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CONTENTS

532 Companies and taxes in the UK: actors, actions, consequences and responses
John Hasseldine, Kevin Holland and Pernill van der Rijt

552 Australia's carbon policy – a retreat from core principles
Evgeny Guglyuvatyy

573 Land taxation: a New Zealand perspective
Jonathan Barrett and John Veal

589 Reforming the Western Australian state tax anti-avoidance strategy
Nicole Wilson-Rogers

621 An ordered approach to the tax rules for problem solving in a first
Australian income taxation law course can improve student performance
Dale Boccabella



Companies and tax in the UK Factors, actions, consequences and responses

2. THE CORPORATE TAX ENVIRONMENT

2.1 Actors and Actions

Figure 1 provides an overview of the participants (or actors) in the U.K. corporate tax environment. This section briefly outlines the role and incentives of each party with more detailed analyses on corporation tax rates and revenue available elsewhere

company differences in ETRs, or that a firm's ETR is less than the statutory corporate rate, therefore says little about the amount of tax avoided, although where companies do engage in planning or avoidance, this affects their ETR relative to what would have otherwise applied if the tax planning or avoidance had not been undertaken.

Accordingly, research has examined whether there is a link between ETRs and firm size (e.g. Callihan, 1994; Holland, 1998) and has tested for associations with other characteristics such as capital intensity, leverage, industry membership as well as the influence of tax preferences (Gupta and Newberry, 1997).

Mills (1998) extended ETR research and pioneered U.S. efforts into differences between income for financial reporting purposes and taxable income (now known as the book-tax gap). Such gaps are not surprisingly associated with tax audit adjustments (Cho et al. 2006) and are treated as red flags in risk measurement exercises of various tax agencies (see Appendix).

Empirical tax researchers in the U.S. and more recently in the UK have recently addressed tax avoidance and tax shelter participation more directly, and in relation to financial reporting (including links with earnings management). Thus, the focus has now shifted to investigations of underlying motives and economic consequences (Desai and Dharmapala, 2006a; 2009b). This involves drawing a distinction between active steps, described variously as tax avoidance, tax planning or tax management, and passive or secondary effects e.g. reduction in corporate income tax arising from an operational decision to acquire an asset qualifying for capital allowances or issuing debt for primarily nontax reasons (Frank et al. 2009) where such decisions are not tied to

Tax avoidance has also been subject to qualitative research approaches (e.g. Freedman et al. 2009; Mulligan and Oats, 2009) and this U.K. based research started to investigate the relationships between the parties in the corporate tax environment. Exemplars include research on large companies' relationships with tax agencies such as HMRC and the IRS (Oats and Tuck, 2008; Mulligan and Oats, 2009; Toumi, 2008) and these researchers have stressed the company's risk attitude, desire for maintaining corporate reputation and good tax governance as important considerations for large multinationals. Similar research has also been commissioned by tax agencies themselves (e.g. HMRC, 2007), and the need for tax risk management is promoted by big four accounting firms (e.g. KPMG, 2010; PwC, 2004). To our knowledge, there is no prior research in this area which has been conducted with SME's.

3.2 Accounting firms as intermediaries, tax practice and tax knowledge research

The research on tax planning and avoidance just discussed reflects the complex, technical and vested nature of the corporate taxation environment (Mulligan and Oats, 2009; Oats and Tuck, 2008) but work on tax knowledge per se, is however largely restricted to experiments exploring individual tax professionals' judgements and decisions such as search processes and expertise (Bonner et al. 1992; Cloyd and Spilker, 1999; Gibbins and Jamal, 1993). Our focus here is on aggregate tax system wide knowledge flows and effects as schematically shown in Figure 1.

Accounting firms are brokers of tax knowledge. By definition, they operate as intermediaries between corporate taxpayers and tax agencies (OECD, 2008; Hasseldine et al. 2011). Prior research in tax compliance suggests that tax accountants enforce nonambiguous tax law while exploiting ambiguous tax law (Klepper et al. 1991; NAO, 2010). The decision to hire an accounting firm as an adviser may be driven by a lack of knowledge about tax legislation (Morris and Empson, 1998), or as a form of 'insurance' pending a perceived response from a tax agency (Hasseldine et al. 2011), or the corporate taxpayer may hope to reduce the probability of the external auditor subsequently objecting to the proposed financial accounting treatment of a particular tax transaction in which the accounting firm was involved (Maydew and Shackelford, 2007), particularly when the tax adviser also acts as financial auditor.

'enforcer' role vs. the 'exploiter' and 'complexifier' role). Hasseldine et al. (2011) conclude that despite the use of cooperative compliance models, there remains an unavoidable tension between customer-friendly initiatives, based on responsive regulation and cooperative approaches, and policy and administrative responses targeted at tax avoiding companies which are now outlined.

Graham Aaronson QC (2011) recommended a GAAR to target artificial and abusive tax avoidance schemes with a consultation period in 2012 and likely legislation in 2013. Notwithstanding these developments we draw on themes in western tax agencies, over and beyond the operative compliance approach mentioned in Section two.

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Prior research by Hasseldine et al. (2010) highlights that demand for the role played by accounting firms is driven by the difficulties companies have in interpreting tax legislation and the ability of advisers to provide administrative compliance as well as promoting tax avoidance schemes. Accounting firms may not always recognise the motives of corporate taxpayers in engaging them. For instance, corporate taxpayers report one reason for purchasing tax advice is as a form of insurance, whereas this was rated as unimportant by accounting firms. Consequently, tax advisers may be inadvertently further increasing the demand for tax avoidance activities by reducing its potential costs, particular if they are unaware that they are providing such insurance. This has implications for restricting auditors on the extent to which they can provide tax related non-audit services and may justify regulation of all tax advisers and not just those who are members of a professional association.

This perspective paper also reinforces earlier work on the dual role played by accounting firms i.e., their superior abilities in tax knowledge management allow them to be both enforcers and exploiters in the tax system (Klepper et al. 2001). This suggests that the policy response to regulating tax practitioners, in which there is considerable international divergence, needs to be carefully balanced by governments and tax agencies.

In the future, we believe that archival corporate tax data will become more readily available and that research into corporate tax practice (including planning and avoidance activity) should remain high on the agenda not just for future researchers, but also for other users such as tax agencies, accounting firms, companies themselves, and society at large.

REFERENCES

- Abdul Wahab, N. S. and Holland, K. M. 2012. "Tax planning, corporate governance and equity value", *British Accounting Review*, 44: 2, 111-124.
- Aaron, H. and Slemrod, J., (Eds) 2004. *The crisis in tax administration* Washington: Brookings.
- Bonner, S., Davis, J. and Jackson, B. 1992. "Expertise in corporate tax planning: The issue identification stage", *Journal of Accounting Research*, 30: Supplement 2, 1-28.
- Braithwaite, J., 2003. "Large businesses and the compliance model", In V. Braithwaite (ed) *Taxing democracy: Understanding tax avoidance and evasion*. Farnham: Ashgate, 17-20.
- Braithwaite, V. (ed), 2003. *Taxing democracy: Understanding tax avoidance and evasion*, Farnham: Ashgate.
- Bruce, R., 2011. "Tax turns nasty", *Accounting and Business*, 14: 20, 18-

- Burton, M., 2007. "Responsive regulation and the uncertainty of tax law: Time to reconsider the Commissioner's model of cooperative compliance", eJournal of Tax Research 5: 1, 71403.
- Cabinet Office, 2007. Capability Review of HM Revenue & Customs, London: Cabinet Office.
- Callihan, D., 1994. "Corporate effective tax rates: A synthesis of the literature", Journal of Accounting Literature, 13, 43.
- Chartered Institute of Taxation. 2010. ~~Tackling~~ Tackling of tax law London: CIOT.
- Chen, S., Chen, X., Cheng, Q. and Shevlin, T. 2010. "Are family firms more tax aggressive than non-family firms?", Journal of Financial Economics 95: 1, 4161.
- Cho, J., Wong, J and Wong, N., 2006. "Btax-differences and Inland Revenue audit adjustments in New Zealand", Journal of Business Finance & Accounting, 33: 9 10, 16501667.
- Christensen, J. and Murphy, R., 2004. "The social responsibility of corporate tax avoidance: Taking CSR to the bottom line", Development 47n3, 3744.
- Cloyd, B. and Spilker, B., 1999. "The influence of client preferences on tax professionals' search for judicial precedents, subsequent judgments and recommendations", The Accounting Review, 74: 3, 3299
- Council of the European Union, 2011. Conclusions on tackling the challenges on raw materials and in commodity markets Brussels.
- Desai, M. 2012. "A better way to tax U.S. businesses", Harvard Business Review 7-8, 134139.
- Desai, M. and Dharmapala, D., 2006a. "Corporate tax avoidance and provided incentives", Journal of Financial Economics, 79, 1179.
- Desai, M. and Dharmapala, D., 2006b. "CSR and taxation: The missing BSR, Leading Perspectives, Winter, 54-
- Desai, M. and Dharmapala, D., 2009a. "Corporate tax avoidance and value", Review of Economics and Statistics, 91: 3, 546-
- Desai, M. and Dharmapala, D., 2009b. "Earning management, corporate tax shelters, and booktax alignment", National Tax Journal, 62: 1, 1696.
- Devereux, M. and Loretz, S., 2011. Corporate tax in the United Kingdom Oxford: Oxford University Centre for Business Taxation.
- Dyregang, S., Hanlon, M. and Maydew, E., 2008. "Long-corporate tax avoidance", The Accounting Review, 83, 62-

Hasseldine, J., Holland, K., and van der Rijt, P., 2010. The management of tax knowledge London: Association for Chartered Certified Accountants.

Hasseldine, J., Holland, K. and van der Rijt, P., 2011. "The market for corporate tax knowledge", *Critical Perspectives on Accounting*, 22: 1529-

Hasseldine, J. and Morris, G., 2012. "Corporate social responsibility and tax avoidance: A comment and reflection", *Accounting Forum* forthcoming.

Hite, P. and Hasseldine, J., 2003. "Tax practitioner credentials and the incidence of IRS audit adjustments" *Accounting Horizons*, 17: 1-14.

HM Revenue & Customs, 2005. Review of HMRC's Powers, Deterrents and Safeguards London, HM Revenue & Customs,

HM Revenue & Customs, 2007. Large groups' tax departments: Factors that influence tax management London: HMRC.

HM Revenue & Customs, 2009. Working with tax agents: The next stage BDC 0.37

KPMG, 2010. Good, better, best: The race to set global standards in tax management
KPMG International, Switzerland.

Lavermicocca, C., 2011. "Tax risk management practices and their impact on tax
compliance behavior: The views of tax executives from large Australian companies",
eJournal of Tax Research, 1, 89-115.

Lisowsky, P., 2010. "Seeking shelter: Empirically modeling tax shelters using
financial statement information", The Accounting Review, 85: 5, 1693-1720.

Maydew, E. and Shackelford, D., 2007. "The changing role of auditors in corporate
tax planning", In A. Auerbach, J. Hines and J. Slemrod (eds), Taxing corporate
income in the 21st century. Cambridge: Cambridge University Press, 307-

McBarnet, D., 2003. "When compliance is not the solution but the problem: from
changes in law to changes in attitude", In V. Braithwaite (ed) Taxing democracy
Understanding tax avoidance and evasion. Farnham: Ashgate, 22-33.

McBarnet, D., Aurora, V. and Campbell, T., 2009. The new corporate accountability:
Corporate responsibility and the law. Cambridge: Cambridge University Press.

McKerchar, M., Bloomquist K. and Leviner, S., 2008. "Improving the quality of
services offered by tax agents: Can regulation assist?", Australian Tax Bulletin,
399-425.

(425.istangCorn603 >>(a)-2(9 <</M0 Tw 17)4sw t

OECD, 2009. Guidance note: Experiences and practices of eight OECD countries Paris. Forum on Tax Administration: Compliance Management of Large Business Task Group. Paris, OECD.

OECD, 2011. Tackling aggressive tax planning through improved transparency and disclosure Paris, OECD.

Osborne, G., 2011. "Statement on banking by the Chancellor of the Exchequer", Speech to the House of Commons, London, February 9.

Owens, J. and Hamilton, S., 2004. "Experience and innovations in other countries", In H. Aaron and J. Slemrod (Eds.) The crisis in tax administration (Washington: Brookings).

Palan, R., Murphy, R. and Chavagneux, C., 2010. Tax havens: How globalization really works. Ithaca: Cornell University Press.

Phillips, J., 2003. "Corporate tax planning effectiveness: The role of compensation-based incentives" The Accounting Review, 78, 847-874.

Porter, B., 1999. "Survey of in-house tax departments in United Kingdom corporates", British Tax Review, 1, 3251.

PricewaterhouseCoopers, 2004. Tax risk management London: PwC.

Sakurai, Y., 2002. "Comparing cross-cultural regulatory styles and processes in dealing with transfer pricing", International Journal of the Sociology of the Law, 173-199.

Salter, D. and Oats, L. 2011. "HMRC – Engaging with tax agents", British Tax Review 3, 272-273.

Shaw, J., Slemrod, J. and Whiting, J., 2010. "Administration and compliance", In S. Adam et al. (Eds.) Dimensions of tax design: The Mirrlees review Oxford: Oxford University Press, 110-162.

Shulman, D., 2010. "Prepared remarks of Commissioner of Internal Revenue Douglas H. Shulman before the OECD", Washington, June 8.

Sikka, P., 2008. "Enterprise culture and accountancy firms: New masters of the universe", Accounting, Auditing and Accountability Journal, 21: 2, 298-342.

Sikka, P., 2010. "Smoke and mirrors: Corporate social responsibility and tax avoidance", Accounting Forum, 34, 156-168.

Sikka P. and Willmott, H., 2010. "The dark side of transfer pricing: Its role in tax avoidance and wealth retentiveness", Critical Perspectives on Accounting, 21, 342-356.

Toumi, M., 2008. Cultures of compliance: British and French tax enforcement compared. Unpublished PhD dissertation, University of Lancaster.

Tran-Nam, B. and McKerchar, M. 2012. "A study of regulation of services offered by tax intermediaries in selected OECD countries" Unpublished paper presented at the Taxation Research Network Conference, Roehampton University, London.

Trautenberg, N., 2010. "Corporate board governance of tax risk", Written testimony to IRS Oversight Board, Tax Executive January/February, 560.

Treasury Inspector of Tax Administration, 2009. Most tax returns prepared by a

Appendix: Tax Agency Use of Large Business Compliance Risk Indicators

United Kingdom

HMRC rates behavioural and organisational compliance risk in seven areas in order to determine the risk a taxpayer presents. These areas are listed below with a couple of examples of high risk behaviour.

In terms of tax contribution, the trend of receipts will show a significant falling pattern in one or more tax regimes with no clear reason and there is likely to be significant divergence of taxable profits compared with commercial profit levels.

In terms of complexity, the business typically operates within a highly complex structure but has no clear strategy or procedures to ensure completeness or best practice arrangements. Highly complex tax issues are considered on an ad hoc basis and there are likely to be very high tax throughputs in a number of different tax regimes.

In terms of boundaries, examples of major risk include a foreign owned business with a lack of knowledge or clarity around the global business interest. Others include complex and diverse business

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Compliance Risk indicators include, but are not limited to the following:

- x extensive international business activities (opportunities for transfer pricing and cost sharing tax avoidance);
- x transactions with corporate affiliates or third parties in tax haven countries (basis shift export of intangibles);
- x transactions with other "tax advantaged entities"-exempt entities, entities with unused credits, losses or preferential tax rates: asset/basis shifting, leasebacks, arbitrage schemes, etc);
- x use of Special Purpose Entities (a.k.a. "Variable Interest Entities": entities set up to achieve a specific financial and/or tax planning purpose: to own specific assets, handle specific transactions, etc. These are often shell entities, often flow through, often tiered);
- x complex entity structures (consolidated financial reporting entity differs from the consolidated tax reporting entity: separate tax filings by some corporate affiliates, extensive use-of flow through entities to report some business activity, etc.);
- x use of complex hybrid and derivative financial instruments (techniques for claiming tax