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Ethical and Socially Responsible Behaviour of Tax Advisers: The Case of Moral Beliefs

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Abstract

Financial crisis and corporate scandals have turned the spotlight on the role played by tax advisors in the creation and development of tax minimization schemes. This paper explores whether society is entitled to expect tax advisors to behave in an ethical and socially responsible manner and to have general moral obligations. A modern contradictory role of tax advisors has been analyzed, influencing a predatory entrepreneurial culture, and the conflicting mental attitude of society and clients have been investigated. The study concludes that significant differences in tax advisors' ethical sensitivity and personal moral beliefs have been insurmountable obstacles to meeting these expectations thus far.

Keywords: tax advisors, tax minimization schemes, ethics, socially responsible behaviour.

Introduction

Several decades ago, the tax function was just an insignificant task among others performed by the company accounting department. Since then, dramatic changes have occurred as the global financial crisis has generated particular interest in the problem of tax planning, avoidance and evasion (Hasseldine, Holland, Rijt, 2011; Sikka, 2010). It is estimated that in 2010 world total tax evasion exceeded 3.1 trillion US dollars, which made up approximately 5.1% of the world GDP. In comparison with any other country, the US budget had the highest loss – about 337 million USD. The USA was followed by such countries as Brazil, Italy, Russia, Germany and France (The Tax Justice Network, 2011). Tax evasion was not a problem faced only by the largest world economies. Although absolute numbers of loss suffered by the budgets in the Baltic States were not so impressive and were about 1.12 million USD in Estonia, 1.22 million USD in Latvia, and 2.12 million USD in Lithuania[1], according to the ratio of tax evaded to health care spending, Estonia placed 25th, Lithuania 33rd and Latvia 46th among 145 countries (The Tax Justice Network, 2011).

In addition, a number of corporate scandals have only added fuel to the fire. The collapse of Enron and WorldCom provided a valuable insight into the nature and the scale of complex tax avoidance and evasion schemes. The famous audit firms such as Arthur Andersen, KPMG and Deloitte & Touche, and some credit institutions including Chase Manhattan, Deutsche Bank and Bankers Trust, played quite an important role in the creation of these tax schemes (Sikka, 2008). Recently, more and more stakeholders have asked rhetorical questions about a fair share of taxes the corporations have to pay and whether these taxes are actually paid. This awareness has increased the significance of effective tax management and created an extra demand for taxation consultancy services. Consequently, at present, it is impossible to overstate the importance of the part played by tax advisers in this process. On the one hand, they are primarily focused on assisting clients with tax minimization. On the other hand, their general moral obligations to society could be questioned. Particularly, it could be the case of developing countries (low and middle income countries) which urgently need financial resources to alleviate poverty and stimulate economic development (Spillovers…, 2014). Nowadays, the extent of blatant tax minimization schemes is really shocking. Corporate tax evasion is characterized as part of a global process when the wealth of the developing world is being steadily shifted to the world's richest countries. According to R. Baker, a fellow of the US Centre for International Policy, it is "the ugliest chapter in global economic affairs since slavery" (A Christian Aid, 2008, p. 2).

The research aim is to explore whether society is entitled to expect tax advisors to have general moral obligations and to behave in an ethical and socially

[1] Recalculated into USD by the authors of the paper according to the official currency exchange rates published by the Eurostat.

responsible manner while conscientiously fulfilling their professional duties.

The research tasks are:

1) to perform a comparative analysis of such tax minimization methods as tax avoidance, tax evasion and tax planning;
2) to examine the conflicting role of tax advisers, their ethical sensitivity, and their personal moral stance on developing and promoting tax minimization practices;
3) to explore a contradictory attitude of society to tax minimization in general and its different methods in particular.

The research subject is the moral beliefs of society and tax advisors as well as their interaction.

In order to achieve the research aim the following *research methods* have been used: comparative and in-depth analysis, synthesis, comparative studies and review of theoretical literature, and the published results of previous empirical research.

The novelty of this study is an attempt to use a multifaceted and integral approach to the exploration of the interaction between the moral beliefs of society and an ethical and socially responsible behaviour of tax advisors in theory and practice. In previous studies, various aspects were analysed separately. For example, Sikka and Hampton (2005), Sikka (2008; 2010), Sikka, and Filling and Liew (2009) focused on a negative influence of modern predatory entrepreneurial culture, Huseynov and Klamm (2012) explored corporate social responsibility, Yetmar and Eastman (2000) analysed the ethical sensitivity of tax advisors, whereas Fisher (1994) and Shafer and Simmons (2008) provided an insight into the threats to the ethical behaviour of tax consultants. Such researchers as Henderson and Kaplan (2005), Kirchler, Maciejovsky and Schneider (2003) studied the individual ethical orientation and the attitude of different social groups to tax minimization.

Opaqueness of tax minimization methods

In practice, a vast range of various methods is used by tax advisers to help clients minimize the amount of taxes due. As the borderline between "tax avoidance", "tax evasion" and "tax planning" is fuzzy (James, Nobes, 2004), they often require further clarification. Most scholars emphasize the difference in legality of these activities. Whereas "avoidance is the manipulation of one's affairs within the law in order to reduce tax", "evasion is the illegal manipulation of one's affairs so as to reduce tax" (James *et al.*, 2004, p. 16) or "the illegal non-payment of tax to the government of a jurisdiction to which it is owed by a person, company, trust or other organization" (The Tax Justice Network, 2011, p. 2). Tax planning is "arranging one's affairs to take advantage of the obvious and often intended effects of tax rules in order to maximize one's after-tax returns" (The Tax Justice Network, 2011, p. 2). Usually, accountants refer to avoidance as "tax planning" or "tax mitigation" in order to emphasize its legality (The Tax Justice Network, 2011, p. 100).

Similarly, Hart (1981, p. 210) gives the following definitions: "Tax avoidance is the arrangement of a person's financial affairs so as to legitimately reduce a tax liability. Tax evasion is the illegal elimination of a tax liability by fraud, wilful default or neglect". Kirchler *et al.* (2003) have adopted a more exemplified approach and explained tax avoidance as "an attempt to reduce tax payments by legal means, for instance by exploiting tax-loopholes" whereas tax evasion as "an illegal reduction of tax payments, for instance by underreporting income or by stating higher deduction rates". In addition, they also use the term "tax flight" to denote a situation when a person has only the intention to reduce the tax burden (Kirchler *et.al.*, 2003, p. 539). Melville (2013, p. 12) refers to the general principle of honesty; in other words, tax evasion is dishonest behaviour (for example, concealing a source of income) whereas tax avoidance is "a legal activity of organizing financial affairs in such a way that the tax burden is minimized". Lewis (1977, p. 25) underlines the conditional nature and vague concept of tax avoidance because "a taxpayer is seeking to order his affairs by legal form so as to minimize his tax liability, and in so doing he might be either successful or unsuccessful".

Other scholars follow a non-traditional way of defining these methods. For example, Hanlon and Heitzman (2010) define tax avoidance as the reduction in explicit taxes and give the following examples: tax management, tax planning, tax aggressiveness, tax evasion and tax sheltering. Due to great difficulty in distinguishing these terms, Lipatov (2012) suggests using just two terms; namely, "simple tax evasion" and "sophisticated tax evasion". If the former does not require special knowledge of financial or tax accounting, the latter does.

Usually tax avoidance is preceded by legitimate tax planning when corporations try to develop and accumulate their knowledge of tax system (Hasseldine *et al.*, 2011). In Kay and King's (1990, p. 59) opinion, tax evasion is used exclusively by poor people because well-to-do taxpayers reduce their liabilities by legal tax avoidance. Despite the fact that most scholars and practitioners consider tax avoidance a legal method of tax minimization, a pessimistic opinion has been expressed (Kaldor, 1980, p. 18) that "the existence of widespread tax avoidance is evidence that the system, not the taxpayer, stands in need of radical reform".

Although tax revenues are of crucial importance to redistributing wealth and fighting poverty, for most corporations taxes are just additional costs which make the creation of shareholder value more difficult and problematic. Consequently, in modern entrepreneurial culture, tax minimization schemes are often perceived as a logical way of cutting costs (Sikka, 2005). L. Lynch (2007) – a tax partner at the Big 4 accountancy firm KPMG – made it clear that "As with any other cost, the board members owe their shareholders a duty to manage that cost by the legal means afforded to them. Where a company's tax philosophy is heavily influenced by a duty to shareholders, the focus should be on responsible management of tax cost". An alternative point of view has been given in a legal assessment performed by one of the leading law firms, which states that, "It is not possible to construe a director's duty to promote the success of the company as constituting a positive duty to avoid tax" (Fiduciary…, 2013). Each statement is probably worth considering. However, they still do not give an answer to the most important question. As a comparative analysis of definitions has already shown, the boundaries between tax avoidance, tax evasion and tax planning are blurred, and consequently legality becomes a matter of judgment. Therefore, it is difficult to disagree with the maxim that "…the directors should manage the company in a way that makes sense from a business perspective and that could involve tax planning. The difficult question to answer is what constitutes 'reasonable tax planning'" (Rogerson, 2013).

Corporate social responsibility has economic, legal, ethical, and philanthropic aspects. It demands that companies harmonize their goals and their responsibilities (Huseynov *et al.*, 2012). Although a company's declaration of being socially responsible does not guarantee actual compliance with tax rules (Sikka, 2010), empirical research of 408 listed Australian companies (Lanis, 2012) has revealed a lower probability that corporations who make significant social investments (for example, support charities) are tax aggressive. There is an inevitable conflict between shareholders being interested in a higher profit and stakeholders who expect a company to pay taxes. Consequently, tax avoidance or evasion is argued to be socially irresponsible as they occur at the expense of society (Huseynov *et al.*, 2012; Sikka, 2008, 2010; James *et al.*, 2004). Nonetheless, different opinions have also been expressed. For example, Nobel Prize winner M. Friedman emphasized that the only social responsibility of business is to make and increase its profit as long as it does not violate the law (Friedman, 1970). Another alternative view is that tax avoidance could be "a justified reaction to growing tax burdens and uncompromising tactics on behalf of government authorities" (Shafer *et al.*, 2008, p. 712). This is highly probable because a positive correlation between an increase in tax rate and a growth in tax evasion has been empirically proved (Bethencourt and Kunze, 2013).

Nowadays, state dependence on private capital as a lubricant which oils economic activity is an important obstacle to more vigorous tax regulating. The UK can be mentioned as a classic example of this dependency. Of the 72 tax havens that exist in the world, 30 are located in Commonwealth countries and Crown Dependencies (A Christian Aid, 2008). According to a poll conducted by the Institute of Business Ethics in 2013 (Institute…, 2013), the public is much more concerned about tax avoidance in comparison with such business ethics issues as executive remuneration, environmental responsibility or discrimination, which were mentioned by respondents as the top problems in 2008 (Surveys…, 2008). Nevertheless, in practice the state is quite reluctant to declare war against them. For instance, initially the British General anti-abuse rule regulation was introduced in order to enable tax authorities to fight "aggressive" tax avoidance, but later it was modified to focus only on extremely abusive forms of this misbehaviour (Sikka, 2013).

Similar to large corporations, accountancy firms have also become typical representatives of the modern predatory "enterprise culture" and are mostly focused on increasing their own profits even if it requires compromising general principles of ethical behaviour and professional integrity (Shafer *et al.*, 2008; Sikka, 2008, 2010). Presumably, no one could dispute that tax minimization schemes developed by accountancy firms lead to distorting the mechanism of wealth redistribution, challenge the legitimate taxation policy of the state, reduce budget revenues, and impose limitations on the fulfilment of such state functions as maintaining infrastructure and providing public services. However, the awareness of this problem does not give a clear answer as to whether the development of these schemes deserves strict and unconditional condemnation. As one of the main legal principles is "*actus reus non facit reum nisi mens sit reas*" (from Latin: "an act does not make a defendant guilty without a guilty mind"), the mental attitude of society, tax advisor's clients and tax advisors to tax non-compliance is of crucial importance for a thorough assessment of professional tax advisors' obligation to exhibit ethical and socially responsible behaviour.

A conflicting role of tax advisers – are they guilty without guilt?

According to Pickhardt *et al.* (2013), the interaction (or a "tax game") between the main actors consists of several sub games. One of these is "taxpayers and tax practitioners vs. tax authority" when a tax practitioner acts as a well-informed intermediary (for Tan (1999) - a "gatekeeper") who directly influences a taxpayer's behaviour with regard to tax evasion or tax compliance (Devos, 2012; Sakurai *et al.*, 2003). Dubin *et al.* (1998), cited by Pickhardt and Pritz (2013), particularly emphasized the controversy of these simultaneously-played roles of an agent for the tax authority and a taxpayer. A figurative description of this role was provided by Hasseldine *et.al.* (2011, p. 49): "From an HMRC[1] perspective, tax accountants are analogous to a bee; they provide a useful knowledge transfer function (pollination) but simultaneously facilitate higher levels of tax planning (the sting)". A tax practitioner could act as an enforcer in case of explicit tax regulation and an exploiter if the regulation is equivocal (Klepper and Mazur, 1991, cited by Sakurai and Braithwaite, 2003, p. 376). A continuous growth in the complexity of tax regulation is one of the reasons for the increasing importance of the role played by accountancy firms as intermediaries between a tax authority and a taxpayer (Hasseldine *et al.*, 2011). A highly sophisticated and contradictory legal system stimulates taxpayers to use the services of tax advisors and facilitates tax evasion because of the inability of tax authorities to efficiently prosecute the crime (Pickhardt *et al.*, 2013).

Nevertheless, these theoretical postulates are not clearly supported by the results of empirical studies, which are contradictory. For instance, Erard (1993) has shown that the use of CPAs and attorneys in filing tax returns is generally linked to the use of aggressive tax avoidance schemes and a higher risk of tax non-compliance. In contrast, Gleason and Mills (2011), cited by Huseynov *et al.* (2012, p. 805), have argued that tax services provided by auditors improve the accuracy of tax expense. An alternative view (Hasseldine *et al.*, 2011) is that the tax authority, accounting firms and corporate taxpayers do not necessarily compete with each other. The tax authority is a "knowledge seller" and corporate taxpayers are "knowledge buyers" who gain knowledge about tax regulation either by compulsion (compliance) or violation (planning and avoidance). Accountancy firms are "knowledge brokers" who help buyers communicate with sellers. They combine existing and new knowledge, distribute it and consequently "give meaning to new (explicit) tax legislation" (Hasseldine *et al.*, 2011, p. 42). Presumably, this highly creative process also includes the development of sophisticated tax schemes (Hasseldine *et al.*, 2011, p. 46).

Nowadays, accountancy firms initiate, develop and promote mass shelter products instead of giving individual tax advice to each client. Moreover, they ignore the requirement to register these schemes with tax authorities (Melville, 2013; Sikka, 2008; Sikka *et al.*, 2005). There is evidence (Tan, 1999) that the majority of clients rely on tax advisers and agree with their recommendations whether they are conservative or aggressive. Usually, clients are more risk-inclined and ready to follow aggressive advice given by tax consultants, particularly by chartered accountants, in a balance-due prepayment situation (Schmidt, 2001). Therefore, it seems reasonable that taxpayers may rarely be the initiators of aggressive tax minimization schemes.

Nonetheless, it has been maintained that tax advisers actually offer only those services, including the optimization of tax burden, which their clients demand. Desai, Foley and Hines (2006) have identified a "risk group" which is predisposed to using tax havens in tax avoidance and evasion schemes. Usually it means large multinational companies in R&D intensive economic sectors with low foreign tax rates and active intra-company trade. These companies invest much more in foreign economies with a subsequent rapid rate of growth than other companies do. As one of the Big4 partners said, "There is an industry developing, and we are part of it, in standard avoidance" (Sikka, 2008, p. 278). Even with a constantly growing demand for tax services, this market segment is still dominated by buyers (Yetmar *et al.*, 2000) and accountancy firms are eager to expand their market share even at the expense of social welfare (Sikka *et al.*, 2005). Theoreticians (Fisher, 1994) have stressed that this stiff competition could endanger the ethical behaviour of tax consultants. This conclusion is supported by an empirical study (Ayres, Jackson and Hite, 1989) which has found that certified public accountants are more pro-taxpayer in their professional opinions than the non-certified consultants.

Presumably, tax advisors' moral stance and personal belief in the value of ethical or socially responsible corporate behaviour influence their attitude to the development and application of blatant tax minimization schemes. Particularly, it could be a case of conflict between the code of professional conduct and moral ethics and the tax advisers' goal of lightening clients' tax burden (Hansen, Crosser and Laufer, 1992). This theoretical assumption is based on the findings of empirical studies. The survey of tax professionals in Hong Kong has revealed that those who neglect the significance of ethical and socially responsible behaviour are more inclined to be involved in the creation and promotion of aggressive tax avoidance schemes (Shafer *et al.*, 2008). In a study of certified public accountants who supervised tax practitioners (Burns and Kiecker, 1995), respondents

[1] Her Majesty's Revenue and Customs (HMRC) – a tax authority in the United Kingdom which is responsible for the collection of taxes and the payment of certain types of state financial support.

mentioned that they would support tax practitioners in taking ethical decisions and punish those who did not do that. Nevertheless, the degree of encouragement and punishment depended on the economic outcome of the behaviour. If immoral behaviour led to significant economic benefits to the company, it was assessed as a less serious violation. Consequently, ethical behaviour resulting in economic benefits deserved more appreciation.

This is a typical example of the contradiction between professional and commercial logic. While the professional logic is linked to the compliance with the codes of conduct, the commercial logic relates to revenue generation, attracting new clients and retaining current ones (Spence and Carter, 2013). According to Hanlon (1994, p. 150), cited by Sikka *et al.* (2005, p. 329), accountancy firms' "emphasis is very firmly on being commercial and on performing a service for the customer rather than on being public spirited". It is not surprising because commercialization and increased litigation are mentioned as two modern main global trends in the audit industry (Barrett, Cooper and Jamal, 2005). As a former PricewaterhouseCoopers partner noted, an accountancy firm would sell a tax avoidance scheme even if there were just a 25 per cent chance that the scheme would be accepted by the tax authority as legal (Mitchell, 2014).

Consequently, instead of appealing to integrity, accountancy firms try to meet their clients' needs. Since 1990s, salesmanship and the ability to serve existing clients well have become important integral features of every successful professional who would like to make a career within any of the Big4 companies (Spence *et al.*, 2013). Although the award of employees for the profit growth of the auditing company is strictly prohibited by the Code of Ethics for Professional Accountants issued by the International Federation of Accountants (Gray and Manson, 2011, p. 92-93), it is still a widespread practice and a reason for the continuous development and aggressive marketing of tax minimization schemes (Sikka, 2008).

Nonetheless, the necessity and willingness to meet the demands of clients does not automatically imply that tax advisors' personal ethical standards are inferior. There is always a possibility of "market segmentation" when consultants express their attitude to tax (non)compliance and attract only those clients whose needs they want and can meet. The proportion of these different types of tax consultants can be approximated. A survey of 2040 Australian taxpayers (Sakurai *et al.*, 2003) has revealed that the most popular and ideal type of tax advisor was "low risk, no fuss". It was followed by such types as "cautious minimization" and "creative aggressive tax planning". 90% of respondents characterized their tax advisor as a "very honest person" and just 27% said that they "suggested complicated schemes". Generally, taxpayers managed to find the type which complied with their own ethical ideals. The main findings of surveys of taxpayers in New Zealand (Tan, 1999) and the USA (Henderson *et al.*, 2005) were consistent with the aforementioned results. It has been revealed that tax advisers erroneously equate the advocacy of a client's interests with aggressive tax minimization whereas taxpayers are looking for nothing but increased accuracy and the reduced probability of a tax audit (Stephenson, 2007). Moreover, there is evidence of clients complaining about tax consultants who do not listen to them and ignore their actual wishes. This inevitably leads to a "gap in expectations" and to taking a more aggressive position than clients are satisfied with (Christensen, 1992). Thus, the majority of respondents looked for a tax advisor-enforcer and only some were interested in using the services of an exploiter-type consultant.

Contradictory attitude to tax minimization

In general, a decision to evade tax is the result of the rational balancing of the probability to be punished, the possible punishment and the degree of risk aversion (Allingham and Sandmo, 1972). An alternative interpretation has been offered by Pickhard (2013) who modified Cressey's (1953) "fraud triangle" and came to the conclusion that a predisposition towards tax fraud depends on the stimulus to cheat, the chance of committing fraud, and fraudulent behaviour. The main causes of tax avoidance and evasion are high tax rates, imprecise laws, insufficient penalties, and the inequity of the tax system (James *et al.*, 2004, p. 101).

Consequently, tax compliance increases when taxpayers are ashamed of violating tax rules, observe other taxpayers paying taxes or consider tax system as fair; in other words, compliant with the conceptual social contract which they implicitly agree upon (James *et al.*, 2004; Vihanto, 2003). The alternative "deterrence theory" states that the risk of legal punishment, social condemnation, and feeling of guilt could effectively prevent non-compliance (Kaplan, Newberry and Reckers, 1997).

Some evidence has also been found that religiosity increases tax morale which could be defined as "an internalized social norm for tax compliance which expands the cost incurred by evaders to include not only the fines payable upon detection, but also certain non-pecuniary considerations" (Bethencourt *et al.*, 2013, p. 3). Torgler (2006) has based his analysis on a representative sample of 30 countries and observed a statistically significant positive correlation between tax morale and church attendance, active participation in a religious organization, religious education, and guidance on religion and belief. Generally, the strength of the tax morale depends on the number of members of society who accept it. Bethencourt *et al.* (2013) found that countries with a high per capita GDP have a lower level of tax evasion, smaller proportion of evaders, and higher level of tax morale.

Individual ethical orientation is directly linked to ethical evaluation and the latter predicts tax compliance behaviour. Ethical orientation is a general ethical belief not specific to making a certain decision. In contrast, ethical evaluation is the application of ethical orientation to arriving at a solution to a certain problem. Ethical beliefs depend on the situation: despite an overall negative reaction of respondents to violation of law, they clearly differentiate between tax evasion and other crimes. Some individuals perceive tax evasion as a crime just insignificantly more serious than bicycle theft (Henderson *et al.*, 2005, p. 41).

Typically, members of society have different attitudes to and opinions about various types of tax optimization methods and professional accountants' honesty (Kirchler *et al.*, 2003). Generally, tax avoidance has been characterized as legal and moral, tax evasion as illegal and immoral, and tax flight as legal and immoral. Each of these methods established certain associations (Kirchler *et al*., 2003, p. 545). For example, tax avoidance was linked to the approval of legal tax reduction, the application of tax allowances, and tax loopholes. Tax evasion had an association with risk, intention, tax audit, fraud, criminal offence and punishment, opportunity, black money, shadow economy, unintentional errors and non-acceptance. Tax flight was related to tax havens, negative consequences, flight abroad, bureaucracy, criticism of the tax system and willingness to reduce the tax burden.

The judgement about the ethics and fairness of tax minimization methods has been found to be also dependent on the respondent's professional background. If fiscal officers considered all of these methods as less fair, business owners were of the opinion that tax flight was the fairest. Surprisingly, some fiscal officers established a negative correlation between a taxpayer's good knowledge of the tax system and a justification of tax evasion. This perception is also linked with the level of income because respondents with low, upper-middle and high income express more positive attitude towards tax evasion (Yankelovich, 1984, cited by Henderson *et al.*, 2005, p. 52).

According to Kaplan (1997), the difference in attitude towards tax avoidance and evasion could be attributed to a discrepancy in the personal belief in the importance of performing moral and civic obligations, acceptable variations in ethical standards and a valuation of the opportunity to achieve personal goals at the expense of society as a whole. Therefore, a person at the lowest level of Kohlberg's (1969) model of moral reasoning is focused on self-benefit and is more inclined to be involved in wrongdoing in comparison with a person at a high level who thinks about societal benefits. Shafer *et al.* (2008. p. 701) have provided an alternative explanation and argued that tax advisors who follow the main principles of Machiavellianism could justify tax avoidance by appealing to "shareholder's view", in other words, a complete ignorance of the social responsibilities of any business. This general conclusion was supported by Ponemon and Gabhart (1990) who discovered that professional accountants with low moral reasoning showed more inclination to a violation of the rules of professional conduct and were more sensitive to penalties than to the twinges of conscience.

Over the years, in the eyes of society the reputation of an accountant has undergone changes. Society used to consider accountants more ethical in comparison with other professions. In 1986, 1231 respondents ranked certified accountants first among 12 professions (certified public accountants, professors, bankers, doctors, corporate executives, editors, senators, newscasters, stockbrokers, personal financial planners, insurance agents, lawyers) (Burns *et al.*, 1995, p. 29), and in 1988 another survey (Burns *et al.*, 1995, p. 28-29) ranked them second in a list of eight professions (clergy, accountants, teachers, engineers, physicians, business executives and consultants, lawyers). The results of another opinion poll conducted in 1995 covered a sample of 205 adults showing that 67 % of respondents considered accountants as honest as the rest of society, 29 % believed them to be more honest, whereas 4 % thought that they were less honest (Tew). Although the Enron and WorldCom scandals significantly damaged the accountant reputation, of late the situation has slightly improved. For example, if in 2002 55% of respondents believed in the trustworthiness of accountants, in 2006 this percentage was 68%. Nevertheless, accountants were not among the highest ranking professions as doctors, teachers, scientists, policemen and professors (Public…, 2006).

Ethical sensitivity and the behaviour of tax advisors

As the ability of discerning the ethical content of any problematic situation, ethical sensitivity plays an extremely important role. Although a lack of sensitivity invariably results in amoral behaviour, its presence does not guarantee moral behaviour because a tax consultant could be an *a priori* dishonest person (Yetmar *et al.*, 2000). Actually, imposing penalties for giving "aggressive advice" to taxpayers is nothing but an attempt made by the state to enhance ethical sensitivity. Although these attempts are not always successful, the state tries to do its best to bridle the modern thriving culture of tax minimization. For example, the results of recent research have shown that taxpayers often perceive and expect their tax preparers to be less aggressive than they actually are (Wade and Stephenson, 2009). Penalties are believed to encourage discussion between consultants and clients and to help make their expectations sounder and clearer.

In the model introduced by Hunt and Vitell (1986), cited by Yetmar *et al*. (2000, p. 273) and further modified by Yetmar *et al.* (2000), the ethical sensitivity of tax advisors is assumed to be influenced by such factors as role conflict and ambiguity, job satisfaction, professional commitment, and ethical orientation. Similar to other individuals, tax advisors are social actors who play a role; in other words, they exhibit behaviour suitable for their position in society and expected by their clients (the minimization of tax burden and advocacy of client's interests). Hypothetically, there should be a positive correlation between ethical behaviour and professional commitment because the ignorance of a profession's goals and values could result in ethical violations and exclusion from the profession. Nonetheless, this link has not been affirmed by empirical study as the results showed the unresponsiveness of tax advisors to the attempts of professional bodies (for example, codes of conduct) at developing their ethical competence. Tax advisors with a detailed knowledge of regulations did not demonstrate better skills in recognizing, avoiding and resolving ethical issues. Surprisingly, tax consultants employed by leading large audit companies were able to recognize ethical conflict situations better than respondents from other audit firms (Yetmar *et al.*, 2000).

In theory, the following factors should guarantee that certified accountants, particularly tax advisors, behave in an ethical way: a heavy dependence on public trust, strict codes of ethics and professional conduct (for example, IFAC Code of Ethics), rigid control by professional accountancy bodies, threat of penalties, internal control systems, and licensing and examination (Burns, 1995, p. 29). Most documents on professional ethics contain such words as "credibility, integrity, objectivity", "professional behaviour", "serve the public interest" and "honour the public trust" (Gray *et al.*, 2011, p. 78) However, there is some evidence that in practice these safeguards do not work properly (Sikka, 2010; Sikka *et al.*, 2009) and that referring to them is just an example of a commercially successful strategy of accountancy firms (Barrett *et al.*, 2005).

Nevertheless, it would be wrong to make any inference about the complete uselessness of the above-mentioned methods. Obviously, their effectiveness for fighting tax minimization schemes depends on the perpetrator's deontological or teleological ethical orientation. If in the first case individuals consider any illegal behaviour as wrong, in the second case they analyze the possible consequences of wrongdoing, for example, the harshness of punishment (Henderson *et al.*, 2005). It has been suggested (Sikka, 2008) that the application of the basic principles of transparency and accountability and the establishment of supervisory organs similar to audit committee and non-executive directors in corporations could curb the immoral and anti-social behaviour of accountancy firms. Shafer *et al.* (2008) proposed increasing training for tax advisors in business ethics to curb their willingness to develop aggressive tax schemes. Nevertheless, due to globalization and rapid technological changes the design of new anti-avoidance measures generally only helps maintain the status quo instead of further limitations of predatory practices. As Kay *et al.* (1990, p. 60) wrote, "Revenue [HMRC] puts itself in the position of a man who is going to shut the stable door every time they see a horse bolting".

Conclusions

Recently, numerous corporate scandals and the global financial crisis have turned the spotlight on the role played by tax advisors in the creation and development of tax minimization schemes. Consequently, their general moral obligations to society have been re-examined. In other words, a rhetorical question has been posed whether tax advisors must behave in an ethical and socially responsible manner and whether society is entitled to expect that they consider the existence of a moral dilemma – a conflict between the necessity of meeting client needs and the sacrifice of society's welfare due to a smaller amount of paid taxes.

Similar to other individuals, tax advisors are social actors who play a role–they exhibit behaviour suitable for their position in society and expected by their clients. While fulfilling their professional obligations, tax advisors have to satisfy various parties (clients, employers, professional associations, society) whose interests can collide. Inevitably, it leads to numerous explicit or implicit ethical conflicts. In modern entrepreneurial culture, tax minimization schemes are often perceived as a logical way of cutting costs. As the borderline between such different types of tax minimization as "tax avoidance", "tax evasion" and "tax planning" is fuzzy, their legality and the ethical aspect of their application becomes a matter of judgment.

Even with a constantly growing demand for tax services this market segment is still dominated by buyers and tax advisors are eager to meet their clients' needs in order to expand their market share even at the expense of society welfare. This results in a conflict between professional and commercial logic. Nonetheless, it does not imply that aggressive tax minimization is unavoidable evil. There is always a possibility of market segmentation when consultants express their attitude to tax (non)compliance and attract only those clients whose needs they want and can meet. Surprisingly, the majority of clients are not comfortable with the aggressive tax optimization, and instead are interested only in the advocacy of their interests, the increased accuracy of tax computations, and the reduced probability of tax audit.

Theoretically, ethical sensitivity is the ability to discern the ethical content of any problematic situation including the creation, development and promotion of tax minimization schemes. The ethical sensitivity of tax advisors has been found to be influenced by such factors as role conflict and ambiguity, job satisfaction, professional commitment, and ethical orientation. In addition, a person's deontological or teleological ethical orientation is of great importance. It means that tax advisors have different perceptions of ethical dilemma and consequently show different patterns of ethical and socially responsible behaviour.

Generally, the attitude of society to different types of tax minimization is not unified. It depends on the respondent's professional background, personal beliefs in the importance of performing moral and civic obligations, acceptable variations in ethical standards, and the valuation of opportunity to achieve personal goals at the expense of society as a whole. Typically, tax avoidance is characterized as legal and moral, tax evasion as illegal and immoral, and tax flight as legal and immoral.

Although theoretically society as a whole has the right to expect that tax advisors behave in an ethical and socially responsible way, in practice the influence of the predatory enterprise culture and significant differences in consultant's ethical sensitivity and personal moral beliefs have been insurmountable obstacles to meeting these expectations thus far. In addition, a variety in the attitude of various social groups to tax minimization makes it impossible to formulate the unanimous opinion of society on the necessity to condemn this practice. If tax minimization schemes which violate law cannot be justified, tax avoidance and planning are still a "grey area" from a moral perspective.

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Этическое и социально-ответственное поведение налоговых консультантов - пример моральных убеждений

Резюме

В последнее время многочисленные корпоративные скандалы и глобальный финансовый кризис способствовали росту внимания к роли, которую играют налоговые консультанты в создании и развитии схем по минимизации налогов. По результатам последних опросов общественного мнения, проблемы, связанные с уходом от налогового обложения, волнуют респондентов намного больше, чем такие вопросы как бизнес-этика, зарплата руководителей крупных корпораций и защита окружающей среды, занимавшие лидирующие позиции в списке несколько лет назад. В результате моральные обязательства налоговых консультантов по отношению в обществу в целом были подвергнуты скрупулёзному анализу. Иными словами, реторический вопрос заключается в том, должны ли налоговые консультанты соблюдать этические нормы и нести социальную ответсвенность, а также имеет ли общество право рассчитывать на то, что налоговые консультанты осознают наличие моральной дилеммы, а именно, конфликта между необходимостью удовлетворять нужды клиентов и ухудшением общего благосостояния общества из-за уменьшающейся суммы налогов, получаемых государственной казной.

Подобно другим индивидам, налоговые консультанты являются социальными актёрами, играющими определённую роль – поведение, приемлемое для их положения в обществе и соответствующее ожиданиями их клиентов. Выполняя свои профессиональные обязанности, налоговые консультанты должны удовлетворять многочисленные заинтересованные стороны (клиентов, работодателей, профессиональные ассоциации и общество). Однако, эти интересы часто не совпадают, что неизбежно ведёт к многочисленным явным и скрытым конфликтам. Современная культура предпринимательской деятельности считает схемы минимизации налогов одним из методов сокращения затрат. Так как граница между такими различными методами как «уход от налогового обложения» (*tax avoidance*), «уклонение от налогового обложения» (*tax evasion*) и «налоговое планирование» (*tax planning*) является довольно расплывчатой, законность и этичность использования этих методов становятся объектом суждения.

Несмотря на непрерывно возрастающий спрос на налоговые консультации, в этом секторе рынка продолжают доминировать покупатели. Поэтому налоговые консультанты напрямую заинтересованы в удовлетворении нужд клиентов с целью дальнейшего расширения рыночной доли даже за счёт ущемления интересов общества в целом. Это приводит к конфликту между профессиональной и коммерческой логикой. Всё более популярными становятся продукты массовой ориентации – вместо оказывания индивидуальных консультаций, клиентам предлагают универсальные схемы минимизации налогообложения. Однако это не значит, что агрессивная минимизация налогов является неизбежным злом. Всегда существует возможность сегментации рынка, когда налоговые консультанты выражают своё отношение к разработке спорных схем для минимизации налогов, привлекая и обслуживая только тех клиентов, нужды которых они способны удовлетворить. Удивительным является тот факт, что большинство опрошенных клиентов испытывают дискомфорт от агрессивной налоговой минимизации, осуществляемой налоговыми консультантами, и более заинтересованы в защите своих интересов, точном расчёте налогов и уменьшении вероятности налогового аудита. В то же самое время подмечено, что клиенты становятся более расположены к риску в момент, когда приближается срок уплаты налогов.

Теоретически, этическая сенситивность (чувствительность) – это способность различать этический

контекст любой проблематичной ситуации, включая создание, развитие и популяризацию схем по минимизации налогов. На этическую сенситивность налоговых консультантов влияют такие факторы как ролевой конфликт и неопределённость, удовлетворённость работой, профессиональные обязательства и этическая ориентация. В дополнение к вышеупомянутому, деонтологическая или телеологическая этическая ориентация также играет важную роль. Это значит, что налоговые консультанты имеют различное представление о моральной дилемме и, соответственно, демонстрируют различные образцы этического и социально ответственного поведения.

Отношение общества к различным типам налоговой оптимизации не однозначно. Оно зависит от образования и рода профессиональной деятельности респондентов, их личной точки зрения по поводу важности выполнения моральных и гражданских обязательств, допустимости вариаций в этических стандартах и оценки приемлемости достижения личных целей за счёт общества в целом. Обычно уход от налогового обложения характеризуется респондентами как законный и морально приемлемый, уклонение от налогового обложения – как противозаконное и морально неприемлемое, а намерение уменьшить налоговое бремя – как законное и морально неприемлемое.

Хотя теоретически общество в целом имеет право рассчитывать на то, что в профессиональной деятельности налоговые консультанты должны исходить из норм морали и социальной ответственности, на практике влияние современной культуры предпринимательской деятельности, а также существенные различия в этической сенситивности консультантов и в их личных моральных убеждениях являются непреодолимым препятствием на пути к достижению этих ожиданий общества. Более того, формулировка единой точки зрения общества о целесообразности осуждения практики создания и применения схем минимизации налогов практически невозможна из-за чрезмерного многообразия мнений различных социальных групп по этому вопросу. Если схемы по минимизации налогов, нарушающие закон, не имеют оправдания и заслуживают строжайшего порицания, планирование и уход от налогового обложения всё еще остаются размытой и неопределённой областью с точки зрения морали.

Ключевые слова: налоговые консультанты, схемы минимизации налогов, этика, социально ответственное поведение.

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