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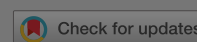
# Abusive Tax Avoidance and Responsibilities of Tax Professionals

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contribute majorly to abusive tax avoidance, benefit greatly from its persistence, and have significant capacities to reduce its extent. One result of this analysis is that tax professionals—especially large accountancy, legal and securities firms—ought to do much more to address tax avoidance than merely comply with existing legislation. We also argue that these responsibilities are consistent with, indeed required by, widely accepted standards of professional integrity.

Keywords:

- Economic development
- Tax abuse
- Tax professionals and responsibilities
- Remedial responsibilities
- Fiscal corruption
- Abusive tax avoidance

## Notes

1. Hanlon and Heitzman ([2010](#), 137) adopt a similar definition.
2. The latter category is often called “tax planning” or “tax mitigation.”
3. Note that we do not restrict our definition to explicit tax-reductions within a given tax year, as we do not restrict our definition to explicit tax-increases within a given tax year.
4. For simplicity, we do not distinguish between tax avoidance and tax evasion.
5. Older studies (e.g., [Graham et al., 2001](#); [Graham and Tucker, 2002](#); [Graham and Tucker, 2005](#)) also distinguish between tax avoidance and tax evasion.
6. For simplicity, we do not distinguish between tax avoidance and tax evasion.
7. KPMG (2005) estimates that the total amount of tax avoidance in the United States is \$100 billion annually, or 1.5% of GDP. This is a significant amount, especially considering that the total amount of tax evasion is estimated to be \$10 billion annually, or 0.15% of GDP.
8. Guerrieri and Hurlbert (2005) estimate that the total amount of tax avoidance in the United States is \$100 billion annually, or 1.5% of GDP. This is a significant amount, especially considering that the total amount of tax evasion is estimated to be \$10 billion annually, or 0.15% of GDP.
9. For an example of the impact of tax avoidance on the American economy, see the report by the Congressional Budget Office (2005).



There are many responses to this cluster of concerns but here we highlight just a few. To take the last concern first, our primary target in this paper is those teams of tax professionals for whom three key responsibility factors converge: they are causally implicated in designing or implementing the problematic tax product; they benefit from these products; and they have excellent capacity to remedy the defective situation. These professionals often operate in highly organized teams, so they share responsibility for what they do together, even if an individual professional participates in only one highly predictable part of the process (such as legal challenges). As we saw in the Wyly case, lawyers are often core members of this team. Lawyers who only represent tax shelter cheats but have not causally contributed to the situation nor benefited from it and are not part of a team who provides such services, are not our primary target.

We would challenge several of the assumptions that underlie many of the objections. First, the actions of lawyers and those of their clients are not so easily distinguished in the cases at issue here. Rather, they work together in crucial ways when the teams of tax professionals create the products which will help clients avoid the tax in ways quite contrary to the spirit of the law (i.e. they fail the Canadian test discussed). Second, there are limits to the kind of partiality lawyers may show for their clients' interests, even when they have fiduciary duties. These limits are frequently defined by courts, professional associations, and public opinion. On, we believe professionals do support the creation of tax products. Recent cases have shown that Third, in many cases, tax dealmakers are the ones who have the most influence over which products are completed and who have reason to believe the legal system is not what gives them the most harm by not pointing out that the standard of care is not the



objections relies on what we think appropriate in criminal law, but it is a further question whether similar standards should unreflectively apply to corporate law.

# Additional information

## Notes on contributors

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Hamish Russell is a doctoral student at the University of Toronto, where he is the recipient of the David Gauthier Graduate Scholarship in Moral Philosophy. His research interests include the political philosophy of economic markets and the moral responsibilities of market actors.

### Gillian Brock

Gillian Brock is Professor of Philosophy at the University of Auckland in New Zealand and currently also a Fellow at the Safra Center for Ethics, Harvard University. Some of her recent work in Philosophy has been on global justice (Oxford University Press, 2009), distributive justice (Oxford University Press, 2012), Cosmopolitanism (Oxford University Press, 2013), and the ethics of interdisciplinarity (Oxford University Press, 2015). She is also the director of the Center for Applied Ethics at the University of Auckland.



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