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The Journal of Tax Administration (JOTA) is a peer-reviewed, open access journal concerned with all aspects of tax administration. Initiated in 2014, it is a joint venture between the University of Exeter and the Chartered Institute of Taxation (CIOT).

JOTA provides an interdisciplinary forum for research on all aspects of tax administration. Research in this area is currently widely dispersed across a range of outlets, making it difficult to keep abreast of. Tax administration can also be approached from a variety of perspectives including, but not limited to, accounting, economics, psychology, sociology, and law. JOTA seeks to bring together these disparate perspectives within a single source to engender more nuanced debate about this significant aspect of socio-economic relations. Submissions are welcome from both researchers and practitioners on tax compliance, tax authority organisation and functioning, comparative tax administration and global developments.

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In preparing papers for submission to the journal, authors are requested to bear in mind the diverse readership, which includes academics from a wide range of disciplinary backgrounds, tax policymakers and administrators, and tax practitioners. Technical and methodological discussion should be tailored accordingly and lengthy mathematical derivations, if any, should be located in appendices.

MESSAGE FROM THE CHARTERED INSITUTE OF TAXATION

The Chartered Institute of Taxation is an education charity with a remit to advance public education in, and the promotion of, the study of the administration and practice of taxation. Although we are best known for the professional examinations for our members, we have also supported the academic study of taxation for many years and are pleased to widen that support with our involvement with this journal.

WEBSITE

The Journal of Tax Administration website can be found here: www.jota.website

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EDITORIAL NOTE

In this issue of JOTA, we are pleased to include a special section on the tax profession, which is a follow-up from a JOTA symposium held in London in February 2018. The impetus for the conference came from growing scrutiny of the activities of tax professionals in the wake of increased public consciousness of the tax affairs of multinationals. The symposium generated considerable interest and was chaired by Penelope Tuck from the University of Birmingham. Papers were presented by a wide variety of academics with an introductory speech by Stephen Edge from Slaughter and May. Two of the papers presented at that symposium have been developed for publication here (those by Rasmus Corlin Christensen & Leonard Seabrooke, and Jane Frecknall-Hughes) and a further paper (by Till-Arne Hahn & Rodrigo Ormeño-Perez) was developed as a review paper in response to the symposium.

Rasmus Corlin Christensen and Leonard Seabrooke tackle the difficult issue of professional misconduct in the context of the international tax environment, which has been attracting significant attention in recent years. The authors come from a political economy background but draw on a variety of academic literature to develop a framework for better understanding professional misconduct, which they conceptualise as boundary transgressions. The approach they develop will be useful to inform future interdisciplinary research in this area.

In the second paper in the *Tax Profession* special section, Jane Frecknall-Hughes traces the emergence of a specialist tax profession in Britain, linked initially to the introduction of income tax. The paper positions contemporary commentary in the press and professional journals against the prevailing political, social, and economic conditions, and the evidence shows how income tax influenced the development of the accounting profession and accounting principles.

The paper by Matthew Sorola and colleagues deals with an important but under-researched issue in tax practice, specifically the gender bias inherent in tax talent management, given the historical dominance of a masculine orientation. Empirically, the paper draws on a wider survey of tax professionals and teases out the gender dimension of the data collected therefrom. The findings are analysed by reference to studies in non-tax fields as well as other tax scholarship. As the nature of tax work changes in response to both globalisation and digitalisation, the gendered nature of professional work takes on new nuances which are important to understand by the industry and policymakers.

Stefan Greil and colleagues study, through a survey of tax experts and non-tax experts in Germany, how respondents differ in their sense of fairness in the specific context of taxing digital businesses. The questionnaire was distributed to tax auditors, tax advisors, and business students and the authors find evidence that experts do differ in terms of their sense of fairness, which goes some way to explaining why policymakers, generally being non-experts, hold different views to technical specialists.

To complete the *Tax Professions* special section, we include a review of scholarly literature on the topic, carefully compiled and analysed by Till-Arne Hahn and Rodrigo Ormeño-Perez. We are grateful to them for undertaking this task, which is an important contribution to ongoing research into the role and practices of tax professionals. The fragmentation of scholarly work in taxation makes it difficult for all of us to keep up with developments and trends in sub-topic areas, and reviews such as this are invaluable to time-constrained scholars.

To complete this issue, we also include two papers that fall under the remit of the journal but do not specifically relate to the topic of the tax profession.

Harsha Konara Mudiyanselage and colleagues investigate the reasons of the decline of the tax revenues as the proportion of GDP in Sri Lanka over the last 25 years. In this comprehensive study, authors apply the stochastic frontier analysis to estimate tax effort using a panel dataset for 52 Lower-Middle-Income countries and compare Sri Lanka's tax performance to that of other countries in the sample. The paper discusses the mechanisms behind the effect of macroeconomic factors on tax effort. The authors argue that one of the reasons for poor tax performance in Sri Lanka is the system of ad hoc tax concessions and tax incentives

The final academic paper in this issue comes from China. Noam Noked and Yan Xu explore a proposal for voluntary disclosure procedures to replace the current ad hoc system of penalty waivers and to bring China into line with other countries that have adopted formal amnesty and voluntary disclosure regimes.

In addition, this issue of the journal includes a review of some recently published academic literature, which has been compiled by members of the Tax Administration Research Centre (TARC) at the University of Exeter.

We thank all our contributors and reviewers, and hope you find the contributions interesting and inspiring. We also welcome suggestions for future special issues and additions to our editorial team.

Finally, we hope you all stay safe at this difficult time.

Lynne Oats & Nigar Hashimzade (Managing Editors)

PROFESSIONAL MISCONDUCT IN INTERNATIONAL TAXATION

Rasmus Corlin Christensen[1], *Leonard Seabrooke*[2]

Abstract

This paper explores the space for professional misconduct in international taxation through the exploitation of unique expertise and legal distinctions. In a complex international tax environment, where multiple logics from overlapping social and legal systems meet, there is unique scope for misconduct by professional experts as adjudged by social control agents, such as the state, professional bodies or popular media. These are not trivial judgments. The implications of perceived misconduct are potentially significant – fostering new regulations and enforcement actions, changing social norms, and damaging trust in the profession. Given this, there is a need to systematise our understanding of misconduct in international taxation, including its evaluation and social settings. We emphasise the particular ambiguities that characterise international taxation and discuss how tax professionals may strategically and, as a matter of everyday practice, come to be perceived as engaging in misconduct. We argue that it is helpful to understand misconduct through the analysis of key professional boundaries and we provide case vignettes of important contemporary judgments of professional misconduct in international tax systems.

Keywords: Professionals, Misconduct, Boundaries, International Taxation.

INTRODUCTION

The role played by tax professionals in enabling – and disabling – international tax avoidance and evasion has received unprecedented scrutiny in recent years. Large-scale revelations about actions by tax professionals, such as those exposed in the Panama Papers and the Paradise Papers, as well as critical public inquiries by government authorities, such as the Public Accounts Committee, have fuelled public interest and heightened the political salience of professional misconduct. In the international tax environment, where multiple logics from overlapping social and legal systems meet, there is ample scope for action by professional experts with experience in accounting, financial, legal, and regulatory systems. There is also scope for judgments of misconduct by social control agents, i.e. actors representing a group with the ability to impose sanctions – such as the state enforcing or changing regulations, a professional association finding ethical breaches, or the media imposing reputational sanctions (Greve, Palmer, & Pozner, 2010). These judgments are hugely consequential. They foster enforcement action, and political initiative, as governments target the "enablers" of criticised tax planning (De Widt, Mulligan, & Oats, 2016; Oei & Ring, 2018)[3]. They may challenge norms, as the boundaries between acceptable and unacceptable are reconfigured (Berg & Davidson, 2017; Dallyn, 2016; Gracia & Oats, 2012). They also challenge the ethical environment of professional work (Frecknall-Hughes, Moizer, Doyle, & Summers, 2016), potentially damaging trust in the profession itself.

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[3] E.g. http://www.oecd.org/ctp/administration/oecdtaxintermediariesproject-termsofreference.htm; http://europa.eu/rapid/press-release_IP-18-1841_en.htm; https://www.gov.uk/government/collections/tax-avoidance-enablers.

The contemporary discourse on professional misconduct typically focusses on dynamics at the micro-level, specific to the profession and the organisations under scrutiny. In this paper, we argue that there is a need to systematise our understanding of misconduct in international taxation more broadly, including with regard to its evaluation and social settings. We offer an alternative framework for understanding professional misconduct in international taxation as situated within a macro-meso-micro framework, one that locates misconduct in the context of the international political economy and the social process of evaluation. Existing studies highlight how professional misconduct occurs within established professions, such as deviance from professional values by elite accountants (Suddaby, Gendron, & Lam, 2009), and professionals engaging in behaviour that leads to misconduct or encourages whistleblowing in firms and public organisations (Gangloff, Connelly, & Shook, 2016; Miceli, Near, Rehg, & Van Scotter, 2012). Focussing on international taxation, we suggest that studies of contemporary professional misconduct discussions can be improved by understanding the specific ambiguities that characterise the professional field, and the differing opportunities for engaging in and asserting misconduct within this social context.

As scholars interested in the political economy and sociology of taxation, we understand professional misconduct as behaviours that transgress common normative expectations. Common normative expectations are not given – they are socially constructed and fought over. Where a regulator may see misconduct, a professional body may see perfectly acceptable behaviour. Activities that may be perceived as misconduct may be internalised within practitioners' own conception of 'professional regulation', including their capacity to self-govern behaviour (Robson, Willmott, Cooper & Puxty, 1994). A focus on how normative expectations are contested allows us to focus less on the absolute evaluation of whether an action is "harmful" or "immoral", and more on the social context and battles over what is, and what is not, to be considered misconduct. Assertions of transgression of common normative expectations are often associated with crossing different "boundaries", where the tensions and conflicts between different social systems are most pronounced, and the opportunities for, and struggles over, professional misconduct are most prevalent. Following recent work by Daniel Muzio and colleagues, we emphasise three such boundaries: i) *jurisdictional* boundaries that disrupt professional jurisdictions and separate professional norms systems; ii) *geo-political* boundaries that allow legal and normative arbitrage; and iii) *ecological* boundaries, which distinguish the context of, and influences on, professional work, such as coercive relations with clients (Muzio, Faulconbridge, Gabbioneta, & Greenwood, 2016).

International taxation is a particularly complex social setting, spanning national, social and professional norms, rules and institutions, making professional misconduct difficult to evaluate. Here, we define international taxation as nation states' taxation of income earned through the utilisation of internationally mobile production factors. Professionals here may be lawyers, accountants or economists, and so on, or combinations thereof, who are engaged, in one way or another, in professional tax practice. The boundaries of international taxation offer space for these professionals to behave as "lords of the dance" (Scott, 2008) in establishing best practices, including the permissible scope for misconduct. It is these tax professionals who do the heavy lifting of "institutional work", strategically leveraging multiple logics from different professional systems (Currie, Lockett, Finn, Martin, & Waring, 2012; Lawrence, Suddaby, & Leca, 2009; Suddaby, & Viale, 2011). In doing so, tax professionals may engage in "epistemic arbitrage", exploiting different pools of professional knowledge to create and exploit information asymmetries (Seabrooke, 2014), or act as "double agents" in representing transnational interests while playing off their embeddedness in domestic institutions (Dezalay & Garth, 2016).

Given that behaviour in the complex systems of international taxation crosses different national, professional, and legal systems, we need a way to differentiate different types of misconduct, their social settings, and evaluations. The stakes of defining what is right and wrong in tax practice are very high indeed (Christians, 2017). Differentiation is required to deepen our understanding of how misconduct by tax professionals is judged and perpetuated. Misconduct can be investigated in two ways. The first is as discrete acts in which actors seek to gain a benefit and assess their risk in "getting caught". The second is misconduct built upon a power structure in which benefitting from others' actions that may be labelled misconduct is naturalised or unquestioned (Goodin & Pasternak, 2016). Both types are important in terms of how professional misconduct occurs within international tax systems, either as discrete actions to "get away with it" or as choices made knowing that the system is weighed in your favour. These are dynamics that have, in particular, been investigated in the context of Global Professional Service Firms (GPSFs) (Boussebaa, 2009; Boussebaa, Morgan, & Sturdy, 2012; Suddaby & Greenwood, 2001). Furthermore, setting misconduct in the context of the differing roles played by tax professionals in international tax systems permits insights into the relationships between micro, meso, and macro elements, thus answering recent calls in the organisations and professions literature for studies which integrate different levels of analysis (Currie, Finn, & Martin, 2008; Marchington, Grimshaw, Rubery, & Willmott, 2004). Our discussion contributes to this literature.

This article makes two central contributions. First, we discuss the specific characteristics of international taxation as a complex system. This allow us to identify the particularities of the professional field and the differing opportunities that its social contexts offer for professional misconduct, as well as how these opportunities are judged by different social control agents. Second, we present a framework that we apply to systematise enquiry into professional misconduct in the field of international taxation. In what follows, we first discuss the ambiguities of international taxation. We then discuss the nature and evaluation of professional misconduct, conceptualising misconduct as "boundary transgressions" that involve *jurisdictional*, *geo-political*, and *ecological* borders. Case vignettes of misconduct discussions involving the three borders are provided. Finally, we reflect on the opportunities that our discussion provides for future research into professional misconduct in international taxation.

THE AMBIGUITIES OF INTERNATIONAL TAXATION

As the cornerstone of the modern nation state, taxation touches upon what could be considered to be a vast range of actors in a vast range of economic, social, cultural, and political contexts, and brings conflict amongst interests across society (Goldscheid, Schumpeter, & Hickel, 1976; Tilly, 1992). Yet, despite its importance and reputation as something truly inevitable – something which is encapsulated in the quote often attributed to Benjamin Franklin ("nothing can be said to be certain, except death and taxes") – taxation is also a highly ambiguous field. In many respects, it is marked by a high level of complexity and entanglement with other domains of social life. Tax rules are not always definitive, but rather, as Gracia and Oats suggest, "fuzzy and open to interpretation" (2012, p. 308).

At the international level – where individual states tax income earned from international factors of production – the social setting is marked by multiple logics from different states, different professional communities, and different legal systems. Historically, taxation was significantly premised on the absence of such complexity or fuzziness, assuming that taxable events either "fall within a national tax jurisdiction, and are therefore liable to national tax, or they fall within the jurisdiction of some other state, and are therefore liable to tax there" (Genschel, 2005, p.

60). Yet the growth of multinational commerce and global corporations, alongside technological and economic globalisation, has contributed to the "transnationalisation" of taxation. While the attribution of tax liabilities and credits ultimately rests at the national level, taxation is, in multiple significant respects, an *inter*- or *trans*-national matter.

Politically, this means that international fora, such as the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), play significant roles in setting and controlling tax regulations at a national level (Eccleston, 2013; Genschel & Jachtenfuchs, 2011; Rixen, 2008). Organisationally, global corporates and advisory firms – in which a substantial proportion of international tax professionals are employed – increasingly instil and embed practices that entangle or outright depart from traditional national cultures through transnational training, interaction, and socialisation (Faulconbridge & Muzio, 2012; Morgan, Kristensen, & Whitley, 2001). Within professional employers and policymaking organisations, the professional division of labour today often has international taxation as a specialised domain, separate from national taxation practices (Picciotto, 1992; Suddaby, Cooper, & Greenwood, 2007). In this regard, scholars have increasingly identified a distinct *trans*national professional community, which is concerned with international taxation and has its own logics and norms (Genschel & Rixen, 2015; Hearson, 2018; Christensen, 2020). In some parts of this transnational tax community, such as wealth management, the shared social understandings are centrally based on an outright departure from national norms and institutions by "freeing its clients from state authority" (Harrington, 2016, p. 247).

Picciotto (1992, 2015) characterises the unique international tax space as fundamentally indeterminate due to its complexity. This complexity arises because of its historically specific foundation principles of "ad hoc" decision-making and its distinct (legalistic) language. These practical ambiguities are exacerbated by a highly complex global policy system (Araki, 2016). This indeterminacy, as Sharman (2010) argues, has enabled the growth of a vast range of international tax planning services and tax havens, together with "the offshore world" in international taxation, through the strategic pursuit of "calculated ambiguity" – "the ability to give diametrically opposed but legally valid answers when responding to the same question from different audiences" (p. 2).

These ambiguities give rise to important considerations about misconduct. However, the international tax space is not equally ambiguous in all its facets and action is evaluated in different ways by different stakeholders. Even in the context of ambiguity, there has been significant international cooperation attempting to provide greater clarity on tax rules, to the extent that we can meaningfully talk about taxation as a key policy area in global economic governance (Christensen & Hearson, 2019). Thus, it is important that we identify and conceptualise the core ambiguities as they relate to professional misconduct, and we will focus on this in the remainder of the paper. First, we contend that the *context* of ambiguity is one core feature. Most existing studies emphasise the "ethical" responsibilities of tax professionals in relation to profession-specific standards of behaviour, rarely considering the broader societal imperatives or settings in which misconduct might be judged (Frecknall-Hughes et al., 2016). We emphasise a broader perspective, as popular attention to the actions of tax professionals in recent years has re-emphasised the difficult questions that arise in reconciling the ethics of international tax practice and the broader societal evaluations of morality (Hansen, Crosser, & Laufer, 1992; Mehafdi, 2000). For instance, recent discussions have highlighted how individuals and firms, advised by tax professionals and taking advantage of the opportunities for arbitrage that they themselves perceive as unproblematic, may be directly undermining national democratic sovereignty (Dietsch, 2015; Harrington, 2016).

The context of ambiguity also relates to the type of professional activity being undertaken. Tax professionals engage in different tasks, the particular nature of which makes them more or less exposed to ambiguity and perceived misconduct opportunities. In general, we can distinguish between "tax compliance" and "tax planning/avoidance" work (Frecknall-Hughes & Moizer, 2015). The former's aim is to ensure compliance with tax rules and regulations through basic tax assessments and reporting, while the latter's is to minimise tax liabilities. In addition, tax professionals perform a variety of "background" services including research, examining legislation, and supporting implementation and defence of tax positions. There is undoubtedly ambiguity related to tax compliance work – for example, questions like "is a new chimney on a building a new capital item or a repair?" or uncertainties around "the figures to be entered in the tax returns (…) (e.g. determining the value of private company shares or real estate)" (Frecknall-Hughes et al., 2016, p. 5). However, ambiguities and risks of misconduct perceptions arguably are most substantial in relation to tax planning/avoidance work, when tax professionals engage in aggressive structuring of transactions or risky interpretations of existing legislation. In this respect, Quentin (2014) argues that tax avoidance typically encompasses filing positions that are weaker or "riskier" in terms of their likelihood of success if challenged by a tax authority.

Second, it is clear that opinions about professional misconduct and potentially unethical or immoral behaviour in international taxation are massively divided and fought over. These differences of opinion inevitably relate to the point of view from which stakeholders evaluate potential misconduct in international taxation. Greve and colleagues conceptualise these stakeholders as "social control agents" with different resources, who will try to impose or resist sanctions – financial, reputational, or otherwise – on professionals perceived to be misbehaving (Greve et al., 2010). Social control agents will "draw the line" on what is and is not professional misconduct, acting as what Abbott calls "audiences", which ratify professional action (Abbott, 2005). These actors can be professional bodies that define and enforce codes of ethics, governments that formally regulate professional conduct, or media outlets and social movements that frame interpretations of professional action and impose reputational costs. What a professional body views as "ethical" and accepted professional practice, regulators or newspaper editors may view as clear instances of morally unacceptable misconduct. Where there are conflicts over professional (mis-)conduct by different stakeholders, social control agents who are successful in asserting their favoured interpretations may be able to translate their victories into (non-)action by enforcement agencies.

In international taxation, Hasseldine et al. (2011) conceptualise the key agents as operating in a "knowledge market" model involving sellers, brokers, buyers, and external "influences". In this setting, tax advisors span the boundary between authorities and taxpayers. Operating as knowledge brokers or gatekeepers, they scope out a unique knowledge and economic proposition by "translating" institutional changes from the sellers – in terms of changes to regulation, and to administrative practices and norms, as well as organisational changes. In such a position, advisors are concerned with strategic demands that may be mutually exclusive, such as meeting client demands, entrenching their own unique knowledge position, abiding with legal compliance, and so forth (Wurth & Braithwaite, 2016).

Tax authorities, in contrast, may be principally concerned with enforcing legislation with underlying political objectives, such as raising revenues (Ganghof & Eccleston, 2004), or avoiding tax issues that will highlight sociocultural problems (Björklund Larsen, 2017). Often those scripting tax policies will present them as technocratic fixes to revenue concerns which are ostensibly politically neutral, especially at the international level (Kentikelenis &

Seabrooke, 2017). In turn, external influencers such as civil society advocates and the media, may emphasise wide-ranging moral obligations of tax practitioners and authorities to politically charge debates, in order to try to constrain particular forms of tax planning (Berg & Davidson, 2017; Seabrooke & Wigan, 2015, 2016). Tax professionals certainly perceive these moral pressures as challenges to their practices, spurring reflective and pragmatic repositioning (Radcliffe, Spence, Stein, & Wilkinson, 2018).

Given the nuances in identifying and analysing professional misconduct in international taxation, we cannot take instances of alleged misconduct for granted. Rather, the existence and nature of misconduct becomes an empirical question concerned with the context and social process that constructs what is and what is not misconduct, and what is to be done about it (Greve et al., 2010, p. 56). To systematise this enquiry in accordance with our key dimensions, we conceptualise professional misconduct as "boundary transgressions" (Muzio et al., 2016).

MISCONDUCT AS BOUNDARY TRANSGRESSION

What constitutes professional misconduct by tax professionals? As noted, we define professional misconduct as behaviours that transgress common normative expectations, as fought over by social control agents. Muzio et al. (2016) outline a perspective emphasising the boundaries that shape these common normative expectations and provide opportunities for (struggles over) misconduct. This is a useful conceptualisation for analysing professional misconduct in international taxation, as it highlights the social and professional context of, and battles over, misconduct. Professional boundaries are continually shifting and are negotiated through inter- and intra-professional dynamics (Abbott, 1988, 2005; Liu, 2015). This gives rise to ambiguities and struggles which, in turn, give rise to perceptions and assertions of misconduct. In particular, Muzio and colleagues highlight three central types of boundaries: *jurisdictional*, *geo-political*, and *ecological*.

First is misconduct associated with *jurisdictional* boundaries. *Jurisdictional* boundaries define the distinctive control over a domain of work that each profession enjoys. Think of the conventional division of labour between tax accountants doing tax reporting and tax lawyers doing judicial defence. In cases where the boundaries of jurisdictions come under heated challenge, claims of misconduct may be evoked. For instance, social control agents may claim misconduct in cases of rapid expansions of professional jurisdictions where there is a perceived divergence from established professional norms. Such divergence from traditional professional ethics has been discussed in the context of GPFSs (Suddaby, Gendron, & Lam, 2009). For instance, observers have identified such misconduct when Parmalat's tax and accounting advisers institutionalised an accepted practice of strategically inflating earnings and concealing debts shortly before the company crashed (Gabbioneta, Greenwood, Mazzola, & Minoja, 2013). The intra-organisational professional community involved had defined its practices as legitimate. However, once these practices had been exposed to the public and powerful enforcement agencies, the labels of illegitimacy and misconduct were asserted. Conflicts of interest may also invite divergence from established professional norms when professional services firms leverage audit work for large corporate clients in order to gain more expansive consulting work (Sikka & Willmott, 1995).

Second is misconduct associated with *geo-political* boundaries. *Geo-political* boundaries define the borders between social systems that inevitably arise when operating in cross-border, multi-jurisdictional settings. This includes different national tax regulations, but also cultural systems and professional norms. Here, social control agents may claim misconduct in cases

where tax professionals arbitrage between these differing social systems, or when they are unable or unwilling to meet differing ethical demands. Consider the USA's 2010 introduction of the Foreign Accounts Tax Compliance Act (FATCA), a heavily sanctioned requirement for all financial institutions on the American market to report information on US citizens' foreign accountants (Palan & Wigan, 2014). These requirements conflicted with long-standing professional norms of confidentiality in Switzerland and other places (Muzio et al., 2016, pp. 14-15). The tax professionals under scrutiny could not meet the expectations on large global "acceptable conduct" of both US regulators, Swiss lawmakers, and clients. In other words, the ambiguity of contradictory norms associated with geo-political borders created an irresolvable professional dilemma, potentially giving rise to claims of misconduct whichever course of action was chosen.

Third is misconduct associated with *ecological* boundaries. *Ecological* boundaries define the borders between the profession itself and its "audience", such as clients, investors and politicians (Abbott, 2005). These audiences, functioning as social control agents with possible means of sanctions, may claim misconduct in cases where tax professionals "trespass" onto the domain of those audiences, or allow outsiders to influence established conventions in the profession. A classic dilemma in tax practice is how to balance serving the broader demands of society and the specific requests of the client (Doyle, Hughes, & Summers, 2013; Frecknall-Hughes et al., 2016; Sikka, 2010). As Field (2017) asks, "Can a tax planner be both ethical and aggressive?". The resolution of such dilemmas may attract criticism when tax advisors engage in "client capture", favouring clients' commercial interests over the public interest and professional norms (Dinovitzer, Gunz, & Gunz, 2014; Leicht & Fennell, 2001).

MAPPING PROFESSIONAL MISCONDUCT ACROSS BOUNDARIES

In this section, we illustrate the value of the "boundary transgressions" framework by analysing the ambiguities of international taxation and the resulting scope of judgments of professional misconduct. We zoom in on three short case vignettes, each one emphasising conflict around a particular type of misconduct.

Global Professional Services and Jurisdictional Misconduct

The rise of GPSFs illustrates the potential for professional misconduct and struggles over its judgment around *jurisdictional* boundaries. In the international tax spaces, global professional services have emerged as a sophisticated tax and audit advisory service, often involving the management of uncertainties and risks that span multiple professional areas, including tax, finance, and law. GPSFs are not merely coalitions of distinct embedded professional groups; the core of their multi-disciplinary practice is the development of company-specific, cross-cutting resources and cultures (Greenwood & Suddaby, 2006). This allows GPSF professionals to dominate international tax service markets, supporting global corporations and individuals in more or less aggressive tax planning, and the management of the regulatory impacts of investment and location decisions using resources that span multiple professional jurisdictions. They also contribute to redefining the core ethics of the professional groups that make up GPSFs, as company-specific cultures oriented towards commercial values may come to dominate and supplant traditional professional ethics (Suddaby et al., 2009).

The activities of some GPSF professionals exemplify behaviour that has become contested as potential misconduct. Global tax professionals representing GPSFs are involved in the everyday practice of tax and audit services, as well as being involved in the shaping of the

institutional and regulatory context of those services (Boussebaa & Faulconbridge, 2019; Picciotto, 2015). At the practice level, GPSFs may be perceived as engaging in jurisdictional "deviance" by exploiting tax-regulatory blind spots, as with the design and spread of the (in)famous "Double Dutch Irish Sandwich" corporate tax structure, for example (Drucker, 2013). This structure was utilised by Apple and others, which created an effectively "stateless" income stream (Seabrooke & Wigan, 2017; Ting, 2014). Media revelations about the structure opened the door to significant arguments about the misconduct of Apple and its tax advisors. Apple, and indeed the Irish government, asserted that global tax planning was perfectly legitimate, the company noting that it conducted its business with "the highest of ethical standards, complying with applicable laws and accounting rules" (Duhigg & Kocieniewski, 2012).

In contrast, various social control agents perceived the behaviour as constituting misconduct. Regulators in the US, Australia, and Europe were notably critical, summoning Apple to defend its actions (Chee, 2018; Schwartz & Chen, 2013; Wade, 2015). While such financial arrangements may be legal and accepted within a particular professional community, the professional exploitation of mismatches was widely seen to deviate from common normative expectations. As noted by the OECD, revelations about Apple and other corporations "encouraged a perception that the domestic and international rules on the taxation of cross-border profits are now broken and that taxes are only paid by the naïve" (OECD, 2013, p. 13). These popular perceptions, divergent from many practitioners' views, were highly influential in policy circles, partly due to forceful civil society activism (Seabrooke & Wigan, 2016). The consequences were tangible. As a direct result of the Apple exposures, regulations were changed (Ireland opted to phase out the possibility of using the "Irish Sandwich" structure), Apple announced that it would restructure its global tax affairs and, furthermore, the European Commission decided that Apple had received €13bn in undue state aid. There may also have been other direct financial costs; in other contexts, the reputational hits from revelations of aggressive corporate tax planning have contributed to a shifting of the costs associated with tax planning for large global corporations (Dyreng, Hoopes, & Wilde, 2016).

Wealth Management and Geo-Political Misconduct

The case of global wealth managers illustrates a prominent recent conflict revolving around *geo-political* boundaries. The industry offers an important contemporary example of professional misconduct judgments in the international tax context. The offerings of wealth managers are highly specialised, providing uniquely tailored solutions and relationships, affordable only for the ultra-wealthy (Harrington, 2016). They are personal stewards of client wealth, helping to manage its accumulation, protection (including from tax and other interventions), and passage within and across family generations (Santos, 2020). The services that wealth managers provide have a high level of complexity, typically spanning decades if not lifetimes, and require and provide a substantial degree of the freedom for them when planning the fortunes. Often, wealth managers will take legal control over fortunes through trusteeships in trust structures. These close relationships between wealth managers and clients are, importantly, distanced from potential regulators and other stakeholders, who have little knowledge of and access to the intricate activity within and across trusts, foundations, and other closed systems. These services allow wealthy individuals to benefit from tax-minimised income from their wealth (which legally becomes "owned" by the trustee) in offshore locations (Rawlings, 2004, 2005, 2011).

While wealth managers typically stay within the letter of the law, a core element of their practice remains international legal arbitrage, which has become contested as misconduct across geopolitical boundaries. The professionals providing wealth management services draw on their ability to master finance, law, tax, property rights, and testamentary regulation, across nation states, in order to identify and manage structures to protect client wealth. This may entail exploiting mismatches in national fiscal and financial systems; for instance, by taking advantage of the "commercialized sovereignty" of offshore locations at the expense of onshore public regulation (Palan, 2002). These practices create tensions between the expectations of outsider stakeholders, such as "onshore" politicians and the media, and "insider" stakeholders. Harrington describes how wealth managers distinguish themselves by playing "cat and mouse" with governments and regulators across multiple nation states, practices understood by the profession itself and its association as being generally acceptable and unproblematic (Harrington, 2016, pp. 233-270).

In contrast, outsiders have constructed wealth management practices as misconduct and the profession has been met with widespread political condemnation in recent years. Following the release of Harrington's (2016) investigative study and recent years' large-scale leaks from wealth management firms, in particular, popular attention has been directed at the professions' activities. There has been a significant backlash. Popular momentum has been carried by a popular perception that specific wealth management activities, notably those performed for high-profile clients, were dubious and problematic (Osborne, 2017). This has resulted in new regulatory action (including a rapid expansion of cross-border exchange of tax information), additional tax enforcement through aggressive auditing by tax authorities, and renewed political calls for the publication of corporate and asset ownership details across the globe (Oei & Ring, 2018). As Oei and Ring (2018) highlight, these perceptions of misconduct entail significant risks in respect of agenda capture and disproportionate action (to the detriment of the professionals in question), but have also enabled previously hidden information to flow, created impetus for reform, and could be helpful in restoring distributional skews (pp. 575-581).

Shell Companies and Ecological Misconduct

Shell companies are simple and typically inexpensive corporate structures that have become increasingly scrutinised in recent years, and discursively associated with *ecological* misconduct. They fall into a range of different legal categories but, at heart, a shell company is an entity with few or no activities or assets. Shell companies are simple products, easy to manage, and may provide a substantial level of secrecy that helps to insulate clients from regulatory liability. To be clear, shell companies often, in essence, do nothing, and most jurisdictions have had legislation and administrative practices in place to pursue fraud associated with shell companies for years. Yet, as Findley and colleagues found, the enforcement of national and international standards for anti-money laundering and transparency associated with shell companies varies greatly around the globe, with some of the laxest enforcement found in the United States and the United Kingdom, enabling these companies to be used for tax avoidance and evasion (Findley, Nelson, & Sharman, 2014). Through the 2000s, shell companies became oft-used vehicles of opacity and secrecy, with authorities too often unable to obtain relevant information and enforce their proper use.

The ease with which shell companies can be established and exploited has led to their involvement in a number of high-profile international scandals, notably in connection with the circumvention of international tax rules, but also in relation to international arms treaties,

money laundering, and corruption (Van der Does de Willebois, Halter, Harrison, Park, & Sharman, 2011). The highly publicised Panama Papers scandal raised newfound questions about the fraudulent use of shell companies by tax professionals operating internationally (Harding, 2016). These cases underscore how the use of shell companies can come to be perceived as misconduct associated with *ecological* boundaries. In particular, the use of shell companies can create tensions between the interests of governments and societies, and those of clients interested in exploiting them for personal gain.

In functioning as intermediaries operating between clients and regulators, professionals working for Corporate Service Providers (CSPs) maintain the most immediate responsibility for ensuring compliance with "know your customer" rules. However, in a global survey of compliance, almost half of CSP professionals did not require the identification for establishing shell companies required by the OECD standards, which were set largely by Global North governments (Findley, Nelson, & Sharman, 2014). Professionals on the regulator side tasked with overseeing compliance also contributed to lax enforcement. As the Panama Papers revealed, professionals on both the practice and regulatory sides had "insufficiently" enforced existing legislation mandating the collection of ownership information, to the benefit of clients seeking refuge from the prying eyes of governments. Underlying these trends is the ramp-up of compliance requirements for financial institutions itself. Namely, new requirements have led to the increasing professionalisation of compliance officers with their own distinct understandings of misconduct (Tsingou, 2018). Such widespread acceptance of a particular practice indicates a normalisation amongst certain professional communities of a client-first interest (Anderson-Gough, Grey, & Robson, 2000).

In contrast, these normalised practices have begun to attract serious negative scrutiny by outsiders. Perceived misconduct has prompted whistle-blowers to leak massive sets of insider documents, fuelling highly critical global media coverage and political backlash (such as the Panama Papers, Paradise Papers, and the "Offshore Leaks"). Whistle-blowers are typically associated with a public service motivation (Caillier, 2017), which can be understood here as an expression of dissatisfaction, from a broader societal interest perspective, with "deviant" practices by professionals. The leaks have generated significant issue salience in an allowing post-crisis political climate, providing unprecedented insights into previously largely secretive practices. The focus of critical outsiders' framing has been about societal fairness and expected contributions to government revenues. These framings have been successful in fostering substantial political scrutiny and counter-action to bring professionals in line with the expectations of critical "onshore" stakeholders (Dover, 2016).

CONCLUSION

This article provides a framework for understanding the relationships between professional misconduct and international taxation. We have highlighted how viewing misconduct via a "boundary transgressions" perspective (Muzio et al., 2016) is useful in highlighting the social context and battles over what is, and what is not, to be considered misconduct in relation to international taxation. This allows an analysis that integrates types of professional actions and distinct forms of misconduct, locating them with examples from the international political economy. Our case vignettes show the value of considering the dynamics of professional misconduct not only at the micro-level but also within these meso and macro system contexts. The approach presented here provides a number of opportunities for informing future research on professional misconduct in international taxation and beyond, across disciplines. First, given the importance of professionals in complex international systems of finance and taxation, it is

imperative to link the analysis of micro-level behaviour to the social contexts that enable or perpetuate misconduct. The framework offered here permits new research questions on the micro-macro interplay by deepening our understanding of the dynamics of misconduct across these different contexts. Second, the framework contributes to the literature on professions and organisations by fostering an understanding of relational dynamics among professionals. Spence et al. (2015) have drawn on the work of Pierre Bourdieu to examine how cultural and social forms of capital, such as class background or developed networking skills, are converted to economic capital in the form of service fees in GPSFs. Previous research has also shown that leading professionals continually signal to each other what practices are reputable (Mazzola, Ravasi, & Gabbioneta, 2006). We know that misconduct is an intersubjective phenomenon and it is useful to understand where different evaluations of misconduct come from and how they are contested.

Third, and finally, our framework aligns with the "Global Wealth Chains" literature in International Political Economy scholarship, seeking to understand how "firms, groups, and individuals engage in innovative forms of multi-jurisdictional wealth creation and protection" (Seabrooke & Wigan, 2017, p. 22). This emerging literature seeks to integrate lessons from law, accounting, finance, sociology, and political economy to study how wealth chains are articulated to create and protect wealth in ways that often flummox regulators. A range of cases with direct tax implications have already been explored, including mining, art, personal trusts, and many others (Finér & Ylönen, 2017; Helgadóttir, 2020; Quentin, 2020; Sharman, 2016). The macro-level impacts of evaluations of professional misconduct in wealth chains are substantial, enabling and constraining the actions of professionals, as well as the games played by states and firms in seeking wealth creation in the world economy. In sum, our framework asks us to reflect on how professional misconduct is contextualised and constructed in international taxation, and what socio-economic and political networks and legacies it rests upon.

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THE ROLE OF INCOME TAX IN THE GENESIS OF THE TAX PROFESSION

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Abstract

This paper has two main aims: first, to show how and why, from a functionalist perspective, income tax, especially after 1842, contributed to the development of the accounting profession; and, second, to show how, by this, the seeds of a specialist tax profession were sown. It examines the nature of the legal and commercial difficulties associated with income tax as revealed by the academic literature, then goes on to use newspaper and other press reports and articles to show how accountants were involved in helping to resolve such difficulties on a day-to-day basis. It does this for a key period of development for both income tax and the accounting profession: between 1798 and 1900. The examination of press materials reveals that accountants' involvement in income tax not only helped towards the development of the profession, but, arguably, drove the development of accounting principles and sowed the seeds for a more specialist tax profession to emerge.

Keywords: Income Tax, Accounting Profession Development, Tax Profession Development, Newspaper Reports/Articles.

INTRODUCTION

The introduction of income tax is listed by Parker (1986) as one of the founding influences in the development of the accounting profession in nineteenth century Britain, along with "the growth of large-scale organizations, and in particular, the railways; the development of the limited liability company; [and] the high rate of insolvencies" (p. 5). As he comments (1986), in a world where there had been predominantly only small owner-managed businesses and no income tax was applicable to commercial profits, there was "little demand for outside accounting services" (p. 4). Parker (1986) also comments that "British accountants have seldom been slow to offer new services as a demand arises" (p. 42),[2] suggesting that their early involvement in bankruptcy work meant that they gained knowledge of how to deal with statute and case law that was easily transferable to tax, along with the skills "to apply the law to particular problems and to express the results in figures" (p. 41). Lawyers, as an older established profession, lacked the same incentive to pursue new work opportunities and were often not numerate (ibid). Parker (1986) points out that the "first standard text" (p. 7) was published by accountants in 1895, later identifying this (p. 40) as *A Guide to Income Tax Practice* by A. Murray and R. N. Carter (London, England: Gee and Company Ltd), although as this paper later reports, there does appear to have been an earlier, more specialist work, likewise written by an accountant. Lamb (2001) also draws attention to this issue, citing Macve's (1994) view that tax and accounting conventions interacted to make the concept of

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[2] An exception was cost accounting, as it was aligned with trade rather than public practice (Parker, 1986, p. 42). This trend continued into more modern times. For example, Dezalay (1991) comments that, in the twentieth century, lawyers did not take on tax law consultancy work in Europe, although it fell theoretically into the legal domain, and as a consequence, it "was progressively appropriated by accountancy firms" (p. 795).

income tax workable practically, and noting that tax influence has been considered as (i) a "cause of accounting theories and source of calculative technique"; (ii) a "negative influence on the development of commercial accounting practices"; and (iii) a "body of law or practice that was (essentially) separate from accounting" (Lamb, 2001, pp. 275-276).[3] Frecknall-Hughes (2015) has shown that accountants were not slow to colonise the new work domain offered by income tax and that this type of endeavour was regarded as "proper work" for their emerging profession (p. 46). Tellingly, Anderson, Edwards and Chandler (2005) cite the 1894 example of "Mr A. C. W. Rogers, who enquired [of the Institute of Chartered Accountants in England and Wales (ICAEW)] whether he could add the words 'Income Tax Adjustment Agency' to his sign" as a chartered accountant (p. 43). The ICAEW denied the request, as it did not think agency was a fitting work concept for an accountant, but was happy with the idea of income tax.

This colonisation by accountants of the income tax domain as part of their "proper work" was what Abbott (1988) refers to as an expansion of "cognitive dominion by using abstract knowledge to annex new areas, to define them as their own proper work" (p. 102) and plays a crucial role in the development of a profession. Abbott (1981) actually suggests, as a working definition of a profession[4], that it is "an exclusive occupational group marketing a specialized skill based in some way on esoteric knowledge" (p. 820). There seems to be a common acceptance that knowledge and skill play important roles in all professions, even if that acceptance is inherent (Morris, Crawford, Hodgson, Shepherd, & Thomas 2006; Saks, 2012). Abbott later goes on to say that the occupational group applies "somewhat abstract knowledge to particular cases" (1988, p. 20) and that "[f]rom time to time, tasks are created, abolished, or reshaped by external forces, with consequent jostling and readjustment within the system of the professions" (1988, p. 33). Much has been written on the development of professions and reference to what (incipient) professionals actually do in their day-to-day jobs is important from the functionalist perspective of a profession. The functionalist perspective is of particular relevance for this article, as it "attends to professions as integrated communities whose members undertake highly skilled tasks that are crucial for the integration and smooth operation of society" (Willmott, 1986, p. 557).[5] However, the importance of, and interaction between, the legal, economic, and political environments as the context for professional development must not be ignored (Maltby, 1999; Stacey, 1954; Walker, 1995; West, 1996; Willmott 1986).

[3] See footnote 6, citing variously, Napier (1996), Watts and Zimmerman (1979), and Edwards (1976, 1989).

[4] Providing a definition of a profession capable of universal acceptance is an impossible task, and to attempt to do so is "to invite controversy" (Cogan, 1955, p. 104). Abbott (1981) commented that, were he to begin with defining the concept of a 'profession', "it would keep us from ever reaching the matter of interest" (p. 820). Many would contend that it is pointless to try to define a profession (Johnson, 1972, cited in Saks, 2012, who points to Sciulli, 2010, and Brante, 2011, as notable exceptions).

[5] Willmott (1986) discusses three perspectives on professional development: critical, functional, and interactionist. The critical perspective sees the "emergence of professional bodies … as a means of achieving collective social mobility by securing control over a niche within the market for skilled labour", and is a "strategy for controlling an occupation, involving solidarity and closure, which regulates the supply of professional workers to the market", also allowing a basis for domination of other bodies and associations operating in the same or a similar work domain (Willmott, 1986, p. 558). Interactionism, on the other hand, looks at professions "as interest groups that strive to convince others of the legitimacy of their claim to professional recognition" (Willmott, 1986, p. 557). Willmott (1986) goes on to suggest that "before the early 1970's 'functionalist' and 'interactionist' perspectives were dominant", but since then a "more critical approach has developed which draws heavily upon the work of Weber and Marx" (p. 557). As has been argued elsewhere (see Frecknall-Hughes, 2016), it is feasible to look at these perspectives as "successive phases in professional development. For example, striving to claim professional status and recognition (interactionism) might be followed by a critical and then a functional phase or, indeed, they might be synchronous" (Frecknall-Hughes, 2016, p. 134).

The purpose of this paper is twofold. It aims: (i) to examine how and why, from a functionalist perspective, income tax, especially after 1842, contributed to the development of the accounting profession, by reference to the legal and commercial environments prevailing at the time; and (ii) to show how, by this, the seeds of a specialist tax profession were sown. The remainder of the paper is structured as follows. The next section considers the introduction and development of income tax, and is followed by sections detailing contemporary legal and commercial issues which have been identified in academic literature as driving the need for professional help. A discussion of the methods used to obtain data (contemporary press materials) then follows and, afterwards, an exploration of the data obtained to address the purposes of the paper is provided. The final section offers concluding remarks.

BACKGROUND

The UK income tax was introduced in 1799 to fund war with Napoleonic France. It was repealed in 1802 but reintroduced by Addington in 1803, amended considerably in 1806, repealed again in 1816, and introduced once more in 1842, with the 1842 reintroduction mirroring the 1806 legislation (see, for example, Seligman [1921] for an extensive discussion of the tax's development). After 1842, income tax remained as a permanent tax, although it was nominally classed as temporary and had to be reimposed every year. The 1842 reintroduction by Sir Robert Peel was to help government finances through a period of difficulty following reforms of indirect taxes and Gladstone had originally intended to abolish it in 1860, as indicated in his 1853 Budget. However, after the Crimean War (1853-56), it became clear that income tax would not be abolished. The justification for its retention (Daunton, 2001, p. 167; Sabine, 1966, p. 90) was the abolition of the excise on paper and the import tariffs that remained in force at the time (Stebbings, 2009; St John, 2010, p. 96). Gladstone was, however, still calling for the abolition of income tax in 1874 (Sabine, 1966, p. 116).

The UK had been accustomed to a wide variety of different taxes up until 1799, both direct – on carriages and riding horses, on land, and on windows – and indirect – customs duties on imports (tea, rum, wine, tobacco, and raw silk); excise duties on goods produced domestically (coal, candles, salt, beer, malt, and printed cloth); and stamp duties (on newspapers, bills of exchange and fire insurance). There were also death duties – probate, legacy, and succession duties, and settlement estate duty (see Lamb, 1997, p. 196; O'Brien, 1988, pp. 9-10). Lamb (1997, p. 196) also comments that there had been many experimental taxes by the late eighteenth century, including taxes on certain kinds of income, such as the *aide* of 1692, which taxed "*inter alia*, income from certain non-mili[t]ary office and income from merchandise and goods". The idea, at least, of tax on income was not new, with Sabine (1966) seeing it as "a gradual development" of "the theory and practice" of the past (p. 25). The basic problem with taxing income, however, was that income was seldom visible or recorded and, in the case of business profit, was not easily calculated (see later). Property that was visible and immovable was thus easier to tax – and some of it (such as land, windows, houses, carriages, horses, etc.) was, indeed, a reasonable proxy for determining who was wealthy and therefore able to pay: expense and/or consumption were thus taxed because of these visibility and calculation problems. As Adam Smith commented (1904/1776), "[t]he state not knowing how to tax directly and proportionately, the revenue of its subjects, endeavours to tax it indirectly by taxing their expence, which, it is supposed, will in most cases be nearly in proportion to their revenue" (p. 399).

The 1799 tax required a (self-assessment) return of total income, with an applicable tax rate of 10% on income in excess of £200 per annum. Income between £60 and £200 was taxed at a graduated rate, from 0.83% up to 10%; income below £60 was not taxed. Numerous deductions/allowances were permitted for children, annual interest/annuities payable, and life assurance premiums and assessed taxes paid. The Schedules and Cases introduced in 1803 by Addington were designed to compartmentalise tax, so that sources could be kept separate and overall income totals would remain unknown, other than to the taxpayer. Addington also introduced deduction of tax at source, notably on Schedule A rent and Schedule C income. By 1842, the various Schedules and Cases charged tax on: annual produce from land and buildings (Schedule A); farming profits (Schedule B); and annuities payable from public revenues (Schedule C). Schedule D and its Cases dealt with: any income, annual profit/gains not otherwise taxed arising from any trade, manufacture, adventure or concern in the nature of trade; income and/or annual profit/gains from professions, employments or vocations; profits of an uncertain annual value, not charged in Schedule A (rent); interest on securities relating to British dominions, and from overseas (unless assessed under Schedule C); and annual income/profits/gains not falling under the above rules and not charged anywhere else. Schedule E taxed charges on income from certain offices, employments, annuities, and pensions (see Lamb, 1997, p. 207 and pp. 265-266). *The Illustrated London News* (10 May 1842) notes, in an article titled "The Income-Tax, with All Its Most Obnoxious Clauses...", how unpopular Sir Robert Peel's 1842 reintroduction of the tax was, and says that it "will, ere long, be regarded with universal loathing" (p. 10). It was, however, greeted with far less opposition than Pitt's tax, which did not raise the expected amount of revenue and was easily avoided/evaded (see Cousins, 2018).

THE LEGAL AND COMMERCIAL DIFFICULTIES

Legal Difficulties

Given the societal constraints of the late eighteenth and nineteenth centuries, which lacked the instant communication media to which we are nowadays accustomed, making members of the general public aware of new tax obligations represented great challenges. Stebbings (2009) comments:

> The accepted deal was that the primary legislation be sufficiently intelligible to enable [taxpayers] to familiarise themselves with the safeguards the law provided for them and to allow them to invoke them if necessary. They should be able to find out the nature of the charge to tax and whether it applied to their own situation or not. If aggrieved by an assessment or other decision of the tax, they should be able to ascertain whether they had a right of appeal and, if so, how to set about putting it in motion (p. 147).

She comments further that, before the Victorian era, tax legislation was physically "inaccessible to the ordinary taxpayer", although "educated propertied and professional classes" had access to statutes, as "some were published and others privately copied and distributed" (Stebbings, 2009, p. 40). She cites the example of a paper manufacturer in 1835 who wanted to see the (excise) laws which affected his trade, which neither he nor his agent could access or obtain, with the taxpayer eventually having to go to the Record Office "to copy them out" (Stebbings, 2009, p. 148). Much of this continued into the Victorian period (Stebbings, 2009, pp. 146-152) when, in many respects, things just got worse. Copies of statutes, though often incomplete, could be found in libraries and reading rooms, and

newspapers – both national, such as *The Times*, and local – reported on new legislation, carried relevant articles and correspondence, and detailed tax cases.[6] Often, items first appearing in a London newspaper would be repeated or reported in a regional newspaper (see later), which was one way of disseminating important materials. As well as being physically inaccessible, the legislation was intellectually inaccessible, as the whole of the law might not be contained in one particular Act, and provisions were complex, lengthy, illogically ordered, and archaically expressed, and "the intellectual preserve of the lawyers" (Stebbings, 2009, pp. 40-41). These kinds of difficulties were evident too in the kinds of forms the taxpayer needed to file, with Form 11, the return for commercial income in the mid-1800s, "being notorious" in its complexity (Stebbings, 2009, p. 151). As Stebbings (2009) comments:

> And in income tax ... the taxpayers realised the laws were "spread over a vast variety of statutes, extending to several reigns, and [requiring] a great knowledge of the statute book ... to know what the law is".[7] A contemporary commentator observed that "[a]n Englishman is generally satisfied if he is quite clear what is the law, whether he likes the law or not, but now no Englishman is satisfied that he gets quite the right law in income tax matters" (p.152).[8]

Local tax tribunals, in the resolution of disputes, might provide taxpayers with some idea of how tax law worked in theory and practice, although the processes of appeal were often unknown, very difficult, and reliant on formal notices being issued and published – frequently by means of being affixed to church doors (Stebbings, 2009, pp. 157-158) – but even "well-informed commercial men, well into the twentieth century" (Stebbings, 2009, p. 159) remained ignorant and confused about the role, for instance, of the Special Commissioners.[9] The 1874 Customs and Inland Revenue Act introduced a right of appeal by way of case stated, which may have had significant impact (especially as regards depreciation – see later) (Stebbings, 1996, p. 616), but there was no entitlement to legal representation before Commissioners until the Taxes Management Act 1880 (Stebbings, 2009, p. 163), so individuals had to represent themselves, which was often a harrowing experience. Lamb (2001) reports the experiences graphically recorded in her diary by Jane Carlyle, the wife of the writer Thomas Carlyle, who in 1855 attended in her husband's place to appeal before the General Commissioners against an income tax assessment made against him. She frequently refers to one of the Commissioners as "Rhadamanthus".[10] The General Commissioners did hear her, despite her lack of standing – an issue which is clear throughout her account. Tax officials were often very unpopular, regardless of the tax involved. Basil Sabine (1995), himself a tax inspector, described the activities of a tax surveyor[11] called George White (one of his own forebears), citing the complaint of one William Fennell in 1818:

> The villain White called and surveyed my windows and charged me two more than I ever paid. I remonstrated with him. He went away a short time and then returned with the most insulting language, calling me a son of a bitch and threatening he

[6] Stebbings (2009, p. 40) cites the report of Pitt's introduction of income tax in *The Times* on 4, 15, and 20 December 1798; 1, and 9 January 1799; and 15 March 1799.
[7] Citing Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *HCPP* (1862) (370) xii 131, q. 500.
[8] Citing Minutes of Evidence before the Departmental Committee on Income Tax, *HCPP* (1905) (2576) xliv 245, q. 1967, per Arthur Chamberlain JP, representing the Birmingham Chamber of Commerce.
[9] Including Mr Chamberlain, as referred to in the above footnote (see Stebbings, 2009, p. 159, footnote 70).
[10] In Greek mythology, King of Crete and later one of the judges of the dead in Hades.
[11] Tax surveyors were the forerunners of tax inspectors.

> would charge me with three more windows, which causes me to attend two more days upon the Commissioners when the last he put on was taken off (p. 2).

Appearing before Commissioners often meant loss of business. Jane Carlyle comments on seeing tradesmen whom she knew when she appeared on her husband's behalf. Tax officials were meant to be upstanding members of their communities. Mr White clearly was not. He was eventually dismissed himself, for tax evasion.

The above clearly shows that the average member of the public, even if an educated individual, might struggle with dealing with tax obligations. Stebbings (2009) comments:

> Such was the complexity and technicality of tax law and practice that the need for expert advice and assistance was self-evident. There were a number of sources of such advice, namely the clerk or other subordinate officials of the local commissioners, the surveyor, the central board itself, the members of the legal profession and the emerging accounting profession (p. 168).

Poorer individuals might rely more on tax officials, like the assessor, clerk, or surveyor, while wealthier ones would seek advice from their solicitor (Stebbings, 2009, pp. 168-173), but "the wealthier traders and companies made use of accountants both for advice and to negotiate with the surveyor directly and attempt to arrive at some kind of settlement" (Stebbings, 2009, p. 173). Although accountants did not supersede solicitors as tax advisers during the Victorian period, they gradually took on more work, especially commercial work, which ensured that they held a dominant position after World War I (ibid; Wyn Griffith, 1949, pp. 40-41). Frecknall-Hughes's (2015) study, referred to earlier, has likewise shown that accountants were not slow to colonise the new domain offered by commercial tax work (as "proper work" for the developing accountancy profession). If lawyers were still acting as tax advisers during the Victorian period, in which areas were they involved? Given that taxation falls into the "border territory" between law and accountancy (Freedman & Power, 1992, p. 1), one might expect to see evidence of their involvement in tax, but this remains a largely under-researched area. Frecknall-Hughes (2015) notes that lawyers had long been involved in particular kinds of tax work:

> … especially in terms of dealing with death and so on (for example, probate duty had been introduced in 1694, with succession duty and estate duty appearing in the mid- to late 1880s). This was usually and clearly linked to the need for a solicitor when a will was made. The full extent to which the legal profession colonised the newer areas offered by income tax remains to be investigated. Logically, lawyers might be expected to be less proactive than accountants, as their role is typically played at the end of a process, for example, when dealing with a person's estate or when a matter is referred to court … [absorbing] the additional work as something akin to their existing roles as advocates …(p. 54).

As tax was imposed by law, it would fall automatically into the domain of lawyers, who, as a long-established profession, did not have the same struggle to establish a work domain as accountants. The legal professional bodies (the Law Society and the Bar Council, founded in 1825 and 1894 respectively) did not "drive the professional development of the legal profession itself or determine its legitimacy, in the same ways as establishing professional bodies validated the accounting profession … [being] more a recognition of a status quo" (Frecknall-Hughes, 2015, p. 53). Possibly, given their involvement in different areas of tax work, there was less

potential for competition. Such competition as there was seems to have been in the area of insolvency and bankruptcy (see Walker, 2004). It is also quite possible that lawyers considered commercial tax work as socially inferior. The law was deemed a fitting profession for the "spare heirs" of aristocratic families, and solicitors had a long history of dealing with landed estates,[12] so the social stigma and "taint" of trade may have thus deterred them (Frecknall-Hughes, 2015, pp. 53-54; Frecknall-Hughes & McKerchar, 2015, passim). Given the present lack of detail on lawyers' involvement in taxation matters (acknowledged by Frecknall-Hughes, 2015, p. 54, as an area for future research), this paper thus concentrates on accountants' involvement.

Commercial Difficulties

Not only was the law difficult to find, understand, and apply, there was the added problem of ascertaining as to what it actually applied. The idea of "income" was problematic. Many writers had given considerable thought to the issue of taxing income. Jeremy Bentham, for instance, in *Tax With Monopoly*, an undated work, but likely to have been published somewhere around 1795, advocated charging taxes on bankers' and stockbrokers' profits. Such profits could be easily taxed because sufficient written records of transactions existed to enable them to be calculated, which was not the case for the profits of other traders, where "[t]he difficulty of ascertaining the profit and loss ... would be an endless source of evasion" (Bentham, n.d., p. 371). Bentham also addressed the subject in *Proposal for a Mode of Taxation*, where he also examined different types of income, which Dome (1999, p. 325) analyses as follows:

> Property incomes (assured):
> rent from land;
> interest on money lent;
> government and personal annuities; and
> dividends paid by joint stock companies.
>
> Industrial incomes (casual):
> profits from trade; and
> professional incomes.

"Income", however, in terms of commercial profits, could prove an extremely nebulous concept, compounded by the fact that it was not always visible or recorded, which led to business profits frequently being estimated by tax officials (Lamb, 1996, p. 935; 1997, pp. 261-264). It also fluctuated. In *Tax With Monopoly*, Bentham also suggested dealing with the inequality between incomes by taxing industrial incomes at half the rate of property income. Stebbings (1998) comments on Adam Smith's opposition to directly taxing commercial income, as to assess fluctuating income correctly, the assessment process had to be inquisitorial (p. 4). If commercial men opened up their books, it exposed their business and income levels to competitors, and could potentially damage their ability to raise capital. Keeping one's financial affairs confidential (or secret) was a strongly defended liberty.

> In the complex social attitudes of the eighteenth century, what a man appeared to be was at least as important as that which he actually was. In both business and

[12] They would thus be familiar with aristocratic estates which had relatively predictable streams of income and with the difficult trust law problems that would arise in this context. As a consequence, solicitors might have had a natural tendency, for example, to become involved in Schedule A, as a tax particularly associated with land, but this is speculation and needs further research.

> everyday life, patronage, connections, and in turn, credit, were all crucial to both professional and social advancement, and disclosure of one's true financial situation would leave no room for pretence (Stebbings, 1998, p.1).

It was also feared that financial disclosure might erode the accepted social hierarchy, reflecting fears about the possible effects of the French Revolution (ibid), and it would not be good for children to know if they were in line to inherit fortunes from their parents (Stebbings, 1998, p. 2).

The influence of the above is clear in Pitt's original tax of 1799 and, most especially, in Addington's 1803 deduction of tax at source and development of the Schedules and Cases applicable to different types of income, the latter particularly keeping separate the assessment of income from different sources, and thus ensuring confidentiality, as returns were made to different officials and no one official would know the full extent of anyone's resources (see Stebbings, 1998, pp. 7-8). The very short general return required by the 1799 tax (see Sabine, 1966, p. 28) was a concession to the widespread hostility felt against the tax, and further details of income and deductions were only required if the Commissioners were not satisfied with the general declaration of income (see also Cousins, 2018).

"Income" was difficult to define. The issues revolved round periodic accounting (relevant where income was assessable annually), the distinction between revenue and capital, and hence, the deductibility of items such as depreciation, and thus the value of assets. Harris (2006, p. 134) cites the summary of this by Yamey (1977, p. 22), when speaking of profit and loss accounts between 1500 and 1800:

> The balance of a typical profit-and-loss account measured the change, from virtually all causes, in the recorded value of the capital in the business between the opening and closing dates. With few exceptions, the balances of all nominal accounts, the recorded profits or losses on all trading accounts (goods, voyages, etc.), the entries for the owner's additions to or subtractions from the resources of the firm, and the gains or losses on asset revaluations, were entered in (or cleared through) the profit-and-loss account. Or, to express it differently, during the accounting period, or at its termination, all account balances other than those of assets, liabilities or capital were cleared through the profit-and-loss account, the balance of which, in turn, was transferred to the capital account.

Yamey (1977, p. 23) identifies three main ways of dealing with asset valuations:

> (i) Carry forward the asset at original cost, with any payments or receipts (such as rents received from, and expenditure on repairs for, houses) entered into the asset account being transferred to the profit and loss account at the date of drawing a balance.
>
> (ii) Carry forward the balance on the asset account, without any such transfer as in (i) – so no debit/credit to the profit and loss account.
>
> (iii) Carry forward the revised value of an asset, after revaluing upwards or downwards at the date of drawing a balance, debiting or crediting the loss on revaluation to the profit and loss account.

A mixture of the above methods could be found in use by the same firm and sometimes for the same asset at different balance dates. Inconsistency was rife, with Yamey (1977) concluding that, in the seventeenth and eighteenth centuries, there was no "strict concept of periodic profit" with realised and unrealised profits, business and non-business costs, and both revenue and capital items being found variously in profit and loss accounts (p. 24). Harris (2006) comments that the sixteenth and seventeenth centuries also showed "diversity of practice", and that there was "clearly no uniform concept of what [was] 'profit' or 'income' at this stage let alone any consistency in how to calculate it in practice" (p. 135). Harris (2006) also remarks that even the establishment of chartered companies did not have an impact on accounting practice (p. 135), although it did give rise (p. 133) to an embryonic need to identify profits (in excess of capital), in order to pay shareholders dividends as returns on their investments. This, in turn, engendered a requirement to draw up, if not annually, at least periodically, a profit and loss account to determine how much profit was available to distribute.

Stebbings (2009) notes the "profound economic and social changes in the fabric of national life" that transformed Britain from the beginning of the Victorian era into "the leading industrial nation in the world", with great strides forward being taken in: communications, via the development of roads and canals; overseas trade (with America, India and the Far East); and the coal, iron and cotton manufacturing industries (p. 7). This all resulted in a "new fund of commercial wealth" (ibid). It was noted earlier that, in addition to income tax, Parker (1986) attributed the development of the accountancy profession to the "growth of large-scale organizations, and in particular, the railways; [and] the development of the limited liability company" (p. 5). These two influences had implications for income tax, as "[t]hey stimulated, in some case, for the first time, discussion about such accounting questions as the distinction between capital and revenue, depreciation, professional audit, uniformity vs. diversity, and disclosure to shareholders and the general public" (Parker, 1986, p. 6). The Joint Stock Companies Act of 1844[13] established a new requirement for the filing of information annually with the Registrar of Companies (see Napier, 2010; Parker, 1986), and also allowed incorporation by means of registration (instead of by Act of Parliament or Royal Charter), with limited liability being added in 1855 (ibid) which led to a growth in the number of limited liability companies – 1,000 by 1858, 2,000 by 1864, 8,692 by 1884, and 18,361 by 1894 – many of which were dissolved very soon after formation (see Parker, 1986, pp. 9-11).

The business of railway, coal, iron/steel, and other manufacturing industries required considerable investment in infrastructure for laying track and digging tunnels and cuttings etc., sinking pits, or in heavy machinery, all of which was expensive. In addition, heavy machinery wore out and needed to be repaired or replaced, while pits became exhausted. This generated considerable problems, particularly with regard to how to deal with depreciation, obsolescence, and wasting assets and buildings, for both accounting and income tax purposes, driven by "the introduction of an annual tax on business profits" (Edwards, 1976, p. 301). There were no rules about how to calculate allowable deductions, either in accounting or in taxation – and even "income" was not defined in the income tax acts (Daunton, 2001, p. 307). Edwards (1976) notes that the fact that England introduced income tax so early "precluded the possibility of any effective contribution from the accounting profession" (p. 302): there were only 11 accountants recorded in London in 1799, with possibly 600 existing in total throughout England and Wales at this date (Stacey, 1954, p. 17), a small cohort, whose numbers increased

[13] It is significant that the Joint Stock Companies Act of 1844 came two years after the Income Tax Act of 1842. This meant that corporate income tax was developed within a legal infrastructure that had not anticipated modern company law – and, as a corollary, possibly brought more work to accountants as the developing body of corporate accounting and tax experts.

significantly during the mid-1800s (see also Brown, 1905, pp. 232-235). "Therefore, in the absence of any readily available figure for business profit, the tax authorities were obliged to introduce their own rules" (ibid), which was supportable in so far as income tax was just a temporary measure, but not so when it became permanent, effectively, in 1842. The 1842 Income Tax Act allowed for "repairs or alterations" but not depreciation – which led to certain Commissioners (often local businessmen themselves) being willing to accept accounts "which included an unconcealed charge in respect of depreciation" (Edwards, 1976, p. 303) or to allow renewals or replacements to be interpreted as repairs or alterations. It was not until 1878 that the Customs and Inland Revenue Act allowed a deduction for "wear and tear", after a series of court cases and lobbying, especially by "[t]he prominent accountant, company promoter, and Member of Parliament David Chadwick" (Lamb, 2002, p. 108; see also pp. 141-142), whose concerns that income tax was rendered inequitable because of the lack of a depreciation allowance are reflected in the Parliamentary debates (see Lamb, 2002, p. 108). "Wear and tear" did not cover depreciation (as we understand it currently), so legal cases continued after the 1878 Act.

Lamb (2002, pp. 129-130) discusses seven key cases in depth, namely *Re Addie & Sons* (1875), *Forder v Andrew Handyside and Company, Limited.* (1876), *Knowles (Andrew) and Sons Limited v MacAdam* (1877), *Coltness Iron Company v Black* (1879 and 1881), *Caledonian Railway Company v Banks* (1880), *Burnley Steamship Company v Aikin* (1894), and *Leith, Hull, and Hamburg Steam Packet Company v Bain* (1897). The main issues were: depreciation (over their useful lives) of industrial buildings, fixed plant and machinery, or assets used in the trade (such as railway rolling stock or ships); and how to deal with the costs of pit sinking and the reduction in mine value or pit workings through coal or mineral extraction – the latter two issues featuring in the *Knowles* and *Coltness* cases. Claims were extremely rarely allowed, but in *Knowles*, the costs of working a mine were allowed. However, this was effectively overruled in the 1881 *Coltness* case, in which the House of Lords disallowed the cost of making a mine (see Frecknall-Hughes, 2015, pp. 48-49), casting considerable doubts on the *Knowles* decision.

David Chadwick was one of the directors of *Knowles*, and had represented the company at an appeal hearing before the Special Commissioners (Lamb, 2002, p. 136). He explained depreciation in terms of deterioration/diminution in the value of property at the end of a year compared with worth at its beginning, with Cleasby, B. accepting that Mr Chadwick was an expert in such matters (Lamb, 2002, p. 140). It is difficult to estimate the overall influence of David Chadwick, but his commercial experience was undoubted. Baldwin and Berry's (1999) examination of the accounting practices of four coal/iron companies between 1864 and 1900, among them those concerning depreciation, capital accounting, and revaluation, include three companies (Staveley Coal and Iron Company; Sheepbridge Coal and Iron Company; and Bolckow, Vaughn and Company Limited) in which Chadwick was heavily involved. Staveley was the first he set up, and the others were formed by a consortium led by Alderman Henry Pochin, to which Chadwick provided technical expertise, and which was "to form a dozen or so companies in iron, steel and coal between 1863 and 1867" (Baldwin & Berry, 1999, p. 85), with Chadwick's accounting firm being usually appointed as the first auditor, with one William Armstrong, an engineering consultant, regularly engaged to advise on valuation of capital assets and on accounting for capital acquisition and depreciation. Chadwick (1821-1895) had an unusual and distinguished career. Baldwin (1994, p. 4) reports that he was a founder member of the London Institute of Accountants, first president of the Manchester Institute of Accountants, and one of the first council members of the ICAEW, as well as being involved in the formation of at least 47 companies, including those with Pochin's consortium. From 1868 to 1880, he was a Member of Parliament, specialising in matters to do with company law reform

(see also Cottrell, 1984; Edwards, 1992; Edwards, Boyns, & Anderson, 1995; Maltby, 1998). Sabine (1966) comments on another MP, William Chadwick, running an accounting firm concerned, in 1871, in "the auditing and making the Income Tax Returns of upwards of forty or so manufacturing and mercantile concerns, including some of the largest establishments in the country" (p.107)[14], and also names J.E. Coleman, an accountant (p. 86), as an expert giving evidence to the 1861 Select Committee in Income and Property Tax in 1861 (the Hubbard Committee). Accountants were starting to make their mark in tax matters.

RESEARCH METHODS AND DATA SOURCES

As indicated earlier, the purpose of this paper is twofold: (i) to examine how and why, from a functionalist perspective, income tax, especially after 1842, contributed to the development of the accounting profession, by reference to the legal and commercial environments prevailing at the time; and (ii) to show how, by this, the seeds of a specialist tax profession were sown. The academic literature reviewed shows that expert advice was required in order to implement income tax and reveals a great variety of commercial problems associated with the tax, by reference, chiefly, to legal cases, sets of financial statements, and Parliamentary material, although some press material is occasionally referenced. Frecknall-Hughes's (2015) study has shown that accountants were not slow to colonise the new work domain (as "proper work") offered by income tax, by reference to material in the professional journal, *The Accountant*. One aspect that has not been considered is what might be termed the ordinary and everyday aspect, that is, the one revealed by contemporary press reports. As Bougen, Young and Cahill (1999) say:

> There is a considerable temptation to forget that most people neither read this [academic] literature nor do they attend academic conferences, much less are they privy to discussions in the council chambers of the profession. For many people their understanding of who accountants are; of what they do; and of what they should do is much more likely to be shaped and indeed modified by more common means and through more informal interaction (p. 443).

They refer particularly to the press. Press reports provide insight into concerns about the effect of tax in everyday life, and the prominence and importance of various tax issues and the debate about them – and, relevant to the purpose of this paper, what accountants were doing in this context on a day-to-day basis. These issues are not often considered. There are some instances of this in respect of accounting practices (Hopwood, 1994; Maltby, 1998), but Lamb's (2001) study looking at the effect on Jane Carlyle is one of the few instances of a consideration of the contemporary effect of tax issues on an ordinary person, as evidenced by the provision of an individual's diary. Not everyone would keep such a record and, if he/she did, the chances of it surviving would be rare, but press reports provide a valuable source of everyday material. Press reports provide a contemporary lens through which to see how both ordinary and high-profile individuals dealt with, even progressed, taxation matters in daily life. They show the human face of taxation and they provide contemporary source material of a different kind in support of Parker's (1986) contentions about the role played by income tax, and practical examples of how (as per Abbott, 1988) accountants expanded their cognitive domain.

The materials used to address the aims of this paper were drawn from the British Library newspaper databases, either directly or via the library subscription databases provided by Gale,

[14] This is a direct quote from Hansard 19/V/1871.

containing primary source material for 1600-1900. The databases (which can be searched using search terms) contain the archives of London-based newspapers, such as *The Times* and the *Illustrated London News* etc., as well as city- and region-specific ones, as well as publications such as *The Economist* and various seventeenth, eighteenth, and nineteenth-century periodicals.[15] The period examined for this paper was confined to 1798-1900, which covers the years from the introduction of the first income tax, the 1842 reintroduction, and the early years of the development of the accounting profession, up to some 20 years after the granting of its charter to the ICAEW in 1880. A variety of different, tailored search terms was used to locate relevant articles, such as "income tax" in conjunction with "accountant", "Schedule D", "Schedule B", "depreciation", "inconvenience", "inefficiency", "inequity", "unpopularity" and "David Chadwick". The use of "income tax" alone would find thousands of items and would not be sufficiently specific. The use of tailored search terms such as these establishes a priori themes for discussion and analysis, but the terms themselves are sufficiently wide to enable other themes to be picked up which may not have been initially identified, as a number of related, different topics might be discussed within the press articles found. Many hundreds of press items were found, and all were read and appropriately categorised, with some of the most illustrative being used in the next section to evidence accountants' involvement in the legal and commercial (tax) difficulties identified earlier in the academic literature. While the search was thorough, it is not claimed to be exhaustive. However, a saturation point was reached, identifiable when the different search terms were finding the same press items. For example, "income tax" and "depreciation" would bring up a number of items about David Chadwick. Some terms were followed up as "stand-alone" searches. For instance, searching for "David Chadwick" would find not only his involvement in tax/depreciation matters, but evidence of his wider activities as an MP.

THE PRESS REPORTS

Legal Difficulties

The legal complexity and practical difficulties in applying the income tax statutes were acknowledged at the highest level. The Chancellor of the Exchequer, in a piece titled "The Chancellor of the Exchequer on the Income Tax" in the *Derby Mercury* for 28 February 1872, is reported as saying that:

> there was enormous room for practical improvement in the working of the tax. There was hardly an act on the statute book so clumsy and difficult to understand as the income-tax – (laughter), – and nothing was more wanted than a proper re-writing of that act, so as to make [it] intelligible and easily read. Its extreme complexity was proved by the fact that they had so many bodies to work it. ... T]he real difficulty was that the tax was always regarded as a temporary tax.

Accountants were allowed, in early years, to advertise their services and actively sought out tax business on the basis of their expertise to help resolve taxpayers' difficulties. *Freeman's Journal and Daily Commercial Advertiser*, an Irish paper, carried an advertisement a number of times in the 1860s for the services of one Mr Mahony, of which the example reproduced below, for 10 August 1863, is typical:

[15] Articles are very rarely attributed to specific authors and sometimes lack titles. The references for the press articles are given in a separate section at the end of the paper. The references given are those provided by the databases on accessing the items.

INCOME TAX—
IMPORTANT REDUCTION.

By the New Act (26th Victoria, cap. 22) A DEDUCTION OR ABATEMENT of the assessment to the extent of the duty chargeable on £60 is allowed on all net incomes ranging from £100 to £200 per annum.

Incomes over £200 per annum are subject to the FULL TAX.

Net Incomes under £100 WHOLLY EXEMPT.

To obtain Remission, secure and equitable assessment, or derive the full advantage of the deductions allowed by the recent act, consult without delay

C. R. MAHONY,
PUBLIC ACCOUNTANT AND ACTUARY,
MERCANTILE CHAMBERS,
66, CAPEL-STREET, DUBLIN

Hours of ATTENDANCE FROM 7 TO 9 O'Clock EVERY EVENING, Saturdays excepted.

Communications from the country, enclosing stamps or Post Office Order for Five Shillings replied to by return of post.

OPINIONS OF THE PRESS.

The extensive experience of Mr Mahony in the preparation of the several returns connected with this branch of public finance will be found peculiarly valuable.—*Irish Times.*

In the preparation of the necessary data on which adjudication in based, Mr. Mahony, from his enlarged mercantile experience, has been found highly useful.—FREEMAN'S JOURNAL.

Mr. Mahony had had *special experience* in this department, and without such help it is almost useless to appeal against the arbitrary assessments sometimes made.—*Catholic Telegraph*.

A marked success has attended the labours of Mr. Mahony as Income tax Accountant. In almost every instant in which the schedule returns have been prepared in accordance with his instructions the Commissioners have allowed the reduction or exemption claimed.—*Evening Mail*.

The advertisement gives details of the law, and advertises the location of Mr Mahony and his working hours – presumably evening hours allowed those who worked during the day to consult him, although he was also willing to deal with postal queries from those not in Dublin – and the testimonials provided from other newspapers stress his mercantile experience (he knew about trade), as well as his successful experience in completing returns and in dealing with "arbitrary assessments" from the Commissioners. The advertisement also makes clear that the latter are difficult to deal with without expert assistance. A less fulsome advertisement is found in the Advertisements & Notices of the *Western Mail*, on 7 June 1870, for the services offered by "W. R. CRUMP (Late Surveyor of Government Taxes), ACCOUNTANT" in Bristol, in preparing "INCOME-TAX CLAIMS, &c.". Similarly, the *West Surrey Times* for 1 November 1856 advertises the services of "T. Lovett, Law Stationer & Accountant", based in Guildford, for "Income and Property Tax Returns carefully filled up and Exemptions made out. Terms reasonable".

An advertisement in *The Dart: A Journal of Sense and Satire*, a Birmingham periodical, on 11 September 1891, (p. 13, beginning "The grumblers at the unjust and vexatious assessment of the obnoxious Income Tax are legion…") recommends a book by Mr James Rhodes, Chartered Accountant, of 34, Waterloo Road, titled *How to Get Over-Assessments Reduced*:

> It is a valuable little work, lucidly written, and cannot do other than prove of great assistance to all who are called upon to pay excessive taxation, and more especially those who have cause to object to the over-assessing of their trade profits. It is full of useful information from cover to cover.

The book is advertised (price one shilling), but without any commentary, in several issues of *The Dart* throughout 1891, sometimes under the slightly different title of *How to Get Over-Assessments on Trade Profits Reduced*. In a letter to the editor in Correspondence in *The Economist* (9 June 1855, p. 622), "J. A. Franklin, Esq., Auditor and Accountant" advises of "methods on computing the income tax without the use of tables, which is followed by a letter from "T. J. W." in Belfast outlining a preferred method of two possible ones "adopted by joint stock companies to collect from their proprietors the property tax due on their dividends".

Some press articles gave great detail about what taxpayers should do, with practical examples. The *Leicester Chronicle*, for instance, on 23 July 1842 (p. 1, in an article titled "Important to Income-Tax Payers") not only published the names of the local commissioners, but the full rules and requirements for the collection of income tax, and details of the income from trades, professions, employments, and vocations to which the tax applied, as well as details of deductions permitted and not permitted, with an example of the declaration which should be made. A similar such piece was printed under the title "More About the Income Tax" in the *Blackburn Standard* on 15 May 1880 (p. 2). The piece is specifically about Schedule D, C and E (which rules apply and to what) and sets out what is assessable for traders (including for trading partnerships), which types of business profits are subject to averaging and what is assessable for individual salary earners, including deductions allowed. The writer cites from "Mr. Long's ... able 'Guide to Matters relating to the Income Tax' " and although no date is given for the Guide, it must pre-date the 1880 date of the press article. However, the following is found in the "Multiple Classified Ads." section of the *Lancaster Gazette Supplement* for 1 March 1873:

POPULAR GUIDE
TO MATTERS RELATING TO THE
INCOME TAX,
INHERITED HOUSE DUTY, AND THE
LAND TAX.
By J. P. Long, Surveyor of Taxes.
PRICE ONE SHILLING.
On Sale at the "Gazette" Office.

Likewise, the press carried reminders about important dates, such as in the letter to the editor headed "Income Tax" in the *Morning Post* (1 April 1890, p. 2), from David Rodan, "late Surveyor of Taxes", reminding those over-assessed for 1888-89 under Schedule D that they must notify their wish to appeal in writing to the surveyor no later than 5th prox., and must submit any claim for repayment for 1886-87 before 6 April or otherwise lose their repayment.

The press reports outlined above show that income tax law was clumsy and complicated – something admitted at the highest level by the Chancellor of the Exchequer – supporting Stebbings's (2009) comments about its physical and intellectual inaccessibility, and about help being needed to apply it, especially in a commercial context. They also show that accountants, in particular, provided the much-needed technical and practical help, even to the extent of writing "self-help" books, evidencing them offering a new service as Parker (1986, p. 42) suggests and annexing new work areas (per Abbott 1988, p. 102).

The inquisitorial nature of income tax, as part of the legal administration process of tax, had always been resented by Schedule D taxpayers, and this resentment very quickly reappeared after its reintroduction in 1842. An article titled "Income Tax & Schedule D" in the *Hampshire Telegraph and Sussex Chronicle* for 29 November 1845 carried a piece originally published in the *Worcester Chronicle* about the behaviour of Commissioners.

> We have known tradesmen who were compelled to stand for two or three days in a cold lobby, in the month of November, thereby losing more in a pecuniary point of view, in the value of their wasted time, than five times the amount of the surcharge against which they appealed …

The above supports the experience reported by Jane Carlyle (see Lamb, 2001), who noted the presence of local tradesmen whom she knew when she attended an appeal before the General Commissioners on behalf of her husband, and confirms the difficult nature of the administration process and of the nature of appeals, as reported by Stebbings (2009). The writer of the *Worcester Chronicle* article also comments on these same Commissioners refusing to hear someone who appeared to appeal on behalf of an "old lady, who was confined to her bed" and says that several house owners were assessed wrongly. The *Hampshire Telegraph and Sussex Chronicle* writer comments that if "this string of dirt enquiry and cruel extortion [were pulled] a little tighter ... the cry will be so universal against this inquisitorial schedule that 'the powers that be' will be compelled to abandon it altogether". Jane Carlyle's experiences were far from uncommon.

Various suggestions were made to address this issue, which involved the services of accountants. For instance, a letter under the heading "Income Tax. Schedule D", from one John H. Sizer to the editor of the *Essex Standard, West Suffolk Gazette, and Eastern Counties' Advertiser* for 1 December 1883, draws attention to a formal complaint about the same issues made by the Council of the National Traders' League to the Commissioners of Inland Revenue, with the League's recommendation:

> In order to obviate these grievances the National Traders' League ask the Commissioners of Inland Revenue to make an order to the effect that on any trader producing a statement of his accounts certified by a chartered accountant, it shall be held as conclusive evidence and binding upon the District Commissioners, who shall base their assessment thereon.

The idea that the view of an accountant ought to be "conclusive" for tax purposes is very striking, if not aggressive, and is an indication of the value placed on the work of an accountant, by commercial men, for both financial statement and taxation purposes. The Anti-Income Tax Association was reported by the *Morning Post* (26 March 1870, p. 3) as lobbying the Chancellor on these issues (and also on abolishing the tax completely, although the Chancellor,

while sympathetic to the needs of businessmen, made it clear that the tax via Schedule D raised too much revenue to be abolished).

A further suggestion about the services of accountants comes in an article in *The Dart: A Journal of Sense and Satire* (7 April 1898, p. 9), under the heading of "Reforms in the System of Assessment of Uncertain Incomes for Income Tax", which comments that, where a surveyor is prepared to accept a chartered accountant's certificate (things had moved on from 1883), it could cost four or five guineas, which was very expensive for a small trader, so the paper was proposing a reform:

> Where the assessment is under £500, the taxpayer should be required to show his books *at his place of business* to a qualified accountant sent by the department. This would remove the cause of much irritation to small traders. In the case of businesses producing incomes over £500, a chartered accountant's report might be required, and in such cases all firms would actually be in the habit of having their books audited periodically by a responsible accountant, and the additional expense of preparing a return for Income Tax purposes would not be oppressive.

Somewhat tellingly, *The Dart* article also comments that the Commissioners "are unable to make 'head or tail'" of a trader's books anyway without the assistance of an accountant "and yet have to adjudicate in a haphazard fashion".

From these examples, which represent feelings commonly expressed across a range of different press materials country-wide, it becomes clear that the services of an accountant were increasingly used, valued, and deemed necessary.

Commercial Difficulties

The inquisitorial nature of the income tax also caused commercial difficulties. The article entitled "Income Tax & Schedule D" in the *Hampshire Telegraph and Sussex Chronicle* for 29 November 1845, referred to earlier, comments on the fact that the questions asked by the Commissioners were very annoying and intrusive:

> "How do you live?" "In what style do you live?" "Are these returns consistent with the appearances you keep up?" – and so forth. In the name of common decency, are independent Englishmen, having anything like the stomach of their ancestors, to be baited in this manner, and after exposing their most secret affairs to a knot of Commissioners, to be insulted into the bargain for daring to put on an appearance which all who know anything of business life must admit to be necessary in the great majority of cases to the very existence as well as credit and solvency of the tradesmen.

There seemed to be quite a lot of confusion about who actually had the right to look at sets of books, with John Hitchings of The Rate and Taxpayers' Assessment Protection Association writing to the editor of the *Western Mail* on 24 November 1892 (item headed "Income-Tax Appeals. How to reach the Special Commissioners") clarifying that taxpayers did not need to submit books in the first instance to any tax official, and that it was preferable, if one could, to submit any appeal to the Special Commissioners, as they were not local, meaning that any assessment would then be unknown to them and confidentiality would be maintained. A letter immediately below that of Mr Hitchings (sub-headed "A Case in Point") from a correspondent

with the name "Consistency", about a bank manager sitting as a local commissioner, reinforces the point made about confidentiality:

> You can easily imagine how many people avoided the exposure of their affairs to a gentleman with whom they possibly banked, and had, therefore, to submit to the surcharge of the surveyor, who, by the bye, made himself so objectionable in this respect that he was removed. To have a commissioner in your own trade to assess your income no doubt facilitates matters from an Income-tax point of view, but hardly from the payers'.

Given that a system of self-assessment operated, it was prone to abuse, so the inquisitorial nature of the Schedule D assessments can be understood, as can possibly the irascible nature of some of the Commissioners (individuals like Basil Sabine's Mr White were not rare). *The Economist (*"The Frauds Under Schedule D, In The Relation To The Equalisation Of The Income Tax"*)* on 5 October 1861 comments that "the defalcations of the trading class are in the aggregate very serious". However, the inquisitorial nature created an understandable worry about commercial confidentiality, in that the Commissioners could be competitors, and so could gain trade advantages from their being able to enquire into rival traders' books and, potentially, damage their ability to make profit, raise capital (the "Consistency" writer refers to a banker), and obtain credit, as well as their creditable standing in the community, which, as Stebbings (1998) makes clear, were significant concerns.

Another commercial difficulty frequently highlighted by press articles is that of ascertaining income. David Chadwick addressed the Social Science Congress on this very issue, saying, for tax purposes, it is "the clear annual amount, after deducting all necessary outgoings, received from any property or investment of capital; or from any trade, profession or occupation; or from any annuity or other source, leaving at the end of each year the capital or source intact" (in the article "What is Income?" in *Capital and Labour* for 17 November 1880, pp. 612-613). However, in practical terms this could be fraught with difficulty. In a letter under the heading "Income Tax Assessment" in the *Daily News* for 27 October 1871, a clerk of many years standing to the Property and Income Tax Commissioners of a provincial district, using the pseudonym Lex, writes:

> Many of your readers cannot conceive the difficulties which often beset a case of appeal, and the Commissioners are thrown on their mere notions of what the claimant makes per year. I was at first greatly astonished, but now I feel surprise no longer, at the number of appellant tradesmen who on examination are obliged to confess they never, or very rarely, take stock, and who have no system of keeping books that can possibly prove what they have gained or lost during the past year.

Lex goes on to comment on the haphazard and irrational character of the deductions such individuals make against their income, and concludes it would be better "to assess simply on a man's trade returns [i.e., sales]", although "[c]ases of manufacture would have to be differently dealt with" (Lex, 1871).

An article titled "The Income-Tax Debate", in the *Ipswich Journal* for 2 March 1878, summarises this issue in terms any reader could understand:

> The Income-tax is at once the best and the worst of the means employed to raise money for State purposes. It is the best because it is the simplest and, in principle,

> the fairest. Could we know at a glance every man's net income we should need no other means of raising money, and successive Chancellors of the Exchequer have too readily assumed this knowledge and inferred therefrom that to raise millions all they needed was to turn a little tighter the Income-tax screw. Precisely because we do not know men's incomes, or because after all the income is only one of the means of determining a man's ability to contribute to the burdens of the State, a tax on income is the worst and the most irritating of taxes. A constant wrangle is kept up between Her Majesty's lieges and Her Majesty's Surveyors of Taxes as to the principles on which incomes should be calculated. All men are not in receipt of salaries, and when income is made up of profits from many complicated transactions, or from several sources, there is room for wide differences of opinion.

The article continues by commenting on the "peremptory style" of Government officers and the fact that Commissioners, to whom appeal is made, are prone to favour the views of Government officers. It further states: "In fact, nothing is so difficult as to ascertain what a man's income really is, except in the comparatively small number of cases of annuitants and salaried men" ("The Income-Tax Debate", 1878).

The piece goes on to consider the problems presented by individuals living on their capital, by fluctuating business profits and farming, and by different types of income (for instance, a realised [capital] gain, as opposed to the same amount being earned as salary). Those who earn wages are often at the poorer end of the income scale and are frequently beset by difficulties which are ignored when abatements are considered. The writer comments that a State which can ascertain details of people's lives for the purposes of elementary education could extend the same principles to finding out similar details so as to alleviate the hardship of the income tax impost: "But no ingenuity of this kind has ever been applied to the Income-tax mainly because it has been regarded as a temporary measure" ("The Income-Tax Debate", 1878). The anonymous writer of the article concludes by concurring with others that there would be little hope of ever seeing the income tax abandoned.

Fluctuating incomes (trade profits) were regarded as problematic and there was strong feeling that it would be difficult to deal with them, as an article on income tax under "Multiple News Items" in the *(London) Standard* for 25 March 1863 makes clear. The tax pressed unequally on fluctuating, as opposed to fixed, incomes – and also on those who had little income, such as "the widows and orphans for whom a slender provision has been made of the hard savings of professional men" (same source, but for 26 March 1863).

The press articles referred to above clearly demonstrate the difficulties of calculating business profits for tax purposes. Traders did not always keep records or adequate records – a situation exacerbated by the fact that trading profits varied and fluctuated over time, which made the tax seem unfair when compared with its more predictable effect on fixed income. This was also a period when basic accounting principles were being established, as Harris (2006) and Lamb (2002) show, particularly in terms of allowable deductions. A key deduction under consideration for both accounting and tax purposes was depreciation, which is not surprising in the light of the growth of railways, shipping, coal, iron/steel, and other manufacturing industries, as highlighted by Parker (1986) and Stebbings (2009).

The press contains a vast amount of material discussing and/or reporting on issues to do with depreciation. An article headed "Glasgow Chamber of Commerce" in the *Glasgow Herald* for 12 May 1875 is typical of the concerns felt by businessmen, which gathered particular

momentum in the lead-up to the 1878 Customs and Inland Revenue Act. The article reports on the meeting of the committee in Edinburgh with the "Comptroller-General of the Inland Revenue Department respecting an allowance for depreciation under the Income Tax Act". Depreciation was not allowed on "the works, machinery, utensils, and apparatus employed, but ... deduction was allowed for repairs and maintenance actually expended by the parties" (ibid). It was put forward that:

> a deduction for depreciation was very generally made by manufacturers throughout the country, as being a fair charge on the yearly profits, to provide for the depreciation, which necessarily took place, and for the renewal of items for which said deduction was claimed; that such a deduction in ships and steam vessels was virtually allowed under a minute of the Treasury; and it was suggested that whenever the partners had in *bona fide* made a deduction for depreciation on any particular items of capital which were being exhausted or deteriorated in value before striking their balance of profits, such deduction should be allowed to an extent not exceeding, say 10 per cent ("Glasgow Chamber of Commerce", 1875).

This encapsulates widely felt concerns about depreciation, obsolescence, and wasting assets that were being debated at the time. There were clearly many different practices/calculations in evidence. Depreciation was not easily understood by the non-accountant, but it was easily manipulated. Difference in figures resulting from the use of different concepts/methods could conceivably have provided an incentive to improve accounting practices, so that the Inland Revenue would become less suspicious of the idea of depreciation, more comfortable about its accuracy, and, therefore, readier to sponsor a change in the law. However, this is a period when, as the cases cited by Lamb (2002) show (as referred to earlier), the distinction between capital and revenue was gradually being established by (predominantly) case law for tax purposes, so actual rates and individual practices seemed secondary to the establishment and clarification of concepts. The Inland Revenue was clear in its adherence to the then existing law, expressing concerns about, for example, the difficulties of calculating depreciation on an annual basis. However, some press reports are rather vague about what was actually allowed or not, and Stebbings (1996) suggests that a possible reason for the right of appeal by way of case stated introduced in the Customs and Inland Revenue Act of 1874 might have been "that it came to be realised that the General Commissioners were deciding questions of law of some moment, and that the final determination of such questions by a lay tribunal was unsatisfactory" (p. 616). It seems that the General Commissioners were tacitly allowing claims for depreciation, maybe disguised as repairs and maintenance (see Edwards, 1976, p. 303). While the appeal was expected to protect taxpayers, when the courts insisted on adherence to the Income Tax Act 1842, the process actually restricted the depreciation allowances that businesses were getting in practice. This was unanticipated and provoked lobbying by the likes of Chadwick, resulting in the 1878 Act – but, as soon as it came into force, it was felt to be inadequate. An article headed "The Chancellor of the Exchequer on the Income-Tax (Schedule D)" in the *Leeds Mercury* for 28 March 1879 reports on a deputation sent by the Manchester Chamber of Commerce, accompanied by several Members of Parliament, to see the Chancellor of the Exchequer about extending the principle of deprecation so as to apply to buildings and reservoirs etc. The Act (to which they appeared not to have full access) was unclear on the specific treatment of such assets, and while some Commissioners appeared to allow a five percent deduction in some cases, this was regarded as insufficient. The Chancellor's response, as reported, seems to indicate the wording of the Act had been drawn deliberately widely so as

to allow discretion to Commissioners to allow what was fair in different circumstances.[16] There are several reports of the amount allowed for steamship depreciation being regarded, likewise, as inadequate. The "Report of the Clyde Steamship Owners' Association" in the *Glasgow Herald* for 7 January 1895 makes this clear. The surveyors "made it known" that they would allow a rate of five percent on cargo steamers, but the custom in the district had been to allow seven and half percent on steam and five percent on sailing ships. Test cases brought before different Commissioners resulted in an Appeal to the "Exchequer Division of the Court of Session", which did not resolve the matter. A further article in 1896, under the heading of "Clyde Steamship Owners' Association", in the same newspaper for 9 January, shows an on-going saga. Further appeals and test cases resulted in one appeal to the Commissioners for the Upper Ward (City Parish) of Glasgow agreeing to seven and half percent. The article continues:

> As you directors had learned from the principal surveyor for Scotland that it was the intention of the income tax authorities to bring down the rates allowed to one level, viz., 6 per cent. passenger steamers, 5 per cent. cargo steamers, and 4 per cent. sailing ships, they thought the time had come to request the Chamber of Shipping to take the matter up on behalf of the general body of shipowners. The executive council dealt with the subject by sending out circulars to all the associations requesting them to appeal against the proposed reduction, and to contend (1st) for the rates allowed in London, viz., 6 per cent. steamers and 5 per cent. sailing ships on the original values; or failing that (2d) for the rates allowed by the Commissioners for the City Parish of Glasgow; and they understand that a very general agitation is going on ("Clyde Steamship Owners' Association", 1896).

Some of the correspondence on specific figures for depreciation for the Peninsular and Oriental Navigation Company was published in the *Dundee Courier* for 28 December 1895 (p. 3) under the heading of "Shipowners and Income Tax".

Dissatisfaction was evident across a range of different industries. A report on the annual general meeting of the Glasgow Landlords' Association in the *Glasgow Herald* for 24 January 1895 comments that the association's directors "had combined with other associations in asking the Chancellor of the Exchequer to make an allowance off property-tax for repairs to and depreciation of property, and the result was that an abatement of 6 per cent was granted". It is noteworthy that the secretary of the association, Mr James Wilson, was a chartered accountant – and perhaps also that the meeting was held in the "Accountants' Hall". Companies often reported the amount they charged for depreciation as a separate item, for example, as in the case of the Market Weighton Gas Light and Coke Company which wrote off five percent (as reported in the "Commercial Reports" section of the *Leeds Mercury* for 19 February 1887); or the Bristol Tramway Company writing off additional amounts in respect of "horses, &c." ("The Tramway Dividend", in the *Bristol Mercury* for 8 September 1880).

Given the prominence of David Chadwick in the mid- to later nineteenth century, it is not surprising to find him mentioned in the press in reference to issues of depreciation, and he appears numerous times. In a piece titled "The Chancellor of the Exchequer on the Income Tax" in the *Derby Mercury* for 28 February 1872, he is reported as a member of a deputation,

[16] An article titled "The Budget Bill" in the *York Herald* for 18 April 1878 (p. 6) states it will be "lawful for the Income-tax Commissioners, in assessing the profits of trade, &c., under the rules of Schedule D, 'to allow such deduction as they may think just and reasonable for depreciation in respect of the wear and tear of any machinery or plant used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on'. "

going, with other delegates including MPs, to see the Chancellor "shortly after the conclusion of the Associated Chambers of Commerce Conference ... with a view of obtaining an inquiry into the mode of levying, and the incidence of the income tax" with reference to "the objections felt by the mercantile community", particularly "the mode of assessing and levying the tax and the mode of conducting appeals". An article titled "Income-Tax Assessment" in the periodical *Capital and Labour* for 17 April 1878 (p. 248) inserts a letter, at Mr Chadwick's request, which was also sent to *The Times* in the previous week,[17] wherein he says that he has been asked:

> to specify some of the classes of charges in the cases of short leases and depreciation on mills in which immediate alteration and depreciation could be made. The decision of the Court of Exchequer in Knowles's appeal case has practically settled the question that capital, when consumed or repaid by annual or other instalments, is not liable to be assessed to income-tax, although such capital has been erroneously and illegally charged for thirty years.

Mr Chadwick goes on to give a series of calculations. He comments that "there is no valid reason why [depreciation] should not be allowed in all cases" and reports that he was one of a special committee appointed in 1875 "to consider the practicalities of adopting a common measure of value in the assessment of direct taxation, local and imperial". He continues that "[it] is high time that some equitable and approximately correct system should be applied in lieu of the unequal, unjust, and arbitrary methods now attempted". In the letter to *The Times* previously mentioned, Mr Chadwick gives his view on the *Knowles* case, and cites his speech in the House of Commons on 26 February 1878 and the fact that the Chancellor of the Exchequer took note of it, given that the ramifications of the *Knowles* case were wide. However, he comments that the decision in *Knowles* does not extend to "allowing depreciation annually on steam engines, boilers, machinery and plant".

The press reports show the difficulties associated with depreciation claims both before and after the 1878 Customs and Inland Revenue Act. The granular level of detail of some of the reports is often unexpected and they cover a wide range of industries across the country, though shipbuilding is associated most usually with Scotland. Given David Chadwick's career as an accountant, MP, and company promoter, it is not surprising that he features prominently in the reports, and his expert accounting knowledge is drawn on in helping to define income and appropriate allowances (especially depreciation) in terms of taxation, and taking the debate forward. Again, this shows the increasing necessity for, use of, and value placed upon the work and expertise of accountants.

CONCLUDING REMARKS

The academic literature reveals a number of legal and commercial themes emerging in respect of income tax and accountants: the physical and intellectual inaccessibility of income tax law (Stebbings, 2009), and the practical difficulties of dealing with it on a day-to-day basis, especially with appeals and the inquisitorial nature of General Commissioners, as Jane Carlyle's experience before them testifies (Lamb, 2001), such that help was needed. In addition, there were commercial difficulties caused by that inquisitorial process, in that Commissioners might be business rivals and so gain advantage from the process, with consequent damage to the profits, potential to raise capital and credit, and standing in the community of the traders whose books the Commissioners inspected. In addition, business

[17] See Chadwick, David. (1878, March 30). Income-Tax Assessment. *The Times*, p. 8.

profits fluctuated and were not easy to calculate for tax purposes, owing to lack of/inadequate records and the ongoing development of accounting and tax principles, especially as regards depreciation.

The press reports, in general, provide information, often in a surprising level of detail, about how accountants played active roles in helping (especially) commercial taxpayers in all of these areas. For instance, they helped, in various ways, with the legal difficulties inherent in dealing with income tax, which even the Chancellor himself acknowledged were prevalent. The media reports concerning the accountants Mr Mahony, Mr Crump, and Mr Lovett show them advertising their services (although this was later disallowed). We see accountants not only writing the "first standard text" on income tax in 1895 (Parker, 1986, p. 7), but we see, perhaps, a more general guide in Mr Long's *Popular Guide to Matters Relating to the Income Tax, Inherited House Duty, and the Land Tax* – and, in the case of Mr Rhodes's book, titled *How to Get Over Assessments Reduced*, the appearance of a book focussed on a more specialised topic. There is advice and information variously given by accounting-informed writers in the press, and the day-to-day tax problems are made very clear: the confusion, anxiety and, sometimes, shame caused by having to attend hearings before Commissioners, and how onerous this was in terms of losing business; and the resentment at, and misunderstanding over, the inquisitorial nature of the tax. Not being able to attend in person if one was ill, for example, meant things could get much worse. Many of the problems could be addressed, suggest the press, if the Inland Revenue would accept a chartered accountant's certification of accounts (which some Commissioners themselves did not understand), or an accountant's inspection of a trader's books in the latter's place of business. There is an indication of the ever-widening use and appreciation of an accountant's services. Moreover, these suggestions would also address the commercial concerns felt about keeping financial matters confidential, and protecting trade, creditworthiness, and community creditability.

Accounting expertise (as especially evidenced by David Chadwick) could address the difficulties in keeping records and defining income (and dealing with different kinds), most particularly business profits, generated by the growth of Victorian industry in terms of the railway, coal, iron/steel, mills, and shipping companies. This is covered extensively in the press, with depreciation and obsolescence being key issues; and we see this in minute detail. The press reports also make clear how particular groups got together to try to improve things, and the various suggestions they put forward, so we see the Anti-Income Tax Association, and various trade bodies, such as Chambers of Commerce, shipowners' delegates or landlords' associations, lobbying the Chancellor of the Exchequer. The involvement of David Chadwick and other accountants, such as William Chadwick, as MPs with expert commercial and accounting knowledge is evident. This is all their everyday activity – their function – and forms the "back story" to the law and how it was applied and, in due course, changed. The press items make their roles evident and describe them in considerable depth.

The press evidence examined in this article shows just how income tax influenced the development of the accounting profession and accounting principles (and, arguably, vice versa), but, equally, it reveals how accountants drove forward the development of income tax law with their day-to-day involvement in the granular details of individuals' affairs, often offering help proactively. Would there have been, for example, any sort of Act of Parliament in 1878 to allow depreciation, without the intensive involvement of men like David Chadwick? The press reports make clear that not only did accounting require expert knowledge and skills, but that dealing with income tax did as well, and that accountants put their skills at the service of those who needed it: in this is the germ of a more specialist profession. It seems clear that

we are seeing individuals who can "apply the law to particular problems and to express the results in figures" here (Parker, 1986, p. 41) and with the "marketing [of] a specialized skill based ... on esoteric knowledge" (Abbott, 1981, p. 820): having "accounting" or "accountants" mentioned or advertised in the press would make people aware of the services that they offered (their "function"), and would help accountants with their colonisation of the income tax domain. They are clearly dealing with "tasks ... created, abolished, or reshaped by external forces" (Abbott, 1988, p. 33), in terms of the need for their skills generated by the legal and economic circumstances of the time, particularly the state/understanding of tax law, and the huge growth in industry and the need for record-keeping that drove the development of financial statements and concepts like depreciation: all this was, as Willmott (1986) says, "crucial for the integration and smooth operation of society" (p. 557).

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ADDRESSING GENDER ISSUES THROUGH THE MANAGEMENT OF TAX TALENT

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Abstract

Like most areas of financial services, the tax field has traditionally had a predominantly masculinist outlook. In lieu of increased female participation within the field and a rapidly changing operational landscape, these gendered hierarchies persist. At the same time, gender diversity has come to be celebrated as an expression of equality within organisations, and has gained widespread acceptance as part of a larger effort to manage "talent" across the tax field. In this paper, we problematise the fundamental underpinnings of these efforts and question their ability to challenge the pervasive and deeply entrenched gendered hierarchies within the tax field. Using practitioner literature focussed on providing guidance to new and existing tax experts, we begin by describing the changing tax field. Here, we highlight the roles that globalisation and digitisation play in the push to manage tax talent, emphasising the way in which issues of gender are assimilated into and, ultimately, constrained by this narrative. Next, we review prior literature for insights into the fundamental inability of such an approach to meaningfully challenge gendered hierarchies. Drawing insights from these critiques, we discuss the conceptual limits of a language of production and focus on clients' needs, as well as the complexities that are overlooked or ignored by the over-simplicity of a business case rationale. In short, we argue that the prevailing approach to manage tax talent is fundamentally incapable of addressing gender issues in the tax field and warn against prevailing attempts that claim otherwise. Central to our argument are the conceptual constraints imposed by a focus on clients' needs. Here, to help to illustrate the impact of these constraints, we also present preliminary empirical data from an international questionnaire on tax experts' priorities in their day-to-day work. While our findings identify a range of differences that align with prior literature on decision-making, they also illustrate a homogenisation of gender differences when servicing both clients' and organisational needs. To conclude, we discuss how these findings illustrate the conceptual grip of clients' needs over tax experts' own priorities, recall the centrality of those needs within the prevailing approach to addressing gender issues via the management of tax talent, and articulate the continued need to challenge gendered hierarchies in the tax field.

Keywords: Tax Experts, Gender, Talent Management, Diversity Management, Business Case, Clients' Needs.

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1. INTRODUCTION

Like most areas of financial services (Čihák & Sahay, 2018), the tax field is experiencing changes in the gender composition of its workforce as an increasing number of women enter the field (Hoke, 2018, p. 446; see also Haines, 2017; Liddy, 2018; Nibbe, Amino, Barton, Hunter, & Zöllkau, 2016; PwC, 2015). Simultaneously, the nature of day-to-day tax work is changing rapidly in response to pressure from globalisation, which is impacting the type of services that clients require, and digitisation, which is impacting the way in which tax work is conceptualised as routine processes which are increasingly becoming automated (Nibbe et al., 2016; PwC, 2017a; PwC, 2017b). These changes have increased the demand for tax experts who can operate beyond technical proficiency and have a more diversified "entrepreneurial" skill set (Suddaby, Viale, & Gendron, 2016, as cited in Radcliffe, Spence, Stein, & Wilkinson, 2018). In turn, this demand has given way to a competition for "tax talent" amongst organisations, and it is within this narrative that efforts to address gender issues are uncritically combined with efforts to retain and attract "talent" to satisfy client expectations (Nibbe et al., 2016, p. 11). Our research problematises this narrative, exploring the impact of clients' needs on the way in which gender issues are represented and how they are engaged with. More specifically, we question whether the management of tax talent is capable of challenging deeply entrenched gendered hierarchies within the field or effectively maintains the status quo while servicing clients' needs.

Although there is a growing body of research examining gender issues within the tax field (Oats, 2015), we note that little research has considered gender issues across financial services more generally (Broadbent, 2016; Haynes, 2017). Despite this lack of attention, we contend that consideration of these issues is important, as the workforce is no longer dominated by men and the very nature of tax work across the field is in a state of change. This state of change presents the industry with an opportunity to challenge traditional ways of thinking, particularly with regard to the gendered hierarchies that constrain the expression of gender across the tax field, and it is here that we find the management of tax talent to be the prevailing response from organisations.

Calls to manage tax talent may appear to champion gender equity but, as we discuss, they are underpinned by a language of productivity when servicing clients' interests, rather than a richer expression of gender (Kelan, 2010).[4] At a fundamental level, the inadequacy of this approach stems from the over-simplistic nature of a business case narrative that prioritises clients' needs; a common issue identified in managerial decision-making around complex and paradoxical issues (Hahn, Preuss, Pinkse, & Figge, 2014). In this way, we posit that the management of tax talent is constrained in its representation of gender issues and, as such, it should be viewed as fundamentally inadequate for those who seek to foster a richer expression of gender across the tax field.

To illuminate this simplicity, we discuss the conflation between talent and diversity management within the management of tax talent, wherein little is done to unpack the paradoxical relationship between them (Daubner-Siva, Vinkenburg, & Jansen, 2017). Our paper does not seek to confirm the existence of this paradox in the tax field but, rather, this

[4] Using this framing, we view the prevailing approach to managing tax talent in the field of tax as a process that proclaims to foster a normative understanding of gender or "'unitary logic" (Linstead & Pullen, 2006). However, in doing so, underlying tensions are dissolved and depoliticised in order to service clients' needs rather than in the pursuit of a freely expressed, non-normative identity (Kelan, 2010). In this way, we view the management of tax talent to be a perverse or, at least, counterproductive approach for those seeking to "ungender" the field.

paradox helps us to illuminate the absence of complex or critical understandings within the prevailing narrative of managing tax talent. In turn, we discuss how the simplicity of this narrative is dominated by a focus on servicing clients' needs via a language of productivity and the constraints that this entails. Ultimately, we posit that these shortcomings render the management of tax talent incapable of challenging gendered hierarchies in the tax field, let alone the myriad of other issues surrounding the "world of work" (Gallardo-Gallardo, Dries, & González-Cruz, 2013; see also Painter-Moreland et al., 2019).

To address the aim of our research, we engage with the issue of managing tax talent in three distinct ways. First, we contextualise its application by articulating the rapidly changing landscape within which tax experts are expected to operate. Here, we consider the influx of women into a field that is simultaneously changing to accommodate globalisation and digitisation within a competition for "tax talent", and discuss how it is oriented towards, and constrained by, clients' needs and a language of productivity. Next, we draw attention to the potential flaws of this approach to gender diversity from the fields of accounting, auditing, and law, and discuss the insights from this work in relation to the changing tax field. Here, we pay particular attention to the conceptual constraints imposed by a business case rationale and language of production that prioritise clients' needs, and discuss how these preserve gendered hierarchies in the tax field. The way in which these hierarchies are conceptual constraints which are actualised via a language of productivity and clients' needs is central to our discussion. To illustrate the impact of these constraints, we conclude by presenting preliminary empirical evidence relating to the expression of priorities in the day-to-day work of tax experts. Here, we illustrate the homogenisation of respondents' priorities around a language of productivity and clients' needs to help illustrate their influence on the tax field. In turn, we posit that this type of influence subverts efforts to address gender issues via the management of tax talent and leaves entrenched gendered hierarchies unchallenged. Academically speaking, we posit that the way in which gender issues are "managed" as part of a diversified pool of "talent"' within the workforce (Nibbe et al., 2016; PwC, 2015), perhaps inadvertently (Ashley & Empson, 2016), supports, rather than transforms, gendered hierarchies (Edgley, Sharma, & Anderson-Gough, 2016).

2. TAX: A FIELD OF CHANGE

The push for gender diversity is tied to wider calls for equality in society, but there is also ample literature highlighting the profitability derived from the inclusion of women in the boardroom. In short, these issues have become pervasive across the broader business community (Berger, Kick, & Schaeck, 2013; Sila, Gonzalez, & Hagendorff, 2016). More and more women are entering, and working their way into, management roles within traditionally male-dominated fields, and tax is no different (Hoke, 2018). As women continue to enter the tax field, they are doing so at a time when issues like globalisation and digitisation are radically reshaping the very nature of day-to-day tax work (Dobell, 2017; PwC, 2015). For example, as routine tax work becomes increasingly automated, some tax experts have upskilled in data analytics, management, and systems transition, each of which are increasingly identified as the skills required in the field, in order to stay ahead of the curve.

> As the use of technology and data analytics tools becomes more prevalent within the Tax function, ridding Tax of tasks that previously were performed by humans, the function will be expected to add value in other ways. Tax will need to understand the nuances of the business and interact more closely with other

> functions, leveraging new insights into data that technologies provide, to solve the organisation's global problems (PwC, 2017b, p. 5).

With more and more routine tax work becoming automated, tax experts are increasingly expected to "add value" in new ways, and this capacity for innovation can substantially impact their day-to-day work. Tax work is unique in that – commonly – the aim is to navigate issues in a way that minimises the tax liability of the client or the organisation, while also remaining compliant with an ever-changing array of regulations. Far from being an objective endeavour (Radcliffe et al., 2018), much of the tax work that experts are engaged in exists within the regulatory grey zone, which highlights the value of their role as experts capable of mitigating their clients' exposure to fines or litigation (Fogarty & Jones, 2014).

Globalisation has fundamentally changed the markets within which organisations operate but, in so doing, these organisations' operations are now exposed to multiple tax jurisdictions. By requiring them to deal with everything from different legal systems and tax codes to treaties and trade agreements, globalisation has also radically impacted the day-to-day work of tax experts. According to Drucker, Dyson, Handy, Saffo and Senge (1997) "the only comparative advantage of the developed countries is in the supply of knowledge workers." In fact, knowledge is a highly mobile resource, which implies that knowledge workers can easily transfer between different clients and/or organisations. Hence, there is increased pressure to attract, and keep, highly qualified and highly performing employees (Matzler, Hinterhuber, & Friedrich von den Eichen, 2003), particularly in the tax field. Increasingly, tax experts are relied upon to plan and structure organisational operations globally, which has made their role in decision-making processes more prominent and changed the nature of the way in which they operate within organisations.

> A strong technical orientation will remain important — and there will always be specialist roles — but tax professionals will also need a more rounded skill set. They must be able, for example, to assess the quality and meaning of data, to communicate complex tax principles in simple business terms and to work collaboratively with people outside their area (Jay Nibbe, in Nibbe et al., 2016, p.3).

"Soft skills", like collaboration and communication, have become increasingly important for tax experts, as they enable the translation of their knowledge and inform decision-making. Some of these new skill requirements involve a greater emphasis on the need for effective communication of complex tax issues to management and non-tax experts (Nibbe et al., 2016, p. 37). Furthermore, as globalisation increases the complexity of organisational operations, team collaboration will play a greater role in the facilitation of their development. This means that tax experts can expect to find themselves working with or within groups of people with various types of expertise, and they will need to be able to translate their knowledge effectively within and beyond these groups. In this way, modern tax experts are expected to have a somewhat "entrepreneurial" skill set (Suddaby et al., 2016) that can be adjusted to suit different personalities and cultures.[5] Aside from the difficulties involved in transposing an organisational logic between different cultural settings (Apostol & Pop, 2019), the realistic

[5] As discussed in section 3.2, these are the types of changes that signal the desire for a specialised skill set within a talent management paradigm.

limits of "adding value" and "upskilling" on tax experts are beginning to be reached, and this is particularly evident in the impact that generational change is having.

> … (loyalty) now has a shorter horizon. People want more variation over their careers, and you have to take this into account (Ronald Hein, in Nibbe et al., 2016, p.34).

> Millennials are not motivated by the same incentives, such as promotions, more pay or different business opportunities, and so it's harder for us to figure out how to incentivize them (Lisa Wadlin, in Nibbe et al., 2016, p.40).

Prior literature has considered the connection between loyalty and commitment, particularly as it relates to individuals and organisations (e.g. Hirschman, 1970; Morrow & McElroy, 1993; Werther Jr., 1988). Redding (1990) argues that loyalty to a person is more important than loyalty to an institution, while Chen, Tsui and Farh, (2002) found that loyalty to supervisors was more strongly associated with both in-role and extra-role performance than organisational commitment. Within a rapidly changing tax field that increasingly requires an individualised (entrepreneurial) skill set, these insights provide an important context for decreases in organisational loyalty, particularly amongst younger generations whose commitment is not regulated by traditions. As the role of individualised skills increases, so does the importance of interpersonal connections. In response, organisations can be seen to be developing their efforts to retain "tax talent", as illustrated by the search for new incentives to entice younger generations of tax experts to enter the field.

In working to adapt their workforce to a changing tax field, organisations have been faced with a somewhat paradoxical choice between retraining their existing workforce or restructuring their systems and processes to accommodate new demands. Retraining requires spending time and money adapting the knowledge and skill sets of existing employees who might not be in the workforce much longer, while restructuring operations can require a paradigm shift in the existing culture of the firm. Each option represents substantial expenditure with no guarantee of success and it is from within the underlying paradox of this situation that many organisations have promoted a business case for "managing diversity".

> Diversity in all its forms – from gender, generation, ethnicity, sexuality and disability to people with a broader range of skills, experiences and industry backgrounds – is a vital element of the changing talent focus within [financial services] (PwC, 2015, p. 3).

As organisations have come to accept that they need to change the way they operate, many have done so by attempting to embrace diversity "in all its forms". Rather than addressing each underlying issue, this approach attempts to create a "win-win" of sorts, whereby clients' needs are serviced by a more "diverse" workforce.[6] Commonly referred to as the business case for gender diversity, this approach aims to address both workers' and clients' needs simultaneously. However, we question the effectiveness of such efforts to address the systematic issues that underpin each of the complex diversity issues that they claim to engage with, particularly those regarding gender.

[6] In line with fn5 and our discussion in section 3.2, these are the type of changes that align with the equity ambitions of a diversity management paradigm.

3. "MANAGING" GENDER

3.1 Conceptualisation

Early understandings of gender were essentialist in nature, often being portrayed as an individualistic set of traits (Poggio, 2006). This over-simplistic approach enabled a binary conceptualisation of men and women, whereby their concerns and priorities can be represented as a unitary category (Gallhofer, 1998). Over time, the expression of gender has come to be viewed as a manifestation of a subjectively internalised reality and its expression reflected an objective realism (Poggio, 2006; West & Zimmerman, 1987). In the tax field, symbolism and symbolic gestures that objectify notions of gender are key components in reinforcing a sense of professional identity based on gender (Haynes, 2013; Haynes & Grugulis, 2014). Put simply, this means that the expression of gender can be understood as being subject to the influence of the environment in which it is being expressed (Kirkham & Loft, 1993; Komori, 2008). The impact of a professional environment on the expression of gender provides important insights into the multiple forms of gender (Kelan, 2010) that are, or are not, allowed for and normalised in day-to-day tax work. Through various micro-processes, we suggest that tax experts have become conditioned to internalise professional traits that support and rationalise "a language of productivity" (Edgley et al., 2016, p. 13) that prioritises clients' needs. In turn, this has allowed gender issues to be managed in a way that dissolves and depoliticises tensions, thus mitigating any meaningful challenge to the entrenched gendered hierarchies that exist across the field.

With the prevailing approach to gender diversity being framed by clients' needs, it is somewhat unsurprising that there is ample research on business decision-making and gender (Akaah, 1989; Rosa, Carter, & Hamilton, 1996; Watson, 2002; Watson & Robinson, 2003). Here, prior research has noted a high degree of gender bias in terms of leadership capabilities and that women in business have fared less well because they essentially lacked the leadership capabilities of their male counterparts (Chaganti, 1986). Previous research has also found women to be more compliant as taxpayers, although it is unclear how this may translate to women in tax advising roles (Kastlunger, Dressler, Kirchler, Mittone, & Voracek, 2010). Despite being a seemingly antiquated notion (Eagly, 1987), women are also portrayed as – on average – more emotionally intelligent than men, which is believed to help them to foster greater group collaboration (Kirkland, Peterson, Baker, Miller, & Pulos, 2013; Woolley, Aggarwal, & Malone, 2015). Other work looking at the role of gender in financial performance found differences in financial performance between men and women, although gender was not a definite factor in determining these differences (Collins-Dodd, Gordon, & Smart, 2004). There has also now been ample research into the intersection of gender and risk (Croson & Gneezy, 2009; Eckel & Grossman, 2008a, 2008b; Harris, Jenkins, & Glaser, 2006). Although "women's risk taking is more complex than the common stereotype" (Maxfield, Shapiro, Gupta, & Hass, 2010, p. 587; see also Groysberg, 2008), prior literature suggests that women are more risk-averse than men (Charness & Gneezy, 2012; Eagly, 1987), even from a biological approach (Coates & Herbert, 2008; White, Thornhill, & Hampson, 2007).[7]

[7] The papers reviewed here have been selected for their applicability to the aims of this paper. For a review of this extensive body of prior research, see Bertrand (2011), Croson and Gneezy (2009), and Eckel and Grossman (2008a; 2008b).

3.2 Management

As of 2016, more than half of the people entering the tax field were women, there was near parity between men and women in mid-level tax management positions, and nearly 70% of tax examiners, collectors, and revenue agents at the Internal Revenue Service in the US were women (Nibbe et al., 2016, p. 11). Traditionally, financial services like tax, audit, and accounting were grounded in masculine social and cultural norms (Broadbent, 1998; 2016; Haynes, 2017; Walker 1998, 2003). While a broad body of research has highlighted resistance to these norms (Komori, 2008; Twomey, Linehan, & Walsh, 2002; Windsor & Auyeung, 2006), more recent work indicates that as "lived spaces", the tax field continues to be defined by them (Abu-Rabia-Queder, 2017; Carmona & Ezzamel, 2016). The continued influence of professional norms based on gender is an important consideration within the tax field, as it delineates the path forward for those who want to develop a career in the field. For example, consider Flynn, Earlie and Cross (2015, p.479), who identified a firm belief among both male and female tax professionals that a successful career progression meant "adapting to masculine occupational values and norms".

The presence of gendered hierarchies in tax expert domains is well-documented (Anderson-Gough, Grey, & Robson, 2005; Fasci & Valdez, 1998), and efforts to resist gendered hierarchies have been noted in recent research (Abu-Rabia-Queder, 2017; Tremblay, Gendron, & Malsch, 2016). Despite these attempts, more recent studies have looked at gender composition in the tax field, notably at the higher levels of management, and found that females continue to be underrepresented at the most senior levels (Adapa, Rindfleish, & Sheridan, 2012; Lupu, 2012). Recognising the longevity of this issue, it is understandable that researchers have come to question the apparent lack of significant progress in addressing wider issues of gender inequality in the tax field.

Given the longevity of these concerns and the historical entrenchment of gendered hierarchies, it is only natural that efforts that proclaim to address them have come into question, as is the case with the management of tax talent. Broadly speaking, managerial decision-making has work to do when it comes to grappling with complex issues, as business case thinking often leads to the oversimplification of complex and paradoxical issues (Hahn et al., 2014). The conflicts and tensions that underpin issues like gender tend to be dissolved and depoliticised in order to facilitate their management but, ultimately, such a simplistic representation can effectively ensure that the underlying issues are never addressed. This means that "win-win" changes are often prioritised over more complicated changes that can challenge entrenched gendered hierarchies. Furthermore, it is easy to see how prolonging meaningful change in the face of increasing social pressure can generate malaise and inaction, and further entrench gendered hierarchies as "the way things are".

To illustrate, consider the conflation of talent and diversity management within the push to manage tax talent. Both talent and diversity are framed by their relationships to clients' needs, but this overlooks the fundamental paradox between them (Daubner-Siva et al., 2017). Here, calls for exclusion under talent management (i.e. specialised skill sets) and calls for inclusion within diversity management (i.e. bringing more women into upper-level management positions) (ibid, p.315) are combined under a push to manage tax talent, but the underlying

paradox they represent is never critically engaged with.[8] By avoiding engagement with this paradox, the management of tax talent cannot be expected to deliver on its talent or diversity ambitions, let alone generate change around gender issues. Our research posits that it is the over-simplistic framing of the management of tax talent and its approach to gender issues that leaves it fundamentally incapable of challenging entrenched gendered hierarchies across the tax field (Litven, 2002; Noon, 2007; Tomlinson & Schwabenland, 2010).

Although his work focussed on ethnic minorities, Noon (2007) discussed the displacement of equal opportunities and its social justice underpinnings by a push for diversity favoured by management. Rather than a maturation of the argument for equal opportunities, Noon viewed the ascendance of a push for diversity as inadequate, which stems from its association with an over-simplistic rationale that appeals to management. To illustrate this difference in relation to gender, an equality perspective aims to assimilate a variety of gendered traits into an organisational norm, or "ungender" the workplace (Kelan, 2010; Linstead & Pullen, 2006), while a diversity perspective aims to nurture and reward difference (Ashley, 2010). Central to this difference is the moral legitimacy that is obscured by the simplicity of the push for diversity, as it fails to confront "power relations, dominant ideologies or organizational goals" and cannot be expected to address "deep, structural problems" (Noon, 2007, p.775-776). In effect, these failures make such efforts for diversity nothing more than an exercise in "firm branding, without threatening cultural norms" (Edgley et al., 2016, p.16). Despite these shortcomings, the push for diversity continues to proliferate, particularly amongst "texts for a practitioner public" (Ashley, 2010, p 714). Within our own research, we view the management of tax talent in a very similar way to Noon (2007), in that it obscures the rich tensions and moral complexities that underpin gender equity issues. In this way, such an approach cannot, and should not, be expected to address them.

Throughout this section, we have articulated the shortcomings of the management of tax talent, particularly as it relates to gender issues within the tax field. In doing so, we articulated a complex understanding of gender and its expression within organisations, and discussed how it remains constrained by a business case framing of clients' needs. Fundamentally, the management of tax talent is an over-simplistic approach to a paradoxical issue like gender and cannot be relied upon to engage issues of gender. In practice, the influence of organisational demands and clients' needs places conceptual constraints on the types of issue that such an approach addresses and, in lieu of a more critical understanding, these constraints mitigate any meaningful change to gendered hierarchies in the tax field. To help to illustrate the impact of these conceptual constraints, the next section presents preliminary data in respect of the way in which tax experts' own priorities are constrained by a language of productivity when servicing clients' needs, regardless of gender. Although this data focusses on tax experts' priorities in their day-to-day work, we aim to illuminate the homogenising impact of these conceptual constraints to problematise efforts to manage tax talent.

[8] Our research is focussed on the inadequacy of managing tax talent to address gender issues in the field of tax. In this regard, the underlying paradox between talent and diversity management helps to articulate the fundamental shortcomings of such an approach, particularly as an extension of the type of simplistic decision-making that prevails within the business case rationale of addressing clients' needs. An expanded discussion of this paradox is beyond the scope of this paper, but for further discussion and analysis see Daubner-Siva et al. (2017), Painter-Moreland et al. (2019), and Gallardo-Gallardo et al. (2013).

4. METHODS

4.1 Personal Qualities in Day-to-Day Tax Work

The preliminary data presented in this section is a small part of a larger online questionnaire directed at tax experts regarding their day-to-day work. The questionnaire was designed and constructed in Qualtrics, and subsequently piloted between February and April 2017. At the beginning of May 2017, an email link was distributed across a variety of professional and industry networks. The link was closed on December 1st, 2017, at which time 988 responses had been collected (N=988; male=515; female=473) from across 58 countries.

The full questionnaire contained thirteen questions meant to provide deeper insights into various factors that tax professionals may, or may not, see as important in their day-to-day tax work. Questions one to nine were demographic (i.e. age, gender, etc), while questions ten to thirteen were attitudinal-focussed and developed from themes identified in literature (i.e. factors important in day-to-day tax work, organisational leadership, and influences on an innovative/aggressive tax decision). Our paper utilises data from one of these attitudinal questions, which focussed on the personal qualities that the tax professional might bring to their work. In this sense, we refer to our dataset as preliminary for two reasons. First, it indicates our recognition that the data presented here is only a small piece of a much larger analysis that can be developed from the full questionnaire. Although a variety of questions could be explored and analysed using the data obtained from the full questionnaire, we have limited the data presented here so as to narrow our analysis in support of the aims of this paper. In a similar way, we recognise the limited analytical capacity and generalisability of our data across the tax field. Although this is a common limitation of questionnaire data, we also recall the utility of this data within our broader critique of the management of tax talent, that is, to illustrate the conceptual grip of clients' needs over tax experts.

Using a 5-point Likert scale, from (5) very important to (1) not important at all, respondents were asked to subjectively rate the importance of a range of personal qualities in their day-to-day tax work:

Knowledgeable, *Ethical*, *Speedy*, *Pragmatic*, *Compliant*, *Innovative*, *Accurate*, *Confidential*, *Technically competent*, *Nuanced*, and *Loyal.*

The selection of these qualities was informed by a review of literature in and around the organisational setting of tax work that recognised the highly charged and dynamic processes that call on tax experts to possess a diverse range of skills (Fogarty & Jones, 2014; O'Regan & Killian, 2014; Radcliffe et al., 2018). We cannot state that these qualities reflect the full range of important influences on respondents' day-to-day work, but we note that many of them are critical to tax work in the modern globalised tax field. Here, we view decision-making in tax work as being subject to a variety of factors that are external to the tax expert, such as managerial expectations, changing client demands and expectations, and whether their organisation promotes the adoption of a risk-taking or a risk-averse attitude towards decision-making. In terms of the latter, research findings suggest that gender is a factor when it comes to professional decision-making in tax work. Bobek, Hageman and Radtke (2015) found that "female tax professionals are less likely both to recommend and to allow a client-favourable tax position in an ambiguous scenario as compared to male tax professionals" (p. 60). While it may seem inconceivable, recent research indicates that client attitudes to gender are influential in shaping organisational attitudes to gender (Hardies, Lennox, & Li, 2018). In light of this, we

find that asking respondents to subjectively rate the importance of these factors is arguably a reflection of objectified organisational attitudes to the same factors.

A stream of prior literature suggests that subjective attitudes to some of these factors are impacted by gender (Hakim, 2000; Kornberger, Carter, & Ross-Smith, 2010; Lupu, 2012; Shawver & Clements, 2015; Watson, 2002), but we note the variability of human subjectivity and recognise that an individual's view of any issue cannot be defined entirely by their gender. While it has been noted that gender (especially female) is a factor when it comes to career progression (Komori, 2008; Lupu, 2012; Windsor & Auyeung, 2006), more recent work suggests that organisational attitudes to gendered division of labour is a fluid concept that can shift when it is deemed to be in the best interests of the organisation (Sommerlad & Ashley, 2018).

Given our focus on developing a more fluid understanding of gender, we had hoped to expand our analysis of gender to represent a broader range of identities (Egan, 2018; Hardies & Khalifa, 2018; Haynes, 2017; Rumens, 2016), but only seven *prefer not to say* responses were received. Undoubtedly, it would be very interesting to study differences between three different gender groups, by considering *males*, *females*, and those who *prefer not to say*. However, as *prefer not to say* responses constitute only 0.7% of the total sample, we cannot validate statistical inferences from their responses. That being said, we note the potential for future research here, particularly within a dramatically changing business environment under the influence of "heteronormative perspectives" (Stenger & Roulet, 2017, as cited in McGuigan & Ghio, 2018, p. 626; Rumens, 2016).

Table 4.1 reports the results related to the perceptions of both males and females on the importance of the personal qualities that they bring to their day-to-day tax work. Compared to males, females – on average – scored higher for the majority of personal qualities (*knowledgeable*, *ethical*, *speedy*, *pragmatic*, *compliant*, *accurate*, *confidential*, *technically competent*, and *loyal*). However, males, on average, gave being *innovative* and *nuanced* higher scores.

Based on the replies of the participants, we conducted a statistical analysis with the use of non-parametric tests (i.e. Mann-Whitney U test), to identify broad relationships between males and females across the personal qualities that they valued in their tax work. This test provides a rank table that indicates which group can be considered as having the highest overall score for each dependent variable; namely, the group with the highest mean rank (Table 4.2).

Table 4.1: The importance of personal qualities across gender

		Females Mean Median (SD)	Males Mean Median (SD)
Knowledgeable		4.84 5.00 (0.45)	4.74 5.00 (0.49)
Ethical		4.68 5.00 (0.68)	4.48 5.00 (0.83)
Speedy		4.00 4.00 (0.85)	3.94 4.00 (0.83)
Pragmatic		4.18 4.00 (0.79)	4.16 4.00 (0.77)
Compliant		4.61 5.00 (0.68)	4.42 5.00 (0.74)
Innovative		3.82 4.00 (0.98)	3.94 4.00 (0.95)
Accurate		4.72 5.00 (0.57)	4.64 5.00 (0.59)
Confidential		4.72 5.00 (0.63)	4.61 5.00 (0.68)
Technically competent		4.66 5.00 (0.65)	4.65 5.00 (0.61)
Nuanced		3.61 4.00 (1.03)	3.76 4.00 (0.88)
Loyal		4.00 4.00 (1.02)	3.92 4.00 (1.00)

Table 4.2: Mann-Whitney U test across females and males: Scoring

	Females	Males	Sig.	Higher score among
Knowledgeable	MR=513.64, n=469	MR=467.26, n=509	1%	Females
Ethical	MR=519.19, n=469	MR=460.11, n=507	1%	Females
Speedy	MR=500.68, n=468	MR=477.28, n=508	None	n/a
Pragmatic	MR=491.51, n=463	MR=477.10, n=504	None	n/a
Compliant	MR=523.89, n=468	MR=452.81, n=505	1%	Females
Innovative	MR=469.51, n=463	MR=500.10, n=507	10%	Males
Accurate	MR=509.87, n=467	MR=466.89, n=507	1%	Females
Confidential	MR=514.08, n=469	MR=463.83, n=506	1%	Females
Technically competent	MR=492.14, n=467	MR=483.23, n=507	None	n/a
Nuanced	MR=441.80, n=431	MR=476.07, n=488	5%	Males
Loyal	MR=493.45, n=460	MR=467.60, n=499	None	n/a

As illustrated in Table 4.2, females scored higher across most of the personal qualities. More specifically, we find that female tax experts considered it more important to be *knowledgeable*, *ethical*, *compliant*, *accurate*, and *confidential* than males, while males consider being *innovative* and *nuanced* to be more important than females. Interestingly, we found there to be no statistical difference in the way in which *speedy*, *loyal*, *pragmatic*, and *technically competent* were perceived by males and females.[9]

5. DISCUSSION

5.1 Differences

Respondents who identified as female were seen to give higher priority to being *knowledgeable*, *ethical*, *compliant*, *accurate*, and *confidential* than those who identified as male, who prioritised being *innovative* and *nuanced*. Broadly speaking, qualities like *knowledgeable*, *compliant*, and *accurate* would be expected to be important for most professionals working within an organisation, and there is no reason to believe that tax experts would be any different. From the perspective of management, these skills are basic requirements of the changing operational landscape of tax experts.

[9] To ensure that we were not inferring an effect from pattern differences, we also developed a complementary ranking variable based on the Likert score replies in order to indicate how highly each respondent ranked each quality relative to the other options available. Using the same non-parametric approach, our second test provided us with the same indicators as Table 4.2 regarding the similarities and differences between females and males.

> The great skills of the tax professional going forward will be to carry their technical skill with them, but not let that dominate every conversation they have with a finance person or a business person (Chris Price, Leader of EY's Global People Advisory Services, in Nibbe et al., 2016).

Generally speaking, ethical approaches emphasise moral reasons beyond utility maximisation and the profit motive to move towards a more just world. Butterfield, Trevin and Weaver (2000) define ethical awareness as individual consciousness of an ethical dilemma wherein a decision or action is required that conflicts with one or more moral standards. In line with findings from prior behavioural literature (Betz, O'Connell, & Skepard, 1989), women appear to be more concerned with ethical business decision-making than men are. This is particularly interesting in relation to the wider context of concern about global tax evasion, and the need to be compliant and ethical (O'Regan & Killian, 2014; Radcliffe et al., 2018). Here, the increased importance that women place on ethics might be useful to professional firms concerned with making staffing decisions in respect of issues that might have substantial ethical ambiguity, or tax leaders looking for staff who will support their values.[10] In any case, as tax work becomes ever more complex, the value of ethics as a guide for decision-making is becoming increasingly important for the modern tax expert (Radcliffe et al., 2018).

> In terms of leadership of a group, women tend to be collaborative. And in tax, because of the complexity, you really need some kind of moral compass guiding you. And maybe women project that in a particular way (Diane Dossin, Chief Tax Office, Ford Motor Company, in an interview in Nibbe et al., 2016).

Findings with regard to the qualities *compliant* and *accurate* touch on a similar characteristic, one that illustrates a concern for the quality of the job being undertaken. The underlying question here is why women score and rank this personal quality higher than men. While it is important to avoid the conclusion that this difference means men do not care about these qualities, these findings suggest that women place a higher level of importance on the quality of their work. Given that an error in either compliance or accuracy could result in fines or litigation, these differences may also indicate that women are more conscious of the implications that the quality of their work may have on the organisation. These considerations align with prior literature on risk aversion amongst women (Charness & Gneezy, 2012; Eagly, 1987), and are important for professional firms looking to service their clients while also mitigating potential fines or litigation (Fogarty & Jones, 2014), as well as those looking to refute the negative characterisations that have begun to plague the tax field as a result of highly publicised cases of global tax evasion.[11]

Given the sensitivity of tax information, *confidential* is another quality that makes sense in relation to the day-to-day work of tax experts. Here, the higher scoring and ranking of this quality amongst women aligns with a more externally oriented approach to their work in that it elevates the interests of others, or perhaps a client. In being more receptive to these external issues than men, women – once again – can be seen to prioritise interests that are beyond themselves. Combined with the higher importance that women place on *ethics* in their work, and the higher levels of emotional intelligence that they exhibit in order to foster group collaboration (Kirkland et al., 2013; Woolley et al., 2015), our findings suggest that women

[10] This being said, we also note the "glass cliff" that women face even when they reach top management positions (Broadbent & Kirkham, 2008; Nutley & Mudd, 2005).

[11] See "An ICIJ Investigation – Paradise Papers: Secrets of the Global Elite". and "The Panama Papers: Exposing the Rogue Offshore Finance Industry". (n.d.).

promote qualities that are increasingly aligned with those of organisations seeking to adapt to, and thrive in, the type of rapidly changing tax field that we discussed in Section 2. Enabling such adaptation also reflects women's communication within their occupational field (Ashby, Haslam, & Webley, 2009), and the social norms that they foster within their organisations in order to facilitate their adaptation (Onu & Oats, 2015).

The qualities promoted by men – *innovative* and *nuanced* – also appear to have a common thread; namely, individualism. *Innovative* refers to a development beyond the current approach. In a work context, being *innovative* is often seen as the path towards finding new solutions. As the nature of day-to-day tax work is impacted by digitisation, qualities like *innovation* are in demand amongst tax experts; if tax experts are innovative, they can add value beyond carrying out routine tasks, which are increasingly becoming automated. On one hand, professional firms competing for clients may see the importance that men place on innovation as a means by which they can develop a competitive advantage. However, as males also place a lower level of importance on *ethics* and *compliance*, questions can be raised about the sustainability of such *innovation*, particularly in a tax field that is struggling to navigate the "grey areas" surrounding tax avoidance and evasion.

As tax experts are increasingly expected to have a more diversified and "entrepreneurial"' skill set (Radcliffe et al., 2018; Suddaby et al., 2016) in order to navigate both "grey areas" and paradoxical decision-making in the modern tax field (Fogarty & Jones, 2014), it is somewhat understandable that individuals might see the necessity of taking a *nuanced* approach to their work. However, *nuanced* suggests an ability to navigate complexity in a way that is not only sufficient to complete the task at hand, but also distinguished for its ability to operate within a complex environment.

5.2 Similarities

Given our exploration of the conceptual constraints that clients' needs play within the tax field, those areas in which no differences were identified between respondents were particularly interesting for analysis. There were four variables that respondents of both genders scored similarly: *speedy, pragmatic, technically competent*, and *loyal*. Individually, these first three characteristics represent distinctly different qualities which signal different priorities.

It is somewhat understandable that *speedy* would be a characteristic that tax experts bring to their work, as the need to meet the ubiquitous deadlines in the field and the pressure to reduce client fees necessitate taking an efficient approach to day-to-day work. Furthermore, as digitisation continues to reduce the number of recurring tasks that tax experts need to carry out in their day-to-day work, the fact that both genders assign similar levels of importance to this characteristic may also reflect a more general approach within the field.

In a similar way, *pragmatism* is also a component of expedient decision-making in respect of time-sensitive tax matters, but it conveys a sense of reductionism in decision-making as well. Pragmatism can help modern tax experts to make decisions about issues within the "grey areas" that they are called to engage with (Fogarty & Jones, 2014). In this regard, it is important to recall the central role of clients' needs in the decision-making processes of organisations more generally, which calls into question the way in which these decisions are being conceptually constrained by the interests they serve.

Technically competent rounds out a three-part "functionality" thread that appears to run through most of the similarly-rated variables, as the very nature of day-to-day tax work requires practitioners to have a foundation of technical knowledge. The similarity identified here is also interesting when contrasted with the differences identified in respect of *innovative* and *nuanced* amongst men. While *technically competent* suggests having the knowledge needed to undertake the work required, sufficiency is also implied. When contrasted with the more individually-oriented characteristics that men ranked higher, questions begin to surface about the way in which women approach their work and leverage their knowledge in the field.

The similarity identified in respect of *loyalty* is initially interesting in relation to the ways in which the tax field is changing and the perceived decreases in loyalty amongst younger generations of tax experts. *Loyalty* is a major concern for organisations, given the impact of globalisation and digitalisation on day-to-day tax work, and the investment that is being made in retraining and recruiting programmes, which are driving organisations towards managing tax talent. Furthermore, these characteristics, in line with the other functional similarities that were identified, portray an ideal tax expert in terms of the language of productivity that operates when servicing clients' needs.

6. CONCLUDING COMMENTS

The tax field is dominated by a masculine-oriented hierarchy and, to change this, meaningful opposition to the gendered hierarchies underpinning the field is needed. As globalisation and digitisation usher in a time of immense change across the tax field, the management of tax talent is being promoted as a process by which clients' needs can be met at the same time as more fundamental gender issues are being addressed. Inevitably, this type of business case narrative favours clients' interests above all else and, in so doing, the tensions and underlying complexities of issues like gender diversity are overlooked and/or ignored. This process of simplification may appease the needs of clients, but this leaves approaches like the management of tax talent susceptible to the overwhelming influence of a language of productivity that prioritises clients' needs, thus constraining their ability to challenge deeply entrenched gendered hierarchies.

Years of women entering the tax field has increased their representation within the field but, arguably, has changed little else (Hoke, 2018). The number of women in upper-level management positions may be a crude indicator of progress, but it helps to illustrate the resilience of this issue and the longevity of deeply entrenched gendered hierarchies across the tax field. We posit that the prevailing approach to address this, the management of tax talent, is fundamentally incapable of challenging these hierarchies.

To illustrate the power of the conceptual constraints imposed by an orientation towards clients' needs, preliminary empirical data was presented in respect of the day-to-day work priorities of male and female respondents. As expressions of gendered priorities, our findings aligned with existing understandings of gendered differences and we discussed how these are framed by the servicing of clients' needs. Males appeared to prioritise individualist characteristics, while females emphasised collaborative characteristics. The identification of these differences is not new, but they do illustrate type of "masculine values and norms" that women must adapt to in the field, as well as an "undervaluing' of their 'occupational values'" (Flynn et al., 2015, p.495). Furthermore, the alignment of these differences with these previously identified norms and values illustrates their continuity within the existing tax field, as they are allowed for under existing gendered hierarchies (Anderson-Gough et al., 2005; Fasci & Valdez, 1998; Hoke,

2018). Differences between men and women were interpreted via insights from prior literature, but it was the similarities between them that indicated a homogenisation of priorities around a language of productivity when servicing clients' needs. Here, insights were gained into the homogenisation of priorities in order to illuminate the conceptual constraints that clients' needs place on tax experts, and it is these same constraints that – we posit – subvert efforts to address gender issues within the prevailing efforts to manage tax talent.

In surfacing a homogenisation in the priorities of tax experts around *speedy*, *pragmatic*, *technically competent*, and *loyal*, we sought to illustrate the alignment between these qualities and the "language of productivity" that is both pervasive in the tax field and focussed on serving clients' needs (Edgley et al., 2016). The nature of this preliminary data does not enable generalisation of this homogenisation process, but we have tried to show that, while males and females may have slightly different priorities in their day-to-day work, tax experts have a strong sense of being "productive" at their core, regardless of their gender. In articulating this, we recognise the limited analytical capacity of the preliminary data that we presented to inform these inferences, but it is here that there is potential for future research. Statistical checks were performed in order to assess the significance of the similarities and differences between respondents, but there are a variety of ways in which respondents could have interpreted our survey instrument and the qualities that they were asked to rank. We recognise that we cannot make inferences about the tax field more broadly, but also note that the underlying complexity of gender requires taking a more nuanced approach than can be informed by statistical generalisation. While we recognise these limitations, our findings, although preliminary in nature, illuminate a path for future research on tax experts that is aligned with much of the motivation for this special issue of the *Journal of Tax Administration*. More specifically, we believe that there is ample room to develop future research that includes LGBTQ perspectives and to expand on our research with the addition of qualitative insights in order to develop more robust analytical insights. Regarding the latter development, additional interviews would be a useful way in which to more accurately assess the impact of clients' interests on tax experts in their day-to-day work.

To conclude, we posit that the management of tax talent should not be relied on in order to address gender issues in the tax field. As an inherently simplistic approach to these issues, the underlying complexities and tensions of gender issues are obscured in favour of a business case rationale that prioritises clients' needs. By failing to address the complexity of these issues, this approach allows gendered hierarchies to remain unchallenged, thus ensuring their continuity. As factors like globalisation and digitisation continue to radically change the operational landscape of the tax field, we hope that this research can stand as a call to remain vigilant of the changes that are taking place and whose interests are being served as the field adapts to them.

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DO TAX EXPERTS AND NON-EXPERTS DIFFER IN THEIR SENSE OF FAIRNESS ABOUT A MORE EVEN DISTRIBUTION OF "DIGITAL" PROFITS ACROSS COUNTRIES? - EVIDENCE FROM A SURVEY IN GERMANY

Stefan Greil[1], *Christian Schwarz*[2], *Stefan Stein*[3]

Abstract

The taxation of multinational enterprises (MNEs) is challenging. The profits of an MNE should be aligned with value creation and taxed accordingly using the arm's length principle (ALP) to achieve a proper distribution of taxing rights. However, those who are not tax experts, such as tax politicians, often raise concerns that, in a digital economy, arm's length profits lead to a tax base allocation based on value creation. Therefore, they advocate fair taxation but, on the contrary, don't describe or explain what can be understood as fair. In this paper, we use a survey to shed light on questions about whether tax experts, such as tax advisors and auditors, and non-experts differ in their senses of fairness with regard to a more even distribution of profits across countries. Our findings indicate that tax experts' senses of fairness differ from non-experts' senses of fairness about a more even distribution of profits across countries. Tax experts – to a certain extent – consider the ALP and value contributions, while non-experts do not. As the ALP allocates a vital role to inter-nation equity, it is essential that there is no perceived unfairness in this regard, or the current regime of international taxation is called into question.

INTRODUCTION

Almost all articles, press releases, and political statements dealing with the taxation of digital business models in principle and the international allocation of taxing rights across jurisdictions postulate that the digital economy must be taxed fairly. For example, one will find the word "fair" eighteen times within the European Commission (EC) communication *A Fair and Efficient Tax System in the European Union for the Digital Single Market* (EC, 2017), but what can be understood as "fair" is not described or explained.[4]

On the one hand, one could assume that fairness relates to the fact that multinational enterprises (MNEs) should be taxed at a certain level (effective minimum taxation), as the low effective tax rates applicable to digitalized MNEs are emphasized again and again in political discussions. For example, the European Union (EU) estimates that companies with digital business models pay, on average, half of the effective tax rate applied to companies with traditional business models.[5] Global action seems to be needed to stop an unfair and harmful race to the bottom of the tax rates. Incentives to shift profits could be significantly limited through the development and consistent implementation of rules that would safeguard the

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[4] The EC published two proposals: *Proposal for a council directive laying down rules relating to the corporate taxation of a significant digital presence* (2018a) and *Proposal for a council directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services* (2018b).
[5] C.f. EU (2014).

imposition of a minimum level of tax on profits. Against this background, Germany and France have also launched international initiatives for effective minimum taxation (Global Anti-Base Erosion) to meet the challenges of the digital economy and ensure that a level playing field exists.

On the other hand, one could assume that fairness relates to the principle that an MNE's business profits should be taxed in the countries where their business activities take place and value is created, regardless of the MNE's effective tax rate. The achievement of this objective should be ensured by employing the arm's length principle (ALP) as the main principle for allocating business profits between the enterprises that form an MNE and different countries.[6] The ALP is legally codified in German national tax law and in all German double tax treaties, and is also found in many national tax laws and double tax treaties worldwide (Article 9, OECD-Model Tax Convention; see Langbein & Fuss, 2018, for the history of the ALP). The purpose of the ALP is to allocate taxable profits to different enterprises of an MNE in accordance with the outcomes of market transactions between independent third parties and, therefore, to ensure that profits are taxed where the business activity (i.e., the functions performed, risks borne, and assets employed) takes place, that is, where its resources are located and directed (e.g., Langbein & Fuss, 2018; Vann, 2010).

The public in general and tax politicians in particular often raise concerns that, in a digital economy, arm's length profits lead to a tax base allocation based on value creation. This relates to the empirical evidence showing that digital business models, in particular, were quite successful in avoiding taxation.[7] In traditional business models, the taxation rights of a jurisdiction correspond with the scope and extent of the MNE's business activities in that country. However, in digital business models, digital goods and services can be provided without the company having a physical presence in a specific country. As a result, it is not essential to have a physical presence in a certain country and, therefore, value creation is more difficult to evaluate, since the use of typical heuristics, such as employees or tangible assets, as reference points is not possible or reasonable.[8]

The main concern of the debate is that "user" value creation due to data gathering is located in a tax jurisdiction where the company carrying out a digital activity is not physically established and, therefore, where its "activities" cannot be taxed.

In practice, the current transfer pricing guidelines and rules seem to ignore this issue of "user value creation" (for a comprehensive analysis, see Greil, 2019) and may not provide a satisfactory solution by which to allocate profits aligning with the business activity (see Devereux & Vella, 2017). Additionally, Greil, Müller and Olbert (2019) indicate that existing transfer pricing rules approximate economic activity to a greater extent than the formulary apportionment of corporate profits would, despite the conceptual shortcomings of the ALP. However, the increased automation of business activities makes it harder to justify the allocation of profits based on physical allocation factors.

[6] The ALP is – at least, for OECD countries – also the cornerstone of the attribution of profits to the permanent establishment (PE) and the enterprise.

[7] Typical channels include transfer pricing (Davies, Martin, Parenti, & Toubal, 2018), debt shifting (Egger, Keuschnigg, Merlo, & Wamser, 2014), royalties (Dischinger & Riedel, 2011; Griffith, Miller, & O' Connell, 2014; Karkinsky & Riedel, 2012), and shifting of functions (Mutti & Grubert, 2004; Ruf & Weichenrieder, 2012; Voget, 2011).

[8] See also BEPS Action 1 (OECD, 2015), where is argued that digitalization facilitates the internationalization of all aspects of a company's business, as it is not necessary to create a physical local.

The current transfer pricing system, which focuses on value creation and business activities, can also be used to structure the tax burden of an MNE group, as the transfer pricing system is linked to mobile factors. MNEs are thus able to allocate these factors in a tax-efficient way (the relocation of real economic activities; investment shifting). It even provides the incentive to structure the tax burden and can also have negative welfare effects (Aliber, 1993; Avi-Yonah, Clausing, & Durst, 2009; Devereux & Keuschnigg, 2008; Durst, 2012; Luckhaupt, Overesch, & Schreiber, 2012; Morse, 2013; Rectenwald, 2012; Vann, 2010).

In the public and among tax authorities there currently exists, therefore, a strong feeling that there could be a mismatch between where taxation of the profit takes place and where value is created, especially for digital activities. Therefore, some countries are unsatisfied with the ALP and implement special levies; for example, India introduced an equalization levy, the UK and Australia introduced diverted profits taxes, and the US introduced the base erosion and anti-abuse tax (BEAT). Against this background, both the Organisation for Economic Cooperation and Development (OECD, 2019) and the EU (EC, 2018, 148 final; EC, 2018, 147 final) are elaborating possible solutions by which to address the fragmentation of the international tax system, restore this system, and achieve a fairer tax system.

In this paper, we use a survey conducted with tax experts and non-experts to shed light on questions about whether they differ in their sense of fairness about a more even distribution of profits across countries. The aim of our survey is neither to estimate arm's length profit allocations nor to attempt to obtain a definition of fairness. Participants – tax auditors and tax advisors as tax experts, and business students as non-experts – were presented with a stylized description of a digital business model in a two-country context. In principle, participants had to assess, as a neutral third party, whether a presented arm's length allocation of profits between the two countries could be considered to be a fair allocation and what the proposed fair allocation of profits would be. In the follow-up questions, we also varied the tax differential. We expected differences in the response behavior. On the one hand, for example, the ALP may trigger an anchor effect among the experts, and they may, therefore, tend to perceive a fairer distribution. Furthermore, the experts should have a better overview of the overall tax system and may consider other aspects in their responses, like value added taxes, which play a vital role in the taxation of digital services. On the other hand, the non-experts, in particular, could be framed by the current political discussion and perceive an unfair distribution of taxing rights.

We analyzed our survey using the following guiding research questions:

- *Research Question 1*: Do tax experts differ from non-experts in their sense of fairness about a more even distribution of profits across countries?
- *Research Question 2*: Do tax auditors and tax advisors differ in their sense of fairness about a more even distribution of profits across countries?
- *Research Question 3*: Do different tax rates in the countries have an impact on the groups' senses of fairness about a more even distribution of profits across countries?
- *Research Question 4*: Does the arm's length allocation of profits between the countries have an impact on the groups' senses of fairness about a more even distribution of profits across countries?

Following the research hypotheses, our results can be briefly summarized as follows. We find significant differences in the sense of fairness differences between experts and non-experts in scenarios with a very uneven distribution of profits across countries. However, we do not find significant differences in the sense of fairness between experts and non-experts in more even

distribution of profits across countries scenarios (*Research Question 1*). This provides initial evidence that non-experts prefer a more even distribution of profits across countries. When analyzing the different roles within expert groups, we find significant differences in the sense of fairness between tax advisors and tax auditors if the distribution of profits across countries is very uneven. On the contrary, we no longer find significant differences in the sense of fairness between expert groups if the distribution of profits across countries is (slightly) more even (*Research Question 2*). Furthermore, we find that the sense of fairness about a more even distribution of profits is independent of the tax differential for both expert groups while it is not for non-experts (*Research Question 3*). This provides an indication that tax differentials might explain why experts and non-experts have different views about the technical issues related to the ALP. Finally, we consider the exogenously-given arm's length allocation of profits. Both the experts and the non-experts propose significantly different fair allocations. However, unlike non-experts, experts are clearly influenced by the given arm's length allocation of profits (*Research Question 4*).

To the best of our knowledge, we are the first to have conducted a survey allowing for differences in the sense of fairness between international tax experts and non-experts, as well as between those in different roles, such as tax auditors and tax advisors, to be disentangled. We contribute to the current research in a threefold way. First, the results could have an impact on current political discussions, as we provide insights into the question of whether tax experts and non-experts differ in their sense of fairness about a more even distribution of profits across countries. As the ALP plays a vital role in achieving inter-nation equity (Navarro, 2018), it is essential that there is no perceived unfairness in this regard. The ALP would then lose its justification. Second, the results could pave the way for further related experimental research regarding the perceived fairness of transfer pricing. Third, our results also provide insights for corporate taxpayers who want to avoid a reputation for "unfairness" due to very aggressive tax structuring and, rather, to show moral leadership – see Gribnau and Jallai (2017).[9]

RELATED LITERATURE

A vast literature shows that individuals dislike perceived inequitable outcomes and have some form of social preference. The ultimatum game (see Güth, Schmittberger, & Schwarze, 1982) is the prototypical game to test whether individuals care not only about their own payoffs but also about their payoffs as relative to those of others. From a standard economic point of view, the profit-maximizing proposer should walk off with virtually the whole surplus in the bilateral bargaining game. However, it is well-known that this is generally not the case, because individuals have some form of social preferences. In particular, responders resist unfair offers (Güth et al., 1982; Güth & Tietz, 1990; Roth, 1995) and proposers make fair offers instead of using their strategic advantage. A robust result in these games is that offers to the responder of less than 20% are often rejected, whereas offers of 40% or more are usually accepted (Camerer, 2003; Fehr & Schmidt, 2003; Roth, 1995; Seldon & Tsigaris, 2010). The simplicity of the ultimatum game renders the 50/50 split a fair outcome (at least in Western cultures; see Fehr, Goette, & Zehnder, 2009, with examples). For our subject group of tax experts, empirical evidence shows that the actual agents involved in the international taxation rights, e.g., tax auditors, do judge the outcomes based on "fairness" considerations. Kirchler, Maciejovsky and Schneider (2003) find that fiscal officers are strongly affected by social preferences. When comparing them to various other groups, such as business students, business lawyers, or

[9] Related to this, Kahneman, Knetsch and Thaler (1986a,1986b), and subsequent papers, show that even profit-maximizing firms will act in a "fair" way if "unfair" behavior involves, for example, punishment costs.

entrepreneurs, the authors find that tax auditors judge all forms of tax reduction as least fair. Following Kirchler et al. (2003), we focus on fiscal officers as compared to other groups involved in (international) taxation, such as tax advisors. Our subject pool includes two "expert" groups as well as a control group of business students.

In our survey, participants are in the position of a neutral third party. Therefore, the literature on distributive fairness norms, as well as that on social preferences as a proposer or responder, is closely related. Even if marginal productivities of participants in a collaboration are clearly observable (as is the case in our survey, since the arm's length allocation of profits is exogenously given), the importance of distributive fairness norms is highly context-dependent (see Karagözoğlu, 2012 for a survey).[10] Furthermore, as argued in the introduction, value contributions (i.e., marginal contributions) are extremely difficult to verify. In such cases, the collaboration partners are frequently remunerated by means of a pre-defined fixed share of the joint output (i.e., by implementing some kind of "profit sharing"). In our survey, we account for this by focusing "only" on the profit shares and not on the concrete transfer pricing method. In such scenarios, equal sharing is often referred to as a normatively appealing allocation rule (see Ashlagi, Karagözoğlu, & Klaus, 2012).

Furthermore, in the more tax evasion related literature, it is found that "perceived" fairness has an impact on the attitude and behavior of taxpayers. For instance, the level of tax evasion decreases if the tax system is perceived as fair by the taxpayers (see Fortin, Lacroix, & Villeval, 2007; Kornhauser, 2005; Spicer & Becker, 1980). Conversely, taxpayers may evade because the tax system is unfair, and the more they receive social information about the extent of others' tax evasion, the less guilty they feel about evading, and so their evasion increases. Thus, an individual will comply as long as she or he believes that compliance is the social norm (however defined); conversely, if non-compliance becomes pervasive, then the social norm of compliance disappears (Alm, 2013; Elster, 1989).

SURVEY

Participants

The questionnaires were distributed to tax auditors, tax advisors, and business students in Germany. The respondents were approached in conferences or seminars (tax auditors and tax advisors) or within university seminars (business students). Those within the group of tax auditors and tax advisors were specifically addressed at transfer pricing related conferences and seminars. Therefore, they had either practical or theoretical experience, or at least a very high affinity with, transfer pricing related topics, since they presumably had a background in international tax. The response rate in this set-up was high and non-responses rarely occurred. Overall, 203 subjects – 131 men, 68 women, and 4 of unknown gender) – participated. Table 1 (below) summarizes the subject sample. "Relevance" refers to the question of whether digital business models will become, subject to the individual's judgement, more important in the future. "Experience" summarizes personal experience in the valuation of transfer pricing issues for a digital business model. We consider a transfer pricing related subject in our survey design. Therefore, we consider tax auditors and tax advisors as "experts" and business students as a control group.

[10] Karagözoğlu (2012) shows that the prevalence of different fairness norms depends inter alia on the type of inputs. For financial investments, the majority of subjects prefer equal shares (see, e.g., Gantner, Güth & Königstein, 2001, or Cappelen, Hole, Sørensen, & Tungodden, 2007) while, for real-effort tasks, the evidence is less supportive of equal sharing (see, e.g., Konow, 2000, or Cappelen, Hole, Sørensen, & Tungodden, 2010).

We assume that students are reasonable surrogates for real-world individuals. The use of students as subjects in behavioral research is commonplace (Ashton & Kramer, 1980). There is a comprehensive literature available on this subject. The findings of Trottier and Gordon (2018), for instance, suggest that having some disassociation between students and the target population they are meant to represent does not necessarily make students inappropriate surrogates. Alm, Bloomquist and McKee (2015) find that the behavioral responses of students are largely the same as those of nonstudents in identical experiments. Depositario, Nayga Jr., Wu and Laude (2009) show that there is no significant difference between students' and nonstudents' willingness to pay bids in experimental auctions. Elliott, Hodge, Kennedy and Pronk (2007) suggest that using MBA students as proxies for nonprofessional investors is a valid methodological choice, provided the researchers give careful consideration to aligning a task's integrative complexity with the appropriate level of MBA student. Additionally, Liyanarachchi (2007) shows that accounting students may be adequate surrogates for practitioners in many decision-making experiments. Remus (1996) compared the decision-making of managers to that of graduate and undergraduate business students, using a complex decision task in which all subjects were equally naive, and found no significant differences between the managers and graduate business students.

Nevertheless, we clearly acknowledge that the subject of international taxation rights often causes controversial discussions, not only amongst students but also within our groups of experts. Therefore, it is necessary to interpret the subject pool, as well as the results of our survey, with caution, as is the case for all of these studies that lack external validity.

Table 1. Subject Pool Descriptive

Subject pool	Total	Auditors	Advisors	Students
Size	203	71	51	81
Age (mean)	37.6	43.3	42.6	23.6
Relevance = yes	99%	100%	100%	97%
Experience = yes	25%	44%	22%	10%

Experimental Design

In the questionnaire, participants were presented with a description of a stylized digital business model in a two-country world, as follows:

A firm develops an algorithm for a social network in country A. Users participate in the social network and enable the firm to generate revenue and profits with the submitted user data. The social network is active in country B, as well as country A. For simplicity, both countries "supply" the same number of users in the social network, and the tax rates are identical and set to 20%.

Participants were asked to assess, as neutral third parties, whether a presented allocation of profits between the countries can be considered as a fair allocation and what the "fair" allocation would be. Using a neutral third-party approach means that subjects are answering the survey questions without being in the specific role of the tax authority or a tax advisor. Typically, this debiases any behavior by subjects arising from the fact that subjects want to appear "consistent" to their given role (e.g., it could be assumed that tax advisors cannot care about fairness). Given this neutral role setting, differences between subject pools should be

weaker and the presented results regarding differences between subject groups (e.g., between tax auditors and tax advisors) should be rather conservative.

First, we asked: "Do you consider the presented allocation of profits between country A and country B as a fair allocation?". We then asked: "What do you consider as a fair allocation of profits between country A and country B?". Participants were asked to answer question 1 on a scale from 1 to 9 (1= not fair to 9 = fair). For the second question, they were presented with predefined allocations (100/0, 90/10 etc.) of the normalized total profit of 100 mEUR. It is crucial to note that the questions do not refer to an arm's length allocation of profits but, rather, to "perceived" fair allocations. The aim of the survey is not to estimate arm's length profit allocations but to elicit "fairness" considerations in transfer pricing related scenarios.

In total, participants were presented with three scenarios that varied the arm's length allocation of profits and the resulting taxation right. In Scenario 1, no taxation right was given to country B in principle, such that all profits were taxed in country A (100/0 allocation between A and B). In Scenario 2, country B captured a taxation right since (routine) marketing activities for country B were performed in country B. The questionnaire then stated that an "established" transfer pricing method results in an allocation of 90 mEUR for country A and 10 mEUR for country B (90/10 allocation between A and B). In Scenario 3, we increased the profit allocation to country B, such that the relative profit allocation was 60 mEUR for country A and 40 mEUR for country B (60/40 allocation between A and B). It was our intention to set the stated profit allocation as the exogenously-given arm's length allocation of profits. Therefore, in Scenario 2 and 3, we stated that an "established" transfer pricing method resulted in the given allocation. In Scenario 1, the allocation of profits was, by definition of the questionnaire, arm's length, since no taxation rights in principle were given to country B. We deliberately did not give specific information regarding the applied transfer pricing method in order to avoid doubts regarding the appropriateness of the method. We used our two-question approach (fairness and proposed fair allocation) in all three scenarios. We varied each scenario by assuming that country A was a low tax country and reducing the tax rate from 20% to 5%.

The scenarios are presented so as to secure answers consistent with professional tax practice. However, the scenarios are highly stylized and, therefore, are not suitable for generalization to the real world. The following results must, therefore, be interpreted with caution.

RESULTS

Research Question 1 - Experts vs. Non-Experts

First, we analyze whether tax experts differ from non-experts in respect of their sense of fairness about a more even distribution of profits across countries. Figure 1 illustrates the senses of fairness across the three scenarios.

We find that, in scenarios where the distribution of profits is more uneven – i.e., in the scenario with 100/0 and 90/10 distribution of profits across countries – experts and non-experts differ in their sense of fairness ($p<0.10$ in 100/0 and $p<0.05$ in 90/10, Mann-Whitney U test - MWU). This is different in the 60/40 scenario, where there is a more even distribution of profits across countries. Here, we do not find a statistically significant difference between experts' and non-experts' senses of fairness. By comparing the different scenarios, we therefore find initial evidence that tax experts have a different sense of fairness about a more even distribution of

profits across countries than non-experts. Namely, we find that non-experts prefer a more even distribution of profits across countries.

When comparing senses of fairness across scenarios, we find significant increases with a more even distribution of profits. Both, experts and non-experts' senses of fairness show statistically significant increases across all scenarios ($p<0.01$ from 100/0 to 90/10; $p<0.01$ from 90/10 to 60/40 for experts and $p<0.05$ from 100/0 to 90/10; $p<0.01$ from 90/10 to 60/40 for non-experts, Wilcoxon signed-rank test - WSR).

Result 1 – We find significant differences between experts and non-experts' senses of fairness in scenarios featuring (very) uneven distribution of profits across countries. We do not find significant differences experts and non-experts' senses of fairness in scenarios featuring a more even distribution of profits across countries. This provides initial evidence that non-experts prefer a more even distribution of profits across countries. In addition, both experts and non-experts show an increased sense of fairness with a more even distribution of profits.

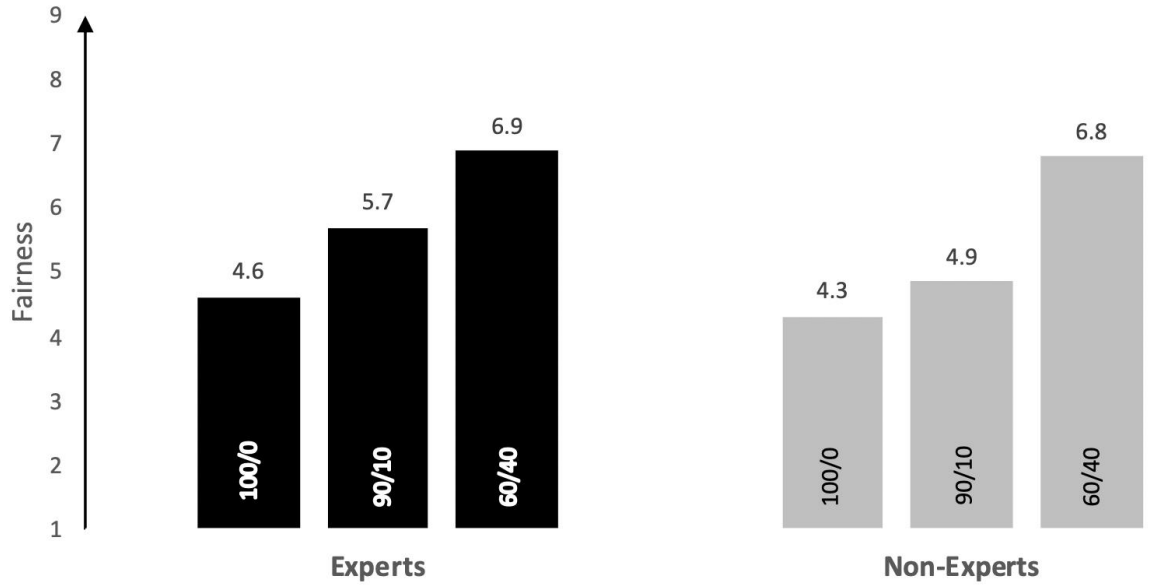

Fig. 1. Sense of Fairness between Experts and Non-Experts.

Research Question 2 – Tax Auditors vs. Tax Advisors

Second, we analyze whether tax auditors differ from tax advisors in terms of their sense of fairness about a more even distribution of profits across countries. Figure 2 illustrates tax auditors' and tax advisors' senses of fairness across the three scenarios.

Both tax advisors and tax auditors show weakly significant different senses of fairness in the most uneven 100/0 profit allocation across countries ($p<0.10$, MWU test). In this extreme scenario, tax auditors consider the allocation of profits to be significantly more unfair. However, a small increase in the tax base of country B in the 90/10 scenario aligns the senses of fairness of the expert groups (MWU test). Furthermore, the most even distribution of profits across countries in the 60/40 scenario shows no statistically significant difference in the sense of fairness between the expert groups (MWU test). Therefore, we find initial evidence that tax

auditors and tax advisors only differ in their senses of fairness about a more even distribution of profits across countries if the given distribution is very uneven (meaning, in practice, that there are no taxation rights in one country).

When comparing the change across scenarios, we find significant increases in the sense of fairness across both expert groups consistently with a more even distribution of profits ($p<0.05$ from 100/0 to 90/10; $p<0.05$ from 90/10 to 60/40 WSR test for tax advisors, $p<0.01$ from 100/0 to 90/10; $p<0.10$ from 90/10 to 60/40 WSR test for tax auditors).

Result 2 – We find weakly significant differences in the sense of fairness between tax advisors and tax auditors if the distribution of profits across countries is very uneven. We no longer find significant differences in the sense of fairness between expert groups if the distribution of profits across countries is (slightly) more even.

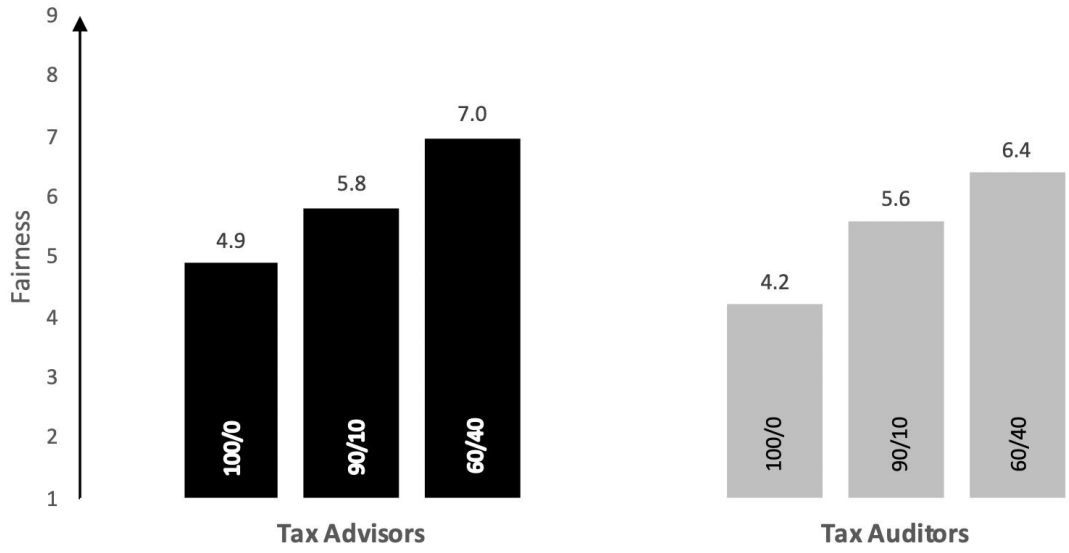

Fig. 2. Sense of Fairness between Tax Auditors and Tax Advisors.

Research Question 3 – Impact of the Tax Differential

Third, we analyze the impact of the tax differential on the sense of fairness. Figure 3 illustrates the senses of fairness across the three scenarios given the same tax rate as well as a lower tax rate in country A.

For our expert groups, sense of fairness is commonly independent of the tax rates (no significant differences for tax advisors, and $p>0.05$ only in the 60/40 scenario for tax auditors, WSR test). A contrary result holds for the non-experts, where we find significant effects in all three scenarios ($p<0.05$ in the 90/10 scenario and $p<0.01$ in the other scenarios, WSR test). Therefore, we can conclude the following.

Result 3 – We find that the sense of fairness about a more even distribution of profits is independent of the tax differential for both expert groups, while it is not for non-experts. This

provides an indication that tax differentials might explain why experts and non-experts have different views on the technical issues related to the ALP.

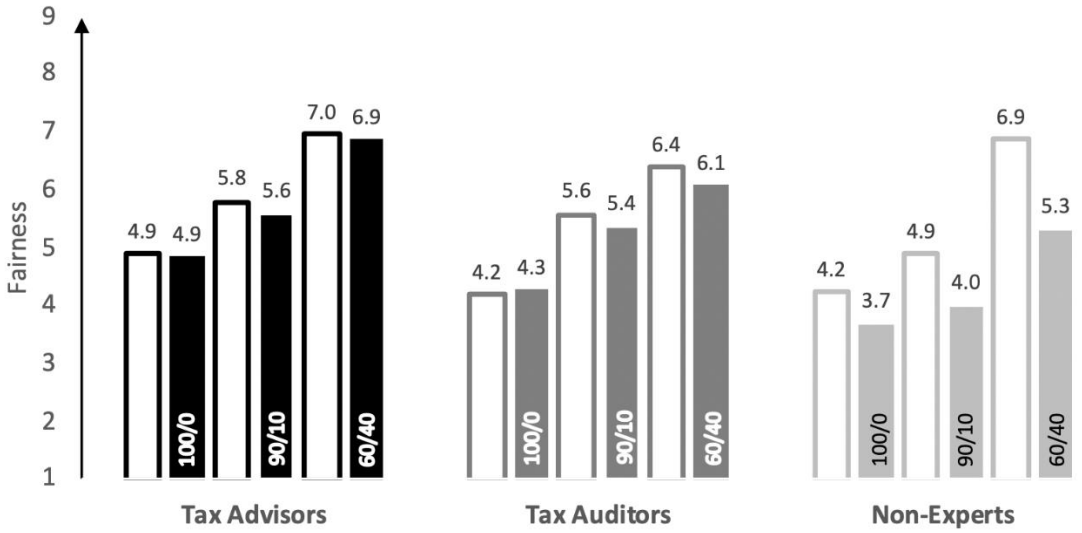

Fig. 3. Impact of the Tax Differential on Sense of Fairness.

Research Question 4 – Impact of the Arm's Length Allocation

Fourth, we analyze whether the exogenously-given arm's length allocation of profits underlying the scenarios has an impact on sense of fairness. To do so, we use our second question of the survey, which asks for a "proposed fair allocation of profits". Figure 4 illustrates the responses from both types of expert, as well as the non-experts, for the three scenarios.

In the 100/0 scenario, the arm's length allocation of profits is most uneven between country A and country B. We clearly observe that all three groups deviate from the exogenously-given arm's length allocation of profits by proposing a fair allocation of profits which is significantly different from 100/0 ($p<0.01$ WSR test for all groups). In economic terms, the difference is quite substantial. Notably, both expert groups propose an almost identical profit allocations (77/23 and 76/24 as their mean fair allocation, not statistically different, MWU test) while the proposed fair allocation by the non-experts is significantly even more equal ($p<0.01$ MWU test pairwise across groups).

The disparity between the proposed fair allocation and the arm's length allocation is also apparent in the second relatively uneven 90/10 scenario ($p<0.01$ WSR for all groups). However, in terms of changes between scenarios, the arm's length allocation of profits, as presented in the questionnaire, has an impact on the expert groups' proposed fair allocations (change from 100/0 to 90/10, $p<0.01$ for experts, WSR test). The reduction by expert groups from the nearly 77/23 allocation to a more equal distribution of approximately 70/30 is statistically significant. That pattern is mirrored in the (most even) 60/40 scenario. Here, both expert groups again adapt their proposed fair allocations to the presented arm's length allocation of profits (change from 90/10 to 60/40, $p<0.01$ for experts, WSR test).

On the other hand, the non-experts are only weakly influenced by the arm's length allocation of profits ($p<0.1$ for the change between 100/0 and 90/10, not significant for 90/10 to 60/40, WSR test). The expert groups are anchored by the arm's length allocation of profits, but they do not follow this closely. In contrast, the non-experts are generally not influenced by the arm's length allocation. We summarize as follows.

Result 4 – Both experts and non-experts propose significantly different fair allocations to the exogenously-given arm's length allocation of profits. However, experts are more influenced by the given arm's length allocation of profits than non-experts.

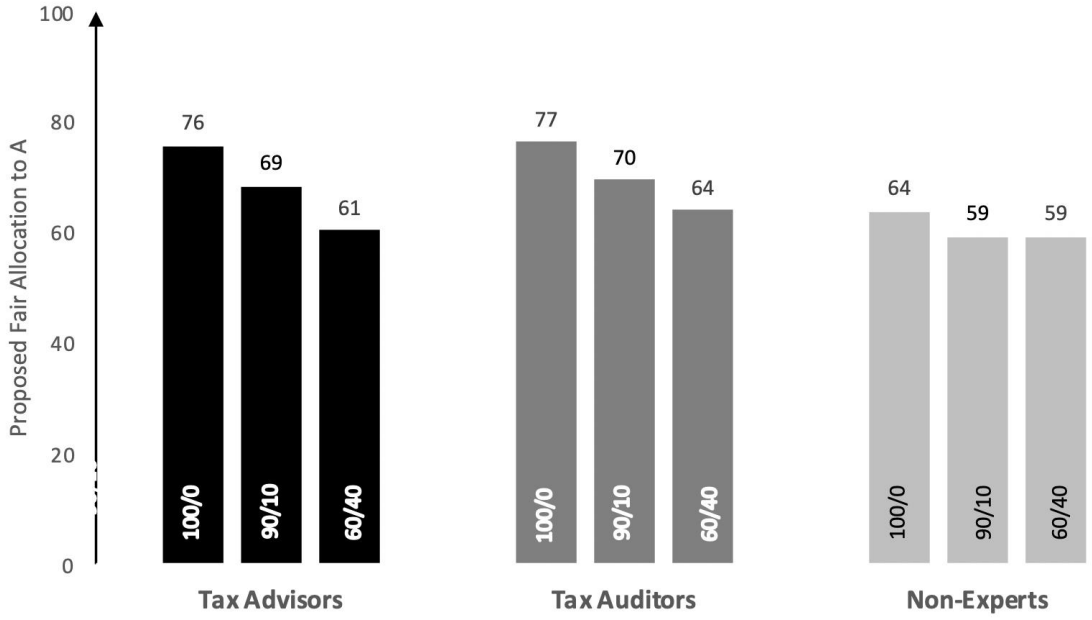

Fig. 4. Proposed Fair Allocation across Subject Pools and Scenarios.

DISCUSSION AND CONCLUSION

Our primary research question was whether tax experts and non-experts have different senses of fairness when presented with scenarios where there is an uneven distribution of profits across countries. Given the limitations of a survey study, we first find evidence that experts – divided into tax auditors and tax advisors – differ from non-experts in terms of their sense of fairness. This finding may explain why politicians, who are not usually experts, have different views about technical issues from tax experts. Their senses of fairness and, therefore recommendations for action, particularly seem to differ in the context of discussions regarding the taxation of the digital economy.

This is reinforced by our finding that the tax rate differential only has an impact on sense of fairness for non-experts. This is an important result, as it relates to the fact that MNEs should be taxed at a certain level. However, this finding also indicates that the arm's length principle is applied by experts consistently, regardless of the tax rate or tax rate differentials. In our opinion, further research on this topic could be fruitful, as one could still discuss whether or not transfer pricing disputes could be reduced when corporate tax rates all over the world converge.

We also find initial evidence that tax auditors and tax advisors only differ in their sense of fairness about a more even distribution of profits across countries if the given distribution is very uneven. This may result in tax auditors making transfer pricing adjustments, as their sense of fairness triggers stronger enforcement even though they are bound by law. To avoid such situations, one could anticipate that tax auditors will differ in their sense of fairness and structure the distribution of profits across countries more evenly. In this regard, the prospect theory is also of importance. The prospect theory (Kahneman & Tversky, 1979) allows for the prediction that tax refunds will be considered as a profit and that tax levied on the taxpayer will be seen as a loss, since the assessment of what is considered as profit or loss is a neutral reference point. Within the profit range, humans tend to be risk-averse. Therefore, it can be observed that tax evasion is less frequent in countries that collect taxes directly at the source than in countries where the tax is not levied directly at the source. This may be of particular importance if, in the context of the external tax audit, risk of a tax liability – which may be perceived as a loss - could arise. In this context, experiments have shown that human beings often adopt extreme positions and/or conduct confrontational behavioral strategies when attempting to minimize or avoid losses (negatively framed). Thus, receipt of an additional tax demand can lead to such behavior and, at the same time, to increased tax dishonesty (Engström, Nordblom, Ohlsson, & Persson, 2015; Robben et al., 1990).

Finally, in the 100/0 scenario, the arm's length allocation of profits is most uneven between country A and country B. We clearly observe that all three groups deviate from the exogenously-given arm's length allocation of profits by proposing a fair allocation of profits significantly different from 100/0. In this scenario, the arm's length allocation does not seem to be a fair allocation. In digital business models, digital goods and services can be provided without the need for the company supplying them to have a physical presence in a specific country. The main concern of the current fairness debate is that "user" value creation due to data gathering is located in a tax jurisdiction where the company carrying out a digital activity is not physically established and, thus, where its "activities" cannot be taxed. Our finding may support this perceived unfairness. One solution could be to reallocate some taxing rights from residence countries to market countries. In this context, the view that the arm's length principle may reward the country in which an MNE has its headquarters too generously and reward the locations in which that MNE has foreign direct investments (FDIs) too little (Vann, 2010) becomes important. One can transfer this finding to so-called "low risk entities" which only receive minimum returns for their activities. An MNE can structure its investments in a way that its economic allegiance (Langbein & Fuss, 2018) is very limited in the source country, which leads to a very small taxable return in this country. Digitization could support this way of structuring investments and lead to an increase in transfer pricing disputes. However, further investigation of this topic would be valuable as, for instance, the use of "fair" safe harbors could reduce the amount of transfer pricing disputes that arise. On the other hand, our findings also suggest that tax experts acknowledge a considerably higher attribution of profits to the algorithm than to user data.

Since fairness considerations play an important role in the current public discussions regarding the fair taxation of the digital economy, more experimental research is needed in order to understand them. Our paper is, therefore, a first attempt at understanding these fairness considerations in the context of the allocation of business profits and digital business models.

DISCLOSURE

The authors have no financial arrangements that might give rise to conflicts of interest with respect to the research reported in this paper.

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APPENDIX

Survey translated

Welcome!

You are participating in a survey in the context of empirical economic research. First of all: thank you for participating!

You are in the role of an independent expert. In the following questionnaire, you assess the taxation of digital business models. In different hypothetical scenarios, various forms of tax bases are presented in a two-country setting. In your role as an independent expert, you should indicate, based on your judgement, how fair the given allocation of profits is and propose a fair distribution of the total profit.

A) General description of the decision situation

Company A runs a social network in country A. For this, company A has developed an algorithm that analyses the member data of the social network. The expenditures for the development of the algorithm were borne in country A. The use of the social network is free for members. Members accept, however, that company A may disclose and use the information disclosed during registration. For this, the algorithm developed by company A is used.

The more data that is made available to the algorithm, the more accurate the analyses that can be made about the members, which will eventually be commercially exploited, will be. This means that, in addition to the algorithm, the number of members represents a value driver of the digital business model.

Company A is now expanding its business activities into country B. After an introductory phase, the number of members is the same in both countries.

B) Scenarios

Scenario 1 – Direct Business: Company A operates its economic activity through a direct business. The profit is expected to be 100 million euros. In both countries A and B, the tax rate is 20%. **There is no taxation of company A in country B for direct business activities.**

How fair is the allocation of profits? Please mark your assessment:

Unfair								**Fair**
1	2	3	4	5	6	7	8	9

How should the profits between country A and B be divided, so that you consider the distribution as fair? Please mark your personal assessment:

Profit in country A in million euros	100	90	80	70	60	50	40	30	20	10	0
Profit in country B in million euros	0	10	20	30	40	50	60	70	80	90	100
Fair Distribution of Profits											

Variation Scenario 1:

Now assume that the tax rate in country A is 5% and the tax rate in country B is still 20%.

How fair is the allocation of profits? Please mark your assessment:

Unfair								**Fair**
1	2	3	4	5	6	7	8	9

How should the profits between country A and B be divided, so that you consider the distribution as fair? Please mark your personal assessment:

Profit in country A in million euros	100	90	80	70	60	50	40	30	20	10	0
Profit in country B in million euros	0	10	20	30	40	50	60	70	80	90	100
Fair Distribution of Profits											

Scenario 2 – Direct Investment: Company A carries out its economic activities through a **direct investment and therefore uses a subsidiary B in country B**. Company B is responsible for the marketing and the internet presence in country B, whereby it is bound by the instructions of A. B is subject to taxation in country B. In both countries, the tax rate is 20%. **An established transfer pricing method results in profit sharing between the two companies of EUR 10 million profit for B and EUR 90 million profit for A.**

How fair is the allocation of profits? Please mark your assessment:

Unfair								**Fair**
1	2	3	4	5	6	7	8	9

How should the profits between country A and B be divided, so that you consider the distribution as fair? Please mark your personal assessment:

Profit in country A in million euros	100	90	80	70	60	50	40	30	20	10	0
Profit in country B in million euros	0	10	20	30	40	50	60	70	80	90	100
Fair Distribution of Profits											

Variation Scenario 2: Now assume that the tax rate in country A is 5% and the tax rate in country B is still 20%.

How fair is the allocation of profits? Please mark your assessment:

Unfair								**Fair**
1	2	3	4	5	6	7	8	9

How should the profits between country A and B be divided, so that you consider the distribution as fair? Please mark your personal assessment:

Profit in country A in million euros	100	90	80	70	60	50	40	30	20	10	0
Profit in country B in million euros	0	10	20	30	40	50	60	70	80	90	100
Fair Distribution of Profits											

Scenario 3 – Direct Investment: Suppose you look again at the previous scenario (scenario 2). In both countries, the tax rate is 20%. Only the profit distribution changes. **An established transfer pricing method results in profit sharing between the two companies of EUR 40 million profit for B and EUR 60 million profit for A.**

How fair is the allocation of profits? Please mark your assessment:

Unfair								**Fair**
1	2	3	4	5	6	7	8	9

How should the profits between country A and B be divided, so that you consider the distribution as fair? Please mark your personal assessment:

Profit in country A in million euros	100	90	80	70	60	50	40	30	20	10	0
Profit in country B in million euros	0	10	20	30	40	50	60	70	80	90	100
Fair Distribution of Profits											

Variation Scenario 3: Now assume that the tax rate in country A is 5% and the tax rate in country B is still 20%.

How fair is the allocation of profits? Please mark your assessment:

Unfair								**Fair**
1	2	3	4	5	6	7	8	9

How should the profits between country A and B be divided, so that you consider the distribution as fair? Please mark your personal assessment:

Profit in country A in million euros	100	90	80	70	60	50	40	30	20	10	0
Profit in country B in million euros	0	10	20	30	40	50	60	70	80	90	100
Fair Distribution of Profits											

C) Other

To what extent do the following statements apply to you? Please mark accordingly.

Statement	**Does not apply at all**	**Rather not true**	**Neither nor**	**Rather true**	**Completely right**
I am reserved.					
I easily trust others.					
I'm comfortable, tend to laziness.					
I am relaxed, cannot be disturbed.					
I have little artistic interest.					
I am outgoing.					
I tend to criticize others.					
I do tasks thoroughly.					
I get a bit nervous and insecure.					
I have an active imagination					

How do you personally assess yourself? Are you generally a risk-taker or do you try to avoid risks? Please mark accordingly.

Risk-taker								**Avoid risks**
1	2	3	4	5	6	7	8	9

Please briefly describe the basis on which you have made your fairness considerations.

Questions	**Yes**	**No**
Have you already gained experience in the evaluation of digital business models from a transfer pricing perspective?		
Are you estimating that digital business models will become more important in the transfer pricing practice?		

Please provide your gender, age, and profession.

Gender	
Age	
Profession	