



**CORPORATE  
CRIME  
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# **COMPLIANCE, AVOIDANCE, AND EVASION IN TAXATION: THE ROLE OF PROFESSIONALS**

## **SESSION II - THE GRAY AREA**

### **PART 1 - AT THE CROSSROADS OF TAX PRACTICES: ETHICAL CHALLENGES AND DEMOCRATIC ISSUES**



**2023**

# COMPLIANCE, AVOIDANCE, AND EVASION IN TAXATION: THE ROLE OF PROFESSIONALS

## SESSION 2 THE GRAY AREA

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### OVERVIEW AND METHODOLOGY

Throughout the research conducted as part of the EU-funded VIRTEU project,<sup>1</sup> which aimed to investigate the complex interconnections between tax abuses and corrupt practices, the role of tax professionals as facilitators of tax-abusive behaviors emerged as a crucial area of interest requiring further exploration. In light of this, the organizers of this event<sup>2</sup> – Prof. Diane Ring (Boston College Law School), Dr. Costantino Grasso (Manchester Law School), and Dr. Donato Vozza (Roehampton Law School) – have developed this research inquiry focused on this topic. Specifically, the objective of this research-focused event is to explore the "gray" area of tax advisers' professional activities, characterized by unethical behavior that exists at the intersection of legality and illegality.

This line of inquiry encompasses a cohesive and interconnected set of research questions, serving as the groundwork for subsequent investigations. These investigations will involve various components, including a systematic review of existing literature and the research outcomes generated during the VIRTEU project research activities. The aim of this study is to contribute to the cumulative understanding of the current state of knowledge concerning the above-mentioned research topic.

By fostering an open discussion of these questions, employing an interdisciplinary approach, and exploring select subtopics, this event will provide a platform for high-level academics and experts to delve deeper into the subject matter. The researchers

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<sup>1</sup> The main findings of the project VIRTEU, which include the technical reports and the video recordings of the research events, are available online at the following link: [www.corporatecrime.co.uk/virteu](http://www.corporatecrime.co.uk/virteu).

<sup>2</sup> The event "*Compliance, Avoidance, and Evasion in Taxation: The Role of Professionals - The Gray Area*" will represent an international roundtable during which several high-level academics and experts will explore the key role played by tax professionals in the gray area. This research event follows the first roundtable entitled "*Compliance, Avoidance, and Evasion in Taxation: The Role of Professionals - The Bright Area*," which was held on Zoom on the 3rd of February 2023. The video recordings of all the sessions are published online and accessible at the following link: [www.corporatecrime.co.uk/professionals-tax-compliance-and-abuse](http://www.corporatecrime.co.uk/professionals-tax-compliance-and-abuse).

will build upon previous findings and integrate new perspectives, enabling a comprehensive examination of the main issues at stake. The organizers will then analyze the results, draw conclusions, and communicate their findings, with the ultimate goal of making significant contributions to the knowledge base in this specific field of research.

## **1) INTO THE GRAY: EXPLORING THE BOUNDARIES OF TAX ADVISERS' PROFESSIONAL ACTIVITIES**

*This section focuses on the gray area of tax professionals, where tax abusive practices thrive between legal and illegal activities. It analyzes the characteristics of these actions, highlights the involvement of professionals such as accountants, lawyers, and other figures, and addresses the manipulation of legislation and the complexity of the tax system. Furthermore, it emphasizes the privileged position of tax professionals, ethical distinctions, varying perceptions of complexity, concerns within the tax industry, and the collaboration of diverse professionals in facilitating tax abuses within this gray area.*

1. The "gray" area of tax advisers' professional activities is characterized by unethical behavior that exists at the intersection of legality and illegality. Its phenomenological complexity is reflected in conceptual difficulties in definitory aspects. What are the main features of tax advisers' professional activities in such an area? Is this concept just aligned with the idea of avoiding taxation or it requires something else.
2. Based on your knowledge, could you give some practical examples of unethical professional conduct that falls within the gray area?
3. What are the different roles and functions of professionals, and in particular, accountants, lawyers, and auditors in the gray area? How do they engage in activities like establishing shell companies, regulating legal relationships between clients, identifying and exploiting legal loopholes, and adopting aggressive tax planning strategies while adhering to accounting standards?
4. What are other figures external to the limited world of formal tax professionals, which may allow the facilitation of tax abuses (e.g., notaries, financial institutions and other firms, mortgage advisors and other experts, and NGOs) and what is their relationship with the latter lawyers and accountants?

5. How do tax professionals and their firms engage in tax-abusive practices by manipulating legislation to favor influential clients, and how does the complexity of the taxation system contribute to the existence and operation of the gray area within tax practices? Is this complexity a result of inherent difficulties in tax legislation or intentionally designed to facilitate exploitative practices?
6. How does the unique expertise and socially privileged position of tax professionals put them in a situation that allows them to abuse the system?
7. From an ethical standpoint, how can we differentiate between the individuals who design and orchestrate tax avoidance schemes (the masterminds) and those who merely follow the rules that have been manipulated by the former group?
8. How do practitioners who are not the masterminds behind regulatory changes perceive the complexity of the taxation system? How does this complexity influence their decision-making process when navigating the gray areas?
9. What are the main concerns of tax professionals that navigate the gray area? Is there a normalization process in play among tax practitioners and what are its characteristics and implications?
10. How does the diverse range of professionals involved in the tax sector (e.g., lawyers, accountants, bankers, financial advisers, brokers, auditors, notaries) contribute to the perpetuation of tax abuses within the gray area, and what role does professional heterogeneity play in these practices?



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## 2) INVESTIGATING THE DRIVERS OF PROFESSIONAL BEHAVIOR WITHIN THE “GRAY” AREA

*These sections examine the organization of the tax profession, including the issues related to high-level profitability and the impact of market-oriented logic on tax professionals. They explore the nature of big law and accounting firms, address conflicts of interest, and question the need for ethical codes of conduct. Furthermore, the focus is on the dominant narrative in taxation and its alignment with the public interest. It discusses the influence of powerful stakeholders, the consequences of their hegemonic position, and the emergence of alternative narratives.*

### 2.1 ORGANIZATION OF THE PROFESSION AND “TAX-ABUSIVE” ENVIRONMENT

1. How do high-level fees and profitability in the tax profession contribute to the development of a business model which leads to potential tax abuses in the gray area?
2. What are the characteristics of the modern, entrepreneurial, market-oriented logic of professional services, and how do they affect the role of tax professionals (e.g., pros of higher specialization vs cons of commoditization)?
3. What distinguishes big law or accounting firms from individual tax professionals and small/medium offices in terms of their role in relation to tax abuses perpetrated within the gray area?
4. Should big firms, which employ tax professionals, implement internal ethical codes of conduct tailored to their specific business operations? What potential benefits or drawbacks may arise from adopting such codes?
5. What are the problematic aspects related to potential conflicts of interest in the practice of tax professionals, such as combining external auditing services and tax consultations, internal audit responsibilities, and client representation? What are the best practices to mitigate or avoid these conflicts of interest?
6. How pervasive is the dynamic of the normalization process within the tax profession (i.e., the gradual acceptance and integration of certain questionable behaviors, practices, or conditions as the norm or standard within a certain industry)? To what extent does this normalization process allow abusive



practices to thrive? How could you foster ethics in an environment where questionable practices are normalized?

## 2.2 THE DOMINANT NARRATIVE IN THE AREA OF TAXATION

1. Is it possible to identify a prevailing set of beliefs, widely accepted perspectives, values, norms, assumptions, or ideologies that shape the understanding and practice of taxation at the global level? What are its characteristics?
2. How does such a dominant narrative emerge? Does it reflect the perspectives of a specific group of stakeholders? Is it linked to those in positions of power, such as influential tax experts, major accounting, law, and auditing firms, and government bodies responsible for shaping tax policies?
3. To what extent does the dominant narrative in taxation align with the public interest and societal values?
4. How does this dominant narrative influence the professional activities of tax advisers? How does it influence their decision-making processes, client interactions, and overall professional conduct? What are the underlying implications?
5. What are the problematic aspects and implications of the fact that these powerful stakeholders possess significant expertise, resources, and influence, enabling them to shape the narrative to align with their agendas while also having a vested interest in advocating for policies that benefit specific groups or corporate interests?
6. To what extent do top accounting, law, and auditing firms serve as vehicles for hegemony in the realm of taxation? What are the consequences of their hegemonic position, including the perpetuation of the status quo, political capture, and regulatory capture?
7. What are the alternative narratives that emerge from counter-narrators challenging the dominant narrative in taxation? How do these narratives emerge? How do these alternative narratives contribute to the public interest in a democratic society?
8. How can the exploration and understanding of multiple narratives in taxation help foster a more inclusive and equitable tax system? What measures can be

taken to ensure diverse perspectives are considered and incorporated into tax advisory practices?

9. How can policymakers and regulators respond to the influence of the dominant narrative in taxation? What regulatory measures or reforms can be implemented to address any negative consequences and promote a more balanced and transparent tax system?

### **3) THE GRAY AREA OF TAX ABUSE: ALIGNMENT AND MISALIGNMENT WITH DEMOCRATIC VALUES**

*This section explores the tensions between loyalty to clients, the State, and society within the context of taxation. It aims at examining how various forms of loyalty can clash with the rule of law and fundamental values, particularly in cases of state capture. It focuses on the implications of exploiting tax laws for "tax abuses" and its impact on democratic societies. Additionally, it investigates the connections between unethical professional practices and assault on democratic values.*

1. What are the tensions between loyalty towards clients, the State, and society, and how they could be managed in compliance with the rule of law as well as other fundamental values?
2. When loyalty to a client aimed at annihilating the tax burden does not translate into disloyalty to the state e.g., in a potential situation of state capture (e.g., Ireland and Apple). How does this tension evolve and can be interpreted?
3. Tax law can be "hacked" by powerful players and converted into a facilitator of "tax abuses." What are the implications of such forms of sectoral autocratic legalism for democratic societies?
4. What are the potential connections between unethical professional practices in taxation and the rule of law? Can these practices be considered an assault on the principles of the rule of law and, consequently, on the foundations of democracy?
5. What measures can be implemented to enhance transparency and accountability within the tax profession, ensuring that tax professionals prioritize adherence to ethical standards and the promotion of democratic values?

6. In what ways can governments and regulatory bodies work together with tax professionals to create an environment that encourages compliance with tax laws while discouraging exploitative practices that erode public trust in democratic institutions?

#### **4) EDUCATION, SOCIAL MOBILITY, AND PROFESSIONAL TRAINING**

*This section of inquiry focuses on various aspects related to education, professional training, and ethical responsibility in the fields of law, business, and taxation. It explores issues such as the lack of ethical education in law and business schools, the role of education in perpetuating dominant narratives in taxation, the impact of different curricula on ethical standards, improving education for tax professionals, barriers to entry in the tax profession for disadvantaged individuals, the relationship between social mobility and professional integrity, the effectiveness of ethical codes, and the response of professional associations to tax abuses. The challenges in enhancing self-regulatory instruments are also examined.*

1. Exploring the lack of ethical education and cognitive capture in law and business schools. This problem arises due to the orientation of these schools towards profit and unregulated capitalism, which leads to a distorted education that neutralizes the emphasis on social and professional values.
2. Education What role do education and professional training play in perpetuating or challenging the dominant narrative in taxation? How can educational institutions and professional bodies encourage critical thinking and ethical decision-making among tax advisers?
3. Could the difference in educational curricula for example between a law school and a business school play a role in the way in which lawyers and accountants are formed and approach ethical standards? Is the separation between economics and social science relevant in this area?
4. How can education and professional training programs for tax professionals be improved to foster a stronger sense of ethical responsibility and discourage engagement in gray area practices that undermine the public interest?
5. Does the tax profession have traditionally higher barriers to entry for individuals from disadvantaged backgrounds? What are the potential implications of these



issues: limited access and opportunities (individuals from disadvantaged backgrounds face limited access to quality education and networks that could help them secure high-paying jobs in the tax profession); unconscious bias (despite efforts to promote diversity and inclusion, unconscious bias can still play a role in hiring and promotion decisions within the tax profession); income inequality (tax profession, particularly in prestigious firms, tends to offer higher salaries to those at the top, contributing to income inequality)?

6. What could be the relationship between social mobility and professional integrity in the area of taxation?
7. In which way do professionals' ethical codes foster integrity? Is their approach limited or too vague? In which way the ethical codes could be enhanced so as to become a more effective instrument to encourage ethical behavior?
8. How did professional associations respond to the series of leaks that highlighted pervasive tax abuses in the last decade? What are the challenges in innovating and enhancing self-regulatory instruments?
9. What role do tax professionals' regulators play in fostering ethical standards through the application of disciplinary measures imposed on their members when they are involved in unethical behavior and what are the inherent limitations and challenges of this sanctioning model?



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## **CORPORATE CRIME OBSERVATORY**

The Corporate Crime Observatory is an international platform established by independent academics and experts from different countries and backgrounds devoted to promoting the analysis and discussion of corporate and economic crime issues as well as other forms of corporate irresponsible behavior around the world.

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