pricing budgeting conducted?

Legislative stage

What do you know is done when a tax bill is received?

How do you know that the quality/purpose of the bill has been assessed?

Who participates in this exercise?

Do you know if consultation is carried out? How? Why?

How is consensus reached with other policy makers?

What is your perception of the transparency of the process?

What is the role of trust in debating tax regulation?

What is the role of political parties in passing tax regulation?

Implementation stage

Tax administration

How is this unit organised? Number of people and roles?

How is administrative guidance issued?

What do you think about the quality of the law?

What do you do when the law is uncertain?

How are audits conducted?

How is the relationship with taxpayers managed?

How is the relationship with tax advisors managed?

Taxpayers

How is this unit organised? Number of people and roles?

To what extent do you use administrative guidance?

How do you comply with the rule? Compliance costs?

How is the relationship with the tax administration managed?

What do you think the transfer pricing rule is?

How do you manage that quality?

How was the first submission of an affidavit for you?

What was the role of tax authorities and advisors in this first stage?

Tax advisors

How is this unit organised? Number of people and roles?

To what extent do you use administrative guidance?

How do you manage your relationship with taxpayers?

How do you manage the relationship with the tax authorities?

What is your opinion about the tax law-making process?

What do you think about the transfer pricing rules?

How do you manage that quality?

How was the first submission of affidavit for you?

What was the role of tax authorities in this first stage?

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