Tax professionals under societal pressure: a Dutch case study on responses to BEPS

Hutten, E.

9 Tax professionals' responses to the BEPS-related developments

9.1 Introduction

Chapters 6-8 explore tax professionals' responses to the BEPS-related developments in the Dutch corporate tax field taking two different approaches. The discursive approach, encompassing an exploration of tax professionals' attempts to legitimate and de-legitimate corporate tax planning, is described in Chapter 6. The identity approach is discussed in Chapter 7 and 8. The role of societal norms in the practice of corporate taxation was explored by investigating tax professionals' identity perceptions in Chapter 7. Chapter 8 provides an account of the way in which tax professionals' ideas of professionalism have altered in response to the public criticism of corporate tax planning. This chapter integrates and analyzes these findings further by applying Oliver's (1991) typology of strategic responses. The application of Oliver's (1991) framework allows the present study to classify tax professionals' responses from conforming to resistant (section 2.3). In doing so, this chapter will answer the main research question: How do tax professionals respond to the BEPS-related developments?

9.2 Tax professionals' responses

Tax professionals in the Dutch corporate tax field were very much aware of the developments in their institutional environment. Further, they recognized that the BEPS-related developments threatened the legitimacy of their professional practice of corporate tax planning, and some felt that they had become 'the new banker'. Hence, it is clear that tax professionals were aware of the tension between societal expectations of professional behavior and their involvement in corporate tax planning. The empirical analysis of tax professionals' responses to these BEPS-related developments in the Dutch corporate tax field shows that individuals' strategic responses to societal pressure varied from acquiescence to manipulation (Oliver, 1991). Furthermore, they engaged in different tactics as well. Tax professionals' responses are analyzed in more detail below.

9.2.1 Compliance

This study shows how tax professionals accede to the societal pressure in their institutional environment. More specifically, some tax professionals engaged in the “conscious obedience to or incorporation of values, norms, or institutional requirements” (i.e., compliance; Oliver, 1991, p. 152). This strategy of conformity is considered an active strategy[1] of acquiesce. Consistent with Oliver's (1991) framework, legal coercion appeared an important determinant of tax professionals' compliance with societal expectations. Hence, compliance is enforced by means of regulatory authority rather than voluntary (DiMaggio & Powell, 1983; Pfeffer & Salancik, 1978; Scott, 1987) because actors aim to avoid sanctions associated with deviance (Oliver, 1991). Compliance with changing legal norms was particularly evident when tax professionals explained how they had to adjust their corporate tax practice to new anti-avoidance measures that were being introduced in response to the BEPS-related developments (Chapter 7 and 8).[2] Corporates had to ensure that their tax affairs were compliant with new legislation, tax advisors assisted corporates in achieving compliance, and tax administrators had to adjust their enforcement strategy and administrative practice.

In the case of tax professionals, complying with the law is a natural part of professional practice. Expertise and sophisticated knowledge are defining characteristics of professions (e.g., Scott, 2008; Muzio et al. 2017). Hence, professionalism requires tax professionals to stay on top of the latest developments in tax law to enable them to correctly apply (new) legal norms in their professional practice (Chapter 7). In this regard, tax professionals were adamant about the unacceptability of non-compliance and assisting in (illegal) tax evasion, similar to the results obtained by Doyle et al. (2009) and Radcliffe et al. (2018). This implies that taking legal measures in order to alter the professional practice of corporate taxation is likely to be highly effective and stresses the importance of non-tax professional actors' advocacy work (section 5.3.3). Arguably, this mechanism is particularly effective in the case of legal professions, such as the tax profession, because it does not solely rely on the deterring effect of sanctions (Oliver, 1991). As professional identities are generally highly valued (Caza & Creary, 2016), performing well in this role is important for individuals' self-esteem and well-being (Tajfel & Turner, 2004; Thoits, 1983). Furthermore, mastering technically challenging anti-avoidance legislation instills professional pride and provides individuals with status within the profession. As professionalism in taxation requires state of the art expertise in tax law, tax professionals have an intrinsic motivation[3] to comply with the law as well. Hence, professionalism in taxation facilitates change through regulatory intervention. According to tax professionals' legalistic views, the legislator is the primary legitimate authority to alter the practice of corporate taxation (Chapter 6).

1 As opposed to the more passive tactics of acquiescence: mimicry and habit (Oliver, 1991).

2 The abolition of CV/BV-structures in response to rules that neutralize hybrid mismatch arrangement is exemplary for this type of compliance.

3 In the tax compliance literature, the intrinsic motivation to comply is often referred to as ‘tax morale’ (for example, see Halla, 2010).

Although adopting new legislation in the professional practice is 'business as usual', the results do show that the legislative measures had implications for the nature of tax professionals' roles. These implications, however, differed between tax professionals working in the commercial practice of corporate taxation and those working for the government. The role of tax professionals working in commercial practice is dual in nature (Frecknall-Hughes & Moizer, 2015). One the one hand, these professionals assist corporate taxpayers in achieving tax compliance and on the other hand, they enable corporate tax planning. The introduction of several reporting requirements[4] increased the amount of compliance work in commercial practice. Furthermore, the focus of corporate tax planning shifted from 'traditional' tax planning practices to transfer pricing. Hence, while corporate tax planning in general was still perceived to be a legitimate practice, the role of 'tax planner' in commercial practice appears to have lost prominence in response to the regulatory changes.

The nature of the role of tax professionals working for the government had changed as well. The fact that regulatory measures were increasingly being developed by international institutions[5] and that some legislative measures required professionals working for the tax administration to take into account foreign governments' interests are particularly consequential. As a consequence of these developments, the perspective of tax professionals working for the government was increasingly outward-looking and their role increasingly encompassed international collaboration as opposed to competition. Hence, these regulatory developments legitimated foreign governments and tax administrations as stakeholders in tax governance.

However, tax professionals' compliance with the introduced legal measures and the corresponding changes in the nature of the professional practice is most likely insufficient to align professionalism in corporate taxation with societal expectations. First, the law can never capture societal expectations perfectly. The law necessarily contains 'vagueness' (Endicott, 1999) and human behavior is difficult to capture in general (legal) norms (Happé, 2015). Furthermore, the legislator cannot fully anticipate enactment of the law in practice (Kronman, 1993). As such, opportunities for tax planning that violate societal expectations of appropriate tax planning for example, are likely to persist. Add to this the fact that some tax professionals – tax advisors in particular – take pride in developing 'clever' and 'creative' tax planning schemes, and the cat-and-mouse game between governments, and corporates and tax professionals is likely to continue.

Second, society's request for ethical tax practices and for tax professionals to take into account the public interest arguably requires tax professionals to move beyond such legalistic views of their professional practice. Hence, tax professionals' legalistic views of taxation are precisely what the actors outside of the profession are criticizing (Chapter 5 and 6): "We're not

4 Related to CbCR, Mandatory Disclosure, etc.

5 Namely the OECD and the EU.

accusing you of being illegal, we're accusing you of being immoral" – Margaret Hodge. While our results reveal that compliance with new legislation has altered the boundaries of the professional practice of corporate taxation, it has not been able to eliminate legalistic views altogether. As complying with changing regulation is 'business as usual', tax professionals do not have to adjust their ideas of professionalism in taxation to accommodate such compliance.

As this broader call for more ethical practices is not backed by enforceable legal norms, compliance to such societal expectations is at tax professionals' discretion. Consequently, tax professionals have the opportunity to resist pressure from their institutional environment. Indeed, when it comes to societal expectations that have not been codified, tax professionals' responses were more diverse and ranged from attempting to compromise to active resistance. While a few tax professionals complied with societal expectations by taking into account ethics in their professional practice, most respondents engaged in responses that can be classified as 'resistance' (Oliver, 1991). Consequently, the institutionalization of ethics in the professional practice of corporate taxation – as opposed to legal norms – is less straightforward and is dependent on the discretion of individual tax professionals.

9.2.2 Compromise and manipulation

While many tax professionals indicated that professionalism in corporate taxation required that ethics are not taken into account, some tax professionals working in commercial practice did alter their professional practice in response to non-legally coercive societal pressure – albeit in different ways and to varying degrees. Arguably, these different responses reflect tax professionals' attempts to fit societal demands into their professional practice. Consistent with the scholarly work that explains that the public interest is ambiguous and unclear (Dellaportas & Davenport, 2008), tax professionals argued that 'fair share' was too ambiguous to apply in practice. This view was expressed both in interviews and in scholarly work by tax professionals.[6] Consequently, a straightforward way to incorporate the public interest in the corporate tax planning practice is lacking (Anesa et al., 2019). Hence, in order to be able to take ethics and the public interest into account, tax professionals have to 'translate' what this means to their professional practice. While Oliver (1991) recognizes that the content of the

6 This refers to the discussion of the role of ethics in the corporate tax practice that has taken place in the professional journal 'Weekblad Fiscaal Recht'. In particular, the following articles: 'Fiscale ethiek voor iedereen' by Stevens (2015), 'Fiscale ethiek voor multinationals' Happé (2015), 'Tussen ethiek en wet: een derde weg' by Bender (2017) and 'De invloed van maatschappelijke opvattingen op het beroep van belastingadviseur by Albert (2017).

constituents' demand is a predictor of actors' responses, this finding extends that knowledge by arguing that the clarity (i.e., ambiguity) of the demand is a feature that should be taken into account: societal expectations of professional behavior are not necessarily clear to the professionals in question.

An important factor that influenced how tax professionals dealt with changing societal expectations were the demands and expectations of tax professionals' employers and corporate taxpayers[7]. Tax professionals' struggles with fair and ethical tax practices in this regard are illustrated by the fact that some tax professionals expressed that if the outcome of such practices should be that corporations have to voluntarily pay additional taxes, that this would be unworkable and unrealistic. Hence, tax professionals had to reconcile societal expectations with business interests in a commercial environment. This was generally achieved by taking into account non-tax aspects in their professional practice using stakeholder or risk management.

Tax professionals' need to balance business and public interests can be seen as an attempt to compromise and aims to accommodate "multiple constituent demands in response to institutional pressures and expectations" (Oliver, 1991, p. 153). In practice, this balancing entailed embedding societal interests in existing business frames. One business frame that was mentioned is stakeholder management (Carroll, 1989; Freeman, 1984; Weiss, 1994). Stakeholder management essentially means that companies aim to create value for all its stakeholders, not just shareholders (Freeman, 2000) and has been referred to as a theory of ethics for the business world (Fassin, 2012). Consequently, this approach allows tax professionals to take societal expectations into account while acting consistent with business objectives. The stakeholder approach, whereby corporate tax decisions are analyzed in terms of their value to the company's stakeholders (such as the local communities in which they operate), detaches companies from the objective of maximizing shareholder value. Hence, a stakeholder approach is arguably an appropriate way to incorporate the tax-as-contribution view of taxation put forward by the non-tax professional actors of the Dutch corporate tax field in commercial practice (see section 5.3.1).[8]

Another approach that integrated societal expectations with the commercial practice of corporate tax planning is risk management. References to risk and risk management were very pronounced among tax professionals. In particular, acceptable (i.e., ethical) tax practices were distinguished from unacceptable practices on the basis of the legal and reputation risks associated with them. Legal risk was assessed using legal norms such as the spirit of the law, substance, and the motivation of the taxpayer. While this approach to assessing legal risk fits well with legalist views of profes-

7 Corporate taxpayers and the tax professionals' employer can coincide in the case of in-house tax professionals.

8 Whether or not this approach is consistent with the tax-as-contribution view depends on the scope of the definition of stakeholders. The literature of stakeholder theory is unclear about this (Fassin, 2022).

sionalism (Chapter 7), taking into account legal risk was believed to have become more prominent in response to the BEPS-related developments.[9] Tax administrators' perceptions of appropriate application of the law appeared particularly important when assessing legal risk because corporates generally did not want 'any hassle with the tax administration' (Chapter 7). The increased focus on risk and the alleged more aggressive tax positions taken by the tax administration resulted in 'overcompliance' according to some professionals working in commercial practice. Furthermore, both in-house tax professionals and tax advisors increasingly used reputation risk as a framework to assess the appropriateness of corporate tax planning practices. Similar to legal risk, the incorporation of reputation risk in the commercial practice of corporate taxation can be seen as an attempt to balance both the public and business interest. Protecting the corporate reputation is of vital importance to corporations and as a result of the increased media attention to corporate tax behavior, taxation has become an area of strategic concern. By warning corporate clients or the employer of the reputation risk associated with certain tax planning practices, tax professionals serve the business interest. At the same time, assessing reputation risk requires tax professionals to consider to what degree corporate tax behavior complies with societal expectations.

However, the appropriateness of a risk management approach to (intentional or not) incorporate ethics and the public interest into the commercial practice of corporate taxation is questionable. Doyle et al. (2009) have explained that risk management in taxation might coincide with ethics whereby risk management is a business approach to dealing with ethical dilemmas, while it might also be two completely different frameworks whereby risk management crowds out ethical considerations. Similarly, the use of risk management as a framework for ethical corporate tax practices is ambiguous. Embedding legal risk in the commercial practice of corporate taxation can be seen as an attempt to reconcile the public interest with business interest, given tax professionals sophisticated arguments as to why taking into account the law coincides with serving the public interest (Chapter 6) and the idea that tax administrators represent the public interest in taxation (Doyle et al., 2014). Further, reputation risk might serve as a proxy for societal expectations. In this sense, tax professionals focus on risk management can be interpreted as an attempt to operationalize the ambiguous concepts of 'ethical practices' and 'the public interest' in terms of a more familiar, commercial framework: risk management. On the other hand, the increased prominence of risk management in the professional practice of corporate taxation might just be an attempt to protect business interests. The emphasis on risk shows that incorporating the public interest and ethics

9 For example, tax advice was believed to be more binary in nature before the BEPS-related developments. A certain tax scheme was within the law, or it was not. Assessing legal risk leaves more room.

in corporate taxation is largely based on a cost-benefit analysis. Taking risk means that one is exposed to "such issues as economic or financial loss or gain" (Francis & Armstrong, 2003, p. 375). Hence, this result supports the idea that in business, where profits matter, taxation is approached economically (e.g., Verboon & Goslinga, 2009): taking risk into account is good for business. Although the results of this study suggest that the prevalence of 'risky' tax planning has decreased in response to the increased attention for and sensitivity towards risk in the professional practice, challenging the idea that an economic approach to corporate taxation leads to tax minimization (Anesa et al., 2019; Happé, 2015), this does not necessarily make the risk management approach consistent with societal expectations of ethical tax practices. In the risk management approach, societal expectations are only relevant to the extent that they threaten profitability. Hence, this approach aligns well with the tax-as-cost view of taxation as opposed to the tax-as-contribution view put forward by non-tax professional actors of the Dutch corporate tax field. Further, the durability of the risk management approach is questionable: it is likely that tax professionals' interest in societal expectations will wane if the policing activities of non-tax professional actors (reports by the media and NGOs of corporate tax planning, see section 5.3.2) would cease. In other words, for the risk management approach to continue to take into account societal expectations, continued monitoring and action of non-tax professional actors is required.

Whether tax professionals' motives to incorporate non-tax issues such as stakeholder interests and reputation risk into their professionals' practice of corporate tax planning are the result of a genuine desire to take into account the public interest or merely to serve the profession's (commercial) interests remains up for debate. Arguably, providing a broader and more cautious tax advice makes one a valued business partner, making it a profitable response to the developments in the tax environment.

While tax professionals in commercial practice seem to have found ways to reconcile the requirements of their role (i.e., serving business interests) with (uncodified) societal norms for more ethical tax practices, this appeared more difficult for professionals working for the tax administration. Many professionals working for the tax administration believed that their role as 'instrument of the law' required them to take into account legal norms only. Incorporating societal norms in the administrative practice of these individuals is incompatible with their professional role. Hence, these professionals are not motivated to apply non-legal standards in their work. While the administrative practice had changed in response to regulatory measures (see section 9.2.1), societal expectations appear to have been less influential. Hence, these results illustrate that professional identities play an important role in shaping responses. Oliver (1991) argues that the consistency between institutional demands and organizational goals is important. This study shows that, when it comes to professional responses, consistency between professional requirements and external demands is a relevant factor as well.

Another response category observed by the present study is manipulation, whereby tax professionals influence the values and criteria of appropriate practices (Oliver, 1991). Manipulation "is intended to actively change or exert power over the content of the expectations themselves or the sources that seek to express or enforce them" (p. 157) and is considered the most active form of defiance. Manipulation such as observed by the present study occurred primarily in the public domain. Tax professionals attempted to influence regulatory measures, in particular through the NOB. While actors disagreed about how such efforts should be perceived – non-tax professionals (and a few tax professionals) described it in terms of lobbying for commercial interests and tax professionals generally perceived it as an academic and objective effort to improve legislative quality – they clearly aim to influence legislation. Such business influence is of big concern to the non-tax professional actors of the Dutch corporate tax field (see section 5.3.2). Another example that fits Oliver's (1991) concept of manipulation are the efforts of PwC to develop standards for appropriate tax behavior (i.e., the tax transparency benchmark) in collaboration with VBDO.

9.2.3 Defiance

Besides the aforementioned developments in the corporate tax practice, some tax professionals responded to the BEPS-related developments with defiance. In particular, three tactics of defiance were observed: dismissing, challenging and attacking (Oliver, 1991). Tax professionals' discursive legitimation (Chapter 6) shows how they contest societal norms and values regarding taxation and attack the sources of institutional pressure (i.e., NGOs, the media and politicians). These efforts by tax professionals are an attempt to preserve the integrity of their profession and its practices – referred to as maintenance work in the literature on institutions (Currie et al., 2012; Dacin et al., 2010; Lok & de Rond, 2013; Trank & Washington, 2009; Zietsma & Lawrence, 2010). By defying the societal pressure in their institutional environment, tax professionals work to maintain existing professional practices of corporate tax planning.

First, tax professionals contested the need to incorporate the public interest and ethics further in the professional practice of corporate taxation using both legal and economic arguments. Drawing from principles of tax law, tax professionals emphasized that the democratic process that underlies the legislative process is a safeguard to ensure that both the public interest and taxpayers' interests are protected. Furthermore, tax professionals argued that having an attractive corporate tax policy – that inevitable facilitates corporate tax planning – has important economic benefits to Dutch society in terms of increased foreign direct investment and, consequently, employment. As such, serving business interests through tax policy was assumed to be in the public interest. This finding has an important implication. Research on institutional change has shown that contradictions in institutions are an important driver of change (Rao et al., 2003). By defending corporate tax planning in terms of the public interest, tax professionals are able to blend society's call to take the public interest into account and the legal and commercial arguments that support corporate tax planning. Consequently, the need to re-examine professional practices ceases and, consequently, the potential for institutional change as well (Bitektine & Haack, 2015; Oliver, 1992).

Second, tax professionals defied societal pressure by attacking its sources (Oliver, 1991). More specifically, tax professionals emphasized the actors' lack of expertise in corporate tax law, challenged the validity of their arguments and argued that they acted out of self-interest instead of the public interest. These strategies can be seen as an attempt by tax professionals to distinguish between legitimate and illegitimate voices in corporate taxation (i.e., 'gatekeeping'). By discrediting the non-tax professional actors that challenge professional practices of corporate tax planning (Chapter 6), tax professionals reject their norms and expectations (Oliver, 1991). Similar to the efforts of contestation, such gatekeeping has implications for the potential for institutional change. While gatekeeping does not necessarily neutralize the contradiction between societal demands and professional practice – as opposed to contestation, it allows tax professionals to ignore these actors' criticism and inhibit institutional change. By effectively placing these actors outside the realm of corporate taxation, they are not considered a legitimate stakeholder and their expectations and demands become irrelevant.

Third, tax professionals dismissed the public criticism of corporate tax planning by ignoring it in their corporate tax practice as well. While tax professionals' choice to defy societal pressure might result from a lack of incentive to change – people are generally motivated to keep their identity stable (Shamir, 1991), two specific barriers to take societal demands into account emerged from the empirical analysis. First, tax professionals' micro-level (i.e., organizational; Mulligan & Oats, 2012) environment appears to constrain their ability to comply with societal demands. This is consistent with Oliver's (1991) work, which argues that the consistency between institutional demands and organizational goals is a predictive factor for actors' responses. In the commercial practice of corporate taxation, the business interests of tax professionals' employers might interfere with their ability to incorporate ethics and the public interest in their professional practice. For corporations, taxes are generally the "single largest bill that they will pay each year" (Cooper & Nguyen, 2020, p. 1), and corporate tax planning schemes are a profitable business for accounting firms (Sikka & Wilmott, 2013). Consequently, tempering or ceasing corporate tax planning practices can be a costly affair and considered undesirable. While incorporating non-tax issues into tax advice might make a tax advisor a valued business partner (see section 9.2.2), a tax professional who refuses to engage in (certain) tax planning practices is more likely a nuisance. Furthermore, the changes in the organization of the tax administration in response to its' desire to increase uniformity appears to decrease tax administrators' discretion. Consequently, tax administrators have less room to 'do justice' in individual cases. In terms of Oliver's (1991) framework, the institutional pressures experienced by these tax professionals are inconsistent with the goals of their employer. Hence, the likelihood of resistance increases. Second, tax professionals believed that they lacked the knowledge and skill to incorporate ethics in their professional practice. This lack of perceived self-efficacy – trust in one's agentic capabilities – appears to be an important barrier to compliance with societal demands. While Oliver's (1991) model recognizes that the capacity to comply is an important determinant, this finding extends her model by suggesting that relevant expertise is a predictive factor for actors' responses as well.

9.3 Conclusions

This chapter aimed to integrate the findings of previous chapters and to analyze them further. Using Oliver's (1991) typology, this chapter was able to classify the different responses of tax professionals to the BEPS-related developments in their institutional environment. The findings of this doctoral study show that tax professionals' responses ranged from compliance to influence. First, some tax professionals' responses can be classified as acquiescence (i.e., conforming) because professionals were found to be compliant with changing regulation in response to the BEPS-related developments. While the implementation of new legislation is 'business as usual' for legal professions, the implementation of the regulatory changes did alter the nature of the professional practice of taxation. Second, tax professionals in commercial practice engaged in responses that can be classified as compromise as well. To reconcile societal expectations with business interest, tax professionals engaged in stakeholder management and risk management. While the stakeholder approach is likely consistent with non-tax professionals' views of corporate taxation, the focus on tax planning's financial consequences for the company in risk management is most like not consistent with these views. Third, manipulation was encountered as well, as evidenced by tax professionals' advocacy work and collaborations with non-tax professional actors. Fourth, tax professionals defied the social pressure of changing societal expectations by challenging the arguments and beliefs supporting alternative views of corporate taxation, and attacking non-tax professional actors in terms of their expertise and the interests they serve.

10 Summary and conclusions

10.1 Introduction

The aim of the present study is to understand how tax professionals respond to the public criticism of professional practices of corporate tax planning. The institutional environment of tax professionals working in the Netherlands is changing. New actors have entered the corporate tax field and have taken the topic outside of the domain of tax experts and into the public domain (Elbra, 2018). These non-tax professional actors have engaged in institutional work, creating the potential to alter the practice of corporate tax planning. Their alternative theorization of corporate taxation and tax planning, efforts to expose 'transgressors' and advocacy work in the legislative process are clearly creating turmoil in the Dutch corporate tax field.

However, it is not clear how tax professionals respond to the social pressure caused by these BEPS-related developments. Empirical work on tax professionals and corporate tax planning is scarce. Further, the few studies that have addressed tax professionals' responses to the BEPS-related developments have focused on tax professionals working in commercial practice and specific jurisdictions (Apostol & Pop, 2019; Radcliffe et al., 2018). The present study aims to address these gaps by investigating the responses of a wide variety of tax professionals (including professionals working for the government) working in a jurisdiction that functions as a conduit country. The present study aims to answer the following (sub-)research questions:

Main research question: How do tax professionals respond to the BEPS-related developments?

Sub-question 1: How do tax professionals construct the boundaries of legitimate corporate tax planning practices in response to the BEPS-related developments?

Sub-question 1a: What legitimation strategies do tax professionals use to legitimate corporate tax planning practice?

Sub-question 1b: How do the legitimation strategies used by tax professionals to legitimate corporate tax planning practices compare to the legitimation strategies used by non-tax professionals in the corporate tax field?

Sub-question 2: How do tax professionals' identity perceptions influence professionals' responses to the BEPS-related developments in the professional practice of corporate taxation?

Sub-question 3: How do the BEPS-related developments influence tax professionals' identity perceptions?

10.2 Legitimation: Main findings and contributions

Unacceptable tax planning does not have a definite meaning and its boundaries are socially constructed by the legal profession in particular (Barker, 2016). The BEPS-related developments in the corporate tax field challenge the legitimacy of existing corporate tax planning practices. This constitutes a threat to the legitimacy of tax professionals' practice of corporate tax planning which motivates tax professionals to respond (Oliver, 1991). While previous work by Anesa et al. (2019) has shown how the lack of power of the actors that challenge corporate tax planning frustrates their attempts to undermine the field-level legitimacy of corporate tax planning, their study does not shed light on the manner in which individual tax professionals defend (i.e., legitimate) or criticize (de-legitimate) corporate tax planning practices in light of the changing societal expectations. It is this gap that the present study aims to address. This leads to the following sub-questions: How do tax professionals construct the boundaries of legitimate corporate tax planning practices in response to the BEPS-related developments? What legitimation strategies do tax professionals use to legitimate corporate tax planning practice? How do the legitimation strategies used by tax professionals to legitimate corporate tax planning practices compare to the legitimation strategies used by non-tax professionals in the corporate tax field?

10.2.1 Main findings

The first part of this section will answer the following sub-question: What legitimation strategies do tax professionals use to legitimate corporate tax planning practice? Tax professionals defend corporate tax planning practices using authorization, moral legitimation, and rationalization and mythopoesis. These strategies were generally grounded in legalistic and economic arguments. Discursive gatekeeping was another legitimation strategy used by tax professionals to defend corporate tax planning. Tax professionals appeared to neutralize the public criticism of corporate tax planning by drawing a boundary between actors that had the authority to evaluate corporate tax practices (i.e., the legislator) and those that do not. Consequently, non-tax professional actors that challenge professional practices (i.e., NGOs, the media and politicians) are generally not considered a legitimate voice in the field of corporate taxation. However, the findings of this study show that de-legitimation of corporate tax planning practices was widespread among tax professionals as well. Generally, tax professionals used norms derived from (international) tax law (i.e., lack of substance, taxpayer motives and artificiality) as well as the spirit of the law to de-legitimate certain tax planning practices.

The second part of this section will answer the following sub-question: How do the legitimation strategies used by tax professionals to legitimate corporate tax planning practices compare to the legitimation strategies used by non-tax professionals in the corporate tax field? With the exception of gatekeeping strategies, non-tax professionals engaged in the same (de-)legitimation strategies as tax professionals. Compared to non-tax professionals, tax professionals' discursive de-legitimation strategies were less likely to be grounded in a 'tax as contribution' view (Anesa et al., 2019). Hence, tax professionals were less likely to explain corporate tax planning in terms of an insufficient contribution to society or a loss in government revenue compared to non-tax professionals. Hence, it is clear that tax professionals' construction of corporate tax planning is different from non-tax professionals' construction of this practice creating competing accounts. Further, gatekeeping emerged as a (de-)legitimation strategy unique to tax professionals.

The third part of this section will answer the following sub-question: How do tax professionals construct the boundaries of legitimate corporate tax planning practices in response to the BEPS-related developments? Despite the attempts of non-tax professional actors of the Dutch corporate tax field to disrupt corporate tax planning practices, they remain firmly institutionalized in the professional practice of corporate taxation. While tax professionals do distinguish unacceptable corporate tax planning practices, primarily using norms derived from both national and international frameworks for taxation, they generally defend corporate tax planning as well. Taking a legalistic view, tax professionals emphasized the authority of the law and argued that corporate taxpayers only have a duty to pay the amount of tax they owe under the law. Furthermore, tax professionals emphasized the importance of attracting FDI for the Dutch economy and the competitive pressures that 'force' companies to engage in tax planning (Sorbe & Johansson, 2016).

10.2.2 Contributions

The contributions of the present study are twofold. First, prior studies on the tax profession have focused on power relations at the field-level (Anesa et al., 2019) Although their study sheds light on the role of intentionality and power establishing legitimacy (Scott, 2008), it does not explain how individual tax professionals construct the boundaries of acceptable corporate tax planning practices. The present study complements this literature by taking a discursive perspective on legitimation of individuals active in the corporate tax field. Using the framework by van Leeuwen (2007) for analyzing the language of legitimation, we are able to provide a novel, micro-level understanding of the manner in which professionals explain and support (i.e., legitimate) corporate tax planning practices.

Second, although we found that, similar to other studies (Anesa et al., 2019; de Widt et al., 2016), tax professionals generally used economic and legal arguments to draw the boundary between acceptable and unacceptable tax planning practices, these norms were used to both legitimate and de-legitimate corporate tax planning. These findings contribute to the work by Mayer and Gendron (2022) on normativity in taxation, and stress the importance of incorporating individual legitimation and de-legitimation strategies.

10.3 Professional identity: Main findings and contributions

The public criticism of corporate tax planning reflects a changing societal norm about appropriate corporate tax practice. To understand how actors respond to changing societal norms, it is important to take into their identity perceptions in account (e.g., Martins, 2005; Pitsakis et al., 2012; Randel et al., 2009) because actors' identity has been found to influence their response to public criticism (Randel et al., 2009). Similarly, work by tax scholars suggests that tax professionals' identity perceptions influence the role of social norms in the practice of corporate tax planning (Field, 2017; Hill, 2006) and results by previous (empirical) studies suggest that professional roles influence the practice of tax and the role of ethical considerations in taxation (e.g., Doyle et al., 2013; 2014). However, empirical work on tax professionals' identity perceptions is lacking. The present study aims to fill this gap by investigating the influence of societal norms in the corporate tax practice and how tax professionals' identity perceptions moderate such social influence. This leads to the following sub-question: How do tax professionals' identity perceptions affect the relevance of the BEPS-related developments in the professional practice of corporate taxation?

10.3.1 Main findings

The findings of the present study suggest that the ability of societal norms to influence the corporate tax practice depends on tax professionals' identity perceptions. Broadly speaking, three aspects of tax professionals' identity could be distinguished. First, tax professionals defined their work and profession in terms of the law and legal analysis ('the legalist'). Consequently, the professional practice of the legalist could be influenced by societal norms through the implementation and interpretation of legal norms. Second, a few interviewed tax professionals were of the opinion that moral considerations were part of the tax professionals' practice (' the moralist'). Hence, the professional practice of these moralists could be influenced by societal norms through personal norms of appropriate tax practice. Third, some tax professionals defined their professional role in terms of defending the rights of corporate taxpayers ('the advocate'). Hence, the professional practice of such advocates could be influenced by changing societal norms through corporate taxpayer's responses to such developments.

10.3.2 Contributions

The results of the present study underline the importance of social norms in corporate taxation as shown by Mayer and Gendron (2022). Although tax scholars have commented on different identities of tax lawyers (Field, 2017; Hill, 2006), the present study is the first to empirically investigate them in the context of corporate tax planning. The results of the present study suggest that the practice of corporate tax is not equivocally impacted by changing societal norms. Rather, the influence of societal norms on the practice of tax depends on individuals' perceptions of what it means to be a tax professional. Hence, our results provide an additional explanation for the influence of the public criticism of corporate tax planning in the corporate tax practice. Whereas Anesa et al. (2019) point towards the lack of a practical means as a critical factor that prevents social concerns from being taken into account in the practice of corporate taxation, our results stress the importance of tax professionals' identity perceptions in understanding the impact of the public criticism.

10.4 Identity work: Main findings and contributions

Identity perceptions are learned through interactions with others (Burke, 1980) and are influenced by society (Ajayi & Syed, 2016; Syed, 2017; Way & Rogers, 2015). Consequently, the BEPS-related developments might affect tax professionals' identity perceptions because some of the criticism is directed at the role that tax professionals play in corporate tax planning. With respect to tax professionals in commercial practice, Apostol and Pop (2019) have argued that the public criticism constitutes a "societal request for tax consultants to act in a way that takes into account the interests of society in their tax advising activities" (p. 2). However, public criticism of tax professionals is not limited to tax advisory firms as evidenced by the fact that governments and tax administrations have been criticized for their advance pricing agreement (APAs) practices (Marian, 2017; Ryding, 2018). Hence, the BEPS-related developments threaten tax professionals' identity perceptions. However, to date, no study has empirically investigated to what degree tax professionals have altered their ideas of professionalism in response to the public criticism of corporate tax planning. This leads to the following sub-question: How do the BEPS-related developments influence tax professionals' identity perceptions?

10.4.1 Main findings

The findings of this study show that a substantial number of tax professionals have maintained their legalistic perceptions of their professional identity despite the public criticism. Hence, in the professional practice of such tax professionals, the public criticism of corporate tax planning is believed to be inconsequential unless such societal norms become codified. The findings of the study suggest two potential barriers to identity change. First, some tax professionals believed that they did not have the ability to respond to society's call for more ethical tax practices because they lacked the necessary knowledge and skills. Second, some tax professionals experienced a conflict between society's call for different tax practices and their organizational environment. More specifically, the business interests of tax professionals' employers (i.e., accounting firms and corporates) were perceived to be at odds with serving the public interest. Furthermore, the internal structure and organization of the tax administration aimed at unity of policy restricted tax inspectors' ability to take into account ethical considerations in their professional practice.

While legalistic views were maintained by some tax professionals, others did show signs of identity restructuring in response to the public criticism. Both internal and external tax advisors appeared to have broadened their beliefs about what it means to be a tax professional. Consequently, the tax profession appears to have expanded beyond a mere legal profession. Generally speaking, societal concerns were incorporated in the professional practice of corporate taxation in terms stakeholder management, whereby the public interest is taken into account among MNE's other stakeholders, and risk management – in particular reputation risk. Furthermore, tax professionals working for the government altered the meaning of it means to be a tax professional as well. In response to regulatory measures, tax professionals were increasingly taking into account the interest of foreign governments in their professional practice.

10.4.2 Contributions

By investigating how Dutch tax professionals respond to the BEPS discussion, the present study makes two contributions to the literature. First, we respond to a call by Muzio et al. (2013) to broaden our understanding of the micro-level foundations of institutional change by investigating identity work by professionals. The results of our study reveal that tax professionals respond to transnational field-level changes (i.e., the BEPS-related developments) by engaging in identity work. When such changes are able to alter what is expected of professionals or threaten professionals' identities, they can cause professionals to restructure their identity. However, our results suggest that professionals' micro-level environment (i.e., the organizational context) as well as their narrow technical-cognitive resources can create a barrier to transforming the professional identity in response to changing institutional pressures. Second, we add to the study by Radcliffe et al. (2018) by showing the influence of the BEPS discussion on tax professionals working for the government. We find that increased transnational collaboration on corporate taxation influences local tax practice and tax professionals' role identities.

10.5 Tax professionals' responses: Main research question

This section answers the main research question: How do tax professionals respond to the BEPS-related developments? The findings of the present study show that tax professionals' responses to the changing societal expectations varied, and ranged from conforming to defiance (Oliver, 1991). One type of response exhibited by tax professionals can be classified as acquiescence (i.e., conforming). First, tax professionals were found to be compliant with changing regulation in response to the BEPS-related developments. While the implementation of new legislation is 'business as usual' for legal professions, the implementation of the regulatory changes did alter the nature of the professional practice of taxation. Work in the commercial practice of corporate taxation was more concerned with compliance and tax planning activities focused on opportunities for tax planning that were not affected by legislation. Further, tax professionals working for the tax authorities were increasingly required to take into account foreign governments' interests as a result of changing regulation.

Second, tax professionals in commercial practice engaged in responses that can be classified as compromise as well. To reconcile societal expectations with business interest, tax professionals increasingly took non-tax aspects into account in their professional practice of taxation. One approach that tax professionals engaged in is stakeholder management. This approach, whereby corporate tax decisions are analyzed in terms of their value to the company's stakeholders appears consistent with the view of taxation put forward by the non-tax professional actors of the Dutch corporate tax field. Risk management is another approach taken by tax professionals. While managing reputation risk requires tax professionals to consider the public criticism of corporate tax planning, its focus on avoiding financial loss is likely inconsistent with the views of taxation put forward by non-tax professional actors.

Third, manipulation was encountered as well in the public responses of tax professionals. Through advocacy work and collaborations with non-tax professional actors, tax professionals aimed to influence the norms of appropriate tax planning practices. Fourth, tax professionals defied the social pressure of changing societal expectations by challenging the arguments and beliefs supporting alternative views of corporate taxation, and attacking non-tax professional actors in terms of their expertise and the interests they serve. Two factors emerged that limit tax professionals' ability and willingness to conform to societal expectations. The (commercial) interests of tax professionals' organizational context influenced the manner in which societal expectations could be incorporated in their professional practice of corporate taxation. Finally, tax professionals' ability to conform to societal expectations appeared to be hindered by a lack of necessary skills and knowledge.

10.6 Practical implications, limitations and future research

10.6.1 Practical implications

The results of this doctoral research have several practical implications. First, the findings of this study inform the public discussion of corporate tax planning. By investigating the legitimation strategies of the different actors of the Dutch corporate tax field, the present study provides a comprehensive overview of the different arguments and their underlying value systems. Although such an overview does not move the BEPS discussion further in and of itself, it might promote effective communication between different actors by transferring knowledge (Carlile, 2004). Further, the results have shown that the actors of the public discussion have not yet been able to establish 'facts' of corporate tax planning (for example with respect to the tax contributions of MNEs). Given that the actors have not been able to reach consensus on the problem, a satisfying solution is likely to remain out of reach. Hence, the results of the present study stress the need for increased participation of corporates in the public discourse and the importance of transparency initiatives such as proposed by the European Commission to enable actors to define the problem of corporate tax planning.

Second, the results of the present study make some contributions to policymaking. Firstly, the study examines how changes in societal norms of corporate tax planning are taken into account in the professional practice of corporate taxation. These insights into tax professionals' responses allow policymakers to assess more fully the impact of both regulatory changes and the public criticism, and identify remaining areas of concern. Furthermore, the findings of this study show that ethics and the public interest appear to be approached from a risk perspective in the commercial practice of corporate taxation. Consequently, corporate risk management practices and individual levels of risk tolerance might be particularly important determinants of corporate tax planning practices. Third, although we find that tax professionals increasingly recognize the social dilemmas associated with corporate tax planning, some tax professionals intentionally did not take such considerations into account in the practice of corporate taxation. Further, the lack of identification by tax professionals with serving the public interest may represent a concern from a policy perspective. Such policy concerns might prompt the tax profession (i.e., tax authorities and professional bodies) to reaffirm traditional professional values and ethical consideration amongst tax professionals through ethics education for example (e.g., Kim, 2022).

10.6.2 Limitations

Despite careful consideration, the present study has some limitations which should be taken into account when interpreting the results. First, the study engaged in purposive sampling to acquire a heterogenous sample that is able to capture variations in the subjective experiences of tax professionals. However, it is conceivable that our sample is systematically biased against certain tax professionals whose responses are different from what we encountered in our sample. Neither can we be sure how dominant certain responses are in the field nor whether certain types of tax professionals are more prone towards certain responses as opposed to others. While this was not a purpose of the study, it is important to note that the findings of this study are not statistically generalizable. The overall purpose of the study and its exploratory nature directed the research design and selection of methods. Finally, the sample of the present study does not include company directors. While knowledge of the response of corporate taxpayers (by engaging CFOs for example) would add to our understanding of the empirical context of tax professionals, the sample of the present study does include in-house tax professionals working for MNEs and a representative of a Dutch business association. Consequently, the corporate perspective is represented in the sample and could be taken into account.

Second, the study explores tax professionals' experiences of the BEPS-related developments in the Dutch corporate tax field. This dynamic and multifaceted phenomenon, referred to as the BEPS discussion, has continued to develop during the 17-month period of data collection. The OECD continued its work on BEPS through its two-pillar approach, the Netherlands implemented additional regulatory measures, and the center of gravity of the discussion in the media changed. Consequently, the salience of different aspects of the BEPS discussion differed between tax professionals according to the timing of the interview. This made comparisons of the results across interviewees more challenging. However, the qualitative research approach of the present study enabled the researcher to capture and take into account the complexity of the phenomenon while interpreting tax professionals' responses. Furthermore, it is possible that the present study underestimates the level of change that has occurred among the tax profession in response to the BEPS discussion. Altering professional practices and acquiring the necessary knowledge and skills might be a long-term process that was not completed yet at the time of data collection.

Third, from a positivist perspective, conducting interviews is associated with specific validity concerns (e.g., Do people 'walk the talk'?). Social constructivism, however, contests the idea of an objective truth, making validity as a quality criterion less useful. Nevertheless, the present study's ability to investigate tax professionals' subjective experiences might be influenced by response biases, like the social desirability bias (Weiss, 1995; Brown 2001). Social desirability bias is a subject's tendency "to deny socially undesirable traits and to claim socially desirable ones, and the tendency to say things which place the speaker in a favorable light" (Nederhof, 1985). Given the fact that the research is concerned with the public criticism of tax planning, tax professionals could be inclined to deny their involvement in such socially controversial practices. However, two aspects of the present study are likely to reduce this threat to the validity of the research. First, the researcher tried to signal her objectivity regarding corporate tax planning practices by using neutral terms (i.e., corporate tax planning) and avoiding terms such as 'tax avoidance', 'fair share' and 'ethics'. Second, the researcher has studied tax law and is affiliated to Leiden University's department of tax law. Hence, she might have been perceived as an 'insider' by tax professionals which might have reduced their tendency to disguise their involvement in socially sensitive corporate tax planning practices.

Another bias associated with qualitative research is the interviewer bias. As the interviewer both collects and interprets the data, and develops a closeness to the studied phenomenon and the interviewees, it is very important to safeguard objectivity (Patton, 1990). The potential for a researcher bias was recognized during the research design and several safeguards were implemented to address this threat (Chapter 3). Despite these measures, it is important to take the position of the interviewer into account when interpreting the results.

10.6.3 Directions for future research

Several directions for future research emerge from the findings and limitations of the present study. First, future research could investigate tax professionals' legitimation further using a quantitative research design. Such an approach allows researchers to establish how frequent certain legitimation strategies are amongst tax professionals, and which combinations of strategies are more common than others. Furthermore, using a longitudinal design, future research could map changes in legitimation over time and link them to specific developments in the institutional environment of tax professionals. Finally, cultural differences in the manner in which the boundaries of acceptable tax planning practices are drawn could be investigated further. Some interviewees suggested that views of appropriate tax planning practices differed substantially between the US and the Netherlands and future research could clarify to what degree this is indeed the case.

Second, the influence of tax professionals' identity on the role of societal norms in the corporate tax practice provides an interesting avenue for further research. Using a quantitative research design, researchers could investigate the prevalence of the aspects of tax professionals' identities (i.e., legalist, advocate, and moralist) observed by the present study and compare the prevalence of these aspects among different types of tax professionals (e.g., tax advisors, tax administrators, in-house tax professionals). Furthermore, future research could explore to what degree perceptions of one's professional identity explain the influence of social norms in the professional practice of corporate taxation using a survey or experimental design. An experimental design would be preferable, due to its ability to test the causal assumptions of the findings of the present study.

Third, the focus of the present study and previous work on the role of ethics in the tax profession (e.g., Doyle et al., 2009; 2013; 2014) is on conscious ethical decision-making and moral reasoning. However, a growing body of literature emphasizes the importance of intuitive moral reasoning (e.g., Bucciarelli et al., 2008). Future research could investigate this aspect of ethics in practice further by studying intuitive, unconscious moral judgements in corporate taxation. For example, future research could shed light on the role of emotion in moral judgements in professional practice and whether unconscious moral judgements of corporate tax planning practices are different for tax professionals as compared to non-tax professionals.

10.7 Conclusions

The results of the present study show that tax professionals' responses to the BEPS-related developments varied. Tax professionals' discursive legitimation reveals efforts to defy the actions taking by non-tax professional actors to disrupt the practice of corporate tax planning. More specifically, tax professionals engaged in gatekeeping strategies whereby non-tax professional actors were portrayed as illegitimate voices in the corporate tax field. This was achieved by challenging the views of taxation put forward by non-tax professional actors and by attacking these actors. More specifically, tax professionals emphasized their lack of tax expertise and questioned their motives. Through these responses, tax professionals defended corporate tax planning and reaffirmed its status as a legitimate corporate tax practice.

Despite the fact that tax professionals defied societal pressure to alter corporate tax planning practices, some changes in response to the BEPS-related developments were observed as well. Tax professionals working in commercial practice had to reconcile business interest with societal expectations of corporate tax behavior. First, stakeholder management became more pronounced in the professional practice of corporate taxation as an approach to balance the interests of business and the public. Second, the public interest was taken into account in the context of risk management. In particular, reputation risk was used as a concept to incorporate societal pressure into the professional practice of corporate taxation. While the stakeholder approach appears consistent with the views of taxation put forward by non-tax professional actors, risk management is likely inconsistent with such views.

Furthermore, tax professionals complied with new anti-avoidance measures that were being introduced in response to the BEPS-related developments. While complying with legal norms is consistent with the dominant aspect of the tax profession – legal analysis – it did alter what it means to be a tax professional to a certain degree. First, the center of gravity in corporate tax planning shifted from practices addressed by the BEPS project towards transfer pricing. Second, compliance work had gained prominence in response to the BEPS-related developments making tax planning less pronounced. Third, tax professionals working for the government increasingly took foreign governments' interests into account.

The findings of this doctoral study show that tax professionals' responses to the BEPS-related developments ranged from compliance with legal norms to resistance of societal pressure. While these findings show that non-tax professional actors have not been able to de-institutionalize corporate tax planning, it is clear that it has not left the professional practice unaffected. The results of this study have several practical implications. First, it might inform the public debate on corporate tax planning. The findings provide an overview of both tax professionals' and non-tax professionals' account of corporate tax planning and show points of friction between these different actors. Second, the insights into professionals' responses allow policymakers to assess more fully the impact of both regulatory changes and the public criticism, and identify remaining areas of concern. In particular, the lack of identification by tax professionals with serving the public interest may present a concern from a policy perspective and prompt the tax profession to reaffirm traditional professional values and ethical considerations among tax professionals through ethics education for example (e.g., Kim, 2022).