



The accountancy profession and taxation: doing the right thing

POSITION PAPER

HIGHLIGHTS

FEE believes that tax policy, and how key players interact in developing it, needs a thorough rethink. Tax policy must adapt to ever changing circumstances and respond to pressing public demands. The accountancy profession, through its knowledge and experience of existing tax systems, is a crucial contributor to this debate.

This paper seeks to clarify the role and responsibility of the professional accountants in the context of tax policy. It also highlights the positive role that the accountancy profession has in the correct functioning of the European states' tax systems.

Setting the scene

FEE believes that tax policy, and the manner in which the key players interact in its development, needs a thorough rethink. Tax policy must adapt to today's ever changing circumstances and respond to pressing public demands.

In the context of the ongoing financial and economic crisis, several European countries have implemented painful reforms and public spending cuts that have affected all segments of society. This has ensured that debates around tax fairness, evasion and avoidance have remained firmly on the political agenda. The accountancy profession has a clear role to play in these debates. The question is no longer about whether change will come, but rather when and how.

This paper has two main goals:

- Firstly, it highlights the positive role that the accountancy profession has in the correct functioning of the European states' tax systems; and
- Secondly, it clarifies the profession's roles and responsibilities in the context of tax policy.

This clarification of roles and responsibilities is vital as public discussions on tax policy reform are not helped by confusion in the roles of the different parties involved. Professional accountants, policy-makers and the general public require a thorough understanding of what the accountancy profession (as a whole as well as individual professional accountants) can or cannot take responsibility for, not only in legal terms, but ethically as well. This will help to ensure that future tax policy reforms are targeted in ways that will achieve the maximum intended effect.

Role of the Accountancy Profession

The accountancy profession is an essential player in the functioning of tax systems. Why? Because the accountancy profession has:

- A global set of ethical standards¹ as well as an ethos of professional scepticism and integrity derived from professional education, standards and practice and is subject to strong public oversight;
- Unrivalled technical expertise encompassing not only tax law and practice, but also accountancy issues (the two are often highly interrelated);
- A crucial role in the operation of the tax system by assisting taxpayers to cope with the increasing complexity of tax laws and by enhancing mutual trust between taxpayers and tax administrations;
- The ability to help businesses grow and invest by identifying and advising on tax reliefs introduced for that purpose and by protecting taxpayers' rights; and
- Experience in analysing the effectiveness of existing tax systems and providing cost effective suggestions for their improvement.

¹ International Ethics Standards Board of Accountants (IESBA) July 2009

The provision of tax advice and compliance services to taxpayers and businesses by some professional accountants has led some stakeholders to criticise the profession as a whole for its role in aggressive tax planning. Although this criticism may have some grounds, it is exactly because professional accountants interact with tax systems in many ways that they are indispensable for their smooth operation. As tax advisors, many professional accountants provide unparalleled assistance to their clients in translating complex tax law and, where possible, the underlying intent of that law.

However, it is unfair to criticize the accounting profession as a whole, and professional accountants working as tax advisors in particular, for actions of others over which they have no control. But above all, illegal and unethical behaviour is unacceptable in all circumstances.

Responsibilities of the Accountancy Profession

In our view, it is necessary at this point to address some specific concerns as to the responsibilities of professional accountants in providing tax advice services. Both legal and ethical responsibilities of the accountancy profession in the field of taxation deserve clarification.

Professional accountants provide tax advice and compliance services within different legal structures across Europe, working within existing national rules and in the best interest of their clients. However, the accountancy profession at a European level shares several common characteristics, and, by extension, responsibilities in tax-related services.

What the accountancy profession is responsible for:

- Assisting clients in complying with applicable tax laws whilst providing them with the best quality tax advice. The advice will be in line with applicable laws and will explain to the client where such laws are open to interpretation and the financial or reputational risk factors inherent to the case;
- Not being involved with illegal activities, and taking all necessary steps to establish the legitimacy of their clients and their clients' sources of funding;
- Actively discouraging their clients from engaging in tax fraud and evasion, and resigning from the engagement should the client persist along this path;
- Complying with obligations to report money laundering and illegal activity where required by laws or regulations;
- Refraining from promoting tax avoidance schemes based on purely artificial structures using loopholes and mismatches in tax legislation; and
- Using their professional ethical judgement (where allowed by local laws and regulations) to assess whether tax planning that is legal, but that falls in the grey area of "aggressive tax planning" or avoidance, is something that they wish to advise on, also taking into account the non-tax related risks of reputational harm from being associated with such advice.

What the accountancy profession cannot take responsibility for:

- It can't make up clients' minds for them. Professional accountants are professionally and often legally obliged to present all legal tax planning alternatives, setting out in clear terms all uncertainties and risk factors (including, where relevant, reputational risk). It is always the client that makes the final decision – at this point, the professional accountant will make an ethical judgement as to whether

they will continue to act for clients that proceed with tax planning with which they feel uncomfortable; and

- It can't decide the "fair" amount of tax that a client should pay – it is and has always been up to legislators to set the appropriate rules and determine what constitutes a "fair" amount to be paid.

Some stakeholders say that taxpayers should conform to the intent of the legislation but it is not always easy to determine this intent, particularly when the laws of more than one country have to be considered and when the intent of the legislators might have evolved over time and in response to the demands of society. Professional accountants have to take into account the strict boundaries of the applicable laws and regulations, administrative practices and case-law. However, if a tax authority takes a position that a professional accountant believes to be an incorrect interpretation of the law, the professional accountant is professionally obliged to dispute this interpretation on behalf of their client. In some cases, only a court of law can make the final decision.

Having said that, any advice that an accountant provides must not only be within the boundaries of relevant laws, but follow ethical criteria as well. Professional accountants are aware that artificial legal measures and structures can result in reputational damage for both the client and themselves, thereby acting against the long-term best interests of their clients and themselves. With new forms of instant world-wide communication, reputation is infinitely easier to damage than to repair.

Positive contributions of the accountancy profession in tax policy

The accountancy profession, through its knowledge and experience of existing tax systems, is a crucial contributor to the debate on the evolution of tax policy. The accountancy profession's work is vital not only for the everyday functioning of tax systems across Europe, but also in identifying limitations in the existing tax systems, conceptualising potential solutions, and helping convert governments' tax reform visions into reality.

FEE considers the determination of tax policy to be a matter for society as a whole. It is essential that all parties engage and cooperate in this matter if there is to be any hope of a timely and effective solution. The accountancy profession is committed to playing its full role in this respect.

Professional accountants know that change is inevitable. Indeed, one of their contributions has always been to help their clients manage change in the least disruptive and least costly manner; this is essential in ensuring the most effective and smooth implementation of policy reforms. The accountancy profession realises that the tax environment requires change and is ready and willing to play its part in the process, both as technical advisers as well as visionaries with knowledge-based understanding of the key challenges inherent in any given area of tax policy. In particular, we use our core skills and knowledge to:

- Inform the debate;
- Engage with all stakeholders in order to find common solutions to the issues occupying so much of people's attention at the moment;
- Assess and propose solutions; and
- Assist in their implementation.

As with anyone else, the accountancy profession should not be involved in any illegal or unethical practices. These harm individual professional accountants, their clients, the accountancy profession and society as a whole.

Lawmakers and tax administrations for their part have a clear moral, if not legal, obligation to ensure that legislation is clear and precise, thus ensuring that taxpayers can fully and easily comply with their tax obligations. Public authorities alone have the capacity to change and clarify rules and make their own intentions clear. They must also realise that in today's world there is no alternative to international coordination and enhanced levels of communication with taxpayers.

As with any policy area with deep, complex and unpredictable impacts on society, tax policy and its reform are beyond the reach of easy solutions. It is in the best interests of all stakeholders, including taxpayers as well as tax authorities, legislators and policy-makers, that the regulatory framework (and any changes to it) is clear in intent, understandable and coherent in content, and faithful to established societal principles. In this, the accountancy profession can and will play a key role.



Federation of European Accountants

Avenue d'Auderghem 22-28

1040 Brussels

T: +32 (0)2 893 33 60

E: secretariat@fee.be

www.fee.be



@FEE_brussels



Federation of European Accountants

WHO WE ARE

FEE represents 47 professional institutes of accountants and auditors from 36 European countries, with a combined membership of over 800,000 professional accountants working in different capacities. As the voice of the European profession, FEE recognises the public interest.

FEE is in the EU Transparency Register (No 4713568401-18).