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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 [cross multiple tax year](#)
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10. An anonymous reviewer for this journal wonders whether we need to argue for a further claim for our argument to have force, namely that tax-reduction practices that undermine the intent of legislation are morally unsupportable. The reviewer concedes that we do discuss the idea of fairness underlying tax law and the need to pay one's fair share. The reviewer also notes that we present a compelling picture of the hardships faced by both developed and developing states and the unfairness of shifting the tax burden on to less well off citizens. However, the reviewer believes we should consider whether, in addition, we need to argue for the claim that those practices that undermine the intent (as opposed to the just the letter) of legislation are morally unsupportable. We thank the reviewer for this comment and for encouraging us to think through the issues. We believe that in the context of our particular argument, we do not need to take on this large and general issue. Rather, for our purposes we believe it is sufficient to argue that tax practices that undermine the intended results of legislation (results that can indeed be reasonably expected given good evidence) are morally unsupportable. Such practices undermine the effectiveness and equity of revenue collecting institutions, leading to deprivation for people whose capabilities depend on government funded initiatives. We have argued that tax professionals contribute toward, benefit from, and have the capacity to prevent these sources of deprivation. We hope that readers will be sufficiently persuaded by these connections between tax professionals and tax-related deprivation to accept that professionals have at least some ob

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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 other regulators. As we show in the final section, we believe professionals do support tax products. Recent cases show that Third, in many cases dealmakers who have not completed the transaction and have reason to worry about the legal consequences that gives them a strong incentive to be harmed by the transaction. It is worth pointing out that the standard and 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

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