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Assessing the quality of services provided by UK tax practitioners

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Abstract

This paper focuses on the work of UK tax practitioners. We divide the work of the practitioner into two forms—compliance and planning/avoidance work—and define how the quality of each can be evaluated. We consider the economic forces operating in the tax services market and their likely impact on the tax practitioner's choice of the quality level to which he or she works, aiming to show whether market forces alone may sufficiently protect the public from poor quality tax work and considering whether regulation may be of net benefit to society (UK tax practitioners currently are not regulated).

Keywords: quality assessment, reputation, regulation

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1. INTRODUCTION

This paper focuses on the work of the tax practitioner operating in the current UK market for tax services. Our aim is to show how the work of the tax practitioner can be categorised and how its quality can be evaluated. By examining the economic forces within which tax practitioners operate, we aim to show whether market forces alone can be expected to be sufficient to protect the public from poor quality tax work. Having established that there is likely to be some market failure at least in certain sections of the market, we seek to consider whether regulation is likely to be of net benefit to society and whether the increasing complexity of tax legislation and recent events make regulation more or less likely. In particular, the recent cases of Starbucks, Amazon, Google and Facebook have highlighted the issue of tax advice, with doubts being cast on the ethical considerations of those responsible for steering corporations towards certain courses of action designed to minimise tax. This issue is relevant in the context of more intense interest in the relationship of tax authorities and tax practitioners generally, often spoken of in terms of increasing the quality of tax work (see, for example, the study published by the Organisation for Economic Co-operation and Development (OECD, 2008) on tax intermediaries and HM Revenue & Customs' (HMRC, 2009) consultation paper on tax agents) and the wider issue of quality in terms of services provided by tax authorities (see Tuck, Lamb and Hoskin, 2011). The specific issue of how to assess, evaluate or measure the quality of the service a tax practitioner provides has not been considered in the light of this.

The work done to date on taxation services has been mostly carried out in the USA, and has concentrated on particular aspects. Erard (1993) summarises such work into focal studies on certain features of tax practice interlaced with econometric research. The focal studies have considered variously: the role played by tax practitioners in reducing taxpayer uncertainty (Scotchmer, 1989a, 1989b and Beck, Davis and Jung, 1991); the effect of tax practitioners in reducing the time and anxiety associated with tax return preparation and audit (Reinganum and Wilde, 1991); the usefulness of tax practitioners in uncovering ways to reduce tax liabilities (Slemrod, 1989); and the ability of tax practitioners to exploit legal uncertainties to reduce taxpayer penalties for non-compliance (Klepper, Mazur and Nagin, 1991). The econometric research has concentrated on identifying the kind of taxpayers who seek assistance and on whether employing tax practitioners improves or worsens compliance with tax laws (for example, Slemrod and Sorum, 1984; Long and Caudill, 1987; Collins, Milliron and Toy, 1988; Slemrod, 1989; Klepper et al., 1991; Dubin, Graetz, Udell and Wilde, 1992). The conclusions are that level of income, age, marginal tax rate and complexity of completion of the tax return encourage taxpayers to employ tax practitioners. Additionally, married taxpayers, self-employed taxpayers and taxpayers with many forms and schedules to complete are also likely to seek assistance. Taxpayers with high levels of education or significant tax knowledge tend to prepare their own returns.

Klepper et al. (1991) advance a formal model which jointly addresses the decision to engage a preparer and the compliance outcomes conditional on the preparation mode. The principal focus of their model is to formalise the argument that preparers are not only guardians against unequivocal breaches of the legal code, but also exploiters of legally ambiguous features of the tax code to the advantage of the taxpayer. Their model predicts that on some items, the preparer will play an enforcer role, contributing to greater compliance, while on other items, the preparer will play an advocacy role, contributing to greater non-compliance by exploiting ambiguities. A second feature of the model is that the magnitude of the compliance effect of the preparer (whether it proves to be pro- or anti-compliance) will be greater, the greater the opportunity for non-compliance on an item. Therefore, the model predicts that the expert's participation will discourage non-compliance on legally unambiguous income sources, but encourage non-compliance on ambiguous sources. In the model, this dualism stems from the preparer's unique knowledge of reporting strategies for reducing penalties for non-compliance on ambiguous income, coupled with penalties that can be imposed on preparers for preparing returns which are non-compliant in some respect. The model has, therefore, implications for any regulatory regime as it predicts that increases in preparer penalties will have their desired effect—the enforcer effect will be magnified and the ambiguity-exploiter effect muted, although any increase in preparer penalties will increase the price to the taxpayer, and will discourage the use of preparers.

Dubin et al. (1992) and Erard (1993) further consider the issue of whether the type of tax practitioner chosen to assist the taxpayer has any significance, and both studies suggest that the type of preparer is important, Erard distinguishing between a Certified Public Accountant (CPA) or lawyer, a non-specialist and self-preparation and Dubin et al. using a wider range. Erard's results agree with those of Klepper et al. (1991) but, more specifically, in that the use of CPAs and lawyers is associated with a higher level of non-compliance. Inherent in these studies is the notion, naturally deriving from differentiating between types of preparer, that the services offered by one type of preparer are different from those offered by another, or are more suitable in certain circumstances, but this is not developed further in the literature to deal with the innate ideas of quality. A study by Newberry, Reckers and Wyndelts (1993) similarly contains these implicit but undeveloped suggestions that the quality of services offered is important. This seems an important area for development. The quality of the services offered by the tax professional would appear to be an unquantified (and, perhaps unquantifiable) variable which might further inform the studies already carried out. It is also of explicit concern for the tax profession, given that tax services historically are the cause of most malpractice suits against CPAs (see Hull, 1992, p. 51). Hull (1992) reporting on his own firm's implementation and development of a tax quality control programme[3] suggests that there are evident rewards in seeing that more accurate tax products were developed, professional standards were met, that the tax practice was properly organised, and that preparer penalties and tax lawsuits were avoided. The firm's image and reputation were enhanced.

More recent research suggests that the relationship between taxpayers and tax practitioners is multifaceted, dependent on a number of factors, such as individuals' differing characteristics, especially attitudes to risk, with taxpayers demanding both cautious and aggressive advice and feeling that tax practitioners' performance fell short of expected standards. Technical proficiency and trust particularly affected taxpayer satisfaction levels (Tan, 2009[4]). Sakurai and Braithwaite (2003, p. 375) find

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[3] In accordance with the American Institute of Certified Public Accountants' voluntary tax practice review programme operating at that date. This was designed to ensure that a quality tax service is offered to CPA clients, and the implementation of such a programme has proved beneficial.

[4] This is taken from the description of Tan's 2009 PhD thesis (the full version being unavailable), available online at https://digitalcollections.anu.edu.au/handle/1885/10069?mode=full. [Accessed 12 March 2014]

that, for Australian taxpayers, there are three ideal types—a "creative aggressive tax planning type", a type who engaged in the "cautious minimisation of tax" and (the most popular), a "low risk, no fuss" practitioner. However, when taxpayers' perceptions were combined with their ideals, "tax avoidance" and "doing the right thing" emerged as the "only two substantive dimensions". Devos's (2012) study notes the increased use of tax practitioners by Australian individual taxpayers (75%) and reveals (p. 23) "that there was a statistically significant relationship between the need for engaging tax professionals and compliance behaviour generally" and evidence of a "statistically significant relationship between tax professionals' aggressive advice and compliance behaviour, but only amongst non-evaders".

The remainder of the paper is organised in the following way. Section 2 describes the nature of the taxation services market in the UK. Section 3 examines the type of tax work carried out by tax practitioners and considers what is meant by quality in this context. Section 4 gives an economic analysis of the market for tax services and presents a model of tax service quality choice. Section 5 discusses ways of improving the quality of the service provided by tax practitioners, including the issues surrounding regulation. Section 6 outlines the conclusions to the paper.

2. THE NATURE OF THE TAXATION SERVICES' MARKET IN THE UK

The market for the supply of tax services in the UK is fragmented. Per Frecknall-Hughes (2012, p. 178):

> [T]ax advice is given by a broad range of business professionals including accountants, solicitors, barristers, payroll agents, former and current members of government revenue authorities, tax experts working within industry, as well as those officially designated as tax consultants as a result of their membership of tax dedicated professional bodies, such as the Chartered Institute of Taxation (CIOT) in the UK. Some tax professionals work as sole practitioners or in accounting, legal or tax specialist partnerships and will undertake various kinds of tax work on behalf of clients. While some persons with a legal background will be found working within accountancy practices, the tendency is still very strong for those with legal training in tax to stay within the legal profession. Tax experts working in industry are more typically employees of a company, or group of companies, in which instance employer and client are the same. Throughout both academic and professional literature, tax practitioners are also referred to as tax advisers, tax agents, tax intermediaries, tax preparers and tax professionals without any significant differentiation between these terms.

The term 'tax intermediary' is a more recent development adopted by the OECD, whereas 'tax preparers' is especially used in the USA to denote firms or individuals who provide chiefly assistance in tax return completion (such as, compliance work – see later). A currently emerging term is 'tax structurer', which may have significant implications.[5]

[5] This term is used in a job advertisement for an in-house post (headed 'Front Office Tax – Urgent') in a global banking group at http://www.accountancyjobsonline.co.uk/job/2136268/front-office-tax-urgent/. There are six main bodies (other than the CIOT) professionally involved in taxation in the UK, namely

The main feature of the market for tax services in the UK is therefore the lack of any professional monopoly and the fragmented nature of professional regulation. In addition, there is no statutory definition of the words ‘accountant’ or ‘tax practitioner’ and so anyone can set up in business as an accountant or tax practitioner without having to satisfy any legal requirements.[6] This is in contrast, for example, to the highly regulated position in Australia, where registration as a tax agent has been a nationwide requirement since 1943 (Fisher, 2010). Many other countries, including New Zealand, operate in the same way as the UK, but there is a general trend towards regulation. In the USA, since 1 January 2011, there has been mandatory federal registration of tax intermediaries, together with a range of compliance checks (related to good standing) and, for intermediaries not licensed by certain professional bodies, competency tests and requirements regarding continuing education are also currently being rolled out (Treasury Department, 2011).[7]

It is evident thus far that the fragmentation of the tax profession and its lack of monopoly, as observed in many countries in the 1990s by Thuronyi and Vanistendael (1996, pp. 160–163), still remain. As Frecknall-Hughes and McKerchar (2013, p. 424) comment:

> The paucity of academic literature on this subject is somewhat surprising, given the almost universal acknowledgement that tax practitioners have increasingly become key players in modern tax administrations seeking to maximise taxpayer compliance.

Increases in the volume and complexity of tax law, especially in the UK (see Aitken, 2010), mean that tax practitioners will necessarily be used by both individual and corporate taxpayers. As long ago as the mid-1990s, evidence from HMRC’s Independent Adjudicator (Green, 1995, pp. 1; 19–20 and 47) focused attention on the poor quality of the advice given by some tax practitioners, but there has been increased concern in recent years rather about the nature of tax advice provided, especially in terms of ethics (Shafer and Simmons, 2008), with a number of firms in the USA being investigated for the marketing of tax shelters which facilitate aggressive tax avoidance (Herman, 2004; Johnston, 2004; Scannell, 2005). Companies and their senior executives are frequently alleged to use ‘tax havens’ or tax shelters for the purpose of avoiding their tax obligations (Godar, O'Connor and Taylor, 2005; Dyreng, Hanlon and Maydew, 2007; Wilson, 2009; Dyreng, Hanlon and Maydew, 2010; Sikka, 2010). The KPMG tax shelter fraud case in the USA points to the involvement of tax professionals in such activities (Sikka and Hampton, 2005; Sikka, 2010), and the 2012 cases of Starbucks, Amazon, Google and Facebook,

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the Association of Taxation Technicians, the Association of Chartered Certified Accountants, the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Indirect Taxation and the Society of Trust and Estate Practitioners. The Institute of Indirect Taxation has recently merged with the CIOT. There is also the Worshipful Company of Tax Advisers. In the public sector, there is, of course, HMRC. The 2009 HMRC report, *Modernising Powers, Deterrents and Safeguards. Working with Tax Agents: A Consultation Document,* in Ch. 5 looks more closely at different definitions for different types of tax professionals. See also Devos, 2012, p. 5.

[6] The HMRC 2009 consultation document, *Modernising Powers, Deterrents and Safeguards. Working with Tax Agents: A Consultation Document*, does suggest, in Ch. 5, some form of registration for the 12,000 estimated tax practitioners who are currently unregulated by any professional body.

[7] Registration of paid preparers has been a requirement in Oregon since 1973, in California since 1997, and in Maryland since 2008 (McKerchar, Bloomquist and Leviner, 2008, pp. 402–411).

highlighted in the British press (see, for example, Barford and Holt, 2012), indicate the continuing relevance of this topic, as company executives have been questioned by the UK government's Public Accounts Committee (PAC) about the level of corporation tax paid (or not) to the UK revenue authorities (see Armitstead, 2013; Fuller, 2013). The PAC also questioned the 'Big Four' accounting firms about the nature of the advice they provided to such firms. However, what is unclear is whether companies as recipients of this type of tax advice feel that their advisers have provided good quality advice or not. This perspective has not been examined. In general, HMRC will pursue an individual taxpayer in the case of errors, etc., but not the practitioner on whose advice the individual has relied, although the UK taxpayer might in certain circumstances have a claim against the practitioner for negligence (malpractice). This would be a separate issue and the aggrieved taxpayer would have to show that he or she had suffered a financial loss as a result of relying on the sub-standard service provided by the tax practitioner. UK practitioners who are members of professional bodies may also be subject to sanctions imposed by that body but, as already indicated, membership of a professional body is not mandatory.

Another aspect of market fragmentation that should not be ignored is the different type of client or customer who needs tax services. The tax service requirements of an employee with a small amount of investment income, or the self-employed plumber, are not comparable with the requirements of a multinational corporation, and these differing needs add further levels of complexity when trying to analyse the quality of services. A tax practitioner who deals competently with self-employed individuals might not be able to offer the same level of competence if faced with dealing with a multinational's tax affairs. Arguably there is not one, but many, markets for the provision of tax services. Our subsequent analysis veers, perhaps, towards the needs of the more sophisticated users of tax services, though much of what we discuss is relevant to all types of users/markets.

3. THE WORK OF THE TAX PROFESSIONAL

At this stage, it is helpful to consider in greater depth the nature of the service provided by tax practitioners. The service basically can be divided into two kinds: tax compliance and tax planning/avoidance advice. Tax compliance work involves the preparation of tax computations for submission on the taxpayer's behalf to HMRC, dealing with subsequent queries and the resolution of any uncertainties. Tax planning/avoidance (or mitigation) work occurs when the tax practitioner attempts to devise ways of reducing the taxpayer's liability to tax. These categorisations will be explored in the next two sub-sections.

3.1 Tax compliance work

This involves reporting the economic events that have occurred. The aim of the tax practitioner will be to ensure that the reporting of these economic events complies with tax law, but using whatever latitude is possible to present the information in the best possible way to serve a client's interests. Tax legislation may contain 'grey' areas, where the law is actually unclear, but often it is the situation to which the legislation is applied that is ambiguous. For example, the law is clear on the tax treatment of repairs as distinct from capital expenditure. However, in the case of buildings, the distinction between the two may, in practice, be blurred. In addition, there will inevitably be areas of tax reporting where the amounts to be entered in the tax returns are subject to some uncertainty and hence to a process of negotiation with the tax authorities. Such negotiations can be considered to be a legitimate part of the tax process, because it is normal for some uncertainty to arise in particular circumstances. Typically, this will cover areas where values have to be agreed and may be the subject of differing professional opinions, such as determining the value of private company shares with no stock market price, or the value of real estate.

3.2 Tax planning/avoidance work

This second category involves a definite and deliberate manipulation of the taxpayer's affairs to reduce the amount of tax payable. For example, in the UK, inheritance tax may be charged on an individual's death where the value of assets in the estate, or given prior to death, exceeds certain exempt bands. In order to provide some relief, gifts taking place more than seven years before death are exempt and so it is possible to avoid paying some or all of the potential inheritance tax by making lifetime transfers of assets directly to the intended beneficiaries or indirectly into trusts. Hence, it is a normal part of inheritance tax planning to devolve estates so as to preclude a tax burden occurring on death, as this is legitimately avoidable. Such tax planning involves deliberately framing reality in a particular way to ensure that taxpayers are enabled to act pre-emptively in order to obtain future benefits, which they would otherwise miss because of a lack of knowledge of the technicalities of tax law. It is also possible for the tax practitioners to go further and deliberately test or stretch a tax statute, which is unclear or ambiguously written, such that one or more interpretations may be attempted, or where issues arise which are not the subject of specific statute or case law precedent. Such testing or stretching is at the outer extremes of tax planning, and may involve the establishment of complex or artificial schemes specifically framed with no other aim than to avoid tax. Such schemes have come not infrequently to the Courts for a decision as to their legitimacy, though internal UK schemes increasingly are filtered out by the disclosure of tax avoidance scheme rules (DOTAS) introduced in *Finance Act 2004*. However, the cases of Starbucks, Amazon, Google and Facebook indicate that schemes at an international level are still an issue. These should, perhaps, be better designated as 'tax arbitrage', as they are clearly designed to exploit to advantage the distinctions and differentials in treatments and rates between different tax jurisdictions, but we will, for the purpose of this paper, consider them as schemes.

In the UK, as elsewhere, a distinction is generally drawn between avoidance of tax, which has always been regarded as legitimate, and evasion, which has not. The term tax evasion is usually used to mean illegal avoidance of tax, and may be achieved by a variety of means, from falsely reporting transactions which have, or have not, occurred, to setting up artificial transactions. However, the extent to which transactions/actions may be regarded as legitimate avoidance or illegitimate evasion depends a great deal on the legal, social or political climate of the time. For example in 1929, Lord Clyde in *Ayrshire Pullman Motor Services and D.M. Ritchie v CIR* (14 TC 754, at 764–765) said:

> No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable

> HMRC[8] to put the largest possible shovel into his stores. HMRC is not slow ... to take advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue.

This was supported by the comments of Lord Tomlin in 1935 in *IRC v Duke of Westminster* [1936] AC 1, at 19–20:

> Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.

These comments are well known and often cited in support of avoidance activities as legitimate. Case law seems to support this in other ways. For example, in the case of *Hurlingham Estates Ltd v Wilde & Partners* [1997] STC 627, it was inherently suggested (at 628) that a solicitor owed a duty to his client to structure a transaction so as to avoid a tax charge. A similar view initially prevailed in the long-running case of *Mehjoo v Harben Barker* [2014] EWCA Civ 358. Mr Mehjoo had sued his long-standing accountants, Harben Barker, for failing to recommend the use of an offshore tax avoidance scheme, the Bearer Warrant Scheme (BWS) (since banned by HMRC), which Mr Mehjoo's non-UK domiciled status would, *prima facie*, have allowed him to use to avoid capital gains tax on the disposal of a company. However, in the 2014 Court of Appeal judgment, which overturned earlier judgments, Lord Justice Patten placed great significance on the fact that Mr Mehjoo had "accepted in evidence that he would not have gone ahead with the BWS if he had been advised that there was a substantial risk of it being challenged by HMRC" (Rayney, 2014); and on the fact that under the terms of its engagement letter, Harben Barker was only obliged to provide limited tax planning advice. This case decision reflects the increasingly less benign climate for tax avoidance work, which has been demonstrated through a series of cases, perhaps notably beginning with *Ramsay (WT) Ltd v CIR* [1982] AC 300, with legal success sometimes going to the taxpayer, but at others to HMRC. Significant developments over recent years have been: a deliberate shift in terminology, such that tax avoidance has been categorised variously as 'aggressive', 'unacceptable', 'abusive', 'illegitimate' and 'illegal'—the latter two seeming particularly at odds if avoidance is legal (see Wyman, 1997; Frecknall-Hughes, 2007); the development of DOTAS (see earlier) and attempts to introduce some kind of general anti-avoidance rule (now operationalised as a general anti-abuse rule from 2013 (see Aaronson, 2011); and the specific categorising of avoidance as unethical or immoral. For instance, the UK Chancellor of the Exchequer in his 2012 Budget speech referred to avoidance as being "morally repugnant" (Krouse and Baker, 2012). In its published guidance on the General Anti-Abuse Rule (GAAR) (HMRC, 2013), HMRC specifically highlights at Section B 2.1 a movement away from past case law, in that the GAAR:

> ... [t]herefore rejects the approach taken by the Courts in a number of old cases to the effect that taxpayers are free to use their ingenuity to reduce their tax bills by any lawful means, however contrived those means might be

[8] At this date, 'HMRC' would refer to 'Her Majesty's Revenue Commissioners'.

and however far the tax consequences might diverge from the real economic position.

3.3 The quality of service provided by the tax practitioner

The distinction between the two forms of tax service is important, because determining the quality of the service provided by the tax practitioner will depend on which type of service is being offered. The following definitions of the quality of the two types of tax service will be used:

i. **Quality of tax compliance work**: how closely the eventual tax liability corresponds to the minimum possible, given truthful reporting and perfect knowledge of tax law and the practices of HMRC. In practice, this idealised definition will become the extent to which the tax computations do not contain any significant errors or omissions as laid down by tax law.

ii. **Quality of tax planning/avoidance**: how closely the eventual tax liability corresponds to the minimum possible, given the taxpayer's willingness to frame his or her affairs in the most tax efficient manner.

Whilst the definitions capture the elements of the tax practitioner's service, they may become inter-related, when, for example, the quality of the tax compliance work is affected by some particular tax avoidance scheme. A tax adviser with some particularly ambitious tax avoidance scheme is always likely to test the law to its limits and hence, although it may eventually be decided that the tax computations are wrong, the 'error' may have been due primarily to a lack of clarity in the legislation rather than incompetence. In addition, tax advisers working at the extremes of the law are effectively making probabilistic judgements about how worthwhile their schemes are, since each scheme is likely to impose costs on the taxpayer and so the chances of a scheme eventually being accepted have to be weighed against the cost of implementing it. This means that every so often a scheme will fail, but it does not necessarily mean that overall the tax practitioner is offering a poor quality service.

Having accepted the above caveats, evaluating quality in accordance with the two definitions is still not an easy task. In principle, a client of a tax practitioner should be able to make some sort of *ex-post* evaluation of the quality of the tax compliance work, based on the feedback that he or she receives from HMRC. However, HMRC does not necessarily scrutinise in detail all the tax computations submitted to it relying, instead on key ratios such as gross profit margins and the knowledge that, if some error were subsequently discovered, then it may be able to go back and look again at the earlier tax computations. The feedback that the clients would notice could be categorised into three forms: additional demands for extra tax and/or penalties because of errors in original computations, experience of the time taken by the tax practitioner to agree matters with HMRC or HMRC deciding to carry out an investigation. All of these would be directly observable by the taxpayer. However as indicated earlier, additional tax/penalties may become due, additional time may be required or an investigation may arise because of the use of some avoidance scheme and not necessarily because of errors or bad advice.

An *ex-post* evaluation of the quality of tax avoidance advice is even more difficult to undertake, because the theoretical minimum tax liability is unobservable. This will be forever unknown, and so all the client can rely on is some calculation based on either the eventual size of the tax liability given the size of the transaction, or the amount of profit or gain that the client has made multiplied by the rate of tax appropriate to such transactions. There is also the problem for the client that the use of some tax avoidance measures may produce negative outcomes because of the bad publicity that could result. Such has been the case for Starbucks, with the protests by UK Uncut outside its coffee shops and the company's pledge to pay 'extra' corporation tax,[9] which might be expected to be some £20m over 2013 and 2014.[10] How a company can calculate the amount of 'extra' corporation tax due in such a situation is an interesting issue. A further example would be the furore that occurred when it was discovered that John Birt, the Director General of the BBC in the early 1990s, was being paid as a limited company rather than as an individual employee. The tax avoidance device of the limited company reduced the tax liability, but the bad publicity was such that he changed the method of payment to that of a normal employee. Hence the goal of the theoretical minimum tax liability has also to be weighed against any negative effects that the use of the tax avoidance scheme produces.

4. AN ECONOMIC ANALYSIS OF THE QUALITY OF THE SERVICE PROVIDED BY TAX PRACTITIONERS

Having outlined the nature of the tax service and how quality can be evaluated, we will now provide an economic analysis of the tax service to determine the incentives that exist to produce a quality service. The characteristics of the tax service that are evident from the foregoing discussion are that it is virtually impossible for the consumer to observe the quality of the service before consumption (explicitly stated by Stephenson, 2010, p. 102 and Bojanic, 1991, p. 29). Often too, in terms of professional services, the client or customer is reliant on the professional to diagnose in the first place the problem that needs solving and thus may not know what type or level of service to expect. It is only once the service has been provided that the consumer will be able to observe only particular aspects of its quality,[11] which might be specific to the nature of the problem dealt with, rather than generic (see Hill and Neeley, 1988).[12] This notion of observability plays a key role in economic analysis under uncertainty. Observability refers to the ability of parties to verify directly the events and conditions relevant to the formation and execution of economic transactions. The importance of verification lies in the opportunities which are created

[9] See, for example, the BBC news report 'UK Uncut Protests over Starbucks "Tax Avoidance" ' at http://ww.bbc.co.uk/news/uk-20650945.

[10] See the BBC news report 'Starbucks Agrees to Pay More Corporation Tax' at http://www.bbc.co.uk/news/business-20624857.

[11] Bojanic (1991) makes the point that it can be difficult to evaluate the quality of a service even after it has been consumed.

[12] Parasuraman, Zeithaml and Berry (1988) developed the SERVQUAL scale to measure the quality of service provided in different environments. While widely used, it was developed as a generic measure, and this has been the focus of criticism levelled at it: it needs to be customised to a specific service (see Brown, Churchill and Peter, 1993). It has, however, been adapted to assess the quality of services provided by a CPA firm (Bojanic, 1991), where key quality-related issues were firms' responsiveness to clients, partner knowledge and personal attention . There are many different models of service quality: Seth, Deshmukh and Vrat (2005) critique 19 of them, dominated by the focus on the consumer, rather than the service provider. Aspects associated with the service provider are the focus of fewer studies (but see Dotchin and Oakland, 1994; Nilsson, Johnson and Gustafsson, 2001).

when one self-interested party must rely upon the representations of another self-interested party, since the assumption of self-interest implies that each party will take advantage of any situation which could increase his or her welfare (Simunic and Stein, 1987a, 1987b).

A good example of what can happen in such a market is the used car market of Akerlof (1970). A vendor wishes to sell a used car of a particular level of quality. A customer wishes to buy the used car, but is unable to discern its quality before purchase. Hence the maximum amount that the customer should pay is the market price for a car of average quality. This will be so, because any statements by the vendor about the true quality of the car will not be believed by the customer, because the customer has no way of verifying the vendor's representations. The rationale behind the customer's attitude is that the vendor knows not only that price and quality are related, but also that the customer cannot observe the true quality of the car. Therefore, the customer will reason that it is in the vendor's interest to report that the quality of the car is high, whether it is or not.

In such a market consisting of imperfectly informed consumers in which producers have no chance to build a reputation, two factors will conspire to reduce the availability of high quality goods: moral hazard and adverse selection. If the quality of a purchase cannot be pre-determined, then both high and low quality products will eventually sell for the same price, as it is impossible for the buyer to distinguish between them before purchase. The producer's choice of quality cannot therefore have any influence on his or her sales volume. Accordingly, moral hazard will arise because sellers can maximise profits by supplying only poor quality, low cost products, since the returns from producing good quality accrue generally to all sellers regardless of the quality that an individual seller produces. Adverse selection will arise from the fact that sellers of the cheapest, low quality products will drive from the market any seller who for whatever reason wishes to supply higher quality products. Consequently, the average quality of goods on sale will be reduced and the size of the market will shrink (Akerlof, 1970).

In most markets where product quality cannot be determined in advance, it is at least possible for consumers to judge product quality after consumption, even if only imperfectly. In these markets a reputational effect occurs (Rogerson, 1983). The higher quality firm will attract more customers, because customers who have consumed the firm's product are less dissatisfied than the average customer and so fewer leave than on average. Word of mouth advertising also ensures that the higher quality firm attracts new customers. In such a market, product quality will reach an equilibrium level and not fall to the lowest level.

Klein and Leffler (1981) argue that firms producing high quality products will price them sufficiently in excess of salvageable production costs, so that the future stream of profits from producing and selling such high quality goods will exceed the one shot wealth increase available from selling a low quality product at a high quality price. The activity of producing low quality and selling at a high quality price is a once only occurrence in the model, because it is assumed that consumers become aware of the low quality soon after purchase and that this information is quickly disseminated to other potential consumers. Hence, firms with an established reputation for high quality will have incentives not to cheat by selling low quality goods and services. This model also implies a market price greater than the perfect competition price, so that it might be expected that there will be entry into that particular product area and a resulting erosion of the price. Klein and Leffler argue against entry by other producers by suggesting that high quality firms will invest in non-salvageable firm specific assets and so deter other producers from entering the market. For example, they suggest that companies will invest in advertising and other market promotion activities to such an extent that the economic rents from selling high quality products are reduced to zero.[13]

Shapiro (1982) has shown why a producer would wish to increase the quality of his or her products. In his model of a monopoly producer acting in a market where product quality can be determined only after consumption, each consumer has some expectations regarding product quality at any particular point in time. These expectations constitute the monopolist's reputation, which in turn determines the position of the producer's demand curve. In order for the monopolist to produce higher quality goods, he or she must believe that the improvement in the quality of today's goods will cause the present consumer demand curves to move outwards in the future. Products the quality of which it is difficult to observe after use will display a slow or lagged adjustment in consumer expectations. The monopolist will then have to find the level of quality (and hence eventual reputation) which maximises the present value of his or her profits, since increased quality, whilst producing increased revenue as a result of the higher reputation, will also incur increased production costs as higher quality items will be more costly to produce. In the tax services market, the change in consumer expectations will be very slow and so there will be only a very small incentive for the tax practitioners to produce higher quality work in order to improve their reputation and hence their earning power.

A model of how a tax practitioner chooses a particular level of tax service quality for compliance work can be developed from the audit service model of Simunic and Stein (1987a, 1987b). The model assumes an uncertain world, in which economic agents are concerned primarily with their distributions of future wealth. In particular, taxpayers are concerned with their distribution of future wealth, conditional on a set of tax returns. Tax practitioners for their part are concerned with their distribution of future wealth, conditional on the tax service itself. A formal definition of tax service quality from this perspective can be expressed as:

$$qjk = h\{ [fjk \mid ajk\,(cj, zj, sjk)], fj \}$$

where:

qjk = taxpayer j's perception of the quality of the tax service by tax practitioner k

h = a function

fjk = taxpayer j's perceived distribution of wealth with respect to tax effects determined by tax practitioner k

[13] Klein and Leffler's model has been developed further by Allen (1984) to conclude that the "main result is that, despite the competitive nature of the model, equilibria can exist in which price is not equal to marginal cost. If no warranties are feasible, price can be above marginal cost. Each firm does not cut its price, because this would change its incentives, and consumers would refuse to buy its products. If warranties are feasible, there is the additional possibility that equilibria can exist with price below marginal cost: each firm does not cut its output, because this would again change its incentives and result in no sales", (p. 327).

ajk	=	the tax service for taxpayer j by tax practitioner k
cj	=	a set of characteristics of taxpayer j
zj	=	a set of environmental factors relevant to taxpayer j
sjk	=	the inputs of tax practitioner k to the tax service for taxpayer j (tax service scope) including the quantities of such inputs
fj	=	taxpayer j's perceived distribution of wealth before any tax effects determined by tax practitioner k

Therefore, tax service quality is some function of the difference between j's prior (pre-tax service) and posterior (post-tax service) distributions of wealth. In the model, taxpayers are expected to revise their priors based on ajk alone—that is, the fact that the tax service is performed by tax practitioner k. Tax practitioners are expected to revise their priors based on their full knowledge of cj, zj and sjk.

The final part of the model examines the relationship between tax service quality and tax service quantity (that is, time spent on the tax service). From the tax practitioner's perspective, tax service quality and tax service quantity measure the same dimension. For example, tax service quality could be measured by the conditional probability of producing a large tax saving, given a particular interpretation of existing tax law: thus this model could also be applied to the quality of tax avoidance work. However, the important aspect of the Simunic and Stein model is that when the taxpayers are introduced who can observe neither inputs nor output directly, the equivalence between tax service quality and tax service quantity breaks down. Tax service quality to consumers is a function of brand name and reputation and this user perceived tax service quality determines the level of quantity, which it is necessary to maintain an existing reputation. Formally, a profit maximising tax practitioner's problem is to minimise tax service costs subject to the constraint of the user perceived quality:

minimise p. sj

subject to: h { [fj | aj (cj, zj, sj)], fj } = qj

sj ≥ HMRCmin

where qj is the user perceived tax service quality for that tax practitioner implied by the tax practitioner's present reputation, p is a vector of market prices for the various tax service inputs and HMRCmin is some minimum required level of tax service quality necessary to comply with generally accepted HMRC requirements. sj is the inputs of the tax practitioner to the tax service for taxpayer j and aj is the tax service for the taxpayer j. The constraint that the vector of inputs exceeds some lower bound prescribed by HMRC is consistent with the view that individual tax practitioner service failures impose external costs on him or her because of HMRC's 'black list'.

The value of the Simunic and Stein model is that it shows that a tax practitioner may choose to undertake more tax service work than that necessary to meet HMRC minimum requirements, in order to meet the reputational expectations of taxpayers. The question then becomes one of determining how taxpayers form reputational expectations of the work of a particular tax practitioner or firm of tax practitioners. HMRC receives the work of the tax practices and therefore it should be possible to use the information it has in order to grade the quality of the tax services provided by individual practices. Unfortunately for prospective clients there is no publicly available feedback because of the position of confidentiality and impartiality maintained by HMRC. The only public data available is the 'well known' fact that most HMRC District Offices maintain a 'black list' of questionable tax advisers, although names have never been disclosed. Such evidence as there is of tax scandals is not necessarily an indicator of a less than satisfactory service, because it would rather be a case of negligence which would give rise to concern—and cases of negligence are invariably settled out of court on the advice of the insurance company providing the professional indemnity insurance. In most instances, tax cases reach the Courts purely because statute is not clear (for example, *Pepper v Hart* (1992) on benefits in kind and *Glaxo Group Ltd* (1996) on transfer pricing issues): there is nothing inherently scandalous in the work of the tax practice. Hence for many tax practices, the only evidence on reputation that new clients can use is the professional body to which members of the tax practice are affiliated. As indicated in Section 2, the problem is the plethora of professional bodies involved, augmented by the body of former HMRC employees who have transferred to private practice, who will have obtained internal HMRC qualifications. To our knowledge, no work has been done on how individual professional bodies are perceived by clients and whether in particular the use of the name 'chartered' produces any additional cachet, although most professional bodies have the word 'chartered' in their name.

As far as the reputation of an individual firm is concerned, given the unobservability of the quality of its service as a tax practice, it is likely that potential clients will make use of indirect measures, based on what they can observe, and hearsay evidence from others, something that has long been acknowledged (see, for example, Carey, 1955). From this perspective, how a tax practice is viewed is not determined primarily by the quality of its tax work, but rather how the firm is viewed more generally, that is, by its reputation in the financial community. Reputation has been defined as follows:

> Reputation is the estimation of the consistency over time of an attribute of an entity. This estimation is based upon the entity's willingness and ability to repeatedly perform an activity in a similar fashion. .... Reputation is an aggregate composite of all previous transactions over the life of the entity, a historical notion, and requires consistency of an entity's actions over a prolonged time for its formation.
>
> Herbig, Milewicz and Golden, 1994, p. 23

Reputation is a multidimensional construct and so a tax practice will have a composite reputation reflecting its reputation for quality work in the numerous services offered by the firm of which it is part, for example, auditing, accountancy, management consultancy, computer systems advice, personnel selection, etc., *as well as* taxation. Its reputation for quality work in one area is quite likely to affect its reputation in another, as shown by Jacoby and Mazursky (1984), who investigated the effects of selling products with either favourable or unfavourable images in stores, which themselves had either a favourable or an unfavourable image (see also Rao and Ruekert, 1994; Purovit and Srivastava, 2001). They found that a retailer with a relatively low image could improve this image by associating it with a more favourable product image. Similarly, a very favourable retailer image was likely to be damaged, if it became connected with brands having less positive images. Consequently, it is reasonable to suppose that the various reputations for each of the services offered by an accounting firm will tend to influence each other. This will be especially true of the Big Four accountancy firms which typically offer a range of services all contributing to a generic reputation, rather than to a specific one for a particular type of service. Hence a potential client may well judge the likely quality of taxation services on the basis of the firm's overall brand image for quality service and/or value for money.

5. WAYS OF IMPROVING THE QUALITY OF THE SERVICE PROVIDED BY TAX PRACTITIONERS

The implication of the foregoing discussion is that market forces are unlikely to ensure that all tax practitioners will have a vested interest in offering a high quality service to their clients. If market forces are insufficient, that is, if market failure occurs and the public interest is no longer protected by such forces, then the suggestion almost inevitably follows that some form of regulation is necessary as a substitute for market forces. The complexity of tax law and major initiatives (such as the introduction of self-assessment for individuals and companies in the 1990s, compliance with DOTAS in the 2000s, etc.) increase the potential for mistaken advice, which is of concern, especially in a context where unregulated advisers exist. For instance, the cases of bad practice outlined in Chapter 2 of the 1995 report, *Regulation of Tax Advisers in the UK* (Green, 1995), were taken by all commentators in the professional press as evidence of the market failing. However, these were the first concrete examples of such failure. Until these details were published, evidence of poor tax advice was anecdotal, and while it is clear that these examples are selected as representative, it is unclear whether they represented a small or large problem (and there has been no subsequent research to clarify this).

From the point of view of the State, it is necessary to separate tax work into the two components identified in Section 3, namely, tax compliance work and tax avoidance, since it may not be in the State's interests to regulate tax avoidance work, despite its overall aim being to reduce the revenues that the State can collect (see later). A great deal of effort may be expended on, say, devising avoidance schemes to exploit existing or potential loopholes in legislation to benefit individuals not originally intended at law as the recipients of such benefits. Such individuals inevitably tend to be the wealthier members of society, able to afford tax advice aimed at preserving their personal wealth. From a Utilitarian point of view, they may be regarded as obstacles to the collection of taxation monies which could be used to benefit all members of society, and wasters of HMRC's time. HMRC must then itself spend time devising ways of plugging the gaps in the legislation—either by proposing additional anti-avoidance legislation (thus creating further complexities), amending DOTAS, taking cases to Court, drafting Extra Statutory Concessions, or responding by technical or press releases, such as in the case of *Pepper v Hart*. Admittedly this dynamic process does contribute to the development of tax law, but it is rather wasteful of resources, benefiting only the professionals themselves and the wealthier elements within society. (We are still waiting to see what the impact of the specific UK General Anti-Abuse Rule might be.)

The usual purpose of regulation is to protect the public interest, but this aim is somewhat problematic in the taxation services area since it is unclear who the public would be. As suggested earlier, it is not in the interest of the general body of taxpayers that some taxpayers reduce their tax burdens by the use of clever tax avoidance schemes, as this will mean that the 'lost' tax has to be collected from them or that HMRC has to introduce complicated rules to nullify the avoidance scheme, thus increasing administrative costs. Hence, high quality tax advice can be seen as being detrimental to the well-being of the majority of the population. However, if the term 'public interest' is used more narrowly to relate to the consumers of the services of taxation practitioners, that is, existing and potential clients, then it means providing a service on which taxpayers can rely to minimise their tax liability and which they can use to deal fairly with HMRC on their behalf. O'Leary and Boland (1987) suggest that in the USA the phrase 'public interest' has developed in relation to the accounting profession from meaning policing the public interest against the threat of bureaucratic power to a duty to address the public's interest in the activities of the accounting profession (see also Wyatt, 2004). In a slightly different context in taxation terms, allegations of not protecting the public interest might mean not offering sufficient protection against the bureaucratic power of HMRC.

The term 'market failure' also needs to be defined in relation to the type of work being performed. The effects of market failure in terms of tax compliance work will mean that tax computations are being produced which do not comply with HMRC's requirements. Consequently, there is a possibility of either failure to collect all the tax that is legally due or of increased government administrative costs in checking and correcting the errors in the submitted computations. It is in this area that demands for some form of licensing have come, where there is a standard against which to judge the quality of the tax preparation work. From the consumers' point of view, regulation provides a means of protection and ensures that the tax adviser chosen will be of good quality as regards tax compliance work. However, regulation will only be appropriate if the benefits exceed the cost. Such benefits would include: reduced time spent by clients on tax related issues (because of less need to respond to HMRC queries); a reduction in the burden imposed on HMRC (higher quality tax computation submissions would require a lower level of monitoring); and the tax bill would better approximate to what it should be, given the fiscal law at that point in time (because of the submission of more accurate tax computations). The difficulty is that these benefits are not easily quantifiable, whereas the related costs are. These would essentially cover registration costs and would be borne ultimately by the taxpayer (though initially by the tax practitioner). McKerchar et al. (2008) suggest that regulation of tax practitioners does increase compliance and the overall quality of returns—and it was proposed in the USA by the National Taxpayer Advocate in her 2002 and 2003 reports to Congress, though the likely cost was acknowledged (Bauman and Manzke, 2004). This remains an ongoing debate.

The economic theory of regulation, developed by Stigler (1971) and elaborated by Peltzman (1976), which has often been referred to as 'capture' or 'interest group' theory, asserts that regulation exists to benefit the regulated parties. Stigler argued that an industry with sufficient political power and internal cohesion would strive to use state powers to augment that industry's profitability. Ayres, Jackson and Hite. (1989) refer to the US system of regulation whereby Circular 230 granted CPAs, lawyers and enrolled agents (the latter a specific process) the right to practise before the IRS—meaning that an individual so licensed may represent his/her client in all matters related to the IRS. Thus, such individuals are able to offer a broader range of services than can preparers without this professional certification. Regulation of the tax services allows the practitioners to interpret the law more to the benefit of the taxpayer, further increasing the value of the regulated practitioner's services to the client and thus the total industry profitability (Ayres et al., 1989).

The means by which UK taxation services can be regulated to ensure quality are various and have been considered by Green (1995, p. 45), although she makes no distinction between compliance and avoidance work, as we make here. The suggestions cover providing improved information about tax advisers, voluntary schemes or codes of practice without legal force, codes of practice with legal force, licensing, self-regulation, and legislation and registration. Green's preferred model is one involving registration of tax practitioners (dependent on a suitable level of technical knowledge and/or experience certified by existing professional bodies), professional indemnity insurance, a minimum level of ongoing continual professional education, and a regulatory body in the form of a National Taxation Council. The role of the National Taxation Council would be like that of the independent National Tax Practitioners' Board, in Australia, which aimed primarily to deal with complaints against practitioners and make an annual report to Parliament. As HMRC already reviews a substantial number of tax computations, the Council could ask for HMRC involvement to identify any practitioners who fell short of current standards, since it is from this source that the impulsion to look at regulation has in part stemmed, and continues to do so. As has been mentioned previously, the HMRC 2009 consultation document, *Modernising Powers, Deterrents and Safeguards. Working with Tax Agents: A Consultation Document,* does suggest, in Chapter 5, some form of registration for the 12,000 estimated tax practitioners who are currently unregulated by any professional body. Hence this idea continues to resonate. In addition, HMRC (2010) has recently published draft legislation as part of its consultation on tax agents, designed to address deliberate wrongdoing by tax agents. Its independent adjudicator in the past has condemned the quality of advice given by tax agents (see, for example, the Third Annual Report from HMRC's independent adjudicator (Bunn, 1996)).

However, perhaps a simpler approach to improving the performance of UK tax practitioners would be to make the tax adviser responsible at law for his or her submission to HMRC (perhaps jointly with the tax client), with a legal penalty imposed if submissions were proved to be incorrect. Penalties could be a percentage of any additional tax due, and might be graded, according to the severity of the errors. This would provide a considerable incentive for the tax practitioner to 'get it right' personally and for the client, although it might mean that there would be less give and take and informality in dealings with HMRC. This would reverse the current position whereby the practitioner's client is pursued by HMRC in the first instance if errors are found. In Canada, it is the case that the adviser is responsible at law for his or her submissions and the USA imposes penalties on the preparer if there are errors. Klepper et al. (1991) provide support for this recommendation with their conclusion that increases in preparer penalties will have the effect of magnifying the enforcer effect (where the taxpayer is persuaded to comply with tax law) and mute the ambiguity-exploiter effect (where the tax practitioner encourages the taxpayer to exploit ambiguities in the law). However, the introduction of preparer penalties will inevitably increase the price to the taxpayer of the practitioner's services, which will discourage the use of preparers and encourage more taxpayers to do their own tax submissions with, inevitably, a drop in reliability because of their lack of knowledge.

6. SUMMARY AND IMPLICATIONS

In this paper we have considered the role of the tax practitioner in the UK tax services market and the existing forces that determine the standard of care to which the practitioner works. We noted the fragmented nature of professional regulation with the many professional bodies and also drew attention to the lack of statutory definition of the words 'accountant' and 'tax adviser'. Hence anyone can call themselves either an accountant or a tax adviser with no requirement that they have shown that they are capable of fulfilling that role, either by virtue of experience or examination performance. In the UK, unlike in other countries such as the USA, there are no penalties imposed by the tax authorities for poor performance on the part of the tax practitioner. Any penalties are imposed on the taxpayer, who has to resort to suing the tax practitioner in the Courts for negligence in order to recoup some of his or her losses.

We have also categorised the work of the tax practitioner into two kinds: compliance work where the tax practitioner is essentially reporting what has already taken place with the aim of minimising the taxpayer's liability to tax, given what has already occurred, and planning/avoidance work where the tax practitioner aims to (re)structure the client's affairs with the aim of so organising them that the tax payable in the future is reduced. We showed that, where the tax practitioner provided avoidance advice as well as the compliance service, it would be difficult sometimes to evaluate whether apparent poor performance on the part of the tax practitioner was due to sub-standard compliance work or speculative tax avoidance schemes which ultimately proved not to work in law. Even for purely tax compliance work, it is not easy for individual clients to evaluate the service provided by the tax practitioner, since they have no benchmark against which to assess him or her as they would not know what a 'good' practitioner would have done in similar circumstances. The only feedback is the amount of queries and general aggravation that they receive from HMRC. It is known that HMRC has its own list of poor tax advisers, but details are not released to the outside world.

We adapted the model of Simunic and Stein from the audit context to show how reputation could work as a way of ensuring that the tax practitioner would work to a particular level of quality. However, the problem that we identified was how the prospective client might learn of the reputation of an individual practitioner or firm of practitioners. The reputation literature was examined and revealed that the reputation of a firm of accountants, for instance, would more than likely be a general one for the firm. Hence prospective clients would have a general image of the firm which would then be applied to the tax services offered.

Finally we looked at whether there was a case that could be made for regulating tax practitioners. Given the fragmentation of the profession, multiplicity of professional bodies and the fact that anyone could set up in business as a tax consultant, it is not obvious that professional self-regulation can be successful, because it would work only via the reputational effect of belonging to a professional body and there are too many professional bodies for that to be considered to have much impact. It is clear that if there were to be some form of regulatory regime that it would have to be organised by the State. However, there does not seem to be any role for the State in imposing some sort of regulatory regime on the provision of tax avoidance advice as it is not in the interests of the State to encourage the setting up of schemes the primary purpose of which is to reduce the amount of tax revenues that the State would receive.

Hence any State regulation is likely to apply only to compliance work. Whether there is a net benefit in the State introducing regulation will depend primarily on who finances it. The main benefit to the State will be that the tax forms submitted to HMRC will be more accurate and hence that there will be less investigation required by HMRC (which should produce a cost saving). However, better advice will not necessarily increase the amount of tax payable to the State as taxpayers will be made aware of reliefs available to them and hence technically competent compliance work could on average reduce the amount of tax payable. The overall effect will depend on the extent to which the regulated tax practitioners are able to convince their clients to be more honest in their reporting of their affairs and hence the balance is between the additional honesty and the effects of full knowledge of the reliefs available.

If the regulatory process is financed by the tax practitioners via some levy (as happens in the current system of audit regulation), then the costs of tax practitioners will rise and so inevitably will their charges. Such an increase will discourage some taxpayers from using them, as they will prefer to prepare their own computations. Given the complexity of UK tax law, it is likely that taxpayers on their own are likely on average to do a worse job than even an unregulated tax practitioner would do and hence introducing costly regulation will have the effect of improving some of the tax returns to HMRC and reducing the quality of others. The overall effect will therefore depend on the costs of the regulatory scheme. The cheapest scheme is probably to make the tax advisers liable for any errors in the computations and failure to meet deadlines, etc. Such a scheme would not require some large regulatory watchdog, but would allow HMRC to target tax practitioners producing a poor quality service. If the public were made aware of who had been fined for poor performance, this would introduce a reputational effect to amplify the financial effects of the fine.

The advent of self-assessment in tax returns together with increasingly voluminous and complex legislation in recent years means that taxpayers will be likely to continue to seek assistance. The taxation services market has an economic interest in attracting new customers. Stressing the difficulty associated with meeting more stringent requirements imposed (for example, fines for late submission of tax returns) is one way of attracting them. However, there will be political costs if the government is seen as having forced some individual taxpayers (as they see it) to use professional tax advisers and then these tax advisers produce work of low quality which results in extra costs to the taxpayers. Hence in the end it may be the politics of the process rather than the economics that determines whether some form of regulation of tax advisers is introduced.

It is clear from the above that State regulation would be contentious on a number of levels, and would be likely to be resisted by practitioners, as it would be seen, perhaps, as eroding professional autonomy. There is the additional question of how it would be financed—and to whom exactly it would apply, given the fragmentation of the market for taxation services and type of individuals at work there. As we have outlined, it is also likely only to be applicable to compliance work and would not easily (if at all) address the difficulty of how to ensure that advice given complies not only with the letter of the law, but also its spirit, that is, to ensure that it is ethical. While DOTAS has been effective in filtering out domestic avoidance schemes, it cannot ‘reach’ international ‘tax arbitrage’. Our earlier suggestion of making the tax adviser responsible at law for his/her submission to HMRC (perhaps jointly with the tax client), with a penalty applying if anything were incorrect, might be a relatively easy way to ensure better quality compliance, but there is no easy way to deal with avoidance. The answer may be a continuation of the 'moral outrage' stance taken by government (regardless of its political persuasion) that links tax avoidance explicitly to the reduction in public benefits resulting from decreased tax take: over time this may succeed in eroding the social acceptability of avoidance if it is seen as responsible, for example, for lack of funding for hospitals or care for the elderly.

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