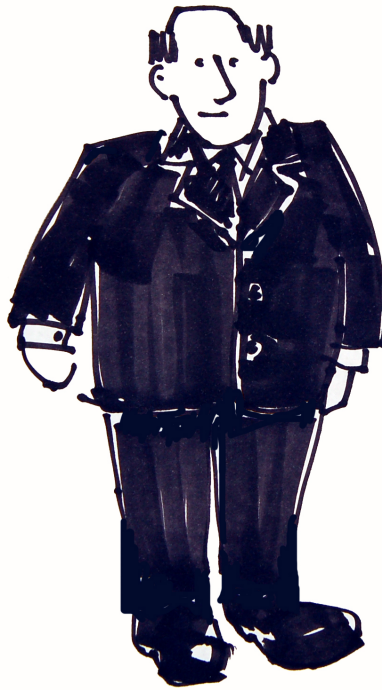


{TRM} Dictionary

“**CFO**” means something like a UFO when it comes to tax risk management **{TRM}**, because many **CFO**’s often believe that tax is an “in due course” risk that should only be considered reactively. That’s why this book has been written, for you the **CFO** to, hopefully, see otherwise and end up saving your business from an Enron-styled embarrassment. Nearly 30% of SOX 404 material weakness reports to the SEC show tax accounting as the problem. No other subject matter scores as high.



“**Forensic Tax Accountants**” means a team of CA’s or CPA’s and, possibly also, ex-Revenue Service officials, skilled in conducting internal tax audits.

“**Legal Privilege**” in broad terms, is a special legal safeguard protecting the taxpayer in situations where any information disclosed to an attorney for advice is secret and confidential and may not be shared (under compulsion or otherwise) with an outside party, where litigation was contemplated at the time the information is shared with the

attorney. Any information disclosed under the **legal privilege** is privileged and protected and cannot be used in evidence (including civil disputes) against the taxpayer. To take advantage of this position, an attorney must be instructed in the **{TRM}** process and be appointed as the agent of the taxpayer. Any third parties contracted through that attorney, in the execution of duties on behalf of the taxpayer, will also be covered by the **legal privilege**. This includes other members of the **tax team**.

“Legal Team” means a small team of lawyers (usually an attorney, with an assistant) skilled in tax risk management **{TRM}**, collating facts and evidence, and possessing Revenue Service related negotiating experience.



“Legitimate Expectations” is the close neighbor of a right, and is a legal doctrine derived from English law that should find application in many other jurisdictions. It is a legal doctrine entitling taxpayers to rely upon any practice or interpretation published by the Revenue Service, as if these practice or interpretation publications are as binding as the law itself on the Revenue Service, unless the content of these publications are clearly contrary to the law.

“Letter of Findings” means the letter issued by Revenue Service officials, pre-revised assessment giving detailed account and reasons for their particular findings after a Revenue Service investigation or audit of a taxpayer’s tax affairs. The taxpayer should always be given an opportunity to respond in writing to the **letter of findings**.

“Off-the-radar screen” means those **tax risk** areas determined after analyzing compliance, operational, transactional and financial accounting areas under the **legal privilege**. This examination is usually done by the **tax team** and **forensic tax accountants** by interviewing key personnel in various business areas. Once identified, all relevant facts are compiled fully, including explanatory memoranda, opinions, views, agreements and correspondence, and are submitted to the **legal team** and the **tax manager** for initial **tax risk** assessment, and are then placed before the **tax team** for review, after the appropriate **opinion sign-off**, if necessary.

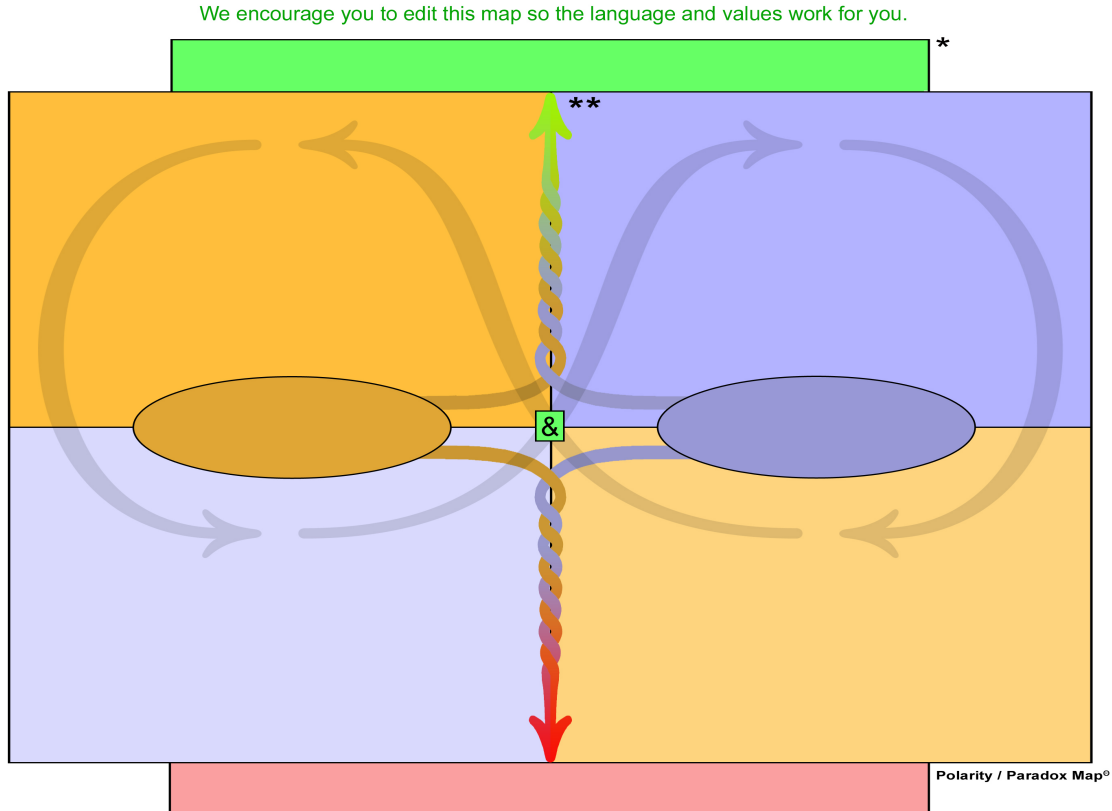
“On-the-radar screen” means a collection of all current tax issues and queries outstanding with the Revenue Service, and known to the Revenue Service. These might, for example, be outstanding tax returns and all outstanding or current queries or audits with the Revenue Service. After compiling an internal list, with the relevant supporting information, the Revenue Service should be requested to provide any outstanding items it might have. After drawing a comparison between the two lists, the outstanding **on-the-radar-screen** can be worked through by the **tax team** with the aim of achieving a **soft outcome** and a **Revenue Service sign-off** with the appointed **Revenue Service Representative**.

“Opinion sign-off” means obtaining confirmatory written opinion, subject to **legal privilege**, by at least one tax specialist opining that the **tax risk** area has been properly and legitimately examined, and arguably falls, within a reasonable interpretation of the tax law in question, in favor of the taxpayer. Such an opinion, if positive, will be used in the future to stop any criminal prosecution (there being no criminal intent present), penalties and interest.

“Polarity Management” is a process applied to a series of problems that cannot be solved, but can only be managed so as to minimize any negative consequences. It is

based on the concept devised by Barry Johnson PhD which addresses unsolvable problems (such as ongoing tax risk). More information can be obtained from polaritymanagement.com.

Tax risk can only be managed on an ongoing basis, and not solved. Not permanently, because of the dynamic nature of tax. The process of Polarity Management entails determining the positive and negative side of, say, reactive–vs.-proactive tax risk management, where the two processes are constantly intertwined at some point in a business’s day-to-day operations. The solution lies, not on finally solving the problem, as it constantly moves ahead of itself, but in managing the interaction between reactive and proactive tax risk management, attempting to hold the business in the upper left and right quadrants, and away from the lower quadrants. As soon as the process moves into one of the lower quadrants, a method must be implemented to push it back up to the upper quadrant. That way, the problem is managed efficiently and effectively, on an ongoing basis.



In the Polarity / Paradox Map© above, the left two quadrants represent reactive tax risk management, and the right two quadrants represent proactive tax risk management. The top two quadrants represent a higher purpose for reactive and proactive tax risk management, displaying the positive effects of these processes. The lower two quadrants represent a deeper fear for reactive and proactive tax risk management, displaying the negative consequences. The paradox between reactive and proactive tax risk management, is ongoing whilst the tax manager must consistently respond to tax problems, as well as implement a proactive early warning system, is rendered in the map. Starting at the proactive top quadrant, proactive tax risk management means using a tax team to identify, analyze and solve or manage tax risks. Moving down to the proactive lower quadrant, however, in practice, the tax team may not always work coherently as a result of, for instance, the urgency of a matter and there may be no satisfactory solution. Following the infinity loop into the top quadrant for reactive tax risk management, the tax manager may have to step in on his or her own and react to the tax risk problem immediately, so as to solve or manage the problem. If this starts happening too frequently, the tax manager's functions, following the infinity loop down to the reactive tax risk management quadrant, may become totally reactive, as he or she starts to "kill fires" again. Again, following the infinity loop into the top right-hand quadrant, the reaction is to empower the tax team again properly. And so the diagram maps out the ongoing intertwined relationship. The aim is to keep the infinity loop mainly in the two upper quadrants, so as to manage the continuous process with a predominant positive, higher purpose, outcome. This process will become clearly once Chapter 1 has been read.

"PNAL" means "pay-now-argue-later", a concept entrenched in most tax legislation which provides that tax remains payable by a taxpayer pending any tax appeal, despite the taxpayer objecting to the assessment.

"The Revenue Service Representative" means **the Revenue Service representative** appointed as the contact point with Revenue Service throughout the tax risk management **{TRM}** process.

“The Revenue Service sign-off” means a settlement agreement under the appropriate provisions of the tax statute to an agreed assessment, an advance tax ruling or agreement by exchange of letters.

“Soft outcomes” is the goal of the **legal team** in addressing contentious **tax risk** areas with the **Revenue Service representative**. Here emphasis is placed on moving away from a potential dispute scenario to arrive at an agreed assessment, with minimal penalties and interest exposure. Any possibility of criminal prosecution falls away. This approach emanates from the taxpayer embarking upon a self-disclosure process with the Revenue Service, and an attempt by the **tax team** achieving a **Revenue Service sign-off**.

“Tax manager” means the person in charge of tax compliance in the business who, after reading this book, may acknowledge that another 60% tax liability is lurking in the historical annals of the business under transactions, financial accounting and operations. If this person takes their work very seriously, he will attempt to convince the **CFO** that a tax risk management **{TRM}** strategy is appropriate sooner rather than later.



“Tax risk” is the concept that must be recognized by business organizations in response to internal and external stakeholder demands, whilst continuing to meet business objectives and goals. Primarily it is a cautionary measure to avoid possibly serious adverse financial consequences. It can be divided into two broad areas: internal and external **tax risk**.

External **tax risk** occurs through ongoing legislative and regulatory changes and new case law, giving rise to changes in application and interpretation of tax laws. Often businesses fail to keep abreast of these changes.

Internal **tax risk** can be classified as follows:

- Transactional **tax risk**;
- Operational **tax risk**;
- Compliance **tax risk**;
- Financial accounting **tax risk**;
- Management **tax risk**; and
- Reputational **tax risk**.

By failing to effectively and efficiently manage transactional, operational, compliance and financial accounting **tax risk**, management and reputational **tax risk** is also created.

“{TRM} Strategy” means the **tax risk management {TRM} strategy** for the business, updated at least every six months, as described in Chapter 3 below.

“Tax Team” means the team involved on an ongoing basis with the planning, implementation and execution of the tax risk management **{TRM}** process. The **tax team** usually includes:

- the **CFO**;
- Tax manager**;
- a representative from each operating division or subsidiary;
- the **legal team**;
- a representative of the **forensic tax accountants**;
- a representative of the Auditors; and
- a representative of the current tax advisors,

acting as tax steering committee for the execution of the tax risk management **{TRM}** process. Sometimes the latter two representatives only get involved once all initial problem areas have been identified. They will make recommendations, via the **CFO**, to the board of directors, through the audit committee. Their initial function will be to determine (together with representatives from each operating division) the **tax risk management {TRM} strategy** to assist in determining their tax risk areas. Thereafter the implementation and execution of issues arising is carried out with regular reporting to the audit committee.

“Tax Query Questionnaire or TQQ” means the set of questions set out below. All or some of these questions are to be given to the Revenue Service to complete before providing them with any information (other than the appropriate tax return) where they make a request, without giving complete details what the enquiry is about, or for, and whether or not the information, documents or things to be supplied, is mandatory. The **TQQ** must emanate from the **tax manager**. Any Revenue Service response must be

reviewed by the **tax manager**, under appropriate circumstances, with the assistance of the **legal team**. The **TQQ** will ensure that proper administrative procedures are adhered to by the Revenue Service. The **TQQ** is as follows:

- State the authority, giving the specific sections of the legislation, for the solicitation of the information that you require?
- State whether the disclosure of the requested information is mandatory or voluntary. If mandatory, why?
- State what penalties may/will result from non-compliance in furnishing the information you have requested?
- State the principle and specific purpose for which the information requested is to be used in any and all capacities?
- State the routine uses which may be made of the requested information or any other use to be made of the requested information?
- State the effect on the taxpayer for not providing the Commissioner or its officials with the information requested?
- Explain and show that the investigation involved is of the kind authorized by legislation?
- Explain how and why the demand for information is not too vague and broad in scope?
- Explain and show that the information sought is relevant or material as a lawful subject of this enquiry?
- Explain why and how the investigation is pursuant to legitimate purposes?

- Explain why and how the enquiry for information may be relevant to the purposes?
- Show and prove that the information is not already in the possession of the Commissioner or its officials or cannot be obtained from other sources?
- Show and prove that the Commissioner or his officials has determined that this further examination is necessary?
- Show and prove that all other administrative steps as required by law and your practice, have been followed?
- Show and prove that after initial investigation, the Commissioner or his officials have determined that a further examination is necessary and warranted?
- Show and prove that the taxpayer has been properly notified that further examination is necessary?
- State exact reasons in detail for the examination of the specific year/s for which information is requested?
- State whether there is any misconception and/or a mistake in the tax return for the specific year/s in which the information is requested?
- State exactly where the mistake lies, or if in fact, that one exists?
- Specify exactly which items of income or expenses are in question on the tax return, if any?
- State why the specific income and/or expense item is in question, or needs to be examined, if any?
- Explain why and what issue in law or fact is being questioned?

- State the name, address and telephone number of any person or persons informing you of any questions or concerns involved in any item or tax return or any activity of the taxpayer?
- State exactly what was said, either verbally and/or written concerning any item, tax return or activity of the taxpayer by any person(s) informing or directing you to conduct an examination directly or indirectly?
- State and prove that the taxpayer is not being subjected to an examination based on/or for any political, ideological, harassment, pressure, tactic or bad faith purpose, and is not being singled out for prosecution as an example to other taxpayers for any reason?
- State and explain why the examination cannot and will not amount to an inquisition or arbitrary enquiry on the part of the Commissioner or its officials?
- State and explain why you feel that the taxpayer is not being subjected to unnecessary examination or investigation?
- State the exact methods used, either past or present, to gather information concerning this taxpayer, and whether information was gathered through the use of unusual means?
- State whether the verification of specific deductions would be the limited scope of the examination?
- State whether the Commissioner or his officials would be prejudiced against the taxpayer who arranges his affairs to minimize tax as the law permits?
- Show and prove to the taxpayer how the Commissioner or his officials have jurisdiction over any subject matter concerning the taxpayer, or the parties that the taxpayer conducted business with?

- Show and prove that the Commissioner or his officials have established sufficient jurisdictional facts to bring the taxpayer within the ambit of the legislation so as to shift the onus of proof to the taxpayer.

“{TRM}” means **tax risk management {TRM}** as described in this book.