

# ENCOURAGING ETHICAL TAX COMPLIANCE BEHAVIOUR: THE ROLE OF THE TAX PRACTITIONER IN ENHANCING TAX JUSTICE

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## I

### INTRODUCTION

Taxation serves a vital role in any economy. It funds public services, facilitates the redistribution of income and influences taxpayer behaviour. Non-compliance with tax rules impedes each of these important functions. Though challenging to measure, the estimated loss in global tax due to non-compliance is extensive and results in significant damage to society at a global level.<sup>1</sup> One important dimension of non-compliance—the questionable tax conduct of large, high-profile multinational companies—has historically generated little attention outside the tax field. In recent years, however, public awareness has grown, in some cases leading to public protests, and tax compliance behaviour has generated increased interest from the media and NGOs.<sup>2</sup>

Among the most critical harms from non-compliance now drawing careful consideration is its impact on “tax justice,” defined by Vaughan as the question of “how an international tax system might work more transparently and fairly in the interests of both developed and developing countries.”<sup>3</sup> Large scale aggressive tax avoidance and tax evasion that undermine national tax revenues lie at the heart of tax injustice. To date, the literature on tax justice focuses primarily on tax system design and policy level issues such as automatic exchange of tax information between countries, registries of beneficial ownership of companies, and country-by-country reporting of profits for multinational corporations.<sup>4</sup> Although earlier conceptualizations of tax justice emphasized the

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1. See James Alm, Joyce Beebe, Michael S. Kirsch, Omri Marian & Jay A. Soled, *New Technologies and the Evolution of Tax Compliance*, 39 VA. TAX REV. 287, 289 (2020) (discussing the effects of non-compliance).

2. See, e.g., Prem Sikka & Mark Hampton, *The Role of Accountancy Firms in Tax Avoidance: Some Evidence and Issues*, 29 ACCT. F. 245, 325 (focusing on issues with accountancy firms in selling tax avoidance schemes).

3. Michael Vaughan, *Scale Shift in International Tax Justice: Comparing the UK and Australia from 2008 to 2016*, 18 SOC. MOVEMENT STUD. 735, 735 (2019).

4. See generally THOMAS POGGE & KRISHEN MEHTA, *GLOBAL TAX FAIRNESS* (2016) (proposing

global impact of profit shifting on developing countries, increasingly the attention is on domestic national revenue depletion, particularly in the face of rising domestic austerity.<sup>5</sup>

System design reforms, though important, are insufficient to adequately curb tax non-compliance. The incentives of those who operate within tax regimes must also be explored. Tax practitioners, as the intermediaries that sit between taxpayers and the tax authorities, are frequently identified as the architects of convoluted transactions that move capital from higher- to lower-tax jurisdictions or that exploit loopholes in domestic legislation to reduce clients' tax burdens. Thus positioned, tax practitioners are critical actors in the tax compliance process and therefore central to any debate on international and domestic tax justice. The role of tax practitioners has been explored in the tax compliance literature but, to date, has not featured prominently in tax justice discussions. To begin addressing this lacuna, this article, which builds *inter alia* upon the research that the author has carried out as a Research Associate within the project VIRTEU,<sup>6</sup> aims to re-examine tax practitioner research that the author has previously conducted. Some of these research studies were qualitative, involving semi-structured interviews with tax practitioners designed to map the ethical landscape in which they work. Others were quantitative in nature, employing an adapted psychometric instrument to measure the ethical reasoning of tax practitioners to investigate how they approach ethical dilemmas in tax. All the original studies being drawn on below are fully referenced. Collectively considered here as an integrated body of research, they support new insights and recommendations for enhancing tax justice both nationally and internationally. Relatedly, the article incorporates work on whistleblowing and corruption in the context of tax practitioners to flesh out promising options for supporting tax justice.

The remainder of the article is set out as follows: Part II defines crucial terms and explains the impact of tax non-compliance. Part III tracks the role tax practitioners play in the tax compliance process and outlines the environment in which they operate. Part IV reviews the existing literature on tax practitioner ethics pertinent in the context of tax justice. Part V outlines suggested reforms to encourage tax practitioners to contribute more positively to a tax justice agenda. The article concludes by summarizing the finding that tax practitioners may play a significant role in enhancing tax justice.

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policy reforms to address tax injustice).

5. See Vaughan, *supra* note 3, at 750.

6. VIRTEU (Vat Fraud: Interdisciplinary Research on Tax Crimes in the European Union) was a two-year international research project funded by the European Anti-Fraud Office (OLAF) of the European Commission (Grant Agreement No. 878619), which aimed at exploring the interconnections between tax crimes and corruption. All the documents produced as well as all the video recordings of the events organized over the course of the project are available online on The Corporate Crime Observatory, which serves as the long-term repository of the project outcomes. See generally CORP. CRIME OBSERVATORY, [www.corporatecrime.co.uk](http://www.corporatecrime.co.uk) [<https://perma.cc/43UE-6XMX>].

## II

## TAX COMPLIANCE AND THE IMPACT OF NON-COMPLIANCE

Within the tax realm, *compliance* involves filing all information mandated by the relevant taxing authority on an accurate and timely basis and paying tax liabilities when they fall due.<sup>7</sup> *Evasion* involves breaking the law by not paying tax that is legally due and is a crime punishable by fines or incarceration. *Avoidance* is the term used to describe a reduction or elimination of tax liabilities that falls short of clear evasion but, nonetheless, may raise concerns about its appropriateness under the law. Some transactions that reduce tax are explicitly encouraged by the tax regime and not deemed problematic—for example, investing money in a pension fund to secure a tax deduction. Transactions of that nature are positioned on one end of what might be considered a continuum of tax avoidance and are not only legal but are recognized as acceptable conduct both by tax administrations and the general public.<sup>8</sup> However, moving towards the other end of the continuum, taxpayers may endeavour to reduce their tax burden by exploiting ambiguities in tax law, perhaps using elaborate structures intentionally designed by tax professionals.<sup>9</sup> Some tax avoidance schemes are highly complex and involve profoundly altering the character of transactions or creating artificial structures to exploit specific provisions of tax law.<sup>10</sup> Tax avoidance by multinational organisations often involves the exploitation of weaknesses in tax laws and tax administration or the exploitation of differences in the tax systems of multiple jurisdictions.<sup>11</sup> Furthermore, when tax professionals enter these grey areas, in which their advice is potentially legal but not entirely ethical, they run the risk of descending down a slippery slope, adopting a mindset characterized by ethical lapses in the decision-making process, which may lead to increasingly serious violations.<sup>12</sup>

Tax non-compliance decreases the tax receipts of governments, depleting the national coffers and compromising the financing of essential public goods and services, like health and education. It may result in increased or more distortionary taxes being imposed to offset taxes not paid. It exacerbates inequity and may lead to further non-compliance by those taxpayers who perceive that

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7. See generally TAXPAYER COMPLIANCE, VOLUME 1: AN AGENDA FOR RESEARCH (Jeffrey A. Roth, John T. Scholz, & Ann Dryden Witte eds., 1989) (discussing U.S. and U.K. taxpayer compliance).

8. See generally ANDY LYMER & LYNNE OATS, TAXATION POLICY AND PRACTICE (16th ed. 2009) (describing the U.K. taxation system).

9. *Id.*

10. *Id.*

11. Over the past decade, a number of well-publicized data leaks have revealed the secret offshore holdings of high-net-worth individuals and multinational taxpayers, leading to a sea change in cross-border tax enforcement. See, e.g., Shu-Yi Oei & Diane Ring, *Leak-Driven Law*, 65 UCLA L. REV. 532, 532 (2018) (discussing such data leaks and the resulting changes).

12. Ann E. Tenbrunsel, *VIRTEU Roundtable CSR, Business Ethics, and Human Rights in the Area of Taxation*, CORP. CRIME OBSERVATORY, at 14:28 (Feb. 12, 2021), <https://www.corporatecrime.co.uk/virtue-csr-business-ethics> [<https://perma.cc/5B9E-D3F7>].

they are now bearing a disproportionate tax burden relative to others.<sup>13</sup> Taken to the extreme, tax non-compliance may erode a country's capacity to govern effectively and ultimately threaten democracy.<sup>14</sup> Tax avoidance may have spill-over effects as individuals or corporations shift income and profits between jurisdictions to reduce their effective tax liabilities. These spill-over effects disproportionately impact developing countries.<sup>15</sup> Tax non-compliance therefore fundamentally impairs tax justice both domestically and internationally. Policy makers and tax authorities continually struggle to foster a culture of tax compliance in their own jurisdictions, while international associations like the OECD and the G20 focus on tax compliance within an international context (albeit sometimes accused of giving a disproportionate slice of the tax base to capital-rich countries at the expense of developing countries).<sup>16</sup>

### III

#### TAX PRACTITIONERS AND THE TAX PRACTICE ENVIRONMENT

The combination of self-assessment systems, complicated tax legislation, serious penalties for non-compliance, increased international activity and the prospect of reduced tax bills has increased taxpayer reliance on tax practitioners.<sup>17</sup> Tax practitioners, however, are far from homogenous. Tax advice is dispensed by a wide range of professionals including accountants, auditors, lawyers, barristers, former and current employees of the tax administration authority and tax experts working within companies, as well as those formally identified as tax consultants due to their membership in professional tax institutes.<sup>18</sup> The expression "tax practitioner" endeavours to encompass this wide range of individuals. Some operate as sole practitioners or in legal, accounting, or tax specialist partnerships and provide diverse categories of tax advice to their clients. Tax professionals working in-house are usually employed by an organisation and will act solely in that organisation's interests as members of an internal tax team.

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13. See Katharine Gangl & Benno Torgler, *How to Achieve Tax Compliance by the Wealthy: A Review of the Literature and Agenda for Policy*, 14 SOC. ISSUES AND POL'Y REV. 108, 108 (2020) (focusing on how the wealthy differ from other types of taxpayers).

14. See, e.g., BROOKE HARRINGTON, *CAPITAL WITHOUT BORDERS* 11 (2016) (discussing how tax avoidance contributes to global inequality).

15. See Olatunde Julius Otusanya, *The Role of Multinational Companies in Tax Evasion and Tax Avoidance: The Case of Nigeria*, 22 CRITICAL PERSPS. ON ACCT. 316, 328 (2011) (examining how tax avoidance affects developing countries like Nigeria).

16. See Martin Hearson, *The Challenges for Developing Countries in International Tax Justice*, 54 J. DEV. STUD. 1932, 1932 (2018) (discussing how tax justice has jumped to the forefront of international issues since 2008).

17. Alm, Beebe, Kirsch, Marian & Soled, *supra* note 1, at 287.

18. See Elaine Doyle, Jane Frecknall-Hughes & Keith W. Glaister, *Linking Ethics and Risk Management in Taxation: Evidence from an Exploratory Study in Ireland and the UK*, 86 J. BUS. ETHICS 177, 177 (2009) (surveying how tax practitioners feel about the ethics of tax avoidance); Till Arne Hahn & Rodrigo Ormeño Pérez, *Tax Professionals in the Academic Spotlight: A Review of Recent Literature*, 6 J. TAX ADMIN. 96, 96 (2020) (reviewing the role(s) of tax professionals in general).

Tax practitioners have been acknowledged as key actors in the tax compliance process, possessing substantial influence in terms of shaping their clients' tax compliance actions.<sup>19</sup> A 2008 report from the Organisation for Economic Co-operation and Development (OECD) recognized this power and identified tax practitioners as one of the tax compliance risk factors that a tax administration must oversee. As such, tax practitioners can have a harmful effect on global tax systems.<sup>20</sup> At a fundamental level, the function of the tax professional is to help taxpayers comply with tax law while providing guidance on how to arrange transactions to optimize (usually minimize) tax costs.<sup>21</sup> In some cases, tax practitioners are identified as the designers of the convoluted schemes deemed as illegitimate or unacceptable tax planning by tax administrators.<sup>22</sup> At times, tax practitioners design ways of achieving conformity with the letter of the legislation while being reproached by the tax authorities for undermining the (habitually undocumented) policy objective underpinning the legal wording, often referred to as the "spirit" of the law.<sup>23</sup> The term "tax aggressiveness" signifies the degree to which the tax professional may be willing to extend the law, contravening its spirit if not its letter, in creating complicated structures to benefit clients. Recently, such activity has more explicitly fallen under the general label of tax compliance ethics. This article considers these actions of tax practitioners by reference to how they undermine tax justice both domestically and internationally.

As noted above, tax practitioners work within a significantly fragmented profession,<sup>24</sup> with tax advice dispensed by a wide range of business professionals. Fragmentation means that some practitioners are subject to government regulation regarding elements of their work other than tax (for example, external auditors, barristers and solicitors), while others are governed by the independent regulation of their own professional bodies (members of the various accountancy

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19. See Brian Erard, *Taxation with Representation: An Analysis of the Role of Tax Practitioners in Tax Compliance*, 52 J. PUB. ECON. 163, 163 (1993) (discussing the increased influence of tax professionals in tax compliance); Rex. L. Marshall, Robert W. Armstrong & Malcolm Smith, *The Ethical Environment of Tax Practitioners: Western Australian Evidence*, 17 J. BUS. ETHICS 1265, 1265 (1998) (researching tax professionals' role(s) in Western Australia in tax ethics in an income-tax system).

20. ORG. FOR ECON. CO-OPERATION & DEV., *STUDY INTO THE ROLE OF TAX INTERMEDIARIES* 5 (2008) (discussing the negative role of tax practitioners).

21. See Matthew Sorola, Dionysios Karavidas & Martin Laheen, *Addressing Gender Through the Management of Tax Talent*, 6 J. TAX ADMIN. 52, 52 (2020) (discussing how tax expert skills must change as work becomes more automated); Hahn & Ormeño Pérez, *supra* note 18, at 96 (reviewing the general role of tax professionals).

22. See Jane Frecknall-Hughes, Peter Moizer, Elaine Doyle & Barbara Summers, *An Examination of Ethical Influences on the Work of Tax Practitioners*, 146 J. BUS. ETHICS 729, 729 (2017) (focusing on how tax professionals think from an ethical perspective).

23. See Rasmus Corlin Christensen & Leonard Seabrooke, *Professional Misconduct in International Taxation*, 6 J. TAX ADMIN. 6, 6 (2020); Heather M. Field, *Aggressive Tax Planning & the Ethical Tax Lawyer*, 36 VA. L. REV. 261, 261 (2017); Dinah M. Payne & Cecily A. Raiborn, *Aggressive Tax Avoidance: A Conundrum for Stakeholders, Governments, and Morality*, 147 J. OF BUS. ETHICS 469, 469 (2018); Andrew West, *Multinational Tax Avoidance: Virtue Ethics and the Role of Accountants*, 153 J. BUS. ETHICS 1143, 1143 (2018) (discussing corporate tax avoidance).

24. Doyle, Frecknall-Hughes & Glaister, *supra* note 18, at 178.

and taxation institutes and the legal profession),<sup>25</sup> and still others may not be subject to regulation of any kind. Fragmented professional regulation may result in ethical issues when tax professionals comply with varying ethical standards established by a plethora of professional institutes—or sometimes no standards at all. In many common law countries, any individual can establish a business as a tax consultant. It is very much a case of *caveat emptor*, which further confounds any endeavour to develop a common ethical standard for the tax profession. This professional fragmentation is accompanied by a significant level of subjectivity characterising the activities of tax professionals, especially when generally accepted accounting principles must be used.<sup>26</sup>

Compounding the problem of a fractured pool of advisers, the issues that tax practitioners advise on and the environment in which they work foster ethical and risk management tensions.<sup>27</sup> Tax legislation is often ambiguous, resulting in a range of interpretations and courses of action from which to choose. When confronted with this ambiguity in tax law, tax practitioners may encounter conflicts and ethical dilemmas.<sup>28</sup> Tax practitioners have duties to numerous stakeholders including, but not limited to, their clients, the tax system as administered by the revenue authority, other professional advisors, colleagues within their organisations and the professional institutes with which they are affiliated. Practitioners working in tax roles within industry may also have to consider shareholders, customers, suppliers, regulatory authorities, trade unions and so on. Ethical dilemmas may result from the pressure to simultaneously satisfy all these stakeholders, who may not always have consistent demands.<sup>29</sup> Tax practitioners may be pressured by clients who have an appetite for non-compliant tax behaviour or aggressive tax avoidance activities.<sup>30</sup> Tax practitioners themselves will have varying ethical orientations, which may motivate tax aggressive behaviour. Tax advisors work in a highly competitive domain, within which they are always attempting to attract new and retain old clients. The amount of money involved in the transactions on which tax practitioners advise is often quite substantial, increasing the stakes.<sup>31</sup> Not only do tax practitioners

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25. Examples would include the Institute of Chartered Accountants in England and Wales (ICAEW), Chartered Accountants Ireland (CAI), the Chartered Institute of Tax in the U.K. (CIOT), the Irish Tax Institute in Ireland (ITI), The Law Society of Ireland, The Bar Council of Ireland, The Bar Council of England and Wales and so on.

26. Kelly Richmond Pope, *VIRTEU International Symposium, The Professionals: Dealing with the Enablers of Economic Crime Session II (The Causes)*, CORP. CRIME OBSERVATORY, at 32:24 (July 21, 2021), <https://www.corporatecrime.co.uk/virteu-symposium-the-professionals> [<https://perma.cc/35PF-NFKS>].

27. Doyle, Frecknall-Hughes & Glaister, *supra* note 18, at 183.

28. See generally Evelyn C. Hume, Ernest R. Larkins & Govind Iyer, *On Compliance with Ethical Standards in Tax Return Preparation*, 18 J. BUS. ETHICS 229 (1999) (studying whether the *Statements on Responsibilities in Tax Practice* (SRTPs) affect the decisions of CPAs).

29. Frecknall-Hughes, Moizer, Doyle & Summers, *supra* note 22, at 731.

30. See Cheryl A. Cruz, William E. Shafer & Jerry R. Strawser, *A Multidimensional Analysis of Tax Practitioners' Ethical Judgments*, 24 J. BUS. 223 (2000) (studying practitioners' ethical judgments and behaviour when dealing with client pressure to adopt aggressive reporting positions).

31. Doyle, Frecknall-Hughes & Glaister, *supra* note 18, at 182.

face these direct pressures and incentives, but they may also experience stress from the profession itself. Stress often results in suboptimal conduct, including unethical action.<sup>32</sup> In assessing the conduct of tax practitioners, it is useful to contrast it with that of auditors, who are mandated to be independent of their clients with a duty to the shareholders of the companies they audit rather than the companies' directors. Tax practitioners, however, must be advocates for their clients. This advocacy mandate means that tax practitioners are more likely to face ambiguity in establishing when they have crossed the line between strong advocacy and unethical tax advising.<sup>33</sup>

At the heart of the ethical debate on tax compliance is the question of what exactly the tax practitioner is willing to do to reduce a client's tax liability. What ethical standard should be applied to establish the tax that should be paid in the interests of tax justice for all, while simultaneously fulfilling the tax practitioner's professional duty to act in the best interests of the client? Shafer and Simmons have proposed that some tax professionals have forsaken any concern for the public interest in their pursuit of commercialism and client advocacy, suggesting that tax practitioners do not believe in ethical or socially responsible behaviour.<sup>34</sup> Christensen goes further in proposing that national tax systems around the world are being assaulted by a globalised industry of neoliberal tax professionals who design opaque structures to facilitate their clients' engagement in illicit cross-border movements of capital, profit-shifting, tax evasion and tax avoidance.<sup>35</sup> This phenomenon is enabled by the technical expertise and international experience of tax practitioners working in globally networked practices who can transcend national law and scrutinize the entire global landscape to design optimal structures that navigate a sea of national rules. Cornut St-Pierre describes elite tax lawyers choosing from a menu of options inventoried by experienced practitioners, exploiting the regulations to create innovative financial assets and navigating routes between national legal systems in every imaginable manner to benefit their clients, seemingly without breaking any rules.<sup>36</sup> These kinds of transactions lead to the perception that the poor evade taxes, while the rich and privileged can afford to engage in tax avoidance

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32. See Scott A. Yetmar & Kenneth K. Eastman, *Tax Practitioners' Ethical Sensitivity: A Model and Empirical Examination*, 26 J. BUS. ETHICS 271, 276 (2000) (suggesting that too much stress can lead to decreased ethical behavior).

33. See Donna D. Bobek & Robin R. Radtke, *An Experimental Investigation of Tax Professionals' Ethical Environments*, 29 J. AM. TAX'N ASS'N 63, 64 (2007) (studying the ethical environment of tax professionals).

34. William E. Shafer & Richard S. Simmons, *Social Responsibility, Machiavellianism and Tax Avoidance*, 21 ACCT., AUDITING AND ACCOUNTABILITY J. 65, 69 (2008).

35. John Christensen, *Do They Do Evil? The Moral Economy of Tax Professionals*, in NEOLIBERALISM AND THE MORAL ECONOMY OF FRAUD 72, 83–84 (David Whyte & Jörg Wiegratz eds., 2016). See also *VIRTEU Roundtable, Institutional Corruption and Avoidance of Taxation*, CORP. SOC. RESP. BLOG, at 16:25 (Mar. 12, 2021), <https://corporatesocialresponsibilityblog.com/2021/03/26/institutional-corruption-virtue/> [<https://perma.cc/H3R8-GCGR>].

36. Pascale Cornut St Pierre, *Investigating Legal Consciousness Through the Technical Work of Elite Lawyers: A Case Study on Tax Avoidance*, 53 LAW & SOC'Y REV., no. 2, 2019, at 323, 340.

leveraging the expertise of their tax advisors.<sup>37</sup> This framing places tax practitioners at the centre of the international tax ecosystem,<sup>38</sup> identified as facilitating and perpetuating an ever more aggressive attachment to the maximisation of shareholder value rather than embracing notions of sustainability and fairness.<sup>39</sup> This dynamic would appear to clearly violate the notion of tax justice.

Examining tax practitioners in the context of morality and tax justice raises interesting questions. Where should tax practitioners position themselves on issues that extend beyond the requirement to act in the interests of a client, which a practitioner may perceive as limited only by a responsibility to obey the letter of the law, and expand into the domain of morality, ethics, and justice? Should tax practitioners have a collective or civic allegiance to the tax system and society at large? If such an accountability exists, how can it be squared against practitioners' professional and ethical responsibilities to provide their clients with the best tax advice? While this article does not promise to answer these challenging questions, it does draw on existing tax practitioner research in ethics in an integrated manner that reveals new insights into the role these advisors play in the tax compliance and planning processes and suggests ways in which ethical standards might contribute positively to the fight against tax injustice.

#### IV

##### RESEARCH FINDINGS

This Part draws on several studies that were carried out by the author aimed at examining tax practitioners and ethics. This body of work is examined here in an integrated manner and in the context of tax justice to reveal new insights into the role tax practitioners might be encouraged to play to enhance tax justice. This Part also incorporates work on whistleblowing and corruption in the context of tax practitioners.

##### A. The Perceived Role of Ethics in Tax Practice

Qualitative interviews carried out by this author with tax practitioners working in various private sector tax roles in Ireland and the U.K. revealed that practitioners are often confused about the role that ethics play in their practices.<sup>40</sup> Practitioners typically believe that once they act consistently with the letter of the

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37. Joel Slemrod, *Cheating Ourselves: The Economics of Tax Evasion*, 21 J. ECON. PERSPS. at 25, 30 (2007) (discussing tax avoidance as it varies by income class).

38. See generally Diane Ring, *International Tax Relations: Theory and Implications*, 60 TAX L. REV. 83 (2007) (exploring the tensions between the fact that the vast majority of tax rules are "domestic" and the inherent international nature of tax practices).

39. See Sheila Killian, Philip O'Regan, Ruth Lynch, Martin Laheen & Dionysios Karavidas, *Regulating Havens: The Role of Hard and Soft Governance of Tax Experts in Conditions of Secrecy and Low Regulation*, 16 REGUL. & GOVERNANCE 722, 725 (2020) (discussing how tax avoidance has been aided by the idea of maximizing shareholder value).

40. Doyle, Frecknall-Hughes & Glaister, *supra* note 18, at 187–88.



tax law, they are acting ethically, whereas any advice breaching the legislation would be unethical. Practitioners recognize that an individual practitioner may stretch the law to varying degrees, but they lack a clear sense of any role for ethics in tax practice and in how the law may be stretched. This finding is notable given the attention large firms are placing on ethics (such as establishing firm-specific codes of conduct and creating positions and even departments tasked with ethics oversight and training). Tax practitioners with no sense of a role for ethics in tax practice are unlikely to consider the concept of tax justice in their day-to-day dealings with, and in dispensing advice to, clients.

### B. Risk Management in Tax

Interviews with tax practitioners revealed that risk management has become an increasingly important aspect of tax practice. Reputational risk was identified as particularly important.<sup>41</sup> The integration of risk management processes into the daily work of tax practitioners has emerged as a very significant issue for tax practice. In their answers during semi-structured interviews, practitioners considered risk management to be a crucial issue and were at ease when discussing risk procedures for themselves, their firms, and their clients.<sup>42</sup> Whereas the concept of ethics is nebulous, as identified above, risk management is tangible and actionable.

Indeed, in most cases, interviews with practitioners suggest that risk management appears to have replaced the concept of ethics in tax practice (if that concept ever existed). The proliferation of robust risk management procedures in firms may help desensitize the ethical antennae of tax practitioners.<sup>43</sup> The rise of risk management processes might be more positively characterized as an attempt by tax practices to operationalize broad ethical principles. In other words, the theoretical construct is that of ethics, but risk management is its linguistic expression and operational form. Regardless, this focus on risk management rather than ethics at a tax firm level is not broad enough to embrace the more holistic concept of tax justice, thereby blinkering tax practitioners to notions of justice that are not part of the current firm or professional culture.

### C. Ethical Reasoning of Tax Practitioners

The objective of ethical reasoning research is to understand how individuals consider ethical dilemmas and the cognitive methods they use in approaching them. Originally based on a theory developed by Laurence Kohlberg in the 1970s,<sup>44</sup> cognitive developmental psychologists posit that before a person arrives at a decision about whether and how to behave ethically when faced with a dilemma, ethical reasoning happens at a cognitive level. Cognitive moral development theory is supported by a measurement instrument called the

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41. *Id.* at 184.

42. *Id.* at 192.

43. *Id.* at 194.

44. *See, e.g.*, LAURENCE KOHLBERG, *THE PSYCHOLOGY OF MORAL DEVELOPMENT* (1984).

Defining Issues Test (DIT), which measures the percentage of an individual's reasoning done at a principled level (the most advanced level of ethical reasoning). However, the test is based on a set of social scenarios presenting predicaments faced by individuals in a personal capacity. For example, Heinz (a character in one scenario) faces the potential death of his sick wife due to a lack of financial resources necessary to purchase the medication she needs. He is considering breaking into the pharmacy to steal the medication. Use of such social context vignettes to measure the ethical reasoning of professionals in their working context is criticized in the literature as not sufficiently robust. The subject-relevant professionals may approach and assess the vignettes in their capacities as spouses or parents and so on, rather than as professionals—in this case, a tax practitioner. Given these concerns, when examining the ethical reasoning of tax practitioners, tax-context vignettes were developed by the author to measure the ethical reasoning of tax practitioners in a tax-specific context. For example, one vignette involves a practitioner who must decide whether to inform on someone who has illegally failed to declare foreign rental income but has also contributed to society in a positive manner.

Using both the original DIT social scenarios and ones developed in the tax context, the ethical reasoning of private sector tax practitioners, revenue employees and non-tax experts was examined.<sup>45</sup> No significant difference was found among the participant groups when answering the social context scenarios.<sup>46</sup> This observation suggests that any problems with ethical reasoning within the tax profession do not stem from the profession attracting individuals with an orientation for low levels of ethical reasoning. This is a positive finding, unless one expects tax practitioners to adopt a higher standard of ethical reasoning than other members of the public based on education and professional role.

However, once the context of the vignettes moved into the tax domain, private sector tax practitioners used a much lower percentage of principled ethical reasoning, while non-tax experts remained consistent with how they reasoned in social context scenarios. This change may be driven by the importance that tax practitioners place on legal rules in the tax context. Radcliffe and others, for example, observe that tax professionals are not trained to consider what is right or wrong so much as what is within the letter of the legislation.<sup>47</sup> This is not an encouraging finding in the context of tax justice.

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45. For a full explanation of how the research instrument was developed, see Elaine Doyle, Jane Frecknall-Hughes & Barbara Summers, *Research Methods in Taxation Ethics: Developing the Defining Issues Test (DIT) for a Tax Specific Scenario*, 88 J. BUS. ETHICS 35 (2009).

46. See Elaine Doyle, Jane Frecknall-Hughes & Barbara Summers, *An Empirical Analysis of the Ethical Reasoning of Tax Practitioners*, 114 J. BUS. ETHICS 325, 335 (2013) (studying the ethical reasoning of tax practitioners particularly as compared to non-tax experts).

47. Vaughan S. Radcliffe, Crawford Spence, Mitchell Stein & Brett Wilkinson, *Professional Repositioning During Times of Institutional Change: The Case of Tax Practitioners and Changing Moral Boundaries*, 66 ACCT., ORGS. & SOC'Y 45, 55 (2018).

Splitting the participant group into private sector practitioners and revenue authority employees clarified that the difference is arising from private practitioners, since revenue employees reasoned similarly to non-tax specialists. This implies that the presence of a practitioner-client relationship may be propelling the lower levels of ethical reasoning rather than tax knowledge, tax skill, or even tax as a work domain, all of which would be applicable to both private sector and revenue employees.<sup>48</sup> The emphasis on legal rules may stem from the tension between responsibility to the client and wider concerns for society. A commitment to professional obligations may result in a tax practitioner taking a “legal is ethical” stance when operating in the tax domain, justifying this position on the basis that the law provides a more well-defined guide than ethical discretion in an environment where the perception of what is legitimate and illegitimate tax avoidance appears to frequently change. The enhanced importance placed on risk management in tax may also promote a law-and-order orientation, as it can provide a benchmark for judging the risk to reputation.

Another potential reason for the decrease in principled ethical reasoning of private sector tax practitioners when the context alters to tax is an amplified emphasis on personal interest reasoning. Personal interest reasoning centres around individual social interaction, engaging in exchanges that advantage both parties, being thoughtful, polite and kind to support building and maintaining positive relationships. Decent behaviour is what is pleasing and acceptable to other people. Such behaviour may be driven by the practitioner-client connection, which involves the client paying for tax advice. An organisation’s compensation structures (for example, promotion and bonuses) might motivate tax practitioners to alter their reasoning in a tax context compared to how they would typically approach similar situations in social settings. Furthermore, the organisational culture in which tax practitioners operate may foster a specific way of considering a scenario. Fitting into or having a strong sense of identity connected with an employer firm may prompt practitioners to focus on the interests of the firm when approaching dilemmas.

Carrying out a more nuanced analysis on the data gathered on private sector practitioners, revenue employees, and non-tax experts shed light on whether the reduction in principled reasoning of private sector tax practitioners was due to a move towards law and order or personal interest reasoning. All three participant groups increased their reliance on law-and-order reasoning when the context of the dilemmas moved from social to tax. This suggests that the dominance of law-and-order reasoning in a tax context does not result from professional risk management, a rules-based education, or professional guidelines, given that none of these factors would be applicable to the non-tax expert group. The differences in ethical reasoning found in private sector tax practitioners compared with revenue practitioner and non-tax experts cannot be easily explained as either a

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48. See generally Reid K. Weisbord, *A Catharsis for U.S. Trust Law: American Reflections on the Panama Papers*, 116 COLUM. L. REV. ONLINE 93 (2016) (discussing the Panama Papers as it relates to the broader discussion around the abuse of offshore trust arrangements).

straightforward increase in either law-and-order reasoning or personal interest reasoning. The differences appear to be due to the conflicts that private sector tax practitioners face within their role, as they simultaneously owe duties to different parties. These private sector practitioners may also be motivated by self-serving concerns as they consider paths that generate the best return for their personal interests.<sup>49</sup> None of these findings are positive when considered in the context of domestic or international tax justice.

Similar quantitative research on the ethical orientation of tax practitioners suggests that both tax practitioners and non-tax specialists have more pronounced deontological orientations in tax context dilemmas than in social context dilemmas.<sup>50</sup> A deontological ethical approach involves an assumption that specific aspects of an action unequivocally establish the action's moral quality. This approach involves the creation of certain moral injunctions by which a person can determine whether something is morally correct—for example, “Thou shalt not kill.” Consequentialists are more concerned with balancing the methods and the results of an action while aiming for an optimal result. As such, any detriment associated with the means of achieving the outcome must be balanced against the expected benefit of the outcome. Utilitarianism, whereby actions are assessed not solely by their consequences but also by the level of benefit society gains from those consequences, is a specific form of consequentialism with the objective of maximising happiness for the greatest number of people.

The greater emphasis placed by practitioners on deontological issues in the tax domain may be a result of the fundamentally legal character of tax practice. This may drive a reliance on law-and-order reasoning, in which an emphasis on the morality of law and a responsibility to social order leads to obedience to clear rules benefitting everyone. It is worth remembering that deontology underpins most codes of conduct for tax practitioners. This is a design choice that fits with how practitioners appear to reason in the tax domain. Understanding this focus on rules and duties may be helpful in terms of identifying the means by which tax practitioners might be motivated to be more conscious of tax justice issues.

#### D. Firm Size

Based on qualitative semi-structured interviews with tax practitioners working in tax practice, we have found that the ethical issues faced by large international accounting firms and smaller, locally-based tax practices with domestic clients are different and are typically approached differently.<sup>51</sup> Interestingly though, the ethical outcomes are not necessarily different. Larger

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49. See Elaine Doyle, Jane Frecknall-Hughes & Barbara Summers, *Ethical Reasoning in Tax Practice: Law or is There More?*, 48 J. INT'L ACCT., AUDITING & TAX'N 1, 10–11 (2022) (finding that the personal interest orientation of tax practitioners may affect ethical reasoning).

50. Frecknall-Hughes, Moizer, Doyle & Summers, *supra* note 22, at 729, 741.

51. See generally Elaine Doyle, Jane Frecknall-Hughes & Barbara Summers, *Ethics in Tax Practice: A Study of the Effect of Practitioner Firm Size*, 122 J. BUS. ETHICS 623 (2014).

international firms may have different structures in place to deal with ethical dilemmas, relying on the application of clear, internally generated policies and support mechanisms, which eliminate the necessity for any professional within the organisation to reason from first principles about any ethical dilemma that might occur. Smaller firms or organisations appear to reason from first principles, which might have a positive impact on the ethical awareness of the practitioners confronting ethical scenarios.

However, when firm size was examined quantitatively using data gathered with the Defining Issues Tax (with the addition of the tax content scenarios), as mentioned above,<sup>52</sup> there was no evidence of a significant difference between the ethical reasoning of practitioners working with the Big Four accounting practices and those working in other private sector tax related roles, for example, smaller firms and in industry. This finding suggests that recommendations addressing how tax practitioners might be more cognisant of tax justice issues do not necessarily need to distinguish between tax practitioners working in tax practices of different sizes. In other words, we don't need to differentiate between large firm and small firm practitioners when making recommendations.

#### E. Reputation

One interesting finding from qualitative interviews carried out with private sector tax practitioners was the critical importance that practitioners placed on reputation.<sup>53</sup> Reputation includes practitioners' own personal reputations as professionals with clients, colleagues, and tax authorities, as well as the reputations of the practitioners' firms. Practitioners articulated two primary reasons for the significance of reputation: the ability of an individual practitioner to sleep at night knowing that their conscience was clear—couched as the practitioner's comfort in knowing that an issue was not going to arise that might lead to legal action, rather than necessarily believing that they had done “the right thing”—and the harm that results from a bad reputation with the tax authorities—which might lead to the practitioner's clients being targeted for audit. This attitude towards reputation appears indicative of a fear of the financial implications of reputational loss rather than a desire to maintain a high ethical standard.

#### F. Tax Students and Education

An interest in tax practitioners and how they approach ethical dilemmas raises questions about how to optimize the ethical reasoning of tax students, who will eventually become the tax practitioners of the future. This question motivated a mixed methods study that focused on tax students at the postgraduate level. The quantitative phase of the study found low measures of ethical reasoning in students when they were faced with ethical predicaments in

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52. *Id.* at 638.

53. Doyle, Frecknall-Hughes & Glaister, *supra* note 18, at 189.

tax. Rather than display a principled reasoning orientation, the students displayed personal interest or law-and-order approaches.<sup>54</sup> Qualitative observations from the student participants in a focus group suggest that this is due to the perception that speaking up for principles is not acceptable behaviour in the financial services and tax domains. Students referenced a perception of powerlessness in an organisational environment characterized by a hierarchy that gives no option for behaving inconsistently with organisational norms. That said, students did acknowledge the importance of preserving their professionalism and integrity and, at a minimum, the importance of complying with the black letter of the legislation.

However, it was clear from focus group feedback that students were primarily attentive to their own career progressions and their personal reputations, frequently at the expense of honesty and integrity. This suggests that educators need to take action to enhance an awareness of ethics in tax practice as well as to highlight issues of domestic and international tax justice. Educators need to go further to equip students with the techniques and confidence needed to handle ethical scenarios in the face of an organisational culture that might suggest doing otherwise. Students in the sample group considered relationships with family, friends, work colleagues, and clients to be important when faced with ethical dilemmas. Social norming of tax justice issues would therefore influence the behavior of students.

Online discussions of ethical dilemmas in tax designed to enhance the ethical reasoning of tax students were perceived positively by the students engaging in a focus group. Students reported a positive impact on their appreciation of ethical issues within tax practice.<sup>55</sup> Numerous benefits were identified, including students' need to justify their ethical positions and employ critical thinking. The students also expressed their enjoyment from engaging in the online ethical discussions. Despite this positive feedback, a quantitative examination of the students' ethical reasoning scores revealed no statistically significant increase in the scores of students in either a social or a tax context as a result of the ethical intervention introduced in the module. One potential reason for this was the overwhelming emphasis in all other modules in the postgraduate programme on the notion of maximising shareholder value, which may have resulted in the moral reasoning levels of students remaining stagnant despite the ethical focus within the tax module. This prospect highlights again how the culture within a domain (in this case, a postgraduate programme) can encourage a specific way of thinking and acting. Adopting a full programme approach and integrating ethical and tax justice issues into all modules is more likely to be an effective way of encouraging ethical reasoning development in students and may provide adequate programme intensity that could lead to an enhanced appreciation for the importance of tax justice.

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54. See Elaine Doyle, *Taxing Times: An Educational Intervention to Enhance Moral Reasoning in Tax*, 34 IRISH EDUC. STUD. 183, 196 (2015) (examining how students reason ethically in a tax context).

55. *Id.* at 191.

### G. Gatekeepers

In terms of addressing tax crime, the formal systems that censor and investigate potential fraud include internal auditors, external auditors, and revenue authorities who initiate tax audits. In addition to these formal gatekeepers, whistleblowing is acknowledged as a potent tool in curtailing tax evasion. Whistle-blowers who directly expose and help prosecute tax evaders may also disincentivise other tax evaders to pursue similar approaches, thereby fostering tax compliant behaviour.<sup>56</sup> Near and Miceli define whistleblowing as “the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.”<sup>57</sup> Of course, organisational wrongdoing can also be reported by external parties. However, employees are more likely to have access to evidence of wrongdoing in the modern era of incredibly complicated corporate structures.<sup>58</sup> Whistleblowing or protective disclosure regulations defend whistle-blowers from retribution by an employer. However, they vary substantially in scope across different countries. A tax professional employed within a company could expose tax crime being carried out by the employer and be categorised as a whistle-blower under the above definition, thereby enjoying protections under the relevant whistleblowing legislation. This prospect may not be clear-cut for tax professionals working as external advisors with fiduciary duties to their clients, particularly considering the importance of professional privilege and maintaining client confidentiality.<sup>59</sup> There is also a level of doubt about whether whistle-blowers are protected when disclosing tax avoidance or aggressive tax planning activities that, while strictly legal, may be considered inconsistent with the objective of the legislation.<sup>60</sup> At present, there is little evidence in the academic literature of tax practitioners blowing the whistle on tax evasion or tax avoidance activities being conducted by their clients. Practitioners typically react to clients who push for a level of tax aggressiveness outside the practitioners’ comfort zones by extracting themselves from those relationships.<sup>61</sup> This pattern might be an area in which to focus in future research, and some suggestions are offered in the discussion section below.

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56. See Armenak Antinyan, Luca Corazzini & Filippo Pavesi, *Does Trust in the Government Matter for Whistleblowing on Tax Evaders? Survey and Experimental Evidence*, 171 J. ECON. BEHAV. & ORG. 77, 77 (2020) (describing various ways in which whistleblowers help to curb tax evasion).

57. Janet P. Near & Marcia P. Miceli, *After the Wrongdoing: What Managers Should Know About Whistleblowing*, 59 BUS. HORIZONS 105, 108 (2016).

58. See Weisbord, *supra* note 48, at 93 (examining a massive leak of information that exposed asset protection trust arrangements as a method for hiding assets).

59. See generally John McLaren, *Laws to Protect Tax Whistleblowing in Australia: What Does This Mean for Taxpayers and the Taxation Profession*, 48 AUSTL. TAX REV. 24, 51 (2019) (explaining some of the complications around whistleblowing and professional privilege for tax advisors).

60. See generally *id.* (surveying relevant case law and academic research on this subject).

61. See Tim Fogarty & David A. Jones, *Between a Rock and a Hard Place: How Tax Practitioners Straddle Client Advocacy and Professional Responsibilities*, 11 QUALITATIVE RSCH. ACCT. & MGMT. 286, 310 (2014) (listing various examples where tax practitioners stopped working with clients due to risk).

## H. Corruption

One of the themes of this special issue is corruption, a term with numerous definitions.<sup>62</sup> One common definition involves the “use of public office for private gain” in ways that violate declared rules.<sup>63</sup> This definition encompasses a range of public sector activities stretching from grand corruption (the abuse of public power by high-level public officials, such as ministers or senior staff, for personal gain) to petty corruption (the extortion of small payments by low-level public officials in everyday interactions designed to smoothen transactions).<sup>64</sup> It can occur as political corruption, police corruption, or judicial corruption. Corruption has been identified as a pervasive and multi-faceted criminal phenomenon with the power to infect all aspects of our society.<sup>65</sup> However, the above legal definition of corruption often fails to capture some of the worst corrupt activities—for example, asymmetric exchanges of favours. Transparency International defines corruption more broadly as “the abuse of entrusted power for private gain.”<sup>66</sup> While the merits of various definitions can be debated, the latter extends the idea of corruption from being solely positioned in the public sector to include private sector actors. This in turn serves to broaden the scope of the debate on corruption and ensures that a search for successful anti-corruption measures considers all paths, including those that involve both private sector actors and public officials.

From a search of the academic literature, it appears that the direct involvement of tax practitioners in tax crimes or corrupt practices is an underexplored phenomenon.<sup>67</sup> That said, the tax literature acknowledges the existence of an entire industry of tax advisors engaged in providing valuable advice to large (and indeed small) corporations and wealthy individuals on how

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62. Jonathan Rose, *The Meaning of Corruption: Testing the Coherence and Adequacy of Corruption Definitions*, 20 PUB. INTEGRITY 220, 221 (2018). For an expansive definition of corruption and its connections to tax crime, see Diane M. Ring & Costantino Grasso, *Beyond Bribery: Exploring the Intimate Interconnections Between Corruption and Tax Crimes*, 85 LAW & CONTEMP. PROBS., no. 4 (2022), at 4–5 (identifying a critical need for the adoption of a conception of corruption that extends beyond the notion of bribery, and that recognizes it as a pervasive social problem and multi-faceted criminal phenomenon).

63. Bernardin Akitoby et al., *Corruption: Costs and Mitigating Strategies*, IMF Staff Discussion Note SDN/16/05 (May 2016), at 3.

64. Arifin Rosid, Chris Evans & Binh Tran-Nam, *Tax Non-Compliance and Perceptions of Corruption: Policy Implications for Developing Countries*, 54 BULL. INDON. ECON. STUD. 25, 27 (2018).

65. Costantino Grasso, *The Dark Side of Power: Corruption and Bribery within the Energy Industry*, in RESEARCH HANDBOOK ON EU ENERGY LAW AND POLICY 237, 238 (Rafael Leal-Arcas & Jan Wouters eds., 2017).

66. *What is Corruption?*, TRANSPARENCY INT’L (2022), <https://www.transparency.org/what-is-corruption> [<https://perma.cc/K99X-PXET>].

67. Recent academic papers on tax evasion and corruption do not include tax practitioners as a variable. See, e.g., Vito Tanzi, *Corruption, Complexity and Tax Evasion*, 15 EJOURNAL TAX RSCH. 144, 149–51 (2017) (not including tax practitioners as one of the listed factors that play a role in tax evasion). See also James Alm & Yongzheng Liu, *Corruption, Taxation, and Tax Evasion*, 15 EJOURNAL TAX RSCH. 161, 166–67 (2017) (not including tax practitioners in a list of factors causing corruption); Arifin Rosid, Evans & Tran-Nam, *supra* note 64, at 32 (focusing on the correlation between corruption in government and tax evasion rather than the role of tax practitioners).



to reduce their tax liabilities, often by exploiting national and international tax legislation.<sup>68</sup> Several interesting occurrences of the potential involvement of tax professionals in corrupt practices clearly emerged from the research activities conducted under the umbrella of the project VIRTEU,<sup>69</sup> including the illuminating insights offered by Charles Middleton, the former Vice President of International Tax for Wal-Mart Stores, Inc. — a company involved in a case of tax evasion and corrupt practices in the 2000s.<sup>70</sup> These practices would certainly appear to be a violation of tax justice. It also seems highly improbable that those engaged in serious tax crime are not advised at some point by tax experts. Viewed at its most benign, there is evidence that tax practitioners, as critical actors in global and national tax systems, may be contributing to tax injustice by following the letter rather than the spirit of the tax legislation and in prioritizing clients' interests at the expense of the wider community. Taking a more critical view, aggressive tax avoidance under the Transparency International definition may arguably be a corrupt practice if professionals with a public interest mandate used their roles for personal gain—such as by charging high fees in return for exploiting national and international tax laws to reduce exchequer funding that pays for public services. Rose argues that corruption claims are almost always connected to morality claims,<sup>71</sup> making it both appropriate and imperative to examine the ethics of tax practice in the context of tax justice and corruption.

## V

### DISCUSSION AND RECOMMENDATIONS

Drawing together the studies on tax practitioners and ethics outlined above and considering them as an integrated body of work provides the foundation for several actionable recommendations to encourage tax practitioners to enhance their contributions to tax justice.

First, academic and professional education programmes must be designed with an empirically grounded understanding of how tax practitioners and students employ lower degrees of moral reasoning in a tax context compared to a social one. This step is crucial if we are going to educate tax practitioners on how to contribute to tax justice rather than thwart it. Ethical reasoning can be

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68. See, e.g., Tanzi, *supra* note 67, at 154 (observing that tax planners, consultants and administrators assisted taxpayers with gaming the tax system). See also Gangl & Torgler, *supra* note 13, at 110 (observing that wealthy taxpayers hire tax practitioners to “optimize” their tax behavior).

69. See generally VIRTEU International Symposium, *The Professionals: Dealing with the Enablers of Economic Crime*, CORP. CRIME OBSERVATORY (July 21, 2021), <https://www.corporatecrime.co.uk/virteu-symposium-the-professionals> [https://perma.cc/4KG6-YSAH] (exploring the role of professionals as facilitators of economic crime and conceiving possible responses to address such a phenomenon).

70. See generally Charles Middleton, *VIRTEU Roundtable Discussion: Whistleblowing, Reporting, and Auditing in the Area of Taxation*, CORP. CRIME OBSERVATORY, at 09:55 (Feb. 26, 2021), <https://www.corporatecrime.co.uk/virteu-whistleblowing> [https://perma.cc/2W3B-SULS] (reflecting upon his personal experience(s) as a whistleblower).

71. Rose, *supra* note 62, at 222.

promoted through certain types of educational interventions, and research confirms that undertaking university ethics courses correlates with enhanced ethical reasoning in accountants and accounting students. Findings from the original research reviewed above, however, indicate that ethics instruction rooted in social contexts might not have an optimal influence on work-related ethical reasoning. To maximise impact, it is posited that university and professional training courses should include formal ethics education that employs specific tax-related dilemmas and explicitly addresses tax justice issues. Employing the focal context in professional ethics training offers the best potential for challenging socialised behaviour, rather than using social scenarios where professionals may reason differently from their work context. Ethics education also needs to be integrated holistically across entire training programs rather than being delivered as a separate topic to be ticked off the syllabus. The difference between ethics and risk management in tax must be clearly distinguished and an awareness of duty to a broader range of stakeholders (beyond the client) must be impressed upon trainees as well as qualified professionals. This wider perspective should be rooted at the heart of organisational culture if the very social norms that appear to be restricting the ability of early career tax practitioners to have a voice are to be changed.

Second, the tax profession itself, self-regulated through its professional bodies, would also benefit from understanding the views and approaches of tax practitioners regarding ethics and their levels of ethical reasoning. Given the scope and size of the profession, attention to the heterogeneity among practitioners operating in different environments (risk management in larger firms versus reasoning through ethical dilemmas in smaller firms) would be essential. The self-regulated character of the profession is such that professional bodies have a duty to govern the profession effectively. The ethical sensitivity of tax professionals must not be blunted by risk management processes, which are designed to avoid litigation but frequently stifle professional judgement. Being cognisant of the diverse requirements of smaller practitioners is critical given that Big Four practitioners frequently contribute more substantially to the professional tax institutes than non-Big Four practitioners, thereby impacting more significantly on tax professionalisation, regulation, education, and policy. Integrating the types of ethical issues faced by small firms in training programs may assist those working in larger firms to enhance their ethical reasoning beyond a reliance on risk management processes. Conversely, some elements of the risk management procedures used in larger firms might offer insights to practitioners working in smaller firms. Ultimately, incorporating the diverse matters faced by firms of differing sizes may assist the professional institutes in providing better service to all their members in areas of education, regulation, and input into tax policy.

If the ethical sensitivity of practitioners can be heightened as a result of better training or education, will this eradicate the increase in tax avoidance structures perceived as unethical and which contribute to tax injustice? It is difficult to forecast with any level of certainty. However, enhanced ethical sensitivity may

encourage some professionals who are willing to design and promote “dodgy” tax structures to be more cognisant of the effect of such structures on a more diverse group of stakeholders; in other words, to consider more than simply the tax they save their clients.

Third, the significance that tax practitioners place on developing and maintaining a good personal reputation—with colleagues, tax authorities and clients—could also be leveraged to improve compliance ethics in tax professionals, contributing to enhanced tax justice. If career advancement were to be impeded by reputational damage, that cost may signal the importance of robust professional ethics in tax among both tax practitioners and students. Gangl and Torgler propose that tax administrations be more proactive in making a distinction between tax firms in general and tax professionals more specifically by only dealing with professionals who have been awarded certificates of trust by undertaking official training that emphasizes the interests of the community instead of simply those of the individual client.<sup>72</sup> Certificates could be utilised both as a gatekeeper technique and as a criterion for career progression if, for example, only tax professionals with a valid certificate were allowed to submit tax returns.

Fourth, policy makers, professional institutes and even corporate entities commonly develop codes of conduct or guidelines indicating best practice in specific areas. These codes can be rules-based or principles-based. An awareness of the way relevant individuals approach ethical issues may be of benefit to code drafters by suggesting how best to motivate enhanced compliance with codes and guidelines. On the basis that tax practitioners seem to reason using lower levels of moral reasoning in their work domain, codes or guidelines incorporating prescriptive processes may have a more significant impact than principles-based guidelines. But an even deeper question may underlie the design of codes of conduct: Should codes be drafted to facilitate the development of principled ethical reasoners who depend on their own cognitive reasoning processes to guide their conduct? Alternatively, would the tax profession be better served by fostering the creation of rule-oriented practitioners who are steered by the profession’s detailed directives when tackling ethical dilemmas? If strategies could be introduced to enhance ethical conduct in tax, it is conceivable that a principled professional code exemplified by medicine’s Hippocratic Oath might be successful.<sup>73</sup> Effectively designed ethics training and appropriately drafted ethical codes may be successful in enhancing social norms of tax honesty and justice among tax practitioners and, by extension, their clients.

Fifth, as discussed earlier, due to the fragmented nature of the tax profession, ethical dilemmas can arise when tax practitioners conform to varying levels of ethical standards as set out by a plethora of professional institutes (or, sometimes, no standards at all). In the contemporary globalized environment, self-regulation

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72. Gangl & Torgler, *supra* note 13, at 136.

73. *Id.*

of the tax profession may prove inadequate. The tax community may need to explore some type of uniform professional regulation of all tax practitioners irrespective of their original profession (for example, accounting or law) and notwithstanding their geographical location. Tax justice is, after all, an international concept.

Sixth, while there does not seem to be extensive or explicit academic evidence directly connecting tax practitioners to tax crime or corruption as more traditionally defined, it seems implausible that those involved in tax crime are not guided by individuals with expertise in tax.<sup>74</sup> However, we have limited understanding about this phenomenon or about how tax practitioners may end up advising on transactions that involve premeditated tax evasion. This is a substantial gap in our knowledge that needs to be rigorously examined. Perhaps more importantly, however, the conduct of tax practitioners should be evaluated against the more encompassing definition of corruption set out by Transparency International—namely, “*the abuse of entrusted power for private gain.*”<sup>75</sup> This would extend the debate on corruption to include private sector actors (including tax practitioners) who might fall afoul of this definition if advising clients on highly artificial tax avoidance transactions.

Finally, we see very limited evidence in the academic literature of tax practitioner advisors blowing the whistle on tax crime or tax avoidance carried out by their clients. Perhaps more could be achieved in this regard in two ways: first, if professional advisors were included in the protections afforded under whistleblowing legislation; and second, if there was less ambiguity about the degree of artificiality that needs to exist in tax avoidance transactions to classify them as wrongdoing under whistleblowing regulations.

The global context within which many tax practitioners work, the technical nature of many tax avoidance structures, and the emphasis on secrecy justified on commercial and competitiveness grounds make it challenging for national revenue authorities to tackle tax avoidance on a unilateral basis, other than to identify it as unethical. After all, it can be claimed that it is national governments that draft tax legislation, and tax practitioners are simply abiding by it in their advice to clients. An international approach to enhance the transparency around tax planning might serve to encourage ethical professional conduct and create a more global culture of tax compliance, thereby facilitating tax justice.

## VI

### CONCLUSIONS

Initial discussions on the issue of tax justice focused at the national and international policy level. Domestic legislation and even international guidelines have been accused of contributing to tax injustice due to how they facilitate opaque cross-border flows of capital to lower tax countries often at the expense

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74. See Weisbord, *supra* note 48, at 93.

75. TRANSPARENCY INT’L, *supra* note 66 (emphasis added).

of developing countries. However, the term tax justice is also being used increasingly in the context of domestic tax injustice. In the context of their role as intermediaries between tax authorities and taxpayers, tax practitioners are critical actors in the tax compliance process and therefore an important variable in any debate on international and domestic tax justice, though they appear not to have been examined in tax justice debates to date. With the aim of beginning to address this gap in the literature, this article has drawn together several existing studies on tax practitioner ethics in an integrated manner, together with existing work on whistleblowing and corruption, to reveal new insights into the role that tax practitioners might be encouraged to play to enhance domestic and international tax justice.