REGULATING TAX ADVISERS:
A European Comparison of Recent Developments and Future Trends

Dennis de Widt, University of Exeter
D.DeWidt@exeter.ac.uk
Emer Mulligan, National University of Ireland, Galway
emer.mulligan@nuigalway.ie
Lynne Oats University of Exeter
L.M.Oats@exeter.ac.uk

The FairTax project is funded by the European Union’s Horizon 2020 research and innovation programme 2014-2018, grant agreement No. FairTax 649439
## Contents

Executive Summary ........................................................................................................... 5  
List of abbreviations ........................................................................................................... 6  

1 Introduction .................................................................................................................. 7  

2 The tax advisory profession in different European jurisdictions ............................... 9  
   2.1 The UK tax advisory profession ........................................................................... 9  
   2.2 The Irish tax advisory profession ....................................................................... 11  
   2.3 The Dutch tax advisory profession .................................................................... 11  
   2.4 The German tax advisory profession ................................................................ 13  
   2.5 Conclusion .......................................................................................................... 15  

3 The regulatory space of tax advisory work ................................................................. 17  
   3.1 Regulating the tax advisory profession: direct regulations .................................. 19  
      3.1.1 Direct regulations of the tax advisory profession in the UK ....................... 20  
      3.1.2 Direct regulations on the tax advisory profession in Ireland ...................... 21  
      3.1.3 Direct regulations of the tax advisory profession in the Netherlands ........ 23  
      3.1.4 Direct regulations of the tax advisory profession in Germany ................. 24  
      3.1.5 Conclusion ..................................................................................................... 25  
   3.2 Regulations indirectly affecting the work of tax advisers ........................................ 25  
      3.2.1 European regulations ................................................................................... 26  
      3.2.2 UK regulations indirectly affecting tax advisory work .................................. 29  
      3.2.3 Irish regulations indirectly affecting tax advisory work ............................... 29  
      3.2.4 Dutch and German regulations indirectly affecting tax advisory work ...... 29  

4 Relationships between tax advisers and other actors .................................................. 31  
   4.1 The UK system ....................................................................................................... 31  
   4.2 The Irish system .................................................................................................... 32  
   4.3 The Dutch system .................................................................................................. 34  
   4.4 The German system .............................................................................................. 37  
   4.5 Conclusion ............................................................................................................ 37  

5 Concluding remarks .................................................................................................... 38  

6 References .................................................................................................................... 39  

7 Project information ...................................................................................................... 42
REGULATING TAX ADVISERS: A European Comparison of Recent Developments and Future Trends
Executive Summary

This report investigates the role of tax advisers in large business tax compliance. The report compares the tax advisory industries in four EU Member States, the United Kingdom (UK), the Republic of Ireland (Ireland), the Netherlands and Germany. The focus is on the professional background of tax advisers and the regulatory frameworks in which advisers operate.

In the UK, Ireland and the Netherlands, tax advice is provided by different types of professionals – exclusive tax advisers, lawyers, accountants and others. The German system stands out as all tax related work is reserved to a strongly protected tax advisory profession. Due to high entrance criteria to the profession, as well as strict professional duties, German tax advisers enjoy a strong reputation. The non-protected status of the British, Irish and Dutch tax professions has resulted in a more dynamic and client oriented approach of tax advisers. In addition, the number of exclusive tax advisers the UK, Ireland, and the Netherlands is smaller than in Germany, and, in contrast to the German situation, it is not so much tax advisory work that leads to access to non-tax work, but non-tax work leading to tax advisory assignments.

Tax advisers in Europe are subject to highly different regulatory frameworks. Two main types of regulation can be distinguished. First, there are rules aimed at the tax profession directly, which are mostly documented in laws, codes, standards, or a combination thereof. Direct regulations are most strongly developed in Germany, and, with the exception of anti-terrorism financing regulations, virtually absent in the British, Irish and Dutch tax systems. Second, the regulatory framework provides indirect forms of regulation by setting out how services provided by tax advisers should be organised. These regulations are scarce in the German system, but prevalent in the British, Irish and Dutch tax systems. Hence, the report demonstrates that a low degree of regulation of the tax advisory profession goes together with a high degree of regulation and supervision of the work in which tax advisers are involved.

The role of tax advisers in the British, German, and Dutch tax system has been eroded in recent years. The position of tax advisers has been affected most strongly in the Netherlands with the introduction of horizontal monitoring.

A main conclusion of the report is that in order to adequately identify the relationship between tax advisers and taxpayers' compliance, a multidimensional analysis is required of the advisory profession within the wider regulatory landscape, not limited to regulations that directly apply to the tax profession but comprise all regulations that affect tax advisory work. What initially appear to be very heterogeneous European regulatory frameworks for tax advisers, are in practice systems that are much more convergent in terms of the regulatory output they produce regarding tax advisory work.

Keywords: tax advisers, regulation of tax advisory work, professional tax and accountancy bodies
**List of abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCA</td>
<td>Association of Chartered Certified Accountants (UK)</td>
</tr>
<tr>
<td>ATT</td>
<td>Association of Tax Technicians (UK)</td>
</tr>
<tr>
<td>BEPS</td>
<td>Base erosion and profit shifting (OECD project)</td>
</tr>
<tr>
<td>CARB</td>
<td>Chartered Accountants Regulatory Board (Ireland)</td>
</tr>
<tr>
<td>CCAB</td>
<td>Consultative Committee of Accountancy Bodies</td>
</tr>
<tr>
<td>CIPFA</td>
<td>Chartered Institute of Public Finance and Accountancy</td>
</tr>
<tr>
<td>CIOT</td>
<td>Chartered Institute of Taxation (UK)</td>
</tr>
<tr>
<td>HMRC</td>
<td>Her Majesty’s Revenue and Customs (UK tax authority)</td>
</tr>
<tr>
<td>ICAEW</td>
<td>Institute of Chartered Accountants in England and Wales (UK)</td>
</tr>
<tr>
<td>ITI</td>
<td>Irish Tax Institute</td>
</tr>
<tr>
<td>LCD</td>
<td>Large cases division (Irish Revenue)</td>
</tr>
<tr>
<td>MNE</td>
<td>Multinational enterprise</td>
</tr>
<tr>
<td>NAS</td>
<td>Non audit services</td>
</tr>
<tr>
<td>NOB</td>
<td>The Dutch Association of Tax Advisers (Nederlandse Orde van Belastingadviseurs)</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>PAC</td>
<td>Public Accounts Committee (UK)</td>
</tr>
<tr>
<td>PCRT</td>
<td>Professional Conduct in Relation to Taxation (UK)</td>
</tr>
<tr>
<td>PSFs</td>
<td>Professional service firms (umbrella term for all firms providing advisory services including tax).</td>
</tr>
<tr>
<td>RB</td>
<td>Register of Tax Advisers (Register Belastingadviseurs)</td>
</tr>
</tbody>
</table>
1 Introduction

The global landscape for advisers to large business has changed dramatically in recent years and is set for further change in the immediate future, in part due to the OECD’s Base Erosion and Profit Shifting (BEPS) project, but also in light of the ongoing impact of the global financial crisis that has heightened sensitivities in relation to tax collection. The trend towards cooperative compliance promoted by the OECD has been overshadowed to some extent by these concerns, creating tensions in relationships. The push towards greater transparency in the affairs of large businesses operating across borders is increasing the visibility of multinational enterprises (MNEs) decision making. This push comes from civil society and supranational bodies. Although media coverage of these issues is confused and sometimes misleading, there is a clear need for businesses to respond to demands for greater clarity. Tax advisers clearly have a role to play.

The tripartite relationship between large businesses, their external advisers and tax authorities is complex and nuanced, and importantly, also changes over time. This relationship is not well understood, particularly in popular discourse. It also plays out differently in different jurisdictions. The purpose of this discussion paper is to explore this relationship, in particular the tax advisory landscape in relation to large businesses in four jurisdictions, the United Kingdom (UK), the Republic of Ireland (Ireland), the Netherlands and Germany.

The focus on large businesses reflects recent developments globally that recognise the significant risks that they pose to tax administrations, many of which have created dedicated large taxpayer units to monitor and manage their affairs more closely. Typically these affairs will be significantly more complex than those of small and mid-sized businesses; for example they will have many operating entities and diverse business lines, high volume transactions and large numbers of employees (OECD 2015).

Large business taxpayers, particularly MNEs, have internal (in-house) tax departments staffed by technical experts who manage the tax affairs of the organisation. Exactly what these experts do will vary from business to business in light of a range of factors including the industry and jurisdictions in which they operate and the range of tax obligations they face in each of those jurisdictions. In recent years, there is evidence to suggest that in-house tax departments have increased in both size and prominence for many MNEs. Recourse to external advisers, be they lawyers or accountants or some other type of specialist, appears to be largely reserved for specific events or transactions beyond the capability of the in-house team, or for ‘comfort’ in relation to, for example, interactions with the tax authority.
Following public scrutiny in the face of apparent tax avoidance schemes in the business sector, the work of tax advisers has been put under the spotlight in many countries. Most investigations into the tax advice industry have been conducted by parliamentary committees and stakeholder groups, which has often enhanced the already politicized nature of the tax compliance/avoidance discourse. Academic research into the role of tax advisers is limited, hence the role occupied by tax advisers in the tax landscape is very much a black box, a relationship illustrated by figure 1.

Figure 1: the tax advice industry as a black box in the tax landscape

By analysing the role of tax advisers in different EU member states, this discussion paper addresses the question:

*What is the role of tax advisers in large business tax compliance?*

Specifically, this question is investigated by analysing four EU member states – the UK, Ireland, the Netherlands, and Germany. The focus is on national regulatory frameworks.

To enable a systematic comparison, the paper concentrates on the following sub questions:

1. Who are the corporate tax advisers (hereafter: advisers) within the four systems?
2. What is the regulatory framework in which advisers operate?
3. How do advisers relate to other relevant actors in the tax landscape?
4. What has been the role of tax advisers in business compliance arrangements introduced by tax administrations?

The paper draws upon primary and secondary literature, including documents and internet resources from the tax administrations and associations of tax advisers within the different countries. The paper formulates several discussion questions for further research and concludes with some reflections on the future position of tax advisers within the different tax landscapes.
2 The tax advisory profession in different European jurisdictions

As noted in the introduction, the work of tax advisers to large businesses is complex and varied. There is no single advisory role and large businesses will use advisers for different reasons, most closely linked to in-house expertise and capacity. The tax regimes and obligations faced by large businesses varies considerably between countries. The actual practical activities of tax advisers, however, is not well understood in the academic literature.

In the UK, Ireland and the Netherlands, tax advice is provided by different types of professionals – exclusive tax advisers, lawyers, accountants and others. In Germany, tax advice is exclusively reserved to the tax advisory profession. Partly the diversity of tax professionals follows from the heterogeneity of the clients they serve. Significant diversity also exists in the scale of the organisations that provide tax advice – ranging from the small tax practice run by a single tax adviser to the large tax divisions of the globally operating professional service firms (PSFs), both accounting and law firms.

Although the main function of tax advisers is advisory, many advisers support their clients with additional tasks such as administrative functions, and representative and legal support. Despite similarities in their work, differences exist between the four countries regarding the type of professions that are most actively involved in providing tax advice.

2.1 The UK tax advisory profession

In the market for large business tax advice in the UK, the accounting profession is more dominant than the legal profession. The influential tax advisory role of accountants in the UK can partly be explained by the strong working relationships that traditionally exist between the accountancy firms and HMRC, the UK tax authority. The strong relationships with HMRC have arguably strengthened the advising position of the UK accountancy profession. The five leading UK law firms, colloquially known as the ‘Magic Circle’, also provide corporate tax advice, but their services tend to be used more infrequently – for example in transaction related issues such as the case of complex corporate transactions, such as mergers and acquisitions. Other players in the UK tax field are investment banks and the tax bar. The role of investment banks has reduced in recent years, whereas, due to its limited capacity, the role of the UK tax bar has always been relatively small.

Tax advisory work in the UK is a legally unregulated profession. To maintain quality standards, the profession relies upon self-regulation by the professional bodies. A minority of the around 50,000 UK tax advisers are organised into one of the two professional bodies
exclusively dedicated to taxation. The Chartered Institute of Taxation (CIOT) was established in 1930 and currently has a membership of around 17,000. Membership to CIOT is awarded on passing the Institute’s examination and completion of three years practical UK taxation experience, and members may use the letters CTA (Chartered Tax Adviser). The second UK professional tax body is the Association of Taxation Technicians (ATT). Founded in 1989, the ATT has a membership of around 7,400. ATT members are qualified by examination and practical experience, and members may use the practicing title of ‘Taxation Technician’ (ATT).

In addition to the CIOT and ATT, there are bodies that represent practitioners who are involved in tax advice, even though the organisations themselves are not primarily focused on taxation. There are several accountancy bodies, the Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants in Scotland (ICAS), Association of Chartered Certified Accountants (ACCA). All Big-4 firms active in the UK are members of one or more of the professional bodies. Although some tax advisers active in the Big-4 held individual memberships with the professional bodies, the majority tends to be affiliated with a body through the corporate memberships. However, there is some indication that the Big-4 have become more separated from the wider profession, indicated by limited involvement of the firms in the professional tax and accountancy bodies (Cooper and Robson 2006). An overarching umbrella body, the Consultative Committee of Accountancy Bodies (CCAB) was founded in 1974 and currently serves the above mentioned accountancy bodies plus the Chartered Institute of Public Finance and Accountancy (CIPFA) and also Chartered Accountants Ireland, reflecting the historical ties between Ireland and the United Kingdom. The CCAB provides a collective voice for the UK accountancy profession more broadly.

The professional association representing lawyers in the UK are the Law Society of England and Wales, the Law Society of Scotland and the Law Society of Northern Ireland. Barristers have a separate professional body, the General Council of the Bar. Nested within the Bar association are a number of specialist associations, one of which is the Revenue Bar Association, which brings together English barristers practising in the tax field.
2.2 The Irish tax advisory profession

In Ireland, tax advice is provided by different types of professionals – exclusive tax advisers, accountants, barristers, solicitors and other business professionals. While the majority of tax advisory work is conducted by accountancy firms, the leading Irish law firms also have dedicated tax teams who provide tax advice primarily in the area of corporate transactions for example, mergers and acquisitions.

Similar to the UK, tax advisory work in Ireland is largely subject to regulations as set out by the professional bodies. The majority of tax advisers are members of the Irish Tax Institute (ITI) which is the only professional body in Ireland exclusively dedicated to tax. The ITI was established in 1967 and had a membership of over 6,600 as at 31 March 2015 (ITI 2016). Membership to the ITI is awarded on the successful completion of the Institute’s examinations and after members are formally accepted to membership at the ITI’s annual conferring ceremony, they may use the letters CTA (AITI Chartered Tax Adviser). In addition to the ITI, a professional tax qualification is also offered by Chartered Accountants Ireland (CAI) which is the largest and longest established accountancy body in Ireland. CAI was established in 1888 and has a membership of over 24,000 professionals. This tax qualification, known as Chartered Tax Consultant, was introduced in 2011 and is only available to members of CAI. This qualification is awarded under the Chartered Accountants Ireland charter. The majority of tax advisers in the Big-4 firms in Ireland tend to have either or both an accountancy and tax qualification.

2.3 The Dutch tax advisory profession

Similar to the UK and Ireland, the group of tax advisers in the Netherlands is highly heterogeneous. A substantial number of advisers used to be tax inspector in previous careers. According to some observers, this creates a special, sometimes almost collegial, atmosphere between advisers and the Dutch fiscal authorities. According to Streek (2012, 21), advisers of the ‘traditional mentality’ could refuse providing tax advice to clients if this would lead to their clients paying no tax. Again resembling the UK, the Dutch tax profession is not legally

1 Website: http://taxinstitute.ie/AboutUs.aspx
2 Website: http://taxinstitute.ie/CareersandCourses/AITICharteredTaxAdviserCTAQualification/AboutAITICharteredTaxAdviserCTAQ/FAQs.aspx
3 Website: http://www.charteredaccountants.ie/en/FDI/ROI/
4 Website: https://www.charteredaccountants.ie/General/About-Us/
5 Website: http://www.charteredaccountants.ie/PageFiles/599922/Final%20version%20CTC%20Brochure%20A5%2012th%20Oct%202015.pdf
regulated and it is the professional tax bodies that play the main role in ensuring the quality, integrity, and recognisability of the Dutch tax profession.

The majority of Dutch tax advisers belong to one of the two Dutch professional bodies for tax advisers. The Dutch Association of Tax Advisers (Nederlandse Orde van Belastingadviseurs – NOB), which was established in 1954, is the professional association of university educated tax advisers. The Netherlands is one of the few countries in the world with full university courses in tax law and tax economics, and NOB members have completed at least one of these two university courses. Their academic background in taxation provides NOB members with a strong training background. NOB members are also required to follow a postgraduate NOB professional course. The NOB has around 4,900 members, including 600 of which exclusively concentrate on corporate tax advice.6

The second Dutch tax body is the Register of Tax Advisers (Register Belastingadviseurs – RB), which represents advisers active in small and medium-sized enterprises (SMEs). The RB has around 7,600 members. To become a member of the RB, applicants do not need to possess a university degree in tax law or tax economics, but have to complete a special training programme alongside acquiring experience in the profession. The programme for becoming a tax consultant takes 1.5 years, followed by 2.5 years training required to become tax adviser. Similar to the NOB, the RB provides ongoing training activities for its members. In addition to quality assurance via training, members of the NOB and RB are bound to codes of professional conduct formulated by their association. The emphasis on ongoing training, and the associations’ internal ruling systems, seems to contribute positively to the quality of the Dutch tax profession. However, definite statements regarding the quality of the Dutch tax advisory profession are difficult as few reliable indicators are available.

Besides the category of exclusive tax advisers, Dutch accountants and lawyers are also regularly involved in providing tax advice. The market for tax advice is attractive for accountants due to the fierce competition characterising the Dutch audit market. The legal services industry in the Netherlands also faces growing competition, for several reasons. First, there has been a strong rise in the number of Dutch law firms since the 1990s, second, automation of legal work has reduced demand for legal services, and, third, there has been a sharp rise in the fees for legal services which has slow down market growth in the legal services industry (ING 2012; Susskind 2010). These changes in the Dutch legal profession have incentivised lawyers to become more involved in providing tax advice.

6 Website: http://www.nob.net/dutch-association-tax-advisers
2.4 The German tax advisory profession

In contrast to the UK, Ireland and the Netherlands, the occupation of tax advisers is legally protected in Germany. Hence, tax advice is restricted work which only licensed professionals may perform (Vorbehaltsaufgabe). The profession is known as Steuerberater (StB), or tax adviser, a term first used in law in 1933. A lower qualification was created in law in 1935, known as the Helfer in Steuersachen (Assistant in Tax Matters) – the title later changed to Steuerbevollmächtiger (StBv). In 1943, a professional Chamber was created for both professional groups (Markus 1997). Despite the presence of a separate occupation of tax advisers, German auditors (Wirtschaftsprüfer) are also involved in taxation work, although only after having past a special examination. The main legislation providing the current framework for German tax advisers has been in place since 1975 (Steuerberatungsgesetz – StBerG).

The German tax advisers are part of the so-called free professions (Freie Berufe). Around 94,000 tax advisers (Steuerberater) are active across the German federation – of which around 70% is active in a single practice. The number of official German advisers has more than doubled over the period since 1990, from 45,400 in 1990 to 93,950 in 2015 (Bundessteuerberaterkammer 2015). The rise of German advisers partly reflects an increase in the need for corporate tax advice. Due to increased activity by both domestic and foreign MNEs in Germany since the early 1990s, tax advisory needs increased, especially amongst the large corporates. The increasing role of large corporates in German economic life partly followed a process of acquiring SMEs by the large corporates. The subsequent reduction in the number of German SMEs has equally reduced tax advisory needs among SMEs, and overall the growth of tax advisory practices seems to have outstripped demand. The changes in German business structures, combined with an increase in the number of tax advisers, have resulted in a very competitive German market for tax advice. Reflecting trends in the German business sector, there has been strong consolidation among German audit and tax advice firms into larger firms from around 90% in the early 1990s, down to 70% in 2014 (Bundessteuerberaterkammer 2015).

The official German tax advisory profession is highly qualified; arguably the highest qualified tax advisory profession in Europe (Von Lewinsky 2015, 75). Access to the German tax profession is only possible after passing a special uniform nationwide state examination (Steuerberaterprüfung), which is considered one of the toughest and prestigious professional examinations in Germany (Evans and Honold 2007). Registration for the examination is only possible following the acquisition of considerable professional experience and technical knowledge. The passing rates of the exam are usually low at about
40%, with the permitted number of resits being limited to two. Around a quarter of the German advisers held additional qualifications, in most cases a law degree (BStBK 2011). Although the difficulties of accessing the German tax advisory profession are frequently criticized, especially the tough examinations, the German fiscal authorities and the German Chamber of Tax Advisers defend the practice by referring to the high quality standards of the German tax profession.

The legal protection and high entrance criteria of the German free professions, including that of tax advisers, have been critically examined by the European Commission. Since initiatives by European Commissioner Monti back in 2003, the special labour regulations for free professions have been under continuous pressure from Brussels, which observes them as important barriers to creating open competition on the European market for professional services. More recently, the EU Commission obliged Member States to evaluate the proportionality of national regulations on access to professions, and Member States had to report back to Brussels by the end of 2015. As part of this so-called Transparency Exercise, Member States were assigned to conduct a mutual evaluation of national systems of regulations that limit access to certain professions, and provide the Commission with an action plan for ‘eliminating unjustified restrictions or barriers’ to national occupations (European Commission 2013). The EU Commission, however, asserts that it does not aim to create a single European model to regulate the access to national professions as it will take account of ‘country specific features’. For example, according to a Commission’s spokesperson (Binczyk 2015) the complexity of the German tax system might justify a higher level of regulation of the German tax profession compared to countries with less complicated tax systems.

Regulations on entering the German tax profession have not only been scrutinised by Brussels but also by German tax professionals themselves. The state examinations for tax professionals are especially criticised for not examining candidates on their knowledge of business consultancy and business management (Neufang 2012). The skillset of German tax advisers tested in the state exams versus those demanded by clients seems out of line when looking at the actual work content of the modern-day German tax adviser. Statistics collected from German tax advisory firms (Steuerkanzleien) show that German tax advisers allocate only a minority of their time to actual tax advisory work, with the majority (around 85%) allocated to payroll and general financial accounting, the preparation of financial statements, and organising tax returns (Creutzmann 2006). The latter activities concentrate on administering the financial and fiscal implications of decisions made in the past, whereas tax advice focuses on future decision-making. With the exception of the filing of tax returns, the activities to which tax advisers dedicate most of their time constitute tasks that are not
exclusively reserved to the tax advisory profession. In light of this, German tax advisers do
face increasing competition due to an overall rise in the number of qualified tax advisers,
and because of competition from non-tax advisers in areas that are not exclusively reserved
to tax advisers but are nonetheless crucial to their commercial survival.

2.5 Conclusion
In all four countries, the work of the majority of tax advisers is concentrated on relatively
standard work, such as completing tax forms, and clarifying regularly returning questions
from clients. However, the most innovative and creative tax advisory work seems to derive
in all four countries from a small group of advisers, of which many seem to be based within
one of the Big-4 firms.

The German system stands out as all tax related work is reserved to a strongly protected tax
advisory profession. However, most work by German tax advisers is dedicated to
unprotected tasks, with limited tax advice involved. Though facing increasing competition,
their protected status gives German tax advisers an advantage when compared to their
European counterparts. In particular, their monopoly over tax advice provides German tax
advisers with unique access to the corporate sector, and augments their position to acquire
non-tax advisory work. In the Netherlands, Ireland and the UK, an opposite situation is
visible. The non-protected status of the British, Irish and Dutch tax professions has resulted
in a more dynamic and client oriented approach of tax advisers. In addition, the number of
exclusive tax advisers is smaller than in Germany, and, in contrast to the German situation,
it is not so much tax advisory work that leads to access to non-tax work, but non-tax work
leading to tax advisory assignments. This is reflected by a much more heterogeneous range
of professions involved in providing tax advice in the Netherlands, Ireland and the UK,
compared to Germany.

From the four countries, the German tax advisory profession is most recognisable and best
organised as a separate interest group. This gives German tax advisers a strong position to
operate as a strong lobby group within Germany, even though proving more difficult at the
European level. Due to high entrance criteria to the profession, as well as strict professional
duties (see below), German tax advisers enjoy a strong reputation. This contrasts strongly
with the situation in the UK, where political and societal trust in the tax advice profession is
highly limited. According to Sharon Baynham, Tax Director at KPMG UK, and Mandy Pearson, chair of the working group
responsible for the latest version of the Professional Conduct in Relation to Taxation (PCRT) code, trust in the UK
between the Netherlands and the UK, with the legal profession occupying a more prominent position in the Netherlands, and the accounting profession in the UK and Ireland.
3 The regulatory space of tax advisory work

Similar to other professions, tax advisers deliver trust-based goods. This means that clients of tax advisers will generally be unable to evaluate the quality of the services provided by their adviser due to the complicated nature of the tax system. This information-asymmetry between suppliers and purchasers of tax services provides an economic justification for the regulation of tax advisers. In an economically rational world, however, regulations should be proportional to the market failure they are aimed to address. Otherwise, the regulations are likely to increase the costs of service delivery, and still make the consumer worse off.

Another implication of the information asymmetry in the market for tax advice is that clients should be able to trust that service providers act in their interest. The clients’ interest may to some extent be opposed to the interest of the state. Hence, it is generally acknowledged that a certain degree of professional autonomy from state interference is essential in the profession of trust-based goods.

In Europe, countries have chosen different paths to regulate providers of trust-based goods. In the market for tax advice, two most different approaches can be identified. On the one hand, there is rules-based regulation. This is defined as a casuistically structured normative system, which ‘establishes legal consequences for a wide range of individual circumstances on the basis of clearly defined criteria’ (EESC 2013, 64). The advantage of this system is a high level of legal certainty for individual circumstances regulated by the rule. Disadvantages are a tendency towards excessive regulation, and difficulties in dealing with new and unexpected situation. The rules-based regulation is prevalent among EU Member States and is found mainly in Continental Europe.

Principles-based regulation can be found at the other end of the spectrum. This approach is common in the UK and the Scandinavian countries. The approach is characterised by the formulation of abstract legal principles of professional regulation, which must then be applied on a case-by-case basis (Schlag 1985). In the exercise of their profession, professionals must be guided by the principles and objectives in order to achieve the goals stated therein. As the approach is limited to a restricted number of principles, it is more manageable for practitioners and easier to adapt to new circumstances. A potential disadvantage of the light-touch regulation is legal uncertainty, especially when the principles are applied to new circumstances and limited case law is available (Schneider 2009).

---

8 Similarities can be found in the provision of other trust-based goods. For example, regarding the medical profession it is recognized that a doctor shall prescribe the medical treatment that is best for the patient even if the health insurance fund would have an interest in a cheaper treatment (CFE 2013, 1).
An example of the difference between the rather abstract sounding systems can be derived from the rules on road speed limits (Henssler 2015, 39). A rules-based illustration of such a regulation would be: ‘The maximum speed is 80 km/h’, whereas a principles-based approach would rephrase the regulation into something like: ‘The maximum speed must be reasonable and adjusted to local circumstances’. In reality, both approaches exist in mixed forms. For example, German professional regulations for tax advisers, which can be characterised in principle as part of the rules-based system, also include basic principles, such as related to the adviser’s independence and confidentiality.

Due to the trust-based nature of the services provided by tax advisers, most rules-based and principles-based systems have regulations, or other instruments in place that are aimed at ensuring the quality of tax advice provided. Two main types of regulation can be distinguished. First, there are rules aimed at the tax profession directly, which are mostly written down in laws, codes, standards, or a combination of those. Second, the regulatory framework provides indirect forms of regulation by setting out how financial services provided by tax advisers should be organised.

Traditionally, the regulatory frameworks have been developed by domestic actors. Country specific trajectories of professionalization provide a crucial explanation for cross-country differences in the regulation of tax advisers. From a historical perspective, professionalization in the UK occurred largely spontaneously and via a bottom-up process, while much more state intervention was evident in Germany (Neal and Morgan 2000). To a large extent, these distinct patterns in the development of professional organisations followed from differences in the development of political and economic systems in the nineteenth century. In Germany, the lack of a fully democratic parliamentary system and civil rights was a serious deterrent to the development of independent professional associations. In the UK, instead, the laissez-faire policies of successive British governments incentivised a bottom-up way of professionalization. Professionalization in the Dutch and Irish systems had a strong bottom-up background, but with some critical involvement from government actors, hence very much constituting a mix between the German and UK developments.

The differences in professionalization trajectories are reflected in the position of the tax advisory profession in the different countries. Graph 1 demonstrates that whereas tax advisers in Germany are considered to be a liberal profession, such a notion is absent in the UK and Ireland, and only latently present in the Dutch system.
In the Dutch, Irish and UK systems, statutory regulations are absent and instead the professional bodies carry the main responsibility for regulating the tax profession. In the German system, statutory regulations are in place, making that government actors rather than professional bodies do carry the main responsibility for regulating the tax profession. However, the professional bodies in Germany are important actors too, which means that the German system is very much a mixed or dual system (Henssler 2015). In all four systems, the work of tax advisers is increasingly affected by regulations deriving from the European Union (EU) level. The next section discusses both domestic and EU regulations that affect tax advisers. We start in section 3.1 by analysing regulations that have been formulated with the explicit aim of regulating the tax advisory professions, either by government actors, non-government actors, or a combination of those. This is followed in section 3.2 by an investigation of regulations that have not been explicitly designed to regulate the tax profession, but nevertheless significantly impact advisers’ work.

### 3.1 Regulating the tax advisory profession: direct regulations

The regulatory approach in place does not only determine how specific the regulations are, but also has a major impact upon the question which actors carry the responsibility for enforcing those rules. In countries with a rules-based approach, it is common to allocate the main responsibility for enforcing rules to professional bodies with a compulsory membership. In systems with principles-based regulation, principles are primarily kept up through standards that are supervised by professional bodies of which membership is non-compulsory.
3.1.1 Direct regulations of the tax advisory profession in the UK

In the UK, regulations directly aimed at regulating the professional status of tax advisers are the sole responsibility of the professional bodies. Tax advisers who are members of the CIOT, ATT, or accountancy professional bodies are bound by a professional code of conduct that should ensure professional behaviour, covering aspects such as integrity, objectivity, due care, and confidentiality. CIOT members breaching their professional code may be investigated by the Taxation Disciplinary Board, which was set up in 2001 by the CIOT and ATT as an independent entity. In 2013, the Board received 47 complaints, and a disciplinary tribunal imposed expulsion from the professional body in seven cases (Taxation Disciplinary Board 2015).

Some tax advisers are bound by codes formulated in addition to those formulated by the professional bodies. For example, member firms of KPMG International apply a common Global Code of Conduct (Global Code), which relates to the internal governance of KPMG firms. Since 2004, KPMG UK also applies the UK Principles of Tax Advice (Tax Principles), which codifies the governance procedures of KPMG UK in relation to taxation. This Code was prompted in part by the investigations of the US Department of Justice into the US member firm of KPMG International in relation to the sale of tax shelters in the US between 1996 and 2002 (House of Commons Public Accounts Committee 2013). Reflecting changes in the political debate, KPMG’s UK Principles of Tax Advice were amended in 2012 by adding a principle that recognises the importance of the intention of parliament in tax legislation (‘spirit of the law’). In a different light, the adoption of firm-specific codes, such as by KPMG, might be seen as an illustration of the increasing divergence of the PSF’s from the rest of the UK tax advisory profession (Anderson-Gough, Grey and Robson 2002).

Following investigations by the Public Accounts Committee (PAC), a cross-party committee of the UK House of Commons, the effectiveness of self-regulation by the tax advice industry has become the subject of heated political debate in the UK. The British parliamentary investigations were sparked by the leak of hundreds of Luxembourg tax rulings, and the inquiries by the PAC led to the Big-4 being accused of promoting tax avoidance schemes ‘on an industrial scale’. In particular, MPs accused PwC of marketing tax avoidance schemes, a criticism that has been strongly rejected by the accountancy firm. Based upon its disputed findings, the PAC demanded the UK Government to take on a more active role in regulating

---

the tax advice industry ‘as it evidently cannot be trusted to regulate itself’. MPs demanded from the Government to introduce a code of conduct for tax advisers and suggested compliance with this code had to determine whether or not firms providing tax advise can access both government and wider public sector work (House of Commons Public Accounts Committee 2013). The PAC also called the professional bodies to ‘take on a greater lead and responsibility’ in relation to tax avoidance.

HMRC have publicly stated that there is no intention of it becoming a regulator for the tax agent industry (Houlder 2015b). In March 2015, however, the UK Government urged the professional bodies to maximise their role in setting and enforcing clear professional standards to prevent tax avoidance, but it rejected the PAC’s demands for direct regulation of the tax profession. In response to the Government’s position, the professional bodies indicated that they would look at whether their code of conduct needed strengthening, but at the same time expressed doubts whether much more could be done (Houlder 2015b). In May 2015, the major UK accountancy and tax bodies adopted an updated code entitled Professional Conduct in Relation to Taxation (PCRT). The PCRT is not a reply to the Government’s request to the professional bodies to strengthen their regulatory role, but it provides a clearer standard of professional behaviour, and adoption is encouraged by the professional bodies to all tax advisers in the UK, both in and outside the professional tax bodies. HMRC has stated that the Code provides ‘an acceptable basis’ for dealing with tax administrators (Goodall 2015). The PCRT puts strong emphasis on the potential reputational effects of tax advice provided, both for clients, advisers and the wider tax profession.

Self-regulation also characterises other UK professions involved in providing tax advice. Law firms benefit from a high degree of self-regulation, arranging their disciplinary affairs through the Solicitors Regulation Authority. In 2007, the UK Government attempted to improve its control over the legal profession by introducing external regulation under the Legal Service Act. However, this remained without long-term effects due to successful lobbying by the large law firms (Flood 2011).

### 3.1.2 Direct regulations on the tax advisory profession in Ireland

Tax professionals in Ireland are subject to a number of specific statutory obligations which are set out in Irish tax legislation and anti-money laundering legislation including an

---

obligation to report suspected tax evasion and suspected money laundering offences, a prohibition on assisting a taxpayer in filing an incorrect return and a prohibition on directly or indirectly assisting a taxpayer to evade tax.

While there are a number of specific statutory obligations on tax professionals, it is the professional bodies that have the responsibility for the regulation of the profession through the establishment and maintenance of professional standards of conduct for their members. In the case of the ITI, members are bound by the Institute’s Code of Conduct, entitled “Code of Professional Conduct and recommended best practice guidelines” (the Code). Each article of the Code is split into two elements, the first being the code itself and the second part consisting of recommendations on how the code should be implemented. Members are expected to be familiar with the elements of the Code and to carry out their professional activities in a manner that complies with the Code and maintains the highest standards of professional behaviour. The Code covers areas such as independence, confidentiality and exercise of care and conscientiousness in all professional dealings. In addition, the Code provides guidance on the appropriate actions to be taken in various situations to include where a tax adviser is commencing to act for a client, occasions when it is appropriate to decline to act for a client and where there are conflicts of interest.\(^\text{11}\) There is a disciplinary procedure in place to review and investigate formal complaints received by the ITI with respect to breaches of the Code by its members. These complaints may be initially reviewed by the Taxation Disciplinary Board in the UK and subsequently by various committees within the ITI, if considered worthy of further investigation.\(^\text{12}\)

In addition to the ITI, members of CAI (including those with the Chartered Tax Consultant qualification) must abide by a Code of Ethics which covers aspects such as integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.\(^\text{13}\) CAI has an independent regulatory body, the Chartered Accountants Regulatory Board (CARB), who are responsible for developing professional and ethical standards for members of CAI, monitoring the compliance of members and member firms and dealing with complaints and disciplinary actions.\(^\text{14}\) Where tax advisers are also members of other professional bodies, there may be a requirement to comply with additional regulations for example solicitors providing tax advice are required to abide by the professional standards of conduct as set out by the Law Society of Ireland.

\(^{11}\) Irish Taxation Institute – Code of Professional Conduct and Recommended Best Practice Guidelines.
\(^{12}\) Irish Taxation Institute – Bye-Law No. 1 Investigation and Disciplinary Procedures.
\(^{13}\) Chartered Accountants Regulatory Body – Code of Ethics.
\(^{14}\) Website: [http://www.carb.ie/](http://www.carb.ie/)
3.1.3 Direct regulations of the tax advisory profession in the Netherlands

With no statutory regulations in place, the professional tax and accountancy bodies carry the main direct responsibility for regulating tax advisory work in the Netherlands. The codes of conduct of the Dutch professional tax bodies show many similarities. The codes do not provide very specific or strict guidelines for tax advisers on how to conduct their advisory work. For example, the Code of Professional Conduct of the NOB states that a member is obliged to ‘perform his work in his capacity as a tax adviser in an honest, conscientious and appropriate manner and to refrain from all that which is in conflict with the honour and dignity of the profession’ (article 1). The NOB underlines the potentially flexible meaning of the provision in its explanation to article 1 in which it states “what constitutes the ‘honour and dignity’ of the profession is partly determined by the views of society and may thus be subject to change”.

Other provisions in the NOB Code emphasise the importance for advisers to always clarify their acting capacity, maintain confidentiality, avoid conflicts of interest, and commit to professional development. Sections of the Code dedicated to the services provided by tax advisers mostly concentrate on issues such as how a member should deal with situations in which clients are taken over from another adviser, or how assignments should be terminated. Most specific about the duties of tax advisers is the explanation to clause 1, article 7, which states that, if there are reasonable grounds that the services requested by a client are incompatible with the tax adviser’s ‘honour and dignity’ (article 1), the adviser should ‘refrain from providing the services requested’. The most explicit regulation here is a member’s obligation to carry out due diligence in accordance with the Act for the prevention of money-laundering and financing terrorism. The NOB advises its members that when in doubt as to whether their clients’ request may be in conflict with the honour and dignity of the profession, advisers should consult a fellow member of the NOB who is not a candidate member. The code of conduct of the other major Dutch association of tax advisers, the RB, is very similar to the NOB code.

In sum, the codes of conduct of the Dutch tax advisory associations provide only general guidelines regarding how advisers should operate in relation to tax compliance. Most specific are the codes about members’ obligation to follow statutory regulations put in place by the Dutch government, such as the anti-terrorism measures (e.g. Wwft).

Although tax advisers in the Netherlands do not constitute a legally protected profession, historical rulings and parliamentary evidence has given a high degree of autonomy to Dutch advisers. First, the Dutch legislator has recognised that taxpayers must have the opportunity
‘to consult in a confidential manner with their tax adviser’.\textsuperscript{15} In practice, confidentiality is particularly protected by the informal right of non-disclosure (‘\textit{verschoningsrecht}’) held by advisers. Dutch advisers have an informal instead of formal right of non-disclosure because, as stated by the Dutch legislator, it proved ‘impossible to introduce legislation on the non-disclosure for tax advisers as the profession of tax adviser is not legally regulated’.\textsuperscript{16}

A formalisation of the non-disclosure principle, however, has frequently been discussed, with formalisation of non-disclosure being presented by opponents of self-regulation as an important advantage for the Dutch tax advisory profession to receive a statutory regulated status, similar to German tax advisers. According to several experts (e.g. Gohres 2009), however, formalisation of non-disclosure is unneeded for Dutch advisers, especially since a 2005 judgement by the Supreme Court has provided all essential features of a non-disclosure principle. The Dutch Supreme Court dealt with the question whether or not due diligence reports had to be disclosed to the Dutch tax authorities, and it decided that the principle of fair play opposes allowing examination by tax authorities of ‘reports and other documentation from third parties intended to cast more light on the taxpayer’s tax position or to advise the taxpayer of that tax position’.\textsuperscript{17} Hence, the ruling widened the scope of the Dutch ‘tax practitioner privilege’ and improved the position of the Dutch tax payer (Seeling and Visser 2005; Sporken, Vegt and Dols 2011).

Notwithstanding the stronger base for the confidentiality principle provided by the Supreme Court’s judgement, recent regulatory changes have reduced the autonomous position of Dutch Advisers (see below).

3.1.4 Direct regulations of the tax advisory profession in Germany

Due to their membership of the free professions, regulations affecting tax advisers are most strongly developed in Germany. The German Federal Court allocates different features to the free professions, such as a high level of qualifications of those practicing the profession, and a high degree of occupational autonomy in regulating the profession. In its historical rulings, the German Federal Court has also underlined the autonomous position of tax advisers, referring to them as ‘mediator between state and tax payer’, ‘independent organ of the tax judicature’, and a ‘state-bound trusted profession’.\textsuperscript{18}

\textsuperscript{15} Tweede Kamer – Parliamentary documents II 1957/58, 40870, no. 7.
\textsuperscript{16} Tweede Kamer – Parliamentary Documents II 1957/58, 4080, no. 7, page 13, right column, and Parliamentary Documents I 1958/59, 4080, no. 7a, page 9, right column.
\textsuperscript{17} Supreme Court, 23 September 2005, BNB 2006/52.
\textsuperscript{18} Or, in the original German rulings, ‘\textit{Mittler zwischen Staat und Steuerzahler}’ (BVerfG, 15.2.1967), ‘\textit{Wahrer des Rechts}’ (OLG Celle, 2.6.1960), ‘\textit{unabhängiges Organ der Steuerrechtspflege}’ (§ 2 Abs. 1 BOSTB), and are
The legal foundation of the regulatory framework of the German tax advisory profession is provided by the Law on Tax Advisers (Steuerberatungsgesetz – StBerG). The law determines that a German tax adviser needs to be member of a Chamber of Tax Advisers (Steuerberaterkammer). In 2014, there were 21 Chambers across Germany, representing 93,950 tax advisers and tax advisory firms. The Chambers carry the main responsibility for regulating the work of tax advisers, and are themselves supervised by the state level governments, most often the State Ministries of Finance. The 21 Chambers are united in the Federal Chamber of Tax Advisers, which is itself regulated by the Federal Ministry of Finance.

3.1.5 Conclusion

In all four systems, the associations of tax advisers are putting more emphasis on the potential reputational effects of tax advice provided. This is a large difference with twenty or even ten years ago, when tax was purely considered a legal matter, and courts generally applied the law prescriptively, such that a lot of tax planning arrangements were ultimately successful. From the four countries in our comparison, the shift in public attitudes towards tax planning has been most radical in the UK, where the reputation of tax advisers has subsequently been damaged most seriously. The negative perception of the UK tax advisory profession has incentivised the adoption of professional codes by the UK tax advisory bodies that emphasise a high level of societal accountability of the tax profession, going beyond interpretations that stick to the ‘letter of the law’. In the Dutch, German and Irish systems, professional codes have been less adapted in recent years, which might be explained by the more positive and less publicly scrutinised reputation of Dutch, German and Irish tax advisers compared to their UK counterparts.

3.2 Regulations indirectly affecting the work of tax advisers

Government regulations that indirectly affect the work of tax advisers can be found in all four countries. We start by identifying the impact of European regulations, which is followed by an analysis of country specific regulatory developments.

exercising a ‘staatlich gebundenen Vertrauensberuf’ (BVerfG 8.10.1974), which obliges them to be independent and have self-responsibility.
3.2.1 European regulations

Differences in professionalization trajectories explain some of the distinct features of the profession of tax advisers in the four countries. However, at the same time the EU is exerting pressures on the Member States to reduce cross-country differences in the organisation of professions. A key European regulation has been Directive 89/48/EEC, which determines that a ‘Member State may not refuse Community nationals access to a regulated profession if they are fully qualified to exercise the same profession in their Member State of origin’. By insisting upon the mutual recognition of professional qualifications, the Directive thus ensures that professional institutions within individual Member States have to tolerate practitioners who have not necessarily been trained in ways required for the achievement of professional status in that country (Neal and Morgan 2000, 22). The EU regulations towards establishing a free labour market, such as Directive 89/48/EEC, are forcing Member States to restructure their professions. In Germany, this has reduced the state's traditional control over the professions, and, in the UK, swept aside much of the regulatory autonomy of the professional bodies. However, at the same time, the EU Court of Justice has recognised in the Cassis de Dijon case (1979) that certain measures that restrict the EU’s open market principles could be justified if in the public interest, such as to protect the consumer. For this reason, some experts do not perceive recent EU initiatives under all circumstances as a threat to the German model of the regulated tax advisory profession – as it may be argued that this model does not exist to protect the profession from competition, but to protect consumer interests.

However, to what extent the German model may be taken over by the EU as a ‘European model’ is uncertain, as there is no legislation regarding free professions in any of the EU treaties. The absence of the concept of profession in the EU’s acquis communautaire means that it is very difficult, if not impossible, for EU policymakers to come up with a single model for the regulation of tax professionals, for example by merging the best elements present in existing Member State models. The only legislative option left to the Commission is to assert that existing models are in conflict with EU treaty principles, and hence need to be eliminated by legislative action by Member States. Another method available to the Commission is trying to foster debate within Europe about the regulation of the professional occupations. The EU’s current Transparency Initiative is an example of such a non-legislative approach.

Table 1 shows regulatory changes following both European and domestic reforms. The position of advisers in all three countries is affected by legislation introduced to prevent money laundering and the financing of terrorism.
Table 1: regulatory changes

<table>
<thead>
<tr>
<th>Regulatory changes following European regulation</th>
<th>UK</th>
<th>Ireland</th>
<th>The Netherlands</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU Audit Reform – mandatory audit rotation and restrictions on provision of non-audit services</td>
<td>No statutory regulations planned – monitoring directive allocated to the Financial Reporting Council (FRC), starting June 2016</td>
<td>Department of Jobs, Enterprise and Innovation responsible for the drafting of the Irish legislation – draft bill has not been issued yet</td>
<td>Wta – Audit Firms Supervision Act (2013)</td>
<td>Draft Bill (2015) - Abschlussprüfungs-reformgesetz (AReG)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regulatory changes following domestic developments</th>
<th>General Anti-Abuse Rule (GAAR)</th>
<th>General anti avoidance rule</th>
<th>Wab – Law on the Accounting Profession (2012)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Disclosure of Tax Avoidance Scheme (DOTAS)</td>
<td>Mandatory disclosure of certain transactions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Accounting Officers (SAO)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

19 In the original Dutch version titled: ‘Wet ter voorkoming van witwassen en financieren van terrorisme – Wwft’. But result of merging of two existing laws (Wet melding ongebruikelijke transacties, introduced in 1994; and Wet identificatie financiële dienstverlening’.
20 In the original German version titled: ‘Gesetz zur Bekämpfung des internationalen Terrorismus’.
21 In the original Dutch version titled: ‘Wet toezicht accountantsorganisaties – Wta’.
22 In the original Dutch version titled: ‘Wab – Wet op het accountantsberoep’.
It has been outlined above that the three main groups involved in providing tax advice are exclusive tax advisers, lawyers and accountants. Providing tax advice has different consequences for each of these groups. In particular, when accountants start to be involved in providing tax advice to clients for which they are also the dedicated accountant, their independent position may be undermined. Given the societal relevance of a high quality auditing function, mixing audit and tax advice work by accountants has been critically reviewed by government regulators. Following large corporate auditing scandals (Enron), legislative action has been undertaken across jurisdictions to reduce conflicts of interest within the accounting profession. In the US, the 2002 Sarbanes-Oxley Act has restricted auditors from providing non-audit services to their clients.

At the EU level, concern over audit quality has led to the EU Audit Reform. Part of the reform are new rules on the provision of non-audit services. The legislation provides a detailed list of non-audit services (NAS) that audit firms and members of their networks may not provide to public interest entities, which are listed companies, banks and insurers. Examples of NAS are consultancy services and tax advice. Member States may prohibit additional non-audit services if they wish (Deloitte, 2014). The regulations on NAS also impose a cap of 70 percent on the fees an accountancy firm can generate from NAS.

Another measure implemented as part of the EU Audit Reform is the mandatory audit firm rotation, which determines that public interest entities have to change auditors every 10 years. Member States can choose to require rotation after a shorter period. If Member States choose to allow it, this period can be extended to a maximum of 20 years if there has been an audit tender after 10 years. The Member States discussed in this paper are currently at different stages of transposing the EU directives related to the EU Audit Reform. In the Dutch system, new legislation has been introduced which requires rotation after 8 instead of 10 years. Germany and the UK are currently consulting national stakeholders on how best to implement the EU directives.

The EU Audit Reform particularly affects the position of the Big-4. Although the origins of their work and brand reputation are strongly rooted in providing auditing services, the Big-4 are realising the fastest growth in their non-audit divisions such as consulting and tax advice. As the Big-4 are increasingly presenting themselves as ‘one-stop shops’ (Houlder 2015b), critics claim that their evolution from auditors into PSFs could threaten auditor quality and independence, and fundamentally change the culture and tone at the top of the firms. For example, commercial growth opportunities in non-audit services may result in firm resources being increasingly allocated to the firms non-audit divisions, at the cost of the resources available for the audit divisions.
3.2.2 UK regulations indirectly affecting tax advisory work

Despite intensified discussions in recent years, the UK Government has refrained from implementing legislation that would directly regulate the tax advice industry. While the profession itself continues to rely upon self-regulation, tax advisers have been affected in their work by many regulatory changes. UK policymakers have responded to tax avoidance schemes with new legislation and, according to several major players in the tax advice industry (e.g. Mazars), ‘increasingly aggressive strategies’. The Disclosure of Tax Avoidance Schemes (DOTAS) rules introduced new reporting requirements for taxpayers and their advisers from 2004 onwards. The UK General Anti-Abuse Rule (GAAR) was introduced in 2013 following lengthy consultation, and is aimed at tackling abusive tax avoidance. At this stage, the impact of GAAR on the tax advisory profession remains to be seen. Following consultations during 2015, the UK Government has introduced additional new measures including a requirement for large businesses to publish their tax strategies.

3.2.3 Irish regulations indirectly affecting tax advisory work

While there is limited direct statutory regulation in Ireland with respect to the tax advisory sector, tax legislation has been introduced that indirectly affects the work of tax advisers. In particular, new legislation was introduced in 2010 requiring mandatory disclosure of certain transactions by tax advisers where such transactions could be considered to be tax avoidance. The intention behind this regime was that it could act ‘as an early warning mechanism for Revenue in respect of what they perceive as aggressive tax planning’. As the disclosure requirement is the obligation of the tax adviser, they need to always bear this legislation in mind when providing tax advice.

3.2.4 Dutch and German regulations indirectly affecting tax advisory work

Compared to the UK, the tax advisory professions have been less substantially affected by indirect regulations in the Netherlands and Germany. Most important in the Dutch system has been the Law on the Accounting Profession introduced in 2012, which prohibits accountants from providing other services to their clients, including tax advice. In Germany, most substantial changes are expected to result from the implementation of the BEPS regulations. German tax advisers are also affected by an increasing trend of digitalisation occurring in the state level tax administrations. In general, these changes, such as EHUG
and ELStAM, tend to increase the administrative burdens for German tax advisers (Bundessteuerberaterkammer 2014).

Overviewing European and domestic regulatory trends in the four selected countries, we observe an overall trend towards stricter regulatory frameworks that restrict tax advisers’ activities. This is despite some measures that have (indirectly) strengthened the position of tax advisers, such as the 2005 Dutch Supreme Court ruling.
4 Relationships between tax advisers and other actors

Tax advisers have relationships with multiple actors in the tax landscape. The position of tax advisers vis-à-vis other actors demonstrates several similarities across the four systems. Officially, tax administrations consider all tax decisions as having been made by the tax payer. However, in daily practice advisers often act as first contact point for tax administrators. The presence of advisers carries benefits not only for clients, but also for the tax administration (Grotenhuis 2005). When interacting with the ‘opposite side’, tax administrators are able to interact with experts, in case taxpayers are being represented by tax advisers. Due to their mediating role, advisers also buffer the high expectations often held by their fiscally uninformed clients and the position taken by the tax administration. The relationships between the three actors have both formal and informal features.

There are also some notable differences between our countries in the interactions between tax advisers and other actors in the national tax landscape. We focus on the relationships in the context of compliance initiatives targeted at the business sector.

4.1 The UK system

HMRC, as the UK tax authority, has focused on increasing business tax compliance by improving its customer service – especially through organising the so-called Customer Relationship Manager (CRM) model. The Large Business Office at HMRC was established in 1997 and has twice been renamed, as the Large Business Service in 2005 and more recently as the Large Business Directorate in 2014.

At the same time as it aims to improve customer management for large corporates, the UK tax authority is increasingly focussed on reducing tax avoidance by large corporates. In 2006, HMRC published a Review of Links with Large Business, which proposed a risk assessment process for large companies with complex and controversial tax affairs (Tuck 2013). In July 2015, HMRC announced plans to implement a ‘special measures’ regime, which, according to the Government, is aimed at companies that ‘simply do not play by the rules’, by which it means companies that persistently engage in tax avoidance, highly aggressive tax planning, or refuse to engage with the tax authorities in a ‘full, open and proper way’ (Houlder 2015a).

The relationship between the UK tax authority and the tax advisory industry has been discussed in several recent investigations. According to Hasseldine et al. (2011) accounting firms in the UK generally have a positive opinion about HMRC due to their high quality manuals, their pro-activity (in making visits, sending mails, and publishing), and their
flexibility and helpfulness. A 2012 investigation by the House of Commons Public Accounts Committee (PAC) concentrated on tax advice provided by the Big-4. The Committee depicts the relationship between the tax advisory divisions of the Big-4 and HMRC as highly unequal, with the Big-4 much better resourced in terms of staff and expertise compared to HMRC.

UK tax advisers do not only have close relationships with the country’s tax authority, but also have a big impact on tax policymaking by the UK Government. Advisers from the Big-4 in particular are regularly seconded to government departments to provide technical advice on changes to tax laws. A notable case has been the Patent Box. The influence of tax advisers on UK tax policymaking has been particularly criticized by the PAC. These criticisms added further to the negative publicity the government was already receiving for its handling of tax issues, especially the alleged 'sweetheart deals' between HMRC and some large business taxpayers.

The picture that arises from the position of tax advisers in the UK tax landscape is one of ambiguity: whereas regulatory changes have reduced the autonomy of tax advisers and their representative bodies, the impact of the Big-4 has increased, especially on UK fiscal policymaking.

4.2 The Irish system

The Irish tax authority (the Revenue) and tax advisers have developed a healthy working relationship which is not only beneficial for both parties but also for the smooth running of the tax system. This relationship has been described by the tax authority as one that ‘is defined by a mutual respect, an acknowledgement of the absolute validity of each other’s roles and a willingness on both sides to engage in open dialogue which can only be to the benefit of all’. In addition, this relationship has been growing over the years and the strength of the relationship is now ‘based on greater consultation and engagement and anchored to a considerable degree in mutual trust and understanding’.

The Irish tax authority’s commitment to increasing tax compliance by building relationships with taxpayers (and consequently tax advisers) was demonstrated by the introduction of two initiatives as follows: the establishment of the Large Cases Division (LCD) within Revenue and the introduction of a new cooperative approach to tax compliance. The LCD, which was

---

23 Taken from speech by Frank Daly, Chairman of the Revenue Commissioners at KPMG Conference in 2005, website: http://www.revenue.ie/en/press/speeches/archive/kpmg_conference041105.html.
established in 2003, is responsible for dealing with the tax affairs of the largest corporate
groups/companies in Ireland together with certain high net worth individuals. Each
taxpayer is assigned a dedicated case manager which enables the development of a
relationship between the taxpayer and Revenue and also an opportunity for the manager to
acquire an understanding of the taxpayer’s business and any associated tax risks.

The second initiative introduced by the tax authority with the aim of increasing tax
compliance was ‘The Co-operative Approach to Tax Compliance’ (Co-operative Compliance).
This framework, introduced in September 2005 by the LCD, was designed as a mutually
beneficial mechanism for managing the relationship between taxpayers and tax authority
whereby all parties (including tax advisers) work together to achieve the highest possible
level of tax compliance. This approach requires the existence of a relationship between the
parties that is based on trust, mutual understanding, openness and transparency. By
disclosing information to tax authority on business events and tax planning strategies in real
time, taxpayers and their advisers can openly discuss the associated tax concerns with tax
authority and this provides taxpayers with an element of certainty that is essential in today’s
business world. From the tax authority’s perspective, this new approach allows a more
efficient use of their resources as an increased knowledge of a taxpayer's business allows
resources to be concentrated on the areas of highest risk. Although both of these initiatives
seek to improve the relationship between the tax authority and taxpayers, the tax authority
stated that it is not their intention to undermine the relationship between taxpayers and
their advisers as they regard ‘tax advisers as the cornerstone of the system’ and a key player
in the efficient running of the tax system (Moriarty 2004, 49).

Tax advisers and the Irish tax authority also engage in continuous dialogue to improve the
administration of the tax system in Ireland. One such method of dialogue is the Tax
Administration Liaison Committee (TALC) which is a main forum for making
representations between the tax authority and tax advisers (through their professional
bodies) on non-client specific issues which can then be progressed in an open and productive
manner. Tax advisers also have a role to play in influencing tax policy through submissions
to the Department of Finance in Ireland, which is the government body responsible for the
development of Irish tax policy. In recent years, certain aspects of Irish tax legislation have
been subject to a public consultation process where submissions are invited from

25 Revenue publication – Chapter 14: “Large Cases Division - Guide to the Structure, Functions and Records of Revenue”
26 Revenue publication, The Cooperative Approach to Tax Compliance – Revenue working with Large Business.
27 Website: http://taxinstitute.ie/TaxPolicyandPractice/RevenuePracticeandRepresentations/TaxAdministrationLiaisonCommitteeTALC.aspx
practitioners, taxpayers and professional bodies as to their views on the particular topics. The Knowledge Development Box is an example of a tax measure that was introduced following a public consultation process. Tax advisers have an important role to play in such submissions as they can capture the views of their diverse client base and draft submissions that help to ensure that the tax measure is fit for purpose.

In contrast, the introduction of compliance initiatives by the Irish tax authority seem not to have changed the role of tax advisers in acting as the first contact point for the tax authority with respect to a taxpayer’s affairs. At the time of introduction of the cooperative compliance programme, the Irish tax authority stated in their publication that they do not intend to undermine the important role of tax advisers in Ireland.

4.3 The Dutch system

In the Dutch system, there has traditionally been a collegial atmosphere between advisers and tax administrators. Facilitated by the regional organisation structure of the Dutch tax administration, long term working relationships characterise the interactions between Dutch advisers and tax administrators. The fiscal administrative culture in the Netherlands is very much aimed at reaching reasonable compromises between the position taken by the adviser and the tax inspector. Hardening one’s own position as part of settling a conflict, as can be found in some other industries, is relatively uncommon in the Dutch fiscal culture (e.g. Grotenhuis 2005, 101).

The cooperative interactions in the Dutch tax landscape, combined with a well-considered litigation approach, results in a relatively low number of court cases lost by the Dutch tax administration; on average it wins, totally or partially, four out of five court cases (Beheersverslag 2004, 100). It is not only the tax administration, but also the tax advisory profession that benefits from the cooperative Dutch fiscal culture. An adviser who has managed to build a good working relationship with the tax administration is likely to benefit in multiple ways; most importantly an adviser will be able to receive early clarity from the tax administration about the administration’s likely response to certain fiscal decisions planned by the adviser’s clients. This is of huge importance to the advisers’ clients as information from the tax inspector may have a decisive impact on the business decisions eventually taken by the clients.

The relationship between Dutch tax payers and the tax administration also affects the position of tax advisers. In 1991, the Dutch government planned to introduce a so-called Tax Statute (Belastingstatuut), which outlined the rights and duties of Dutch taxpayers. Article
4 of the Statute recognised the right of taxpayers 'to aim, within the boundaries of the law, to reduce the amount of tax to pay'. Although the Statute, which was merely a summary of existing law, was never officially adopted by the Dutch Parliament, the Dutch tax administration translated its content into a flyer for tax payers, which was first published in 1994. The flyer translates article 4 as follows: 'The Dutch tax administration recognises your right to organise your tax affairs, within the boundaries of the law, in such a way that you will pay the minimum amount of tax'.

Although the flyer was published for years by the Dutch tax authority, interactions between advisers, the tax administration, and tax clients began to change in the early 2000s. In 2004, the Dutch government judged it important to improve the relationship between advisers and the tax administration. The government aimed to improve the relationship through a new code, which was to be drafted together with the professional tax bodies. In the code, both the tax administration and the tax advisory profession had to make certain promises to each other that they could then be held accountable for. A conceptual version of the code drafted by the Government, received a very critical response in the Dutch parliament and from the tax profession. In particular, the strong normative approach of the Code was criticized, and led to the document being qualified in the Dutch Senate as a 'code for scouts'. Due to the strong normative position of the government, the RB association openly refused to negotiate with the government about the code, whereas the NOB did not give any public response.

The Dutch Government eventually withdraw on its plan to implement the code, and in a change of strategy decided to implement the norms laid down in the code by drafting direct agreements between the tax administration and tax payers, and as such side-lined the tax advisory profession. The new working method started as a pilot project in 2005 and has been referred to as 'horizontal monitoring'. According to the Dutch tax authorities, the method focuses on drafting compliance covenants between trustworthy private parties and civil society organisations. The latter group of taxpayers is to be distinguished from high-risk taxpayers by having different mechanisms of self-regulation in place, such as certification and internal codes of conduct. Prior to drafting a compliance covenant, tax payers are required to set up a Tax Control Framework (TCF) that is approved by the tax authority. Tax payers in a horizontal monitoring arrangement acquire the main responsibility for monitoring their fiscal status, supposedly generating benefits for both parties involved: savings on monitoring costs for the tax administration, and a reduction of compliance costs for taxpayers.

---

28 In the original Dutch Tax Statute, article 4 is phrased as follows: 'De belastingdienst erkent uw recht om uw zaken binnen het kader van de wet zo te regelen dat u zo min mogelijk belasting betaalt'.

In contrast to the role of the external accountant, the position of tax advisers is not discussed in the main Dutch government documents related to horizontal monitoring. Some Dutch tax administrators emphasise the important role tax advisers could play in horizontal monitoring arrangements (Streek et al. 2012, 13). Given the close and often long-lasting relationships between Dutch tax advisers and their clients, advisers are in a strong position to evaluate the extent to which their clients are in fiscal control. This information is vital for the tax administration as being in fiscal control constitutes a precondition for taxpayers in order to join a horizontal monitoring arrangement.

Grotenhuis (2005) argues that the implementation of horizontal monitoring has confronted Dutch tax advisers with a moral dilemma. On the one hand, advisers are recruited by clients with the clients expecting to receive advice solely on the basis of the legal tax framework in place, or the ‘the letter of the law’. However, increasingly the Dutch tax administration also expects advisers to formulate their advice based upon what the administration perceives as desirable tax behaviour (‘the spirit of the law’). For advisers, this expectation from the tax administration is difficult to ignore because, to a large extent, their effectiveness from the clients viewpoint depends upon having good working relationships with the tax authorities. The different, and at times opposing, expectations between clients and tax administrators cause a major moral dilemma for the tax profession. If the adviser pretends towards his clients that his advice is solely based on the legal rules in place, while not doing so in practice, he ignores his own professional ethics. This, however, also occurs when the adviser pretends to the tax authorities that he does not advise what is seen by the tax administration as improper tax planning, whereas in practice he would do so. Should the adviser inform his client that he will only identify possibilities for tax reduction that are deemed acceptable by the tax administration, the relationship between client and tax adviser is unlikely to be a long lasting one (Grotenhuis 2005, 106). Although the potential reputational costs of the use of tax avoidance schemes are considered more carefully by tax payers nowadays, the search for tax minimisation options still constitutes a major part of the added value generated by tax advisers, and as such provides a ‘justification’ (Stevens, 1997) for their fees. Depending upon industries, however, firms demonstrate different appetite for the risks they are willing to undertake to reduce their effective tax rate.

Ten years after being introduced in the Netherlands, cooperative compliance agreements have spread from the large companies to the SME sector. In 2011, 177 agreements were in place with very large companies, 954 with medium large size companies, and 183 with

---

31 For example, a recent survey conducted among 350 senior-level executives by Allen & Overy (2015) demonstrated that despite increased scrutiny and growing reputational concerns, 66% of respondents said the key objective of their tax function is still aimed at achieving the lowest effective tax rate for their company.
medium and small companies (Stevens 2012, 97). Overlooking the successful implementation of compliance agreements in the Netherlands between the tax authority and taxpayers, it seems that the rejection of the Government drafted code back in 2005 has undermined the role of advisers in the Dutch tax landscape.

4.4 The German system

In Germany, interactions in the tax landscape are characterised by a high level of formality. It appears that, following their protected status, the value of German tax advisers very strongly derives from their technical knowledge and less from other skills, such as being able to connect different parties, or to provide strategic business advice.

As tax administration is a state level responsibility in the German system, CCAs differ substantially across the German states (Drüen 2011). The states of Lower-Saxony and North Rhine-Westphalia (NRW) have been most prominent in developing CCAs, with both states’ putting most effort in realising a speedier process of tax assessment and tax collection for large corporate clients (Kaiser 2013).

4.5 Conclusion

With the exception of Ireland, the role of tax advisers in all systems discussed in this paper has been eroded in recent years. Arguably, the position of tax advisers has been affected most strongly in the Netherlands with the introduction of horizontal monitoring. In Germany and the UK, business compliance arrangements are very different from the Dutch system, as no covenants are in place between the tax administration and individual business tax payers.
5 Concluding remarks

The analysis in this paper demonstrates important differences in the position of tax advisers and the regulation of the tax advisory profession between European countries. With respect to the rules applying to the profession, Germany and the UK offer highly contrasting regulatory systems. In the principles-based UK system, there are no statutory regulations in force that apply directly to the tax advisory profession. This contrasts strongly with the rules-based German system, where direct government regulations apply to tax advisers, especially regarding access to the profession.

Based upon country differences in the direct regulation of tax advisers, one would assume a higher degree of autonomy for tax advisers in the UK as opposed to Germany. However, the analysis demonstrates that a low degree of regulation of the advisory profession in the UK goes together with a high degree of regulation and supervision of the work in which tax advisers are involved. This contrasts with the German system, which shows a high degree of regulation of the profession, but a comparatively low degree of regulation of tax advisers’ work.

Similar to the UK, the Dutch and Irish systems lack statutory regulations applying to the tax advice profession, but rely less than the UK on compensatory regulations applying to tax advisers’ work. In Ireland, there are high standard of regulations as set out by the professional bodies. The work of Dutch tax advisers is more strongly affected in an indirect manner, such as through the cooperative compliance covenants in place between the Dutch tax administration and tax payers. In addition, the Dutch system constitutes a relatively unique case given the highly specialized, university level tax training background of many tax advisers.

Overall, the paper demonstrates that in order to adequately identify the relationship between tax advisers and taxpayers’ compliance, a multidimensional analysis is required of the advisory profession within the wider regulatory landscape, not limited to regulations that directly apply to the tax profession but comprise all regulations that affect tax advisory work. Such an analysis, as carried out in this paper, demonstrates that what initially appear to be very heterogeneous European regulatory frameworks for tax advisers, are in practice systems that are much more convergent in terms of the regulatory output they produce regarding tax advisory work. The regulatory frameworks in all three systems have become more repressive, with tax compliance risks increasingly being shifted from the tax administration towards tax payers and tax advisers.
References


EESC. 2013. *The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society*. Brussels: European Economic and Social Committee (EESC).


7 Project information

FairTax is a cross-disciplinary four year H2020 EU project aiming to produce recommendations on how fair and sustainable taxation and social policy reforms can increase the economic stability of EU member states, promoting economic equality and security, enhancing coordination and harmonisation of tax, social inclusion, environmental, legitimacy, and compliance measures, support deepening of the European Monetary Union, and expanding the EU’s own resource revenue bases. Under the coordination of Umeå University (Sweden), comparative and international policy fiscal experts from eleven universities in six EU countries and three non-EU countries (Brazil, Canada and Norway) contribute to FairTax research.

Contact for information

Åsa Gunnarsson
Dr. Professor Tax Law, Coordinator
Forum for Studies on Law and Society
S-901 87 Umeå University
Sweden
+46 70 595 3019

FOR DETAILS ON FAIRTAX SEE: HTTP://WWW.FAIR-TAX.EU

Please respect that this report was produced by the named authors within the FairTaxProject and has to be cited accordingly.