eJournal of Tax Research

Volume 10, Number 3 November 2012

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Atax UNSW

ISSN 1448-2398

eJournal of Tax Research (2012) vol. 10, no. 3, pp.532-551

Companies and taxes in the UK: actors, actions, consequences and responses

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Abstract
A growing literature analyses corporate tax planning and avoidance with an emphasis on its economic consequences (Hanlon and Heitzman, 2010). Meanwhile, citing tax gap statistics and subsequently a cause for the Occupy movement, campaigners for social justice in the U.K. and U.S. have used the media to target tax-avoiding firms with protesters taking direct action (e.g. against Vodafone and Bank of America). Policy-makers and tax agencies must calibrate their policy and administrative response to tax avoidance carefully. This paper contributes to our understanding of tax avoidance and related behaviour by drawing on prior literature and international administrative experience in the corporate tax arena. Based on a knowledge management framework, we identify the key actors, their roles and incentives, and outline international practice in terms of co-operative compliance and tax enforcement. We then outline an array of policy responses to tax avoidance including disclosure regimes, anti-avoidance rules and the regulation of intermediaries such as banks and accounting firms.

Keywords:
accounting firms; co-operative compliance; corporate tax; effective tax rates; knowledge management; tax avoidance; tax planning

1. INTRODUCTION

The global economic crisis has seen increased research effort and international attention on corporate tax planning and avoidance (Desai and Dharmapala, 2009a; Dyreng et al. 2010; Lisowsky, 2010; Hanlon and Heitzman, 2010). The focus on tax avoidance, which is often prefaced with the adjective 'unacceptable', and the use of 'aggressive' planning involving tax havens and profit-shifting techniques is a major concern to governments (OECD, 2011) who must balance their desire to offer companies a 'pro-business' tax environment that encourages investment, for example through corporate tax rate reductions, while still maintaining the tax base and corporate tax receipts.

In the U.K., campaigners have taken direct action against firms such as Vodafone, Alliance Boots and Top Shop.[1] Direct action has now spread across the Atlantic with US Uncut targeting Bank of America. The emergence of protests against alleged tax avoiders has the potential to affect corporate reputations, with Richard Lambert (ex-Director-General of the Confederation of British Industry) quoted in the Financial

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[1] See www.ukuncut.org.uk.

Times stating: "It's worrying to the extent it gives an impression that business is not paying taxes in the way it should. It gives a misleading impression of the role of business in society" (Houlder et al. 2010). Campaigning in the U.K. is also conducted by organisations such as Tax Justice Network and, arguably, extends to the accounting literature, with Sikka and Willmott (2010) highlighting the "dark side of transfer pricing" and Sikka (2010) citing the cases of Enron, WorldCom and individual practitioners from KPMG and Ernst & Young. Sikka (2010, p. 153) argues that researchers have paid little attention to companies and large accounting firms' "organised hypocracy" of promises of responsible conduct but actual indulgence in tax avoidance and evasion.

The increased presence of market-based tax avoidance research in leading accounting journals (e.g. The Accounting Review and Journal of Accounting and Economics), case-based comment in critical accounting journals (e.g. Critical Perspectives on Accounting and Accounting, Organizations and Society), together with increasing attention from policy makers and campaigning groups on both sides of the Atlantic (e.g. Tax Justice Network, Occupy movement, UK Uncut; US Uncut etc.) provides our motivation to 'set the scene' and provide a perspective on the U.K. corporate tax environment.

In this paper, we draw upon prior research on tax avoidance and effective tax rates (ETRs), as well as international administrative and policy responses to tax avoidance.[2] The successful implementation of planning and avoidance ultimately relies on companies effectively developing, managing and sharing tax knowledge (Hasseldine et al. 2010). Our contribution is to contextualise tax avoidance and identify actors and related behaviour for researchers, tax agencies, accounting firms, corporate taxpayers, and other stakeholders including society at large. For example, one direct consequence of more corporate tax research is that the factors associated with corporate tax (non)compliance may be identified (Hanlon et al. 2007). Attention to other areas is also likely to reap benefits. These include documenting the effects of known tax avoidance on corporate reputation and consequential firm value effects (Hanlon and Slemrod, 2009). Finally, we note that major cross-country differences exist in the regulation of tax practitioners (i.e. accountants and other agents) between countries such as Australia and the U.S. versus the U.K.

The paper is structured as follows. In the next section, we identify the actors in the U.K. corporate tax environment, discuss their respective roles and incentives, and outline prior research on recent developments in tax avoidance and corporate tax compliance. Section three provides a synopsis of prior research on ETRs, tax planning and avoidance and extant literature on tax accounting practice and tax knowledge. Section four provides a perspective on the policy responses to tax avoidance including divergent practices in the regulation of tax practitioners. Section five offers some concluding remarks.

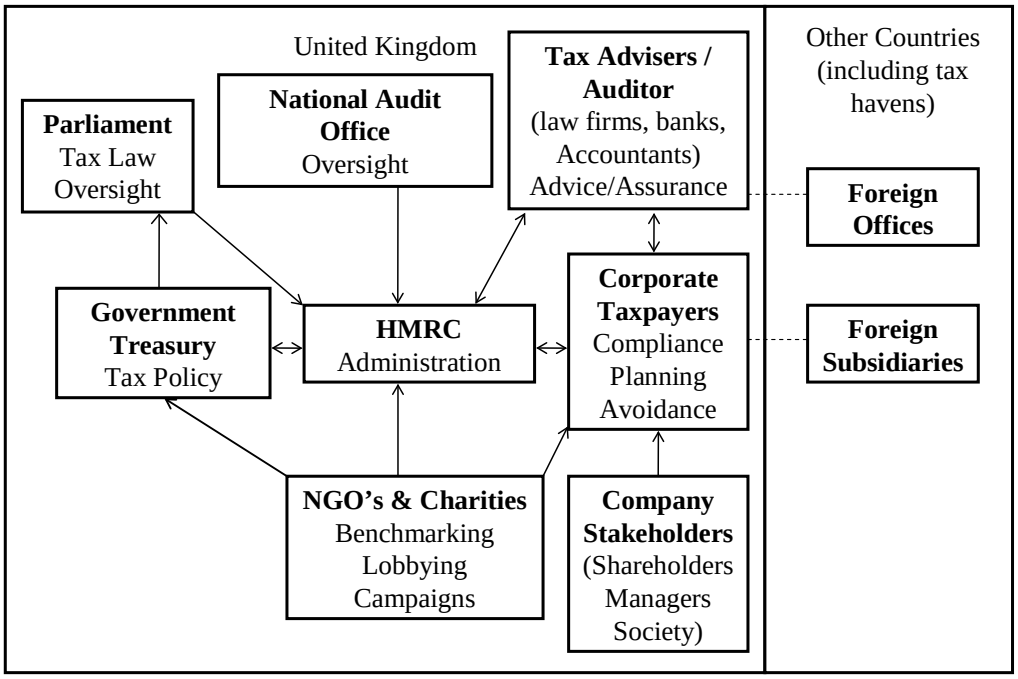
[2] We consider U.K. literature but also a relatively large number of non-U.K. studies. The reason for this is that U.S. based quantitative researchers have access to large datasets, and the two countries share similar capital market features and companies tend to focus on shareholders as their primary stakeholders.

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 revenues available elsewhere (Devereux and Loretz, 2011). First, the U.K. Government and Her Majesty's Treasury are responsible for formulating tax policy, which is then enacted into tax law through Parliament.[3]

Figure 1: Actors and Relationships in the U.K. Corporate Tax Environment



Her Majesty's Revenue and Customs (HMRC) is responsible for the administration of tax law and was established in 2005 following a review by Sir Gus O'Donnell into the two former revenue departments (HM Treasury, 2004). At the same time, the (then) Paymaster-General launched a review of HMRC's powers, deterrents and safeguards

[3] Detailed discussion on the actual process of enacting tax legislation (i.e. consultation, drafting and use of Select Committees etc.) is beyond the scope of this paper. Interested readers can refer to CIOT (2010).

in a bid to modernise areas that were not working well. Using a consultative approach, the 'Powers' review has initiated change in debt management and investigation powers, civil and criminal penalties, compliance checks and taxpayer safeguards, in respect of both taxpayers and their advisers (HMRC, 2005).[4] Since 2008, in a shift from prior practice, HMRC has been governed by a non-executive chairman and oversight is provided by the National Audit Office and the Public Accounts Committee of Parliament.

From a compliance perspective, corporate taxpayers must capture, or, at least access, tax knowledge and implement informal and/or formal systems to enable routine tax compliance while engaging in volitional planning and avoidance activity as determined by various factors (see subsequent discussion in Section three). Prior survey evidence suggests that larger companies are more likely to have an in-house tax department (Porter, 1999).

External advisers act as intermediaries between companies and HMRC and include law firms, accounting firms (e.g. the 'big four') and banks. Law firms may be used when disputes lead to possible/actual litigation, for advice on specific transactions and for procuring legal opinions. Clearly, advisers have a vested interest in a certain level of tax system complexity (McKerchar et al. 2008).

Company management are themselves stakeholders (Dyreng et al. 2010), together with existing and future shareholders, who wish to maintain shareholder value and avoid reputation risk. Prior research by Hasseldine et al. (2010) suggests the principal motives of U.K. corporate taxpayers for using an external adviser are their awareness of the legislation and their experience in the practicalities of tax compliance. They also find that almost two-thirds of corporate taxpayers agreed that using an external tax adviser is designed to provide insurance against a tax risk although advisers agreed significantly less on this motive.

While tax law is national and levied democratically by sovereign states, globalization means corporate activity frequently spans international borders. Multinational firms are not just faced with the U.K. corporate tax environment, but an international corporate tax environment. This entails compliance with local tax laws and dealing with foreign tax agencies in every country in which they operate, which may well include tax haven countries. Even small and medium sized enterprises (SME's) are likely to deal with foreign tax jurisdictions.

Given that the big four accounting firms also operate world-wide, and tax administrations do not, the latter have worked to seek out and share 'best practice', often accomplished with the assistance of international agencies such as the OECD, IMF and World Bank.[5] Owens and Hamilton (2004, p. 348) provide international context, suggesting that tax administration problems reflect not so much the behaviour of the tax agency, rather what they have to administer viz:

[4] One of the authors was a member of the 'Powers' Consultative Committee from 2005 – 2011.
[5] Readers are referred to www.itdweb.org.

> "In looking at the root causes of problems in tax administration, what needs to be considered is what is being administered: the tax law and how it is interpreted. And problems caused by the law cannot be considered until one reflects on the efficacy and practicality of the tax policy that the law is meant to implement. The entire system, all of its players, their behaviours, and drivers of those behaviours need to be considered in an objective, holistic, and systemic manner if countries are going to tackle successfully their crises in tax administration."

Until Aaron and Slemrod's (2004) Crisis in Tax Administration volume focused on the U.S., there had been a paucity of scholarly tax administration research.[6] This is shifting with more published research on the topic (e.g. Hasseldine, 2011) and has been assisted by specialist biennial conferences on the topic under the auspices of the Australian School of Taxation at the University of New South Wales.

In the U.K., a review of HMRC in 2007 concluded that the department was complex, both in terms of its many constituent parts and in terms of its matrix management structure that did not relate roles and responsibilities amongst its senior management to accountability (Cabinet Office, 2007). Yet, in both the U.S. and U.K., when examining tax agency performance, one contributing factor to the "crisis in tax administration" is that tax agencies face budget constraints, especially in times of public spending cuts, and are often under-funded (Owens and Hamilton, 2004; Shaw et al. 2010).

As noted above, following the lead of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, tax agencies such as the IRS and HMRC and others are co-operating more closely with each other. IRS Commissioner Douglas Shulman (2010), in a speech to the OECD, suggests that tax administration is progressing from simple co-operation to coordinated action on global tax issues. Areas likely to be targeted are joint audits (where two or more countries join together to carry out a single audit of a company with cross-border business activities), information exchange, offshore tax compliance and a continuation of the Joint International Tax Shelter Information Centre (JITSIC).

A final group of stakeholders are NGO's and charities (e.g. Oxfam, ActionAid) who are motivated by the desire to reduce the use of tax havens and promote a 'fair deal' for developing countries (see Palan et al. 2010). This bridges calls made for corporate social responsibility in the area of tax. Sikka (2010) strenuously argues that multinationals and their advisers (Sikka, 2008) who champion CSR are themselves engaging in tax avoidance and evasion. Christensen and Murphy (2004) espouse similar views. The argument tends to be that a 'fair' amount of taxation is not being paid, and that such corporates are contributing to the tax gap (HMRC, 2010). Some socio-legal scholars also argue that aggressive planning within the law is problematic (McBarnet, 2003).

[6] Such research is distinct from the separate and extensive literature on taxpayer compliance and taxpayers' costs of compliance.

Not surprisingly, accounting firms are keen to demonstrate their expertise and credentials in this area, with one example being the Total Tax Contribution framework of PwC and Williams's (2007) KPMG paper providing a detailed perspective on tax and CSR. Ultimately, it would appear that CSR is a legitimate concern for corporate taxpayers, especially given that corporate reputation effects may ultimately affect shareholder value.

Desai (2012, p. 136) states that "the complexity of the current [U.S.] system and the proliferation of tax avoidance techniques have made the corporate tax optional for many global corporations". Yet, Desai and Dharmapala (2006b, p. 5) note that while tax avoidance is widespread, shareholders and tax collectors share a common interest in constraining opportunistic managers, as "tax avoidance demands obfuscation and this obfuscation can become the shield for actions that are not in the interests of shareholders or tax authorities". They suggest that corporate malfeasance is linked to tax avoidance behaviour, and in their parlance, CSR is "the missing link". Desai (2012, p. 139) suggests that CSR practice by the corporate sector might embody tax obligations at a commensurate level with, say, environmental regulations.

So while there is not yet a mainstream recognition of tax and CSR (as opposed to the impact of a firm on the environment for example), Hasseldine and Morris (2012) believe it promises to be a key growth area for future research. Notwithstanding the "missing link", prominent social campaigns, may also force companies to (re)consider their reputation and provide greater transparency in the area of tax reporting. However, given that country by country tax reporting would be costly and difficult for multinationals, and is not currently supported by policy makers (given the lack of legislation),[7] it seems likely that providing such tax disclosures in an understandable format would be extremely challenging, not only for the providers of the information, but for the users of it as well (Bruce, 2011).

3. SCHOLARLY LITERATURE

3.1 Companies' Tax Actions – Planning and Avoidance

The existence of different effective tax rates (ETR) is sometimes taken as an indicator of 'missing' tax.[8] Yet, these can vary across companies for many legitimate reasons. These include a company carrying forward losses from prior years or it may have large depreciation allowances. Any of these conditions may qualify the company for relief under the tax law and so reduce its tax liability. Simply observing cross-

[7] Notwithstanding, note the European Commission has recently engaged in a public consultation exercise on country-by-country reporting by multinationals and the Council of the European Union, meeting in Brussels in March 2011 invited "the Commission to come forward with initiatives, in consultation with Member States and relevant stakeholders, on the disclosure of financial information by companies working in the extractive industry, including the possible adoption of a country-by-country reporting requirement, International Financial Reporting Standards (IFRS) for the extractive industry, and the monitoring of third-country legislation. " (Council of the European Union, 2011).

[8] ETRs express a company's tax charge for a period relative to its accounting profit. Definitions vary around, for example, the treatment of deferred tax. A related measure is the book-tax gap which is based on the difference between the grossed-up tax charge, proxying for taxable income, and pre-tax accounting income. These two measures differ only in the sense that ETRs capture the tax saved while the book-tax gap is in gross terms, i.e. income (Abdul Wahab and Holland, 2012).

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.[9]

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 non-tax reasons (Frank et al. 2009) where such decisions are not motivated by any tax consideration whatsoever. Insights provided are that the basis of remunerating managers, whether on a pre- or post- tax basis (Phillips, 2003) or linked to share price (Abdul Wahab and Holland, 2012; Desai and Dharmapala, 2009b), ownership structure (Chen et al. 2010) and wider corporate governance considerations are all associated with levels of observed tax avoidance.

There is co-operation between the IRS and researchers with Lisowsky (2010) using a confidential dataset to model tax shelter participation. He shows that shelter participation is positively linked with subsidiaries in tax havens, foreign-source income, inconsistent book-tax treatment, litigation losses, use of promoters, profitability, and size, and is negatively related to leverage. These results confirm the risk measurement approach of both the IRS and HMRC (as outlined in the Appendix).

Collectively, researchers can now measure proxies of tax avoidance, identify its firm level determinants (incentives and control mechanisms), and consequences in terms of firm value, market reactions to tax shelter involvement and whether shelter firms carry less debt. Dyreng et al. (2010) even show, using a sample of 908 executives, that individual executives (i.e. CEO, CFO etc.) play a significant role in determining the level of tax avoidance undertaken, incremental to firm-level characteristics.

[9] The effect will depend on whether the tax planning results in a permanent avoidance of tax or the deferral of a liability.

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 has started to investigate the relationships between the parties in the corporate tax environment.[10] 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).[11] 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). Prior 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 non-ambiguous 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.

There is little prior research on the 'big picture' of tax knowledge. Porter (1999) surveyed 156 major U.K. companies and for the firms that had an in-house tax department in 1995, she reported that firms spent about 60% of their time on routine compliance and 38% on tax planning and advisory services. A more recent example is Hasseldine et al. (2011) who report on 26 interviews held with participants from accounting firms, corporate taxpayers and HMRC. They find that accounting firms vigorously try to establish and sustain a strong intermediary position between HMRC and corporate taxpayers, which is acknowledged by HMRC who are also aware of the simultaneous benefits and disadvantages that accrue with tax agents (i.e. the positive

[10] Lavermicocca (2011) reports on tax risk management practices based on qualitative interviews with Australian large company tax executives.

[11] Of course, one may argue that it is not surprising accounting firms highlight tax governance and risk management in their quest to market consultancy services!

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

4. POLICY RESPONSES

4.1 Response to tax avoidance – Cooperative Compliance

Traditionally, and based on the vested interests of the actors identified in the previous section, the relationship between tax agencies and taxpayers (and advisers) has been of an adversarial nature. A notable trend is that many western countries (see OECD, 2009) have adopted the use of the term 'customer' (Tuck et al. 2011) with a responsive regulation approach which promotes co-operative tax compliance. A team at Australian National University pioneered a compliance pyramid model based on procedural justice (Braithwaite, V. 2003), which has also been adapted for large business (Braithwaite, J. 2003). The intention is to enable, or force, taxpayers towards the base of the pyramid.

The alleged benefits of such compliance models are better "buy-in" and one consequence is that taxpayers (and their representatives) may take government/tax agency efforts to lower taxpayer compliance costs at face value, rather than with cynicism. HMRC has embraced co-operative compliance, and for its large business customers, this has led to the introduction of Customer Relationship Managers (CRMs) and new systems of compliance risk assessment, resulting in the classification of a company as either "High" or "Low" risk and consequential effects in terms of being audited (NAO, 2007; OECD, 2009; Appendix).

However, not all scholars fully endorse an 'enhanced relationship' approach. Kornhauser (2007) suggests that a tax authority following the compliance model risks being perceived as either too lenient or too hard in its approach, both of which might decrease tax compliance. She notes that a flexible system (required for responsive regulation) might lead to arbitrary decisions that actually undermine procedural fairness. Burton (2007) also critiques the approach, suggesting that it is particularly problematic as tax law is often indeterminate. This is especially the case for tax laws affecting large companies which are often uncertain, complex, and not always objective. Accordingly, different interpretive paths might produce different interpretive meanings, choices and actions.

Aside from various administrative responses discussed earlier, such as co-operative compliance models etc., there are several policy responses that the international community has, arguably, been proactive in dealing with in addressing international evasion and avoidance (e.g. the OECD's project on Harmful Tax Practices). However it is beyond the scope of this paper to consider every international policy response to tax avoidance. For example, countries report different experiences with the use of general anti-avoidance rules (adopters including Australia, Canada, Hong Kong, New Zealand) versus non-adopters such as the U.K. (see Freedman, 2008). However, tax avoidance in the U.K. has been such a pressing issue, that a Committee chaired by

Graham Aaronson QC (2011) recommended a GAAR targeted at 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 co-operative compliance approach mentioned in Section two.

In the main, tax agencies have responded with more targeted audits and increased requirements for disclosure and greater transparency (e.g. for senior accounting officers in the U.K. and companies with 'uncertain tax positions' in the U.S. - Traubenberg, 2010) in a similar manner to the Australian Tax Office' focus on tax governance in large business over the last few years. Information exchange is another theme, with several hundred bilateral tax information exchange agreements (TIEA's) being signed between OECD and non-OECD countries, following projects on harmful tax practices and high net-worth individuals.

Recently, the OECD (2011) published a report on disclosure initiatives which documents the international use of early mandatory disclosure rules (especially aimed at promoters), additional reporting obligations (e.g. on capital losses), questionnaires to help with tax audit selection and penalty-linked disclosure rules (offering concessions for voluntary disclosures).

The approach of HMRC has been likened to "an iron fist in a velvet glove" (Bruce, 2011) as HMRC has operated a tax avoidance disclosure regime since 2005, and received disclosures of 2,035 direct tax schemes in the first five years, which then informed 49 anti-avoidance measures (Oats and Salter, 2008; OECD, 2011).

The rationale for policy responses in the U.K and elsewhere involving disclosure and transparency can be summarised as tax agencies wanting to 'tilt the scales' in their favour. With greater knowledge on current practice, they are able to respond directly to tax avoidance with new legislation, or seek to influence corporate tax compliance through co-operative arrangements as outlined in Section two.

Efforts are being made to influence companies' motivations to avoid tax. For example, a code of practice for banks, introduced in 2010, specifies that: "The Government expects that banking groups, their subsidiaries, and their branches operating in the UK, will comply with the spirit, as well as the letter, of tax law, discerning and following the intentions of Parliament". The U.K. government (and consequently, the voter/taxpayer) part-owns two major combined high street and investment banks, which gives it increased influence over U.K. banks' tax behaviour. Following pressure from the Chancellor of the Exchequer, the top 15 banks operating in the U.K. signed up to the 'voluntary' Code of Practice on Taxation (Osborne, 2011).

Nonetheless, not everyone agrees with use of the "spirit" of the law as opposed to the "letter" of the law. Contrary to McBarnet et al. (2009), arguably there is no need for a distinction between the "letter" of the law and the "spirit" of the law, and given the difficulties associated with trying to determine the intention of a collective body (i.e. UK Parliament) other than through the enacted tax law, there is no need to seek any further than the actual legislation (Hasseldine and Morris, 2012; Hoffman, 2005). However, unlike activists, tax practitioners (and their professional associations) tend

to believe that if a tax agency feels a claim is not within the "spirit" of the law, then better legislation should be drafted and enacted (ICAS, 2008).

4.2 Regulating tax practitioners

While financial reporting is becoming more harmonised through the use of IFRS (Desai and Dharmapala, 2009b), tax practice and the regulation of tax practitioners remain areas of international difference due to national sovereignty (e.g. McKerchar et al. 2008; Tran-Nam and McKerchar, 2012). Further, while tax agencies share best practice, differences in international regulatory style will arise from national context and culture (Sakurai, 2002). There is also competing evidence (Erard, 1993; Hite and Hasseldine, 2003; Salter and Oats, 2011; TIGTA, 2008) on whether returns prepared by practitioners are associated with more, or less, compliance than returns prepared without the assistance of a practitioner, again supporting the characterisation of practitioners as both enforcers and exploiters.

In the U.S., there have long been rules in Treasury Department Circular No. 230 governing practice before the IRS, and these have been strengthened from time to time, most recently with the requirement for all preparers to hold a Preparer Tax Identification Number (PTIN) number, and to possess certain competencies (GAO, 2011a; GAO 2011b; Tran-Nam and McKerchar, 2012). Regulations are even more stringent in the states of Oregon and California as noted by GAO (2008) and McKerchar et al. (2008).

In contrast to the U.S. and Australia (see Tran-Nam and McKerchar, 2012), in the U.K., there are no explicit requirements in order to be a tax agent. Yet, following a recent report from the National Audit Office (2010), and perhaps, lesson-drawing from other tax agencies such as the IRS and Australian Tax Office, HMRC is paying more attention to the role of tax agents and is in the process of introducing new legislative powers involving sanctions and access to agents' working papers (HMRC, 2009; Salter and Oats, 2011). Not surprisingly, the accounting profession has resisted such efforts, suggesting that self-regulation is their preferred option and that they can 'look after it themselves' through their own disciplinary procedures (e.g. ICAEW, 2010). Of course, some tax agents are not affiliated with any professional body and this strengthens the argument for regulation, at least of unaffiliated agents.

5. CONCLUDING REMARKS

The study of the actors in the U.K. corporate tax environment, their actions and the consequences has hitherto been a neglected topic in scholarly journals. This paper's contribution is to contextualise tax avoidance and to motivate further research by documenting linkages between the actors in the environment, prior U.S. research, and policy responses. We believe that further research can be conducted using a variety of research methods and methodologies (e.g. archival, experimental and qualitative work). Tax avoidance is believed to be widespread and as other researchers have shown is linked closely to financial reporting, economic consequences and society at large.

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 and companies themselves, and society at large.

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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 together 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 structures with major connected party interests and activity, complex transfer pricing transactions, extensive involvement with tax havens and UK based businesses using offshore entities with tax avoidance as the driver.

In terms of change, the business is likely to have numerous acquisitions and disposals, but with no strategy for change management. The business is likely to react routinely to industry and commercial or other pressures with no consideration of tax consequences.

In terms of governance, the tax strategy is likely to be un-stated with unclear accountabilities and authorities and/or the Board will be unsighted on significant tax issues. There will be limited co-operation in identifying and resolving issues, sharing information or de-risking systems or processes and no evidence of commitment to build a trusting partnership with HMRC based on an open, transparent, and meaningful dialogue.

In terms of tax strategy, the business will be heavily involved in tax planning with no commercial context and there will be significant use of loopholes or anomalies in the law to minimise tax or duties.

In terms of delivery, the business will have a history of regular and significant mis-directions or late declaration or payments of tax in a number of tax regimes. Tax teams will be poorly supported or under resourced both in terms of numbers and in terms of adequate skills.

United States Large and Mid-Size Business Unit

The principle risk factors that LMSB focuses on when screening or risk assessing corporations mostly relate to the ability of large companies to exploit complexity:

- complexity in tax law;
- business structure; and
- accounting and financing.

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

- extensive international business activities (opportunities for transfer pricing and cost sharing tax avoidance);
- transactions with corporate affiliates or third parties in tax haven countries (basis shifting, export of intangibles);
- transactions with other "tax advantaged entities" (tax-exempt entities, entities with unused credits, losses or preferential tax rates: asset/basis shifting, leasebacks, arbitrage schemes, etc);
- 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 short-lived entities, often flow-through, often tiered);
- 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.);
- use of complex hybrid and derivative financial instruments (techniques for claiming tax advantages of debt [interest expense deductions, bad debt losses], and equity [dividend received deductions, capital gains treatment] on the same financing transactions);
- tax incentives for specific types of economic activity (tax rules and regulations that give preferences for favoured activities such as research & experimentation credit, domestic production, alternative energy production, etc. become tax planning opportunities for "substance vs. form" accounting and reporting);
- tax incentives offered by competing tax jurisdictions (opportunities for companies to engage in "tax arbitrage" planning, such as foreign tax credit generators, shifting of supposed business locus);
- computerized and web-based business and accounting systems (to enable greater complexity, fractionating of transactions, disassociation of economic activity from a specific location, etc.);
- management focus on management of profit reporting (aggressive financial management that requires tax departments to be managed as "profit centers", and competition between accounting and legal practitioners to promote tax planning techniques to reduce effective tax rates and increase cash flow);
- book-tax reporting differences (opportunities for tax and financial accounting manipulation created by complex and inconsistent accounting systems: US tax accounting vs. foreign tax accounting vs. US Generally Accepted Accounting Principles vs. International Financial Reporting Standards. "Rules" vs. "Principles" based accounting. Companies that report their activities using multiple different accounting systems have opportunities to shift transactions to benefit accordingly);
- competitive pressure to drive down ETR (Effective Tax Rate – so called "tax efficiency" measures used by investors and others to compare companies); and
- history of restatements of financial reports required by Securities and Exchange Commission.

This is only a partial list, and many of these factors work together or are inter-related. These are all conditions that enable large companies and their tax planning advisors to initiate or participate in non-compliant tax planning and reporting activities. Many of these factors have been extensively studied and measured.

Source: OECD (2009, pp. 19-20)