

PUBLIC DUTY, PRIVATE GAIN: PROFESSIONAL ETHICS AND TAX

feature

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The professions are often discussed in terms of high status and pay. But they depend ultimately on privileges derived from the state and justified in terms of the public good. Given the complicity of both law and accountancy in tax avoidance work, these privileges are attracting increasing attention. The gap between service to the public good and profit maximisation is now too wide to ignore.

Many features distinguish professionals from other groups like merchants, traders or labourers. Professionals are generally seen as having a strong sense of integrity, responsibility and accountability to the public interest. For example, auditors are required by law to use their professional training, independence and judgement to give a “true and fair” opinion on the financial statements of companies. In this case, the state has given professionals not only the right, but also the responsibility, to supervise private enterprises using their expertise.

Both the accountancy and the legal professions are therefore vulnerable to challenge on public interest grounds, because they earn their professional privileges in the expectation that they will use them to serve the public good. Their professional status is not purely based on their ability to perform well in the service of their clients’ interests and to earn a great deal of money as a result. Many professional firms have recognised that they risk their long-term commercial prospects if they lose sight of the public duty

at the origin of their professional privileges. However, the actions that they have taken to date to mitigate these risks have been focused on public relations rather than on substance.

Today, the Big 4 accounting firms, Deloitte, PWC, KPMG and EY, are faced with a fundamental cultural and professional dilemma: do they serve the dollar or their professional code of ethics and responsibility? Past scandals point to instances where this tension has unravelled in spectacular fashion, such as the demise of Arthur Andersen after its unethical and highly conflicted auditing of Enron.

In the area of taxation, this conflict between public and private interest is particularly acute. Protecting the public interest would require the Big 4 firms to ensure that their clients pay a fair amount of taxes. The commercial reality, however, is that they often go out of their way to help clients minimise their tax liabilities. According to a 2009 Tax Research survey they have

offices in more than three quarters of the world’s small secrecy jurisdictions and they proactively help clients to reduce taxes through these secrecy jurisdictions.

Tax is an obligation to pay a proportion of earnings to support the state in its role as a provider of public services. It is a duty, not a choice. In the nineteenth century, John Ruskin wrote in ‘Unto This Last’ that most businessmen know nothing about political economy, and that all they know is how to count their revenue and costs. Ruskin observed that they did not appreciate the vital enabling role of the state in this process, preferring to take personal credit for their earnings. There seem to be echoes of this myopic worldview in the refusal of many tax professionals to acknowledge that



Arthur Andersen: when accountants push the envelope that little too far.

using their expertise to undermine rather than adhere to principles of tax compliance is at odds with their values of integrity and responsibility.

Even though new recruits are trained and examined on the subject of ethics, the culture and values of the Big 4 firms are in many ways contrary to those ethical values. Instead of charging for tax advice on the

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basis of employee time, they charge in terms of money saved to the client, so it is much more lucrative to help clients to pursue aggressive tax strategies. Their internal codes of ethics often place the burden onto the employee to raise any issues of concern. And because these firms work with large clients, individual employees generally only deal with one aspect of a piece of client work, and rarely see the whole picture of what the firm is doing on behalf of its clients. The partners at the top may have a clearer overview, but it is likely that by the time they reach that stage, they have already been socialised into the culture. Those who might have challenged the system would not have reached the top, and so strongly ethical behaviour is filtered out.

The Institute of Chartered Accountants in England & Wales (ICAEW), the world's oldest professional body of accountants, has not sanctioned any Big 4 firms for their tax avoidance schemes or advice. Neither have the Chartered Institute of Management Accountants (CIMA) or the Association of Chartered Certified Accountants (ACCA), bodies which are equally global and perhaps even more so. On the contrary, these professional bodies often applaud the Big 4 and act as their choirmasters. The Big 4

routinely take advantage of legal loopholes to undermine the fundamental spirit of corporate and private tax regimes. In reaction to public criticism, the ICAEW recently published a “technical release” on professional conduct and taxation. The section on ethics and values does not mention the duty of accountants to protect the public interest. Instead, the document provides its members with advice about how to deal with tax avoidance issues and communicate with HMRC. The ICAEW claims that it is clients who want to undertake aggressive tax avoidance schemes, and that some profiteering barristers are sanctioning aggressive tax avoidance. This is blame-shifting.

Recent public scandals about tax avoidance at large companies like Google, Starbucks and Apple prompted the ICAEW to complain about the negative publicity for large companies and to put the blame on government for the lack of clear tax rules and guidance. Its actions suggest that, instead of “protect[ing] the quality and integrity of the accountancy and finance profession”, it is defending the Big 4 firms from accusations made about lapses in that quality and integrity.

What is needed is for members of professional bodies such as CIMA, ACCA and ICAEW to raise their concerns about unethical practices with those bodies, and for a wider movement to encourage the strengthening and enforcement of ethical codes by professional firms in relation to tax advice. This is not to underplay the role of government in responding more robustly to misdemeanours, and revoking licences to practice in the most extreme cases.

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