An Exploration of Risk from Tax Expert Networks

Document Details

Work package WP5
Lead Beneficiary University of Limerick
Deliverable ID D5.6
Date 27 August 2019
Submission 27 August 2019
Dissemination Level PU – Public
Version 1.0

Author(s) Sheila Kilian
University of Limerick
sheila.killian@ul.ie

Philip O’Regan
University of Limerick
philip.oregan@ul.ie

Martin Laheen
University of Limerick
martin.j.laheen@ul.ie

Ruth Lynch
University of Limerick
ruth.lynch@ul.ie

Acknowledgements

The project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 727145.

PAPER IN DEVELOPMENT. PLEASE DO NOT COPY OR CITE WITHOUT AUTHORS’ PERMISSION
An Exploration of Risk from Tax Expert Networks

Sheila Killian, Philip O’Regan, Martin Laheen & Ruth Lynch
University of Limerick, Ireland

Abstract
This paper explores the situations in which tax experts are most likely to take an innovative or aggressive tax position, focusing on the self-perception of the experts themselves of the factors that may trigger such a tendency. The results are important because they highlight the micro-influences on tax experts which may move them along the spectrum of tax avoidance, which has been acknowledged as posing a significant risk to public welfare, equality of opportunity and the common good. The paper presents findings from an international survey of tax professionals and experts and highlights some key risk factors. This aims to empower both regulators and professional bodies concerned with the governance of tax experts in addressing the problem of tax avoidance.

Keywords: tax avoidance; risk factors; professionals; experts; governance

1. Introduction
Tax is an area in which professional expertise intersects very obviously with both the common good and the public interest. Tax funds the input of government and private actors into the common good, creates the financial support for it and shapes how it will be realised in a particular jurisdiction. Tax avoidance and evasion therefore both pose well-documented risks to public welfare (Sikka, 2010), depleting the public coffers, reducing the capacity of government to provide essential services, and exacerbating inequality by stripping resources away from services to the poor and vulnerable. On an international level, tax avoidance and evasion tend to negatively impact significantly the ability of developing countries to mobilise domestic revenue, thereby increasing aid-dependence and contributing to instability in government spending. Tax evasion is more easily defined than tax avoidance, referring to tax arrangements or the lack thereof which are clearly illegal. Tax avoidance is a more problematised term, but incorporates aggressive or innovative arrangements designed to significantly reduce tax while remaining within the letter of the law. The focus of this paper is on a set of activities that may be construed as tax avoidance rather than evasion, the legal actions of tax professionals as they move towards extending the boundary of the law. We include within our scope tax experts working as professional advisers as well as those working in the public or corporate sectors. The aim of this research is to empower regulators by identifying some key circumstances which are associated with a risk of the work of tax experts moving towards tax avoidance.

The role of professionals, and particularly accountants, in society has received attention in the critical accounting literature over several decades. Questions such as: does the accounting profession represent the public interest or their own private interest? (Parker, 1994; Lee, 1995); how do professional claims on the primacy of their expertise withstand public scrutiny? (Robson et al. 1994; Collins and Evans 2002; Canning and O’Dwyer 2013; O’Regan and Killian 2014); how should the professions be regulated? (Robson et al. 1994; Sikka & Willmott 1995). The contrast between the public interest mandate of the profession
and the damaging impact of tax avoidance makes an examination of the work of tax professionals particularly important. More recently, Carter et al. (2015:1198) observes that given the changing nature of the accounting profession, as well as a ‘rediscovery of the agency of professionals in broader social processes (Arnold, 2005)’, a focus on expert workers may be more appropriate. The risks posed by the work of tax experts include those outlined above which derive from tax avoidance more generally: reduced public services, increased inequality and, on an international level, a potentially widening gap between nations. International tax arrangements can also impact on the sustainability of domestically-centred firms which don’t have access to international tax strategies, giving a potentially significant competitive advantage to multinationals. Aggressive tax planning for high net worth individuals can also perpetuate and extend existing inequalities as the more wealthy pay for expert advice to reduce their overall tax contribution.

Overly contentious tax arrangements also impact on the reputation of the profession as a whole. The current focus on tax avoidance has opened public debate to a wider than usual range of actors on how the tax system might serve the public interest. The question of corporate tax avoidance has moved from a technical issue discussed only in boardrooms to one which features in senate hearings, parliament debates, street protests and popular media. Both national and international regulation has struggled to respond to increasingly labyrinthine tax avoidance by private firms. In crisis, the field has opened to include new actors with a societal focus, bringing a different perspective and seeking to engage in order to bring about change. In exploring technocratic and societal perspectives in this context, we address a call in Gracia and Oats (2012:319) for “broader, more situated research, that explores ‘tax in action’ and examines the linkages and relationships between tax, accounting and regulatory practices and the influence of the wider contexts in which these practices operate.” We examine the circumstances that lead to aggressive or innovative tax decisions in the context of a tax crisis of significant global societal impact (Sikka 2010; Sikka and Willmott, 2010; Sikka and Willmott 2013, Sikka 2013). This addresses the call in Carter et al., (2015) for work critically examining the role of expertise in crises, globalisation and “the position of different expert groups in relation to societal elites” (Carter et al. 2015:1198).

Considerable work has been done in the critical accounting literature on taxation focusing on tax compliance, avoidance and evasion (Morales 1998; Braithwaite 2003; 2013; Kirchler et al. 2008; Sikka and Willmott 2010; Cooper et al., 2013); on the role of the profession in facilitating tax avoidance (Sikka and Hampton 2005, Doyle et al. 2013); on taxation as an element of corporate social responsibility (Sikka 2010; Lanis and Richardson 2012a; Lanis and Richardson 2012b; Hasseldine and Morris 2013; Dowling 2014); on tax competition, (Killian 2006; Otusanya 2011) and on lobbying by tax professionals and their internal relationships (Mulligan and Oats, 2016). However, despite calls for broader and more contextualised critical research on taxation (Boden et al. 2010; Gracia and Oats 2012), relatively little attention has been directed towards the organisational and individual circumstances that foster tax aggression or innovation. In this paper, we contribute to our understanding of tax risk by focusing at a micro-level on the situations in which tax experts are more likely to take an aggressive or innovative tax position. We do not specify what those positions might be, but rather address the environments in which tax experts feel enabled or compelled to act in a more aggressive or innovative way. This is important because it is in those small decisions that tax precedents are set, and case law established, shifting the overall
landscape of tax regulation as the boundaries of the original legislation are stretched in unforeseen ways.

The risks posed to civil society and government coffers by tax expert networks are to a large extent centred on this stretching of interpretation, based on case law or the interaction of national rules to create a form of tax arbitrage. Both the OECD BEPS process and the EU CCCTB initiative aim to eliminate such arbitrage opportunities, seeking to identify specific international mismatches and to better align them. This research complements and informs such efforts by highlighting the micro-triggers within a firm or throughout the daily work of a tax expert which make tax aggression or innovation more likely to occur. An ‘economic Cyclopia of technoscientific rationality’ (Beck 1992:60) can blind experts and professionals to the scale of the problems facing them, seeing a crisis such as the current tax avoidance issue as something that “until now was unthinkable” (Beck 2012:68). This gives them “exceptionally strong tendency to cast even the most severe and unexpected problems as amenable to be solved by an incremental modification of existing best practices” (Porter & Ronit 2006:51). In responding to an issue of global concern, that of tax avoidance and its impact on society, for instance, experts may not see their role as addressing broader issues, but rather as preserving the system. They may be less “concerned with attaining something ‘good’, but rather with preventing the worst” (Beck 1992:49). Arguably, the OECD BEPS process can be seen as such an incremental modification of the system, rather than a reform. This research approaches the problem from another perspective, gathering the self-perceptions of tax experts of the situations which make tax avoidance more likely to occur, providing a grassroots view of issues that could be addressed.

A note on language is timely at this point. In framing this study, we were informed by the ideas of Pierre Bourdieu. Bourdieu is useful in seeing how professional experts may have an understanding of their own role that differs from that of actors who are socialised through, for example, their involvement in civil society groups. They have a habitus, or sense of self, derived at least in part from their professional training, perhaps (Ponemon 1992; Spence & Carter 2014), and may have a different understanding of the doxa, or unwritten rules, of tax practice (Bourdieu 1982; 1990a; 1990b; 1998; 1999; 2000; 2005; Bourdieu and Passeron 1990). With this focus in mind, by means of an international survey of tax experts, we gathered data on tax professionals’ own impressions on the triggers to tax aggression or innovation in their daily work. This is a deliberately personal and subjective approach, aiming to shed light on the conditions under which the experts themselves feel pressure, motivation or perhaps the regulatory freedom to stretch the boundaries of tax law. The kinds of tax decisions that push the envelope of regulation may be seen as aggressive by some, or in a less pejorative way, as innovative by others. For this reason, we use both of these terms in our survey, conscious that while the value implications of their use may vary, the outcome of the actions they each describe is the same. Bourdieu is also invaluable in facilitating an appreciation of how the different understandings of agents in a field can shape the field itself, while also being shaped by it. This helps us to understand the role of peer pressure and the role of competitors in setting norms for the behaviour of tax professionals.

The rest of this paper is set out as follows. The next section positions our work within the relevant literatures on professional expertise and taxation in the context of global developments in tax, and describes the main theoretical concepts from Bourdieu which are used, as well as outlining the circumstances which might foster the kinds of tax decisions that
could lead to tax avoidance. Section three outlines our data and method. Section four presents and discusses the key findings; section five concludes with some recommendations arising from the study.

2. Tax risk and triggers for avoidance

In recent years, public perception of tax avoidance has moved from being a dry, technical issue to one of immediate relevance to questions of inequality and the funding of public services. Tax avoidance by multinational firms has led to executives being questioned in the US Senate and the UK House of Commons. Tax protests, particularly in the UK and across Europe, have led to an increased focus on the issue internationally. The work of Prem Sikka and others has identified tax avoidance and evasion as an international crisis (Sikka 2010; Sikka & Willmott, 2010; Sikka & Willmott 2013; Sikka 2013). “Tax and the avoidance of it, probably for the first time in a generation, was being framed as a moral issue in the UK” (Carter et al. 2015:1202). Taxation can be seen as serving the common good by translating societal values into financial or quantifiable terms, making unambiguous and effective the intent of government. Taxes dictate wealth distribution and concentration; they incentivise some activities while penalising others; they recognise and privilege some forms of economic activity, and by excluding others, affect the balance of how society operates. Taxes set limits on the ability of the State to raise revenue for public services, social welfare and business supports. They promote activities which are considered to be useful through tax breaks or subsidies, and deter those considered harmful through Pigouvian taxes and levies. As such, a well-functioning tax system is an instrument of power with immediate and traceable societal effect, and a matter of fundamental public interest. If those engaging with the tax system understand their role as primarily to respond to laws that manifest a previously unarticulated expression of how that society sees itself and what its priorities are, they will understand tax regulation as a codification of tacit norms. This could be described in Bourdiesuan terms as the country’s doxa, a set of tacit rules of the game which is all the more powerful for not being overtly articulated. Doxa is described in Bourdieu (1998) as the unexpressed but commonly understood, taken-for-granted beliefs that comprise a shared view of the world. This can become an orthodoxy, or dominant vision, enabling the State to maintain order in a way that appears to be “self-evident, as beneath consciousness and choice” (Bourdieu 1998:56-57). “Doxa is a normalcy in which realization of the norm is so complete that the norm itself, as coercion, simply ceases to exist as such” (Bourdieu:848). Financial codes such as the taxation policies adopted by the country may make this invisible visible, at least to those who can interpret their effects. It is not that tax regulation itself is doxa, but rather that, through the effect of taxes on society, they reveal the shape or presence of the doxa which governed their formation. The tax code gives effect to the intent of the state in shaping society through the economy, and at the same time makes this intent visible and measurable, formalising the pattern of relationships that dictate the kind of society that will be fostered. In this sense, taxation can serve as a fiscal foundation for common good.

Public criticism of tax avoidance extends not only to the behaviour of companies in aggressive tax planning, but also of the structures and networks that facilitate this practice. The public critics bring a different perspective to bear on the issue. As the perception grows that tax avoidance is a crisis, “what had been considered unpolitical became political … suddenly public opinion and politics govern the most intimate areas of operational
management” (Beck 1988:89). The most conspicuous outcome of the public concern has been the decision by the OECD, later involving the G20, to initiate a programme of international tax reform. The Base Erosion and Profit Shifting (BEPS) project addresses issues of the digital economy, transfer pricing, tax treaties, hybrid mismatches and a range of other anomalies in the international system. This primarily aims to address both the risk of tax loss and the risk of a loss of tax morale leading to further tax avoidance, and to restore the efficiency and clarity of a system affected by tax avoidance which was “blurring our picture of the basic geography of wealth” (Piketty 2014:467). The BEPS process has grown in significance with the recognition that tax avoidance and evasion is impoverishing the global south and creating inequality within and between countries. In parallel, the EU has taken action under fair competition regulations, and in developing the Common Consolidated Corporate Tax Base (CCCTB) initiative to address mis-matches across the EU. At the same time, tax can be seen, not least by tax professionals, as primarily a technical issue of compliance with – or stretching of – the law. Even at the point of setting tax policy, it can be framed as an issue of the economic rather than the social: “Policy makers find that it is efficient and comfortable to define decisions as technical rather than political" (Nelkin 1974:36). This can create a situation in which experts feel that they operate on a primarily technical field, “protected by an institutional web of social and technological practices” (Irwin et al. 2000:83). This echoes the idea of accounting in Cooper (1992:24) as “the dominant conceptual system” which deprioritises complex social issues in favour of that which is measurable: “through accounting, almost anything in our society is reducible to some kind of binary opposite … we feel safe with accounting” (Cooper 1992:25).

Tax practice may fall, then, at the intersection of relationships between expert professionals, the state and wider society. In a comment redolent of Bourdieu’s conception of doxa as the unwritten rules of the game, Picciotto (2016) observes that tax ‘is a complex game, in which both companies and tax authorities are reinterpreting the rules as play continues. The audience has to guess what rules the players think they are following, but can only suspect that this is just shadow-boxing.’ In categorising interested parties as players or otherwise, the state plays a key role. The state privileges professions in return for a tacit commitment to deliver on the public interest (Robson et al. 1994; Gunningham & Rees, 1997). To a large extent that public interest mandate is expected to be delivered by deploying expertise for the common good, at a level that could not be attained by the state alone (Ogus 1995). In a tax context and with a focus on the actions of the Big Four accounting firms, Addison and Mueller (2015) describe framings through which the Big Four describe their expert work as tax advisors as serving the public interest by virtue of its seemingly disinterested expertise. The disinterested element is significant, and as a claim may be open to scrutiny. In this paper, we focus on tax professionals and experts from a range of backgrounds and working in a variety of contexts, seeking to explore their own self-perception of the circumstances that may trigger actions that trend towards tax avoidance.

The range of issues which might lead a tax professional to make an innovative or aggressive tax decision is wide, and under-researched. As well as drawing on relevant literature to develop our expectations of the factors that might be influential, we also drew on the tax practice experience of some members of the research team who had worked as tax advisors in the past. From this personal experience, we expect that a major factor which triggers innovation or aggression is the level of ambiguity in the tax rules. If the regulations are very
clear, there is little scope for creative interpretation. Where the language used or the relationship between different statues, or between legislation and case-law is loose, then this opens a door for a tax position to be taken which is within the letter but outside of the spirit or intent of the legislation. Where these positions are taken and successfully defended, they create precedent, becoming known as loopholes which remain viable until closed by reactive legislation.

The drift from a public interest logic in the profession towards a more commercial imperative for accountants working in big-four advisory firms has been documented by Spence & Carter (2014) and Spence et al. (2016). This may well translate to accountants and related professionals working in other environments. In a taxation context, an ability to devise ways to reduce the tax liability of a corporate employer or a client would then translate to career progression and promotion, creating an incentive for ambitious individuals to push the envelope of the law as a means to reduce tax. We therefore include personal ambition as one of the factors that might lead to a more innovative or aggressive tax decision.

On the other hand and as noted above, the near crisis of tax avoidance has resulted in an unprecedented level of public involvement and concern about tax practices. To an extent, this impacts on the relationship between the state or other public regulatory bodies and expert groupings. In crisis, this relationship may become strained (Canning & O’Dwyer 2013) in part because of public perceptions that the profession no longer acts exclusively in the public interest, or that its way of operating no longer unambiguously serves the common good. “A comfortable reliance by government on the professional norms of accountancy bodies is suddenly insufficient in the face of Beck’s ‘civilizational risk’ in the form of fraud or tax evasion, and a consequent lack of public trust in the profession” (O’Regan & Killian, 2014:629). Regulators, the state and media may seek to open the debate to a wider range of stakeholders. The multiplicity of voices becoming involved in the debate, described by Mulligan and Oats (2016:1) as “the current cacophony,” extends to public debate in a context described by Collins & Evans (2002:236) as particularly challenging to those who rely on their expertise, when risks or scandals in which their peer group may have been implicated acquire “visible relevance to the public.” For this reason, we anticipate that while personal ambition might be an influence on the work of tax professionals, the potential for international exposure of the outcome of their work might have a dampening impact on the degree of innovation or aggression. In a similar vein, and informed by work such as Kirchler et al. (2008), we expect the likelihood of inspection or audit by the tax authority to have a restraining impact, as well as the scale of the transaction in financial terms, which affects the scale of public response in the event of the transactions becoming public.

Countering this, for those tax professionals in advisory practice, prior work in the audit field suggests that the influence of the client can be a powerful incentive (Carey & Simnett, 2006). Specifically, the importance of the client to the firm has been shown to be influential on the quality of audit, and significantly, this effect can be reversed with changes in the institutional environment (Chen et al., 2010). In the tax field, an awareness of client expectations on the scale of their tax liability is also likely to be relevant. This could be particularly important given the professional socialisation process of tax experts, where the Bourdieusian doxa of tax advisers may be focused on the client expectation that by paying fees to professionals, their tax liability will be significantly reduced. Beyond these general expectations, it is also possible that, particularly for smaller firms and those working with smaller clients, the client
ability to pay tax may become significant. In addition, based on the experience of some of the
research team in working in tax and accounting practices, we are acutely aware of the
pressure of timesheet billing, which creates a considerable level of time pressure in working
on some clients. For this reason, we include time pressure as a potential factor which might
impact on the nature of tax decisions in practice.

The Bourdieusian concept of habitus is also relevant. Bourdieu’s idea is of an instinct which
either facilitates or impairs a player in a particular situation, a “feel for the game” which is
not clearly articulated, but rather “goes hand in glove with vagueness and indeterminacy’
(Bourdieu 1990a:77). In this sense, the habitus of expert professionals gives them a sense of
what is expected of them which might not be overtly articulated, but which will give them an
advantage, a sense of their own ability to ‘move in their world as fish in water’ without being
conscious of how they are doing so. This maps closely to the sense of competence acquired
through professional training (Spence & Carter 2014), and we hypothesise that management
expectations will be an influence on the decisions of tax professionals.

Because taxation is a broad field, with many sub-specialisms, the technical ability of tax
workers can become very narrow. For example, Value Added Tax (VAT) is a major but niche
area of planning, which has little in common with for example, Transfer Pricing (TP). A VAT
expert would not necessarily feel confident addressing an issue of intra-group pricing, while
an expert in TP or in capital taxes would not in general address VAT issues. For this reason,
we expect that personal technical ability, and the nature of the transaction in question would
influence the propensity for tax aggression and innovation.

Bourdieu’s work on the field and how it is defined by the agents acting on it is useful in
helping us to understand why the self-perception of significant agents acting in the field
matters, and how a perspective shared by a range of actors can become so dominant as to
shape the field itself. The field in which a group operates “is to a large extent what the agents
make of it, at each moment.” Bourdieu stresses the need to understand “the position
occupied, the struggle over the power of knowledge, for power through knowledge, for the
monopoly of legitimate symbolic violence, by each of the agents or groups of agents who are
involved in it, whether they be ordinary individuals, exposed to the vicissitudes of the
everyday symbolic struggle, or authorized (and full-time) professionals” (Bourdieu
1985:734). Informed by this, we recognise that the actions of competitors can shape the field
in which professionals work.

Based on these considerations, we devised an international survey of tax professionals aimed
at gathering their subjective impressions on the degree to which the factors identified above
might impact on the likelihood of their making an innovative or aggressive tax decision. The
next section describes our method and data.

3. Method and data
Our data comes from an international survey of tax experts working in 58 countries, in a
range of environments including large and small firms, the public, private and professional
advisory sector, and coming from a broad range of levels of seniority and age. We selected
thirteen potential factors which might contribute to the likelihood of tax avoidance as
outlined in the previous section, and, using a five-point Likert scale, asked respondents to rate
the degree to which each might influence them in taking an innovative or aggressive tax position. The survey was piloted among a small group of tax workers before being rolled out internationally. The survey was delivered online, with key verification questions included to ensure internal validity. To source respondents, we drew on the extended network of our research team with three different professional bodies. Some of the research team attended practice-facing conferences, and delivered the survey there. Several international and national tax advisory firms and professional bodies also rolled out the survey to their employees and members.

After eliminating spurious, incomplete and invalid responses, our final sample comprises over a thousand valid responses. It is well-balanced by gender, and includes respondents whose primary discipline is law as well as accounting. Table 1 below shows the factors and the number of valid responses for each.

<table>
<thead>
<tr>
<th>Factor</th>
<th>N</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal ambition</td>
<td>1,008</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Opportunity for international exposure</td>
<td>957</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Likelihood of audit</td>
<td>1,006</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Ambiguity in tax rules</td>
<td>1,023</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Amount of money involved</td>
<td>1,013</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Importance of client to firm</td>
<td>958</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Client expectations</td>
<td>971</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Client or firm ability to pay tax</td>
<td>972</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Time pressure</td>
<td>1,014</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Management expectations</td>
<td>1,008</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Personal technical ability</td>
<td>1,007</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Nature of transaction</td>
<td>1,014</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Competitors’ aggressive tax planning</td>
<td>996</td>
<td>1</td>
<td>5</td>
</tr>
</tbody>
</table>

The survey deliberately elicits subjective responses, an approach which complements other work using an experimental approach. Since our respondents are in the disciplines of both accounting and law, our findings transcend the boundaries of a single profession and extend the idea of professional socialisation beyond the experience of accountants in their training, to the impact on their habitus of participating as professional experts in a highly technical field. Our findings are therefore relevant to other regulatory spaces as well as to the changing accounting profession.

4. Results and discussion

As previously noted, respondents were asked to rate the influence level of each factor on a five-point Likert scale, where 5 was high influence and 1 was low influence. Table 2 below presents the Likert scores for the thirteen factors.

<table>
<thead>
<tr>
<th>Factor</th>
<th>Mean</th>
<th>Median</th>
<th>Mode</th>
<th>Variance</th>
<th>Percentiles</th>
</tr>
</thead>
</table>

4. Results and discussion

As previously noted, respondents were asked to rate the influence level of each factor on a five-point Likert scale, where 5 was high influence and 1 was low influence. Table 2 below presents the Likert scores for the thirteen factors.
The most interesting results are those reported as having a relatively high or low influence. The results indicate that the single most significant factor that might lead a tax professional towards tax avoidance is ambiguity in tax rules. It also has the lowest variation in response, indicating that the high rating given to this factor is pervasive in the field. This is a strong pointer to regulators that one efficient means of reducing tax avoidance would be more careful drafting of legislation, perhaps with a broader range of input from practice. Ambiguity on an international level is more challenging to address. While a national government can improve the clarity and certainty of domestic legislation, the way in which tax law from different countries intersects is more equivocal. International endeavours including the OECD BEPS process and the EU CCCTB initiative go some way towards addressing this.

Factors which relate to the specifics of the tax situation, the nature of the transaction and the tax expert’s own personal technical ability, are also reported as influential. This again is a useful pointer for regulators, in that attention is best spent on those areas where avoidance is most prevalent. Respondents were invited, although not required, to elaborate on what they understood by “nature of the transaction.” Several respondents added brief comments on this, most citing a range of factors to be considered: “the potential issue would require consideration 'in the round', including precisely what was planned, on what legally tenable basis, at what cost for what benefit plus the risk of 'adverse headlines' if it were to prove 'inappropriate'. ”; “transparency, complexity, uniqueness.”

For some, the nature of the transaction was related directly to their own personal technical ability: “depends on the domain or handling that I have of the transaction”; “depends on the
level of complexity.” Other respondents reiterated here the idea of ambiguity: “if the tax treatment of the transaction is uncertain and no indication (not even implicitly) were given by Italian tax courts or Italian tax administration, it’s more likely that the tax Advisor will suggest an aggressive tax planning scheme”; “if the transaction is in a grey area, being innovative or aggressive can be a bit safer than clear cut, black and white.” Interestingly this is expressed in terms of risk to the tax expert themselves – when it is “safe” to be aggressive or innovative, an idea echoed by other respondents: “different transactions hold different risks. Writing off fuel is standard, writing off a trip to Hawaii is not. Need to evaluate the nature of the transaction to determine the risk.” This risk was sometimes related to the direct oversight of the taxing authority, or connected to confidentiality or secrecy: “the extent to which the transaction is visible by Revenue Authorities; whether the transaction is high profile for company; level of benefit sought; values involved and potential exposure”; “whether the transaction would be publicized or advertised on media.” Other respondents related this to ethical or professional values and legal compliance, often with a mention of the need to respect substance over form rules: “having due regard to substance & form, and the possibility of transactions to be classified as schemes or otherwise not in public interest.” Some respondents, however, noted that they would be more inclined to take an aggressive or innovative position if the client expected this, or if the client was important to the firm: “it is important to determine what the client requires as part of our engagement”; “if I am getting paid a lot by this client I will be influenced to work harder”.

Echoing these latter comments, client expectations comes out as a significant pressure felt by tax professionals in taking a position that might push the boundary of regulation. There is a tension, as noted by Spence et al. (2014), between the commercial imperative of earning fees from clients and the professional imperative of acting in the public interest and remaining independent. It is difficult to imagine individual firms taking a position on this in the absence of a consensus across the profession. To a large extent, the means to address this lies in the hands of the large advisory firms if they were to act in concert, or more significantly, the professional bodies.

The likelihood of audit, in line with Kirchler et al. (2008) is shown as influential, although perhaps less influential than postulated in previous work. Management expectations and the amount of money involved – both internal pressures in a sense –also come through with as presenting a medium level of risk, marginally more influential than the importance of the client to the firm. This may indicate that the importance of an individual client is not significant, or perhaps more likely, that this becomes embodied in management expectations. In a Bourdieusian sense, this would be seen as part of the unarticulated doxa of the firm. As a whole, they are felt by tax experts as a medium level influence.

Time pressure and the ability of a client to pay tax are perceived as having a neutral impact on the work of tax experts in terms of tax innovation or aggression. The time pressure result is particularly significant, countering the perception of hasty decisions being more tax aggressive. This may indicate the possibility of some innate conservatism among tax professionals.

At the other end of the scale, factors that loosely relate to ambition including the desire to obtain an advantage on competitors; the opportunity for international exposure and personal ambition are reported by tax experts as having relatively little influence towards tax
avoidance. This self-perception is interesting. While it may not translate directly to reality – it may be that ambition and the actions of competitors do indeed spur professionals on towards more aggressive or innovative tax positions – the fact that such competitive behaviour is not part of the *habitus* of tax professionals and their understanding of their own role, is indicative of a sea-change perhaps brought about by the public outcry on tax evasion as well as avoidance. In particular, the result on international exposure may reflect an increased wariness about publicity due to the campaigning work of tax-based civil society groups.

5. **Conclusion**

This research could be extended in a number of useful ways. The relationship with the client comes through as complex, and further research focusing on this factor would be worthwhile. Similarly, a breakdown of how these trends vary by jurisdiction or by firm type would be useful in enabling professional bodies and regulators to target responses. Overall, however, the study shows that tax professionals perceive that certain situations make them more likely to adopt an aggressive or innovative tax position. While this self-reported perception may not always translate directly into action, it is indicative of the *habitus* of the professional, and so is a valid criterion to inform policy-makers and regulators. Responses on the nature of transactions most likely to facilitate an aggressive or innovative tax position show that concerns about adverse publicity are felt as an influence, which supports the impact of the work of campaigners and public interest reporters in dampening the scale of tax avoidance. This is an indicator of the importance of such work and its impact on tax avoidance globally. It is clear that ambiguity in tax rules is a key lever for extending or limiting the scope of regulation, and is a key area for attention by legislators. International cooperation measures are already in play through the OECD BEPS process and across the EU. These could perhaps be complemented by some peer-reviewing of legislation across taxing bodies, to increase internal compatibility and to close potential gaps of dubious interpretation. Such cooperation requires a consensus that may be challenged by the trend towards tax competition. Nonetheless, the findings from this study show that it is an area which has significant potential for further investigation.

**References**


Braithwaite, J. (2013) 'Flipping markets to virtue with qui tam and restorative justice', *Accounting, Organizations and Society, 38*(6), 458-468.


