TAX JUSTICE FOCUS

The newsletter of the tax justice network

THE PROFESSIONS ISSUE
VOLUME 9, NUMBER 3

INTERMEDIARIES FOR GOOD OR ILL: THE ROLE OF THE PROFESSIONS IN THE GLOBAL TAX SYSTEM

Accountancy and legal firms, alongside the financial services sector (collectively referred to as 'intermediaries' or 'enablers'), play a key role in making the global tax system work. How can the tax justice movement engage with the accountancy and legal professions to promote a culture of transparency and responsibility around tax, both among its members and, through them, among their corporate clients?

editorial

Will Snell

In simple terms, the role played by tax accountants is well understood. They advise corporate clients on how best to minimise their tax liabilities, while complying with tax regimes wherever they have a legal presence. As such, their role is not only legitimate, but necessary to ensuring that international commerce functions efficiently and in accordance with legislation.

However, if we look a little deeper, questions emerge about the role played by accountancy firms in this system. This edition of Tax Justice Focus looks at some of these questions from a variety of perspectives.

Firstly: accountancy firms help corporate clients to comply with international tax laws. But what do we understand by compliance? If we mean that laws are not broken, then we have little cause to complain about the role

"Accountancy firms help corporate clients to comply with international tax laws. But what do we understand by compliance?"

Guest Editor: Will Snell
Editor: Dan Hind
Contributing Editor: John Christensen
With thanks to Richard Murphy
Design and layout: www.tabd.co.uk
Email: info(at)taxjustice.net
Published by the Tax Justice Network Limited

For free circulation, ISSN 1746-7691

played by most accountants (we certainly cannot reasonably make allegations of tax evasion against the "Big 4" firms). Recent legislation, at least in the UK, has curtailed the more blatant examples of tax avoidance, so the number of abusive tax avoidance schemes has fallen sharply. However, if we define tax compliance as paying the right amount of tax, in the right place, at the right time, then we do have reason to look more critically at the role played by accountancy firms.

The International Consortium of Investigative Journalists (ICIJ) recently highlighted PwC's role in brokering corporate deals with the Grand Duchy of Luxembourg worth hundreds of billions of dollars, many designed to reduce tax bills. In the most sophisticated cases, accountants structure the global affairs of a company so that it does not *have* to avoid tax, because it does not have a tax *footprint*. Here, accountants are selling the ability to generate profits without a geographic location, which cannot be taxed by any single jurisdiction. This falls outside conventional definitions of tax avoidance, which suppose that it should be clear which tax regime is being deprived of income. David Quentin looks at the legality of self-assessed tax liabilities, the role of tax accountants and lawyers in relation to them, and wider issues of professional ethics.

This leads to our second issue: the role of ethics in the global tax system. Accountants often argue that ethics play no role at all, because the regulatory framework ensures that 'unethical' activities, such as aggressive tax avoidance, are thrown out before being put into practice. But this reassuring picture seems simplistic. The global tax system is complex, convoluted and full of loopholes. The sophisticated exploitation of loopholes enables companies to claim that they are compliant in every jurisdiction in which they have subsidiaries, while avoiding taxes on portions of their profits by manipulating the profits declared in each jurisdiction. Is this ethical? It is hard to argue that no one is harmed: *Honest Accounts*[1] estimates that, while $30bn of aid flows into Africa each year, $35.3bn goes out as illicit financial flows facilitated by tax havens, and another $46.3bn as profits made by multinational companies. *Tackling Tax and Saving Lives*[2] estimates that, if developing countries could increase the proportion of GDP collected as tax revenue from 17% to 20%, 287,000 child deaths could be averted each year, and 72m people could have access to clean water.

Atul Shah argues that there is a conflict between the contractual pressures on accountants to enhance the commercial position of their clients by minimising their tax liabilities, and their public duties to the society that granted them their professional privileges, and that this conflict should be recognised and addressed by the professional associations. There is also a role for government, in examining the negative impacts of legislation that exposes accountancy firms to the risk of legal action by clients who feel that their tax advisers have not acted to maximise their commercial interests.

"It has become clear during the production of this edition of Tax Justice Focus *that some of the larger accountancy firms are unwilling to take part in the debate as currently framed."*

No discussion of ethics in business can ignore corporate social responsibility. Increasing numbers of multinational companies are adopting a more sophisticated approach to CSR. By integrating CSR into their business activities, they are leveraging their core competencies to achieve social outcomes that they are best placed to achieve, while reinforcing their long-term commercial prospects by improving their "brand". This is fine, but there are two glaring omissions where tax is concerned. The first is that many of these companies are paying less tax than they should in the countries where they operate, depriving developing countries of more value than they are contributing through CSR activities, however well constructed. The second is that accountancy firms, no slouches when it comes to producing glossy CSR reports, are well behind the CSR 'curve'. As Stephen Littler points out, their own CSR reporting neglects one of their core business activities: the provision of tax advice. Until this anomaly is corrected, it is difficult to have an informed and comprehensive conversation about tax transparency and ethics with accountancy firms.

We must avoid the trap of treating the accountancy profession as a monolithic bloc. There is a multiplicity of views and practices. For example, we are beginning to see some divergence between the "Big 4" firms' attitudes to tax transparency. In October, the Chairman of PwC – the world's largest tax practice – said that "tax advice has a moral dimension to it that professional services firms must keep in mind when advising clients.", PwC also published a study suggesting that introducing country-by-country reporting – a reform they had previously opposed – could "boost competitiveness, increase lending and bolster financial stability". By contrast, EY is encouraging its clients to lobby governments to water down reform of the international tax system (the BEPS recommendations). The other side of the story is the smaller

[1] Health Poverty Action, 2014 | http://www.healthpovertyaction.org/wp-content/uploads/downloads/2014/07/Honest-Accounts-report-v4-web.pdf

[2] Save the Children, 2014 | http://www.savethechildren.org.uk/sites/default/files/images/Tackling_Tax_and_Saving_Lives1.pdf

tax practitioners. Rebecca Benneyworth explores the widespread concern among smaller firms that they are coming under pressure to advise on tax avoidance schemes without having the professional competence to do so. Many accountants would rather focus on the "day job", advising their clients on how to grow their businesses, without getting embroiled with tax avoidance. This is a timely reminder to the tax justice community that accountants can be allies as well as foes. As signs of change start to appear in the attitudes of some accountancy firms to tax transparency, opportunities for constructive engagement may increase.

How, then, should we engage? It has become clear during the production of this edition of *Tax Justice Focus* that some of the larger accountancy firms are unwilling to take part in the debate as currently framed. They do not believe that external pressure can add much to their ongoing internal conversations about tax avoidance. However, as the debate becomes more constructive on both sides, opportunities for the issues to be discussed openly can only help the accountancy profession to embrace the growing public support for transparency and responsibility around tax issues.

We are running a short online survey to hear your views about how the tax justice movement should engage with the accountancy and legal professions. Please take five minutes to answer three basic questions. The survey is available now at www.taxintermediaries.org**.**

Thank you!

Will Snell is Director of Public Engagement & Development at Development Media International, a UK NGO working to improve health outcomes in developing countries through mass media campaigns, with a focus on maximising and measuring impact. He has an interest in tax justice issues.

Luxembourg, a European mini-state shrouded in darkness. See News in Brief.

PUBLIC DUTY, PRIVATE GAIN: PROFESSIONAL ETHICS AND TAX

feature

Atul K. Shah

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

"Both the accountancy and the legal professions are 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."

"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."

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.

Dr. Atul K. Shah is a Senior Lecturer at the Suffolk Business School. He has published research on accounting, international financial regulation, business ethics and cultural intelligence and diversity. He can be reached at a.shah@ucs.ac.uk

TAX AVOIDANCE SCHEMES – A SMALL PRACTITIONER'S VIEW

feature

Rebecca Benneyworth

Accountants can find themselves in a difficult position if their clients are eager to engage in "tax reduction". Some are worried that they will be legally liable if they do not comply. But accountants do not have to advise on tax schemes and no one can force them to do so.

I have made no secret of my dislike of complex avoidance schemes throughout my career as a lecturer and writer. That dislike is rooted in my belief that if a client cannot understand the full purpose of a series of transactions and how they relate to his business or personal life then he should not be entering into them.

The advice I deliver through my practice is aimed at supporting my clients to grow their businesses, making use of available tax reliefs that are appropriate to them. If I am asked for advice about "tax reduction", as I have been this year, I am firm. Tax reduction is not my area of expertise, and should a client wish to take advice elsewhere, then he is welcome to leave me. It is a stance that is perhaps easier for me to take than many of my colleagues – I have more than one business, and my practice is a small part of my income, giving me the luxury of speaking my mind to clients.

However, as chair of the Institute of Chartered Accountants in England and Wales (ICAEW) Tax Faculty, I do also hear from fellow professionals who are worried about tax schemes which are being offered to their clients directly, or schemes which are heavily marketed to smaller firms of accountants.

My fellow practitioners are worried that they might be regarded as negligent if they fail to give advice to clients about aggressive avoidance schemes which might be open to them. No doubt this concern is stimulated by promoters who plant the seeds of doubt. Indeed, in the past, I have spoken at events where other speakers have delivered just that message – if you don't advise clients to go into the latest tax schemes then you risk a negligence case.

"My fellow practitioners are worried that they might be regarded as negligent if they fail to give advice to clients about aggressive avoidance schemes which might be open to them."

How these promoters must have smiled and rubbed their hands when the decision of the High Court went against the advisers in the case of Mehjoo v Harben Barker. Here was a Court apparently ruling that the advisers were negligent because they were not aware of a complex avoidance scheme open to non domiciled individuals. Of course the case was more complex than the headlines indicated, and the world was largely set right again when the Court of Appeal ruled in favour of the advisers.

My view for my fellow professionals in smaller firms is the same in respect of avoidance schemes as it is in relation to any other area in which they have no expertise. If they are generalists, and that is clear to their clients, then clients cannot expect them to advise on highly specialised areas. There are numerous areas where I would refer a client to a specialist – setting up an employee share scheme, for example. The fact that areas in which I regard myself as technically unqualified to advise include tax avoidance schemes is not a problem to me. Because I know that complex schemes need very careful execution down to the last detail, I would ask a client to leave my practice if they wanted to take up a scheme. This is not a moral judgement on them – although I happen also to have a personal dislike of these types of arrangement, but I rule myself not competent to give a client the support that he or she is likely to need following his course of action.

So that, I believe, deals with the adoption of tax avoidance schemes in the future. In fact, when advising anyone now on taking up a tax avoidance scheme, I am now able to point out that under the Accelerated Payment Notice legislation, clients entering into a 'DOTAS' scheme may be required to pay the tax up front pending the scheme being examined by the courts. (DOTAS is the acronym for Disclosure of Tax Avoidance Schemes, and indicates that a scheme or arrangement exhibits some of the characteristics which give HMRC cause for concern; such schemes have to be registered with the tax authority and are allocated a reference number, so that their use can be carefully monitored, particularly if they are subsequently overturned by the courts.) I have already found that this advice dampened the enthusiasm of an individual who was referred to me by another practitioner, to the point that, on reflection, he decided not to look for any schemes to reduce his tax liability.

But there is another difficult area for the smaller practice. Clients may have taken advice elsewhere in the past, and that advice is now coming back to haunt them! With the introduction of another new Notice – this time a Follower Notice – the client may find that he has been invited to settle a long standing dispute in favour of HMRC. A follower notice allows HMRC to ask users of schemes which have not been to court to settle in the taxman's favour if the scheme they have used is similar to another scheme which has failed in the courts. Clients who have come to us with an old scheme under enquiry – entered into some years before we took over their affairs – may now seek advice from the new adviser as to what they should do. Follower Notices do exactly what the consultation document said they would do – "Raise the stakes" for those who have entered into tax avoidance schemes in the past. Clients do not have to settle their case – they may choose to fight on; but if they do, the money at stake (excluding of course the very high cost of litigation) will increase by 50% – the penalty for failing to settle the dispute as requested by the Follower Notice.

Our natural reaction is to try to support our clients – we want to help. But I would encourage smaller practitioners who are out of their depth to be very careful how they approach these cases. If the present adviser does not understand the scheme the client entered into, he is hardly well placed to advise of the chances of success in court. He should also be aware that some schemes preclude a purchaser of the scheme from reaching a settlement with HMRC. Directing a client back to the original adviser or promoter is the safest way to protect your client – and indeed your own professional indemnity premiums.

"If smaller practitioners are not comfortable with advising on tax schemes, then they cannot be required to do so, by their client or by anyone else."

The agreement between the taxpayer and his adviser is governed by contract law, underpinned by the professional requirement to act in the client's best interests. However, advisers must always stay within their area of expertise, and if smaller practitioners are not comfortable with advising on tax schemes, then they cannot be required to do so, by their client or by anyone else. Trying to be helpful can be a dangerous thing to do.

Rebecca Benneyworth MBE BSc FCA is a chartered accountant, lecturer and author on tax issues. She is currently the chair of the ICAEW Tax Faculty. The views expressed are her own.

TAX AVOIDANCE AS LAW-MAKING RATHER THAN LAW-BREAKING

feature

David Quentin

At the moment taxpayers are free to file returns claiming tax advantages that do not exist. The tax advice industry can make up the law to suit its clients, placing the onus on the revenue authority to mount a challenge. Professional regulatory bodies need to step in and impose stricter duties on tax advisers in order to protect public funds from systematic predation.

When the US and the UK invaded Iraq in 2003, they claimed to be doing so "legally", pursuant to UN resolution 1441. The UK government obtained an opinion from the Attorney General, Lord Goldsmith, to the effect that the resolution authorised the use of force, and on the basis of that opinion the UK invaded. The fact that Lord Goldsmith's opinion was universally derided by scholars of international law was irrelevant, because international law doesn't work like that. States are the source of law, and so the invasion itself was the juridical act; the debate over its 'legality' was a mere conversation between onlookers. Where the behaviour of powerful states is in question, international law is like a court case with only one party, who is also the judge.

To some extent, self-assessed tax liabilities work in the same way. You can assess yourself as having a liability to tax that is as low as you want it to be, and file on that basis, provided you have your tax equivalent of Lord Goldsmith – the adviser who knows which side his bread is buttered on. As with international law, it does not matter if your adviser is right or not; the mere fact that he says it is "legal" makes it so. Of course, the tax authority could challenge your self-assessment, provided that it has the necessary information, resources, and inclination, but at the point of filing of your tax return, you can be your own fiscal warmonger, laying claim to money that would not otherwise belong to you, "creating your own reality", as one White House aide at the height of the neo-con era famously described it.

To be sure, if your filing position is vulnerable and the tax authority is aware of this, then you might fail to "create your own reality" and, through the mechanisms of tax enforcement, have to pay more tax than you originally said you owed. But tax authorities suffer from radical information asymmetries and savage resource constraints, and generally only challenge the more obviously vulnerable filing positions in any event. This means that taxpayers who create their own fiscal realities stand a good chance of succeeding, which is why this practice is so common.

As the example of Lord Goldsmith demonstrates, we cannot expect the professional integrity of advisers to stand up as a first line of defence against this kind of practice. Also, it is not just a matter of advisers compromising their professional integrity in pursuit of their clients' interests because that is what they are *paid* to do: there is a wide spectrum of *ideological* positioning which protects tax advisers from confronting their role in the predation of the public purse by wealthy individuals and companies:

"Taxpayers who create their own fiscal realities stand a good chance of succeeding, which is why this practice is so common."

Some tax practitioners are positively motivated by their self-image as freedom fighters, liberating wealth (which they view as inherently private) from the clutches of the over-mighty state. Others struggle to understand the agency that they and their fellow professionals have in the prior process of structuring transactions so as to be able to claim the consequent dubious tax advantages. They speak as if the legal form that transactions take is deposited overnight by some sort of tax structuring fairy, and that the only role of tax advisers is to wake up in the morning and decide whether or not to claim whatever tax savings arguably arise. Even those who recognise the agency of tax advisers in structuring transactions nonetheless insist that their contribution cannot be distinguished from the commercial imperatives of the client.

Clearly, then, since they do not perceive themselves to be part of the problem, self-regulation by individual tax professionals is not the solution. Professional regulatory bodies seem to be an obvious alternative, *"Someone somewhere along the line will 'sign off' on the tax, and the existence of this 'sign-off' enables everyone else to get on with their jobs, without having to apply their own professional judgement to the tax planning in question."*

but (in the UK at least) they have so far failed to step in. One obstacle preventing a regulatory solution stems from the fact that there is a heterogeneous gaggle of lawyers', accountants' and tax advisers' regulatory bodies, many of which regulate professions with a huge variety of other specialisms, and so do not specifically regulate their members in relation to their tax work.

Even those bodies that do specifically regulate tax advisory work, however, set the bar astonishingly low in terms of the strength of the filing position that their members can encourage (or permit) their clients to adopt. A member of the UK's Chartered Institute of Taxation, for example, must "not assert tax positions in a tax return which he considers have no sustainable basis." This is a laughably low threshold. Indeed it is not really a threshold at all; it is a green light to any intelligible argument in favour of a tax saving, irrespective of whether or not it is actually correct. No doubt resolution 1441 would have taken the invasion of Iraq over the "no sustainable basis" threshold, had the threshold applied to war as well as to self-assessment filing positions.

To an extent this low threshold reflects the division of labour as between tax advisers. The person who files a tax return is not necessarily the person who dreamed up the tax planning, who may be a different person again from the person who advised that the tax planning was legally effective in achieving its intended fiscal effect. Someone somewhere along the line will "sign off" on the tax, and the existence of this "sign-off" enables everyone else to get on with their jobs, without having to apply their own professional judgement to the tax planning in question.

The problem with this model is that, where one adviser concerns herself with the accounting treatment, another with the legal analysis, and yet another with the transactional implementation, and someone else even further down the line does the actual filing, there is no imperative on anyone in particular to ensure that that the whole tax proposition stacks up. Typically for example, the legal analysis will assume factual features which cannot realistically be delivered on an implementational level, although I have seen one much-implemented scheme purporting to shelter entire personal incomes from UK tax where the QC's advice was wrong in law, the accounting assumptions were incorrect, *and* the factual propositions did not hold water in any event. If the client is risk-averse then this kind of thing should be called out by a conscientious adviser acting in the client's interest somewhere along the line, but if the client is a sophisticated taxpayer hungry for the tax risk this stuff represents then nobody is going to call it out on behalf of the public exchequer.

With a view to protecting public money from this kind of predation, it would be possible for such bodies as (in the UK) the Bar Standards Board, the Solicitors Regulation Authority, the Institute of Chartered Accountants of England and Wales and the Chartered Institute of Taxation to oblige regulated professionals call this kind of thing out on behalf of the public exchequer, by imposing a regulatory requirement that tax filing positions, taking all relevant factors into account, have to have a specified minimum prospect of success. At its very lowest the threshold should be "more likely than not to succeed".

We professionals are at risk of criminal prosecution if we continue to advise a client who is baldly failing to report income to the tax authority; it seems bizarre that, by contrast, we should be completely off-risk for even a non-criminal regulatory breach if we wave through filing positions which we know perfectly well would not survive forensic scrutiny. The difference between the two is only the difference between the invasion of Iraq with or without the opinion of Lord Goldsmith to support it.

David Quentin is a UK barrister who has worked at Allen & Overy, Farrer & Co, and at the independent bar. He advises on UK and international tax law, specialising in the taxation of complex corporate, financial and property transactions, and disputes with the UK's revenue authorities. He is a Senior Adviser to the Tax Justice Network, and a visiting research fellow at the University of Sussex. His discussion paper "Risk-Mining the Public Exchequer" may be downloaded at dqtax.tumblr.com.

THE MISSING LINK: TAX AVOIDANCE AND CORPORATE SOCIAL RESPONSIBILITY

feature

Stephen Littler

The accountancy firms make much of their commitment to corporate social responsibility. But though they are happy to talk about their charitable work among the poor, they are less forthcoming about their core business. Yet tax avoidance is one of the main reasons why charity is becoming so much more vital.

While researching my Ph.D. thesis, I interviewed two senior members of the UK Parliament. Neither was able to define what tax avoidance was, or to say exactly how much the government loses to it every year. They are far from unusual. Uncertainty surrounds the role of the state in fulfilling its core function of raising tax revenue in order to provide public services.

Meanwhile, the accountancy firms that are often responsible for promoting or facilitating tax avoidance produce elaborate corporate social responsibility (CSR) reports that do not adequately address the issue of taxation. I know this to be the case after reviewing the content of the CSR reports produced by the top four accountancy firms over a six-year period between 2005 and 2011. Not one of these reports clearly and systematically stated how much tax was paid, where it was paid, or whether the firms abstained from using artificial means to reduce their own or, more importantly, their clients' tax liability.

"No one is asking accountancy firms to encourage their clients to pay more tax than they need to."

Estimates of the amount lost to tax debt, avoidance and evasion have of course been made, and the current 'tax gap' in the UK – the difference between the amount of revenue expected if the system worked as intended and the amount actually collected – is thought to be in the region of £119.4 billion (Murphy, 2014[1]). Needless to say, across Europe and the US, the figure is much higher. The size of the problem is putting increasing pressure on those who facilitate tax avoidance (even if they have nothing to do with facilitating tax evasion).

In my recent research, I examined 124 CSR reports from the top four accounting firms in the UK. Only 23 (19%) of them gave any account at all of their approach to taxation. Only five of those 23 – 4% of the total – provided anything like a quantitative analysis. The rest gave only a vague assurance that the business was proactive in providing responsible tax planning, without including any facts or figures at all. Meanwhile, all the reports went into considerable detail about charitable work and links with the community. This is not to cast doubt on the value of charitable activities. But within accountancy firms' CSR reporting, tax remains a missing link.

Given the sheer size of the industry, and the ability for a partner in tax consultancy to earn £3 million per annum in fees,[2] the lack of disclosure of taxation information within accountancy firms' CSR reports raises serious questions. It is difficult to escape the conclusion that many businesses, including the top four accountancy firms within the UK, see CSR as little more than a tool for brand and reputation management, helping to legitimise their current practices.

The eighth circle of hell is reserved for fraudsters. Something that the Big Four might want to bear in mind.

[1] http://www.taxresearch.org.uk/Blog/2014/09/22/new-report-the-tax-gap-is-119-4-billion-and-rising/?

[2] http://www.icaew.com/~/media/Files/Products/sustainability/TECPLN9787%20CRS%20Briefing%2016%20Dec%20Final.pdf

"It is difficult to escape the conclusion that many businesses, including the top four accountancy firms within the UK, see corporate social responsibility as little more than a tool for brand and reputation management, helping to legitimise their current practices."

The Accounting Standards Board (ASB) notes that the section of company accounts that is most commonly full of 'immaterial clutter'[3] is the corporate social responsibility section. It also comments that many organisations, including accountancy firms, are not reporting on areas specific to their activities, in this case taxation service lines. In a recent survey by the ASB, nine organisations had a CSR section of their company accounts that was longer than the financials section, and yet only one in five companies gave an adequate explanation as to why CSR was important to that particular business.

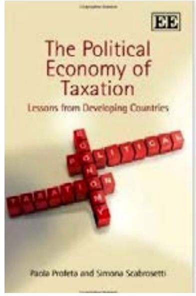
If accountancy firms are offering and selling tax advice and products, should this not be part of their CSR disclosure? It may be less common practice to relate tax advice to CSR than the more 'traditional' CSR issues such as human rights and supply chain best practice, but CSR is increasingly about 'core business', and tax advice is indisputably a core business activity of accountancy firms. There are good commercial reasons for accountancy firms to make a more explicit link between tax advice and socially responsible behaviour. By helping companies to pay their fair share of taxes, accountancy firms will build a reputation for strong ethical values, attracting likeminded clients and employees.

No one is asking accountancy firms to encourage their clients to pay more tax than they need to. However, there are compelling reasons for accountancy firms to help their clients to pay the correct amount of tax in each country where they have an operational presence, and for accountancy firms to produce CSR reports that engage directly with their main business activities. At a minimum, CSR reports should describe how, where and when tax is paid by the accountancy firms themselves, provide information on their service lines, including the nature of tax advice provided to clients, and outline how their tax partners are trained in ethics. To repeat, tax is currently the missing link in accountancy firms' CSR reports. Given the level of scrutiny that tax avoidance is attracting, accountancy firms would be well advised to remedy this.

Stephen Littler is an Associate Lecturer in Business within the School of Business and Enterprise at the University of the West of Scotland. He has recently completed his Ph.D. thesis on Corporate Social Responsibility of Accountancy Firms at UWS. He can be contacted at stephen.littler@uws.ac.uk.

[3] https://www.frc.org.uk/Our-Work/Publications/ASB/Rising-to-the-Challenge/Rising-to-the-challenge.aspx

book review



The Political Economy of Taxation: Lessons from Developing Countries

Paola Profeta and Simon Scabrosseti

Edward Elgar Publishing Ltd 2010

This book is a welcome attempt to address the gap between the study of taxation and of political economy. The book is based on an extensive study across several continents carried out by the authors, though I must confess that I was disappointed to see Africa left out completely.

One of the main arguments of the book is that the more democratic a state the higher its tax revenue and the better its distribution. The key terms that guide this book are political economy, taxation, developing countries, emerging economies, Asia, Latin America, Europe, democracy. This book analyses the links and connections between economics, politics and taxation.

I approached this book from the angle of extending its applicability to developing nations in Africa. In Africa, too it can be argued that the increase in democracy may lead to increased tax collection, which in turn will lead to an increased demand by citizens to have better spending on welfare issues.

The book begins to enquire into, and critique, how political economy affects taxation and *vice versa.* However the book pushes the globalisation argument that financial market liberalisation and openness to free trade will enhance distribution. While the data is convincing there is an absence of a deep, contextual country-by-country analysis. This raises questions about whether the theory being posited can indeed be extended to African countries.

Several other interesting arguments explored by the authors include: firstly, that redistribution can take place through an enlarged welfare state and an efficient and effective tax system in which direct taxes would have to be prioritised over indirect taxes. Secondly, they make the case that democratisation allows poor people to actively engage in politics and as a consequence democracy promotes equality. Finally, that democratisation affects growth through institutional improvements rather than other mechanisms such as capital accumulation or fiscal and trade policies.

An additional critique to this book is that in a field that is multi-disciplinary in nature, more narrative would not have been amiss in order to reach out to a public that is becoming increasingly interested in the field of political economics, notwithstanding that most people have no formal training in the subject.

A book that canvasses and analyses this topic through this perspective is an excellent addition to the area. I would definitely recommend this book to anyone interested in development, human rights, poverty alleviation and or taxation and would encourage those interested in researching on Africa to use this text as a model to analyse African states and their economies.

Review by Attiya Waris

news in brief...

Tax Justice in Kenya

Tax Justice Network Africa has gone to the High Court in Nairobi in an attempt to stop a double tax treaty between Kenya and Mauritius, which is supposed to come into effect in July 2015.

Not only do tax treaties with tax havens like Mauritius often allow multinational corporations to strip profits artificially out of victim countries (in this case Kenya), but they also insert a secrecy turntable into the transactions and help Kenyan citizens dodge taxes by "round-tripping" investments illicitly through shell companies in Mauritius.

Tax Justice Network Africa argues that, as drafted, "the Agreement contravenes the principle of good governance, sustainability and accountability and therefore is in breach of Articles 10 and 201 of the Kenyan Constitution. The Agreement is open to abuse which could endanger the growth and development of the country."

"A Magical Fairyland": The Latest From Luxembourg

On November 5th the International Consortium of Investigative Journalists (ICIJ) published a large cache of private tax rulings that Luxembourg has provided to multinational companies. The ICIJ detailed how PricewaterhouseCoopers had negotiated tax rates as low as one quarter of one percent for its corporate clients.

Speaking to the ICIJ, Stephen E. Shay, a professor of international taxation at Harvard Law School and a former tax official in the U.S. Treasury Department explained that "a Luxembourg structure is a way of stripping income from whatever country it comes from," The Grand Duchy, he said, "combines enormous flexibility to set up tax reduction schemes, along with binding tax rulings that are unique. It's like a magical fairyland."

Juncker Mentality

The ICIJ's revelations about Luxembourg have led to calls for the resignation of the newly installed president of the European Commission, Jean-Claude Juncker. But for the moment the former Minister for Finance and Prime Minister of the tiny Grand Duchy is ignoring questions about his position, and continuing to defend the increasingly flyblown notion of "tax competition".

On November 15th Juncker told journalists that "I'm in favour of tax competition but I'm also in favour of fair tax competition." He went on to ask the G20 countries "to join the efforts of the Europeans to have greater transparency in the tax field and we will do everything possible to support the base erosion and profit-shifting action plan."

Joannes Claudius Juncker, the Grand Panjandrum of the EU from the Grand Duchy

A Big Swing to Tax Justice

The rise in Spain of the left-wing populist party Podemos ("We Can") has brought the issue of tax avoidance into the centre of political discourse in another country in the EU. Its collaboratively written programme in the European elections called for increased public control over the economy, curbs on lobbying and moves to prevent tax avoidance by large corporations.

Spain has had its fair share of scandals involving offshore accounts and secrecy jurisdictions. The *Economist* reports that more than fifty people were arrested on charges of bribery and embezzlement at the end of October. Indeed, the combination of economic stagnation and grand corruption is one of the factors driving support for Podemos. But as ever the enablers are as likely to be found in London as anywhere else. Now that Podemos is topping the polls in Spain, the repercussions are going to be felt elsewhere, sooner or later.

Divided by a Common Language, and an Ocean

According the UK polling agency YouGov, only 37 percent of Americans believe that "people have a duty to contribute money to public services", compared with 63% of Britons. Conversely, 53% of Americans believe that "people have a right to keep the money they earn" while only 28% of their transatlantic counterparts do. The agency notes that Democrats in the States are about as committed to tax as a duty as Conservatives in the UK.

As is often the case, the poll leaves one with a nagging sense that people might be answering a slightly different question from the one the pollsters think they asking. Few

news in brief (contd)

in the tax justice movement would argue that people don't have a right to keep *some* of the money they earn. The question is one of degree. Are more than two thirds of the British population and slightly less than half of all Americans really Maoists?

HSBC in Tax Probe Shock

Fresh from its sterling work in the foreign exchange markets, HSBC finds itself in trouble in Belgium and France. In its interim results in August the bank disclosed that "magistrates in Belgium and France are conducting inquiries regarding whether HSBC Private Bank Suisse SA acted appropriately in relation to certain customers who had Belgian and French tax reporting requirements, respectively".

The *Guardian* reports that a Belgian judge has now placed the bank under formal investigation and links the case to the so-called Lagarde list of private clients of the bank.

The Dragon Stirs

In October the state-owned *People's Daily* in China published an article complaining that foreign companies were failing to meet their responsibilities. "Why," the paper asked, "do the multinational companies get all the profits… while we let the revenues run away? […] Taxation is at the core of national sovereignty. [We] have to take effective measures to stop tax revenue losses… to protect the national economic interests."

Something to bear in mind the next time you hear a politician claiming that attempts to tax progressively will cause companies to flee abroad. Now that China is calling time on aggressive tax avoidance by multinational companies, where exactly will they go?

G20: A Commitment to Tax Justice, Sort of

In its communiqué after the Leaders Meeting in Australia in mid-November, the G20 reaffirmed its commitment to the principle that "profits should be taxed where economic activities deriving the profits are performed and where value is created." It goes on to welcome "the significant progress on the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan to modernise international tax rules." The communiqué claims that G20 countries will "begin to exchange information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures."

But, as reported on the euractive.com website, the NGO One has pointed out that the communiqué makes no reference to the need for transparency in the extractive industries:

> *"The principle of transparency in the extractive industries, agreed upon last year under the Russian presidency, has completely disappeared from the official communiqué."*

Furthermore, there is no requirement for companies to make information from a system of automatic exchange available to the public and no reference to the need for country-by-country reporting.

Fair Tax Mark on the FTSE

Scottish and Southern Electricity has become the first FTSE100 company to receive a Fair Tax Mark. Gregor Alexander, SSE's Finance Director said that:

> *"there has been an erosion of trust between big businesses and the customers they serve. That's why it's so important to have a third party accredit us for tax disclosure… SSE has always been open about its tax but we've taken our transparency to a new level following the advice received from the Fair Tax Mark."*

In order to secure the Fair Tax Mark the company has issued a tax policy that renounces artificial tax planning and the use of tax havens. As the campaigner Richard Murphy notes. SSE's decision presents a challenge to other large companies. If an energy company can embrace transparency, what is to stop the rest of the corporate sector?

A Good Listener

Larger than life FIFA exectutive Chuck Blazer has been one of the most influential figures in American football for more than a decade. According to the *New York Daily News* Blazer was also a reckless tax evader. And rather than face prosecution, in 2011 Blazer agreed to become a cooperating witness for the FBI and the IRS. He went on to record conversations with his FIFA colleagues while in London for the 2012 Olympic Games. Blazer's work for American law enforcement promises to create yet more troubles for the farcically rich football authority.

Global sport has long been a playground for those who enjoy unaccountable power. Perhaps now this is about to change.