

TROUBLESHOOTING

Tax and Customs Administration, citizens and conflict files

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Summary

The Dutch Tax and Customs Administration maintains some 400 files of taxpayers and/or tax advisers relations that have been heavily disrupted. Work on these files on average takes up 0.5 FTE per file per year for a period of over 10 years for reasons other than the legal aspects or the facts of the matter being highly complex. The citizens that figure in these conflict files often tend to display non-standard behaviours. It is difficult for the individual official to properly respond to such behaviours, which may sour the relationship even further.

A team of researchers of the Tax and Customs Administration and Hiil Innovating Justice analysed the characteristics and the behaviour of the parties figuring in these disputes, the effects thereof and the interventions performed thus far. They also developed a number of tools to improve the processing of these files. These tools also seem to be applicable to less severely disrupted relations and to be useful to other government bodies.

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1 Introduction

Over the course of performing our duties as conflict management experts of the Tax and Customs Administration we encountered a number of files featuring relationships between the Tax and Customs Administration and the citizen that had grown extremely problematic and that seemed to revolve more around elements of the conflict itself than around the actual legal or factual matters in dispute: conflict files. Conflict files seem to be primarily about aspects related to the communication, relationship, feelings, emotions, attitude and behaviour, both rational and irrational. We met with the officials/inspectors burdened with these files. Processing these conflict files eats up energy; energy the staff members involved could have otherwise expended to work on other, possibly more productive, tasks. Neither the Dutch Tax and Customs Administration nor other domestic or foreign government bodies seem to possess administrative information, knowledge and insight, or centrally organised expertise on dealing with conflict files to any substantial degree. Over the course of an initial scan, we were able to identify 130 of such files, both open and closed, within the Tax and Customs Administration. We started to wonder how many more of such files there might be within the Tax and Customs Administration and the government in general. How much does the processing of such files cost? Why do they exist? And, most importantly, is it possible to improve the processing of such files, making it more efficient, more effective and more comfortable to all parties involved? This study was conducted, in cooperation with the HiIL Innovating Justice research institute, established in The Hague, to find an answer to those questions. This report describes in short the relevant literature (chapter 2), the research structure and method (chapter 3), the research results (chapter 4), the discussion of results (chapter 5) and our conclusions and recommendations (chapter 6).

For the purposes of the research, we defined a 'conflict file' as follows:

A file - including all organisational resources and processes involved - concerning the relationship between the government and a citizen, the processing costs of which cannot be justified by the substantive (factual or legal) complexity, featuring at least two of the following indications:

- *The file is experienced by the processing staff involved as being highly burdensome and having an emotional component, be it in terms of manageability, work satisfaction or otherwise;*
- *The total processing time expended by the staff involved in processing the file (including the department, the State Advocate, etc.) is on average more than 0.2 FTE annually or 1 FTE or more over a period of 5 years;*
- *The file features 10 or more instances of escalation (complaint, objection, appeal, application, claim, etc.) in a period of 5 years.*

Three examples from our files database:

1. File A since 1989, 2 meters thick, 0.2 FTE per year; counterparty is a married couple; constant postponement behaviour with respect to all processes, including in appeal, upon the court refusing further postponement: challenge of the judge; dozens of objections, appeals, appeal in cassation over 30 times, complaints; advisers changed; inspectors consider the counterparty to be manipulative and intelligent. No effective control/coordination by the Tax and Customs Administration. Conflict management not called in, for "things had not escalated".

2. File B from before 2000, 1 meter thick, 0.5 FTE per year from 2008 onward; counterparty is a consultant; amount and type of income unclear, everything disappears in an international jumble of companies; frustrates all processes; complaints, appeal cases, State Advocate; suit on reversing the burden of proof lost by the Tax Administration; inspectors consider the counterparty to be elusive and

"unfathomable"; arrogant, charismatic, megalomaniac, rapid mood swings; advisers changed. Inspectors criticise the internal coordination and control.

3. File C since 2008, well over 50 cm thick, 0.1 FTE per year; counterparty complains exceedingly often, 400 letters, writes to everyone crossing their path; also attached placards to the Tax Administration's office, complaint to the police; hardly no fiscal interest; emotional, grim, threatening language, burdensome to the complaints handler; counterparty evades all attempts at direct communication. The Tax and Customs Administration reported the affair to the police, but the Public Prosecution Service does not want to prosecute. The counterparty does not keep to their agreements, "for things get back in my head that way, and have to get out".

2 Literature

2.1 General

In preparation for the research we consulted general literature on the causes of conflicts and the ways the parties - including third parties - involved deal or can deal with them, on complex and persistent conflicts, on the conduct by governmental bodies and authorities in dealing with disputes and conflicts with citizens, specifically also in the context of taxation and the associated psychological issues.

We also consulted the literature on the citizen embroiled in escalated conflicts with the government (and other parties). We were unable to discover any research directly similar to our research into the costs of processing such conflicts. The general assumption is that these conflicts are expensive to the government, both on the personal level of the inspector and as concerns the costs to society. Yet, at the same time, it is unclear how many conflict files exist within the various government bodies, how much processing time goes into them and how processing can be improved. The research reports and literature (hereinafter jointly to be referred to as: the 'literature') listed in the below contain many more references to further sources.

2.2 Conflict systems and conflict resolution

The literature on the causes of conflict and on conflict resolution generally presents two perspectives: that of the neutral observer of the conflict who studies and/or applies the causes of conflict and the related intervention methods, and that of optimising one's own role as a party to the conflict.

Conflicts occur between people. Subjective aspects are crucial: the development of a conflict is based on whether the parties experience the situation to be a conflict and how they communicate about it. Both parties to a conflict in principle avail of a great many interventions to either escalate or de-escalate the conflict. The same applies to neutral third parties like process supervisors, mediators and the courts.²

2.3 Complex and persistent conflicts

The literature on complex and persistent conflicts primarily focuses on two archetypal forms of conflict, namely conflict between spouses and conflict between population groups. These conflicts are sometimes also referred to as the 5% impossible conflicts, intractable conflicts or ongoing serial

² Refer to, inter alia, Folkman S, Lazarus RS, Stress, Appraisal and Coping, Springer, New York, 1984; Watzlawick P, Beavin J, Jackson D, De pragmatische aspecten van de menselijke communicatie, 1986/1994, Bohn Stafleu van Loghum, Houten/Diegem, fourth printing 2001; Canary D, Lakey S, Strategic Conflict, Routledge, New York, 2013.

conflicts; they have their own, distinguishing characteristics and feature highly negative dynamics.³ The parties develop very negative, deeply rooted perceptions of one another, ensuring that the other cannot do anything right in their eyes; they are trapped in conflict. It goes without saying that such conflicts are immune to standard interventions like "having a proper talk". Interventions can best be aimed at having parties accept the complexity of the situation and making the conflict tractable and at the same time at seeking out as many ways as possible to work towards de-escalation.

2.4 Bureaucracy conflict behaviour

Government bodies have great difficulty dealing properly with persistent complainants and litigants. Many different explanations for this are provided in the literature, from the theory of the bureaucracy preferring quiet, method and order, via Galanter's notion of the repeat player, to the theory of the government itself being an organisation displaying pathological characteristics.⁴

The individual government official, too, has difficulty dealing with citizen problem behaviour. This is mostly due to them being incapable of doing so, instead of unwilling: they lack the necessary knowledge, skills and time. Still, they also are insufficiently willing to expend energy to deal with troublesome files.

A lot of research has gone into the best way for governments to levy taxes.⁵ Generally speaking, many disputes and conflicts can be prevented if a high taxpayer compliance rate exists. Compliance can best be realised by having a system of responsive enforcement, based on trust, in place. The citizen in this connection attaches a great deal of importance to procedural justice.

2.5 Persistent complainants and litigants

There are two Dutch studies that also focused on the characteristics and behaviour of people who went to complain to the National Ombudsman.⁶ The quantitative part of these studies focused mainly on indications of the number of persistent complainants, with less attention to the associated processing costs. The National Ombudsman has released a guide on how to deal with people who complain overly often.⁷ The Dutch literature available on persistent litigants focuses on two well-known cases: Winterswijk and Dordrecht.⁸ These sources assume that persistent litigants are exceedingly costly to the government and focus on the judicial settlement of the cases by the municipal authorities and the courts.

We found a number of foreign research reports on the topic of persistent litigants and troublesome complainants: two studies performed within ombudsman offices in Australia in 2004 and 2009 and a study of the complaints body of the Scottish police from 2011.⁹ These studies primarily focused on

³ Mayer B, *Staying with Conflict, A strategic approach to ongoing conflicts*, 2009; Coleman P, *The five percent, Finding solutions to seemingly impossible conflicts*, Public Affairs, New York, 2011; Canary & Lakey 2013 supra

⁴ Jong, J de, *Dealing with Dysfunction, A conceptual, theoretical, and empirical exploration of problem solving in public sector bureaucracies*, Zijlstra Center, Amsterdam, 2012

⁵ Kirchler E, *The Economic Psychology of Tax Behaviour*, Cambridge University Press, Cambridge, 2007

⁶ Jacobs W, *Klagers en veelklagers bij de Nationale Ombudsman*, Gouda Quint bv, Arnhem, 1995; Dijk JJ van, Leeuw FL, Choenni R, *Klachtenprofielen, trefkansen en intermediairs*, De Nationale ombudsman tussen 1985 en 2006, in *Werken aan behoorlijkheid*, Boom Juridische uitgevers, Den Haag, 2007 p. 297-325

⁷ National Ombudsman, *Het verhaal achter de klacht, Effectief omgaan met lastig klaaggedrag*, 2013.

⁸ Refer to, inter alia, Willems-Dijkstra TA, Leek DT van der, *Misbruik van (proces)recht in het bestuursrecht, Onevenredige werkbelasting door veelklagers*, NTB 2013/7.

⁹ Lester G, Wilson B, Griffin L, Mullen PE, *Unusually persistent complainants*, *British Journal of Psychiatry* (2004), 184, 352-356; New South Wales Ombudsman, *Unreasonable Complainant Conduct Project Report*, New South Wales Ombudsman, Juni 2009; Skilling G, Øfstegaard M, Brodie M, Thomson L, *Unusually Persistent Complainants against the Police in Scotland*, 2011 commissioned by the Police Complaints Commissioner for Scotland;

the qualitative aspects of persistent complainants, including on the early warning signals for the possible escalation of the conflict, and paid less attention to the costs associated with dealing with persistent litigants.

Anglo-American research literature pays a relatively great deal of attention to vexatious litigants.¹⁰ This phrase is used to denote citizens who, put simply, often take a matter to court on unreasonable grounds.¹¹ Many Anglo-American countries have legislation in force to prevent such suits from being brought.¹² The relevant arrangements have in common that the court may, on the basis of various standards, order that the citizen concerned can, in future, only initiate new proceedings if the court has granted its approval. Not many citizens have been deemed to be vexatious litigants.

In the Anglophone, Francophone and Germanophone countries a lot of literature on the behaviour, psyche and personality of the persistent litigant and persistent complainant exists. From studying this literature, we found that a wide variety of behaviour is shared under the terms 'persistent complainant' and 'persistent litigant', while an equally wide range of possible explanations is provided. Yet for all that, very little distinction is made between deranged or sick minds, fault-finders, people with non-standard behaviour or a non-standard way of communicating, troublesome or otherwise, citizens assertively fighting against 'the system', bona fide do-gooders, Don Quichottes, citizens who honestly and understandably seek justice, whistle-blowers, etcetera. The general view seems to be that persons who complain or litigate overly much are deviants who fail to keep to the social, psychological or legal agreements in force. However, the definitions of deviant and non-deviant are closely bound to context.

3 The research

3.1 Research structure; hypotheses

We formulated the aspects to be researched in the following main research question: How can the costs of processing conflict files be made more tractable? The following sub-questions were formulated: What are the characteristics of a conflict file? How are such conflict files currently being dealt with? How much processing time is currently required per conflict file? What are the most important elements increasing or lowering the costs of processing these files? What early warning signals can be identified in the literature? What are the effective interventions for a specific file or situation?

The most important hypotheses tested in the research are, in brief, as follows: The external processing costs follow from the interaction between the behaviour of the parties involved. One party displays a certain behaviour, which at times can be a highly specific one, that is insufficiently well responded to by the other party. In consequence, a conflict arises, which continues to escalate for as long as the parties fail to respond adequately to the special behaviour, the special circumstances and/or the special situation. This escalation causes the processing costs to rise. Specific conflict interventions are required to bring down the processing costs, or at any rate to prevent them from increasing even further. The interventions to be performed depend on the nature, the scope and the escalation level of the conflict.

¹⁰ Refer to, e.g., Productivity Commission 2014, Access to Justice Arrangements, Inquiry Report No.72, Canberra, section 12.3., for many references to other sources.

¹¹ These litigants are also being referred to as 'frivolous filers' or 'querulent litigants', as persons suffering from 'querulent paranoia', who submit 'unmeritorious claims' and/or commit 'abuse of process'. Many florid descriptions of the person or their behaviour can be found in the media, the source literature and in court decisions.

¹² The United Kingdom paved the way with its Vexatious Actions Act 1896.

3.2 Research method

Preliminary to the research we selected 100 of the approximately 130 conflict files we identified within the files of the Tax and Customs Administration for our research. This selection became the research population. To answer the research questions and test our hypotheses, we designed and performed the following actions:

- The official or officials primarily responsible for processing each of the 100 individual files were interviewed. During these interviews, the officials would tell their stories, providing information on how the conflict arose - if known - and progressed, the views, emotions and expectations the officials had, complications within the organisation and notable happenings. The interview reports are often supported by reports of meetings, e-mails, etcetera.
- A structured questionnaire was drafted and submitted to the official or officials primarily responsible for processing each of the 100 files. The questionnaire contained questions on many data concerning the facts of the case, like the number and types of escalation steps, the cause of the escalation, the term the file had been open for, the processing time, demographic data, interventions performed, the deployment of conflict management services and the attention provided to the file by management. Where there was a lack of concrete data, the officials gave an estimate. In addition, it contains 94 questions on the actions taken by the counterparty and 36 questions on the actions taken by the Tax and Customs Administration or the processing officials. For each question, the frequency of the action and the degree to which such action disrupted processing had to be stated. All data were entered into a database and systematically analysed.
- The researchers reviewed the paper and/or digital files themselves, amongst others to investigate whether the situation as described during the interview plausibly matched the written data.
- Nine semi-structured interviews were held with counterparties, amongst others to learn about the other perception which is always present in escalated conflicts.
- On the basis of the information we gathered and the resulting insights, and following consultations with the inspectors involved, we made a conflict diagnosis for 13 files and drew up an intervention strategy, laid down in a processing plan, for these files. Next, we monitored the effectiveness of the resulting interventions. We conducted this action research during some 9 months.

4 Results

This chapter presents the most important research results. What is striking in these results is the regular occurrence of extremely low and, in particular, extremely high outliers for each file such as 0 contact moments; a case that has been ongoing for 23 years; one action present in 99 of the 100 files; etcetera. To improve readability, we will not list median values, only averages.

4.1 Conflict files: number, scope and term until closing

In the above, we indicated that we identified some 130 conflict files during our preparatory work for the research. Well over 100 of these files were still open; the remainder was closed.

We at a later point directly asked 300 staff members into the presence of conflict files.

On the basis of the total response obtained, we concluded that some 400 conflict files are ongoing within the Tax and Customs Administration. From our talks with representatives with, *inter alia*, the Employee Insurance Agency, municipal authorities and the National Ombudsman, we obtained the view that some 1,000 conflict files exist within the remainder of the Dutch government.

On average, a conflict file was 282 centimetres thick. This includes converted digital files. Once the five extreme outliers on both ends - the most extreme outlier measuring 70 meters - are excluded, the average came to 155 centimetres.

The average time until the file could be closed was 11.4 years for the open and closed files taken together. This average was partly based on estimates provided by the inspectors of the time it would take for currently open files to be completed.

4.2 File escalation phase

At the time the research was conducted, of the 100 cases reviewed, 10 files were at the escalating phase, in which the processing of the file is still becoming more burdensome, while 44 were in the escalated phase and 26 in the de-escalating or closing phase; 20 files had already been closed at that time.

4.3 Tax interest

The average annual tax interest per file was calculated to amount to EUR 80,000.

A number of inspectors estimated that, on average, about half of this amount is actually being collected by the Tax and Customs Administration and that this figure may rise to some 90% of the amount if the case is dealt with properly.

4.4 Resources and processes

Income levy was disputed in 94% of the conflict files, turnover tax in 41% of them, corporation tax in 34%, payroll taxes in 24% and benefits in 7%. The conflict occurred in the following processes: inspection (41%), declaration processing (67%), objection processing (75%), appeals processing (73%), collection (55%), internal (53%) and external complaints processing (32%), coordination (24%) and management (16%). Civil-law issues played a part in 36 of the 100 files and criminal-law issues in 29 of them.

4.5 Number, type, result of escalation steps; contact moments

We investigated how often the counterparty performed certain actions and what the result of those actions were. We referred to those actions as 'escalation steps'. By using this term, we do not seek to state an opinion on the causal relationship leading to the conflict escalating or on the legal and/or relational justifiability and rightness of the actions concerned. On average, in the files studied, a notice of objection was submitted 13 times, applications for judicial review were submitted 9 times, appeal procedures started 6 times and appeal in cassation procedures started 4 times. A complaint was filed with the Tax and Customs Administration an average of 4 times per file. In total, some 60 complaints were filed with the National Ombudsman and a like number of requests under the Government Information (Public Access) Act were made. Rounded to the nearest multiple of ten, an individual inspector or the Tax and Customs Administration as a whole were held liable 90 times, penalty claims were submitted 80 times, another type of objection, application for judicial review or judicial demand was filed 130 times, the Tax and Customs Administration or a staff member were reported to the police 50 times, letters were sent to the department, parliament, the King or Queen, etc. 130 times, and other formal actions were taken 170 times.

On average, each file featured 44 escalation steps.

Given an average completion time of 11.4 years, this amounted to some 4 escalation steps per file per year.

We asked the inspectors how often the Tax and Customs Administration was found to be in the wrong in procedures on secondary, substantive, procedural and/or formal aspects and in complaints on its conduct. The possible answers ranged between 'never or almost never' and 'always or almost always', with the options of 'not applicable' and 'unknown' also being provided. Disregarding for now

these last two options, with respect to procedures, the answers provided were 'never or almost never' (80%), 'sometimes' (14%) and 'regularly' (4%). Similar answers were provided with respect to complaints: 'never or almost never' amounted to 93% of the answers, 'sometimes' to 4% and 'often' to 3%.

According to the inspectors, 5 contact moments (face-to-face, by letter, by e-mail, etc.) between them and the counterparty took place per file per month.

4.6 Demography of the parties involved

For 90% of the 100 files we investigated, the counterparty, or at any rate the main contact of the counterparty, was male. 88% of counterparties was aged over 50 and 33% was aged over 65. For about half of the cases, the counterparty has completed higher education. The highest level of education completed was unknown in 37% of the cases.

16 counterparties were occupational tax consultants.

For 57 of the 100 files, the inspectors stated that the counterparty was embroiled in one or more other private or business conflicts, with other government bodies or otherwise.

Of the primary responsible officials interviewed, 85% was male and 70% of them was aged over 50. Of the officials, 79% served at the higher vocational and university level, respectively.

4.7 Number of inspectors

In total, 216 inspectors were interviewed, or some 2.2 inspectors per file. These respondents estimated that, in addition to themselves, over the period concerned - i.e., the escalated phase or, if applicable, the 12 months prior to the start of the research - a total 652 other inspectors were involved, or an average of 6.5 other inspectors per file. This means that, in total, an average of 8.7 inspectors were involved in the substantive processing of the file over the period concerned. This included officials responsible for each of the resources and processes involved with processing the file, including complaints handlers, departmental staff, etcetera.

4.8 Processing costs and expenses in time and euros

The processing time spent on the conflict files has been calculated using two methods. First, we asked the inspectors we interviewed how much time they themselves had spent working on the file over the period concerned, and how much time the other inspectors involved with the file had spent. This resulted in a total average of 0.7 FTE per year. In addition, in collaboration with a number of respondents, we investigated the processing time per centimetre of paper file. This method resulted in a total average of some 0.25 FTE per year. Based on these two approaches, a supposition of the average manpower spent working on a conflict file amounting to around 0.5 FTE per year seems to be a sound assumption.

The processing times results were converted into costs in euros on the basis of the average salary of the inspectors involved. Assuming work on a file takes up 0.5 FTE, each file costed EUR 38,500 per year, or EUR 440,000 for the entire period until closing of the file. This calculation does not include *opportunity costs*, in terms of additional tax proceeds gained, in these and other files should it have been possible to more effectively deploy these experienced inspectors.

Based on the 400 files present within the Tax and Customs Administration and the 1,000 or so files present within other Dutch government bodies, and assuming that the files studied are representative, total annual processing costs of these files amount to some EUR 15 million for the Tax and Customs Administration and EUR 38 million for the other Dutch government bodies involved in these cases. To the costs in these files need to be added the costs incurred by the judiciary, the National Ombudsman, the State Advocate, etcetera.

4.9 Emotional burden experienced by inspectors

We asked the inspectors: "What emotion or emotions do you most readily feel when you think about having contact with the counterparty?" In total, emotions were identified 240 times. Over two thirds of the emotions named were mainly negative: irritation, frustration, powerlessness, despondency. 14% of the emotions experienced mainly related to the counterparty as a person (pity, amazement) and 18% of emotions were mainly positive (challenge, satisfaction, informative). The inspectors regularly felt insufficient support in their negative emotions from their managers.

4.10 Counterparty behaviour

We asked the inspectors 94 questions about the behaviour of and circumstances related to the counterparty that, in principle, would be disruptive to the processing of the file and that we identified in the literature and/or in the first, open analysis of the files.

We asked after the frequency of such behaviour and the degree to which such disrupted the process. So as to compare the frequency of certain behaviours we indexed the answers. The same goes for the level of disruption.

Measured in this fashion, the inspectors were on average faced with troublesome behaviour 273 times per file. This corresponds to 27 different types of behaviour that were encountered constantly, or to a greater number of behaviours that were encountered less frequently.

With respect to behaviour encountered relatively frequently, the average level of disruption, considered for all these types of behaviour, amounted to 205 index points per file on average. This corresponded to an average of 20 different highly disruptive types of behaviour per file.

Multiple files were awarded a score equivalent to 40 different constant troublesome and/or highly disruptive types of behaviour.

The below table lists, on the left, the 10 most frequently encountered behaviours and, on the right, the 10 most disruptive behaviours displayed by the counterparty, both in descending order of index value.

Table 1 Counterparty behaviour

<i>Most frequently displayed behaviour</i>	<i>Most disruptive behaviour</i>
1. Does not adopt a cooperative and solution-focused attitude.	1. Does not adopt a cooperative and solution-focused attitude.
2. Is unable to explain the problem; is not to the point.	2. Does not accept a decision as being the final word; does not acquiesce in the decision.
3. Does not accept a decision as being the final word; does not acquiesce in the decision.	3. Employs all available formal-legal remedies, including the filing of a complaint.
4. Fails to accept the limits set by laws and regulations within the normal boundaries of stubbornness.	4. Is unable to explain the problem; is not to the point.
5. Employs all available formal-legal remedies, including the filing of a complaint.	5. Has rigid and/or imperative viewpoints.
6. Has rigid and/or imperative viewpoints.	6. Does not submit ordered documents; annexes - to the extent provided - are not relevant.
7. Does not submit ordered documents; annexes - to the extent provided - are not relevant.	7. Fails to accept the limits set by laws and regulations within the normal boundaries of stubbornness.
8. Does not use coherent reasoning and arguments; line of argument is difficult to understand.	8. Fails to provide the requested information within the specified term.
9. Constantly re-opens an (alleged) past incident.	9. Stalls.
10. Does not have their affairs in order.	10. Tries out the fiscal limits and/or acts on or over the limits of what is fiscally allowed.

In the analysis we sorted the 94 behaviours into 11 behavioural categories and a residual category. The table below shows the 11 behaviour categories and the interdependence between those categories.¹³ The highlighted scores indicate strong positive correlations.

Table 2 Correlations¹⁴

	1	2	3	4	5	6	7	8	9	10
1 Anti-social behaviour	-									
2 Fraud	,540	-								
3 Changing moods/behaviours	,215	,258	-							
4 Unacceptable behaviour	,336	,208	,452	-						
5 Victimized behaviour	,338	,285	,526	,340	-					
6 Opposing behaviour	,289	,389	,194	,094	,076	-				
7 Distinctive writing style	,130	,069	,283	,473	,493	-,125	-			
8 Suspicious behaviour	,208	,124	,561	,589	,415	-,015	,420	-		
9 Reckless behaviour	,678	,551	,188	,445	,229	,257	,138	,234	-	
10 Egoentric behaviour	,336	,311	,321	,373	,322	-,022	,481	,322	,267	-
11 Incompetent communicational behaviour	-,041	,145	,188	,237	,391	,129	,504	,177	,034	,242

Further analysis led to five clusters of files with related types of behaviour. See the table below.¹⁵ The bold/underlined scores indicate a relatively high score in the cluster, the bold/italic scores a relatively low score. The files in cluster 1 score high on all types of negative behaviours. The remaining clusters provide a more specific image.

Table 3 Scores on the classification variables¹⁶

	Cluster 1 (n=15)	Cluster 2 (n=12)	Cluster 3 (n=21)	Cluster 4 (n=20)	Cluster 5 (n=28)
Anti-social behaviour	<u>7,36</u>	2,69	3,00	<u>5,93</u>	<u>1,91</u>
Fraud	<u>7,49</u>	<u>2,47</u>	4,82	<u>6,40</u>	3,64
Changing moods/behaviours	<u>5,73</u>	1,69	<u>4,97</u>	1,86	1,55
Unacceptable behaviour	<u>6,65</u>	2,99	4,77	2,96	<u>1,92</u>
Victimized behaviour	<u>7,51</u>	5,09	5,12	3,38	3,35
Opposing behaviour	<u>6,50</u>	<u>2,46</u>	<u>7,12</u>	<u>6,83</u>	4,07
Distinctive writing style	<u>6,27</u>	4,92	4,77	<u>2,37</u>	3,07
Suspicious behaviour	<u>8,40</u>	<u>7,75</u>	5,67	2,95	<u>1,57</u>
Reckless behaviour	<u>7,61</u>	<u>2,48</u>	3,94	<u>6,35</u>	2,96
Egoentric behaviour	<u>5,28</u>	2,98	2,82	2,68	2,44
Incompetent communicational behaviour	<u>8,33</u>	4,97	<u>7,52</u>	4,32	<u>7,04</u>

¹³ The numbers in the table are correlation coefficients (r). Correlation coefficients have a value which lies between $r = 1$ (which indicates a perfect positive correlation between two variables) and $r = -1$ (indicating a perfect negative correlation between two variables). The table shows, for example, that anti-social behaviour is strongly related to fraud ($r = .54$) and reckless behaviour($r = .68$). Fraud and reckless behaviour are mutually also quite highly correlated ($r = .55$).

¹⁴ Goslinga S. c.s., Rapportage Conflictdossiers, Belastingdienst Centrum voor Kennis en Communicatie, Onderzoek Team, august 2016.

¹⁵ With Ward's method is calculated how the five clusters differ in the types of behaviours according to which they are clustered. This minimizes the variance within clusters with respect to the variance between the clusters. The table shows for each cluster of records the average scores on the types of behavior (on a scale of 1 to 10). For this table, the total population was $n = 96$.

¹⁶ Goslinga S. c.s., Rapportage Conflictdossiers, Belastingdienst Centrum voor Kennis en Communicatie, Onderzoek Team, august 2016.

4.11 Inspectors/Tax and Customs Administration behaviour

We asked the inspectors 36 questions on their own behaviour and the behaviour of their colleagues involved in the files. We again asked after behaviour that, in principle, is disruptive to the proper processing of the file. Of these questions, 26 had the inspectors themselves assess the frequency of and disruption caused by their behaviour (direct questions), while the remaining 10 had them assess how they believed the counterparty to interpret their behaviour (indirect questions).

The answers to these questions on frequency and level of disruption were indexed in the same way as those on the behaviour displayed by the counterparty. We refer to paragraph 4.10.

Measured in this fashion, the inspectors on average displayed a total of 78 different troublesome behaviours per file for both categories. This corresponds to 8 types of behaviour that are displayed constantly, or to a greater number of troublesome behaviours that are displayed less frequently. The average level of disruption of these types of behaviour amounted to 54 index points, or 5.5 different highly disruptive behaviours.

The below table lists, on the left, the 10 behaviours most frequently displayed by inspectors and, on the right, the 10 most disruptive behaviours displayed by the inspectors, both in descending order of index value, as were identified on the basis of the 26 direct questions.

Table 4 Inspector/ Tax and Customs Administration behaviour, direct questions

<i>Most frequently displayed behaviour</i>	<i>Most disruptive behaviour</i>
1. The Tax and Customs Administration does not deploy conflict management	1. Files are not transferred from one inspector to another in a coordinated fashion.
2. Expectations about the counterparty are negative.	2. The Tax and Customs Administration provides insufficient direction and coordination with respect to the processing of this file.
3. The Tax and Customs Administration distrusts the counterparty.	3. The Tax and Customs Administration did not set and maintain the pace of processing the file.
4. The Tax and Customs Administration does not properly empathise with the counterparty and does not respond to their underlying needs and concerns.	4. The file is not in order and inaccessible.
5. Management pays no attention to the processing of the file and the associated process.	5. Superiors fail to provide sufficient input.
6. There is no verbal communication with the counterparty.	6. The Tax and Customs Administration has displayed notable behaviour or another notable occurrence took place.
7. Files are not transferred from one inspector to another in a coordinated fashion.	7. The Tax and Customs Administration is difficult to contact by telephone.
8. The Tax and Customs Administration puts the ball in the counterparty's court.	8. The Tax and Customs Administration does not bring its attitude and behaviour in line with the attitude and behaviour of the counterparty.
9. No comprehensive processing based on a strategy takes place.	9. The Tax and Customs Administration applies for a postponement to be able to draft or substantiate its position, draw up a decision, etc.
10. The Tax and Customs Administration plays along with the professional game and/or challenge inherent in the dispute.	10. The Tax and Customs Administration puts the ball in the counterparty's court.

The below table lists, on the left, the 3 behaviours most frequently displayed by inspectors and, on the right, the 3 most disruptive behaviours displayed by the inspectors, both in descending order of index value, as were identified on the basis of the 10 indirect questions.

Table 5 Inspector/ Tax and Customs Administration behaviour, indirect questions

<i>Most frequently displayed behaviour</i>	<i>Most disruptive behaviour</i>
1. The Tax and Custom Administration is perceived as being unrelenting, strict, unyielding, uncompromising.	1. The verbal communication with the Tax and Customs Administration is perceived as being verbose, long-winded and/or interruptive.
2. The Tax and Customs Administration is perceived as being inflexible.	2. The behaviour displayed by the Tax and Customs Administration is perceived in some other notable fashion, or some other notable action by the Tax and Customs Administration is experienced.
3. The Tax and Customs Administration is perceived as being unreliable.	3. The Tax and Customs Administration is perceived as being uninterested and playing things solo.

In all, based on the indexation and when taking both parties together, on average we counted the equivalent of 25.5 different behaviours that are perceived as being highly disruptive and, based on the indexation, estimated that such behaviours occurred 351 times per file.

Further analysis of the conduct on the part of the inspectors c.q. the Tax and Custom Administration were either not possible because there was too little data, or they led to coherences that we as researchers (as yet) could not comprehend.

We also asked the inspectors about the behaviour they observed themselves displaying when processing their files. 213 times some type of behaviour was mentioned. Well over half the behaviours named related to conduct focused on the substance of the issue at hand: looking for solutions, maintaining a professional attitude. One third of the behaviours can be characterised as negative: hardening, obstinacy, reluctance. Over 10% was positive: motivated, understanding.

4.12 The start of escalation; early warning signals

The trigger, that is, the concrete immediate cause of the escalation, was often easy to identify in the files: the attention paid by the inspector at a certain point, during an inspection or declaration processing, to one or more fiscal aspects of the counterparty. In some cases the attitude adopted by the inspector could lead to irritation or misunderstanding. Triggers do not necessarily say anything about the reason or motive for a party to escalate the situation. We have not investigated the reasons and motives. We are only able to suspect that a specific event in the life of the counterparty - like a serious and costly illness, the death of a partner, an ugly divorce or losing one's job - may provide the reason and/or motive for the escalation.

Early escalation signals are important indicators of potentially sharply increasing costs. In the literature we identified the existence of early warning signals provided by the counterparty using striking ways of communicating. The writing style used becomes especially noteworthy. In particular, according to the literature the counterparty will use a great many punctuation marks, various fonts, etcetera and provide an excessive amount of information, even at an early stage of escalation. We presume that other early warning signals which can occur, include the following: deviant declaration behaviour; a quickly rising number of escalation steps; emotions quickly running high; recurring troublesome behaviour including being imperative, attention-seeking, distrustful; displaying manipulative behaviour. Further research into early signals is needed, amongst others to discover the extent to which these signals can also be identified in files that do not escalate as extremely.

4.13 Interventions performed: number, type, effect

We asked the inspectors to state the number of interventions performed in their file, who performed them and what - positive - lasting effect they had. No intervention was reported for 15 files. A total of 246 interventions were reported for the 85 remaining files. This means that, on average, some 2.5 interventions were performed for each of the 100 files under review, calculated over the entire time

the file was open. Of the interventions, 75 (30%) had a lasting effect, 146 (60%) did not have a lasting effect and for the remaining 25 (10%) it is unknown whether they had a lasting effect. None of the interventions was reported to have been performed by the counterparty.

We also enquired after the type of interventions that were performed. We sorted the performed interventions and the frequency of their performance in 12 categories. See the below table (number in parentheses).

Table 6 Intervention categories

Intervention categories	
1 Problem diagnosis (unknown)	7 Engaging third parties (21)
2 Drawing up a processing strategy (32)	8 Facilitating the counterparty (4)
3 Improving the working relationship with the counterparty (90)	9 Limiting the counterparty (46)
4 Re-assessing own attitude (0)	10 Conceding or removing from the system (2)
5 Improve own skills (4)	11 Improve substantive processing (17)
6 Improve own organisation (22)	12 Various, difficult to fit in a category (8)

As we found that only 30% of interventions performed had a lasting positive effect, we analysed the interventions to discover which were reasonably likely to be successful, and which were relatively unlikely to have any success. Drawing up a processing strategy and improving the own organisation - which also includes stepping up control and coordination - were relatively successful interventions. Attempts to improve the working relationship - mainly by arranging a meeting or starting up mediation - often failed.

4.14 Interviews with counterparties

The following were identified as the main bottlenecks during the 9 interviews we held with counterparties:

- The procedures were experienced as being insufficiently just, negative views of the Tax and Customs Administration (repressive, hostile) and little trust in complaints handlers and mediators.
- Selective perception of facts and circumstances, and of the behaviour and motives of the inspectors, at the same time, self-insight, at least to a certain degree.
- The influence of personal circumstances, including life events.
- A high degree of impact on personal well-being.
- A positive element we identified, and therefore a need, is the personal attention provided by the inspector. Other needs mentioned: more information on the procedure and the substance of the case, a greater focus on finding a solution.

4.15 Action research

For the action research, a structured working method was developed and applied, so as to improve the processing of conflict files; see under paragraph 3.2 Research method. Important parts of this working method are conflict diagnosis and (as standard interventions) a handlingstrategy, control and coordination. We hereby present our preliminary findings.

- The intervention repertoire we developed serves well; it is certainly possible to improve it even further based on actual field experience.
- Our action research involved the simultaneous or sequential performance of multiple interventions in 13 conflict files. Effects noted (in 5 conflict files) include: Views held by inspectors changed, more control/coordination, notable decrease of processing costs, conflict solved. When performing the interventions, the inspectors experienced both positive/optimistic and negative/pessimistic emotions.

- During the action research phase, both the inspectors and the counsellors/researchers had less time and energy available than is required for the proper processing. Too, the organisation - including management - on both sides is insufficiently focused and dedicated. The ongoing reorganisation of the Tax and Customs Service negatively affects the process of identifying and keeping an eye on conflict files.

5 Discussion of results

The most important conclusions and assumptions presented in the sources about persistent complainants and persistent litigants we consulted are that the behaviour of these people results in very high processing costs, that those processing costs are incurred in the complaints and litigation stages, but also in the other processing stages, that the processing of their files is perceived as a burden by the individual processing official, and that these files take far longer to close, be it with or without a satisfying resolution. It is very difficult to put a stop to the behaviour displayed by the persistent complainant and/or litigant the literature is describing. He doesn't take 'no' for an answer. The amount of time, energy and money he has to spend on his actions do not stop him, either. We found confirmation for these conclusions and assumptions in our research.

The annual processing costs, the number of contact moments and the total time an average conflict file stays open are all extremely much higher than for a similar 'normal' file, no matter the comparison made. The average volume of the conflict files - 1.5 meters thick - is the result of those aspects. We also believe that these files result in a sizeable loss of tax proceeds.

The archetypal persistent complainant and litigant, as presented in the literature, is a reasonably well-educated, middle-aged white man. This is also true for the counterparties identified in our research. We found that the average inspector has the same characteristics, a point that is hardly reflected in the literature.

The literature mainly focuses on aspects of troublesome behaviour displayed by persistent complainants and persistent litigants. The files we studied on average were found to involve a mixture of such behaviour. Notably, this behaviour is not displayed just in the complaints and/or litigation stages, but also in the inspection, objection processing and/or recovery stages.

The literature often speaks of persistent complainants and litigants in psychological and psychiatric terms. We, the researchers, are neither psychologists nor psychiatrists. Our research focus is on the concrete behaviour often encountered in the files that disrupts processing. Such behaviour can often be altered, even if the person or their personality cannot. At the same time, we certainly do not want to suggest that there are no counterparties who suffer from a cut-and-dry behavioural or personality disorder: consider the man who believes himself to be a prophet and God's mouthpiece, and who has been told from heaven above that he does not need to pay private motor vehicle and motorcycle tax; or the man who is clearly very learned, but constantly expresses his belief that he is on the hit list of the corrupt Tax and Customs Administration; or the elderly psychiatrist who, without being asked to do so, diagnoses all Tax and Customs Administration staff with an affliction requiring intensive therapy. However, we also believe to have identified people who simply do not want to pay taxes, and people who simply have little skill handling a conflict. It might be useful to characterise people in these terms, as well, differentiating between disturbed behaviour, compliance problems and a lack of skills. The reality of our research often shows that a mixture of these characteristics is involved. This might be material for further research.

The analysis on the correlations between categories of behaviour on the side of the counterparty, and the clustering of groups of behaviour seem to display recognizable coherence (see tables 2 and 3 in paragraph 4.10):

- The strong correlation between suspicious behaviour and a distinctive writing style is frequently described in the literature as the behaviour of the paranoid litigant who demands attention through his writing style for the terrible wrongs which he is facing. This figure seems to show in cluster 2.
- There also is a clear coherence between changing moods/behaviours, opposing behaviour and incompetent communicational behaviour; see cluster 3.
- The strong correlation between anti-social behaviour, fraud and reckless behaviour; which is the consistent behaviour that we associate with the intelligent, unscrupulous figure who is purely in it for his own interest. We believe this figure reflected in cluster 4.
- The figure in the largest cluster 5 seems to be the counterpart of the figures in clusters 2 and 4: he only scores high on incompetent communicational behaviour. Apparently such behaviour, in the interaction between the parties is sufficient to cause the degeneration of relatively many files into conflict files.
- Worrying is the image evoked by cluster 1: high scores on all 11 behavioural categories. How to go at such files ...?

The literature refers to various triggers that cause a citizen to, knowingly or unknowingly, decide to have their case become a conflict file. While life events are often referred to in this connection, as are the development of a mental disorder (which is a life event as well, but is not usually recognised as such). We have been unable to identify any clear sequences of happenings, circumstances and developments that explain why matters start to escalate in our research, other than a suspicion that the causes often tend to be connected to a deep-rooted personal perception of reality that, in combination with the very specific way each human being copes with major happenings, may trigger such behaviour. Many counterparties identified in our research also have conflicts with organisations other than the Tax and Customs Administration. When holding our 9 interviews with counterparties, we found that they felt prolonged and intense emotion. Prevention is better than cure, also in consideration of the costs and expenses incurred by both sides. Basing ourselves on the literature and our own insights, we are currently researching how to define a system of early warning signals.

In their answers to our questions, the inspectors stated that they predominantly felt negative emotions when processing these files: feelings of frustration and powerlessness are most often felt. When describing their own behaviour, they most often describe themselves as actively looking for a solution and displaying accurate and professional behaviour. It is notable that the inspectors mainly consider those behaviours that stop them from properly doing their substantive work as being disruptive and frequent. Other types of deviant behaviour, like "threatens to call in the media, politicians, the National Ombudsman and/or other external parties" are less often considered to be disruptive. It might be that inspectors are more prone to simply stoically accept or ignore such behaviour than to respond to it.

The inspectors are currently unable to put conflict files on different, more effective tracks by their behaviour including the (few) interventions they perform. The overall image is one of interventions mainly being aimed at coming to a substantive resolution instead of on making the conflict tractable. On the basis of the literature and our own insights, we assume that certain behaviours as displayed by inspectors tend to escalate the situation rather than de-escalate them. These include taking on a more distant and formal-legal attitude, becoming more rigid, and lacking strategy, control and coordination.

The literature predicts that long-term, persistent conflicts are highly complex and contain mechanisms that actively preclude the coming to a solution. We believe we have identified clear signs of this during our research. The average file contains a mixture of many extremely disruptive behaviours and negative emotions that dominate the interaction between the parties, involves many escalation steps, forms an enormous pile of (digital) paper and takes a very long time to close, the inspectors not often working according to a set strategy. We believe this to be a toxic cocktail in terms of conflict escalation.

We see many indications that many conflict files have, in fact, ran out of control. The dynamics of the conflict have taken over the case. Most inspectors are unable to bring a conflict file back under control on their own. They do not possess the time or the required conflict knowledge and skills, nor do they have the power to draw up a strategy and establish control and coordination mechanisms or to ensure such are consistently used. Some are too much, others too little involved in the file. Higher management appears to consider these conflict files to be collateral damage of the overall bureaucratic process. The necessary input of the higher echelons is often missed, as well concerning strategy, control and coordination as concerning mental support for officials. As an aside: the current organisation of the Tax and Customs Administration is conducive to files escalating; disconnected resources and processes in combination with high production targets, make it increasingly difficult for the official, wanting to overview the file, to do so.

The study has limitations; some we already pointed out. The most important are:

- There was no control group.
- Virtually all data have been obtained from one party, the officials; with the other party there were only nine open interviews.
- Some of the data are based on estimates and perceptions of the officials.
- Certain useful analysis, in particular on the behaviour of the parties, could not be performed because the (many) different types of data are not in balance with the (relatively small) research population of 100 files.

6 Conclusions and recommendations: towards improved processing

Studying the nature and scope of the conflict file phenomenon makes for challenging research. It is an almost virgin, multidisciplinary field of study: management, law, organisation, conflict management and psychology all play an important part and are interlinked. The present research for the first time presents a clear picture of the nature and scope of the cost to society of conflict files. Our hypothesis that conflict files are costly proved true. The total cost to society of conflict files runs to tens of millions of euros per year.

More effective processing of conflict files by the Tax and Customs Administration is both useful and possible. These files over time develop massive intrinsic complexity and tenacity. Put simply, they require the deployment of more energy and expertise and a lot of commitment by all divisions involved, including management. The issue requires administrative attention on the strategic level, for the workfloor staff are unable to organise everything themselves.

The literature suggests that, when working on resolving intractable conflicts, the focus should first be on finding ways to manage the burdensome conflict interaction, instead of on trying to end the conflict or finding a quick substantive resolution. Translated to the conflict files within the Tax and Customs Administration this requires the use of a customised approach, with each file being given its own treatment plan containing investigation, analysis and diagnosis and a strategy featuring interventions selected from a broad range, or at any rate a broader range than the one applied by

the inspector who is currently handling the file and which is driven by (negative) emotions. A set of interventions that collectively make removing the heavy conflict dynamics more attractive offers a higher success rate than implementing one or just a few measures. We have designed a new toolbox as part of the research. A first test in our action research shows that it can operate well.

This research offers valuable insights, leads and specific tools to allow for a more effective processing of the files involving a conflict in the relationship between the Tax and Customs Administration and the citizen. Our results can be broadly applied, as they can also be used in other, less extremely escalated Tax and Customs Administration files and in comparable files involving a conflict between the citizen and other government bodies.

Recommendations for a more adequate handling of conflict files are¹⁷:

- Embed an approach effecting the expert processing of conflict dossiers within the Tax and Customs Administration's policy and practice.
- The standard scenario is for the existing inspector in charge to process the conflict files. Only select a file for special treatment, lifted out of the regular processing, when this is truly required.
- The detection and selection of emerging conflict files is based on a system of early warning signals.
- The processing of conflict files has to be based on a treatment plan that is to include all the relevant interventions to be performed, needs to follow from comprehensive file control, analysis and diagnosis, and has to be subjected to monitoring and assessment. Uniform procedures, models and protocols, digitally available to each inspector, have to be in place.
- The processing is always to involve conflict management services and, when necessary, psychological expertise.
- The following needs to be realised within the organisation:
 - More knowledge on and insight into the conflict file phenomenon is to be acquired through further research;
 - Inspectors should be provided with more specialist knowledge and skills and with a uniform processing toolbox;
 - The toolbox, including the early warning signals system and the intervention repertoire, need to be further improved on the basis of field experience.

¹⁷ The recommendations have been accepted by the management of the Tax and Customs Administration in July 2016 and are currently being implemented.