



Tax professionals at work in Silicon Valley



Emer Mulligan^{a,*}, Lynne Oats^b

^a J.E. Cairnes School of Business and Economics, National University of Ireland, Galway, Ireland

^b Exeter Business School, United Kingdom

ARTICLE INFO

Article history:

Received 23 April 2013

Received in revised form

25 September 2015

Accepted 26 September 2015

Available online 21 October 2015

Keywords:

Tax

Institutional theory

Endogeneity of law

Power

Knowledge experts

ABSTRACT

This paper analyses a previously unexamined but nonetheless important facet of modern society – the nature and impact of the relationship between in-house tax professionals in large multinational organizations, and the external business, tax and regulatory environments within which they operate. Drawing on face-to-face interviews conducted with senior tax executives in US multinational enterprises (MNEs), we uncover the social reality of the world in which MNEs' tax executives operate, and find that these tax professionals are a powerful, elite group of knowledge experts who can significantly shape tax law and practices. We analyze the activities of these experts who, although working largely in the shadows of their organizations, are very much engaged in constructing and shaping the wider institutional environment. From a theoretical perspective that brings together institutional work and the endogeneity of law, we find these elite professionals engaging in subtle and diffuse exercise of power at a micro level within their organizations, a meso level between organizations within the field and at a macro level within the wider external environment. This has important implications for our broader understanding of the tax and regulatory environments which corporate actors inhabit.

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"I had a friend who was a Tax Director of a company here, a very large company ... that is ... quite aggressive in tax planning and ... somebody ... asked him 'how do you decide which organizations ... you will join or you'll be active in?' He said 'I don't join an organization unless I can control it'." (Silicon Valley Tax Executive (TE), 2005)

"Its [General Electric] extraordinary success is based on an aggressive strategy that mixes fierce lobbying for tax breaks and innovative accounting that enables it to concentrate its profits offshore. G.E.'s giant tax department, led by a bow-tied former Treasury official named John Samuels, is often referred to as the world's best tax law firm. Indeed, the company's slogan "Imagination at Work" fits this department well. The team includes former officials not just from the Treasury, but also from the I.R.S. and virtually all the tax-writing committees in Congress." (New York Times, 2011)

1. Introduction

There has been considerable hype recently surrounding corporate tax practices including serious accusations of misconduct. In this environment new vocabularies are emerging to describe corporate tax related behaviour: 'fair share', tax 'dodging', 'aggressive avoidance'. We are witnessing unprecedented levels of attention and attempted 'tax shaming' on named multinationals by the media, non-government organisations (NGOs), by national governments, parliamentary committees and even supranational bodies. Yet despite all the strident protests and verbiage, there is an alarming level of misunderstanding and misinformation; and we still know very little about the actual tax practices of multinational corporations. We are left to wonder: who are the architects of these allegedly devious plans and how widespread are these apparently aberrant practices?

In this paper we shed light on some of these issues, but in so doing we go back to an earlier, more secretive time, before the current cacophony commenced. We draw on a series of interviews with in-house tax professionals who ply their trades *within* companies; embedded within organisations to manage the tax affairs, including the relationship with the various tax authorities to whom

* Corresponding author.

E-mail address: Emer.Mulligan@nuigalway.ie (E. Mulligan).

they are accountable. In the context of large, multinational organisations (henceforth MNEs), these professionals are an elite group of knowledge specialists who engage as individuals and collectively in institutional work across three levels of practice, within their organisations, between organisations and within the wider environment. We uncover the hidden power of tax professionals in practice; in shaping tax policy, which in turn has an important and significant role in fundamentally shaping society (Boden, Killian, Mulligan, & Oats, 2010; Covaleski, Dirmsmith, & Mantzke, 2005).

The contributions of this paper are twofold. Firstly, at an empirical level, we contribute to a small but rapidly growing body of literature that views tax as a social and institutional practice (Gracia & Oats, 2014) and adopts an interpretive approach to provide a new and rich insightful perspective on the way the tax field operates in practice. We find MNE tax executives to be a powerful group of experts, working largely in the shadows of their own organisations, but also engaged in collective institutional work, contributing to shared understandings across organisations of the 'rules specifying how the game is to be played' and 'how the specified actors are supposed to behave' (Scott, 2008a, p.55). At the same time, some of these powerful professionals are actively engaged in shaping the wider regulatory environment, by for example, making direct representations to government as well as feeding into the knowledge bases of their peers and of future generations of tax professionals. We thus shed light on an aspect of organisational life that has received scant attention previously, examining one organisational function (the tax function) and tracing its impact beyond the organisation.

Secondly, at a theoretical level, we bring together two strands of institutional theory, dealing respectively with the institutional work of professionals and the endogeneity of law. Supported by our findings, we conceptualise the institutional work of in-house tax professionals, including that which shapes the laws to which they are then subjected, as occurring within three layers of fields, demonstrating the complexity and rationale of the overlapping practices that calls into question more simplistic and sometimes invalid accounts of the work of tax professionals. Unlike studies that consider the role of professionals in generating profound social change (e.g. Suddaby & Viale, 2011), the phenomenon we study here is more subtle and diffuse. Importantly, we view organisations themselves as sub-fields (Bourdieu, 2005), and power as relational (Lawrence, 2008), rather than a resource to be 'possessed' (Cooper, Mahmoud Ezzamel, & Willmott, 2008). In this way we are able to bring to the fore the dynamic and contingent practices within the tax field (Gracia & Oats, 2012).

Before discussing the specific findings of the empirical study, we first clarify the theoretical positioning of the paper in the next section. This is followed by elaborating on the role of in-house tax professionals in each of the fields of practice within which they operate.

1.1. Theoretical considerations

There is growing interest in the institutional work of the professions. This body of research reconnects institutional theory to questions of both agency and power, to consider how institutions operate through individual agency (Suddaby, 2010). Associated with this is a strand of theorizing that brings law and society scholarship together with institutional theory, recognizing the malleability of law and the interactions between law and organizational practices. Edelman (2007) for example, describes how legal logic enters into and transforms organizational fields through a process she terms "endogeneity of law". The professions are intimately implicated in this process. Here we draw together the notions of law's endogeneity and the institutional work of a group

of professionals who are actively, but not overtly, engaged in shaping the legal environment in which they operate, and ultimately society.

A number of studies have sought to explicate the institutional work performed by professionals in various contexts. Scott (2008b) charts the shift in scholarship dealing with the professions from the functionalist thinking of the early twentieth century, through the emergence of a conflict lens highlighting political aspects of the professional project from the 1960s onwards, through the more recent institutional perspectives, some of which introduce a social constructionist conception to develop new insights.

Lawrence and Suddaby (2006) introduced a taxonomy of institutional work, identifying various categories of activity within three broad categories, specifically creating, maintaining and disrupting institutions. Currie, Lockett, Finn, Martin, and Waring (2012) seek to extend Lawrence and Suddaby (2006) typology, demonstrating the interaction between the different types of institutional work in a medical professional setting. Suddaby and Viale (2011) demonstrate the dynamics through which professionals reconfigure institutions and fields, describing the professional project as an endogenous mechanism of institutional change. They observe that professions wield considerable power not only as a result of their expert knowledge, but also through their ability to manipulate the social order within the field.

The professions play a key role in translating legal prescriptions into organizational practices. But they do more than this – indeed they are implicated in the very process by which laws come into being, or once in place, may be modified in the light of practice and experience. Edelman and Suchman (1997) suggest that law develops meaning through the process of professional interpretation, and substance through its enactment by organizational actors responsible for compliance. They further argue that organizations do not only respond to the law, but are also actively engaged in constructing and configuring legal regimes; indeed that it is rare for legal regulations to come into being independently of those at whom they are directed. It is rare for regulations to "emerge independently of the organizational actors whom they ostensibly govern" (Edelman & Suchman, 1997, p.488).

The endogeneity of law perspective allows us to pay particular attention to active agency in the context of understanding the social construction of tax laws. According to Edelman, Uggen, and Erlanger (1999), law is rendered "endogenous" whereby "organizations are both responding to and constructing the law that regulates them ... the content and meaning of law is determined within the social field that it is designed to regulate." (p.407). Even seemingly clear laws are subject to new interpretations and actors create, as well as respond to, uncertainties in interpretation (Kelly, 2003).

Much of the scholarship drawing on Edelman and colleagues' work analyses organizational practices around mediation and employment law.¹ Like employment law, tax is often viewed as a 'back office' function, largely as a result of its highly specialized knowledge base.² Morris and Empson (1998), for example, quote a Tax Partner from a large accounting firm as saying "tax is highly complex, like an intellectual puzzle". Tax knowledge is frequently (mis) represented as codified knowledge, on the assumption that it resides primarily in the legal field, governed by statute and

¹ Although see Kelly (2003) for an extension into employer sponsored child care, where a curious overlap between employment law and tax law created a financial incentive to employers to sponsor child care for employees.

² Unlike employment law specialists who reside within Human Resources and similar functions, tax specialists are dealing with compliance issues that directly impact on the financial performance of the organization.

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