



**ACCOUNTANCY
EUROPE.**

THE ROLE OF PROFESSIONAL ACCOUNTANTS IN TAX

Questions & Answers

position paper

VIEWS.

**TAX
JULY 2017**

HIGHLIGHTS

The role of professional accountants in the functioning of tax systems has raised a lot of questions from all actors in the tax environment. With this Q&A paper, we answer these questions by focusing on the following 3 points:

- we clarify the role of professional accountants in advising taxpayers and tax authorities
- we set out the fundamental principles for accountants to comply with when providing tax advice
- we consider how technology changes the future of tax and what this means for the role of accountants

As a profession, we can contribute to developing fair and sustainable tax systems. We are taking up this responsibility that we share with authorities, lawmakers, lawyers, banks, and taxpayers to ensure sustainable financing for our public services in the future.

INTRODUCTION

Building on our 2015 publication, *The accountancy profession and taxation: doing the right thing*¹, this paper explains the role of the accountancy profession in tax systems. LuxLeaks, Panama Papers, Malta Leaks have kept tax at the top of the public policy agenda. We set out the questions and answers below to address the many legitimate concerns expressed since these events.

Some of the information leaked seems to refer to illegal acts. It is important to make clear that tax evasion and money laundering are crimes, in which no taxpayer or accountant should be involved. The accountancy profession plays its role in combatting such illegal acts and accountants must report any suspicious transaction.²

WHAT IS THE IMPACT OF THE PUBLIC POLICY DEBATE ON FAIR TAXATION?

The question of tax fairness is now firmly on the European policy agenda but it is a concept that is difficult to define in a clear and universally accepted way. There are individual cases where companies have achieved an effective tax rate of near zero by legal interpretation of applicable laws. Such cases are widely perceived as unfair by the public, although the outcome is a result of shortcomings of law.

This public perception puts further pressure on lawmakers to align statutory rates and effective tax rates by better law-making. Politicians seek support from taxpayers and increasingly require taxpayers to consider, among other factors, the impact of their tax planning strategies on the public purse.

Some shortcomings of tax law result from non-harmonised international tax systems. As a result, we have seen develop enhanced international cooperation and an increasing reluctance by taxpayers to undertake tax planning strategies that could cause them reputational harm.

WHAT IS THE ROLE OF ACCOUNTANTS IN THE FUNCTIONING OF TAX SYSTEMS?

Accountants are well placed to deal with the changing tax environment for taxpayers, tax authorities, and legislators.

Across the globe, we assist tax collection by helping taxpayers deal with complex tax laws, helping them comply with their tax return filing obligations and by providing independent assurance or certification of tax returns.

We engage with tax authorities to develop new systems that both improve the taxpayer experience and increase efficiency through implementation of such developments as big data analytics and artificial intelligence. This will benefit tax authorities that often have a shortage of resources, an ageing workforce, and legacy tax infrastructures.

Our knowledge of the global tax systems helps us advise legislators to draft effective and practical tax laws.

Forensic accounting skills - where accounting and auditing skills are used to investigate fraud or embezzlement and to analyse financial information for use in legal proceedings - can be very effective in the fight against fraud and criminal activity in general.

Where private sector accountants provide services to the public sector, the accountant's duty of care is solely to their public-sector client and thereby to work in the public interest. Such engagements can result in both real and perceived conflicts of interest. This is particularly the case where the accountant is on secondment from the private sector or simultaneously provides advice to private sector clients.

In these circumstances, transparency must be rigorously observed. Whilst working for public authorities, the accountants must use their experience from the private sector in an open and transparent fashion. They must

¹ <https://www.accountancyeurope.eu/publications/fee-issues-views-responsibility-accountancy-profession-tax>

² 4th Anti-Money Laundering Directive http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_2015_141_R_0003&from=ES

highlight all perceived issues or unintended consequences that they identify and, once the assignment is complete, not advertise their experience as giving them special or insider knowledge of the matter concerned.

WHAT IS THE APPROPRIATE SCOPE OF TAX PLANNING?

The need for tax advice has grown because both business and tax systems have become more complex, as digitalisation of the economy changes business models and increases globalisation.

Helping taxpayers navigate complex tax systems normally consists of advising taxpayers on the reliefs and exemptions that have been written into law specifically for this purpose. Inevitably, it also involves alerting taxpayers of possibilities to reduce their tax liability by arranging their affairs in a way not prohibited by law. This is the professional duty of the adviser – indeed, in many jurisdictions this duty is enshrined in legislation and/or case law.

There is a level of tax planning that is perfectly appropriate. However, tax planning is a continuum that runs from interpretation of law unchallenged by tax authorities to interpretation of law that may be overturned on assessment or in court. The latter situation can harm the reputation of the taxpayer and the adviser.

We believe that all countries should offer a system of advance clearances, offering a rapid interpretation of tax law that is unclear or particularly complex. This would not only provide greater legal certainty for the taxpayer, but would also function as an early warning to tax authorities that aspects of the tax code are open to interpretations that could result in an underassessment of tax.

In the absence of universal advance clearance mechanisms, tax advisers must continue to use their best judgement when interpreting tax legislation. In doing so, accountants should be aware of certain key characteristics the public debate has identified as producing unfair tax results, even when these characteristics arise out of purely commercial considerations. These will increase the risk (both to the client and accountant) of giving advice that could lead to reputational issues.

The key characteristics of concern raised in the public debate include:

- tax results that, under the existing tax laws, appear disproportionate to commercial or economic risk or activity
- the use of artificial steps or structures that appear to obscure or change the appearance of the commercial reality of the transactions with the principle purpose of obtaining a tax advantage
- the use of offshore structures or non-co-operative jurisdictions for no commercial reason

HOW SHOULD ACCOUNTANTS PROVIDE TAX PLANNING ADVICE?

In respect of legal tax planning, we set out below some orientation for accountants to consider when advising clients. This is aspirational and is not applicable to all jurisdictions – due to different regulatory environments, different cultural perspectives or the fact that the tax policy debate is at a different stage in different countries.

Accountants are often required, sometimes by law, to make the taxpayer aware of all legal ways in which the tax liability could be mitigated – at least within the bounds of their terms of engagement and what would be expected from an average practitioner with the same experience. However, the client has the final decision on whether tax planning arrangements will proceed and the accountant is free to refuse to implement the arrangements should they believe that it is not in the best long-term interests of the client, conflicts with their own ethical code or could cause significant harm to their own reputation.

In addition to the fundamental principles that all accountants must comply with in their day-to-day professional life³, we believe the following should be considered when advising taxpayers⁴:

Accountants must give tax advice that is based on a realistic assessment of the tax law as it stands. Where uncertainties exist, the accountant must give their client an honest assessment of these uncertainties and the potential risk that they pose. Where necessary, the accountant should take appropriate additional advice to confirm the position taken.

Accountants must provide tax advice that is client specific. In practice, accountants should not promote pre-packaged tax avoidance schemes but rather base their advice around the commercial and economic realities of their clients.

Accountants must not devise and promote tax planning structures or arrangements that are designed to achieve a different result than what is clearly intended by the legislators and/or which are wholly artificial and wholly contrived and which seek to exploit loopholes, mismatches between different legislation or different treatment of structures or items in different countries.

Accountants must terminate any client relationship with clients who decide not to disclose the relevant facts (as defined at a national level) to the tax authority.

HOW SHOULD ACCOUNTANTS PROVIDE TAX ADVICE WHEN THERE IS INCREASED PROFESSIONAL RISK?

In certain circumstances, accountants will be asked to provide tax advice for perfectly legitimate commercial transactions that fall into those areas of enhanced public concern mentioned above. In such circumstances, accountants should:

Consider the public perception of the advice, including the degree to which reputational harm could accrue to the taxpayer, the accountant and the accountancy profession as a whole. The risk factors should be brought to the taxpayer's attention, so that the taxpayer is able to make a well-informed decision as to whether to proceed with the advice or not.

Be aware that structures that include overseas jurisdictions are viewed with increasing suspicion, particularly when the offshore jurisdiction is viewed as non-co-operative and/or appears on black lists ("tax havens").

Be aware that structures that include the use of jurisdictions that do not require the filing of beneficial ownership information are also increasingly viewed with suspicion.

Consider whether the use of non-transparent structures can, in any way, be commercially justified. The use of such structures considerably increases the risk to both taxpayer and accountant.

In these circumstances, accountants should avoid giving tax advice unless there are clear commercial objectives other than just tax mitigation. Where the transaction has a genuine commercial purpose, the client

³ Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour - IESBA Code of Ethics <https://www.ethicsboard.org/iesba-code>

⁴ National rules and/or codes of conduct may already exist to deal with the issues being raised, such as the UK's Professional Conduct in Relation to Taxation

should be informed of any risks. Full documentation should be kept supporting the judgements made, should the advice be challenged.

HOW WILL TAX SYSTEMS CHANGE IN THE FUTURE?

The way taxpayers, tax authorities, and tax service providers work together is changing due to technological developments, including big data, distributed ledgers⁵, and artificial intelligence. Tax authorities are working towards direct communication with taxpayers, including real-time access to business records. The concept of co-operative compliance⁶ is further changing the relationship between taxpayers and tax authorities.

HOW COULD TAX SERVICES DEVELOP IN THE FUTURE?

Artificial intelligence systems are already being used in tax work⁷. This is likely to increase in the future with such systems being used by both the private and public sectors. Such systems can scan millions of pages of legislation to highlight tax planning opportunities and mismatches between legislation on national and international level.

These systems will become increasingly cost effective and disseminated. The technology will also become more sophisticated, with complex algorithms taking over many of the technical elements of tax planning. There is a risk that these algorithms provide aggressive tax planning by default, with the programming designed to provide the best conceivable outcome for the client without considering risk (including reputational) or ethical principles.

There is also an increasing trend for tax authorities to effectively sub-contract tax compliance by using co-operative compliance. In such circumstances, the taxpayer is responsible for ensuring that they have adequate systems in place to ensure the production of an accurate tax return. When the tax authorities are satisfied that the systems are adequately designed, implemented and monitored, the taxpayer is usually 'rewarded' with a light-touch tax audit regime.

WHAT IS THE ROLE OF THE ACCOUNTANT IN THE TAX SYSTEMS OF THE FUTURE?

Where tax planning includes the use of artificial intelligence, accountants can draw on their ethical codes to help ensure that ethical considerations are included by design in the algorithms. They can also provide the final reality check for the advice produced, and explain clearly to the taxpayer the potential consequences of following the arrangements proposed.

In terms of co-operative compliance, we believe that external assurance of tax accounting systems can help provide comfort, to both tax authorities and taxpayers, that the systems put in place function effectively. Our auditing skills make us proficient providers of tax assurance services. We assist taxpayers to design and implement the systems necessary to comply with co-operative compliance programmes and to ensure that the systems operate in the manner intended.

Additionally, accountants will continue to provide the essential services of tax planning and assisting taxpayers to comply with complex tax laws, with technology changing the way we work.

HOW CAN ALL PLAYERS DEVELOP FAIRER TAX SYSTEMS?

No single player – whether authorities, lawmakers, accountants, lawyers, banks or taxpayers – is responsible for the current deficiencies in tax systems and no single player can rectify these deficiencies alone. Scapegoating, blaming each other, and naming and shaming of individual players is ineffective and potentially counter-productive. At worst, this could lead to public discussions and policy responses that disproportionately

⁵ A distributed ledger is a database that is consensually shared ("trustless") and synchronised across network spread across multiple sites, institutions or geographies – for example, Blockchain

⁶ Co-operative compliance and tax assurance will be further elaborated in a future Accountancy Europe paper

⁷ See, for example, H.R. Block <https://www.hrblock.com/lp/fy17/hrblock-and-watson.html>

address one side of the problem, but leaves other areas uncovered. This will not fix the problems, and will thus contribute to further erosion of public trust in our tax systems.

Instead, all players must accept collective responsibility for improving tax systems, not just in terms of improving current inadequacies and inefficiencies but also by looking at alternative ways at raising tax revenues. Only in this way will we ensure that there is sustainable financing for our public services in the future.

The accountancy profession, for its part, stands ready to play its full role in developing fair and sustainable tax systems.



Avenue d'Auderghem 22-28, 1040 Brussels



+32(0)2 893 33 60



www.accountancyeurope.eu



@AccountancyEU



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ABOUT ACCOUNTANCY EUROPE

Accountancy Europe unites 50 professional organisations from 37 countries that represent **1 million** professional accountants, auditors, and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

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