STUDY

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Regulation of intermediaries, including tax advisers, in the EU/Member States and best practices from inside and outside the EU

Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies
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Abstract

This study provides an overview of the regulatory environment of tax intermediaries. It presents a comparative analysis of five selected countries (4 EU, 1 Non-EU). For each country, it provides an understanding of the landscape of the tax profession, the current regulatory framework and its impact on tax compliance and draws attention to some weaknesses across this regulatory space. It also highlights some proposed remedies and direction for further in-depth research in this area.

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LIST OF ABBREVIATIONS

ACCA	Association of Chartered Certified Accountants (UK)
AEI	Amsterdam Exchange Index
AEOI	Automatic exchange of information
ATAD	Anti-Tax Avoidance Directive
ATT	Association of Tax Technicians (UK)
CAAF	Authorized Tax Advice Centres (Centri (autorizzati) di assistenza fiscale)
CARB	Chartered Accountants Regulatory Board (Ireland)
CCAB	Consultative Committee of Accountancy Bodies
CIOT	Chartered Institute of Taxation (UK)
CIPFA	Chartered Institute of Public Finance and Accountancy (UK)
DAC	Directive on Administrative Cooperation
DOTAS	Disclosure of Tax Avoidance Schemes
ECB	European Central Bank
EP	European Parliament
ETAF	European Tax Adviser Federation
ETR	Effective Tax Rate
EU	European Union
FISC	Subcommittee on Tax Matters
GAAR	General Anti-Abuse Rule
HMRC	Her Majesty's Revenue and Customs (UK tax authority)
IAASA	Irish Auditing and Accounting Standards Board
ICAEW	Institute of Chartered Accountants in England and Wales (UK)
ICIJ	International Consortium of Investigative Journalists

IESBA	International Ethics Standards Board of Accountants
ITI	Irish Tax Institute
LSRA	Legal Services Regulatory Authority
MNE	Multinational enterprise
NOB	Dutch Association of Tax Advisers (Nederlandse Orde van Belastingadviseurs)
NTCA	Netherlands Tax and Customs Administration
OECD	Organisation for Economic Co-operation and Development
OPBAS	Office for Professional Body Anti-Money Laundering Supervision
PAB	Professional Accounting Bodies
PAC	Public Accounts Committee, House of Commons UK Parliament
PCRT	Professional Conduct in Relation to Taxation (UK)
POTAS	Promoters of tax avoidance scheme
PSF	Professional service firms (umbrella term for firms providing advisory services including tax)
RB	Register of Tax Advisers (Register Belastingadviseurs)
SME	Small and Medium scale enterprises
STR	Standard Tax Rate
TAIN	Tax Advisor Identification Number
TGPG	Tax Gap Project Group
TJN	Tax Justice Network

EXECUTIVE SUMMARY

Background

The need to regulate tax intermediaries has become an increasing priority for the European Union as part of its wider toolkit to clamp down on tax fraud and evasion. There is a recognition at the EU level of the need to enlist tax intermediaries as allies in this fight, as they can play a crucial role to help combat tax fraud and evasion. This requires a proportionate regulatory framework which helps provide transparency and certainty for law-abiding tax intermediaries in the advice they provide to taxpayers to enable them to comply with their tax obligations, while providing safeguards against the activities of tax intermediaries who facilitate/enable tax evasion.

This attention to tax intermediaries has been driven to a large extent by several leaks, including the Panama papers. This has driven legislative attention at the EU level, resulting in DAC 6 adopted on 25 May 2018, which put an obligation on all tax intermediaries – lawyers, accountants, bankers etc. – to report certain cross-border tax planning arrangements/transactions to the tax authority of the relevant Member State, which in turn, via automatic exchange of information (AEOI), provides such information to other relevant Member States.

While this effort is notable and there has also been a number of hard and soft law instruments developed at European and national levels, the regulatory landscape of tax intermediaries among EU countries is not well understood. This report aims to provide an overview of the regulatory framework for tax intermediaries focussing on four EU countries (Ireland, Italy, Germany and the Netherlands) and one non-EU country (the United Kingdom).

This study is also carried out within the context of the OECD (2021) Report which explores ways in which countries can target professional enablers of tax crimes.

Aim

The research aims:

- To highlight recent reports on how tax intermediaries have been found to play a role in facilitating tax evasion by multinationals and high net worth individuals.
- To provide an understanding of the landscape of the tax profession in the countries analysed.
- To provide a comparative analysis of the regulatory framework within which the tax intermediaries carry out their tax advice activities in the five countries.
- To explore the role of regulation of tax intermediaries in improving tax compliance and reducing tax avoidance.
- To identify the weaknesses/loopholes in the current tax intermediary regulatory space in each country.
- To outline some proposed regulatory modifications by experts in the field such as international organisations, academia, and civil society.

Key Findings

- Tax advice is provided by a broad and diverse range of professionals/intermediaries which include tax advisers, lawyers, accountants as well as bankers and wealth managers. In Germany, the status of tax adviser is legally protected, this is not the same in Italy, the UK, Ireland, and the Netherlands. In addition, Trade Unions play a strong role in tax advisory work in Italy, a phenomenon which does not exist in the other four countries.
- Despite four of the five countries practising professional self-regulation, tax intermediaries operate in an increasingly regulated environment (soft and hard forms) across all five countries, largely due to EU regulations as well as new regulations introduced by national tax authorities and Parliaments.
- The impact of specific tax intermediary regulation on reducing tax evasion and undesirable tax avoidance remains unclear and there is insufficient data available to enable the identification of best practices on the various forms of regulation currently in place.
- There is concern about the potential for over-regulation especially as there is some suggestion that the bulk of tax evasion/undesirable tax avoidance enabling activities may be occurring among the small pool of tax advisers who are not members of any professional bodies. Regulation needs to be targeted to be able to identify this small pool of advisers along with imposing relevant sanctions.
- Potential remedies identified in previous research to enhance the regulatory space for tax intermediaries are: the development and implementation of an EU wide Code of Conduct for tax intermediaries, the introduction of mandatory Professional Indemnity Insurance for tax intermediaries, and the adoption of a more targeted approach to deal with tax intermediaries who enable undesirable tax avoidance.
- The report recommends further research is needed including to: conduct an extensive comparative study of current regulation, assess the feasibility of uniform measures in light of different country and global institutional contexts, explore the characteristics of the 'bad apples' and how to manage them in a more targeted way, assess the differences between countries with and without direct regulation of tax intermediaries, and explore the principles of responsive regulation for the governance of such intermediaries.
- Overall, the report highlights a lack of impact evaluations on the hard and soft law instruments currently existing in the countries analysed. Restraint from adopting further rules governing the activities of tax intermediaries and relating to disclosure requirements, without an empirical understanding of the costs and effect of those currently in place is highly recommended.

1. INTRODUCTION

KEY FINDINGS

- Tax intermediaries make a significant contribution to well-functioning and sustainable tax systems across the EU and beyond.
- The regulation of intermediaries in enabling undesirable tax avoidance and tax evasion has recently received increased levels of attention at the EU level.
- There is a lack of publicly available comprehensive information on the identity and role of tax intermediaries in facilitating tax avoidance.
- DAC 6 is a landmark regulation at the EU level to deal with activities of Tax Intermediaries.

Tax intermediaries play a vital role as important contributors to well-functioning and sustainable tax systems inside and outside the EU and this is appreciated by tax authorities, governments, taxpayers, and various global institutions. They frequently contribute to tax policy development and they help taxpayers to understand and comply with their tax obligations in an increasingly complex world. Therefore, it is important that regulations advocated by policymakers ensure this positive work of advisers continues, whilst at the same time ensure as far as possible that intermediaries do not play a part in tax abusive or illegal activity.

The difficulties in determining what constitutes tax abusive activity, as distinct from illegal activity, should not be underestimated. While all would agree that illegal activity such as fraud and money laundering requires stringent sanctions, there is considerable disagreement about activity that falls short of illegality and the level of control required to combat activity deemed to be unacceptable to policy makers, frequently referred to as tax avoidance or aggressive tax planning[1]. The absence of consensus on the definition of such unacceptable activity is problematic and leads to considerable misunderstanding (Oats & Morris 2017). For the purpose of this report, the term 'undesirable tax avoidance' is adopted to acknowledge the importance of national context in determining what forms of activity require specific regulation.

The regulation of intermediaries, has recently received increased attention at the EU level, arising at least in part from the activities of a number of such professionals being highlighted notably in the report by the PANA Committee of the European Parliament[2]. The Panama Papers and various other data leaks in recent years have highlighted a need for closer scrutiny of the work and role of tax advisers and intermediaries. While there has been a number of arrests[3], the actual statistics and evidence on the sanctions against tax intermediaries over the years for enabling undesirable tax avoidance remains sparse. There is a lack of publicly available comprehensive data on the identity and roles of intermediaries in facilitating undesirable tax avoidance, so it is not possible to be conclusive on this matter.

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[1] Neither of which terms can be clearly defined and have different meanings in different jurisdictions.

[2] Study for the PANA committee, 2017 *'Role of Advisors and Intermediaries in the schemes revealed in the Panama Papers'*. Prepared for Policy Department A at the request of the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA), European Parliament, Brussels. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/602030/IPOL_STU(2017)602030_EN.pdf.

[3] Notable examples include Dick Gaffey, a partner at a U.S.-based accounting firm. Available at US accountant, guilty in Panama Papers case, sentenced to more than 3 years - ICIJ; Hanno Berger, a German tax inspector for the 'cum-ex scandal'. Available at Former German tax inspector charged with €279mn tax fraud | Financial Times (ft.com); Jon D'Arcy, Eamonn Donaghy, Arthur O'Brien and Paul Hollway, then partners in KPMG Ireland (Jones, Temouri & Cobham, 2018).

At EU level, recent regulation has attempted to enhance the role of tax intermediaries in reducing undesirable tax planning, most notably with the introduction of DAC 6[4], which has now been implemented by all member countries (Spain, the last country in May 2021)[5]. This transparency initiative seeks to put an obligation on all tax intermediaries – lawyers, accountants, bankers etc., to report certain cross-border tax planning arrangements/transactions to the tax authority of the Member State where the transaction occurs; the tax authorities would in turn, via automatic exchange of information (AEOI), provide such information to the relevant tax authority of other relevant Member States[6]. It is too early to assess the impact of DAC 6. However, a recent report on DAC 6[7] highlights a trend of 'multi-fragmented' implementation across the EU with some states having more strenuous and often burdensome requirements than others potentially undermining the EU internal market. A further review of DAC 6 'in action' since that report is outside the scope of this study (and indeed would be unlikely to reveal significantly different findings over such a short period) but some brief references to its implementation across the countries will be made throughout this report as appropriate.

In addition, due to differences in the regulation of professional services and to protect the internal market, in 2017, recommendations were issued to the Member States on national reforms for regulation in professional services (European Commission 2021). In that report, the EU Commission asserts that such reforms do not aim to create a single European model to regulate the access to national professions as it will take account of 'country specific features'.

Notably the OECD in its recent report on tax crimes (OECD 2021) has also turned its attention to the role of professionals who enable tax crimes, suggesting five actions for governments to take to deal with these enabling professionals. This study's findings address in part some of the key elements of such actions.

There may also be a role for effective whistleblowing protections in clamping down on undesirable tax planning arrangements, given that it's through leaks that the undesirable tax avoidance arrangements of HNWIs and multinational companies have been brought to public attention. However, making information available to the tax authorities rather than the public is arguably more powerful.

The tax advisory profession is undergoing considerable change in response to a number of factors including globalisation and digitalisation. The rise of global professional service firms that transcend national borders, for example, pose challenges for national regulators, as does the increasing tendency for mid-sized firms to join global networks. Improvements in technology are changing the way tax administrations, taxpayers and their advisers interact, including bringing new digital players into the tax advisory market. This report is therefore set against a dynamic and fast-moving backdrop.

Recognising the positive and sometimes negative role of tax intermediaries in the tax advisory landscape, the EP's FISC Subcommittee on Tax Matters has taken a keen interest in the area with a number of actions/events in an effort to understand the landscape of intermediary regulation in Member States, considering its principles of proportionality (a public measure or regulation must not go beyond what is required to attain its stated goal) and subsidiarity (the EU should act only if the stated goals cannot be adequately achieved at the national level). Such actions include conducting a series of public hearings including country specific public hearings into the legislative framework for

[4] Itself derived from the Article 12 of the OECD BEPS relating to Mandatory disclosure rules.

[5] See footnote 1.

[6] Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ('DAC 6).

[7] See footnote 1.

combating undesirable tax avoidance at the national level[8] and an April 2021 public hearing on 'How to reinforce the regulation of Tax Intermediaries to create an intermediary sector that ensures a fair and user-friendly tax system'[9]. The latter is to be followed by a public consultation on the issue of reinforcing current legislation with the goal of improving the quality of tax advice. The latter was welcomed by the European Tax Adviser Federation (ETAF) President Philippe Arraou, who commends the FISC focus on targeting 'rotten apples….and not to overburden the whole tax profession'[10] through more regulations.

Alongside the above EU led activities relating to the regulation of intermediaries, a review of the current regulatory framework and the role of such regulation within which tax intermediaries operate, in curbing undesirable tax avoidance is timely and is the focus of this study. The overall purpose of this study therefore is to provide a comparative analysis of the regulatory framework (including soft law instruments) of tax intermediaries, primarily advisers, in a group of five countries. This study draws on relevant published documents and reports and the academic research which exists on this topic[11]. Having highlighted recent reports on how tax intermediaries have been found playing a role in facilitating undesirable tax avoidance by multinationals and high net worth individuals (HNWIs) (see above), this study provides an overview of current forms of regulation across five countries in the form of legislation (national and EU driven), soft law, and self-regulation of tax intermediaries within and outside the EU, particularly regarding the profession of tax advisers. The five countries are Ireland, the Netherlands, Germany, Italy and the United Kingdom (UK). For each country, this study provides an overview of the landscape of the tax profession, addresses the role of the current regulatory framework in relation to undesirable tax avoidance and tax crime and draws attention to some weaknesses across this regulatory space. It raises some discussion questions on the topic, presents some practices/recommendations which could be promoted at EU level in the form of further legislation or soft law. Arising from this study, a number of recommendations for further research are provided.

The rest of the report is organised as follows: section 2 outlines the landscape of tax intermediaries in the countries analysed; section 3 details the regulatory framework (including soft law instruments and any kind of compliance rules and independent supervision/accountability) within which the tax intermediaries carry out their tax advice activities; section 4 explores the role of tax intermediaries' regulation in improving tax compliance and reducing undesirable tax avoidance; section 5 identifies the weaknesses/loopholes in the current tax intermediary regulatory space in each country; section 6 of the report outlines some potential remedies to enhance the regulatory space of tax intermediaries and section 7 provides some conclusions and discussion questions/areas for further research.

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8 See the Netherlands. FISC, 2022 'The Netherlands: national tax reforms and the combat against aggressive tax schemes'. Available at: https://www.europarl.europa.eu/committees/en/the-netherlands-national-tax-reforms-and/product-details/20220317CHE10018.

9 FISC, 2022, 'Hearings on how to reinforce the regulation of Tax Intermediaries to create an intermediary sector that ensures a fair and user-friendly tax system'. Available at: https://multimedia.europarl.europa.eu/en/webstreaming/fisc-committee-meeting_20220425-1345-COMMITTEE-FISC.

10 ETAF 2022, *'ETAF welcomes the FISC hearing on reinforcing the regulation of tax intermediaries'*. Available at: https://www.etaf.tax/index.php/newsarea/283-press-release-etaf-welcomes-the-fisc-hearing-on-reinforcing-the-regulation-of-tax-intermediaries.

11 This study does refer to such earlier work such as those by De Widt, Mulligan and Oats (2016) and OECD (2008; 2013) reports. Notable also is the Hahn and Ormeno (2020) review of academic research on the tax profession.

2. THE LANDSCAPE OF TAX INTERMEDIARIES ACROSS FIVE COUNTRIES

KEY FINDINGS

- Tax advice is provided by a broad and diverse range of professionals which includes tax advisers, lawyers, accountants as well as bankers and wealth managers.
- In Germany, the status of tax adviser is legally protected, which is not the same in Italy, the UK, Ireland, and the Netherlands.
- Trade Unions play a role in providing tax advice in Italy, a phenomenon which does not exist in the other four countries.
- The legal profession dominates the tax advisers' landscape in the Netherlands while the accounting profession dominates the tax advisers' landscape in the UK, Italy, and Ireland. Most German and Irish tax advisers hold a university degree in accounting or similar.
- There is some variance across the countries examined in this study in the prevalence of tax advisers who are not members of professional bodies (it is, for example, high in the UK, but low in Germany). This heterogeneity is important when considering appropriate regulatory measures.

2.1. Introduction

The work of tax intermediaries, particularly in relation to HNWIs and large businesses is complex and varied. There is no single role which all tax intermediaries carry out and large businesses in particular use intermediaries for different reasons linked to increasingly expanding in-house tax teams. The tax environment for these groups varies significantly between countries. However, the practical activities of these tax intermediaries, who they are, and their varied professional backgrounds are not often well understood.

Although the main function of tax advisers is to provide tax advice, many advisers, as already noted by De Widt, Mulligan and Oats (2016) support their clients with additional tasks such as administrative functions, and representative and legal support. Advisers vary in terms of how much planning advice they provide to clients, depending on their client base. Some intermediaries, particularly accountants, primarily perform compliance work, filing tax returns on behalf of taxpayers, for example those with clients who are less able to avail themselves of planning opportunities.

2.2. The United Kingdom

The market for tax advice in the UK is diverse and largely self-regulated and not legally protected. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 define a tax adviser as "*a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services*". However, tax intermediaries in the UK are not required to be registered as such, nor meet any standards in order to operate as tax advisers. Given the lack of formal registration and monitoring of tax intermediaries, it is not surprising that in addition to accountants and lawyers, many other organisations provide tax advice including pension providers and voluntary organisations, for example TaxAid.

Membership of professional bodies is not compulsory. This means there is no central register of intermediaries and only impressionistic views of the extent of professional body membership among those providing tax advice. While the UK tax authority Her Majesty's Revenue and Customs (HMRC) holds data on tax advisers it interacts with, it is noted that 'there is a significant market in tax advice that does not interact directly with HMRC and is not part of a professional body'[12] for example boutique (bespoke) financial advice. According to HMRC statistics, there are some 72,000 agents representing at least 12 million taxpayers. Agents are used by 72% of mid-sized and 98% of large business, 47% of individuals paying through self-assessment and about 58% of self-employed individuals[13].

Tax intermediaries perform a variety of functions in the UK. The UK does not require taxpayers in employment with taxable income below a certain threshold to file annual income tax returns. This means that the UK does not have a body of tax return preparers dealing with low level income tax filing responsibilities. Tax intermediaries may act for employees whose income exceeds the threshold as well as self-employed individuals, unincorporated businesses, and companies. Outside of income tax and corporation tax (which are separate in the UK), specialist tax intermediaries deal with other taxes such as VAT. A high VAT threshold means that micro businesses are not required to file VAT returns. HMRC has developed a representation of the types of work carried out and the relationship with HMRC categorised by their costs, influence and relationship with HMRC[14]. The digitalisation agenda that is being pursued by HMRC will have an influence on the need for tax advisers and may introduce new players into the market with digital expertise.

In addition to variation in scope of tax expertise, tax intermediaries are also varied in terms of size. There is a continuum from a sole practitioner operating alone or with employees to multinational professional service firms in both accounting and law. Unaffiliated (not members of a professional body) tax intermediaries come from diverse backgrounds, and a substantial number are former HMRC employees. Importantly, intermediaries who promote mass marketed tax avoidance schemes are not generally members of a professional body[15].

HMRC actively engages with tax advisers, including the provisions of support to tax agents undertaking compliance work, and has publicly acknowledged the role of good tax agents as follows[16]:

> '*We welcome the use of agents to represent customers when they add value in helping their clients to get their affairs right. Agents can play a key role in helping people meet their obligations, while also supporting us in our 'one to many' relationship with customers.*'

Particular attention has been paid in recent years to the role of tax intermediaries in designing and promoting marketed tax avoidance schemes, as explained in sections 3.2.1 and 3.3.1 below.

As described by De Widt, Mulligan and Oats (2016), in the UK, there are two professional bodies exclusively dedicated to taxation. The Chartered Institute of Taxation (CIOT) was established in 1930 and as of 2022 has a membership of around 20,000. Membership requires passing stringent examinations together with a period of practical experience. The second UK professional tax body is the Association of Taxation Technicians (ATT). Founded in 1989, the ATT, as of 2022, has a membership

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12 HMRC, 2020, Call for evidence, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873540/Call_for_evidence_-_raising_standards_in_the_tax_advice_market.pdf.

13 Ibid, p.15.

14 Ibid, Figure 4, p. 13.

15 https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes.

16 Ibid, para 38, p. 15, by reference to the Agents Strategy. Available at: https://www.gov.uk/government/publications/hmrc-strategy/our-strategy.

of around 9,000. ATT members are also qualified by examination and practical experience

Accountants acting as tax advisers may instead, or additionally, be members of one of several accountancy bodies, the Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants in Scotland (ICAS), or the Association of Chartered Certified Accountants (ACCA). All Big-4 firms active in the UK are entity level members of one or more of the professional bodies, although some employees and partners may also hold individual memberships.

An overarching umbrella body, the Consultative Committee of Accountancy Bodies (CCAB), currently serves the above-mentioned bodies plus the Chartered Institute of Public Finance and Accountancy (CIPFA) and also Chartered Accountants Ireland.

The professional associations 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. UK law firms are largely self-regulated, with oversight from the Solicitors Regulation Authority. Barristers have a separate professional body, the General Council of the Bar. In addition, there is a number of specialist associations, including the Revenue Bar Association, which brings together English tax barristers.

The Worshipful Company of Tax Advisers was founded in 1995 and incorporated by Royal Charter in 2009. Members are current or former tax practitioners and one of the Company's primary aims is to enhance the standing of the profession in the City of London.

2.3. Ireland

In accordance with Section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, a tax adviser is "a person who by way of business provides advice about the tax affairs of other persons".

In Ireland, the tax advisory profession is not legally protected. In practice, this means that there is no requirement to meet any education or work experience criteria to give tax advice. This advice is provided by a broad and diverse range of professionals which include tax advisers, barristers, solicitors, accountants as well as bankers and wealth managers.

Nevertheless, most tax advisory work is done by accounting firms, and although the number of leading Irish law firms with dedicated tax teams has been steadily rising, they are largely focused on tax advice in the areas of real estate, mergers and acquisitions and investment planning[17]. To go beyond advice and act on behalf of a taxpayer in Ireland, the tax adviser must apply for a TAIN (Tax Advisor Identification Number) from the Irish tax authority (Revenue). Once a tax adviser has received their TAIN, they may access the Irish Revenue Online Service where they can file returns, make tax payments, meet reporting obligations and submit enquiries on their client's behalf[18].

Although, membership of a professional body is not a prerequisite for giving tax advice, the majority of tax advisers in Ireland do hold a membership to professional bodies that regulate their members in the area of tax advisory and professional competence.

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 has a membership of ca. 4,000 qualified tax advisers. Membership to the ITI is awarded on the successful completion of the Institute's examinations, after which they may use the letters CTA (AITI Chartered Tax Adviser).

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[17] Available at: Tax in Ireland | Law firm and lawyer rankings from The Legal 500 Europe, Middle East & Africa guide.

[18] Revenue, 2021, 'Guidelines for Agents and Advisors acting on behalf of tax advisors'. Available at: https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-37/37-00-04B.pdf.

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 30,622 professionals (CAI, 2022), only some of whom hold the institute's tax qualification. 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 accountancy firms in Ireland tend to have an accountancy and/or a specialist tax qualification.

An overarching umbrella body, the Consultative Committee of Accountancy Bodies - Ireland (CCAB-I) was founded in 1988 and currently serves CAI and the Association of Chartered Certified Accountants (ACCA), Chartered Institute of Management Accountants (CIMA) and Certified Public Accountants, Ireland (CPA).

The tax advisory market in Ireland is also served by lawyers, who are members of the law society. In accordance with the solicitors' Act 1954-2015, the law society is charged with the education and regulation of the solicitor profession. Barristers have a different professional body, the bar council which regulates its activities.

Finally, many providers of financial services who also act as tax intermediaries[19] are subject to regulations from the Institute of Banking which boasts 33,400 members and is the largest professional institute in Ireland.

2.4. Italy

In Italy, tax consultancy and intermediation are not restricted to any specific profession[20]. While tax consultancy is protected by law, the legislator has never introduced a 'restriction on providing tax advice', although it is a specific domain of the legal system[21]. Such *particularisme* in the field of taxation is evident in tax litigation, where the activity is provided not only by lawyers, but by an official list of practitioners, including accountants[22].

In general terms therefore, tax advice in Italy can be offered by lawyers admitted to the bar, chartered accountants, other accountants, tax experts and also by some Tax Advice Centres such as the *Centri (autorizzati) di assistenza fiscale* (CAAF), which are operated essentially by trade unions[23].

Although all of the above can operate as tax intermediaries, they differ in terms of their service offerings. Tax lawyers are still relatively rare and their activity is limited essentially to tax litigation and planning; it is delivered on an occasional basis to clients such as SMEs and individuals, and on a continuous basis to larger clients where routine tax activity is usually carried out in-house.

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19 Power, 2021, 'Irish banks and funds used in multibillion euro tax fraud by hedge funds, traders'. Available at: Irish banks and funds used in multibillion-euro tax fraud by hedge funds, traders – The Irish Times.

20 In the case of Chartered Accountants (in Italian *Dottori commercialisti*), the professional activity is regulated in accordance with the legislative decree 28 June 2005, n. 139. The decree considers tax consultancy a *specific*, yet not *exclusive*, activity of the accountant. This distinction allows other professional figures to practice in taxation: the Italian Judiciary allows this. This interpretation is confirmed in several cases such as Supreme Court (*Corte di Cassazione*) n° 13342, 28 May 2018.

21 Legal consultancy should be reserved to lawyers admitted to the bar, under art. 2 Act 1815/39. The mainstream judicial interpretation is however more relaxed (see Supreme Court n° 9237 18 April 2007). Yet in the past there were dissenting opinions to the mainstream understanding of the law such as in the precedent n° 12840, 30 May 2006.

22 Technical assistance in front of the Tax Court can be given not only by lawyers, but by a much larger number of professionals, including accountants, experts and all those admitted by the law (art. 12, legislative decree 546/92).

23 The CAAF are limited liability companies under Italian Commercial law which have been introduced for the first time under the Act 413/91 and have been changed through years. Only trade unions and qualified employers can participate in the capital and their activity is possible under the permission of the Ministry of Finance, which grants the permission to operate. They deal with ordinary compliance duties, routine reporting, tax preparation for individuals.

In Italy, the profession most often engaged in providing tax advice is chartered accountancy[24]. Their clients vary, ranging from individuals to companies. Because of this, they are by far the most relevant tax intermediaries in the country. The legal regulation of their activity, passed recently, considers tax consultancy as the typical activity delivered by chartered accountants, but the law does not define it as exclusively being provided by them.

This non-exclusiveness has given rise to a number of other 'experts' who offer tax services.

Amongst these, the most relevant, from a quantitative point of view, are the Authorized Tax Advice Centres (CAAF) or Centers of Tax Assistance (CAF). They are normally incorporated as cooperatives or limited liability companies operated indirectly by trade unions, which have a long history of assistance to individual taxpayers (normally dependent workers and retired individuals) and they are a significant lobbying force in Italian politics. They do not provide substantive tax planning advice.

In Italy, for the purpose of improving compliance, there are joint protocols between the tax office and the chartered accountant associations (and all the other professional associations)[25], managed via joint regional boards.

Although these joint boards are not regulated by law and can be considered as part of the "soft law" as such, their success is founded on the extreme flexibility of the formula and by the capacity of the local tax managers to overcome the legal formalities. Out of many, the joint boards of the regions Veneto, Lombardy and Emilia are success stories in this respect and have dramatically improved the level of compliance beyond the letter of the law.

Tax assistance is also granted sometimes by other tax experts as defined by law, the position of which is regulated by specific laws[26]. These experts consist of a miscellaneous list of so-called qualified professionals with different backgrounds and whose tax skills have been confirmed by specific associations. In any case, their role is limited in the market. This would be the case of the National Association of Tax Experts (LAPET) incorporated in 1984, whose affiliates (tax preparers and accountants) provide several services to taxpayers including consultancy and miscellaneous tax assistance: they operate through 104 local seats across Italy.

2.5. Germany

The German tax advisory profession in contrast to many countries is legally protected. The main legislation providing the current framework for German tax advisers has been in place since 1975 (*Steuerberatungsgesetz – StBerG*). Hence, tax advice is restricted work which only licensed professionals may perform (*Vorbehaltsaufgabe*). Most members of the profession hold the title of *Steuerberater* (StB), or tax adviser, a term first used in law in 1933. A lower qualification, *Steuerbevollmächtiger* (StBv), is not awarded any more since the 1980s. In 1943, a professional Chamber was created for both professional groups (Markus 1997).

The federal chamber of tax advisers had 89,418 individual and 10,786 corporate members as of 1st January 2021 (Bundessteuerberaterkammer, 2021). About one third of all tax advisers work independently. The rest is organised into 6,607 partnerships or employed in one of the 10,786

[24] As on 1 January 2021, there were 119.298 chartered accountants in Italy: one for every 497 resident individuals. See the annual Report of Chartered accountants (*Rapporto 2021 sull'Albo dei Dottori Commercialisti e degli Esperti Contabili*).

[25] See the various Executive Protocols for joint Regional Decisions Boards (in Italian *Protocolli esecutivi per l'istituzione di un tavolo congiunto regionale*).

[26] This would be the case of the Labour Consultants (in Italian *Consulenti del Lavoro*) who can offer some limited services to employees for what concerns their tax obligations. The Register of Labor Consultants has been introduced for the first time with the Act 1018/64 and then updated with Act 12/79.

incorporated firms. These partnerships and corporations may also comprise members of certain other chartered professions, including chartered auditors and lawyers, in particular. From 1st August 2022 tax advisers may form partnerships or corporations also with members of other so called free professions, e.g., engineers or medical doctors (§ 50 StBerG 2022). This reform is meant to enable tax advisers and other consultants to serve clients in an integrated manner. By law, German auditors (*Wirschaftsprüfer*) are entitled to work as tax advisers, too. In addition, lawyers in Germany may give tax advice to their clients without having to pass the tax adviser exam. However, only a few thousand lawyers do work in the field of taxes, usually after acquiring some additional tax qualification such as Certified Specialized Tax Lawyer (*Fachanwalt für Steuerrecht*) or a master's degree in Tax Law.

Alongside the trend of tax advisers operating in partnerships or corporations, the number of solo tax advisers has been in steady decline for decades. Overall, it can be observed that the Big-4 accounting firms (Deloitte, EY, KPMG, and PwC) which all employ a considerable number of tax advisers are trying to grow down-market finding new customers in the very big and in part dynamic German SME sector. Medium-sized partnerships and corporations for their part have been teaming up in national or international networks which give them access to bigger and more diverse expert pools and at the same time allows to create a brand value. These trends together result in an ever-shrinking number of independent tax advisers. This also reflects the growing complexity of tax advisory work due to European integration and globalization which has not only affected large corporate clients but also SMEs and wealthy individuals.

The official German tax advisory profession is highly qualified; arguably the highest qualified tax advisory profession in Europe (Von Lewinski, 2015). The majority of tax advisers have passed a uniform nationwide state examination (*Steuerberaterprüfung*) which is considered one of the toughest and most prestigious professional examinations in Germany (Evans and Honold, 2007). Most tax advisers hold a university degree. Although we don't know the absolute numbers, we have information about the candidates taking the state examination. About 5% of candidates have previous work experience in the German tax administration. Another 15-20% have work experience as accomplished tax accountant assistant or similar. The other three quarters of candidates hold a university degree (Rennebarth, 2021). A small but stable share of them has studied law, but most candidates hold a degree in Business Administration, Accounting, Finance, or Economics.

Notably, over the last ten years the share of revenues from routine services has been sinking. Only a small number of law firms and other tax advisers limit their services to tax planning or legal advice in special areas and do not offer any accounting or tax compliance services. The business model of the German tax advisory industry described above is under pressure from a chronically tight labour market. Scarcity of support staff is a permanent challenge. Digitalisation of processes within the industry and at the interface with clients and tax authorities is seen as a chance to increase productivity. Therefore, the whole industry has been investing heavily in digitalisation. DATEV, a cooperative owned by 40,000 German tax advisers, is the market leader for tax accounting and advisory software and related IT services in Germany. Its products and services seem suitable for single tax advisers and small firms but are also used by the biggest firms in the industry. Ongoing digitalisation partly may explain the observed trend towards the formation of bigger advisory firms and the vanishing of single advisor practices. Digitalisation also has facilitated the entry of internet platforms as Amazon into the service of collecting VAT for their customers. Although VAT returns are a service reserved to tax advisers under German law, the risk of being held liable for VAT liabilities of their vendors seemingly has been seen as a bigger risk than potentially infringing tax advisory legislation.

To fully describe the German situation, it has to be stated that a big share of German taxpayers are not obliged to file tax return as income tax on salaries and on capital income is deducted at source.

Furthermore, when filing a tax return there is no legal obligation to use the services of a tax advisor. Taxpayers may use the official web-based software www.elster.de or some commercial tax software. Besides taxpayers can get help from tax clinics (*Lohnsteuerhilfevereine*) which are allowed to give tax advice in limited fields around labor and pension income taxation.

2.6. The Netherlands

The group of tax advisers in the Netherlands is highly heterogeneous. Tax advisers work for accountancy and legal firms, which include the large professional service firms and midsize and small firms. In addition, exclusive tax consultancies and practices exist, and some tax professionals work as self-employed tax advisers. Apart from the category of exclusive tax advisers, which compromises around 12,000 professionals[27], Dutch accountants and lawyers are also regularly involved in providing tax advice. The market for tax advice has become commercially more attractive for accountants and lawyers, as both professions have experienced increased competition in the Netherlands in recent years (ING 2012; SEO 2019).

The Dutch tax profession is not legally regulated but professional tax bodies operate to ensure the quality and integrity of the 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[28]. 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. NOB members are also required to study a three-year postgraduate NOB professional course. The NOB has approximately 5,200 members, which are mainly tax advisers but also around 600 members who are based as in-house corporate tax specialists in companies, often multinationals[29]. Around half of the NOB members are based in a Big-4 firm, with many of their tax advisory services focused on assisting multinationals (Van Horzen & Peppelenbosch, 2018).

The second Dutch tax advisory body is the Register of Tax Advisers (Register Belastingadviseurs – RB), which represents advisers active in SMEs. The RB has around 6,500 members[30]. To become a member of the RB, applicants do not need to possess a university degree in tax law or tax economics but must 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 a tax adviser. Similar to the NOB, the RB provides continuing (compulsory) training activities for its members. The RB has also a technical desk where members can go with technical questions; a comparable facility does not exist in the NOB as most NOB members are based in firms with technical support available within the firm itself (Van Horzen & Peppelenbosch, 2018).

The Dutch tax advisory profession has traditionally played an active role in contributing to Dutch tax policymaking, which has been eased by the open and consensus oriented Dutch political culture (Andeweg, Irwin & Louwerse, 2020) and a generally pro-business attitude. The NOB in particular has a long tradition of involvement in fiscal policymaking processes, especially though its Legislative Proposal Committee which, since its establishment in 1981, has acquired a standing amongst government policymakers for the technical depths of its commentaries.

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27 Consultancy.nl, 2018, 'De populairste werkgevers voor fiscalisten en fiscale studenten', retrieved from: https://www.consultancy.nl/nieuws/15795/de-populairste-werkgevers-voor-fiscalisten-en-fiscale-studenten.

28 NOB, retrieved from: https://www.nob.net/node/18136.

29 NOB, retrieved from http://www.nob.net/dutch-association-tax-advisers.

30 Register Belastingadviseurs, retrieved from: https://rb.nl/.

However in recent years, the relationship of the tax advisory profession with the Dutch Finance Ministry and the NTCA has come under growing pressure. Whilst the NOB is still a frequent commentator upon proposed fiscal laws, it asserts it has become more challenging to contribute to policymaking processes due to a more formalised approach taken by the Finance Ministry in regard to sector consultation. This change in approach is generally attributed to exposure in Dutch media of alleged cases demonstrating significant influence by lobbyists, particularly of the banking sector and multinationals, on Dutch fiscal policymaking processes[31]. Professional interactions between tax advisers and tax administrators have also become more challenging. Research previously undertaken by some of the authors of this report (De Widt & Oats, 2017; 2022), which relied on interviews with Dutch tax advisers, corporates, and tax administrators, showed that interactions between tax advisers and the NTCA have become less smooth 'with a diminishing availability and accessibility of the tax administration'. Interviewees predominantly explained this by referring to scrutiny of Dutch tax administrative practices by the European Commission, with a number of NTCA tax rulings considered as illegal state aid by the Commission. Statements by tax advisers in Dutch media also point at an increasingly thorny relationship, such as the chairman of the NOB who stated that 'it has become less self-evident that a discussion with the tax authorities has a constructive outcome' and that, in his view, there is 'little or no willingness to consult with each other' from the side of tax inspectors (Peppelenbosch, 2021).

2.7. Summary

All of the countries examined in this report have, to varying degrees, heterogeneity in terms of who can act as a tax intermediary. Italy appears to be the least coordinated in terms of regulatory control, with Germany the most coordinated. There is some variance in terms of the dominance of particular academic disciplines with accountants dominating in all but the Netherlands where fiscal lawyers play a bigger role. There is also variance in the prevalence of tax advisers who are not members of professional bodies; it is, for example, high in the UK, but low in Germany. This heterogeneity is important when considering appropriate regulatory measures.

[31] Greater cautiousness by the Dutch Finance Ministry in the interaction with external stakeholders seems partly a result of media reporting about the 'coco-gate', which refers to alleged lobbying by three major Dutch banks in relation to a law on contingent convertible bonds (CoCos) proposed by the Dutch Government in 2015. The banks' involvement allegedly resulted in an amendment to the law, making interest on CoCos tax deductible for banks, resulting in 350 million euros of savings for the banking sector.

3. THE REGULATORY SPACE OF TAX ADVISORY WORK

KEY FINDINGS

- Tax Intermediaries operate in an increasingly regulated environment (soft and hard forms) across all five countries due to a combination of regulations emanating from supranational or international organisations (notably the EU and the OECD) and an increased push by national tax authorities and Parliaments.
- There is an increasing number of oversight bodies involved in reviewing and monitoring the work of tax intermediaries.
- Legal Professional Privilege is extended to advisers who are not legally qualified in the Netherlands and Italy, but not Germany, the UK and Ireland.
- There are self-regulation instruments in place across all countries at the professional representative body and individual advisory firm levels. All countries have codes of conduct from professional bodies guiding the conduct of their members.
- Professional bodies are increasingly encouraging tax advisers to consider reputational risks and societal acceptability when giving tax advice.
- Despite many and varied forms of regulation there is a lack of data on their implementation and effectiveness levels.

3.1. Introduction

Tax advisers, similar to other professions, provide trust-based goods. This suggests that clients of tax advisers are often (but not always) unable to evaluate the quality of the services that are provided to them due to the complex nature of the tax system and the level of tax expertise involved. Due to this information asymmetry between tax advisers and their clients, there is an economic justification for tax advisers to be regulated. In a rational world, this would suggest that regulation should aim to adequately prevent market failure and to establish and maintain trust in the tax advisory marketplace by consumers of tax advice and tax authorities. A key challenge lies in having the optimum level and form of regulation, being mindful of the economic and commercial costs to advisers, taxpayers, and the wider societal consequences of excessive regulation. This challenge is even greater in the context of globalisation and the consequent interaction of multiple national tax systems and tax advisory regulation regimes. This section provides the current state of play of the tax advisory regulation space across five countries. A summary table is provided at the end of section 3.

3.2. Regulation of tax intermediaries via Professional Bodies

The regulatory approach in place in any country does not only determine how specific the regulations are, but also influences which actors are responsible for enforcing those regulations. In countries with a rules-based approach, it is common to allocate enforcement to professional bodies with a compulsory membership (e.g., Germany). 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. Professional bodies generally require members to meet entrance criteria such as examinations and practical experience, to adhere to codes of conduct and to undertake continuous professional development (CPD). Many professional bodies, in particular in accounting and law, allow

for firm (entity) level membership as well as individual membership. As umbrella entities, professional bodies often perform a role in representing their membership in policy consultations and debates, sometimes extending to lobbying for regulatory change. In countries where professions are largely self-regulated, regulatory powers are conferred or endorsed by the State such as membership criteria and competence assurance as well as governance of ethical and responsible conduct. Such power is expected to be exercised in the public interest (Adams, 2017).

3.2.1. The United Kingdom

As mentioned earlier there are a number of professional bodies in the UK and they typically have codes of conduct in place, although it is estimated that some 30% of tax advisers are not members of professional bodies.

Following investigations in 2013 by the Public Accounts Committee (PAC), the effectiveness of self-regulation by the tax advice industry became the subject of heated political debate in the UK, with the Big-4 being accused of promoting tax avoidance schemes 'on an industrial scale'[32]. The PAC demanded the UK Government take on a more active role in regulating the tax advice industry 'as it evidently cannot be trusted to regulate itself'[33]. MPs demanded the Government introduce a code of conduct for tax advisers and suggested compliance with this code had to determine whether or not firms providing tax advice 'can access both government and wider public sector work'[34]. The PAC also called on the professional bodies to 'take on a greater lead and responsibility' in relation to undesirable tax avoidance.

In March 2015 the UK Government urged the professional bodies to maximise their role in setting and enforcing clear professional standards, but rejected the PAC's demands for direct regulation of the tax profession. In response, the professional bodies indicated that they would look at whether their code of conduct needed strengthening, but at the same time expressed doubts about whether much more could be done[35]. In May 2015, the major UK accountancy and tax bodies adopted an updated code entitled Professional Conduct in Relation to Taxation (PCRT). The PCRT now provides a clearer standard of professional behaviour, and adoption is encouraged by the professional bodies to all tax advisers in the UK, both members and non-members of professional tax bodies. HMRC has stated that the PCRT 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.

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 2020, the Board received 44 new complaints, and a disciplinary tribunal-imposed expulsion from the professional body in three cases[36].

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

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[32] Margaret Hodge, Chair's comments, website: http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/report-tax-avoidance-the-role-of-large-accountancy-firms-follow-up/.

[33] Margaret Hodge, Chair's comments: http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/report-tax-avoidance-the-role-of-large-accountancy-firms-follow-up/.

[34] House of Commons, Public Accounts Committee (2013), *Tax avoidance: the role of large accountancy firms*. London: HoC.

[35] *Financial Times*, 2015, 'Treasury rejects regulation clamp on UK tax advisers', 19 March.

[36] Taxation Disciplinary Board (2021), *Annual Report 2020*. Heathfield.

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[37].

Solicitors are members of the Law Society which has produced guidance for solicitors advising on tax. Some solicitors will be members of the professional bodies which are signatories to the PCRT. The activities of solicitors are monitored by the Solicitors Regulation Authority which produces standards and regulations as well as guidance.

In recognition of the relatively high proportion of tax advisers who are not affiliated with a professional body, and following consultation with the professional bodies, HMRC published a Standard for Agents in 2016[38] to sit alongside the PCRT and provide a minimum standard for all tax agents. The standard calls for integrity in dealings with HMRC, professional competence and due care and professional behaviour. Standards for tax planning requires that tax planning be based on a realistic assessment of the facts and a credible view of the law, disclosure and transparency and professional judgement and documentation. HMRC have power to address poor practice including:

- Disclosing cases of suspected agent misconduct to professional bodies for follow up;
- Refusing to deal with a tax agent, applying civil penalties or suspending online access; and
- Referral of tax advisers who are suspected of false advertising to the Advertising Standards Authority.

In 2022, HMRC published the outcome of a review into powers to uphold the Standard, following public consultation, which concluded that HMRC is using all options available to tackle poor tax agent behaviour[39].

3.2.2. Ireland

Most of the responsibility for the regulation of the profession is left in the hands of the professional bodies and it is they who are required to impose a set of professional standards on their members. As already noted by De Widt, Mulligan and Oats (2016), 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 this 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 are examined on the Code in order to obtain the Institute's qualification. Members are then required to carry out their professional activities in a manner that complies with the Code and maintains the highest standards of professional behaviour.

As further highlighted by De Widt, Mulligan and Oats (2016), 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. Importantly, there is a disciplinary procedure

[37] House of Commons, Public Accounts Committee (2013), *Tax avoidance: the role of large accountancy firms*, Appendix I.

[38] HMRC: Standard for Agents available at: https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents.

[39] HMRC, 2022, Raising Standards in the tax advice market – HMRC's review of powers to uphold its Standard for Agents, available at: https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrcs-review-of-powers-to-uphold-its-standard-for-agents/raising-standards-in-the-tax-advice-market-hmrcs-review-of-powers-to-uphold-its-standard-for-agents.

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[40] and subsequently by various committees within the ITI, if considered worthy of further investigation.

In the case of the CAI, its members (including those with the Chartered Tax Consultant qualification) must abide by the Code of Ethics[41] which covers ethical conduct relating to integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. Follow-ups to this Code of Ethics called *Ethics Releases*, show how the code is to be applied in different situations.

Due to the ever-changing nature of tax legislation in Ireland, the ITI mandates members to complete annual continued professional development ('CPD') in order to maintain and further develop their tax knowledge and technical skills. This ensures the highest standards of practice are delivered, confidence in the professional services offered by its members and the integrity of the Institute is upheld. Failure to comply with minimum CPD requirements over a period of three years will be investigated by the Institute and members risk being removed from the register of CTAs. Similarly, CAI mandate their members to complete CPD for similar reasons.

CAI has an independent regulatory body, the Professional Standards Board[42] which oversees compliance by members with the ethical standards expected by the institute and the necessary disciplinary mechanisms where necessary. The day-to-day activities are conducted by the professional standards department (PSD). The professional standards board has eight members, equally split between accountants and non-accountants with a non-accountant as chair[43] to ensure its independence from the profession itself.

Other tax intermediaries who are members of other professional bodies will also have to abide by the regulations of those bodies. For example, solicitors and financial service providers will have to abide by the professional standards of conduct as set out by the Law Society of Ireland and the Institute of Banking respectively.

3.2.3. Italy

There is no broad, overarching regulation of tax intermediaries in Italy. Their activity depends on specific laws and the code of conduct pertinent to the respective profession, if any. Legal consultancy, however, is normally delivered by lawyers and is regulated accordingly by the law. More precisely, when such an activity is delivered in connection with litigation in the Court, it is strictly reserved to the lawyers admitted to the bar. When legal consultancy covers different situations (which are not in connection with the trial) then it can be delivered also by other tax intermediaries. The difference between these two scenarios has been clarified by the Supreme Court in the case n°12840/2006.

In this respect, a distinction can be drawn between notaries, chartered accountants, lawyers, and possibly CA(A)Fs[44]. Compared to other countries, the profession of notary in Italy is unique: A notary is an impartial actor, appointed and chosen by a taxpayer for assistance with an act such as a deed, a testament, a contract, etc. He/she functions in the interest of the state as well or, more precisely, is independent. This position is evident in the case of tax assistance for fees which are normally charged on contracts or deeds. Under the profession's code of conduct, notaries act in the interest of the law as

[40] Established under the UK Taxation disciplinary scheme, which applies to members of the ITI.

[41] A revised code was published in 2020 following recommendations from the International Ethics Standards Board for Accountants (IESBA).

[42] Set up in 2020, following a regulatory structure review by CARB, taking up the previous roles of the now abolished regulatory policy board and the Chartered accountants' regulatory board (CARB).

[43] CAI 2021, '*Governance Framework*'. Available at: governance-framework-2021-final.pdf (charteredaccountants.ie) (p. 49).

[44] See § 2.5 for their definition.

such[45].

The Italian legal system provides for criminal sanction in case of fraud and in this very specific respect there is a special provision aimed at intermediaries. Should an intermediary (of any kind) be involved in a tax fraud or act as facilitator of it, Article 13bis, § 3, legislative decree n. 74 passed on 10 March 2000 provides for an increase of punishment by 50%. In such a scenario, the tax intermediary is punished more that the individual committing tax fraud. The law is clear in this respect, as it states that "the punishments provided for by this act are increased by 50% if the violation is committed by a tax consultant, advisor, a practitioner or a financial intermediary if such an activity consists in the proposal of an aggressive tax planning scheme".

In the case of chartered accountants, tax assistance is defined as one of the typical services of the profession, which must be delivered professionally and consistently under the general principles of fairness. The activity of Chartered accountants is both regulated by their Code of Conduct (approved on 17 December 2015 and amended on 11 March 2021) and by the law (legislative decree n. 139 approved on 28 June 2005). Yet, the tax intermediation is defined as the habitual activity of the profession, not the exclusive one (Article 1, legislative decree n.139). This opens doors to other professionals (see below) who might operate as a consequence.

Chartered accountants, together with the authorized tax assistance centers, are nonetheless professionals with the power to submit tax returns to the agency on behalf of the taxpayer. This service could also be rendered by other professionals as identified by law (see below). This would be the case for tax experts whose activity falls under the Act n. 4 passed on 14 January 2013 (atypical professions) and who essentially operate as tax preparers. These tax experts are regulated by the law only, together with other independent workers, with a set of rules that are not specifically designed for tax consultancy. Yet some of these professionals operate within "associations" or "groups" which claim to act consistently with an internal code of conduct whose actual application is somehow untested.

3.2.4. Germany

As noted by De Widt, Mulligan & Oats (2016), due to its character as a so-called free profession, tax advisory is strongly regulated in Germany. The Federal Constitutional 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 Federal Constitutional Court has also underlined the autonomous position of tax advisers, referring to them as 'mediator between state and taxpayer', 'independent organ of the tax judicature', and a 'state-bound trusted profession'[46]. 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*) the only exception being chartered lawyers (see above). 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 (*Bundessteuerberaterkammer*), which is itself regulated by the Federal Ministry of Finance.

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

[45] See in particular Art. 41 of the Code of Conduct of the Notaries as it was approved on 5 April 2008.

[46] Or, in the original German rulings, ´Mittler zwischen Staat und Steuerzahler´(BVerfG, 15.02.1967), ´Wahrer des Rechts´(OLG Celle, 02.06.1960), ´unabhängiges Organ der Steuerrechtspflege´ (§ 1 (1) BOStB and in 2019 confirmed by the German legislator in § 32 (2) S. 1 BStBG), and are exercising a ´staatlich gebundenen Vertrauensberuf´ (BVerfG 08.10.1974), which obliges them to be independent and have self-responsibility.

Commissioner Monti back in 2003, the special labour regulations for free professions have been under continuous pressure from the Commission, 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 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), as already outlined in De Widt, Mulligan and Oats (2016).

In 2017, recommendations were issued to the Member States on national reforms for regulation in professional services (European Commission, 2021). 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.

3.2.5. The Netherlands

As no statutory regulations are in place, the direct regulation of tax advisory work in the Netherlands occurs mainly through mechanisms set up by the professional tax and accountancy bodies, alongside regulations firms may operate internally.

To ensure tax advisers who are members of a professional body comply with their association's Code of Conduct, the professional bodies maintain systems for disciplinary proceedings and apply training requirements for new and current members. The professional codes and training requirements have seen changes in recent years, whilst the professional bodies have also developed additional mechanisms for the regulation of their members. Given its traditional prominence in tax policymaking processes, we illustrate this with reference to the NOB.

The 'Nederlandse Orde van Belastingadviseurs – NOB'

In relation to its Code of Conduct, the NOB has implemented multiple changes in recent years. In 2018, it amended the explanation of Article 1 of its Code of Conduct, which states that members are obliged to conduct their work *'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'*. Up to 2018, the explanation included in the Code merely stated that "*what constitutes the 'honour and dignity' of the profession is partly determined by the views of society and may thus be subject to change*". With reference to changes in societal views and internal NOB discussions, a more extended explanation was included in 2018 with '*integrity*' now being defined as '*an essential element of honour and dignity*', which requires members to act in accordance '*with the values and standards*' they stand for. This, so the extended explanation continues, should result in members' work not only being compliant with legislation and regulations applying at the time, including case law, but advisers should also take the intention of legislation into account, and comply with 'any applicable ethical values and standards'. A similar expanded description is provided for 'honesty', which is referred to as an adviser not allowing any facts or circumstances to be incorrectly represented. Finally, a 'conscientious' adviser is an adviser who discusses 'stakeholders' views' when presenting tax choices to their client.

Next to changes in its Code of Conduct, the NOB has implemented changes to the training of tax advisers, especially more training in relation to professional ethics and more emphasis on understanding and applying the Code of Conduct. Since 2016, the association has also sought to

enhance members' engagement with professional ethics in a contemporaneous way by using an app application (NOB DilemmApp), in which the NOB regularly posts work-related ethical dilemmas and members are encouraged to discuss these by weighing three different interests, that is a personal, organisational, and societal interest.

Following a request by a member of the Dutch Lower House in 2019 to develop a code of conduct for tax advisers, the Dutch Government stated it was considering the benefits and necessity of self-regulation by Dutch tax advisers and the 'societal decency' of the tax advisory profession[47]. Subsequently, the Government adopted the idea of establishing a '*tax governance code*' and it called upon the Dutch business and tax advisory community to develop this code. In response to these political developments, the NOB's leadership drafted a Roadmap in June 2019, which it used to facilitate discussions in the NOB about a tax governance code and the association's system of self-regulation. These discussions have resulted in a number of changes, which were approved by the NOB's general meeting in May 2022, and contain in short the following:

- *The introduction of the NOB Tax Principles* – this document should better enable NOB members to assess the societal acceptability of a proposed tax position and discuss the results with clients. It also includes more guidance in relation to the Code of Conduct, such as the prohibition for members to perform work where the advice relies on or results in information knowingly being withheld from the relevant tax authorities. Members must also ensure they are aware of the real economic objective of the transactions to which their advice relates, and, in case this is not sufficiently plausible and achieving a tax benefit appears the primary aim (and this is not explicitly envisaged as such by the legislator), they must discuss with their client the 'economic, business and reputational risks' of the transaction. Members are also expected to specify within their advice any objections they may have to options included in their advice.
- *Further changes to the Code of Conduct* – changes are aimed at defining in greater detail the various roles and responsibilities NOB members may occupy in professional practice, and how these relate to the professional rules as defined in the Code. More guidance is also included to ensure members provide impartial tax advice, including how members should act in various exemplary scenarios.
- *Changes to supervision of members* – these include the introduction of additional compulsory training and peer-to-peer learning in relation to professional rules of conduct, and an annual self-assessment in which members should reflect on whether they act in line with professional rules.

The above changes have only recently been adopted by the NOB, but they signal an important change in how the association wants tax advisers to conduct their work, and how it intends to ensure members act in accordance with the NOB's Code of Conduct and Tax Principles.

The plans to introduce peer-to-peer learning are focused on reviewing whether advisers act in accordance with the NOB's Code of Conduct but, as is stated by the NOB, 'not the content of advice provided'. One could question whether professional conduct could be comprehensively reviewed if the content of fiscal advice is excluded from the peer-reviews. The peer-review system is likely to be particularly beneficial for NOB members in smaller firms and self-employed tax advisers, who will be linked to other firms/advisers by the NOB, as due to their small scale, these advisers often lack

[47] The original Dutch text is: "Daarin zal ook het nut en de noodzaak van (zelf)regulering en «maatschappelijke betamelijkheid» in de beroepsgroep van belastingadviseurs aan de orde komen." Source: Dutch Lower House (Tweede Kamer), Parliamentary Documents II 2018/19, 35 000 IX, Letter by the Secretary of State of Finance, No. 19, p. 18. The Hague.

formalised arrangements for professional review which generally exist in larger firms (see below).

Disciplinary proceedings apply if members of tax advisory bodies act in conflict with their association's principles. In the NOB, disciplinary proceedings in the first instance are conducted by the Disciplinary Board and appeals are heard by the Board of Appeal.

Complaints can be submitted to the Disciplinary Board by clients, or others with an interest in relation to services provided by individual NOB members. In 2019, the NOB changed the composition of the Disciplinary Board by replacing one out of previously two NOB members on the Disciplinary Board with an external member (the chair and deputy-chair already had to be non-members). The NOB motivated this regulatory tightening by referring to the '(even) higher demands society places on a professional association that values quality and integrity' (Accountancy Vanmorgen, 2019). Rulings by the Disciplinary Board and the Board of Appeal are published on the NOB website, and NOB members have had their membership terminated. In 2016, two NOB members lost their membership as they owned Infintax – the Dutch trust office included in the Panama Papers – and simultaneously acted as the tax advisers to the clients for whom Infintax had been founded, hereby acting against the NOB's Code of Conduct not to combine ownership and advisory roles (NOB, 2016). The NOB publishes all individual rulings on its website, however it does not publish a summary of the number, type, or results of its disciplinary proceedings, which complicates discerning the NOB's disciplinary practices for external stakeholders. An overview we compiled of the disciplinary cases at the NOB in 2020 and 2021 (see Table 2 in annex) shows that whilst there were 4 proceedings at the Disciplinary Board in 2020, 8 proceedings occurred in 2021. Out of the 12 cases in total against (former) NOB members in 2020 and 2021, the complaints were accepted by the Board in 2 cases, with a written warning issued to the defendants in both cases. Out of the 12 cases over the last two years, two proceeded to the Board of Appeal, however this did not result in a different ruling.

Position Register of Tax Advisers (RB)

As the NOB's sister organisation, the Register of Tax Advisers (RB) has implemented many changes similar to those implemented by the NOB, including changes to its Code of Conduct (which partly draws on the NOB's Code of Conduct) and its training provision. In some areas however the RB has made different choices, which partly reflects the different market segment the association serves. In contrast to the NOB, the RB is a long-time supporter of the legal regulation of the Dutch tax advisory profession[48]. In 2020, a majority of RB members adopted several recommendations in response to a request by the Dutch Secretary of State for the tax advisory profession to come up with initiatives to combat abuses in the tax advisory profession. These 'rogue' tax advisers, who generally are not a member of any of the tax advisory bodies, were estimated to be around 150 by the NTCA in the 2016/17, and their misconduct receives frequent attention in Dutch media[49]. Although the RB remains committed to its long-term aim to provide a legal basis to the tax advisory profession, the recommendations from 2020 focus on more short-term measures that should reduce the number of rogue tax advisers. In the main, the proposals focus on building in quality monitoring mechanisms before tax advisers can receive a tax advisers' registration number, which is issued by the NTCA, and tax advisers need in order to be able to submit client tax returns to the NTCA. At present, being registered with the Chamber of Commerce as tax adviser or administrative office is the only

[48] In fact, the desire to provide legal status to the tax advisory profession constituted the main driver for the founding in the 1930s of some of the predecessor tax advisory bodies that later became the RB (Het Register 2021, p.47).

[49] A more recent figure on the number of rogue advisers identified by the NTCA appears unavailable, something for which the NTCA has been criticised by Dutch MPs (e.g. MP Nijboer in the tv programme Kassa on 25th April, 2020: https://www.bnnvara.nl/kassa/artikelen/opgelicht-door-je-belastingadviseur-wat-nu.

requirement existing[50].

3.2.6. Professional Representative Bodies at EU level and beyond

In terms of tax professional representative bodies at the European Level, there are two such bodies – CFE Tax Advisers Europe and the European Tax Adviser Federation (ETAF). CFE Tax Advisers Europe, founded in 1959 is a Brussels based association of European tax advisers. Its membership comprises 33 professional bodies from 26 European countries representing more than 200,000 tax advisers among its membership[51]. To encourage harmonisation of ethical standards across Europe, it has adopted the 'European Professional Principles of Tax Advisers' as well as the guidelines and professional principles set out in the document titled 'The development of the tax profession in Europe'[52]. The CFE is currently working on an ethics quality bar that it is hoped will help steer tax advisers from giving tax advice that encourages fictitious and/or abusive arrangements that have no economic substance[53].

Similar to the CFE, the ETAF is also a European umbrella organisation with members from six EU countries[54]. It is focused on liaising with the EU policy makers to influence tax policy at the European level, to fight abuse and to defend the tax advisory profession. The ETAF has a 'Charter of Regulated European Tax Advisers' which is a voluntary code of conduct for regulated tax advisers[55].

At the Global level, there is the International Ethics Standard Board of Accountants (IESBA) which is an independent standard-setting board that develops ethical standards, notably the International Code of Ethics for Professional Accountants[56] that guides the conduct of professional accountants globally, many of whom, as mentioned earlier, work in the tax advisory marketplace.

The legal profession has not been as entrepreneurial as the accountancy profession in terms of expanding into global entities and in global terms the Big-4 have dominance. It is important to note that global professional service entities are able to navigate national regulations and work to 'avoid local regulatory problems' (Flood, 2011:513, cited in Adams, 2017). Large professional firms adopt internal mechanisms to manage behaviour and misconduct of their employed professionals, which can be construed as a form of self regulation (Adams, 2017,80).

3.3. Other Regulations relating to Tax Intermediaries

In addition to the regulations by professional bodies, there are a number of other regulations, either through national laws, published standards by tax authorities, statutory oversight from some regulatory bodies or other soft law instruments as a result of membership of the EU or other international organisations as detailed in this section. For various reasons (as outlined in the introduction), including increasing concerns about jurisdiction shopping[57] and media coverage of these issues which can be often confused and sometimes misleading, there has been increasingly regulatory action at the European level which are then transposed into national laws of EU Member

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50 Belastingdienst, 2022, 'Hoe vraag ik een beconnummer aan?', retrieved from: https://www.belastingdienst.nl/wps/wcm/connect/nl/intermediairs/content/hoe-vraag-ik-een-beconnummer-aan.

51 See CFE Website. Available at: About Us - CFE Tax Advisers Europe.

52 Ibid.

53 CFE has prepared a discussion paper on a new ethics quality bar. Available at: Microsoft Word - CFE Discussion Paper Professional Judgment in Tax Planning_FINAL.docx (taxadviserseurope.org).

54 France, Germany, Belgium, Romania, Hungary and Austria.

55 ETAF has developed a charter which it believes can form the basis for an EU wide regulatory framework for tax advisers. Available at: ETAF_Charter_FINAL.pdf.

56 IESBA, 2021. *'Handbook of the International code of ethics for professional accountants'*. Available at: IESBA-English-2021-IESBA-Handbook_Web.pdf (ifac.org).

57 Looking for the jurisdiction among Members States that has the most favourable tax planning regime.

States. Such regulations include the DAC 6, the EU audit reform, the Whistleblowing Directive as well as anti-money laundering and financing of terrorism and anti-abuse rules[58].

3.3.1. The United Kingdom

HMRC describes the UK market for tax advice as a '*partial regulatory regime*', in which professional conduct is within the purview of professional bodies together with the HMRC Standard for Agents[59] to which all tax agents are expected to adhere. There is a number of laws that impact on tax intermediaries, supported by the framework of the Commissioners of Revenue and Customs Act 2005:

Firstly, HMRC has power to act against tax advisers who engage in dishonest conduct (Finance Act, 2012 s223 and Schedule 38). A dishonest conduct notice can be issued to allow HMRC access to all working papers. A penalty of £50,000 can be imposed, and HMRC can publish details of tax advisers who have been penalised.

Secondly, there is the common law offence of cheating the public revenue. This is potentially applicable to tax intermediaries, although rarely used as such[60]. The offence requires a finding that the defendant's conduct was '*objectively dishonest according to the standards of ordinary decent people*'.

Thirdly, the Disclosure of Tax Avoidance Schemes (DOTAS) rules[61] introduced reporting requirements for taxpayers and their advisers from 2004 onwards. The rules are designed to enable HMRC to obtain intelligence about tax avoidance schemes as early as possible. The rules are drafted widely and potentially capture arrangements that might not be considered tax avoidance schemes. Arrangements are only disclosable if they display a 'hallmark', and disclosure is required by the promotor of the scheme (if there is one) or the taxpayer, who must reference a 'scheme reference number' once allocated. HMRC have a team responsible for alerting taxpayers who have entered a scheme to the potential risks, offering advice as to how to leave the scheme.

In relation to DAC6, post-exit repeal has been followed by the UK intending to legislate to ensure it meets the proposed OECD standards as a preferred approach. DAC6 disclosure will still be required, of course, by anyone dealing with an EU Member State. It has been observed that the mischiefs aimed at by DAC6 are largely covered by the UK DOTAS rules[62].

The fourth regulation, the promoters of tax avoidance scheme legislation[63] (POTAS) allows HMRC to deal with 'high risk' promoters by firstly issuing a conduct notice for a period of up to two years, and from June 2021 this period can be increased to up to five years. For this purpose, promoters are not restricted to tax advisers or banking services. The term encompasses any person responsible for the design of an arrangement and makes a 'firm approach' to someone to adopt the arrangement. If that notice is breached, a monitoring notice can be issued by a tribunal, resulting in closer monitoring and additional reporting requirements. A monitored promoter is subject to specific information powers and penalties for non-compliance of up to £1million. HMRC has the power to name monitored promoters and clients of a monitored promoter are supplied with a reference number to be reported to HMRC.

HMRC also has the power to issue a 'stop' notice requiring a promoter to cease promotion of a tax avoidance scheme once it has been shown not to work. In addition to ceasing to promote the relevant

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58 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD).

59 Available at: https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents.

60 See R. v. Charlton and others [1996] STC 1418 for example.

61 Finance Act 2004, Pt 7.

62 Freedman, J & Loutzenheiser, G. (2022).

63 Finance Act 2014 ss 234-283, schedules 33A-36; Statutory Instrument 2015/130.

schemes, a promoter that is subject to a stop notice must file quarterly returns for three years detailing all relevant clients.

These measures have been strengthened from June 2021[64] to expand the scope of '*promoter*', and to issue stop notices at an earlier stage.

Fifthly, in 2017, new legislation[65] introduced a penalty for any person who enables the use of abusive tax arrangements which are later defeated. An enabler is widely defined to mean '*any person who is responsible, to any extent, for the design, marketing or otherwise facilitating another person to enter into abusive tax arrangements*'[66]. It is stated that '[t]he legislation will influence and promote behavioural change in the minority of tax agents, intermediaries and others who benefit financially from designing, marketing, or facilitating the use of abusive tax arrangements that are defeated'[67].

Penalties cannot be charged by HMRC without an opinion from the GAAR advisory panel[68]. The amount of the penalty is '*the total amount, or value, of all the relevant consideration, which has either been received by the enabler or is receivable by them*'[69]. Penalties under this regime are reduced by the amount of any penalty imposed in respect of the same activity, for example under the penalties for enablers of offshore evasion or non-compliance legislation[70]. Similarly, penalties will not be applied under the 2017 rules, if the enabler has already been convicted of an offence in relation to the same activity.

Sixth, there are criminal offences including being knowingly involved in fraud or evasion of tax, including aiding and abetting. According to HMRC[71], '*Since April 2016 promoters have formed the majority of the 20 individuals convicted for offences relating to fraudulent arrangements promoted and marketed as tax avoidance schemes. The courts ordered over 100 years of custodial sentences and more than 7 years suspended.*'

Criminal prosecution is not HMRC's preferred option in respect of promoters of tax avoidance schemes however, since criminal proceedings are expensive, time consuming and difficult to prove.

Anti-money laundering legislation can also be used against both individuals and companies. Whistleblower protection is provided by the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998. A Whistleblowing Commission was established in 2013 and has developed a Whistleblowing Code of Conduct. The EU Directive has not been transposed into UK law following departure from the EU, as UK law already exceeded EU minimums in many areas.

The Code of Practice for Banks was introduced in 2009 to 'change the attitudes and behaviour of banks towards avoidance because of their unique position as potential users, promoters, and funders of tax avoidance'[72]. The code includes the requirement that banks should 'not undertake tax planning that aims to achieve a tax result that is contrary to the intentions of Parliament'[73].

Legal professional privilege is not extended beyond the legal profession in the UK.

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64 Finance Act 2022.

65 Finance Act (No 2) 2017 Schedule 16.

66 https://www.gov.uk/guidance/tax-avoidance-enablers-of-defeated-tax-avoidance-legislation.

67 ibid.

68 The UK General Anti-Abuse Rule (GAAR) was introduced in 2013 following lengthy consultation and is aimed at tackling abusive tax avoidance.

69 https://www.gov.uk/guidance/tax-avoidance-penalties-appeals-and-publishing-details-of-enablers.

70 Finance Act 2016 Schedule 20.

71 https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes.

72 https://www.gov.uk/government/publications/the-code-of-practice-on-taxation-for-banks-annual-report-2021/the-code-of-practice-on-taxation-for-banks-annual-report-2021.

73 Ibid.

3.3.2. Ireland

There is a significant level of self-regulation of the tax advisory profession in Ireland, as mentioned earlier. Nevertheless, there are some direct regulations affecting the conduct of the tax intermediaries. The constitution takes precedence over any other law, including common law. Where the common law or Irish domestic law conflicts with the constitution, the constitution will prevail. Under Article 29 of the constitution, EU law supersedes Irish domestic law. The other Irish regulations include:

First, the Finance Act 2010 introduced mandatory disclosure rules for schemes which may constitute tax planning[74] as outlined in Chapter 3 of part 33 of the Tax Consolidation Act (TCA) 1997, with further legislation detailing procedures relating to such disclosures (S.I. No. 7 of 2011). Following DAC 6, these rules have been updated further to provide for the obligation on tax intermediaries to inform tax authorities of tax planning schemes involving cross-border arrangements. Intermediaries are now required to file returns of information with the Irish Revenue Commissioners regarding such arrangements.

Second, a civil penalty of €4,000 for a tax adviser may arise under section 1055 of the TCA 1997 where the individual 'deliberately assists in or induces the making or delivery for any purposes of income tax or corporation tax of any incorrect return, account, statement, or declaration'[75].

Third, in accordance with Section 1078 of the TCA, 1997 as amended, Revenue offences are criminal actions which involve recklessly or knowingly facilitating the fraudulent evasion of tax by another person. People engaged in such offences may also be charged under the common law for conspiracy to commit the specific revenue offences as stated in the act, conspiracy to defraud and attempt to commit the offence, even if the offence ended up not being committed[76].

Fourth, Where the Irish revenue is of the opinion that an intermediary's conduct falls below the standard expected of a member of a professional body, under Section 851A (7) of TCA 1997, a complaint may be made to the intermediary's professional body for further action. This will generally only arise after civil penalties and/or revenue offences have been applied.

Fifth, the Irish revenue may challenge any tax avoidance scheme under GAAR (section 811C of TCA 1997) or one of the specific anti-avoidance rules specified in the TCA. Where a challenge is successful, a surcharge of up to 30% may apply.

Sixth, many tax crimes are often also associated with fraudulent and/or money laundering crimes. Under the Criminal Justice (Theft and Fraud Offences) Act, 2001, they may also be charged with deception, creative accounting, or the use of a false instrument. In addition, under Section 19 of the Criminal Justice Act, 2011, it is an offence for a person not to disclose information that may assist An Garda Síochána in preventing, detecting, apprehending, or securing the prosecution of a person for a relevant offence.

Seventh, Ireland has audit reform laws prohibiting the same firm from providing both audit and tax services, in line with laws passed at the EU level.

With regards to the right to non-disclosure, the application of Legal Professional Privilege is defined rather narrowly and has arisen out of case law rather than direct legislation. It applies exclusively to lawyers and relates to a situation where the documents or disclosure to a legal practitioner is solely in

[74] It must enable or be expected to enable, a person to obtain a tax advantage'.

[75] Revenue, 2021, 'Failure by an Agent to meet the Professional Standards of a Professional Body'. Available at: Revenue referrals to Professional Bodies under S851A TCA 1997 - Failure by an Agent to meet the Professional Standards of a Professional Body.

[76] Please see the EU report for more on tax crimes in Ireland (Turksen et al. 2018).

the course of preparation for a trial or to enter into legal proceedings[77]. If the legal professional is the promoter of a scheme or someone is marketing it on their behalf, legal professional privilege does not apply[78].

In addition, there are Oversight Bodies such as the Legal Services Regulatory Authority (LSRA) was set up in 2016 as a regulator of the legal profession (both solicitors and barristers) with a wide remit including but not limited to, acting on complaints from the public about the service of legal practitioners, maintaining a roll of barristers and regulating the advertisement of legal services provided by legal practitioners. In addition, to the ethical codes from the regulatory body, they are currently working on a code of practice for practising barristers.

Activities of financial service providers are strongly regulated by the Central Bank of Ireland and the European Central Bank (ECB). Particularly notable is the Landmark Central Bank (Individual Accountability Framework) Bill 2021 which aims to improve the culture and behaviour of Irish banks.

Other oversight bodies include the IAASA (Irish Auditing and Accounting Standards Board) which supervises the Professional Accounting Bodies (PAB) and ensures that there is compliance with their disciplinary mechanisms and that the professional bodies are abiding with applicable ethical standards. The Board consists of nine members of which a maximum of four can be from a PAB. There are also supervised by the Financial Reporting Council[79] and the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), which supervises the accounting and legal sector for compliance with money laundering and terrorist financing provisions.

For money laundering provisions, tax intermediaries who are not members of professional bodies are supervised directly by the Ministry of Justice. Finally, in relation to the potential role of whistleblowing protections in clamping down on undesirable tax planning arrangements, whistle-blowers are protected under the Protected Disclosures Act of 2014.

3.3.3. Italy

The most significant provision that indirectly affects tax intermediaries is the law that addresses the power of attorney granted by the taxpayer at the moment in which he/she submits his/her annual tax return. The transmission of the tax return is by far the most important moment in the annual tax year, and it normally encompasses both income tax and VAT (where applicable).

Recently, the tax administration has increased the number of the pre-filled in tax returns[80] as it possesses enough data to know in advance of most - if not all - the pertinent information relevant for tax purposes. Despite this, most Italians still rely on services provided by tax intermediaries (and in particular the CAAF).

In order to grant such a service the intermediary, irrespective of his/her nature or legal status, must be identified on the ENTRATEL platform[81]. ENTRATEL platform is a secure online portal managed by the tax administration. Entities and intermediaries admitted to the ENTRATEL platform can fill in tax returns and transmit directly to the tax office all relevant documentation on behalf of their clients[82]. This

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77 Artisan Glass Studio Ltd v The Liffey Trust & Others (2018).

78 Revenue, 2019. 'Guidance Notes on Mandatory Disclosure Regime'. Available at: Guidance Notes on Mandatory Disclosure Regime (revenue.ie).

79 Similar function to the IAASA but in a UK Context.

80 Approximately around 20 millions Italian taxpayers qualify for a pre-filled-in tax return. Such a reporting model was introduced for the first time in 2015.

81 Art. 43 ter, § 4, Presidential decree n. 602/73.

82 These entities allowed to transmit the pertinent information to the tax administration making use of the special online channels are: chartered accountants, labour consultants; graduated tax experts as they were listed in the specific registry o the chamber of commerce

platform is also made available to each individual taxpayer who wants to submit his/her tax return individually[83].

Not all intermediaries are admitted on ENTRATEL. The conditions are set by the legislator and the tax office, thus affecting indirectly the activity of several businesses. Accountants, tax preparers and tax centers are the most frequent users of the ENTRATEL system, but, however, labour consultants, notaries and other professionals have free access once authorized.

3.3.4. Germany

In 2021/2022 the profession has been busy with (1) adapting to the new legislation on mandatory disclosure of cross-border tax planning schemes in line with DAC6 and (2) insert client information into the new Federal transparency register that was created in response to the EU Directives 2015/849 and 2018/843. The German anti money laundering law (Geldwäschegesetz – GwG) experienced a last change in 2021, obliging corporations to register their ownership structure and ultimate owners in the transparency register. Under the law on anti money laundering, tax advisers are obliged to take care that all relevant information on the client, ownerships structure, potential risks of money laundering etc. have to be documented. On top of that, tax advisers have to take care of the entries of all required information into the Federal transparency register for many of their clients.

The EU Directive 2018/822 or "DAC6" has led to the introduction of *§§ 138d through 138k Abgabenordnung*, a law regulating tax procedures in general and for all specific tax laws. Tax advisers engaging in cross-border tax planning are now obliged themselves to notify everything that might be regarded as a cross-border tax planning scheme, and they will typically also help clients fulfil their obligation to notify tax authorities. As with every new tax law, there is a certain degree of uncertainty with regard to its interpretation in detail.

Obviously, both laws have generated extra workload for tax practitioners, which in turn has led to complaints from their lobbyists. Nevertheless, much of this workload is a one-time effort and it can be expected that after this first phase routines and software solutions will be developed to handle these reporting duties efficiently.

To date, there is no general whistleblowing law in Germany and the EU Directive on the protection of whistleblowers has not been implemented in Germany and there is no legal protection for a whistleblower. A draft law to implement the Directive has been presented in April of this year and is expected to pass parliament in autumn of this year under the title of *Hinweisgeberschutzgesetz* (HinSchG). Furthermore, there is a legal incentive for voluntary self-disclosure of a possible misconduct or fraud in the field of taxation under *§ 371 Abgabenordnung* and on money laundering under § 261 of the Criminal Code (*Strafgesetzgebuch*). As long as no investigations have been started, self-disclosure can regularly avoid criminal consequences.

3.3.5. The Netherlands

The tax advisory profession in the Netherlands remained relatively unaffected by indirect regulations for a long period. In 2012, to facilitate the transposition of the EU Audit Reform Directive, the Netherlands introduced the Law on the Accounting Profession, which prohibits accountants from providing other services to their clients, including tax advice. Most relevant however has been the

on 30 September 1993; lawyers; accountants as defined under the legislative decree 21 January 1992, n. 88; trade unions of employers and employees as under art. 32, § 1, letters a),b) e c), legislative decree n. 241/97; associations representing ethnic or linguistic minorities; CAFs; professional tax advisors; experts in forestal and agricultural sciences (*sic!*); partnerships of professionals as under decree 18 February 1999.

[83] In this case, they may want to use the Fisconline platform instead.

European anti-avoidance and evasion measures (under the ATAD Directive) which have resulted in the compulsory disclosure by Dutch tax advisers and other intermediaries of certain advice and transactions with the tax authorities from 2020 onward. The mandatory exchange of information is aimed at identifying undesirable tax planning schemes used by corporates and applies to cross-border transactions that meet certain hallmarks. In June 2021, the NTCA reported it had received 4,500 notifications of potential tax avoidance structures in relation to the period 2018 to early 2021, which is lower than the 40,000 initially expected (NOS 2021; Waterval 2021). No data is available at present as to how many of the reported transactions and structures encompass actual tax avoidance.

Another recent development likely to impact upon Dutch tax intermediaries' work is the new Tax Governance Code, which was launched in May 2022. The Code has been initiated by the Confederation of Netherlands Industry and Employers (VNO-NCW) and adopted by around 40 large Dutch multinationals, including 20 of the 25 companies listed on the Amsterdam Exchange index (AEX). The Code is set at an ambitious level which is reflected by the fact that at present (May 2022) none of the participating companies fully meet all the requirements[84]. Tax advisers, who have given input to the Code's drafting alongside other stakeholders, are likely to play an important role in supporting companies to comply with the Code, which is aimed at generating more transparency on the tax position of the signatory companies and helping to build stakeholder trust in companies' tax policies[85].

Other regulations indirectly affecting tax advisers include legislation put in place by the Dutch government to prevent money laundering and the financing of terrorism as included in the Money Laundering and Terrorism Financing (Prevention) Act (WWFT). Compliance with the WWFT, which includes an obligation to carry out due diligence, is monitored by the Financial Supervision Office (Bureau Financieel Toezicht - BFT), which is an independent agency under the Ministry of Justice and Security. The BFT monitors compliance with the legislation by all professional groups providing financial services, including tax advisers. When it comes to the right of non-disclosure, 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'[86]. In practice, confidentiality is particularly protected by the informal right of non-disclosure ('*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*'[87]. 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 not needed for Dutch advisers, especially since a 2005 judgement by the Dutch Supreme Court has provided all essential features of a non-disclosure principle[88].

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84 BAM, 2022, 'Forty Dutch multinationals embrace new Tax Governance Code', retrieved from: https://www.bam.com/en/press/press-releases/2022/5/forty-dutch-multinationals-embrace-new-tax-governance-code?position=0&list=lg0tWusEBf1-XtgNaHpqZjWTNo99X_hhrlaFewJkjkg.

85 Core features of the Tax Governance Code (VNO-NCW 2022) include, amongst others, a company tax strategy that emphasises the value of tax as an important contribution to society and not a cost factor only, and the relationships of the company with tax authorities and other external stakeholders is driven by 'mutual respect, transparency and trust'.

86 Tweede Kamer – Parliamentary documents II 1957/58, 40870, no. 7.

87 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.

88 As already noted by De Widt, Mulligan and Oats (2016), 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

Notwithstanding the presence of a non-disclosure right, recent regulatory changes not directly aimed at tax advisers have reduced the autonomous position of Dutch advisers.

3.4. Summary

Each of the countries studied in this report share concerns about the need to better regulate the activities of tax intermediaries. Professional bodies perform an important role in setting and maintaining professional standards among members. This is supplemented in each country by State regulations that impact on the practices of tax intermediaries. Table 1 provides a summary of key features of regulation.

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'. Hence, the ruling widened the scope of the Dutch 'tax practitioner privilege' and improved the position of the Dutch tax payer (Seeling & Visser, 2005; Sporken, Vegt, & Dols, 2011).

Table 1: Summary of key features of regulation across the 5 countries, and the European/International level

	United Kingdom	Ireland	Italy	Germany	The Netherlands	Europe/International
Professional Body Codes	Professional Conduct in Relation to Taxation (PCRT); Professional Code (CIOT)	Codes of conduct (ITI, CAI)	Code of Conduct (Chartered Accountants)	Law on Tax Advisers (Steuerberatungsgesetz –StBerG) and subordinate legislation	NOB's Code of Conduct and Tax Principles; Register of Tax Advisers (RB) Code of Conduct	CFE Ethics quality Bar; ETAF Charter of Regulated European Tax Advisers
Other Codes	HMRC Code for tax agents, Code of tax practice for banks; UK Principles of Tax Advice (Tax Principles), Law Society	Institute of Banking; Law Society of Ireland	Codes of Conduct - Notaries	Federal and Regional Chambers of Tax Advisers	Tax Governance Code (Confederation of Netherlands Industry and Employers)	Codes of Conduct of Big-4 firms. The International Code of Ethics for Professional Accountants developed by IESBA; IESBA Framework on Tax Planning
Mandatory Disclosure Rules	Yes, Finance Act 2004 (Pre-DAC 6)	Yes, Finance Act 2010 (pre-DAC 6)	Yes. DAC 6	Yes. DAC 6	Yes. DAC 6	-
Whistleblowing Protections	Public Interest Disclosure Act 1998; Whistleblowing Code of Conduct	Protected Disclosures Act of 2014 (Amendments to Incorporate the EU Whistleblowing Directives)	Italian Whistleblowing law (Law of 30 November 2017, No. 179[89]); Legislative Decree of 8 June 2001, NO 231[90]	Draft law expected to come into effect in 2022 (Hinweisgeber-schutzgesetz HinSchG)	Wet Huis voor klokkenluiders (House for Whistleblowers Act)	-

[89] Provisions for the Protection of the Authors of Reports of self-employed Crimes or Irregularities Acknowledged in the Context of a Public or Private Employment Relationship.

[90] Governing the Administrative Liability of Legal Persons, Companies and Associations Including Those Without Legal Personality.

	United Kingdom	Ireland	Italy	Germany	The Netherlands	Europe/International
EU Audit Reform Directive 2014	Implemented	Implemented	Implemented	Implemented	Implemented	-
Oversight Bodies	GAAR Advisory Panel; Financial Reporting Council (FRC)	IAASB; LSRA; OPBAS; Central Bank, European Central Bank; Financial Reporting Council; Ministry of Justice	OIC (Organismo Italiano di Contabilità), the "Italian Body for the Domestic Accounting standards", Central Bank	Federal and Regional Chambers of Tax Advisers	Financial Supervision Office	-
Legal Professional Privilege	Restricted to lawyers	Restricted to lawyers	Restricted to lawyers	Access to profession regulated through law and Chambers	Informal right of non-disclosure ('*verschoningsrecht*') for all advisers	-
Regulatory Changes following Domestic developments	POTAS; GAAR; Penalties for Enablers; Dishonest conduct; Anti-Money Laundering legislation	GAAR; Penalties for Enablers, Criminal offences for enabling fraud; Anti-money laundering legislation	Anti-money laundering legislation, including self-money laundering, Criminal offences for enabling fraud, extended Ruling practice	Anti-Money Laundering legislation; mandatory disclosure of tax planning schemes	Money Laundering and Terrorism Financing (Prevention) Act (WWFT)	-

4. IMPACT OF REGULATIONS ON TAX COMPLIANCE

4.1. Introduction

KEY FINDINGS

- Overall, there is a sense of a move towards more conservative planning across the five countries and a reduction in the number of mass marketed tax avoidance schemes, but the exact drivers of this are somewhat unclear.
- Impact of specific tax intermediary regulation on reducing undesirable tax avoidance remains unclear.
- There needs to be more evidence and transparency around the differences in tax advisory costs between countries with different regulatory environments.
- There is insufficient data available to enable identification of best practices on the various forms of regulation currently in place.

Regulation of tax intermediaries has many objectives, one of which is to reduce (if not eliminate) the extent to which tax intermediaries facilitate or enable tax fraud. Whilst there is extremely limited publicly available data on the matter, this section, as far as is possible addresses the role of existing regulation in improving compliance with tax obligations and reducing undesirable tax avoidance.

4.2. The United Kingdom

There is little publicly available information regarding the correlation between tax intermediary regulation and improved compliance generally. It is generally thought, however, that the tax avoidance scheme market has changed significantly in part in response to the measures outlined in section 3.3.1.

HMRC reports[91] that since working with the accountancy profession to strengthen the Professional Code of Conduct in Relation to Taxation, as well as the banking sector:

> '*the vast majority of major accountancy, legal and banking firms and others who are members of the professional bodies no longer design or sell mass marketed avoidance schemes. This leaves a smaller pool of promoters who are mainly unregulated, unlike other providers of financial services and advice*'.

In relation to promoters of mass marketed tax avoidance schemes, it is noted that over this period public norms have changed, and such schemes are no longer mainstream[92]. There has been a significant reduction in the number of schemes reported under DOTAS, although some promoters are failing to notify schemes.

HMRC notes that since 2014, around 20 promoters have left the tax avoidance market, leaving a core of promoters who target wealthy and middle-income taxpayers. This is believed to be in response to the range of measures, in particular POTAS. There are still, however, an estimated 20 – 30 promoters and between April 2019 and May 2020, HMRC identified 45 schemes in circulation. There is evidence

[91] HMRC, 2020, Call for evidence p. 20. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873540/Call_for_evidence_-_raising_standards_in_the_tax_advice_market.pdf.

[92] https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes.

to suggest that the market has moved to less affluent, high-volume users, many of whom may be unaware that they are in a scheme. At the lower end of the market, schemes are often driven by employers seeking to reduce employer national insurance contributions, which are in effect a payroll tax.

One witness to the House of Lords Economic Affairs committee hearing in 2019 suggested that HMRC is engaged in a '*game of cat and mouse*' with promoters able to avoid the rules, and that the hard core of promoters is an *'exceptionally difficult nut to crack'*, despite the various measures introduced that give HMRC additional powers. According to HMRC[93], between April 2019 and December 2021, meetings with 11 tax agents representing clients in tax avoidance arrangements resulted in the agents agreeing either stop representing those clients or encouraging the clients to reach a settlement with HMRC.

4.3. Ireland

There is very little publicly available data to draw upon to establish any link between increasing levels of regulation of tax intermediaries and a decrease in undesirable tax avoidance. However as in many countries, there is a sense that the increasing national and internationally driven regulation changes, combined with the increased media attention in recent years of high-profile tax cases involving Ireland[94] (such as Apple) has most likely led to more conservative tax planning activities in general. Although the impact of specific legislation such as its disclosure rules is lacking, taking a more comprehensive look at the role of Ireland in international undesirable tax avoidance, it is evident that financial institutions and tax advisers make up a very small part of those implicated in recent leaks. A report on the tax intermediaries in the Panama papers[95] shows that in Ireland, financial institutions and tax advisers make up just 19.7% of the identified entities involved, the overwhelming majority of which were carried out by trusts and fiduciary companies. This suggests the bulk of the tax-avoiding practices is carried out by firms that may not typically be under the regulatory supervision of professional bodies.

Perhaps the regulatory initiative on which there is some published evidence of success is in the area of whistleblowing of taxpayers. Reportedly, according to Revenue, there has been a year-on-year increase in suspicious activities reported to them rising from 855 reports in the second half of 2015 to 3,387 in the first half of 2020. These reports have generated €4.9 million as a result of 2,971 reports in 2016 and €2.6 million from 4,734 reports in 2017[96].

4.4. Italy

It is difficult to assess the actual impact of the intermediaries' regulation and its incidence on tax compliance, although the Tax office has been investing in this for years. In general terms, there is no publicly available data about this matter, mostly because the distinction between aggressive tax planning and avoidance is anything but clear in the domestic system.

The Tax office pursues a policy of collaboration with the intermediaries (in particular with Chartered accountants, but also other professions are involved in some respects, including lawyers and labour consultants to name a few) sharing and defining best practices with them in terms of collaboration,

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93 HMRC, 2022, Raising Standards in the tax advice market – HMRC's review of powers to uphold its Standard for Agents, available at: https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrcs-review-of-powers-to-uphold-its-standard-for-agents/raising-standards-in-the-tax-advice-market-hmrcs-review-of-powers-to-uphold-its-standard-for-agents.

94 Notably, the double Irish scheme, which was eventually closed by the Irish revenue and used to great effect by Silicon Valley companies such as Apple (White, 2020).

95 Ibid, see footnote 1.

96 Gallagher, 2020, 'Massive rise in people reporting others for tax evasion'. Available at: Massive rise in people reporting others for tax evasion (irishtimes.com).

interpretation of the law and eventually ways and means to facilitate compliance.

4.5. Germany

Since the foundation of the Federal Republic of Germany and even before, the regulation of the profession has been the responsibility of the chambers of tax advisers. Regulation is strict, as described above, and members of the profession generally have a clear professional ethos. Therefore, phenomena such as those described in relation to the UK tend to be less of a problem in Germany. This assessment may be supported by the fact that at the centre of what is probably the biggest tax fraud in the history of the Federal Republic of Germany, the cum-ex and cum-cum-schemes (Spengel, 2021), were not tax advisers but banks that marketed these schemes to their clients. However it must be stated that there is no transparency as to the number and results of disciplinary proceedings of Chambers of Tax Advisers against professionals.

The German tax advisers' representatives argue that regulation and the tough entry exam secure high professional standards that protect the taxpayers' and tax authorities' interests alike. Tax advisers help and educate their clients in fulfilling their tax obligations but tax advisers also claim to defend their clients' interests against tax authorities and thus stabilize the legal system. To the best of our knowledge, there does not exist any research comparing the cost and quality of tax advisory services between countries with and without direct regulation of the industry. A comparison of the amount of lawsuits against tax advisers or premiums to professional liability insurance might shed some light onto this question.

4.6. The Netherlands

The emphasis on ongoing training, and the associations' disciplinary systems, has generally contributed to a positive perception of the quality of the Dutch tax profession. This similarly applies to the NOB's membership requirement to possess an academic fiscal law or fiscal economics degree and the increase in attention for ethics in these programmes which has likely increased the capability amongst future tax advisers to observe fiscal questions from different stakeholder perspectives (Boomsluiter & Hofman, 2020).

However, as societal and international concerns have endured about tax services provided by some tax advisers, political pressure has grown to enhance trust in the tax advisory profession. Resembling the preference of the Dutch Government for the tax advisory sector to come up with initiatives for improvement, the tax advisory bodies have adopted several measures, however for most of them it is too early to determine their impact on tax compliance. Whilst the adopted measures appear comprehensive, their effectiveness will be critically determined by their monitoring and enforcement in practice. Considering the unknown impact of the measures, it will be critical for the tax associations to report transparently and publicly about the working and outcomes of the revised arrangements as only this information may ensure society that the tax advisory bodies genuinely seek to ensure their members contribute to enhancing clients' tax compliance.

It is important too to highlight that although the Tax Principles adopted by the NOB in May 2022 apply with immediate effect, NOB members are allowed to delay applying the Tax Principles until 31 December 2023. In that case, the principle of 'comply or explain' applies and members are required to explicitly explain why and the extent to which they do not apply the principles (NOB, 2022).

The changes in relation to supervision of members are at an early stage, and the NOB states they will continue to be refined over the coming years. The introduction by the NOB of compulsory collegial exchanges between members are likely to be particularly beneficial for independent tax advisers and

small tax advisory firms, who will generally have limited opportunity for collegial exchange within their work practice. The system is likely to be of less relevance to advisers working in larger firms as these will often already have more formalised structures in place to enhance peer-to-peer learning and review the societal acceptability of services and tax propositions. However, as discussed above, firm internal regulations and practices also differ amongst the larger firms and it is likely that large firms demonstrate different capacities in practice to ensure their tax advisory work contributes to tax compliance. Further, a piece written on tax governance from the perspective of young members of the NOB (Jonge Orde van Belastingadviseurs – JOB) states that junior tax advisers regularly experience differences in their perception of tax advice or structures compared to more senior advisers, and that scope exists to improve firm internal discussions about these differences in viewpoints (Schuerman - JOB & NOB 2020).

5. WEAKNESSES/LOOPHOLES IN THE CURRENT REGULATION OF TAX INTERMEDIARIES

KEY FINDINGS

- There is concern about the small pool of tax advisers who are not members of any professional bodies in the four countries that practice professional self-regulation.
- There is concern about the potential for over-regulation and the adverse impacts of that.
- Without relevant data, it is unclear whether further regulations will reduce the incidence of tax evasion and undesirable tax avoidance.
- Alternatives beyond regulation should be considered to identify and deal with arguably a relatively small number of tax advisers (mostly not registered with any professional body) involved in facilitating tax evasion and undesirable tax planning schemes.

5.1. Introduction

Notwithstanding the increasingly regulated tax advisory marketplace, undesirable tax avoidance and tax evasion as reported in various leaks continue[97]. Consequently, it could be argued that the current regulatory framework is not effective[98]. However, it takes time for tax authorities and policy makers to evaluate the need for action against alleged perpetrators, so it may be that it is too early to tell. Although the extent to which current regulation is problematic remains unclear at this stage, we do identify a number of weaknesses arising from the existing state of play on regulation across the five countries.

5.2. United Kingdom

Engagement with the tax advice market and especially the targeting of advisers and others who facilitate undesirable tax avoidance has been ongoing over the past 20 years with incremental regulatory change as policies are evaluated and adjusted. The number of tax advisers at whom these measures are directed is very small, but there is some disquiet among the tax professional bodies that the measures may extend to 'good' advisers and that some form of safeguards are needed. There is some scepticism about the impact of the measures and a suggestion that promoters will continue to try to circumvent these regimes and there will remain a core of promoters in the absence of radical change.

In particular, the new powers for HMRC introduced in 2022 have raised concerns about reach. For example, that HMRC would be '*judge, jury and executioner*'. Naming a person as a promoter without sufficient evidence could cause reputational damage. HMRC have stated that it needs to be able to name a promoter at an early stage as a warning to the public.

First, the DOTAS rules have required regular updating since their introduction in 2004 to modify both scope and operation of the rules. The most recent issue now dealt with in Finance Act 2022 relates to speeding up the allocation of scheme reference numbers (SRN).

[97] See Annex.
[98] See Annex.

Secondly, with regards to POTAS, one problem that has been identified is that of 'phoenixism' which arises when a tax avoidance scheme has been defeated, but before HMRC issues a stop notice – apparently some promoters close the relevant business and start again in a new company. Changes introduced in 2022 address this problem.

Thirdly, there is a concern about the potentially wide reach of the enabler provisions which raises questions about an appropriate balance between acting against scheme promoters and acting against scheme users, as well as the impact of the timing of the action by HMRC.

In relation to regulation more broadly, one professional body representative has noted that even if there were a fully regulated market in the UK, it would not necessarily drive out the promotion of tax avoidance schemes, as such activity tends to be largely outside of the market for tax advice[99].

5.3. Ireland

At the moment, there are no market access rules for tax advice in Ireland. While the professional bodies have their codes of conduct, individuals who are not affiliated with any of the professional bodies are not subject to the same requirements. Therefore, a few '*bad apples*' can enable tax abusive activities and damage the reputation of the profession as a whole. How to identify and deal with those who are not members of a profession is a significant problem. Furthermore, trust and fiduciary companies are outside the scope of these professional bodies. The lack of market access rules also means the tax authority may have more difficulty in adapting to new players on the tax advisory scene such as virtual platform operators, crypto-currency managers, and financial technologists.

Secondly, there are now more and more regulations clamping down on tax avoidance activities and those who promote them. This can have the adverse effects of over-reporting which affects both the tax authority and the tax advisers themselves. The experience of the Sarbanes-Oxley Act shows that information overload can become a real problem[100] with more and more mandatory disclosures leading to decision-makers making worse decisions than if less information was made available to them. Tax authorities may be unable to accurately detect misleading and/or sensitive information with limited funds and tax advisers are likely to provide insufficient information due to negligence.

Third, the penalties for non-compliance are relatively low. An example is the DAC 6 regime where the maximum penalty in Ireland is €4,000 plus €400 per day for non-compliance thereafter. In comparison, in the Netherlands, its maximum is €830,000[101].

Fourth, many of the oversight bodies have stipulations that for example, half the board should be made of non-accountants, in an effort to increase board independence. Nevertheless, nearly all the members of the board tend to be in the corporate sector with expertise in legal and/or financial services, even if they are not accountants. More experts from academia and specialists outside the finance world[102] may provide some more independent perspectives.

5.4. Italy

In terms of weakness, it is possible to argue that it derives from fragmentation across the tax advisory marketplace. Several practitioners acting under different codes of conducts, ethical principles and rule

[99] Frank Haskey, ICAEW in evidence to House of Lords Economic Affairs Committee 2019.

[100] Paredes, T. A., 2003, Blinded by the light: Information overload and its consequences for securities regulation. *Wash. ULQ*, *81*, 417.

[101] HASLEHNER, W., PANTAZATOU, K., 2022, Assessment of recent anti-tax avoidance and evasion measures (ATAD & DAC 6), Publication for the Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

[102] The term is used in a broad sense, by including accountants, economists, corporate lawyers, and tax advisers.

of law result in somewhat chaotic scenarios, where on some occasions the intermediary tries to strike an agreement between the tax authority and the client, whilst others support the client's position on tax avoidance completely and do not seek an agreement/compromise with the tax authority.

A possible remedy to this would be to draft a common statute for tax intermediaries, which sets basic conditions that tax experts must abide by in order to interact with the tax office, and a stricter code of conduct for their activity. This new classification of 'tax intermediary' would not introduce a new profession as such, but rather a certification awarded to any tax expert, whether it be a lawyer, accountant, notary, who acts in concordance with the tax office, in respect of shared values and reciprocal trust. This would allow flexibility to the EU Member States in order to accommodate the figure of tax intermediary in domestic legislation, and moreover, would pave the road to a more precise European regulation on this. There is a common consensus, among mainstream academics and practitioners, on the fact that taxation has to be built on reciprocal trust between taxpayer and tax administration (in particular). Such (bilateral) trust demands qualified intermediaries to exist and to work effectively as they are the cornerstone of such a relationship.

Moreover, concerns exist as to the role played by the tax office in the country, whose competence cover both audit / control and regulatory framework via circular letters, rulings, regulations, and other legal instruments. In such a situation, the tax office is in the position to decide on the rules under which its own activity will be carried out, eventually eroding the rule of law and the separation of powers. It would be recommended to keep these two activities separated, giving back the regulatory power to the Ministry of Finance.

5.5. Germany

The regulated German tax advisory industry does not seem to suffer from loopholes in its regulation. On the contrary, tight regulation has come under the spotlight of the European Commission in its effort to eliminate barriers to open competition on the European market for professional services. In 2017 recommendations were issued to the Member States on national reforms for regulation in professional services (European Commission, 2021). This process has led to a change in the German tax advisory law (*Steuerberatungsgesetz*) which from 1st August 2022 onwards allows tax advisers to choose from a wider range of legal forms, to team up with members of other regulated professions and with individuals who are allowed to work as tax advisers under the law of another country.

Germany did not follow the recommendations to loosen up shareholding restrictions for tax advisory companies and it did also not liberalize less complex or routine tasks. Seemingly the Commission has identified monthly returns on VAT as such a task, whereas the German tax advisers' lobbyists fight for their privilege. They argue that monthly returns are as important as the yearly tax declaration and that unprofessional or less qualified service providers carry enormous risks for taxpayers and tax revenues alike (German Tax Advisers, 2021). In the meantime, some internet platforms have started preparing monthly VAT returns for their international platform users, thereby potentially violating professional law. It remains to be seen whether this will lead to more conflicts in future tax audits or not.

5.6. The Netherlands

An important feature of the Dutch system is the absence of a legal regulatory framework aimed at the tax advisory profession. Instead, the professional bodies who are responsible for the conduct and integrity of the Dutch tax profession have sought to strengthen their role in recent years in response to changes in public attitudes, especially by incentivising their members to incorporate stakeholder perspectives in tax advice, which, so it is hoped, will enhance taxpayers' compliance behaviour. It is challenging however to evaluate the impact of the efforts by the professional tax bodies on the services

and advice provided by their members, and the tax options selected by their clients due to a lack of empirical information on the implemented measures, whilst other measures have not yet been implemented, or are in the process of implementation.

Professional self-regulation has several recognised advantages, such as being more cost-effective and able to draw on sector expertise, whilst some have suggested the model may also better fit with the Dutch regulatory culture[103]. A drawback of professional self-regulation is that tax advisers who are not members of any of the tax bodies, are subject to limited regulation and it is this group of tax advisers on which many of the quality and tax compliance concerns focus in the Netherlands. The group of professionally unregulated advisers is however small as part of the total group of Dutch tax advisers, and, given their generally poor reputation, most individuals and companies in the Netherlands opt for a professionally regulated tax adviser[104]. Another feature which to some extent alleviates the shortcomings resulting from professional self-regulation is that some measures such as the recent disclosure requirements emanating from European Council directives apply to all tax advisers, regardless of whether they are part of a professional body.

Overall, it could be concluded that greater transparency about the role of the professional bodies and advisory firms on tax advice issued in practice by individual advisers is essential in order to determine to what extent recent measures are able to address concerns which have caused the diminishing reputation of the tax advisory profession in the Netherlands, but also internationally, in recent years.

[103] Anna Gunn, Q&A FISC Public Hearing on 'Case studies on Member States national tax policies - The Netherlands: implemented national tax reforms and the combat against aggressive tax schemes', European Parliament 28 March 2022. Recording retrieved from: https://www.europarl.europa.eu/committees/en/the-netherlands-national-tax-reforms-and/product-details/20220317CHE10018.

[104] See above (p.33) and Accountancy Vanmorgen, 2020, 'Kamervragen over malafide belastingadviseurs', retrieved from: https://www.accountancyvanmorgen.nl/2020/06/12/kamervragen-over-malafide-belastingadviseurs/.

6. POTENTIAL REMEDIES/ACTIONS TO ENHANCE THE REGULATORY SPACE FOR TAX INTERMEDIARIES

KEY FINDINGS

- Caution is required when developing new remedies in this regulatory space, to ensure they are tailored to country level contexts.
- Three potential remedies to enhance the regulatory space for tax intermediaries identified in previous research and by NGOs are: the development and implementation of an EU wide Code of Conduct for tax intermediaries, the introduction of mandatory Professional Indemnity Insurance for tax intermediaries, and the adoption of a more targeted approach to deal with tax intermediaries who enable undesirable tax avoidance.

6.1. Introduction

The preceding overview of country practices reveals considerable variation in general approach to the regulation of tax intermediaries, reflecting differing regulatory, administrative and policy styles (Howlett & Tosun, 2021). While there is a case for policy learning from other jurisdictions, caution is required in terms of how potential new regulations fit within an existing legal, institutional and regulatory context. In addition, as previously mentioned, both proportionality and subsidiarity must be borne in mind in developing regulatory change.

We also reiterate the need for clarity in relation to identifying each problem that calls for regulation and tailoring regulatory interventions that address particular problems. For example, a targeted approach to managing enablers of undesirable tax avoidance should be designed so as to prevent overreach, i.e. interfering with the work of non-enablers.

We outline below some potential additions to the tax intermediary regulatory space drawing on the very limited academic research in this area, and ideas put forward by academics, international organisations, and NGOs. Considerable further work would be needed to evaluate these proposals before moving towards implementation, in particular whether they should be mandated at EU level. It is worth noting that these approaches are not mutually exclusive and there is a need for them to be tailored to country level contexts.

6.2. EU Wide Code of Conduct

While professional bodies in every Member State have their own codes of conduct, there have been calls for a harmonised code of conduct that applies to tax intermediaries across countries, for example EU Member States. Notable attempts to this end include CFE's draft Ethics quality bar [105] as well as the IESBA consultations on the tax planning. The outcomes from the above two projects may help the EU in providing soft-law instruments for Member States to approve.

This need for an EU wide code of conduct framework learning from codes of conduct already in place has been an established recommendation in a previous EU report [106]. The authors of that report argue

[105] See footnote 61.

[106] Roxan et al., 2017, 'Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services' prepared for Policy Department A at the request of the Committee of Inquiry into Money Laundering, Tax Avoidance

that such an EU-wide code of conduct could be developed by the professional bodies with perhaps some input from the regulatory authorities'[107].

Codes of conduct can be found in many regulatory environments and their value is contested. In the field of research integrity, for example Desmond and Dierick (2021) examine research integrity codes in Europe, exploring divergences in national practices relative to the European Code. The authors note that some view codes of conduct as 'window dressing' to create an impression of concern about ethical conduct, often created in response to high profile scandals. They further recommend a normative framework to identify the aim of sanctioning misconduct (a legal dimension) as well as questioning the incentives that may run counter to integrous behaviour (a sociological dimension).

The value of an EU wide code of conduct needs careful consideration and would need to be weighed against the costs attached to monitoring compliance and sanctioning non-compliance.

6.3. Professional Indemnity Insurance

While HNWIs and some multinational companies are the subject of debate and leaks relating to undesirable tax avoidance, there is also an increasing recognition of the profile of a tax avoider also including a range of middle-class professionals who, for example in the UK, have been selling 'tax schemes' purportedly to help them save tax unaware that such schemes might actually be illegal and years later might see them with large tax bills they may be unable to pay[108]. This suggests that improving the standard of tax advice can also be a form of consumer protection.

Some suggestions, therefore, include providing a recourse in which citizens can hold tax advisers responsible for providing them with faulty/illegal tax advice. This can take several forms, but a notable approach would be through mandating that tax advisers take out professional indemnity insurance[109]. This will have the benefit of assuring taxpayers about the quality of tax advice, incentivise current tax advisers to improve their standards and deter unscrupulous tax advisers from participating in the tax advisory market or – in medium term - price them out of the market. There is however a problem of scope with this remedy. While tax intermediaries who interact directly with tax authorities on behalf of taxpayers can be monitored for compliance with a requirement to hold professional indemnity insurance, in many jurisdictions promoters and enablers of tax avoidance 'schemes' do so in a purely advisory capacity and may be beyond the reach of such regulation. Mandating professional indemnity insurance also comes with the counter-acting problem of costs of insurance being passed onto clients, making tax advice in general more costly for everyone.

6.4. Targeting Tax Avoidance Enablers

Following on from DAC 6 which requires mandatory disclosure of potential cross-border tax planning arrangements, some possible extensions have been suggested in the academic literature and by the Tax Justice Network (TJN).

Although the problem of leaving the penalty regime in DAC 6 to various countries has already been extensively discussed[110], an additional suggestion by the Tax Justice Network is for penalties that

and Tax Evasion (PANA). Available at: Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services an legal service (europa.eu).

[107] CFE Europe is proposing an ethics quality bar but it is important that must apply to lawyers as well.

[108] Morse, 2021. 'Independent Loan Charge Review: report on the policy and its implementation'. Available at: Independent Loan Charge Review: report on the policy and its implementation (publishing.service.gov.uk).

[109] See HMRC Consultation on improving standards in tax advice. Available at: Raising standards in the tax advice market - summary of responses and next steps (publishing.service.gov.uk).

[110] Ibid, see footnote 106.

accrue a percentage of the scheme's fees /values rather than simply fixed penalties which have dominated the penalty regime in many EU countries[111]. Non-monetary penalties such as criminal sanctions, disengagement of tax advisory organisations and loss of licence are also encouraged. Naming and shaming tax intermediaries, similar to the UK POTAS rules may also be considered (Noked & Marcone, 2022). Since many countries already have such provisions, providing a suite of potential approaches by the EU could be helpful. In addition, the TJN recommends, the details of tax avoidance schemes from DAC 6 be published to ensure transparency[112].

In addition to these measures, the OECD in its report advocates for strong rules against promoters of tax avoidance schemes with clear indicators and intelligence that makes them easy to identify; a civil penalty regime for being a professional enabler; strengthening whistleblowing and reporting structures; disqualification of company directors and whole of government approaches to tax fraud (OECD, 2021). While there is a clear case for punitive measures where fraud or illegality is present, the application to undesirable tax avoidance is more problematic, given the difficulties in defining tax avoidance and the context specific nature of determining what is undesirable.

[111] See TJN critique of the OECD rules, some of which are also relevant in the DAC 6 context. Available at: OECD rules vs CRS avoidance strategies: not bad, but short of teeth and too dependent on good faith - Tax Justice Network.

[112] Ibid.

7. CONCLUSION

7.1. Summary

Over the past decade, particularly at the EU level, the spotlight has increasingly been shone on the role and activities of tax intermediaries in enabling and promoting undesirable tax avoidance. Significant attention has been given to their activities in policy-making circles, resulting in some cases in more regulation at the levels of government and professional bodies [113]. This report provides an overview of the regulatory framework for tax intermediaries focussing on four EU countries and one non-EU country [114].

The 'tax advisory' profession, with the exception of Germany, is not protected. Nevertheless, most tax advisers have accounting or legal training and are members of either the accounting, tax or legal professional bodies and there is typically significant reliance on these bodies to regulate the profession and enforce ethical codes of conduct. Although all countries in this study have NGOs participating in the tax advice market, rather uniquely, in the case of Italy, trade unions are also actively involved, but their role tends to be mostly in compliance work as opposed to tax planning.

While the legal framework varies among countries and tax advisers are technically still self-regulatory in four of the five countries, the regulatory environment of the tax profession has changed significantly over recent years. This is partly due to the increase in regulations aiming to combat undesirable tax avoidance that has been introduced nationally and at the EU level but also, we are seeing more oversight of the activities of tax intermediaries and hard laws introduced by national parliaments. The UK and the Netherlands, in particular, have developed more stringent rules (hard and soft-law instruments) over the last few years and tax advisers are increasingly focussing on managing and considering reputational risks and social acceptability in the context of tax planning advice.

The impact of these regulations on tax compliance across these EU Member States remains uncertain, given that most intermediary regulations such as DAC 6 have been implemented quite recently. Furthermore, there seems to be a convergence towards a more conservative approach to tax planning, as evidenced by the apparent reduced level of off-the shelf tax planning schemes being marketed. It is unclear what percentage can be attributed specifically to tax intermediary regulation and what may be attributed to reputational risks as well as other regulations targeting taxpayers on the demand side.

In terms of weaknesses of the current tax advisory marketplace the market access rules remain problematic. Given that the majority of promoters of tax avoidance schemes are specialist tax advisers often outside the ambit of the professional bodies, it might seem counter-intuitive to continue to increase the legislative burden of law-abiding intermediaries without tightening entry to the tax advisory market. There is a chronic lack of data on the direct effectiveness of current regulations in reducing tax fraud and over-regulation could become a problem.

Finally, we outline a set of possible regulatory options, recommended by others, for the EU to explore going forward with regard to how to regulate the tax intermediary space. We caveat these with concerns about the need to recognise the importance of national context. Before pursuing any course of action, it would be wise for the EU and national governments to carry out an impact evaluation of the current measures that are already in place. Arguably in recent years there has been some mission creep, for example, in relation to disclosure requirements. Whilst initially such requirements might have

[113] Some notable academics include Prem Sikka and John Hasseldine, who have published on the subject with different perspectives (Hasseldine & Morris, 2013; Sikka, 2013).

[114] UK, Ireland, Netherlands, Germany and Italy.

been introduced primarily to provide early signals to tax authorities (relating to certain tax planning activities), their purpose may now be perceived, rightly or wrongly, as going beyond this, attempting to play a significant role in curbing undesirable tax planning activities. Compliance with mandatory disclosure requirements can be very costly, and careful cost/benefit analyses of existing requirements and any further similar disclosure rules being considered would be recommended.

Overall, this report suggests that professional judgement will always be central to tax advice, it cannot necessarily be supplanted with technology, legislation or more reporting to the authorities. Notwithstanding the many and varied recent efforts at different levels to curb tax fraud, it continues to prevail, suggesting perhaps that while regulation is important, it is also important to strengthen the ethics of the profession. Here, the ongoing IESBA inquiry into an ethical framework for tax planning may provide a guide to the European Union.

7.2. Future Research

This report has highlighted the importance of national context and the need for a more nuanced approach to the regulation of tax intermediaries. Further research is needed to analyse the different types of intermediary by client base, the type of work they do and the respective risks they pose to the integrity of tax systems. The nature of any misconduct varies by category of intermediary and regulatory interventions should be matched carefully to avoid overreach. The application of the principles of responsive regulation [115] that have been employed in the direct management of taxpayer compliance in many tax authorities, would be worth exploring for the governance of tax intermediaries. This entails recognition that regulators should have a range of strong powers that are only used in relation to deliberate or negligent rule breaking (Hodges 2013:242). There is much to be learned from other areas of regulation that have been more extensively studied than tax regulation.

More specifically, the following areas of research are recommended:

1. Extensive comparative study of current regulation

- Carry out a comprehensive study of all EU countries

This report covers only 4 EU countries and one non-EU country. These countries are geographically proximate and relatively similar in terms of economic and social conditions. A comprehensive comparative study will include dissimilar countries and therefore most likely reveal additional areas of concern.

- Examine the impact of hard and soft law instruments targeting the work of tax intermediaries

The regulatory environment in which tax intermediaries operate has reduced the tax autonomy of tax advisers across the EU. There are now laws targeting tax enablers as well as stronger codes of conduct in the professional bodies as well as laws addressing audit reform, whistleblowing, and legal professional privilege. However, the impact and assessment of these instruments has been limited. Future research needs to explore the impact of these hard and soft-law instruments to ensure that laws are proportional and targeted towards addressing the problem rather than simply increasing the burden for all tax intermediaries.

- Examine the impact of the DACs

Furthermore, in line with comments made at recent EU public hearings about reinforcement of current

[115] There is a large academic literature on responsive and risk based regulation broadly and also in the tax context, for an overview from one of the seminal authors, see Braithwaite (2011).

rules regulating the work of tax advisers in recent years notably through its DAC 6 and the upcoming DAC 7 and DAC 8 that are in the pipeline, there is need for impact evaluation and case studies on the impact of these legislations on tax avoidance and compliance as well as its effects on the compliance costs and administrative burden for tax intermediaries. As the DAC 6 legislation is relatively new, it will take some time until enough data is available to identify and measure its impact.

2. Assess feasibility of uniform measures in light of different country and global institutional contexts

Assessing the effectiveness of EU wide measures should take account of their contribution to delivering the EU's strategic objectives as well as considering the costs from the point of view of the national revenue and the administrative burden of tax officials, taxpayers and their advisers. In this regard, there is scope to develop a trade-off evaluation framework.

3. Regulating the behaviour of 'bad apples'

Evidence from the countries in this report suggests that the bulk of tax advisers are law abiding and that a few bad apples may be the problem with most of them outside the scope of the professional bodies. Further research is needed to explore the characteristics of these 'bad apples', and crucially how we manage the behaviour of these tax advisers if they are not members of any professional bodies. This research would include identifying and addressing the implementation of appropriate sanctions.

4. Assess the differences between countries with and without direct regulation

To the best of our knowledge, no research has been carried out on the differences in the cost and quality of tax advisory sources between countries with and without direct regulation of the industry. In its absence it is difficult to say how different market access rules may impact on the tax advisory profession, and the occurrence of undesirable tax avoidance and/or tax evasion by taxpayers. Further research may also explore the need for tightening up the market access rules in countries with professional self-regulation such as the development of a common statute for tax intermediaries which is flexible enough to incorporate a country's unique features.

7.3. Concluding comments

Tensions will always exist between taxpayers, tax administrations and intermediaries within and across tax jurisdictions but it is important for stakeholders to continue to work together, build and enhance mutual trust and try to find the right balance so that regulation is a positive force in securing a well-functioning, fair and user-friendly tax system.

In conclusion, while there are strong regulations in all five countries appropriate to creating a cooperative environment between tax intermediaries and the tax officials which are necessary and continue to be necessary, there is a consensus that there is a small number of enablers of tax crime who appear to be substantially outside the reach of the professional bodies and that focus should be on targeted approaches towards this part of the tax intermediary market rather than more regulations for all. Consistent with responsive regulation theory, this aligns with the OECD strategy which argues for strategies that identify, deter, and disrupt these small number of professional enablers rather than targeting 'the majority of professionals (who) are law-abiding and play an important role in assisting businesses and individuals to understand and comply with the law and helping the financial system run smoothly' (OECD 2021. p.7).

REFERENCES

- Accountancy Vanmorgen, 2019, *NOB wijzigt samenstelling Raad van Tucht*. Retrieved from: https://www.accountancyvanmorgen.nl/2019/06/27/nob-wijzigt-samenstelling-raad-van-tucht/.
- Adams, T.L., 2017, *Self regulating professions: past, present, future Journal of Professions and Organization,* 2017, 4, pp. 70–87.
- Andeweg, R. B., Irwin, G. A., & Louwerse, T., 2020, *Governance and Politics of the Netherlands*. Bloomsbury Publishing.
- BAM, 2022, *Forty Dutch multinationals embrace new Tax Governance Code*, retrieved from: https://www.bam.com/en/press/press-releases/2022/5/forty-dutch-multinationals-embrace-new-tax-governance-code?position=0&list=lg0tWusEBf1-XtgNaHpqZjWTNo99X_hhrlaFewJkjkg.
- Bincyk, G., 2015, Die Sicht der Europäischen Kommission auf die Freien Berufe in Europa. In Berufstagung des Deutschen wissenschaftlichen Instituts der Steuerberater e.V. 2014. Stellung und Zukunft der freien Berufe in Europa. DWS Schriftenreihe Nr. 32, Berlin: Verlag des Wissenschaftlichen Institus der Steuerberater GmbH Berlin, S. 93-98.
- Boomsluiter, E. and Hofman, C., 2020, Ethiek, een gezamenlijke verantwoordelijkheid. In: H. Gribnau (Ed.). Tax governance, maatschappelijke verantwoordelijkheid en ethiek. Tijd voor een code? pp. 29-42.
- Braithwaite, J., 2011, *The Essence of Responsive Regulation*. University of British Columbia Law Review, 44, 475-520.
- Bundesrechtsanwaltskammer, 2021, Fachanwälte zum 01.01.2021, Berlin.
- Bundessteuerberaterkammer, 2021, Berufsstatistik der Bundessteuerberaterkammer 2021, Berlin.
- CAI, 2022, *Annual Report 2021*. Available at: chartered-accountants-ireland-annual-report-2021.pdf (charteredaccountants.ie).
- De Groen, W.P., 2017, Role of Advisors and Intermediaries in the schemes revealed in the Panama Papers, publication for the committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/602030/IPOL_STU(2017)602030_EN.pdf.
- Desmond, H. and Dierick, K., 2021, *Research integrity codes of conduct in Europe: Understanding the divergences*. Bioethics.35:414–428.
- De Widt, D., Mulligan, E. and Oats, L., 2016, *Regulating tax advisers: a European comparison of recent developments and future trends*.
- De Widt, D. and Oats, L., 2017, *Risk assessment in a cooperative compliance context: a Dutch-UK comparison*. British Tax Review (2), pp. 230-248.
- De Widt, D. and Oats, L., 2022, *Imagining cooperative tax regulation: Common origins, divergent paths*. Critical Perspectives on Accounting, article number: 102446. (10.1016/j.cpa.2022.102446).
- ETAF, 2022, *ETAF welcomes the FISC hearing on reinforcing the regulation of tax intermediaries.* Available at: https://www.etaf.tax/index.php/newsarea/283-press-release-etaf-welcomes-the-fisc-hearing-on-reinforcing-the-regulation-of-tax-intermediaries.

- European Commission, 2021, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on taking stock of and updating the reform recommendations for regulation in professional services of 2017, Brussels*.
- Evans, L. and Honold, K., 2007, *The Division of Expert Labour in the European Audit Market: The Case of Germany*, in: Critical Perspectives on Accounting, 18 (1), S. 61 -88.
- Financial Times, 2016, *HMRC prosecutions unlikely after Panama Papers Leak*, HMRC prosecutions unlikely after Panama Papers leak | Financial Times.
- FISC, 2022, *The Netherlands: national tax reforms and the combat against aggressive tax schemes* Available at: https://www.europarl.europa.eu/committees/en/the-netherlands-national-tax-reforms-and/product-details/20220317CHE10018.
- FISC, 2022, *Hearings on how to reinforce the regulation of Tax Intermediaries to create an intermediary sector that ensures a fair and user-friendly tax system*. Available at: https://multimedia.europarl.europa.eu/en/webstreaming/fisc-committee-meeting_20220425-1345-COMMITTEE-FISC.
- Fitzgibbon and Hudson, 2021, *Five years later, Panama Papers still having a big impact*. Available at: Five years later, Panama Papers still having a big impact – ICIJ.
- Flood, J., 2011, *The re-Landscaping of the Legal Profession: Large Law Firms and Professional Re-regulation*, *Current Sociology*, 59/4: 507–29.
- Freedman, J., and Loutzenhiser, G., 2022, *Tax policy in the UK post-Brexit*. Oxford Review of Economic Policy, 38(1), 188-204.
- Gallagher, 2020, *Massive rise in people reporting others for tax evasion*. Available at: Massive rise in people reporting others for tax evasion (irishtimes.com).
- German Tax Advisers, 2021, Vertragsverletzungsverfahren Europäische.
- Gohres, W.J.D., 2009, Regulering belastingadviseurs: 'Vrij beroep of keurslijf'? WFR 6834: 1409-1410.
- Hahn, T. A. and Ormeño Pérez, R., 2020, *Tax professionals in the academic spotlight: A review of recent literature*. Journal of Tax Administration, *6*(1), 96-161.
- Hasseldine, J., and Morris, G., 2013, *Corporate social responsibility and tax avoidance: A comment and reflection*. In Accounting Forum (Vol. 37, No. 1, pp. 1-14). Taylor & Francis.
- Het Register, 2021, Wettelijke regulering van het beroep van belastingadviseur. WTF, December (6).
- HMRC, 2022, *Raising Standards in the tax advice market – HMRC's review of powers to uphold its Standard for Agents*, available at https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrcs-review-of-powers-to-uphold-its-standard-for-agents/raising-standards-in-the-tax-advice-market-hmrcs-review-of-powers-to-uphold-its-standard-for-agents.
- Hodges, 2013, *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics*, Hart Publishing, Oxford and Portland Oregon.
- Howlet, M. & Tosun, J., 2021, *The Routledge Handbook of Policy Styles*, Taylor & Francis.
- IESBA, 2021, *Handbook of the International code of ethics for professional accountants*. Available at: IESBA-English-2021-IESBA-Handbook_Web.pdf (ifac.org).

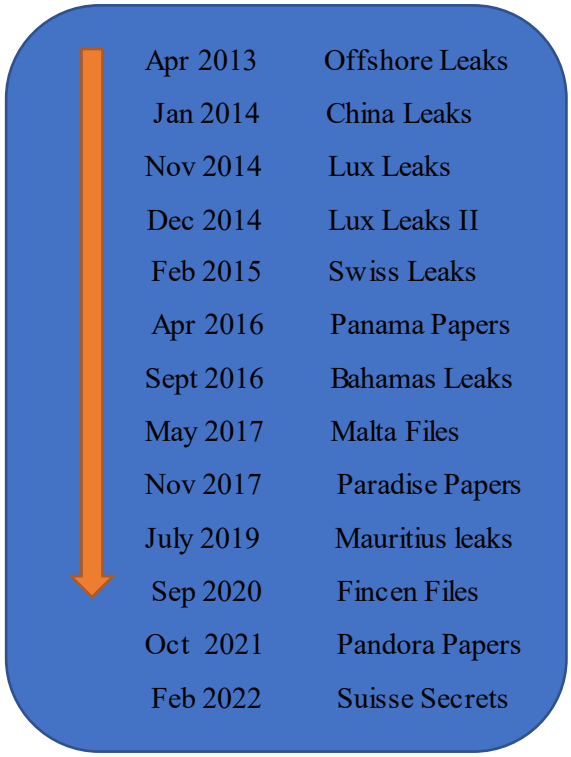
- ING., 2012, Bedrijfsmodel advocatuur langzaam aan vernieuwing toe. Amsterdam: ING Economisch Bureau.
- Jones, C., Temouri, Y., & Cobham, A., 2018, *Tax haven networks and the role of the Big 4 accountancy firms*. Journal of world business, 53(2), pp. 177-193.
- Markus, Hugh, B., 1997, *The History of the German Public Accounting Profession*, New York, Garland Publishing.
- Morse, 2021, *Independent Loan Charge Review: report on the policy and its implementation*. Available at: Independent Loan Charge Review: report on the policy and its implementation (publishing.service.gov.uk).
- NOB, 2016, Persbericht: Reactie NOB op publicaties over leden betrokken bij trustactiviteiten voor cliënten van Mossack Fonseca, available at: https://www.nob.net/persbericht-reactie-nob-op-publicaties-over-leden-betrokken-bij-trustactiviteiten-voor-clienten-van.
- NOB, 2022, NOB Tax Principles, adopted on and effective from 7 April 2022. Retrieved from: https://www.nob.net/file/134557/download?token=AyAIrhPK.
- Noked, N. & Marcone, Z., 2022, *Targeting Tax Avoidance Enablers*.
- NOS, 2021, Duizenden belastingconstructies gemeld door nieuwe wet, minder dan verwacht. 21 June. Available at: https://nos.nl/artikel/2385962-duizenden-belastingconstructies-gemeld-door-nieuwe-wet-minder-dan-verwacht.
- Oats, L. & Morris, G., 2017, *Tax avoidance, power, and politics*. In The Routledge companion to tax avoidance research (pp. 458-471). Routledge.
- OECD, 2008, *Study into the role of tax intermediaries*.
- OECD, 2013, *Tax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies*, OECD Publishing, Paris, https://doi.org/10.1787/9789264200814-en.
- OECD, 2018, *OECD/G20 Base Erosion and Profit Shifting Project Tax Challenges Arising from Digitalisation-Interim Report 2018 Inclusive Framework on BEPS*. OECD.
- OECD, 2021, *Ending the Shell Game: Cracking Down on the Professionals who Enable Tax and White Collar Crimes*. Available at: https://www.oecd.org/tax/crime/ending-the-shell-game-cracking-down-on-the-professionals-who-enable-tax-and-white-collar-crimes.pdf.
- Paredes, T. A., 2003, *Blinded by the light: Information overload and its consequences for securities regulation.* Wash. ULQ, 81, 417.
- Peppelenbosch, F., 2021, *Opinie: Interview met de nieuwe NOB-voorzitter Niels Boef*, NL Fiscaal (18), 9 July 2021. Retrieved from: https://www.nlfiscaal.nl/nlfiscaal-doc/B4AED2BAC79C37F8C125870A00301ABD.
- Power, 2021, *Irish banks and funds used in multibillion euro tax fraud by hedge funds, traders*. Available at: Irish banks and funds used in multibillion-euro tax fraud by hedge funds, traders – The Irish Times.
- Public Accounts Committee, 2013, *Tax avoidance: the role of large accountancy firms*. London: HoC.
- Public Accounts Committee, 2015, *Tax avoidance: The role of large accountancy firms (follow-up)*. Thirty-eighth report of session 2014, 15.

- Rennebarth, E., 2021, Die Ergebnisse der Steuerberaterprüfung 2020/2021 - Analyse der aktuellen Zahlen auch im Kontext früherer Prüfungen, in: DStR, 38, S. 2267-2272.
- Revenue, 2019, *Guidance Notes on Mandatory Disclosure Regime*. Available at: Guidance Notes on Mandatory Disclosure Regime (revenue.ie).
- Revenue, 2021, *Failure by an Agent to meet the Professional Standards of a Professional Body*. Available at: Revenue referrals to Professional Bodies under S851A TCA 1997 - Failure by an Agent to meet the Professional Standards of a Professional Body.
- Roxan, I., Kamath, S. and De Groen, W., 2017, *Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services,* publication for the committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/602029/IPOL_STU(2017)602029_EN.pdf.
- Schuerman, Y. (JOB & NOB), 2020, Tax governance vanuit het perspectief van de jonge NOB. In: H. Gribnau (Ed.). Tax governance, maatschappelijke verantwoordelijkheid en ethiek. Tijd voor een code? pp. 87-89.
- Seeling, H. & Visser, M., 2005, Taxpayer wins Supreme Court verdict over due diligence reports. International Tax Review 17 (1): 29-31.
- SEO Amsterdam Economics, 2019, De Nederlandse markt voor wettelijke controles. SEO Economisch Onderzoek.
- Sikka, P., 2013, *Smoke and mirrors: Corporate social responsibility and tax avoidance—A reply to Hasseldine and Morris*. In Accounting Forum (Vol. 37, No. 1, pp. 15-28).
- Spengel, Ch., 2021, *Statement for the Public Hearing of the Subcommittee on Tax Matters of the European Parliament on the Cum-Ex/Cum-Cum Scandal*, 24 February 2021, available at: https://www.bwl.uni-mannheim.de/media/Lehrstuehle/bwl/Spengel/Dokumente/Medien/Spengel_Statement_European_Parliament_FISC_2021-02-24.pdf/flipbook).
- Sporken, E., van der Vegt, J. & Dols, H., 2011, Netherlands. In Anuschka Bakker and Marc M. Levey (eds.). *Transfer Pricing and Dispute Resolution*. Amsterdam: IBFD, 507-556.
- Taxation Disciplinary Board, 2021, *Annual Report 2020*. Heathfield.
- Van Horzen & Peppelenbosch, 2018, *Opinie: Interview met de nieuwe NOB-voorzitter Bartjan Zoetmulder*, NL Fiscaal (48), 20 September 2018. Retrieved from: https://www.nlfiscaal.nl/nlfiscaal-doc/6403ACA4434104B3C125830B00512CD6.
- VNO-NCW, 2022, Tax Governance Code. Retrieved from: https://www.vno-ncw.nl/sites/default/files/25580_20220219_vno-ncw_tax_governance_code_eng_-_1_v4.pdf.
- Von Lewinski, Kai, 2015, Regulierung der Steuerberater in Europa – ein Strukturüberblick. In Berufstagung des Deutschen wissenschaftlichen Instituts der Steuerberater e.V. 2014. Stellung und Zukunft der Freien Berufe in Europa. DWS-Schriftenreihe Nr. 32. Berlin: Verlag des Wissenschaftlichen Instituts der Steuerberater GmbH Berlin, pp. 75-92.

- Waterval, D., 2021, Belastingadviseurs melden duizenden mogelijke zaken van belastingontwijking. Trouw, 21 June.
- White, J., 2020, *US companies move on from double Irish*. International Tax Review.

ANNEX

Figure 1: Timeline of Leaks[116]



[116] Authors computation based on leaks provided by the ICIJ.

Table 2: Overview NOB disciplinary proceedings 2020 and 2021

2021	Date and case number	Outcome	If applicable, disciplinary measure for NOB member	Outcome if case proceeded to Board of Appeal (including date and case number)
8	3 December 2021 T 398	The complaint was ruled unfounded		
7	18 October 2021 T 396	The complaint was ruled unfounded.		
6	7 May 2021 T 395b	The complaint was partly accepted and partly ruled unfounded.	Written warning	
5	7 May 2021 T 395a	The complaint was ruled unfounded.		
4	15 March 2021 T 393	The complaint was ruled unfounded.		The complaint was ruled unfounded (8 March 2022 - B 112)
3	4 February 2021 T 394	The complaint was ruled unfounded.		
2	12 January 2021 T 391	The complaint was accepted.	Written warning	
1	11 January 2021 T 392	The complaint was partly ruled inadmissible and partly ruled unfounded.		
2020	**Date and case number**	**Outcome**	**If applicable, disciplinary measure for NOB member**	**Outcome if case proceeded to Board of Appeal (including date and case number)**
4	10 November 2020 T 390	The complaint was ruled unfounded.		
3	7 September 2020 T 389	The complaint was ruled unfounded.		
2	15 April 2020 T 388	The complaint was ruled unfounded.		The complaint was ruled unfounded (8 maart 2022 - B 109)
1	19 March 2020 T 382	The complaint was ruled unfounded.		

Source: own composition, based on tribunal rulings as published by the NOB, available via: https://www.nob.net/jurisprudentie-raad-van-tucht & https://www.nob.net/jurisprudentie-raad-van-beroep.

This study provides an overview of the regulatory environment of tax intermediaries. It presents a comparative analysis of five selected countries (4 EU, 1 Non-EU). For each country, it provides an understanding of the landscape of the tax profession, the current regulatory framework and its impact on tax compliance and draws attention to some weaknesses across this regulatory space. It also highlights some proposed remedies and direction for further in-depth research in this area.

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