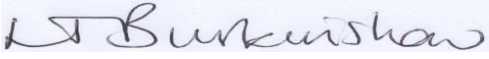


Small tax practitioners in the UK - Provision of tax advice. A qualitative study

Submitted by Lynda Jane Burkinshaw to the University of Exeter
as a thesis for the degree of
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Abstract

The aim of the study is to obtain an in-depth understanding of smaller tax practice in the UK, from the perspective of the tax practitioner. The practitioner voice, the empirical data, was collected via a focus group and semi-structured interviews. The thesis investigates how changes in the tax field impact upon smaller tax practice and adopts a qualitative, interpretive approach to generate rich descriptions of tax practice.

The study examines the client/practitioner relationship and the practitioner/tax authority relationship and also investigates how the practitioner sees their role within this tripartite relationship. The findings suggest that there are a number of 'client expectation gaps' between what clients want and what practitioners can achieve in provision of service to them. These are the 'expert', 'scope', 'HMRC' and 'fee' gaps. Gaps between the type of relationship and service practitioners desire from HMRC and that which they experience are also identified. These are the 'relationship', 'trust', 'systems' and 'knowledge' gaps. The data also provides evidence about positive aspects of the relationship. The study finds that practitioners adopt a number of roles to enable management of these gaps and to fulfil their responsibilities to both clients and HMRC. The gaps arise as a consequence of the dynamic, complex and interdisciplinary tax field in which smaller tax practice plays out. The tax field consists of various actors and is overlaid by a number of fields, such as the legal, political, judicial and bureaucratic field, of which Her Majesty's Revenue and Customs (HMRC) is part. Thus by viewing smaller tax practice against the tax field, a deeper understanding of tax practice is attained. A theoretical framework, a Bourdieusian lens, with a focus upon 'fields' is employed to enable this analysis.

Few studies have examined smaller tax practice, yet it is an important market. Smaller tax practice plays an integral role in the tax system, representing thousands of taxpayers, including small and medium sized businesses. Without the help of the tax practitioner taxpayers may find it difficult to meet their tax obligations, given the complexities in the UK tax system. The findings will be of interest to policymakers, the tax authorities, scholars, professional bodies and practitioners alike.

Contents

Abstract	2
List of tables and diagrams	7
Abbreviations	8
Acknowledgements	10
1 Introduction	11
1.1 Research Questions	11
1.2 Background and motivation	13
1.3 Overview of research design including theoretical framework	19
1.4 Contribution	20
1.5 Structure	22
2 Background and context - The practitioner environment	23
2.1 Introduction	23
2.2 The tax practitioner and the taxpayer	23
2.2.1 What is a tax practitioner?	24
2.2.2 Why do taxpayers seek their help?	24
2.2.3 Functions of the Tax Practitioner	26
2.3 Tax and Accounting Professional Bodies	28
2.3.1 Professional bodies	28
2.3.2 Role of the professional bodies	32
2.4 HMRC matters	34
2.4.1 Taxpayers' charter and HMRC powers	35
2.4.2 Making Tax Digital (MTD)	37
2.4.3 Customer service	38
2.4.4 HMRC and agent engagement	40
2.5 Complexity – the general context	43
2.5.1 Tax practitioners and tax law	45
2.5.2 Complex tax law and its consequences	46
2.5.3 Managing understanding of law	51
2.6 The tax environment and its impact upon the tax profession	53
2.7 Summary	57
3 Literature review	59
3.1 Introduction	59
3.2 The practitioner/client relationship	59

3.2.1	Tax compliance	60
3.2.2	Features of the tax practitioner/client relationship	61
3.2.3	Risk management, confirmation bias and the client relationship	68
3.3	HMRC relationship	72
3.3.1	Service quality at the tax administration	73
3.3.2	Changes in the relationship with tax authorities	73
3.3.3	HMRC assistance to the tax practitioner	79
3.4	Practitioner's Role in the tripartite relationship	80
3.4.1	The position in the middle	80
3.4.2	The tax professional	83
3.4.3	Why professions develop	84
3.4.4	The profession and smaller practitioners	86
3.4.5	Professional Identity	87
3.4.6	The ethical environment	90
3.4.7	Knowledge and expertise	91
3.4.8	Tax knowledge specifically	93
3.5	Summary	95
4	Methodology	100
4.1	Introduction	100
4.2	Research questions and objectives	100
4.3	Research Approach and Research Design	102
4.4	Research methods	105
4.4.1	Focus group	105
4.4.2	Interviews	108
4.4.3	Sampling	110
4.4.4	The interview process	116
4.4.5	Practicalities of the interview and focus group	118
4.5	Other data sources – additional orientation	119
4.6	Ethics	119
4.7	Theoretical framework – an overview of the Bourdieusian lens	120
4.7.1	Bourdieu and studies of tax and accounting	121
4.7.2	Suitability of the theoretical framework to this study	122
4.7.3	Introduction to the Bourdieusian Concepts and theoretical tools	123
4.7.4	Employment of the theoretical framework in this study	130
4.8	Data analysis	131
4.9	Limitations to the research process	136

4.10	Summary	137
5	Findings – The Client Relationship	138
5.1	Introduction	138
5.2	The risk management environment	139
5.3	The ‘expert’ expectation	142
5.3.1	How the practitioner manages the expert expectation	151
5.4	The scope expectation.....	154
5.4.1	Client tax planning and a changed environment	155
5.4.2	How the practitioner manages the scope expectation - ‘tax planning’	158
5.4.3	Scope for bending the rules (ethics and an unappreciated role)	162
5.4.4	How the practitioner manages the scope expectation – ‘scope for bending the rules’	163
5.5	HMRC expectation	164
5.6	The fee expectation.....	166
5.7	Management of colleagues and the impact upon the client relationship	168
5.8	Summary.....	169
6	Findings – HMRC	171
6.1	Introduction	171
6.2	The relationship gap	172
6.3	The trust gap	174
6.3.1	The unfriendly relationship – the antagonistic relationship with tax practitioners	175
6.3.2	Impact of HMRC powers	181
6.3.3	The impact of HMRC working practices	183
6.3.4	The positives	184
6.4	The systems gap	185
6.4.1	Delays	185
6.4.2	Errors	187
6.4.3	Increasing digitalisation	188
6.5	The knowledge gap.....	193
6.5.1	One size fits all	194
6.5.2	Expertise and knowledge	195
6.6	Where the gaps narrow.....	198
6.6.1	Specialist teams	198
6.6.2	Sympathy for HMRC	199

6.7	Summary.....	200
7	Findings - The practitioner's voice – their role in the tripartite relationship	202
7.1	Introduction.....	202
7.2	The practitioner as facilitator	203
7.2.1	Tax planning facilitator	204
7.2.2	Navigation of the tax system	206
7.3	The Practitioner as Translator.....	210
7.3.1	Translation of tax legislation	211
7.3.2	Impact of anti-avoidance provisions	217
7.4	The practitioner as defender	219
7.4.1	Defender of the client	220
7.4.2	Defender of the revenue	222
7.4.3	Defend themselves [the practitioner]	226
7.5	The practitioner as negotiator.....	228
7.6	The practitioner as puzzle solver.....	230
7.6.1	Exercise of judgement and drawing on experience	230
7.6.2	Tools to solve the puzzle	233
7.7	Summary.....	238
8	Discussion	240
8.1	Introduction.....	240
8.2	Tax practice and its position within the wider environment	242
8.2.1	Identification of the tax field	245
8.2.2	Composition of the fields	249
8.3	The tax field and smaller tax practice.....	253
8.3.1	How do small tax practitioners manage client relationships in a dynamic environment? (Chapter 5)	255
8.3.2	How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners?	264
8.3.3	How do the practitioners see their role in the tripartite relationship with clients and HMRC?	269
8.3.4	Themes which draw the empirical findings together	275
8.4	Summary.....	277
9	Conclusions and recommendations for further research	279
9.1	Introduction.....	279
9.2	Findings and implications	280

9.3	Contribution	286
9.4	Recommendations for further research	289
9.5	Concluding remarks	291
10	Appendices	296
10.1	Examples of topics – CIOT meetings	296
10.2	Examples of breadth of work in smaller tax practice	297
10.3	Information sheet – focus group (practitioner workshop)	299
10.4	Prompt sheet - interviews	301
11	References	303
11.1	Table of statutes	303
11.2	Table of cases	303
11.3	References	303

List of tables and diagrams

Tables

1.1	Differences between the Big 4 and the smaller tax practitioner market.....	16
3.1	Tax practitioner and the client relationship literature.....	62
4.1	Focus group details.....	113
4.2	Interviewee participant details.....	114
4.3	Phases of thematic analysis.....	135

Figures

3.1	The professional environment and influences on the tax practitioner.....	90
8.1	Tax practice in a dynamic environment.....	243
8.2	The relationship between the etic domain (the tax field) and the emic domain (tax practice).....	245
8.3	The tax field and the overlapping fields.....	248

Abbreviations

ACCA	Association of Chartered Certified Accountants
APPG	All Party Parliamentary Group
ASG	Agent Steering Group
ATT	Association of Tax Technicians
CFE	Confédération Fiscale Européenne
CGT	Capital Gains Tax
CIOT	Chartered Institute of Taxation
CPD	Continuing Professional Development
CTA	Chartered Tax Adviser
ER	Entrepreneurs' Relief (<i>note, renamed Business Asset Development Relief from April 2020, but the term Entrepreneurs' Relief remains throughout this study</i>).
HMRC	Her Majesty's Revenue and Customs
ICAEW	Institute of Chartered Accountants in England and Wales
ICAS	Institute of Chartered Accountants of Scotland
IRS	Internal Revenue Service
IHT	Inheritance Tax
IOG	Issues Overview Group
JDM	Judgement and Decision Making
JISG	Joint Initiative Steering Group
LSRA	Legal Services Regulation Authority
MTD	Making Tax Digital
NAO	National Audit Office
OECD	Organisation for Economic Co-operation and Development
OTS	Office of Tax Simplification
PAC	House of Commons Public Accounts Committee
PAYE	Pay as You Earn
PCRT	Professional Conduct in Relation to Taxation
R&D	Research and development

SARS	South African Revenue Service
STEP	Society of Trust and Estate Practitioners
TASA	Tax Agents Services Act
VAT	Value Added Tax

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1 Introduction

1.1 Research Questions

The aim of this research is to achieve an understanding of tax practice in the UK smaller tax practitioner context. The research focuses upon tax practice as derived from the accounts and experiences of those working within that environment, the tax practitioner themselves. It is recognised that smaller tax practice does not operate within a vacuum, but operates within a much wider tax field. By viewing tax practice from the wider tax field (from the outside, the etic domain) this enables deeper understanding and explanations of the empirical accounts of the practitioners from within smaller tax practice (the emic domain, Lukka and Modell, 2010).

The tax practitioner is part of a tripartite relationship which consists of themselves, Her Majesty's Revenue and Customs (HMRC) and the taxpayer (client of the practitioner). The tax practitioner acts as an intermediary between HMRC and the taxpayer. The research highlights the interactions of the client/tax practitioner and the tax practitioner/HMRC relationship, and provides detailed examination of the practitioner's role within the middle of this tripartite relationship against the context of the fields (such as the legal field, professional field and bureaucratic field) which overlay and overlap the tax field. This study provides an exploration of tax practice as a social practice.

The research follows calls in the literature for additional empirical work which focuses on "(1) tax-preparer perceptions of their clients, in general, or on (2) what preparers think their clients desire from tax preparation services in particular", as, "...the academic tax literature reveals relatively little about client preparer interactions", Stephenson et al. (2017, p.201), which reflects a view shared by many, including Hite and McGill (1992), Gupta (2015), Oats (2012), Van de Rijt et al. (2019) and Tan (2014). From the perspective of the tax authority/practitioner relationship, Dabner (2012) calls for the views of smaller practitioners in this relationship. Additionally, Apostol and Pop (2019, p.17) call for "more qualitative studies which have largely been absent in tax consultancy research" as they have "great potential to explore the rich details of everyday practices employed in the consultancy industry". Baker (2014, p.281) also remarks upon the paucity of qualitative studies "in the tax practitioner setting".

To attain an understanding of tax practice in the UK smaller tax practitioner context, in what is a dynamic and frequently changing environment, the following overarching research question is to be addressed:

How do changes in the tax field impact upon the practice of smaller tax practitioners?

There are three sub questions, each focussing upon an aspect of the tripartite relationship (the client, HMRC, and the practitioner themselves – that is their role in the middle of this relationship). The three sub questions are:

How do small tax practitioners manage client relationships in a dynamic environment?

This question provides an examination of the client/practitioner relationship in the UK smaller practitioner context from the perspective of the tax practitioner and contributes to the empirical literature in respect of client/tax practitioner interactions. A number of gaps in expectation are identified. The reasons for this, and how the practitioner manages these gaps (and hence the client relationship) are explored.

How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners?

The tax practitioner/HMRC relationship has changed considerably in recent years, as will be explained in Chapter 2, and as will become evident in the empirical evidence. This question explores these issues and highlights interactions between HMRC and the practitioner and details the impact upon the practitioner/client relationship and upon the working practices and roles of the tax practitioners themselves.

How do the practitioners see their role in the tripartite relationship with clients and HMRC?

This question investigates how the practitioners see their role in the tripartite relationship. The practitioners owe obligations and responsibilities to both HMRC and the client, and yet, in the simplest form, the objectives of the taxpayer and HMRC are usually at opposite ends of the spectrum (one may want to minimise tax, the other maximise it). There are numerous references to practitioners

having, for instance, a “dual duty” (Dzienkowski and Peroni, 2016, p.2726), “dual role” (Tran-Nam et al., 2016, p.58) and “being pulled in different directions” (Sakurai and Braithwaite, 2003, p.386) in this relationship. Practitioners are also said to be integral to the operation of the tax system. But how does the small tax practitioner feel about this role, their obligations to clients, HMRC and themselves and what are the influences on the practitioner? What roles do they play in balancing their responsibilities? These questions are explored to obtain evidence of how tax rules and regulations are put into play in practice (Oats, 2012).

The above questions are unpacked into smaller objectives in Chapter 4.

The remainder of this Chapter unfolds as follows. Section 1.2 explains the background and motivation to the research, Section 1.3 gives an overview of the research design, followed in Section 1.4 by the contribution offered by the thesis. Finally, Section 1.5 explains the structure of the thesis.

1.2 Background and motivation

Taxation is important and is worthy of research for a number of reasons. It is an important point of “interaction between the state and its citizens” (Gracia and Oats, 2012a, p.307). Taxation has consequences for the economic plans and the spending intentions of governments hence the tax system is extremely important to a nation. Taxpayers must fulfil their obligations and pay what is owed under the terms of the law. If they do not, the tax system will not function. Taxpayers may however find it difficult to comply with their obligations as tax regulations are complex (as discussed in Chapter 2) and they may therefore seek the help of a tax practitioner. Practitioners thus play an important role in enabling taxpayers to meet their obligations by acting as intermediaries between the state (or tax authorities more particularly) and the taxpayer. The role of a tax practitioner is said to be ‘integral’ to a smooth functioning tax system (Davidson, 2016; Dzienkowski and Peroni, 2016; and Thuronyi and Vanistendael, 1996) and the tax profession is therefore important not just to taxpayers, but the tax system alike. That is, tax practitioners play a key role enabling the tax system to function.

The numbers of tax practitioners in the UK are many and they represent millions of taxpayers who may rely on them for assistance to help them fulfil their tax obligations. HMRC (2020a, p.15) report that

an estimated 72,000 agents represent at least 12 million of HMRC's customers, providing tax advice, completing returns, and interacting with HMRC on their behalf. Agents are used by 72% of small, 88% of mid-sized, and 98% of large businesses. Around 47% of individuals paying through self-assessment and about 58% of self-employed individuals use an agent.

These are large numbers. Additionally, the tax profession is hugely important to the to the UK economy. The National Audit Office (NAO) (2010, p.4) suggested that the market for "preparing tax returns" was estimated, at that time, to be worth around £2.5billion, and although more recent statistics do not appear to be available, this does give an indication of the contribution that the tax profession makes to the economy.

Tax practitioners range from sole traders to those working for large international professional firms (such as the Big 4¹), to those working in the legal profession. Some may work for firms which specialise only in tax work (without audit or accounting services) or have expertise centralised around one particular tax, or provide expertise in relation to a particular tax service such as help for tax investigations (the so-called boutique tax firms, Head, 2018). The services tax practitioners offer are discussed in Chapter 2, however they may offer different services to different types of taxpayers depending upon their own expertise and their target market as the services required by taxpayers will differ. Global organisations such as multinational entities (MNEs) will require different services to those required by national small and medium sized entities (SMEs) for instance. Given such large variations in the types of practitioners and services required by taxpayers, the market for tax advice is diverse and it has been described as fragmented (Thuronyi and Vanistendael, 1996) and difficult to overview (Frecknall-Hughes and Kirchler, 2015; Thuronyi and Vanistendael, 1996). One particular aspect of this market however relates to the tax advice required by SMEs. This is an important sector; in the UK, SMEs (defined as those with less than 250 employees) represent more than 99% of all firms (with 96% of SMES having fewer than 10 employees), (Rhodes and Ward, 2020). SMEs account for 60% of private sector jobs and they consequently make a major contribution to economic growth and employment (Merchant Savvy, 2020). SMEs in particular may grapple with tax regulations (OECD, 2016) and face high

¹ These are Deloitte, PricewaterhouseCoopers (PwC), ErnstYoung (EY), KPMG – not just the largest professional services firms in the UK, but worldwide.

tax compliance costs (Evans et al., 2014) and may not have tax expertise amongst their staff. Consequently, many outsource tax issues to tax practitioners. The SME market for tax advice is therefore an important one and is worthy of research, particularly as Gracia and Oats (2012a, p.305) observe “...less scholarly attention [is] paid to national concerns, small taxpayers and their advisers”. Thus this research has focus on the advisers who count SMEs (rather than the larger, oft-researched MNEs) amongst their client base; that is the smaller practitioner market.

Given the huge SME market described above, the smaller practitioners that serve them are many (being the “high-street accountants and mid-tier accountancy firms” (Warmoll, 2015²) and they supply important services to this large market. Smaller practitioners may also represent individuals and partnerships, alongside the SMEs. As well as helping with compliance obligations and assisting taxpayers to navigate the tax system, practitioners ensure that tax reliefs, some of which facilitate SME growth, can be claimed by appropriate taxpayers. Reliefs are often available as economic incentives for businesses to invest, as they offer tax savings, hence they are important for economic growth and practitioners can advise on these matters. However, little is known about the smaller practitioner segment of the tax advice market which serves the thousands of taxpayers who may find it difficult to accurately fulfil their tax obligations without assistance. If tax obligations are not met, this of course would have many consequences for the collection of tax by the state and the functioning of the tax system in general. To contribute to the knowledge of smaller tax practice, and gain an understanding of this sector and its role within the tax system, it is important to hear the voices of those who work within it, to gain their thoughts, views and experiences about their work at the coal face within this particular market.

Smaller tax practitioners differ from those who work for the Big 4 in a number of respects. Of course the Big 4 organisations are huge concerns with many different offices across the globe which employ thousands of people. Statista (2021) suggests that combined, the Big 4 employed just over one million people

² KPMG announced their intention to act for smaller clients in 2015 and discussions ensued about the potential ‘disruption’ to the SME market amongst the practitioners most likely to act for smaller companies, see for instance Warmoll (2015). KPMG withdrew from this market in 2019, see for instance, Herbert (2019).

in 2020 worldwide. Smaller firms range from sole traders to mid-tier firms which employ a few hundred staff, but they cannot compete with the size or spread of the Big 4 firms. The client base of the Big 4 may also differ, as may the skills of the tax staff employed within them. There are a number of differences between the Big 4 and smaller practices, in terms of their approach to the provision of tax advice, as shown in Table 1.1 below:

Table 1.1 Differences between the Big 4 and the smaller tax practitioner market

	Big 4	Smaller practitioner
Price	Charge high fees	Lower fee profile
Overheads	High	Lower
Global presence	Yes	No
Practitioner involved in work which is	Specialist in nature, e.g. one specific tax, or a specific area of tax.	More general in nature; Likely to advise business and owner about multiple taxes.
Skill set of practitioner is therefore	Likely narrower, specialist, in depth knowledge of particular specialism	Broader (but less depth of knowledge) across a range of taxes/business issues
Client base:	MNEs amongst others. Listed companies. Corporations with global reach. Some larger SMEs. Likely high net worth individuals.	Small business, SMEs, owner managed businesses, sole traders and other individuals
Training and support and access to tax update information	Extensive and in-house formal training.	Training may be bought in/external courses attended. Experience gained 'on the job'
Access to information and resources in-house	Extensive	Limited

This research is therefore not concerned with tax practitioners currently working for the larger professional service providers (such as the Big 4), neither does the research encompass tax lawyers. The size of a firm is often reported upon by its fee income and in relation to this, firms may be commonly described as being in

the 'top 10' or the 'top 20'³ (of which the Big 4 form part and which incorporate larger mid-tier firms); employees of such organisations have also been excluded from participation in the research.

Accordingly, smaller tax practitioners are the participants in this research. Participants include sole traders, those who work for firms with just a few employees, and those working for firms with 100+ staff. No participants were drawn from any organisation which had an international presence, although some participants may have previously worked for the Big 4 or top 10 or top 20 firms.

The smaller tax practitioner view is fundamental to the study as explained. Additionally, the context and environment in which they work must also be examined to add further explanation and understanding to the opinions and perspectives of the participants. Tax advice involves an interplay of many different social and environmental aspects which impact upon the behaviour of those working within that environment. These different phenomena create a dynamic, frequently changing environment in which tax practitioners operate. Although the provision of tax advice is thought to be a technical activity (and at times it may appear so), it is much more than this. It can be described as a 'social practice' (Oats, 2012). Studies which investigate this perspective and thus explicate tax practice as a social (and institutional) practice include Mulligan and Oats (2016) who examine the various relationships of US in-house tax professionals in the context of the environment in which they operate (through the theoretical lenses of institutional work and endogeneity of law); Radcliffe et al. (2018) who investigate how tax professionals respond to "changing moral boundaries" (p.45) in the corporate tax practice context, from the perspective of "professionalization and institutional change" (p.45); and Boll (2014) who adopts an actor network theory perspective to examine tax compliance of smaller taxpayers in the context of the external environment.

As Radcliffe et al. (2018, p.46) explain ;

...tax as a social practice ...[highlights]... the ways in which tax behaviour is enmeshed with wider organizational, institutional, political and societal phenomena...

³ Typically the top 50, or top 100 firms are reported annually, see for instance <https://www.accountancyage.com/rankings/top-5050-accountancy-firms-2020/> [accessed 1 September 2021]

But they also add

... [this tells] us little about what actors are actually doing on the ground...”
(Radcliffe et al., 2018, p.46)

Additionally, as Radcliffe et al. (2018) point out, tax research tends to prioritise investigation into either the ‘macro’ environment in which tax practice operates (so the “wider organizational, institutional, political and societal phenomena” described above), or, the micro level of tax practice itself. Without the link between the two, it is suggested there is some of the picture missing. In other words, to address this observation one needs to study ‘actors on the ground’ (here the smaller practitioner perspective) against the wider fields and environments (the contexts) in which they operate. Such a view of the practitioner and their working environment is explored in this thesis. Their voices are heard to allow examination of the social practice of tax at the micro (emic) perspective. This is explored against the backdrop of the wider tax field in which they operate, at the macro (etic) perspective. This will allow examination of how the tax field and changes within it affect their practice.

Finally, the personal experience of working as a tax practitioner in both a large professional services firm and in smaller tax practice inspired this research. The contrast between environments was stark. Work within the large firm was restricted to one tax only. Any questions or problems could be resolved within the firm, either at a local or national or international level. Upon moving to a smaller practice, the breadth of knowledge needed increased immeasurably. From advising upon one tax in respect of a transaction, suddenly there were at least seven different taxes which one needed to contemplate (from income tax to national insurance to inheritance tax). The reason for this was twofold. Firstly, the size of the practice was such that specialism (depth of knowledge of one tax) was not feasible, and secondly, the nature of the clients differed. Businesses were often owner-managed, which meant advising both the business and the owner, hence the knowledge of many different taxes was needed, as well as an appreciation of how the taxes may interact with each other. Whilst the majority of tax compliance work (completion of tax returns for example) was relatively straight forward, the tax queries that arose daily were diverse, unique and often involved hours of time to investigate and provide an answer. An answer which in

many cases was by no means 100% certain. The question started to form – why is tax practice like this? Surely someone has had this query before? Can someone not just create a book of every tax question and an appropriate answer to save the time of everyone else looking at the same question? That of course is impossible as all tax situations and questions are unique to their own circumstances, however, this experience was a source of inspiration for the thesis.

In sum, the thesis seeks to understand smaller tax practice and its challenges against the wider environment in which it operates.

1.3 Overview of research design including theoretical framework

Given the research objective and research question, the perspective of the tax practitioner is vital to this study. Their voice needs to be heard. To understand how changes in the tax field impact upon the practice of smaller tax practitioners requires a close examination of social practices in this environment. A qualitative study is therefore undertaken. The study adopts an interpretive perspective and an abductive approach which enables analysis of the links between the empirical evidence and the theoretical framework to add meaning and understanding to the empirical data generated from the participants.

In accordance with the research objectives, the methods to acquire the data were a focus group, followed by semi-structured interviews. It should be noted that participants for this research were from within the professional field (defined for the purposes of this study as; members of, or working for an organisation overseen by, a professional body, or with HMRC training) as explained in Chapter 4. Practitioners outside the professional field were not included in the sample.

As tax practice (the emic domain) cannot be viewed in isolation from the wider environment (the etic domain) in which it operates, a theoretical lens is required which enables examination of smaller tax practice in this context. A Bourdieusian lens, with particular focus upon the concept of 'field', is a theoretical framework which enables such a link. The framework is appropriate for examination of organisations (here smaller tax practice) (Swartz, 2008) and is suitable for an interpretive approach (Malsch et al., 2011), hence it is suitable for use in the context of the thesis. This will enable examination of the smaller practitioner

environment as a social practice and thus enable attention to be paid “to the way in which everyday tax practices are interwoven with societal, institutional and political norms and pressures” Radcliffe et al. (2018, p.46). As the tax field is complex with many “cross disciplinary relationships” (Gracia and Oats, 2012a, p.308) a Bourdieusian lens will aid understanding of the impact of such relationships. The tax field is made up of various actors and is overlaid by other fields such as the political field, the bureaucratic field and the legal field. By viewing evidence from those inside tax practice at the ground level, against the wider tax field, a deeper understanding of tax practice will be attained, as tax practice will be shaped by the actions of those within the tax field.

1.4 Contribution

The thesis provides a number of contributions.

It extends knowledge and scholarship around the practice of tax, responding to calls for further study into how “tax rules and regulations are put into play” (Oats, 2012, p.7). The thesis examines how tax rules are implemented by actors on the ground, in the UK smaller tax practitioner context. Neither the UK context, or the smaller tax practitioner market has been widely researched (Gracia and Oats, 2012a), and thus the thesis adds to the domain literature in this field.

The study of tax as a social (rather than technical) practice is an underrepresented field of study (Oats, 2012). The thesis contributes to this perspective by viewing smaller tax practice against the wider tax field. The thesis explores how tax practitioners balance their client and HMRC responsibilities and how they deal with the impact of frequent changes, a dynamic environment and uncertainties in order to carry out their work. Changes at the tax field level may be used to explore and understand smaller tax practice and to examine why the tax environment is so complex and fluid. This perspective draws together examination of the actors on the ground (smaller tax practice, at the micro level) and the broader interdisciplinary tax field (at the macro level) so viewing the impact of the different stakeholders in the tax field upon smaller tax practice. This perspective contributes to a gap identified by Radcliffe et al. (2018), who suggest that many studies focus upon either the micro or macro context, rather than bringing both together, as in this study. The link between the tax field and the actors on the ground is achieved using Bourdieu’s theoretical framework and the

concept of “field” in particular. This enables an appreciation of what is going on in the tax field at the macro level, and thus contributes to a deeper understanding and knowledge of smaller tax practice at the micro level to explain not just what tax practitioners do, but also why they do what they do. Tax practice is seen to be shaped by the tax field in which it operates and indeed tax practice may also impact upon the tax field, thus illustrating the social practice of tax.

Further the tax practitioner voice is underrepresented in existing studies. The practitioner perspective about client and tax authority relationships and interactions is obtained, thus contributing to knowledge in this respect. In particular, the thesis addresses the calls for more research into “client preparer interactions”, Stephenson et al. (2017, p.201) and responds to similar calls from Hite and McGill (1992), Gupta (2015), Oats (2012), Van de Rijt et al. (2019) and Tan (2014).

The research identifies a number of gaps in expectation between the practitioner and the client and between the practitioner and HMRC and, additionally, illuminates the roles adopted by practitioners to fulfil their responsibilities as the central actor in the tripartite relationship. These findings contribute to the knowledge of tax practice as a whole. Importantly, the thesis also offers additional insight into the functions of smaller tax practitioners and the significant roles they play in the operation of the tax system in general. Additionally, a light is shone on how practitioners reconcile complexities to carry out their roles as suggested by Bogenschneider (2015) and Picciotto (2007) as there has been little explanation, to date, about how this is achieved. The thesis therefore provides additional contribution to the scholarship and knowledge about how tax rules are implemented on the ground in this respect (Oats, 2012).

Additionally, whilst this research is not a law thesis, reference to the tax law is inevitable. As will be discussed in Chapter 2, law, as applied to any discipline (not just taxation) may at times, be uncertain and add to complexity. Such uncertainty transfers to tax law. Calls for the effects upon the consequences of uncertainty in tax law have been made in the past (Weisbach, 2002). The thesis touches upon the impacts of uncertain law upon smaller tax practice and hence, addresses, in small part (given the wide area that tax covers and its interdisciplinary nature as a subject) such a call.

Finally, from a methodological perspective, the thesis responds to calls for more qualitative work in the tax practitioner environment (Apostol and Pop, 2019; Baker, 2014). As will be addressed in Chapter 3, many studies in the tax practitioner context adopt a positivist perspective, and few hear the tax practitioner voice. A qualitative approach enables acquisition of the depth and richness of the practitioners' experiences, so as to enable deep understanding of smaller tax practice and thus the thesis contributes to scholarship in this respect.

The thesis will be of interest to the practitioner community, tax authorities and policy makers, the professional bodies concerned with taxation (such as those representing the accounting, legal and tax profession itself) and scholars.

1.5 Structure

The thesis is structured as follows: Chapter 2 provides background and context to the environment in which tax practice in the UK is currently carried out and explains what a tax practitioner is and the roles they have. Details about the tax profession are also presented. The role of HMRC is highlighted, and current issues which impact upon the tax profession are discussed. As tax practitioners advise on law, details of challenges in this respect are also presented. Chapter 3 provides a review of the literature around the client/practitioner and HMRC relationship and the role of the practitioner in the tripartite relationship. The professional identity of the tax practitioner is also addressed. Chapter 4 provides an explanation of the methodological approach, research design, research methods and theoretical framework. Chapters 5 to 7 present the empirical findings, based around each of the three research questions. Chapter 8 provides a discussion, linking the empirical findings to the theoretical framework at the macro (etic) domain, in order to provide additional understanding of tax practice at the emic domain. Chapter 9 offers conclusions.

2 Background and context - The practitioner environment

2.1 Introduction

This chapter provides background and contextual information about tax practitioners and the work they undertake, the roles of the professional bodies, HMRC as an organisation and the general environment in which the UK based smaller tax practitioner works.

The chapter starts at Section 2 by explaining what a tax practitioner is. This section also presents the reasons why taxpayers seek the help of tax practitioners and discusses the services practitioners provide. The roles of professional bodies in the UK (to which practitioners may, or may not belong) are discussed in terms of regulation, how they oversee their members and the benefits practitioners may obtain from membership in Section 3. Of course, a large part of the practitioner role involves interaction with HMRC. HMRC as an organisation has undergone significant change in recent years as it adapts to changes in the environment and responds to pressures to collect more tax and clamp down on tax avoidance. Such changes impact upon both taxpayers and practitioners alike, hence a number of current issues are also discussed. HMRC matters are discussed in Section 4. The complexities in the tax system are highlighted in Section 5. Practitioners navigate complex law and the tax system to assist their clients and these complexities can be a source of challenge, frustration and difficulty for many. The tax practitioner may therefore find her/himself operating under conditions of uncertainty (arising from the different relationships which they must manage, as well as complex tax rules and regulation) when seeking to resolve issues for clients. Section 6 explains how various events in the tax field have created an element of scepticism about the tax profession and provides an examination of the backdrop against which tax practice currently plays out, highlighting some additional pressures in the tax practitioner environment. Finally, a summary of the chapter is provided in Section 7.

2.2 The tax practitioner and the taxpayer

This section explores what a tax practitioner is, why there is demand for their services and describes the services the practitioner offers.

2.2.1 What is a tax practitioner?

Tax practitioner, tax adviser, tax intermediary, tax return preparer, tax professional, tax agent, tax accountant, tax lawyer: these are all terms which may be used to describe individuals who act for clients in respect of taxation matters (Frecknall-Hughes and Moizer, 2015). Other terms may also fall within the tax professional remit, such as payroll agents and those employed (or formerly employed) by revenue authorities (Frecknall-Hughes and Moizer, 2015). Brock and Russell (2015, p.19) suggest that tax professionals are "...intermediaries or knowledge brokers between taxpayers and government tax institutions" and the practitioner's role within this tripartite relationship is explored in Chapter 3. There are a "multiplicity of terms used to describe tax practitioners" (Frecknall-Hughes and Kirchler, 2015, p.290) and yet there is no statutory definition of what or whom a tax practitioner or adviser is (Frecknall-Hughes and Kirchler, 2015; Gupta, 2015). Nevertheless, Devos (2012) undertaking research in respect of the Australian tax practitioner does suggest a definition for tax practitioners as shown below. Whilst this encompasses the diversity of those within the tax profession and is a fair reflection of the situation in the UK too, it is important to note that the 'registered tax agents' relate only to Australia (and not the UK). International comparisons should be made with caution as some countries (here Australia) require registration of tax practitioners. This is not required in other countries, the UK included (as further discussed below).

Self-employed and in-house accountants, tax advisers and registered tax agents, tax agent franchises and legal practitioners in the tax area are all embraced by the term 'tax practitioner'. Devos (2012, p.5) definition of tax practitioner.

The term tax practitioner is used throughout the thesis where possible.

2.2.2 Why do taxpayers seek their help?

The tax system in the UK is notoriously complex. Complexity pervades not just the tax law (it may be lengthy, unclear, vague, ambiguous, change frequently) but also the administration of the system. Reasons for complexity are highlighted in Section 2.5 to illustrate the problems that may arise for some taxpayers and their advisers. Complexity is a fundamental reason why there is a demand for tax practitioner services.

Taxpayers may require help to fulfil their tax obligations, or to understand the tax implications of a future transaction. MacNeil (2009) and Raskolnikov (2015) suggest that the act of seeking advice is a response to uncertainty – that is the taxpayer does not know how the tax law may apply to their circumstances, or how to fulfil their obligations under the tax system. They may hence seek the help of an expert.

Particular individuals who seek advice are not the focus of this thesis, although various studies have been undertaken over time about those who seek tax practitioner assistance from a demographic perspective (age, sex, marital status, level of education, income levels, employment status) (see for example, Borrego et al., 2015; Christian et al., 1993; Collins et al., 1990; Frecknall-Hughes and Moizer, 2015). Not all taxpayers will seek advice, it will depend on their circumstances. However, the reasons for which taxpayers seek advice are important in this study, as the tax practitioner is expected to have the knowledge to address those particular needs of the taxpayer.

The motivations for taxpayers to seek assistance have been widely written about, although not always from a UK perspective. Nevertheless, the drivers appear to be common amongst countries, and include:

- to reduce uncertainty in reporting tax affairs correctly;
- to reduce the risk of audit by authorities;
- to save compliance costs (particularly for smaller business Evans et al., 2014) and time (i.e., engage those with the knowledge and ability to help with compliance or provide advice required). In other words, to access tax practitioner knowledge which is much greater than that of the taxpayer. (Gupta, 2015; HMRC, 2015a)
- to avoid penalties and interest;
- to 'get it right' and fear of error;
- inability to understand the law (complex, ambiguous, the language) in order to determine tax obligations;
- to obtain a quicker refund;
- and to obtain advice in respect of arranging affairs in a tax efficient way (Murphy, 2004)

For literature on these matters, see for instance, Brock and Russell (2015), Brody and Masselli (1996), Christensen (1992), Christian et al. (1993), Collins et al. (1990), Frecknall-Hughes and Kirchler (2015), Gupta (2015), Klepper et al. (1991), Leviner (2012), Niemiowski and Wearing (2003), Reckers et al. (1991), Smith and Kinsey (1987), Tran-Nam et al. (2016). Additionally, HMRC research report (2015a), collected information regarding the motivations of small and mid-sized businesses for using a tax agent; many of the above reasons were indeed listed as motivations.

Therefore, complexity and uncertainty about the tax system and the tax law creates demand for services to assist the taxpayer (Borrego et al., 2015; Cloyd and Spilker, 1999; Frecknall-Hughes and McKerchar, 2013; Helleloid, 1989; Hite and McGill, 1992; Klepper et al., 1991; McKerchar, 2005; Murphy, 2004). As a result,

“...professional judgement [that is, rather than taxpayer judgement] is often required to interpret the law ... and how the law applies to the factual situation of the taxpayer” (Kaplan et al., 1988, p.427).

Professionals are seen as being “conversant” in the relevant law (Sakurai and Braithwaite, 2003, p.376) helping taxpayers have confidence that their tax affairs are correctly taken in hand to help resolve uncertainty to pay “no more than the law requires” (Tan, 2011, p.74), to submit a timely, compliant tax return (Erard, 1993, p.163) and meet their tax obligations (Frecknall-Hughes and Kirchler, 2015, p.290). Indeed, as Ansari and Sossin (2017, p.295) indicate, professional expertise is therefore required to “resol[ve] complexity for the taxpayer”. One could say therefore that there is transference of the taxpayer’s uncertainties to the practitioner (Eustice, 1989; Fogarty and Jones, 2014)

2.2.3 Functions of the Tax Practitioner

Given that taxpayers seek the help of practitioners, what tasks do they undertake and what does the practitioner actually do? This may depend upon the size or type of firm for which the practitioner works. Those working for larger firms may specialise in a particular area of tax (such as corporate tax, or inheritance tax), whereas those working in smaller firms will need a far broader knowledge and come across a greater variety of issues. Additionally, the responsibilities of a tax lawyer may differ completely from those working within the broader accounting

field. The role may, in other words, depend upon the context within which the individual works.

It is common to view the responsibilities of a practitioner by the type of activities they undertake, such as compliance matters which comprise tax return preparation, and filing and payment activities (for example, see Erard, 1993; Frecknall-Hughes and Moizer, 2015; Tran-Nam et al., 2016 and; Niemirowski and Wearing, 2003) and those which encompass advice on tax minimisation such as tax planning. The use of the practitioner's knowledge in this respect is explored by Klepper et al. (1991) who suggest that their expertise may be used for enforcement (compliance) or enabling (tax planning or exploitation of ambiguous law) purposes. Interestingly, Apostol and Pop (2019) include 'tax planning' within the tax compliance category as they see tax planning to be implementation of tax law in accordance with its intent (such as claiming of tax reliefs); they categorise other activities (such as searching for loopholes within the law, and taking advantage of ambiguous legislation) as tax avoidance.

Alternatively, responsibilities may be classified by services, such as; preparation (and auditing) of accounts and tax returns, and representation of taxpayers (Thuronyi and Vanistendael, 1996; Tran-Nam, 2016); responding to queries from tax authorities; providing valuations, and acting as a mediator or negotiator between the tax authorities and the client (Frecknall-Hughes and Kirchler, 2015); and helping taxpayers avoid errors and deterring them from "...engaging in unlawful or overly-aggressive activities" (OECD, 2008, p.14, which engaged in a study of the role of tax intermediaries in conjunction with HMRC and others to determine the roles played "in tax compliance and the promotion of tax minimisation arrangements" (p.5) which perhaps explains the context of this quote). Conversely however, practitioners provide a protection role for the taxpayer against overzealous tax authorities (Brock and Russell, 2015). Practitioners also act as a conduit of knowledge between the tax authorities and the taxpayer (Brock and Russell, 2015), providing details of changes in law or new rules and regulations, or advertising tax reliefs or incentives on behalf of HMRC such as research and development (R&D) tax reliefs (Hasseldine, et al. 2011). Tran-Nam et al. (2016) describe this role as the education of the client. The practitioner is therefore, arguably in the business of selling knowledge (Gracia and Oats, 2012a) and may be seen as a "knowledge broker" as their

knowledge is itself an “economic asset” (Hasseldine et al., 2011, p.27). Thus they act as intermediaries between the tax authorities and the client (Tomasic and Pentony, 1991).

Many practitioners may be members of a professional body. Details of accounting and tax professional bodies, and their main roles are discussed below. Further information about why professions develop, the role of professionalism in approaching ones responsibilities and the professional identity of the tax practitioner are discussed in Chapter 3. What follows here gives additional context to the working environment of (some) tax practitioners.

2.3 Tax and Accounting Professional Bodies

Those working in the UK tax profession may belong to a one or more professional bodies in the accounting and tax field – which is described as a “confusing plethora” (Freedman and Power, 1992, p.21). Despite the choice of organisations on offer, there is no overall umbrella regulation and it is not obligatory to belong to any professional body. There is no system of registration for tax practitioners in the UK (which differs to some other countries) as indicated above.

2.3.1 Professional bodies

Many tax practitioners may be qualified accountants and may belong to one of the professional accounting bodies, such as the Institute of Chartered Accountants in England and Wales (ICAEW, which also hosts a ‘tax faculty’ for members, at extra cost); the Institute of Chartered Accountants Scotland (ICAS); Chartered Accountants Ireland; the Association of Chartered Certified Accountants (ACCA); or Association of Accounting Technicians (AAT). Individuals usually become full members of these bodies after completion of examinations and a period of work experience (in practice or industry, depending on the institute) which is characteristic of any profession (see Chapter 3, Section 3.4.3). Upon qualification individuals are designated to the professional body and are able to call themselves – for instance - Chartered Accountant (ICAEW), Chartered Certified Accountant (ACCA) and so on.

Additionally, for tax more specifically, the Chartered Institute of Taxation (CIOT) and the Association of Taxation Technicians (ATT) are other professional organisations. The CIOT is described as

“the leading professional body in the UK for advisers dealing with all aspects of taxation... [with the] primary purpose ... to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all” (CIOT, 2020).

Again, the organisation sets criteria for membership and upon successful completion, the individual becomes a Chartered Tax Adviser (CTA). This organisation also enables international tax practitioners to study for a diploma in international tax. Additionally, the CIOT offers a dual qualification with ICAEW and the ATT. There are also other specialist tax organisations such as the Society of Estate and Trust Practitioners (STEP) which is (per the ‘about us’ webpage) described as a “global professional association for practitioners who specialise in family and inheritance and succession planning” and historically there was also an Institute of Indirect Taxation, now merged (since 2013) with the CIOT.

As noted in Section 2.2.1, tax practitioners may also include qualified lawyers, solicitors and barristers who may also belong to their own professional organisations (and perhaps also to the CIOT) and others may have no professional qualifications, nor belong to any professional body, although neither lawyers or unqualified individuals are included in this study. For completeness, it should be noted that there are many other accountancy-related professional bodies in the UK, such as Chartered Institute of Management Accountants (CIMA) (in the main, the professional body for accountants working within industry) and Chartered Institute of Public Finance and Accountancy (CIPFA) (the public sector accounting body). Whilst these bodies do include some taxation studies in their professional qualifications, in the main, practising tax advisers, if they do belong to a professional body, are more likely to belong to those noted above. In an international sense there is also the CFE (Confédération Fiscale Européenne), which is a type of ‘umbrella’ organisation which includes within it “33 national organisations from 26 European States, representing more than 200,000 tax advisers”. Representatives within the CFE from the UK include the CIOT and the tax faculty of the ICAEW (CFE, 2020). Another body of note, also offering a route to professional accountancy qualification is the Association of International Accountants, this also includes taxation within the route to qualification.

The professional bodies publish professional standards to which members should adhere and have regulatory and disciplinary rules in case of breach of standards. Firms may be monitored. There are practical benefits to belonging to such organisations for members. These include access to support, access to continuing professional development (CPD) courses and materials, technical assistance and ethical guidance. Careers advice, professional development opportunities, job advertisements, access to a journal, or newsletters and access to the library of the organisation may also be available. The professional bodies provide current information, updates and advice about changes to tax rules and tax law to help members keep their knowledge up to date. They also provide a route for members to have a voice in relation to ongoing consultations, which are often frequent and numerous. For example, at the budget in Spring 2020, the government published eleven policy consultations and calls for evidence (Norman, 2020). Additionally, a branch network may exist – that is local ‘arms’ of the organisation run events for members, enabling access to an accounting or tax community and network. For an example of this see the CIOT’s local branch network programme (CIOT, 2020a) or the ICAEW’S local area information (2020F). A selection of events held at local CIOT branch meetings, from 2017-2019 are shown in Appendix 10.1. In addition, a qualification attained via either (or both) a tax or accounting body enables the practitioner to advertise this fact, and their membership will become visible on the databases held by the organisations. This provides potential clients with a type of hallmark, as this suggests practitioners are highly trained individuals who have the support of a professional body. Interestingly however HMRC (2015a) research found that taxpayers simply assumed their adviser to be professionally qualified, but were unlikely to check this is the case. However, as an example, ICAEW (2020) states:

“Being an ICAEW Chartered Accountant is no ordinary achievement. Your premium qualification sets you apart as a member of a highly influential and respected professional body, which connects you to a wider global community of financial experts”.

Additionally, the CIOT describes their qualification as the “gold standard” that is the mark of a “trusted adviser” (CIOT, 2020b). To retain membership, individuals must pay an annual subscription to each body, and ordinarily declare annual compliance with the professional body rules and regulations in terms of CPD, ethics and money laundering rules for instance.

These benefits may be viewed as a type of capital; to which individuals have access by virtue of their membership. Simply belonging to a professional body may confer status (Stringfellow and Thompson, 2014) and respectability to the outside world which can be seen to be an intangible benefit of membership - or in other words symbolic capital – as membership may confer indirectly an indication of quality and good service. Of course, to become a member in the first place, as discussed, one must meet stringent entry requirements. Success in meeting these requirements also enhances the human and cultural capital of the individual (Stringfellow and Shaw, 2009), and yet a qualification may also be seen as symbolic capital too.

In sum, in the UK, anyone may set her/himself up to be a tax practitioner, qualified or unqualified, experienced in tax matters, or not. Practitioners may belong to more than one professional body, or none. Research undertaken by Kantar Public for HMRC in 2018 indicated that 67% of tax advisers belong to a professional body, meaning that, as Smith (2019) and White (2019a) note, one in three are unregulated by any professional body. Interestingly, membership of professional bodies appears to increase to 82% if the practitioner employs staff (HMRC 2014b) and it was suggested in the same research that ICAEW was the professional body to which most participants belonged. Strangely, none of the participants in that particular study (which had a secondary objective of updating HMRC about tax agents' profiles) referred to the CIOT (despite it having over 19,000 members according to information on the website as at November 2020).

Taxpayers may incorrectly assume their adviser is professionally qualified per HMRC (2015a) research findings, as aforementioned. Unqualified advisers are a source of consternation to those belonging to professional bodies, who themselves are regulated by the terms of their membership (Kantar Public research for HMRC, 2018). "Lack of oversight" of non-qualified practitioners was a chief concern and various ways were suggested to bring about change. This research is not concerned with 'unregulated' practitioners, but this particular sector of the market will inevitably affect the field under consideration as they may potentially be in competition with practitioners who must fulfil additional obligations to their professional body (which the unregulated practitioner does not).

2.3.2 Role of the professional bodies

The professional bodies (here the accounting and tax bodies) are self-regulating and have their own rules around ethics, conduct, and oversight, as described above. They must guide members about their conduct, particularly in relation to tax planning advice. Of course, an individual will have their own disposition and approach to their work (which forms part of an individual's professional identity) and the link between the professional body and the individual is discussed in this respect in Chapter 3. Given that professional bodies should act in the public interest (also discussed further in Chapter 3) their actions, as well as those of individual tax practitioners, have recently come under additional scrutiny, in light of aggressive tax avoidance matters, as will be explained in Section 2.6. If the actions of a profession are not deemed robust enough, particularly around the issues of what may be viewed as aggressive tax avoidance, there is a risk of a "loss of professional freedom and increasing regulation" (Stuebs and Wilkinson, 2010). To this end the profession issued the Professional Conduct in Relation to Taxation (PCRT) regulations. These regulations first appeared in 1995, and are common to seven professional bodies⁴. The regulations have undergone 8 iterations since, most recently in 2017 (and being digitised in 2019, along with publication of additional help sheets), to give stronger focus to the obligations of the tax practitioner in terms of tax planning and to help address some of the criticisms levied at the tax profession, or as Gammie (2017) states is a response "to ministerial concern that the professions are not doing enough to curb tax avoidance". The latest version includes new standards for "tax planning" and lays out the responsibility of the tax practitioner in that respect.

The PCRT (the full version of which can be seen at CIOT, 2019a)

- sets out the high ethical standards which form the core of the tripartite relationship between tax adviser, client and HMRC.
- responds to the government's challenge to the professional bodies to take a greater lead in setting and enforcing clear professional standards around the facilitation and promotion of tax avoidance.
- has been endorsed by HMRC as an acceptable basis for dealings between members and HMRC.

(ICAEW, 2020a)

⁴ These professional bodies are: •Association of Accounting Technicians (AAT)•Association of Chartered Certified Accountants (ACCA)•Association of Taxation Technicians (ATT)•Chartered Institute of Taxation (CIOT)•Institute of Chartered Accountants in England and Wales (ICAEW), •Institute of Chartered Accountants of Scotland (ICAS)•Society of Trust and Estate Practitioners (STEP)

The standard is not without criticism. Gammie (2017) argues that it is the setters of law who should take more responsibility for tax avoidance, rather than leaving it to the preserve of the tax practitioner, as this is not an easy issue to resolve. He concludes:

Ministers may like to think that the professions should take on a greater lead and responsibility in relation to tax avoidance, but in fact avoidance is a function of the tax laws that ministers promote and that Parliament enacts. As the Memorandum of Dissent to the Royal Commission on the Taxation of Profits and Income noted more than 60 years ago: 'The existence of widespread tax avoidance is evidence that the system, not the taxpayer, stands in need of radical reform.' And the reference to the taxpayer could have included a reference to those whose job it is to advise taxpayers on their tax obligations, based on a realistic assessment of the facts and a credible view of the law. It is for ministers and parliamentarians to look to what they do, rather than to look to the professions to relieve them of responsibility for the errors and inadequacies of their tax policy and tax legislation.

Of course, the way one views these matters depends very much on personal perspective. Gammie is a Queens Counsel (QC), a senior barrister in the tax field, which may influence how he sees this issue. A practitioner's view is given by Dodwell and Parker (2017, p.8), who recognise that practitioners should be treated fairly yet there is a need to rule out

"bad behaviour...while making it clear that taxpayers are entitled to be advised on different courses of action with different tax outcomes...the ultimate arbiter of the law is the judiciary".

This suggests perhaps a fear that 'acceptable tax planning' could inadvertently be caught up in the guidance (see Fernie, 2016). However, there is undoubtedly a changing attitude towards the acceptability of tax avoidance, which will have an impact on all tax practitioners and which is discussed at Section 2.6 below.

Research was undertaken on behalf of HMRC in 2018 (Kantar Public research for HMRC, 2018) into the role of the professional bodies in the regulation of tax agents. Some of their findings are also mentioned above. The research was to investigate the membership (and role) of professional bodies, how their regulatory frameworks interact with members, and the relationship between HMRC and the profession along with how the profession regulates their members. The study collected the views of senior officials of professional bodies. The findings suggested that professional bodies did not see their role to be one of regulation, rather that they "saw their role as maintaining and enhancing

standards through education, with a review process referred to as ‘practice assurance’ or ‘monitoring’” (Kantar Public research for HMRC, 2018, p.4). As highlighted above, a chief concern of the professional bodies related to those agents who do not belong to a professional body, and suggestions were made as to how to address this issue (which is outside the scope of this thesis).

2.4 HMRC matters

HMRC is the body which is responsible for administration of the tax system (including collection of tax, and payment for public services and welfare).

“HMRC’s objectives, as agreed by the government, are to:

- collect revenues due and bear down on avoidance and evasion;
- transform tax and payments for its customers; and
- design and deliver a professional, efficient and engaged organisation”.

(NAO, 2020, p.3)

HMRC do not set tax law – that is the preserve of parliament, but HMRC are charged with overseeing that it is complied with. It may however be the case that some tax regulations are introduced in the form of secondary legislation, and in this case HMRC do have input to the wording of rules and regulations (see the discussion below about Making Tax Digital).

Clearly as the objectives above show, HMRC wish to transform the collection and payment of tax (see Making Tax Digital, at Section 2.4.2 below) and create an efficient organisation to serve its “customers” (i.e. taxpayers and perhaps tax practitioners?). In this respect see Section 2.4.3 regarding ongoing reorganisation of the service which has implications for this particular objective. Despite taxpayers being described as “customers”, HMRC is a service that they have to use, that is they cannot choose not to engage or go elsewhere if they are not satisfied with the service. Therefore, the choice of the term ‘customer’ to describe taxpayers may itself be debated; for exploration of this and discussion about the changing discourse of the tax authorities in respect of “an organisation that is predominantly a regulating department” see Tuck et al. (2011, p.357). Nevertheless, customer or taxpayer, what can the taxpayer (customer) expect from HMRC, and what does HMRC expect from the taxpayer? This relationship is represented in the Taxpayers’ Charter. Of course, if the taxpayer engages a practitioner much contact will be routed via the practitioner rather than the

taxpayer, so the taxpayer charter could indirectly impact upon the practitioner/client and client/tax authority relationship – and HMRC acknowledge a gap here (ICAEW, 2020d) as discussed below at Section 2.4.4 ‘HMRC and agent engagement’.

2.4.1 Taxpayers’ charter and HMRC powers

The Taxpayers’ Charter sets out the responsibilities and obligations of both HMRC (bearing in mind the above objectives) and the taxpayer.

Information on HMRC’s webpages (updated January 2016) explains

We want to give you a service that is fair, accurate and based on mutual trust and respect. We also want to make it as easy as we can for you to get things right.

Changes to the charter itself have recently been proposed arising from various parliamentary reports which included examination of HMRC conduct in certain situations, including the Independent Loan Charge Review (discussed below)

Changes are required;

to set higher expectations of performance during interactions with members of the public and ensure that staff are offered training on how to deliver it (Cullinane, cited in Cave, 2020)

The new wording has yet to be determined, although there continues to be a debate about the rights and obligations of HMRC versus those of the taxpayer (Bradley, 2020). HMRC powers have increased in recent years and include, amongst others, the ability to charge the taxpayer large penalties and demand payment of tax upfront (in case of dispute). Some suggest that the rights of taxpayers have become lost in the pace of change. See for instance Maas (2018) for an in depth consideration of this perspective; Bowler (2018) who writes about HMRC powers; and safeguards and the report by the All-Party Parliamentary Loan Charge Group (n.d), which is discussed below. The power appears to have shifted in favour of HMRC and this of course has consequences for taxpayers and their advisers alike.

As will be further explained in Section 2.6 HMRC has had recent success in tackling tax avoidance cases, success which may have been elusive in the past. Three areas of tax avoidance, of note, which may affect the smaller tax practitioner market relate to Employee Benefit Trusts; Film Schemes and the so

called Loan Charge. Sympathies with taxpayers taking part in tax avoidance arrangements may be few, yet controversy has surrounded some of this success. Rangers Football Club employee benefit trust (a tax saving vehicle) was found to fail as payments into the trust were reclassified as salary upon which tax would be payable (earlier rulings in favour of the taxpayer were overturned by the Supreme Court and Scottish Court of Session). This was a controversial ruling per Heaton (2018), as it was felt that the goal posts had been moved about the acceptability of employee benefit trusts and their adherence with the tax law. He remarks upon this from the tax practitioner's perspective as an adviser. He suggests that

“...plain English legislation and precedent [were] disregarded in order to get to a result that the court thinks is the ‘right’ answer”

and he asks how

“practitioners [are] supposed to know what the law means, when it can be, if not completely disregarded, then at least freely interpreted....”.

The interpretation of tax law is discussed further below at Section 2.5.3.

Tax relief offered for investment in films has also been challenged successfully in the courts, as HMRC contend that the vehicles in which the funds were invested were not actually ‘trading’ and so no tax relief on the investment was due. Maas (2019) provides the background to these schemes and sets out their history. HMRC has recently won a court battle with Ingenious Media (see White, 2019b). White (2019b), suggests it likely that Ingenious Media will appeal the decision as there is over £450million tax at stake.

Perhaps the most controversial HMRC challenge relates to the so called ‘loan charge’, introduced in 2019 (in respect of individuals who had entered into ‘disguised remuneration arrangements’ to avoid tax and national insurance contributions). The method by which individuals were paid reduced their tax liability. Many low paid taxpayers, who may have been misled or coerced into such arrangements, or simply misunderstood what they entailed, have been caught up in this (CIOT, 2019). HMRC sought to remedy the underpayments of tax which had gone on for years. Demands for underpaid tax were thus received by many. Demands were retrospective (up to 20 years) and in some instances were for large sums of money and caused such distress that some taxpayers took their own lives (All-Party Parliamentary Loan Charge Group, n.d.). The content

and tone of HMRC correspondence was criticised. Consequently, a review was undertaken into the approach by HMRC and a number of changes were made. A Loan Charge Action Group was set up to provide support. The group also engaged with politicians and the media to raise awareness of the issues. As a result, HMRC were required to shorten the time that they could 'look back' to calculate underpaid tax, (now to 2010, rather than 1999) and must take note of whether or not disclosure was made (by the taxpayer) about participation in the scheme (Sweet, 2020). The issues led to the proposed changes to the Taxpayers' Charter.

Finally, the tone of correspondence referred to above may be illustrative of a 'nudge'. This occurs when the wording of correspondence is designed to encourage certain behaviours (Lymer, 2018; McCleod, 2013). Whilst this can be beneficial in some instances, some 'nudges' are observed to be "heavy handed". It is suggested that the taxpayer may feel, intimidated, or obliged to act in a certain way, and may not be aware that there is, at times, no legal basis for the requests made of them by HMRC (Clegg, 2021). This is further example of HMRC 'power', albeit perhaps in a more nuanced sense.

2.4.2 Making Tax Digital (MTD)

In line with its objectives HMRC has the "aim of becoming one of the most digitally advanced tax administrations in the world" (NAO, 2020, p.4) and is currently rolling out its "Making Tax Digital" (MTD) programme. The requirement is for taxpayers to move away from paper records to digital record keeping. MTD is currently operational (from 1 April 2019) for value added tax (VAT) for those businesses which exceed the VAT registration threshold. The next stage will be to roll out MTD for income tax. A consultation for corporation tax has yet to take place. It seems that there is a mixture of compliance with the MTD rules for VAT. ICAEW (2020c) reports HMRC commissioned research which suggests that noncompliance with the current MTD VAT rules relates to lack of knowledge by taxpayers, with misunderstanding of the word "digital" being one of them, or in other words they did not appreciate the meaning of "making tax digital". Additionally, communications about MTD from HMRC were described as vague, and some taxpayers could not even recall receiving HMRC communications about this.

When income tax MTD comes on stream, four quarterly returns of information must be submitted by businesses, followed by a fifth return, to finalise profit for the period. Effectively, a taxpayer's tax position will be maintained in real time. The idea is that mistakes will be minimised and the impact upon tax collected should be positive. This system will replace the single annual tax return. Moore (2017) expresses concerns that, if her clients require her to file their tax returns, she will have to do this five times per year, rather than the current, one return per year, hence the switch in system is causing consternation to practitioners as well as taxpayers. However, the implementation for income tax MTD has been delayed until, currently, 2024. Additionally, ICAEW (2020b) indicates that HMRC are yet to issue firm rules around its operation. Changes such as this will of course affect practitioners. The system will not function without specialist software which the practitioner will need to acquire and uncertainty around the introduction of MTD may cause additional challenges for practitioners. This is recognised by Lemmon (2019) citing Brian Palmer an MTD expert, who suggests that the only certainty is that digitalisation will be introduced and thus urges practitioners to prepare their clients for that, rather than focus upon MTD per se. The method of the introduction of MTD is also not without controversy. Whilst the concept of MTD has been enabled via primary legislation, which is subject to parliamentary scrutiny, the subsequent 'rules' about its operation are to be introduced via secondary legislation. This type of legislation is subject to far less scrutiny which some commentators find concerning. Ross Martin (2020) for example suggests that the use of secondary legislation will allow HMRC to make rules up as they go along. She also notes that secondary legislation is difficult to track. Cave (2017a) makes similar points, noting that it will be HMRC who write the rules (rather than parliament) and that that "the vital points of how taxpayers must comply with MTD won't be scrutinised". This may be further example of HMRC having powers some feel they should not have. The delay in the issue of secondary legislation and the rules (as yet unknown) create uncertainties for both taxpayer and practitioner – they know something is coming, but not exactly how it will play out in practice.

2.4.3 Customer service

HMRC has undergone major restructuring in recent years. Local offices (which could be visited by taxpayers if they needed help) are gradually being replaced

by 13 large HMRC offices across the country (HMRC, 2019). This means that HMRC will no longer be accessible to local communities in a face to face capacity. The aim is to provide a more efficient organisation, and yet, there are already problems accessing help remotely via post or telephone, as highlighted by Lovell (2016), which may have consequences for taxpayers and tax practitioners alike.

HMRC as an organisation has challenges in general. Staff levels have been reduced and there is ongoing reorganisation. Suggestions are that HMRC is under resourced - which brings many challenges to the practitioners' environment. Matters relating to poor levels of service by HMRC regularly feature in the press. Issues such as; unanswered telephone calls; unopened correspondence; staff who lack technical knowledge and; the provision of incorrect advice (see for instance Lovell, 2016 on accountingweb, who refers to downturns and challenges in HMRC service, with staff cut by a third, and office closures). These matters are also reflected in research undertaken for HMRC (2014b) in which practitioners remarked upon; the amount of time they wasted chasing HMRC about delays (which can prove costly for clients); a request to have named contact with specific individuals to help with complex queries and a need for access to expert advisers. A desire for email contact was also expressed, although the drawback to this, it was suggested in the report, may be to create unreal expectations about how quickly HMRC can respond, given resource limitations (which could damage the HMRC/practitioner relationship further). Interestingly, details provided by ICAEW (2021) indicate that general email contact is still not available, although email, or online forms, or web chats may now be used for certain types of transaction. Such concerns are echoed by Maas (a practitioner with 50+ years of experience) in a speech to the ICAEW tax faculty (Maas 2015). The NAO (2016, p.14) noted a "collapse" in customer service in 2014/15, suggesting this occurred as staff were released prior to completion of major changes in the service. A report by the Public Accounts Committee (2015) also noted that HMRC does not provide an acceptable or consistent level of service to customers. In terms of more recent published data relating to HMRC performance during 2018-19, HMRC still has challenges, with the NAO report into the department during this time (2020, p.6) noting a "dip in phone and post-performance", "recruitment challenges" and a diversion of resources "towards EU Exit work". ICAEW (2020d) suggest that although tax

revenues increased during 2019-20, HMRC struggled to meet customer service targets as a result of resource issues and the coronavirus pandemic. Issues such as these will impact upon taxpayers and their advisers alike. Whilst academic literature considers the reasons for reorganisation/reduction in resources in HMRC, such as the implementation of 'lean' government in terms of cost reduction and the impact upon employees and the service provided to the public (see for instance, Carter et al., 2011), it does not consider the impact on tax practitioners.

It has already been suggested that HMRC see practitioners as being important for the smooth functioning of the tax system. Therefore, there should be good relations between all three parties of the tripartite relationship and particularly between HMRC and the practitioner. HMRC has undertaken various initiatives to improve this relationship.

2.4.4 HMRC and agent engagement

HMRC (2014a) describes plans for a "tax agent strategy" to "transform" the relationship between agents and HMRC. This includes a number of objectives including a desire to understand practitioners and their clients, make it "easier [for practitioners] to do business with HMRC and reduce ... costs", and "align HMRC and agent processes where possible". A commitment to work with agents was given, along with greater provision of online services for practitioners. It should be said that it is not easy to track the progress of the "tax agent strategy" from 2014 to date – however, there is a central webpage from which agents can currently access "agent services" (HMRC, 2015b, updated 2019). This page provides links to various services including MTD sign up, HMRC manuals (books of instruction to HMRC staff, which cover all taxes), various forms, online services, and agents' news and updates (includes technical issues, reminders of deadlines, information about current consultations, guidance, responses to queries, a "spotlight" on tax avoidance issues and links to other newsletters and information). See for example HMRC Agent Update 78 (HMRC, 2020c), dated June-July 2020. A number of sources of help and support are also available.

There are various initiatives relating to tax agents/HMRC interaction, although these are not easily identifiable from HMRC webpages. For instance, Kantar Public 2018 research on behalf of HMRC, regarding the role of the professional

bodies in the regulation of tax agents, elicited comments from the professional bodies about, the Joint Initiative Steering Group (JISG) and the Agent Steering Group (ASG). It is not easy to find information about these groups (perhaps they have been superseded?). The most current initiative appears to be the Issues Overview Group (IOG), which is a successor of “Working Together” – a previous initiative to engage tax agents. The purpose of “working together” is given from the Working Together (n.d.) website as:

[Looking] for ways to improve HMRC’s operations for the benefit of tax agents, their clients and HMRC.

The main objectives of Working Together are to:

- improve communications between HMRC and tax agents
- identify and clarify widespread issues which can be escalated in real time
- help HMRC focus on the best way to help tax agents and their clients
- be open and exchange views on how the tax system works

The IOG is said to be a “partnership between HMRC and professional bodies of the tax world”, which has come into existence since the demise of local working together groups following closure of local HMRC offices (Stride, 2018). The

core activity of the group remains to bring problems arising at the coalface to the attention of HMRC, and where ever possible to achieve solutions or work arounds (Stride, 2018).

Agents belonging to a professional body may join an agent’s forum where they can discuss issues with other agents, and items raised therein may be taken up by the IOG. Here is not the place to discuss all these initiatives, other than to highlight that efforts are being made to engage tax agents. Interestingly however, ICAEW 2020d indicates acknowledgement by HMRC of a gap between its “Charter commitments and its performance” in the way “HMRC interacts with representatives of taxpayers”. Hence there is improvement to be made in the practitioner/HMRC relationship.

There are good intentions to engage with the tax profession, yet this is set against a backdrop of increasing HMRC powers, not just over taxpayers, but also over tax practitioners. For instance, practitioners must disclose certain tax avoidance schemes to HMRC under the *disclosure of tax avoidance schemes regulations* (DOTAS). Additionally, penalties are now enforced for enablers of defeated tax avoidance, the provisions of which target those who enable abusive tax

avoidance. This legislation is included in Schedule 16 Finance (No. 2) [Act] 2017 and the purpose and provisions of it are explained at HMRC (2018).

This legislation introduces a penalty for any person who enables the use of abusive tax arrangements, which are later, defeated.

That is, if the arrangements are defeated in a court of law, those involved in enabling the taxpayer to take up the arrangements are subject to a penalty. These provisions are designed to deter organisations/practitioners from taking part in and benefiting (financially) from designing, marketing and facilitating “abusive tax arrangements” (HMRC, 2018). The provisions should work in conjunction with the directions/instructions to the practitioner via the PCRT as discussed above. The guidance states that “Those who provide clients with services in respect of genuine commercial arrangements will not be impacted” (HMRC, 2018).

Further, HMRC have, as already discussed, instigated research into the role of the professional bodies (and their regulation of tax agents) (Kantar Public research, 2018 for HMRC) and, sought to obtain views about raising standards in the tax advice market (HMRC, 2020b). The latter called for evidence in several respects including:

the scope of the market for tax advice; the characteristics of good and bad practice; current government interventions; international models; possible approaches to raising standards (HMRC, 2020b)

These initiatives, whilst well intentioned, may suggest a lack of trust on part of HMRC in respect of their view of the tax practitioner market. This in itself may impact upon the HMRC/practitioner relationship.

The final two sections of this Chapter shed additional light on the working environment of tax practitioners. Section 2.5 examines what makes tax law complex, uncertain and difficult to advise on. Of course, not all transactions will be complex, but even what may appear to be a simple matter – such as business expenditure – may not be necessarily so. Section 2.6 provides an overview of some of the recent events in the wider tax field and highlights the impact upon the tax profession more generally.

2.5 Complexity – the general context

It is easy to say that tax in the UK is complex. It is more difficult to convey what this actually means in practice, that is, as it affects the taxpayer, or their adviser when trying to implement the tax rules on the ground. The context of this research is the smaller tax practitioner. However, the context may make little difference – complexity is still an issue. Smaller practitioners will still, at times, be faced with unravelling complex situations. Indeed, Tomasic and Pentony (1991) observed that smaller practitioners come under greater pressure from their clients (than those representing larger firms) as the clients will often be owner managers and have a large stake in the business in which they require advice (so the pressure, for the practitioner, should a mistake occur becomes more pronounced). When first starting out on this project and discussing the direction of it with various individuals, those who were not familiar with the smaller (or general) tax practitioner environment, suggested that most of the work the smaller practitioner may undertake would be ‘run of the mill’, familiar, routine, compliance type of work. Or, that once one had undertaken, say one company reorganisation (or any other more complex piece of tax work) that this would become routine going forward. In other words, what possible difficulties could the practitioner encounter? This is a misunderstanding of this market and is not an accurate picture of the smaller practitioner environment. Tomasic and Pentony (1991) suggest that a smaller practitioner undertakes more compliance than advisory work, but that does not necessarily mean that the work is straightforward. See the example topics from the CIOT’s local branch programme between 2017-2019 as an illustration in the appendix at Section 10.1. Many attendees at such events are likely to be smaller practitioners rather than those from the Big 4 who may attend ‘in house’ tax updates. The range of topics is broad.

Complexity may perhaps be visualised by referring to the quantity of materials available to the tax practitioner. Websites of the professional bodies include reams of taxation materials. There are various tax specialist commercial entities offering tax software, tax databases, or subscription based services (such as access to a helpline). Additionally, tax text books which provide commentary on legislation are issued by a number of specialist publishers. There is an abundance of online forums, some of which provide information about the latest tax updates, some of which also accept questions submitted by what appear to

be both practitioners, as well as taxpayers themselves (see for instance, [accountingweb](#) and [taxationweb](#) to name just two). There are numerous social media forums (for a discussion as to how these are employed by those seeking assistance with their tax position see Onu and Oats, 2018). As to whether the responses to tax queries on such forums are actually correct is another issue, but these forums perhaps spring up as alternatives to paying for advice. The HMRC website of course contains numerous documents, although it is criticised by Todd (Senior Technical Manager, Low Incomes Tax Reform Group in evidence provided to the Treasury Sub-Committee, 2018) as far too simplistic which can make it unhelpful. Just taking the documents issued for the March 2020 budget as an example (HMRC, 2020d), these included four immediate changes to tax law and regulation, 35 links to “Tax information and impact notes”, three other related documents, and links to six consultations about changes in policy. An additional link was given to a 180-page document the “*Overview of Tax Legislation and Rates*” as at March 2020 (HMRC, 2020e) the introduction to which states, at p.3,

“This document sets out the detail of each tax policy measure announced at Budget 2020. It is intended **for tax practitioners** (*authors emphasis*) and others with an interest in tax policy changes, especially those who will be involved with consultations both on the policy and draft legislation.”

In the UK there is at least one budget per year, which introduces the annual finance act (there have at times been two). Practitioners need to keep up with frequent change.

Other HMRC sources of information available via HMRC webpages (accessed September 2020) include tax information and impact notes; Revenue and Customs briefs (bulletins); leaflets, factsheets and booklets; budget and pre-budget reports; webinars; and extra-statutory concessions (ESCs). HMRC provide access to their own interpretations of the law via Statements of Practice – there are over 130. Access to HMRC manuals (instructions to HMRC staff) are also, in the main, publicly available (although certain elements may be redacted). There are over 150 HMRC Manuals (which cover different areas of tax). Additionally, there are a further 76 manuals relating to Value Added Tax (VAT). HMRC manuals, include for example, the Admin Law Manual, the Business Income Manual, the Corporate Tax Manual, the Cider Manual, the Diplomatic Privileges Manual and so on. Of course, some of these are very specialist and

will not be relevant to all practitioners, but in terms of conveying the breadth and depth of tax law, here is just an example. The tax legislation itself, stands feet tall and is one of the longest tax codes in the world (Turnbull-Hall and Thomas, 2012) and practitioners cannot ignore this. The following section provides more information about the context of tax law and attempts to highlight the reasons why all the above materials exist.

2.5.1 Tax practitioners and tax law

Tax law is

“...based on legal precedent, so...requires an element of predicting how the tax authorities and ultimately the courts will interpret the legislation that has been enacted” (Mazars, 2014, para 11).

It follows that practitioners will therefore advise on law, whether they are acutely conscious of this or not. Picciotto (2007, p.25), referring to MORI research undertaken during 2006 implies that many “accountants ...rarely look at the [tax] legislation itself”. That is, they may rely on aides to provide answers to tax questions, such as commercial tax publications or HMRC guidance mentioned above, as opposed to the wording of the legislation itself. This is an interesting finding, for a number of reasons. Firstly, many accountants will advise on tax matters (not just lawyers who are assumed to refer to the law per se) and secondly only the tax legislation itself has the force of law. All guidance, HMRC materials and other information or commentary is outside the law and does not have legal force (see Burkinshaw and Frecknall-Hughes, 2016 for a discussion). If practitioners rely upon wording in guidance documents, they may run into difficulties as discussed below. The participants of the MORI poll described as ‘in practice’ appear to fall under the ‘accountants’ bracket, yet, within this category there will be many different individuals (some may be tax trained, others not and so on) so it seems a little broad brush to say that “accountants...rarely look at the legislation itself”. However, this finding needs to be borne in mind when exploring how practitioners undertake their work.

Additionally, the background of the practitioners may affect their approach. For example, are they legally trained, or not (Cloyd and Spilker, 2000; Latham, 2012)? Different perspectives may be brought to the interpretation of law, depending on the angle from which it is viewed (be that an accountant, lawyer, judge, academic, taxpayer, tax authority etc. – see Latham (2012), citing

Rosenbloom 2009). This would suggest that how the tax law is managed by certain groups will differ – which may include the smaller practitioner too – and this may affect the advice given.

2.5.2 Complex tax law and its consequences

All law can be vague, ambiguous, grey, unclear, uncertain, indeterminate (there being no single right answer to a question) or multiple answers may exist when applying the law to the facts (Endicott, 2000; Greenawalt, 2001). Much is written about the language in which law is expressed and the impact upon interpretation of it (Bogenschneider, 2015; Burton, 2007; Edgington, 2001; Endicott, 2001; Eustice, 1989). It therefore follows, that these problems will also affect tax law. Uncertainty is not a desirable characteristic of any tax system (see Smith, 1776, as discussed by Smith and Joyce, 1797), and yet it is inevitable that uncertainties will arise in tax law too. The word “incomprehensible” has been used to describe tax law (Ansari and Sossin, 2017 (describing Canadian tax law) and Prebble, 1994 citing Walker (describing English tax law)). So how is meaning ultimately derived from it?

Vague and ambiguous language can leave laws open to interpretation. That is language can be “inaccurate”, have “numerous senses” and can create a “multitude of doubts” D’amato (1983) citing Joseph Story (1836) as well as lack clarity, be conflicting and “unsettled” (MacNeil, 2009, p.70). The same applies to tax law. Or as, Gracia and Oats (2012a, p.308) state:

Tax laws are not immutable, but rather are fuzzy and open to interpretation...[and therefore there is] discretion as to how rules are enacted

The accusations of ‘game playing’ levied at tax practitioners in relation to tax avoidance relate to this issue. Tan (2011, p.74) suggests that practitioners create their own “credible interpretation” of a law in order to play such a game. Yet, given difficulties to ascertain the meaning of certain tax law, how does this affect the taxpayer and the tax practitioner? Taxpayers should not have to guess what will happen to them under the terms of the law (Bogenschneider, 2015, referring to Stroup, 1984), they should know the tax effect of their proposed transaction (D’amato, 1983) and they should know in advance how the law applies to them (Gribnau, 2013). Ideally they (and practitioners) need certainty. Yet this is not always so. Laws are not always “clear and precise” and may require “constant

interpretation” (Edwardsson and Wockelberg, 2013, p.365), a fact agreed by Rowland 1995. Raskolnikov (2015, p.5) suggests legal uncertainty is a “fact of life” and Fogarty and Jones (2014, p.287) indicate that the adviser’s role is to “absorb” such uncertainty – that is – remove it from the taxpayer, so that the practitioner deals with the uncertainty on their behalf.

There are different ways tax laws may be written. This affects how rules are implemented in practice and so is of relevance to the practitioner. A rules based system (such as in the UK, or the US) has many laws and statutes (McBarnet and Whelan, 1991). A principles based system takes a broader view and does not dictate a specific rule, but requires an overriding principle to be considered against a particular action (Avery Jones, 1996; Freedman, 2010; James, 2010). Both systems have advantages and drawbacks. It is suggested for instance that a practitioner requires additional guidance to implement principle based legislation as the law itself contains little assistance as to its application (Carby-Hall, 2002; Freedman, 2010). It is advocated that the UK has characteristics of both types of system (Raz, 1979) as the UK common law system runs in tandem with the legislative parliamentary system – in other words, case law is determined by application of principles to the underlying legislation by the judiciary. It follows therefore that UK tax practitioners may have to advise on both types of legislation.

Interpretation of law can be undertaken in various ways. The literal language (meaning) of the law may be taken (McBarnet and Whelan, 1991; Picciotto, 2007; Powers, 1976) (as with the Duke of Westminster and Ayrshire Pullman cases, as discussed in Section 2.6 below). Or one may seek to apply the intention of parliament (known as purposive interpretation), as tends to now be the case in tax avoidance matters as discussed above. Much has been written about these different approaches. Whilst the detail is not particularly pertinent to this study, as tax practitioners may themselves adopt certain ways of seeking the meaning of the law on behalf of clients (it is said that they act as translators, Harvey, 2002; Mulligan and Oats, 2016 - see Section 3.4.3), it is relevant to briefly consider these approaches. A focus on the literal meaning of words, is said to offer taxpayers (or perhaps their advisers) the chance to engage in the ‘game playing’ mentioned above. This is seen to be a unique attribute of taxation law (Freedman, 2010; Ginsberg, 1984; MacNeil, 2009; McBarnet and Whelan, 1991; Munroe 1981; Picciotto, 2007; Powers, 1976; Prebble, 1994; Weisbach, 1999 a

and b) which may result in taxpayers relying on the form of the law and shaping their transaction to 'fit' into a particular form in order to reduce the tax liability, referred to variously as using "cubbyholes" by Kleinbard (1990, p.1320) "mapping" and "freezing" by Powers (1976, p.30), or using "foxholes" by Eustice (1989, p.20). With respect to the purposive approach to interpretation, it may be difficult to identify the intention (of the drafter or policymaker) behind the law (Dodwell and Parker, 2017; Freedman, 2010; Lee, 1999), which could also (as with a literal approach) result in "creative compliance" (Freedman, 2010 p.719). Nevertheless, interpretation of tax law may not be easy. It has been described as an "art" (Edwardsson and Wockelberg, 2013, p.364 quoting F. C. von Savigny 1853).

Examples of these matters which are specific to the tax adviser, provide additional context to the tax practitioner environment and type of work they do and hence are relevant to this particular study. Ginsberg (1990) and Snape (2015) refer to the "seemingly innocuous question" (Snape, 2015, p.157) about where the line is drawn between business and non-business expense. This will be a common issue not just for taxpayers but also for the practitioners who advise them. The tax treatment of a transaction can depend on how something is defined, and there can be a fine line which separates one transaction from another. Common examples include equity/debt, capital/revenue (see for instance the doubt that may arise over the replacement of a damaged roof, Frecknall-Hughes and Kirchler, 2015) capital profit/income, trading profits, employed/self-employed and loan/lease. These distinctions are not as clear as they might be. The variances are important as the tax treatments (and hence the tax payable) differ.

Many have explored why tax law is so complex. The reasons for (and sources of) complexity are important as they impact upon the tax field in which the tax practitioner operates. These may include:

- Equity. Exemptions and reliefs are incorporated into law for equitable purposes and numerous different rules may be required for fairness, so to distinguish between taxpayers (D'amato, 1983; Eustice, 1989; Freedman, 2007; Thuronyi, 1996). Reliefs are also used as economic incentives (for example R&D) and have political connotations. There are numerous

reliefs in the UK which have been the subject of various reports (see for instance the National Audit Office (NAO) (2014) and the Public Accounts Committee (PAC) (2014). It is suggested reliefs may pave the way for tax avoidance, but there appears to be little appetite to reduce the number in existence.

- Badly drafted law (Weisbach, 1999a and b)
- Language of law. This may also include the absence of a definition for certain words, which leave them open to interpretation – such as, in the tax context - “substantial”, “reasonable”, “capital”, “material”, “partnership”, “corporation” (D’amato, 1983; Endicott, 2001; Raskolnikov, 2015; Weisbach, 1999a, 1999b and 2002) and ‘due’ and ‘ordinary’ (D’amato, 1983) and even the word “income” – see for example Snape (2015). See also James and Wallschutzky (1997) for a discussion about the use of language in rewritten tax law; Salter (2010) mentions syntax problems; Thuronyi (1996) refers to poorly written law.
- Tax law is used for multiple purposes. This affects the drafting and design of law as tax law seeks to achieve multiple objectives – such as raising revenue, administering welfare, implementation of economic policy, and influences over the behaviour of taxpayers (Eustice, 1989; Freedman, 2003, 2010; Hickman, 2014; James and Wallschutzky, 1997; Kay, 1990; Karlinsky and Koch, 1987; King, 2008)
- Length – the UK has one of the longest tax codes in the world, amounting to thousands of pages (Turnbull-Hall and Thomas, 2012)
- Anti-avoidance provisions. These are often bolted on to existing (already complex) legislation which results in an increase in length and additional complexity (Chittenden and Foster, 2009; James and Wallschutzky, 1997; Weisbach 1999b)
- Those creating tax law (politicians and policy makers in a role of governance) may lack, or undervalue, the need for technical tax knowledge, which may create a gap between those who are responsible for tax policy and those who have to implement it. There may be a disconnect between what the law says, or does not say, and its implementation, which creates problems of application in practice (Bowler, 2010).

- A disjointed approach to the tax system in general (Bowler, 2010).
- Frequent change, and the UK system of issuing an annual finance act (Chittenden and Foster, 2009; Salter, 2010; see also McKerchar, 2005 in the Australian context)
- Lack of time for consultation. This may result in policy changes and U-turns, which add to difficulty (Freedman 2007)
- "...the common law approach, the increasing sophistication of commerce, the desire for certainty, the need for legislation to prevent avoidance, the courts, political tinkering, the parliamentary process, parliamentary counsel, the lack of time – in other words our whole legal culture" (Avery Jones 1996, p.64).

The above issues, combined with the difficulties of interpretation pose challenges for tax practitioners. Not least they need to keep up to date with changes. This challenge has been viewed from the perspective of the corporate taxpayer (Hasseldine et al., 2011) and in house tax departments (Porter, 1999). Yet in terms of how such complexities impact the tax practitioner specifically, one may draw only on overseas studies. McKerchar (2005) discovered practitioners in Australia felt overwhelmed with the volume of material, and frequent changes in income tax law. Tax complexity in the US was discovered to create the possibility of errors, and high costs of compliance (Burton and Karlinsky, 2016). In Portugal 49.5% of Portuguese practitioners admitted to unintentional error (Borrego et al., 2017). In Australia Tran-Nam et al. (2016) examined how cumulative tax changes affected the relationship between tax practitioners and clients, finding consequential increases in costs and time incurred by practitioners, and an opposing reduction in certainty of advice. Additionally, different dimensions of complexity were identified by Portuguese practitioners regarding the Portuguese fiscal system (Borrego et al., 2015). Likewise, complexity from the perspective of a US tax lawyer is discussed by Zelenak (2014). It is suggested that even experienced professionals find tax law difficult to understand and that an outright answer may never be found (Zelenak, 2014, Prebble, 1994). Additionally, Prebble (1994) cites, at p.382, David Walker, editor of *The Oxford Companion to English Law* who compares tax law with other forms of law:

"More than any other branch of municipal law, tax law is open to the reproach of being utterly incomprehensible by the individuals affected, and even frequently by their legal advisers. The enormous complexity of the

rules of law on each kind of tax gives rise to an enormous volume of dispute and argument...

Whilst the complexity of the tax law and the tax system in the UK is the subject of various articles (Avery Jones, 1996; Freedman, 2010; Hyde, 2015; James, 2007; Mumford, 2015; Oats and Morris, 2015; Office of Tax Simplification, 2011; Snape, 2015 and; Turnbull-Hall and Thomas, 2012), the UK tax practitioner perspective on the problems of managing frequent change, uncertainty in law, and interpretation difficulties is lacking in the literature. Some smaller practitioners may not be concerned by this, if they are those who refer to the guidance around the law. Others however may have to deal with a far broader scope in terms of complexity than those working for large professional service firms who may be able to specialise in one particular tax.

2.5.3 Managing understanding of law

The above section attempts to explain the challenges practitioners face in coping with legal uncertainty, complexity, and application (or interpretation) of the law.

Clearly challenges are experienced in the day to day work of some tax professionals, however, despite the difficulties highlighted, claims are made that the tax community must deal with complexity, as, of course if they did not, they could not do their job (Bogenschneider, 2015; Picciotto, 2007). It may be the case that practitioners have to reach a position with which they are comfortable (as opposed to finding the absolute answer) as Picciotto (2007) observes; individuals may legitimately have different interpretations of rules.

What does this mean in practice? Wide-ranging research into a tax transaction is often needed. Eustice (1989, p.19) writes that, at times, tax practitioners may find that despite extensive research they may not achieve success in the search for understanding. The suggestion is they may “give up” trying to work out exactly what will happen in relation to a transaction. In contrast to this McKerchar (2005) observes that practitioners may undertake extra research to bolster technical abilities and knowledge. Therefore, it may take an inordinate amount of time to research a tax issue, and this has implications for the time and costs incurred and the advice given (Eustice, 1989; Roberts et al., 1972). This latter point was observed in research by Fogarty and Jones (2014) who found that taxpayers were happy to pay the practitioner for what they know, but less happy to pay for

what the practitioner needs to learn (i.e. the research into the tax issue). Even in today's technological world which, theoretically has made the research of tax problems easier, time and cost to establish the knowledge needed to advise clients, is, in some circumstances, prohibitive (Fogarty and Jones, 2014). It may also be the case that the practitioner does not charge the full fee incurred (McKerchar, 2005). There is a trade-off. More research and more comfort for the practitioner is attained by spending time on an issue even if the client is not charged for it, versus less research and a lower fee for the client, but which may leave the practitioner with doubts. Interestingly, this may reflect the smaller practitioner environment more so than the larger professional firm environment. Smaller (accounting) practitioners were found to regularly work more hours than they charged for and were said to recognise their own limitations – that is they have less technical expertise than those in larger firms (Stringfellow et al., 2015). Given their client base they will also need a broader knowledge as discussed.

Nevertheless, practitioners are expected to translate legalities. But how is this achieved? Extra-statutory guidance may be one source of assistance used by practitioners to support their position, such as that available on HMRC webpages. Tax practitioners, therefore, may refer to both the law and 'non-law' to advise their clients (as also observed by Tomasic and Pentony, 1991, see also Chapter 3, Section 3.3.2). Freedman and Vella (2011, p.113) note that "[a]t present this guidance is completely outside the legislative system as it is not contained in secondary legislation but is simply issued by HMRC". Using guidance to offer advice may mean reliance on material that is not legally binding and is based on HMRC's own view of the law. This may encourage the taxpayer to pay tax according to HMRC's interpretation (as the taxpayer may trust HMRC to have the 'correct' view of the law). Yet much HMRC guidance is accompanied by a caveat that the taxpayer should not necessarily rely on the guidance given (Freedman and Vella, 2011). As guidance is outside the law, this perhaps is understandable, but it does beg the question as to the purpose of guidance in the first place. Further difficulties for the taxpayer and tax practitioner arise when changes take place: old guidance is removed from HMRC websites and previous versions of HMRC manuals disappear, making it impossible to track the changes made (Cave, 2017b; De Cogan, 2011; Freedman and Vella, 2011). Hart (2017) cites a case where guidance used to support the tax position submitted for a client had

been removed when the practitioner went back to refer to it (upon receipt of an audit letter from HMRC). When issues such as these arise, trust between the tax authorities and the practitioner can be damaged, which is vital for the smooth operation of the tax system (Bober, 2012; De Cogan, 2011). Comments arising in TAXGUIDE 3/13 (ICAEW 2013) suggest that better management of the changes to HMRC guidance is needed.

Additionally, Cave (2017a) observed, that new property tax anti-avoidance legislation was subsequently clarified by 64 pages of guidance. She observes that this is not appropriate given some of the issues described above.

This is not the first time that anti-avoidance legislation has been introduced, which throws a wide net over large population of taxpayers, but subsequent HMRC guidance “clarifies” the scope to narrow the effect to the intended targets.

She observes that the courts will not take HMRC guidance into account in any judgement. Practitioners should thus be aware of these matters if relying upon guidance when advising clients. Perversely, guidance may add complexity rather than alleviate it, as it too is subject to caveats and practical problems.

The final section of the chapter takes a much broader view of the current tax environment and adds a deeper macro perspective. The practitioner must work with HMRC, and complex law in order to carry out their roles for their clients as discussed throughout this chapter, yet their profession is currently viewed with scepticism, which may affect the practitioners’ relationships with clients and HMRC alike. This wider perspective thus adds additional context to the practitioner’s role and is discussed in Section 2.6 below.

2.6 The tax environment and its impact upon the tax profession

The tax profession as a whole has come under scrutiny in recent years from the international community, governments, politicians, the public and the media, just to name a few interested factions. At an international level, the way that global corporations trade and the way that they calculate their taxes, has been open to increasing enquiry. Large corporations have been accused of not paying their fair share of taxes and being involved in aggressive tax avoidance schemes. Companies such as Facebook, Google, Starbucks and Amazon, amongst others, have been the target of such accusations and drew public protest (see Barford

and Holt, 2013; McVeigh et al., 2012). No doubt in many cases, corporations will claim they have operated within the law in seeking to minimise their tax payments. Yet, corporations may have sought professional advice to enable this. Practitioners and the tax profession are thus seen as instrumental to these practices and the roles they play have also been under the spotlight (de Widt et al., 2016). It is suggested that there has been an “erosion of taxpayer respect for the tax system” (Dzienkowski and Peroni, 2016, p.2736) and the role of practitioners in what may be perceived to be non-compliance is seen as a problem (Borrego et al., 2017 and Dodwell and Parker, 2017). Some suggest that there has been a “decline in tax advisor professionalism” (Dzienkowski and Peroni 2016, p.2724) and changing moral boundaries need management (Radcliffe et al., 2018). The ethics of tax practice and tax practitioners have thus been questioned.

This thesis is not about tax avoidance, or about what is a ‘fair share’ of taxation. Aspects about tax planning and tax avoidance may inevitably arise as the thesis unfolds, but the focus is not about tax avoidance per se. Indeed, to focus upon this would require a detailed discussion as to what tax avoidance is (or is not) which would not be a simple question to address, given the “fuzzy” boundaries which exist in tax regulation (Gracia and Oats, 2012a, p.308). For details of different perspectives about tax avoidance, see Hashimzade and Epifantseva (2017). Nevertheless, the environment in which the practitioner works has changed in recent years. Tax practice in general and the work of a tax practitioner is often viewed with scepticism and the reason for this may be attributed, in large part, to tax avoidance issues. Despite the fact that there is a huge market and range of tax practitioners, as discussed in Section 1.2, not all will be concerned with the tax avoidance practices which may be reported in the media, however such publicity may affect attitudes towards the tax practitioner market in general. Often, the Big 4 and international tax lawyers are criticised for their role in global tax avoidance practices, yet, challenges to practices at an international level will ultimately have an impact upon domestic tax matters. The effects at a global level filter down and affect the working practices of many local tax practitioners. In the UK context, given the requirement for HMRC to collect more tax since the financial crisis in 2008 there has been increasing focus on tax avoidance issues. Westminster has hosted various House of Commons Public Accounts (PAC)

meetings to discuss several tax avoidance related issues, both at a domestic and international level⁵. The Covid 19 crisis may have further impact here.

Various domestic tax avoidance issues have been tackled by HMRC in recent years and not all are the preserve of Big 4 international firms, indeed, some schemes may be marketed by small online 'boutique' firms (HMRC, 2021). Nevertheless, some tax avoidance schemes affect the smaller practitioner market too, including, by way of example: employee benefit trusts, film schemes and arrangements regarding remuneration (the 'loan charge'), which are discussed at Section 2.4.1 above. Historically, HMRC did not fare well when challenging tax avoidance, particularly in the courts. Broadly, as long as the taxpayer complied with the literal wording of the law, this was acceptable, even if resulting in loss of tax to the exchequer, see for example McLaughlin (2000) and the cases of Ayrshire Pullman Services and Duke of Westminster. Today, however, it is often the case that the intention of the law is considered, as well as the literal wording, and as a result HMRC has had success in tax avoidance cases in recent years as discussed in Section 2.4.1. which is further illustrative of change in the tax practitioner environment.

The role of practitioners in advising taxpayers about tax avoidance and their ethical conduct has been open to question as said. However, despite the criticisms levied at practitioners, or the "army of clever accountants", some, particularly in the profession, believe this to be "an inaccurate portrayal of the majority of tax advisers" with the suggestion that some practitioners act outside a professional body "remit" (Mazars, 2014). As to the role of professional bodies, see Section 2.3. Clearly there will be different opinions about the tax profession depending upon one's outlook. This was highlighted in Addison and Mueller's (2015) research which reviewed the transcript of a PAC meeting about tax avoidance. It was shown that the language and discourse and metaphor used (and hence opinion towards the Big Four's role which was under discussion) depended upon the perspective of the person speaking. Their analysis "brought out very clearly directly competing rhetorical framings" (p.1279) as those from Big Four attempted to "defend themselves discursively" (p.1283). Some of this

⁵ See here for details of the different sessions
<https://old.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/taxation/> [accessed 14 January 2020]

debate and “framing” may of course link into the debate about what ‘tax avoidance’ is (or is not) which is not considered within this thesis, however it is not surprising that views from those within the profession and those outside it may differ. Despite Addison and Mueller’s focus upon the Big Four, the debate spills over into the tax profession more generally as lines between acceptable and unacceptable tax avoidance (or planning) become blurred (Fernie, 2016) and thus may affect how a practitioner undertakes the work they are asked to do.

The scepticism surrounding the practice of some practitioners, does not just affect public opinion towards the tax profession. HMRC, as an organisation has undertaken various consultations into the role of the tax profession, including for example, Kantar Public (2018) research for HMRC about the *Role of Professional Bodies in the Regulation of Tax Agents* and, most recently, a call for evidence was made about raising standards in the tax advice market (HMRC, 2020). HMRC and agent (practitioner) engagement is discussed at Section 2.4.4. Such consultations may also have impact upon the tax practitioners who are the subject of this research and are examples of further shifts in the relationship between tax practitioners and the tax authorities. As there are tens of thousands of tax practitioners in the UK, there will of course be differences in work practices (and standards) amongst this population. However, not all practitioners will be involved with what is seen as unacceptable tax avoidance (Mazars, 2014), despite the fact that some may.

This focus upon tax avoidance practices may detract from the other important roles that tax practitioners play. Tax practitioners are instrumental to the tax system – a role which attracts far less attention. Gracia and Oats (2012a, p.311) cite HMRC (2009) who recognised that

“[t] he overwhelming majority of tax agents advise their clients appropriately and calculate the right amount of tax...if this were not the case, the tax system, as we know it would simply not function.

This view compares favourably with Mazar’s (2014) opinion, that is, to portray all advisers as being instrumental in tax avoidance, is an inaccurate picture. The role of the tax practitioner within the tax system is important and this will be explored further in Chapter 3. Nevertheless, some practitioners (of whatever size and type) may feel their profession is tarnished by the negative publicity

surrounding such matters, which creates new challenges in the tax practitioner working environment.

2.7 Summary

The above discussion provides broad context to the tax practitioners' roles and working environment and begins to build up a picture of the tax field in which they operate.

A practitioner must manage relationships with the tax authorities. As discussed, there have been structural changes at HMRC, increasing digitalisation, resource issues and increases in HMRC powers. These matters create a challenge for the practitioner, the unrepresented taxpayer and HMRC alike and they provide the backdrop to the context in which the practitioner/HMRC relationship currently plays out.

The participants in this research have professional backgrounds – that is they are qualified via a professional body, or work for an organisation under the umbrella of such a body, or they are professionally trained in other respects, such as former HMRC employees. The professional bodies and their roles in relation to their direction to members, and the benefits of belonging to such a body are also discussed.

The functions of tax practitioners described at Section 2.2.3 help illustrate their roles as intermediary between HMRC and the taxpayer. Practitioners enable implementation of the tax rules (tax law) on the ground. They are at the coal face, so to speak, and this chapter provides context to the challenges they face which arise from the environment in which they work. The practitioners' roles, at times, are met with scepticism given the spotlight on the role of tax practitioners in the facilitation of tax avoidance. Both tax practitioners and the professional bodies to which they belong have thus been the subject of increasing attention in recent years. Nevertheless, demand for the services of practitioners, driven by the complexities discussed, remains high, despite a shift in perception about the work tax practitioners do. There are thousands of tax practitioners in the tax market, and they represent a significant number of taxpayers.

The discussion is not limited to the smaller practitioner market or context alone as there is often little distinction made between the different types of practitioner.

However, of those that do make such observations, Evans et al. (2014) suggest that smaller businesses seek assistance to save compliance costs by appointing an adviser (and smaller businesses may seek the assistance of a smaller, more local tax practitioner rather than a Big 4 organisation); Tomasic and Pentony (1991) suggest that smaller practitioners face greater pressure from owner-managed businesses given the owner's large stake and interest in the businesses on which they advise, and they suggest that smaller practitioners undertake more compliance, than advisory work; additionally, practitioners in smaller accountancy practices (although the findings are transferable to the tax profession) were found to regularly work more hours than they charge for, and recognised their limitations, that is, they have less technical expertise than those in larger firms (Stringfellow et al., 2015). These distinctions help provide additional context for the objective of the study, which is to understand smaller tax practice. However, there are few observations, from the literature, which provide a demarcation between the tax practitioner market in general and those who operate in the smaller tax practitioner field.

Chapter 3, explores the academic literature regarding the tax practitioner relationships with the client (taxpayer) and with HMRC and examines the literature surrounding the professional identity of tax practitioners.

3 Literature review

3.1 Introduction

Tax practitioner research is plentiful. That which explores why a tax practitioner may be needed, along with an explanation of the type of work they do is discussed in Chapter 2 as it provides context and background to the thesis. This chapter presents a review of extant literature about the client/practitioner relationship, the practitioner/HMRC relationship and explores the practitioner's role within this tripartite relationship.

The chapter unfolds as follows:

Firstly, the practitioner/client relationship literature is discussed in Section 3.2. This is followed in Section 3.3 by a review of literature around the practitioner/tax administration relationship. The position of the practitioner and the roles they play within this tripartite relationship is explored in Section 3.4. The practitioner role 'in the middle' between HMRC and the client is set against the context of the individual's professional identity (how the individual sees himself/herself and conducts themselves), hence matters of the tax professional and professional identity are also examined in Sections 3.4.2 to 3.4.5. Additionally, as the participants to this research come under the remit of a professional body, ethics and knowledge are important to the practitioner and may impact upon their relationships. These matters are also discussed in Sections 3.4.6 to 3.4.8. Finally, the chapter is summarised in Section 3.5.

3.2 The practitioner/client relationship

There is a rather disparate mix of research which explores the client/tax practitioner relationship – both from a participant perspective (i.e. who takes part in the research) and from a topic perspective (i.e. what is the objective of the research). A large proportion of research of this nature is undertaken in an experimental, quantitative manner. Table 3.1 provides a summary of these aspects, along with the country in which the research takes place; many studies relate to the overseas context. In the main, these studies provide insight into the qualities sought from a tax practitioner/client relationship and include perspectives from both the client and practitioner side of the relationship.

Additionally, studies which assess how certain influences (such as client preferences, or client importance) affect the decision making of the practitioner are also relevant to the client/practitioner relationship. These studies are drawn, in the main, from the judgement and decision making (JDM) literature, much of which is derived from the United States. This literature draws on psychology and behavioural economics theory (Trotman, 1998) and frequently includes experimental (often scenario based) research, which asks participants for their response to an imagined situation. This type of research is approached with positivistic assumptions, and so differs from the perspective adopted in this thesis. However, it does shine a light on various assumptions about a tax practitioner's behaviour, and is an alternative way of examining the practitioner/client relationships, considering, in particular, factors which affect decision making (Roberts, 1998).

The discussion begins with research which has focus upon the tax compliance of the taxpayer, which is plentiful and yet leaves aside the fact that a tax practitioner may play a role in the compliance process. This is followed by a closer look at studies which examine the client/practitioner relationship and those from the JDM literature.

3.2.1 Tax compliance

There is a large body of research into how and why taxpayers comply with their tax obligations, but this does not necessarily focus on the client/practitioner relationship, notwithstanding that the practitioner may play a role in the compliance process on behalf of their clients (CFE, 2014; Niemiowski and Wearing, 2003). This includes, for instance, literature from the psychology field, which examines the psychological contract and the reason why individuals pay their taxes (see for example, Alm et al., 2012; Feld and Frey, 2007). Braithwaite and Wenzel (2008) view taxpayers from a 'consumer' and 'citizen' perspective and discuss how various relationships with the tax authorities and other stakeholders enables voluntary compliance (see also Tan and Braithwaite, 2018). Taxpayer identities are also explored by Wenzel (2007). The role of responsive regulation (see the HMRC relationship at Section 3.3.2) and incentives for individuals to pay taxes is discussed by Braithwaite (2007) and Feld and Frey (2007). The voice of the taxpayer is also heard in relation to how individuals may express their discontent with tax authorities (described as motivational postures)

as discussed by Braithwaite et al. (2007) and Braithwaite and Wenzel (2008). These works investigate why taxpayers comply with their tax obligations and/or examine how taxpayers see themselves in this context. The practitioner does not feature prominently in these discussions.

3.2.2 Features of the tax practitioner/client relationship

Table 3.1 summarises literature in the field of the practitioner/client relationship.

Table 3.1 Tax practitioner and the client relationship literature

Author	Topic/research question	From the perspective of	Method Used	Country
Gupta (2015)	Perceptions of satisfaction of clients towards tax practitioners and assessment of competences	Client	Survey/quantitative	New Zealand
Hite and McGill (1992)	Taxpayers preferences for aggressive or conservative advice from practitioners	Client	Questionnaire/quantitative	United States
Sakurai and Braithwaite (2003)	Qualities taxpayers seek in tax practitioners	Client	Survey/quantitative	Australia
Tan et al. (2016)	Why smaller businesses commit to their tax adviser	Client	Survey/quantitative	New Zealand
Van de Rijt et al. (2019)	Willingness of corporate taxpayers to share knowledge with tax practitioners	Client	Survey/quantitative	United Kingdom
Christensen (1992)	Client and tax practitioners perspectives about service quality	Client and practitioner (large firms)	Survey/quantitative	United States
Stephenson et al. (2017)	Expectation gap between clients motivations to hire tax	Client and practitioner (smaller firms)	Survey/quantitative	United States

	preparers and the tax preparers perceptions of the motivations			
Fogarty and Jones (2014)*	How tax practitioners manage clients and help government collect tax revenue	Practitioner (from firms of various size)	Interview/qualitative	United States
Tran-Nam et al. (2016)	How tax changes impact on the role of tax practitioners in assisting clients to comply with tax obligations	Practitioner (from firms of various size)	Survey/quantitative	Australia
Apostol and Pop (2019)*	Interplay of commercial and ethical logic within a developing tax consultancy	Practitioner (from firms of various size)	Interview/qualitative	Romania
Tomasic and Pentony (1991)*	Roles of tax practitioners in advocacy for clients and roles in tax system	Practitioner (including lawyers) from firms of various size and revenue authority	Interview/qualitative	Australia
Hasseldine et al. (2011)*	Management of tax knowledge in the context of corporate entities, advisers and HMRC	Practitioner (from firms of various size) client and revenue authority	Interview/qualitative	United Kingdom

*also features in respect of the HMRC relationship and/or the practitioner's role in the tripartite relationship

The studies shown at Table 3.1 elicit a number of findings around the client/practitioner relationship. Christensen (1992) and Stephenson et al. (2017) draw out a number of gaps in expectation between both parties in the relationship. Stephenson et al. (2017) found that taxpayers approach tax practitioners for assistance for entirely different reasons to those the practitioners expected. The (smaller) tax practitioner in this study believed clients approached them to save time, although protection from the tax authority, legal compliance and the desire to save money featured in the reasons given by clients. Contrarily, participants in Fogarty and Jones (2014) and Apostol and Pop's (2019) research did identify that they, as practitioners, provide peace of mind and reassurance to the taxpayer which is more in line with Stephenson et al's. (2017) client participant expectations. A knowledge of the client is important as it helps a practitioner offer a tailored service so perhaps it may be expected that the practitioner understands why their help is sought. The findings of Stephenson et al. (2017, p.226) are therefore slightly at odds with their observation that a smaller practitioner is more "sensitive to their client's desires than other types of preparers" (given an in-depth knowledge of their client) as these desires are presumably driven by the reasons (motivations) for which they have chosen to access the help of a tax practitioner.

Other gaps in expectation relate to tax planning advice. Christensen (1992) found clients expected more advice in this respect. This suggests that tax practitioners are reactive, rather than proactive in this particular role as suggested by Tomasic and Pentony (1991), although this may depend upon the adviser and the firm they work within. Practitioner participants in Hasseldine et al.'s (2011) study (about management of tax knowledge) recognised that clients expected them to respond quickly to changes in their (the client) situation, in order to maintain their credibility as adviser to the company. Hence a reactive approach here would also be seen as poor service.

Additionally, if the practitioner and client have different views about tax planning, this may cause tension in the client/practitioner relationship as it follows that the risk appetite of the advised and the adviser differs (this is also discussed in the JDM context at Section 3.2.3 below). Sakuari and Braithwaite (2003) and Tan et al. (2016), in their client facing research, suggest that clients seek a practitioner who can match their tax planning aspirations (that is one with a more aggressive, or conservative outlook as appropriate) as this will satisfy both parties of the

relationship. Hite and McGill (1992) however found no evidence that US taxpayers sought aggressive tax advice, favouring instead conservative advice from practitioners.

Interestingly, Hasseldine et al. (2011) found that there was a reluctance amongst some clients to take up the suggestions of their practitioner to make claims for R&D tax reliefs to reduce their tax payments. That is, the tax planning suggested by the practitioner was not wanted. This was thought to be owing to concerns that HMRC may request information relating to the claim, which may create taxpayer anxiety. Such issues were also noted by the Office of Tax Simplification (OTS) (2014), although Kitt (2014) suggests that the cost of implementation of the advice may also be prohibitive. This is an example where the risk appetite of both parties do not match, even though R&D reliefs are not part of an aggressive avoidance scheme. Interestingly, Parnaby (2009) found evidence of a similar issue in a study of financial planners and the provision of personal financial planning advice. Whilst this is not tax related per se, the relationship of client/financial planner is similar to that of tax practitioner/client and the research obtained the practitioners' views which, as seen above, are somewhat less explored than those of the client view. Parnaby (2009) also found that clients may challenge the planner's expertise, based on knowledge gained from their own research from 'google' or elsewhere. This resulted in differences (gaps) in points of view between the planner and the client and thus the risk appetite of the two parties may also differ in this context, as with the tax practitioner/client relationship.

Practitioners also try to protect clients (and themselves) from what they feel are inappropriate courses of action. In Parnaby's (2009) study, this was achieved by educating the client about their investments and by use of tangible documentation to illustrate different issues, to try to obtain alignment of view between the client and practitioner. In the tax context Tomasic and Pentony (1991) similarly suggest that practitioners play a role in the re-education of clients about unacceptable tax mitigation. Additionally, participants in Fogarty and Jones' (2014) study indicate they were not willing to blindly acquiesce to complicity in tax avoidance at any cost (they were not willing to risk their livelihoods) and employed a 'scale of acceptability' to reach a tax planning position with which they (the practitioner) were comfortable. Risk to the practitioner is therefore taken into account upon

implementation of tax planning for clients (Fogarty and Jones, 2014; Tomasic and Pentony, 1991) thus it would seem that client requests for a more aggressive stance are not automatically complied with. Indeed, participants suggested they may be selective about the clients they wish to act for (Fogarty and Jones, 2014). Client selection (or removal) was also a finding in Parnaby's (2009) research.

Client expectations around tax planning therefore require management by the practitioner. This may include provision of information about the tax planning advice on offer (Fogarty and Jones, 2014; Tomasic and Pentony, 1991, and as indicated above, Parnaby, 2009 also uses such a technique in the financial planning field). Indeed, it is suggested that clients expect to receive such information to manage tax risk (Hasseldine et al., 2011 and Tan et al., 2016). This latter point suggests that taxpayers are attuned to potential problems of unacceptable tax planning and wish to keep an eye on what their advisers suggest. Additionally, Tan et al. (2016) identified that commitment to a practitioner could be threatened (perhaps unsurprisingly) if incorrect advice was given. Interestingly however the provision of such information was found to diminish the standing of the practitioner in the eyes of the client in Gupta's (2015) study. Satisfaction waned if the practitioner insisted on providing their client with information about tax regulations and their tax obligations; that is the client did not want to know the ins and outs, they just wanted to be told what to do. Christensen (1992) however highlighted that clients felt they did not receive enough information about tax changes and the like, requesting more frequent information from their adviser, which again is at odds with Gupta's (2015) findings. Of course all these studies take place in different cultural settings, so perhaps the context has an impact upon such matters. Nevertheless, as to whether clients want to pay for detailed tax information is another issue. It may be that they are willing to pay for the practitioner's knowledge, but not the time it takes them to acquire it (that is research time into the tax issue for which advice is requested), per Fogarty and Jones (2014). Complexity, as discussed in Chapter 2, may also affect the practitioner's responses to client requests as Tran-Nam et al. (2016) suggest. They identified that frequent change in the tax rules and regulations impact adversely upon the client/practitioner relationship, that is uncertainty arises; additional time is spent resolving tax issues, and; difficulties

may arise when raising a fee for the work undertaken, all of which may have a negative influence on the client's perception of their adviser.

Finally, it is important that the tax practitioner/client relationship is built on trust and honesty. This is important from both the client perspective (Sakurai and Braithwaite, 2003; Tan et al., 2016) and the practitioner perspective; although a trusted relationship may take time to develop (Fogarty and Jones, 2014). Trust is important, as it may have bearing upon the willingness of a taxpayer to share knowledge with their practitioner (Hasseldine et al., 2011; Van de Rijt, 2019) which will of course impact upon the advice the practitioner may give (and could increase risk in that respect, if full knowledge of the situation is not available). There was suggestion that reticence to share knowledge may be owing to the perception that the practitioner will use the information to sell the taxpayer additional services and hence increase their fees (Hasseldine et al., 2011). This indicates some scepticism here on part of the taxpayer, although contrary to this, as discussed above, the taxpayer does want a proactive, flexible approach from the practitioner to help them in their business. Interestingly trust was found to be more important in the local practitioner context (smaller practitioners are perhaps more likely to be based locally) when compared to taxpayers represented by the Big 4 firms (Tan et al., 2016). This could be owing to the in-depth knowledge smaller practitioners have of their clients (Stephenson et al., 2017) who offer what may be viewed as a more personal service. Indeed, access to a local accountant was an important requirement of taxpayers too (Tan et al., 2016).

The above provides a review of studies related to the client/practitioner relationship. Parnaby's (2009) findings are included, as this research was undertaken in a related field, and the practitioner's perspective was obtained about such a relationship. A complete comparison between the personal planner and tax profession cannot however be made as the position of the clients differ. Clients of personal financial planners have a choice whether to invest their money as advised by the planner (or not). However, whilst clients of tax practitioners (taxpayers) may nevertheless choose to disagree with the tax planning advice they are given, they cannot choose to disengage with the tax system itself as they have obligations they must fulfil; but Parnaby's research does provide an interesting angle from the practitioner's view.

Finally, a finding from Tomasic and Pentony (1991) also warrants attention given the context of this research. This relates to the practitioner/non tax colleague relationship. The word “dangerous” (p.294) was used in reference to the tax knowledge of audit partners. This refers to the damage that those with a little tax knowledge can do, if they offer advice to clients which is not exactly correct, or, if an accounting transaction is executed without consideration of the tax implications. That is, they do not request advice from their tax colleague, but ‘go it alone’. Whilst the practitioner/non tax colleague relationship is not the same as that of the client/tax practitioner relationship, the former adds an additional dimension to the tax practitioner role in the management of client expectation should the practitioner subsequently intervene to correct advice previously given.

The next section discusses the influences upon practitioner decision making as this will have impact upon the client/practitioner relationship. As explained, much of the following is based around the JDM literature. It is important to bear in mind that the wider social influences which may affect tax practice or the “organizational, institutional, political and societal phenomena” (Radcliffe et al., 2018. p.46) are not considered in this particular literature. The wider social context is therefore not taken into account in this type of research, although aspects of the micro context of tax practice itself are explored, such as the client, or the influence of colleagues.

3.2.3 Risk management, confirmation bias and the client relationship

Decision making is of course important in the tax field and at times a practitioner must make choices in the context of ambiguous/grey law as discussed in Chapter 2. Ambiguous or vague law can affect judgement and decision making (Helleloid, 1989; Magro, 1999, referring to Spilker, 1997). The choice a practitioner settles upon will affect the advice given to the taxpayer, and, may affect the amount of tax payable. Mala and Chand (2015, p.25) suggest that most accounting tasks “... involve decisions under uncertainty”, which has an impact upon risk (for the client as well as the practitioner). When decisions are made in an uncertain environment, there is a risk the advice may be incorrect or the practitioner may be too aggressive in the approach to tax planning. In making these choices the practitioner will at times have to decide whether to “play safe”, or “exploit ambiguity” (Tan, 2011, p.74) and in doing so consider the risk to themselves and the effect upon the client relationship, particularly if the client risk preferences do

not match those of the practitioner (Hite and McGill, 1992; Sakaurai and Braithwaite, 1993). If the practitioner decides to “exploit ambiguity”, this may have consequences for the client as well as the practitioner. There may be financial loss for the client, and/or the practice (Fogarty and Jones, 2014; Mala and Chand, 2015 and Tan et al., 2016) as the expectations of the client may be overinflated in terms of a satisfactory outcome, and/or the practice may be exposed to penalties (under the US system – see below). It is important for practitioners to remain objective and impartial when offering advice to clients (Cloyd and Spilker, 1999, Kahle and White, 2004) to ensure contemplation of likely challenge to the chosen position in order to manage these types of risk and client expectation. Certainly, Doyle et al. (2009b) found practitioners were aware of the risks of litigation and to the reputation of themselves and their practice (organisation) when making choices under conditions of uncertainty and links were made to the practitioners’ ethical approach (that ethics may be “operationalised as risk management”, p.194).

Indeed, consideration of risk to the practice may dampen the practitioner’s temptation to provide advice of a more ‘aggressive’ nature which may be difficult to responsibly defend (Carnes et al., 1996). Good judgement is therefore essential to maintain professional reputation (Mala and Chand, 2015) and to defend the practice from risk (Tomasic and Pentony, 1991). Practice risk, per Carnes et al. (1996) may be managed in part by seeking the opinion of colleagues to help protect against litigation and to assist with consistency of decision making in the practice. On the other hand, however Carnes et al. (1996) interestingly suggest this action may have the opposite effect and raise practice risk (see the discussion below regarding ‘confirmation bias’). As much JDM research is in the US context, it should be recognised that practitioners are subject to penalties. Practitioners must act as advocates⁶ for their clients, that is they must provide the

⁶ Those writing in the US context, do so in the knowledge that the American Institute of Certified Public Accountants (AICPA), require those governed by the AICPA regulations to act as ‘advocate’ for their clients (see Cloyd and Spilker, 1999; Spilker et al., 1999; Bobek et al., 2010; Cloyd et al., 2012; Spilker et al., 2016 for a discussion of advocacy and its impact on US advisers and Thuronyi and Vanistendael 1996, p.14 for a brief general discussion of advisers acting in the role as advocate). Acting as advocate indicates that the position best suited to the client should be recommended, as long as it can be reasonably supported and is not “frivolous”, according to the AICPA Statements on Responsibilities in Tax Practice (as discussed and cited by Brody and Masselli, 1996) which recognises that at times there will be a choice of action under the terms of the tax legislation, and certain courses of action may result in a tax saving. Practitioners may be subject to penalties if there is no reasonable support for their recommendations.

advice of most advantage (least tax cost) to the client. However, the advice must be reasonably supported and be in agreement with the tax law and regulation as it stands. If it is not penalties may arise. Practitioners will wish to avoid penalties to minimise practice risk. This may affect how the practitioner decides what advice to give (Brody and Masselli, 1996); that is, they may not provide the option of least tax cost even if appropriate, should there be a risk of incurring a penalty. The advice provided is therefore affected by factors external to the tax practice as the penalty may have bearing upon the practitioners' judgement. The situation in the US is, of course, different to the UK context. However, with increased litigation against aggressive avoidance, combined with the recent introduction of tax penalties for "enablers of defeated tax avoidance legislation" (under the increased powers which HMRC now have, see Chapter 2) which will affect advisers in the UK, it is not unimaginable for these findings to be transferrable to the UK context.

The consequences of the provision of risky advice for both the client and practitioner are mentioned above. But are practitioners influenced to act in a particular way? There is an abundance of literature in the JDM field which considers the susceptibility of the practitioner to so called confirmation bias. In other words, are practitioners influenced to act in a certain way by the wishes (or "desires" as it is often termed in this literature), of their client, colleagues or supervisors? If the practitioner does bring his or her views into line with others this is known as confirmatory bias (Cloyd and Spilker, 1999; Cloyd et al., 2012 Tan, 2011). For instance, if a client (or possibly a supervisor of the practitioner) requests that a certain tax saving position is adopted, and the law is ambiguous in that area, the practitioner is assumed to favour (give greater weight to) the evidence that supports the tax saving view, over and above evidence which indicates the opposite outcome. In other words, objectivity is impaired and confirmatory bias exists (Carnes et al., 1996; Cloyd and Spilker, 1999; and Kahle and White, 2004). Carnes et al. (1996) also found that a practitioner may change their original view when discussing tax matters with colleagues, so bringing into line their view with their peers – hence why it is suggested by Carnes et al. (1996) that by seeking the assistance of colleagues to help minimise practice risk, the opposite effect may occur, and in fact cause practice risk to increase.

It is suggested that practitioners are “highly attuned to the desires of their clients” (Kahle and White, 2004, p.23). These findings correspond with Reckers et al. (1991) and Tan (2011) – although it is to be noted Tan (2011) is not within the JDM field of research. Tan (2011) suggests that the practitioner adopts whatever position the client desires when providing tax planning advice (aggressive, or conservative as appropriate). These findings however conflict with comments from practitioners in Tomasic and Pentony’s (1991) and Fogarty and Jones’ (2014) studies that they would not be swayed by client demands and would disassociate themselves if uncomfortable with the situation. The threat of litigation influenced the practitioners’ behaviour (Tomasic and Pentony, 1991). Nevertheless, could ‘client importance’ affect the practitioner approach? Findings here also conflict. Bobek et al. (2010) and Reckers et al. (1991) suggest that a practitioner’s objectivity could be impaired if acting for an important client (if for example they do not wish to lose the income stream). Bobek and Radtke (2007), Fatemi et al. (2018; 2020), Hageman and Fisher (2016) and Helleloid (1989), however found that ethics and integrity were important determinants of a practitioner’s behaviour. Bobek and Radtke (2007) and Hageman and Fisher (2016) contend a strong ethical environment encourages ethical behaviour (see also Section 3.4.5 below for the impact of the profession and organisation upon professional identity). In other words, ethics were deemed more important than the risk of upsetting an important client. Additionally, Fatemi et al. (2018) suggest that if practitioners are reminded of professional standards, or ethics (Fatemi et al., 2020) they take less risky positions; so it would appear in the findings to this research that conformation to client preference is not automatically the default position. However, the context of the decision may be important too. Spilker et al. (1999) suggest that practitioners adopt a riskier position when dealing with tax compliance matters (given there is more risk here for the client than the practitioner) than when providing advice about tax planning (as practice risk increases with tax planning activities).

As discussed above, if there is a difference in risk appetite between the client and practitioner, the practitioner may shift position to match the risk preference of the client. The findings above conflict – some suggest the practitioner may adopt the same position as the client (which in the scenarios above, discusses a position of risk), however others disagree. Some suggest that the practitioner is actually

more risk averse than the client, and is generally not affected by the client's own attitudes to risk (Brody and Masselli, 1996; Christensen, 1992; Helleloid, 1989; Hite et al., 1992). The discussion above may explain the reasons for this. In summary this may be attributed to practitioners being bound by professional standards (Fatemi et al., 2018); the desire to avoid penalties for the taxpayer (or themselves in the USA) (Brody and Masselli, 1996; Christensen, 1992; Cloyd and Spilker, 1999; Hite et al., 1992), and; the risk of damage to the reputation of the practice (Carnes et al., 1996). A conservative attitude was found to exist in relation to the preparation of tax returns, based on a scenario given to participants by Brody and Masselli (1996). They acknowledge that this may be attributed to a possible lack of technical knowledge of the practitioner, but this finding appears to contradict the suggestions of Spilker et al. (1999) that practitioners take a more aggressive approach in a compliance capacity.

3.3 HMRC relationship

This section explores the relationship between the tax authorities and the tax practitioner. There is not a great deal of academic literature which examines the relationship between HMRC in the UK and the tax practitioner per se (or which has focus upon the small practitioner in particular), and hence international studies are also drawn upon.

Studies which include HMRC as a subject of research include exploration of the relationship of large business and HMRC (Freedman et al., 2007). The changing role of accountants within HMRC is examined by Oats and Tuck (2008), whilst analysing the relationship between HMRC and large corporate tax payers. Additionally, HMRC's management of the UK tax system (Freedman and Vella, 2011) has been studied and from time to time there have been calls for tax agents (practitioners) to be registered/regulated (Salter and Oats, 2011). The regulation of tax agents is a theme which continues to be discussed today as highlighted in Chapter 2. HMRC commissioned research into the role of the professional bodies in the regulation of tax agents in 2018 (Kantar Public, 2018) and consultation about raising standards in the tax advice market was recently undertaken (HMRC 2020a and b). Additionally, Mayson (2020) proposes the establishment of a Legal Services Regulation Authority (LSRA) which would capture registration of tax services (and hence regulate tax practitioners). Mayson's proposal includes a role for the appropriate professional body in these arrangements.

Research which specifically relates to the tax practitioner and the tax authorities is discussed below. This encapsulates service issues and the changing relationship between the two parties.

3.3.1 Service quality at the tax administration

Stiglingh (2014) examines what practitioners would like in terms of a quality of service from the South African Revenue Service (SARS). Her aim was to propose a service quality framework. She found that “service quality is seen as a multidimensional, hierarchical construct” (Stiglingh, 2014, p.244). The view of the practitioners as to what they consider quality service depended upon different aspects such as their past experiences of communication with SARS (be that for instance interaction with personnel or use of SARS documentation). In the UK context, Hasseldine et al. (2011), indicate the advisers of corporate clients have a good relationship with HMRC, the reasons for which included access to good quality materials (documentation) and HMRC flexibility in provision of assistance to the practitioner. Dabner’s (2012) study of tax practitioners in the UK suggested they also desire good communication between themselves and HMRC, to be kept informed about technical issues and new systems and generally want ‘no surprises’. These attributes may be seen as good service on behalf of the tax administration and bears out Stiglingh’s (2014) findings that experience of practitioner/authority interaction will determine what is perceived to be a good service. Findings specifically suggest that “functional quality [the how] is more important to the perceived service quality than technical quality [the what which enables delivery of the service]” (Stiglingh, 2014 p.246). Information about service quality of HMRC (the time taken to open post or answer the telephone etc.) in the UK tends to be published by the organisation itself, and/or commented upon by the National Audit Office (NAO) – see Section 2.4.3 in Chapter 2, for the challenges HMRC (and consequently practitioners and taxpayers) face in this respect.

3.3.2 Changes in the relationship with tax authorities

In Australia and New Zealand, the use of responsive regulation techniques (Braithwaite, 2007; Feld and Frey, 2007) and the effect upon tax practitioners is investigated by Dabner (2012:2015). Gracia and Oats (2012a) observe an increasing shift to this type of system in the UK too. Responsive regulation aims to:

“...move towards an environment where regulatees comply voluntarily, and there is mutual trust and respect between regulators and regulatees” (Gracia and Oats, 2012a, p.305)

If regulatees do not comply, penalties are invoked and the tax authorities may become more adversarial. In light of this Gracia and Oats (2012a) explore tax regulation and boundaries in the tax field, using a Bourdieusian framework. For such a system to operate, the “regulatory institution” needs cooperation of the regulatees (the taxpayers, tax practitioners), Gracia and Oats (2012a, p 306). If the regulatees ‘step out’ of sync with what the institution (HMRC) wants (for example tax avoidance matters) this invokes changes in the behaviour of stakeholders – HMRC included – which can upset the prior understandings of how the field operates. Responsive regulation requires an enhanced relationship between tax practitioners and the tax authorities. Trust is, as Gracia and Oats (2012a) suggest, an important basis for this system.

Responsive regulation Dabner (2012, p.526) advocates, has developed from “theories proposing a partnership framework” so as

to move tax administrators from a command and control posture to a more sophisticated form of regulation

which, he notes, is described by the OECD (2008) as the “enhanced relationship” model. In describing various initiatives under this model in a number of countries (not necessarily responsive regulation, per se, although it is said to have developed from the ‘enhanced relationship’) Dabner (2012, p.528) observes that

The notable feature of these initiatives is that they are primarily taxpayer focused with tax practitioners either sidelined or simply facilitating the arrangement between the administrator and the taxpayer.

This of course illustrates a fundamental shift from the more traditional relationship and will have a number of implications. Changes in the practitioner/tax authority relationship are also observed by Walpole and Salter (2014) who examine the effect of tightened controls on tax practitioners in Australia (who, unlike in the UK or New Zealand, must be registered to operate) following a change in Australian law, with the introduction of the Tax Agents Services Act (TASA) in 2009.

Traditionally, a practitioner may have a sole obligation to the client (whilst of course also complying with the tax administration requirements), but under both these revised approaches (responsive regulation and TASA 2009), more

obligations are owed to the tax authorities. The revised relationship, is viewed by the tax authorities at least, as a partnership between themselves and the practitioner, rather than the tax authority being seen as an 'adversary' in the traditional sense. Interestingly, practitioners in Tomasic and Pentony's (1991) study were uneasy, even then, about being seen as partners of the tax authority. Clearly there have been changes since 1991. Walpole and Salter (2014) conclude that there has been a shift in the tripartite relationship (for more detail, see Section 3.4) – away from the client and more towards the tax authority. This appears to have arisen as the tax authority increased controls over practitioners, perhaps in response to the shifting boundaries as posited by Gracia and Oats (2012a). The consequence, Walpole and Salter (2014) observe, is that the agent no longer only takes account of the clients wishes, but also complies with the wishes of the tax authority too. The theme here is a desire by the authorities to raise standards of the tax profession. This is not the preserve of New Zealand or Australia, or indeed the UK (which is discussed below). The US for instance uses a penalty system "to raise standards of tax professionals" (Dzienkowski and Peroni (2016, p.2729) and regulation has increased in response to aggressive tax positions (Fatemi et al., 2018) and additionally Blanthorne et al. (2013, p.170) cite Brody and Fisher (2008) suggesting "...that Congress [in the US] is serious about moving tax professionals away from being client advocates and more toward being government agents". This would suggest a major shift in position with regard to the obligations of tax practitioners and it would seem that Walpole and Salter (2014) have observed a move in the same direction in Australia.

Nevertheless, a change in relationship of this nature brings with it a number of difficulties, as identified by Dabner (2012;2015) including the simple fact that traditionally the taxpayer has the opposite objective to that of the tax authority (one seeks to minimise tax and the other to maximise it). Hence how should a practitioner approach this changing relationship? To whom is the obligation owed? The tax authorities or the client – or both? This is discussed further below in Section 3.4. Other issues may arise, as Dabner (2012) highlights. In seeking to collect the "correct" amount of tax in partnership with the tax authorities, what happens if, as it may, there is a difference in point of view between the practitioner and the tax authorities? This is highly possibly as the interpretation of law is not straightforward as explained in Chapter 2. A good example is given by Gracia

and Oats (2012a), in their exploration of regulation featuring the Arctic Systems (Jones v Garnett) tax case. In this case, HMRC believed there had been “a breach of the compliance boundary” (p.313) in respect of a common practice adopted by many small companies. A court case unsettled this position and was unanticipated by taxpayers and practitioners. HMRC used an unusual legal angle to attack this position (made possible given the problems of legal interpretation, and “fuzzy” tax rules as explained in Chapter 2). Additionally, although HMRC issued guidance about this issue, they were accused of delaying the production of it, and providing examples too simple to be of use to the practitioner (thus avoiding more challenging grey areas) (Gracia and Oats, 2012a). This increased, rather than reduced, uncertainty. Ultimately, the taxpayer won the case, but the regulatory practice, use of power and behaviour of HMRC was questioned (as it was in respect of the loan charge in 2019 noted in Chapter 2).

Dabner (2012) explores the views of a number of tax practitioners about their relationships with the tax authorities in light of responsive regulation in Australia and New Zealand, and the UK ‘Working Together’ initiative (see Chapter 2). Dabner (2012) found evidence of a marked deterioration in relations in both Australia and New Zealand, although it appears that larger practitioners had a more beneficial relationship with the tax authorities in New Zealand than those advising smaller business. The reason for this was the ‘patchy’ relationship with some personnel within the organisation. More senior staff offered, it was said, a more co-operative relationship to organisations likely to be represented by larger practitioners. Dabner (2012) suggests the views of smaller practitioners could be sought in the UK to ascertain whether the same is found. In terms of the UK practitioners generally, Dabner (2012) found that they had a far more cooperative relationship with the tax authorities at the time of writing. This was confirmed by Hasseldine et al. (2011, p.45) who refer to their “flexibility” and “helpfulness” and participant’s general positive opinion of HMRC in what was described as quite an amicable, reciprocal relationship (although there was acknowledgement from HMRC that practitioners may use their knowledge against the exchequer). However, a discussion about additional regulation of the tax profession in the UK (by HMRC) was at that time creating tension and a feeling began to surface amongst practitioners that HMRC were simply out to collect the maximum revenue they could at that time (Dabner, 2012 and it is to be noted, a view shared

by Maas, 2015). This resulted, it was suggested, in perceptions of distrust of tax agents.

Additionally, Dabner (2012) highlights practitioners' concerns about HMRC's failure to address inadequacies within their own organisation; a view since expressed by Maas (2015). This affected the relationship between both parties. Maas (2015, p.2) speaks wistfully of the years when the relationship between knowledgeable staff at HMRC and practitioners was one of trust and mutual respect (similar to findings by Hasseldine et al., 2011) who had a common interest in "determining the tax effect" for the client. At the time of Dabner's (2012) research, one of the reasons he gives for what is recognised to be a deteriorating relationship between the UK practitioner and HMRC is the closure of offices and loss of local knowledge, as Maas (2015) also observes. Maas (2015) additionally bemoans the loss of technical skills and the unwillingness of HMRC to engage with the legislation or case law, choosing instead to cite HMRC manuals in their responses to practitioners. Interestingly Tomasic and Pentony (1991, p.247) note comments of a practitioner who highlighted similar reticence with the Australian Tax authorities. The reluctance to engage with tax legislation per se, the practitioner noted, meant the practitioner having to work with "two sets of law" (i.e. the legislation and the guidance). Maas (2015) also refers to the difference in 'speed' at which HMRC and private organisations now work, wishing that HMRC should have to "justify their time to the citizenry in the same way [he has] to do with clients". This suggests that 'time' at HMRC does not have a value – which could mean that delays are not seen as problematic and that the organisation may have the luxury of spending hours dealing with a tax issue that the practitioner does not. Ironically, despite delays and the slow speed at which tax matters may be processed, Maas (2015) notes HMRC demand a response to their correspondence by the practitioner, within 30 days which he feels is unrealistic. Some may suggest HMRC too should at times be subject to penalties, as are taxpayers (Cave, 2020 citing Cullinane).

Dabner (2012, p552) forecast that a "storm" may be approaching. That is, the content felt by practitioners in 2011 about their relationships with HMRC, was beginning to slip. It is of note that the various PAC committee meetings and the amendment of PCRT to tighten regulation around tax planning advice (see Chapter 2) occurred after the date of Dabner's (2012) research, as tax

practitioners continue to be in the media spotlight. Comments from Maas (2015), in his speech to the ICAEW tax faculty confirms Dabner's (2012) prediction. He suggests that practitioners and HMRC are not seen as equals (as he feels that HMRC think they "know best" (p.6) or as he puts it, "They are not entitled to substitute their judgement for mine" (p.7)). He wishes for recognition that practitioners are not "enemies" (p.6), or a "nuisance" or at worst "an accomplice" (p.2) (in unethical tax matters) as they are there to represent their clients and they want to work with (as perhaps opposed to for) HMRC (Maas, 2015, p.6). He suggests tax practitioners see HMRC as "bullies" and that HMRC regard "all self-employed taxpayers and small businesses as small-time crooks, taking it for granted that the taxpayer is cheating." (p.2). Gracia and Oats (2012a) additionally observe that HMRC has become more aggressive towards some taxpayers; an observation which may have effect upon advisers too – as such characteristics may affect the trust in the relationship between the tax practitioner and tax authority. Maas (2015) refers to the "perception gap" to describe what he feels is the "gulf between what we do and what HMRC think or expect us to do" (p.3). In other words, he describes a deteriorating relationship with HMRC (perhaps as Dabner (2012) describes in New Zealand and Australia and as forecast in the UK) and desires a less adversarial association with the organisation. Negative attitudes are seen here by both parties to the relationship and interestingly the 'gulf' described by Maas (2015) can be seen in the work by Addison and Mueller (2015) who examine the language and discourse of a transcript of a PAC meeting. This was about the Big 4 professional firms. Different metaphors were used to describe the Big 4, which suggests views towards tax practitioners may depend upon one's particular perspective. Nevertheless, Dzienkowski and Peroni (2016, p.2734) warn of the dangers of a poor relationship with the tax authorities, suggesting that a "[n]egative attitude towards tax authorities can affect compliance of taxpayers and tax practitioner ethics". Trust between both parties thus is required for a cooperative relationship as also observed by Gracia and Oats (2012a). Nonetheless, questions about the conduct of practitioners and possible regulation of the profession continue, as discussed both in Chapter 2 and above.

3.3.3 HMRC assistance to the tax practitioner

HMRC can be a source of assistance to practitioners as found by Hasseldine et al. (2011). Tax authorities may offer advance rulings (that is, a ruling is provided about the tax treatment of a transaction, prior to the transaction being undertaken. Ordinarily, the ruling is provided only if all the facts on which the decision has been based apply, when the transaction is actually undertaken). Access to this type of assistance is one way practitioners may seek to reduce uncertainty. Diller et al. (2017) suggest advance rulings can foster investment, as the taxpayer will have certainty of tax treatment in advance of their investment – and of course, audit costs may be reduced on behalf of the tax authority. Dabner (2012 and 2015) however suggests that the authorities' discretion to administer a ruling unique to a particular taxpayer is now a source of contention as it may be perceived to be unfair to other taxpayers who may not be able to take advantage of the same rulings. Indeed, Diller et al. (2017) remark upon the publication of such agreements under the so called Luxembourg Leaks in 2014 (citing findings from the International Consortium of International Journalists). This publication generated substantial interest and suggestions were made that such rulings may be linked to aggressive tax avoidance strategies. Additionally, there have been criticisms of HMRC for their action in the past in reaching agreement with companies to determine tax payable in the event of dispute – the so called 'sweetheart deals' (Huber, 2013). There were accusations of failure in such negotiations, resulting in money lost to the exchequer (Public Accounts Committee, 2011). The reluctance of the tax authorities to issue advance rulings (as noted by Dabner (2012, 2015)) could be symptomatic of the changing environment discussed above, that is tax authorities do not want to offer specific taxpayers assistance, which is perhaps linked to the wider tax avoidance debate. For a detailed review of HMRC's discretionary powers, see Freedman and Vella (2011), who conclude that discretion is required for the tax system to function, yet it is a balancing act to ensure that HMRC do not overstep the boundaries.

The studies presented above appear to be, sadly, illustrative of a difficult practitioner/tax authority relationship. Certainly the relationship has changed over time which creates issues for practitioners and not just in the UK context. Nevertheless, HMRC does recognise the importance of tax practitioners and, as

discussed in Chapter 2, the organisation indicates good intention to engage with tax practitioners in a number of ways.

We welcome the use of agents to represent customers where they add value in helping their clients to get their affairs right. Agents can play a key role in helping people meet their obligations, while also supporting us in our 'one to many' relationships with customers. (Kantar Public Research for HMRC, 2018, p.8).

3.4 Practitioner's Role in the tripartite relationship

The relationships of the practitioner and the client, and, the practitioner and the tax authorities have been explored above. It is clear to see that the practitioner is in the middle of both relationships. They are an intermediary between both parties. Each party may have conflicting demands and there may be challenges and difficulties arising from the practitioner's position within this relationship. Various scholars have commented on this position.

3.4.1 The position in the middle

The practitioner must manage both relationships, as well as think about the wider public, the government, their profession, their firm and of course themselves when undertaking their work (Davidson, 2016; Doyle et al., 2009b; Frecknall-Hughes and Kirchler, 2015). In terms of the three-way relationship some suggest that there is a tension between obligations to the revenue authorities and to the client, as there is a

dichotomy between the state's interest in raising revenue and in applying its taxation law in a consistent, efficient, and equitable manner and the client's interest in minimizing tax. (Thuronyi and Vanistendael, 1996, p.5)

or as Davidson (2016) puts it there is a boundary between "obligations to the state" and the "rights and duties of individuals". A tension may exist, therefore, in how the practitioner uses specialist knowledge. Using the analogy of Klepper et al. (1991) the practitioner may adopt an 'enforcer' role (to enable the client to submit an accurate tax return (compliance activities) or an "enabler" role in the tax planning context as without technical knowledge the client pays more tax. It is to be noted however that today, the term 'enabler', carries with it more ominous connotations which captures aggressive tax avoidance. These differing demands may create a "uniquely ambiguous position" (Baker, 2014, p.281) and Brody and Masselli (1996, p.2) suggest that this can create a dilemma as to "... which of the two masters ... they should serve in ambiguous situations".

So if tax law is not clear, should the practitioner choose the position which creates a lower tax payment, or not? This will of course depend on the circumstances of the client, the transaction and the understanding of the law. This will inevitably bring with it a number of difficulties and perhaps divided loyalties. The need to “strike an appropriate balance” is recognised by Hageman and Fisher (2016), Niemiowski and Wearing (2003) and Thuronyi and Vanistendael (1996, p.1). This issue is described as a “unique role” (Fatemi et al., 2020, p.134), a “unique dilemma” (Blanthorne et al., 2013, p.150), a “dual duty” (Dzienkowski and Peroni, 2016, p.2726), a “dual role” (Tran-Nam et al., 2016, p.458) a “dual responsibility” (Oatway, 1965, p.254, and also described similarly by Stuebs and Wilkinson, 2010) and a “dual agency problem” (Leviner, 2012, p.1097). Dzienkowski and Peroni (2016, p.2726) suggest that having the “government as an opponent” is “unique” which creates the “dual duty” as the practitioner has obligations with regard to revenue collection. However, such a duty may affect the practitioner’s “...ability to represent their clients with maximum zeal” (Dzienkowski and Peroni, (2016, p.2722) as, Dzienkowski and Peroni (2016, p.2728) suggest, practitioners have an obligation to “represent their clients zealously within the bounds of the law”. The possibility of being “pulled in different directions” is acknowledged by Sakurai and Braithwaite (2003, p.386), and is described similarly by Dabner (2012). Philipps (1993, p.589) refers in the tax law context to the “tension between the lawyer’s duty to represent a client diligently and the sometimes conflicting duty to promote the administration of justice” (which he notes is often referred to as a “duty to the system”). This latter point is also observed by Blanthorne et al. (2013) and Stuebs and Wilkinson (2010). Given the numerous references to the practitioner in the tripartite relationship, it is clearly an issue which warrants contemplation by the practitioners, HMRC and clients and it can be difficult to reconcile these different, conflicting roles (Frecknall-Hughes and Kirchler, 2015).

It should be noted that all of these analogies originate from outside the UK, although the relationship (and responsibilities) between the revenue authorities, practitioners and clients is similar. However, there are differences regarding registration of tax practitioners in different countries, as already noted, which may carry additional obligations and perhaps cast a slightly different light on these relationships. Nevertheless, the practitioner should act in the client’s interests

within the tax law (Gupta, 2015; Leviner, 2012; OECD, 2008). A balance is needed according to Dzienkowski and Peroni (2016) as if the practitioner leans too far towards the tax administration in terms of their responsibilities, they may be seen as “quasi-IRS agents”. This may create problems for the practitioner’s obligations to the client. This resonates with the dilemmas described by Dabner (2012, 2015) and Walpole and Salter (2014) in their discussion about the changed relationships between practitioners and the authorities in Australia and New Zealand. In terms of the practitioner’s primary duty however, the CFE (2014, p.1) state that “... tax advisers are not watchdogs of the tax administration” and, the OECD (2008) acknowledge that a practitioner’s primary duty is to the client.

Within the tripartite relationship, practitioners have an important role within the tax system itself. This is not just true of the UK, but also the US (Helleloid, 1989) and New Zealand (Gupta, 2015). They have been described as “... critical gatekeepers for the tax system and its administration” (Leviner, 2012, p.1090; see also Oatway, 1965). The term ‘gatekeeper’ is also used by Gupta (2015, p.77) who suggests that practitioners have a duty to “...uphold the integrity of the tax system”, although this term is disputed by Dzienkowski and Peroni (2016) as they remark that taxpayers themselves have obligations to the tax system too. Nevertheless, Davidson (2016), Dzienkowski and Peroni (2016) and Thuronyi and Vanistendael (1996) all suggest practitioners are integral to the tax system and are needed for it to function smoothly. Tomasic and Pentony (1991) agree that practitioners are an important part of the tax system.

Tomasic and Pentony (1991) in their study of tax practitioners and the tax authorities (the Australian Tax Office) found that tax practitioners had a number of roles. These included “independent advisers” to clients, intermediaries between the tax authorities and the client, and “protectors of their practice” (a risk management role in protecting their practice as well as representing clients). Additionally, Tomasic and Pentony (1991) suggested that practitioners are “unpaid employees” of the tax administration, “compliance advisers” and “influencers on the tax system”. The practitioners are not employees of the tax authorities in the literal sense, yet many of them felt that way. That is, they were increasingly doing the job of the Australian Tax Office as more responsibilities previously undertaken by the tax administration were shifted to the taxpayer (and therefore their adviser. Hence in the metaphorical sense, they may be seen as

“unpaid employees” of the tax system). Tomasic and Pentony (1991) conclude at the time that there was a closer relationship between tax practitioners and the tax authorities, but the tax practitioners were uneasy about being viewed as partners in this relationship. This continues to be the case in later years (Dabner 2012, 2015). Interestingly, even back in 1991, the practitioner participants in Tomasic and Pentony’s (1991) study expressed unwillingness to take part in unacceptable tax avoidance. The environment has changed greatly since this research was undertaken, yet there appears to be no similar research in the UK. Maas (2015, p.4) however remarks that he does not actually see himself as being “[i]n the relationship between HMRC and the taxpayer”. The contractual and legal obligations are, he feels, to his clients. Ethical obligations, are, in his opinion, to comply with the rules of the professional bodies. Hence the relationship with HMRC is seen as entirely separate in his view. Nevertheless, grey, uncertain and ambiguous legislation can prove difficult for a practitioner to manage. They may well be pulled in different directions and tempted to exploit ambiguity (i.e., to ascertain a credible explanation of the law according to Tan, 2011), should it exist, either by pressure from clients and/or their firms. This is despite the need to evaluate a transaction, or situation, in an unbiased manner (Hageman and Fisher, 2016). This aspect is explored further below in Section 3.4.8 about how practitioners need appropriate tax knowledge. Additionally, their background and ethical compass may also play a part here.

The next section explores the literature surrounding the professional context in which the practitioner works, which starts to highlight the influences on the practitioner as a professional and an individual.

3.4.2 The tax professional

The tax practitioner is a professional. It is important to note that tax practitioners who do not belong to a professional body, or are unqualified, may nevertheless consider they work in the tax profession and hence see themselves as professionals too, as do those who are members of such bodies. The tax profession, per se, is thus distinct from the professional bodies which operate in the tax field. The approach of all tax practitioners to their work may be affected by their professional identity, that is the “cognitive mechanism that affects workers’ attitudes...and behaviour in work settings and beyond” (Caza and Creary, 2016, p.260). Professional identity is a somewhat subjective construct

and many different aspects feed into how one's professional identity forms, as will be discussed in Section 3.4.5 below. However, as already discussed, the participants in this research exclude those individuals who operate outside the remit of a professional body, or who are not HMRC trained. As such, the professional body to which the participants in this research belong (see Chapter 2) and/or their former training may influence how they approach client and HMRC relationships and how they view their roles as the central actor in the tripartite relationship. Section 3.4.5 thus reviews the literature about professional identity to help shed more light on the factors that shape and influence an individual's approach to their work. Prior to this, and to add context to the discussion of professional identity, the reasons for the formation of a profession are touched upon in Section 3.4.3. The context of the smaller practitioner is also commented upon in Section 3.4.4. Finally, to draw together these aspects, the literature about the professional identity of the practitioner is presented in Section 3.4.5.

3.4.3 Why professions develop

There is an abundance of literature about why professions develop and there are many different views about the purpose of professions, the power they have, and their impact upon society. See for instance, Abbott (1988), MacDonald (1995), McCahery and Picciotto (1995), Paisey and Paisey (2018) and Wilmott (1986). Of importance here are the reasons why professions develop, as individuals will enter a profession to undertake a particular type of work.

The main reason for the development of any profession is expertise. When individuals with common knowledge or specialisms group together and create some sort of domain around that specialism, a profession is formed (Abbott, 1988; Adler et al., 2008; MacDonald 1995). Typically, a profession encapsulates expert knowledge about a particular field (Adler et al., 2008; Stuebs and Wilkinson, 2010) and is usually service focused (Stuebs and Wilkinson, 2010). Knowledge may not just relate to technical knowledge. Those using the services of a profession will have access to the experience, judgement and related skills of the individuals who make up that particular profession. Schinkel and Noordegraaf (2011, p.68) suggest that a profession "guards and maintains [the] self-awareness" of workers who "possess a clear sense of what their work is about" and "secures the technical underpinnings of occupational practices, that is, knowledge and skills" (p.69).

Additionally, the language and discourse which relates to the tax and accounting field is of particular relevance in this context. Those outside the tax profession may seek assistance to understand tax liabilities, or the tax consequences of a transaction and may require an expert to explain this in layman's terms for them. In other words, they require an expert to translate the specialised language of the field, as they are unable to do so themselves. Legal language (as well as knowledge) is given as a reason for the development of the legal profession (McCahery and Picciotto, 1995) and this is relevant to the tax profession too. It is suggested that lawyers are translators. That is, lawyers translate the client discourse into legal language and then translate it back again into simple terms for clients (Cain, 1979, cited in McCahery and Picciotto, 1995). This is supported by Mulligan and Oats (2016, p.64) who report that "professions play a key role in translating legal prescriptions in to organizational practices" – that is, how law is implemented on the ground. Of course, perhaps the same analogy (of translator and solution finder) can be applied to any profession (architect, medical or engineering for example), although here, it is possible to see clear links with the tax profession, particularly given the examples of complex and uncertain tax law in Chapter 2.

Given a profession's monopoly over knowledge (Abbott, 1988; Hamilton, 2013; Miller and Power, 1995; Paisey and Paisey, 2018), and certain expertise, this leads to deliberations about the profession's role in society and questions of power. A profession is seen as a "central means of institutionalising expertise in society" (Carter et al., 2015, p.1198) and Mulligan and Oats (2016, p.64) refer to a wielding of "considerable power not only as a result of their expert knowledge, but also through their ability to manipulate the social order within the field". In addition to offering expertise, the tax and accounting professional bodies also see their roles as "maintaining and enhancing standards through education" (Kantar Public research for HMRC, 2018, p.4). The power of a profession may often be seen via its gatekeeping capacity. That is, entry to the profession is often controlled via acquisition of qualifications set by the professional bodies operating within that profession. Those without the requisite requirements are excluded (Abbott, 1988 and Paisey and Paisey, 2018) from membership. This confers an air of status or exclusivity (MacDonald 1995) around that profession, giving an aura of respectability, and a highly educated membership. This provides the

profession with credibility and legitimacy in the eyes of those outside the profession. Of course not all tax professionals choose to join a professional body or undertake the qualifications on offer and yet they may also benefit from the credibility which is attached to belonging to a profession, per se. This distinction between qualified and non-qualified practitioners may go unnoticed by members of the public when choosing a tax practitioner to act for them, as highlighted by HMRC (2015a).

As explained in Chapter 2, the professions are self-regulating. The government or state does not intervene unless there are exceptional circumstances as discussed by O'Regan and Killian (2014) in their examination of the failures of the Irish audit profession. O'Regan and Killian (2014 p.616) suggest that when the public accept the position of the profession as a holder of knowledge, this gives it legitimacy "underpinning...its ability to self-regulate". Public trust is therefore required for the profession to maintain credibility (Adler et al., 2008; MacDonald, 1995). There are different views around the effectiveness of self-regulation and as indicated at Section 3.3 the self-regulation of the tax profession is currently under consideration, nevertheless, the accounting and tax professional bodies (unsurprisingly) believe that self-regulation works well (Kantar Public research for HRMC, 2018).

3.4.4 The profession and smaller practitioners

As this discussion is about smaller practitioners, it is pertinent to refer to the input of the accounting profession into this particular market. Members of the accounting and tax bodies work for organisations of all sizes including the Big 4, down to sole practitioners. Their requirements will differ. Those working for the Big 4 may have the support and expertise of a large professional firm to assist them if necessary. Such a professional support network will not exist in smaller firms and hence the professional body may need to offer different services to that particular market. Ramirez's (2009) study specifically focussed upon the ICAEW in this respect, taking a historical look at the attitude of the organisation towards smaller practitioners (which make up a large proportion of the membership). He discusses the "attempt by the [ICAEW] to give institutional existence to the category of 'the smaller practitioner'" (p.381) and to understand their needs to target their services to them more appropriately. This was not however felt to be of benefit by the smaller firms. They felt that whilst ICAEW *talked* about matters,

there was no particular *action* taken to tailor what was on offer to the smaller practitioner (Ramirez, 2009). Clearly however smaller practitioners are seen as important to the ICAEW, as they have recently launched a new community to provide “sole practitioners and small firms with bespoke content, webinars, exclusive benefits and networking opportunities” (ICAEW, 2020e). It will be interesting to see how this is received by this community and whether it is of benefit to the tax community in particular, given Ramirez’s 2009 findings. Nevertheless, membership of a professional body and the trust and credibility which is attached to such a membership, provides an added ‘seal of approval’ and a sign of quality assurance for members (White, 2019a). This may be particularly relevant for smaller firms (Ramirez, 2009) as these firms will not have the support or financial backing of many larger firms. Membership of a professional body will make them more visible to the public. As explained in Chapter 2, there is no requirement for any tax practitioner to be qualified, registered, or belong to a professional body. The professional bodies regularly raise concerns in this respect (Kantar Public research for HMRC 2018), given that they are unregulated and therefore have fewer obligations and there is a perception that they may offer less of a quality service than their members.

3.4.5 Professional Identity

Individuals make up a profession. They may, or may not, be employed by an organisation which falls under the remit of a professional body. The individual cannot be seen in isolation from either the organisation in which they work, or the professional body to which they belong. The professional identity of the individual is therefore important. Professional identity, is described by Alvesson et al. (2015) and Cooper and Robson (2006), as how individuals see themselves and how they perceive they link to the organisation in which they work. Professional identity relates to how professionals conduct themselves, rather than the technical skills they possess (Grey, 1998) and Caza and Creary, citing Schein, 1978 (2016, p.261) suggest that this includes the “attributes, beliefs, values, motives and experiences that people use to define themselves in their professional capacity”. Brouard et al. (2017) suggest professional identity can also encompass links between the individual and society. The issue of professional identity can be “complex and diffuse” (Alvesson et al., 2015, p.2; see also Brouard et al., 2017 and Fatemi et al., 2018). Brouard et al. (2017) explore

the formation of the professional identity of accountants and highlight a number of influences (termed “audiences”) on the individual in this respect, including professional accounting organisations, employers, clients, government, media, general public and society in general. It is suggested that these influences (or different loyalties (Alvesson et al., 2015)), or the framework within which an individual operates will have an influence upon professionalism and also affect the shaping of the identity of individual accountants (Brouard et al., 2017). The approach of an individual towards their work and how they behave may therefore be affected by many different influences and experiences. If the environment in which the individual works promotes the right ethics and ideals this can impact upon the way an individual acts in his or her professional life (Bobek and Radtke, 2007; Borrego et al., 2017). Overall, it is said that an individual’s professional identity (such as their beliefs and values per Caza and Creasy, 2016) will provide “clues” for how to act (Alvesson, 2015, p.404).

The organisation in which an individual works and the professional body to which they belong will both have an important role in influencing individual behaviour, which was remarked upon by practitioners in Fogarty and Jones (2014) study and observed by Hageman and Fisher (2016). How much influence is open to question. The influence of the organisation is firstly discussed, followed by comments about the professional bodies.

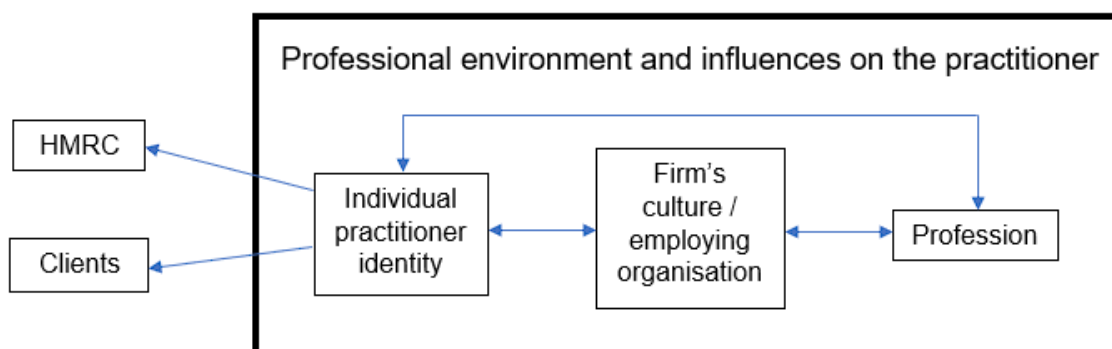
Research undertaken by Cooper and Robson (2006) suggests that the influence over members/individuals which once would have been held by professional accounting organisations, has been lost and replaced by the influence of the larger Big 4 professional services firms. This was felt to have eroded professionalism amongst individuals, and is also remarked upon by Fatemi et al. (2018) and Suddaby et al. (2009). Daoust (2020) additionally studied the recruitment practices of the large professional accounting firms in the audit context. Daoust (2020) observes that recruitment events commence with the socialisation of the applicants into the firm’s culture and suggests that traditional emphasis on expertise, knowledge and the public interest which related to professional values has waned in favour of more commercial aspects. That is the individual also becomes “socialized” in the ways of the organisation (i.e. educated, trained and learn to be accountable) according to Schinkel and Noordegraaf (2011, p.69). Emphasis may be given to the promotion of certain

discourses, how to dress, the importance of exams, how to conduct oneself (Anderson-Gough et al., 1998) and how to speak and write (Cooper and Robson, 2006). The influence of the firm is important as this is the place where “trainees learn to articulate and enact professional and organizational practices and values” (Anderson-Gough et al., 1998 p.571). Indeed, Hamilton (2013) suggests in her research that trainees are largely influenced by their firm, and rarely comment on the professional body other than in reference to qualifications and exams. Hamilton (2013) suggests that training within the organisation helps them become the professional individual. Cooper and Robson (2006) found the same.

It is clear that the organisation plays a large role in terms of how staff perceive themselves and in instilling the ethos of the firm to the individual (Cooper and Robson, 2006) and therefore will impact upon one’s approach and behaviour in the work place. Yet, despite the influence of the firm, Hamilton (2013) suggests that membership of a professional body enables transmission of its own ethos to individuals, as they will be bound by its ethical rules and regulations, and they must meet the qualification criteria set by it as discussed in Chapter 2. However, it is clear that both the organisation and the professional body will have influence over individual practitioners. Suddaby et al. (2009) found no conflict between the profession and the employer as the majority of accounting professionals are committed to their profession.

The above relationships between the practitioner as an individual, the firm in which they work and the influence of the professional bodies impact on the individual’s attitude and approach and ethical perspectives and hence affects their interaction with clients and HMRC and how they carry out their work. This can be shown diagrammatically at Fig. 3.1 below. An individual’s professional identity may adapt and change as one’s experiences and knowledge develops and will be carried with the individual throughout their career as explained in Section 3.4.7

Figure 3.1



Source: Author's own

3.4.6 The ethical environment

The environment (of the firm, and/or the professional field) in which the individual operates is important, as there have been increasing questions as to the behaviour of some tax professionals in recent years. As indicated in Chapter 2, at Section 2.6, there has been a shift in public perception - to one of scepticism about the role of professions in society (Addison and Mueller, 2015). With regards to tax particularly, this is seen now as a moral issue (Carter et al., 2015) and the ethics of some practitioners have been questioned, particularly in light of the facilitation and encouragement of tax avoidance. The erosion of professionalism is discussed by Cooper and Robson (2006), Fatemi et al. (2018) and Suddaby et al. (2009). Changes in perception such as these, and shifts in the public viewpoint may undermine the public trust which gives a profession credibility and this will affect professional identity. The individuals within the profession will of course have a number of conflicting demands to reconcile in their approach to their work. They work for commercial organisations and the economics are certainly important, and yet, a profession should operate in the public interest. There can be tension (Stuebs and Wilkinson, 2010), but commercial aspects should not be “at the expense of ethics and public service” (Suddaby and Muzio, 2015, p.32). The individual should not act in their own self-interest. Professional bodies should take steps to guide members in this respect (Stuebs and Wilkinson, 2010). Given the individual is a provider of services related to tax, they will also have obligations to the tax authorities which they must reconcile to their particular role, or “embrace a professional identity that ties their obligations to the integrity of the tax system” (Dzienkowski and Peroni, 2016,

p.2738). However, Dzienkowski and Peroni (2016) also note that if the tax return process is perceived to be an adversarial process, this can negatively affect the attitude of the individual towards the tax system – and whilst this particular point is not an influence of the employing organisation or professional body, this is important in the context of tax professionals. Yet, consideration of ethics and the requirement to adopt an ethical approach to tax practice are undoubtedly important to a tax practitioner (and form part of one’s professional identity).

The ethics of tax practice has been widely researched (Frecknall-Hughes et al., 2017) including ethical reasoning of tax practitioners (Blanthorne et al., 2013; Doyle et al., 2013), the effect of practitioner firm size on ethics (Doyle et al., 2014) and the influence of ethical codes of conduct on professionalism in tax practice (Fatemi et al., 2020). The link between risk management in taxation and ethics was studied by Doyle et al. (2009b). The influence of ethical conflicts (in particular as ethical obligations may be broader than relevant legal obligations) of the practitioner and their responsibility to the client is discussed by Dalpont (2015) and Stuebs and Wilkinson (2010). The impact of client importance, social interaction with clients and organisational climate on ethical decision making is also explored by Hageman and Fisher (2016). Whilst the focus of this particular study is not on ethics per se, ethics cannot be ignored and these studies illustrate the wide research in this field.

It has already been said, that knowledge and expertise lead to the development of a profession. Additionally, training and exam success feed into the development of the tax professional as an individual. Sections 3.4.7 and 3.4.8 examine how knowledge and expertise develops and how tax practitioners acquire the skills needed to carry out their roles. Such experiences cannot be divorced from the individual’s professional identity. As an individual’s career develops, so too does their knowledge and approach to their role. One may draw on former experiences to carry out the role of the intermediary between taxpayer and the tax authorities in order to fulfil the role in the middle of the tripartite relationship.

3.4.7 Knowledge and expertise

The professional bodies require evidence of the expertise of their members via examinations and appropriate work experience. Knowledge and expertise is vital

to the tax practitioner's role. As said by Hasseldine et al. (2011), a practitioner may be likened to a knowledge broker and sells their knowledge. So how does this develop? The knowledge tax practitioners have will depend upon their background, experiences, training, support for continuing professional development, the professional body to which they belong, the size of the firm they work for, whether they have colleagues working with them, and so on. A tax practitioner learns continuously throughout their career as a result of the complex and dynamic nature of tax law and the tax system, as evidenced in Chapter 2. The practitioner will be influenced by both the organisation and profession as discussed above. The organisation is a site, it is suggested "...where accounting rules and standards are translated into practice, where professional identities are mediated" (Cooper and Robson, 2006, p.415). This experience will then travel with that individual throughout their career and may ultimately shape how they then approach professional life in the future (Hamilton, 2013). Over time, experience will develop and evolve, as will professional identity. Professional identity is not something that is created at one point in time and never changes (Bevort and Suddaby, 2016; Brouard et al., 2017). As individuals progress throughout their career, acquire other experiences, obtain additional training, take on other responsibilities, attain other skills and continue with their education, professional identity will change and links may be made here to the concept of Bourdieu's habitus (see Chapter 4 for a discussion). Thus "human capital" (Stringfellow and Shaw, 2009, p.137) develops and over time, evolves into experience and expertise, which Stringfellow and Shaw (2009) suggest, is particularly pronounced in small professional service firms, where the owner may be the main source of capital in the organisation.

Those practitioners who belong to professional bodies will be required to evidence their on-going professional training and complete compulsory professional development (CPD) records. These records should indicate regular access to appropriate training, for instance, attendance at courses and professional body meetings, and reading of text books and professional journals (see also McKerchar, 2005, from the Australian perspective). Such training may be perceived to enhance the trust of those accessing their services (Paisey and Paisey, 2018). The practitioners are seen as experts in their field and members are thus able to capitalise on the profession's control of knowledge (Schinkel and

Noordegraaf, 2011). Despite this, practitioners will learn much on the job (Hamilton, 2013; Hicks et al., 2007) as discussed in Section 3.4.8 below.

3.4.8 Tax knowledge specifically

The job will of course involve tax research. That is, research of tax law, regulations and case law, and utilisation of extra-statutory guidance, in order to provide advice required, as observed by Fogarty and Jones (2014). The tax practitioner therefore has a wealth of information that s/he may need to search through, and needs to be 'on the ball' with the current tax position, should a non-routine tax matter land on the practitioner's desk. Each situation will differ, and what is required will depend upon the nature of the query. When faced with a potentially large amount of information, and a finite amount of time to do the research, a practitioner needs to adopt a strategy (Bouwman et al., 1987) to locate, read, analyse and interpret laws, case law, and other authorities. Drawing again on evidence from the JDM literature, the practitioner may find conflicting opinions and precedents during the research, which they need to weigh up to help them form a decision (Bain and Kilpatrick, 1990). These will then be applied to the facts of the client case, to determine the advice to be given (Carnes et al., 1996; Roberts, 1998; Spilker, 1995). This will enable the practitioner to "... determine the level of authoritative support for alternative tax treatments" (Cloyd and Spilker, 1999, p.300). This should be carried out objectively, however Cloyd and Spilker (1999) found that client preference may result in practitioners 'skewing' their findings in favour of the clients preferred outcome – which is evidence of confirmatory bias discussed above, when examining the client relationship. This finding was however affected by the background of the practitioner (Cloyd and Spilker, 2000), as discussed below. Practitioners will use various tools in the information search, including database and internet searches, but it may be that as tax law itself is so voluminous, even the most experienced and knowledgeable practitioner is unlikely to recall all there is to know about a given topic, and this in itself may affect the search task (Bouwman et al., 1987). The specific way a practitioner does this will depend on their past experiences and knowledge (see for instance, Cloyd, 1997; Spilker, 1995). Not surprisingly, time pressure was found to affect the effectiveness of the search for information (Spilker, 1995), as did task interruption (Long and Basoglu, 2016) hence both situations may impact upon the decision making process. A link can be made

here to observations from Fogarty and Jones (2014) that short cuts may be made, and time pressures create fee problems. Hence budgets and a finite amount of time may impact upon the advice ultimately given.

As the career of a practitioner develops, knowledge will be combined with experience gained during working life as described above. Kaplan et al. (1988) investigate how practitioners use past experiences to exercise judgement when interpreting tax law. This was achieved by creating different scenarios based around a grey area of tax law. They suggest that knowledge in 'unambiguous' areas of law (i.e., straightforward technical knowledge) is gleaned from the classroom, professional journals and the like. Yet, in order to advise on ambiguous aspects of the law, practitioners draw on earlier knowledge and experiences. Klepper et al. (1991) conclude that such experience enables advantage to be taken of ambiguous law in making recommendations to clients. Interestingly however, Cloyd and Spilker (2000) found that the background of the tax practitioner may have an effect here. Those with legal training were less inclined to give undue weight to authorities which supported the client position. Instead they were shown to be more objective in decision making and showed less inclination of confirmatory bias than those with an accounting background. This was thought to be related to the difference in training and former experiences. Those with legal training showed a more balanced approach to the search for information, as, it was suggested, they are trained to expect challenges to their arguments and are more familiar with case law. This resonates with suggestions by Freedman and Power (1992) and Latham (2012) that one's approach may depend upon one's background given "... fundamental differences in analytical styles which have their basis in varied historical, cultural and educational patterns of development" (Freedman and Power, 1992, p.2, in their work which looks at the difference between the accounting and legal professions). Experience may therefore help drive the tax search for information and this illustrates that not all tax practitioners will have access to the same information, or adopt the same approach to providing tax advice. Thus the effectiveness of the practitioner's information search may affect the decision made (Cloyd, 1997). The above discussion indicates the issues that practitioners must contend with to advise clients appropriately, yet they must also act within the bounds of the law in their roles as intermediaries. Given the complexities of the tax system and the

difficulties of tax law, as discussed in Chapter 2, it may not be straightforward at times to offer the advice requested. As highlighted in Chapter 1, the organisation for which the practitioner works may also affect the approach to tax knowledge acquisition. It is likely that a Big 4 firm will have a central team to provide multiple resources and regular updates to their many staff and of course, will employ numerous experts in certain areas of taxation who may be able to assist other colleagues as and when required. Those working within a smaller firm will have less support and are likely to seek updates to knowledge outside the organisation (such as attendance at external training courses, attendance at CIOT events, use of online materials and so on). Expertise may also be sought outside the smaller practitioner's organisation, perhaps drawing upon the help of other practitioners. This action will depend upon the limitations of expertise within the firm, given the market in which they work. From an accounting perspective, as mentioned above, ICAEW recently introduced a "small practitioners community" in which ICAEW members who are smaller practitioners and firms (limited for this purpose to a maximum of 4 partners) may participate. This community offers resources (including for taxation), webinars and training opportunities tailored to that particular market, in acknowledgement that their needs may differ to those of larger organisations (ICAEW, 2020e). Knowledge is important to all practitioners, but the context in which it may be attained differs depending on the size of the practice.

3.5 Summary

This chapter has reviewed the extant literature as the client/practitioner relationship, practitioner/tax authority relationship and that which explores the role of the practitioner in the middle of the client/tax authority tripartite relationship. The impact of professional identity upon the practitioner and the importance of knowledge and ethics to the tax practitioner were also discussed. These matters affect the approach of the individual towards their work and hence the relationships with clients and HMRC, and by association, shapes the individual's role as the actor in the centre of the tripartite relationship in a more general sense. The relationships between the client, HMRC and the practitioner viewed as a whole give an insight to tax practice.

Section 3.2 shows that the client/practitioner relationship is multifaceted and may be affected by many issues such as attitudes of both parties towards risk and

trust. The demands of clients and influences of other external factors such as ethical considerations, practice risk, application of ambiguous law, and the practitioner's background may also affect the relationship.

What can be determined from this review is that many studies in the client/practitioner relationship field are undertaken from a quantitative/positivist perspective as indicated in Table 3.1. There are few qualitative studies in this vein. Additionally, there is a paucity of studies in the UK context. Furthermore, many studies focus on the taxpayer perspective rather than that of the tax practitioner. With the exception of Apostol and Pop (2019), Fogarty and Jones (2014), Hasseldine et al. (2011) and Tomasic and Pentony (1991) few studies about the client relationship per se incorporate the practitioner voice. It is clear from Table 3.1 that the only study to incorporate the view of the smaller practitioner alone, is that of Stephenson et al. (2017) which is undertaken from a quantitative perspective. A particular reflection about this market, according to Stephenson et al. (2017) is that smaller practitioners have better knowledge of their clients and more understanding of what their clients need (than larger practitioners may). Other studies were not about the small practitioner market per se, but some made ad hoc observations about the client relationship in that market, such as that access to a local, trusted accountant was found important to Australian taxpayers (Tan et al., 2016).

However, as Stephenson et al. (2017) observe at page p.201, generally

...there is surprisingly little empirical literature of which we are aware that focuses on (1) tax-preparer perceptions of their clients, in general, or on (2) what preparers think their clients desire from tax preparation services in particular.

Additionally, they assert that "...the academic tax literature reveals relatively little about client preparer interactions", a view shared by many (Hite and McGill, 1992; Gupta, 2015; Oats, 2012; Van de Rijt et al., 2019 and Tan, 2014). Additionally, Apostol and Pop (2019. p.17) call for "more qualitative studies which have largely been absent in tax consultancy research" as they have "great potential to explore the rich details of everyday practices employed in the consultancy industry".

The thesis will address these calls and **research question 1** is derived in light of the above; **How do small tax practitioners manage client relationships in a dynamic environment?**

Section 3.3 reviewed literature around the tax authority/practitioner relationship. Some of the qualitative studies referred to in Section 3.2 also ask tax practitioners for their views on the tax authority relationship (Apostol and Pop, 2019 in a developing tax consultancy profession in Romania; Hasseldine et al., 2011; and Tomasic and Pentony in Australia in 1991). In addition, there are a number of qualitative studies in the tax practitioner/tax authority relationship in Australia (Dabner, 2012; Walpole and Salter, 2016), New Zealand (Dabner, 2012) and the UK (Dabner, 2012; Gracia and Oats, 2012a). Broadly, there appears to be tussles between what the tax authorities want from the practitioner and what the practitioner wants, or is able, to give. Additionally, the relationship between both parties seems to be weakening – as evidenced in the UK context (Dabner, 2012). This may be, in part, a result of the current narrative around the tax profession and their role in tax avoidance practice and the consequence of the changing structure in HMRC as highlighted in Chapter 2. The impact of the changes on a service perspective is apparent (Dabner, 2012 and Maas, 2015 and, see also Stiglingh, 2014 where practitioners desire a functional service with the tax authorities). Nevertheless, the views of practitioners about the current relationship with the UK tax authorities, and how this impacts upon the tax practice, is lacking in the literature in general. Additionally, given the large smaller practitioner market, their views are important and have not specifically been explored in prior literature. Dabner (2012) suggests that their views could be sought.

This leads to **research question 2; How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners?**

Finally, Section 3.4 highlights prior research into the practitioner's role at the centre of the tripartite relationship. There are many views and opinions about to whom practitioners should be obligated, and common sentiment is that they may feel pulled in different directions. There is a clear suggestion too that without tax practitioners tax systems would not function. How the practitioner balances each of the client and HMRC relationships may be determined by how they see themselves (drawing upon their morals, values, beliefs, experiences, per Caza and Creary, 2016) that is their professional identity. The studies identified (Alvesson et al., 2015; Brouard et al., 2017; Cooper and Robson, 2006) suggest

that the practitioner may be influenced by their firm, and profession and that as experience develops they draw upon this in their future roles (Bevort and Suddaby, 2015; Brouard et al., 2017). Knowledge and expertise is of course important in the role of any professional, and literature in this field has also been explored, along with how the tax practitioner may equip themselves with knowledge to assist the client and manage their obligations to the tax authorities in their role within the tripartite relationship. With specific regard to the smaller (accounting) firm Stringfellow and Shaw (2009) suggested that the owner of the firm attains the experience and expertise to advise clients. The knowledge needs of the small practitioner market in this respect may differ to those of larger firms as also acknowledged by the ICAEW (2020) and Ramirez (2009) who discusses the approach of ICAEW in 2009 towards this segment of the accounting market. An initiative to provide more appropriate activities for the small practitioner market was reported as having little benefit (Ramirez, 2009), however the small practitioner market appears at the forefront of ICAEW thought, given further initiatives launched in November 2020. These are rare examples which take account of the smaller practitioner element of the tax practitioner market. Finally, the JDM literature provides evidence for how practitioners may be unduly influenced by the client when undertaking tax research (Cloyd and Spilker, 1999), although it is observed that those with a legal background may approach this differently (Cloyd and Spilker, 2000). As these studies were experimental research the practitioner's voice is not heard.

A practitioner's role and obligations within the relationship, and the different pulls between HMRC and the client are vividly explained in the literature, but what actually causes difficulties in these relationships and how these difficulties are overcome, in the practitioner's words, is not evident. How do they balance different relationships and a complex and shifting environment? Does the practitioner's professional identity influence their approach? How do they implement tax regulation on the ground within tax practice? Practitioners do of course manage to cope with complexity and uncertainty (Bogenschneider, 2015 and Picciotto, 2007) – but how is this achieved? The thesis will contribute to this understanding as Fogarty and Jones (2014, p.313) (writing about the challenge to US practitioners of dealing with complex, uncertain law) suggest, “[h]ow

accounting firms get their staff to the point where they can survive in such a world needs to be better understood.”

This leads to **research question 3; How do the practitioners see their role in the tripartite relationship with clients and HMRC?**

Overall, there has been a “...neglect of tax practice as an objective of scholarly attention...” in general (Gracia and Oats, 2012a, p.319). Specific investigation into the smaller practitioner segment of the huge tax practitioner market is also sparse. The thesis will focus upon smaller tax practice as a whole to contribute towards the literature in this respect to address the overall research question;

How do changes in the tax field impact upon the practice of smaller tax practitioners?

The next chapter explains the methodological perspective of the study, how it has been actioned and the theoretical framework.

4 Methodology

4.1 Introduction

This chapter presents the approach to the research and introduces the theoretical framework, a Bourdieusian lens. This lens is used to view the empirical data derived from the participants of this research, representing smaller tax practice. The study adopts an interpretive perspective and an abductive approach which enables analysis of the links between the empirical evidence and the theoretical framework. The chapter commences by restating the research questions, as both informed by the literature review and the data collection from an exploratory focus group. Each question is broken down into smaller objectives to allow fuller exploration of each question. This is followed by Section 4.3 which introduces the research approach and design. Section 4.4 explains the methods used in the research. The subsequent sections present the ethical considerations and an overview of the theoretical framework. The final sections provide detail of data analysis and a summary.

4.2 Research questions and objectives

The focus of this study is the examination of smaller tax practice and its operation within a dynamic, frequently changing and complex environment.

The overriding research question is:

How do changes in the tax field impact upon the practice of smaller tax practitioners?

There are 3 sub questions to enable exploration of the overarching question which are presented below. These questions were derived from examination of the literature in respect of tax practitioners and client relationships; relationships with the tax authority and the unique position of the tax practitioner, as a professional, within this tripartite relationship. Additionally, data from the early stages of this research (a focus group) contributed to the setting of the objectives within each question.

Research question 1

➤ **How do small tax practitioners manage client relationships in a dynamic environment?**

Objectives

- to gain insight into, and explore, the practitioners' views on their relationship with clients;
- to describe and understand the environment in which the practitioner works and in which the client/practitioner relationship operates;
- to explore how they manage this relationship

Research question 2

➤ **How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners?**

Objectives

To explore, gain insight into and understand:

- the practitioners' views on the relationship between themselves and HMRC;
- the environment in which the relationship is managed;
- The challenges and difficulties, as well as positive aspects of that relationship;
- The impact that management of this relationship has on the practice of the practitioner;

Research question 3

➤ **How do the practitioners see their role in the tripartite relationship with clients and HMRC?**

Objectives

To explore, gain insight into and understand:

- How practitioners see their role 'in between' HMRC and the client;
- The roles they play in managing both relationships;

- What challenges and difficulties arise from their roles;
- How these challenges are overcome;
- How the practitioners come to understand, interpret and implement tax rules on the ground whilst managing their position in the tripartite relationship.

4.3 Research Approach and Research Design

The research is qualitative in design. An interpretivist perspective is employed.

Much work in the accounting area (tax included) employs “quantitative and theoretical analysis” techniques i.e., has a positivist perspective (Oler et al., 2010, p.642). This may be because accounting researchers try to obtain “academic respectability from peers in other fields” (Oler et al., 2010 p.642), or as Boden (2010, p.541) remarks, tax research is “easy prey for positivism” as it is a “rule bound field”. This approach can be seen in various studies which employ the testing of hypotheses and experimental approaches to determine how tax practitioners behave in certain situations, or how they respond to different influences, as presented in Chapter 3. A mix of questionnaires or surveys (for example Christensen, 1992; Gupta, 2015; Hite and McGill, 1992; Sakurai and Braithwaite, 2003; Stephenson et al., 2017; Tan et al., 2016; Tran-Nam et al., 2016; Van de Rijdt et al., 2019) or scenario based experiments may be employed. The judgement and decision making (JDM) literature in particular adopts the latter approach (see for instance, Bobek et al., 2010; Carnes et al., 1996; Cloyd et al., 2012; Cloyd and Spilker, 1999; Fatemi et al., 2018; Fatemi et al., 2020; Kahle and White, 2004; Spilker, 1995; Long and Basoglu, 2016). These types of study have a positivist approach. However, as Oler et al. (2010) suggest, this particular focus has the consequence that certain accounting (here tax) research questions are ignored if they cannot be answered in a positivist fashion. In light of this observation, given the nature of the research questions in this thesis, positivism (or a quantitative approach) is *not* considered suitable for this particular study, as it is unsuited to addressing the specified research questions. Instead a qualitative approach is adopted.

This particular research is very context specific, and aims to investigate the impact of changes in the tax field upon the practice of smaller tax practitioners. Details of their relationships with clients and HMRC are to be explored. A deep

understanding of the practitioners' world is needed. Thus, to obtain insights and depth of detail about this world, evidence from the practitioners (their words and their perspectives) is required, to allow their voice to be heard. Hence, context, and the meaning attributed to the information derived from the practitioners is important (Robson, 2011). A qualitative approach will enable gathering of in-depth explanations from the participants to allow understanding as to 'what is going on' in the context of the smaller practitioner and wider tax field (Denzin and Lincoln, 1998; Silverman, 2013). An interpretive approach is employed to obtain the meanings that the participants "attribute to their environment" (Bryman and Bell, 2011, p.402) and to attain understanding of the world from the point of view of the researched; here the practitioners themselves (McKerchar, 2010; Robson, 2011; Saunders et al., 2012). It is acknowledged that subjectivity is inevitable in this kind of research, however the intangible and subjective aspects, which are ignored in research of a positivist nature (Lee with Lings, 2008) and hence may miss part of the story (Silverman, 2013) are important to enable examination of "...phenomenon [and] identify themes and patterns" (Saunders et al., 2012, p. 144) in the empirical data collected.

Whilst a qualitative, interpretive perspective is to be deployed, this will take the form of an abductive approach. As said, the context of the study is the smaller tax practice. Those working in that environment (the subjects of the research) are the sources of experiences about their life in practice. The smaller practitioner context thus enables study of a small element of the tax field (the micro, or emic perspective (Lukka and Modell, 2010) arising from the study of practices from inside that particular context (Lukka and Vinnari, 2014)). It is recognised that smaller tax practice does not operate within a vacuum, but within a much wider tax field, which Lukka and Modell (2010) describe as the etic perspective, which here, is the study of small tax practice from the "outside" (Lukka and Vinnari, 2014, p.793). These two elements (the emic and the etic) are linked, and an abductive approach allows investigation and understanding of these connections by linking the findings from the emic, to the etic via a theoretical framework (Lukka and Vinnari, 2014).

An abductive approach is middle ground between inductive and deductive approaches. An inductive methodology has focus upon the data, rather than the theory. However, a deductive methodology prioritises theory. Abduction is mid-

way between. The practitioner accounts (the data collected) enable identification of the “processes and mechanisms that tie together the developed explanations” (Lukka 2014, p.562), thus the researcher adds interpretation and meaning to the raw data (Kennedy, 2018). It is acknowledged that this is also indicative of an inductive approach, but in this study, an existing theory is borne in mind through which to view and understand what the emic accounts of the practitioners mean. A purely inductive approach would call for creation of a theory which critics (see Taylor, 2018) suggest is not feasible, as the researcher brings with them their own experiences and biases and consequently such biases prevent a wholly objective approach when interpreting the data (Alvesson and Kärreman, 2011). Reflexivity is thus acknowledged; that is the researcher recognises their possible impact on the research process. Given the researcher’s past experience of working in smaller tax practice this can narrow the divide between the participant and the researcher and Gioia et al. (2012, p.19) warns against “going native”. Nevertheless, it is important to recognise the researcher’s former knowledge of, and background in, the environment subject to research.

An abductive approach thus helps bridge “the gap between theory and research” (Taylor, 2018, p.513). The role of theory, in abductive research is as a “source of inspiration” (Alvesson and Sköldberg, 2018, p.15) or it is used to “sensitise” (Taylor, 2018, p.515) the researcher as to how the field may impact upon the data and how the data may impact upon the field (Lukka, 2014; Taylor, 2018). That is, an iterative process is employed and findings are constantly compared, revisited and reanalysed throughout the research to make sense of, and allow understanding of, the data collected (Alvesson and Sköldberg, 2018; Lukka, 2014; Lukka and Modell, 2010). Hence there is an interplay between the theory and the data (Kennedy, 2018; Taylor, 2018). The data collection and analysis thus has overlap (Taylor, 2018) and is undertaken concurrently.

In sum, integration of the emic (here small tax practice) with the etic (here the wider tax field), as in this study, is characteristic of abductive reasoning and allows the “linking of an individual piece of interpretive research within the extant body of knowledge on the focal field” (Lukka, 2014, p.560). This allows one to make sense of and seek explanation and understanding of the empirical findings from the smaller tax practitioner context in relation to the wider, theoretical tax field by drawing on appropriate theory and the current knowledge about the field.

The researcher's knowledge is also acknowledged. The lens to be used in this research is Bourdieusian, as discussed at Section 4.7 below.

The next section provides explanation of the research methods employed in this research.

4.4 Research methods

The tools (the method) to collect the data included a focus group and interviews. These are suited to a qualitative approach and are appropriate to address the research aims and objectives. These methods allowed collection of data to attain the practitioner perspective about life in the small practitioner market, and enabled acquisition of stories, experiences and depth of explanation. Additionally, to provide additional orientation in respect of the research, a number of other data sources were also referred to – an explanation of which follows in Section 4.5. This section starts by outlining details of the focus group and the process undertaken in that respect. This is followed by an explanation of how the interview process was adopted in this research.

4.4.1 Focus group

Focus groups are helpful for exploratory purposes (Fontana and Frey, 1998) and to 'pre-test' later elements of the research, such as interviews, but can also be useful in their own right (Flick, 2014). They can be loosely structured, depending on the purpose for which they are used (Fontana and Frey, 1998). As such, the focus group was a pre-cursor to holding later interviews and the interview questions were informed by the findings from the focus group.

A focus group was held in May 2015 attended by 5 representatives from smaller firms, all involved in the provision of tax advice, who were able to contribute to the questions asked i.e. the ability to participate was the defining characteristic for the selection of participants. Details of the invited participants are discussed at Section 4.4.3 below (sampling) and are shown in Table 4.1.

There are debates about whether the participants should have homogenous characteristics or not (Krueger and Casey, 2015), and whether they should be unknown to each other (Hopkins, 2007, referring to Tonkiss, 2004). The only requirement for this particular research was the size of firm from which they were drawn (see Section 4.4.3), given that the research questions are focussed around

the UK smaller tax practitioner. Some members of the group did know each other. As they were drawn from the local area, this was unavoidable. Hopkins (2007) cites Holbrook and Jackson (1996) who suggest that this can bring different strengths and weaknesses to the focus group. With hindsight, the familiarity probably enabled a more informal, relaxed environment; although it is not possible to know to what extent this would help or hinder a 'free' discussion in terms of what participants are willing to say in response to the question asked.

Potential participants were contacted by telephone, with further explanatory details sent by email. Those contacted were known to the researcher via professional connections, which made the initial approach easier. These individuals were able to suggest other participants not known to the researcher, who were also contacted. Although a favourable response was received from many, there were difficulties in logistics, which meant some were unable to join the group, although the offer of help at a later time was made by many. Five participants attended, all of whom the researcher knew fairly well from previous connections. This was a manageable number. Each person was able to contribute and the problems of transcription (and the identification of 'who said what') was kept to a minimum thus avoiding difficulties which can arise with a large group as Brinkmann and Kvale (2015) and Saunders et al. (2012) identify. The discussion lasted for 2 hours, with a break for lunch.

Ideally, Flick (2014) advises that at least two colleagues should be present when hosting a focus group so that note taking, or other organisational matters, do not interfere with listening to, and chairing of, the group. A colleague assisted. It would have been difficult to obtain the full benefit from the group environment without help in terms of even the most mundane matters (for example, location of the facilities, offers of refreshment and so on).

Ethical requirements were considered (see full details below) and an information sheet (appendix 10.3) was provided in advance of the meeting outlining areas for discussion and sample questions. This proved to be useful as participants could think about different aspects before the meeting which added an additional perspective to the discussions, as discussed below. After a brief 'warm up', as advised by Flick (2014) to break the ice, the discussion flowed well, and the participants were happy to contribute. As per the ethical approval, the meeting

was held in accordance with the Chatham House rules, in order to encourage freedom of discussion. This meant that the participants should not attribute the source of any comments outside of the discussion, to preserve confidentiality.

The researcher chaired the group discussion as advised by Krueger and Casey, (2015) and was able to provide an appreciation of the issues discussed having worked in tax practice for a number of years, in both large and smaller firms. The researcher was mindful of the need to allow space for discussion and “not disturb the initiative of the participants” as identified by Flick (2014, p.247), although it is noted by McGregor (2005) that the presence of the researcher could have effect on what is said.

The aim was to hear ‘from the horse’s mouth’ about the issues and challenges affecting the operation of smaller tax practitioners in today’s environment and to garner preliminary data to be subsequently followed up by interviews. The questions were loosely structured and open ended following suggestions by Krueger and Casey (2015) and allowed for meandering. The group was engaged in an informal discussion based around a loose set of questions which adopted a non-directive style in accordance with Brinkmann and Kvale (2015) to identify the challenges practitioners face. Questions covered three broad areas; client issues, relations with HMRC and specific difficulties in terms of offering advice. The researcher sought perceptions of the practitioners about the role of the smaller practitioner and whether this had changed over recent years in order to gain information about their “values, attitudes and opinions or knowledge” as directed by McGregor (2005, p.424); and Krueger and Casey (2015). The aim was thus to use the focus group to act as a “vehicle for transferring ideas or knowledge....to [the] research[er]” as highlighted by McGregor (2005, p.424).

Following advice from Hopkins (2007, citing Morgan, 1997), the researcher ensured there was engaged “...interaction...based on topics supplied by the researcher...”. The exercise elicited many points of view, which is a benefit of a focus group, per Brinkmann and Kvale (2015) and McKerchar (2010). Some vivid examples were used to illustrate the practitioners’ comments, some of which had been thought about prior to the commencement of the meeting and this contributed to the richness and depth of data. The meeting was recorded and transcribed. As Silverman (2013) suggests, themes could be identified, along

with shared views and common views – which also added to the depth of data (Patton, 2002).

As Flick (2014) notes, if practical problems can be overcome, which they were in this instance, rich data can be obtained, at a minimum cost. The findings were fruitful and proved helpful to help formulate the research questions. Additionally, the findings were employed to create an interview schedule. The findings were also data in their own right. The data was analysed as described below in Section 4.8, Data Analysis.

4.4.2 Interviews

Following the focus group, interviews were conducted. Interviews are one of the most common and effective methods to collect data (Bédard and Gendron, 2004). This method enables detailed questions to be asked. Again, the aim was to shed light on what practitioners think i.e. to obtain their point of view, perspectives and experiences (per Brinkmann and Kvale, 2015; Robson, 2011). Interview questions were based around the research aims and subject matter of the project, to elicit the information needed following Brinkmann and Kvale (2015, p.130, referring to Bourdieu, 1999). This enabled collection of rich descriptions and depth of information as Fontana and Frey (1998) and Robson (2011) explain. The questions covered matters such as the background of the participant, challenges they face, how they manage in a fast changing environment, and how they deal with tax law. As well as being appropriate for the research aims, the interview process gave the participant some control over what they chose to say to protect confidentiality. This position is confirmed by Turley (2004) whose experience was that participants (of practices, but in the auditing context) were happy to talk in the abstract or in general terms, but would not commit to specifics for fear of breaching confidentiality. The same could be said of the focus group.

As identified by Fontana and Frey (1998, p.47) interviews are a powerful way of “...understand[ing] our fellow human beings” and on a practical level allow easier access and quicker data gathering than by say, observation in the ‘traditional sense’ i.e. being part of, and observing the office environment, which may bring confidentiality issues (and access problems) into question (Turley, 2004). Interviewing is thus an economical choice in respect of time and resources (Fontana and Frey, 1998; Silverman, 2014).

Interviews may be structured (standardised questions), semi-structured (non-standardised) or unstructured (Robson, 2011; Saunders et al., 2012). The choice depends on the depth of information required (Robson, 2011). Each has different characteristics and Silverman (2014) draws on Noaks and Wincup (2004, p.80) to help differentiate. A structured interview is rigid in approach and may be suited to more quantitative or positivistic research; the researcher takes no part in the research itself as the questions are defined prior to the interview and there is no prompting or improvisation on behalf of the researcher. At the other extreme, the unstructured, or 'open ended' interview (Silverman, 2014) is operated in a flexible manner, and although the interviewer may have an idea of the questions to ask, there is no control over direction of the interview. In between each extreme is the semi-structured interview. Both the unstructured and semi-structured interview enable collection of experiences and rich detail, yet there is a difference in how the interviews are directed and controlled.

Semi-structured interviews were the chosen method in this case, (for both the focus group and the individual interviews) as they are suited to an exploratory approach, as suggested by Saunders et al. (2012, p.377). This enabled control to be retained by the researcher, to guide the questions asked (per Robson, 2011 and Silverman, 2013) and to maintain focus on the research objectives, which may not be the case for an unstructured interview as noted by Fontana and Frey (1998). Additionally, this method permitted the researcher to put similar questions to each participant (Bryman and Bell, 2011) to help with data analysis. Semi-structured interviews are useful when the researcher has a specific focus in mind, yet, as identified by Gioia et al. (2012), Patton (2002) and Robson (2011) they also allow flexibility to add or adapt questions during the process and according to Bryman and Bell (2011) allow adjusted emphasis if necessary. Data acquired from semi-structured interviews may thus be "...non-standardised, so that questions and procedures may alter and emerge during a research process that is both naturalistic and interactive" as identified by Saunders et al. (2012, p.163), who also recognise that such an approach is both suited to understanding attitudes and opinions and allows responses to be probed and built upon. This relates to the overlap between data collection and analysis (Taylor, 2018) and sits within the abductive approach to this thesis. This flexibility enabled

exploration of a “richer, theoretical perspective” (Saunders et al., 2012, p, 163) and facilitated acquisition of “richer answers” (Bryman and Bell, 2011).

The focus group and interview process thus garnered empirical data from which the smaller practitioner context was examined. The responses attained allowed exploration of the meaning and understanding of practices; the environment; the relationships of the practitioner, and; the challenges arising in a dynamic environment along with the practitioner response. The data therefore provided the means to address the research questions.

4.4.3 Sampling

The sample selection for the interviews and focus groups was via non-probability (non-random) sampling, or purposive sampling (Patton, 2002). Participants needed knowledge appropriate to the issues being investigated as advised by Johnson et al. (2007). It is inevitable that subjective judgement was involved in the selection of the sample (Saunders et al., 2012, p.281).

To identify participants for the focus group, the researcher drew on personal contacts as discussed above. The same approach was adopted for the identification of interviewees, and additionally, the researcher spoke briefly at a CIOT event to explain the project and ask for volunteers to participate in the research. The CIOT events have many individuals from smaller, independent firms amongst their audience. Such events are opportunities for attendees to keep up to date and hear about changes to tax regulation. Such opportunities may not be available ‘in-house’ to a smaller firm. An information sheet was handed out with a returnable slip at the bottom to enable the researcher to make contact at a later date. This generated a number of participants and worked well.

It is important to note that the method of recruiting individuals resulted in a pool of qualified participants. That is the participants were qualified tax practitioners and/or accountants, or individuals with HMRC experience, or who were qualified by experience and work under the supervision of a firm which is linked to a professional body (but may still be studying/not have qualified). It is acknowledged that there are many unqualified tax advisers in the market (who do not belong to any of the professional accounting or taxation bodies, or work for a regulated firm, as explained in Chapter 2). Unqualified practitioners have not been included in the sample and remain an unexplored field in the tax arena.

One suspects there may be different approaches to the practitioner role and different challenges within that particular field which would be interesting to explore in future research.

Participants worked for smaller firms and included sole traders, those who work for firms with just a few employees, and those working for firms with 100+ staff. Participants were not drawn from larger professional service providers (such as the Big 4, 'top 10' or 'top 20' firms), nor from any organisation which had an international presence, although some participants may have previously worked for the Big 4 firms. The participants required were thus those working for smaller organisations in accordance with the aim of the study which is to attain an understanding of tax practice in the UK smaller tax practitioner context. Participants therefore worked for a variety of firm sizes which of course had different characteristics and different levels of support in terms of training and number of colleagues for the individual. This was explored during the research, along with the background and training of the participants as this too may affect their approach to their roles.

None of the participants worked for firms which had, what was described as a "tax directorate" (I/V 23). What the interviewee meant was that some large organisations have a central team which produces regular tax updates (information about changes to tax regulation) which are then cascaded throughout the organisation (in-house) for staff use. None of the participants worked for organisations that produced such information, hence they themselves must generate this material, which they obtain from various sources outside the firm (via training courses, attendance at CIOT events, researching matters in-house and so on) which is characteristic of a smaller firm, as discussed in Section 3.4.8.

The tables below record for both the focus group (TABLE 4.1) and interview (TABLE 4.2), whether the participant has the benefit of working in a 'tax team', or not. Whilst staff numbers will be fewer in the small firm context, the type of organisation the participants work for in this study vary from sole trader to firms with a number of staff. Some may therefore work with other tax colleagues. As will be seen, colleagues are sources of support and help. Such in-house support

may not be available to all participants in the sample and hence help may have to be sought elsewhere depending on the practitioners' circumstances.

Given that there are fewer staff in the smaller practitioner context, it so follows that they are less likely to specialise in a particular tax, and so the knowledge required by smaller practitioners is likely to be much broader and less in depth than those working for larger organisations. The client base of a small practitioner will include taxpayers of various size, industry, and type, and hence queries which arise may be ad-hoc and unexpected which will require learning on the job. Advice and expertise may be sought outside the organisation which is also indicative of the smaller practitioner context, and indeed some participants also offer such assistance to other advisers as explained below.

Brief details of experience are also noted in the tables that follow, as this enabled the researcher to see how the practitioner had arrived in the role/position they had. Interestingly, some of the sole traders (identified in Table 4.2 for the interviews, as interviewees 1,2,8 and 15) had acquired different levels of expertise in specific areas of tax, or had HMRC knowledge upon which they drew in their work, with many offering their expertise to other advisers as the table indicates. Additionally, the sample included what may be termed, general practitioners, responsible for accounting and tax work (interviewees 9, 20 and 21) who were not necessarily tax 'experts' but nevertheless were responsible for client tax matters. These differences may account for the participants' responses as noted where appropriate in Chapters 5-7.

The following provides details of the participants who took part in the focus group in May 2015 and the interviews which were obtained between November 2017 and October 2018.

25 people were interviewed in total. 4 were members of the focus group which took place during 2015, and an additional 21 participants were interviewed. Thus, 26 different individuals participated in the study overall (25 interviewees, plus one member of the focus group who was not subsequently interviewed).

Table 4.1 Focus group details

Participant	Role	Tax team? 5 or more
FG1	Tax Manager	Yes
FG2	Sole Trader	N/A
FG3	Tax Partner	Yes
FG4	Partner – deals with tax and accounting issues	No specific tax team, but has tax background
FG5	Tax partner	Yes

Table 4.2 Interview Participant details

Participant (interviewee I/V number)	Role	Tax team 5 or more	Experience or qualifications	Specialises in certain area of tax? ⁷
1	Sole trader (1)	N/A	HMRC, CTA	
2	Sole trader	N/A	Big 4, Top 10 ⁸ , smaller firms and CTA	Yes
3	Head of tax team (2)	Yes	ACCA and CTA	
4	Tax Partner (1,2)	Yes	Top 10 and smaller firm, ACCA, CTA	
5	Provision of advice to smaller firms (1)	Retired	HMRC, Big 4	
6	Tax Senior Manager	Yes	Number of independent firms, CTA	
7	Specialist tax adviser	Yes	Top 10, CTA	
8	Sole trader (1)	N/A	HMRC, Big 4	Yes
9	Sole trader	N/A	Big 4, ACA, CTA	
10	Tax manager (3)	Yes	ACA, CTA	
11	Tax manager (3)	Yes	ATT, CTA	Yes
12	Tax associate (3)	Yes	ACA, CTA	Yes
13	Tax senior (3)	Yes	ACCA, CTA	

⁷ These are not specified, as some are so unique that to state the specialism may compromise anonymity

⁸ See here: <https://www.accountancyage.com/rankings/top-5050-accountancy-firms-2020/>

14	Tax adviser	No, team of 3	ATT, Big 4, various smaller firms	
15	Sole trader (1), (2)	N/A	Big 4, CTA	
16	Tax adviser (3)	Yes	ACCA, part CTA	
17	Tax adviser (3)	Yes	ACCA, CTA	
18	Tax manager (3)	Yes	CTA	
19	Tax manager (3)	Yes	Big 4, CTA	
20	Director of firm (3)	No- accounts and tax work	Big 4, ACA	
21	Director of firm (3)	No – accounts and tax work	ACCA	
22	Tax Partner	Yes	Big 4, Top 10, smaller firms, CTA	
23	Tax Partner (1,2,3)	Yes	Top 10, CTA	
24	Tax partner (1,3)	Yes	Top 10, CTA, ACA	
25	Tax adviser	Yes	CTA	

(1) – also provides advice to other practitioners

(2) – member of original focus group

(3) – Joint interview (participants 10 and 11, participants 12 and 13, participants 16 and 17, participants 18 and 19, participants 20 and 21, participants 23 and 24)

4.4.4 The interview process

There were 19 interviews (including joint interview participants). These were conducted at a time and place to suit the participant and were held in cafes (1), at the offices or workplace of the participant (10), in pubs (5), at the researcher's office (2), and at the home of one participant. All were recorded with the participant's permission and, somewhat surprisingly, the quality of all the recordings was good, even with the background noise present in public places.

To save time, and at the participants' suggestion, occasionally two people from the same firm were seen together. There are advantages and disadvantages to this approach. For instance, if one person does not feel comfortable in the company of another, or one person dominates the discussion, or they exhibit conformity of views (Fontana and Frey, 2004). To try to overcome these issues, participants of a similar level were interviewed together (so partners, or senior managers, etc.). The advantages are largely in the time efficiency of data collection for the researcher, but time is also precious for the participants and this process enabled them to take part, but also preserve the firm's time, as any disruption to the working day was minimised. The group interviews went very well, as each participant could bounce off the other, leading to both agreement, and disagreement at times, and a lively discussion. In all cases each participant made a good contribution to the discussion; no one person dominated.

All participants were enthusiastic and willing to help. The researcher realised (after holding 5 interviews) that to preserve the meeting time for the interview, it was more time efficient to send out the information sheets, consent forms (see ethics below at Section 4.6) and a summary of the purpose of the meeting in advance by email. It took time to explain matters thoroughly at the commencement of each meeting and this 'ate' into the practitioner's time, and so an alternative approach was ultimately taken. This gave the participant time to look at the information the researcher was required to give, and consider if they were happy with the consent form and process. The information sheet included sample questions, but the researcher explained that the interview might not cover everything, and that other questions might be included as the interview developed. Some participants asked if they could see more specific questions before hand. The researcher provided a tidier version of a prompt sheet (and provided the same 'health warning' that other questions may be asked and that

some stated questions may or may not be asked as the case may be). In some cases, the participant had clearly thought about some of the questions prior to the interview and in those cases, on balance, the discussion acquired more depth and illumination. In these instances, examples could be given to illustrate various points, as the participant did not have to 'think on their feet' and grapple for examples, some of which may not have been forthcoming on the spot. The researcher was conscious of imposing too heavily on the time of busy practitioners, so there was no requirement to consider the questions before hand. Indeed, it may be thought, perhaps, that better data is produced 'on spec' at the time, but on balance, provision of information in advance helped create a better discussion (although not all had had time to look at the questions before hand).

Without fail, all interviews went smoothly, conversation did not run out, and although at times the conversation may digress on to other matters, the conversation was steered back to the issues at hand. Some interviews lasted around 1.5 hours, others less, the shortest being around 40 minutes. An estimated interview time of 1 hour was given in all cases, but prior to commencement the time availability of the participant was also confirmed.

The interview questions were developed from the research questions, also taking into account findings from the focus group. An interview prompt sheet is shown in appendix 10.4. The questions allowed for a loose structure to enable participants to explore/explain issues of importance to them. Questions were adapted following reflection for subsequent interviews if necessary. This enabled the exploration of interesting phenomena highlighted by other participants as and when appropriate. Despite this, the interview schedule did provide the researcher with a guide to maintain control over the direction of the interview.

The researcher's background was such that most of what was discussed was understood (and if not, the researcher was well informed enough to ask for and understand the resulting clarification). Familiarity with terminology and aspects of the law were important to attain good understanding. The researcher's background proved an advantage in this respect. All knew the researcher's background and it made the interviewing process much easier.

Many themes were common. Unexpectedly, although interestingly, some participants saw the interview as an opportunity to 'get things off their chest', and

felt it was therapeutic, or cathartic. Some asked if their comments were the same as other participants, seeking reassurance that they were 'the norm' and not experiencing something unique to them. Others were pleased that someone was looking into their work and expressed an interest in seeing the finished thesis, as they found what was discussed to be of interest and worthwhile.

4.4.5 Practicalities of the interview and focus group

As discussed, the researcher is knowledgeable about the interview/focus group topics. This is required for successful interviewing (Brinkmann and Kvale, 2015; Silverman, 2013) to ensure responses are understood, and to help with subsequent analysis of data. Being well informed enabled an "informed conversation" to elicit detail to address the research questions, as observed by Brinkmann and Kvale (2015, p.19). It was expected that the relationship between the interviewer and participant therefore "produce(s) knowledge..." (Brinkmann and Kvale, 2015, p.25) as the interviewer was not just a bystander in the process of the interview, but an "active participant" (as suggested by Silverman, 2014, p.168) and the "field [will be] ...shaped by the theoretical interests of the researcher" (Ahrens and Chapman, 2006, p.820). An awareness of reflexivity accords to an interpretivist research perspective and an abductive approach.

A number of elements were borne in mind when planning the interview and focus group to help attain the best possible data, including; putting the participant at ease, ethical integrity, avoiding adding one's own knowledge to the process (Brinkmann and Kvale, 2015, p.194; Fontana and Frey 1998), being a good listener (Bryman and Bell, 2011; Denzin and Lincoln, 1998; Fontana and Frey, 1998; Robson, 2011) and the need to establish a rapport (Bédard and Gendron, 2004; Fontana and Frey, 1998; Saunders et al., 2012;). The researcher must be seen as trustworthy to ensure the validity of the data obtained (Bédard and Gendron, 2004), empathetic and persuasive in order to derive the information required (Fontana and Frey, 1998), and there should be confidence for a frank and open discussion so that the participant is happy to express themselves (Turley, 2004). In conjunction with the knowledge of the interviewer this therefore enabled themes to be identified as identified by Brinkmann and Kvale (2015, referring to Bourdieu, 1999) to enable later data analysis.

Having been immersed within 'practice life' prior to working in academia, and still being part of a professional network of accountants and tax advisers, the above requirements were thus achievable to gain appropriate data of sufficient detail to address the research aims. The researcher was known to many (not all) participants, which made a comfortable environment for productive discussion.

4.5 Other data sources – additional orientation

The data obtained from the focus group and interviews is supplemented with information obtained from CIOT local meetings (from branch booklets and topic notes) and, information from the HMRC website is touched upon where necessary. Additionally, oral evidence from the Treasury Sub Committee Inquiry in 2018 in relation to The Conduct of Tax Enquiries and the Resolution of Tax Disputes has been reviewed (the purpose of this inquiry was to examine HMRC's approach to tax disputes and tax audits). Other materials reviewed included those produced by the All- Party Parliamentary Loan Charge Group (APPG), a group concerned about the fairness of the so called 2019 Loan Charge and HMRC's role in administering this, as discussed in Chapter 2.

The local branch information is used to illustrate the diverse range of issues that smaller practitioners have to be aware of, and is also illustrative of a network to which the practitioner has access. This can be a source of assistance to the practitioner if needed. The evidence from the Treasury Sub Committee (2018) and the APPG provide additional context in which to examine the relationships between HMRC and the tax practitioner. Findings from these additional sources are discussed in the relevant chapters.

It should be noted this aspect of data collection is more 'broad brush' than that which detailed documentary analysis would require methodologically and it is simply used to enable additional orientation and context in terms of the research undertaken.

4.6 Ethics

Ethical approval was given for both the focus group and interviews. Participant consent forms and information sheets were prepared and cover a number of issues such as reassurance over: confidentiality; storage of data, purposes of research (Bédard and Gendron, 2004, p.198; Turley, 2004); voluntary participation; the use of the data collected; examples of questions to be

discussed. Participants were asked if they had any questions and were asked to sign a consent form, a copy of which was then either given to them/emailed, or some said they did not require it. One person asked to see a transcript of the interview which was emailed to them (no comments were received). Some asked to see a copy of the thesis – this will be provided on completion.

4.7 Theoretical framework – an overview of the Bourdieusian lens

Theory was a difficult issue to reconcile in the research process. The researcher did not want to be ‘hindered’ or ‘restricted’ in terms of what could be asked, or what answers the practitioner provided. An abductive approach enables this, therefore, it was decided to keep an open mind regarding theory – in some respects also following ‘middle range thinking’ (Laughlin, 1995). ‘Middle range thinking’ is a methodological approach which sits in the middle ground between a positivist approach and a view that there is no theory at all. In other words, one approaches the data collection with neither a rigid theory in mind, nor the attitude that no theory at all is appropriate. Such a methodological approach also acknowledges that the researcher plays a part in the research process (Laughlin, 1995), as with an abductive approach (Taylor, 2018). Given that the subject of the research is a social practice, a number of theories were considered, including use of a Bourdieusian lens. Keeping an open-mind from a methodological perspective enabled the researcher to have freedom to refer to, for example, questions about the practitioner’s background and prior experiences. From a Bourdieusian perspective this may enable examination of habitus (see Section 4.7.3). In other words, the researcher approached the data collection with an idea of some “‘skeletal’ theory with some broad understanding of relationships” (Laughlin, 1995, p.80), on which one could then generate ‘flesh’ to hang on the bones of the theory. In general, however, questions were not restricted by theory of any kind, in order to encourage practitioners to speak freely about issues of importance to them, in order to obtain “empirical richness” (Laughlin, 1995, p.80).

‘Middle range thinking’ clearly has similarities to, and is conducive to abductive reasoning as discussed in Section 4.3. That is the theory was used as a “source of inspiration” (Alvesson and Sköldbberg 2018, p.15) and to “sensitise” (Taylor, 2018, p.515) the researcher as to possible explanations for the accounts of the practitioners. The next section highlights the relevance of Bourdieu’s theoretical

framework to studies of accounting and taxation and will illustrate its appropriateness in an abductive approach in enabling a theoretical linking of the emic findings at the smaller practitioner level, to the etic; the wider tax field or environment.

4.7.1 Bourdieu and studies of tax and accounting

As this thesis investigates how changes in the tax field impact upon the practice of smaller tax practitioners, this requires a close examination of social practices in this environment. The empirical data will enable an in-depth view of smaller tax practice from those inside the organisations (the emic). As smaller tax practice is but a small part of a wider tax field, explanations and understanding of the emic accounts may be linked to the etic (the wider tax environment) and a Bourdieusian lens, with particular focus upon the concept of 'field', is a theoretical framework which enables such a link. The framework is appropriate for examination of organisations (here smaller tax practice) (Swartz, 2008) and is suitable for an interpretive approach (Malsch et al., 2011), hence it is suitable for use in the context of the thesis.

Gracia and Oats (2012a) observe that a Bourdieusian lens is not widely used in accounting research, and rarely in tax scholarship (Gracia and Oats, 2012b). Its popularity however appears to be increasing, as observed below. A Bourdieusian lens has been used in some accounting studies (Gracia and Oats, 2012a, p.304) to "develop understandings of accounting practice" and therefore illustrate the "usefulness and applicability of Bourdieu's social theory to the accounting field generally". Malsch et al. (2011, p.221, noting Hopwood, 1983) suggest a need to obtain "...better understandings of accounting in the contexts in which it operates", hence a Bourdieusian lens can contribute towards this understanding and can be used in the context of (smaller) tax practice. Further, Gracia and Oats (2012b, p.114) draw on Dezalay and Madsen (2002) who use this framework in the field of law, employing the "conceptual toolbox" (see Section 4.7.3 for a discussion of the three concepts (or toolbox) of field, capital and habitus) to analyse aspects of law such as "...the state, the legal profession and legal language". Gracia and Oats (2012b) suggest that as 'law' may be "substituted" (p.114) with 'tax', this link enables one to legitimately use this framework in the tax and practitioner field.

Bourdieuian concepts have been used in the tax field a number of times to analyse tax as social practice. For instance, Gracia and Oats (2012a) examine a particular aspect of tax practice, being analysis of a tax avoidance case. They examine the interplay between participants in the tax field (i.e., the taxpayer, HMRC, the accounting profession, judiciary, and lobby groups). The legitimacy of corporate tax minimization strategies in Australia and the Australian corporate tax field (and the stakeholders within it) are viewed via a Bourdieusian lens by Anesa et al. (2019). In other research relevant to this study, a Bourdieusian lens has been used in the examination of small professional service and accounting firms. Stringfellow et al. (2015) analyse the dominance of the Big 4 and their position in the social structure of professional accounting firms along with the impact (of this dominance) on smaller accounting firms; and, entrepreneurial capital in small professional service firms has also been examined using this lens (Stringfellow and Shaw, 2009).

4.7.2 Suitability of the theoretical framework to this study

In light of the above, a Bourdieusian framework transfers well to this study as the thesis has focus on the context, processes, practice and interplay between the tax practitioner, clients, HMRC, and other stakeholders which may be identified, as viewed from the perspective and context of the small practitioner. Tax is a multidisciplinary subject, it draws people from accounting, law, tax practice, economics and other disciplines (Lamb, 2005), thus it is an interdisciplinary practice. Given this interdisciplinary perspective, it follows that the environment in which the smaller practitioner works is influenced by fields (and other disciplines) which lie outside, but nevertheless overlap the tax field (such as the legal field, the bureaucratic field, the professional field, the judicial field and even the small business field). Smaller tax practice is thus a small part of social practice within this wider tax environment. As Gracia and Oats (2012a, p.307) suggest:

...the modern tax field is complex and not confined to a single site of autonomous social practice, but overlaid and intertwined with a number of other social and professional fields, including the accounting, political, bureaucratic and judicial fields

A Bourdieusian framework allows analysis of these “complex” and “cross-disciplinary relationships” (Gracia and Oats, 2012a, p.308) many of which, they

note "...arise only in the tax field". A 'field', as it relates to a Bourdieusian perspective is discussed in Section 4.7.3.

As Bourdieu uses the tools of the framework (described in Section 4.7.3) to "bridge the apparent divide between 'academic theories' and everyday practices" (Webb et al., 2002, p.45), this sits well with the abductive approach which, as said, helps bridge "the gap between theory and research" (Taylor, 2018, p.513). Indeed, as Grenfell (2014) observes, Bourdieu's approach seeks to take account of not just a theoretical angle but also the findings from the analysis of empirical data collected by the researcher, in order to see how the "real world is constituted" (Grenfell, 2014, p.214). That is,

...[T]he study of a social object can be described most simply as an ongoing and reflexive interplay between the two positions – empirical investigation and theoretical explanation. (Grenfell, 2014, p.214)

Thus, data collection and analysis takes place on an ongoing basis allowing frequent reference to the theoretical framework and vice versa, as per an abductive approach (see Section 4.8) and is viewed through a Bourdieusian lens. In summary, the empirical evidence arising from the smaller tax practitioner market will be viewed amidst the wider tax, and overlapping fields. A Bourdieusian lens will be used to examine and explain the empirical findings of the research to gain understanding of tax practice in the context in which it operates (here smaller tax practice).

4.7.3 Introduction to the Bourdieusian Concepts and theoretical tools

According to Webb et al. (2002), the Bourdieusian concepts (or tools) of habitus, capital and field;

...constitute ...arguably the most significant and successful attempt to make sense of the relationship between objective social structures (institutions, discourses, fields, ideologies) and everyday practices (what people do and why they do it). (Webb et al., 2002, p.1)

Hence, an understanding of the concepts of field, capital and habitus will enable an understanding of the smaller tax practice (that is, what the practitioners do and why they do it). Bourdieu used these concepts to "...understand and explain the relationship between people's practices and the *contexts* (authors emphasis) in which those practices occur" (Webb et al., 2002, p.21). Or, as Grenfell (2014, p.223) puts it, Bourdieu thinks relationally by "seeing events in relation to people,

organisations, time and place". Webb et al. (2002) explain that these *contexts* relate to cultural *fields*.

The following provides a brief discussion of the link between fields, capital and habitus.

Field

Bourdieu believed that the social world (society) is made up of social spaces, or in other words, **fields**. (These same social spaces are also described as a "theory of social structure" by Dobbin, 2008, p.53). The fields are occupied by people or organisations (actors) in their various capacities (depending upon the field occupied and their relationship to that field). Examples follow in Chapter 8, but in light of this research one could think about the tax field, the accounting field, the legal field, the political field and so on. As Thomson (2014, p.68) also observes "Collectives of people may occupy more than one social space at a time". There are conflicting views as to whether a field is autonomous or not. Some suggest so (Hilgers and Mangez, 2015; Inghilleri, 2005). Webb et al. (2002) suggest not, as fields can be influenced by other fields. Perhaps fields can be better described as operating "semi-autonomously" (Thomson, 2014, p.68). This can create difficulties in the analysis of a specific field as the boundaries between fields are described as "fuzzy" (Thomson, 2014, p.77), or not fixed (Gracia and Oats, 2012a; Madsen, 2013) and fields may "interpenetrate" other fields (Hilgers and Mangez, 2015, p.24). Hence fields are not rigid and may overlap with each other (Dezalay and Madsen, 2012; Parnaby, 2009) as will be illustrated with the examination of the tax field and other interconnected fields in Chapter 8. The way a field operates is often compared to a game (Everett, 2002; Thomson, 2014) and the same analogy is used by Bourdieu – who suggests that a field has its own rules (or discourse) which are not "explicit and codified" (Bourdieu and Wacquant, 1992, p.98). Hence, each field operates according to its own rules, or accepted way of 'doing things' and participants are said to 'play the game' according to the rules of each individual field.

Fields are apparent in many areas of social life and at times, may not be easy to define. To illustrate, a number of explanations follow. Webb et al. (2002, p.21) see fields as the context in which people carry out practice, and describe these as cultural fields which can consist of a:

... series of institutions, rules, rituals, conventions, categories, designations, appointments and titles which constitute an objective hierarchy, and which produce and authorise certain discourses and activities.

Or in Bourdieu's own words, a field is:

[a] network, or a configuration, of objective relations between positions. These positions are objectively defined, in their existence and in the determinations they impose upon their occupants, agents or institutions, by their present and potential situation (*situs*) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions (domination, subordination, homology, etc). (Bourdieu and Wacquant 1992, p.97).

Lombardi and Cooper (2015, p.88) suggest that:

A field could consist of any aspect of life, or social life, in which people of differing positions have rules imposed upon them in order to maintain the field's social structure.

Clearly therefore there are different interpretations or explanations about what a field is. However, they may be thought of as sites of specific activity (Hilgers and Mangez, 2015) or as contexts in which practice is carried out (cultural fields) (Webb et al., 2000). According to the explanations above a field may be seen as a network, or institution, or "any aspect of social life" (Lombardi and Cooper, 2015, p.88). Some examples include: artists, intellectuals, class lifestyles, science (Bourdieu and Wacquant, 1992), economics (Lang and Rego, 2015), education (Grenfell, 2017) and family (Glover, 2010; also Hilgers and Mangez, 2015). A field can be a physical thing such as a branch or organisation (Land and Rego, 2015). Additionally, fields may be a type of professional activity such as translation (Grenfell, n.d.), or administration (Cooper and Joyce, 2013), sport or journalism (English, 2016), academia, or business (Dezalay and Madsen, 2012), or law (Anesa et al., 2019), or simply just professional (Schinkel and Noordegraaf, 2011). To add to the complexity there may be fields within fields (subfields) too (Hilgers and Mangez, 2015; Thomson, 2014). There is no fixed definition of a field, hence as to where one draws the boundary around a field appears quite subjective.

Fields are said to be fluid (Everett, 2002), in a constant state of flux and boundaries can change (Lang and Rego, 2015; Oakes et al., 1996) as the contexts in which they operate and society changes. Madsen (2013) gives this

fluidity as a reason for the use of the framework for 'studying the crossroads' of fields (such as the influence of neighbouring fields) in the examination of the interaction of transnational and national legal fields. For Everett (2002) fields can change in response to externalities and can result in new 'doxa', or, in other words, a new understanding of how the field operates (Hilgers and Mangez, 2015). Or to put it another way, the rules of the game as they were understood to operate within the field, change in response to some event or externality.

Nevertheless, as discussed, there appears to be no specific definition of a field and Bourdieu (1992) seems reluctant to give a precise definition. Thomson (2014, p.73) notes, it should not be a "paint by numbers formula" hence the idea of a field depends on the situation. Fields in the context of this study may include, for example the legal field (including, for example, lawyer participants), political field (participants of which include the government and policy makers), journalistic field (participants include those working for the media), professional field (participants include tax practitioners and professional bodies), the bureaucratic field (HMRC is the main participant in this field), the judicial field (participants include the courts and judges), the small business field (participants of which are small business taxpayers) and the non – qualified tax practitioner field (practitioners outside the professional body remit). All these fields overlay the wider 'tax field'. These are further discussed in Chapter 8.

As said, each field has participants, or actors within it – but how does a field operate?

As Inghilleri (2005, p.136) notes:

The principle of the dynamic of a field lies in the relations between the various forces that confront one another. This confrontation between the social agents or institutions located within the field is always constituted in relation to the distribution of specific forms of capital – it involves a struggle to gain symbolic and material advantage with respect to social positioning.

Capital

As Inghilleri (2005) suggests, the position (power) of the actors, or participants within each field, depends upon the **capital** to which they have access (Gracia and Oats, 2012a; Thomson, 2014). As individuals (actors) vie for capital and position within a field, it follows that the field consists of those with more power than others, that is, the 'dominant' and the 'dominated' (Everett, 2002). There

are many forms of capital, which can include; money or property (economic capital); networks (social capital); professionalism (Schinkel and Noordegraaf, 2011) or qualifications, or status, prestige or reputation (symbolic capital); or capital in the form of skill, taste, lifestyle (Everett, 2002), experience or education (Oakes et al., 1998) art or literature (Cooper and Joyce, 2013) (which are indicative of cultural capital). Symbolic capital is intangible, that is, it “exists in the eyes of others” (Glover, 2010, p.487). Bourdieu (1977, p.179) suggests that symbolic capital may be “... the most valuable form of accumulation” (type of capital) to have. Additionally, capitals are linked, for instance, cultural capital can be turned into economic capital (Garcia Villegas, 2004). For a detailed explanation of the many different types of capital, see Bourdieu 1986, *The Forms of Capital*.

Grenfell (2017, p.7) provides a useful definition, describing capital as, the:

... currency of the field, what fuels its operations, defines what is included and excluded from the field, what is valued and what is not valued, what those present in the field need to accrue status and/or power in order to exert control over it. It is the medium of communication between field and habitus.

Dobbin (2008) and Grenfell (2017) equate capital with power. Indeed, Cooper and Joyce (2013, p.111) cite Bourdieu and Wacquant (1992, p.7) that Bourdieu himself “...used the terms power and capital interchangeably”. The capital (power) to which participants have access, within the field, will differ. Participants thus play the ‘rules of the game’ of the field, using different strategies to attain capital, to determine their position within it. This is seen in Bourdieu and Wacquant’s (1992) reference to the “distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake” (p.97). In other words, participants are said to have stakes in the game, and investment in the field (known by Bourdieu as *illusio*) where struggles/competition between actors take place (see, for instance, Dezalay and Madsen, 2012; Hilgers and Mangez, 2015) to vie for position (and power) within it. Thus the

“internal composition of [the field] will derive from the structure of power relationships within it” Gorton (2000, p.283 citing Bourdieu, 1983).

Access to capital may also be used to attain entry to a particular field (Grenfell, 2017; Oakes et al., 1998). For example, access to cultural capital, such as

education and experience may allow entry to a professional body and the professional field.

Habitus

The capital that one may have is determined, in part, according to Bourdieu by that person's background, education, upbringing and prior experiences in life, and can include training and ways of thinking. Therefore, in the tax and accounting context, training and the influence of professional bodies (see Cooper and Robson, 2006; Hamilton, 2013; and Hamilton and Ó hÓgartaigh, 2009) may have effect upon these phenomena. These phenomena are termed '**habitus**'. Bourdieu (1977, p.86) suggests that

“...the habitus could be considered as a subjective but not individual system of internalized structures, schemes of perception, conception, and action...”.

In other words, according to Gracia and Oats (2012a, p.307) habitus conceptualises “attitudes, values and behaviours” or training and professional background, or, as Malsch et al. (2011, p.198) note, the “long processes of inculcation during a lifetime” and, “... the interplay of structures and practices in the conduct of everyday life” (p.203). Habitus determines how one sees the world, “not consciously, but in a taken-for-granted sense” (Inghilleri, 2005, p.135), thus explaining how one may understand things and therefore how one may relate to the field in which they find themselves. These concepts and ideas share similarity with one's professional identity as discussed in Chapter 3. Experience and training and one's background feeds into one's moral and ethical disposition and beliefs and affects and shapes how one approaches work. Anesa et al. (2019) describe habitus as a bridge between the field and capital as habitus can determine access to capital and hence position within the field. Dobbin (2008, p.53) sees habitus as being a theory of the individual. In effect therefore Dobbin sees the Bourdieusian concepts in a slightly different way, being theory of social structure (field), theory of the individual (habitus) and theory of power (capital).

Habitus is a subjective concept (Bourdieu, 1977). It is not fixed and can change over time (Gorton, 2000) and may respond to changes in the environment. Anesa et al. (2019) give the example of habitus changing in relation to reputation problems or risk management considerations. Habitus will therefore continue to affect future outlook and actions of the individual (here tax practitioners)

(Haugaard, 2002) and will affect access to capital. For instance, the professional accounting training (the habitus) teaches the specialised language necessary for the job, providing linguistic capital or cultural capital in the form of the qualification attained (Hamilton and Ó hÓgartaigh, 2009) as discussed in Chapter 3. The actor with access to the most appropriate capital is likely to succeed and progress within the field, raising to higher 'ranks' within it so having more power than those less well positioned, as explained above.

Specific examples of the interaction of capital and habitus in the smaller tax practitioner context include for instance:

Capitals such as professional qualifications (symbolic capital); networks which allow access to support and assistance (a type of social capital), which is important for the smaller practitioner as this support must often be accessed outside the firm (unlike with larger firms); and, additionally, the extent of specialist tax and technical knowledge of the practitioner may be viewed as cultural capital (or a type of technical or linguistic capital, unique to the tax practitioner environment).

One's habitus may offer an advantage in the acquisition of such capitals, or resources. For instance, smaller practitioners who have worked in other organisations (which may include the Big 4), may have access to a wider network of former contacts (social capital) on which they can draw for support and those with HMRC experience have access to cultural capital which other practitioners may not, in the form of detailed technical knowledge about the organisation and how it works, which may be beneficial in their client work. The practitioners with specialist tax knowledge, for instance **IV2**, also have strong technical (or cultural) capital, which has developed from their former work experiences (habitus), and which they thus convert into fee income (economic capital) and they may develop a reputation in that particular specialism (symbolic capital). The acquisition of different types of capital give participants power within the field in which they work. The professional field for instance of which the smaller tax practitioner is part, may vie for position in the tax field against HMRC (in the bureaucratic field) which accumulates its own capital, or practitioners may have to deal with the negative publicity from the journalistic field (which arises from the participation of some practitioners with tax avoidance) which may damage the value of the

practitioner's symbolic capital and so on. These matters are discussed further in the findings chapters 5-7 and drawn together in the discussion in Chapter 8.

The interaction and links between these three concepts of the field, capital and the habitus (Grenfell, 2014; Thomson, 2014), Bourdieu espouses, results in a theory of practice, relating to what people do, and why people do it (Webb et al., 2002), or simply what "people do in their daily lives" (Glover, 2010, p.486, citing Jenkins 1992). This relates to social practices rather than individual actions (Inghilleri, 2005) as each aspect "plays a part in the generation of social phenomena" (Gorton, 2000, p.281 citing Harker, 1990). Or as Madsen (2013, p.16) remarks;

Bourdieu introduced the notion of a field as a research tool for understanding not simply how the actions of certain groups (and networks) of agents structure the social world...

but also how the social world affects those groups (or networks). It is therefore feasible to focus on the 'field' from this framework to help analyse and explain the reason for practical problems, or as Thomson (2014, p.79) says;

Field was not developed as grand theory, but as a means of translating practical problems into concrete empirical operations

The Bourdieusian lens thus lends itself to the subject of the research by offering a number of tools and concepts by which to understand the issues and relationships arising in the context of the smaller tax practice.

4.7.4 Employment of the theoretical framework in this study

The Bourdieusian lens is one which enables the understanding of "tax as a social and institutional practice" (Gracia and Oats, 2012b, p.119), and in particular will be deployed in this study to aid understanding of the social practice of smaller tax practice. By employing the three tools of the Bourdieusian framework of field, capital and habitus, an understanding and explanation for the emic empirical accounts (the micro context) of the smaller tax practitioner may be obtained. In particular, this study will focus upon the different fields which overlay the tax field, by focusing upon the 'field' element of Bourdieu's framework as discussed in Section 4.7.1. In doing so, this will help illustrate the dynamic and interdisciplinary environment in which the practitioners work, the etic (the macro context). The fields which overlay the tax field, contribute to the dysfunctionality and complexity of the tax field as a whole. Hence by situating the empirical findings of the smaller

tax practitioners (emic) against the backdrop of the broader tax (and related) fields (etic) this will enable deeper understanding of what smaller tax practitioners do and why. The practitioner relationship with clients, HMRC and their role in the tripartite relationship (as will be discussed in Chapters 5, 6 and 7) will be explored to shed light on how changes in the tax field impact upon tax practice which is the aim of this thesis.

This approach will thus build on research which examines and explores the tax field by Anesa et al. (2019) and Gracia and Oats (2012a). The thesis will analyse practitioners' views and interpret them in light of the other stakeholders in the field. The thesis thus contributes to a gap identified by Radcliffe et al. (2018, p.48) who suggest that, to date, research has more commonly focused either upon actors at the micro, emic aspect (here, the smaller tax practitioner) or the macro (etic) perspective (here the tax field) as opposed to exploring simultaneously "the extent to which tax professionals both shape and are shaped by their...environments". Whilst Radcliffe et al. (2018) examine institutional environments, this study employs a Bourdieusian lens to allow links to be made between both practice and other stakeholders in the wider tax field thus enabling deeper understanding of the empirical findings.

The next section explains how data from the interview and focus group was analysed.

4.8 Data analysis

A thematic analysis of the data was carried out to elicit meaning from the data acquired (Oats, 2012; Robson, 2011). Robson (2011, p.467) suggests such analysis can be used on a "...descriptive or exploratory basis within a variety of theoretical frameworks". This mechanism helps identify themes and patterns in the data and is widely used in qualitative analysis (Braun and Clarke, 2006). As Braun and Clark (2006, p.79) note,

[t]hematic analysis is a method for identifying, analysing and reporting patterns (themes) within data. It minimally organizes and describes [a] data set in (rich) detail.

They describe this method of analysing data as a "theoretically flexible approach" (p.77) and observe that it is suitable for different philosophical perspectives, that is, it is suitable for use if starting with a theory in mind, or approaching the

research with an open mind. Hence in light of the research design discussed above this is an appropriate method of analysis. Whilst Braun and Clarke (2006) write from the perspective of psychology, they note that as a technique for data analysis, it can be applied in many other qualitative contexts. The method in which this was used in this research is described below.

When an interview had taken place, this was transcribed as soon as practically possible. The researcher undertook all the transcription of all interviews. The focus group was professionally transcribed and received within a matter of days after the event. Some suggest that transcription is best undertaken by the researcher as this allows immersion in the data (Braun and Clarke, 2006, citing Riessman, 1993) which allows creation of meaning simultaneously (Braun and Clarke, 2006, citing Lapadat and Lindsay, 1999). The reason for transcribing the interview data oneself in terms of this study, however, related to practicalities. The researcher is able to type reasonably quickly, and had the desire to transcribe recordings where possible prior to the next interview to ascertain if questions required adjustment. This relied solely upon the researcher's own timetable which was easier to manage. This enabled constant comparison of the data; hence data collection and data analysis ran side by side as the researcher looked for similarities and differences and explanations for what was being said. This is consistent with a constant comparison approach (Given, 2012) and is appropriate in abductive reasoning as data collection and analysis often take place concurrently in this approach (Kennedy, 2018; Taylor, 2018). As the transcription for one interview was completed, themes could be identified and questions adjusted for the next participant if appropriate. An iterative process of data comparisons, to enable creation and adjustment of themes (Given, 2012) and reference to and from the theory (the Bourdieusian lens) took place. The self-transcription process enabled a deep in-depth knowledge of the responses (that is, an immersion in the data) and 'who said what' which assisted data extraction. In addition, the researcher could also reflect upon the disposition of the participants, noting exasperation, loss of words, 'sighs', emphasis made and so on. This enabled reflection on comments made and helped form an initial view as to the themes arising, and as time progressed, similarities and differences in opinion and responses were observed.

Once the transcription had taken place, the interview was dissected into three broad headings (or codes) that were initially apparent from the descriptive facts given by the participants. These were the client, HMRC and the practitioner themselves. Each of these main themes relate to each of the three research objectives, which taken together answer the overall question of:

How do changes in the tax field impact upon the practice of smaller tax practitioners?

The three research objectives relate to the themes as follows:

1. How do small tax practitioners manage client relationships in a dynamic environment?

This question provides an examination of the client/practitioner relationship in the UK smaller practitioner context from the perspective of the tax practitioner and is related to the theme of 'the client'. The findings in relation to this question are shown in Chapter 5.

2. How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners?

This question focuses upon the interactions between HMRC and the practitioner which play out in a changed (and changing) environment and is related to the theme of 'HMRC'. The findings in relation to this question are shown in Chapter 6.

3. How do the practitioners see their role in the tripartite relationship with clients and HMRC?

This question investigates how the practitioners see their role in the tripartite relationship, between the client (objective 1) and HMRC (objective 2). The findings in relation to this question are shown in Chapter 7.

Having determined the three main themes, each theme was reanalysed and broken down into smaller sub themes and comments from each interview were allocated to each sub theme. This enabled a deeper analysis of similarities, differences and the stories told in order to build up a picture of smaller tax practice. The Bourdieusian lens was used to seek understanding and explanation of the empirical data. This was not an easy process given the

quantity of data and the length of some transcripts. It was not easy to bracket certain items together and as a result, in the first instance this resulted in a great deal of overlap between sub themes. The data was revisited and revised and refined to minimise this. In terms of coding, this progressed from the descriptive facts (what the participant said) – from which the three main themes were initially identified (followed by, subsequently, the sub themes within) - and to which relevant comments and observations were added as appropriate. This was then followed by adding analytical (interpretative) meaning, as identified by the practitioner. This process of coding the data therefore progressed from the descriptive (or emic codes, arising from the self-understanding (Stringfellow et al., 2015) of the insider, or the participant) to the analytical (etic codes, generated by the researcher) (Fetterman, 2012). This is similar to the explanation provided by Van Maanen (1979), who makes a distinction between what the informant (insider) says – known as first order codes, and the researcher's view as to what is going on, or their interpretation (known as second order concepts) of the facts. The second order codes are generated by the researcher and should take account of the context in which things are said. The context in this research is the wider theoretical field, the macro, or etic context (Lukka, 2014) in which smaller practice (the emic) is carried out. This approach is enabled in this research by employing the Bourdieusian lens and conceptual tools. Gioia et al. (2012) suggest that by taking both the voice of the researched and the researcher, as also acknowledged in abductive research and in Bourdieusian thinking, this adds to the quality of qualitative research. For a discussion about the Bourdieusian view on reflexivity, see for example, Inghilleri (2005, p.137).

The researcher started the analysis of the interview transcripts by hand, colour coding and highlighting relevant themes, initially via pen and paper, and then, to ensure accurate coding, via WORD documents. The different themes became headings under which comments and quotes were collected. The data was frequently revisited and adjustments were made, and reference was made to and from the theoretical framework. NVIVO (a qualitative data analysis computer software package) was explored, but as the researcher had already undertaken much analysis in the manner described above the decision was made to continue with the original technique. Finally, the findings were illustrated with extracts from the data and reviewed and analysed in light of the literature, this was then further

analysed/interpreted to add additional meaning and explanation via the Bourdieusian lens and in particular exploration of the overlapping fields of the tax field as a whole – see Chapter 8, ‘Discussion’.

Braun and Clarke suggest the following approach to thematic analysis (see Table 4.3), which the researcher broadly followed as described above in order to determine the themes around the research objectives highlighted.

Table 4.3 Phases of thematic analysis, from Braun and Clarke (2006), p.87

Phase	Description of the process
1. Familiarizing yourself with your data	Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. Generating initial codes	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes	Collating codes into potential themes, gathering all data relevant to each potential theme
4. Reviewing themes	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic ‘map’ of the analysis
5. Defining and naming themes	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6. Producing the report	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

4.9 Limitations to the research process

This research adopts a qualitative approach and has an interpretive perspective. This type of research inevitably incorporates subjectivity, both in the nature in which the empirical findings are interpreted and in the exercise of the researcher's judgement in this respect. The researcher's background and former involvement in practice is also recognised as unconscious bias may influence the research process (Alvesson and Kärreman, 2011).

The methods to obtain the data include a focus group and interviews. The reliability of interviews can be questioned as it is not a standardised practice (Robson, 2011). Nevertheless, Bryman and Bell (2011, p.400) suggest that interviews can produce some credible findings and extend knowledge, as long as the sample is defended, explanations are given about how the data collection is undertaken and that the context is clear. The sample details and explanation of data collection process is given above. Despite this it is acknowledged that as the interviewee has control over their responses (Turley, 2004), it is possible they may say only what they think the researcher would like to hear and/or may withhold details of less desirable practices.

This research is about the tax practitioners' perspective of smaller tax practice. The research therefore incorporates only one perspective. As highlighted in the suggested avenues for additional research at Section 9.3, the views of those working in the tax authorities and/or clients may provide different views upon smaller tax practice. It should also be noted that the sample of practitioners includes only 'qualified' practitioners (or those belonging to a professional body) as defined. It is recognised that one's background, training, former work experiences, and the influence of organisations (former and current) in which the practitioner works may affect views and perspectives (see Addison and Mueller, 2015). No practitioners outside the professional body remit (except for those with a HMRC background) were included in the sample and different findings may be attained had this been the case. Again, this aspect is included in Section 9.3 as an area for additional research. Finally, smaller tax practice in this research has a fairly broad definition, from sole traders up to practitioners working for a mid-size practice. It is recognised that this is a broad range. Other research could focus upon, say sole traders within this market, to enable more

generalisability (for a discussion of generalisability in the qualitative research arena, see Parker and Northcott, 2016).

In terms of generalisability, whilst it is not impossible for a qualitative study to be generalisable to other contexts (Parker and Northcott, 2016), the objective of this particular study was to enhance understanding of smaller tax practice. Given the nature of the research it is not statistically generalisable.

4.10 Summary

This chapter has presented the methodology and an explanation of the methods employed (interviews and focus groups) to gain the rich data required to address the research questions. The rationale for using these methods has been explained. The process to obtain the data, along with the techniques for analysing the data has been discussed. In addition, an exposition of the theoretical framework has been presented along with an explanation of how it is employed in relation to an abductive approach and data collection and analysis. The findings from the data collection follow in Chapters 5 (the client relationship), Chapter 6 (HMRC relationship) and Chapter 7 (the practitioner's role in the tripartite relationship). Chapter 8 (Discussion) draws these three chapters together by employing the theoretical framework to analyse the fields which overlap the tax field to shed further light and explanation upon the tax practice of the smaller practitioner as identified in the three findings chapters.

5 Findings – The Client Relationship

5.1 Introduction

The practitioner acts as an intermediary, or a bridge between HMRC and the client. They must manage both relationships. This chapter focuses on the practitioners' views of the practitioner/client relationship. The findings in relation to research question 1 are presented and analysed, so as to address the question *how do smaller tax practitioners manage client relationships in a dynamic environment?* In addressing this question, the following objectives will be examined, as discussed in Section 4.2. The chapter aims

- to gain insight into, and explore, the practitioners' views on their relationship with clients;
- to describe and understand the environment in which the practitioner works and in which the client/practitioner relationship operates;
- to explore how they manage this relationship

The management of client expectations is one of the biggest challenges in the day-to-day work of the tax practitioner, according to the interviewees. This chapter explores this challenge and provides context to the environment in which the practitioner works and in which the relationship operates.

The themes and expectations discussed below have emerged from, and were grounded in, the data, and are developed from the stories the practitioners told. The narratives revealed commonality amongst the participants. The evidence suggests that there are a number of 'client expectation gaps' between what clients want and what practitioners can achieve. A number of these gaps are explored. To allow analysis and obtain insight into the client/practitioner relationship, what (and why) challenges arise and how the relationship is managed, the themes arising have been grouped into the following categories.

- The 'expert' expectation
- The 'scope' expectation
- The 'HMRC' expectation
- The 'fee' expectation

This chapter provides focus on the client/practitioner relationship, addressing calls for additional research in this respect (Hite and McGill, 1992; Gupta, 2015; Oats, 2012; Stephenson, 2017; Tan, 2014; Van de Rijt et al., 2019).

Clients engage tax practitioners for their expertise. The role of expert is legitimised by the practitioners' qualifications, experience, and support of a professional body (Adler et al., 2008; Stuebs and Wilkinson, 2010). At times, the value the client places on this expertise (and hence the legitimacy of the practitioner) can be questioned. This may be because of the time the practitioner takes to answer a question, the fee charged, or even the amount of tax the client is advised to pay. What follows shows that practitioners take account of many aspects within their work which may not be readily visible to clients (such as risk and reputation) alongside balancing the client expectations. Whilst risk management is not a client expectation as such, it does form part of client management. Risk management featured regularly in the discussions with participants and it is part of the dynamic environment in which this relationship plays out.

The chapter therefore commences with 'risk management' in Section 5.2, so as to set the context for the rest of the chapter. This is followed by an analysis of each of the expert, scope, HMRC, and fee expectations, before a summary is presented.

5.2 The risk management environment

When a client (or potential client) asks for assistance, the participants indicated that prior to taking on the task, they firstly must determine if they are actually able to do the work (in terms of having the skill, knowledge, or experience to do so), and/or, do they even want to act for that particular client.

Phrases, such as "*knowing your boundaries*" (I/V4) and it being important to "*know what you know*" (I/V6 and I/V9) cropped up regularly. Professional indemnity and the "*insurance risk*" (I/V6), and the potential of being sued, was never far from the practitioners' minds. Given the complex, changing tax environment, as explored in Chapter 2, the participants described the management of risk in three particular ways; to the organisation (that is the practice risk per Mala and Chand, 2015 and Tomasic and Pentony, 1991), to themselves and to the client (as identified by Davidson, 2016; Doyle et al., 2009b

and; Frecknall-Hughes and Kirchler, 2015). The reasons why risk management features so heavily and so prominently in the practitioners' work can be traced back to the wider tax field, and will be discussed in Chapter 8. The worry of stepping outside one's area of expertise, or knowledge without adequate support to resolve the question asked, was an issue for many. This is perhaps indicative of the smaller practitioner context as queries may be broad in scope, ad hoc in nature and often not anticipated. That is, the nature of the work undertaken is often less specialised than that of a larger, or Big 4 tax practitioner. As highlighted in the participants' comments below, ethical considerations, a strong sense of minimising risk in general and preservation of reputation was apparent, consistent with the findings of Doyle et al. (2009b). The participants did not indicate there was tension, or trade off, between commercial interest (the fee) and the risks of taking on certain work contrary to Stuebs and Wilkinson (2010) and Suddaby and Muzio (2015). Nevertheless, the practitioners are in business to make money, thus, it may be questionable whether the alternative would otherwise be admitted by the participants in an interview situation. Nevertheless, these matters do give a clue about the tax practitioners' professional identities, that is how they see themselves in relation to their organisation and how they conduct themselves as discussed by Alvesson et al. (2015), Cooper and Robson (2006) and Grey (1998).

To illustrate, as explained clearly by a tax partner in a mid-size firm:

There are issues around risk management and whether you are prepared to take the work on ... I think that is a key issue for a mid-size firm. Before you can even start to look at a piece of work **you look at the scale of it and whether the relationship is of the type the firm should be involved with** and have the **capacity to deal with** and that is quite an important step I think that probably **was not there so much in the past.** [I/V23]

The former experience of some participants, such as I/V4, I/V9 and I/V23 (quoted above), included work in a top 10, or Big 4 firm, I/V6 had smaller firm experience, yet the sentiment was the same. Interestingly, this was common sentiment, right across the board, from sole traders up to the mid-size firm. There are a number of points here to which I/V23 refers. The scope of the work, the capacity and competence (knowledge/expertise/staff numbers) to deal with the query, as well as reflection on whether the work and relationship is actually wanted by the firm (ever more important to consider in the current climate around tax avoidance

issues – to which the practitioner also alludes given the comments about action in this respect “in the past”). The participant is aware that their own experience may not be conducive to the tax issue upon which they are asked to advise. The work is not automatically taken without consideration of a number of issues which include both practice risk and preservation of reputation.

A sole trader participant also remarked:

I may recommend someone else...that is one of the first things in your code of practice isn't it, **the ethics**? That if you are not competent to handle it, and, I would regard competent as also not being necessarily only [competent on] the technical side, but also are you comfortable negotiating [with HMRC once you take on the work]? **[I/V1]**

Interestingly here, this participant suggests that as well as being able to handle technical matters, a practitioner should feel confident entering into negotiations with HMRC. **I/V1** implies that, in such cases, the work may be passed on to another more experienced expert, as the risk of not being ‘up to the job’ is not acceptable. “The ethics” are clearly important to **I/V1** who states this fact explicitly and, although not mentioned by **I/V23**, ethics (although perhaps operationalised as risk management, Doyle et al., 2009b) is implicit in the comment made – “**should the firm be involved with...**” a particular relationship.

Ethics and integrity (examples of professional values and professionalism of the practitioner) therefore appear to play a part in the risk management concerns of these participants. Such values may relate to influences of a professional body (**I/V6**, for instance did not want to “*end up in hot water with the institute*”) or the ethos of the practitioner’s organisation (consistent with the findings of Fogarty and Jones, 2014 and Hageman and Fisher, 2016) and affect the professional judgements of the practitioners, such as; is the client wanted and are we competent to act for the client. It is suggested that professionalism has diminished in recent years in the accounting profession by Cooper and Robson (2006), Fatemi et al. (2018) and Suddaby et al. (2009), however these practitioner comments indicate the importance of ethics and integrity in their own decision making – perhaps even more so than in the recent past, given **I/V23’s** clear acknowledgement of the changed environment in which tax practice now operates. The conduct of these participants is important to each of them, which is indicative of their professional identities as suggested by Grey (1998).

Bearing in mind the context of risk management in general, client expectations are now presented.

5.3 The 'expert' expectation

There are many reasons why a taxpayer engages a tax practitioner as discussed in Chapter 2.

In simple terms taxpayers may want to comply with the law and fulfil their obligations under the tax system, but complexities may cause them to seek assistance. In other words, the taxpayer engages an expert to solve a problem, for which they themselves do not have the expertise, time, or inclination.

I/V15 gave a good analogy:

Every area of difficulty in life requires somebody somewhere to provide expert advice and the tax system has developed in such a way that advisers have proved to be necessary in explaining to people what the score is

In other words, the interviewee suggests taxpayers can approach a practitioner who is well versed (or expert) in the system to represent them (in the same way as one would need a builder, or other tradesperson). Reference is made to the complex tax system which the participant suggests is the reason why practitioners are needed. This role (a facilitator role) is discussed in Chapter 7.

It is of course not unreasonable for clients to expect the practitioner to be an expert. Yet, as reported by many participants (and irrespective of firm size) clients may expect practitioners to give "*an instant answer and ... think you should know everything about tax there and then*" [I/V6]. Clients may also believe practitioners are experts who know how HMRC "thinks" and that "[*you must*] have done everything before" [I/V24]. There is an expectation that practitioners have the resources, experience and knowledge to instantly provide the advice asked for, in return for the client's fee. In other words, the client pays for access to these resources (or capitals) of the practitioner, which is discussed further in Chapter 8.

Tax however, is a huge area in terms of breadth and depth, as highlighted in Chapter 2 and the reasons for which are further analysed in Chapter 8. Those working in the smaller practice context must manage this to a greater extent than those working in a specialist capacity such as within a Big 4 specialist

department, a boutique firm, or those who serve niche areas. Consequently, research into a tax problem may be required as it is impossible for a practitioner to have knowledge of all possible taxes or all possible situations, a sentiment expressed by various participants as evidenced by **I/V6** below. The breadth of tax, as a subject, creates additional risk to the practitioner and their organisation and adds additional context to the comments regarding 'knowing what you know'. Research into a tax question may not be straightforward and as will be seen in Chapter 7, there are many processes practitioners adopt to ensure they are supported/get comfort in the opinion given. The consequence is that answers may not be immediately forthcoming. This can create a gap in expectation between what the client expects they will get for the fee paid, how quickly they get that advice, and what advice the practitioner is willing and able to provide. As **I/V6** explained:

.... that happens in tax doesn't it? You don't always know the answer straight away and it is important skill I think that you need to recognise. That you don't know everything and you need to look certain things up, as tax is a complicated area.

Tax is such a massive area And so many different branches of it. It's quite a broad area and it can be very difficult....

Clients may not appreciate these issues, and why should they, as they have asked the practitioner to address their tax question. As **I/V24** explained:

It is always difficult knowing at the outset with a piece of work exactly **where it is going to go, what you need to know**. And, if it is something you have never looked at before it is not necessarily something you cannot do, but **you just need to have the experience and judgement** to know how you are going to find the answer and that I think is where it comes in with the **time and support of the teams and the wider group**.

This indicates the subjectivity and uncertainty around some tax issues. Again, the participant refers to risk management by contemplating whether the work is something that can be undertaken within the bounds of existing experience, or not. Moreover, the practitioner may need time to investigate, and support from colleagues to address the client question (see Chapter 7). Of course the research process will depend on the nature of the query. The above makes reference to the acquisition and use of experience in the practitioner's role as discussed by Cooper and Robson (2006), Hamilton (2013) and Stringfellow and Shaw (2009). Judgement is highlighted which also develops with experience and this particular

participant had worked in the larger, 'top 10' organisations previously and will carry the knowledge gained from such roles into her/his current position.

Investigation into the tax effects of transactions is a considerable part of the role for many practitioners, as the above two participants indicate. This is necessary to reduce uncertainties around the advice to be offered, or to bolster technical knowledge as suggested by **I/V7** and as found by McKerchar (2005). Smaller practitioners are aware of the limitations of their technical knowledge as found by Stringfellow et al. (2015). Estimates of time spent on research, were difficult for the participants to ascertain, as no two days are the same, but estimates ranged from half an hour per week (sole practitioner **I/V9** whose work consisted largely of more straightforward tax return compliance), 5% (**I/V2** a practitioner in a niche market, owing to experience of the issues in the field, illustrating the 'depth' noted above); to 50%, and some who could only say it would involve long periods of time. **I/V23** and **I/V24** (joint interviewees) explain why time consuming work may be required:

The difficulty we have got is that you can read around as much as you like in terms of the legislation, the guidance and the revenue manuals, but it is **not that often that a piece of work you are advising on will fit exactly into a previous circumstance** and even if you think it does, with the way the cases go and the way revenue enquiries go... **[I/V23]**

It could vary. **[I/V24]**

And you could have a very, very robust position but the courts could decide actually what was meant to happen could be something different. So there is a bit of a risk I think anyway. **[I/V23]**

Yes, **subjectivity and a risk**

Which sort of goes back to ... risk management... because one of the biggest debates for us is what detail do we put into **our report** as to the **thought process** as to why we have reached that conclusion.

Whereas the **client actually probably just wants the answer**, that says you know this is what I want to do, why have you told me about all the other bits!

It is about making sure about the thought process and that the client buys into it and understands it and accepts the conclusion with full knowledge - whereas actually what the client **wants you to say** is you need to **buy that building in that entity for that amount of money and that is the VAT treatment** ...Clients always want the **absolute answer and no uncertainty** and that is the hardest thing about being a tax adviser

nowadays as **you cannot really offer much certainty about anything.**
[I/V24]

The exchange above indicates that no two tax questions are the same. Assumptions cannot be made. Many of the complexities identified in Chapter 2 are highlighted here including complex and ambiguous law, interpretation of law and legal precedent, all of which drive the requirement to investigate thoroughly. Here this particular practitioner is concerned that if there is a disagreement with HMRC the case may end up in court. The practitioner also highlights that certainty cannot be attained from previous tax situations or cases (even if they appear similar), as even a fine difference in circumstances could cause variation in tax treatment. Nevertheless, the practitioner suggests that the client wants to be told what to do without being bothered about all these issues, which corroborates findings by Gupta (2015). Uncertainty is mentioned. Uncertainty is said to drive taxpayers to seek advice (MacNeil, 2009; Raskolnikov, 2015). Nevertheless, it may be difficult for an adviser to determine the absolute answer to a question, as this practitioner indicates. This is said to be an issue for even the most experienced of tax professionals, as discussed in Chapter 2 and identified by Eustice (1989), Prebble (2014) and Zelenak (2014). The client, clearly, from the bold text above, does not want to hear about uncertainty. Presumably this is because they have turned to an expert and are paying, they think, for an answer from someone they expect is “conversant” with the law (Sakurai and Brathwaite, 2003, p.376) or for them to “absorb the uncertainty” on their behalf (Fogarty and Jones, 2014, p.287). The practitioner, however, as the adviser, indicates the risks they must bear in mind. Here a main concern is that those in other fields (HMRC, or the judiciary for instance) may have a different opinion as to the tax treatment of a transaction if the law is uncertain or ambiguous. By implication, therefore, a practitioner is likely to undertake time consuming work in some cases, which clients may not anticipate. A report to the client, is also mentioned; this is an important mechanism for the practitioner. The report is the mechanism by which the advice is documented and formalised and this is one way of managing client expectations as discussed in Section 5.3.1.

Additionally, clients may not even think about tax issues at all. What appears to be a simple question to the client is not actually so when the tax issues are considered, as the exchange between **I/V12** and **I/V13** (joint interviewees) illustrate:

Yes, clients have some crazy, crazy ideas what they want to do

[I/V13]

“I want to do this and then this, but before this, I want to do this!”. There is so much legislation. I suppose they come in thinking their idea is easy.

[I/V12]

They know where they want to be and what the end result is, and what their end aim is and they think that, you know, it is easy to get there, because to them, **it is just a change in shareholdings** – “from this, to this, to this and at this time, for this purpose”. But – it is the in between bit [i.e. the tax effects] that they just don’t get.

[I/V13]

This interchange shows that the taxpayer focuses on their business (i.e., in this example, the client is concerned about the share reorganisation itself) and not the tax issues. From the client perspective, the tax consequences just happen to be incidental to the transaction, and may be completely forgotten, or if not forgotten, as the interviewees identify, the complexity may not be appreciated. The practitioner’s job is to point this out as it may require far more input (research time and additional fee) from the practitioner than the client expects.

If there is no simple answer to a question, and the practitioner does feel able to assist, but explains to the client that they need time to investigate, there was a feeling amongst some that doubt about the practitioner’s competence arises. **I/V12** mentioned this as a specific expectation to be managed carefully. **I/V15** also felt that:

...some clients are reasonable and understand that you can’t possibly know it. Some...may want to replace you...as they expect people to know exactly what the law says....

Of course, the taxpayer believes they have engaged an ‘expert’. The taxpayer may have been drawn to seek advice by the practitioner’s symbolic capital – that of a professional person, or membership of a professional body, and sees them therefore as someone who can ‘provide the answer’. This symbolic capital may thus be questioned; the practitioner’s legitimacy may be challenged. Of course, as the participant indicates, it is not the case that the participant is unable to assist the client, rather that the practitioner’s expertise may be employed in ways different to that expected. That is, the tax practitioner will anticipate their work may involve investigation, research, interpretation of law and, depending on the transaction, how different taxes may interact (described as a strength of small

practitioners by **IV3**, given the nature of the client base as discussed in Chapter 1), as there may be many aspects to a tax question. Indeed, there may be more than one answer and each answer may have different tax effects. Thus it is evident that the participants in the study do draw on their knowledge and experience and resources (capitals of various kinds), but not in the way a taxpayer may anticipate. It would seem, from the explanations above that the participants are pulled in different directions. They describe client demands and expectations on the one hand and yet, they indicate they have responsibilities to themselves and their firm on the other. Thorough research enables them to manage risks to give the advice required. Interestingly, the increase in technology and the search capacity (of many online commercial tax databases to which many participants subscribe) does not seem to have alleviated the need to invest so much time in research (also observed by Fogarty and Jones, 2014) as will be discussed in Chapter 7. Practitioners in this study do worry about the time research takes and the impact on the fee (see Section 5.6 below), but they did not seem to be concerned about time pressures per se as identified by Fogarty and Jones (2014) and Magro (1999); rather what seems to be more important is that they manage the risks around the provision of advice appropriately. Clearly the quotes above suggest that some clients may not understand the issues faced by practitioners – and why should they, as they have engaged an expert.

Conversely some participants reported instances when clients choose to ignore the practitioner's advice (and hence expertise). This arises largely in the tax planning context. Some (but not all) participants are proactive in spotting tax planning opportunities by regularly reviewing client circumstances to identify reliefs that may be claimed. This suggests good knowledge of client circumstances (as found by Stephenson et al. (2017) in the smaller practitioner context). This draws on the practitioner's knowledge, experience, and understanding of regulations and law, as well as their detailed understanding of the client's situation. However, others may offer tax planning on a more ad hoc (reactive) basis. Advice may be generated by a query from a client (if they have become ill for instance, or want to retire), or planning opportunities may be picked up when the practitioner undertakes compliance for the client. There is a mixture of approaches (although Tomasic and Pentony (1991) suggest much planning is reactive). But reactive, or proactive, if the practitioner acts on these

opportunities, their legitimacy in the eyes of the client may increase (as well as fees of course), particularly as an unrepresented taxpayer does not have access to the tax field to get this advice (that is unless the unrepresented taxpayer tries the DIY approach via social media/internet, which comes with the many potential problems discussed below).

On the whole, it would be assumed, or expected, that the rational person would wish to save tax as suggested by Freedman (2008) and this is often, but not always, the case. Sometimes the practitioner recommendations are ignored or not implemented. The participants gave a number of reasons for this. It is apparent in many instances, that the client's main concern is running their business. Or they find life very busy. Tax is not their main concern (this is at odds, the participants suggest, with the HMRC perspective, as discussed at Section 6.5.2). Consequently, the time needed to think about the practitioner's suggestions, followed by the effort to implement them, is thought to detract from other issues seen to be more important to them. This means that reliefs go unclaimed, or the planning (a simple example given by **I/V9** was to sell some shares either side of the tax year to use up the capital gains tax (CGT) annual exempt amount across two years instead of just the one) does not occur. It may also be that the client just wants 'to get a deal done'. An example was given by **I/V8**, where the advice to do a deal two days later than planned to defer payment of the resulting CGT was ignored as the client just wanted to finalise the deal. Tax did not come into the decision making process at all. Here the clients limit the execution/use of the practitioner's knowledge. Fees also play a part. The financial cost of the advice and time to implement the planning, as identified by **I/V14 and I/V22**, versus the tax saving, appear to be additional factors as also identified by Kitt (2014) regarding R&D reliefs. Indeed, **I/V22** referred to some clients who missed an "*open goal*" in terms of tax reliefs due to them, as they were too busy to implement them. Experience was, per **I/V22** that some may, in due course, take up the offer of the practitioner's advice – they just have many other priorities.

Other clients were thought to be happy, or "*content*" (**I/V1**) with the amount of tax they pay. That is, if they are overpaying tax, then so be it. Some practitioners reported that some clients choose simply not to enter into any transaction that they think could draw them to the attention of HMRC, preferring to stay 'under the

radar'. The examples provided related to simple claims for tax reliefs to which the clients were entitled – so nothing convoluted. This behaviour has been observed in relation to R&D claims (Hasseldine et al., 2011; OTS, 2014, p.37). **IV 3** explained they (the tax team) know their clients so well (which again supports Stephenson et al's. (2017) findings) that they know who not to bother with tax planning suggestions, as some clients would just worry about putting in the claim. That is the practitioner is keenly aware of the client wishes and aligns their service accordingly to keep clients comfortable and not rock the boat. Many clients, participants suggested, want 100% certainty, so if there is any uncertainty that a claim would not be agreed they will not enter into it. If it is not "*straightforward*" (**IV1**) or is felt to be a little "*grey*" the practitioner may have a battle getting the client to claim what is a "*rightful deduction*" (**IV4**). Additionally, examples were given where individuals within an organisation (described as the 'gatekeeper') mistakenly believe that an R&D claim (for example) is not applicable to them, even though the practitioner knows it is. In other words, the knowledge of the practitioner is not accepted by some clients. In such cases therefore taxpayers may overpay their taxes.

Whilst practitioners can encourage clients to take up planning advice, it is of course the client's choice. This links to literature about 'client preference', in which Hite and McGill (1992) suggest that the desires of the client and the tax practitioner need to align, in order to keep the client happy. This plays out in the example given by **IV3** above. The participant adjusted their views to match their client's preference. There is a line to tread however if the client has a more aggressive outlook than the practitioner as suggested by Bain and Kilpatrick (1990) as this has to be carefully managed as discussed below in Section 5.4 regarding the Scope Expectation.

Additionally, clients may bypass the expert advice of their practitioner (if they have one) by turning to information on the internet or from friends. A number of participants referred to this. Such behaviour was observed by Parnaby (2009) in the financial planning context. The attempt to locate information by clients themselves could amount to an attempt to cut costs (see below), which could be seen to devalue a practitioner's knowledge and experience. **IV25** referred to a client who suggested he believed his mate over and above the practitioner's professional advice. Information on the internet may also lull clients into thinking

that tax is simple, that is, they do not see or expect the complexities the participants speak about. Participants, interestingly gave HMRC webpages as the example here. This is a respectable source of information, yet, it was said the information was too simplistic as also identified by Todd (Treasury Sub Committee, 2018). Therefore, relying on simplistic information (or even misinformation, from less reputable webpages) could be problematic (see Onu and Oats, 2018). The expectation that tax is 'simple' has to be managed.

Some participants additionally feared that internet-based information may create a 'false sense' of security for clients. An example about a share option scheme was given. This had been the topic of discussion between the practitioner and the client. The client 'googled' the issue and thought that as this appeared quite a simple thing to set up, as all they needed to pay for was a form, they could to 'do it themselves'. This was described as "dangerous" (I/V24) as things are not as simple as they seem, yet clients may not appreciate this (and hence, by association the value of the practitioner's advice). The risk is that the taxpayer could end up in a difficult situation by not recognising the problems to watch out for. Interestingly, share schemes (and their difficulties) feature amongst the topics of local CIOT meetings (appendix 10.1). Furthermore, the participants reported taxpayers 'scaring' themselves by reading materials online that would not previously have been easily accessible.

...[clients] scare themselves. One of the big issues for customs at the moment is evidencing goods that have left the UK. All of that is in the market place, and one of our contacts clients researched it on the internet and scared himself silly, and it is almost like he has diagnosed himself with cancer
[I/V23]

And of course, internet searches cause some clients to want to try less acceptable, tax avoidance techniques, which is further discussed below under the Scope Expectation.

In sum, the client may at times question whether the practitioner is indeed the expert and is competent enough to advise them on their transaction. They may not appreciate or understand that tax law is lengthy and complex, or that it is impossible for the general tax practitioner to have a detailed knowledge of all (or even much) of the law itself. They may not realise that the practitioner has to investigate the interaction of several different taxes in relation to the transaction,

as is often the case with the tax queries of small business. In other circumstances, participants report clients rebuffing their attempts to suggest tax reliefs to which they may be entitled for the reasons discussed. The expectations of the client therefore must be managed to ensure a good client/practitioner relationship.

5.3.1 How the practitioner manages the expert expectation

Many participants felt it important to fully inform clients about their tax choices and make them aware of uncertainties, even though clients expect practitioners to be the expert and resolve ambiguity or doubts. Yet, as noted, uncertainties may not entirely disappear, but may better be described as ‘managed’. If advice is uncertain, say, based on ambiguous law, the participants caveat the advice provided. This ensures the client is aware that HMRC’s interpretation (and view) may differ to the practitioner’s advice. As **I/V6** said, “*It is a shame why you have to do that...in an ideal world you would know where you stood.*” Tax law is often criticised for such uncertainties (Ansari and Sossin, 2017; Gribnau, 2013) and as clients may not be aware of these problems, it may be that the legitimacy of the practitioner as an expert is questioned – as they have not provided a definitive answer.

Nevertheless, participants expressed concern that clients ‘buy in’ to what is being said (**per I/V24**, at Section 5.3... [*it is about making sure about the thought process and that the client buys into it and understands it and accepts the conclusion with full knowledge*]) and are informed where they stand (**I/V15**), and are made aware of the potential impacts of HMRC challenge to the position entered into. Despite Gupta’s (2015) findings that clients may be less satisfied by the practitioner’s service if they are given too much information, this does not bear out the action of the participants in this research. The client is included in the decision making process, as it is the client who must sign the submitted tax return – hence their understanding of the position was seen as important. To emphasise the point, in situations of uncertainty, participants may estimate the odds of the different legal interpretations (theirs versus HMRC) being accepted. Some also employ their knowledge to ‘cost’ each avenue (in terms of fees and tax) to warn the client of the financial effects in case of HMRC challenge. **I/V8** explained that if the tax savings resulting from the practitioner view (when compared to that of HMRC’s likely view) were minimal, it would be put to the client

that to choose the HMRC route might be the wisest course of action – even if **I/V8** did not agree with the HMRC interpretation. This prevents challenge about different interpretations of law and hence time, effort and fees (and uncertainty for the taxpayer). This position ties into the role the practitioner adopts for the client as negotiator and defender (see Chapter 7). Thus the practitioner draws on previous experience and can legitimise their role i.e., ‘I can save you this much based on my knowledge, but my advice is to not return that position, as in financial terms, it is easier just to defer to HMRC’s point of view’. Other participants also described playing ‘devil’s advocate’ – that is, putting on the HMRC ‘hat’ to explain to the client HMRC’s likely perspective. This also helps determine if the client is happy to accept the chance of audit should the submitted tax position be subject to differences of opinion and interpretation – that is, do they want the “*aggro*” (**I/V1**). These are alternative techniques to manage uncertainties and client expectations to ensure the client is on board with the advice provided by the practitioner and is able to make an informed decision. These techniques may also help align the risk appetite of the client and practitioner (as Hite and McGill, 1992 and Sakurai and Braithwaite, 1993 identify difficulties in the client/practitioner relationship in this respect) and additionally, examination of the various different perspectives and outcomes may assist the practitioner to employ objectivity in the decision making process (which is noted as important by Cloyd and Spilker, 1999; Kahle and White, 2004). Such techniques feed into the management of risk more generally.

To provide a view of both sides of the argument, the practitioners draw on former experiences. It should also be noted that some participants, **I/V8** included, have former HMRC experience, thus, it may be that those participants may view the ‘HMRC side’ rather differently to other practitioners. Certainly knowledge of HMRC as an organisation (as former insiders to that environment) was evident. Some continued to maintain contacts within the organisation. They may thus know how the ‘revenue official’ may operate. This gives such practitioners an advantage over other general practitioners. They have a different type of knowledge, as they have ‘insider’ and ‘outsider’ knowledge (knowledge which extends beyond the smaller tax practice from a different field), hence their technical and cultural capital is enhanced.

Some practitioners may seek help from other tax practitioners if needed, which again is indicative of the smaller practitioner market, as they may not have the required expertise to hand. This is discussed further in Chapter 7. Some participants, including some former employees of HMRC, act as ‘advisers to advisers’ (many have clients who are practitioners themselves) by drawing on former experiences and networks to carve out a particular area in which to offer their services. For instance, **IV15**, having built up years of practice experience and depth of knowledge (including time at a Big 4 firm) may save other practitioners hours of time investigating a transaction in a field in which s/he specialises (a similar sentiment was expressed by **IV1**). **IV8** “leverages” on work which plays to her/his strengths (which have developed from former experience) and whilst the complexities of the tax system are recognised, this practitioner finds it rare to be “*completely stumped*” having built up such a depth of knowledge in the fields in which s/he works. The professional identity of the ‘adviser to the adviser’ thus develops over time, as experience is gained from former work places, work practices, work colleagues, and types of organisation in which one has worked – which produce many networks and contacts upon which the practitioners may later draw in setting up their smaller tax practice. That said, it continues to be evident that these practitioners, at times, also meet the same problems as those with less in-depth experience as the evidence shows. Indeed, a range of strategies to manage the client ‘expert’ expectation is adopted by many.

Many participants reported recording the advice they give in some shape or form, which relates to the “*buy in*” described by **IV24** above. A letter or report may be provided, or the practitioner may hold meetings, or create minutes to outline matters for the client. In other words, what practitioners describe is an attempt to educate the client about how and why time was spent on their query, along with the outcomes of the work, including the choices of available action and associated tax cost, if appropriate. This may elicit trust in the client/practitioner relationship. These techniques help explain the worth or value of the practitioners’ work, the resources employed (such as knowledge, experience and the symbolic capital (per Stringfellow and Thompson, 2014) of their professional background) to arrive at the outcome, and can help justify the fee. Documentation of the advice therefore converts the intangible, unseen efforts of the practitioner into a visible,

tangible output, which may also illustrate the different complexities and choices for the client, by taking abstract tax concepts and reducing them to more simple explanations as illustrated below by **I/V6**. This relates to the translator role as discussed in Chapter 7.

When you are meeting new clients and they have a particular tax query it is tempting to just give them the answer if you have spent hours in the past perhaps researching it for another client [*Note – this was said to be an infrequent, but possible occurrence*] but if you do that then they won't appreciate the value of the advice or pay an appropriate fee for it... [that is a] problem in tax I think. Accountants generally...don't experience that as you can produce an actual document such as a thick set of accounts ... if you send [the client] a thick tax report they can see you have put a lot of work in it. **[I/V6]**

Additionally, the participants use such documentation as protection for themselves (a form of risk management). **I/V15** advises clients they cannot rely on anything unless it is provided in writing. Clients may not want a long document of explanation (they may wish just to be told what to do, as **I/V24** observed at Section 5.3 and Gupta, 2015 found in her research) and indeed **FG5** observed that clients do not want a "*dissertation*", but as **I/V24** says, there is more to this. To manage the client's expectation and obtain 'buy in', documentation is required to draw important issues to their attention. Whilst Gupta (2015) found clients did not want to be kept informed of details, other authors found the opposite (Christensen, 1992; Hasseldine et al., 2011; Tan et al., 2016). From the practitioners' perspective, the actions above and the attempt to educate clients of the tax position, are consistent with findings by Fogarty and Jones (2014), Tomasic and Pentony (1991) and Parnaby (2009).

Finally, if there is a choice of tax route, once the decision is made, disclosure of the position is shown on the tax return to protect the taxpayer from later dispute and 'discovery' (that is HMRC are not told the full facts relating to the chosen tax treatment, but later become aware of it). Hence the practitioner has a number of techniques to manage the client expert expectation.

The next section explores the 'scope' expectation.

5.4 The scope expectation

The 'scope expectation' relates to what the client expects the practitioner to achieve on their behalf. This encapsulates both tax planning strategies and the

expectation, by some clients, that practitioners should be on their side at all costs and will be happy to 'bend the rules' to overlook identified errors, which may otherwise cost the client more in tax. Hence some participants reported, they are subject to the accusation that they work for HMRC rather than the client.

The 'scope expectation' for tax planning may be narrower than the client expects as a result of the practitioners' ethical obligations, and, this is discussed further, in light of the theoretical framework in Chapter 8. However, the 'scope' of a transaction may nevertheless be broadened by the tax practitioner, to obtain the 'bigger picture' about a proposed transaction. This is necessary to identify additional, unintended tax (and other) implications of a transaction which must be drawn to the attention of the client.

This section is subdivided into 'client tax planning' and 'scope for bending the rules'.

5.4.1 Client tax planning and a changed environment

.... I think clients come to you thinking the scope for planning is very wide...But in reality it's...very narrow. And it's about dispelling that myth ... I think the reality is, we've got little scope, a lot less than they think we have when they first come to us. **[FG5]**

The above quote indicates that there can be a mismatch between what the participant expects to achieve in respect of tax planning and what the client thinks can be achieved. As discussed in Section 5.3, whilst tax planning is part of the practitioner role, some clients may choose to ignore the advice provided. However, others may have the opposite perspective entirely and hope to access various tax saving initiatives, not all of which may be advisable. As **FG5** suggests the practitioner may then have to advise on what is and is not appropriate. Note – the participants generally termed what they saw to be 'acceptable tax saving' as 'tax planning' and the 'unacceptable tax saving' as 'tax avoidance'. This is how the distinction is made in the narrative which follows.

Some participants have clients approach them with tax saving ideas from the internet, or identified from media reports. One participant has a client who frequently asks if particular tax planning schemes (as identified by the client via the internet) are "doable". Another fielded calls from clients after the 'Jimmy Carr scandal'; not condemning what Jimmy Carr had done, but asking why their own tax practitioner had not advised them to do the same. Jimmy Carr (comedian)

had taken part in a tax scheme known as K2, in which earnings were sheltered from tax. He received much negative publicity. He described making a 'terrible error of judgment' at the time (BBC, 2012). Yet, the practitioner's clients wondered why they had not been offered the same opportunities. The practitioner explained they did not offer avoidance schemes of that nature. This raises wider issues about the influence of the press. Reports about this matter have, presumably unintentionally, acted as an advertisement for such schemes for those whose views do not align with the debates about tax morality and may indicate such taxpayers' "erosion...of respect for the tax system" as identified by Dzienkowski and Peroni (2016, p.2736). These taxpayers appear to fear they have 'lost out' somehow, and may question the legitimacy of the tax practitioner's expertise and query what service they are paying for. Here is a direct mismatch between expectation and action, and the practitioner's professional background and ethical stance is at odds with what the client wants, i.e. client preference does not align with that of the practitioner, an issue identified by Brody and Masselli (1996), Cloyd and Spilker (1999), Christensen (1992), Helleloid (1989) and Hite and McGill (1992).

There was acknowledgement amongst all participants that the tax planning environment is not the same as that a number of years ago. A couple of interviewees acknowledged that they had participated in 'tax avoidance' in the past. One referred to the sale of film schemes for a fee (see Chapter 2). Others say they have never been involved in any tax avoidance. Without exception, however, all participants said they do not themselves take part in artificial schemes or aggressive avoidance (i.e. what they now term 'tax avoidance'). Of course, it might be said that they may not say otherwise. Interestingly the general practitioners (**I/V20 and I/V21**) expressed doubt about the scope of their obligations to their clients. They had been approached in the past by various 'boutique' firms offering tax saving mechanisms. The practitioners were torn as to whether they were obliged to (rather than wanted to) mention these to clients who asked about more aggressive methods to save tax, although it was clear they would strongly advise against them. This dilemma seemed to have been triggered from attendance at a CPD course. The concern appeared to be whether they would not be acting in the client interest, if they did not pass on such information. There seemed to be a reverse type of ethical dilemma here, as the

practitioners were questioning their responsibilities to the client, along with the morality of “dodgy” schemes. Nevertheless, there is sensitivity around the tax avoidance issue and a keen awareness of the shift in society’s opinion of these matters as described in Chapter 2. A consequence of this shift however, is the concern of some participants, that the line as to what is, or is not, acceptable is not always clear and this caused angst as the following two participants articulate.

The political landscape is changing all the time.

I think the press help the government as they started using the words avoidance [legal] and evasion [illegal] in the same sentence and although the legal interpretation has not changed, I think the way people view it **morally** has changed so we just don’t get involved [in avoidance].

[I/V4]

And:

We are not aggressive advisers.... We do not promote tax avoidance schemes [but] I am concerned about the way it is going...

It has become, well, **morally** unacceptable to do any sort of tax avoidance, and well, verging on tax planning. I suppose there is a grey area. [I/V6]

Here, I/V4 mentions the political and media influence and a shift in language from what the practitioner was used to. There is thus a change in discourse which is discussed more fully in Chapter 8. Both participants refer to morality. This adds another dimension to the advice giving process. The wording of the law is one aspect which a practitioner must manage on behalf of clients, yet, the implication is that they must also manage a moral angle – so how does this impact upon the practitioner and tax practice? The participants realise the boundaries have shifted. This causes doubt and worry that tax planning may also be tainted with the same brush as tax avoidance schemes as observed by Fernie (2016) which may heighten sensitivities and uncertainties as identified by I/V6. That said the participants do not shy away from tax planning, as further discussed in Chapter 7.

The above refers to a *narrow* scope for tax planning, but, on the other hand the adviser may *broaden* the scope around what the client asks. This may mean a request for more information and a consequential increase in fees. The tax practitioner role involves looking forward, to anticipate future tax (or other business related) implications of the transaction currently planned, as I/V24 pointed out. For instance, if a business is being restructured, this might require

advice across a number of taxes. There may also be different ways to achieve the same commercial outcome which may nevertheless have different tax implications, some more costly than others (I/V24). Suggestions may be made as to how to achieve the most tax efficient outcome, but if there are uncertainties or likely challenge to the different alternatives these need to be borne in mind and discussed with the client to determine an agreed approach. The work required depends upon the circumstances. The client may think they have asked a simple tax question, only to find that this becomes a much larger project. Here the tax practitioners are proactive to ensure they protect the client from unexpected consequences. They may ensure costly tax 'traps' are avoided, or opportunities are taken in to account (for instance, do you want to take on employees, reward employees, retire, what will happen then? (I/V23/24), or what happens if the shareholders fall out; what happens to the shares of shareholders who leave? (I/V8)). Clients may well not have thought about these matters. This type of advice is inextricably bound up with tax planning. Participants described drawing on years of experience to identify what questions should be asked in what situation and it seems that their advice may extend out of the tax arena per se, hence they may play more of a business adviser role. For instance, the participants in this study have, amongst them, experience in the Big 4 and top 10 firms, from HMRC, from other organisations in general, as well as experience gained in their current roles on which they can draw. In sum, the practitioner may take on a role broader than that expected by the client. This close connection with the client is also characteristic of the smaller practitioner market.

5.4.2 How the practitioner manages the scope expectation - 'tax planning'

So how do participants determine what they are comfortable with? How do they decide? I/V4 adopts a 'risk scale', i.e., no tax planning and no risk at all at one end, shifting through various situations on the scale until tax avoidance starts to blur with tax evasion at the top end of the scale (which is similar to the findings of Fogarty and Jones, 2014). The practitioner is comfortable if clients remain at the bottom end of the risk scale, that is, at 3 or 4, perhaps less so at 6 or 7, and definitely not if at 9 or 10. (Interestingly HMRC, adopt similar strategies to profile taxpayers (see Freedman et al., 2009, for a discussion about companies and tax risk)). Additionally, the practitioner looks out for 'tax motive' (versus commercial motive) and is alert to indications as to whether planning falls under the

arrangements not palatable to HMRC, such as film schemes and employee benefit trusts (EBTs) (see Chapter 2) to help assess the risk of suggestions some of which may come from clients themselves. Low risk tax planning relates to business reliefs, pension planning, and the reliefs which a taxpayer is meant to claim in accordance with the intention behind the law which introduced them. Taxpayers however may not be aware of such reliefs without a practitioner's assistance, as discussed at Section 5.3.1 above. This is the field of tax planning in which many practitioners appear to feel most comfortable as illustrated in the comment below. Indeed, the participant describes appealing to the 'social conscience' of the client to deflect requests to partake in more aggressive types of tax avoidance:

We had one client ... who wanted to do some really aggressive stuff and I just said 'no' I am not going there – but there is no need – you know if you take advantage of pensions relief, R&D relief, patent box, capital allowances ... you are not going to do badly, you are going to pay a bit of something, and you drive round on the roads and use the hospitals, so you can forget paying nothing. So it is down to advisers to educate clients properly, and down to clients to listen. **[I/V22]**

Clues as to the practitioner's professional identity are observed here as the practitioner draws on past experiences, ethics and morality to encourage the client round to the practitioner's way of thinking. The practitioner is responding to the changed environment and is pulling on social conscience to legitimise this point of view. A specific choice of language, and a subtle reference to social obligations, are employed in this respect, rather than simply seeing matters in terms of financial (tax) savings alone.

The use of judgement and experience to manage expectations in terms of 'scope' is well illustrated by **I/V2**, the specialist tax adviser. Having worked in the specialist field for years, knowledge of what is and is not acceptable in that particular field in terms of tax planning and uncertain law, has been gained over time. This practitioner also referred to an in built mechanism about what she/he would be comfortable with. Other practitioners alluded to the same – again drawing on past experiences to determine their own comfort position.

I say [to the client] well, this is ambiguous, and if you lost there would be X amount of tax due...I don't even do those contentious claims... You sort of get a feeling 'hmm, I don't think that will work', so I am not going to do it. **[I/V2]**

Additionally, as part of the risk management role the interviewees revealed that frequently, the balance of probabilities is taken into account to weigh up whether planning transactions which involve uncertain law will be successful, or open to challenge as already discussed.

In summary, in today's environment, the evidence of the practitioners would suggest that if a client wants to undertake what the practitioner felt was unacceptable tax avoidance, or to adopt a tax position which the practitioner could not 'defend' or 'justify', (in terms of where the lines may blur, or legislation may be grey) then the client is told this is not appropriate, and it will not be pursued. Practitioners, as seen by the evidence in Chapter 7, are highly sensitive to this. The rules of the game (in the tax field), as they have known them, have changed. Permitted discourses in the field have changed and practitioners are sensitive to these changes. Without exception (and subject to the limitation that interviewees may not admit otherwise) interviewees said they wanted to feel comfortable with the advice provided. This appears to contradict Carnes et al. (1996), Cloyd and Spilker (1999), Kahle and White (2004), Reckers et al. (1991) and Tan (2011) in terms of bowing to client pressure. Of course, the background of the participants may impact upon the views they express. An individual is said to be affected by numerous influences (or "audiences" (Brouard, 2017)) which, taken together may affect one's beliefs and how one thinks and behaves in their work. Such influences may be former work experiences, former training, ones employing organisation, the ethical environments to which one has been exposed, or the professional body to which the individual belongs, and can include the views of the media, or society in general. These influences, or different loyalties (Alvesson et al., 2015) help shape one's moral and ethical outlook, which ultimately guides how the individual sees and conducts themselves as found by Alvesson et al. (2015), Caza and Creary (2016), Cooper and Robson (2006) and Grey (1998). The practitioner may consider their reputation for instance, or that of their employer which may limit their behaviour, but this may be bound up with the organisations approach (or professional body guidance) to an individual's ethical obligations or risk management matters. Such circumstances, along with former work experiences and professional training may have a bearing upon how the practitioner thinks and acts. In other words, the practitioners within this study suggest that they have the training, and disposition

to 'rein in' the client if necessary. They appear to be happy to tell the client 'how it is' in terms of tax payments or the availability of reliefs. That is, the practitioners indicated that they are aware of the scope of what is acceptable (in their view). These issues may be indicative of the professional identity of the practitioner as discussed in Chapter 3, as they may take 'cues' from their former training and experiences, and the ethos of the organisations in which they work, which guide how they behave and which guide them as to the acceptability, or otherwise of certain actions.

Hence it seems that the expectations of what the *client* wants to achieve are managed by the practitioner to ensure a revision of those expectations to a position that the *practitioner* is happy with (whilst taking account of the blurred lines between the acceptable and unacceptable tax planning; and in these cases a view must be taken). Overall however, the practitioners in this study do not seem to consider the clients wishes of great importance. If the practitioner is not comfortable, many participants advise that they will walk away. Many said their clients did not wish to push the boundaries too much in any case.

Nonetheless, it is acknowledged that aggressive tax planning schemes continue to exist as evidenced by the legislation designed to prevent such schemes, and as evidenced by the clients of the tax practitioners in this study; such ventures are easily found via internet searches, which shows a continuing market for such tax avoidance. Indeed, some practitioners had taken on new clients who, as it was diplomatically put, had "fallen out" [I/V10] with their aggressive tax planner (film schemes and EBTs were mentioned) and they were trying to unravel things/put things right for such clients. It may however be said of course that the participants in this study may choose not to highlight their own involvement in such schemes. Furthermore, had the pool of participants differed, there may be different views forthcoming. Whilst a couple of participants operate within a niche area of tax in this study, further interviews with a detailed focus on 'boutique' tax practitioners, or the non-professionally qualified tax market, or even the tax lawyer market, or those working for the 'Big 4' may yield additional different outlooks and opinions about this particular issue. It is not possible to say for certain, but this has been noted as a potential area for additional research in Section 9.4 as clearly all such opinions cannot be extrapolated to the entire market of tax practitioners. It should be recognised that much of the debate

around tax avoidance, discussed in Chapter 2, relates to global MNE's most often represented by the Big 4 or international tax lawyers who may be able to exploit the differences in international tax law, to the benefit of the MNE. The client base of the Big 4 is not the same as that of the smaller practitioner. It is possible that a MNE may wield greater power (perhaps threaten to change practitioner for example) over their desires to minimise their tax charge and are likely to be more aware of the tax avoidance schemes on offer, thus the relationship between such clients and their tax practitioner may differ to that described above. This may be explored in future research, as it may thus be easier for a smaller tax practitioner to resist client pressure (although it is clear from the evidence here that the internet plays an increasing role in publicising such schemes to many (and not just the larger company) taxpayers).

5.4.3 Scope for bending the rules (ethics and an unappreciated role)

Evidence obtained from the participants suggested that they are perceived, at times, to throw obstacles in the way of the client. That is, they are accused of both working for the revenue and, costing the client tax they did not expect to pay (which links into what the practitioner actually does, see Chapter 7 – as part of their role is prevention of errors, which is examined under their role as 'defender' of the client). Practitioners have ethical and moral obligations in this respect. The crux of the issue is the divergence from what the client may want (reduced tax bills) versus the practitioner's responsibilities under the terms of the law. Practitioners reported being the target of client frustrations, particularly if things turn out in ways the client had not expected, for instance, receiving a higher tax bill than anticipated, or tax problems arising with their business idea.

I/V16 felt that some clients 'blamed' them for tax rule changes advised to them in their capacity of channelling information to the client, which is a role identified by Brock and Russell (2015). It was felt necessary to explain that they are just the 'messenger' and were simply helping the client understand. **I/V19** described clients transferring their frustration to the practitioner, leaving them feeling like "*you are the bad person for bringing this to their attention.*" Clients wonder why changes occur, question the logic (**I/V11**), or wonder why practices that have been in existence for years have been unsettled (such as changes to taxation of dividends, which is particularly appropriate to the clients of the small practitioner as many owner-managed businesses will receive both a salary and dividends

from their own companies). Tran-Nam et al. (2016) identified that frequent changes to tax rules and regulations impact adversely on the client/practitioner relationship and consequently, clients may view their practitioner in a negative light, as described here.

The examples that follow give a flavour of how the practitioner stands their ground under pressure from the client and how expectations are managed. Here practitioners again illustrate they are aware of the ethical environment (as found by Fatemi et al., 2018) and that they are willing to go against client wishes if necessary (as also found by Tomasic and Pentony, 1991).

5.4.4 How the practitioner manages the scope expectation – ‘scope for bending the rules’

If in the course of looking at a taxpayer’s affairs, an error comes to light, then corrective action is taken (as discussed in Chapter 7 which explores the practitioner role). There can be a gap in expectation here. Clients may find themselves ‘sacked’ if they do not, for example, amend an incorrect tax return. Some may also expect that they can claim tax reliefs/claim expenditure against income in all circumstances. Practitioners will not do this if it is not acceptable. They report holding their ground. That is, one has to be rather “*stern*” (I/V16), as “*you cannot do it just to please them*” and it does seem to be the case that the practitioner will withstand pressure from the client “*I think no, it is not due, and I am not claiming it, so it is as simple as that*” (I/V1).

The following is an example of where the practitioner refuses to budge on an issue. A new client asked the practitioner to submit a claim for entrepreneur’s relief in respect of the sale of shares. Voting rights⁹ must be attached to the shares to claim the relief. This did not apply in this case and a claim could not be submitted.

I ... had to tell him [after discovering the shares did not carry voting rights] that he will not get ER.

[He said] Yes I should do,

[I said] yes but you did not have voting rights

⁹ To obtain entrepreneurs’ relief at the date of this interview, various conditions have to be met, which attach to the shares being sold – one of which is that the shares must carry voting rights.

[He said] well I should have had

[I said] but yes, but you did not

You do feel a bit...but still... You cannot do it just to please them if it is not right.... **[I/V18]**

The colleague of I/V18 then interjected

[They say] you sound like you are working for the HMRC! Really no I am not – I am still looking after your best interests. Sometimes it is really just that clear cut. **[I/V19]**

What can be seen here is the practitioner acting on behalf of both the client and HMRC. Chapter 7 describes this as the defender role.

The next section focuses on client expectations specifically linked to HMRC.

5.5 HMRC expectation

Some participants felt that shortcomings of HMRC (discussed further in Chapter 6) reflect badly on them. This affects the practitioner/client relationship and hence is briefly mentioned here too.

One practitioner relayed a story about a tax refund which was outstanding for months. HMRC regularly ‘fobbed off’ the practitioner who had to relay this information (the response was the same – call back in 4 weeks) to the (disbelieving) client. The practitioner felt that the client’s perception of them at this point was poor – when in reality, the practitioner had no control over the tax refund. It was also suggested that simple errors in PAYE codes (put right by the practitioner, but not actioned by HMRC) resulted in verbal abuse from clients. Additionally, one practitioner had notified HMRC that penalties, interest, and underpaid tax, was not actually due in respect of their client yet, it took weeks for this to be actioned. As the client continued to receive tax demands and reminders to pay, the client believed the practitioner had not dealt with this properly (**FG 3**).

These are all examples where the HMRC system is out of step with the practitioners’ work as discussed by Maas (2015). In private practice, time is money. The HMRC system runs at a far slower pace and this is discussed further in Chapter 6 and in Chapter 8 in light of discussions around the tax field and the Bourdieusian framework. Practitioners have no control over this, yet they must work with it. They have no choice.

Additionally, some participants observed that taxpayers appoint advisers because they do not want to deal with their own tax affairs. However, it is felt that HMRC have started to target the taxpayer directly in a number of instances (going outside the tripartite relationship) leaving some practitioners feeling a little sidelined. This appears symptomatic of new initiatives in the tax practitioner/tax authority relationship highlighted by Dabner (2012, 2015). This change is increasingly observed by the practitioners. This subtly shifts the relationship between the client and practitioner, and has created additional client management concerns. For instance, Making Tax Digital (MTD) is taxpayer focussed (see Chapter 6), as are 'personal tax accounts' which contain various online tax information in relation to each taxpayer. At the time of the interviews, the agent did not get right of access to the personal tax accounts of individuals, yet there is certain information therein that the practitioner might need (pension information was given as the example). This annoyed one client. He was unwilling to access his account for the information as he felt this is what he paid the practitioner for – he did not want to deal with his own tax compliance, which agrees with findings by Evans et al. (2014). (Things may now have changed regarding some rights of access in this respect). Further details on the tripartite relationship are included in Chapter 6.

The above are examples of changes in the rules of the game, that is, the former norm with which the participants were familiar has changed. HMRC has a large impact upon the world of the practitioner and the working environment between the practitioner and HMRC has changed considerably, as will be discussed in Chapter 6.

Finally, the practitioner may protect the client from HMRC error. For instance, one client would have overpaid £30,000 CGT without the practitioner's assistance, owing to wrong advice being given by HMRC over the telephone. The practitioner's knowledge in this particular example surpassed that of HMRC, which could be said to increase trust in and legitimacy of the practitioner as a provider of tax advice. This ties in to the 'knowledge gap' which practitioners identified as problematic in their dealings with HMRC (see Chapter 6). However, the authority of HMRC and its perceived power has an impact upon taxpayers, who believe it (the organisation) will not make mistakes, yet at times, as here, it can, and practitioners have to manage this on behalf of their clients.

The final expectation relates to the practitioner's fee. Surprisingly, many comments were made about fees and at times angst was evidenced, as will be seen. The working practices of HMRC also create problems in this respect too.

5.6 The fee expectation

The findings show that there is often difficulty in charging clients for anything other than routine work. This can be linked to the 'expert expectation' and the need to invest time and effort into 'invisible' research to answer the client's problem. That is the unseen use of practitioners' expertise. At the outset, it may not be known how long this may take, as the scope of the problem may only become clear once the work has commenced. The work practitioners do in relation to HMRC delays or error, also causes billing issues. There is a danger therefore that the client may be undercharged and dilemmas arise about how best to manage this.

Some try to scope out the work to the best of their ability (drawing on prior experience) to determine, for instance, which taxes come into play regarding the tax problem being investigated. As **IV22** pointed out, it is no good quoting for a piece of work, only to start it, and then realise there are, say inheritance tax (IHT) issues which had not been identified at the beginning (again symptomatic of the breadth of tax work of the smaller tax practitioner). The practitioner draws on past experiences to find a way to manage this aspect, and suggests that care must be taken to ensure:

we don't have any miscommunication with the client and we are clear on what the assignment looks like before we start. I think that is unusual, to be honest, but that is just years of having worked with people who have done a load of work and can't bill it. **[IV22]**

Other practitioners estimate a 'ball park' in terms of time it will take, then keep in close contact with the client if things are taking longer than thought, to manage their expectations about the likely fee. It is the case, however, that many write off time spent on research and charge it down to training, or alternatively 'bank it' somewhere. Then, if a similar problem comes up in the future, both time and a fee can be billed from the bank (this was observed by Fogarty and Jones, 2014 as a potential solution to this issue too). Others (**IV14**) think that agreeing a reasonable fee with the client is about the client having trust and confidence in the practitioner, which means that symbolic capital is important here.

Documentation, the output of the adviser is also used to help justify a fee. Additionally, some referred to 'getting better' at billing (drawing on past experiences to achieve this).

Some participants however choose not to bill for all the time taken to research a tax issue:

I/V1 explained that the first time something is looked at, one never bills everything and **I/V9** and **I/V12** were of a similar opinion.

Sometimes you are bit unsure of something; sometimes you get the answer straight away; sometimes it takes you longer to get the answer than you can reasonably charge the client. So you have to write some time off, but it all comes out in the wash.

...if you specified to someone that you were charging them for researching something they would not be very happy as they would expect you to have that competence and expertise anyway. It's not like that you present a fee for the work, which includes the numbers and the time spent relearning the rules if you need to. **[I/V 9]**

And

If I go over budget, generally for advisory, we have to suck it up, as we did not realise how much research you have to do and arguably if we had to do research because it is a training need, is that a cost we should be passing on anyway, as they come to us.....? **[I/V12]**

These comments are consistent with findings by Fogarty and Jones (2014), that a client is happy to pay for the answer, but not the time it takes to obtain the knowledge required to answer it. Perhaps there is an unwillingness on behalf of the practitioner to explain the extent (and time taken) of the research in case doubt is cast on their abilities, expertise or competence (as discussed at 5.3 above)? And there appears to be difficulty in distinguishing between research directly related to the tax problem, from that which just improves the technical ability of the practitioner (which could be possibly be more pronounced in the smaller practitioner environment) as found by McKerchar (2005).

Generally, the problem with the small practitioner market, is that many questions are ad-hoc and work must be undertaken to get to a 'standing start' in many instances. This effort may not be converted into a fee, as there is a clear perception on behalf of the practitioner that the client would not expect to pay for this aspect of the work. Indeed, Stringfellow et al. (2015), suggest smaller

accountancy practitioners work longer hours than they charge for as they are aware of the limits of their technical expertise, and the same appears to hold true here in the smaller tax practitioner context.

5.7 Management of colleagues and the impact upon the client relationship

Interestingly, the interviewees revealed that the ‘management of expectations’ is not solely client focussed. That is, they must also manage expectations of ‘non-tax’ colleagues. This impacts upon management of the client, as it is often the case that there is interaction between clients and other colleagues prior to the involvement of the tax practitioner. As Tomasic and Pentony (1991, p.294) found, a little knowledge in the hands of the non-tax specialist was described as “dangerous”. It is fair to say this feeling was reciprocated amongst a number of practitioners. Problems arise if the non-tax colleague misadvises the client (perhaps about an accounting transaction – purchase of own shares by a company was the common example - without appreciation of the tax consequences), or inadvertently withholds information from the tax practitioner, should its tax significance not be appreciated. Corrective action may ensue – and of course must be explained to clients. This illustrates tension with a similar, but distinct field, the accounting field, and its effects in the tax field. Here the tax practitioner’s capital (knowledge) is seen as superior to that of the accountant, and they have more power to ensure the original advice is adapted, but interestingly, sometimes, the accounting colleague chooses not to seek that superior advice in the first place (which would avoid these issues).

A perspective on this is given below. **I/V12** (a joint interviewee) found this situation challenging and exasperating;

I always say [I will only do that] if I can defend it, because it is my advice and [if] HMRC query it I have got to defend it! If I feel comfortable that I can defend it, I will send it out. If I can’t defend it - how possibly can I send it out? Because if HMRC enquire – oh – it is just because.... **[I/V12]**

I just picked that one. It sounded good. **[I/V13]**

I just went Eeny, meeny, miny, mo as I just went for this answer as I just could not decide which. That’s what I say a lot, especially to colleagues ... who say ‘can’t you just do this’? I will say I can’t defend that. I cannot turn round and give a valid reason why I have done that, so no I can’t. If you want to do that then fine and then you defend it! **[I/V12]**

This often elicits accusations that the tax colleague works for HMRC, yet provides evidence that the participant does not give into peer pressure.

Despite the above, the value of a tax practitioner's knowledge may be underplayed by their accounting colleagues. An example was given where an IHT report was asked for by a non-tax colleague. The report was produced, showing an IHT liability. The non-tax colleague had however not expected the tax team to bill the client for this work. The client was not happy either, particularly as they had not expected to see potential tax liabilities highlighted in the report, as they were just contemplating "*giving things away*" (IV12). Nevertheless, the report was seen by the tax team to be a specialist piece of work. This is not an isolated incident. In these instances, the specialist knowledge of the tax practitioner is undervalued and at times is not converted into fee income. This may be as a result of an interplay between the accounting and tax colleagues and who may have a closer relationship with clients, and of course – whether a fee has been discussed (see Section 5.6), or not, but this will nevertheless impact upon the earning capacity for the practice.

5.8 Summary

This chapter has addressed the research question "*how do smaller tax practitioners manage client relationships in a dynamic environment*" and attended to the following objectives:

- to gain insight into, and explore, the practitioners' views on their relationship with clients;
- to describe and understand the environment in which the practitioner works and in which the client/practitioner relationship operates;
- to explore how they manage this relationship

The practitioners' views on their client relationships have been explored which enabled identification of a number of 'client expectation gaps'. These gaps have been examined against the context of risk management. As highlighted throughout the Chapter, practitioners manage many different issues in the client/practitioner relationship such as complexity, breadth of tax regulation, understanding client circumstances (to provide tax planning advice) and ethical

issues which enable an understanding of the environment in which the client/practitioner relationship operates. It is clear that the smaller tax practitioner environment is multifaceted and clients are unlikely to appreciate the different issues the practitioner must address to provide the advice requested. That is, much of the practitioners' efforts may go unseen. There is a 'mismatch' of expectations, in terms of what the smaller practitioner knows and can do, and how quickly; the scope for tax planning, or turning a blind eye to errors; the impact of HMRC on the relationship; and the fees charged. The impact of non – tax colleagues upon the relationship is also examined.

The strategies used by practitioners to manage these gaps (and thus the client/practitioner relationship) are also explored.

The practitioner must balance management of both HMRC (and the slower speed at which it works) and the client. The impact of HMRC upon the practitioners' practice is explored in Chapter 6.

6 Findings – HMRC

6.1 Introduction

As discussed in Chapter 4 (at Section 4.8), three main themes became clear as the data was analysed. One of these, HMRC, relates to the second research objective. As the interviews progressed (and taking account of comments from the focus group) it became clear that HMRC as an organisation has a great impact upon the practitioners. New challenges have evidently arisen in the practitioner/HMRC relationship – challenges, which had not existed until relatively recently. This chapter therefore presents and examines the findings in relation to research question 2, “*How does the shifting relationship with HMRC impact upon the practices of tax practitioners?*” The objectives related to this Chapter are shown in Section 4.2 and are to explore, gain insight into and understand:

- the practitioners’ views on the relationship between themselves and HMRC;
- the environment in which the relationship is managed;
- The challenges and difficulties, as well as positive aspects of that relationship;
- The impact that management of this relationship has on the practice of the practitioner;

The chapter explores the shifting relationship with HMRC, and examines how it impacts upon practices of the practitioner – as viewed through the eyes of the practitioner.

The perception of the practitioners in the study is that they face challenges which arise from the restructure at HMRC, a reduction in HMRC resources and changes in HMRC attitude towards both practitioner and the taxpayer. Some practitioners felt perturbed about the relationship with HMRC, given their experiences of recent interactions with HMRC, and frustration was felt at times. Despite this some teams at HMRC were praised. This chapter explains the environment in which this relationship is managed, and highlights the challenges and impacts of the relationship upon the practitioner role. Positive aspects are also explored. The points arising were many, some of which are supported by evidence from the

Treasury Sub-Committee (2018) regarding the conduct of tax enquiries and resolution of tax disputes.

The themes arising from the data may be viewed as expectation gaps between what the practitioner desires (or expects), in terms of service from and the relationship with HMRC, and what they actually get. As will be seen these gaps increase uncertainty in the practitioners working environment, which requires careful management. Themes arising from the practitioners' experiences and stories are explored under the following headings:

- The relationship gap
- The trust gap
- The systems gap
- The knowledge gap
- Where the gaps narrow

Aspects of the above are interrelated with the management of client expectations (Chapter 5) as will be examined. For instance, the delays at HMRC as a result of system issues, or lack of resource, have the potential to cause problems in the client relationship. The chapter takes each of the gaps in turn, commencing with the relationship gap.

6.2 The relationship gap

The evidence confirms that those who have worked in the profession for many years have seen the structure of HMRC change beyond all recognition. This change (a forecast storm) was anticipated by Dabner (2012). This has had a huge impact on the relationship between HMRC and the participants in this study as the following suggests:

If you were to ask me what significant changes have taken place in the last 5-10 years, I think the biggest change is the Revenue reorganisation. This is one change which denies the practitioner the opportunity to talk to someone from the revenue and I think that is a really big issue.....in days gone by at least you could talk problems through, even if you came up against a blank wall
[I/V15]

Some participants remember the days when they knew the name of local tax inspectors, who at that time had a specific portfolio of taxpayers to look after, and with whom the practitioner spoke regularly. There was thus a personal, named contact within HMRC who was accessible to the practitioners, and what is clear

from the findings is that this was thought to be some sort of ‘proper’ relationship which as **I/V15** explains above, is now lost.

I/V23 was more specific:

[it was] quite an open framework and I think that framework has now gone. You probably do not know the person dealing with your clients...you have not got an ongoing relationship with them and actually the dynamic is very different to what it was before.

The participants noted that even written correspondence is now sent to a central point, rather than direct to a named person, so practitioners have little idea who is dealing with matters. The lack of contact described by **I/V15** above goes deeper than just having someone to whom they could pick up the telephone – there used to be a meaningful, working relationship, as suggested by **I/V23**. This relationship appeared, formerly, to be part of the normal working day for practitioners. Many lamented this loss of personal contact (and the help from HMRC staff that could be derived from this relationship). Many suggested that if they could alter anything, it would be to change the relationship back to how it used to be. The loss of this direct relationship was also observed by Keith Gordon, Barrister at Temple Tax Chambers who provided oral evidence to the Treasury Sub-Committee (2018, at question 52); also by Maas (2015) in his speech to the ICAEW Tax Faculty; and was also reported in HMRC research findings (2014b). The advantage of the former relationship was reassurance for the practitioner. Reassurance they could speak with someone who knew their client, knew the locality, knew and understood the workings of the client’s business, and who could provide help and assistance if required, i.e. a trusted individual who could be approached if needed. This has all but disappeared and **I/V4** even felt that HMRC had no idea who the practitioner was. This has had a profound effect on the relationship between HMRC and the practitioner, as will be seen below, resulting in increasing uncertainty in an already complex system.

A better relationship between HMRC and the practitioners was seen as necessary to ensure a seamless working relationship between HMRC, the practitioner and the client:

...we’re desperate to have a better relationship with the Revenue, we’re happy to correspond by email, we’re happy to phone them up. We’re happy to have a customer relationship manager [this was a HMRC member of staff, a point of contact for compliance for businesses to ensure

coherent customer management] because we know that would assist our relationship with the client, and make things work more smoothly....
[FG2]

Frustration was evident in this regard:

You can never get through to them, you can't get to speak to them, they have to ring you, you can't send emails, and explaining [that] to a client...you can't.....(*exasperated and lost for words*)
[IV14]

In general, there are perceived barriers which prevent access to any help at all beyond the initial telephone call, or getting past the 'receptionist', as it was described by **IV13**.

However, begrudging acceptance of the situation is also evident.

...we just can't get to that [better relationship] because the level of resources within the Revenue is insufficiently large or has insufficient expertise to allow us to do that.
[FG2]

What is described here (and acknowledged by this participant) is a huge organisational change that of course has implications for HMRC itself and yet impacts upon the practitioner's role immeasurably. The relationship that previously existed a number of years ago which meant practitioners were happy to converse with HMRC (to mutual benefit it seems – or certainly so in the eyes of the participants) has evaporated. Interestingly, the quotes above come from those without a former HMRC working relationship. As discussed in Section 5.3.1, some participants have HMRC experience and maintain contacts within the organisation, hence their experiences may differ, although they too may face challenges in the relationship given the changes in the organisation as is further discussed below. Additionally, of course, those with less experience may not even appreciate this former relationship existed, but those that do have seen a relationship that has been transformed and this has consequences. The 'trust gap' is one consequence, as is the 'knowledge gap', that is the "insufficient expertise" identified by **FG2**. Both these gaps are explored below.

6.3 The trust gap

The word "trust" featured a number of times in the findings, in the context of the practitioners' relationship with HMRC. Additionally, "mutual trust and respect" is a phrase in the taxpayers' charter, and interestingly also used by Maas (2015) who refers to it in the past tense when describing working practices with HMRC.

Bober (2012), De Cogan (2011) and Gracia and Oats (2012a) observe that if trust is damaged it can affect the relationship to such an extent that the operation of the tax system may be at risk. Trust between both parties is therefore extremely important in such a relationship.

The trust gap is split into various subsections, as different matters have diverse impacts upon trust in the relationship, these are; the unfriendly relationship; the impact of HMRC powers; and the impact of HMRC working practices, including both negative and positive impacts.

6.3.1 The unfriendly relationship – the antagonistic relationship with tax practitioners

Many participants made comments about how they thought HMRC perceived them. Opinion varied, but there was a distinct feeling among the majority that attitudes towards practitioners are not the same as in the past. The reason for this was thought to be related to the toughening stance of HMRC in respect of unacceptable tax avoidance, and the pressure to collect as much tax as possible, as described in the context to the practitioners' environment (Chapter 2). There was a feeling that they were seen in an unfavourable light (as also indicated by Addison and Mueller, 2015; Mazars, 2014) although, as discussed in Chapter 5, most said they had never been involved with unacceptable tax avoidance in any case. The responsibilities of the practitioner to their client and HMRC are explored further in Chapter 7, however, not all practitioners have partaken in the tax avoidance market and yet, many appear to feel the fallout from this reduction in trust in a number of ways which is consistent with comments by Gracia and Oats (2012a) and Mazars (2014). It seems that some feel 'tarred with the same brush' as the international tax lawyers, or Big 4 who have been in the media spotlight, despite serving a different market. Some participants clearly feel less comfortable in the tax practitioner role in the current environment, as will be discussed further in Chapter 7. Participants acknowledged the changed environment in which they work and that the rules of the game as they knew them are no longer valid as the following quotes show.

IV11 referred to more "*hostile*" relations with HMRC. The feeling was that HMRC now view the practitioner as an 'us and them sort of thing'. This interestingly contradicts HMRC publications which acknowledge the importance of tax

practitioners (Kantar Public research for HMRC, 2018). As discussed in Chapter 5 and the ‘HMRC expectation’ some felt that HMRC are increasingly side-lining the practitioner by targeting the taxpayer (client) directly. This therefore has consequences for the practitioner/client relationship. For instance, **I/V16 and I/V23** referred to a shift in how HMRC approach taxpayers who are represented by a practitioner. Letters which would, in the past, have come to the practitioner, are sent directly to the client with a copy to the practitioner. There is also a time lag before the practitioner obtains a copy, which was thought to be intentional. This therefore puts pressure on the client/practitioner relationship (**I/V 23**). The practitioner cannot forewarn their client of the contents of the letter, and this puts the practitioner on the ‘back foot’, as they may not be aware correspondence has been issued until the client calls them.

I/V23 explains:

The way that their letters are phrased - they are very abrupt, direct, aggressive and if you have not been able to talk to your client in advance and say actually this is on its way, take it as it is meant - it is formal, but we can deal with the questions behind it...that is a very different conversation to having one with the client who says I have received this today, [it] says I can be locked up, if I don't respond within 28 days and there is a massive list at the back, what does it mean?

I/V24 (colleague of I/V23) agreed:

Always very scary, human rights law, penalties telling you the worst, which is all very calculated from the revenue perspective – they have got very clever with their nudges and prompts and use of language.

The above illustrates changes in HMRC behaviour and leaves the practitioner feeling less in control of the client's situation. If what is said is correct, and the delay experienced by the practitioner in obtaining a copy of the client letter is intentional, this illustrates an example of the exercise of power by HMRC, as suggested by Gracia and Oats (2012a). HMRC has dominance over the practitioner's position within the tax field, as there is little they can do about it. The use of “nudges and prompts” and aggressive language as described by **I/V24** is also indicative of this, as highlighted by Lymer (2018) and McCleod (2013). This action and the wording of such correspondence makes the client uncomfortable and worried (indeed, as Clegg, 2021 observed, some taxpayers may feel “intimidated”). Practitioners described themselves as the buffer between the client and the revenue, and one role is to act as a ‘defender’ of the

client (see Chapter 7) and to protect them from HMRC (as observed by Brock and Russel, 2015) and this role becomes weakened in these instances. The client cannot be advised and reassured in advance of receiving the letter and these procedures were said to put a wedge between the client and practitioner. What is described is a change in practice by HMRC which has impact upon the practitioners' relationship with HMRC (and the client too).

IV23 views the above as an attempt by HMRC to operate “*outside*” the tripartite relationship, and liaise with the client directly rather than via the practitioner (as also observed by Dabner, 2012 who explores changing relationships between tax authorities and practitioners). But why such a change? Is this because trust in the practitioner has reduced? Practitioners have attracted ‘bad press’ in recent years and there is reduced trust in the tax profession in general (Addison and Mueller, 2015; Dzienkowski and Peroni, 2016; Mazars, 2014; Radcliffe et al., 2018) and consequently the tax practitioner working environment is changing (Chapter 2). The regulators (HMRC) response to the practitioner and taxpayer, as stakeholders in the field has changed. Possibly, in HMRC’s judgement, the role the practitioner has is questionable. The practitioner will want to help a client achieve an efficient tax position where possible, which may be at odds with HMRC’s objectives to increase tax revenue. Hence HMRC may begin to side-line the practitioner to communicate with taxpayers directly about a tax audit. May the client may be inclined to favour HMRC’s view about their tax position? Will they thus act in accordance with the ‘nudges’ within the correspondence they receive (Clegg, 2021), rather than engage with the advice from their practitioner? It may be that the client wishes to ‘settle’ quickly to remove the pressure they feel from HMRC, irrespective of whether HMRC have a case, or not. As per the discussion in Chapter 5, clients tend to believe those in authority (and hence this is indicative of power over the taxpayer). Here there is a power shift away from the practitioner to the revenue authority. This (along with the evidence of the APPG regarding the loan charge) brings into question the power of such authorities.

There is also evidence of a change in practice in how tax audits may be resolved. **FG5**, whilst reminiscing about the past, refers to the loss of the pragmatic HMRC view which enabled an agreed resolution of disputed tax questions (although there are instances that this still exists as discussed at Section 6.3.4). Each party,

in the past, felt they had trust in the other to settle certain issues as Maas (2015) also highlights. For example, if both HMRC and the practitioner were of the view that there could be protracted negotiations ahead, then the commercial effect would be considered, so you could:

cut to the chase...you would both be sensible and you would say, well, it's going to take a long time to do it this way, let's just shake hands on it...but because they have all become entrenched in their little bit, you don't get that anymore. **[FG5]**

Today, there appears to be less chance of such negotiation, and instead a 'digging in of the heels' on the part of HMRC. A negotiator role (see Chapter 7) was one which the practitioner saw as part of their remit, yet the new rules of the game within the tax field, and particularly in the relationship between HMRC and the tax practitioner, may weaken this. **I/V15** described HMRC as having a "*pre-determined view*" or "*their minds are fairly fixed*" and hence found HMRC unwilling to be pragmatic and draw a conclusion to matters with mutual agreement. **I/V19** comments were similar, describing "*preconceived ideas and they will not be persuaded otherwise*". **I/V25** described some inspectors as "*not wanting to budge*", or not "*having it any other way*", and they were not prepared to listen to the practitioner. These comments derive from practitioners who have a variety of experience, **I/V15** in particular has many years of experience and acts as adviser to other practitioners. These experiences are very similar to that outlined by Gordon in the evidence provided to the Treasury Sub-Committee (2018, question 34) and the views expressed by Maas (2015) as discussed in Chapter 3 – that HMRC "*knows best*". The flexibility remarked upon by participants in Hasseldine, et al's. (2011) study appears to have diminished. It may be that such interventions would require use of discretion, which, HMRC no longer wish to exercise (according to Dabner, 2012, 2015). If negotiation is not possible the practitioner has to decide whether to try the Alternative Dispute Resolution (ADR)¹⁰ mechanism. However, it was noted that the ADR is not available in some cases (if the disagreement is about penalties and interest), and that the only solution would be to take the disagreement in such cases to a tribunal. **I/V15**

¹⁰ This is explained as follows: "ADR involves an HMRC officer trained in mediation skills and techniques who acts as neutral third party without forming a view on who is right or wrong. As the mediator they'll help you [the taxpayer] and the HMRC officer resolve a dispute together." HMRC (n.d), Alternative Dispute Resolution, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866631/CCFS21_English.pdf

suggested that this may not be an easy solution for some practitioners or taxpayers, as they may not feel comfortable putting a case together – that is they may lack experience, and some may not wish to go through the process (and cost may also be an issue). Additionally, Gordon’s evidence to the Treasury Sub-Committee, (2018) suggests that some cases may be pursued by HMRC and pushed to tribunal even when the practitioner views they have little chance of winning. There may be a resource issue here in that the smaller practitioner may not have the experience or time or budget to see a case through to tribunal, even if the taxpayer is willing to pursue this. Outside assistance may be required, whereas larger firms may have in house experience and support to facilitate such matters. Many factors may come into play however, as the amount of tax at stake is likely to be a fundamental issue, as well as the nature of the client and their appetite to challenge HMRC’s opinion. The smaller business client or individual may be less willing to enter into such challenges, than perhaps larger MNEs, or more wealthy individuals who are more likely to be represented by a Big 4 firm for instance.

Furthermore, some practitioners referred to “*weak*” arguments raised by inspectors in recent audits into taxpayers’ returns (although **IV2** recognised this was an attempt to protect the “UK tax net”, as inspectors will be under pressure to bring in increased revenue). Examples were provided of those considered unusual including disagreements over warranty provisions, and disputes about a car benefit in kind calculation. Very often the tax at stake is not large, and although the practitioner has a robust position (or feel they do), the practitioner will agree to ‘settle’ the case rather than run up large fees. The fact that this occurs is further illustrative of the power (or capital) of HMRC. Gracia and Oats (2012a, p.314) suggested that “interpretations of texts” may be manipulated by those with power “in order to regularise and control practice consistent with its interpretations” – could this be what is happening here? Is HMRC using the vague and indeterminate language of the law to its advantage? Or is it a case of tax inspectors (or practitioners) misunderstanding matters? It is up to the practitioner to deal with these issues on behalf of the client. If the position is settled to save aggravation and rising practitioner fees, this does beg the question of how much tax is paid which is not actually due (which resonates with comments by Maas 2015).

Many comments were made about how HMRC used to be tasked with collecting the *right* amount of tax (that is as opposed to the maximum amount of tax). As **I/V5**, a former HMRC inspector, says:

... we were always told in the revenue, your job is to get the tax position right, not as a lot of people assume, get the maximum amount of tax, but to get the right amount of tax.

However, the thought today is that there has been a paradigm shift – and now the maximum amount of tax is what inspectors seek to collect. The above comments may illustrate this position.

I/V19 also held this opinion, yet remarked

taxpayers **really are** allowed to arrange their affairs, so they **don't** have to pay the maximum amount of tax”

and suggested that an unrepresented taxpayer may not manage to do this, as

I think they [HMRC] would look out for maximising tax [of the unrepresented taxpayer] – that is my perception.

I/V24 also felt that

The revenue has shifted - where they would have had an open mind...now they come at things from how they get to the position where it is the most tax....

Additionally, **I/V25** described HMRC as:

“...less understanding now. They [say] *this is what it is!* There is ‘so much tax to collect’ and they are having it! I don’t think they see it from the taxpayer’s perspective much anymore...before they did...they had that relationship with you and they knew you were not trying to pull a fast one.

HMRC was described as “*aggressive*” in their approach to anti-avoidance and employment taxes by **I/V22**, who also advised that there is a need to “*protect clients*” from these situations, as also identified by the APPG regarding the loan charge. **I/V22** further commented that:

...I think they are out of order quite a lot and they are just trying to bully people into sticking their hands up for stuff which is not actually true, or pushing them into settlements and things like that, so they are a bit aggressive at the top end...having said that...most people in the revenue are trying their best to do a good job, but there are not enough of them.

There are a number of issues which are apparent from the quotes above. The practitioner uses the term ‘bully’; Maas (2015) says the same. There is a

suggestion that today there is far less understanding of the taxpayer's position. Similar could be said of the discussion around the loan charge as discussed in Chapter 2. Some may suggest taxpayers should have had their eyes open to the effect of how they were remunerated and therefore HMRC are right in their approach to chase underpayments and yet, others would disagree. The above is not about the loan charge per se, but one can see similarities as there has been a change in the attitude towards taxpayers (as well as practitioners). Gracia and Oats (2012a) also suggest an increasing aggression towards taxpayers. The practitioner's role of facilitator (see Chapter 7) is made difficult, as HMRC appear obstructive, and can draw on their position and power within the tax field to be so. The loss of the mutually beneficial relationship is mentioned yet again by **I/V25**. There are many issues here and there is an impact on the trust between the practitioner and HMRC, and vice versa, and this has created a much changed relationship for the practitioner to manage.

6.3.2 Impact of HMRC powers

As suggested above, there are reports that HMRC lack of understanding of the situations in which clients find themselves. Regulatory practice has impact upon society and consequently lives. Regulators, should be disinterested (Gracia and Oats, 2012a, referring to Bourdieu), but the practitioners recognise that taxpayers are human beings and may expect some sort of empathy or understanding of their situations. **I/V10** recalls a situation where HMRC were told that their client (a new client who had approached them to help them unravel participation in a tax avoidance scheme) would pay an Advanced Payment Notice (tax to be paid prior to the determination of a tax avoidance case), on the receipt of funds from the sale of a property. This could be proven, and yet no account was taken of this explanation, instead, the client was taken to court. This situation elicited the following comment:

It is that sort of intransigent, dogmatic... [attitude]...which is what we are facing more and more and every day with HMRC. It is as they are gradually being given more powers and more freedom, aren't they? Effectively? And with that power [it] is going to their head a little bit. **[I/V10]**

The same practitioner described this as “*disconcerting*” and “...*it does feel like you are dealing with a very sort of Orwellian State, and it did not used to be*”.

Reference is made here to the wider powers HMRC have attained in recent years. The practitioner's appeal to HMRC to wait for the funds was ignored. The impact of this approach on this particular practitioner's opinion of HMRC is clear to see. The practitioner suggested that some taxpayers had found themselves in very difficult circumstances, given a change in the approach of HMRC towards film schemes and EBTs and similar (see Chapter 2). The question was asked why HMRC had not given 'health warnings' much sooner. Film schemes in particular were, it was suggested, viewed as investment opportunities when first developed, yet the narrative, over a long period of time has changed immeasurably, resulting in the consequences described above. The practitioner observed that these issues affect many taxpayers, and not just the "ultra-wealthy".

This particular practitioner has come to expect trouble, difficulties, and poor relationships in general with HMRC. Trust between both parties has been seriously weakened. This may not be as a result of this particular incidence alone, but is likely to be a combination of many of the examples given. Indeed, Dzienkowski and Peroni (2016) suggest that if the tax return system is adversarial in anyway, this may affect one's attitude towards it.

Perhaps, in acknowledgement of all these 'shifts' in attitude and changes in the taxpayer's environment, there does appear to be a softening of the attitude of the tax tribunals (the first 'court' stage of resolving disagreements with HMRC) towards taxpayers.

....at the revenue level they continue to write out and deny the taxpayer any rights. At the tribunal level the tribunal is now much more willing to look at the circumstances **[I/V15]**

This appears to suggest that the tribunals are taking more account of the taxpayer circumstances than HMRC initially do. The practitioner referred to imbalance in the rights between HMRC and the client. S/he suggests these matters now appear to be acknowledged via the tribunal system, and that taxpayers are seen in a more sympathetic light. Perhaps in a simplistic sense one could see this as an attempt to address the power balance away from HMRC. But, as mentioned, not everyone is able (has the skills or the time or expertise) or is willing to take a case to a tribunal (Gracia and Oats, 2012a) which may preclude some taxpayers from accessing this type of resolution and hence they may be disadvantaged in this respect.

6.3.3 The impact of HMRC working practices

The frustration caused by the 'generalist' (i.e. not specialist - see below) expertise of HMRC was evident, although some participants were more concerned than others. The following exchange, which takes place between **IV10** and **IV11** (an interview undertaken jointly) illustrates clear frustration with the 'general' sections of HMRC, although a specialist team is defended. The exchange below came in answer to the researcher asking what the practitioner thinks makes their job difficult:

[IV10] HMRC. HMRC without any question. The intransigence, the incompetence, and the downright 'you can't speak to anybody who knows anything' and that has changed so much in my career. It used to be that you could phone somebody who knew what they were talking about and you could have a sensible discussion. The more computerised they have become, the more frustrating and the more time consuming. It is time you cannot recover from clients and I would say that that is the biggest single issue that we have got. They are utterly incompetent. And the time we spend trying to sort out and work around their systems, which is irrecoverable. To me - HMRC is the biggest challenge we face.

[IV11] I would actually not agree with that

[IV10] That's because you don't do much compliance

[IV11] Well, I oversee it and I am in the same room as everyone who deals with the compliance but the compliance is with HMRC xxx team on the whole

[IV10] Ah OK.

[IV11] They are the people which you can get some common sense from. They are an office. So from my perspective they are not the biggest barrier for me, they do make mistakes and they do mess up, and can be a bit, you know, stupid at times, but on the whole I think they are one of the better quality offices.

[IV10] I would agree. I think if you have specific dedicated officers, so if one of ours goes to the high net wealth unit - thank goodness - because you can actually speak to somebody who knows what they are talking about.

It's the general modge (sic) that just sits in the post that gets moved from one office to another and no one knows what is going on

But it's looking for a needle in a hay stack. The majority of the time you are dealing with people who patently have no idea what they are talking about...

This illustrates a feeling of frustration. **IV10** also used the word '*shambolic*' to describe her/his view of organisation and practice at HMRC. The practitioner

cannot get on with what they believe is the work they are paid to do. Some work they cannot bill, frustrating their ability to convert their knowledge into fee income. The work the practitioner does is in an administrative capacity. Time is spent sorting out/chasing up issues with HMRC on behalf of the client. The practitioner believes they have better knowledge than the generalist members of staff in HMRC, and frustration with this is evident. Having said this, those within HMRC who are well trained, with specialist knowledge are defended. This was a common observation amongst many participants. Such individuals are seen as a genuine source of assistance for the practitioner, as they can continue to draw on their expertise to help manage uncertainties in their role. In other words, these individuals provide an additional source of assistance to the practitioner, and this discussed further 6.3.4. The team with which **I/V11** frequently works is clearly trusted, but there is a lack of trust between **I/V10** and the 'general' HMRC team that they will be able to get things right or be helpful towards the practitioner.

6.3.4 The positives

Nevertheless, not all examples of the interaction with tax practitioners were negative. The employer compliance teams were singled out in particular for continuing to have "*conversation*" with the practitioner and the taxpayer (**I/V19**), which interestingly contrasts with the perspective of **I/V22**, who described these as "*aggressive*" at times. **I/V12** spoke highly of the VAT teams who, it was explained, try to adopt a helpful approach to the taxpayer, in the interests of getting the VAT position correct. **I/V24** referred to a pragmatic, helpful inspector, who looked at the overall picture and client circumstances during a tax audit to bring the case to a resolution. The inspector was willing to be flexible around the tax issues being discussed. It was however noted by **I/V24** that it had taken 2 or 3 years, and 3 or 4 inspectors, to get to that point. It was evident too, that not all inspectors are the same. Some are more open to negotiation than others, but in general, there appears to be less willingness to discuss matters than in the past, which has implications for the taxpayer/tax practitioner/HMRC relationship as discussed. This would suggest different practitioners may have different experiences with the same teams at HMRC. The type of experience may be down to the different individual attitude of both practitioner and revenue staff. In other words, tax practice in this sense may depend upon the "people, organisations, time and place" (Grenfell, 2014, p.223) depending upon the

context in which this occurs (Webb et al., 2002) and hence is an example of relational practice.

6.4 The systems gap

Many participants mentioned 'delays' at HMRC, some of which may be related to the systems within the organisation. Delays and errors at HMRC have a severe impact upon the practitioner/client relationship as discussed at Chapter 5.

6.4.1 Delays

Various examples of delays at HMRC were given. **I/V16** said that HMRC had told them there was a delay (at the time of the interview in 2018) of 10 weeks for post to be opened, i.e. not actioned, which takes even longer. **I/V11** had a case of a repayment claim being outstanding over 18 months. **I/V14** referred to delays dealing with appeals against assessments. **I/V2** said the team that deals with most of the firm's clients should take 28 days to action what is sent, yet at the time of the interview in 2018, this took 6 months per client. Additionally, an enquiry, which in the opinion of **I/V2**, had no reason not to be closed, had taken over 2 years to deal with, and was still not officially finalised. In this case the taxpayer was owed thousands of pounds. The practitioner pointed out that this was money due to the taxpayer, which could well affect their day to day living, as they were not wealthy. **I/V24** referred to an enquiry in which months had gone by, and s/he suspected that information provided to HMRC had "*dropped off the face of the earth*" between different HMRC departments. Interestingly, the facility to contact HMRC via email is only just becoming available, although as the ICAEW (2021) suggest there continues to be no general email facility (although email can be used, in certain forms, for certain types of transaction). **FG2** referred to one inspector who corresponded via email, which in 2015, at the date of the focus group, was not (surprisingly) the norm, and the other participants spoke wistfully of how they would appreciate the same (and such a desire was noted in research undertaken by HMRC, 2014b).

If a practitioner requires assistance, the call now goes to a 'call centre'. Often the call handler is unable to answer an enquiry, and suggests a call back by another individual, which can take 2 or 3 days to occur. This was found frustrating by many, and one participant described waiting 40 minutes for the call to be answered in the first place (**I/V6**), even if calling the agent helpline (a telephone

line set up by HMRC for agents only, the idea being that there is quicker access to assistance for practitioners using this helpline, as per the agent strategy as discussed at Chapter 2). Nevertheless, **I/V9** and **I/V20** thought that delays were getting shorter and the system was getting better.

It is clear that the pace at which HMRC works, is not the pace at which professional practice should or would like to work. In professional practice, time is money as indicated in Chapter 5. The cost created by delay is time that is difficult (or impossible) to bill and it has an effect on the time that could be spent on 'chargeable' work for other clients. There is a clear mismatch in how the two systems 'sit' and yet, the relationship is one which must be maintained. Matters such as those described above create the feeling that the value of time at HMRC is not important as Maas (2015) suggests. And yet for a practitioner, time is key to how they bill their clients and they need to work in an efficient manner.

Many interviewees highlighted the problems a slower system causes with clients, and how this can put strain on the relationship. The following exchange illustrates the frustration when chasing a repayment of tax (time after time after time):

I/V10 And you can just tell from the client's voice when you phone them and say....

I/V11 That strain

I/V10 that sort of - Do I believe you, don't I believe you? Have you just been sat doing nothing? And I say there is nothing I can do as it is in their pile of post and until they process that post, phoning them doesn't actually do anything. You can just hear in their voice that they think that you can't be bothered to do it, or bothered to chase it up.

The clients mentioned here thus question the expertise of the practitioner and hence their legitimacy. They do not know whether to continue to trust the practitioner. This creates additional work, a problem with fees and impacts upon the role of facilitator (i.e. helping to ensure taxpayers have good interaction with the tax system) as discussed in Chapter 7. Again, there is little the practitioner can do about the bureaucratic shortcomings at HMRC other than to manage this in the best way possible, to keep their clients informed, and to maintain their trust.

Additionally, **I/V14** commented:

You are in the firing line from the client, although they do tend to understand now, but it is letting them know that most of the people at the revenue are just admin people as they cannot answer questions.

This is quite a telling comment. Expertise is no longer expected, rather those answering the telephones are seen just to represent an administrative, rather than expert, function. That is, the practitioner's knowledge is again seen as superior, and the practitioner advises the clients as such, to protect their legitimacy in the client's eyes and to preserve the trust in that relationship.

Delays cause resentment and frustration. Yet further resentment arises about HMRC information requests. Practitioners are required to send information within 30 days of the date (not receipt) of the letter. Many pointed out that when the letter arrives, some days after it was written, this cuts down their time to comply with such instruction immensely. If they do not send what is needed when asked, they are subject to various actions, and so the practitioners nevertheless comply. This situation prompts the practitioner to further question the authority and power of HMRC. More than one practitioner raised this disparity in deadline time limits as unfair and "*ridiculous*", and there was temptation to ignore the deadlines, and take the same length of time to respond as HMRC take, in turn, to respond to the practitioners. There was clear annoyance that the rules which apply to the practitioner did not apply to HMRC, but again, practitioners take note of HMRC powers; they have no alternative but to comply. These comments can be compared to those of Maas (2015) who had similar experiences and feelings.

This is also highlighted by **I/V19**:

Yes, it is ridiculous, you know we have to wait and wait and wait for replies, yet when it is on the other foot, you have to jump about then getting information together, getting valuations done, and whatever they request....

6.4.2 Errors

HMRC errors featured in the discussions. Errors in letters (**I/V6**), erroneous penalty and interest claims (**FG4**), erroneous advice, repeated errors in PAYE codes (**I/V25**), and so on. As explained in Section 5.5 about management of client expectations, clients may not believe HMRC can get things wrong, and may automatically assume what is said, or the amount of tax demanded to be correct. Part of the practitioners' role is to check things on behalf of clients, in their defender role (see Chapter 7). Some errors were thought to result from technical

incompetence and lack of training. Such errors were described as “*irritating*” (I/V22). I/V10 was lost for words when trying to explain the amount of time spent sorting out the “*messes*” that HMRC were making on an almost daily basis. This clearly had changed the nature of the practitioner’s job. Compliance was not an issue in the “*old days*”, but today, there are lots of problems as “*you are dealing with systems that don’t work*”. The issues practitioners highlight here are related to what is felt to be inferior capital in HMRC, in terms of their poor knowledge and poor resources; which practitioners nevertheless, sympathetically acknowledge is difficult for the staff within that organisation to deal with. Ultimately, it is the practitioner who has to manage this on behalf of the clients they represent.

Some of the errors, practitioners suggested, were linked to the computerisation of systems, and the lack of human input (in exercising knowledge and judgement) to consider whether what was being sent to the taxpayer was correct, with “*tax codes and stuff ... just done by the computer and just churned out...but could just be a load of nonsense*” (I/V6). Numerous errors in tax codes were mentioned and I/V10 described them as landing like “*confetti*” on the taxpayers’ doorsteps, as often one code after another is sent to the same taxpayer. Practitioners may be well versed in correcting errors in tax codes on behalf of taxpayers, but it begs the question about those who are unrepresented (and take at face value what has been issued). Practitioners may try to get the code corrected, but the correction may then not be actioned on a timely basis (further delay problems) or further errors may ensue. Whilst this may seem a small issue in the scheme of things, such a simple matter can take on huge significance when clients get annoyed, and the practitioner is in the firing line (I/V10) for the taxpayers’ frustrations. This is further evidence of the mismatch between the speeds at which private practice and HMRC operate and the reference to computer “nonsense” relates to problems with digitalisation. There are penalties for taxpayer error and mistake, but no reciprocal system for the organisation (see Cave, 2020, citing Cullinane in this respect). This creates resentment and puts further pressure on the trust in the relationship.

6.4.3 Increasing digitalisation

Practitioner frustration when asking for help at HMRC was evident. More than one practitioner used the phrase “*computer says no!*” when clearly the practitioner thought the answer should be otherwise.

More “*human contact*” was desired by **I/V5**, having found it difficult to obtain any help at all regarding a particular tax issue, given the closure of enquiry offices. **I/V5** felt sorry for those taxpayers who do not have any professional representation. Interestingly, **I/V5** (who has former HMRC experience) mused that HMRC appear, today, to not want practitioners to act for taxpayers (given the negative publicity they have received in recent years) and yet - the face to face help required from HMRC is no longer there for those with no representation. Face to face contact has been replaced by telephone helplines, yet, these too come in for criticism from both the agent’s perspective (as discussed above) and the taxpayer’s perspective (**I/V14** referred to a taxpayer who had spent 2 hours trying to provide HMRC with bank details). Some may say that in the internet age, the HMRC webpages are there to help, which of course they are, and yet this form of assistance was also criticised by some practitioners, but not all, as seen below.

Interestingly, the general practitioners **I/V9**, **I/V20/21** (joint interviewees) were happy *not* to interact with HMRC in a personal capacity. **I/V20/21** used what they described as helpful resources from HMRC webpages where possible. These included webinars and access via an “agent portal” to allow them to work remotely, thus reducing the need for direct contact with HMRC. These type of resources were praised. Interestingly however, as discussed below at 6.5.2, these practitioners also doubted the value of using HMRC helplines – which may have a bearing on their views. Additionally, perhaps the nature of their roles allows more limited contact with HMRC. General practitioners may come across less complex matters which do not require as much HMRC contact, which may allow them to keep the physical relationship with HMRC at arm’s length.

Some participants also questioned whether HMRC’s systems would cope with new Making Tax Digital (MTD) systems (see Chapter 2). Given other experiences (a new HMRC reporting system for trusts was mentioned) practitioners were worried about this. One practitioner noted “*set back after set back*” and “*zero support*” for the (at the time) recently introduced trust reporting system. HMRC staff were not blamed here, rather the decision to introduce a new system, possibly too early for it to work properly was the issue – leaving both the practitioner and HMRC staff in the dark about how it should work and how to resolve the problems with it.

Some practitioners felt MTD had been rushed in, only for this to be then followed by a delay (see Chapter 2) which has a big impact on practitioners' planning. The implication here is that the economic consequences of action (or inaction) in one field (here HMRC or the wider political or parliamentary fields and the decisions made within them) are not considered on others affected by decisions or changes, in this instance practitioners, specifically in the tax field. One organisation had been planning forward, reducing staff numbers, and buying [software] licences to prepare for the introduction of MTD, only for the implementation of it to then be delayed. This created unexpected costs and staffing issues. As explained

I think for a firm like ours the lack of clarity or certainty from HMRC [causes many problems] - we all go rushing off down that path, suddenly we stop there, screech to a halt and all go rushing off down that one!

The principle of MTD itself was not seen to be an issue, but the method of bringing in the changes and the readiness, or otherwise, of HMRC and its systems was criticised.

Some observed lack of HMRC engagement with taxpayers about MTD in general. **I/V20** and **I/V21** felt that it was down to them to educate taxpayers, rather than HMRC. Other firms were offering open evenings to explain it. This is illustrative of the role the practitioner plays in acting as a 'conduit' of information between HMRC and the taxpayer (Brock and Russell, 2015), in other words, translating into simple terms the action which will be needed to keep the tax system running in the new desired format. ICAEW (2020c) highlighted that poor knowledge and poor communications from HMRC were amongst a number of issues behind non-compliance, hence the feelings of **I/V20** and **I/V21** appear to be correct here. These roles may be similar to those described by Tomasic and Pentony (1991), as being tantamount to unpaid employees of the tax authority— that is the practitioners work on behalf of the tax authority to advise and educate taxpayers of upcoming changes to the tax system.

Practitioners need HMRC systems to work to provide the facilitator role as discussed in Chapter 7. Without this, problems are created for client work and impact upon fees. Nevertheless, having said the above, it was acknowledged by **I/V10** and **I/V11** (joint interviewees), that the people behind the design of HMRC systems share the frustrations of those who have to use those systems. These

participants also recognised that there are bound to be problems in such a “massive” organisation. These observations came from the participants’ attendance at an event hosted by HMRC, hence the event enabled the practitioners to see the human face (particularly of the “techy guys” [I/V11]) behind HMRC:

[That] was a day when they wanted to consult with people like us [the practitioners] and you know they were great, fantastic people - you really felt like they were taking on board what you were saying. They acknowledged the failings of the system, but they were going to do their best. You almost have to remind yourself that these are the people that make up HMRC. [I/V10]

What the participant describes is an example of engagement between HMRC and practitioners, perhaps as part of the agent strategy, as discussed in Chapter 2. If nothing else, it appears that the meeting improved understanding between both parties and reinforced that fact that people make up the organisation HMRC, which enables increased understanding and empathy between the attendees and HMRC as an organisation. The participant appears almost surprised that attendance at the meeting had been so positive, and beneficial, having expressed that s/he was not sure what to expect. The participant’s opinion towards HMRC as an organisation in this respect (the systems issues) seemed to soften somewhat.

As this section explores the practitioners’ view of HMRC systems, it is appropriate to mention changes (as observed by the practitioners) to HMRC webpages. This was touched upon in Section 5.5 about clients’ expectations of HMRC.

The website comes in for mixed reviews, with some interviewees (1,2,6,7) feeling that it has been dumbed down to such an extent that it is not helpful to the taxpayer, and that it is far too basic, or “vague” (I/V12), even being described as “awful” (I/V22). The language on the main website pages (i.e. as being distinct from language say in HMRC manuals, which are not readily apparent to basic users of the website) comes in for criticism, as being too simple. The ‘landing page’ about whatever the person is searching is felt by some to be far too simplistic, and the concern expressed was whether a taxpayer trying to help themselves and do the right thing, would know that. Practitioners realise there is ‘more to it’, and will know where to look to ascertain the details and more comprehensive rules, but some felt that there are not sufficient links to enable a

taxpayer to look further into issues without having more knowledge about the subject themselves. Having tried to locate a tax regulation from HMRC's webpages, to reference material in Chapter 2 of this thesis, the researcher found the same. There were no links to such information from the landing page. As **I/V6** said "*You can't make something very complicated simple by putting simple guidance on the revenue website....it is a minefield*". Other observations included:

If you are a taxpayer genuinely trying your best and if you need to get some clarity on something quick to make a business decision ... it would take you a week and then they would be none the wiser - and that is where we come in. **[I/V22]**

Given the suggested attempt to weaken the relationship between the practitioner and the client, one would expect information in a form to encourage or enable taxpayers to undertake some of their own tax obligations, would be available. HMRC webpages will be an obvious source of assistance – but there are weaknesses as described above. Victoria Todd also criticised the simplicity of the webpages, and suggested that this can create problems for the taxpayer, during the provision of evidence to the Treasury Sub-Committee (2018, paragraph 68). She stated:

Even the simple information is in parts misleading; in parts it is wrong...It has impacts for HMRC...How can people meet their obligations if they do not have the information they need to do that?

The role of the adviser is examined further in Chapter 7, but here, the value of the knowledge of the practitioner is again illustrated. The suggestion is that it will be more beneficial for taxpayers to use the services of the practitioner to attain the correct tax position and fulfil their tax obligations, rather than 'go it alone', even if relying upon HMRC official webpages. Of course, clients pay a fee for doing so, so it may be questioned whether the participants would say anything otherwise. Additionally, of course, the complexity of the tax system creates work for the tax practitioner. Nevertheless, some taxpayers may not be able to pay for representation. Examination of how an unrepresented taxpayer fulfils their tax obligations is another avenue for future exploration.

It is also of note that information on the HMRC webpages is not trusted by some practitioners, and they check information from it with other sources. Nevertheless, some think the HMRC materials are reasonably helpful, and

provide useful information for the taxpayer and themselves. Many find them easy to use. But all are aware that they can find additional information via other less visible pages on the HMRC website (whether they rely on HMRC information is a different matter) which may not be within the reach of the ordinary taxpayer. Additionally, practitioners have access to other resources to help ascertain a taxpayer's position as discussed in Chapter 7 and hence they can help represented taxpayers navigate the system and its difficulties.

6.5 The knowledge gap

The knowledge/expertise of HMRC staff was briefly discussed in Chapter 5 under the HMRC/client expectation gap.

Knowledge levels of front line staff at HMRC were thought to be poor by the whole range of practitioners in this study, including the general and niche practitioners. Nevertheless, at times, assistance was said to be satisfactory, although this appeared to be the exception. There was a general feeling that the help obtained (or not) depended upon who at HMRC answered the telephone. It was felt to be 'hit and miss' as to whether one could speak to a knowledgeable or helpful individual. Poor understanding of tax issues and lack of technical knowledge by some at HMRC was identified as a problem, and this was in part thought to be owing to insufficient training.

As **IV/2** remarked:

Weren't they boasting that when they brought in that agents [help] line that you would speak to someone with at least one year's experience? Is that really a boast! Without being awful they haven't really got a lot of knowledge....

The one-year training period was also criticised by members of the focus group.

When practitioners contact HMRC, they are aware that their call will be answered by any number of staff in a call centre. There is a feeling of being "*passed from pillar to post and you don't get anybody who really has a technical knowledge, and sometimes the interest, to answer your question.*" (**FG1**). The call centre arrangement was viewed by participants as response to reductions in staff numbers, but if this does not work satisfactorily there will be consequences, not just for the tax practitioner/client relationship, but also for the unrepresented taxpayers (as discussed above).

Whilst poor tax technical knowledge of helpline staff was criticised by participants so was lack of flexibility to deal with different client circumstances, both of which are further discussed in Section 6.5.1.

6.5.1 One size fits all

The participants described their experiences of using HMRC telephone helplines. If help was required for technical style questions, such as where something is entered on a tax return (an example of pension details was given by **I/V21**), the HMRC response was generally praised. This kind of help, however, does not require tax knowledge per se, which differentiates it from the kind of knowledge required to help with tax questions. The experience of those using the helpline for assistance with tax queries revealed either that no answer, or a wrong answer was given, or the answer provided was too “tentative” (**I/V13**) and not sufficient. The manner in which responses were given were variously described as reading from a “script” (**I/V16**), or a “flow chart” (**I/V13**). This hinders the ability of staff to provide a contextualised response. **I/V15** lamented the lack of “opportunities for discretion” as, it was noted, “we are human beings and you do need discretion”. It is fair to say that many of the practitioners no longer access help in this manner.

As the comment from **I/V15** indicates, there is room for improvement:

[T]he revenue are unsympathetic about taxpayers who they think as reasonable people sitting on the Clapham Omnibus [who] should be able to deal with tax issues and [who] could ring them up. In a recent case I had it was quite clear that the notes kept by the revenue of the telephone calls were insufficient to say, or show, what had exactly been discussed by the client/taxpayer or indeed whether the taxpayer understood what had been said. Quite clearly in the case I have got....it is a case where the taxpayer did not understand what the revenue were saying, but at every point the revenue are saying, ‘well all you had to do would be ring up and we would tell you’, well they might have told [that to] the individual, but the individual did not understand.

What is described is, in the main, a lack of understanding of the taxpayer’s (or tax practitioner’s) situation. HMRC have been criticised for exercising discretion in the past, particularly in coming to agreement with large taxpayers about the tax that is to be paid which, critics would suggest, was not sufficient in amount. These issues have been highlighted in the media and have become politicised (see Huber, 2013; Public Accounts Committee, 2011). A possible consequence of these issues is what now occurs at the coal face as described above, i.e. to treat

every taxpayer the same and not to deviate from the 'script', which is what the practitioners seem to indicate. This could be part of the reason why the taxpayer (referred to by **IV15**) could not understand the explanation from HMRC. The practitioners, however, acknowledge that the tax system is so complex and uncertain that neither help via the helpline, or help via the webpages can be 'boiled down' to very simple concepts. Each taxpayer's circumstances may be unique. This rigidity, or unwillingness, to be flexible or see beyond the basics, to help the practitioner help the taxpayer, has created a poor perception of some HMRC staff. The word 'numpty' featured a couple of times, along with less complimentary descriptions, which are not noted here. Additionally, practitioners' access to HMRC knowledge for a ruling in advance of a transaction is now also restricted as further discussed in Chapter 7 – that is discretion here has also been reduced. Nevertheless, **IV7** suggested that, there may be some willingness to be flexible – but it depends who answers the call. **IV10** suggested the same, and described receiving a pragmatic, practical answer as to how to resolve a tax issue for a client suffering with dementia. Additionally, the offer (by one HMRC staff member) to simply write a note on a taxpayer's file (rather than ask the practitioner to write a letter of explanation) also attracted praise. Those giving these examples appeared surprised (and pleased) by such helpful, pragmatic approaches – which would suggest that such responses by HMRC staff are not considered the norm.

However, it is important to note that there was some sympathy (see below) for the people working at HMRC, as the practitioners understood the situation in which they find themselves is not of their making.

6.5.2 Expertise and knowledge

As this sample of participants were qualified, or ex HMRC inspectors, or working for regulated firms, the training they will have undertaken will have been lengthy and in depth, which substantially contrasts with the 12 months training for HMRC frontline staff as noted. The participants in this research also have experience of working in the field, which strengthens their knowledge, consistent with Cooper and Robson (2006), Hamilton (2013) and Stringfellow and Shaw (2009). Many, as indicated at Table 4.2 in Chapter 4, have experiences gained from other tax practitioner settings, be that Big 4, top 10, or other smaller organisations. Of course, HMRC staff too will gain experience in their roles, which becomes evident

in the specialist roles discussed below. However, the participants appear to feel that they know more than the frontline staff. On occasions, practitioners report telling HMRC staff what was possible (i.e. telling them their job), as previous conversations with colleagues had already ascertained this fact. As **I/V7** notes:

...if I am just ringing up about routine compliance, it is a mixture sometimes. You can get someone who is really helpful or someone who is a bit of a numpty...I wanted to do this thing and the guy on the other end categorically said I could not do it and I knew full well that I could...

I/V18 felt that sometimes HMRC staff did not understand the practitioner, and sometimes asked the same questions over and over, which was not helpful in moving the query on, or getting a resolution. **I/V18** gave the following example regarding calculation of foreign income:

[They asked] how have you calculated it and we kept telling them this is what we have done. But they kept coming back and saying but **this** is the effective rate, and he has paid an effective rate of **this**.....and your effective rate is **that**.

[We replied] but yes, this is how we calculated it! In the end we said to [the client], it would only be £2.5K to settle [and] we said it would be cheaper in terms of our fees and time, just to settle and accept their argument. And that is what we did, but we settled on the basis that our fees were building up, rather on the fact that we did not agree with them.

...it got to be a bit like, 'this is how we have done it, this is how we have always done it', but [they said] 'but yes, this is the effective rate', but [we said] 'yes this is how we have done it'....it was just going on.

I think sometimes the people at the other side do not understand.

They accepted that and they closed that with no penalty...so they accepted that that people had not been careless, so it is just a difference of how you interpret the rules.

I/V8 gave another example, having been engaged in rounds of correspondence about a company reorganisation, in which HMRC made some suggestions which the practitioner knew were not valid and not appropriate for the circumstances and did not make sense. Correspondence went back and forth, but **I/V8** stood ground as, it was explained, s/he had clear confidence in their own knowledge. It was observed that those with less knowledge may well have given in.

There are various issues here. Firstly, what **I/V18** describes could be just as the practitioner sees it – an inability to see, or engage with the practitioner's point of view. But could this be seen instead as unwillingness - given the comments and

observations from practitioners about staff at HMRC having a pre-determined view, or digging in heels in order to extract as much tax as possible? Alternatively, it may be a misunderstanding on the part of the practitioner – nevertheless, the commercial element of the argument won out in the end, as it was cheaper to pay the tax. This contrasts with **I/V8**, as the practitioner was so sure of the position, this was accepted by HMRC in the end. The tax at stake may have been much larger, but the participant was successfully able to challenge HMRC’s knowledge about the transaction. Here the technical capital of the practitioner wins out.

The knowledge of those who staff the HMRC helplines was generally thought weak. The general practitioners (**I/V20 and I/V21**), those without specific tax training, limited their questions for the general HMRC helpline to queries about compliance or registering taxpayers, or checking something, as:

If you ask them a question you probably get the wrong answer [**I/V20**]

Yes, if it is advice, I would not say it is that good...and we just don't ask for it really. Maybe [we will call] the VAT helpline, but we take it with a pinch of salt, the result [as], the next person...can give you a different answer. [**I/V21**]

The above indicates gaps in technical tax knowledge, but practitioners also noted a general unwillingness by some at HMRC to understand the commercial aspects of a business. More than one practitioner noted an inability to “*understand commercial reality*” (**IV15**), which was a criticism that was also levied at the inspector level. Some of this was said to be owing to the relocation of inspectors away from the local areas in which they lived and worked. For instance, if a computer programme flagged up a change in the fortunes of a local business, which then became subject to enquiry (an audit), this could have been avoided if it had been known, say, that road works had had a severe effect on trade for business in that vicinity (example given by **FG5**). However, a lack of commercial awareness was said to have always been a problem, as noted by **FG3**

Last time we did a Working Together meeting with the Revenue (see the agent strategy details at Chapter 2) – this was a few years ago – we were trying to present to them the commerciality of the real world, and the fact that SMES weren't spending all their days thinking about paying less tax. Actually it is the bottom of their agenda, because they are more bothered about trading.

Yes - having profits to pay it on!

[**FG5**]

Yeah – agreed – yeah. And the Revenue wouldn't get it, couldn't get it. They honestly thought there was a different agenda, and it was solely a family moneybox, we were taking money out and not paying tax on it. They didn't see the commerciality of it. **[FG3]**

They didn't see these people as generating jobs **[FG2]**

There are a number of points arising from these comments. The Working Together initiative, as part of the agent strategy, does not elicit the same positive response of **I/V10** who attended an event about HMRC systems at 6.4.3 above. It would appear from the participant's comments here, that their attempts to encourage understanding of client circumstances by their HMRC counterparts, were not successful. "Working Together" in this particular respect, did not appear successful from the practitioner's perspective. Whether this divergence of views is indicative of the practitioner's deeper understanding of their clients (that is they have more knowledge about the client than HMRC) or whether it is suggestive of a change in HMRC position (a pre-determined mind-set, identified by Maas, 2015) and a requirement to increase or maximise the tax take (commented upon by Dabner, 2012 and Maas, 2015) is not clear to see. The practitioners see a business first and foremost which then has to pay tax. The problem they highlight is that in their view a wider picture (of the client) – to encompass the commercial aspects as well as the tax aspects of their transactions - is not considered by HMRC. This limits negotiation between HMRC and the practitioner and is an additional challenge for the practitioner to resolve. This becomes a problem when the practitioner undertakes their various roles of facilitator, translator, defender, negotiator and overall puzzle solver when representing the client (see Chapter 7).

6.6 Where the gaps narrow

6.6.1 Specialist teams

Not all HMRC departments come in for criticism. As noted above, technical (or IT related) helplines are praised. A VAT team was commended for their assistance to clients, as also discussed. Without exception, specialist teams at HMRC, be they in relation to R&D, clearance department for transactions or simply 'niche units' within HMRC, such as the those responsible for trusts, or those dealing with 'high net worth taxpayers' were praised. In particular, the participants were happy to be known as "customers" in their dealings with the R&D team (**FG5**), the implication being, that this term is just not appropriate in

the usual sense, given the difficulties practitioners or taxpayers encounter on a day to day basis (see Tuck et al., 2011 for the use of the term ‘customer’). Praise was given for the in-depth technical knowledge of such teams, their training, and their ability to provide answers and advice in response to the practitioners’ questions, which is reported to be rarely the case when practitioners contact ‘general helplines’. The knowledge and skills of these teams were clearly seen as superior and held in high regard by the practitioners. Additionally, practitioners could still contact the departments directly – which was appreciated. Generally, there was acknowledgement that there are some “*very skilled people within the revenue who are quite helpful and supportive*” (I/V23), and that there had been some good interaction and relationships with those carrying out tax audits (Interviewees 7, 12, 13, 23, 24), particularly with those still willing to consider commercial implications, and apply a pragmatic approach to resolve outstanding issues. So there are positive experiences. In life however, focus is often on negative experiences, and these are what are most clearly remembered, particularly if additional work and problems result, and some of these are seen above.

6.6.2 Sympathy for HMRC

Delays and the lack of technical competence displayed by the ‘customer facing’ HMRC representatives is understood by the practitioners to be a result of under resourcing, cost cutting, staff reduction and restructuring (see Chapter 2). However, the workings of HMRC after such changes, at least from the point of view of the practitioners, is worse and not better as practitioner/HMRC problems identified by HMRC (2014b), Lovell (2016), NAO (2016), and NAO (2019) also indicate. There was some general sympathy for staff at HMRC, and it was recognised that they too may face the same issues as practitioners, such as keeping up with frequent changes and increasingly complex tax legislation, and additionally they will have targets to meet in terms of tax collected, meaning that they also have more demands on them. The practitioners realised that many were “*overworked*” as “*there aren’t enough of them*” and that they were “*let down by the system*” (FG3). I/V22 acknowledged that these were “*foot soldiers*” who were doing their best. The staff were recognised to be “*only human*” (I/V8), and have to deal with huge amounts of queries. It was observed by I/V10 and I/V11 that attendance at an event organised by HMRC for practitioners (possibly part

of the agent strategy discussed in Chapter 2) also enabled the 'human side' of HMRC to shine through, which elicited a softening in tone towards HMRC as an organisation. Some staff were praised for seeing "*the common sense of how to deal with it [they saw] the human side ... and that just reminded me of how it used to be in the old days...*" [IV10]. This again makes reference to how the situation has changed over the working life of the practitioner. Overall, however, the desire was for a better system, improved relations with HMRC, fewer delays, more joined up thinking and knowledgeable and helpful staff.

6.7 Summary

This chapter presents the practitioners' views of the relationship between themselves and HMRC, and highlights aspects of the current environment in which this relationship is managed. This addresses research question 2 "*How does the shifting relationship with HMRC impact upon the practices of tax practitioners?*" by taking account of the following objectives as explained in Chapter 4:

To explore, gain insight into and understand:

- the practitioners' views on the relationship between themselves and HMRC;
- the environment in which the relationship is managed;
- The challenges and difficulties, as well as positive aspects of that relationship;
- The impact that management of this relationship has on the practice of the practitioner;

The practitioners' views on the relationship between themselves and HMRC reveal a number of 'gaps' in respect of the type of relationship that is desired by the practitioners and the relationship that currently exists. These 'gaps' are evident in the nature of the relationship itself, trust between both parties, the different ways in which private practice and a large organisation operate, and in knowledge. The participants describe lack of expertise, delays and errors which arise in HMRC systems, and an unwillingness, at times, by some, to negotiate or engage with the practitioner perspective. HMRC service, based on personal experiences is found to be poor which is consistent with Hasseldine et al. (2011)

and Stiglingh (2014), although there are exceptions, as discussed. These matters create a demanding environment in which the relationship plays out and present challenges for the practitioner in their day to day work, which at times, does not run smoothly as a result. It is clear that some of these challenges have occurred relatively recently as some describe that the practitioner/HMRC environment with which they were familiar has altered greatly. Uncertainty has increased. The old familiarity (the 'norm') has become unsettled and tax practice must adjust to the new rules of the game, as further discussed in Chapter 8.

These, challenges and changes (and 'gaps') within the HMRC/practitioner relationship have broader impacts upon the practice of the tax practitioner. The practitioner relationship with clients is affected, and there are personal implications for some participants, as the changing environment affects how they feel about their work. **IV10** suggests, for instance, the work s/he does has changed beyond all recognition in recent years and **FG2** expresses the concern that "...*the Revenue ... I think part of it doesn't respect what we do*". Additionally, there is resentment that HMRC as an organisation appears to be immune from the consequences of delay and error arising from within that field, whilst the practitioners are not. The practitioners face problems from a vast bureaucratic organisation which seems to them, to be chaotic rather than offering the seamless experience they desire, although there is understanding of the reasons why this may be (and sympathy too for those working in the organisation).

FG5 sums it up neatly:

The join, in-between the Revenue and the client, is really key about our role, but actually we're let down by the Revenue on that, and that destroys client confidence

Chapter 8, 'Discussion', sheds further light on many of the aspects discussed above.

The practitioner as intermediary in the tripartite relationship is now explored in Chapter 7, where the client relationship, and the HMRC relationship are brought together.

7 Findings - The practitioner's voice – their role in the tripartite relationship

7.1 Introduction

This chapter draws together aspects of the client and HMRC relationships as presented in Chapters 5 and 6. Findings are presented and analysed, so as to address the question *How do the practitioners see their role in the tripartite relationship with clients and HMRC?* The objectives for this question are shown in Section 4.2 and they are to explore, gain insight into and understand:

- How practitioners see their role 'in between' HMRC and the client;
- The roles they play in managing both relationships;
- What challenges and difficulties arise from their roles;
- How these challenges are overcome;
- How the practitioners come to understand, interpret and implement tax rules on the ground whilst managing their position in the tripartite relationship.

This chapter will give voice to the practitioner and explain how they see their role in the tripartite relationship and the different roles they employ in managing both the client and HMRC. The challenges they face and how these are managed will be explored to shed light on how the implementation of tax rules tax place on the ground.

The practitioner must manage two very different relationships which creates different demands on the practitioner's role as explored in Chapter 5 (The client relationship) and Chapter 6 (HMRC), as well as various gaps in expectation. The practitioner role is said to occupy a "uniquely ambiguous position" (Baker, 2014, p.281). Consequently, the practitioner needs to "strike an appropriate balance" (Thuronyi and Vanistendael (1996, p.1) to manage these relationships and may be "pulled in different directions" (Sakurai and Braithwaite, 2003, p.386), a point also observed by Hageman and Fisher (2016) and Niemirowski and Wearing (2003). The challenges that the interviewees balance in dealing with clients on the one hand and HMRC on the other are many.

But how do practitioners see themselves? How do they manage their position within the tripartite relationship? What is it, specifically, about the uncertainties in the practitioner environment which creates difficulty for the practitioner and why? This chapter gives the practitioner perspective. What follows is how the practitioners see their roles, and how they view their identity within the tax system itself as the 'middle' actor in the tripartite relationship. Having explored the relationship from the client and HMRC angle it is possible to derive new categories to explain the various roles of the practitioner. The themes arising from the evidences about the practitioners' roles were inspired by and tend to align with a comment from **IV/7**. This practitioner had asked for the interview questions in advance of the meeting and had put a lot of thought into them. When asked how s/he saw the role of the practitioner in practice, the reply was "we have many roles" and specifically said those roles encompassed the following:

"We help them [the client] to get their tax right; a defender; a negotiator; and a facilitator.

Additionally, many participants referred to their role as 'translator'. This chapter therefore examines the identity of the tax practitioner by interpreting their roles as facilitator, defender, translator, negotiator, and overall, a puzzle solver. These roles encompass both a client and HMRC facing position and hence illustrate the practitioner position in the middle of the tripartite relationship. Each role is taken in turn.

7.2 The practitioner as facilitator

As explored throughout Chapters 5 and 6, the participants help clients to comply with tax obligations, to claim tax reliefs, and advise on tax planning. As will be seen in this chapter more vividly, the participants also see their role as being central to the tax system, helping it function as it should. That is, they can be seen as facilitators. Given that they assist both clients and HMRC, and play a role in the tax system more generally, one can see the role of facilitator faces in both directions.

This section explores the facilitator role of the practitioner in two respects: as tax planning facilitator and as facilitator to assist taxpayers to navigate a complex tax system. The importance of the practitioner, to the tax system in general, is also examined.

7.2.1 Tax planning facilitator

Without the assistance of the tax practitioner's knowledge taxpayers (here, SMEs, or small business for example) may not be aware of the tax reliefs (which broadly reduce tax liabilities) they could claim. In other words, the practitioner enables the taxpayer to "take advantages of the reliefs", as described below. Practitioners are however aware of the narrower 'scope' they have for tax planning, in today's environment, which creates the gap discussed at Chapter 5.

I think we are here to make sure the clients just pay the right amount of taxes and take advantages of the reliefs that are out there...They are there to be claimed by businesses so they can afford to invest in plant and machinery and hopefully generate work which employs people...**[I/V3]**

This narrative focuses on the entitlement of taxpayers to pay the right amount of tax and to claim the eligible tax reliefs. As to what the 'right' amount of tax is may be difficult to ascertain if the applicable law is grey or uncertain as discussed in Chapter 5 in light of the expert gap and this aspect of a practitioner's role is further considered below. Nevertheless, the practitioner explains why reliefs exist (to assist investment and hence employment) and gives the economic context. The practitioner seems to feel the need to justify why clients are advised to claim such reliefs. This justification is returned to in the discussion below. This narrative is similar to that of **I/V22**

We are there to help them legitimately minimise the tax bills by claiming their entitlement to reliefs which parliament has enacted and HMRC have put there for a policy reason, so R&D, capital allowances and things like that. Traditional smaller accountants have not got the expertise to do that, which is where you know I think that the qualified tax profession comes in really...Sometimes you get elements of the revenue where they see people claiming a load of reliefs and they don't like it. Well that's tough, you guys set the rules, we help people claim it. **[I/V22]**

I/V22 also illustrates how the practitioner's knowledge is put to use. Value is attached to the fact that this knowledge comes from the professional tax practitioner, so drawing on the symbolic capital that qualifications may carry consistent with observations of Stringfellow and Shaw (2009) and Stringfellow and Thompson (2014). The status of the profession is emphasised, which is an intangible 'asset' from which those belonging to it can draw. Although interestingly whether the client views this in the same way is open to question as it is likely many assume a practitioner is qualified in any case (as identified in research by HMRC, 2015a). Nevertheless, there is feeling amongst some of the

interviewees that the current arrangements for tax practitioners (in that no registration or qualification is required) is not satisfactory and can damage the reputations of those in the profession who are qualified. Clearly this is an issue to be addressed in the tax field in general, per the Kantar Public 2018 research for HMRC. There is also a defensive element to the comment of **I/V22**, as with **I/V3**, about the tax savings taxpayers might achieve by “*claiming a load of reliefs*”. There is inference that some claims come under unnecessary audit from HMRC (that is “*they don’t like it*”) despite the practitioner feeling that the taxpayer is entitled to claim them, within the rules as they exist. Of course, any claim may be challenged as HMRC must ensure claims for tax relief are not made inappropriately. The comment by **I/V22** however infers that HMRC ‘challenges’ are a more common occurrence than may be desired by the practitioner; the potential reasons for which are explored below. The comments from **I/V9** illustrate similar sensitivities

I have never been under any illusions, at the end of the day, when I work for my clients even in a fairly simple case there is always some tax planning you can do. It is never just compliance. In almost every case you always have to take a view on something and if you took view A you pay £100 more tax or £1000 more tax, or whatever, but there is always that aspect to it. So, in that sense, I am always working against the public revenue - I can’t see any other way of looking at it

... It’s kind of like being an honest broker isn’t it?

As I say making sure the compliance is dealt with but also, yes, saving them a bit of tax, NI or VAT or whatever it is.

All three participants (**I/V3**, **I/V22** and **I/V9**) describe facing two ways in their roles. That is to do as much as possible to assist the client to comply with their obligations, but also to provide advice to ensure tax saving. These roles are akin to the enforcer (meeting tax obligations) and exploiter roles (in the context of enabling tax planning) described by Klepper et al. (1991). All three comments have a defensive tone as if the participants feel the need to justify why they offer advice which reduce funds going to the treasury. In all cases what is described is legitimate tax planning rather than unacceptable tax avoidance schemes. Appropriate reliefs are there to be claimed as highlighted by **I/V3**. Reliefs are often devised to act as economic incentives and to encourage investment. However, the comments of the participants may be seen as a consequence of tension in the political field – that is the offering of reliefs on one hand, but a

change in attitude towards tax planning and tax collection on the other. This has impact on the approaches adopted by HMRC as they are under pressure to collect more tax as a result. There is a changed narrative around tax planning (and a concern that this may be tainted with the same brush as tax avoidance, as also suggested by Fernie 2016) and a loss of trust in the tax profession more generally (as discussed in Chapter 2) and this may explain the practitioners' justifications.

Despite the above, participants do not shy away from tax planning. As **I/V23** identifies, clients expect to pay for their "*knowledge and experience*" to determine how to approach a transaction in a tax efficient way, which may include access to business reliefs. Nevertheless, some law is grey, not clear or ambiguous and the application of law may depend upon interpretation of it. In some instances, as already identified, there will be a choice of approaches. See Section 7.4 below.

7.2.2 Navigation of the tax system

The tax practitioner, as facilitator, assists taxpayers to navigate the tax system. In one instance **I/V1** provided assistance to a taxpayer, without fee, to navigate the bailiff system to which they should not have been subject. The practitioner could draw on previous knowledge of HMRC systems (as discussed in Chapter 5, this background (or habitus) provides a unique form of capital upon which the practitioner can draw) to help bring this to a satisfactory conclusion for the client. Given **I/V1's** former background it is likely that this was the reason for the successful conclusion here – it is unlikely that others with less advanced knowledge of HMRC systems would have achieved the same outcome so smoothly. Here hours of work were undertaken but not charged for, not because of lack of technical knowledge of a smaller practitioner (as identified by Stringfellow and Shaw, 2009) - in fact the opposite is true here - but because the practitioner feels an ethical obligation to assist. The ethical stance may have developed during years of earlier work experience as a tax inspector and tax practitioner. The practitioner's professional identity plays a role here, and in particular the conduct of this practitioner (rather than the provision of technical skills) was the important thing for **I/V1** as highlighted by Grey (1998). One might also say that this example illustrates the owner as the 'human capital' here, whose experience enables resolution of this matter, consistent with Stringfellow and Shaw (2009). Of course, this participant is also a sole practitioner and has

sole control over the fee; the above may not have been possible in a larger organisation, even if one's belief and preferred conduct (professional identity) was to act in this manner.

Additionally, **I/V9** facilitated a tax refund for an elderly couple. They did not know how to claim a transfer of the Married Couples Allowance (MCA).

I sent a MCA claim in, and backdated it for 4 years...plus the current year. The tax repayment was over £3k. That was just applying the rules [relating to the MCA], but they [client] did not know the rules and the system itself does not automatically give them that benefit - which is strange really.

So you [the government] set a rule saying people can benefit from this transfer, but then you leave it up to them whether they should do it or not. So in that sense, helping...out...is quite fulfilling. I don't mind reducing the public purse in that sense because in my view they should have automatically been given that transfer... it should just be allocated. The revenue system should be clever enough to realise that Mr A is not using his allowance and Mrs A could use it, and that would mean she is due a tax repayment but they [those responsible for the tax system] will never do that - so sometimes you can feel quite rewarded! But it is not very often you get cases like that really.

I/V9, clearly felt satisfied facilitating this claim. Nevertheless, again the practitioner makes reference to the fact that MCA claim takes funds away from the exchequer – despite the fact that this is a legitimate relief, perhaps for the reasons already suggested. Yet, without advice these clients could not have obtained the benefit from it. This particular practitioner had an interesting perspective on the role:

...obviously, being a tax practitioner is not the most socially useful job in the world, not as useful as being a policeman or a nurse or whatever, but it is the nature of the beast isn't it you can't just have a tax system with the taxpayers and the revenue.

...The vast majority of the taxpayers who are individuals and indeed most of the small companies - there is absolutely no way they can comply [with their tax obligations] without having an accountant – and it is just getting more and more complicated...

The interviewee suggests that the tax system cannot operate without practitioners. Of course, one could say that a practitioner would say this – as they are paid to help clients navigate the system. However, on the other hand, without practitioner services would taxpayers inadvertently not pay the correct tax/understand their tax positions, given the complexity in the system? The practitioner alludes to this possibility. Given the discussion in Chapters 5 and 6

about the taxpayers' use of potentially unreputable internet based information, or their reliance upon the simplistic explanations of HMRC webpages, which may cause error (see also Victoria Todd, Treasury Sub-Committee, 2018) the practitioner feels their role is integral to the tax system. In this particular case the practitioner has accessed the tax relief and ensures the client pays the correct amount of tax. Without the practitioner's help, the couple would have overpaid their tax substantially. In sum the practitioner sees a role which navigates a dysfunctional tax system (see Chapter 2).

Many participants feel they play an important role helping HMRC collect tax, and keep the system running. That is, they facilitate the operation of the tax system. This role was however perceived as undervalued and not appreciated, but many defended their abilities in this respect.

I think we are perceived quite negatively at the moment...particularly by the media, seen as having no morals and looking to do something dodgy, but the reality is that most advisers aren't doing anything like that at all and are probably actually helping the revenue and are helping the client to pay the right amount of tax and helping the revenue out really... [I/V6]

Clearly, as I/V6 intimates, how the profession (and by inference, given the tone of the language used in this quotation, the practitioner as an individual too) is perceived is important to I/V6. The dominant negative narrative, portrayed, here via the "media" is mentioned. The vocabulary used by the practitioner confirms this; "perceived negatively", "no morals", "dodgy". The suggestion by I/V6 is that this particular role (which is said to bring benefit to the tax system) receives little attention by the media, public, HMRC and so on. However, HMRC do state that they recognise the importance of practitioners to the tax system (as identified by Kantar Public research for HMRC, 2018). Nevertheless, this is not a position this participant identifies with. As said, in the view of I/V6 '*most practitioners*' do have morals and will not be '*looking to do something dodgy*'. Whilst all practitioners continue to offer tax planning, there are degrees of what is and is not acceptable, as I/V6 recognises, and not all practitioners partake in the unacceptable. This practitioner distinguishes her/himself from those who perhaps may "do something dodgy". There is a feeling that all practitioners are tarred with the same brush, given shifts in attitude in recent years towards what is now termed unacceptable tax avoidance, as discussed in Chapter 2. I/V6 is not the only practitioner feeling perturbed by the general feeling towards the profession, be it by the media, the

public, or HMRC as an organisation. **I/V7** spoke of helping people to do the right thing in terms of their tax obligations but is seen as “...*the devil incarnate*” and **I/V10** felt even more strongly

It is about us against them (HMRC), they think that we are all fiddling it which winds me up...the impression that they believe all agents are trying to do them out of tax. Without actually accepting that without tax agents the system would not operate... **[I/V10]**

The comments here can be linked to the individual's professional identity, how one sees themselves professionally and how they conduct themselves (as discussed by Alvesson et al., 2015; Brouard, 2017; Cooper and Robson, 2006; Grey, 1998; and how they are viewed by the different stakeholders or “audiences” as described by Brouard et al., 2017). The language of both practitioners about how they think other stakeholders see them is very evocative; “devil incarnate” and “fiddling”. However, they see themselves in a totally different light. Their professional identities it seems would steer them away from being “dodgy” and it makes them feel uncomfortable to think others perceive them differently. Nevertheless, these interviewees saw their role as a key part of the tax system, so “*integral*” to it **I/V9**. They suggest it would not run without them. They facilitate the operation of it. It was also recognised that HMRC would require more resources without the practitioner's assistance for taxpayers, as they prevent many problems that would otherwise slip through the net **I/V5**. So to use the analogy of Tomasic and Pentony (1991) they are tantamount to ‘employees’ of the tax authorities. This was also a view from **I/V8** who said:

My little daydream is if the revenue goes too far one day [in their attitudes towards practitioners] is that every practitioner in the country downs tools for 6 months.

To see what happens?

Yes, exactly it would be a disaster for the country

The revenue would actually find itself trying to take individual taxpayers to the tribunal or something for having got their tax returns wrong and they [the taxpayers] would say we don't understand anything about tax - what do you expect us to do?

These comments suggest that the interviewees feel their role in bringing this particular benefit to society is not recognised, and their experience of the tax system and their tax knowledge, in doing so, is not valued. The suggestion from **I/V8** is that by withdrawing this knowledge and experience, the effects upon the

tax system would soon be felt. The practitioner as the intermediary in the tripartite relationship would not exist, which would mean direct HMRC/taxpayer interaction in all respects – and the suggestion is that the system could not function as it does now.

The practitioner role in this respect is usefully summarised by a practitioner;

[we] help clients *interpret* the tax system to make sure they pay the right amount of tax, so that is a compliance thing. I think HMRC need us to do that because the vast majority of clients want to get it right but the system is so complex they cannot possibly do it. I mean look, it is hard for us sometimes. So I think the profession is an essential outsource of HMRC to ensure that the country collects the right amount of tax. [IV22]

It is clear, from the language employed by the participants, that they are aware of their 'reputations' in the wider environment (from the point of view of HMRC, the public and the media) and yet, this is not how they see themselves at all. It would appear that their positions as qualified tax practitioners and the symbolic capital this brings in terms of experience and training is not 'useful currency' from the perspective of some stakeholders in the tax field, despite the integral role they appear to play in the tax system (which is commented upon by Gupta, 2015; Leviner, 2012; Thuronyi and Vanistendael, 1996; Tomasic and Pentony, 1991). The facilitator role faces both the client and HMRC, according to the practitioner perspective. Nevertheless, there is a huge gulf between how the participants see themselves and how they think others see them. This is not the image they wish to project.

7.3 The Practitioner as Translator

IV22 refers to an *interpretation* role above. 'Translator' was a word which featured frequently in the transcripts. The themes emerging from the data indicate three broad ways in which a practitioner has a translation role.

The first relates to the translation of the legislation into action on the ground according to the client circumstances/transaction.

The second requires the practitioner to relay the above information to the client, by translating this back into simple language for the client to understand the consequences and implications of a transaction (this is often achieved by offering written advice, as discussed in Chapter 5).

The third, is to act as a conduit of information between HMRC and the client (consistent with Brock and Russell, 2015). This can include relaying changes from the annual finance act to those clients who will be affected by them, or explanation of fundamental changes to tax administrative practices such as Making Tax Digital (as discussed in Chapter 6). Some practitioners feel they play a major part in delivery of this information to clients, which again is an important part of ensuring a sustainable, and functioning tax system.

This section largely examines the first aspect, with the second and third aspect discussed in chapters 5 and 6 respectively.

7.3.1 Translation of tax legislation

As the examples below illustrate, the interviewees may struggle to interpret (or translate) imprecise law. Dilemmas about how to apply or implement law create uncertainty for both the practitioner and the client. Precision in tax legislation (or legislation which avoids the need to ‘guess’ the tax effect of a transaction) is desirable (Edwardsson and Wockelberg, 2013; Freedman and Vella, 2011; Gribnau, 2013, Rowland, 1995) in terms of reducing uncertainty. Yet, the practitioners interviewed do not experience this to be the case. “*Ambiguous*”, “*grey*”, “*legal jargon*”, and outdated language (as described by the practitioners) causes them problems, as does law which is described as “*difficult to read*” (which also encapsulates the complicated structure of legal provisions, as well as the language of it). For example:

...what really winds me up is the double negatives they use, like ‘not more than 183 days’ – why don’t they say less than? So 183 days or less.

You have to say and think - what does that actually mean....

There was one piece of legislation I read, and I can’t remember the word it used, but nobody on the planet uses that word these days it was like where there is 3 or 4 words strung together to make another word, notwithstanding or something.... **[IV7]**

This participant grapples with the construction of the language and the way the words are written. Whether a legally trained tax adviser would comment upon this particular difficulty may differ, as they will be trained in how to read and interpret legislation and will likely be familiar with how legal language is constructed (Cloyd and Spilker, 2000). The reading of legislation can be affected by one’s background (Freedman and Power, 1992; Latham, 2012). Words have

different meanings to different people (Latham, 2012) so it is possible that individuals read different meanings into the legislation. The role of the legal field in the creation of the language of law cannot be ignored here as it, will of course, have consequences for the tax field. That is, lawyers may draft the (what often seems to non-legally trained practitioners uncertain or difficult) legislation, which then has to be implemented within the tax field – and often by non-lawyers. This is explored further in the discussion in Chapter 8.

Two interviewees even commented about the location of commas in legislation, and how that could affect the reading and understanding of the legal provision. Additionally, some tax legislation was described as being:

...just ambiguous, genuinely ambiguous [and] I have no idea which one of two or more alternatives were intended. **[I/V8]**

This was said by a practitioner with many years' experience both in private practice at a Big 4, and in HMRC. Judgement is needed to determine application of such legislation, and this is where expertise and knowledge comes in to play (see Chapter 5 about how this is managed). Interestingly **I/V8** refers to what the law "intended" – this suggests s/he considers the 'spirit' of the legislation, rather than simple reliance upon the literal language or wording of the provision. However, even then this does not add clarity for this practitioner. Other participants found similar issues, as discussed below.

Some recent legislation is criticised as widely drafted (too broad in scope) by the interviewees. This creates problems to ascertain to whom or to what transactions the legislation applies. That is, the interviewees did not find it specific enough as observed by Cave (2017b). Those who mentioned new legislation did so with exasperation, were lost for words, and 'sighs' were encountered from some. Some felt it was 'rushed in'; that there was not sufficient consultation, and that there was no thought for how those at the 'coal face' have to implement it (as Bowler, 2010 identified).

everything seems rushed through these days, nothing seems thought through. Nobody seems to take advice. It almost seems like a bright spark has an idea and runs with it without having a concept of it. And...well...I don't know... (was lost for words here) **[I/V11]**

Whilst some make criticisms as above, they did not say whether they had taken part in the consultation processes about changes to tax regulation as discussed

in Chapter 2. The professional bodies were however criticised by one practitioner for being on the back foot. That is, they were accused of reacting to such problems after the event, rather than making representations beforehand. It was thought that the profession should stand up for the practitioners and support them more in such circumstances – as this clearly was not what that participant felt was the case. As to whether this is indicative of the disconnect felt by members of the smaller accounting profession and their professional body (Ramirez, 2009) however is not possible to tell.

The participants felt that broadly drafted legislation could trap transactions that they felt it should not (this is consistent with Cave, 2017b, in that it “throws a wide net over a large population of taxpayers”). There was difficulty implementing such legislation. In attempts to do so, more than one participant tried to apply what they termed as ‘common sense’ – that is asking in their (the practitioners’) view, what is this legislation designed to trap/what is the intention of the legislation? This approach is similar to **IV8** above. Once that had been ascertained, they felt more comfortable as to what it should ‘trap’ but there was no certainty that it would only apply in the way they thought. Uncertainty was the theme here. The legislation is not precise enough to provide the tax practitioner with sufficient certainty. **IV10** described this as “*lazy legislature*” and would prefer more precision in that legislation should be “*worded to catch what they want to catch*”. The participants here appear to describe legislation based on overriding principles, rather than based upon detailed rules (for a discussion of principles based legislation see Avery Jones, 1996; Freedman, 2010; and James, 2010) and it seems these particular practitioners struggle with how to interpret it. They wonder whether they should adopt a literal approach to interpretation of the legislation – i.e. in which case the wording of the law suggests all transactions could be caught (per McBarnet and Whelan, 1991; Picciotto, 2007; and Powers, 1976), or should they instead seek the intention behind the legislation (as discussed by Freedman, 2010; Lee, 1999) – that appears to be their attempt at applying, as they described, ‘common sense’. Yet, there is no certainty.

Law which is wide in scope without sufficient precision, or direction for its application is criticised for its brevity above. This contrasts with the view of **IV15**, who had difficulty with lengthier, more specific legislation which includes

numerous rules (rules based legislation is discussed by McBarnet and Whelan, 1991).

This new stuff, which goes on for multiple sort of sub sub sub sections, 242 FF or VV or something like that.

It is designed to try and make sure there is no possible way around it, but the problem is it becomes a nightmare to read for people who try and understand it. **[I/V15]**

This practitioner has many years' experience and a Big 4 background and also acts as an adviser to other practitioners who require assistance, so it is clear that the way the tax legislation is written can cause substantial problems for many. The practitioner's experience derived over the years may assist to a certain point, but as **I/V15** suggests above, this does not make the implementation/understanding of the legislation automatically much easier. The point made here about the form of the legislation relates to the anti-avoidance 'problem'. Anti-avoidance provisions create layers of complexity. Provisions are bolted on to existing legislation, or drafters and policymakers try to legislate for all eventualities, as referred to in the quotation above, which is consistent with the observations of Bowler (2010), Chittenden and Foster (2009), James and Wallschutzky (1997) and Thuronyi (1992). **I/V3** agreed, observing that such provisions make legislation "*all over the place*" and that they can catch "...*things it should not catch*". This creates the opposite problem to broadly drawn legislation which is not thought to be detailed enough as described by **I/V10**.

The following examples illustrate the thought processes of the practitioner when faced with implementing legislation on the ground – that is applying it to taxpayer circumstances.

7.3.1.1 *Inheritance tax*

Practitioners must report tax avoidance schemes for inheritance tax under the disclosure of tax avoidance schemes (DOTAs) regulations. Broadly this requires practitioners to disclose certain schemes relating to tax avoidance. The application of this to inheritance tax is relatively recent. The simple gifting of assets to avoid inheritance tax, as long as the donor lives at least 7 years after the gift (an established and accepted practice) appeared to come within the terms of the new legislation as the quote below suggests. Subsequent guidance ruled

this out, but the joint interviewees below believed the legislation itself should be clearer, as the explanation shows:

I/V10 IHT DOTAs [legislation] - so they [HMRC] said that [relates to IHT] planning. So [are] gifts in the 7 years before death - are they caught? Oh no...concessions [subsequently issued by HMRC after the issue of the legislation] come out and they [gifts in the 7 years before death] are not caught...!

I/V11 [HMRC said] [t]hat is not what we meant!

I/V10 If it's [the planning] within the reach of the *normal person* [it's OK and not classed as tax avoidance]. But, what is or isn't within the reach of the *normal person*?! How do you define that?!

This shows the thought process of the 'translator'. The doubt is around the term 'planning' and 'normal person'. Initially it was not clear what was meant by the new law. This created uncertainty around what had been a settled position. Upon reading the legislation literally, this practitioner believed the wording of it could apply to the standard practice of 'giving gifts away' bringing such actions within the scope of the new anti-avoidance provisions. That is, the legislative provision appeared to cast the net wide (as suggested by Cave, 2017b). This created doubt in the participant's mind about application of the provision. Had there been a change in the way the law now works, or not? The way some clarity was ultimately obtained was also subject to criticism by the participant – see Section 7.3.2.

7.3.1.2 *Phoenix companies*

Anti-avoidance provisions for so called phoenix companies¹¹ were also questioned by a number of participants. Whilst the interviewees could see the reason for the rules, for many, client circumstances were such that it was not clear whether the transaction would be caught or not. In a number of cases, the practitioner thought the rules should not apply if based on [again] 'common sense' (see above), but they actually did not know, and in some cases, if clients were to fall foul of the rules, the tax charge could double.

As **I/V3** explained

¹¹ When a company is liquidated, the profits then withdrawn are subject to capital gains tax, often at a rate of 10%. This is usually more favourable than being assessed to income tax. Consequently, to stop an individual repeatedly doing this (closing down and then opening a new company carrying on the same trade) there are anti-avoidance rules in place.

I get that people should not be able to liquidate; shut down and get money out at 10% and start again. And instead of taking income out, just keep doing that. I get that and I agree with that.

But sometimes... I do believe in [looking at] what is the purpose of the legislation, thinking what it is trying to achieve or what is it trying to stop.

The application of the rules to the winding up of a company were not clear to this practitioner. To seek certainty, the intention of the legislation (and the commercial reason for the transaction) was seen as important. To apply the wording of the legislation literally may produce an outcome which may not be desirable for the client. Yet the participant was not clear whether the legislation should apply in this manner, or not. There was clear doubt here. The participant is stuck between two methods of interpretation of legislation (the literal wording of it, versus the purpose or intention of it), but does not lose sight of the commercial reason for the transaction either. The problem was how to advise the client; one way would be less costly than another. The participant wanted to do the right thing (not misadvise the client), but was not sure which route was the right one. Presumably the route costing least tax was preferable, but clarity as to whether this was the right way to advise the client was hard to find.

Another practitioner's client wished to reorganise his affairs prior to death. If he did nothing, IHT would be payable on the estate, but no further tax would arise. To reorganise things prior to death saves problems for the family, but other taxes would be payable – here specifically, CGT. In other words, the client was voluntarily willing to pay a large amount of CGT (£1m). Given the restructuring needed, and to help manage uncertainty around the application of the phoenix rules, advice was taken about the transaction (the practitioner did not say from who, although this practitioner is also an 'adviser to other advisers' and has a wide range of contacts and networks, and has a broad range of experience which has been gained over many years). The practitioner was told that commercially the restructure made sense and the phoenix trade arrangement legislation *should not* apply, *but* there was no certainty that it would not. The practitioner approached HMRC to see if they would give advance ruling on this, but they would not which is consistent with findings by Dabner (2012) and Diller (2012). **IV15** said "*that seems to me wrong as because if you know in advance whether it is or it is not [going to apply] then you know whether to do it or not*" and in this particular case, this inaction prevented a very substantial tax payment which was

to be made, in effect, voluntarily – as the risk could not be taken that a much higher tax charge may be invoked should the phoenix rules apply. Certainty is needed, but is not forthcoming. This, to the practitioner, seemed a ridiculous situation that could be ‘clarified’ if HMRC would provide a ruling on the transaction prior to it being undertaken, but as seen in Section 7.3.2 below this is, nowadays, often not possible to obtain. HMRC guidance was also criticised.

There is a whole load of stuff in the guidance on company liquidation anti-avoidance rules which came in a couple of years ago. I think some of the examples of the revenue response is incorrect, or at least incomplete and therefore misleading. **[I/V8]**

I/V8 is an experienced practitioner in this field. The view is that the guidance is misleading (in what way, or how, is not explained), thus reliance upon the guidance may have unintended consequences for those less knowledgeable. In the cases of **I/V3** and **I/V15** they are required to interpret law for their clients’ situations. In both cases each seems to consider what the law is trying to achieve, or its intention as described by Freedman (2010) and Lee (1999). In both cases each note that there is no intention of tax avoidance, and that there is a commercial reason for the transaction. That is probably understandable, given in recent years HMRC look at the spirit of the legislation or its intent, particularly in anti-avoidance cases (see Chapter 2). This does not however, give the certainty required for either practitioner, as the literal interpretation (the meaning of the words) appears to conflict as also identified by Powers (1976), McBarnet and Whelan (1991) and Picciotto (2007). These examples illustrate the pull between what the legislation may literally say and the commercial reasons for the transactions, which may make interpretation difficult (this is mentioned at Chapter 6 in respect of HMRC attitude towards small businesses). Certainty is not obtainable. HMRC as a source of reassurance is not an option. Here the advisers struggle to attain the right outcome – that is to advise the clients appropriately whilst complying with the law. The time it takes to do this contributes to the ‘expert gap’ seen in Chapter 5.

7.3.2 Impact of anti-avoidance provisions

Some practitioners voiced concerns about the “*paranoia*” (**I/V22**) around tax avoidance, and the desire of the policy makers to ‘shut down’ any potential avenue for it. This affects how the legislation is drafted as already discussed. Additionally, it seems that HMRC are unwilling to commit to specific advice about

the application of legislation in case the practitioner tries to work around it, which makes the interpretation of legislation even more difficult. This is illustrated in the discussion above. HMRC advance clearance rulings (see Diller et al., 2017) have reduced significantly as highlighted by **I/V15** above, which is consistent with Dabner (2012) probably for the same reasons. This facility is missed by practitioners. Some describe it as the only route which would have provided certainty in the past. Attempts to get advice appear to be rebuffed as HMRC are “*not a confirmation service*” (**I/V12**) or the answer is simply “*no*” this will not work, which is thought to be the stock answer. **I/V12** suggested that the questions put to HMRC relate to genuine uncertainty (as opposed to trying to identify a tax ‘loophole’), and yet no help is given. As one practitioner (**I/V23**) said, it is almost like if you are having to ask a question then you must have identified a grey area of law, so the answer given to the practitioner is simply ‘no’, when in reality this is not the case at all, as,

you just want some certainty over it, as you have a client beating you over the head saying what is the answer?!

This indicates tension. Clients want certainty. HMRC have withdrawn access to their knowledge (and hence their own perspective on the transaction), which ties into the “one size fits all” approach in Chapter 6. HMRC guidance may of course instead be accessed, but this was also thought to be unhelpful at times. The speed at which guidance is issued after new legislation appears on the statute books was criticised, as was the substance of it too. Nevertheless, guidance eventually clarified **I/V10**’s uncertainty around IHT DOTAs legislation. Yet the very fact that guidance was used to exempt various transactions from the legislation was criticised by **I/V10** and **I/V11**. As **I/V11** stated, one seems to be “*taxed by legislation and [then later down the line] untaxed by guidance*”. This, interestingly, was the title of an article by Cave (2017). Cave (2017) explained that the guidance that does the ‘untaxing’ does not have the force of law, unlike the tax legislation per se. This means neither the practitioner, nor taxpayer can rely upon it, and additionally, guidance is easily changed, or removed by HMRC which may of course create additional problems as explained in Chapter 2.

The production of broad legislation, followed by the issue of guidance has happened, **I/V10** and **I/V11** report, so frequently recently that they ‘sit’ on new legislation and do not try and work out to whom it applies (if they can, that is, they

get no client questions about it), and then they wait for the guidance to appear a number of months later. In other words, they 'delay' the need to translate the new law for client situations. Despite this, the guidance ultimately issued was thought in the main unsatisfactory. It was said to be weak and included only obvious and simple circumstances that the practitioner could have worked out themselves (as reported by Gracia and Oats, 2012a, in respect of the Arctic Systems (Jones v Garnett) case). In other words, the more complex, unusual transactions that practitioners find themselves looking at for clients are not covered in the guidance. Further guidance about the "*mischief they are trying to solve*" (I/V10) would be appreciated to help with application of the legislation at the coal face. The desire was to understand what the legislation is designed to prevent – but as to whether this would be helpful is debatable (given the discussion above regarding the literal interpretation versus the intention of law). The delay in issue of guidance, or the weak examples provided therein, could be seen, per Gracia and Oats (2012a, p.316) to allow "HMRC to sustain a climate of uncertainty and anxiety, reinforcing their dominance and control over the field", hence further example of a shift in power to the tax authorities and away from the practitioner. The narratives given above would tend to support this view.

7.4 The practitioner as defender

The practitioner may also be viewed as a defender. Their role is varied in this respect.

Participants described themselves as a 'buffer' between HMRC and the client. They may need to protect (or defend) the client. But they may also protect (or defend) the tax net from client error. Clearly this latter point may be a contentious claim, given the role some in the tax profession play in tax avoidance – which by its nature, reduces funds going to the exchequer. However, as will be illustrated, there is another way of looking at the practitioner role. The practitioner uses their experience and knowledge to spot errors, hence they may prevent mistakes which could otherwise reduce the tax take (which without practitioner intervention may go undetected and uncorrected). Despite this, it is fair to say that practitioners do not feel valued in this respect, as will be discussed.

The client defender role is illustrated in the discussion from the focus group

...it's about sort of shepherding them [the client] down the right route, then, isn't it? **[FG3]**

So I would say we're more of a, kind of a go-between, because we do have the knowledge that they don't, of how the Revenue works, and by the same token, sometimes you need to protect them from the Revenue, you know, when you have things like enquiries [audits], sometimes the Revenue kind of overstep the mark, so I see us as being, just being in between **[FG4]**

The 'shepherding' comment indicates that the practitioner defends not just the client from HMRC (should the organisation "overstep the mark"), but also from themselves, as suggested. The inference here is that the practitioner helps them meet their obligations by showing them the "right route", which could encapsulate prevention of error or misdemeanour – this is further explored below. **FG4** clearly refers to the use of the practitioner's knowledge (their technical capital, or even symbolic capital, which is drawn upon as a resource) in the role as 'go between'.

In summary therefore the practitioner acts as a defender of both the client and HMRC. The practitioner also defends themselves. These three roles are discussed below.

7.4.1 Defender of the client

The interviewees see their clients as business people, employers and contributors to the local economy. They suggest that they do not see businesses which simply focus upon tax matters. Whilst "*tax is an issue...it is not a driver [of decisions]. They have got way more important things to think about*" (**FG4**) as they are concerned with running their business. Yet, as suggested in Chapter 6 (the 'knowledge gap'), HMRC appear to have a mind set in which they question, automatically, the motive of a transaction, assuming the motive to be tax related, rather than there be a commercial reason. Practitioners feel HMRC works to a totally "*different agenda*" (**FG3**) and as said in Chapter 6 HMRC may dig their heels in in order to seek payment of more tax. Practitioners may be forced to defend clients in this respect.

...you know on some reorganisations [of the client's business] they [HMRC] say you are doing this to save a load of tax! And we are like 'no', we are reconstructing a group to safeguard jobs, to ring fence areas that are in risky sectors, and the shareholders have fallen out, and this bloke wants to sell his shares because he is 75 and he wants to cash his chips in. What is the point in having ER and reliefs for stuff if people are not allowed to sell stuff? Quite often it is because they [HMRC] see stuff that is not there. **[IV/22]**

What is described here is a difference in discourse between the practitioner and HMRC. The practitioner's view is that legislative provisions conflict with the commercial issues. The practitioner refers to business related tax reliefs, which when claimed, are challenged by HMRC. If a business/individual is entitled to claim such reliefs, practitioners defend their entitlement. Realisation by HMRC that the business is being reorganised for valid (not simply tax) purposes was thought lacking. Interestingly, the 'commercial transaction' versus a 'tax transaction' argument, appears to filter through into interpretation of the legislation. It was suggested by **I/V19** that HMRC read the law literally (that is they take the meaning of the words in a literal sense), and this will "trump" the commercial argument all the time. In other words, the commercial, economic event taking place is not given consideration when deciding the tax treatment. This is interesting, as for many years now, it has been the 'substance' of transactions, and a consideration of the economic effects of a transaction, rather than the 'literal' wording of the law, that has been taken into account when looking at tax avoidance cases which have arrived before the courts as discussed in Chapter 2. The possibility was raised by one practitioner (**I/V3**) that the approach taken by HMRC may depend upon the potential tax take by each option, so adapting the reading of the law to suit. Again, a conflict in approach between HMRC and the practitioner can be seen here. Could this be further example where "interpretations of texts" may be manipulated by those with power "in order to regularise and control practice consistent with its interpretations" (Gracia and Oats, 2012a, p.314)? This thus poses a challenge to the practitioner and client alike, as there is a lack of consistency. Doubt and uncertainty may increase, as the practitioner may be unsure what HMRC's reaction will be. Indeed, this can be seen in the discussion above at Section 7.3.2 – should they read the law literally, or should they seek the intention (substance) behind the legislation. The observation of **I/V19** may feed into these dilemmas. Nevertheless, the benefit of the practitioner's knowledge in these situations may be weakened, and hence their role as 'defender' of the client may be called into play.

Some taxpayers were said to be 'naïve'. In such cases, they may need protection from themselves. Hence the practitioner defends the client in a slightly different way here. **I/V15** and **I/V24** referred to clients who mistakenly believe that tax rules and regulations (and how HMRC see things) are based on 'logic', when in

the tax field this is definitely not the case. Clients may see things far too simplistically (or rely on the HMRC webpages, which are criticised as being too simple, as identified by Todd, Treasury Sub-Committee, 2018, see 2.5 above) and hence make errors in their tax submissions. Additionally, practitioners are aware of the problems that the internet brings, against which taxpayers need protection.

It's not the man in the pub anymore, it is Google.... I have one client who must spend every evening looking at tax planning ideas on Google and emailing me a link and saying can I do this? I say no, it won't work you will end up in prison. But there is not so much of that. [IV22]

This is touched upon in Chapter 5, when examining the client/practitioner relationship, but it is relevant here too as misinformation (see Onu and Oats, 2018) is something against which the practitioner needs to protect the client. The practitioner's knowledge therefore helps keep the client within 'the rules', helps protect revenue and helps manage expectations as discussed at Chapter 5.

7.4.2 Defender of the revenue

Leaving aside the role some practitioners may play in the sale of tax avoidance schemes, there is an alternative perspective. The participants in this research could be said to defend the tax net. Many described the correction of client errors, and gave examples where they take a stance against claims for reliefs or expenses which may be claimed by clients but may not be due. Many referred to their ethical disposition (or their professional identity as discussed above) and their desire to feel comfortable with advice given. The role of the profession may have influence here. The participants are obligated to act appropriately and to have regard to ethical requirements. As a result of these obligations (to themselves, the client, HMRC, the profession and so on) practitioners must advise clients to correct potential errors and ensure they submit the correct position. Similarly, if clients are pushing the tax planning boundaries a bit too much, to a point that does not sit well with the practitioner, the practitioner 'reins' them in (roles also described by the OECD, 2008). The following quote illustrates this.

I have probably collected more tax as an adviser than I ever did as an investigator just by advising people not to even ... try the things they are thinking of, where if they had not had advice there would be all sorts that they are claiming....[IV1] (a former revenue officer and now practitioner)

This practitioner suggests that in her/his experience taxpayers with representation submit more accurate positions. The practitioner draws on their unique experience and knowledge of HMRC to suggest this – experiences which now feed into the role as practitioner. **I/V2** said similar, finding that those without representation tend to underpay, rather than overpay their taxes. Without representation, it is suggested, errors, which may simply be based on a lack of understanding of a very complex system, go unchecked. More than one practitioner gave examples. For instance, one practitioner expected to lose a client because of an error made by HMRC. The client was undercharged as despite submitting all the correct information, the calculation of tax payable received from HMRC was incorrect. The practitioner had to (again, an ethical obligation) advise the taxpayer to pay the correct amount; news which did not go down well with the client and is an example of a situation in which practitioners may be accused of working for HMRC, rather than the client - as discussed in Chapter 5 (the ‘scope’ gap).

I/V12 noted this accusation

[some taxpayers] say why did I come to you? I wanted you to save me tax not cost me all this...

In general, advisers emphasised that they must do the right thing ethically speaking - although it may be unlikely in an interview scenario for anyone to admit otherwise. Additionally, they make ‘disclosures’ [to HMRC on behalf of taxpayers] of errors, or of under payments of tax, using both official HMRC channels to do so (e.g. ‘let property disclosures’; an initiative for landlords in receipt of rent to get their tax affairs in order; **I/V7** has undertaken a number of these, “loads”, was the term used) or simply acting when matters come to light, as evidenced by many conversations.

I/V11 (a joint interviewee) gave the following example. Information provided by a new client resulted in a disclosure of underpaid tax, as an issue had been dealt with (unintentionally) incorrectly for years.

...I am going through a disclosure ... and doing the honest thing and getting him straight...and how many do we do this for? So many we do this with!

We identify the issue for HMRC as they have limited resources.... let's get this straight and pay the tax [the client] should have paid and some penalties and interest

So actually we have put an extra £10k in the system

I/V10 And, multiply that across all agents across the land...!

I/V11 How much are you putting in? And how much recognition do you get? None...we are just treated as the enemy.

This further illustrates depth of feeling. There is a desire for greater recognition of the role they play in protection and defence of the tax net – that is adding funds into the system, by using their knowledge and experience, and ethical obligations to do so.

These examples support the comments of many practitioners that they 'help' the tax system run more smoothly, as discussed under the facilitator role above.

Of course, as well as correcting errors, practitioners are happy to help clients plan their tax affairs efficiently – but not at any cost – as explained in Chapter 5 ('scope' gap). This could be viewed as another form of defence of the tax net (as well as defence of the practitioner and their organisation too), as further illustrated by the participant below.

...we see a lot of potential new clients. There have been some over recent years where it is clear that some appear to be engaging in activities that are contrary to what HMRC would want them to do, so we refuse to act and walk out of the meeting. We have had one or two clients saying they want to look at something, which in fairness in the last 20 years, the profession would have handled ... but we are not going there. So I have no interest in acting for people like that. **[I/V22]**

Here the practitioner illustrates sensitivities about the changed environment around tax avoidance and the effect upon their work and explains there is a line they will not cross. There is a mismatch between what the client wants and what the practitioner is willing to take part in (which is opposite to findings per Sakurai and Braithwaite, 2003). There is however acknowledgement that had these meetings taken place some years ago, then the profession (the practitioner) may have acquiesced – in which case the literature, written at that time, may have reflected the situation more accurately, as per Sakurai and Braithwaite (2003). The comment by **I/V22** reflects the changes in opinion towards aggressive tax avoidance schemes in recent years and the shift in the practitioner/HMRC relationship, with the practitioner moving closer to the HMRC position – as

similarly identified by Walpole and Salter (2014) in the Australian context. Additionally, clues to changes in professional identity are apparent here. As Bevort and Suddaby (2016) and Brouard et al. (2017) observe, changes in professional identity occur over time, as experience develops and contexts change. A change in professional identity (in terms of how one conducts oneself) is implied here (that is, the historic approach to such requests may have differed). The specific reasons for this are not clear to see. This participant, had in the past worked for larger firms which may have had the resources to facilitate more aggressive schemes, so perhaps the smaller practitioner context enables the practitioner to hold firm against the client demands as possibly the facility to enter into such schemes is limited. As Cooper and Robson (2006) identify, the ethos of the participant's current (smaller) organisation may also play a part. Reputation of the practitioner and the firm may also be relevant, as may the influence of a professional body membership. Nevertheless, the participant's awareness of the current narrative around tax avoidance is also evident and has a bearing upon her/his conduct.

The following illustrates the practitioner's role in between HMRC and the client and thoughts around tax planning, in today's environment.

I try to say to clients, there are things that are black and white. You have to declare all your turnover. And there are things that are open to interpretation. And I will make sure, I will almost police you on the stuff that's black and white, if you're not doing it right. You have to, because I'm a chartered accountant and I love you, but I'm not going to jail for you.

And then there is stuff that is open, that's subjective. And I will, as long as it's defensible, try and push it as far as I can for you, without stepping over that line. But it's about spelling out to them...So there is a pull, because people expect you to, you know, pull a white rabbit out of a hat, and very often you can't. And it's, how do you communicate that to them, in a way that they'll understand and more importantly, they'll accept. **[FG5]**

This practitioner refers to interpretation of subjective law, but views it from the perspective of HMRC, the client, and also the practitioner themselves – all parties in the relationship have an interest here. Compliance is more black and white. Tax planning is less so. The participant refers to things that are open to interpretation and suggests that a tax efficient view will be adopted, on behalf of the client (as long as it is defensible – which is similar to the advocate position in the US). But there is a line the practitioner will not cross (see Chapter 5, which

referred to 'scales' of acceptability) and the practitioner needs to balance each relationship. It would appear that the practitioner here will pull the client back from seeking an inappropriate tax position and will not just be led by client wishes, 'to pull the white rabbit out of the hat' to achieve maximum tax savings if that is not feasible in the view of the participant, which contradicts Carnes et al. (1996), Cloyd and Spilker (1999), Kahle and White (2004); and Tan (2011). Nevertheless, the participant is 'tuned in' to the request to save tax where possible for the client. As to whether this leads to confirmation bias (that legislation which supports a tax saving is favoured over that pointing to the contrary (discussed in a study by Cloyd and Spilker, 1999)) is not possible to see in this situation. However, the practitioner's ethics, morals, socialisation within the professional environment and hence professional identity (discussed by Alvesson et al., 2015 and Cooper and Robson, 2006) and how individuals see themselves does appear to come into play in terms of how the individual conducts her/himself. The participant refers to her/his status as a Chartered Accountant (symbolic capital) and is aware of the consequences of breaching ethical requirements (personal morals and/or the influence of the profession to which the participant belongs perhaps) – which has an influence on how the participant approaches the client request.

7.4.3 Defend themselves [the practitioner]

The role of the practitioner in tax planning is discussed in earlier sections, and implicitly they appear to defend themselves from association with unacceptable tax avoidance matters. In terms of the provision of advice to clients, be that in relation to compliance, or tax planning, or explaining the tax effects of a transaction, all interviewees provided evidence of careful thought and research. All said they avoided acting 'rashly' or 'off the cuff' and would regularly double-check things, so as to be as sure as possible about their conclusions. Some referred to the litigious nature of the industry, and the problems of being sued for what is *not said* as opposed to what is said. One practitioner (**FG5**) has a rule of never sending out what has been written on the same day. The advice is 'sat on' to allow thoughts to settle, and to take time to reflect on the advice, and to allow consideration of "*the bits that you did not think were relevant*". Additionally, the practitioner may support their opinion by drawing on a number of other sources, as discussed in Section 7.6.2. Risk management is clearly important here and yet such activities may also contribute to the 'expert gap' identified in Chapter 5.

The participants defended their positions as well-trained, qualified practitioners. Many distinguished themselves from other practitioners who operate in the non-qualified tax field. It is fair to say, these advisers were not held in high regard amongst the participants of this research. **I/V4** referred to a call from such an adviser asking for help with taper relief (a CGT relief) in the recent past – despite the fact that this was abolished in 2007. Other questions fielded by this practitioner in response to requests for help from this market were described as “*quite shocking*”. **I/V5** used the phrase “*no clue about anything much*” to describe some operating in this field, and many participants had sorted out or unravelled the tax affairs of former clients of such firms. **I/V15** described this field as a “*problem*” as there is no “*monitoring*” and many may “*struggle*” and were years “*out of date*”. The feeling was many advised from leaflets, guidance, and the like and almost ‘wing it’ without a full understanding of the situation on which they were advising. **I/V22** suggested such a market was “*not as well qualified, who are not as ethically straight as we are...*”. Participants seemed to feel that these negative issues reflected badly on them too and there was defence of this, with reference to their qualified status, levels of training, and ethical obligations – that is the symbolic and technical capital which the participants in this research have. There was acknowledgement that, of course, not all practitioners would offer poor advice, but in general, reform of the regulation around the tax practitioner market was desired.

In summary the role of the defender can be seen from the perspective of the client, HMRC (or the revenue), even though this may be thought a contentious claim for the reasons discussed, and the practitioner themselves.

Sakurai and Braithwaite (2003) suggest practitioners are ‘pulled’ in different directions. Brody and Masselli (1996) suggest practitioners have two masters. Baker (2014) suggests practitioners are in an ambiguous position between the tax authorities and the client. Maas (2015) however disagrees, saying the only obligation of the practitioner is to the client. The above evidence however does indicate the practitioner has an eye on responsibilities to both parties and themselves. Nevertheless, many confirmed their chief responsibility to the client. On the whole the participants do acknowledge that they are some sort of ‘buffer’ between the revenue and the client and they appear to provide a defence mechanism for both parties. They see their roles as being of importance to the

tax system. In this respect, and in light of the work they do as discussed above, indications are they are integral to the tax system and do help it function smoothly which is consistent with Davidson (2014), Dzienkowski and Peroni (2016), Thuronyi and Vanistendael (1996) and Tomasic and Pentony (1991).

7.5 The practitioner as negotiator

As intermediary (between HMRC and the taxpayer) the practitioner corresponds with HMRC on behalf of the taxpayer. This may be in respect of a tax audit, or in respect of the valuation of an asset for instance. This will, at times, involve negotiation as suggested by Frecknall-Hughes and Kirchler (2015). The practitioner and HMRC may have diverging viewpoints over legal interpretation during a tax audit. Additionally, negotiation may involve discussions about the valuation of goodwill, or private company shares, and the like, which will involve judgement by both parties. The practitioner will wish to obtain the best (most tax efficient) position for the client, and so this role may also be linked to that of ‘the defender’ of the taxpayer. To carry out this role, a further skill is employed – that of negotiator.

The ability to negotiate with HMRC, and to feel comfortable doing so, was highlighted as necessary by **I/V1**, and is factored in to the risk assessment of taking on work for a client. The role of negotiator involves clear understanding about what HMRC asks, being sure enough that the practitioner’s position is the correct one, and also being able to present this confidently in the negotiation – this latter point is emphasised by **I/V8**.

...I know enough to know when I can stand my ground and when perhaps I should advise the client when to stand down for example, but I can see other people, and perhaps - and I don’t mean this in a nasty way - but people who are less sure of their ground and may be less robust personally just not wanting to be an accountant who is having an argument with HMRC. **[I/V8]**

This comment is illustrative of the practitioner employing experience and prior knowledge to determine where to draw the line during negotiations with HMRC. Additionally, both **I/V8** and **I/V1** have knowledge of HMRC as an organisation, and understanding the habitus of HMRC agents perhaps puts them in a position to draw on additional knowledge that other practitioners may not have as previously mentioned. This may help ascertain the boundaries of any argument. They may be more knowledgeable about how to present matters and therefore

there may be more to the argument than just “*technical knowledge*” (I/V1). Many interviewees referred to negotiation with HMRC. The ability and willingness to challenge HMRC is also a necessary attribute of a practitioner (a simple example given by I/V8 was asking HMRC to cite the legislation (rather than HMRC manuals) in their correspondence, consistent with comments by Maas 2015), as the HMRC manuals have no force of law.

That said, it was noted by many that, over time, negotiation has become more difficult. It is still a possibility, but the role of the practitioner as negotiator appears to have weakened.

I think it depends who you get from the revenue as to how much negotiation there is - we did have one enquiry - [the inspector] was willing to negotiate, and willing to wait for information that we were trying to collect. Whereas some of them - like the one that X dealt with - he was pretty firm, you know ‘this what is in the legislation, this is what I need, I am not having it any other way’.

[I/V25]

The position has become more fractious. If genuine disagreement continues, the only way to resolve the difference in opinion may be to go to tribunal, and that has disadvantages in terms of time, cost, and the experience required for this, as I/V15 noted and as discussed at Section 6.3.1 above. This action will also depend upon the appetite of the client and practitioner to take the disagreement forward, and how sure one feels about the potential outcome as per I/V8’s comments above. Perhaps there is a belief at HMRC that a practitioner may ‘settle’, as explained in Chapter 6, prior to getting this far, given the difficulties of resolving the matter. This is further evidence of a shift in the practitioner/HMRC relationship as also identified by Walpole and Salter (2014). An example was given by I/V19, who had questions from a tax inspector about aspects of a tax return (during a tax audit), the likes of which had never been seen before by that practitioner or their colleagues. One may speculate why this is - from the HMRC perspective this may be an attempt to generate further tax revenue, or it could simply be the practitioner has misunderstood the situation. Nevertheless, the practitioner did not agree with HMRC, but it was cheaper (to limit the practitioner’s time and therefore the fee) for the client to settle (pay the tax) rather than argue the point, as the tax at stake was not large. By adopting this course of action, the tax increases, albeit by small amounts of tax (which are perhaps more common for the clients of the smaller tax practitioner, than from the larger clients of the

larger firms) which could possibly be the intention behind the inspector's unusual approach to the tax audit.

The practitioner does not just adopt a negotiation role with HMRC. Negotiation may also take place between the client and the practitioner. This may occur if there is a decision to be made about the tax position in light of grey or ambiguous legislation which may have different interpretations. Examples were given above in Section 5.3.1 which discussed management of client expectations.

7.6 The practitioner as puzzle solver

The roles of facilitator, defender, translator and negotiator have been discussed and examples provided which relate to these particular roles. This section takes an overview to further illustrate the variety of work undertaken by the smaller practitioner and the difficulties they face in the tripartite relationship. There are many occasions when the practitioner appears to be faced with a perplexing puzzle, which seems to have no outright 'correct' answer as tax law is uncertain and messy as described. Client circumstances may often be unique and may not fit exactly with previous similar situations. This section shows the human side of what is involved in a tax practitioner's day to day work and adds more insight into how they cope with the dynamic environment. Their thoughts and feelings also become apparent. This section also has an explanation of the methods (and resources used) by which practitioners come to understand the puzzle.

7.6.1 Exercise of judgement and drawing on experience

A "rollercoaster" of emotions was an analogy was used by **FG4** whilst describing the process to solve a tax problem. The emotions described included peaks and troughs in feelings (from despair to elation and back again) in respect of the advice process.

It's about judgement, when it comes down to it. And you can only use your own [judgement], and that comes from whatever your historic experiences are, I think. I mean.... can you find the answers, well, sometimes there isn't a definitive answer **[FG4]**

The participant went on to describe working on a tax problem with colleagues, consideration of different approaches to the tax problem and even thinking about the problems outside of work. In other words, there may not be a simple solution to a tax problem. There may be multiple things to consider. Time, thought, and

effort may be spent to arrive at a resolution. To arrive at an opinion, the practitioner refers to former experiences and background (*habitus*). Team members are important in arriving at a conclusion – that is drawing on the expertise of others. The opportunity to talk issues through was an important source of comfort (or another opinion) for many (and may act as additional protection against practice risk, which is consistent with Carnes et al., 1996). **IV7** also described the importance of colleagues and regularly took the opportunity to share questions with the whole team to seek opinion upon how to answer them. The practitioner describes a role which does not finish at the end of the working day, as difficult tax matters may prey on the mind (also similarly described by **IV12**). The remaining uncertainty, the absence of a “definitive answer” is also referred to by **FG4** – in other words what the participant can offer is simply an opinion.

These matters are not unique. **IV7** described the emotional energy of having solved a tax problem only to be told by a helpline external to the firm (a subscription based tax helpline – see Section 7.6.2 below) that the advice (that had already been provided) was incorrect. The work was redone, only to discover the first position was correct. Not only was time wasted, but the practitioner felt sick on discovering the so-called ‘error’, as it was thought the client had been incorrectly advised. Tomasic and Pentony (1991) suggest that smaller practitioners come under greater pressure than those working for larger firms given the client base. This could be illustrative of this. The amount of tax at stake for a smaller taxpayer, may be far more significant than that of a larger company. The difficulties here arise from differences in legal interpretation. This is not just a problem for the practitioner, but for their adviser/source of outside help. Many questions may be unique or uncommon and there may be no ‘standard answer’. The ability to draw on prior experience may be limited at times (which goes for both the practitioner and other advisers to whom they may turn for help), see Section 7.6.2 below.

Research into tax issues can be difficult. **IV7** was quite evocative in explanation as shown below:

... I get to that point where I don't actually know. I don't know the answer. I don't know how these [taxes] interact. I haven't got a clue. I don't even

know what that [that has been read] has just said. I have read it 10 times and I still don't know.

This describes the feelings experienced when looking into a tax issue. It was said with some frustration and exasperation, yet the practitioner was ultimately confident there would be resolution to the issue. Various examples were provided by participants during the interview process and **IV25** adds more depth to these issues, having been asked the question about the specific challenges faced by the practitioner:

I find it hard not being able to have a clear answer, I like to have a yes or no answer and if I am still uncertain it annoys me as I want to know for definite! Is that eligible for capital allowances? Am I going to get capital allowances on it? Or is it part of the building? [and therefore not eligible]. It annoys me that I cannot find an answer. It would be really nice to have legislation written in layman's terms, with a lot more yes and nos!

You just don't know for certain that you are right; you interpret it so you think it is right, but it is not totally clear. [In arriving at the answer] you have just to try to find a similarity [to claims for similar assets], or a similar [tax law] case.

...you could spend hours on it and you can cost your client a lot of money, when you keep coming back to the same answers. There might be a lot of tax at stake.

[The worry is] is it going to be one that HMRC enquire into.....?

You have to put the reasoning why on the file and if anything does come of it, it is based on this legislation interpreted [in] this way similar to this [whatever the decision is based on as compared to the claim at hand] so this is how you come to the decision.

This participant has a research strategy (discussed by Bouwman, 1987), and yet explains that, at times, an element of doubt remains, even after thorough research. In other words, there is never 100% closure. This participant (as with **IV7**) is frustrated that certainty cannot be achieved. Tax law (or any law) is open to interpretation and is subjective. This participant would like more objectivity and does not feel comfortable with the subjective aspect of tax law. Capital allowances are mentioned and interpretation depends on the definition of 'plant' and consequently, knowledge of case law and how it is applied. To resolve this the practitioner draws on knowledge, experience and judgement to weigh up the different evidence to come to a decision (consistent with Bain and Kilpatrick, 1990). However, if there is no case which is exactly the same as the practitioner's situation, then reliance on similar, but not identical precedent, leaves doubt in the

practitioner's mind, as HMRC may have a different interpretation (as described by **I/V23 and I/V24** in Chapter 5). The participant also refers to the impact of the fee and the time required for the research (as discussed by Fogarty and Jones, 2014). The above provides further insight to the 'expert' and 'fee' gaps as identified at Chapter 5.

Whilst **I/V25** expresses frustration in the role, others relished puzzle solving and enjoyed the 'thrill of the chase'. There was often a sense of satisfaction of a job well done, when reaching the end of a piece of work from most practitioners. **I/V8** referred to times when research into a tax transaction could throw up unexpected tax consequences, giving moments of revelation and interest where "*You find yourself dropping a line to your mates [asking] do you agree with this interpretation [of this particular legislation]?*" and **I/V12**, too said that the challenge of finding the answer is most enjoyable

That's what tax is isn't it? That working your way through it, through however many million pages, guidance, legislation, notices. It's great!
[I/V12]

Despite some of the frustrations and difficulties already described in Chapters 5 and 6 and in the sections above, the variety and challenge of the tax practitioners' work, is clearly relished by these particular participants.

I/V24 described the key to the puzzle as building a picture of the transaction. This involves interpretation of the law, obtaining a rounded view, doing thorough research, and not acting upon the first bit of information discovered. In other words, the practitioner builds 'evidence' and support for the position ultimately taken. This, in itself, may be a difficult part of the process as **I/V7** explained

...I will gather my information and see how this all interacts with each other. Then it is hmmm. Some of the time it is dead clear, and other times it is not...

The techniques the participants use to assist them to solve a tax puzzle are discussed in Section 7.6.2.

7.6.2 Tools to solve the puzzle

The dilemmas and difficulties encountered by tax practitioners in the provision of tax advice have been explored in this chapter. Practitioners describe an armoury of techniques to acquire the evidence of and support for the approach they

ultimately take. The smaller practitioner may have to seek more help outside their firm, than those in a larger organisation, although of course many will have in-firm access to legislation, guidance, commentary or technical databases as discussed.

Practitioners may refer to commentary about the law (text books, HMRC guidance etc.) to help them understand and apply legislation, but the interviewees are keenly aware that only the legislation itself has the force of law. That is, the legislation, not the guidance (or HMRC manuals) should be cited in evidence/correspondence. Of the 25 interviewees, 23 made use of the actual legislation (as opposed to relying entirely on commentary) for this reason. This is somewhat at odds with Picciotto's (2007) comments that accounting practitioners tend not to refer to the legislation per se based on Mori research about tax legislation. Reliance on guidance may not be satisfactory, for some, in other respects too, as described by **IV10** above – it may arrive late, or be too vague, or it may change or be removed without notice as identified by Hart (2017). Thus one participant now stores permanent copies of all guidance referred to during the decision making (or opinion forming) process.

The starting point for a research strategy for many is 'google'. This is despite recommending clients do not adopt this approach to comply with their tax obligations. Nevertheless, participants may find queries and problems at some of the webpages such as accountingweb or taxationweb mentioned in Chapter 2 which may be similar to their own, which may point them in the direction of useful information. However, this technique was used as a steer and the information gleaned in this way was said to be taken with a "pinch of salt" as it was recognised that it may not be correct. Interestingly **IV23** suggested new staff members required training to undertake research properly. Their instinct is to 'google' for information and take the first answer found without necessarily finding complete support and evidence for the response to the question asked. This may reflect the habitus of new recruits and their attachment to technology, social media and the like, hence new habits, it is suggested need to be instilled. Hence socialisation within the organisation and introduction to the techniques and values of the organisation are apparent here and these findings are consistent with Alvesson et al. (2015), Cooper and Robson (2006) and Schinkel and Noordegraaf (2011).

Many participants subscribe to commercial databases – which include access to tax legislation, commentary, examples and may also include access to a ‘helpline’ where practitioners can discuss tax queries for a steer or a second opinion, as described in the example above by **IV7** at Section 7.6.1 above. The effectiveness of the subscription based helplines appeared to vary. Many indicated they called the helplines only after thorough research, so they tended to use these services for comfort. **IV15** did not use them as experience suggested they gave the wrong advice. There were occasions where views conflicted (between the practitioner, the helpline and even a second helpline) and the practitioner would take account of all views and to arrive at a reasoned judgement. Presumably in these circumstances the ‘adviser to the adviser’ meets the same difficulties the practitioners in respect of complex law, interpretation difficulties etc. Additionally, **IV20** thought the effectiveness of helplines was limited as their offers of additional assistance were a sales technique to get the practitioner to buy their services. Thus it is left to the participant to determine their own approach – they may draw on former experiences, draw on advice from colleagues or other advisers (see below) or use a helpline, as discussed, to draw a reasoned conclusion. Nevertheless, many packages have inbuilt “advice” sections, to provide a steer for the practitioner. Specialised software will also calculate tax liabilities. **IV9** and **IV20 and IV21**, general practitioners rely on this heavily, as **IV20** said

.. it’s expensive for a practice like ours, but the software is very good and it knows more about tax than I do!

The tax practitioners in this research recognised when something is best resolved using outside help (that is help outside their own firm, be that via a subscription based helpline or an alternative source). Again, this links to risk management and is characteristic of the smaller practitioner firm. It would appear on occasion that rather than there be a 3-way relationship between HMRC, the practitioner and the client there is actually a 4-way relationship – the 4th party being another adviser. This can take many forms: - helplines as above; contacts known to the practitioner from previous connections; those known to specialise in a particular field; and networks of firms themselves, made up of many member practices who can offer advice to other member firms upon request. Some participants acted in the capacity of advisers to others, using former experiences (such as HMRC

knowledge) to provide this service. Other larger firms in the sample described playing a role in the 'outsourcing' of compliance services and tax return completion for some smaller practitioners and/or they belonged to one of the network of firms described above if they were large enough to offer support (it depends what experiences the employees of the firm have). Local professional network meetings are also particularly important for the smaller practitioner – not only as a source of CPD and access to updated knowledge (see Chapter 2), but for access to specialist knowledge via speakers, who may be contacted for assistance. This shows the value of the tax network. Additionally, the knowledge and experience and support of colleagues (where available) is important, as described above by **I/V7 and I/V3**. This may include discussion of ideas collaboratively, or to seek other opinions about the application or interpretation of legislation and so on.

Access to outside help however is not always a panacea, given the complex tax world, as the following example illustrates. A number of participants referred to employment related securities legislation. This legislation is designed prevent tax advantages of share transactions for employees – yet is described, now, as “*probably the most subjective and grey area*” (**I/V24**), for which HMRC clearance will not be given making this a risky area. **I/V15** sought the advice of a solicitor on one such transaction, who suggested that at least 5 hours would be required read the rules and provide the advice needed. The associated cost was therefore large. This “*enormous*” (some “*sixty pages or something*”) legislation was described as a ‘*nightmare*’. Risks were said to have increased in this field, given EBT tax issues (see Chapter 2). This legislation affects many practitioners, as even what seem to be simple transactions may well fall within it, even if the practitioner expects they should not. The legislation itself is examined by Ross Martin (2006) who refers to Moody (2006) who suggested that this legislation is too complex for the general practitioner to understand. Here, even the ‘expert to the expert’ (the solicitor) was not able to answer the question posed quickly. The practitioner found this frustrating.

Knowledge in a rapidly changing field is important. Various HMRC bulletins, or tax briefings are frequently issued. Numerous journals and articles may be read. Change is frequent (see Chapter 2). Participants reported feeling inundated by the rapid change and quantity of materials, and suggested they were selective in

their approach, so as not to feel overwhelmed (feelings also identified by McKerchar, 2005). Attendance at CIOT meetings or other professional body events were mentioned by some, and update meetings were held for all staff in some of the larger firms. All updates came from the staff within each firm in this sample, that is, no firm had a central office, or source to collate all the changes. Training in general, along with exam success was also an important issue which arose during discussions. This again relates to professional identity of the individual and by undertaking a qualification to join a particular professional body, this adds to the symbolic capital of both the individual and the organisation for which they may work as discussed in Chapters 2 and 3.

Despite increases in technology (which has expanded access to numerous tax research materials) life for tax practitioners does not appear to be easier as discussed in Chapter 5. Search tools, instant access to legislation, specialist software which brings together tax 'topics', online access to HMRC materials, regular inbox bulletins and so on may have changed the way practitioners search for information, but has not necessarily made the process of solving the puzzle any easier. Underlying this is the fact that the tax system continues to be complex, dynamic and dysfunctional and the quantity of, or accessibility to, research materials does nothing to address this. Perhaps the ability for 'instant searches' even hinders progress, as there is the added problem of determining the legitimacy and validity of materials online and it is clear from the discussion above that many may feel overwhelmed with information availability and keeping up with frequent change.

Nevertheless, the participants do have access to the various tools, which they draw on to employ judgement to resolve whatever the issue is. Judgement as a word cropped up frequently. Indeed, **I/V15** described the adoption of a "multilayer" approach to research, drawing upon many resources to help employ judgement to come to a conclusion. Hence, practitioners do ultimately solve the puzzle, or come to some sort of consensus or decision on the answer as Picciotto (2007) and Bogenschneider (2015) suggest. As **I/V1** stated

you do spend time doubting yourself...but I am confident that [having read lots of material and] having come to that decision, I have probably got to the right answer

Various examples of 'non routine' work have been given by the practitioners to illustrate the problems they face. To those outside the tax practitioner field, the variety, complexity, and broad range of questions with which they have to grapple, may be surprising. This list is shown in Appendix 10.2. All examples are, without fail, those which do not have an immediate answer, and it appears that many of the problems relate to the difficult area of anti-avoidance legislation (as discussed at Section 7.3.2) and how to apply the law in that respect, which makes the tax position far more complex than it otherwise would be.

IV3 sums this up well:

we interpret how we think [the law] should be interpreted, we look at different magazines and books on the subject, we speak to other advisers and we just get to a situation where we think we can advise on what is our opinion of the law and that is what we have to stress. That's our opinion. There are lots of things that are just not clear cut and I think that is where the difficulties are. I think if you can explain this to the client and they fully understand that, there is not much more you can do

7.7 Summary

This chapter illustrates the many roles that smaller practitioners undertake. Responsibilities to both the client, HMRC, and themselves are apparent and this chapter draws together the practitioner role in the tripartite relationship to answer the question "*how do the practitioners see their role in the tripartite relationship with clients and HMRC?*" by addressing the following objectives:

To explore, gain insight into and understand:

- How practitioners see their role 'in between' HMRC and the client;
- The roles they play in managing both relationships;
- What challenges and difficulties arise from their roles;
- How these challenges are overcome;
- How the practitioners come to understand, interpret and implement tax rules on the ground whilst managing their position in the tripartite relationship.

The chapter has explored how practitioners see their role, and the challenges they face, within the tripartite relationship. Links can be made to the gaps in

expectation in the client relationship and those in the tax authority relationship as identified in Chapters 5 and 6.

The findings illustrate that the participants adopt a number of roles to carry out tax practice and maintain both the client and HMRC relationships. These are facilitator (of tax planning and navigation of the tax system, to enable clients to meet their tax obligations), defender (of themselves, the client and the revenue), translator (of legislation), negotiator (on behalf of the client) and overall puzzle solver. These roles face both the client and HMRC and the practitioner may therefore find themselves in a conflicting position. Illustrations of how the practitioners employ experience, knowledge and ethical disposition to carry out these roles and balance competing discourses are given. Difficulties are faced in all these roles, the reasons for which are highlighted in Chapter 2. The participants see their role in this relationship as being integral to the tax system (they help it keep running, prevent errors and help taxpayers comply), yet this role is not believed to be acknowledged. Participants are also aware of how society perceives them. Changes in attitude towards tax planning at the tax field level explain the practitioners' defensive tones and heightened sensitivities in this respect. The difficulties which arise in the implementation of law (and tax rules and regulation in general) at the 'coal face' are also illustrated and examples of how practitioners come to a conclusion on tax advice are given. Changes in the relationship with HMRC are evident. There are fewer opportunities to access advance rulings to alleviate uncertainty, and a changed relationship in general with HMRC counterparts makes negotiation difficult, which impacts upon the client/practitioner relationship too. Tension in the relationship seems to have increased which affects the practitioners' tax practice. Practitioners of course, do ultimately manage uncertainty, by employing the various strategies discussed, and they do balance their responsibilities to themselves, the client and HMRC to enable them to undertake their role as tax adviser to the taxpayer.

The following chapter draws together Chapters 5, 6 and 7 (which taken together illustrate tax practice in the small practitioner context) and provides discussion in light of the theoretical framework.

8 Discussion

8.1 Introduction

The aim of this study is to achieve an understanding of tax practice in the UK in the smaller tax practitioner context, which is to be addressed by the question:

How do changes in the tax field impact upon the practice of smaller tax practitioners?

In seeking answers to this question, empirical evidence has been obtained from the participants within smaller tax practices, that is, hearing the voices of those inside tax practice itself. The findings chapters have presented this evidence in accordance with the following 3 sub questions.

How do small tax practitioners manage client relationships in a dynamic environment? (Chapter 5)

How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners? (Chapter 6)

How do the practitioners see their role in the tripartite relationship with clients and HMRC? (Chapter 7)

NB, the evidence presented in the above chapters and in the discussion below, refers, at times to the participants, or practitioners. It is acknowledged in the limitations to the research, in Chapter 4, that these findings may not be generalisable to the entire population of tax practitioners.

The evidence presented in Chapter 5 illustrates “tax-preparer perceptions of their clients” and provides observations about “client preparer interactions” (Stephenson et al., 2017, p.201) addressing calls for more research in this area. These findings distil into a number of ‘expectations’. The ‘expectations’ refer to client expectations which the practitioner may not always be able to meet, so resulting in a ‘gap’ between what the practitioner believes a client wants from their service, and what they (the practitioner) can actually provide. Chapter 6 offers evidence of the tax practitioner view about the current relationship with the tax authorities. There is little prior UK research on this topic, as highlighted in Chapter 3. This relationship has a significant impact upon practice. Notable

perception gaps are apparent between what the practitioners desire from the relationship (and service) with HMRC, and that which they actually have to manage on a day to day basis. These 'gaps' have been compounded in recent years both by various reorganisations at HMRC and, many practitioners feel, the shift in opinion towards the tax profession (which is often portrayed in a negative light as discussed at Chapter 2). Chapter 7 brings together the issues arising from management of client expectations, and management of the HMRC relationship, to present evidence of how practitioners actually implement tax rules and regulations at the 'coal face' and how they balance the demands and obligations upon themselves (which come from both clients and HMRC). Evidence about the practitioner's role within the tripartite relationship is thus explored. It was found that the practitioners adopt a number of roles with regard to their professional responsibilities which enable them to carry out their practice. The roles may face both ways, that is, both client facing, and facing towards HMRC.

Overall, it is apparent throughout the findings chapters that there are many complexities, uncertainties, and challenges within the smaller tax practitioner context, which are further discussed in Section 8.3. The study offers insight into how these matters impact upon smaller tax practice, along with exploration as to how practitioners manage such challenges. In general, the findings chapters shine a light on tax practice as a whole, as taken together the three chapters give deep insights into tax practice in the smaller tax practitioner context.

In sum, the empirical chapters portray a rich study of tax practitioners in the micro (or emic, Lukka and Modell, 2010) domain. To aid a deeper understanding of the empirical findings (such as the challenges identified and their impact upon practice), the place of tax practice within the wider environment is explored in this, the Discussion Chapter. That is, the link between the micro (emic) and the macro (etic) is examined.

The chapter unfolds as follows. The link between tax practice (emic) and the wider environment (etic) and the employment of the theoretical framework is discussed in Section 8.2. This includes identification of the tax field and its composition. Smaller tax practice and its link to the tax field is highlighted in Section 8.3. This is followed by findings from each of the empirical chapters

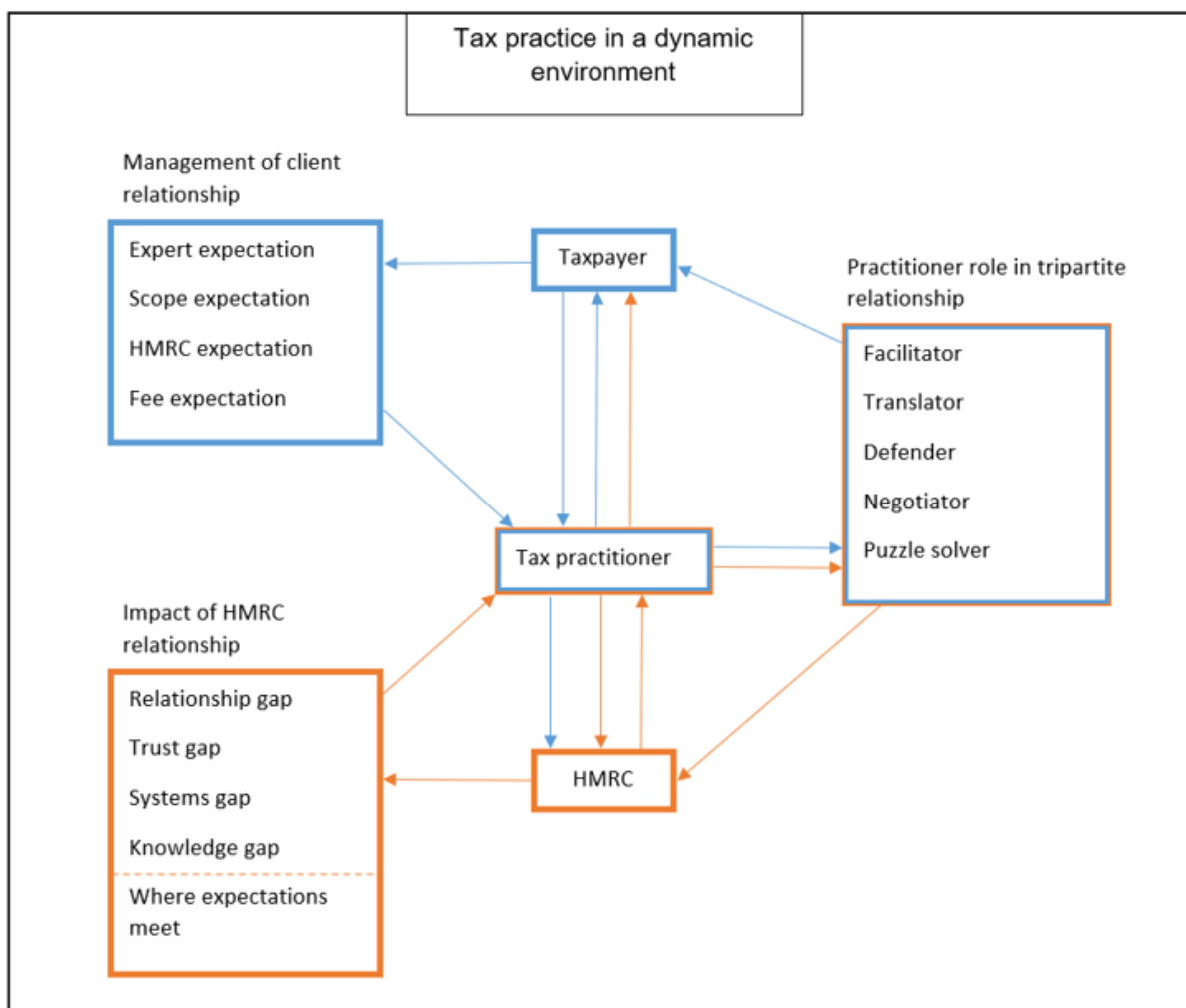
which are discussed in light of the Bourdieusian field framework; secondary themes which draw the empirical chapters together are also summarised. A summary of the chapter follows at Section 8.4.

8.2 Tax practice and its position within the wider environment

This section discusses the link between the emic and the etic and explains how the theoretical framework is employed to aid understanding of the empirical evidence discussed in Chapters, 5,6 and 7.

A diagrammatic representation of tax practice, at the emic level, as discussed in Chapters 5, 6 and 7 is shown in Fig 8.1. The empirical data presented within the findings chapters provides the tax practitioner perspective on each of the three parties (the client, HMRC and themselves) which form the tripartite relationship. As illustrated in Fig 8.1, the taxpayer makes requests of the tax practitioner, who acts on their behalf in dealings with HMRC, if the nature of the request requires it. HMRC, in turn, respond to the tax practitioner, who interacts with the taxpayer. Depending on the practitioner response to the taxpayer, there may be gaps in what the taxpayer expects from the practitioner in terms of service, as explored in Chapter 5. The relationship with HMRC is not always as the practitioner would desire, and at times the service from HMRC also falls short, in the eyes of the practitioner. This results in a number of gaps, described in Chapter 6, which have an impact not just upon the practitioner, but also upon the client/practitioner relationship. Consequently, to manage both the client and the HMRC relationship the practitioner adopts a number of roles (as illustrated in Fig 8.1). The practitioner employs a number of techniques, strategies and resources to enable them to respond to clients and HMRC alike in a dynamic tax environment. The techniques they use are discussed throughout each of the empirical chapters, with more specific details shown at Section 7.6.2 in Chapter 7. It should be noted that Fig 8.1 shows the practitioner understanding of established practice. Whilst the practitioner continues to be in the middle of the relationship, it was suggested (in Chapter 6) that on occasion HMRC have begun to contact the client directly (rather than the practitioner), which may affect the order of 'who contacts whom'. This will be discussed at Section 8.3.2 below.

Fig 8.1 Tax practice in a dynamic environment

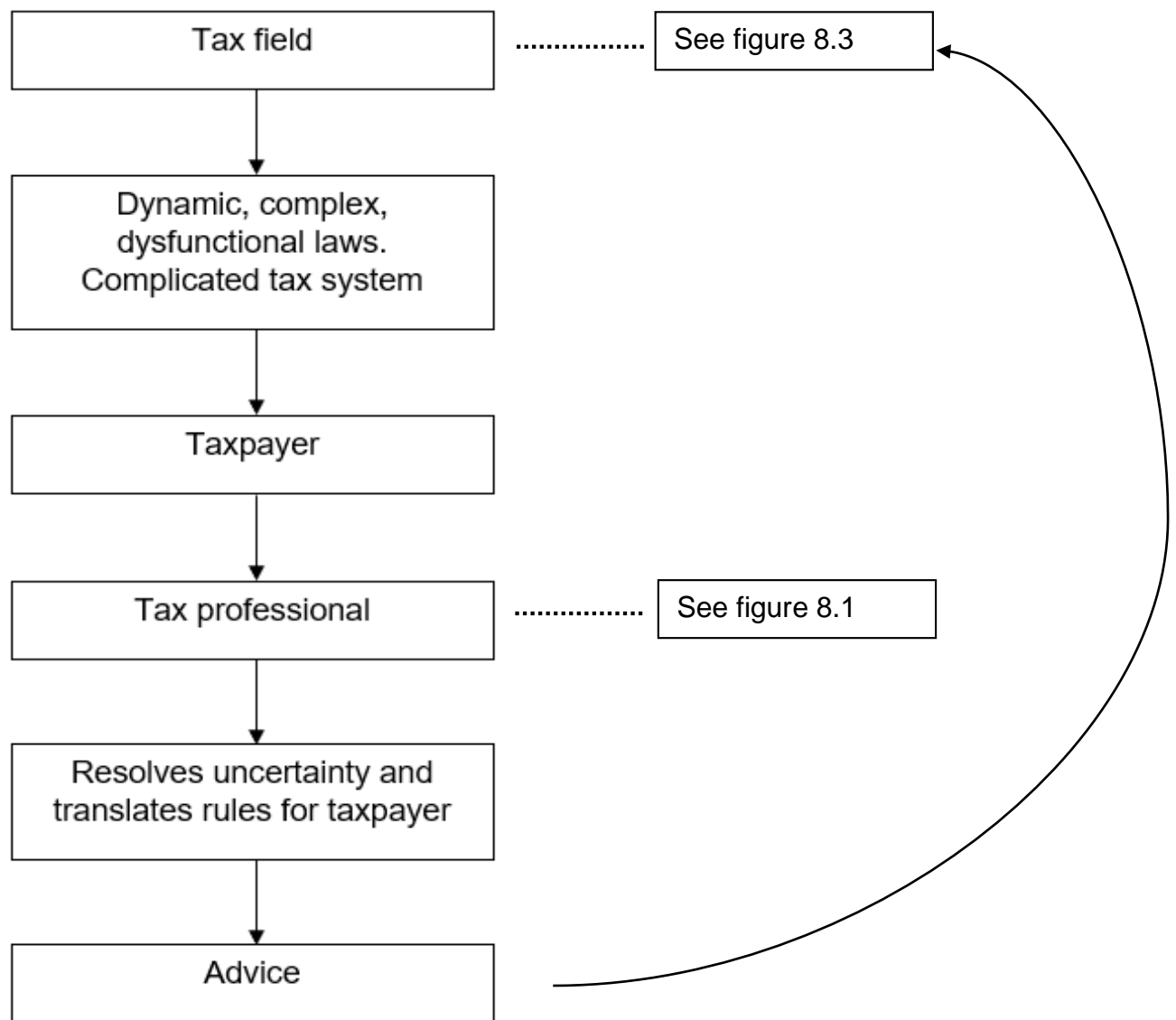


Source: Author's own

Of course, tax practice does not operate in isolation, but within a broader environment, described here as the 'tax field'. The tax environment is often described as dynamic, complex, challenging and full of "dysfunctional laws" (Fogarty and Jones, 2014, p.287) and regulations which frequently change. Without representation, taxpayers must manage this unwieldy, complicated, uncertain field in terms of the tax system itself, administrative requirements and self-assessment of the correct amount of tax. As identified in Chapter 2, many taxpayers may feel unable or unwilling to battle with such complexities and choose to pass on their uncertainties arising from this dysfunctional system (arising in the etic domain) to the tax professional (at the emic domain) for them to resolve. This is represented diagrammatically at Fig. 8.2. (the relationship is not necessarily linear, as, for example, advice proffered, may impact upon the tax

field itself, apropos the tax avoidance discussion in Chapter 2). An examination of the tax environment in which smaller tax practice operates and thus exploration of the wider tax field will help shed light on what smaller tax practitioners do, and why they do what they do in their daily work (Webb et al., 2002), and show how changes in the tax field impact upon their practice. Such examination will provide additional explanation and understanding of smaller tax practice as identified in the empirical chapters and as shown in Fig 8.1. This examination is to be informed using a tool from Bourdieu's concepts and theory of practice as discussed in Chapter 4 (Sections 4.7.3 and 4.7.4), that is, the focus will be upon Bourdieu's concepts of "fields" to explore tax practice at the 'macro' domain. By standing back from the smaller practice itself, a more holistic view of the wider environment and context in which tax practice operates is attained. The theoretical framework thus provides a way of analysing the 'etic' (macro) domain (Lukka and Modell, 2010) to enable understanding of the empirical data arising from the emic domain that is smaller tax practice.

Figure 8.2 The relationship between the etic domain (the tax field) and the emic domain (tax practice)



Source: Author's own

The next section explores the dynamics and composition of the 'tax field'.

8.2.1 Identification of the tax field

An explanation of a field, according to Bourdieu, is discussed in Chapter 4. Fields are described as social spaces, or networks (Bourdieu and Wacquant, 1992), contexts in which practice is carried out (Webb et al., 2000) or "any aspect of social life" (Lombardi and Cooper, 2015, p.88). Examples are given in Chapter 4 of the different types of field, which may consist of, for instance, organisations or types of activity. Using these explanations, it is possible to create a picture of the

'tax field' itself, although it is acknowledged that as to where one draws a boundary around a field is subjective. The 'tax field' is not itself an isolated field, but is made up of many related and interconnected fields which, together, make up the 'tax field'. As Gracia and Oats (2012a, p.307) suggest, the tax field is "overlaid and intertwined with a number of other social and professional fields".

The fields of relevance in this study (in relation to constructing the 'tax field') have been identified by drawing both upon the context to the research (as discussed in Chapter 2), and from the comments made by the participants of the study. These are identified as the political, journalistic, professional, bureaucratic (HMRC), small business and non-qualified practitioner fields; all fields which were explicitly mentioned by the participants. Additionally, the legal fields and judicial fields are also identified. The latter two fields were not named by the participants, but by implication, from the evidence collected, these fields have an impact upon the work of the tax practitioner. As said, the existence of a 'field' is subjective and as the tax field has many participants including for instance, taxpayers, practitioners, professional bodies and HMRC it is recognised that "[c]ollectives of people may occupy more than one social space [field] at a time" (Thomson, 2014, p.68) and fields may overlap. Indeed, the smaller practitioners could themselves be seen as a separate field, although here they are treated as participants (actors) of the professional field and some participants of the legal field may also be actors in the judicial field for example judges, administrators and users of the law. The boundaries of fields are fluid and changeable (Everett, 2002; Lang and Rego, 2015; Oakes et al., 1996) and may vary in response to changes in society and events both within and outside the field. The overlapping fields can thus have impact upon each other and the wider tax field, particularly as fields may also interpenetrate (Hilgers and Mangez, 2015). It so follows that influences from events which arise in one field may cross the fluid (or porous) boundaries of other fields with the consequence that events in the etic domain (macro environment) affect the emic – here smaller tax practice. This characteristic is not unique to the tax field as discussed in Chapter 4. Overlapping fields in the personal financial planner context are explored by Parnaby (2009) and in the study of the interaction of transnational and national legal fields by Madsen (2013), thus an analysis of the overlapping fields in the context of the tax field, is helpful to explain the operation of smaller tax practice. Additionally, tax, as a subject, or object of

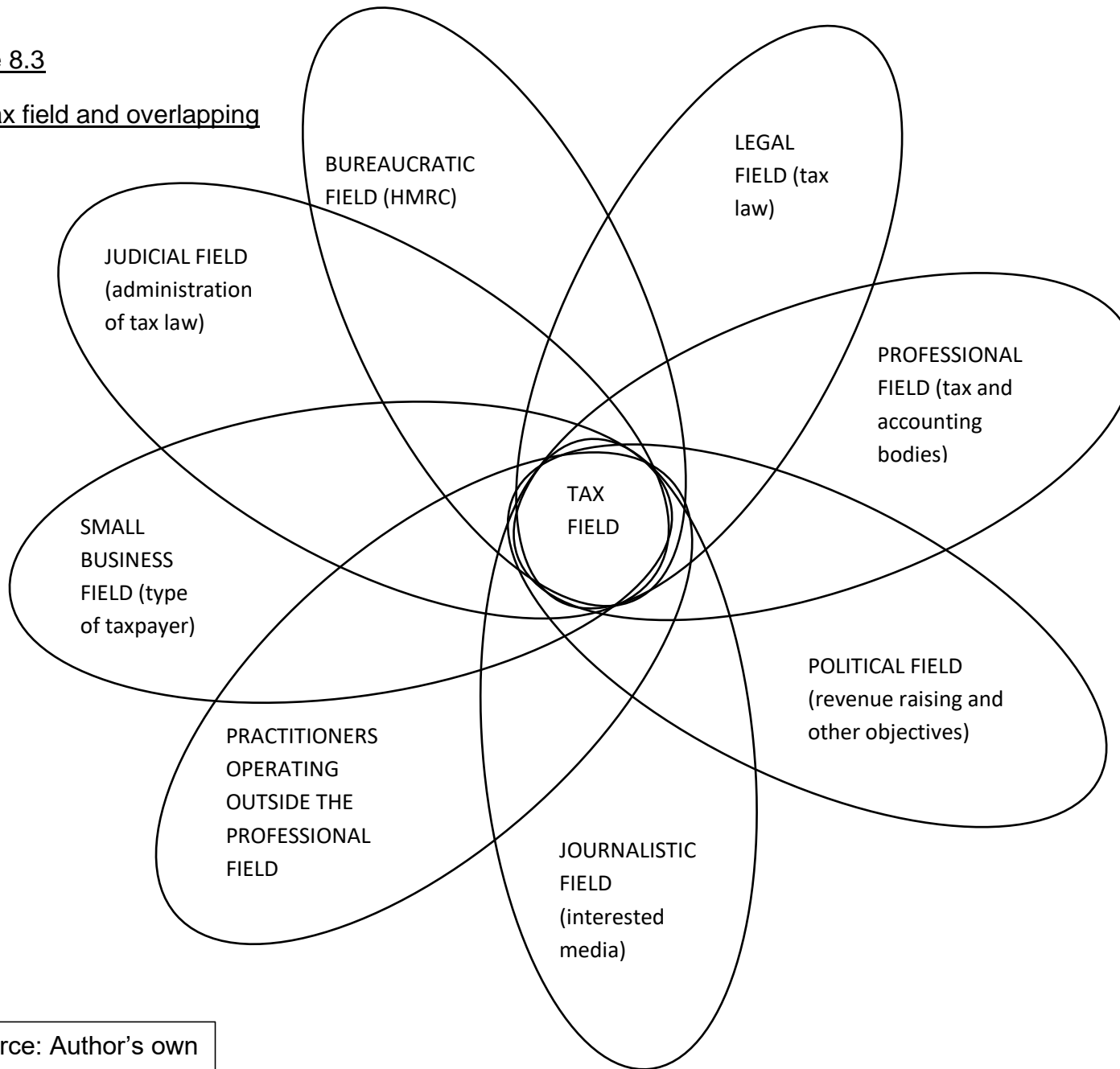
research, is interdisciplinary, drawing from areas such as economics, politics, accounting, law and so on, hence exploration of overlapping fields using a Bourdieusian framework will also allow analysis of these “complex” and “cross-disciplinary relationships” (Gracia and Oats, 2012a, p.308). A diagrammatic representation of the overlapping fields is shown at Fig 8.3 – this shows that each of the fields interlinks/overlaps/are entwined together to illustrate that each field cannot be viewed in isolation from another. Note: the order of the fields is simply random and is only for illustrative purposes.

It is also recognised that there may be other fields which may form part of the ‘tax field’ (so the above ‘fields’ may not be exhaustive) but those of relevance to this research, as derived from the empirical evidence are identified above and are discussed further below at Section 8.2.2.

Figure 8.3

The tax field and overlapping

fields



Source: Author's own

8.2.2 Composition of the fields

The tax field is thus inhabited by many actors, or participants, as well as a number of other fields (some of which are identified in Fig. 8.3). Each field will have its own dynamics and discourses or rules (ways of doing things) (Bourdieu and Wacquant, 1992) and the positions of actors within the fields, according to their capital (or power) accumulations, will contribute to the different field dynamics (Bourdieu and Wacquant, 1992; Everett, 2002; Gracia and Oats, 2012a; Thomson, 2014), as discussed in Chapter 4. The impacts of competing discourses upon smaller tax practice are examined at the micro (emic) level below in Section 8.3. Firstly, however, an explanation about the composition of the fields and their particular impact upon the tax field is given, by taking each field identified at Fig. 8.3 in turn. The discourse and pressures (and actions of actors) within each identified field, in light of the current environment and context (as identified in Chapter 2 and as evidenced in the empirical chapters) in relation to the tax field, are briefly explained.

Political field

- Greater government control over tax avoidance
- Pressure to collect more tax revenue
- Creates the requirement for new tax laws to implement tax policy
- Tax policy is not necessarily determined by those with detailed technical knowledge
- Determines what to tax (income/wealth/spending) and how to tax it
- Encourages economic development via creation of tax reliefs (such as R&D incentives; Entrepreneurs' relief)
- Use the tax system to respond to changes in the economic environment; which can result in frequent change
- Use the tax system for social objectives
- Annual budgets and Finance Acts, resulting in regular changes to tax laws

Legal field

- Drafts legislation to implement government tax policy
- Is responsible for wording and structure of legislation

- “Bolts on” anti-avoidance rules to existing legislation (Chittenden and Foster, 2009; James and Wallschutzky, 1997; Weisbach, 1999b) in response to political requests to close ‘loopholes’
- Create new legislation with ‘anti-avoidance’ in mind
- Source of advice to taxpayers and the tax (non-lawyer) profession

Judicial field

- Interpretation of law
- Adjudicate disputes between (here) taxpayer (via adviser) and HMRC
- Results in case law and legal precedent
- Rulings may unsettle previously settled tax positions

Bureaucratic field (specifically here HMRC)

- Collect and administer taxes
- Under pressure to collect more taxes
- Provide a service to the public
- To treat taxpayers fairly (per taxpayers’ charter, Chapter 2)
- Engage with tax agents (per Chapter 2)
- Manage and interpret complex law, seek judicial rulings and deal with frequent change
- Cope with the above whilst undergoing organisational change at the HMRC level in terms of physical reorganisation/resource issues/introduction of new systems

Professional field (within which the tax practitioners from this research sit)

- Educate members and provide qualifications
- Provision of ethical guidance and requirements, including for example PCRT (as discussed in Chapter 2)
- Oversight of members
- Provide opportunities for consultation on proposed tax changes
- Many different actors in the field (professional bodies, as discussed in Chapter 2; different tax related professions such as accountants/lawyers)

Small business field (type of taxpayer common to the smaller practitioner context)

- May not appreciate tax complexity
- May entirely ignore tax consequences of a transaction
- Focus upon the business/commerciality rather than tax issues
- Tax planning opportunities may be identified by either practitioner or taxpayer

Journalistic field

- Discourse about tax avoidance.
- Variety of perspectives (professional field, media field, etc.)
- Online forums, websites and impact on behaviour of those who use these

Practitioners outside the professional field (those outside a professional body)

- The non-qualified practitioners
- Public may think all practitioners are qualified (per Chapter 2)
- No oversight or registration

In terms of how the fields are composed, HMRC is shown as part of the bureaucratic field; the practitioner is shown as a participant in the professional field (more specifically here the tax or accounting profession, rather than say the legal profession as of course the term 'professional field' has wide reach). Tax practitioners who operate outside the professional field (the non-qualified) are shown as a separate field, as whilst participants from this field are outside this study, they were frequently mentioned by the interviewees. With regard to taxpayers, these may belong to different fields, such as the small business field, or the multinational enterprise field etc. The small business field is included here, as this is indicative of the types of client the smaller practitioner will deal with. The participants within the remaining fields, are considered to be those working within the different practices within those particular fields, be they lawyers, policymakers, journalists, judges, the courts and so on.

A closer examination of these overlapping fields is needed to understand the impact upon the smaller tax practice. This analysis can then be used to understand the empirical findings in light of the research questions asked. For

instance, both the tax practitioner and HMRC as participants in the broader tax field manage complex tax law (which derives from the legal field, and which has origins in the political field); the practitioner and HMRC (and indeed those in other fields of practice) will be governed by their respective professional organisations and regulations; HMRC may not provide clear guidance as to how a transaction should be taxed, or may be difficult to contact (as evidenced in Chapter 6) creating issues in the tax field deriving from the bureaucratic field; and the tax and accounting professional bodies within the professional field require their members to be up to date, compliant with ethical responsibilities and to adhere to, for instance, the PCRT (as explained in Chapter 2), which impacts upon the behaviour of the tax practitioner and their interactions with clients and HMRC and participants in other fields. The smaller practitioners discussed here are likely to have taxpayers from the smaller business field amongst their clients, the nature of which requires the practitioner to have knowledge of multiple taxes, as transactions may have many tax effects which may add uncertainty to their task. This explanation is of course, not exhaustive in any way, but gives a flavour of how influences from other fields impact upon each other, as will be further explored in the small practitioner sense at Section 8.3.

The fields are not static, they are fluid (Everett, 2002), in a constant state of flux and boundaries can change (Lang and Rego, 2015; Oakes et al., 1996). This fluidity adds further dimension to smaller tax practice. The discourses and rules of the game may change depending on events within (or outside) the field, requiring new understanding of how the field operates (Hilgers and Mangez, 2015). Additionally, there may be an absence of common discourse amongst the fields which overlay the tax field. These matters, along with the interplay between different fields, combine to create a complex environment which will affect tax practice.

The consequences of changes at field level (upon tax practice) are examined in more detail at Section 8.3 however, it is a general consensus amongst participants of this study that the environment they work in is not how it was some years ago. Struggles by the participants within the different fields to obtain more capital (power) result in changes in the dynamics of the different fields (and to the previously understood rules of the game) and thus creates challenge to established practice (Dezalay and Madsen, 2012; Gorton, 2002; Hilgers and

Mangez, 2015). A new understanding of the field is therefore required (Hilgers and Mangez, 2015). This has effect on the practitioner's role in the middle of the tripartite relationship, and how they balance obligations to both clients on the one hand, and HMRC on the other. The roles they employ to manage this are multifaceted, as explained in Chapters 5, 6 and 7.

What follows at Section 8.3 is a discussion of how the Bourdieusian field framework can be used to inform the findings at the practitioner level. Of course, Bourdieu's theory of practice combines matters of the field, habitus and capital, as discussed in Chapter 4. The three concepts are interlinked, relational, and taken together can help explain overall practice. Whilst 'field' is the focus here, there will be references to the resources (capitals) of the practitioner and how they employ them to manage practice (which may be affected by their habitus). Indeed, an examination of capital will help identify which participants, within which fields, have more power over the tax field than others and therefore have an impact upon the practice of the tax practitioner.

The next section begins with an overview of the smaller tax practitioner context which is then followed by taking each of the research questions in turn (and the associated empirical chapter) to explore links between the macro (etic) and micro (emic) perspective to shed more light on smaller tax practice per se, and in particular to answer the overall research question as to how changes in the tax field impact upon the practice of the smaller tax practitioner.

8.3 The tax field and smaller tax practice

Chapters 5, 6 and 7 show the working environment of the practitioner is complex and certainly not static. It should be said however that the participants in the study expect that they will have to deal with, at times, complex legislation and a complicated tax system and they anticipate that their daily tasks may involve management and resolution of uncertainties to enable them to provide the advice required by their clients.

The 'small business taxpayer field' (largely owner-managed businesses and individual taxpayers) creates challenges for the smaller practitioner which may differ to those working for larger, more specialised organisations. The nature of the work is such that the practitioners may obtain many different tax questions in their daily work – some of which they will never have come across before. Many

queries may be 'ad hoc' and given the nature of the client base, the scope of queries is very broad (see Appendix 10.2 for examples). The practitioners expect to have to work with pages of legislation, guidance, and perhaps to seek advice themselves, as it is often anticipated that the answer may not come easily to them. As discussed in Chapter 5, many are aware of the risks of stepping outside their areas of expertise, however, on the whole, practitioners do not have detailed knowledge about one particular tax (as those working for larger firms may), instead, they require breadth of knowledge, and understanding of multiple taxes, to enable them to meet the requirements of their client base. Nevertheless, this is anticipated as part of the environment in which they work. A broad knowledge was seen as a strength of a smaller practitioner and is illustrative of the technical capital on which they can draw (there are exceptions, apropos those operating in a niche environment, or those working in the larger of the smaller practices who may form areas of specialisation). Another characteristic of the 'small business taxpayer field' is the taxpayer's need for broader business advice, and the tax practitioner may have to offer this. This is attained by having a good knowledge of the client as suggested by Stephenson et al. (2017). Various examples were provided by the participants relating to general business and commercial matters. The smaller business owner may require direction as to impacts of decisions upon employees, shareholders, business succession planning and so on. Hence, here, the practitioner's knowledge and experience is used in a different (not necessarily tax related) capacity.

This, the broader context in which smaller tax practice is situated is expected as the norm and tax practitioners are accustomed to this. In other words, the rules of the game, in the context described above, are such that practitioners expect to resolve complex tax queries or solve the puzzle with which they are presented, as discussed in Chapter 7. However, the practitioners feel that their work environment and their profession has changed greatly in recent years and they may experience new, unsettling or unexpected challenges to their practice. As will be discussed, these challenges to established tax practice emanate from changes in the dynamics of the tax field. The practitioners' work environment has changed from what they knew; the rules of the game have shifted. These changes affect the type of work they do, how they feel about themselves and their profession. Thus, as will be seen, changes at the field level have consequences

for the practitioners' work practices and relationship management, which adds additional uncertainty and a further dimension to the practitioners' work. Practitioners must adjust to a new normal.

The shifts and changes in dynamics in the tax field and the associated impacts upon smaller tax practice are encapsulated in the discussion that follows. A number of overriding themes can be seen including uncertainty, issues of trust and the professional identity of the practitioner.

As a reminder the overarching question to be addressed is:

How do changes in the tax field impact upon the practice of the smaller tax practitioner?

The following sections discuss each of the sub questions of the study in turn, to assess the impact of changes in the tax field upon each of the practitioners' relationships with the client (8.3.1), HMRC (8.3.2) and their position within the middle of the tripartite relationship (8.3.3).

8.3.1 How do small tax practitioners manage client relationships in a dynamic environment? (Chapter 5)

As discussed in Chapter 5, the practitioner must address a number of challenges in the practitioner/client relationship, including management of expectations. The themes arising from the evidence indicate a number of gaps between what the client expects a practitioner can do, and what they can actually achieve, which are identified in Chapter 5 as the 'expert', 'scope', 'HMRC' and 'fee' expectation gaps.

Various influences stem from the tax field which affect a practitioner's approach to client relationships and examination of these help shed light upon why the gaps arise. A number of factors combine to create the environment in which tax practice plays out, including as described at Section 8.2.2, complex or uncertain laws, bureaucratic and administrative challenges, the nature of the small business field, as well as the requirements of professional bodies. Each of these fields have different perspectives and discourses, which add various different dimensions to a practitioner's work. At a simple level, taxpayers may want to minimise tax, HMRC may want to maximise it and HMRC is under pressure in this respect for the reasons given at Section 8.2.2. HMRC may thus, for example,

challenge claims to tax relief more frequently to prevent loss of tax and may be less willing to negotiate over doubtful positions (both examples which featured in evidence through Chapter 5-7). Additionally, to prevent taxpayers (or their advisers) taking unfair advantage of the law, the political field may require new laws, or adaptation of existing law; this may sometimes arise, perhaps, as a consequence of (some) tax practitioners' former advice. Thus the tax practitioner has impact upon the tax field itself in this respect as shown at Fig 8.2. Legislation created by the legal field may be written in a manner which makes it more difficult for the taxpayer to 'get around', thus legal provisions may become more complicated, or the practitioner may not understand how to implement them. The interplay between the political, legal, bureaucratic and other related fields and the frequent change within them creates uncertainty. Tax practice must work with this environment; hence it follows that there may be expectation gaps about what a client thinks a practitioner can do for them.

Complex or vague legislation alone may prevent provision of an instant answer to a client query. Research may be required. This may include 'groundwork' to get to a 'standing start' (given the broad scope of smaller tax practice), or to ascertain how ambiguous law may apply to a transaction. The practitioner must do sufficient work to be comfortable in their technical ability to attain an appropriate answer. This is an anticipated part of their role and participants draw on former experiences (their habitus) to manage this. However, participants highlighted an environment of growing uncertainty – be that increasing subjectivity in application of legal provision or a blurring of the line between unacceptable tax avoidance and tax planning. The latter two examples result from changes in the dynamics in the tax field, which are discussed further below when examining the 'scope' gap. Some tax matters may thus require further investment of time to resolve uncertainties and manage risks as discussed in Chapter 5. As an instant answer may not be forthcoming for the client, this leads to the '**expert expectation**' gap. Whilst the practitioner invests time to undertake research to manage their own uncertainties, this may affect the client relationship. Some reported that clients may question their capabilities if an immediate answer is not provided. The client expects to pay for the knowledge of the practitioner as they have passed their own uncertainties to the adviser, and they expect the adviser to address these (as also identified by Fogarty and Jones, 2014). If they

do not meet the client's expectations, this creates uncertainty from the client perspective (in the ability of the practitioner and for their own tax position) and affects the trust in the relationship. Clients may question the technical capital (the knowledge, experience) and professional capability of the practitioner and wonder what they are paying for; as the work undertaken to resolve a query is often unseen. The expertise of the practitioner is thus used in ways not expected (or seen) by the client. The capitals to which the practitioners have access to resolve the client query (their knowledge, past experience and access to resources such as legislation, guidance etc.), is an intangible commodity from the perspective of the client and indeed the symbolic capital which comes from the practitioner's professional qualifications may also be questioned, thus resulting in the expert gap.

Relatedly smaller tax practitioners frequently interact with their non-tax colleagues. This relationship may create further uncertainty. A number of practitioners described backtracking on client advice incorrectly provided by accounting colleagues (as identified by Tomasic and Pentony, 1991). Why the advice of tax colleagues is not always sought in the first instance is not clear. There may be a concern about fees, or the accounting colleague may feel their knowledge is sufficient, hence devaluing the expertise of their tax colleagues. The tax professional however has other knowledge (or cultural capital) which may benefit the client, which other colleagues may not, such as a broad view of the operation of the tax field and the challenges which arise therefrom and how they may affect the client's position. Different fields collide here – the accounting professional and the tax professional, both of which seek the approval of the client (and hence an increase in power over colleagues and the clients perhaps). Nevertheless, although the goal to advise the client appropriately should be common, the different expertise and approach of each professional may create risk management problems if the wrong advice is given and may further contribute to the 'expert' gap. The trust between the client and the tax (and accounting) practitioner may also be tested.

The '**scope expectation**' described in Chapter 5 has various perspectives. If a client is told that an error must be corrected to avoid loss of tax to HMRC, the practitioner's allegiance may be doubted, as in the client's eyes, the allegiance appears to be to HMRC rather than themselves. Trust in the relationship may

thus be tested as the scope of the practitioner's role is questioned. The practitioner's professional identity (their conduct, behaviour, morals and beliefs) as discussed in Chapter 3 has consequence for trust in the relationship, as they have ethical obligations to their profession in such circumstances which prevents them acting in a way the client would prefer.

Further, many participants observed that clients focus upon making their business a success. Tax matters may be seen as incidental, or not given any thought at all. Perhaps the client assumes their practitioner will 'sort it all out', as they have passed on such uncertainties to them (as identified by Fogarty and Jones, 2014), but in some cases the practitioner may need to bring this to the client's attention. This has implications for the scope of the practitioner's work in a totally different capacity. As discussed in Chapter 5, the practitioner may employ their technical capital and experience to identify future tax or business problems by broadening the scope of the advice.

Finally, there is a tax planning 'scope gap'. The participants acknowledge changes in the tax field in recent years have narrowed what advice a practitioner feels comfortable in providing. The dynamics and rules of the game have changed as a result of external pressures on the government and HMRC to get a 'grip' over tax avoidance, which has consequence for the tax field and the different powers (capitals) of the participants within it. The dynamics have changed as struggles ensue for increased power over the field. The fact that the tax profession has been involved with unacceptable tax avoidance in the past has resulted in a change in position of stakeholders within the field to address these matters, as the regulatory system has been upset (Gracia and Oats, 2012a), hence is illustrative of how the tax practice (the emic) affects the wider tax field (the etic). The power of the practitioners to assist the taxpayer to 'game' the system (Eustice, 1989; Freedman, 2010; Ginsberg, 1984; Kleinbard, 1990; MacNeil, 2009; McBarnet and Whelan, 1991; Monroe 1981; Picciotto, 2007; Powers, 1976; Prebble, 1994; Weisbach, 1999b) has reduced, resulting in a transfer of power to HMRC. There are changes in many fields as a consequence, not just the bureaucratic field. Even if a practitioner has not been involved in unacceptable tax avoidance practices in the past, they are nevertheless affected by the response of the tax profession to this issue and must abide by the strengthened PRCT rules as discussed in Chapter 2. They must also implement

revised legal provisions. The judicial field now tends to interpret law in anti-avoidance cases in favour of HMRC and not the taxpayer. Additionally, the reporting about tax avoidance in the journalistic field has contributed to uncertainties around the acceptability of tax planning in general. On the other hand, media reports about tax avoidance schemes, may act as advertisements to clients who wish to take part in them which creates further client management (and trust) issues, as the client risk preference may not align with that of the practitioner (as observed by Hite and McGill, 1992; Sakaurai and Braithwaite, 1993). These clients may question (or challenge) the practitioners' expertise (as discussed by Parnaby, 2009, in the financial planning field). An example of this was provided by **I/V4** whose client questioned why tax shelters used by celebrities had not been offered to them. The practitioner's legitimacy is challenged here – the client sees potential tax savings which they have not been offered. They may question why, in their view, the practitioner has not acted on their behalf. The 'scope' expectation gap can thus be seen. There is a tax planning gap, between what a practitioner is comfortable to advise upon, versus what the client may like to achieve. Some also prevented clients from entering into dubious schemes identified on the internet. The evidence suggested that practitioners will not automatically conform to client preferences in this respect, if they are uncomfortable with matters, despite findings by Carnes et al. (1996), Cloyd and Spilker, (1999) and Kahle and White, (2004), although it is acknowledged that their findings come from a time prior to the revised narrative around tax avoidance. It would however appear that there is evidence to suggest that some practitioners are actually more risk averse than some clients, consistent with findings of Brody and Masselli, (1996), Christensen, (1992), Helleloid, (1989) and Hite et al. (1992). It may be that the risk appetite of the practitioners has shifted as a consequence of the changed dynamics in the tax field as described. They may be far more cautious. Additionally, increased HMRC powers and penalty provisions, which again arise outside of tax practice per se may also have influence on the practitioners' behaviours and hence tax practice (Brody and Masselli, 1996). Nevertheless, the practitioners continue to seek an efficient tax position for their clients, but a number of matters come into play. The practitioner draws on their judgment and experience. Responsibilities to HMRC and awareness of the 'moral' argument, are also relevant and the practitioner has regard to their own conduct and professional identity to determine a position with

which they feel comfortable. Thus if the client and the practitioner are not on the same page, a further scope gap may arise.

Nevertheless, although some clients want a proactive tax adviser as identified by Christensen (1992) and Hasseldine et al. (2011), some forego the tax planning advice proffered by the practitioner as discussed in Chapter 5. Some are simply 'content' with the tax they pay. Some may fear the symbolic power (the authority) of HMRC, as they may not want to come to their attention. It would seem that HMRC has domination in the field (over and above the practitioner advice, hence weakening the practitioner's capital in this respect). Many examples related to claims for tax reliefs. There is seemingly a 'pull' between the political field which introduces such claims (as economic incentives) and the actors in the bureaucratic field (HMRC) who in their quest to protect the revenue net and to treat taxpayers equally may investigate the claim to ensure it is legitimate. The taxpayer may not want to be exposed to this scrutiny, particularly if there is any uncertainty as to whether, or not, a claim may be successful. These are examples in which the practitioner is unable to utilise their technical capital and knowledge to save the client tax, and consequently, they are unable to convert this knowledge into economic capital (a fee). Here, the expertise of the practitioner is not questioned per se, but the taxpayer is prevented from acting upon the advice given by other actors within the broader tax field. The tax practitioner's advice is not seemingly trusted by the client, the reasons for which derive in other fields. Some practitioners however know their clients so well, they know not to offer unwanted advice to them, as it may increase the client's uncertainties. This in-depth knowledge about the client, is representative of the small practitioner field (which was also identified by Stephenson et al., 2017) and is an example of the alignment of the practitioners' expectations with those of the client, to maintain the relationship.

The client/practitioner relationship is also affected by circumstances at HMRC. There is a '**HMRC expectation**' gap. Briefly, delays and errors at HMRC are outside the control of practitioners, yet the client may question the competence of the practitioner in this regard which may create trust problems in the client/practitioner relationship. The authority of HMRC is seen as powerful by taxpayers (given its symbolic power as an organisation) and practitioners must manage this perception, as mistakes and delays can arise in any organisation,

HMRC included. Errors and delays by HMRC impact upon the capacity of the practitioner to convert time into economic capital, i.e. fees are affected. More details about the HMRC aspect of the practitioner/client relationships are discussed in Chapters 6 and 7 and thus in Sections 8.3.2 and 8.3.3 below.

The final gap is the 'fee expectation'. The empirical evidence suggested fees pose a dilemma for many. The main issue was what to charge for 'investigating' a transaction (a problem also identified by Fogarty and Jones, 2014). This problem may be related to the habitus of the practitioner. Their background and experiences may be such that protracted research is required, given the complexities of smaller tax practice. Many were not prepared to charge the client for the whole of the work (as found by Stringfellow et al., 2015 in the small accounting practitioner context), and indeed would not expect the client to pay for research time, or 'looking things up' – as the client would not anticipate having to pay for this. This was also identified by Fogarty and Jones (2014), that is, the client is happy to pay for knowledge, but not the time taken to acquire it. This suggests that, perversely, taking a smaller fee protects the symbolic and cultural capital (the technical knowledge) of the practitioner from scrutiny or question by the client in case their competence is doubted. There may also be a risk management perspective. The practitioner may choose to do more investigative research to grasp the more technical aspects as suggested by McKerchar (2005) and manage uncertainty and hence the risk of getting the advice wrong (a fact which may be more pronounced in the smaller practitioner context, as identified by Stringfellow et al., 2015 as such practitioners are aware of the limitations of their expertise). This may ensure the practitioner feels more secure about the advice offered, but they seem unwilling to charge the client for this work.

The above provides evidence of the 'pull' on the practitioner between the client demands, their ethical obligations to act within the law in seeking a tax efficient position for a client and to uphold the regulations of their profession. The way practitioners feel about being drawn into something they think unacceptable is indicative of a practitioner's professional identity (see Section 3.4.5). An individual's professional identity is shaped by many influences. Such influences include the remit of the professional body to which s/he may belong (as not all may belong to such a body, as discussed in Chapter 2) and the ethical obligations of the practitioner (to her/himself, the professional body, the client and wider

society) as inculcated during training and career development, all of which affect the practitioner's disposition and appetite for risk, thus, habitus is relevant here too. An awareness of a risk to one's reputation, or the organisation in which they work may also influence risk taking and may be inextricably linked to the ethical approach of practitioners (Doyle et al., 2009b). Practice risk (and exposure to penalties) is said to temper the desire to take unacceptable risks such as taking advantage of ambiguous law (Carnes et al., 1996). Smaller practitioners and partners in small firms in particular will be particularly attuned to practice risk as in some instances the small practitioner IS the firm. Development of skills in the workplace (Hamilton, 2013; Hicks et al., 2011) also provide practitioners with the knowledge and confidence to undertake the broad range of work in the smaller practitioner environment and enable an awareness of knowledge limitations and hence when to investigate further. The "human capital" (Stringfellow and Shaw, 2009, p.137) which has developed overtime thus evolves into experience and expertise.

The practitioner must deal with complex scenarios which arise from a combination of factors which flow from the overlapping fields within the broader tax field. This affects their work, how they approach it, and consequently their relationships with clients. Nevertheless, they need to satisfy a number of parties: themselves (that they are providing the right advice); the professional field (keeping to the ethical standards and professional behaviour required); the bureaucratic field (that they enable the taxpayer to meet their obligations and conform to the law); and the taxpayer (to advise them appropriately within the law) – and whom, as said, may prefer to save tax where possible, which is contrary to the remit of HMRC. Hence the practitioner is caught between, and has to manage, the different consequences of the overlapping fields.

The practitioner has a number of techniques to manage the expectation gaps. Their efforts are ordinarily converted into a document to provide something tangible for the client. It represents a physical manifestation of the practitioner's expertise which is the technical capital (knowledge) and symbolic capital (qualifications). This helps manage uncertainties (from both the practitioner and client perspective). Interpretations of legal provisions and implications of advice are communicated to clients in this form to ensure their understanding or 'buy in'.

A tangible document also elicits trust in the relationship and is a form of symbolic capital in itself. Such documents will also help justify the fee.

Additionally, the practitioner's experience (habitus and professional identity) is drawn upon to judge whether they have the ability, resource and expertise – that is the relevant capitals - to undertake the work successfully and minimise risk to themselves, the practice and the client. It is noted in Chapter 4 and seen in the findings of Chapter 5 that different participants have different capitals. This may be a wide network of contacts or technical knowledge from former work experiences in other firms, or knowledge about HMRC as an organisation and the working practices within it (of those participants with former HMRC experience). For instance, those with HMRC experience (I/Vs 1, 5, and 8) or those who specialise in a niche area (I/Vs 2, 8, 11 and 12) bring different sets of expertise (and thus capital) to their clients. Experience is used to judge what is and is not acceptable to her/himself in terms of tax planning and this is balanced against a client's desire to save tax. The evidence in this study would suggest that, today, all steer away from taking part in 'unacceptable' tax avoidance and at times, some may defer to HMRC's view even if they may not agree with it (should the tax at stake not be deemed large enough to argue over) which is indicative of a shift in the power towards the bureaucratic field and away from the practitioners. Some participants attempt to educate their clients – be this about dubious tax avoidance schemes or the consequences of errors. Hence practitioners use their technical capital and knowledge to protect both themselves and the client, which is consistent with Tomasic and Pentony (1991). The 'expert' practitioner as manifests in this situation, is different to that expected by the client – who may expect to be advised how to save as much tax as possible in any which way possible. The practitioner thus uses their expertise and knowledge differently to that which may be expected and draws on the symbolic capital as a member of the tax profession to promote what is seen as 'doing the right thing'. Interestingly too, the 'social implications' of paying tax were drawn upon by some to dissuade clients from entering into unacceptable tax arrangements which could be likened to a 'moral argument'. These techniques narrow the 'scope gap'. Had this research been undertaken a number of years ago, it would have been interesting to see whether similar comments would have been made then, one suspects perhaps not. The dynamics have changed as a result of a shift in power over the

tax field. This could be seen as an example of where narratives and discourses in the various different fields begin to align (that is all discourage tax avoidance).

The above illustrates how changes in the tax field impacts upon the client/practitioner relationship and thus how the gaps in expectation arise.

A closer look at the relationship with HMRC now follows.

The research question addressed by the empirical evidence in Chapter 6 is:

8.3.2 How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners?

The main field of influence upon the practice of the smaller tax practitioner within this part of the discussion is that of the bureaucratic field, specifically HMRC. It is acknowledged that HMRC as an organisation may be under pressure from other fields as it too has to cope with frequent change and complex law, which is influenced by the political, legal and judicial fields. Even the journalistic field has impact upon HMRC, given its reporting of the organisation's success or otherwise in terms of tax collection, tax avoidance, compliance and customer service statistics etc., hence HMRC, of course, has its own pressures to bear. This section however discusses the relationship between the smaller practitioner and the large bureaucratic organisation which is HMRC. There is evidence of recent change in the tax practitioner/HMRC relationship which impacts upon tax practice. Underlying themes of uncertainty and trust are identified.

Many participants in this study have many years of experience and may have worked for a number of organisations as seen in Table 4.2 in Chapter 4. Hence these participants are used to working with HMRC, and have, formerly, understood where they stand within the tripartite relationship. What is clear however, is that this former understanding – so a prior understanding of the rules of the game in the HMRC relationship – no longer holds. That is, what was the 'norm' in terms of this aspect of tax practice has become unsettled, and the participants describe finding their way around new rules of the game and a changed discourse. There is a sense that practitioners are repositioning their former expectations and that the ground on which they are used to standing, is still shifting as participants continue to adjust to a new normal. This has increased uncertainty in the practitioner environment.

A number of matters have combined to create this feeling, all of which highlight HMRC's increasing dominance in the tax field as discussed below. Changes in the tax field thus contribute to the gaps identified in Chapter 6 between what the practitioners would like in terms of service or relationship from HMRC and what they find in practice. These are the relationship, trust, systems and knowledge gaps.

The reorganisation at, and reduction of resources in, HMRC has created changes to working practices. The 'relationship' gap has arisen as the interviewees can no longer access a named individual who is responsible for their client. The former tangible, seemingly amicable relationship (as described in Chapter 6) has been lost. There is regret about the loss of contact with known individuals and thus the loss of access to an informal source of technical capital, as inspectors at HMRC may formerly have been a resource on which participants could draw for assistance and advice. A "trust" gap has also developed. Some participants suggest that their former relationship with staff at HMRC was based upon mutual trust and respect as both parties had an interest to work together to resolve taxpayer issues (as also suggested by Hasseldine et al., 2011; Maas, 2015). This appears to be no longer the case. Some participants report less pragmatic approaches to the resolution of tax audits and some (not all) HMRC staff were said to have pre-determined views and would not move their position no matter what the practitioner said, which leaves the practitioner less able to 'call' the outcome. The words "aggressive" and "bully" featured a number of times regarding HMRC's attitude. Refusals to show discretion in relation to each taxpayer's situation were also reported (discretionary settlements have become much politicised as discussed in Chapter 6 (Huber, 2013; Public Accounts Committee, 2011). Additionally, weak (or surprising) arguments (in the opinion of the participants) have led to tax audits. In the past, the participant's cultural capital included an ability to resolve matters with their HMRC counterpart, on behalf of the client. Whilst this will still be possible, it appears that the participant may encounter challenges in doing so. This may weaken the capital of the practitioner as HMRC tries to take more control over the outcome – it will depend on the situation and the practitioner (and client) appetite to take the argument forward. Many referred to 'settling' a position rather than engaging in protracted argument, even if there was disagreement with HMRC. Such action may result

in the payment of tax to save time and costs, but which may not actually be due – could that be the intention? Perhaps this works to the advantage of HMRC as such action brings a case to a close and the tax collected may be more than it might have otherwise been. It is not uncommon for practitioners to ‘settle’, but it seems the power they had in the past to negotiate over such matters has reduced. HMRC capital dominates that of the practitioner.

HMRC are under pressure from other fields to collect more tax which may account in part for these changes, yet some interviewees felt they, as tax practitioners were not trusted. This feeling was accentuated given reports that HMRC, on occasion, contact the client directly, rather than via the practitioner. The move to prioritise the taxpayer in the tripartite relationship, over and above their representative, is indicative of a move to an ‘enhanced relationship model’ by tax authorities, where the practitioner is ‘side-lined’ in the relationship (Dabner, 2012). This weakens the practitioner/client relationship considerably as seen in Chapter 6. The advantage the practitioner once had, of being forewarned and being on the front foot (to reassure a client, or anticipate issues) with regards to, say, an audit letter, has reduced. The practitioner is no longer in the driving seat. The practitioner relationship with the client must thus adjust. Symbolic power and the power of authority is drawn upon by HMRC. The approach to the taxpayer directly may result in some taxpayers feeling under pressure to comply with HMRC without question. The advice the practitioner may provide otherwise could be ignored, weakening the power of the practitioner yet further. Tax practice thus has to adjust to maintain the client trust in the relationship.

An apparent reduction in trust between HMRC and the taxpayer is also notable. Actors within other fields may view the small business field differently to the practitioners. Practitioners see a commercial business, yet, HMRC, it is suggested see organisations which simply focus upon paying as little tax as possible. There is a lack of common discourse between the professional (the practitioner) and bureaucratic field as it seeks to increase tax revenue. The in-depth understanding the tax practitioner has about their client should be a strength (Stephenson et al., 2017) and their knowledge of the commercial business of the client is likely superior to that of HMRC. However, the knowledge the practitioner has about their clients – their capital – does not outweigh the scepticism that HMRC has about the motives behind a transaction (commercial

versus tax saving). It seems difficult for practitioners to persuade them otherwise at times.

HMRC reorganisation has created other frustrations. A lack of knowledge by front line staff was a common complaint, contributing to the '**knowledge gap**'. Many interviewees avoided contacting HMRC for assistance, as the information received therefrom was not valuable to them for the reasons explained in Chapter 6. Additionally, the problems arising from delays and errors at HMRC (some of which arise from increasing digitisation and reduced human input, described as the '**systems gap**') and the impact upon practice are explored in Chapter 6 and this too has implications for trust in the tripartite relationship. The bureaucratic field runs at a far slower pace. HMRC appears not to value time (Maas, 2015, also referred to this), however in private business, time equates to money, or economic capital. The time it takes to resolve a matter at HMRC appears to be of little consequence in that particular field, however, there are many consequential effects of this in other related fields, particularly on the time and costs which arise on the taxpayer and tax practitioner. Clearly economic capital (maximisation of tax revenue) from HMRC's perspective is important. Time is, however, an expensive commodity in professional practice and HMRC delays have an impact upon a firm's ability to earn fees. There is a mismatch of capital at play within the tax field. HMRC has power over the practitioner, as they have no control over the speed at which HMRC operates. Practitioners must deal with the effects on tax practice, (such as pressure on client relationships, and fee problems) which flow from this. The practitioner, for example, becomes the 'face' of the delay (rather than HMRC), and may thus be subject to client frustrations, and scepticism about why their tax issue remains unresolved.

There are difficulties in this relationship which impact upon tax practice at the emic domain. Interestingly however, the efforts of HMRC in terms of the 'agent strategy' discussed in Chapter 2, to engage practitioners and improve aspects in the HMRC/agent relationship, were infrequently mentioned by participants. There were some references to these endeavours in Chapter 6 – such as reference to the 'agent helpline', the 'agent portal', an event with HMRC about their 'systems', and a Working Together meeting. The reactions of the practitioners to the 'in person' events differed – this could be due to the nature of the meeting (a systems/technology event was received more positively than the

meeting which appeared to be based more around the traditional HMRC/practitioner relationship), but it is difficult to say. However, the experience of the practitioners at the Working Together meeting seemed to reflect the narrative that HMRC's views are inflexible which may explain this. Agent strategy and practitioner engagement (and awareness) could be a subject for further exploration as highlighted in Section 9.4 – as this may perhaps be part of the solution to improved, smoother functioning relationships.

It is important to mention the positive sides of the relationship. Certain individuals were praised for their pragmatism, understanding, or helpfulness (for instance, the offer to write a note on the taxpayer's file appeared to be so rare that one interviewee praised this behaviour). Additionally, highly trained HMRC staff with expertise in a particular field were recognised to be knowledgeable, helpful and a valuable resource of trusted advice for the practitioner. That is, they are a source of technical capital which is accessible to the practitioner. The different actors in the tax field work well together here, from the perspective of the practitioner. Such teams will be a source of comfort to the practitioner as advice from specialist teams can help reduce uncertainty.

Indeed, in general, the interviewees were sympathetic towards staff at HMRC and understood many of the pressures on them. Their feelings were not necessarily personal. However, the current arrangement does not work smoothly for many practitioners, despite the work HMRC has done with regard to agent relationships as indicated in Chapter 2. Tax practice has become more difficult. Interestingly, as Dabner (2012) describes, the shift to responsive regulation requires a partnership style relationship between the practitioner and HMRC, rather than a more traditional adversarial style. Conversely, however the evidence suggests the relationship does now play out differently, but not in the way that Dabner (2012) describes. The old system (of local, named tax inspectors who were known to the practitioner) was viewed by participants as a partnership, with mutual trust and a reciprocal relationship with the same aim – to resolve tax disputes or sort out a taxpayer's tax position satisfactorily. There is little sign of a partnership now from the perspective of the participants. There are signs from many that there is no relationship. Perversely therefore changes in the bureaucratic field (in terms of restructure and overall approach) to elicit a better partnership with tax practitioners has had the opposite effect (from the

practitioner perspective). As Maas (2015) suggests, the relationship he desired was to work with, and not for, HMRC. It would however be interesting to obtain HMRC views about this (see Section 9.4).

The changes in the tax field (at the etic level) occur if the regulated (the taxpayer and tax practitioner at the emic level) step out of 'sync' with what the regulator (HMRC) expects, as already discussed at 8.3.1. Stakeholders within the tax field vie for position within it and as a consequence, the environment changes – and it seems that HMRC has increasing dominance in the field. Consequently, it would appear that tax practitioners have lowered their expectations of their relationship with HMRC and the assistance that may (or may not) be forthcoming from the organisation. The practitioners' former knowledge and experience of how HMRC 'worked' has become less valuable in the current environment (this generalisation may not hold so strongly for those with prior HMRC work experience, as they may still have access to such capital in the form of previous experience and network connections). Uncertainty around the provision of advice has increased. Tax practice (including client relationships) has to adapt and adjust with the changes in the HMRC/practitioner relationship.

Practitioners desire a flexible service, working systems, and 'no surprises' according to Dabner (2012), but whilst at times there is satisfaction in the service this is not consistent and it seems that there is less satisfaction now than was identified in research by Hasseldine et al. (2011). Nevertheless, each stakeholder within the tax field must find a way to function side by side, there is no choice. The practitioner has to manage the difficulties emitting from the different fields.

The final findings chapter, Chapter 7, addressed the question:

8.3.3 How do the practitioners see their role in the tripartite relationship with clients and HMRC?

Chapter 7 draws together the practitioners' views of the client and HMRC relationships and asks how they see their role in the middle of this tripartite relationship. The ways and strategies in which the interviewees manage these competing relationships are also explored. The roles adopted by the participants are summarised as facilitator (of tax planning and source of assistance to help the taxpayer navigate the complex tax system, thus playing a role in the tax system), translator (of legislation and tax rules generally), defender (of the client,

of the tax net (against error) and themselves), negotiator (on behalf of the client) and puzzle solver (examples are given to illustrate the nature of smaller tax practice and the practitioner roles therein). The techniques practitioners use to make sense of complex tax rules and regulations and to manage changes arising from the tax field are also discussed. This Chapter provides a view of the roles undertaken from within the tax practice against the context of the tax field. The roles are not taken in turn, as these have been highlighted in Chapter 7, rather a broad overview of significant findings is given.

The findings show that practitioners are keenly aware of responsibilities to both clients and HMRC (Dzienkowski and Peroni, 2016; Oatway, 1965; Stuebs and Wilkinson, 2010; Tran-Nam et al., 2016, describe this as a 'dual role'). These relationships are based upon different foundations, simply speaking, taxpayers may have different objectives to those of HMRC, hence the practitioners have conflicting roles (Frecknall-Hughes and Kirchler, 2015). Various terms were used by the practitioner to describe their role in the middle, including "buffer" between the client and HMRC and "shepherd" as explored in Chapter 7. The 'buffer' role suggests the practitioner adopts a protection mechanism, which may face towards both the client and HMRC, and additionally, as the 'shepherd,' the practitioner may guide taxpayer behaviour to keep them straying from their tax obligations. The practitioner is seen to balance the client relationship on one hand and HMRC on the other (Hageman and Fisher, 2016; Niemiowski and Wearing, 2003; Thuronyi and Vanistendael, 1996), however it is clear that they also take account of their responsibilities to other stakeholders in the field whilst doing so, not least to themselves and their profession (Davidson, 2016; Doyle et al., 2009b; Frecknall-Hughes and Kirchler, 2015). As such, professional and ethical obligations which derive from the professional bodies (as discussed in Chapter 2) in the professional field have a bearing upon the practitioner's approach to each relationship.

Ethics and risk management featured frequently in the findings. Additionally, reference was made by some to their 'qualified' status and the importance of training and examinations. Experience and the examinations/qualifications derived from a professional background form part of the habitus of the participants, and, simply belonging to a profession provides symbolic capital and status on which they can draw in client representation (Stringfellow and Shaw,

2009). As formerly discussed a membership of a professional body may contribute to the overall professional identity of a practitioner (although of course not all practitioners belong to such bodies). Despite the participants of this study belonging to (or working for an organisation overseen by) a professional body, specific reference to the interactions between participants and their professional body were however scarce. Perhaps the professional environment is just seen as a 'given' and a familiar part of the participants' social practice. Distinction was made between themselves, the 'qualified' practitioners' field, and those who are not (who operate in the separate non-qualified tax practitioner field as illustrated at Fig 8.3). There was regret from some participants in the study that they may be perceived differently as a result of this separate field of practitioners. That is, their (the interviewees') status and professionalism may be tarnished by those operating outside the professional field (the unqualified practitioners). In other words, some actors in this field were blamed for contributing towards the changes in the tax field as a whole in which the participants now find themselves. Despite not belonging to a professional body, the professional identities of these individuals and hence their conduct and beliefs could be further researched as noted in Section 9.4. However, given that findings from HMRC (2014a) indicate that taxpayers assume all practitioners are qualified, it would appear that this distinction could be responsible for some of the changes in trust, felt by the participants, at the HMRC/practitioner level, rather than at the client/practitioner level. That is, interestingly the symbolic capital of the qualified practitioners in this study may not have influence in the HMRC relationship – possibly, all practitioners (qualified or not), are treated the same. This however may something to pursue with HMRC.

As said, Chapter 7 addressed the question of how practitioners see their role in the tripartite relationship. This elicited, perhaps surprisingly, a number of emotions. There was vivid exposition of the participants' feelings about the current climate and how they are perceived as individuals (and as a profession). Some participants suggested the chance to speak about this was a relief or therapeutic and they were glad to get thoughts 'off their chest'. The dominant view was one in which they and the tax profession (despite their ethical obligations discussed above) were seen in a negative light. Many used metaphors to illustrate such feelings, such as "devil incarnate" or the "enemy".

This is an added perspective to the relationship which has implications for the trust in the HMRC/practitioner relationship, which could, ultimately damage a cooperative relationship with HMRC (Bober, 2012; De Cogan, 2011; Dzienkowski and Peroni, 2016; Gracia and Oats, 2012a). Relatedly, participants gave many examples of how their assistance to the taxpayer benefited the exchequer, be that correction of errors, or preventing the client from entering into unacceptable tax arrangements. This manifested itself as the facilitator role (helping clients navigate the tax system) and the defender role which helps protect the tax revenue net. These roles were felt to be unappreciated by HMRC and other stakeholders (particularly the journalistic field) and some felt this was not justified. In other words, the contribution to a sustainable tax system, which these roles bring, is not recognised, rather the dominant narrative is instead about a practitioner's role in tax avoidance. There are conflicting objectives here – saving tax on the one hand, but ensuring compliance and prevention of error on the other. There is thus tension in the relationship which derives from how the practitioner uses knowledge to seek an efficient tax position for the client. This is illustrative, perhaps of what Baker (2014) describes as the “uniquely ambiguous position”. Nevertheless, perceptions that HMRC see the practitioner as a problem, rather than a helpful intermediary between the organisation and the taxpayer, does impact upon the practitioner's work, on client and HMRC relationships, and contributes to the changed environment in which the practitioner practices tax. As discussed in Chapter 2, the narrative around tax avoidance at the international level and often targeted at the ‘Big 4’ and international tax lawyers, has filtered down to practitioners operating in other markets. There is a perception that this negative publicity also affects the small tax practitioner market, despite them not being in the market to provide aggressive tax avoidance schemes. Practitioners are sensitive to the changed environment. It would seem that their view of what is, or is not, acceptable to them is observant of changed narratives and indeed, many felt the need to defend claims for ‘run of the mill’ tax reliefs (such as a married couple allowance). They are conscious that despite being legitimate claims for relief, the claim reduces the tax take, which seems to personify the current narrative and discourse around tax avoidance. There was heightened awareness too of the social implications that a reduction in the tax take can bring. One practitioner even suggested the job is not the most “socially useful” (compared to a doctor or nurse for example).

Nevertheless, it was common sentiment that the tax system would be unlikely to function without the help of tax practitioners (consistent with Davidson, 2016; Dzienkowski and Peroni, 2016; Thuronyi and Vanistendael, 1996; Tomasic and Pentony, 1991). That is the technical capital practitioners have, may be said to benefit the exchequer and wider society, which runs counter to the main narrative about tax practice currently. Nevertheless, HMRC do acknowledge the importance of practitioners (see Chapter 2), but this fact did not seem to be appreciated by some of the interviewees in this research.

Whilst HMRC, in the bureaucratic field, has a huge influence on tax practice other uncertainties arise from the legal and judicial fields particularly. Interpretation of legislation is a required part of tax practice. This must be managed from both the client and HMRC perspective. The participants in this research are not trained in law; had they been the comments arising may have been entirely different. Similarly, whilst some participants had big 4 experience, others did not. All these aspects affect one's approach to researching answers to taxation queries. Knowledge accumulates over time and will be influenced by former experiences. The practitioner habitus thus has impact upon tax practice in this respect (Freedman and Power, 1992; Latham, 2012). Some struggled with the language of the law and examples were given. Some found application of law to client circumstances challenging. Difficulties as to interpretation of law – should this be a literal, or a purposive approach was one such example. Practitioners appeared at times to take the lead from HMRC in this, but their approach did not appear consistent either, as discussed at Chapter 7 which added further uncertainty. An inconsistent approach may be indicative of changes in the tax field, as one participant felt “interpretations of texts” were viewed in light of which route may obtain most tax (per Gracia and Oats, 2012a, p.314). Anti-avoidance provisions also created problems, as did new law which was criticised for its wide reach. These problems may arise as laws are designed to protect the tax net and protect the capital of the state – hence they will be designed to be difficult to circumvent. It follows therefore, that the practitioner may turn to guidance for assistance. This was however criticised as vague, not specific enough and not issued in a timely manner (as found by Gracia and Oats, 2012a). The examples therein did not, the practitioners suggest, accurately represent issues they find on their desks. More likely however is that the guidance is purposely vague, to prevent practitioners

stepping around new law given the allegations of game playing and the role some practitioners played in facilitating this in the past. As discussed in Chapter 2 such behaviour influences the nature of law and guidance that all practitioners (smaller practitioners included) must use. The guidance does little to resolve uncertainties for the practitioner and in some cases the uncertainties are amplified, which creates additional problems in their roles as translators of the tax rules and regulations. This could be seen as a form of symbolic violence in a Bourdieusian sense (not a physical, but an intangible concept) as in effect the practitioner is denied resources to help them do their job. Additionally, the option to approach HMRC for advice as to how the law applies to a taxpayer transaction has narrowed in recent years, as already identified (see Section 7.3.2). HMRC may refuse to comment, or as one practitioner remarked, they assume the question derives from identification of a loophole in the law (which again is indicative of the demands on HMRC to prevent tax avoidance). The practitioner however may simply wish to resolve an uncertainty by obtaining HMRC's perspective. These are further illustrations of the shift in power to HMRC and illustrates a reduction of the capital (and power) of the practitioner.

At times the impacts of changes in the tax field appear to have an emotional toll on some, not just in terms of how they or the profession are viewed as highlighted above. Some expressed feelings of frustration (perhaps because of vague legislation), or helplessness (whilst waiting for matters to progress at HMRC, as seen in Chapter 5). Others may relish the challenge and variety that change brings. Nevertheless, the roles that practitioners adopt enable them to manage their position in the tripartite relationship and they are guided in management of the relationships by their habitus and professional identities. Despite this, the complex, changing environment remains and practitioners recognise that uncertainty does not disappear, even with knowledge, training, qualifications and experiences. There may not be an absolute answer to a tax problem for all the reasons discussed. Yet as taxpayers have transferred their uncertainties to the tax practitioner as suggested by Fogarty and Jones (2014) they must use their capitals to assist the taxpayer to comply with their obligations. Of course, the practitioners do manage to carry out their roles. They do this by drawing on a number of different capitals and resources at their disposal as discussed in Chapter 7 – be that social capital (seeking advice from colleagues, peers, or

network connections and obtaining advice from the ‘adviser to the adviser’), or technical capital (access to databases, tax legislation, tax cases and guidance), or economic capital (via subscription to other networks of advisers or helplines).

The impact of changes in the tax field upon tax practice have been discussed throughout Chapter 8. As actors within the fields accumulate more (or less) power or capital their positions within the fields change and the dynamics and rules of the fields also adjust and as illustrated above, HMRC, as an organisation, appears to have increasing power over the tax field in a number of ways. There is frequent change for the reasons described. The result is that the practitioner from within the emic domain must manage the impacts of changes in the tax field in their tax practice, be that complex or vague law, a strained relationship with the tax authorities or challenging clients.

8.3.4 Themes which draw the empirical findings together

During the discussion there are many references to ‘trust’ and ‘uncertainty’ and ‘professional identity’. Uncertainty is woven throughout smaller tax practice, for the many reasons discussed – and this affects how practitioners carry out their roles. Trust is also important and the gaps identified at Chapters 5 and 6 may have effect upon trust in a relationship. Trust in a relationship is necessary to ensure tax compliance, ethical behaviour (Dzienkowski and Peroni, 2016) and a functioning tax system (Bober, 2012; de Cogan, 2011; Gracia and Oats, 2012a). In terms of the client/practitioner relationship it can be seen that the trust between each party may become strained in a number of respects. Trust between HMRC and the practitioner also features. Some participants feel that HMRC does not trust them. A number of metaphors were used to illustrate this, and this feeling has intensified in recent years. Similarly, trust in HMRC is also weakened. There was evidence of resentment, and an underlying feeling that HMRC are not accountable for their actions in the same way as tax practitioners are. Practitioners are accountable to many stakeholders, including the client, their profession and HMRC. The evidence, illustrated at Chapter 6 particularly, suggests that there is poor accountability in the opposite direction, that is between HMRC and the practitioner (for instance in terms of repeated errors, delays and advice which is not tailored to the taxpayer situation, nor for computer generated information devoid of human oversight). These matters put pressure on trust in the relationship.

The smaller tax practitioner context is of course also relevant as this is the context in which the study is set, however to summarise, briefly, various themes can be seen. The broad scope and ad hoc nature of tax advice is accepted as the norm and the tax practice carried out is underpinned by a good knowledge of the client circumstances, consistent with Stephenson et al. (2017). As evidenced however, there is far 'more' to smaller tax practice than simply tax compliance, which may be the general perception about what smaller tax practice does (Tomasic and Pentony, 1991). The remit is extremely wide. Consequently, there are pressures around technical expertise and knowledge and many may work more hours than they charge for (as found by Stringfellow et al., 2015), but ultimately practitioners have strategies to draw upon to enable management of smaller tax practice, as illustrated. Interestingly, there are a variety of practitioners who work in this context and their capitals depend upon former experiences, backgrounds and specialisations, thus each may bring a different perspective to smaller tax practice.

Throughout Chapters 5-7 the professional identities of the practitioners and their ethical obligations are also apparent. As discussed in Chapter 3, the professional identity does not relate to an individual's technical competence, but is about how one conducts oneself. A number of influences help shape an individual's professional identity, which may be, for example, the organisation in which they work, the ethical environment in which they find themselves and the accumulation of experiences over time as highlighted by Alvesson et al. (2015), Brouard et al. (2017), Caza and Creary (2016), Cooper and Robson (2006) and Suddaby et al. (2009). The participants in this study also belong to (or work under the remit of) a professional body and/or have professional training from HMRC. The ethical obligations and regulations of such organisations also impact upon one's professional identity. All tax practitioners will have a professional identity unique to them, depending on the circumstances and experiences described above. The smaller firm context may affect this too given the nature of the client base and the work undertaken, as may the ethos of each organisation (which, at times, may be in the hands of one or two individuals which may thus reflect their own dispositions and beliefs). In terms of tax avoidance, the facility to offer aggressive schemes may be out of the reach of the small practitioner, although the participants (and their organisations) in this study suggest that they would choose

not to participate in any case. Hence a variety of factors influence the formation of an individual's values, beliefs and morals, which combined, provide guidance or clues (Alvesson et al., 2015) as to how one approaches work. These influences can be seen in the participants' desires to withstand peer or client pressure, and in their thought processes round what is/is not acceptable tax planning, and in a general sense of what guides them to do what they think is right in the circumstances in which they may find themselves. The impact of professional identity contributes in particular to the generation of the scope expectation gap identified in Chapter 5, in terms of advising the tax authorities about error or underpayments, as well as when providing advice about tax planning matters, but is an underlying theme throughout. Thus, reference to professional identity helps explain the behaviours of the practitioners in this study.

8.4 Summary

This chapter has situated the smaller tax practice in the wider context of the macro environment. Chapters 5, 6 and 7, taken together provide the empirical evidence about tax practice as a whole and whilst each research question has been dealt with separately it should be acknowledged that each Chapter has overlaps (for example the HMRC relationship impacts upon the client/practitioner relationship) and the relationships between them can be seen at Fig. 8.1. The overlapping fields contribute to a complex, rather messy environment that the practitioner has to manage in a number of respects. Their role in the middle of the tripartite relationship has consequences for the management of the client and their responsibilities to HMRC. There has been a change in the dynamics in the tax field in recent years, with evidence of a shift in power towards HMRC in the bureaucratic field and away from the tax practitioner. The rules of the game have changed and there have been consequences for trust in the relationships between all three parties and increases in uncertainties as a result. The 'currency' of a field, the capital, to which practitioners have access to help them move through the field to positions of power, has also changed. Consequently, the operation of tax practice has to adapt to the change in circumstances. The environment results in a number of gaps as identified in Chapters 5 and 6. These include client expectation gaps (differences in what a client desires from a practitioner's service and that which the practitioner can provide) and gaps between the type of relationship and service practitioners desire from HMRC and

that which they experience. The relationship with HMRC cannot however be divorced from the practitioner/client relationship. There are links, and each affects the other. The practitioners have a number of roles, and they draw on their different capitals to manage the gaps. They are guided by their professional identities in carrying out tax practice. By drawing on a Bourdieusian lens, with an emphasis on 'fields' through which to view the empirical data, greater understanding and explanations as to the reasons for the interviewees' perspectives have been determined so linking inside tax practice (the emic) with the etic domain. The impact of changes at the tax field on smaller tax practice can clearly be seen.

9 Conclusions and recommendations for further research

9.1 Introduction

As discussed in Chapter 1, the aim of this research was to achieve an understanding of tax practice in the UK smaller tax practitioner context by taking into account the tax field in which tax practice operates. The study addresses the following question:

How do changes in the tax field impact upon the practice of smaller tax practitioners?

To enable the above question to be answered, three sub questions were asked as below. Each sub question was broken down into smaller objectives as per Chapter 4.

How do small tax practitioners manage client relationships in a dynamic environment? The objectives of which are below and were addressed in Chapter 5:

- to gain insight into, and explore, the practitioners' views on their relationship with clients;
- to describe and understand the environment in which the practitioner works and in which the client/practitioner relationship operates;
- to explore how they manage this relationship

How does the shifting relationship with HM Revenue and Customs (HMRC) impact upon the practices of tax practitioners? The objectives of which are below and were addressed in Chapter 6:

To explore, gain insight into and understand:

- the practitioners' views on the relationship between themselves and HMRC;
- the environment in which the relationship is managed;

- The challenges and difficulties, as well as positive aspects of that relationship;
- The impact that management of this relationship has on the practice of the practitioner;

How do the practitioners see their role in the tripartite relationship with clients and HMRC? The objectives of which are below and were addressed in Chapter 7:

To explore, gain insight into and understand:

- How practitioners see their role ‘in between’ HMRC and the client;
- The roles they play in managing both relationships;
- What challenges and difficulties arise from their roles;
- How these challenges are overcome;
- How the practitioners come to understand, interpret and implement tax rules on the ground whilst managing their position in the tripartite relationship.

The key findings from these chapters are included in Section 9.2 below. Contributions to knowledge are shown in Section 9.3 and recommendations for further study are shown in Section 9.4. Finally, concluding remarks are shown in Section 9.5.

9.2 Findings and implications

The study provides an in depth examination of smaller tax practice, as shown in Chapters 5, 6 and 7. These chapters taken together shine a light on smaller tax practice and illustrate the many challenges that arise from within the small tax practitioner environment at an emic (ground) level. The environment is dynamic and frequently changes which creates uncertainty in tax practice. In part this is due to the usual (the expected or anticipated) environment in which tax practitioners find themselves, which may relate to the changes in the annual finance act and alterations to legal provisions which happen frequently. The participants anticipate receiving a variety of queries to resolve, many of which may be ad-hoc given the nature of the smaller tax practice as discussed. This

variety and regular change in regulation are expected and form part of the 'rules of the game' at the smaller practitioner level. This may require practitioners to invest time bringing knowledge up to date, and may cause difficulty or uncertainty when ascertaining how new rules may affect their broad range of clients, but that goes with the territory. Other changes in the tax practitioner environment may be subtler, and cannot really be attributed to say, the latest budget update. As discussed in the empirical chapters, participants reported a change in how they as individuals and a profession were perceived. Changes were also observed in practice at HMRC, with the organisation choosing at times, to prioritise a direct relationship with a taxpayer, rather than via their tax practitioner in the first instance. New rules and regulations, once issued appeared more difficult for practitioners to comprehend with regard to their application – that is, additional uncertainty (and potentially risk to the practitioner and client) may arise given the nature of the laws. Guidance, to assist with the implementation of new law was often delayed and thought to be too vague to be of assistance. Whilst these matters may not change the nature of the practitioners work per se, there are clear implications for how they manage the expectations of clients (Chapter 5), their relationships with HMRC (Chapter 6) and how they view their role in the tripartite relationship (Chapter 7) which does have impact upon their tax practice.

To ascertain the reasons for such a dynamic environment one has to look away from the tax practice itself (the emic domain) to the wider environment and the stakeholders within it (the etic domain). Tax practice is situated within an interdisciplinary, social and institutional context; an environment which may be thought of as the tax field. A view of tax practice from the field level helps explain and increase understanding of what is going on in the smaller tax practice (by viewing it as a social practice and not just as a technical activity). Additionally, this perspective helps attribute meaning to, and deeper explanation of, the empirical data, being the stories and experiences of the practitioners within the practice itself.

A Bourdieusian lens with a focus upon the concept of 'field' as explained at Chapter 4, is employed to make sense of the relationship between smaller tax practice and the wider tax field. The tax field is made up of many separate fields to which participants from a variety of disciplines belong. These fields combine, or overlap (as the boundaries between fields may be fluid and difficult to

ascertain) to create the tax field. Some of these are shown at Fig. 8.3 and include the political, legal, judicial, professional and bureaucratic fields amongst others. Each field has its own discourse, outlook, rules and perspectives. These multiple discourses combine to create a messy, complex tax environment and participants in the study are seen to rationalise a number of competing discourses in their practice. Additionally, events within a particular field may cause the established, and expected ways of how the fields operate (the rules of the game for that field, or the accepted norms or discourse) to shift or change, which have consequential effects not just within that field per se, but on others affected by that field. As certain actors within them accumulate more capital, their position in the field changes, so giving them more power over other participants of the field (as may be seen in this study, as HMRC accumulates additional power over the field). Tax practice is thus shaped by actions and interactions within the tax field, as shown in more detail below.

The key findings from the study indicate that changes at the tax field level have a number of implications for smaller tax practice. The practitioner perceives various gaps in expectation between what the client wants from the practitioner and what they can, or are willing to achieve (these are the expert, scope, HMRC and fee expectations). Some of the gaps arise from the nature of the smaller tax practitioner context, such as the nature of the client base, ad hoc queries, the breadth and broad scope of such tax practice; others arise as a result of the tax environment more generally, such as uncertain legislation, changes in acceptability of tax planning, problems in the HMRC 'system' and reorganisation of HMRC as an organisation. The professional identity of the practitioners (including for instance their ethics, moral outlook and beliefs) plays a part in the behaviour of the practitioners (what they are able and willing to do for the client) which may also contribute to the gaps in expectation. Further, the relationship the practitioner desires from HMRC is not forthcoming. There are gaps between what is desired and the actual relationship (identified as the relationship, trust, systems and knowledge gaps). These gaps arise owing to differences between the bureaucratic field and the practitioner's position in the field, and have been compounded by recent changes in the tax field as discussed throughout the thesis. These gaps, as identified in Chapter 5 (client relationship) and Chapter 6 (HMRC) have effect on the practitioner role in the tripartite relationship. Chapter

7 identifies the roles the practitioners undertake to carry out tax practice and to manage these relationships to enable them to do their job. The roles the practitioner adopts are identified as a facilitator (of tax planning, and, enabling taxpayers to meet their tax obligations); translator (of rules and regulations and conduit of information to clients); defender (of themselves from unacceptable risk), of the client (from certain practices of HMRC and to prevent them entering into unacceptable tax avoidance arrangements), of the exchequer (correcting errors and adding funds into the 'public purse'); negotiator (between the client and HMRC) and generally a puzzle solver in light of the complex transactions that arise in their daily work. These roles enable the practitioner to meet the diverging demands (and dual roles as explored in Chapters 5-7) that come from the client (the smaller taxpayer field) and HMRC (in the bureaucratic field). Responsibilities are owed to both parties, but the demands differ. Management of client expectations will be an expected part of a practitioner's role. A changing relationship with HMRC however impacts upon this aspect of the job. As illustrated in Fig. 8.1 each of these relationships are interlinked. Thus the empirical findings of Chapters 5-7 together identify what smaller tax practice is and what the participants in that environment do. An examination of the tax field helps explain why they do what they do.

Changes at the tax field level have direct impact upon the tax practitioners' work, roles, practice and relationships. Exploration of these changes help explain the reasons for the gaps in tax practice identified above, and shed more light upon the tripartite relationship. The players in the tax field come from the political, bureaucratic, legal and judicial spectrum. They may also be part of the professional field, the taxpayer field (here the smaller taxpayer field), the journalistic field and practitioners outside the professional field too. The actors within these fields and their actions have consequence for the tax field as a whole which filters down to tax practice at ground level. For instance, the role some tax professionals have played in facilitation of tax avoidance, in the past, has been strongly criticised from many within (and outside) the tax field. Pressure has arisen from the political field for HMRC to maximise tax revenue and prevent tax avoidance. The behaviour of some actors in the professional field, has thus contributed to the catalyst for change in the behaviour of other stakeholders in the tax field which affects all tax practitioners no matter which market they serve.

The professional bodies have improved ethical guidance to which the practitioner must adhere; HMRC has gained additional powers and various success in the courts in tax avoidance cases, success which was often out of reach in older tax avoidance cases, thus there is also change in the judicial field. Additionally, tax loopholes in law have been closed, others tightened and new law, driven by the political will, and drafted by those in the legal field is designed to cast the tax net very wide, so as to assist with the objectives of raising tax revenue and reducing tax avoidance. Consequently, legislation becomes more complex, or perhaps vaguer (according to the findings). Competing discourses from across the different disciplines combine to create a complex and dynamic environment and HMRC as an organisation, having accumulated more capital, becomes more dominant in the field. Additionally, however, HMRC must also deal with ongoing reorganisation and the challenges and consequences that flow from that too. These changes affect those who interact with the tax field in a number of ways as described in the thesis, not least there are consequences for the client/practitioner and practitioner/tax authority relationships. Practitioners from within tax practice reported various impacts upon their practice. The rules of the game as they know them, particularly in relation to the HMRC/practitioner relationship, have shifted greatly. There are fewer routes to negotiation of tax position; fewer discretionary rulings; indirect pressure on the taxpayer (by HMRC going outside the tripartite relationship); delays in the issue of guidance to the practitioner to assist with new law and uncertainty as to how new law should be implemented. The practitioners' expertise and competence may be challenged by clients, the scope for tax planning may narrow, and pressure arises on fees, thus contributing to the gaps identified in Chapter 5. This arises against a backdrop of reorganisation, computerisation and digitalisation and change within HMRC as an organisation. These changes appear to contribute to delays and errors and have resulted in fewer knowledgeable staff on the front line, so impacting on the gaps identified in Chapter 6. The speed at which tax practice operates differs from the slower pace at which HMRC operates creating further problems. Pressures from the different fields result in new challenges and frustrations at the practice level that practitioners must manage. Uncertainties increase and pressure arises on trust between the practitioner and their client and HMRC.

Despite the above, some good relationships between practitioners and HMRC remain and many provided a defence of the challenges HMRC as an organisation face, but for some, there is, it seems, a feeling of 'them and us'. This feeling seems to have been compounded by the changes described. Of course, former experiences and interaction with HMRC may determine such a view, however, the relationship, as described by some could not be called a partnership (as desired in the tax authority/practitioner relationship under 'responsive regulation' as part of the 'enhanced relationships' described in Chapter 2). Although HMRC does reach out to practitioners under their 'agent strategy' and acknowledges their important role in the tax system (in order for it to function) this appears to be unrecognised by some practitioners in this research. The relationship today seems distant and inflexible and does not appear to be satisfactory from the perspective of the smaller tax practitioner, given the consequential effects on their practice. Perhaps HMRC see all practitioners (Big 4, the smaller practitioner field and the non-qualified practitioner) in the same light, yet not all may be the same. As discussed in Chapter 3, the ethos of organisations differs as do the professional identities of individuals. Of course not all practitioners will do the right thing, but then again, not all of them will do the wrong thing, or act inappropriately as the professional identity guides practitioners' behaviour. The HMRC view however is not obtained – this is given as a recommendation for further research, because views as to what makes good relationships may differ.

Finally, it is clear that the participants feel they play an integral role in the operation of the tax system. This is not just in terms of routine tax compliance and enabling taxpayers to meet their obligations, but encouraging take up of tax reliefs where appropriate; preventing the claim of such reliefs when inappropriate; and preventing clients overstepping the mark or making errors in their tax returns. This role seems to be unappreciated and unacknowledged, despite HMRC recognising this in their literature. Of course, the practitioners assist with tax planning too, but as many were keen to point out, not all practitioners are involved in tax avoidance. Nevertheless, some believe they are viewed only as promoters of tax minimisation (hence the use of metaphors such as the 'devil incarnate' and 'the enemy') and that the benefit they bring to the tax system in other respects goes unnoticed. In other words, the use of the practitioners' technical expertise

and capitals in this respect is felt to be unappreciated or unrecognised by other stakeholders in the field.

An understanding of the view of the practitioner perspective on the client and HMRC relationships and an understanding of how they respond to field level changes is important. As smaller tax practitioners play an important role in the smooth functioning of the tax system (given the large market they serve) the implications of field level changes upon ground level tax practice need to be understood to ensure continued cooperation from practitioners, compliance from the taxpayer and a functioning and sustainable tax system in general.

By drawing on a Bourdieusian lens, with an emphasis on 'fields' the thesis has examined how changes in the tax field impact upon the practice of smaller tax practitioners. Uncertainties have always existed in this environment some of which are unique to the smaller practitioner market. However, changes within the different fields have resulted in a new form of relationship with HMRC, new types of law and additionally, changes in attitude towards the tax profession in general appear to increase uncertainties in the small practitioner environment. Trust has also been highlighted as an issue, which requires effort amongst all parties of the tripartite relationship, to ensure continued mutual cooperation. The rules of the game have changed, and the practitioners must adjust. The tax practitioners do of course manage uncertainties, both old and new; they have to, in order to carry out their jobs and they do this by the adoption of a number of strategies as discussed, to enable them to manage the tripartite relationship of which they are part.

9.3 Contribution

In addition to the key findings, the thesis provides a contribution to knowledge by adding to the scholarly domain literature around UK tax practice. In particular, the thesis offers study of tax as a social (rather than technical) practice which is an underrepresented field of study (Oats, 2012), and thus compliments current studies in this vein (Boll, 2014; Mulligan and Oats, 2016; Radcliffe et al., 2018). This is achieved by the examination of smaller UK tax practice against the wider tax field. This approach combines exploration of the different stakeholders within the UK tax field, along with examination of the individual actors in the smaller practitioner context per se. This has been accomplished using Bourdieu's

theoretical framework, and the concept of 'field' in particular, to make sense of what is going on in the small practitioner context. The utilisation of the framework enables a link between the micro level smaller tax practice and the wider macro environment in which it operates to analyse and explain why tax the smaller tax practitioners do what they do, as well as exploration of what they do. The employment of the theoretical framework in this way captures complexities and power dynamics in the tax field by examining the relationships between the different disciplines and overlapping fields that form the tax field. A Bourdieusian lens is not often utilised in the tax area, yet it is valuable for identifying complexities and relationships which may otherwise be overlooked. This analysis contributes to a deeper understanding of smaller tax practice, which is an area scarcely represented in the academic literature. Additionally, this approach contributes to a gap identified by Radcliffe et al. (2018) who suggest the focus of studies is more commonly upon the micro (emic) aspect alone (here, the smaller tax practitioner), or the macro (the etic) perspective alone (here the broader tax field, or environment), rather than bringing the two together, as here. The activities and participants in the tax field impact upon the practitioners' work, and indeed the activities of the practitioners may also shape the tax field, hence illustrating social practices in the tax profession.

Furthermore, as discussed in Chapter 3, the views, uniquely, from the smaller UK practitioner market have not been the focus of prior study and neither is examination of tax practice in a UK context widely researched. Ad hoc observations have been made about this market, but there is no focus upon the UK market as a whole. Similarly, the practitioner voice about client and tax authority interactions is underrepresented in earlier studies. The thesis contributes to these perspectives. In particular, the thesis responds to calls for more research into the tax practitioner/client interactions (Hite and McGill, 1992; Gupta, 2015; Oats, 2012; Stephenson et al., 2017; Van de Rijt et al., 2019 and Tan, 2014).

The gaps in expectation between the practitioner, clients, and HMRC and the identification of key roles the practitioners play to undertake their responsibilities (as identified in the key findings and Chapters 5-7) further extend the scholarship and knowledge around tax practice. Identification of these roles provides additional insight into the functions of tax practitioners, alongside the existing

broad classification of roles by function, activity and services offered. This perspective adds knowledge to the interactions of the practitioner in their relationships with both the client and HMRC and serves to highlight, in particular, the roles they play as part of the complex tax system. Additional insight into the nature of small practice is also gained; the work undertaken is extremely broad and varied and, at times, ad hoc and light is shone on how this is carried out. An illustration of tax practice in a dynamic environment which illuminates the relationships and interactions between the tax practitioner, the taxpayer and HMRC is shown at Fig 8.1. This illustration also highlights the different gaps described above, as well as the roles played by the practitioners.

Whilst the study is not an attempt to address uncertainties in tax law, *per se*, examples of the consequences of such uncertainties (Weisbach, 2002) on the smaller tax practice, and how these are managed are highlighted which addresses, in small part, one aspect of how uncertain tax law plays out in practice. The practitioner views may be of interest to policy makers in this respect.

Practitioners are said to reconcile the many complexities and uncertainties of the practitioner environment in order to do their job (Bogenschneider, 2015; Picciotto, 2007) which of course they do. There is little prior research which explores how this takes place, hence the thesis contributes to knowledge in this particular aspect. The thesis explains how changes in the tax field impact upon smaller practitioners, how they go about their daily work in a dynamic field in order to satisfy clients, themselves and HMRC and thus contributes to calls to increase the knowledge about how tax rules are implemented on the ground (Oats, 2012).

Finally, the study contributes to the call for more qualitative research in the tax practitioner setting in order to obtain the rich detail of tax consultancy practice (Apostol and Pop, 2019; Baker, 2014). The study obtains depth of detail and richness of description and explanation from the smaller tax practitioner perspective. Such detail and richness is not obtained from studies which employ quantitative techniques. This approach thus allows a deep understanding of smaller tax practice which enables contribution to the knowledge of tax practice and also provides a methodological contribution to the literature in this respect.

Overall the thesis contributes to existing knowledge about tax practice, and extends this knowledge in the UK, smaller tax practitioner context, which offers a novel academic perspective. The interactions with clients and the tax authorities are illuminated, and the roles the practitioners play and their position within the tax system are highlighted. The uncertainties emanating from the tax field are explored and the impact of changes in the tax field upon smaller tax practice are illustrated. The smaller practitioner market represents thousands of small businesses and taxpayers. It is important that such businesses can claim tax reliefs to assist with economic incentives, and of course fulfil their tax obligations. The smaller practitioner market plays a key part in facilitating this. The thesis will thus be of interest to the practitioner community, policymakers, the tax authorities, as well as the professional and academic communities.

9.4 Recommendations for further research

A number of areas are recommended for future research.

- The sample from which the participants was drawn was a 'qualified' pool of individuals (those belonging to (or worked for an organisation governed by) a tax or accounting professional body, or were ex HMRC staff). It was felt by some, that the 'non-qualified' practitioner market creates problems for those who are qualified. This may be in respect of quality of work, poor reputation and so on. Some participants have taken over work from this particular market, and suggested that, on occasions, it was not completed to a satisfactory standard or had to be 'unravelling', others said that the knowledge of such practitioners is flawed or out of date. Research into this particular market (including the HMRC view) would cast some light on whether these perceptions are accurate, or whether they are wide of the mark and would tie into the current studies about registration of tax agents (Mayson, 2020). An investigation into the professional identity (the beliefs, outlook, and approach to work) of such individuals would also be of interest.
- Similarly, qualitative research in the legal field – that is with legally trained tax practitioners (none of whom were included in this study) would shed light on whether there are differences with their non-legally trained counterparts.

- Further, a separate market within tax practice has been identified, that is the ‘adviser to the adviser’ – some of whom feature in this research. Additional focus on this area may also offer interesting insights as to how these individuals, or groups of individuals, are employed in tax practice.
- As this study includes a broad range of smaller practitioners, from sole traders to those working for organisations with a number of employees, a study of a more targeted market, say sole practitioners, or those working for ‘boutique tax firms’ may provide different insights. Similar research could investigate the relationships and working practices of those working for the Big 4.
- As this study provides the view of the tax practitioner only, perspectives from HMRC and clients could be obtained to build up a rounded view of tax practice from all angles.
- HMRC view of the current practitioner/HMRC relationship would be beneficial to obtain, to see how the organisation perceives this. There may be a different view to that of the participants.
- It has been observed that HMRC efforts with regard to “agent engagement” (as discussed in Chapter 2) are infrequently mentioned by the participants of this study. As these strategies are designed to improve relationships and understanding and make it easier for practitioners to work with HMRC (HMRC, 2014a), there is scope to explore this observation further in terms of: practitioner awareness of such initiatives; the reasons for such initiatives and; the benefits these initiatives may bring to the practitioner/HMRC relationship which may be of interest to the practitioner community, tax authorities and the profession alike.
- Given increasing digitisation and technology, and a reduction to ‘in person’ contact with HMRC, many now turn to the internet for assistance with tax affairs (including those who do have a tax practitioner). For those who do not seek professional advice they enter a world of unregulated tips, tricks and unofficial advice. Some of the advice may be valid, but a brief review by the researcher quickly reveals material that is not correct (or too simple to be of use, which was the criticism levied at the HMRC webpages (see also Todd, Treasury Sub-Committee, 2018)). This begs the question as to whether taxpayers act upon this incorrect (or simplistic) advice. If they do, there are many consequences, not just for them, but also the exchequer if

tax is under (or possibly over?) paid. In other words, do those taxpayers with a tax agent have better compliance?

- A related issue, highlighted by a participant was the increased move to online CPD training. Whilst this may be more accessible than face to face events, networks and new contacts cannot be established, and chances to interact with HMRC in such capacity may be reduced. As seen in the thesis, the habitus of the participants contributes to the creation of unofficial networks of expertise which are often drawn upon to keep tax practice functioning. Research into these issues may shed light upon changes to networks in the tax community, as well as enable exploration of the impacts of increasing digitalisation upon tax practice.
- Finally, given findings by Ramirez (2009) that smaller practitioners did not find the attempts of ICAEW to engage them as a market particularly helpful, along with a subsequent drive by the ICAEW (2020e) to target this market again, it would be interesting to obtain the views of smaller practitioners about their professional bodies to see if they are happy with the service provided. Whilst participants mentioned the professional bodies on occasion during the study, they had little to say, specifically, about them. It would be of interest to examine this relationship further.

There are a number of different, but related, avenues to explore.

9.5 Concluding remarks

The thesis has sought to understand smaller tax practice. Little academic research has, to date, been undertaken into the smaller tax practitioner context and the thesis highlights and illuminates the activities, practice and challenges of this particular market. The findings suggest that practitioners play a number of roles, in particular assisting taxpayers to meet their tax obligations and pay the right amount of tax (which may require correction of errors as appropriate). They also enable taxpayers to claim available tax reliefs and structure their affairs in a tax efficient manner, although this is deemed by the practitioners to be a tax 'planning' rather than a tax 'avoidance' role as has been discussed. Smaller tax practice is viewed against an examination of the environment in which it operates, and the interplay of different disciplines and fields which exist in the broader tax field are highlighted to show the impact of changes in the tax field upon smaller practice itself. Smaller tax practitioners are necessary to help SMEs and other

taxpayers fulfil their obligations within an extremely complex tax system. The practitioners navigate the complexities on behalf of their clients, and in doing so play an integral, important role within the tax system to ensure it continues to function.

As highlighted in Section 9.3 above, the thesis provides an academic contribution to the domain literature about tax practice and adds to the scholarship and knowledge in this arena. From a theoretical perspective, the use of the Bourdieusian framework enables analysis of the link between the micro level smaller tax practice and relationships in the wider, interdisciplinary tax field at the macro level. The theoretical framework is a means by which the complexities and power issues of the overlapping fields in the tax arena are identified and examined and thus provides a mechanism by which a deep understanding of smaller tax practice (what tax practitioners do, and why they do it) is attained. The theoretical framework allows knowledge of the subject to be taken forward. To enable such a deep understanding, the views, perspectives, observations and experiences of the practitioners within smaller tax practice were obtained; their specific comments provide insight into matters which go unobserved in quantitative research, but which were vital to this particular study. A qualitative approach provides a methodological contribution and answers calls for additional research to attain rich detail of tax consultancy practice (Apostol and Pop, 2019; Baker, 2014).

There are a number of practical implications which derive from the thesis. The findings are relevant to a number of stakeholders including the practitioner community, tax authorities and policy makers, the professional bodies concerned with taxation (such as those representing the accounting, legal and tax profession) and scholars.

With regard to the smaller tax practitioner community, it is clear that the tax environment (the tax field) in which they work has changed hugely in recent years. Some of these changes are difficult to manage, be that changes in regulation or legislation, or changed practices at HMRC. Of course, such changes affect all practitioners, and yet the smaller practitioner may have different requirements and characteristics to other elements of the market. Whilst ICAEW (2020e) have recently launched a smaller practitioner community in acknowledgement that requirements of smaller accountants may differ, perhaps

a more proactive approach from the smaller tax practitioner community itself may allow their voices to be heard more loudly. This could include more active engagement with HMRC consultations, additional engagement with HMRC's agent strategy initiatives, and possible lobbying of the appropriate professional body.

In terms of the tax authority and tax policy makers there is recurrent interest around tax practitioners. In particular, there is interest around the regulation of tax practitioners and the tax profession, the roles that intermediaries play in tax compliance and additionally, there have been HMRC consultations about raising standards in the tax advice market (2020a; 2020b). As discussed, not all tax practitioners are the same, the market for tax advice is diverse, and not all tax practitioners fall under the remit of a professional body. Given that this study has particular focus upon one section of the tax advice market and provides depth of detail about what smaller tax practitioners do (and why), as illustrated in Fig. 8.1, the findings of the study may be of interest to HMRC so as to enhance understanding of, and provide greater insight into the market they seek to regulate. Additionally, by seeking to understand why smaller tax practitioners do what they do, as well as what they do, viewing tax practice against the wider, interdisciplinary tax field enables identification of the complexities and challenges therein which impact upon tax practice. The findings therefore provide additional context to smaller tax practice. Examination of this context, and the findings illustrated in the thesis will facilitate awareness of the impacts of changes in the different tax fields upon this particular market and draw attention to aspects of the dysfunctions in the tax system which smaller practitioners must overcome on behalf of their clients. Such analysis may help inform debate about how to ensure a sustainable tax system. The thesis also provides examples of the impact of uncertain law upon tax practice and the practitioners' views on this may also be of interest to policy makers. Further, there is a desire, in general, for improved relationships with HMRC which is highlighted in the thesis. Those participants with years of experience remember a time where they felt relations with HMRC were more amicable more personal and operated to mutual benefit. Some desired a return to the former system. Of course, only the practitioner view is obtained here, and HMRC's view on this could be obtained (as identified in Section 9.4 above). However, an awareness of these matters by HMRC will

facilitate debate and consideration of these issues in order to help improve trust and understanding of both parties and so enable a smoother operation of the tax system in this particular respect, so as to make tax compliance more straightforward for both taxpayers and their advisers.

Finally, the findings have implication for the professional bodies and scholars.

The participants of the study feel that their qualifications, experience and membership of a professional body should enhance their status and capital. The 'non-qualified' and thus unregulated practitioner market was frequently mentioned, as they were believed to have undesirable impacts upon how the qualified tax practitioner is perceived. As to whether this is in fact the case, (as indicated at Section 9.4 above) is a potential area for additional study. However, it is suggested by HMRC (2014) that taxpayers assume all tax practitioners belong to a professional body or are qualified. Could more be done by the professional bodies to support their members in this respect and enhance their credibility, so as to make a distinction between the different types of tax practitioner?

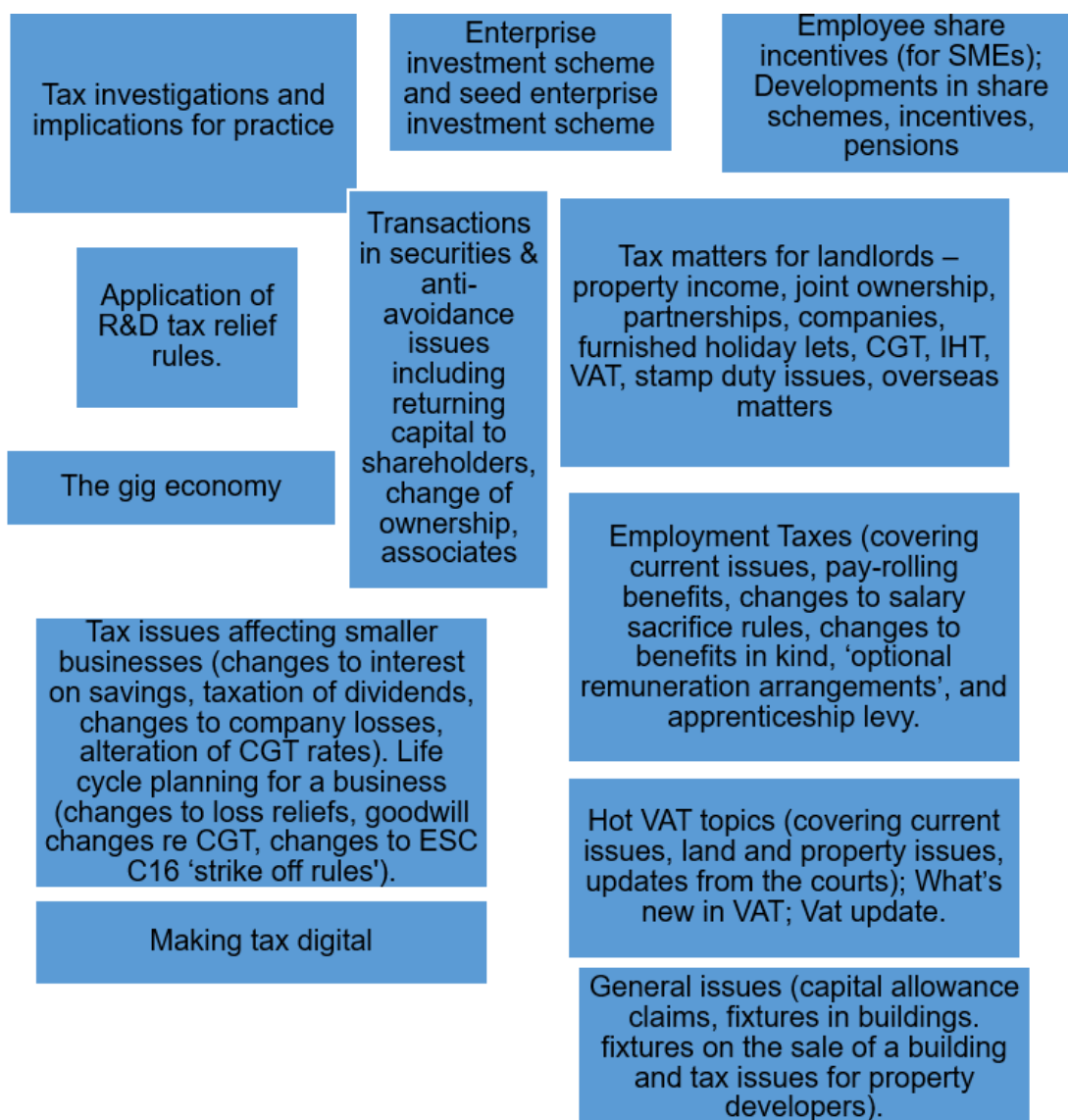
From the academic perspective it has already been said that the qualitative approach to the thesis has generated extensive detail of tax practice by identifying complexities and important issues in the context of smaller tax practice which may be glossed over by a quantitative approach. Additionally, from a scholars' perspective it should be recognised that there are both benefits and disadvantages which derive from the background of the researcher, a former tax practitioner. A good understanding of the technical language, examples provided by the participants and of the environment in which tax practice is carried out enabled the researcher to appreciate the narratives of the tax practitioners and their experiences and perspectives. Of course, the researcher in this situation does bring with them their own experiences which can narrow the divide between the participant and the researcher.

Overall, in terms of the practical application of the thesis if examining the future direction of the tax system, such as, for example the impact of increasing digitalisation, the role of tax intermediaries or the regulation of the tax profession, the findings indicate that a 'one size fits all' policy is not necessarily the best. Tax practitioners come in all shapes and sizes and as illustrated, the small practitioner

market has unique challenges and complexities and an understanding of this will assist with policy making. From the perspective of society in general, the tax system and the tax revenue it generates is extremely important. Smaller tax practitioners are needed to help thousands of taxpayers navigate an extremely complex system to help them meet their tax obligations and they play a vital role in that they contribute to the very function of the tax system as a whole.

10 Appendices

10.1 Examples of topics – CIOT meetings



10.2 Examples of breadth of work in smaller tax practice

Examples of 'non routine' work were given by the participants. All are examples which involve practitioner research – that is, an instant answer/opinion would not be provided. This is just a snapshot. These examples illustrate the breadth and complexities of smaller tax practice.

- The distinction between capital and revenue expenditure. Need to refer to case law.
- Capital allowances and the meaning of 'plant'. Need to refer to case law.
- Double tax treaties. Repeatedly mentioned as being difficult to read and follow
- Status issues – employed v self-employed. Need to refer to case law.
- The restructure of a group and the implications for the 'option to tax' election for VAT.
- Foreign matters in general, including residency issues and foreign income
- Employment related securities legislation – frequently mentioned area of complex legislation
- IHT – the smaller practitioners may well 'farm' this out to more experienced advisers, as this work may not regularly 'crop up' sufficiently for the practitioner to deal with it.
- Transactions in land legislation – how do client circumstances fit?
- Phoenix rules (liquidation of a company and starting up in business again). How do client circumstances fit? Guidance poor.
- Theatre tax relief – a relief similar to R&D, but less common
- Interaction of taxes – various examples. Complex.
- Goodwill – this was not described as difficult to figure out, per se, but an example of constant change.
- Patent box relief. This was described as "*jammed up*" (I/V22) with anti-avoidance rules, and having "*horrendous*" calculations which makes it hardly worth the time and effort to work through all the rules.
- R&D – some firms 'farm out' this type of work to specialist tax boutiques
- Entrepreneurs' relief. Problems if client circumstances were unique so you may "*never find anything the same as your situation*" (I/V3).

- A VAT question from a client – the practitioner is waiting on the outcome of a VAT appeal regarding those in a similar business.
- Option to buy a property
This was described as working out a “reasonable position” to get to the tax treatment and relies upon the participant’s judgement and experience.

10.3 Information sheet – focus group (practitioner workshop)

Tax practitioner workshop – Information sheet

Understanding the mechanics and difficulties of tax practice as identified by tax practitioners from small and medium sized tax and accounting practices.

Research project and invitation to participate

You are being invited to take part in a research project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this and for your consideration of taking part in the research.

Project purpose

Background and purpose

UK tax law is complex – it is often not clear and is open to interpretation. The workshop is part of a wider project which will aim to uncover the ways in which practitioners create meaningful advice from complex legislation. The focus is on smaller practitioners and advice provided to small and medium sized enterprises (SMEs). The data collected may be used in this project and potentially included within publishable work.

Aims

- To get an initial feel for the challenges that face small tax practices/firms and advisors.
- To consider issues of tax complexity – with a potential focus on research and development tax credit claims or other issues as is (are) determined appropriate as a result of the discussion.

The type of questions that may be asked:

What are the challenges facing small tax practices in the current environment? What significant changes have taken place in the past 5/10 years?

Have clients' expectations changed in recent years? How have relations with HMRC changed?

What areas of the tax law are most problematic?

Does R&D (or other issue) create any particular difficulties in terms of interpreting the legislation and HMRC guidance?

Participants

6 or 7 individuals from smaller, independent practices have been asked to participate.

Participation is voluntary

It is up to you to decide whether or not to take part. If you do decide to take part, you will be given this information sheet to keep (and be asked to sign a consent form) and you can still withdraw at any time. You do not have to give a reason.

Time required

The workshop will last a maximum of two hours (excluding lunch) and will be held at the University of Sheffield Management School. Lunch and refreshments will be provided and travel expenses will be reimbursed. It is anticipated that the workshop may gather preliminary data and further workshops or individual interviews may take place at a later date – again on a voluntary basis.

Disadvantages or risk taking part None identified

Advantages of taking part

Whilst there are no immediate benefits for those people participating in the project, it is hoped that as this work will be grounded in the practical activities of tax practitioners, the wider research project may identify issues of concern to SME advisors which may be of interest to the practitioner community, the tax authority and policy makers.

Use of the data

The data will be used to inform the research project and may be used in subsequent outputs such as journal articles, copies of which can be provided.

Recording of data

There will be audio recording of the workshop. This will be used only for analysis of data to use in potential publications and/or illustration in conference presentations and lectures. No other use will be made of them without your written permission, and no one outside the project will be allowed access to the original recordings. No individual will be identified in the use of the recorded data.

Confidentiality

All the information that we collect about you or your firm during the course of the research will be kept strictly confidential. You or your firm will not be able to be identified in any reports or publications.

Funding of the workshop

This is being provided by the University of Sheffield accounting and finance research centre – Centre for Research into Accounting and Finance in Context (CRAFIC).

Ethical approval

This project has been ethically approved via The University of Exeter Business School Research Office.

Who to contact

Dated

10.4 Prompt sheet - interviews

Interview questionnaire: Provision of tax advice to clients by the [smaller] UK tax practitioner

Introduction: Brief explanation of the purpose of the research. Explanation of the nature of the confidentiality/anonymity agreement plus request to record.

The objective of the research is to investigate how the [smaller] UK tax practitioner provides advice to [business] clients, particularly in instances when the nature of the advice required may be subject to uncertainty or is not ‘straightforward’ to give. Trying to ascertain the interaction of the tax practitioner and the client in practice [re smaller advisers and the smaller business clients] e.g. how laws translate into action on the ground.

Roles/Services/Contexts

- Could you tell me a little about your background? How you ended up here/worked elsewhere/how long worked here/position/role? Qualifications and membership of Professional bodies.
- What services does the firm offer and what type of clients does the firm have?
- Why do clients seek your services? What type of issues do clients commonly seek advice for?
- Thinking of business clients what are the size of your clients (leave free to describe)
- Are there times when you prefer not to “take on” a client? If so, why? Is this related to the type of advice needed? Why/why not? (risk?). Who takes this decision
- How perceive your position (between HMRC/client) – please explain.
- What percentage of your time would you say you spend on researching a tax issue and what prompts the need for the research? (confusing language, readability of law, lack of knowledge etc.). Examples of this type of work?
- Proportion of time spent on routine (easy work) v more challenging, which takes time to consider? (*similar to above, can leave depending how conversation goes*)

Environment in which work (HMRC, law, other challenges)

- How find relations with HMRC?
- What challenges do you face (re clients (why), re HMRC (why), re law (if used and why?) and do you think any challenges are unique to the smaller practitioner firm and why?
- Have you found HMRC ‘unsettling’ previously understood tax positions e.g. similar as to what happened in Arctic systems – can you explain?
- Do clients ‘put pressure’ on the practitioner – how/why? Examples?
- Do you consult the legislation when formulating advice to clients (why/why not?).
- Any shift in attitude towards ‘tax planning’ in recent times, either by client or practitioner – why/why not?
- Any comments about the tax legislation (in general)? Use by small practitioner? Issues in advising clients (and smaller businesses)? Any specific issues? Examples?

- Does the law create any certainties or uncertainties for you when providing advice? How and in what respect? With what consequences? Specific examples? (thinking here of language/words such as reasonable, significant, trading and so on)
- How do you go about interpreting the meaning of the law/provision etc (will depend on answers to above)
- Do you have examples of HMRC using its guidance, in its negotiations with you (instead of law)
- Thinking about business tax specifically – do you advise on business reliefs? If so, which? How easy is it to provide advice on these and how easy to claim? Ask for examples depending on response. Any comments about the process or the receptiveness of clients in claiming these?

How manage environment

- How does the practitioner approach the provision of advice in response to tax matters other than the ‘run of the mill’ queries? How arrive at a position of understanding? What is the process? Any examples? What resources are used? Can you talk me through the approach?
- If finding it difficult to determine an answer, what would the practitioner do? Talk me through the process (group discussion/bounce off colleagues/take outside the firm – if so how/where/why?), does this influence your own feelings? I/E how reach a decision?
- If doubt remains, how is it resolved – in favour of the client, or not? How determine support for your position, which authorities used etc?
- What sources of help (guidance – get them to describe) are used in this respect? How and why and what level of reliance is placed on them? How does this impact on the advice provided? Any examples? Have HMRC ever challenged reliance on guidance? How? Examples?
- Do you refer to case law? If so, how and in what circumstances. Any examples? How is it used?
- If a provision in the law is ambiguous (say for example if claiming a business relief), how is this dealt with by the practitioner in terms of dealing with both HMRC and the client? How is judgment exercised? How easy is it to predict the consequences of a transaction? If so, examples? If not, examples? Has this always been the case or have any recent changes affected this? What role do sources outside the legislation itself help with this?
- How does the practitioner keep up to date with changing legislation, or acquire knowledge needed to advise the client? What is the general process? What training/CPD undertaken? Any examples?
- How does the practitioner deal with fees for investigation/research into the tax ‘problem’
- Do you always feel comfortable with the advice given? If so, why? If not, why? Any examples?
- Any suggestions on how to improve the relations with HMRC?
- Any suggestions on how to improve the legislation/system?
- What would you change, if anything, to make the provision of advice easier?
- Making tax digital?

Is there anything else I should have asked you or you wish to elaborate on?

11 References

11.1 Table of statutes

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