



**Professionalism in a Changing Tax Environment
– The Impact of General Anti-Avoidance Tax
Legislation on the Accounting Profession**

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Dedication

To my family for their
unending love, support
and friendship

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Abbreviations

ACA	Associate Chartered Accountant
ACCA	Associate Chartered Certified Accountant
BEPS	Base Erosion and Profit Shifting
CAT	Capital Acquisitions Tax
CCAB-I	Consultative Committee of Accountancy Bodies – Ireland
CGT	Capital Gains Tax
CPA	Certified Public Accountant
DOTAS	Disclosure of Tax Avoidance Schemes
ESR	Export Sales Relief
EU	European Union
FDI	Foreign Direct Investment
GAAR	General Anti-Avoidance Rule
HMRC	HM Revenue and Customs (UK)
IDA	Industrial Development Authority Ireland
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
IRS	Internal Revenue Service (US)
ITI	Irish Tax Institute
LCD	Large Cases Division
LPP	Legal Professional Privilege
MNC	Multi-National Company
OECD	Organisation for Economic Co-operation and Development
OFCCCL	O’Flynn Construction Co. Limited
SME	Small and Medium Enterprise
TALC	Tax Administration Liaison Committee
Revenue	The Office of the Revenue Commissioners (Ireland)
TCA	Taxes Consolidation Act
UK	United Kingdom
US	United States of America
VAT	Value Added Tax

Table of research presentations

Conference / Seminar (Location)	Date	Paper title
UCD Accountancy Doctoral Studies Seminar (Dublin)	16 January 2015	Tackling Tax Avoidance and Contemporary Professionalism: The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
UCD Accountancy Doctoral Studies Seminar (Dublin)	11 December 2013	Contemporary Professionalism and Competing Institutional Logics: The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
UCD Accountancy Doctoral Studies Seminar (Dublin)	14 June 2013	Contemporary Professionalism and Competing Institutional Logics: The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
Irish Accounting and Finance Association Doctoral Colloquium (Dublin)	22 May 2013	Contemporary Professionalism and Competing Institutional Logics: The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
European Accounting Association Annual Congress Research Forum (Paris)	7 May 2013	Competing Institutional Logics and the Erosion of Professional Autonomy – The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
European Accounting Association Doctoral Colloquium (Paris)	4 May 2013	Competing Institutional Logics and the Erosion of Professional Autonomy – The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
Tax Research Network (Roehampton)	5 September 2012	Competing Institutional Logics and the Erosion of Professional Autonomy – The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
Interdisciplinary Perspectives on Accounting Emerging Scholars Colloquium (Cardiff)	9 July 2012	Competing Institutional Logics and the Erosion of Professional Autonomy – The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
Irish Accounting and Finance Association Doctoral Colloquium (Galway)	23 May 2012	Competing Institutional Logics and the Erosion of Professional Autonomy – The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
UCD PhD Symposium (Dublin)	26 April 2012	Competing Institutional Logics and the Erosion of Professional Autonomy – The Impact of Anti-Avoidance Tax Legislation on the Accounting Profession
UCD Accountancy Doctoral Studies Seminar (Dublin)	13 April 2012	Competing Institutional Logics and the Erosion of Professional Autonomy
UCD Accountancy Doctoral Studies Seminar (Dublin)	14 December 2011	Institutional Maintenance in a Low Trust Environment
UCD Accountancy Doctoral Studies Seminar (Dublin)	9 March 2011	Professionalism of Tax Accountants – The Public Interest Dimension
UCD Corporate Governance Doctoral Studies Seminar (Dublin)	10 December 2010	Professionalism in the Age of the Commercialised Accountancy Firm – An Examination of the Professional Values, Attitudes and Behaviours of Tax Practitioners
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Abstract

Tackling tax avoidance has become a priority for tax authorities. The accounting profession has been subject to significant criticism for its role in the promotion and facilitation of what may be regarded as aggressive tax avoidance. In response to this increasing issue of public concern, tax authorities have sought to tackle tax avoidance through the introduction of general anti-avoidance rules and supplementary provisions. These regulatory changes may be regarded as an attempt by tax authorities to disrupt the existing work practices of the accounting profession.

In this context, the escalating disruptive work practices are explored, identifying how a tax authority built up layers of disruptive work, at times crossing into categories of traditional creation and maintenance work, in its attempts to tackle aggressive tax avoidance.

These disruptive work practices were represented in changes to the general anti-avoidance tax regime. As a result, the accounting profession was impacted both directly and indirectly, where provisions introduced placed new reporting obligations on tax advisers and on taxpayers. The accounting profession's response is explored, beginning with defiance (where changes were not aimed at it directly), moving to a combination of defiance and compromise (where it faced new reporting obligations) and finally public acquiescence and private avoidance and defiance (where it faced a Supreme Court decision strengthening the tax authority's powers). The public and private response of the accounting profession are examined, by analysing public documentary evidence, together with interview and focus group data, enabling an in-depth understanding of the accounting profession's response to regulatory changes to be explored.

When faced with disruptive work, tax accountants are seen to engage in a range of different maintenance work practices in an attempt to rebuff changes to their day-to-day work practices and advice given to clients. Once again, the complexity of real life, provides an opportunity to identify institutional work practices crossing traditional categories, with creation work practices identified in tax accountants' attempts to maintain their *status quo*.

The influence of clients, and society more generally, on both the response of the accounting profession to changes in the general anti-avoidance tax regime and the resulting impact on work practices is identified throughout the study, with the concept of client-led professionalism emerging from the findings.

Keywords: Tax practice; Tax avoidance; Anti-avoidance provisions; Professionalism; Institutional theory; Institutional logics

Statement of original authorship

I hereby certify that the submitted work is my own work, was completed while registered as a candidate for the degree stated on the Title Page, and I have not obtained a degree elsewhere on the basis of the research presented in this submitted work.

Chapter 1: Introduction

1.1 Introduction

The accounting profession has been subjected to considerable criticism since the financial scandals of the 21st century, with commentators and academics questioning the applicability of the professional values on which the accounting profession was originally built (Sikka and Hampton, 2005; Hanlon, 1994). Prior studies of professionalism have “cast doubt on the public interest claims” (Carter and Spence, 2014, p.949) and emphasised the prevalent self-interest that may be unsurprising given the inherent commercialism in the activities of the accounting profession (Carter and Spence, 2014).

Many studies have focused on the commercialism in accounting (for example, Anderson-Gough, Grey and Robson, 2000, 2001; Gendron, 2001, 2002; Gendron and Spira, 2010; Kornberger, Justesen and Mouritsen, 2011; Malsch and Gendron, 2013) and from these studies the tensions and conflicts faced by professional accountants have been explored. The compromising impact that commercialism has on professional values and, in particular, on professional integrity, has been established (Carter and Spence, 2014). However, despite the strong emphasis placed on serving clients, studies have shown that professional values have not been completely displaced by commercialism (Carter and Spence, 2014; Gendron 2001, 2002). This has resulted in the co-existence of two guiding logics within the field of professional accounting, professionalism and commercialism (Cooper and Robson, 2006). However, despite this retention of professional values, this has not prevented the accounting profession receiving considerable criticism for its commercial focus and the associated scandals that have taken place.

In this regard, the audit activities of the profession have received considerable attention. However, another major service offering of the accounting profession, taxation services, has not escaped criticism (Sikka, 2008). The accounting profession has been criticised for its role in facilitating aggressive tax avoidance (Sikka and Hampton, 2005; Braithwaite and Braithwaite, 2000). As a result of the

eroding impact of tax avoidance, tax authorities globally have increased their efforts to tackle – what is regarded by many – as an anti-social activity (Mostrous, 2012). One such method to tackle tax avoidance has been the introduction of a general anti-avoidance rule (GAAR), with a number of jurisdictions also choosing to introduce supplementary provisions, such as the mandatory disclosure of tax avoidance schemes.

This study centres on the impact that changes in the general anti-avoidance tax regime have on the professionalism of tax accountants. In doing so, a number of contributions may be made to the tax and accounting literatures.

This chapter commences with the motivations for the study (section 1.2), setting out the precursors which led to the overarching research objective and purpose, presented in section 1.3. The general anti-avoidance tax regime in Ireland has been chosen as the empirical context for the study. The rationale for this choice and a discussion of global efforts to tackle tax avoidance are outlined in section 1.4. Section 1.5 outlines the focus of the study, providing an operational definition of both the accounting profession and tax accountants.

Section 1.6 presents the specific research questions that the study is addressing. The philosophical position and research design adopted for the study, including the specific research methods and data analysis techniques, are outlined in section 1.7.

The chapter concludes with a discussion of the contributions of the study in section 1.8 and an outline of the organisation of the dissertation in section 1.9.

1.2 Motivations of the study

The accounting profession plays an important role for business and society. Accountants are instrumental in ensuring that financial statements are materially correct and represent a true and fair view of the financial affairs of a business (Pierce, 2006; Fischer and Rosenzweig, 1995). The profession contributes greatly to the reliability of financial information, which is essential for investment decisions and for ensuring that businesses are well governed. Each of these factors is vital for sustainable business and a stable society.

The accounting profession has traditionally been seen as an elite institution, which portrayed an image of acting in the public interest (Pierce, 2006). It is made up of professionally qualified accountants, who are also members of professional accounting bodies. The status of the profession was supported by the state-sponsored monopoly granted to the profession in respect of the provision of audit services (Mautz, 1988; Pierce, 2006). Since the late 1960s in particular, the accounting firms have leveraged off this image to expand their businesses and this has in turn generated substantial wealth for members of the profession (Parker, 1994; Lee, 1995).

Due to the criticism faced by the accounting profession for the commercialism of its activities, the meaning of professionalism appears to be in a state of flux, with traditional ideal-type professionalism, often associated with an expectation to serve the public interest, being seriously challenged (Spence and Carter, 2014). Given the financial scandals which have taken place, the assertion that the accounting profession acts in the public interest has been questioned, and societal trust in the profession is under threat (Pierce, 2006). Acting in the public interest, integrity, objectivity, and professional competence and due care are the cornerstones of the profession (IFAC, 2014) and characteristics which the firms have traded on for many years. As a result of the financial scandals, these key attributes have been called into question (Clarke, Dean and Oliver, 2003; Pierce, 2006; Sikka, 2008). Chapter 2 discusses the different approaches in the literature to professionalism and for the purposes of this study, the “ideal-typical discourse of public interest and disinterest in commercial matters” (Freidson, 2001, as cited by Malsch and Gendron, 2013, p.880) is used to explore whether regulatory changes have impacted the nature of professionalism of tax accountants.

As the accounting profession expanded, pressures were exerted on the professional values, attitudes and behaviours of individual accountants. The commercial side of the business became increasingly prominent in comparison to the professional values which the firms had traditionally held (Willmott and Sikka, 1997). In particular, tensions grew between the commercial side of the accounting firms and the traditional audit services, which supported the public interest dimension of the profession (Hanlon, 1997). Given the monopoly that the accounting profession held for audit services, this gave them a powerful position to market non-audit services (Sikka and Hampton, 2005).

The commercial activities of the accounting firms are deemed to include tax consultancy services, corporate finance and advisory services. The conflicts of interest between commercialisation and professionalism have been studied in the literature (Boyd, 2004; Radcliffe, Cooper and Robson, 1994). The change that has taken place in the structure of the accounting profession has not been witnessed to the same extent in other professions (Boyd, 2004). As a result of the changing nature of the accounting profession, the issue of maintaining professionalism is of critical importance, particularly given the reliance which business and society place on its services.

In order to maintain professionalism in the modern accounting firm, attention must turn to the non-traditional services being offered because of the scale of non-audit service offerings being made available by the accounting profession (Boyd, 2004). Non-audit advisory services differ from audit services in that the accountant is required to act independently in her/his role as auditor. However, when offering non-audit services, the accountant takes on an advocacy role. For example, the ability of accountants to possess the professional values, attitudes and behaviours required whilst acting as an advocate for clients is an issue that has been raised in the literature, with disagreement regarding to whom the tax practitioner owes his or her loyalty, the client or the public (Cruz, Shafer and Strawser, 2000).

The area of tax consultancy has received particular attention following the high profile tax shelter fraud case involving KPMG in the United States (US) in 2003¹ (Permanent Subcommittee on Investigations, 2005) and the increasing global attention being placed on tax avoidance. For example, the US Senate Enquiry into the tax affairs of Microsoft, Hewlett-Packard and Apple (Permanent Subcommittee on Investigations, 2012, 2013); the European Union (EU) investigation into transfer pricing arrangements on the corporate taxation of Apple, Starbucks, and Fiat Finance and Trade (European Commission, 2014); the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting Project (OECD, 2014); and the leaking of documents which contained 548 so-called comfort letters from the Luxembourg Government to multi-national corporations regarding

¹ In 2003, KPMG LLP (the US branch of KPMG) was accused by the United States Department of Justice of marketing abusive tax shelter schemes to its clients. A deferred prosecution agreement was entered into in 2005, whereby KPMG LLP admitted wrongdoing in relation to the fraudulent tax shelter schemes created to assist clients evade \$2.5 billion in taxes. KPMG LLP agreed to pay \$456 million in penalties as part of this agreement (Internal Revenue Service, 2005).

favourable tax treatment, commonly referred to as Luxleaks (Wayne, Carr, Walker Guevara, Cabra and Hudson, 2014).

The accounting profession has been criticised for the tax avoidance schemes which were sold to clients (Sikka, 2008, 2013). The importance of maintaining professionalism amongst tax consultants extends beyond protecting the accounting profession, as the behaviour of individual tax specialists can result in the erosion of the tax base, thereby transferring the burden of taxes to less affluent members of society (Sikka and Hampton, 2005; Ulph, 2009).

Given the impact that the accounting profession has on business and society, the maintenance of professionalism is of particular significance. The focus of this study is on the taxation services provided by the accounting profession. The accounting profession may be regarded as having been indirectly subjected to increased regulation in the form of general anti-avoidance tax provisions and directly impacted as a result of the introduction of mandatory disclosure. These changes have been introduced as governments and tax authorities internationally attempt to tackle – what they regard as – unacceptable tax avoidance. The impact of changes in the general anti-avoidance tax regime on the professionalism of tax accountants is examined in this study.

A general anti-avoidance tax regime, for the purposes of this study, is defined as being the statutory provisions (and related judicial decisions) implemented to combat unacceptable tax avoidance. The statutory provisions may include the enactment of a specific GAAR, together with supplementary provisions including protective notification and mandatory disclosure rules. It should be noted that specific anti-avoidance provisions introduced, often on an annual basis, to combat specific breaches of tax law are not included for the purposes of this study. The general anti-avoidance tax regime is aimed at tackling tax avoidance that has not been, or cannot be, addressed by amending specific items of legislation.

1.3 Purpose of the study

This study examines the professionalism of accountants providing taxation services in the 21st century. To achieve this, the contentious issue of aggressive tax avoidance and the accounting profession's role in advising clients of – what may be regarded by tax authorities as – unacceptable tax planning was selected for enquiry.

How the accounting profession has responded to various measures introduced by tax authorities to curb tax avoidance, and how tax accountants have been impacted in terms of their work practices, is the subject of enquiry.

Using Ireland's general anti-avoidance tax regime as the empirical context, the study begins by identifying measures introduced by the Irish tax authorities, the Office of the Revenue Commissioners (Revenue), to tackle aggressive tax avoidance and how such measures were implemented and enforced. It is necessary to first understand what legislative changes were made and how these were enforced, prior to examining their impact on the accounting profession.

The study then examines how the accounting profession responded to these changes in the general anti-avoidance tax regime. The response of the accounting profession is analysed in greater detail, with the study asking why the profession reacted in this manner and, in particular, how the work practices of tax accountants were impacted.

1.4 Contextual setting

Increased regulation of taxation services, in the form of the introduction of a GAAR and subsequent changes to general anti-avoidance tax regimes, has taken place in a number of jurisdictions, including Ireland. This increased regulation may be viewed as representing an external pressure impacting on the institutional field of the accounting profession in both an indirect and a direct manner.

The global efforts to tackle tax avoidance are firstly discussed, followed by a discussion of the appropriateness of locating the study in the Irish context and the broader context in which the study is positioned.

1.4.1 Global efforts to tackle tax avoidance

It has been argued that a statutory GAAR is "an essential part of a modern tax system, since specific legislation will not catch every abuse" (Freedman, 2014, p. 167). As a result, 15 jurisdictions currently have a GAAR enacted, with the majority of those countries introducing a GAAR since the late 1980s (Ernst and Young, 2013). From an EU perspective, member states have been encouraged to introduce

a GAAR, allowing them within their national legislative framework to successfully challenge artificial transactions undertaken for tax avoidance purposes (European Commission, 2012).

GAARs tend to operate by focusing on the substance of a transaction over its legal form. Where insufficient substance or artificial transactions are found, the transaction may be re-categorised and any tax advantage accruing to the taxpayer removed (Ernst and Young, 2013). As a result of the subjective nature of GAARs, i.e., looking behind the legal form to the substance of the transaction, the judiciary are often a key element in the application of GAARs (Ernst and Young, 2013).

GAARs, internationally, have developed in a variety of ways, with little consistency, for example, on whether the burden of proof rests with the taxpayer, the tax authorities or is shared between the two (Ernst and Young, 2013). However, there are generally a number of common characteristics found in a GAAR, including a definition of what constitutes: (i) a tax avoidance transaction; (ii) a tax benefit; and (iii) a business purpose test.

The development of GAARs have differed between jurisdictions. For example, Australia first introduced anti-avoidance provisions in 1915; however, these have been subject to many changes, with the 1981 amendments making it “one of the most mature and comprehensive in the world” (Ernst and Young, 2013, p.7).

South Africa has also had a GAAR for a substantial period of time. It was introduced in 1941. However, the ability of the South African Revenue Service to successfully challenge a transaction using the GAAR was curtailed by the burden of proof resting with the tax authority, with a requirement for it to prove that the transaction was entered into in an abnormal manner. Given taxpayers’ ability to demonstrate some commercial purpose for entering into a transaction, it was very difficult for the tax authority to use the GAAR. As a result, a new GAAR was introduced in 2006, with a transaction regarded as an impermissible avoidance arrangement if its sole or main purpose was the avoidance of tax (Pickup, 2008).

In North America, a GAAR has also been implemented in both the US and Canada. In the US, the Internal Revenue Service (IRS) has a number of common law doctrines developed by the courts, together with broad mini GAAR statutory rules to tackle tax avoidance. Canada introduced a GAAR in 1987. This followed a judicial

decision rejecting “the adoption of a judicially developed business purpose test in considering avoidance cases” (Pickup, 2008, p.11). In the same way, a GAAR was introduced in Ireland in 1989 following a Supreme Court decision to reject the substance over form principle. Both the wording and objectives of Ireland’s GAAR are similar to the Canadian GAAR (Maguire, 2014).

The United Kingdom (UK) introduced a GAAR in 2013. This followed the UK Government’s requesting Graham Aaronson QC to lead a study to consider whether or not a GAAR should be introduced. The Aaronson Report was published in November 2011 and recommended the introduction of a narrowly focused general anti-abuse rule to target abusive tax avoidance (HMRC, 2015). The GAAR was introduced into law in the Finance Act 2013. The primary purpose of the GAAR was to deter taxpayers and promoters from entering into or promoting abusive tax schemes. A number of tests are contained in the GAAR to determine whether or not a transaction is abusive. The critical elements include determining: (i) the reasonable course of action; (ii) the substantive results; (iii) whether there are contrived or abnormal steps; and (iv) a double reasonableness test (HMRC, 2015).

As can be seen, the use of a GAAR to tackle tax avoidance has been a central feature for a range of countries (Duff, 2008). As a result of EU recommendations for the introduction of anti-abuse rules, further GAAR uptake may be seen in the future across Europe (European Commission, 2012).

In addition to the use of a GAAR to tackle tax avoidance, the OECD Base Erosion and Profit Shifting (BEPS) Action Plan includes consideration of the introduction of mandatory disclosure to increase tax authorities’ ability to tackle tax avoidance. Eight countries currently have mandatory disclosure in place, and the benefits of introducing similar measures have been debated. In particular, the advantages provided to tax authorities in obtaining early warning of aggressive tax planning have been highlighted (OECD, 2015). As a result of the attention being placed on the wider introduction of mandatory disclosure, an exploration of its implementation and success, in particular on the work practices of the accounting profession, a key tax intermediary, is a worthwhile area of examination. The appropriateness of this dynamic environment as an area in which to explore the professionalism of tax accountants is probed further in the following section.

1.4.2 Appropriate context to address research objective

Ireland has enacted both a GAAR and a mandatory disclosure requirement. Chapter 3 provides a summary of the evolution of the general anti-avoidance tax regime in Ireland.

Ireland first introduced a GAAR in 1989 which was used as a deterrent for a number of years (Mongan and Murphy, 2006). The GAAR was not amended or strengthened until protective notification was introduced in 2006. This increase in regulation was followed by further changes in 2008 and the introduction of mandatory disclosure in 2011. Jurisdictions have varied their strategies to tackle aggressive tax avoidance, with some countries, such as the UK, introducing mandatory disclosure in the first instance and at a later stage, when instances of tax avoidance remained unacceptable, introducing a GAAR.

Ireland, therefore, provides an empirical setting where a GAAR has been in existence for over 25 years. In addition, it provides a setting where amendments and supplementary provisions have been introduced to strengthen this general rule. The changing general anti-avoidance tax regime in Ireland provides a suitable context to examine the changes in response and work practices of the accounting profession. Ireland is one of eight countries globally to have mandatory disclosure rules (OECD, 2015) and one of four countries globally to have both a GAAR and mandatory disclosure. It is of particular interest that the introduction of mandatory disclosure in Ireland took place over 20 years after the introduction of the GAAR. Therefore, the effectiveness of the GAAR over those 20 years may be called into question. Consequently, Ireland may be regarded as a particularly appropriate setting to examine the impact of changes in the general anti-avoidance tax regime on the work practices of tax accountants.

1.4.3 Broader context in which the study is positioned

It must be acknowledged that tax avoidance has become a main focus for many countries, and in recent years, large-scale tax avoidance by multi-national companies has been widely reported in the media. Ireland's tax regime and tax treatment of multi-national companies have come under scrutiny at an international level, with the US Senate launching an enquiry into the tax treatment of Apple's worldwide profits (Schwartz and Duhigg, 2013) and the EU investigating the tax

incentives offered to multi-national companies by Ireland, Luxembourg and the Netherlands (Smyth, Steinglass and Houlder, 2013). In addition, the OECD published an action plan to tackle tax avoidance by multi-national companies, focusing on base erosion and profit shifting, and the tax reduction strategies that may be used by global businesses (OECD, 2014).

Ireland responded by making changes to the corporate tax residency rules in the Finance Act 2014, which have the result of tackling the “double Irish” tax structure, which had come under increasing global scrutiny (Chartered Accountants Ireland, 2014). Tax avoidance on a global scale is, therefore, a high priority for governments. However, it must be noted that the taxation of, and perceived tax avoidance by, multi-national companies in Ireland is beyond the scope of this study, as the general anti-avoidance tax provisions under enquiry are used, in the main, to tackle tax avoidance on a domestic level by Irish resident companies and individuals.

Despite the attention given in the media to tax avoidance by multi-national companies, tax avoidance by high net worth individuals has also been an area of increasing focus. The Times Investigation, in the UK, published details of many high profile individuals’ tax affairs and structures used to reduce their tax liabilities (Malik, 2012). The Public Accounts Committee in the UK also launched an investigation into the role of the large accountancy firms in tax avoidance (UK Public Accounts Committee, 2013). In the Irish context, Revenue has challenged particular tax schemes in the courts, including the case of *McNamee v The Revenue Commissioners [2012] IEHC 500*, whereby the taxpayer unsuccessfully sought to challenge a notice raised by Revenue under the GAAR. This case arose from an investigation by Revenue, which identified 26 individuals who have been accused of gaining a tax advantage involving the use of Government gilt bonds and foreign exchange finance instruments (Healy, 2012). The ability of general anti-avoidance tax legislation to tackle – what is regarded by Revenue as – unacceptable or aggressive tax avoidance is examined in this study.

1.5 Focus of the study

This study focuses on the professionalism of tax accountants. In order to ensure consistency throughout the study, a definition of both “the accounting profession” and “tax accountants” was adopted and is provided in sections 1.5.1 and 1.5.2, respectively.

1.5.1 Definition of the accounting profession

The accounting profession encompasses a wide-ranging group of individuals, firms and professional bodies and may, as a result, be defined in a number of different ways. It is, therefore, essential to define this term for the purpose of this study, in order to ensure consistency of use and to place appropriate boundaries on the study.

The accounting profession for the purposes of this study is defined as individuals possessing a qualification² from a recognised professional accounting body, who are currently or have previously worked in a professional accounting practice and have specialised in the provision of taxation services.

This definition derives from the purpose of the study, which is to examine the professionalism of tax accountants. Restricting the definition to include accountants who are currently working or have recently left professional practice enables a selection of participants from accounting firms (and those that have recently left such practices) within a particular sub-set of the professional accounting field.

1.5.2 Definition of tax accountant

A tax accountant for the purposes of this study is a member of the accounting profession (as defined in section 1.5.1) who works solely or primarily in the provision of taxation services to clients. Therefore, this includes accountants working in the taxation divisions of Big Four and Mid-Size firms. In addition, this includes professionally qualified accountants providing tax advice in Boutique Tax Practices. Finally, members of the accounting profession providing tax advice as Sole Practitioners or as members of Small Accounting Firms are also included in this definition for the purposes of the study.

1.6 Research questions

The purpose of the study, the review of relevant literature (Chapter 2) and the empirical context (Chapter 3) led to the identification of the following research questions:

² Professional accounting qualifications include ACA, ACCA and CPA.

RQ1: How did the Irish Government and the Office of the Revenue Commissioners attempt to tackle aggressive tax avoidance?

RQ1a: What legislative amendments were introduced?

RQ1b: How were the legislative amendments implemented and enforced (including judicial decisions in relation to the legislative amendments)?

RQ2: Have the general anti-avoidance tax provisions changed the nature of the professionalism of tax accountants?

RQ2a: How did the accounting profession respond to the legislative changes/measures introduced to tackle aggressive tax avoidance?

RQ2b: Why did the accounting profession respond in such a manner?

RQ2c: Did the legislative amendments and related measures result in changes to the day-to-day work practices of tax accountants and, if so, how have the work practices been impacted?

RQ1a and RQ1b, dealing with Revenue's methods of tackling tax avoidance, are answered in Chapter 5.

Chapter 6 examines and answers RQ2a and RQ2b, relating to how and why the accounting profession responded to changes in the general anti-avoidance tax regime.

The work practices of accountants and the impact of changes in the general anti-avoidance tax regime on those work practices (RQ2c) is addressed in Chapter 7.

1.7 Philosophical position and research design

This study examines the nature of tax accountants' professionalism in the 21st century, with a specific focus on the impact of the general anti-avoidance tax regime, and how changes to this regime have impacted tax accountants' professionalism, in terms of their work practices.

The social world under enquiry is the accounting profession as an institution and the individual accountants who form part of the accounting profession. A social constructionist, philosophical position is adopted for the study. From this perspective, the objective world may be regarded as the institutional environment of

the accounting profession, with the subjective world being that of the individual tax accountants.

A qualitative methodology has been chosen, as it fits the purpose of the study and enables the experiences of individual accountants to be examined and understood in their institutional context. Prior studies of accountants' professionalism have tended to use both surveys and interview data (Suddaby, Gendron and Lam, 2009; Gendron, Suddaby and Lam, 2006); however, a criticism of this research is that relying primarily on survey results does not adequately capture the behaviours of individual accountants, as stated values in a survey and the actual enactment of those values in day-to-day work practices may vary greatly (Sikka, 2009).

As a result, this study chose to use documentary evidence, semi-structured interviews and a focus group to examine the professionalism of tax accountants. The documentary evidence provides a contextual overview to the empirical events under enquiry, in addition to specifically answering RQ1, by using publicly available documents outlining the specific legislative amendments and how they have been enforced and implemented.

To supplement the documentary evidence, semi-structured interviews and a focus group were used to add depth to RQ1 and to answer RQ2. The use of the semi-structured interviews and a focus group was appropriate as it enabled the private response of the accounting profession to be examined in more detail than was possible through documentary evidence alone, which provided evidence of the public response of the accounting profession. In addition, the semi-structured interviews and focus group enabled the impact of changes in the general anti-avoidance tax regime on work practices of tax accountants to be examined. The use of three research methods also increased the reliability and credibility of the findings.

A purposeful sampling framework was developed to enable information-rich cases to be selected for interview. Participants from Big Four firms, Mid-Size firms, Boutique Tax Practices, Sole Practitioners and Small Accounting Firms were chosen for the study in order to achieve maximum variation in the sample. This sample captures the Big Four accounting firms, whose importance and role in the standardisation and regulation of accounting practices has been acknowledged in the literature (Cooper and Robson, 2006). In addition, the sample captures Mid-Size firms, the importance of which has been more recently recognised because of their greater dependence

on professional bodies and differing client base (Lander, Koene and Linssen, 2013; Ramirez, 2009). As a result of the incidence of tax avoidance at the level of high net worth individuals, the inclusion of Boutique Tax Practices, Sole Practitioners and Small Accounting Firms, whose client base may include such high net worth individuals and domestic businesses, was deemed appropriate.

Professional body representatives were interviewed, particularly in order to understand and examine the formal, public response of the accounting profession to changes in the general anti-avoidance tax regime.

Current and former Revenue officers were also included in the sampling framework. Interviews with this participant group provided greater insight into Revenue's efforts to tackle tax avoidance and the relationship between Revenue and the accounting profession.

Finally, a focus group was held with tax accountants who had recently left professional practice in order to gain their insights into the response of the accounting profession and the impact of changes in the general anti-avoidance tax regime on work practices. The inclusion of this focus group increased the reliability and credibility of the results from the semi-structured interviews.

Documentary evidence, interview and focus group data were analysed using thematic analysis, whereby the data were firstly analysed into main themes and then analysed and interpreted, allowing new ideas to emerge from the data (Richards, 2009). NVivo was used to assist in the coding process, allowing a systematic record to be maintained throughout the study.

The research design enabled rich findings to be gathered and a number of contributions to be made which are discussed in section 1.8.

1.8 Contributions of the study

This study makes a number of contributions to the existing tax and accounting literatures, to institutional theory and to tax policymaking.

1.8.1 Tackling tax avoidance and disruptive work practices

The theoretical context of this research is interesting, as it examines coercive pressures exerted on the accounting profession by Revenue between 2003 and 2012. These pressures may be viewed theoretically as Revenue engaging in disruptive work. Although some such strategies have emerged from prior studies of institutional change (Jones, 2001; Leblebici, Salancik, Copay and King, 1991; Ahmadjian and Robinson, 2001; Wicks, 2001), the institutional theory literature calls for greater empirical work in this area, in order to identify further strategies employed where disruption of a highly institutionalised field is being sought. In addition, more recent studies have identified the over-lap between different forms of institutional work – creation, maintenance and disruption – due to the complex nature of reality (Empson, Cleaver and Allen, 2013).

This longitudinal study identifies a transition from less direct to more direct disruptive work practices as Revenue sought to tackle tax avoidance. In addition, institutional work, traditionally associated with institutional creation and maintenance, is seen alongside traditional disruptive work practices in order to achieve the desired level of disruption. The building of layers of disruptive work over time, incorporating various aspects of institutional work, emerged from the findings in this study.

The study of disruptive work practices also contributes to the tax literature, as it allowed for a tackling tax avoidance pyramid to be developed, providing an illustration of the measures that tax authorities may implement as their efforts to tackle tax avoidance at a tax system level escalate.

1.8.2 Response of the accounting profession to external pressures

The response of the accounting profession to the disruptive work practices is examined in Chapter 6. Coercive pressures of this kind have been found to be the strongest institutional pressure to result in change (Oliver, 1991). However, despite the legal, coercive nature of the regulatory changes, the accounting profession, for a considerable period, displayed defiance, particularly when it was not directly impacted by the changes. When the changes evolved and introduced direct obligations and penalties for the accounting profession, compromise strategies were adopted, albeit alongside continuing defiance. This study uses Oliver's (1991)

framework as a theoretical lens to examine the response of the accounting profession to the changes in the general anti-avoidance tax regime. The study extends prior work that has examined the response of the accounting profession to changes in its regulatory environment (Canning and O'Dwyer, 2013) by exploring both the public and the private response of the accounting profession to regulatory changes. Going beyond the publically articulated response of the accounting profession and using semi-structured interviews and a focus group to examine the private, internal response to changes in the general anti-avoidance tax regime allowed much greater depth of understanding to be gained and a more accurate picture of the accounting profession's overall response to be constructed.

In addition to examining how the accounting profession responded, the study also explores why the accounting profession responded as it did to the regulatory changes. The importance of clients and societal views are identified as key influencers on the response of the accounting profession and obtaining the private response and views of the accounting profession enabled this depth of understanding to be achieved.

1.8.3 Work practices and maintenance work

The impact of the changes in the general anti-avoidance tax regime on the work practices of tax accountants is examined in Chapter 7. This study wishes to explore if the regulatory changes impacted the type of advice that tax accountants were willing to engage in following the regulatory changes. The concept of maintenance work is used as a lens through which to understand the ways in which tax accountants responded to the changes, in terms of day-to-day work practices. For example, it explores the procedural changes implemented within accounting firms to deal with the regulatory changes and to maintain, to as large extent as possible, the *status quo vis-à-vis* their tax advice. This study, therefore, responds to a call in the accounting literature to examine the mechanisms through which professional values are maintained (Suddaby *et al.*, 2009), albeit in this study the professional values are seen to include a commitment to serve client needs rather than an expectation to serve the public interest.

Despite the substantive regulatory changes being experienced by members of the accounting profession providing taxation services, there has been a dearth of research in this area. There has been a call for an examination of the "relationships

between tax, accounting and regulatory practices” and, in particular, for interpretive and critical methodologies to be used (Gracia and Oats, 2012, p.319). Work practices are impacted as a result of changes in the professional field, and research is required in order to uncover the dynamics, determinants and consequences of this increased regulation and the impact that it has on the work practices of the accounting profession. In the case of tax accountants, the issue under examination is whether the regulatory changes have resulted in changes to the type of tax advice provided by the accounting profession. The qualitative aspect of this study enables rich insights to be gained in relation to the impact of the general anti-avoidance tax regime on the work practices of tax accountants.

The study also responds directly to calls made by accounting scholars in relation to the need to investigate more fully the interaction between regulatory guidelines and micro-level practices (Arnold, 2009; Hopwood, 2009; McSweeney, 2009; Lounsbury, 2008; Cooper and Robson, 2006). The public failings of the accounting profession have resulted in a reduction in status that was originally built upon the traditional, normative logic of professions. This logic involved minimal regulation. Diminishing status has led to a situation where the accounting profession faces significant coercive pressures in the form of increasing regulation of its services and accountability for its actions. The empirical setting chosen for this study (i.e., the general anti-avoidance tax regime in Ireland) provides a field in which norms of appropriate behaviour are still being negotiated between the accounting profession and Revenue. The complexity of the empirical setting also allows for a range of maintenance work practices to be explored and understood, at times crossing the traditional boundaries of creation and maintenance work.

1.8.4 Tax policy implications

This study has important implications from a societal perspective also, given that taxation policy is central to enabling a country to execute its social justice and economic priorities. More generally, this study has a number of practical implications for the accounting profession and policymakers. The introduction of general anti-avoidance tax legislation is time-consuming and costly, and this research aims to examine its impact on one of the key groups within which it aims to alter behaviour. The findings of this study will enable tax authorities to gain an insight into how increased regulation impacts the actual practices of the accounting profession and,

most importantly, whether it achieves its aim of reducing the incidence of aggressive tax avoidance.

The insights gained into the ability of the accounting profession to rebuff legislative amendments; the influence of their clients; and the importance placed on responding to those clients' needs and desires allows for future work by tax authorities aimed at tackling tax avoidance to be better placed and more effective. Tax authorities may direct efforts at changing the behaviours of taxpayers, as the results of this study show client attitudes to tax avoidance to be a key influencing factor on the type of tax planning offered by the accounting profession.

Finally, the study sheds light on the consequences of regulatory change, with tax accountants acknowledging a change in their relationship with Revenue, moving from a collaborative, working relationship to a sub-optimal, deteriorating situation. In addition, the study found a lack of identification by tax accountants with serving the public interest. From a tax policy perspective, this may concern regulators and encourage further re-assessment of the relationship with the profession and what future regulatory changes may be required to tackle aggressive tax avoidance.

1.9 Organisation of the dissertation

The dissertation is organised as follows. Chapter 2 reviews the literature by which the study has been informed and to which the results of the study will contribute. It begins with a discussion of the professionalism of accounting (Carter and Spence, 2014; Spence and Carter, 2014; Muzio, Brock and Suddaby, 2013), including a review of the sociology of professions and the sociology of organisations literature (Hanlon, 1997; Freidson, 2001; Leicht and Lyman, 2006). This is followed by a review of the tax avoidance and tax compliance literature (Braithwaite and Braithwaite, 2000; McBarnet, 2003; Freedman, 2011).

The institutional framework for the study is outlined, commencing with a discussion of the institutional work practice of disruptive work (Lawrence and Suddaby, 2006; Zietsma and Lawrence, 2010; Jones, 2001; Ahmadjian and Robinson, 2001; Empson *et al.*, 2013; Hayne and Free, 2014). The literature review then moves to a discussion of the ways in which an institution may respond to external pressures, with Oliver's (1991) typology of strategic responses to institutional pressures presented and discussed. Finally, the concept of maintenance work is introduced

and its prior use in the literature discussed (Lawrence and Suddaby, 2006; Micelotta and Washington, 2013; Currie, Lockett, Finn, Martin and Waring, 2012; Empson *et al.*, 2013; Hayne and Free, 2014).

Chapter 3 presents the empirical context for the study, the general anti-avoidance tax regime in Ireland. The background to the introduction of the GAAR is explored, followed by an examination of the supplementary provisions that have been introduced, including protective notification and mandatory disclosure. The leading case of *O'Flynn Construction*³ is also presented. Chapter 3 sets the scene for the remainder of the thesis.

The research design, including the philosophical position of the study, the specific research questions, the research methodology, the research methods employed and the data analysis techniques used are presented in Chapter 4.

The results and discussion chapters commence with Chapter 5. The disruptive work practices used by Revenue to tackle tax avoidance are discussed and analysed. Chapter 6 examines the response of the accounting profession to changes in the general anti-avoidance tax regime. The focus then moves inside the accounting firms, to examine the impact of changes in the general anti-avoidance tax regime on the day-to-day work practices of tax accountants in Chapter 7. Maintenance work practices used by tax accountants to resist changes in their work practices are examined and analysed.

Chapter 8 concludes with a summary of the main findings and contributions from the study and implications for policymakers and legislators. This is followed by the identification of the limitations of the study and future research opportunities.

³ *O'Flynn Construction and Ors v. Revenue Commissioners 2011 IESC 47.*

Chapter 2: Literature review

2.1 Introduction

The literature review was guided by the motivation and purpose of this study – to examine the professionalism of tax accountants – in the context of how Revenue sought to tackle what was perceived as unacceptable tax avoidance. This study required an interdisciplinary approach to be adopted, a method which has been used within the accounting literature to examine “the social and legal processes by which taxation influences accounting practice” (Lamb, 2005, p.65). Examining tax practice within the accounting profession has been heralded as worthy of research because of the conflicts of interest that may arise within professional service firms and tensions created by the commercialisation of tax practice (Roberts, 2001, as cited by Lamb, 2005). This study examines tax accountants and the impact of external influences and pressures. The tax accountant faces an “inevitable conflict... between serving the client and maintaining the integrity of the tax system” (Stuebs and Wilkinson, 2010, p.13). The complex relationship that this creates for tax accountants and the competing pressures make this a fruitful research opportunity.

In addition to the inherent conflict faced by tax accountants, the accounting profession has also been facing increasing scrutiny as regards its involvement in the facilitation of aggressive tax avoidance schemes (Sikka and Hampton, 2005). This shift away from professionalism was seen in the involvement of the accounting profession in aggressive tax shelter cases in the US (Permanent Subcommittee on Investigations, 2005). Accounting firms “emphasized customer-driven commercialism and client service rather than public-spirited responsibilities to the public or the state” (Hanlon, 1994, as cited by Stuebs and Wilkinson, 2010, p.25). Aggressive tax planning, and methods of tackling it, are key issues for both national governments and international organisations, such as the OECD. As a result, general anti-avoidance tax regimes have been implemented and strengthened (Pickup, 2008) to address what is regarded as an anti-social issue (Mostrous, 2012).

As a result of the complex nature of both tax accountants and the context in which they perform their services, the literature review includes a number of distinct, but

intertwining, streams of academic research. The most pertinent parts of the literature are discussed to gain an in-depth understanding of the phenomena under enquiry.

This chapter begins with a review of the professionalism literature. Understanding the foundations upon which professions are built (section 2.2) is essential in examining the professionalism of tax accountants. The development of professional groups and the traditional values that differentiate professionals from other occupational groups are explored in this section. The specific development of the accounting profession is discussed in section 2.2.4, with an examination of the commercialisation of the accounting profession (section 2.2.4.1) and the institutional logics guiding the accounting profession (section 2.2.4.2). This study is focused on the taxation sub-set of the accounting profession and, therefore, the development of the provision of tax services by the accounting profession is discussed in section 2.2.6, together with the threats that the provision of tax services pose to the professionalism of accounting. The research gap and opportunities to build upon the existing stream of research are identified in section 2.2.7.

The professionalism of tax accountants has been questioned because of their involvement in aggressive tax avoidance schemes (Stuebs and Wilkinson, 2010). Therefore, it is appropriate to examine what constitutes tax avoidance and the accounting profession's involvement in what may be regarded as unacceptable or aggressive tax avoidance (section 2.3). The issues facing tax authorities in dealing with tax avoidance are addressed, with the traditional methods of tackling non-compliance discussed (section 2.3.1) and the inability of such methods to tackle tax avoidance identified (section 2.3.2). The gap in our knowledge relating to how tax authorities seek to tackle tax avoidance is presented in section 2.3.3.

Institutional theory is used as a lens throughout the study. Tax has been recognised as "a social and institutional practice" (Oats, 2012, p.5); however, it has been argued that insufficient attention has been paid in the literature to the institutionalised nature of tax (Oats, 2012). In addition, it has been argued that the translation of tax law into real-life practices has been neglected in the tax literature (Oats, 2012). This study responds to this call by examining how changes in the general anti-avoidance tax regime were (i) responded to by the accounting profession and (ii) the impact that such amendments had on the day-to-day work practices of tax accountants. Institutional theory provides an appropriate lens through which to examine the

various complex issues under enquiry in this study. In the first instance, the actions of the tax authorities in attempting to deal with tax avoidance may be understood in the context of a distinct form of institutional work, disruptive work (Lawrence and Suddaby, 2006). The aim of disruptive work and the different forms of this institutional work category are discussed in section 2.4.

The literature review then shifts attention from the actions of the tax authorities to the response of the accounting profession to external pressures. Prior research examining responses to institutional change is summarised in section 2.5. Disruptive work practices prompt a response from the organisation or professional group targeted. Oliver's (1991) framework has been used in previous studies examining the response of the accounting profession to external pressures (Canning and O'Dwyer, 2013; Lander *et al.*, 2013). The framework sets out five strategic responses to institutional pressures and suggests the environmental antecedents that may predict the type of strategic response selected. Studies that have used and extended Oliver's (1991) framework are explored, with particular focus on those examining the response of the accounting profession to external changes, together with studies that have focused on the predictive nature of the environmental antecedents.

Having explored the literature relating to how the accounting profession may respond to external pressures, the literature review shifts to the final focus – how the accounting profession may seek to maintain institutionalised work practices that are under threat from external forces.

Institutional theory is, once again, used as a lens to analyse how tax accountants and the accounting firms responded to the external threat in the form of changes to the general anti-avoidance tax regime. The theoretical concept of maintenance work is discussed (Lawrence and Suddaby, 2006). Another form of institutional work, maintenance work, is performed where an organisation or professional group is being threatened, for example by disruptive work practices, and those within the organisation or professional group seek to maintain current practices. The theoretical concept of maintenance work and prior studies in this area, with particular focus on prior studies of the maintenance activities of professional groups (Hayne and Free, 2014; Empson *et al.*, 2013; Micelotta and Washington, 2013; Ramirez, 2013; Currie *et al.*, 2012), are presented and discussed in section 2.6.

The chapter concludes with a summary of the literature review in section 2.7.

2.2 Professionalism of accountants

Professionalism in the context of accountants has been an area of scholarly interest (Gendron, 2002; Gendron *et al.*, 2006; Suddaby *et al.*, 2009, Malsch and Gendron, 2013; Carter and Spence, 2014; Spence and Carter, 2014) for a considerable period, particularly following the financial scandals of the early 21st century. Prior research on the nature of professions helps to inform investigations of professionalism in the accounting context. The sociology of professions literature provides both a trait-based and a conflict/power-based perspective to understanding professional groups. Beginning with the trait-based perspective, the defining characteristics that separate professionals from other occupations are discussed in section 2.2.1, and the consequent societal expectations resulting from professional status are outlined. This is followed, in section 2.2.2, by the alternative power/conflict framework that paints professionalism as “a means of *organizing* and *controlling* an occupation” (Johnson, 1972 as cited by Muzio *et al.*, 2013 p.702). However, the ability of these traditional approaches to deal with contemporary professions has been questioned and an institutional approach to the study of professions is presented in section 2.2.3 as a fruitful alternative, with the meaning of professionalism in the context of this study defined therein.

The development of the accounting profession and the institutional context in which it operates is dealt with in section 2.2.4. This includes a discussion of the commercialisation of the accounting profession, including the impact that the organisational context in which professionals operate and the rise of professional service firms has had on the accounting profession. The institutional logics guiding and shaping the accounting profession are also discussed. This is followed in section 2.2.5 with the opportunities to build on prior studies of professionalism of accountants.

This study is focused on the provision of taxation services by the accounting profession and, therefore, section 2.2.6 provides a discussion of the tax services offered by accountants and the importance of such services from a societal perspective. In addition, this section outlines the conflicts and tensions arising for tax accountants and the criticism received by the profession for its role in tax avoidance.

Section 2.2.7 presents the specific research gaps identified that are addressed in this study.

2.2.1 Professionalism – a trait-based approach

Early studies of professional groups focused on the functional role played by professions (Carr-Saunders and Wilson, 1933; Durkheim, 1957; Parsons 1954) and “their ability to place fairness, knowledge, and altruism at the centre of society and government” (Muzio *et al.*, 2013, p.702). A number of key traits developed as representing the core characteristics of professional groups such as: expert knowledge, professional education and training, self-regulation and a public service ethos (Muzio *et al.*, 2013).

Under this functional perspective, a profession may be defined as “a special type of occupation, one whose members exhibit high levels of characteristics such as: expertise, autonomy, a belief in the regulation of the profession by its members, and a belief in the importance of the services the profession provides” (Kerr, Von Glinow and Schriesheim, 1977 as cited in McAulay, Zeitz and Blau, 2006, p.573).

In addition to expertise, acting in the public interest is regarded as a cornerstone of professions, with members claiming “to subordinate or, at least moderate, self-interest in service of the public interest” (Pierce, 2006, p.7). Professionalism has also been defined as “the extent to which a person possesses attributes such as belief in public service and a sense of calling in the field” (Clikeman, Schartz and Lathan, 2001, p.630). Throughout the literature (West, 1996; Lee, 1991; Mautz 1988), it is argued that serving and acting in the public interest is a key characteristic of professions and the grounds for which society grants monopoly status for specific services to professions (Mautz, 1988). However, the prior literature has found difficulty agreeing a definition of what constitutes “in the public interest” (Pierce, 2006). Public interest in the accounting context has been described as involving the protection of the economic interests of clients and also the interests of third parties who place reliance on the pronouncements and advice of both professional accounting bodies and their members (Parker, 1994).

In response to the difficulty of defining what constitutes acting “in the public interest”, the International Federation of Accountants (IFAC), developed a policy position paper seeking to define the public interest (IFAC, 2012). This policy paper states

that “IFAC defines the public interest as the net benefits derived for, and procedural rigor employed on behalf of, all society in relation to any action, decision or policy” (IFAC, 2012, p.1). IFAC regards the “public” to include all individuals and groups due to the responsibilities of the accounting profession affecting every aspect of society (IFAC, 2012).

An issue that arises in applying the concept of acting in the public interest to all members of the accounting profession is the different roles played both those in audit, tax and advisory services. Tax accountants undertake an advocacy role on behalf of their clients (as discussed in section 2.2.6) and as a result tensions and conflicts arise in the delivery of this advocacy role, whilst maintaining a commitment to serve the public interest (Stuebs and Wilkinson, 2010).

In addition to expert knowledge and acting in the public interest, there are other criteria often cited as being essential for professional groups, including professional education, self-regulation, (Magill and Previtis, 1991), independence from clients and a code of ethics (Lee, 1991). It is these characteristics and commitment to serve the public interest that have been regarded as differentiating professionals from other occupational groups.

This functionalist, trait-based approach to understanding professions has, however, received criticism “for ignoring issues of power and privilege and indeed for being too close to the claims and interests of the professionals themselves” (Freidson, 1970; Johnson, 1972; Larson, 1977 as cited by Muzio *et al.*, 2013). Resulting from this criticism, a new approach centring on conflict and power developed as a means to understanding professions.

2.2.2 Professionalism – a conflict/power approach

An alternative approach to understanding professions, framed professionalism as allowing members of professional groups to control their own work (Freidson, 2001), granting them self-control and autonomy. As a result, it moved away from professionalism being regarded as encompassing specific characteristics (as was the case in the trait-based approach) and instead saw professionalism as a means for professionals to organise and control their work (Johnson, 1972), placing power at the centre of professional studies (Freidson, 1970).

The conflict/power approach emphasises the specialist expertise at the centre of professional groups (Freidson, 2001). The nature of professionals' knowledge, how society evaluates the importance of that knowledge and how the profession manages its knowledge base in a strategic manner is of central importance (Macdonald, 1995). The expertise of professionals affords them both social closure and social status (Macdonald, 1995). For example, the ability of a professional group to control specific technical knowledge and expertise enables it to exclude others from its group and as a consequence advance its own interests (Macdonald, 1995). The ability to achieve social closure is demonstrated by professional groups in their use of credentialism (Hughes, 1971). Professional groups use professional training and the resulting professional qualifications to erect social closure and hence, achieve social status. This method of achieving social closure and social status is performed through the assembly of strong cultural assets (Macdonald, 1995). These cultural assets, encompassing "the realm of knowledge, credentialised skill and respectability" (Macdonald, 1995, p.58) are deemed the most important arsenal for professional groups in their achievement of social closure and the consequent social status that results from a professional group being perceived by society as possessing such specialist knowledge and expertise.

Social closure and social status may provide professional groups with a greater ability to resist changes in their external environment and, therefore, are important concepts to consider in the analysis of external changes experienced by tax accountants.

Despite the praise received by the conflict/power approach in overcoming the limitations of the functionalist perspective to analysing professional groups, it has not escaped its own degree of criticism. It has been regarded as ignoring "the broader role that professionals exercise in the construction, organization, and ordering of social life" (Burrage and Torstendahl, 1990; Halliday, 1987; Halliday and Karpik, 1997; Johnson, 1993; Torstendahl and Burrage, 1990 as cited by Muzio *et al.*, 2013) and is considered as failing to "capture the broader set of motivations besides self interest that guide professional action" (Dingwall, 2004; Evetts, 2006a, 2006b; Freidson, 2001; Saks 1995 as cited by Muzio *et al.*, 2013, p.703). As a result, these existing frameworks do not enable us to fully understand the transformation of work practices both within organisational settings (Brock, Powell and Hinings, 2007; Dacin, Goodstein and Scott, 2002; Hinings, 2005; Leicht and Fennell, 2001) and as a result of professional groups experiencing external pressures (Muzio *et al.*, 2013).

To address these shortcomings, an institutional approach to the study of professions has been developed.

2.2.3 Professionalism – an institutional approach

The shortcomings of the trait-based and conflict/power-based approach to understanding professions led to the adoption of a neo-institutional lens through which professional groups and the processes of professional change may be understood and analysed (Muzio *et al.*, 2013).

Professional projects are constrained by the institutional environment in which they are surrounded (Burrage, Jaraush and Siegrist, 1990) and as a result professional projects have been regarded as containing within them projects of institutionalisation (Suddaby and Viale, 2011). As professional groups respond to internal and external pressures, this results in “reverberat[i]ons through the [institutional] field” (Suddaby and Viale, 2011, p.426). Professionalisation may, therefore, be regarded as a subset of institutionalisation (Muzio *et al.*, 2013).

In contemporary society, professionalism “has been institutionalised as the taken for granted template for organizing and delivering expertise” (Freidson, 2001; Muzio *et al.*, 2007; Reed 1996; as cited by Muzio *et al.*, 2013, p.706). Due to the specific purpose that professions serve for society, they are often based on normative rules (Scott, 2008). In addition to the guidance provided by the normative framework, professions may also be subject to a regulatory form of guidance, through standards created by their professional groups (Scott, 2008). Professions may be regarded as acting as cultural-cognitive agents, where they provide “categories, principles and conceptual tools that help define and frame issues” (Muzio *et al.*, 2013, p.706).

Institutional theory is regarded as providing “the most promising and productive lens for viewing organizations in contemporary society” (Scott, 2008, p. viii). In this study, the institution under enquiry is the accounting profession, with the particular focus being on the work of tax accountants who form part of this institution. The involvement of the accounting profession in the provision of advice that may be regarded by tax authorities and other stakeholders as representing aggressive tax avoidance is the focus of the study. In order to answer the research questions posed in this study, enquiry at the institutional field level is undertaken. DiMaggio and Powell (1983) defined an organisational field as those organisations that

together constitute “a recognised area of institutional life: key suppliers, resource and product consumers, regulatory agencies and other organizations that produce similar services or products” (p.148). In this particular empirical context, the institutional field includes the professional accounting and taxation bodies, the professional accounting firms, the tax authorities, the government, clients and the public. Taxation services are not solely provided by the accounting profession and, therefore, the institutional field also includes competitors such as professional legal firms and non-accountant taxation providers.

This study is specifically addressing the impact of general anti-avoidance tax legislation on the provision of tax services by the accounting profession. Institutional theory provides a framework through which to examine (i) the role of tax authorities in tackling tax avoidance, (ii) the response of the accounting profession to the external efforts of tax authorities and (iii) the impact of changes in the general anti-avoidance tax regime on the work practices of tax accountants. In order to answer the research questions posed the actions of the tax authorities in attempting to reduce the incidence of aggressive tax avoidance through a number of disruptive work practices is firstly examined. The response of the accounting profession is then explored, with the professional accounting and taxation bodies being the actors under enquiry. Finally, the actions of tax accountants working within the professional accounting firms and the reactions of these tax accountants to legislative changes are explored.

Institutional theory can help us to understand “attempts to develop and control a particular occupational jurisdiction” (Muzio *et al.*, 2013, p.706) and, hence, is an appropriate lens through which to analyse both the work of the tax authorities in exerting pressure on the accounting profession to refrain from its involvement in aggressive tax avoidance and the response of the accounting profession to such external pressures. The prior literature has highlighted the ways in which professional groups influence institutional changes through creating new space for their expertise, introducing new actors, re-drawing work boundaries and utilising social capital (Suddaby and Viale, 2011). In addition, institutional theory is an appropriate lens through which to examine the guiding principles and work practices of accountants (Suddaby, Cooper and Greenwood, 2007) and, in particular, the

concept of institutional work⁴ allows for reflexivity and agency to be considered when professionals engage in practices to create, change or maintain institutions, providing a fitting theoretical framework to address the ways in which tax accountants responded to external pressures in terms of their day-to-day work practices.

The overarching objective of this study is to examine the professionalism of tax accountants. It is acknowledged that the term professionalism is used in distinct ways in the literature (Suddaby *et al.*, 2009; Malsch and Gendron, 2013). It may be viewed as a variable notion, encompassing a variety of contradictory values e.g., public service and commercial interest (Cooper, Hinings, Greenwood and Brown, 1996), whereby professionalism is continuously subject to change due to the ongoing contest between these competing values (Malsch and Gendron, 2013). In contrast, professionalism may be viewed as a more stable concept, deriving from the “ideal-typical discourse of public service and disinterest in commercial matters” (Friedson, 2001; as cited by Malsch and Gendron, 2013, p.880). For the purposes of this study, the latter perspective is adopted, with the objective of examining how changes in the general anti-avoidance tax regime impacted this traditional concept of professionalism amongst tax accountants, for example, did the regulatory changes lead to a strengthening of professional values or a greater emphasis being placed on serving the public interest. In order to achieve this, an understanding of the development of the accounting profession and the guiding principles shaping the behaviours of individual accountants is now considered.

2.2.4 Development of the accounting profession

Accountants began to be regarded as a professional group from the late 19th century, with the process of establishing themselves as a profession taking place over a 60-year period (1870–1930) (Kirkham and Loft, 1993). Accounting was an exception to other professional groups at the time, as it was the first professional group to operate within “the new commercial and industrial heart of society” (Abbott,

⁴ Although institutions have “a profound effect on the thoughts, feelings and behaviour of individual and collective actors”, they are also “the product of purposive action” (Lawrence and Suddaby, 2006, p.216). It is as a consequence of individuals’ actions and their response to changes in the external environment that institutions are maintained, changed and destroyed (Lawrence and Suddaby, 2006). The activities and work practices of individual and collective actors which result in the creation, reproduction, change and disruption of institutions is referred to in the literature as institutional work. This concept of institutional work highlights the central role that organisational actors play in the institutionalisation process, a role which has not been widely examined in the existing literature (Lawrence, Suddaby and Leca, 2011).

1988, p.3). It is argued in the literature that a professionalisation project was undertaken, with accountants actively seeking to emulate traditional professional groups such as medicine and law, by establishing, for example, a theoretical body of knowledge, a code of ethics, disciplinary procedures, and rigorous education and examination requirements (Velayutham and Perera, 1993). Accountants began their professionalisation project offering bookkeeping and accounting services, which then moved on to auditing, and later it expanded into the fields of taxation, insolvency and management consultancy (Macdonald, 1995). The professional status afforded to accountants was built up over time and was demonstrated by a monopoly over certain activities, barriers to entry and control over their body of knowledge (Walker, 1988, 2004; Kedsle, 1990).

It has been shown that the accounting profession in the US was building up its reputation and integrity prior to the 1940s by placing importance on the morally educated professional and being concerned with having a culture of professionalism amongst accountants that focused on integrity, character and personal responsibility (Zeff, 2003a; McMillan, 1999). In the context of public practice, the 1960s have been referred to as the golden age of accounting, where partners' confidence in being supported by their colleagues at all times enabled them to stand up to clients who were trying to pursue questionable accounting practices (Zeff, 2003a). Accounting was also seen as a leading professional group in terms of the employment it created, the status and economic rewards which its members enjoyed, the size of the firms, the range of services offered and the influence which it had on political leadership (Lee, 1991).

For most of the 20th century, accountants, like many other professionals, differentiated themselves from other occupational groups by their specialised body of knowledge and expertise, which enabled them to argue for control and autonomy over their work (Abbott, 1988). This autonomy was generally granted on the premise that professionals act in a responsible manner (West, 1996; Lee, 1991). In support of this, professionals were seen in the past as not being guided purely by economic gain, but were instead concerned primarily with the quality of their work (Freidson, 2001). The ability of an occupational group to achieve professional status and to maintain it rests firmly with its persuasive ability to justify the privileged position of the group to society (Lindbloom, 1977).

However, historical studies have cast doubt on the public service ethos claims of the accounting profession (Annisette, 2000; Annisette and O'Regan, 2007; Spence and Brivot, 2011), with these claims instead being regarded as a means of advancing the self-interest of the profession, which may be regarded as unsurprising given that accounting is an "inherently commercial activity" (Carter and Spence, 2014, p.699).

Substantial changes, linked to commercialism, were seen more clearly in the accounting profession from the mid-1960s and, by the end of the 20th century, it has been suggested that the training of professional accountants focused primarily on developing commercial skills, rather than focusing on technical knowledge (Hanlon, 1994). The shift in focus of the large accounting firms has been described as a move from social service professionalism to commercialised professionalism (Hanlon, 1994).

2.2.4.1 Commercialisation of the accounting profession

Contemporary professions are seen as an intellect industry (Scott, 1998). As discussed, the defining characteristics of professions are considered to include expertise, customisation of services, professional discretion and judgement, and the expectation that services are provided within the constraints of professional norms of behaviour (Maister, 1993; Lowendahl, 1997). However, despite the recognition that professionals operate by reference to established professional norms, there has been an emergence of a "dark side" to the accounting and other professions, which questions the extent to which these professional values hold true (Vaughan, 1999, p.271).

The "dark side" (Vaughan, 1999, p.271) of professions may have contributed to the commercialisation of their activities, with such commercialisation being evidenced through the changing organisational nature in which professionals operate.

The changing organisational context of professionals has been seen to the greatest extent in the accounting profession, as it was the first profession to operate internationally (Macdonald, 1995). This was because of a substantial part of its work being derived from multi-national corporations that require global services (Macdonald, 1995). This demand led to the creation of transnational accounting firms, originally known as the Big Eight, and then through mergers and a cessation became known as the Big Four.

These firms were capable of delivering the requisite suite of services to global corporations. The power and influence of the Big Four firms have shaped the contemporary profession. Cooper and Robson (2006, p.436) encapsulated this by saying that “accounting firms, and especially the Big Four, help to produce, as well as reproduce, the identity not just of accountants, but also the way economic and social life is to be conceived, managed and changed”. The global reach of the Big Four firms means that they can rival many of their *Fortune 500* clients in terms of size (Greenwood, Suddaby and McDougald, 2006).

The change in the market for accounting services has been well documented in the literature, together with the resulting “increasing salience of commercial logics that emphasize the pursuit of profit” (Carter and Spence, 2014, p.966). The extent and influence of commercialism in accounting has been attested to in numerous prior studies (Andersen-Gough *et al.*, 2000, 2001; Gendron, 2001, 2002; Gendron and Spira, 2010; Kornberger *et al.*, 2011; Malsch and Gendron, 2013).

The professionalism of accounting literature has investigated tensions between professional and commercial values in accounting and the impact of this tension on core professional values (Gendron, 2002; Gendron *et al.*, 2006; Suddaby *et al.*, 2009). Alongside the commercialisation of the accounting profession, an erosion of professional values has been evident (Hanlon, 1994; Sikka, 2008). This has been attributed by some researchers to the changing organisational context in which professionals work (Leicht and Lyman, 2006) and as a result the role of professional service firms and their impact on professionalism has been examined (Gendron, 2002; Suddaby *et al.*, 2009).

Professional groups came together and formed organisational groups based on the shared traditional professional values and expertise of the relevant organisation’s members. It was initially thought that such organisations would fail due to “an inherent conflict between the individualistic orientation of professional values and pressures to conform within hierarchies” (Blau and Scott, 1962, Scott, 1965, as cited by Greenwood *et al.*, 2006, p.2).

Studies have examined professional and organisational commitment and whether there is an inherent conflict between the two (Suddaby *et al.*, 2009; Bamber and Iyer, 2002; Shafer, Lowe and Fogarty, 2002). The majority of studies have found no inherent conflict between commitment to one’s profession and one’s organisation.

Studies have shown that professionals can remain committed to their profession whilst obtaining a new commitment to their organisation (Wallace, 1995; Leicht and Fennel, 2001), with accountants being able to adapt to their organisational environment, whilst retaining a commitment to their profession (Suddaby *et al.*, 2009). However, accountants working in Big Four firms were found to hold different attitudes to professional ideologies, having been shown to have much lower levels of commitment to professional values than non-Big Four accountants (Suddaby *et al.*, 2009).

It has been found that commercialism does not lead to the complete abandonment of traditional professional values (Carter and Spence, 2014). The ability of contemporary accountants – particularly given the organisation context in which they operate – to retain commitment to professional values, whilst operating in, for example, global multi-disciplinary firms, such as the Big Four, has been the subject of inquiry (Suddaby *et al.*, 2009). However, the extent of professional commitment has been shown to be questioned where the demands of clients have overshadowed the fiduciary duties of professional groups to the state and the public (Leicht and Lyman, 2006). This shift in guiding principles may be described as the commercialisation of professions.

A key issue arising from this empirical work is the importance of the organisational context in shaping the attitudes and values of accountants. A surprising result was that the attitudes and commitment of those accountants working in traditional work contexts, such as auditing, did not differ significantly from the attitudes and commitment of those working in non-core areas, e.g., taxation. However, those non-core accountants did also identify more closely with their clients than their audit colleagues, as may be expected (Suddaby *et al.*, 2009).

Institutional theory provides a lens through which the competing guiding principles of professionalism and commercialism can be explored and analysed. The following section examines the institutional logics that are regarded as guiding and shaping the behaviour of accountants.

2.2.4.2 Institutional logics and the accounting profession

The concept of institutional logics is used in institutional theory to describe “the way a particular social world works” (Jackall, 1988, p.112) and has been defined as “the

socially constructed, historical patterns of material practices, assumptions, values, beliefs, and rules by which individuals produce and reproduce their material subsistence, organize time and space, and provide meaning to their social reality” (Thornton and Ocasio, 1999, p.804, as cited in Thornton and Ocasio, 2008, p.101). Institutional logics essentially “shape the rules of the game” (Dunn and Jones, 2010, p.114).

Globalisation and the increasing power and influence of the Big Four firms have been recognised as having had a significant impact on the institutions of the accounting profession (Caramanis, 2002). It has been argued that the tensions created by globalisation have manifested in high profile failures of the profession and the resulting public debates regarding the ability of the profession to self-regulate in a responsible manner (Cooper, Greenwood, Hinings and Brown, 1998; Zeff, 2003a, 2003b). Despite societal concerns, there has been a continuing shift in the underlying principles guiding the profession from one of social trustee to one of expertise (Suddaby and Greenwood, 2005).

The shift in emphasis from social trustee to a client-focused expert leads to a number of conflicts for the profession. Individual accountants are, in many cases, employees of large transnational accounting firms, where commercial profits and satisfying client demands are a priority and promotion is dependent not so much on the level of expertise demonstrated as on revenue-generation criteria (Suddaby *et al.*, 2009; Wyatt, 2004). Extreme consequences of these conflicts have included the demise of Arthur Andersen in 2002 and a diminution of societal trust in the profession.

The tensions and conflict between traditional professional values and commercial values pursued by accounting firms have been characterised as two distinct guiding principles: a professional logic and a commercial logic (Thornton, Jones and Kury, 2005; Cooper and Robson, 2006; Lander *et al.*, 2013). Where changes arise in the institutional environment of the accounting profession, there may be a resulting impact on these guiding principles. Such changes in logics in turn influence the overall response of the profession to change (Thornton, Ocasio and Lounsbury, 2012).

Following decades of building up their credentials as a professional group, accountants had achieved substantial success in its professionalisation project

(Macdonald, 1995). The fiduciary or professional logic upon which the professionalisation project was built emphasised the responsibility of the accounting profession to the broader community (Jones, 1995). However, the commercialisation of the accounting profession resulted in a shift away from the professional logic towards a strong commercial logic (Cooper and Robson, 2006). This competing commercial logic was promoted by the professional service firms that grew out of the success of the profession in developing a reputation for expertise and client-service (Hanlon, 1994; Cooper and Robson, 2006). This resulted in a shift away from serving the public interest (professional logic) towards a prioritisation of profit maximisation (commercial logic).

Concerns about the potentially damaging impact of a more business-like approach to running accounting firms were articulated during the last quarter of the 20th century, but debates regarding the tension and conflict between these two opposing logics intensified after the demise of Arthur Andersen in 2002 (Zeff, 2003a, 2003b; Wyatt, 2004). The contemporary accounting profession may be regarded as being guided by both a professional and a commercial logic (Cooper and Robson, 2006). The impact of such competing logics has also been raised in the context of tax accountants, with the identification of the inherent conflict between serving the public interest and meeting client needs (Stuebs and Wilkinson, 2010). As a result, the professional logic may be compromised by the pressures to meet client demands (Stuebs and Wilkinson, 2010).

Table 2.1 sets out the key characteristics of each logic, demonstrating the difference between the two logics in how they attempt to guide and shape the behaviour of the accounting profession.

Table 2.1: Institutional logics in the accounting profession

Characteristic	Professional logic	Commercial logic
Source of identity	Accounting as a profession	Accounting as an industry
Source of legitimacy	Professional expertise	Scale and scope of the firm
Sources of authority	Professional membership	Management committee Managing partner
	Government regulation	Government regulation
Values/rationality	Client-service	Revenue/Profit growth
	Public interest	
Basis of attention	Providing legitimacy	Selling services
		Generating profits
Basis of strategy	Personal reputation and quality of service	Expansion of services and client base (cross-selling)
		Differentiation on client-service

Source: Table based on analysis in Ezzamel, Robson and Stapleton (2012), Thornton and Ocasio (2008), and Thornton, Jones and Kury (2005)

As can be seen from Table 2.1, the professional logic emphasises the professional foundations of the institution, with the legitimacy for accountants' work being gained from their professional expertise and skill. In contrast, the commercial logic regards the accounting profession as an industry, with legitimacy being gained from the scale and scope of the individual accounting firm, rather than from professional expertise.

Another key difference between the two logics is the source of authority. The professional logic guides behaviour by placing a key emphasis on professional body membership and the proclamations from such bodies and also from government regulation. Whilst the commercial logic also acknowledges the authority that government regulation has on the profession (given its legally binding status), the commercial logic emphasises the internal management structures within the accounting firms, e.g., the managing partner and management committee, as being the critical source of authority.

A critical distinction between the two logics arises in terms of values, with the professional logic placing both client service and acting in the public interest at the centre of accountants' work. This contrasts with the commercial logic that guides behaviour by stressing the importance of revenue and profit growth for accountants.

Finally, the basis of attention and strategy also highlight the polarising effect of the professional and commercial logics. The professional logic seeks to guide the accounting profession to provide legitimacy and to market itself based on its reputation and quality of service. In contrast, the commercial logic stresses the importance of selling services and increasing profits, with focus being placed on expanding the accounting profession's service offering and differentiating itself from competitors based on client service.

Despite the number of studies examining the conflict between professionalism and commercialism, there remain opportunities for future studies to enhance our understanding of how accountants behave and the impact of professionalism and commercialism on day-to-day work practices.

2.2.5 Opportunities to build on prior studies

Although prior research has focused on examining the professionalism of accountants, it has been acknowledged that a number of gaps in our knowledge remain, particularly relating to how professional values are maintained and reproduced (Suddaby *et al.*, 2009). In addition, a critique of this stream of research has highlighted the failure to focus on the behaviours of individual accountants, as this would provide a richer understanding of the relationship between the profession, society, clients, and other organisations and professions (Sikka, 2009). A call for further research into the organisational work context of accountants has been made, particularly given the influence that these key sites have on "the production, consumption, transformation, regulation, identity and subjectivity of accountants" (Sikka, 2009, p.430).

It has been recognised more generally that the individual professional should represent the key unit of analysis when considering the impact of tensions on professional work (Hopwood, 2009; Arnold, 2009). The professional service firm has been used to examine the integration of professional values and individual motives (Anderson-Gough, Grey and Robson, 2006). However, the individual has been acknowledged as being critical in reconciling competing tensions which arise in organisational settings (Greenwood *et al.*, 2006; Gunz and Gunz, 2006).

The role of professional service firms and the emphasis placed by them on commercialisation and pursuit of profits at the expense of professionalism has not

only been displayed by audit failures. The involvement of accountants in aggressive tax avoidance schemes has also resulted in public concerns and the image of the profession being adversely affected. The commercialisation of the accounting profession has led to it becoming the subject of intense criticism surrounding its involvement in questionable and anti-social practices (Sikka, 2008).

The threat to professionalism posed by the conflicts and tensions encountered by tax accountants, therefore, represents an opportunity for future research. The issues encountered by tax accountants attempting to serve client interests, whilst at the same time remaining committed to serving the public interest, are raised in the literature (Stuebs and Wilkinson, 2010). The provision of tax services by the accounting profession and the issues that have arisen in this regard are now discussed.

2.2.6 Development of the provision of taxation services

Accounting firms have long been criticised for using their monopoly over audit services to diversify into non-audit, advisory services (Sikka and Hampton, 2005). One such non-audit service into which the accounting profession has diversified is the provision of taxation services.

The demand for taxation services resulted from “the growth in the complexity, volume and importance of taxation legislation” (Frecknall-Hughes and McKerchar, 2013, p.277). Increases in income tax rates may also be regarded as an additional contributory factor (Frecknall-Hughes and McKerchar, 2013). This demand for tax services was traditionally met by the accounting profession, going back as far as 1860 in the UK. As a result of the connection between taxation and financial statements, the legal profession was less inclined in the early stages to become involved in the provision of taxation services (Frecknall-Hughes and McKerchar, 2013).

Despite the strong link between the accounting profession and the provision of tax services, in many jurisdictions specialist taxation professional bodies have emerged. Moreover, many accounting professionals who specialise in the provision of tax services have supplemented their accounting qualification to become members of both an accounting and a taxation professional body. Many of these continue to work in professional accounting firms, providing tax services to clients.

From a societal perspective, the enforcement of tax legislation in an efficient and effective manner is of primary concern. Regulators want to ensure the collection of public revenue through the tax system. However, this has been undermined through the increasing use of – what may be regarded by tax authorities as – aggressive tax avoidance schemes (Hasseldine and Morris, 2013).

The traditional adversarial approach of the tax system has been reassessed, with many jurisdictions approaching tax compliance from a co-operative standpoint. The development of trust and integrity in the tax system has been shown to be of importance where the aim is to increase overall compliance (Braithwaite, 2003a; 2007; Kirchler, Hoelzl and Wahl, 2008). Despite the growing focus on co-operative compliance, the accounting profession continues to adopt contradictory roles in the tax system. Exploiter and enforcer are two disparate terms used to describe the accounting profession's role in the tax system (Hasseldine, Holland and Van der Rijt, 2011). The professionalism of contemporary accountants has been seriously questioned (Stuebs and Wilkinson, 2010; Wyatt, 2004; Zeff, 2003a, 2003b) and the profession's involvement in what is considered aggressive tax avoidance has not escaped public attention (Sikka, 2008).

A significant proportion of accounting professionals specialise from the outset in the provision of tax services. The socialisation of accountants has, therefore, changed; and the organisational environment in which they work and learn accepted norms of behaviour may differ depending on the specific area in which they work, e.g., audit, taxation, advisory. It is acknowledged that the way in which professional accountants identify with their role may differ, where, for example, they specialise in the provision of tax services rather than in the traditional work practice of auditing (Empson, 2004). As a result of the advocacy nature of tax services and the differing relationship that they have with their clients in comparison to their audit colleagues, the concept of serving the public interest may be more difficult for tax accountants to maintain as a central feature of their work (Stuebs and Wilkinson, 2010). Consequently, the influence of professionalism for tax accountants in carrying out their day-to-day work practices and in responding to external pressures (for example, in the form of changes in the general anti-avoidance tax regime) may be motivated in a different manner from their audit colleagues, where serving the public interest may be regarded as a central feature of their everyday work.

The professionalism of tax accountants has particularly been questioned following the profession's involvement in tax avoidance schemes. The following section introduces the concept of tax avoidance and is followed by a discussion of the accounting profession's involvement in such practices.

2.2.6.1 Tax avoidance

Tax avoidance involves the “legal minimisation of one's tax liability” (Gracia and Oats 2012, p.305). It is very distinct from tax evasion, which refers to “practices that contravene the law” (Hasseldine and Morris, 2013, p.3). Within the boundaries of tax avoidance, there exist both acceptable and unacceptable methods of tax avoidance, by reference to societal values and regulatory norms. However, views as to whether a particular tax avoidance strategy is regarded as acceptable or unacceptable often differ between the various tax field actors, i.e., the tax authorities, the Government, the tax adviser and the taxpayer (Gracia and Oats, 2012).

The global financial crisis, which occurred from 2008, led to a renewed interest in the involvement of the accounting profession in corporate tax planning and tax avoidance (Hasseldine *et al.*, 2011). Tax authorities have sought to tackle what might be perceived as excessive avoidance by increasing regulation of taxation services, in particular by placing further obligations on tax intermediaries, including members of the accounting profession (OECD, 2011). It has been argued that the involvement of the accounting profession in what has been described as aggressive tax avoidance is in stark contrast to the traditional professional values on which the profession was built (Sikka, 2008). In the context of increasing criticism of aggressive tax planning, it is reasonable to question the role that the accounting profession plays in the operation of a fair and efficient tax system and, in particular, how the profession responds to increased regulation of one of its key service offerings.

2.2.6.2 Tax avoidance and the accounting profession

The boundaries between acceptable and unacceptable tax practice are “complex and fuzzy” (Gracia and Oats 2012, p.304). Whereas some tax avoidance schemes are encouraged by governments to support specific societal or economic needs, taxpayers availing of other tax avoidance schemes have been described as morally repugnant (Houlder, 2012) and anti-social (Mostrous, 2012). Tax authorities have traditionally sought to tackle tax avoidance by addressing the demand side, i.e., the

taxpayer. However, in recent years, new strategies have been introduced which attempt also to tackle the supply side, i.e., tax intermediaries (OECD, 2011). The accounting profession operates as a key intermediary between taxpayers and tax authorities and, consequently, is regarded as playing a central role in the tax system and in the market for corporate tax knowledge (OECD, 2008; Hasseldine *et al.*, 2011).

As a result of the complex nature of taxation, taxpayers avail of the services of tax intermediaries prior to any tax compliance, tax planning or tax avoidance taking place. Tensions may arise for tax accountants, as they attempt to balance the need to act as advocates for clients in the provision of taxation services, whilst at the same time maintaining a commitment to serve the public interest (Stuebs and Wilkinson, 2010). The role of accounting firms in tax avoidance has been described as bringing “the firms into direct conflict with the state and civil society” (Sikka and Hampton, 2005, p.328).

The relationship between the accounting profession, the State and tax authorities is a complex one, with the accounting profession in a position to support and encourage compliance with tax legislation, whilst at the same time being seen to promote tax avoidance. General anti-avoidance tax provisions have been introduced in a number of jurisdictions to tackle unacceptable tax avoidance, and the impact of these provisions on the work practices of tax accountants and how tax accountants view their professional role are important issues which have, as yet, not been addressed by the academic community. In this regard, a call has been made for more interpretive and critical studies of the relationship between tax, accounting and regulatory practices (Gracia and Oats, 2012).

2.2.7 The research gap

The prior discussion of professionalism of accountants, the commercialisation of the profession and its involvement in tax avoidance activities presents a number of opportunities for further exploration.

Section 2.2.5 set out the opportunities to build on prior studies of the professionalism of accountants and, in particular, the gap in our knowledge relating to the behaviours of individual accountants. This gap is responded to in this study. The response of the accounting profession to changes in the general anti-avoidance tax regime is

examined in Chapter 6, with an in-depth exploration of the specific impact of the changes on the day-to-day work practices of individual accountants carried out in Chapter 7. This study also focuses on a key non-audit group within the accounting profession, taxation specialists. This extends prior research which identified that those accountants working in non-core areas, such as taxation, identified more closely with clients than those working in audit (Suddaby *et al.*, 2009). Consequently, the influence of clients on the professionalism of tax accountants is a fruitful avenue for research, particularly given the tensions faced by tax accountants in meeting both client needs and serving the public interest (Stuebs and Wilkinson, 2010).

In order to examine the professionalism of tax accountants, the general anti-avoidance tax regime has been selected as an appropriate context, wherein the actions of the regulator may be explored (discussed in section 2.3). This is followed by an examination of the response of the accounting profession (section 2.5) and finally, the impact on day-to-day work practices of tax accountants (section 2.6).

2.3 Tackling tax avoidance

The objective of this study is to examine the professionalism of tax accountants. The importance of a study of this kind has been emphasised by the involvement of the accounting profession in tax avoidance (Sikka and Hampton, 2005; Stuebs and Wilkinson, 2010). The attempts by which tax authorities seek to tackle tax avoidance is the empirical context in which this study is situated. Therefore, in order to understand how the professionalism of tax accountants has been impacted by changes in the general anti-avoidance tax regime, it is first necessary to examine the ways in which tax authorities have sought to encourage taxpayers to comply with the law and the issues arising from using pre-existing methods to tackle tax avoidance are identified.

2.3.1 Traditional methods of dealing with non-compliance with tax law

Two schools of thought regarding regulatory enforcement have traditionally existed, with one side favouring a deterrent approach and the other favouring the promotion of compliance. This resulted in a dichotomy between the strategies of punishment and persuasion (Braithwaite and Braithwaite, 2000).

In terms of promoting tax compliance, it was difficult to understand the effects of deterrent and compliance approaches (Andreoni, Erard and Feinstein, 1998), and as a result the compliance literature moved away from “a crude contest between punishment and persuasion” and instead focused on “how to get the right mix of the two” (Braithwaite and Braithwaite, 2000, p.1). Compliance is regarded as being most successful where regulatory agencies employ an explicit enforcement pyramid (Braithwaite, 1985). The Australian Tax Office (ATO) established a compliance model in 1998 as a proactive method of building a voluntary taxpaying culture (Braithwaite, 2003a). The ATO compliance model is set out in Figure 2.1. The compliance model illustrates the interaction between enforcement strategies, taxpayer motivational postures, and the range of regulatory strategies open to tax authorities to promote or compel compliance.

The model provides a compliance pyramid, with the motivational postures of the taxpayer on the left-hand side (the stance taken by taxpayers in their relationship with the tax authority) ranging from commitment to disengagement. The regulatory strategies of the tax authority are presented on the right-hand side, ranging from self-regulation to non-discretionary command regulation.

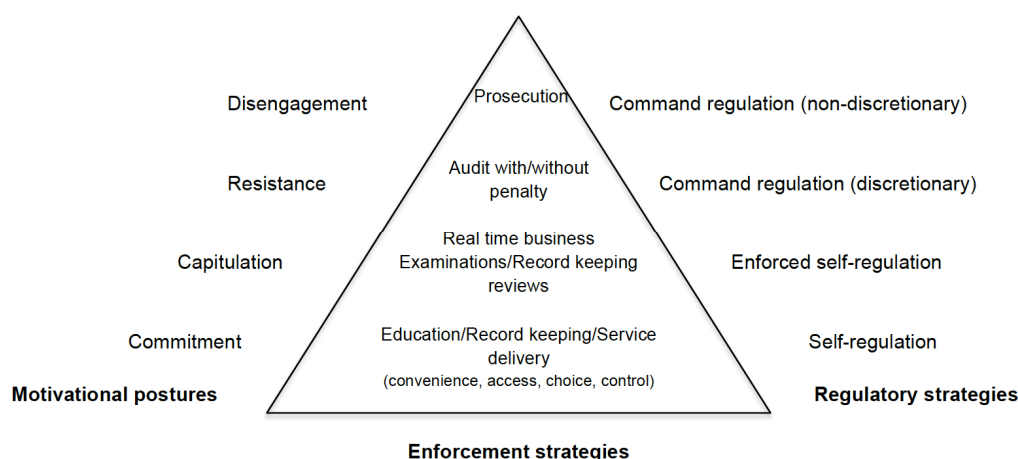


Figure 2.1: ATO compliance model

Source: Braithwaite, 2007

The compliance pyramid reflects a regulatory response that may be labelled as responsive regulation. “Responsive regulation is a process that confidently and openly engages taxpayers to think about their obligations and accept responsibility

for regulating themselves in a manner that is consistent with the law” (Braithwaite, 2007, p.6). This leads to a number of enforcement strategies shown within the pyramid. The base of the pyramid details the enforcement strategies to deal with committed taxpayers where self-regulation is appropriate. Compliance is encouraged through education, record keeping and service delivery. As taxpayers increase their social distance from the tax authority, the regulatory strategy moves to enforced self-regulation, resulting in real-time business reviews. Where resistance is shown by taxpayers, discretionary command regulation is used, with audits undertaken (and penalties being at the discretion of the tax authority). Finally, where taxpayers are disengaged, the final enforcement strategy of prosecution is available to the tax authority.

The tax compliance pyramid is designed to promote self-regulation, with the enforcement strategy selected being that which is necessary to achieve compliance in the particular situation (Braithwaite, 2003a). It is intended that the majority of the regulatory action takes place at the base of the pyramid, where persuasive strategies are used to encourage compliance. However, where taxpayers fail to respond to these persuasive enforcement strategies, the tax authority moves up the enforcement strategy scale, and it is intended that with each escalating enforcement strategy a greater number of taxpayers comply, leaving a minority of disengaged taxpayers to be dealt with at the top of the compliance pyramid.

The mechanism of encouraging compliance through openness and using persuasive tactics responds to concerns that accountants and lawyers are trying to undermine the tax system by promoting and facilitating aggressive tax avoidance schemes that are contrary to the spirit of the legislation (Braithwaite, 2007). However, as tax avoidance does not *per se* involve non-compliance, the inability of the existing tax compliance pyramid to tackle tax avoidance has been raised in the literature.

2.3.2 The tax compliance pyramid and tax avoidance

The tax compliance pyramid’s usefulness begins to diminish where tax avoidance arises. This happens because tax avoidance does not represent non-compliance, but rather represents creative compliance with the tax law, “accomplish[ing] compliance with the letter of the law while totally undermining the policy behind the words” (McBarnet, 2003, p.229). Therefore, the distinction between compliance and non-compliance falls away when tax avoidance strategies are at issue and,

therefore, the tax compliance pyramid offers no assistance to tax authorities as no law has been broken (McBarnet, 2003).

The growth in tax avoidance is regarded as having been facilitated by a cultural shift in the global elite accounting firms (Braithwaite and Braithwaite, 2000). Where elite firms promote aggressive tax avoidance, smaller firms may feel that the only way to remain competitive is to engage in similar activities (Braithwaite and Braithwaite, 2000). Tax avoidance involves the reading of tax legislation in a particular manner, with the possible use of artificial steps that may not otherwise be required from a commercial perspective (Freedman, 2011). Tax avoidance resides in the grey area of legal interpretation (Freedman, 2011).

The ability of taxpayers to engage in tax avoidance or creative compliance results from both the nature and operation of the law, with tax legislation being subject to lobbying and the final legislation being open to different interpretations (McBarnet, 2003). This can result in tax legislation being amended in response to a particular tax avoidance strategy, where a game of cat and mouse often results. Tax advisers find ways to legally circumvent the law, the tax authorities become aware of this and enact new legislation to close a particular loophole, and then the adviser begins to look for new opportunities again (Braithwaite and Braithwaite, 2000; Freedman, 2011). Tackling tax avoidance, therefore, requires fresh thinking and big powers have been suggested as being the most effective method (McBarnet, 2003). One such big power is a General Anti-Avoidance Rule (GAAR). However, problems have been identified in using such big powers where a principles-based approach is converted to rules, through, for example, guidance notes and judicial decisions, which can then be put to use for the purposes of achieving new creative compliance (McBarnet, 2003), the very opportunity that such powers sought to eliminate in the first place.

As a result, a fundamental change in attitude is seen as necessary if unacceptable tax avoidance is to be tackled, with the law being “seen as something to be ‘respected’ rather than ‘material to be worked on’ to one’s advantage” (McBarnet, 2003, as cited by Braithwaite, 2003a, p.9). The importance of building a tax system in which the taxpayer can place her/his trust and perceive it as being fair is an essential aspect in tackling tax avoidance (Freedman, 2011).

The efficacy of persuasive techniques to tackle tax avoidance has been questioned given that taxpayers are operating within the grey area rather than overtly engaging in non-compliance (Freedman, 2011). Law reform has been suggested as a necessary component in tackling tax avoidance, but building co-operative relationships with taxpayers is also seen as a necessary step (Braithwaite, 2003b). It has been further argued that the courts have not gone far enough in applying the spirit of the legislation (Freedman, 2011).

The efforts of tax authorities to tackle aggressive tax avoidance provides a rich research site in which to explore external pressures being faced by the accounting profession.

2.3.3 The research gap

Although responsive regulation has been well received by tax authorities in dealing with non-compliant taxpayers, the best mechanisms to deal with those who attempt to circumvent the spirit of the legislation through aggressive tax avoidance and creative compliance have not yet been agreed (McBarnet, 2003). This study responds to this gap in the literature by adopting a longitudinal approach (2003–2012), analysing how the Irish tax authorities sought to tackle tax avoidance over time. Four strategies were identified in the empirical setting: (i) persuasion, (ii) co-operation, (iii) legislative powers and (iv) actions through the courts.

As discussed in Chapter 5, the tax authority began to strengthen its attempts to tackle tax avoidance by persuading to the professional values of the accounting profession and stressing the common goals between the tax authority and the profession. This strategy was supplemented by increased attempts by the tax authority to establish a co-operative relationship with taxpayers and their advisers. The use of these first two strategies in isolation was deemed ineffective at tackling aggressive tax avoidance and as a result legislative powers were utilised to, firstly introduce incentives for taxpayers to engage with the tax authority and not engage in aggressive tax avoidance and at a later stage, penalties, for tax advisers who were not open with the tax authority about tax avoidance schemes in which they were involved with. However, the optimal reduction in aggressive tax avoidance was not achieved and whilst retaining the use of the first three strategies, legal challenge of aggressive tax avoidance through the court system was the final strategy adopted.

The actions of the tax authorities to tackle tax avoidance may be theorised in the main as representing disruptive work. Tax authorities in their efforts to tackle tax avoidance may be regarded as engaging in institutional work to disrupt an institutionalised practice of the accounting profession – the facilitation of aggressive tax avoidance by its clients. Disruptive work is undertaken where the actions of a particular organisation or professional group, such as the accounting profession, are no longer meeting the needs of another actor, the tax authorities in this instance. The actions of the tax authorities may be viewed as a method of repairing a broken tax system, with attempts being made to restore it to a previous position which better served the tax authorities. However, as discussed in Chapter 3, the background to this empirical context demonstrates that the issue of aggressive tax avoidance was a considerable problem, which had not only recently developed, it was in fact a deeply institutionalised practice within the tax system and amongst tax advisers. As a result, the actions of the tax authority in this context, may be more appropriately theorised as representing the disruption of an institutionalised practice, rather than as a repair exercise.

Lawrence and Suddaby (2006) created a typology of disruptive work practices, which are discussed further in section 2.4. The first strategy of persuasion may be theorised, as representing a re-association of moral foundations, an adapted form of disruptive work, previously identified in the literature as disassociating moral foundations. In addition, the tax authority may be regarded as engaging in disconnecting rewards due to the reputational repercussions for the accounting profession in engaging in aggressive tax avoidance. The second strategy used by the tax authority of encouraging co-operation with taxpayers and their advisers (including members of the accounting profession) may be regarded as engagement in the disruptive work practice of undermining assumptions and beliefs, attempting to set aside the taken-for-granted “them and us” relationship and to encourage openness and transparency between taxpayers and the tax authority.

The third strategy of using legislative powers to tackle aggressive tax avoidance, comprises of both incentives being offered to taxpayers and penalties being introduced for taxpayers in the first instance and at a later stage penalties for tax advisers. The use of incentives, whilst aimed at reducing the incidence of tax avoidance and hence supporting the overall disruptive work of tackling tax avoidance, may be viewed as representing a form of institutional work, traditionally seen in the maintenance of an institutional arrangement – enabling. The incentives

introduced sought to facilitate and support the reduction in aggressive tax avoidance, by providing a mechanism through which to encourage openness about tax planning. However, when such incentives were not deemed to be tackling the issue as desired, they were supplemented with the final form of disruptive work identified – disconnecting rewards and sanctions – through the introduction of increased penalties and use of the courts to formally challenge aggressive tax avoidance.

Institutional theory aids the analysis of this complex reality and the theoretical lens of disruptive work is discussed in section 2.4. However, due to complex nature of reality, other forms of institutional work may also be utilised to supplement the specific disruptive work practices and achieve the desired outcome, as was seen in the use of incentives by the tax authorities. This form of institutional work has been regarded as representing maintenance, which is discussed in section 2.6.

2.4 Disruptive work practices

As discussed in section 2.3.3, the work undertaken by tax authorities to tackle tax avoidance may be regarded as a form of disruptive work. The tensions and conflict created by the accounting profession acting in an advocacy role for its clients, whilst at the same time having a responsibility to act in the public interest (a cornerstone of professional groups), (Stuebs and Wilkinson, 2010) created the impetus for tax authorities to disrupt the institutionalised practice of aggressive tax avoidance through changes to the general anti-avoidance tax regime.

2.4.1 Disruptive work practices

Research on institutional change acknowledges the institutional work that an individual or group of actors may engage in to disrupt an existing institutional practice (Lawrence and Suddaby, 2006; Holm, 1995; Greenwood and Hinings, 1996; Suddaby and Greenwood, 2005). Institutional disruption takes place where existing arrangements do not serve the interests of a particular actor and, as a result, that actor engages in an attempt to disrupt the existing arrangement (Lawrence and Suddaby, 2006; Abbott, 1988; DiMaggio, 1991). This attempt usually involves attacking or undermining the guiding principles of the organisation or professional group (Lawrence and Suddaby, 2006). Three forms of institutional work that aim to disrupt an existing institutionalised practice have been identified in prior studies (Leblebici *et al.*, 1991; Jones, 2001; Ahmadjian and Robinson, 2001; Wicks, 2001).

Table 2.2 sets out the three categories as collated by Lawrence and Suddaby (2006), together with a definition of each.

Table 2.2: Disrupting institutions

Forms of institutional work	Definition
Disconnecting sanctions and rewards	Working through state apparatus to disconnect rewards and sanctions from some set of practices, technologies or rules
Disassociating moral foundations	Disassociating the practice, rule or technology from its moral foundations appropriate within a specific cultural context
Undermining assumptions and beliefs	Decreasing the perceived risks of innovation and differentiation by undermining core assumptions and beliefs

Source: Lawrence and Suddaby (2006, p.235)

Empirically, the majority of disruptive work has been found in the category of disconnecting sanctions “in which state and non-state actors work through state apparatus to disconnect rewards and sanctions from some set of practices, technologies or rules” (Lawrence and Suddaby, 2006, p.235). This is regarded as the most direct form of disruption and has often been seen to involve the judiciary (Zietsma and Lawrence, 2010; Jones, 2001). The ability of the state to disrupt often rests on the legitimacy of its strategies and its capabilities to execute the disruption. The legal system has been shown to be “a strategic and institutional resource that firms draw upon and utilize as part of their competitive arsenal” (Jones, 2001, p.936). However, more recent studies of disruptive work in professional contexts have not identified disruptive work involving disconnecting sanctions and rewards (Empson *et al.*, 2013; Hayne and Free, 2014). An explanation for this may be due to these studies exploring disruption by internal actors, rather than attempts by those outside the professional group to instigate change. As discussed in section 2.3.3, this study involves disruption by an external actor and includes the use of legislative methods and court challenge to tackle aggressive tax avoidance. These forms of institutional work may be categorised as disruptive work aimed at disconnecting sanctions and rewards and provides an opportunity to explore the disruption of a professional group using this most direct form of disruptive work.

The second category of disruptive work identified in the literature involves the

disassociation of a practice from its moral foundations; however there are few concrete examples of this type of work in the literature. The disassociating process is often gradual and is seen as an indirect method of disrupting an institutionalised practice (Lawrence and Suddaby, 2006). This subtle and slow undermining of the normative basis on which an institutional practice developed was seen in the case of downsizing in Japan and the resulting deinstitutionalisation of permanent employment (Ahmadjian and Robinson, 2001) and also in the disruptive work engaged in by a professional group in the introduction of a new risk management framework (Hayne and Free, 2014). The disruption of an existing practice has been shown to be as a result of both social and institutional pressures, which shape the resulting change in practice (Ahmadjian and Robinson, 2001). An important element of this process is a reduction in the legitimacy of the practice that is the subject of the disruptive work (Ahmadjian and Robinson, 2001). As discussed in section 2.3.3, persuasive strategies employed by tax authorities to tackle tax avoidance may be regarded as a form of institutional work, whereby the moral foundations i.e., the traditional professional values, of the accounting profession are appealed to as a mechanism to disrupt the institutionalised practice of aggressive tax avoidance. Rather than attempting to disassociate the moral foundations of aggressive tax avoidance (of which it may be difficult to argue any exist given the anti-social nature of such practices), tax authorities through this form of institutional work may be regarded as attempting to re-associate the moral foundations of professionals, with the intended aim of reducing or eliminating their involvement in aggressive tax avoidance.

The final form of disruptive work previously identified in the literature is the undermining of assumptions and beliefs. This is another indirect form of disruption, where the cost of changing from one set of taken-for-granted beliefs is removed in order to facilitate a new way of acting (Lawrence and Suddaby, 2006). The literature provides us with an example of this form of disruption work in the US radio broadcasting industry, whereby a number of independent radio stations disrupted the taken-for-granted method of radio financing by offering advertising spots, rather than the entire radio programme being sponsored by one company (Leblebici *et al.*, 1991). This form of disruptive work was also seen in the decline in the use of DDT (an insecticide), whereby the underlying belief that its use was safe, effective and necessary was successfully challenged (Maguire and Hardy, 2009). In the professional context, this form of disruptive work was witnessed where the Committee of Sponsoring Organisations engaged consultants to evaluate the need

for a new risk management framework, thereby undermining the assumptions and appropriateness of the pre-existing framework that it sought to replace (Hayne and Free, 2014). This form of disruptive work was also seen in the context of international law firms, with managing partners undermining existing assumptions regarding the structure and operations of international law firms by hiring management professionals (Empson *et al.*, 2013). As discussed in section 2.3.3, this final form of disruptive work may also be regarded as being undertaken by tax authorities as they attempt to tackle aggressive tax avoidance, with pre-existing assumptions regarding the relationship between them and taxpayers/their advisers, being challenged through the introduction of formal, co-operative arrangements. This is a surprising form of institutional work for a powerful regulatory actor to engage in and is more likely to be witnessed in the case of marginal field actors (Lawrence and Suddaby, 2006). However, tax authorities may be willing to engage in this more subtle form of disruptive work prior to moving to more direct methods, such as disconnecting sanctions and rewards, which may be regarded as a last resort.

Table 2.3 presents prior studies of disruptive work, including a summary of the key results and forms of disruptive work identified. As can be seen, with the exception of Zietsma and Lawrence's 2010 study that identified the three categories of disruptive work, the majority of prior studies identify one form of disruptive work being used. Adopting a longitudinal approach to the study of institutional disruption enables the varying forms of disruptive work practices to be identified and for an understanding of how they developed over time to be analysed. This contributes to our understanding of disruptive work practices by enabling an understanding of the success and failure of particular institutional work practices and how they may be replaced or added to over time.

In addition, more recent studies of disruptive work in professional contexts (Hayne and Free, 2014; Empson *et al.*, 2013) highlight the challenges of applying the distinct categories of institutional work (creation, maintenance and disruption) to the "inherently 'messy' empirical reality" (Empson *et al.*, 2013, p.837) and address the possibility of multiple forms of institutional work taking place simultaneously, e.g., creation work taking place at the same time as disruptive work. Different categories of institutional work have been seen to over-lap and reinforce one another (Hayne and Free, 2014). These insights provide opportunities to assess elements of institutional work used by tax authorities – with the overarching aim of reducing

aggressive tax avoidance – that do not fall within the traditional disruptive work category. For example, as discussed in Chapter 5, the incentives introduced by tax authorities to encourage openness and transparency between them and taxpayers may be regarded as enabling, a form of maintenance work. These prior studies, therefore, shed insights into the over-lap between institutional work categories and the ability to recognise other forms of institutional work within a primarily, disruptive environment.

Table 2.3: Prior studies of disruptive work practices

Study	Empirical setting	Method	Summary of key results	Form of disruptive work
Hayne and Free (2014)	The implementation of the Committee of Sponsoring Organisation's Enterprise Risk Managed – Integrated Framework	Interviews and secondary materials	The introduction of a new, innovative, form of risk management resulted in numerous forms of institutional work being used. The process began with disruption, which allowed for the creation of new space for the acceptance of the new risk management framework. This was followed by creation work, with new rule systems and networks being established to support the new framework. Finally, maintenance work was conducted, in the form of promotion, to ensure that the new risk management framework would become a lasting institution. The fluidity of practice was highlighted, with the overlapping of institutional work practices identified.	Disassociating moral foundations Undermining assumptions and beliefs
Empson, Cleaver and Allen (2013)	Corporatisation of large international law firm partnerships	Interviews and archival data	The simultaneous occurrence of different forms of institutional work – creation, maintenance and disruption – was identified. This highlighted that reality may be regarded as far more complex than envisaged in prior studies examining institutional work practices and, hence, the need for multiple different forms of institutional work to be engaged in, in order to achieve the desired outcome.	Undermining assumptions and beliefs
Zietsma and Lawrence (2010)	Harvesting practices in the British Columbia coastal forest industry	Interviews, field research, organisational documents and media reports	Environmentalists and First Nations sought to disrupt the existing authority through civil disobedience and legal challenges, stating that the forests' rightful owners were excluded from forestry decisions. Alliances were also formed to increase power. These challengers also mobilised influencing actors,	Disconnecting sanctions and rewards Undermining assumptions and beliefs

Table 2.3: Prior studies of disruptive work practices

Study	Empirical setting	Method	Summary of key results	Form of disruptive work
			<p>including consumers, stock analysts, commercial customers and foreign governments.</p> <p>In addition, the environmentalists and First Nations sought to disrupt the institutionalised practice of clearcutting. Dramatic language was used to delegitimise the practice and those insiders using such practices.</p>	Disassociating moral foundations
Maguire and Hardy (2009)	Decline in use of DDT (insecticide)	Archival data and interviews	<p>Discourse by outsiders about the use of DDT led to the abandonment of its use. Discourse moved from DDT being safe, effective and necessary (1962) to it being unsafe for the environment and unnecessary for agriculture given available substitutes (1972). New social truths emerged over time.</p> <p>The discourse surrounding the practice was seen as critical in the decline in use of DDT, showing its use as being inappropriate, but at the same time providing an alternative practice, facilitating the abandonment of the prior practice.</p>	Undermining assumptions and beliefs

Table 2.3: Prior studies of disruptive work practices

Study	Empirical setting	Method	Summary of key results	Form of disruptive work
Ahmadjian and Robinson (2001)	Downsizing in Japanese plcs Deinstitutionalisation of permanent employment	Quantitative – dataset of 1,638 plcs (1990–1997)	Downsizing was triggered by economic pressures; however, over time social and institutional pressures shaped the pace and process of how downsizing spread. As larger firms pursued downsizing, smaller firms were able to adopt similar practices with less criticism. Subtle and slow undermining of the normative basis of permanent employment was undertaken, commencing with hiring cuts (an initial threat to permanent employment).	Disassociating moral foundations
Wicks (2001)	1992 explosion at Westray Mines (Canada)	Textual analysis of publicly available secondary data	Institutional influences were identified that created the organisational context in which the explosion could occur. The mine created its own safety rules, contributing to a sense of legitimacy, which was used to appease regulators, professional mining associations and society. This regulatory system did not meet health and safety objectives and over time violations became the norm. The regulation was ineffective because of social norms. This institutionalised mindset contributed to the negative outcome, i.e., the explosion.	Undermining assumptions and beliefs

Table 2.3: Prior studies of disruptive work practices

Study	Empirical setting	Method	Summary of key results	Form of disruptive work
Jones (2001)	American film industry (1895–1920)	Archival data	<p>The first firm to enter the American film industry was owned by Edison. He was granted a patent for his sprocket method of advancing film, following which, he brought patent infringement proceedings against every major competitor.</p> <p>The courts directly intervened dismissing his patent right. However, Edison appealed and the legal contests and reversal of court decisions that followed created uncertainty.</p> <p>Ten firms that had litigated and held 16 key patents formed the Motion Picture Patents Company. However, the Federal Trade Commission launched an anti-trust complaint against them and succeeded in having the Motion Picture Patents Company disbanded.</p> <p>The direct intervention by the courts enabled the disruption of the industry.</p>	Disconnecting sanctions and rewards
Lelebici, Salancik, Copay and King (1991)	US radio broadcasting industry	Historical analysis	Independent radio stations disrupted the taken-for-granted template for how radio programmes should be financed, moving from the sponsorship of entire programmes (which was too expensive) to spot advertising in between programmes.	<p>Disconnecting sanctions and rewards</p> <p>Undermining assumptions and beliefs</p>

2.4.2 The research gap

Consideration of the prior studies of disruptive work practices reveals the notable absence of the disruption of a professional group by an external actor. Prior studies have examined internal disruptive work being engaged in to allow new innovative practices to develop (Hayne and Free, 2014) and new internal work practices that may support the commercial activities of a profession (Empson et al., 2013). However, prior studies have not examined disruption attempts from outside the profession, which attempt to alter established work practices.

In the empirical context of this study, the tax authority may be regarded as seeking to disrupt the institutionalised practice of aggressive tax planning. The State may engage in disruptive work where it wishes to redefine or reregulate a professional field (Holm, 1995). Given the perceived involvement of the accounting profession in aggressive tax avoidance (Sikka, 2013), tax authorities may be regarded as having attempted to disrupt these work practices. This empirical context provides an opportunity to examine the disruption of a professional group by a powerful regulatory actor, an issue that has not been previously explored in the literature. This allows for the different disruptive work strategies of the regulatory actor to be explored and understood. Professional groups have been “highlighted as particularly influential in reconfiguring or transforming fields and institutions within them” (Cooper and Robson, 2006; Greenwood, Suddaby and Hinings, 2002; Lawrence and Suddaby, 2006; Perkman and Spicer, 2008; Scott, 2008; Suddaby and Viale, 2011; as cited by Hayne and Free, 2014, p.313). Professionals have “emerged as a clear causal agent of institutional change” (Hwang and Powell, 2005; Scott, 2008; as cited by Suddaby and Viale, 2011, p.424), with prior studies identifying the powerful influence of professional groups (Suddaby and Viale, 2011). However, the majority of prior research has focused on how professional groups transform themselves (Suddaby and Greenwood, 2005; Anand, Gardner and Morris, 2007; and Dezalay and Garth, 1996). Suddaby and Viale (2011) addressed this gap in our knowledge by examining the ways in which professional groups engage in institutional work, in the creation, maintenance and disruption of institutions.

In this empirical context, rather than examining the ways in which the accounting profession sought to disrupt an institutionalised practice, the attempts of an external actor, i.e., the tax authority, to disrupt an institutionalised practice of the accounting profession is analysed. What makes this an interesting and fruitful research site, is

the ability to examine the attempted disruption by an external actor of a professional work practice. As a result of the powerful influence which prior studies have shown professional groups to possess in influencing their institutional environment, the ability to disrupt an institutionalised practice of a professional group by an external actor may be regarded as a, potentially, more challenging task than the disruption of a non-professional group or of disruption attempts that originate within the professional group itself. The specific disruptive work practices used by Revenue in the Irish context are explored in Chapter 5. The discussion now moves to how organisations and professional groups respond to external pressures.

2.5 Response to external pressures

External events, outside the control of an organisation or a professional group (e.g., the accounting profession), such as disruptive work practices, may result in a range of responses by the organisation or profession. Early studies suggested that, where institutional pressures arise, individual organisations would conform because (i) it was taken-for-granted, (ii) it resulted in normative approval or (iii) they were legally required to do so (Scott, 2008). However, later studies identified a range of responses, with some organisations responding strategically in order to defend themselves from institutionalised pressures (Scott, 2008). Institutional theory, therefore, offers a suitable lens through which the response of the accounting profession to institutional pressures, exerted on it in the form of disruptive work, can be explored and understood. The various ways in which an institution may respond to external pressures are discussed in section 2.5.1.

Institutions were traditionally seen as being highly resistant to change (Berger and Luckmann, 1967; Zucker, 1983; Hinings and Greenwood, 1988). However, the process of deinstitutionalisation, where established practices are delegitimised and taken-for-granted actions are no longer reproduced, is an important aspect that may result from a number of different factors (Oliver, 1992). These factors include political, functional and social pressures (Oliver, 1992).

Political pressures may arise when the institution's practices are challenged by a crisis which "cast[s] doubt on the validity of organizational procedures that have traditionally served the organization's interests effectively" (Oliver, 1992, p.568). This may arise "as shared expectations of acceptable and legitimate activity become supplanted by the pursuit of organizational interests and individual protection"

(Oliver, 1992, p.569). In terms of the accounting profession, the failures witnessed in the early 21st century may be regarded as having cast a doubt on the ability of the profession to self-regulate and as revealing the consequent need for greater regulatory intervention over the accounting profession.

2.5.1 Responses to institutional change

Studies moved away from a “conform, either now or later” (Scott, 2008, p.169) approach to organisations dealing with institutional pressures and instead focused on power and agency (DiMaggio, 1988; Perrow, 1986), with the power of organisations to manage their legitimacy through manipulation identified in the literature (Pfeffer, 1981; Pfeffer and Salancik, 1978). In response to these studies, Oliver (1991) created a typology of strategic responses that organisations may enact in response to external institutional processes. Oliver’s (1991) framework presents a suitable lens through which to explore the responses of the accounting profession to changes in its regulatory environment (Canning and O’Dwyer, 2013) and, therefore, provides an appropriate analytical tool to examine the response of the accounting profession to changes in the general anti-avoidance tax regime.

Oliver’s (1991) framework sets out five possible strategic responses. These responses may vary from least active to most active and include acquiescence, compromise, avoidance, defiance and manipulation. This typology is presented in Table 2.4, which includes specific tactics relating to each strategy and examples of how these tactics may be employed.

Oliver’s (1991) typology presents *acquiescence* as the least active response to external pressures. Organisations may acquiesce to pressures out of habit, to imitate or to comply. Habit comes into play where there is unconscious adherence to the external pressure, because of taken-for-granted rules or values. Imitation may be conscious or unconscious, with organisations, for example, mimicking other successful organisations in their field, or with professionals or professional firms taking advice from professional bodies. This tactic aligns with mimetic isomorphism (the tendency of an organisation to mimic another organisation’s structure, where it views the latter organisation’s structure as being beneficial) as explored by DiMaggio and Powell (1983). Finally, compliance is a conscious action to obey the external pressure. This may particularly be the case where legitimacy is gained from complying in a particular scenario.

Table 2.4: Strategic responses to institutional processes

Strategies	Tactics	Examples
Acquiesce	Habit	Following invisible, taken-for-granted norms
	Imitate	Mimicking institutional models
	Comply	Obeying rules and accepting norms
Compromise	Balance	Balancing the expectations of multiple constituents
	Pacify	Placating and accommodating institutional elements
	Bargain	Negotiating with institutional stakeholders
Avoid	Conceal	Disguising nonconformity
	Buffer	Loosening institutional attachments
	Escape	Changing goals, activities, or domains
Defy	Dismiss	Ignoring explicit norms and values
	Challenge	Contesting rules and requirements
	Attack	Assaulting the sources of institutional pressure
Manipulate	Co-opt	Importing influential constituents
	Influence	Shaping values and criteria
	Control	Dominating institutional constituents and processes

Source: Oliver (1991, p.152)

The second strategic response in Oliver's (1991) typology is *compromise*. This may be used by an organisation where full acquiescence to an external pressure is seen as "unpalatable or unworkable" (Oliver, 1991, p.153). In such cases, an organisation may use the tactics of balancing, bargaining or pacifying to align its goals with those of the external change agent. An organisation may seek to balance its internal requirements with those of the external stakeholders. Organisations may also seek to pacify those external parties by partially complying with demands, often meeting minimum standards required. Bargaining, the most active form of compromise, involves the organisation seeking concessions through negotiation with external agents. Bargaining is a tactic that has been used by professional associations in their dealings with government agencies (Oliver, 1991).

Avoidance is used where an organisation wishes “to preclude the necessity to conform” (Oliver, 1991, p.154). Avoidance may take a number of different forms, including concealment by an organisation of its non-conformity with external demands. A second tactic involves the organisation attempting to buffer itself from being externally inspected, where non-conformity may be detected. The final avoidance tactic is escape, where the organisation exits the realm in which the pressure arises or alters its activities to avoid compliance.

A more active form of resistance to external pressures is *defiance*, which may include dismissal, challenge or attack. Adopting a dismissive response involves ignoring the external pressure and is a tactic likely to be adopted where the value to be gained from complying with external pressure is regarded as low. Challenging the external agent is a more active response and may be employed where the organisation can rationalise non-compliance as being virtuous. Finally, the most aggressive defiance tactic is attack, where the organisation actively seeks to “assault, belittle, or vehemently denounce institutional values and the external constituents that express them” (Oliver, 1991, p.157). Defiance represents an absolute rejection of the external pressure.

The final form of response is *manipulation*. This is the most active response, as it is applied in order to exert power and influence, to bring about change. Manipulation may be engaged in by co-opting, influencing or controlling the external pressure. An example of co-option is where the organisation persuades an external change agent to join its organisation or its board of directors (Oliver, 1991). This has been seen as an effective means of achieving legitimacy and political support (Pfeffer, 1974). Influence, as a manipulative tactic, may be directed at belief systems, values and norms. An organisation may also attempt to influence the standards by which it is evaluated. Finally, control tactics involve the active work of establishing power and dominance over the external change agent.

2.5.1.1 *Adoption and extension of Oliver’s (1991) framework*

Oliver’s (1991) typology of strategic responses to institutional pressures has been widely applied in the literature and continues to help explain how organisations respond to external pressures. Table 2.5 presents a number of studies that have used Oliver’s (1991) framework and the ways in which these studies have contributed to its development or resulted in an extension of the framework.

Recent research, such as those studies listed in Table 2.5, has demonstrated the integration of the role played by institutional logics in influencing the choice of response to external pressures (Hyvönen, Järvinen, Pellinen and Rahko, 2009; Rautiainen and Järvenpää, 2012; Guerreiro, Rodrigues and Craig, 2012; Lander *et al.*, 2013). The framework was extended by Pache and Santos (2010), taking into account the role that intraorganisational political processes play in responding to external pressures. The integration of intraorganisational political processes was regarded as a key contribution to the predictive power of the framework. The predictors of strategic responses are discussed in section 2.5.2. A number of the extensions to the framework have taken place in the context of examining the accounting profession, and these contributions are now discussed (Lander *et al.*, 2013; Canning and O'Dwyer, 2013).

Table 2.5: Prior studies adopting and/or extending Oliver's (1991) framework

Study	Empirical setting	Method	Contribution to Oliver's (1991) framework
Albu, Albu and Alexander (2014)	Translation and application of global financial standards in a local context (Romania)	Interviews	Oliver's typology of strategic responses is mapped to actors (and their interests, power and search for legitimacy). This provided for a more detailed analysis of practice variation.
Canning and O'Dwyer (2013)	Disciplinary procedures in the accounting profession	Archival data	Extension of Oliver's framework from an implicit focus on one actor. The perspective of two classes of actors is considered, the regulators and the regulatees. The strategies adopted by one actor are shown to alter over time in response to the response of the other actor. This indicates that strategic responses are sometimes dynamic and not static.
Lander, Koene and Linssen (2013)	Mid-tier accounting firms	Interviews	Rather than focusing on the adoption or non-adoption of a specific practice, Lander <i>et al.</i> 's study examined the micro-level processes of how organisations respond to competing institutional pressures. Institutional logics were used to explain the response strategy chosen by the organisations.
Guerreiro, Rodrigues and Craig (2012)	Voluntary adoption of International Financial Reporting Standards in Portugal	Survey	Responded to the criticised "instrumental rationality" of Oliver's framework and incorporated the role which institutional logics play in organisations responding to institutional pressures. How institutional logics constrain organisational decision-making was demonstrated.
Rautiainen and Järvenpää (2012)	Response to performance measurement systems in Finland	Interviews	Refinement of Oliver's typology using institutional logics. Responses are clarified and linked to sagacious conformity. A categorisation of response to performance measurement systems was developed depending on the institutional pressures and the focus of institutional logics.
Pache and Santos (2010)	N/A	Theoretical	Extension of Oliver's framework to take into account intraorganisational political processes. New model developed to improve the predictability of institutional responses and used to illustrate the breakup of a global consulting and technology services corporation.
Hyvönen, Järvinen, Pellinen and Rahko (2009)	Management accounting systems in Finnish Defence Forces	Project memos and interviews	Incorporation of institutional logics into the analysis, highlighting the importance of the different institutional logics in an institutional field.

2.5.1.2 *Oliver's (1991) framework – the accounting profession context*

Oliver's (1991) framework has been used in a number of studies to examine the response of the accounting profession to institutional pressures.

Lander *et al.*'s (2013) study examined the response of the accounting profession to changes in its institutional environment related to the commercial logic, using Oliver's (1991) typology. Oliver's (1991) framework was enhanced by the examination of micro-level processes in a field where the accounting profession was responding to competing pressures (professionalism and commercialism) (Lander *et al.*, 2013). Oliver's (1991) typology has also been used to examine the response of the accounting profession to regulatory changes in relation to disciplinary procedures, extending the typology to instead focus on the interaction between a range of actors, moving from an implicit focus (on the response of one actor) to focus on how responses may change over time in response to the actions of other field actors (Canning and O'Dwyer, 2013).

Oliver's framework has further been extended to take into account the field actors' differing interests, power and desire for legitimacy and the impact that this has on the choice of strategic response to the introduction of global accounting standards (Albu, Albu and Alexander, 2014).

In this study, Oliver's (1991) framework is used to understand the response of the accounting profession to changes in the general anti-avoidance tax regime. On account of the longitudinal nature of such changes under examination (2006–2012), the response of the accounting profession and the potential impact that this had on the next move made by the tax authorities can be ascertained. This follows the contribution made by Canning and O'Dwyer (2013) in examining how responses of regulators and regulatees change over time. In addition to the public response of the accounting profession being examined, this study considers the private response of the accounting profession to changes in the general anti-avoidance tax regime. The analysis of both the public and private responses enables a depth of understanding to be achieved.

2.5.2 Predicting the nature of strategic responses

In addition to providing a typology of responses to institutional pressures, Oliver (1991) also theorises the circumstances under which one response may be more likely to be adopted than another. Five institutional factors (cause, constituents, content, control and context) represent the antecedents to particular strategic responses. Table 2.6 summarises these five institutional factors.

Table 2.6: Antecedents of strategic responses

Institutional factor	Research question	Predictive dimensions
Cause	Why is the organization being pressured to conform to institutional rules or expectations?	Legitimacy or social fitness Efficiency or economic fitness
Constituents	Who is exerting institutional pressures on the organization?	Multiplicity of constituent demands Dependence on institutional constituents
Content	To what norms or requirements is the organization being pressured to conform?	Consistency with organizational goals Discretionary constraints imposed on the organization
Control	How or by what means are the institutional pressures being exerted?	Legal coercion or enforcement Voluntary diffusion of norms
Context	What is the environmental context within which institutional pressures are being exerted?	Environmental uncertainty Environmental interconnectedness

Source: Oliver (1991, p.160)

The framework predicts that a less active response such as acquiescence will be adopted in circumstances where legitimacy or economic benefits will be gained from complying with the external pressure. Where such legitimacy or economic benefits are not expected to accrue, more active response strategies such as avoidance, defiance and manipulation are predicted.

The constituents of institutional pressures are also predicted to influence the choice of response strategy. Where there are multiple sources of external pressure (for the accounting profession, these pressures may be from governments, tax authorities, professional bodies, clients and/or society), it is predicted that more active forms of response will be employed. Where the organisation is not dependent on the party exerting pressure, a more active response strategy is also predicted.

Where the content of the institutional pressure is consistent with pre-existing organisational norms and values, a less active form of response is predicted. However, where the pressures threaten autonomy, more active response strategies are seen, ranging from avoidance to defiance and manipulation.

Where there is a high degree of legal coercion to comply with institutional pressures, the response of the organisation is predicted to be a strategy of acquiescence. This is predicted to be the case where legal or government mandates are used to exert institutional pressure on an organisation. Where an institutional pressure is being exerted by voluntary diffusion (e.g., from a professional code of ethics, or from non-mandatory guidelines issued by professional bodies or regulators) rather than by legal coercion, the extent to which a particular practice has already spread within an organisational field will influence the response of the organisation. For example, where the new practice has been widely adopted, an organisation will be more likely to acquiesce or compromise (Oliver, 1991).

Finally, the context in which the institutional pressure takes place is deemed to influence the choice of strategic response. The two key factors influencing the context are environmental uncertainty and interconnectedness. Environmental uncertainty is defined as “the degree to which future states of the world cannot be anticipated and accurately predicted” (Pfeffer and Salancik, 1978, p.67). Interconnectedness refers to “the density of interorganizational relations among occupants of an organizational field” (Oliver, 1991, p.170). It is predicted that where environmental uncertainty is high, an organisation will adopt a less active response, ranging from acquiescence to avoidance as, in times of uncertainty, organisations are likely to: (i) mimic one another, (ii) engage in negotiation to minimise uncertainty or (iii) buffer themselves by engaging in avoidance strategies. Similarly, where there is high interconnectedness within an industry or professional grouping, an organisation is likely to engage in a less active response, as institutional norms and values are widely diffused.

Table 2.7 sets out the various institutional antecedents and the predicted strategic responses. This matrix illustrates the relationship between the five antecedents, which provide the predictive factor, and the five response strategies.

Table 2.7: Institutional antecedents and predicted strategic responses

Predictive factor	Strategic response				
	Acquiesce	Compromise	Avoid	Defy	Manipulate
Cause					
Legitimacy	High	Low	Low	Low	Low
Efficiency	High	Low	Low	Low	Low
Constituents					
Multiplicity	Low	High	High	High	High
Dependence	High	High	Moderate	Low	Low
Content					
Consistency	High	Moderate	Moderate	Low	Low
Constraint	Low	Moderate	High	High	High
Control					
Coercion	High	Moderate	Moderate	Low	Low
Diffusion	High	High	Moderate	Low	Low
Context					
Uncertainty	High	High	High	Low	Low
Interconnectedness	High	High	Moderate	Low	Low

Source: Oliver (1991, p.160)

A number of prior studies have tested the predictive nature of Oliver's (1991) framework in different empirical contexts (Etherington and Richardson, 1994; Goodstein, 1994; Ingram and Simons, 1995; Clemens and Douglas, 2005; Clemens and Papadakis, 2008; Guerreiro *et al.*, 2012). Etherington and Richardson (1994) explored responses to changes in the accounting programmes in Canadian universities, where they found the responses of the universities to be consistent with Oliver's (1991) framework. However, their use of the framework highlighted the importance of the context in which changes take place and the power of individual opinion makers. Active resistance strategies, for example defiance and avoidance, were more likely to be seen where the proposed change was: (i) inconsistent with the goals of the actors, (ii) reduced the actors' discretion and (iii) where the actors were less dependent on those exerting the pressures for resources. In contrast, it was found that responses were likely to be less active where actors perceive: (i) gains in efficiency, (ii) congruence of their aspirations with the effects of the change, (iii) maintenance of autonomy and (iv) reduction in uncertainty of expectations and outcomes (Etherington and Richardson, 1994).

Oliver (1991) predicts that larger and more visible organisations will adopt less active resistance strategies, because of their concern for social legitimacy. This prediction

was supported by a number of studies (Goodstein, 1994; Ingram and Simons, 1995). However, Clemens and Douglas (2005) and Clemens and Papadakis (2008) found that larger organisations were more likely to adopt more active resistance strategies. It should be noted that both studies were of the US steel industry and, therefore, this finding may be specific to this industry. Despite this inconsistency with Oliver's predictions, Clements and Douglas (2005) did find that individual actors who worked together through, for example, trade associations were more likely to co-operate with regulators and adopt less resistant strategies. This is a finding that is consistent with Oliver's (1991) framework.

Guerreiro *et al.*, (2012) returned to the accounting context in their study of the voluntary adoption of International Financial Reporting Standards (IFRS) by Portuguese listed companies. A strong relationship was found between the legitimacy gained from adopting IFRS and the decision to voluntarily adopt. It was also found that companies in more organised industries were more likely to adopt IFRS, because of the high interconnectedness and strong co-operation within the industry, and this was consistent with prior findings (Clemens and Douglas, 2005; Goodstein, 1994).

In the regulatory context of the accounting profession, Canning and O'Dwyer (2013) found that their results were to some extent consistent with Oliver's (1991) predictive framework, but not entirely. Professional bodies were seen to adopt more active response strategies, such as defiance and manipulation, where they viewed regulatory changes as: (i) reducing their discretion, (ii) being inconsistent with their goals and (iii) creating uncertainty in the environment. This finding agreed with those of both Oliver (1991) and Etherington and Richardson (1994). Although the professional bodies are not dependent on the regulator for resources, compromise tactics would have been predicted because of accounting scandals and the resulting threat to the accounting profession's social legitimacy. However, the professional bodies remained actively resistant.

2.5.3 The research gap

The use of Oliver's (1991) framework in prior studies of the accounting profession demonstrates the appropriateness of the framework as a lens to explore how a professional group responds to changes in its environment. This is particularly the case where regulatory changes are taking place which impact the profession, as it

“facilitates consideration of the nature of the strategies available to actors in a regulatory space realignment” (Canning and O’Dwyer, 2013, p.172). In addition, Oliver’s (1991) framework theorises “how elite and powerful institutions will attempt to actively shape and defeat legislation and regulation that adversely affects their interests” (Shapiro and Matson, 2008, p.201 as cited by Canning and O’Dwyer, 2013).

The discussion of prior studies examining the predictive nature of Oliver’s (1991) framework, in particular Canning and O’Dwyer’s (2013) study, illustrates the depth and breadth of understanding of responses to institutional pressures that may be gained from studying the response of professional groups to external change agents. In particular, responses inconsistent with Oliver’s (1991) framework may be identified. For example, the continued use of active resistance has been witnessed despite the coercive legal nature of changes in the environment and despite the social legitimacy of the accounting profession being under threat.

Examining the response of the accounting profession to changes in the regulatory environment of one of its key service offerings, taxation, over an extended period of time allows for the response strategies of another group within the accounting profession to be explored and the responses analysed *vis-à-vis* its specific environmental circumstances and external pressures. In particular, the examination of both the public and the private response of the accounting profession in this study (Chapter 6) deepens our understanding and offers insights into how the on-the-ground private response of the accounting profession may differ to its formal, public response when the profession is under threat from regulatory changes.

Examination of the response of the accounting profession to specific external pressures may reveal that its ability to respond in a given manner is influenced by its professional status and power. The discussion now turns to the impact of external pressures on the day-to-day work practices of tax accountants. The theoretical lens of institutional maintenance work is used to explore and understand how accountants in their day-to-day work practices respond to external pressures and seek to maintain their *status quo*.

2.6 Maintenance work

The impact of changes in the general anti-avoidance tax regime on the work practices of tax accountants may be analysed using the concept of institutional maintenance work (Lawrence and Suddaby, 2006). The tax authorities sought to disrupt existing work practices by introducing regulatory changes. The maintenance work used by tax accountants in response to these external pressures aids in understanding the micro-level practice changes.

Examining the micro-level i.e., the work of tax accountants within accounting firms, allows an understanding to be gained into how regulatory changes are “translated into practice” (Cooper and Robson, 2006, p.415). Prior accounting research has focused on how accountants, together with their professional bodies, influence accounting rules (Cooper and Robson, 2006). This study provides an opportunity to examine the practical implications of a different and distinct set of regulatory rules and guidelines that impact the work of the accounting profession – tax law. Prior studies of the commercialisation of the accounting profession have been criticised for the lack of attention placed on specific practices that enable and support commercialisation within the accounting profession (Sikka and Willmott, 1997). In addition, the accounting scandals of the early 21st century have emphasised the need to go behind the proclamations of professional bodies and to examine the actual day-to-day work practices of accountants when assessing claims to professionalism (Cooper and Robson, 2006).

The lack of scholarly research examining micro-level practices was highlighted following the global accounting crisis and the methodological challenges facing researchers wishing to explore day-to-day accounting practices (Hopwood, 2009; Arnold, 2009). However, despite the difficulties that researchers may encounter in this pursuit, uncovering and examining accounting practices is regarded as an essential extension of existing research (Arnold, 2009), with a focus on practice being required at the fore of research studies, rather than the prior focus of “research at a distance” being continued (Hopwood, 2009, p.802).

Where an institutionalised practice comes under external pressures, those within the organisation or profession may engage in institutional work to maintain the *status quo*. In the past, focus has been placed on individuals creating or transforming institutions; however, there is an argument that individuals also play a critical role in

maintaining institutions (Berger and Luckmann, 1967). Lawrence, Suddaby and Leca. (2011) advocate a shift in “our understanding of the individual in institutional studies of organization from being an accomplice to social processes of institutionalization and structuration to an agent whose motivations, behaviors, and relationships are of direct, rather than indirect, interest and attention” (pp.54–55).

In contrast to the number of studies in the areas of institutional creation and change, the process through which institutions are maintained is less visible in prior research (Lawrence and Suddaby, 2006). As a result, institutional maintenance is considered an area of institutional theory which to date has been under-examined (Dacin, Munir and Tracey, 2010).

It has been assumed that institutions are self-reproducing; however, “relatively few institutions have such powerful reproductive mechanisms that no on-going maintenance is necessary” (Lawrence and Suddaby, 2006, p.229). Lawrence and Suddaby (2006) identified forms of institutional work that were found to support institutional maintenance in a number of empirical studies of institutional change. These categories of institutional work are outlined in Table 2.8.

Table 2.8: Maintaining institutions

Forms of institutional work	Definition
Enabling work	The creation of rules that facilitate, supplement and support institutions, such as the creation of authorizing agents or diverting resources
Policing	Ensuring compliance through enforcement, auditing and monitoring
Deterring	Establishing coercive barriers to institutional change
Valourising and demonising	Providing for public consumption positive and negative examples that illustrates the normative foundations of an institution
Mythologising	Preserving the normative underpinnings of an institution by creating and sustaining myths regarding its history
Embedding and routinising	Actively infusing the normative foundations of an institution into the participants’ day to day routines and organizational practices

Source: Lawrence and Suddaby (2006, p.230)

In a more recent study of maintenance work, three broad categories were identified: custodial work, negotiation work, and reflexive normalisation work (Lok and De Rond, 2013). Custodial work involves the maintenance of an institution through rule creation, socialisation, monitoring and enforcement activities (Lawrence and Suddaby, 2006; Lawrence, Suddaby and Leca, 2009; Lok and De Rond, 2013). Therefore, this first category may be deemed to include enabling, policing and deterring work, as identified in Lawrence and Suddaby's (2006) categorisation.

In addition to custodial work, studies have shown that practices may be maintained by negotiations between organisational members, with rules and norms being a dynamic outcome of on-going negotiations (Lok and De Rond, 2013; Barley, 2008). This form of maintenance work may, therefore, include the use of valourising and demonising, and mythologising work practices to bring about successful negotiations.

Finally, reflexive normalisation work refers to the way that "people tend to account for unexpected interactions in terms of a general background of knowledge and expectancies in such a way that it normalizes these interactions" (Lok and De Rond, 2013, p.188). It has been shown that individuals use rules that have developed from either custodial or negotiation work "to understand and reflectively account for whatever their actual activities turn out to be" (Garfinkel, 1967, Zimmerman, 1971, as cited by Lok and De Rond, 2013, p.188). This form of maintenance work allows divergent behaviours to be temporarily smoothed over (Lok and De Rond, 2013) and is a much less conscious and intentional basis on which institutional maintenance is achieved (Lok and De Rond, 2013). This final broad category may be regarded as utilising the final maintenance work practice previously identified in the literature, embedding and routinising.

2.6.1 Prior studies of maintenance work

Table 2.9 summarises the prior studies of institutional maintenance work, identifying the empirical setting, methods used and the forms of maintenance work identified.

Table 2.9: Prior studies of institutional maintenance work

Study	Empirical setting	Method	Form of maintenance work
Hayne and Free (2014)	The implementation of the Committee of Sponsoring Organisation's Enterprise Risk Managed – Integrated Framework	Interviews and secondary materials	Enabling Valourising and demonising Mythologising Embedding and routinising
Fredriksson (2014)	Governance of financial markets in Sweden	In-depth interviews and documentary evidence	Providing Policing Routinising
Empson, Cleaver and Allen (2013)	Corporatisation of large international law firm partnerships	Interviews and archival data	Policing Mythologising Enabling
Lok and De Rond (2013)	Preparations by Cambridge University for the annual University Boat Race	Ethnographic study – documentary evidence, observations, interviews and e-mail communication, video footage and logbooks	Containment work (minor breakdowns) <ul style="list-style-type: none"> - Normalization work (ignoring) - Negotiation work (tolerating) - Custodial work (reinforcing) Restoration work (major breakdowns) <ul style="list-style-type: none"> - Normalization work (excepting and co-opting) - Negotiation work (reversing) - Custodial work (self-correcting and formal disciplining)
Micelotta and Washington (2013)	Italian reform of professional groups	Case study – documentary evidence and interviews	Repair (reversing change and restoring the status quo) Re-asserting the norms of institutional interaction Re-establishing the balance of institutional powers Regaining institutional leadership Reproducing institutionalised practices
Ramirez (2013)	Response of the Institute of Chartered Accountants of England and Wales (ICAEW) to the call for greater accountability	Publicly available documents, interviews and archives	Preserving a shared sense of worth in the professional project

Table 2.9: Prior studies of institutional maintenance work

Study	Empirical setting	Method	Form of maintenance work
Currie, Lockett, Finn, Martin and Waring (2012)	English National Health Service: Introduction of new nursing and medical roles	Case studies – archival data, interviews and observation	Theorizing Defining Educating Policing Constructing normative networks
Sminia (2011)	Dutch Construction Industry – continuance of pre-consultation for nine years after it was declared illegal	Case study – analysis of transcripts of public interrogations	Passive maintenance work Repairing / Concealing contradiction
Dacin, Munir and Tracey (2010)	Formal dining at Cambridge Colleges	Historical documents, interviews and observations	Embedding and routinising – use of rituals
Di Domenico and Phillips (2009)	Oxbridge formal dining	Ethnographic study - observation	Embedding and routinising – use of rituals
Townley (2002)	Introduction of New Public Management in cultural division of the provincial government of Alberta, Canada	Longitudinal case study – interviews, observations and archival data	Deterrence
Zilber (2002)	Rape Crisis Centre in Israel	Ethnographic study – Participant observation, interviews and administrative texts	Embedding and routinising
Fox-Wolfgramm, Boal and Hunt (1998)	Banking sector (Response of two banks to the Community Reinvestment Act)	Questionnaires (used for selection of banks for the study), interviews and other sources of evidence (documents, archival records and observations)	Policing
Townley (1997)	Performance appraisal of university academics in the UK	Documentary analysis and semi-structured interviews	Embedding and routinising
Schuler (1996)	US steel industry	Quantitative – multiple regression model using primary and secondary, firm-level and industry-level political and financial data Interviews	Policing
Holm (1995)	Norwegian Fisheries - rise and fall of the Mandated Sales Organisation	Case study	Deterrence

Table 2.9: Prior studies of institutional maintenance work

Study	Empirical setting	Method	Form of maintenance work
Angus (1993)	Catholic Boys School – construction of masculine subjectivities	Ethnographic study	Mythologising Embedding and routinising
Leblebici, Salancik, Copay and King (1991)	US radio broadcasting industry	Historical analysis	Enabling work

Five out of the 15 studies in Table 2.9 examine the maintenance work of professional groups (Hayne and Free, 2014; Empson *et al.*, 2013; Ramirez, 2013; Micelotta and Washington, 2013; Currie *et al.*, 2012). A number of these studies have found a range of specific maintenance work practices being used in response to external pressures (Ramirez, 2013; Micelotta and Washington, 2013; Currie *et al.*, 2012). For example, work practices previously identified with creating institutions, such as theorising, defining, educating and constructing normative networks (Lawrence and Suddaby, 2006), were identified in the maintenance work practices of medical practitioners. This illustrates that institutional work may cross categories, from say creation to maintenance, with this blending of different types of institutional work being seen to have particular success in a professional context (Currie *et al.*, 2012). The ability of different types of institutional work to appear simultaneously was also identified by Empson *et al.* (2013) and Hayne and Free (2014). The complex and “messy empirical reality” witnessed in these studies (Empson *et al.*, 2013, p.809) highlighted that the neat categorisation of institutional work as presented by Lawrence and Suddaby (2006) may not always apply in practice. Therefore, the ability to maintain an existing institutionalised practice may be supported by new practices being created and, hence, the use of creation work may be identified in complex empirical settings. Lawrence and Suddaby (2006) identified nine forms of creation work that are presented in Table 2.10.

In addition to opening up the possibility of seeing maintenance and creation work being undertaken simultaneously in response to external pressures, prior studies of professional groups also highlight the number of different maintenance work practices that may be used in a given context. There is a stark contrast between the number of different maintenance work practices used in the studies of professional groups (Hayne and Free, 2014; Empson *et al.*, 2013, Micelotta and Washington,

2013; Currie *et al.*, 2012) when compared with earlier studies of maintenance work, where studies often identified one key maintenance work practice (Dacin *et al.*, 2010; Di Domenico and Phillips, 2009; Townley, 2002; Zilber, 2002). As a result, tax accountants may be expected to engage in a range of both maintenance and creation work practices in response to external threats from tax authorities.

Table 2.10: Creating institutions

Forms of institutional work	Definition
Advocacy	The mobilization of political and regulatory support through direct and deliberate techniques of social suasion
Defining	The construction of rule systems that confer status or identity, define boundaries of membership or create status hierarchies within a field
Vesting	The creation of rule structures that confer property rights
Constructing identities	Defining the relationship between an actor and the field in which that actor operates
Constructing normative associations	Re-making the connections between sets of practices and the moral and cultural foundations for those practices
Constructing normative networks	Constructing of interorganizational connections through which practices become normatively sanctioned and which form the relevant peer group with respect to compliance, monitoring and evaluation
Mimicry	Associating new practices with existing sets of taken-for-granted practices, technologies and rules in order to ease adoption
Theorizing	The development and specification of abstract categories and the elaboration of chains of cause and effect
Educating	The educating of actors in skills and knowledge necessary to support the new institution

Source: Lawrence and Suddaby (2006, p.221)

Institutional maintenance work has also been theorised as a form of repair work in a professional setting (Micelotta and Washington, 2013). Specifically, in Micelotta and Washington's (2013) study, the legal profession was seen to engage in repair work to

re-establish its status quo following regulatory change. A number of maintenance strategies were identified, including: re-asserting institutional norms, re-establishing the balance of institutional powers, regaining institutional leadership and reproducing institutionalised practices.

There are differences in the strategies identified by Micelotta and Washington (2013), when compared with the strategic responses identified by Oliver (1991). The reforms faced by the Italian legal profession were not open for negotiation when initially introduced, therefore not providing the legal profession an opportunity to engage in compromise tactics and influence the regulatory changes. As a result of this, protests and strikes were undertaken to force the government to allow for negotiation and consultation. Whilst this form of response may be categorised as defiance, its aim was to allow for norms to be re-asserted and for compromise to be reached between the parties. The second stage of institutional work undertaken by the legal profession was to re-establish the balance of institutional powers through negotiations with the government, therefore active engagement was used and rather than compromise tactics being deployed, the profession “engaged in effortful work to convince the government” of the importance of professional autonomy (Micelotta and Washington, 2013, p.1151). The power and status of the legal profession enabled it to regain institutional leadership with the distinctive characteristics of the legal profession being successfully articulated in the negotiation process so as to achieve an abandonment of the “one-size-fits-all” approach to professional reform (Micelotta and Washington, 2013, p.1153). Finally, throughout the reform process, the legal profession engaged in the process of reproducing institutionalised practices, to minimise disruption to its existing client relationships and professional practices.

Due to the professional power and status of the legal profession in Italy, it was able to firmly re-assert its position, re-open the negotiation channels and successfully defeat the disruptive regulatory changes. This position of strength provided it with the ability to avoid the need to acquiesce or engage in unacceptable compromise. In addition, despite initial defiance through protests and strikes, the regulatory changes were dealt with directly, thereby avoiding the need for defiance or manipulation strategies.

2.6.2 The research gap

The importance for research in the area of institutional maintenance was highlighted

by Holm (1995) when he commented that the most institutionalised organisations often escape analysis as they are the most taken-for-granted and that this can result in some of the most important phenomena, including professionalisation, not being subject to institutional analysis. Despite the call in the literature for maintenance work by professional groups to be examined, only a small number of studies have examined the institutional maintenance work of professionals (Hayne and Free, 2014; Empson *et al.*, 2013; Micelotta and Washington, 2013; Ramirez, 2013; Currie *et al.*, 2012). To date, there is limited research on the accounting profession and its maintenance work practices (Ramirez, 2013; Hayne and Free, 2014).

The work practices of tax authorities aimed at disrupting the institutionalised practice of aggressive tax avoidance, and hence the accounting profession's involvement in facilitating tax avoidance represent an opportunity to explore the response of the accounting profession and, in particular, the maintenance work practices adopted in order to protect the profession's work practices. Prior work examining the maintenance work practices of professional groups have tended to focus on empirical settings where the professionals are strongly positioned to resist external pressures, due to their power and status (Micelotta and Washington, 2013; Currie *et al.*, 2012) or have focused on changes instigated by the profession itself (Hayne and Free, 2014, Empson *et al.*, 2013). The empirical context of tax accountants provides an opportunity to examine the maintenance work of a professional group that has been severely criticised for its role in aggressive tax avoidance and therefore, its ability to resist changes may be compromised. In addition, rather than examining changes instigated within the accounting field (Hayne and Free, 2014), this study examines the response of the accounting profession to external, powerful regulatory forces. This regulatory force was also supported by social changes, with aggressive tax avoidance being increasingly regarded as an anti-social practice. As a result, it is anticipated that the type of maintenance work practices used by tax accountants will differ to those previously identified in the literature. These maintenance work practices are explored in Chapter 7.

2.7 Summary and conclusions

The objective of this study is to examine the professionalism of tax accountants in the context of how Revenue sought to tackle what was perceived as unacceptable tax avoidance. As a result of the complex nature of the phenomenon under enquiry,

a diverse range of literature has been reviewed in this chapter in order to gain an understanding of (i) the external pressures facing the accounting profession, (ii) the response of the accounting profession to changes in its environment and (iii) the impact of these on work practices of tax accountants.

This chapter also set out a number of research gaps, which are addressed throughout the study:

1. Inability of existing measures aimed at tackling non-compliance to address tax avoidance (Chapter 5)
2. External disruptive work practices targeted at a professional group (Chapter 5)
3. An examination of the public and private responses of the accounting profession to changes in its external regulatory environment (Chapter 6)
4. Examination of the maintenance work practices of a professional group following a loss of societal trust (Chapter 7)
5. Analysis of the behaviours of individual accountants and the impact of regulatory changes on day-to-day work practices (Chapter 7)

In terms of the literature reviewed, commencing in section 2.2 the concept of professionalism was introduced, with the characteristics that differentiate professionals from other occupational groups and the influencing nature of organisational forms discussed. Prior studies of the professionalism of accountants were examined, including the lack of focus in prior studies on the behaviours and work practices of accountants. This gap in our knowledge is responded to in this study, with the work practices of tax accountants being a central focus.

An external pressure facing the accounting profession, in the form of attempts to tackle aggressive tax avoidance, was presented in section 2.3 and a gap in our knowledge was identified regarding the inability of current methods – used by tax authorities to deal with non-compliance with the tax law – to tackle tax avoidance. The attempts by Revenue in Ireland to tackle tax avoidance through amendments

and supplementary provisions to the general anti-avoidance tax regime provide a dynamic setting to explore this under-researched area.

The first theoretical construct, disruptive work, was discussed in section 2.4. The work practices undertaken where an institution, such as the accounting profession, is no longer serving the needs of an external actor were examined. The gap in knowledge relating to external disruptive work targeted at professional groups was identified, offering a fruitful research opportunity to examine the disruptive work practices of the Irish tax authorities in tackling tax avoidance.

Where external pressures seek to alter the existing arrangements of an organisation or professional group, the organisation or professional group may respond in a number of different ways. Oliver's (1991) framework provides five strategic responses that may be adopted in such circumstances. These five responses, together with the antecedents that help to predict the likely response adopted, were discussed in section 2.5. The appropriateness of the framework for the examination of the accounting profession's response to changes in the general anti-avoidance tax regime was identified.

Finally, maintenance work practices were discussed in section 2.6, with the opportunities for further studies of professional groups being highlighted. Studying the maintenance work practices in which tax accountants engaged in response to changes in their regulatory environment provides a rich and appropriate setting.

The literature review has contributed to framing both the purpose of the study and the selection of the empirical context. Chapter 3 presents the general anti-avoidance tax regime in Ireland, including an in-depth examination of the background to the introduction of the General Anti-Avoidance Rule (GAAR), the GAAR itself, and the supplementary provisions introduced to strengthen the regime.

Chapter 3: Irish general anti-avoidance tax regime

3.1 Introduction

The literature review presented in Chapter 2 and the overall research objective led to the selection of the empirical context in which the professionalism of tax accountants is examined. This chapter sets out this empirical context. Internationally, countries are focusing on tackling tax avoidance. This has particularly been the case since the global financial crisis, with general anti-avoidance rules being introduced as a popular means to deal with the challenges of aggressive tax planning (Ernst and Young, 2013). The role of the accounting profession in facilitating tax avoidance has been well documented (Braithwaite and Braithwaite, 2000; Sikka and Hampton, 2005; Sikka, 2013; UK Public Accounts Committee, 2013). The general anti-avoidance tax regime in Ireland was chosen as an appropriate context through which to examine the professionalism of tax accountants. The justification for this choice of empirical setting is presented in section 3.10.

As discussed in this chapter, Ireland's general anti-avoidance tax regime represents a dynamic context that has changed over time. The general anti-avoidance tax regime includes the General Anti-Avoidance Rule (GAAR) and supplementary measures introduced to strengthen the GAAR. Pressure to tackle aggressive tax avoidance increased in Ireland from the early 21st century, following the publication of the Ansbacher Report, which unveiled large-scale tax evasion (Office of the Director of Corporate Enforcement, 2002). The findings from the Ansbacher Inquiry⁵ led to a change in social attitudes to both tax evasion and tax avoidance, providing the impetus for Revenue to target aggressive tax planning with both legislative and non-legislative measures. As a result, this context enables a study of the professionalism of tax accountants in terms of the profession's response to changes in the regime and in terms of the impact of these changes on the work practices of tax accountants. The research design, which is discussed in Chapter 4, is guided by the

⁵ The Ansbacher Inquiry related to a company, Ansbacher (Caymen) Limited, which operated in Ireland to assist Irish residents in moving funds offshore, resulting in breaches of banking, tax and company law, and other legislative contraventions.

empirical context. This chapter sets the scene used to examine and analyse the professionalism of tax accountants in the remainder of the thesis.

The chapter begins with a discussion of tax avoidance, what is regarded as aggressive or unacceptable tax avoidance and the case law regarding the interpretation of tax legislation in this regard in section 3.2. The seminal case of *McGrath v. McDermott 1988*⁶, which is widely regarded as providing the impetus for the introduction of the GAAR in Ireland (Kenny, 1990; Maguire, 2014), is discussed in section 3.3. Prior to introducing Ireland's GAAR, section 3.4 discusses tax avoidance in the Irish context with the attitudes of society analysed and the approach taken to tackle tax avoidance presented. The chapter continues with a detailed description in section 3.5 of the GAAR introduced in 1989 in the form of section 86 Finance Act 1989 (now enshrined in section 811 Taxes Consolidation Act (TCA) 1997). The key features of the GAAR are outlined, including exceptions that may be availed of by the taxpayer.

Section 3.6 discusses the use of the GAAR by Revenue and the changing tax and financial landscape, which led to a number of supplementary provisions to the GAAR, namely, protective notification (section 811A TCA 1997) introduced in the Finance Act 2006, changes to protective notification and the GAAR in the Finance Act 2008 and mandatory disclosure introduced in the Finance Act 2010. These are discussed in sections 3.7 and 3.8.

As the study also examines the response of the accounting profession to the first Supreme Court decision concerning the GAAR, *O'Flynn Construction v. Revenue Commissioners*⁷, the facts of this case are outlined in section 3.9, followed by a discussion of the majority and minority judgments.

International general anti-avoidance tax regimes are discussed in section 3.10, providing further justification for the selection of Ireland as the research site. This is followed by a summary and conclusion in section 3.11.

3.2 Tax avoidance and related case law

Prior to the discussion of the GAAR and the supplementary measures that have

⁶ *McGrath & Ors v. McDermott 1988 IR 258.*

⁷ *O'Flynn Construction & Ors v. Revenue Commissioners 2011 IESC 47.*

been enacted, the term tax avoidance is introduced followed by the treatment of tax avoidance transactions by the courts.

3.2.1 Tax avoidance

Tax avoidance, in its simplest interpretation, is avoiding or reducing a charge to tax (Maguire, 2014). An early example of tax avoidance was the closing up of windows, by the insertion of bricks, in many large 18th century houses in Ireland in response to window taxes, which were introduced in 1799 (O'Halloran, 2005). However, this example of tax avoidance had greater consequences than merely reducing the charge to tax, as the bricking up of windows reduced light in homes. It is an analysis of these other consequences (e.g., the resulting loss of light and heat due to the bricking up of the windows) that is central before any conclusion may be drawn regarding a tax avoidance transaction (Maguire, 2014).

The global financial crisis brought a renewed interest to what is termed aggressive or unacceptable tax avoidance (Hasseldine et al., 2011). The distinction between acceptable and unacceptable tax avoidance has increasingly been debated in the media, on both a domestic and an international level. These terms, whilst often used in the media and by politicians, are not well defined. The differing attitude of taxpayers and their tax advisers and of tax authorities as to what constitutes unacceptable tax avoidance is central to this issue. Tax avoidance has been described as being “...like beauty... in the eye of the beholder” (Commission on Taxation, 1985, Para 11.25). The Irish Revenue has referred to the difficulty of defining what constitutes aggressive, abusive or unacceptable tax avoidance (Revenue Speech, 2005⁸). It has acknowledged that little is to be achieved “by trying to define labels” and that instead the intention of the legislators should be considered and from “Revenue’s very long experience of the avoidance battlefield” it would suggest that “there is rarely doubt about whether or not certain interpretations breach the spirit of the law” (Revenue, 2005⁹, p.7).

Tax authorities have attempted to deal with the ambiguity that exists, with the UK HMRC issuing a number of typical characteristics of aggressive tax avoidance schemes. The warning signs of aggressive tax avoidance include where something

⁸ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

⁹ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

“sounds too good to be true and cannot have been intended when Parliament made the relevant tax law”, “tax benefits or returns [that] are out of proportion to any real economic activity, expense or investment risk”, tax schemes that are “very complex given what you want to do” and schemes that involve “artificial or contrived arrangements” (HMRC, 2014).

The OECD has stressed the importance of developing strategies to deal with aggressive tax avoidance due to its ability to undermine public trust in the tax system, creation of inequalities and reduction of tax revenues (OECD, 2011). The Irish Revenue has also emphasised the negative impact of tax avoidance, with it “offend[ing] the spirit and purpose of the law” (Revenue, 2005¹⁰, p.7). The spirit of the tax legislation is often referred to in debates regarding tax avoidance and refers to the underlying purpose of the tax legislation as intended by the legislator. When tax avoidance crosses the line into what is deemed aggressive or unacceptable tax avoidance, the strict letter of the law is used to the taxpayer’s advantage, with the underlying purpose or spirit of the legislation being set aside.

The differing attitudes between taxpayers and their tax advisers and the tax authorities is discussed in Chapter 7. However, to begin, the changing attitude of the courts to tax avoidance is set out.

3.2.2 The attitude of the courts to tax avoidance

The leading UK case of the *Duke of Westminster v. Commissioners of Inland Revenue*¹¹ dates back to the 1930s and is often the starting point for discussing the courts’ attitude to tax avoidance. The Duke introduced a change to the method by which he remunerated his employees, introducing an annuity as set out in a deed of covenant in lieu of wages. This arrangement allowed the Duke to take a deduction for the annuity payments, when previously the wages were not deductible for tax purposes. The Inland Revenue argued that the annuities were in substance wages and on that basis sought to deny a deduction. In the often-cited comment, Lord Timlin stated, “*Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it would otherwise be. If he succeeds in ordering them so as to secure this result, then, however unappreciative*

¹⁰ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

¹¹ *Duke of Westminster v. Commissioners of Inland Revenue (1933–1935) 19 TC 490.*

the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity he cannot be compelled to pay an increased tax...".

The judgment in the Westminster case was affirmed in Ireland in 1962, in the case of *O'Sullivan v. P Limited*¹². In this case, a company incorporated in the UK but managed and controlled in Ireland (and hence subject to income tax in Ireland) sought to treat a large up-front payment on a lease as capital rather than income. Mr Justice Kenny stated that: "*The case thus raises the difficult and vexed question as to 'form and substance' in taxation matters.... Where a transaction is contained in a document, the liability to tax arising out of the transaction depends upon the meaning and effect of the document ascertained in accordance with the principles of construction which have been laid down by the Courts. Prior to the decision in CIR v Duke of Westminster 19 TC 490. [1936] AC1 there was some judicial support for the view that, in determining liability to tax, the substance of the transaction was to be looked at; this was assumed to mean that the financial result and not the legal effect of a transaction determined liability for tax purposes. This was rejected in the Duke of Westminster case.*"

Following the ruling in *O'Sullivan v. P Limited*, the attitude of the Irish courts was to apply a legal form over substance approach in determining a liability to tax.

Meanwhile in the UK, a new approach to dealing with tax avoidance was established, most notably, in *Ramsey v. Inland Revenue Commissioners*¹³ 1982 and *Furniss v. Dawson*¹⁴ 1984. The Westminster doctrine was set aside and a doctrine of fiscal nullity applied instead. The doctrine of fiscal nullity allows a tax liability to be computed by reference to the end result of a number of transactions, ignoring intermediate steps that have no commercial purpose and are solely undertaken for the purpose of avoiding a charge to tax. These rulings established an economic substance over legal form approach in the UK.

This change of attitude in the UK was tested in Ireland in the case of *McGrath v. McDermott*¹⁵ in 1988. This case is regarded as the stimulus for the GAAR in Ireland. The facts of the case and the Supreme Court judgment are outlined in the following section.

¹² *O'Sullivan v. P Ltd* 1962 II ITR 464.

¹³ *Ramsey v. Inland Revenue Commissioners* 1982 AC 300; 54 TC 101.

¹⁴ *Furniss v. Dawson* 1984 AC 474; 55 TC 324.

¹⁵ *McGrath & Ors. v. McDermott* 1988 IR 258.

3.3 Prompting the General Anti-Avoidance Rule (GAAR) in Ireland – *McGrath v. McDermott 1988*

The substance over form approach to tackling tax avoidance was tested before the Irish courts in the case of *McGrath v. McDermott* in 1988. An overview of the facts of the case and the judicial decisions are presented in section 3.3.1. It is shown how this case was regarded as providing the impetus for the introduction of a GAAR in Ireland because of the refusal of the Irish courts to apply the substance over legal form principle.

3.3.1 Overview of the case and judicial decisions

The *McGrath v. McDermott* case involved the taxpayer entering into a tax avoidance scheme comprised of a number of steps, with the intention of creating an artificial loss for Capital Gains Tax purposes. This fact was not disputed. It was indeed *“accepted on behalf of the appellant that the purpose of these transactions was to secure an allowable loss for capital gains tax purposes”* (Mr Justice Carroll at the High Court).

The High Court allowed the transaction to stand, with Mr Justice Carroll stating that: *“...in my opinion the imposition of tax and the granting of relief from tax is solely a matter for the legislature. It is for parliament if it thinks fit to confer on the courts the power to determine whether a scheme was conceived primarily for the purposes of tax avoidance... If the legislature has failed to plug a hole in advance or has failed to pass law which strikes generally at tax avoidance schemes, then I am strongly of the opinion that it is not the function of the court to intervene.”*

Revenue appealed to the Supreme Court. The Supreme Court found unanimously in favour of the taxpayer, with Chief Justice Finlay stating that: *“Not only am I quite satisfied that it is outside the functions of the courts to condemn tax avoidance schemes which have not been prohibited by statute law but I would consider it probable that such a role would be undesirable even if it were permissible. In some jurisdictions such as Canada and Australia, general statutory provisions against tax avoidance have been enacted, which in the cases to which they apply would, of course, affect the interpretation of specific provisions of taxation laws. In the absence of any such general provisions in our law, there are no grounds for departing from the plain meaning of these sections.”* This ruling of the Supreme Court is regarded as having led to the subsequent introduction of a GAAR in Ireland.

3.3.2 Invitation to introduce a General Anti-Avoidance Rule (GAAR)

The *McGrath v. McDermott* decision is regarded as having provided an “implicit invitation” for the introduction of a GAAR in Ireland (Maguire, 2014, p.81; Doyle and Hunt, forthcoming). The doctrine of fiscal nullity, established in the UK, was rejected by the Irish courts. The ruling is regarded as creating the impetus for the introduction of a GAAR, which took place in the Finance Act following the Supreme Court decision. This contention was affirmed by the Supreme Court in the case of *O’Flynn Construction v. Revenue Commissioners*¹⁶. Having reviewed the *McGrath v. McDermott* case, Mr Justice O’Donnell stated that: “*Looked at against this background therefore it becomes clear that s.86 [now s.811 TCA 1997] is clearly directed towards the reversal of the Westminster case in Ireland, and more.*” The GAAR introduced in Ireland following the Supreme Court decision in the *McGrath v. McDermott* case is discussed in section 3.5, however prior to the specific legislative provisions being discussed, the context in which these changes were made is presented in the following section.

3.4 Tax avoidance in the Irish context

The Irish tax system in the 1980s facilitated large-scale tax avoidance. It was claimed in Dáil debates in 1981 that there had been a “phenomenal growth in tax avoidance schemes” (The Irish Times, 1981, p.5). This view was reiterated by Revenue officials who described the tax avoidance industry as “one of the few growth industries in the country” in 1983 (The Irish Times, 1983, p.14).

Many property-related tax incentives schemes provided opportunities for members of the accounting profession “to develop what were effectively low-risk shelters for rich people” (Taylor, 2015). These opportunities were being developed and marketed at the same time that tax evasion was described as “rampant” in Ireland (Taylor, 2015). The then Minister for Finance, Mr Alan Dukes, announced in 1985 that he would take steps “to outlaw artificially created tax avoidance schemes”, which he described as a “well-planned abuse of the system” (The Irish Times, 1985, p.8). In addition to possible legislative amendments to combat tax avoidance, the Minister appealed to society “to regard tax offences as anti-social”, which at that time, along with tax evasion, did not appear to be regarded as “an offence against society” (The Irish Times, 1985, p.8). Tax avoidance was described by the Minister as “more insidious

¹⁶ *O’Flynn Construction & Ors v. Revenue Commissioners* 2011 IESC 47.

than evasion”, “practised by persons well versed in the rules of taxation. It usually is nothing more than a device to manipulate the rules through an interpretation which, while legally correct, runs counter to the whole spirit of the legislation” (The Irish Times, 1985, p.8). While it was acknowledged that it is acceptable for businesses to take steps to minimise their tax liabilities within the rules, the use of artificial schemes set up solely to take advantage of loopholes in the tax legislation was described as unacceptable (The Irish Times, 1985, p.8).

As discussed in section 3.2.2, the UK courts adopted a substance over form approach in the 1980s to deal with tax avoidance cases. This willingness to apply the spirit of the legislation, by adopting a purposive interpretation of the tax law, allowed the intention of the legislator to be taken into account in tackling artificial tax schemes by the courts. This provided the UK, and other jurisdictions that adopted a similar approach, a new method to tackle aggressive tax avoidance.

The judicial decisions in the UK were described as leading “to some disarray in the tax planning industry, with practitioners proceeding only with great caution” (O’Halloran, 2005, p.109). This was due to the persuasive nature of UK judicial decisions, resulting in concern amongst tax practitioners in Ireland, as regards “the legality of previously acceptable tax avoidance schemes [being called into] question and the distinction between avoidance and evasion [becoming] blurred” (O’Halloran, 2005, p.109). The tax profession questioned whether the Irish courts would follow the UK judicial decisions and adopt a substance over legal form approach to tackling tax avoidance. Despite the uncertainty created by the UK judicial decisions, tax avoidance schemes still flourished in the 1980s, with the vice-president of the Irish Taxation Institute stressing that “the role of the tax adviser is important, if not vital, in working with the client to assist him in structuring his decision making on significant matters to lead to the minimum of tax consequences” (Williams, 1985, p.18). Tax planning in the Irish context, therefore, was an empirical context that provided an opportunity for taxpayers and their advisers to exploit the letter of the tax law, without fear of repercussion.

The uncertainty created by the judicial decisions in the UK was settled in 1989, with the *McGrath v. McDermott* Supreme Court decision (discussed in section 3.3). The Irish courts did not adopt a substance over legal form approach to dealing with aggressive tax avoidance. The judiciary ruled that it was not within its remit to rule against a particular tax planning transaction that was not prevented by the legislator.

Following the Supreme Court decision in *McGrath v. McDermott*, a GAAR was introduced into law in Ireland in 1989 (discussed in section 3.5). However, despite the new rules granted to Revenue under the GAAR, tax avoidance remained an issue of concern throughout the 1990s. In 1991, Mr Peter Casselles (general secretary of the Irish Congress of Trade Unions) described the “highly sophisticated network” of tax advisers costing the State “tens of millions of pounds every year” as a result of tax avoidance schemes, and condemning tax avoidance by describing the “dividing line between avoidance and evasion [as being] often so fine as to be indivisible” (Maher, 1991, p.10). In response, the then president of the Irish Taxation Institute, Mr Norman Judge, described the responsibility that tax advisers have to advise their clients on tax avoidance schemes, including the ability to exploit “a loophole in the tax law if the tax consultant can find one” (Maher, 1991, p.10). Criticism of the use of tax avoidance schemes continued throughout the 1990s, with Revenue officials describing tax loopholes as “morally unjust and socially unfair” (O’Loughlin, 1993, p.2).

As a result of the continuing involvement of taxpayers and their advisers in aggressive tax avoidance schemes, a practice described as “endemic in this State” (Coughlan, 1996, p.14), subsequent Finance Bills introduced specific anti-avoidance measures “to close [the] door on tax avoidance schemes” (Ryan, 1997, p.25). Despite these changes, Revenue continued to identify the use of substantial tax avoidance measures (Tynan and Fagan, 1997). The McCracken Tribunal, which identified tax evasion and tax avoidance as part of its investigation into financial irregularities, resulted in Revenue adopting a “tougher stance” on tackling tax evasion and tax avoidance (Mulqueen, 1998, p.16). Despite these efforts, Revenue renewed its appeal in 2003, requesting a “change of attitude... among tax advisers and their clients, who spend too much time looking for loopholes... in the tax system” (Taylor, 2003, p.20). Revenue warned that if this did not happen that “further legislative and administrative counter-measures to attack aggressive tax avoidance schemes [were] inevitable” (Taylor, 2003, p.20). This threat of further measures materialised with a number of successive amendments and supplementary provisions introduced to bolster Revenue’s powers to tackle tax avoidance, including protective notification and mandatory disclosure (discussed in sections 3.7 and 3.8, respectively).

This empirical setting provides a dynamic environment in which to examine the impact of general anti-avoidance tax provisions and in particular, the response of the

accounting profession to changes in such provisions and the impact of such changes on the work practices of tax accountants. The following sections provide an overview of the GAAR introduced into Irish law in 1989 and the supplementary provisions introduced to tackle aggressive tax avoidance.

3.5 Ireland's General Anti-Avoidance Rule (GAAR) – Section 811 TCA 1997

Ireland's GAAR was first introduced in section 86 Finance Act 1989 and was later enshrined in section 811 TCA 1997. For the purposes of this study, the GAAR is referred to as section 811. The construction of the GAAR, how it works, a number of the important definitions, how Revenue raise an opinion and a number of exceptions to the GAAR that may be availed of by the taxpayer are outlined in this section of the chapter. Appendix I contains the full text of section 811.

3.5.1 Operation of section 811

Section 811 gives Revenue the power to re-categorise transactions that have been undertaken with the primary aim of avoiding tax. Revenue may remove, what is referred to as the tax advantage and charge the taxpayer with the appropriate tax. In order to determine whether a transaction constitutes a tax avoidance transaction, a number of definitions are included in the legislation.

Firstly, the term tax advantage is defined as:

(i) a reduction, avoidance or deferral of **any** charge or assessment to tax, including any potential or prospective charge or assessment, or

(ii) a refund of or a payment of an amount of tax, or an increase in an amount of tax, refundable or otherwise payable to a person, including **any** potential or prospective amount so refundable or payable,

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or **any** part of the results, achieved or intended to be achieved by the transaction.

[Emphasis added]

The broad scope of the legislation may be seen from the definition of tax advantage with the use of the word “any” being used to create breadth. The definition also includes future potential tax charges or refunds. This is to deal with tax avoidance transactions where the benefit does not arise until a future date (Revenue 2013¹⁷).

¹⁷ Revenue (2013) *Revenue Commissioners, Notes for Guidance – Taxes Consolidation Act 1997 – Finance Act 2013 Edition – Part 33*.

A tax avoidance transaction is defined in s.811(2) as follows:

...a transaction shall be a “tax avoidance transaction” if having regard to any one or more of the following-

(a) the **results** of the transaction,

(b) **its use** as a means of achieving those results, and

(c) **any other means** by which the results or any part of the results could have been achieved,

the Revenue Commissioners form the opinion that-

(i) the transaction **gives rise to**, or but for this section would give rise to, a **tax advantage**, and

(ii) the transaction was **not undertaken or arranged primarily for purposes other than to give rise to a tax advantage**,

and references in this section to the Revenue Commissioners forming an opinion that a transaction is a tax avoidance transaction shall be construed as references to the Revenue Commissioners forming an opinion with regard to the transaction in accordance with this subsection.

[Emphasis added]

This definition provides the manner in which Revenue must formulate its opinion on whether a transaction is a tax avoidance transaction or not. The results, the means of achieving those results and any other means by which those results may have been achieved are the three key items to be examined when Revenue is investigating a transaction and determining whether it falls within the GAAR.

A further key definition, which demonstrates the wide-ranging scope of s.811, is the definition of transaction:

(i) any transaction, action, course of action, course of conduct, scheme, plan or proposal,

(ii) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and

(iii) any series of or combination of the circumstances referred to in paragraphs (i) and (ii),

whether entered into or arranged by one person or by 2 or more persons

(I) whether acting in concert or not,

(II) whether or not entered into or arranged wholly or partly outside the State, or

(III) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions.

As is the case for each of the definitions previously outlined, a transaction is broadly defined, with Mr Justice Smyth at the High Court in *O’Flynn Construction v. Revenue*

Commissioners commenting on its “very wide terms.”

These central definitions provide an initial insight into the broad-ranging scope of the GAAR and the power provided to Revenue to tackle tax avoidance transactions. The exceptions to the GAAR and the method of formulating an opinion under section 811 are now considered.

3.5.2 Exceptions available and formulation of Revenue opinion

Section 811(3) sets out two interlinking parts to the GAAR. Firstly, it states what cannot be regarded as a tax avoidance transaction and, secondly, what may be taken into account by Revenue in forming an opinion under the GAAR.

3.5.2.1 *Exceptions to the General Anti-Avoidance Rule (GAAR)*

Section 811(3)(a) provides for two exceptions to the GAAR as follows:

- (a) Without prejudice to the generality of subsection (2), in forming an opinion in accordance with that subsection and subsection (4) as to whether or not a transaction is a tax avoidance transaction, the Revenue Commissioners shall not regard the transaction as being a tax avoidance transaction if they are satisfied that-

(i) notwithstanding that the purpose or purposes of the transaction could have been achieved by some other transaction which would have given rise to a greater amount of tax being payable by the person, the transaction-

(I) was undertaken or arranged by a person **with a view**, directly or indirectly, **to the realisation of profits in the course of the business activities** of a business carried on by the person, and

(II) was **not undertaken or arranged primarily to give rise to a tax advantage**, or

(ii) the transaction was undertaken or arranged **for the purpose of obtaining the benefit of any relief**, allowance or other abatement provided by any provision of the Acts and that the transaction would **not result** directly or indirectly in a **misuse** of the provision or an **abuse** of the provision having regard to the purposes for which it was provided.

[Emphasis added]

The first exception contained in s.811(3)(a)(i) is a business profits test. Where business profits is the main driver of a transaction, the GAAR will not apply. Although this may appear to be a generous exception on initial reading, the exception does not apply to transactions producing passive (non-trading) income or capital gains. In addition, the business profits exception will only apply where the transaction *“was not undertaken or arranged primarily to give rise to a tax advantage.”* The absence of the term “for the purposes of” in this sub-section

provides an opportunity for subjective matters to be considered, and, therefore, commentators have emphasised the importance that taxpayer's evidence may have in defending a transaction in this regard (Maguire, 2014).

The second exception relates to a situation where the taxpayer has entered into a transaction in order to claim a relief or allowance provided for in the tax legislation. This situation will not be regarded as a tax avoidance transaction provided there has been no misuse or abuse of the provision. The *O'Flynn Construction* case hinged on this issue, with Mr Justice O'Donnell ruling that regard must be had "*to the purpose for which the provision is provided.*"

The two key exceptions to the GAAR having been outlined, section 3.4.2.2 presents the method by which Revenue must form an opinion under the GAAR.

3.5.2.2 Formulation of Revenue opinion

Section 811(3)(b) sets out how Revenue must formulate its opinion under the GAAR:

(b) In forming an opinion referred to in paragraph (a) in relation to any transaction, the Revenue Commissioners shall have regard to-

(i) the **form** of that transaction,

(ii) the **substance** of that transaction,

(iii) the **substance of any other transaction** or transactions which that transaction may reasonably be regarded as being **directly or indirectly** related to or **connected** with, and

(iv) the **final outcome and result** of that transaction and any combination of those other transactions which are so related or connected.

[Emphasis added]

Mr Justice O'Donnell in the *O'Flynn Construction* case (which involved more than 40 steps over 50 days) illustrates the formulation by Revenue of its opinion using the criteria set out in s.811(3)(b). "*The form of the transaction (or series of transactions) is highly artificial and has no commercial logic. Indeed a number of the steps that the participants were required to take to bring the scheme to fruition appear to defy commercial logic. The substance of the transaction, furthermore, is the acquisition of the Mitchelstown ESR [Export Sales Relief] to permit the (indirect) payment of the profits of OFCL [O'Flynn Construction Limited] to its shareholders without incurring the tax that would be due on a direct payment by the company to its shareholders by way of dividend.*"

This judgment provides a practical example of how the transaction may be analysed under section 811. An in-depth analysis of this case is presented in section 3.8.

3.5.3 Revenue powers under section 811

The powers afforded to Revenue under the GAAR are now considered, including the time limit for forming an opinion, what must be contained within a s.811 notice of opinion and options available to the taxpayer to appeal such a notice.

3.5.3.1 *Time limit for forming an opinion*

Section 811(4) states that Revenue may form an opinion under section 811 “*at any time.*” There were differing views as to whether “at any time” had an infinite meaning or whether it was to be read in conjunction with the four-year time limit set out in Part 41 of the tax legislation for raising and/or amending assessments.

As discussed in section 3.6.2, Finance Act 2008 introduced amendments to the legislation relating to protective notification (s.811A) that attempted to rectify this time limit issue. However, this issue was later raised in the *Droog*¹⁸ case, where the primacy of the four-year rule was confirmed. Following this ruling, Finance Act 2012 amended the GAAR, by inserting subsection 5A, which specifically addresses the time limit issue and removes any doubt as to the ability of Revenue to make an enquiry or take an action under s.811 at any time (Hayes, 2012¹⁹). Subsection 5A states that any time limit provided for under Part 41, i.e., the four-year time limit, shall not apply for the purposes of the GAAR.

3.5.3.2 *Contents of opinion*

The details of what must be contained in an opinion formed by Revenue for the purposes of the GAAR is set out in section 811(4):

(4) Subject to this section, the Revenue Commissioners as respects any transaction may **at any time**-

(a) **form the opinion** that the transaction is a tax avoidance transaction,

(b) **calculate the tax advantage** which they consider arises, or which but for this section would arise, from the transaction,

¹⁸ *Droog 2011 ITR 65.*

¹⁹ Brian Hayes (2012) standing in for Minister Michael Noonan (Minister for Finance) Finance Bill 2012 Dáil Debates.

(c) **determine the tax consequences** which they consider would arise in respect of the transaction if their opinion were to become final and conclusive in accordance with subsection (5)(e), and

(d) **calculate** the amount of **any relief from double taxation** which they would propose to give to any person in accordance with subsection (5)(c).
[Emphasis added]

As can be seen from subsection (4), there is considerable work involved on the part of Revenue in calculating the tax advantage which in its opinion has arisen and then determining the tax consequences if the transaction was to be re-categorised. Therefore, where Revenue wishes to challenge a transaction under the GAAR, there are a number of detailed steps that must be worked through in order for an opinion to be issued.

3.5.3.3 *Appeals procedure*

The GAAR provides for an appeals procedure that the taxpayer may avail of where the taxpayer wishes to appeal an opinion issued under the GAAR. Section 811(7) sets out the appeals procedures, with any appeal in the first instance being dealt with by the Appeal Commissioners²⁰. An appeal may only be made on the following specific grounds:

(a) the transaction specified or described in the notice of opinion is **not a tax avoidance transaction**,

(b) the **amount of the tax advantage** or the part of the tax advantage, specified or described in the notice of opinion which would be withdrawn from or denied to the person is **incorrect**,

(c) the **tax consequences** specified or described in the notice of opinion, or such part of those consequences as shall be specified or described by the appellant in the notice of appeal, **would not be just and reasonable** in order to withdraw or to deny the tax advantage or part of the tax advantage specified or described in the notice of opinion, or

(d) the **amount of relief from double taxation** which the Revenue Commissioners propose to give to the person is **insufficient or incorrect**.
[Emphasis added]

The permissible grounds on which an appeal may be taken can be seen to link to the contents of the opinion as set out in section 811(4).

The basis on which the Appeal Commissioners shall determine an appeal is contained in section 811(9). Finance Act 2008 introduced an amendment, whereby

²⁰ The Appeal Commissioners is an independent appeal process that allows a review of the tax affairs of a taxpayer. The Minister for Finance appoints the Appeal Commissioners, who are completely independent of Revenue.

the burden of proof differed depending on whether or not a protective notification (under section 811A) had been filed. This amendment is discussed in more detail in section 3.6.2.

Where the taxpayer or Revenue are dissatisfied with the Appeal Commissioners' ruling, section 811(9)(a) provides for an appeal to the Higher Courts.

3.5.3.4 *Revenue opinion becomes final and conclusive*

Section 811(5)(e) states that, where no appeal has been made, or any appeals have been finally determined in favour of Revenue, "*just and reasonable*" adjustments may be made in order to remove the tax advantage.

The main provisions of the GAAR have been outlined in earlier sections of this chapter, and the use of the GAAR is now considered in section 3.5.

3.6 Use of the General Anti-Avoidance Rule (GAAR)

Since its introduction, the Irish GAAR was regarded as being used by Revenue as a deterrent rather than being actively used to challenge tax avoidance transactions (Mongan and Murphy, 2006). Section 811, not having been tested (for a considerable period after its introduction) before the courts, was described by Revenue, when the then Revenue Commissioner Michael O'Grady stated that: "*the uncertainty in its scope is in itself an element of its success as an 'in terrorem' deterrent*" (O'Grady, 2003²¹, p.5). As a result of the lack of published Appeal Commissioners' decisions regarding section 811, there is little evidence to indicate the contrary. However, Revenue from around 2003 (following the global financial scandals and the Ansbacher Inquiry) appeared to increase the focus of its attention on tax avoidance. This was achieved by actively challenging unacceptable schemes (O'Grady, 2003²²; Daly, 2007²³) and by introducing specific anti-avoidance measures (Government of Ireland, 2003).

Details obtained by tax accountants under a Freedom of Information request outlined

²¹ O'Grady, M. (2003) *Acceptable Limits of Tax Planning: A Revenue Perspective*, KPMG Tax Conference – 7 November 2003.

²² O'Grady, M. (2003) *Acceptable Limits of Tax Planning: A Revenue Perspective*, KPMG Tax Conference – 7 November 2003.

²³ Daly, F. (2007) *Meet the Regulators – Sharing Perspectives*, Address to the ICAI Conference, 23 and 24 November 2007.

the number of notices issued under the GAAR, together with a brief description of the cases and the status of such cases as at July 2013 (Fennell, 2011; Byrne, 2013). Appendix II provides detailed information obtained from Revenue which was published in the *Irish Tax Review* (the practitioner journal of the Irish Tax Institute) in 2013. A total of 617 notices (with the notices in one category unspecified) were issued from the introduction of the GAAR in 1989 up to July 2013. The number of opinions issued to March 2010 totalled 458 (Fennell 2011), indicating that 159 notices were issued between March 2010 and July 2013. This illustrates an increase in Revenue activity, with 25% of the total s.811 notices issued in this 28-month period. The majority of the notices issued related to income tax and capital gains tax involving high net worth individuals (Byrne, 2013).

As part of the increased focus on tackling tax avoidance, a number of supplementary provisions were introduced to work alongside the GAAR and strengthen the general anti-avoidance tax regime. The following section examines these provisions.

3.7 Supplementary provisions

This section outlines the supplementary provisions introduced to strengthen the GAAR. These provisions included (i) protective notification and (ii) changes to protective notification and to the GAAR introduced in 2008. The changes are discussed, with details provided of the legislative provisions of each.

3.7.1 Protective notification

In 2006, Revenue introduced the first supplementary measure to work alongside the GAAR (Government of Ireland, 2006). Protective notification was introduced. This provision was contained in Finance Act 2006 and introduced a new legislative provision to sit alongside section 811, section 811A. The full text of section 811A is set out in Appendix III.

Section 811A introduced a surcharge of 10% where a transaction was re-categorised as a tax avoidance transaction under section 811. However, the provision allowed for this surcharge to be avoided where a protective notification was filed with Revenue.

Where a valid protective notification is not made, a surcharge and interest will be applied when Revenue's opinion becomes final and conclusive. The provision to

charge interest is contained in s.1080 of the Taxes Consolidation Act, which provides a daily rate at which interest is to be charged.

Section 811A(3)(a) and (b) provide the relieving provisions whereby, if a valid protective notification is received by Revenue, the surcharge and interest will not be charged.

(a) Subject to subsection (6), **neither a surcharge nor interest** shall be payable by a person in relation to a tax avoidance transaction finally and conclusively determined to be such a transaction if the Revenue Commissioners have received from, or on behalf of, that person, on or before the relevant date (within the meaning of paragraph (c)), **notification** (referred to in this subsection and subsection (6) as a “protective notification”) **of full details of that transaction.**

(b) Where a person makes a protective notification, or a protective notification is made on a person’s behalf, then the person shall be treated as making the protective notification–

(i) solely to prevent any possibility of [...] 6a surcharge or interest becoming payable by the person by virtue of subsection (2), and

(ii) **wholly without prejudice** as to whether any opinion that the transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

[Emphasis added]

An important feature of the provision is contained in section 811A(3)(b)(ii), which states that the protective notification is wholly without prejudice. Therefore, a taxpayer making a protective notification may not be regarded “as ‘admitting’ that s.811 is in point” (Maguire, 2014, p.205). Making a protective notification may, therefore, not be held against the taxpayer.

The protective notification must be filed with Revenue by the relevant date. Section 811A(3)(a) sets out full details in this regard; however, the general rule is that the protective notification must be filed no later than 90 days after the tax avoidance transaction commenced.

The contents of the protective notification are important from the taxpayer’s perspective, as full details must be provided in order for a notification to be deemed valid. Section 811A(6) sets out the details required:

(a) A protective notification shall–

(i) be delivered in such form as may be prescribed by the Revenue Commissioners and to such office of the Revenue Commissioners as–

(I) is specified in the prescribed form, or

(II) as may be identified, by reference to guidance in the prescribed form, as the office to which the notification concerned should be sent, and

(ii) contain–

(I) full details of the transaction which is the subject of the protective notification, including any part of that transaction that has not been undertaken before the protective notification is delivered,

(II) full reference to the provisions of the Acts that the person, by whom, or on whose behalf, the protective notification is delivered, considers to be relevant to the treatment of the transaction for tax purposes, and

(III) full details of how, in the opinion of the person, by whom, or on whose behalf, the protective notification is delivered, each provision, referred to in the protective notification in accordance with clause (II), applies, or does not apply, to the transaction.

Where full details are not provided, the protections offered from the surcharge and interest under section 811A are not available to the taxpayer.

3.7.2 Finance Act 2008 amendments

A number of amendments were made to protective notification in 2008 (Government of Ireland, 2008). Firstly, the surcharge was increased from 10% to 20%. Secondly, a two-year time limit was introduced. Where a taxpayer filed a valid protective notification, Revenue was prevented from issuing an opinion under s.811 after a period of two years. These two amendments were aimed at increasing the attractiveness of making a protective notification.

A third amendment was made to the appeal rights of the taxpayer against a s.811 opinion. Prior to 2008, all taxpayers were treated equally for the purposes of the appeal procedures, regardless of whether a protective notification was made or not. The appeals process required the appellate courts to form a judgement as to whether or not a transaction was a tax avoidance transaction. Finance Act 2008 amended this to state that the courts must uphold an opinion of Revenue if the transaction *“could reasonably be considered to be a tax avoidance transaction”*. The introduction of the word *“reasonably”* was seen as *“severely limit[ing] the role of the courts in upholding a taxpayer appeal against a s.811 opinion”* (Kenny, 2008²⁴). This amended appeals procedure only applied where a protective notification was not filed

²⁴ Kenny, K. (2008) *The Irish Anti-Avoidance Landscape*. Irish Tax Institute, Annual Conference 2008.

by the taxpayer. The inequity of this treatment was argued by professional bodies and the amendment was repealed in 2013.

Finally, section 811A was amended to include a new subsection (1A), which stated that an opinion may be raised under section 811 at any time. This was an attempt to address the debate surrounding the four-year time limit. However, as discussed in section 3.4.3.1, following the *Droog*²⁵ case, an amendment was made to section 811(5A) to ensure that Revenue had the ability to issue an opinion under the GAAR at any point in time.

3.8 Mandatory disclosure

A new approach to tackling tax avoidance was introduced in Finance Act 2010 – mandatory disclosure (contained in section 817D–817R TCA 1997) (Government of Ireland, 2010). This measure differed in two key ways from protective notification: (i) it was mandatory rather than discretionary and (ii) the reporting onus fell on the tax adviser rather than on the taxpayer.

Draft regulations and accompanying guidance notes were issued in June 2010, followed by a consultation period that lasted until September 2010. This consultation period gave tax advisers the opportunity to provide comments, feedback and suggestions in response to the proposed measure. A detailed discussion and analysis of the changes made to mandatory disclosure following the consultation period in 2010 is provided in Chapter 6.

The final regulations²⁶ and guidance notes were issued in January 2011. The following sections outline the objectives of the measure (section 3.7.1); how mandatory disclosure operates (section 3.7.2); its reporting hallmarks (section 3.7.3) and the application of legal professional privilege (section 3.7.4). The full legislation contained in s.817D-817R is set out in Appendix IV.

It should be noted that this section outlines the final regulations and does not provide a discussion or comparison of the regulations and guidance notes issued in June 2010.

²⁵ 2011 ITR 65.

²⁶ The Mandatory Disclosure of Certain Transactions Regulations (MDoCTR) 2011, S17 of 2011.

3.8.1 Objectives of mandatory disclosure

On the release of the draft regulations and guidance notes for mandatory disclosure, its purpose was stated to be: *“to create an early warning system for the Revenue Commissioners of tax schemes that may be potentially damaging to tax revenues. By obtaining information on tax avoidance schemes at an early stage before a loss of tax revenue has become apparent, the Government can decide, if appropriate, to close them down before significant damage is done”* (Revenue, 2010²⁷). However, the Minister for Finance at Committee Stage of the 2010 Finance Bill stated that: *“It is not the intention that ordinary, everyday tax planning will come within the regime, nor will the legitimate use of various tax reliefs and incentives be jeopardised. To this end the regulations will include clear guidance so that normal tax advice planning and tax minimisation activities will not be affected by the disclosure rules.”*

This reference to mandatory disclosure not impacting everyday tax planning was not included in the final regulations; however, the final guidance notes state that it does not *“impact on ordinary day-to-day tax advice between a tax adviser and a client or on the use of schemes that rely on ordinary tax planning using standard statutory exceptions and reliefs in a routine fashion for bona fide purposes as intended by the legislature.”* This exclusion of ordinary day-to-day tax advice will be seen to have had a significant impact on the success of mandatory disclosure, which is discussed and analysed in Chapter 7.

3.8.2 How mandatory disclosure operates

Mandatory disclosure requires the reporting of disclosable transactions. Section 817D defines a disclosable transaction as follows:

- (a) any transaction, or
- (b) any proposal for any transaction, which—
 - (i) falls within any **specified description**,
 - (ii) enables, or might be expected to enable, any person to obtain a **tax advantage**, and
 - (iii) is such that **the main benefit, or one of the main benefits**, that might be expected to arise from the transaction or the proposal is the obtaining of that tax advantage,

²⁷ Revenue (2010) *Press Release – Possible Tax Avoidance Schemes: Revenue Consultation on Mandatory Disclosure of Certain Transactions*.

whether the transaction or the proposal for the transaction relates to a particular person or to any person who may seek to take advantage of it
[Emphasis added]

In order for a transaction to become disclosable, one of the main benefits must be to obtain a tax advantage and, in addition to this, the transaction must fall within any of the specified descriptions or hallmarks as they are referred to in the UK equivalent to mandatory disclosure²⁸. Details of these hallmarks are outlined in section 3.7.3.

Reporting under mandatory disclosure applies to promoters, i.e., tax advisers, tax accountants, tax lawyers²⁹ and certain financial institutions. In certain circumstances, a taxpayer is required to self-report. This may arise where there is no promoter, the promoter is not in Ireland, or where legal professional privilege is being asserted.

Section 817D defines a promoter as follows:

“promoter”, in relation to a disclosable transaction, means a person **who in the course of a relevant business** –

(a) is to any extent responsible for the **design** of the disclosable transaction, (b) has specified information relating to the disclosable transaction and **makes a marketing contact** in relation to the disclosable transaction,

(c) makes the disclosable transaction **available for implementation** by other persons, or

(d) is to any extent responsible for the **organisation or management** of the disclosable transaction.

[Emphasis added]

Two separate reports are required under mandatory disclosure. The first is transaction specific, requiring the nature of the transaction to be outlined. The second is a client list, whereby the promoter must set out the clients to which the disclosable transaction was made available for implementation. An amendment was made to mandatory disclosure in Finance Act 2011, whereby promoters are no longer required to report details of a client where they are aware that the client has not implemented the disclosable transaction.

3.8.3 Reporting hallmarks – specified descriptions

Mandatory disclosure requires reporting where a transaction falls within one of the specified descriptions together with one of the main benefits of the transaction to obtain a tax advantage. The specified descriptions include:

²⁸ Disclosure of Tax Avoidance Schemes (DOTAS).

²⁹ Subject to the legal professional privilege carve-out discussed in section 3.7.4.

- (i) A wish to retain confidentiality of the transaction from Revenue or other promoters or a wish to retain confidentiality where there is no promoter,
- (ii) The charging of premium or contingent fees, linked to the tax advantage,
- (iii) The use of standardised tax products,
- (iv) Loss schemes for individuals or companies,
- (v) Employment schemes, subject to specified exceptions,
- (vi) Income into capital schemes, subject to specified exceptions, or
- (vii) Income into gift schemes.

The guidance notes contain further details in relation to the hallmarks. The first three broader hallmarks, (i) confidentiality, (ii) premium fees and (iii) standardised tax products, are discussed in further detail because they may be regarded as those most open to interpretation.

3.8.3.1 Confidentiality

The guidance notes provide further direction and advice in relation to the wish to keep details of a transaction confidential from both Revenue and other promoters. In relation to confidentiality from Revenue, the final guidance notes state that: *“schemes that promoters know are known to Revenue are not caught by this specified description. This can be evidenced from, for example, technical guidance notes, case law or instances where full details of how a scheme may operate has [sic] been made known to a specialised area within Revenue such as Large Cases Division and the Revenue Legislation Services area”* (Revenue, 2011³⁰).

In relation to confidentiality from other promoters, the hypothetical question is regarded by the profession as difficult to answer, as it may be questionable as to when an adviser would ever be comfortable sharing know-how with competitors (Fennell, 2011). To address this issue, the guidance notes state that the test is not met if the transaction is *“reasonably well known in the tax community as evidenced from, for example, articles in the tax press, textbooks or case law”* (Revenue, 2011³¹).

This hallmark is regarded by the tax profession as very subjective, with promoters being required *“to have excellent market/competitor intelligence and information*

³⁰ Revenue (2011) *Guidance Notes on Mandatory Disclosure Regime* (January 2011).

³¹ Revenue (2011) *Guidance Notes on Mandatory Disclosure Regime* (January 2011).

management systems to identify and document what is known to other tax advisers and what is disclosed to Revenue at client meetings” (Fennell, 2011, p.3).

3.8.3.2 *Premium fees*

The premium fee hallmark relates to fees being charged that relate to the tax advantage being gained by the taxpayer. Once again, the guidance notes provide helpful clarification, stating: *“Revenue recognises that almost any fee obtained in relation to tax planning can to some extent be said to be attributable to obtaining a tax advantage. In that regard, however, fees charged or calculated purely on the basis of ‘scale rates’ or ‘time and materials’ are not to be considered as premium fees for the purposes of that test” (Revenue, 2011³²).*

In addition, the guidance notes state that a fee may not be regarded as a “premium fee” solely on account of factors such as the location of the adviser, the urgency with which the advice is sought, the size of the transaction, and the skill and/or reputation of the adviser. These clarifications were borrowed from HMRC’s guidance notes on the UK disclosure regime.

3.8.3.3 *Standardised tax products*

This hallmark relates to mass marketed transactions, which use standardised documentation that requires little to no tailoring to the specific client’s circumstances. As is the case in the previous two hallmarks, the guidance notes, again, provide further details and exclusions, stating that Revenue acknowledges that tax advisers may maintain *“solutions registers”* and *“precedent documents”* (Revenue, 2011³³). A document falling within this hallmark will depend on the extent to which it is tailored prior to use. This results in a degree of subjectivity being introduced, with the tax adviser being required to decide whether the particular documentation is sufficiently tailored to the client’s specific circumstances to no longer render it standardised documentation.

3.8.4 Legal professional privilege

A feature of mandatory disclosure that received considerable attention was the exclusion for those promoters whose clients may claim legal professional privilege.

³² Revenue (2011) *Guidance Notes on Mandatory Disclosure Regime* (January 2011).

³³ Revenue (2011) *Guidance Notes on Mandatory Disclosure Regime* (January 2011).

Section 817J provides that:

Nothing in this Chapter shall be construed as requiring a promoter to disclose to the Revenue Commissioners information with respect to which a claim to legal professional privilege could be maintained by that promoter in legal proceedings.

Where legal professional privilege is claimed, the reporting obligation moves to the taxpayer, with an obligation resting on the legal adviser to advise Revenue that legal professional privilege has been asserted, albeit that no client names are required to be disclosed.

The key aspects of mandatory disclosure have been outlined. The final issue under consideration in this study is the Supreme Court decision in the *O'Flynn Construction* case.

3.9 Supreme Court decision regarding S.811 – *O'Flynn Construction* Case

The final aspect relating to the general anti-avoidance tax regime, which this study is examining, is the impact of the Supreme Court decision in the *O'Flynn Construction* case on the accounting profession. This was the first case concerning section 811 to be heard before the Supreme Court, and it illustrated the willingness of Revenue to actively challenge tax avoidance transactions. The facts of the case and the decisions leading to the case being heard before the Supreme Court are firstly outlined, followed by a discussion of the majority and minority judgments of the Supreme Court.

3.9.1 Facts of the case

John and Michael O'Flynn were the shareholders of O'Flynn Construction Co. Limited (OFCCCL). This company was engaged in the construction business. An unconnected company, Michelstown, within the Dairygold Group, had Export Sales Relief (ESR) reserves. ESR had been introduced as an incentive for companies engaged in exporting. These ESR reserves were particularly valuable, as tax-free dividends could be paid out to the shareholders of the company.

The Dairygold Group was unable to utilise these ESR reserves. Consequently, a series of steps was entered into whereby the Dairygold ESR reserves were sold to OFCCCL. This transaction enabled a tax-free dividend to be paid out to John and

Michael O’Flynn, thereby avoiding a charge to Advance Corporation Tax in OFCCL and income tax payable by John and Michael O’Flynn on the dividend income received.

This presents a very simplified summary of the case. The complexity of the case was referred to by Mr Justice O’Donnell³⁴ when he stated that “*more than [sic] 40 individual steps were taken over a period of 50 days.*”

In August 1997, Revenue issued a notice of opinion under section 811, which was appealed by the taxpayer. The matter was heard before the Appeal Commissioners, which held that:

- (i) The transaction did give rise to a tax advantage,
- (ii) The transaction was not undertaken primarily for purposes other than to obtain a tax advantage,
- (iii) The transaction was not arranged with a view to the realisation of profits in the course of business in OFCCL and hence the business profits exception was not available,
- (iv) The transaction was undertaken to benefit from ESR and the transaction did not result in a misuse or abuse of ESR and therefore **the no misuse or abuse exception was available.**

The Appeal Commissioners, therefore, decided that the transaction was not a tax avoidance transaction on the basis that it fell within the second exception, that there had been no misuse or abuse of the relief.

Revenue appealed this decision to the High Court. Mr Justice Smyth agreed with the first three conclusions drawn by the Appeal Commissioners but disagreed with the final conclusion relating to the availability of the no misuse/abuse exception. Mr Justice Smyth ruled that there had been a misuse of ESR and, hence, section 811 did apply. In arriving at his decision, Mr Justice Smyth referred to the *McCann v Ó Cualacháin*³⁵ decision where Mr Justice McCarthy stated that the purpose disclosed by statute for the particular scheme must be looked to. Focusing specifically on ESR, Mr Justice McCarthy stated that its purpose was to encourage the creation of employment and the promotion of exports. As a result, Mr Justice Smyth stated that

³⁴ Mr Justice O’Donnell was the author of the majority Supreme Court judgment in the *O’Flynn Construction* case.

³⁵ *III ITR 304.*

ESR was not intended to be a commercially available product and, consequently, held that the transaction was not consistent with the purpose of ESR and, therefore, a misuse of ESR was ruled to have arisen.

The taxpayer appealed the decision to the Supreme Court on the basis of whether the transactions entered into by the taxpayers amounted to a misuse or abuse of ESR.

3.9.2 Supreme Court judgment

The Supreme Court delivered a majority 3:2 decision in favour of Revenue on 14 December 2011. Mr Justice O'Donnell delivered the majority judgment (Mr Justice Fennelly and Mr Justice Finnegan concurring) and Mr Justice McKechnie (and Mrs Justice Macken) dissenting. The two judgments are outlined in sections 3.8.2.1 and 3.8.2.2, respectively.

3.9.2.1 *Majority judgment*

Mr Justice O'Donnell stated that: *“the form of the transaction was highly artificial and contrived”* (Para 80), in addition to stating that *“the scheme in this case was devised with some ingenuity and implemented with a precision which at a technical level is undoubtedly admirable”* (Para 5). This “view of the transaction as being ‘entirely artificial’ and lacking ‘commercial logic’ informs the entire approach to the judgment” (Doyle and Hunt, forthcoming). Mr Justice O'Donnell also commented on the GAAR, stating that *“this is a provision of almost mind-numbing complexity”* (Para 37).

In the judgment, Mr Justice O'Donnell gave consideration to the operation of the misuse or abuse provision (referred to as s.86(3)(b), which is now contained in s.811(3)(b)). Mr Justice O'Donnell stated that: *“In my view the background to s.86, together with its internal structure, is important in considering the true meaning and application of s.86(3)(b). That subsection cannot be treated as a stand alone provision on reliefs and benefits. It is a component part of the overall provision... it is now necessary to consider whether the transaction constitutes a misuse or abuse of that relief **having regard to the purposes for which it was provided.**”* (Para 66) [Emphasis added].

Mr Justice O'Donnell continued, stating that the McGrath decision does not *“preclude a purposive approach”* to interpretation of tax statutes (Para 69). He stated that:

“The idea that any particular scheme can produce a result that the Oireachtas³⁶ did not intend, is much more easily expressed than applied in practice. The legal intent of the Oireachtas is to be derived from the words used in their context, deploying all the aids to construction which are available, in an attempt to understand what the Oireachtas intended” (Para 74).

Mr Justice O'Donnell stated that *“a scheme which allows the shareholders in a non exporting company to benefit from Export Sales Relief on the profits of the non exporting company, is surely a misuse or abuse of the scheme having regard to the purpose for which the provision is provided”* (Para 80).

3.9.2.2 *Minority judgment*

Mr Justice McKechnie began the dissenting judgment by addressing the question of the interpretive approach, which should be adopted for tax statutes (in accordance with the Interpretation Act 2005). Having reviewed the authoritative cases in this regard, Mr Justice McKechnie stated that the intention of the Oireachtas should be established *“by reference to the language used”* and that *“the words used should be given their ordinary and natural meaning.”* Where *“any doubt or ambiguity”* in relation to the language used arose, the *“legal effect”* should have primacy and, therefore, in such circumstances the legislation should be interpreted in favour of the taxpayer. However, as this is the minority judgment, the comments do not have authority.

3.9.3 *Implications from the judgment*

A key feature of the majority ruling was the view that tax legislation was to be interpreted purposively rather than literally (Ramsay, 2012). This was a departure from the long-held historic position regarding interpretation of tax statutes, whereby they (together with all penal statutes) should be categorised and interpreted differently than ordinary parliamentary acts. The historic view was set out by Mr Justice Rowlatt in his judgment in *IRC v Cape Brandy Syndicate [1921] 1 KB 64*, *“in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”* This approach to interpretation was reiterated by the Supreme Court ruling in *Inspector of Taxes v. Kiernan [1981] IR 117*, with Mr Justice Henchy stating: *“when a word or expression is used in a statute creating a penal or taxation*

³⁶ The Irish National Parliament.

liability, then if there is looseness or ambiguity attaching to it, it should be construed strictly so as to prevent the fresh imposition of liability from being created unfairly by the use of oblique or slack language.” The powerful impact of this literal approach to the interpretation of tax statutes was illustrated in *McGrath v. McDermott* [1988] IR 258, whereby the Supreme Court refused to apply the substance over form principle to the transaction.

The Law Reform Commission undertook a review of the law regarding statutory interpretation in the late 1990s and published a Consultation Paper in 1999³⁷. The main recommendation was that a standard approach to statutory interpretation was needed, and this was done by way of the Interpretation Act 2005. However, the new Interpretation Act expressly did not apply to penal statutes, and this exclusion was interpreted prior to the decision in the *O’Flynn Construction* as including tax statutes. Where the Interpretation Act 2005 had been extended to cover penal statutes, Section 5 of the Act would have been of particular importance as it provides that the courts may depart from a literal interpretation of a provision where it leads to incongruity or absurdity, in favour of a purposive approach derived from the piece of legislation as a whole. It also allows for a purposive approach to be used where a literal interpretation would fail to reflect the plain intention of the legislature.

The *O’Flynn Construction* case confirmed the willingness of the courts to apply the GAAR and, hence, may be regarded as a significant event in terms of the applicability of the GAAR, and it is, therefore, worthy of examination. The selection strategy of this particular case by Revenue, which has been described as being picked with “surgical precision” (Doyle and Hunt, forthcoming) and the response of the accounting profession to the judgment, are discussed in Chapters 5 and 6. As mentioned, the accounting profession engaged in much debate following the judgment; in particular, regarding the application of a purposive interpretation to tax statutes. Uncertainty remains regarding the scope of purposive interpretation as it was applied specifically in this case to the abuse or misuse provision. Given the importance of certainty in the tax system, heralded by Adam Smith as one of the four canons of taxation, the uncertainty created by the judgment is not a welcome addition to the Irish tax system. The impact of the judgment on the day-to-day work practices of tax accountants is examined in Chapter 7.

³⁷ The Law Reform Commission: Consultation Paper on Statutory Drafting and Interpretation (LRC – CP14-1999).

The Irish GAAR, its use and supplementary provisions have been discussed. The international context and the appropriateness of selecting the Irish general anti-avoidance tax regime as an empirical setting are now presented.

3.10 International general anti-avoidance tax regimes

Following the global financial crisis, countries on an international basis have focused on tackling tax avoidance. This has been encouraged by multilateral organisations, such as the OECD, the G20 and the European Commission (Ernst and Young, 2013). One traditional step to deal with tax avoidance is the enactment of a GAAR. Figure 3.1 illustrates the countries with a GAAR currently enacted (Ernst and Young, 2013). As can be seen, Ireland is one of 15 countries globally to have a GAAR, with five countries enacting or proposing to enact a GAAR since 2008.

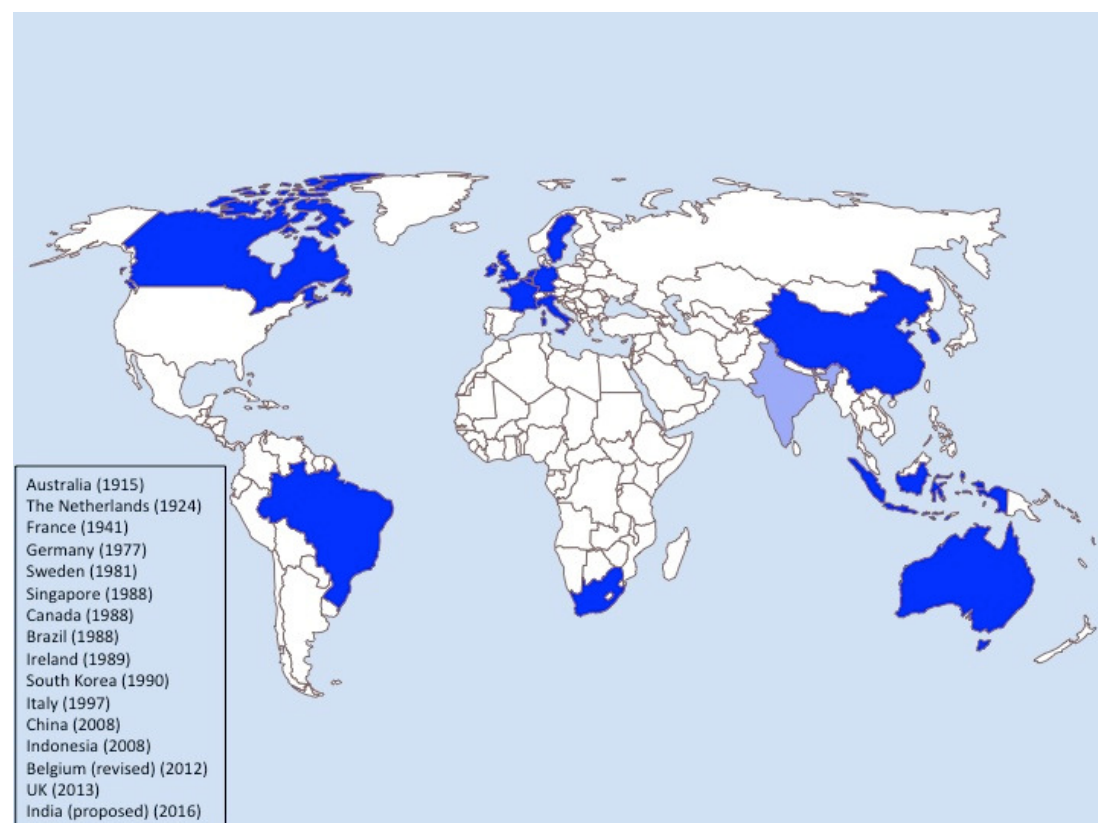


Figure 3.1 Countries with a GAAR enacted

Source: Ernst and Young (2013)

In addition to the enactment of a specific GAAR, there is mounting pressure on countries to introduce further measures to tackle tax avoidance. This has particularly been seen in the OECD's BEPS Action Plan, with the issue of mandatory disclosure

rules being a specific action point (OECD, 2015). Figure 3.2 illustrates the countries that currently have a form of mandatory disclosure in place (O'Brien, 2014; OECD, 2015).

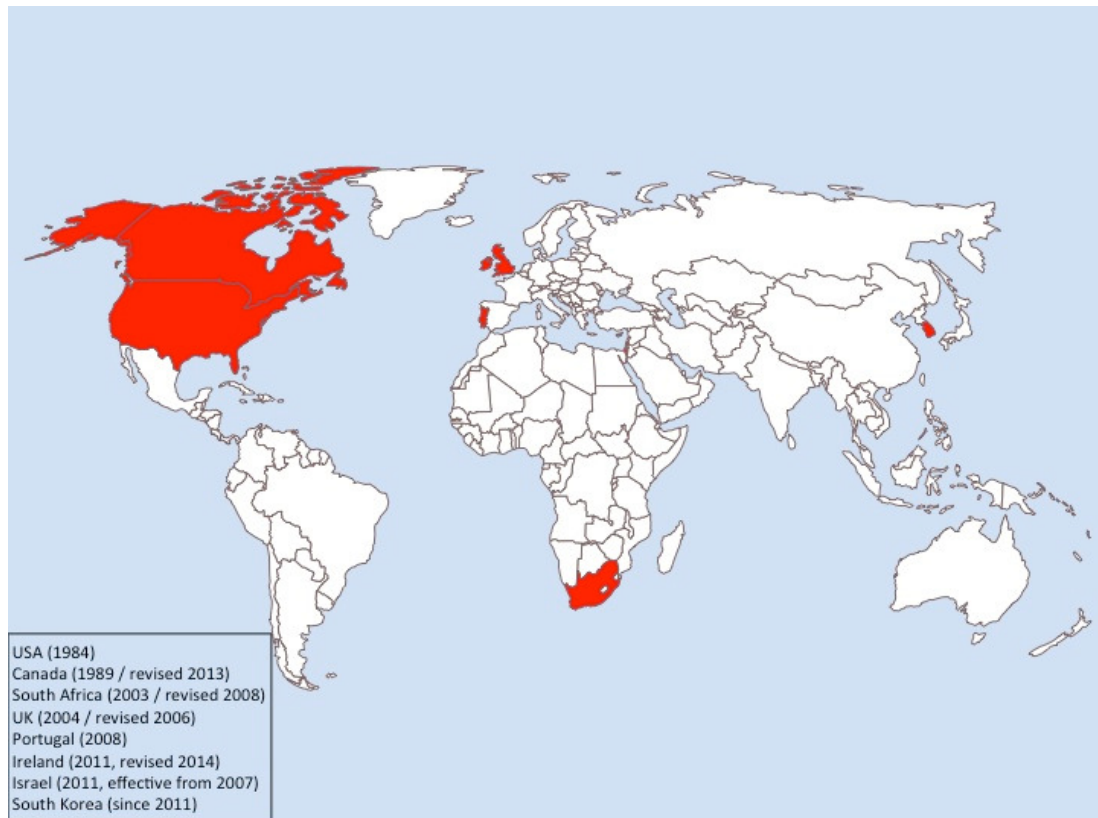


Figure 3.2 Countries with a mandatory disclosure rule

Source: O'Brien (2014); OECD (2015)

When the two maps are compared, four countries are shown to have both a GAAR and mandatory disclosure: Canada, Ireland, South Korea and the UK. The existence of both mandatory disclosure and a GAAR indicates that one of these measures for tackling tax avoidance was not regarded as working on its own, with the consequent introduction of the second measure.

Amongst the group of four countries with both a GAAR and mandatory disclosure, Canada, Ireland and South Korea introduced a GAAR in the first instance, which was then followed (almost 20 years later in the case of Ireland) by the introduction of mandatory disclosure. This contrasts with the UK, where mandatory disclosure was introduced in 2004, with the introduction of a GAAR following in 2013.

Ireland's general anti-avoidance tax regime, therefore, provides a suitable context for this study, as a GAAR has been in place for a considerable period of time (since 1989), and Ireland has also introduced a number of supplementary measures, including protective notification and mandatory disclosure. The study of the impact of the changes to the general anti-avoidance tax regime on the accounting profession is of particular relevance, given the increasing pressure for countries to adopt mandatory disclosure as part of the OECD BEPS project (OECD, 2015) and the pressure within the EU to enact a GAAR to counteract aggressive tax planning (European Commission, 2012). This study sheds light on the impact of these regulatory changes on the work practices of tax accountants and may, therefore, contribute positively to tax policy debate and implementation.

3.11 Summary and conclusions

This chapter has set out the detailed legislative provisions and case law precedents that provide the empirical context for the study. Beginning with an overview of what constitutes tax avoidance, the case law regarding tax avoidance and the changing attitudes of the courts in the UK and Ireland in sections 3.2 and 3.3, the chapter then proceeded to examine the incidence of tax avoidance in the Irish context in section 3.4.

The detailed provisions and the operation of the Irish GAAR (section 811) were outlined in section 3.5. The key definitions of tax advantage and tax avoidance transaction were set out, followed by the two exceptions which may be availed of by the taxpayer (the business profits test and the no misuse/abuse test). The use of the GAAR was presented in section 3.6, and the resulting supplementary provisions (protective notification and mandatory disclosure) were discussed in sections 3.7 and 3.8, respectively. This chapter presents the successive legislative attempts by the Irish Government to tackle tax avoidance, together with the onus now placed on tax advisers, including members of the accounting profession, to report tax avoidance transactions.

The first Supreme Court case regarding the GAAR, *O'Flynn Construction* (illustrating prosecution under s.811, the final measure used by Revenue to tackle tax avoidance included in this study), was examined in section 3.9. The facts of the case and the majority and minority judgments of the Supreme Court were described.

The international move towards greater measures to tackling tax avoidance was discussed in section 3.10. The countries with a GAAR and mandatory disclosure enacted were presented and the particular benefits of choosing Ireland as an empirical setting were discussed.

The research design chosen to examine this empirical context is presented in Chapter 4. The literature review and empirical context allowed for the formulation of the specific research questions, which are presented in sections 4.3.1 and 4.3.2 of Chapter 4. This chapter also sets out how the research gaps identified in Chapter 2 were investigated, with the research methodology, specific research methods and data analysis techniques presented.

Chapter 4: Research design

4.1 Introduction

The research objective of examining the professionalism of tax accountants led to a thorough review of the tax compliance and professionalism of accounting literatures in Chapter 2. Aspects of institutional theory, including disruptive work, strategic responses to institutional change, maintenance work and institutional logics were also analysed and provide a theoretical framework for the study.

The overarching objective of the study and the review of the literature led to a consideration of potential empirical contexts in which to place the study. The general anti-avoidance tax regime in Ireland was identified as an appropriate empirical context due to its aim to tackle – what was perceived by Revenue – as unacceptable tax avoidance practices. Legislation addressed the role of the tax adviser in addition to the taxpayer and therefore sought to impact on the day-to-day work practices of tax accountants. This suggested that this empirical context has merit for examining the nature of the professionalism of tax accountants.

Chapter 3 introduced the General Anti-Avoidance Rule (GAAR), including the introduction of successive supplementary measures aimed at strengthening the GAAR. This chosen context provides an appropriate empirical setting whereby the professionalism of tax accountants may be analysed. The response of the accounting profession to external changes may be explored, together with an analysis of how the changes in the general anti-avoidance tax regime altered the behaviour of tax accountants and impacted their work practices.

The purpose of this chapter is to present the research questions selected to address the overarching objective of the study and the research methods chosen to answer those research questions. The research approach has been selected on the basis of (i) the purpose of the study, (ii) the research questions and (iii) the philosophical approach of the research. Each of these items is separately discussed in sections 4.2, 4.3 and 4.4, respectively.

The rationale for choosing a qualitative methodology is discussed in section 4.5. This section is followed by a description of the specific research methods employed in the study (section 4.6): (i) analysis of documentary evidence, (ii) semi-structured interviews and (iii) a focus group, outlined in sections 4.7, 4.8 and 4.9, respectively. For each research method used, the sampling framework is discussed. The research process adopted and the data analysis techniques used for all data collected are presented in sections 4.10 and 4.11, respectively, and this is followed by a summary and conclusion of the research design in section 4.12.

4.2 Purpose of research

According to Patton (1990, p.150) “purpose is the controlling force in research.” All research design decisions must flow from, and be suitable to achieve, the purpose of the study (Patton, 1990). Therefore, prior to any discussion regarding the specifics of the study’s design, it is essential that the purpose of the study is clearly set out.

4.2.1 Research objective

As outlined in Chapter 1, this study examines the professionalism of tax accountants providing taxation services in the 21st century. Attempts by tax authorities to tackle – what may be regarded as – unacceptable tax planning was chosen as an appropriate context to carry out this study of contemporary professionalism.

The professionalism of accountants has previously been the subject of inquiry; however, studies have tended to focus on accountants more generally, or those providing auditing services (Gendron, 2002; Gendron and Suddaby, 2004; Gendron *et al.*, 2006). The professionalism of tax accountants has been identified as a gap in the literature. This gap is particularly worthy of discussion in light of the increasing attention being placed on tax avoidance and the potential role played by the accounting profession in facilitating this (Coyle, 2007; UK Public Accounts Committee, 2013; Sikka, 2008).

4.2.2 Empirical context

The empirical context for the study is the general anti-avoidance tax regime in Ireland, outlined in Chapter 3. Tax authorities globally are attempting to tackle tax avoidance through the introduction of general anti-avoidance measures and supplementary provisions. This is illustrated by the GAAR introduced in the UK in

2013 following intense media and social pressures on the Government to tackle what was reported as aggressive tax avoidance (HMRC, 2013; Aldrick, 2012; Malik, 2012; Bowers, 2013).

As discussed in section 3.9 of Chapter 3, Ireland's GAAR has been in existence since 1989, with a number of supplementary provisions introduced from 2006 to 2011. This empirical context provides an opportunity to examine how Revenue sought to tackle tax avoidance and the impact of this on the accounting profession.

The specific research questions that are investigated in this study are developed in section 4.3.

4.3 Research questions

Following a thorough review of the relevant literature (Chapter 2) and detailed explanations of the specific empirical context (Chapter 3), the following research questions have been identified:

4.3.1 Research Question 1

RQ1: How did the Irish Government and the Office of the Revenue Commissioners attempt to tackle aggressive tax avoidance?

RQ1a: What legislative amendments were introduced?

RQ1b: How were the legislative amendments implemented and enforced (including judicial decisions in relation to the general anti-avoidance tax regime)?

The first set of research questions focuses on the actions of Revenue. The desire to tackle aggressive tax avoidance was made clear by Revenue in a number of public addresses (Revenue, 2005³⁸; 2007³⁹). Research Question 1a seeks to identify the specific legislative amendments that were introduced to the general anti-avoidance

³⁸ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

³⁹ Revenue (2007) *Tax Advisers – Undermining or enhancing the tax system? Tax Advisers, Revenue Authorities and Taxpayers – Relationships and Interactions*, Sofitel Brussels Europe, 20 November 2007.

tax regime. This includes supplementary measures introduced to strengthen the GAAR and any amendments to the GAAR itself.

In addition to the changes to the general anti-avoidance tax regime, Revenue aims to tackle tax avoidance by the introduction of specific anti-avoidance measures each year. Where a particular section of the legislation is not operating as intended or is facilitating tax avoidance in its current form, Revenue introduces amendments to curb unintended consequences. A study of the wide range of specific anti-avoidance measures introduced by Revenue is beyond the scope of this study and is therefore excluded.

Research Question 1b takes each instance of increased regulation and examines how Revenue sought to implement and enforce it. For example, were penalties introduced for non-compliance or did Revenue attempt to encourage compliance through use of persuasive tactics, such as appealing to professional values, and incentives, e.g., mitigation of penalties, provision of certainty in terms of time limits for reopening filed tax returns?

The tax compliance and institutional theory literatures provide a lens through which to analyse the strategies used by Revenue to tackle tax avoidance and the escalating tactics used where it encountered persistent unacceptable tax avoidance. Chapter 5 sets out the findings and analysis relevant to this first research question.

4.3.2 Research Question 2

RQ2: Have the general anti-avoidance tax provisions changed the nature of the professionalism of tax accountants?

RQ2a: How did the accounting profession respond to the legislative changes/measures introduced to tackle aggressive tax avoidance?

RQ2b: Why did the accounting profession respond in such a manner?

RQ2c: Did the legislative amendments and related measures result in changes to the day-to-day work practices of tax accountants and, if so, how have the work practices been impacted?

The second set of research questions focuses on the professionalism of tax accountants. The literature has addressed the dual function that tax accountants play, as an enforcer and an exploiter of tax legislation (Hasseldine and Morris, 2013). This second set of research questions asks how the nature of professionalism has changed following the amendments to the general anti-avoidance tax regime. For the purpose of this study, professionalism is defined as deriving from a responsibility to act in the public interest (as discussed in section 2.2.3). The response of the accounting profession to changes in the general anti-avoidance tax regime and the impact of such changes on the day-to-day work practices of tax accountants are examined to determine the extent to which, if any, the regulatory changes led to a strengthening of professional values or a greater emphasis being placed on serving the public interest.

This second set of research questions begins by asking how the accounting profession responded to increased regulation in the form of general anti-avoidance tax measures. The response of the profession (RQ2a) is analysed using Oliver's (1991) typology of strategic responses to institutional change. The accounting profession may be regarded as an institution that has experienced external pressures change and therefore Oliver's (1991) typology is an appropriate tool to examine the response of the profession to these pressures.

An analysis of why the accounting profession responded in the way it did to changes in the general anti-avoidance tax regime is addressed in Research Question 2b. The antecedents to change are analysed to provide insight into why the accounting profession responded as it did. Oliver's (1991) framework is used as a lens to determine the influencing factors in this regard. This discussion and analysis is set out in Chapter 6.

Following the examination of how and why the accounting profession responded as it did, the consequences of increased regulation on the work practices of tax accountants (RQ2c) are explored. Research Question 2c specifically explores the day-to-day behaviours of tax accountants and addresses the impact of increased regulation on, for example, the type of advice given to clients, client acceptance procedures and risk management. A discussion of the findings and an analysis using the concept of maintenance work (specific actions undertaken by an institution in order to maintain the *status quo*) are presented in Chapter 7.

4.4 Philosophical approach of the research

As previously outlined, this study examines the nature of the professionalism of tax accountants in the 21st century. It focuses on general anti-avoidance tax regulations and how they have impacted the professionalism of tax accountants in terms of their work practices. The social world under enquiry is the accounting profession (an institution) and the individual accountants who form part of the profession. Berger and Luckmann's (1967) seminal work *The Social Construction of Reality* has been adopted as the appropriate philosophical framework for the study. The dual nature of society, its possession of objective facts and subjective meaning, is central to Berger and Luckmann's theory of knowledge.

The framework developed by Berger and Luckmann seeks to explain "how and why subjective meanings (externalization) become objective facticities (objectivation) which then 'act back' as they socialize present and future generations (internalization)" (Willmott, 1990, p.50). This process is linked to institutionalisation, which can be traced back to all human activity being subject to habituation. When an activity becomes habituated, it retains its meaning whilst becoming embedded as a routine, which then becomes taken-for-granted by the individual. It is this process of habituation which comes before institutionalisation (Berger and Luckmann, 1967).

The objective world in this study is the institutional environment of the accounting profession. The subjective world of individual accountants is affected through the socialisation effects of their environment.

This framework is applicable as the issues under enquiry are both (i) the accounting profession and its response to changes in its environment i.e., examining the objective world and (ii) the work practices of individual tax accountants, i.e., examining the subjective world. On this basis, adopting a social constructionist framework is judged to be the most appropriate for the study. This framework has influenced the choice of research methodology and research methods, set out in sections 4.5 and 4.6.

4.5 Research methodology

This section sets out the research methodology chosen for the study. The

philosophical position, the research objective and the research questions influenced the choice of a qualitative methodology.

4.5.1 Qualitative study

This study seeks to gain a rich understanding of the impact of increased regulation on the professionalism of tax accountants and on the work practices of tax accountants. As a result, a qualitative methodology has been chosen for this study. Qualitative studies are appropriate where the researcher is concerned “with attempting to accurately describe, decode and interpret meanings to persons or phenomena occurring in their normal social contexts and are typically pre-occupied with complexity, contextualisation, shared subjectivity of researcher and researched and minimization of illusion” (Fryer, 1991, p.3). This study is not seeking to test specific hypotheses. It aims to examine the experiences of individual participants and to frame their experiences of the changed legislative landscape in which they practice. A qualitative methodology enables fluidity and adaptability in the research process, which is important in an exploratory study of this kind (Corbin and Strauss, 2008).

4.5.2 Methodological approaches of prior studies

The appropriateness of the research methodology and the research methods was also established by reference to prior studies in the fields of enquiry. A summary of the approaches taken by prior researchers in the various areas being examined is set out in sections 4.5.2.1 – 4.5.2.3. Each research question is dealt with separately, with studies of the specific aspects of institutional theory that are being used as a lens, together with prior studies from the accounting literature.

4.5.2.1 *Disruptive work practices (RQ1)*

The study begins by focusing on the actions of Revenue to tackle tax avoidance, with disruptive work being used as a theoretical lens. The examination of institutional work practices is often achieved through the analysis of documentary evidence. Disruptive work practices have been identified in the literature from the analysis of historical accounts of change and publicly available sources (Wicks, 2001; Leblebici *et al.*, 1991). In addition, studies have combined qualitative and quantitative techniques in order to examine institutional changes that have resulted in disruption work (Ahmadjian and Robinson, 2001; Jones, 2001). More recent studies of disruptive work practices have combined interviews with archival data in order to gain

a greater understanding of the forms of disruptive work being used (Hayne and Free, 2014; Empson *et al.*, 2013; Zietsma and Lawrence, 2010; Maguire and Hardy, 2009).

4.5.2.2 *Response of the accounting profession to institutional pressures (RQ2a and RQ2b)*

This study examines changes in the regulatory environment of tax accountants. The response of the accounting profession to changes in general anti-avoidance tax regulations has not previously been examined in the accounting literature, but the literature has explored the response of the accounting profession to changes in financial accounting standards and the role of the accounting profession in the standard-setting process (Jorissen, Lybaert, Orens and Van Der Tas, 2012; Giner and Arce, 2012; Larson, 2007; Chee Chiu Kwok and Sharp, 2005; Kenny and Larson, 1993). These studies primarily used documentary evidence, in the form of comment letters submitted in response to exposure drafts. This form of documentary evidence has been recognised in the accounting literature as being a rich form of evidence to investigate the standard-setting process.

Studies examining the response of institutions to external pressures using Oliver's (1991) typology have used a range of research methods including interviews, surveys, case studies and archival data. Table 4.1 sets out the research methods used in a recent sample of such studies.

Table 4.1: Studies drawing upon Oliver's (1991) typology of strategic responses to institutional pressures

Research study	Research method
Albu, Albu and Alexander, 2014	Interviews
Canning and O'Dwyer, 2013	Archival data
Lander, Koene and Linssen, 2013	Interviews
Guerreiro, Rodrigues and Craig, 2012	Survey
Rautiainen and Järvenpää, 2012	Interviews
Hyvönen, Järvinen, Pellinen and Rahko, 2009	Interviews

4.5.2.3 *Professionalism of accountants and maintenance work practices (RQ2c)*

Prior studies in the accounting literature examining the professionalism of accountants have used mixed-method approaches, incorporating both survey results

and interview data in their findings (e.g., Suddaby *et al.*, 2009; Gendron *et al.*, 2006). However, there has been a call for research to provide a greater understanding of accountants' behaviours, something that cannot be adequately captured by survey instruments (Sikka, 2009).

Studies of institutional maintenance have tended to focus on qualitative techniques including in-depth interviews, case studies and documentary evidence (Hayne and Free, 2014; Fredriksson, 2014; Empson *et al.*, 2013; Lok and De Rond, 2013; Micelotta and Washington, 2013; Currie *et al.*, 2012; Dacin *et al.*, 2010; Di Domenico and Phillips, 2009).

4.5.2.4 *Research methods selected*

This study combines (i) analysis of documentary evidence together with (ii) interview data — two widely accepted methods for analysing responses to institutional change, institutional work practices and institutional logics. In addition, the study introduces a third research method, a focus group, in order to provide increased validity and credibility to the interview data and to act as a form of triangulation.

The interview and focus group data respond to the call in the accounting literature for studies of professionalism to focus on behaviours and to gain a greater understanding of the relationship between the profession, society, clients and other organisations and professions (Sikka, 2009). Interviewing Revenue officers, as well as those being regulated, i.e., members of the accounting profession, provides rich insights into behaviour.

Following from the discussion of the rationale for the choice of a qualitative methodology, referring to methodologies and methods used in prior studies, the specific research methods are now discussed.

4.6 **Research methods**

As previously stated, three research methods are being used in the study: (i) documentary evidence, (ii) semi-structured interviews and (iii) a focus group.

4.2 sets out the research method used to answer each individual research question.

Table 4.2: Relationship between research questions and research methods

Research question	Sub-research question	Research method
RQ1	RQ1a	Documentary evidence
	RQ1b	Documentary evidence and semi-structured interviews
RQ2	RQ2a	Documentary evidence, semi-structured interviews and focus group
	RQ2b	Documentary evidence, semi-structured interviews and focus group
	RQ2c	Documentary evidence, semi-structured interviews and focus group

A multi-method approach is often used where there are “very complex processes involving a number of actors over time” (Cassell and Symon, 1994, p.4). The use of multi-methods enables the triangulation of data. Methodological triangulation is used in this study, with different research methods – documentary evidence, semi-structured interviews and a focus group – being used to measure the same phenomena from different perspectives.

There are two main purposes for using triangulated methods: (i) confirmation (Denzin, 1970) and (ii) completeness (Jick, 1983). Triangulation is used in this study to achieve both completeness and confirmation.

Documentary evidence provides an insight into the views and actions of Revenue and the accounting profession in relation to changes in the general anti-avoidance tax regime. In particular, the documentary evidence collected provided a non-reactive source of data and an ability to study the evolution of the changes and reaction to such changes over time (Corbetta, 2003). The disadvantages of using documentary evidence are that it may be incomplete and it may only provide an official representation of the institutional reality (Corbetta, 2003). As a result of these disadvantages and the purpose of the study, it was decided to supplement the documentary evidence with other research methods, namely semi-structured interviews and a focus group.

Semi-structured interviews were chosen as they are particularly useful “for accessing individuals’ attitudes and values” (Byrne, 2002, p.182) and are a more suitable research method than surveys, for example, when trying to access participants’ “views, interpretations of events, understandings, experiences and opinions” (Byrne, 2002, p.182).

A focus group was used as a method to confirm the findings from the semi-structured interviews. Given the sensitive nature of the research, i.e., tax avoidance, there was initially concern that interviewees may not be completely open and truthful. To address this concern, it was decided to conduct a focus group, as focus groups are commonly used “to promote self-disclosure among participants” (Krueger and Casey, 2000, p.7).

Focus groups are regarded as a complementary research method to interviews (Tonkiss, 2004). The focus group enabled the findings from the interviews to be discussed and debated with participants who had previous experience of working in tax practice, but who had since taken on roles outside of professional accounting firms. As the focus group participants (i) were in the presence of their peers (other tax accountants) and (ii) worked outside of accounting firms, the possibility of them disclosing their true views and opinions was increased. Focus groups are regarded as an appropriate method “to encourage people to speak with greater openness” (Tonkiss, 2004, p.197). In addition, focus groups are regarded as an appropriate means to explore “mutual experiences and identities” (Michell, 1999, p.36).

The three research methods also met the aim of triangulation by providing completeness, adding depth and breadth of understanding (Arksey and Knight, 1999).

Documentary analysis examined the formal, public proclamations of the various field actors (i.e., the Government, Revenue, the Judiciary, the accounting profession) relating to changes in the general anti-avoidance tax regime and was also used to provide essential insight into the empirical context of the study.

Semi-structured interviews with individual members of Revenue and the accounting profession, and the focus group with members of the accounting profession, enabled subtleties and nuances to be identified and added richness and depth to the documentary evidence. There has been criticism of the triangulation technique, relating to the inappropriateness of combining methods based on different philosophical assumptions (Blaikie, 1991) and the fact that it is an approach based in the positivist paradigm (Silverman, 1985; Guba and Lincoln, 1989). However, where the primary aim – as is the case in this study – is to provide in-depth understanding and completeness rather than confirmation, the benefits of triangulation remain recognised in the scholarly community (Arksey and Knight, 1999).

Each of the three research methods is now discussed in sections 4.7, 4.8 and 4.9, respectively.

4.7 Documentary evidence

To examine the impact of changes in the general anti-avoidance tax regime on the accounting profession, it is important to understand the context in which the changes took place. An examination of documentary evidence allowed for the regulatory changes to be identified (RQ1a) and for an insight to be gained into how such changes were implemented and enforced (RQ1b).

The documentary evidence review of publicly available documents prepared by the accounting profession provided insights into its response to the regulatory changes. Whereas for some changes, such as the introduction of mandatory disclosure, there was very in-depth documentary evidence publicly available, for a number of other changes, the documentary evidence was limited or non-existent. Therefore, semi-structured interviews and a focus group were also used to answer RQ2. In addition, it is important to note that the interview questions evolved from the documentary evidence collected for both RQ1 and RQ2.

4.7.1 Specific regulatory changes to the general anti-avoidance tax regime

The specific regulatory changes, which are the focus of this study, are discussed in detail in Chapter 3. A summary of the key changes is set out below, together with an indication of the timing of each change. The timing of changes in the general anti-avoidance tax regime influenced the collection of documentary evidence, e.g., Budget speeches, Dáil⁴⁰ debates.

(i) Introduction of protective notification

Protective notification was first announced in the 2006 Budget speech, delivered on 7 December 2005. The 2006 Finance Bill containing the legislative provisions was issued on 7 February 2006, with the proposed legislation debated in the Dáil between 7 February and 7 March 2006.

⁴⁰ Dáil Éireann is the principal chamber of the Irish Oireachtas (legislature).

(ii) Amendments to the GAAR and protective notification

The unlimited time period in which Revenue may raise a notice under the GAAR was made clear in the Finance Act 2008. In addition, this Finance Act increased incentives for making protective notifications. These measures were first announced in the 2008 Budget speech, delivered on 5 December 2007. The 2008 Finance Bill containing the legislative provisions was issued on 31 January 2008, with the proposed legislation debated in the Dáil between 5 February and 6 March 2008.

(iii) Introduction of mandatory disclosure

Mandatory disclosure was first proposed in the Finance Bill 2010, published on 9 February 2010; however, draft regulations and guidance notes were not issued until 19 June 2010. A public consultation period lasted until 15 September 2010, during which time professional bodies and other interested parties made submissions on the proposed legislation. The final regulations and guidance notes were issued on 17 January 2011.

(iv) *O'Flynn Construction* – High Court⁴¹ and Supreme Court⁴² decisions

Revenue issued a section 811 notice to O'Flynn Construction Co. Limited on 12 August 1999. The Appeal Commissioners issued its decision on 27 April 2000, which was appealed to the High Court. The publicly available documents relate to the High Court and Supreme Court decisions, which were delivered on 25 April 2006 and 11 December 2011, respectively.

Table 4.3 sets out a summary of the timing of changes to the general anti-avoidance tax regime (which is reviewed in this study).

⁴¹ *The Revenue Commissioners v O'Flynn Construction Co Ltd, John O'Flynn and Michael O'Flynn* [2006] ITR 81.

⁴² *O'Flynn Construction Ltd v The Revenue Commissioners* [2011] IESC 47.

Table 4.3: Specific regulatory changes under examination

<p>(i) FA 2006 – Introduction of protective notification</p> <p>Budget date: 7 December 2005 Finance Bill issued: 7 February 2006 Dáil debates: 7 February 2006 – 7 March 2006</p> <p>(ii) FA 2008 – Amendments to section 811 and section 811A (removal of time limit and increased incentives for making a protective notification)</p> <p>Budget date: 5 December 2007 Finance Bill issued: 31 January 2008 Dáil debates: 5 February 2008 – 6 March 2008</p> <p>(iii) FA 2010 – Introduction of mandatory disclosure</p> <p>Budget date: 9 December 2009 Finance Bill issued: 9 February 2010 Dáil debates: 9 February 2010 – 30 March 2010 Consultation documents: 19 June 2010 End of consultation period: 15 September 2010 Final regulations published: 17 January 2011</p> <p>(iv) <i>O’Flynn Construction</i> – High Court and Supreme Court decisions</p> <p>Section 811 notices Issued by Revenue: 12 August 1997 Appeal Commissioner’s decision issued: 27 April 2000 High Court decision issued: 25 April 2006 Supreme Court decision Issued: 14 December 2011 (majority and minority analysed)</p>
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4.7.2 Contextual evidence

In order to capture the wider context in which the regulatory changes were made, speeches made by Revenue from 2003 to 2012 were collected and analysed, together with the Commission on Taxation⁴³ Report (2009), submissions made by the accounting profession to the Commission and, finally, newspaper coverage for this period (2003–2012). The rationale for this choice of time period is that Revenue, following the Ansbacher Inquiry⁴⁴ (2002), made a number of speeches on the issue of tax avoidance and the role of the accounting profession in the tax system.

⁴³ The Report of the Commission on Taxation was issued on 7 September 2009. The Commission’s role was to review the structure, efficiency and appropriateness of the Irish taxation system.

⁴⁴ Discussed in section 3.1 of Chapter 3.

Consequently, to gain a thorough understanding of the background to the regulations subsequently introduced, a review of these speeches is required. A review of newspaper coverage of tax avoidance and anti-avoidance measures introduced also provided greater insight into the contextual environment in which such regulatory changes were made. The search terms used to collect newspaper data are set out in Appendix V (for example, tax avoidance, protective notification, mandatory disclosure).

4.7.3 Sources of evidence

The purpose of the documentary review was to determine (i) what regulatory changes were made (primary legislation) (RQ1a), (ii) how they were implemented/enforced (speeches, guidance notes, Dáil debates) (RQ1b) and (iii) the profession's response (pre-Budget submissions, commentary in professional firm publications and newspaper articles) (RQ2). This analysis takes place for each specific regulatory change.

The accounting profession's public response to changes in the general anti-avoidance regime was articulated in formal submissions made by the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I) and the Irish Taxation Institute (ITI). The CCAB-I makes submissions on behalf of the professional accountancy bodies in Ireland. The ITI makes submissions on behalf of its members. However, as a large proportion of its members are professionally qualified accountants and work in accounting firms, the inclusion of the ITI submissions was deemed both appropriate and essential to gather the full extent of the accounting profession's public response to changes in the general anti-avoidance tax regime.

In addition, for the entire period under review (2003–2012), documents prepared by a number of the field actors, e.g., speeches of Revenue and professional body publications, were identified and analysed where they relate to issues of tax avoidance and anti-avoidance provisions.

The purpose of this review was to determine the attention given to the issue of changes in the general anti-avoidance tax regime over the period by (i) the accounting profession, (ii) the professional bodies and (iii) Revenue. Direct interaction between the parties is evidenced through reviewing the Tax Administration and Liaison Committee (TALC) meeting minutes. This committee is

made up of representatives from Revenue and professional bodies (CCAB-I, ITI and The Law Society of Ireland⁴⁵).

In addition to providing a contextual overview of the regulatory landscape, the documentary evidence also informed the semi-structured interviews, which were aimed at providing greater insight into all research questions.


Table 4.4 sets out the source of all the documentary evidence examined. In addition, Table 4.5 sets out the documentary evidence used for each regulatory change.

⁴⁵ The Law Society of Ireland is the professional body for solicitors.

Table 4.4: Sources of documentary evidence

Field actor	Category of document	Source
<i>RQ1 Documentary Evidence</i>		
Government	Budget speech	Department of Finance website http://www.finance.gov.ie
	Finance Act speech/press release	Department of Finance website http://www.finance.gov.ie
	Dáil debates	Oireachtas website http://www.oireachtas.ie
	Tax Policy Unit documents	Department of Finance website http://taxpolicy.gov.ie
Revenue	Annual reports	Revenue website http://www.revenue.ie/en/about/publications/annual-reports.html
	Speeches	Revenue website http://www.revenue.ie/en/press/speeches/index.html
	TALC meeting minutes	Revenue website http://www.revenue.ie/en/practitioner/talc/archive/index.html
	Primary legislation	Revenue website http://www.revenue.ie/en/practitioner/law/acts/index.html
Commission on Taxation	Report	Commission on Taxation website http://www.commissionontaxation.ie
Judiciary	<i>O'Flynn Construction</i> case	Courts Services website http://www.courts.ie
<i>RQ2 Documentary Evidence</i>		
Chartered Accountants Ireland	Accountancy Ireland	Proquest
CCAB-I	Submissions	CCAB-I website http://www.ccab-i.ie
Irish Tax Institute	Irish Tax Review	TaxFind http://taxinstitute.ie
	Seminars / conferences	Tax Find http://www.taxinstitute.ie
	Submissions	Irish Tax Institute website http://taxinstitute.ie/TaxPolicyandPractice/RevenuePracticeandRepresentations/InstituteSubmissions.aspx
Professional Firms	Budget / Finance Bill commentary	Professional firm websites
Various	News coverage	Lexis Nexis

Table 4.5: Documentary evidence

Time period						
	2003	2006	2008	2010	2012	
Regulatory action		<i>O'Flynn Construction</i> Judicial Decision (HC)	Protective notification (s.811A)	Amendments to s.811 and s.811A	Mandatory disclosure	<i>O'Flynn Construction</i> Judicial Decision (SC)
Documentary evidence RQ1		High Court decision	Budget speech Finance Act speech Dáil debates Legislation Guidance notes	Budget speech Finance Act speech Dáil debates Legislation Guidance notes	Budget speech Finance Act speech Dáil debates Legislation Guidance notes	Majority and minority Supreme Court decisions
Contextual evidence RQ1	Speeches and annual reports of Revenue (2003–2012) Commission on Taxation Report (2010) Newspaper coverage (2003–2012)					
Documentary evidence RQ2		Pre-Budget submissions	Pre-Budget submissions	Pre-Budget submissions Consultation period – submissions		
Contextual evidence RQ2	Professional body periodicals and conference papers (2003–2012) Submission to the Commission on Taxation (2009) Newspaper coverage (2003–2012)					

4.7.4 Pilot study – documentary evidence

In order to determine the usefulness of each document, a pilot study was undertaken. The documentary evidence was collected for one specific regulatory change, the introduction of protective notification, for the purposes of the pilot study.

From a research design perspective, a number of important issues were highlighted during this initial documentary review:

- The response of the accounting profession to the introduction of protective notification was not well documented in publicly available material. This is not surprising given the sensitive nature of changes to the general anti-avoidance tax regime. The accounting firm briefings, in the most part, were very matter of fact, outlining the legislative change, with little further comment. However, following a review of all documentary evidence, it was established that the accounting profession's response was better documented for the other changes in the general anti-avoidance tax regime. Consequently, it was decided to include the documentary evidence relating to the accounting profession in the study.
- The impact of changes in the general anti-avoidance tax regime on tax accountants' work practices (RQ2c) was difficult to identify using the documentary evidence. This research question is, therefore, addressed, in the main, through the semi-structured interviews and focus group data, which were informed by the documentary evidence review.
- The contextual background provided by reviewing all the sources of evidence was useful for developing interview guides. It also informed the data analysis process. Therefore, no documentary sources were disregarded following the pilot study.

4.8 Semi-structured interviews

Insights from the documentary evidence were supplemented and explored in greater detail by interviews with members of the accounting profession and Revenue.

Interviews allowed for an examination of the underlying rationale behind official responses to changes in the general anti-avoidance tax regime and provided additional insights. Semi-structured interviews were chosen as they allow flexibility in the design of the interview guide and in how the interview is conducted, enabling the underlying motives and experiences of the participants to be probed in greater depth than would be possible with a structured questionnaire (Horton, Macve and Struyven, 2004). Additionally, interviews allowed findings from the documentary evidence to be clarified and explored in greater depth.

A criticism of interviews is that interviewees may give answers that they believe the interviewer wishes to hear – social desirability bias. Although it is difficult to overcome this social desirability bias, assurance was given by the researcher both in writing and verbally (discussed in section 4.10.5) in relation to the procedures being put in place to protect the identity of participants. This helped to make interviewees feel as comfortable as possible, and it encouraged them to reveal their views and opinions. The researcher's background in the profession⁴⁶ added credibility and facilitated an ambience of a discussion between peers, where both understood the tax environment. The focus group, discussed in section 4.9, was also used as a method to address this social desirability bias concern.

In response to some of the criticisms, advocates of interviews as a research method say, "without allowing people to speak freely we will never know what their real intentions are, and what the true meanings of their words might be" (Cottle, 1977, p.27). The issue of validity of respondents' views may also be overcome by the ability to identify consistencies in views and opinions amongst different interviewees, and this allows "a reasonably coherent overall picture to be developed" (Horton *et al.*, 2004, p.348). Methods taken to increase the credibility of the findings are set out in section 4.11.2.

4.8.1 Pilot study – semi-structured interviews

Four pilot interviews were carried out in February and March 2013. The participants included a tax director of a Big Four accounting firm, two sole practitioners who both previously worked at manager or director level in Big Four accounting firms and, finally, a Revenue officer with considerable experience, in terms of both length of service and dealing with the accounting profession.

⁴⁶ The researcher worked as a tax manager in a Big Four firm prior to commencing the doctoral studies.

The purpose of these pilot interviews was to trial the research questions in the field and to determine whether, from an empirical perspective, the research questions were answerable and whether they would provide sufficient insight to address the specific research questions posed in this study.

All four interviews explored the various topics of the research. From a research design perspective, a number of important issues were confirmed or highlighted:

- The examination of increased regulation would be more feasibly focused on the recent legislative amendments and judicial decisions (i.e., from 2006 to 2011) than on the introduction of the GAAR in 1989, as a specific legislative change. The reasons for this were (i) the difficulty in selecting sufficient numbers of individuals for interview who would have had direct experience of the impact of the introduction of the GAAR on the accounting profession and (ii) where such individuals were identified and willing to participate, the time period which had lapsed since its introduction might render the recollections of these individuals unreliable and/or incomplete.
- The interviews with sole practitioners emphasised the different work practices undertaken by accounting professionals depending on the size of their firm or practice. Both individuals, interviewed in the pilot phase stressed that increased regulation had not impacted their work practices because of the type of work undertaken by them, i.e., routine tax compliance. In order to understand the impact of changes in the general anti-avoidance tax regime on the accounting profession, it was therefore important to include participants from a range of firms in the study and to confirm whether the view of non-applicability to smaller practices held true.
- Despite the sole practitioners interviewed not having direct insights into the impact of increased regulation in their current environment, both individuals previously worked in Big Four firms and were therefore well positioned to provide insights into the provision of tax services in Big Four firms and the differing attitudes to aggressive tax avoidance strategies. It may have been easier for these individuals to share their insights, as they were no longer working in a large accounting firm.

- The pilot interviews also highlighted the need for very careful design of the interview guide. Particularly in an interview with a director of a Big Four accounting firm, it was clear that the issue of tax avoidance was a very sensitive topic and that the party line was being given in response to a number of questions. This experience led to a redesign of the interview guide, the inclusion of more prompts and probes, and the inclusion of more specific questions on which the interviewees' opinions were sought. This issue also prompted the use of a focus group to add completeness and also confirmation to the research process.

4.8.2 Sampling framework

To examine the impact of increased regulation on tax accountants, a purposeful sampling approach was deemed most appropriate. Purposeful sampling focuses on depth rather than breadth of responses. This technique allows the study of selected issues in detail to provide an explanation of the empirical events under enquiry (Patton, 1990).

Specifically, interviews were conducted with members of three groups (i) tax accountants, (ii) Revenue officers and (iii) professional body representatives. The sampling strategy deployed for Revenue officers involved interviewing individuals with experience of the general anti-avoidance regime, and of experienced officers (both current and former Revenue officers) who could provide insights into the working relationship with the accounting profession. The professional body representatives selected for interview were, again, chosen because of their experience in dealing with Revenue, making submissions and responding to public consultations.

In contrast, the sampling strategy used for tax accountants required a number of decisions to be made regarding the appropriateness of individual participants. The purposeful sampling technique used to select the tax accountant interview participants is outlined in section 4.8.2.1.

4.8.2.1 *Purposeful sampling – tax accountants*

The selection of information-rich cases for in-depth study is the central aspect of purposeful sampling (Patton, 1990). Tax accountant participants were chosen on the basis of their ability to provide a great deal of insight on the key issues under enquiry

and, hence, to address directly the overall purpose of the study and “illuminate the questions under study” (Patton, 1990, p.169).

The recruitment approach involved the use of personal contacts and those of academic and former professional colleagues. This technique was successful (66% success rate, 25 interviews out of a total of 38 requests), with a high acceptance rate being achieved. The reason for this may be the trust that these participants were willing to place in the research process, where they had direct or indirect knowledge of the researcher. This was of particular importance in this study because of the potentially sensitive nature of the topic for participants.

In addition, a number of potential participants were contacted by email, of whom the researcher had no prior knowledge or any personal contacts. The individuals were selected for contact on the basis of their firm-size (being within the Top 20 Accounting Firms⁴⁷), specialist designation (tax), firm position (partner or director) and experience. Despite a number of initial positive responses, none of the individuals contacted in this manner reached the interview stage. This non-response indicated the importance of establishing contact with participants in a manner where trust in the research process is gained from the outset.

The response rate for the interview stage of the research is outlined in Table 4.6.

Table 4.6: Interview response rate

	Interview requests/responses (No.)	Interview requests/responses (%)
Total requests for interviews sent (using email or LinkedIn)	38	100
Positive response leading to interview	25	66
Initial positive response, no response after follow-up	3	8
No response	8	21
Responded stating not suitable	2	5
Total interviews	25	66

The aim of the study is to examine the professionalism of tax accountants and the impact of changes in the general anti-avoidance tax regime on the accounting profession. Therefore, the purpose of the study is to examine the effects on a large

⁴⁷ Top 20 Accounting Firms as per The Finance Dublin survey (*Finance Dublin*, 2012).

group of individual accountants working in a variety of professional firms. A sub-strategy of purposeful sampling is maximum variation sampling. This sampling technique is appropriate where the study “aims at capturing and describing central themes or principal outcomes that cut across a great deal of participant or program variation” (Patton, 1990, p.172). Maximum variation sampling can be used to determine whether the changes in the regime had an impact across the accounting profession as a whole, or whether there was a more concentrated impact on specific groups of firms, e.g., Big Four, Mid-Size firms. This sampling technique also provides insights into “core experiences and central, shared aspects or impacts” (Patton, 1990, p.172), which is appropriate given the institutional lens through which the impact of the regulatory changes are being considered.

Participants were selected on the basis of their specific experience and the insights that they would be able to provide. In the first instance, a decision was required regarding the firm type from which participants would be selected.

(i) Sampling – firm type

The literature provides insights into the choice of firm types. Sampling the Big Four firms is particularly important as they are regarded as having “become less the subject and more the site of professional regulation” (Cooper and Robson, 2006, as cited in Suddaby *et al.*, 2007, p.334). Professional accountants working in Big Four firms may also be more inclined to identify with the firm rather than with the profession (Suddaby *et al.*, 2007). The Big Four firms have been described as “important sites where accounting practices are themselves standardized and regulated, where accounting rules and standards are translated into practice, where professional identities are mediated, formed and transformed, and where important conceptions of personal, professional and corporate governance are transmitted” (Cooper and Robson, 2006, p.414). However, despite the important influence which Big Four firms have on the accounting profession, in terms of studying professionalism, limiting a study to Big Four firms may not provide an adequate representation of the profession as a whole, particularly as it has been acknowledged that the Big Four firms are motivated by profit and, therefore, it can be assumed that the public interest is not an overarching concern (Cooper and Robson, 2006; MacIntosh and Shearer, 2002). Consequently, both Big Four firms and non-Big Four firms were included in the target sample.

The importance of examining non-Big Four firms has been acknowledged in the accounting literature, particularly as the core of the professional accounting field is made up of non-Big Four firms (Lander *et al.*, 2013). For example, inclusion of Mid-Size firms provides a sample of professional firms that are more dependent than Big Four firms on professional bodies as sites of professionalisation. One explanation for this is that the larger firms provide much of their training in-house (Cooper and Robson, 2006; Ramirez, 2009). Mid-Size firms also serve a different client base: smaller, more local clients, with different demands (Ramirez, 2009). This is a particularly important consideration for this study, as the increased regulation being studied primarily attempts to counteract tax avoidance on a domestic level, rather than at the level of multi-national companies, often serviced by Big Four firms.

As a result of the maximum variation sampling technique chosen for the study and the insights gained from the literature, it was decided to include tax accountants working in a range of firms, e.g., Big Four, Mid-Size, Boutique Tax Practices and Small Accounting Firms. Boutique Tax Practices⁴⁸ were considered an important and relevant group because of the concentration of their work in the domestic and high net worth individual sectors. This is an area where tax avoidance has been seen to be concentrated in the past. In addition, many of the partners and directors in Boutique Tax Practices (and all of those interviewed) are professionally qualified accountants with experience in Big Four firms. Finally, partners in a number of Small Accounting Firms were interviewed in order to gain the views of those servicing smaller, domestic companies and personal clients, and to determine the extent to which the changes in the general anti-avoidance tax regime have impacted them, if at all.

(ii) Sampling – position within firm

In order to ensure that the participants were rich informants (Patton, 1990), participants selected were either at partner or director level. It was important that the participants had experience of the various changes, which commenced in 2006, and that they were aware of the overall firm response. To increase the richness of the data collected, participants were also selected who had particularly relevant experience – for example, individuals who were actively involved in professional

⁴⁸ Boutique Tax Practices refer to smaller firms specialising in the provision of taxation services.

body activities, members of TALC, former Revenue officers, experienced in multiple firms or firms of differing size, and members of risk management committees.

Table 4.7 sets out the participant profiles by (i) participant group and (ii) gender. Table 4.8 sets out further details for the tax accountants interviewed: (i) firm type and (ii) position.

Table 4.7: Interview participant profiles

	Participant group		Gender		
	Participants (No.)	Participants (%)	Participants (No.)	Participants (%)	
Accountants	20	74%	Male	18	67%
Professional Body	2	7%	Female	9	33%
Revenue	5	19%			
Total	27	100%	Total	27	100%

Table 4.8: Accountant interview participant profiles

	Firm type		Position		
	Participants (No.)	Participants (%)	Participants (No.)	Participants (%)	
Big Four	8	40%	Partner or Principal Director	11	55%
Mid-Size Boutique Tax Practice	4	20%		9	45%
Small Accounting Firm	2	10%			
Sole Practitioner	2	10%			
Total	20	100%	Total	20	100%

4.8.3 Sample size

A recognised challenge in qualitative research relates to ideal sample size (Patton, 1990). It is acknowledged that there are no rules for sample size in qualitative inquiry and that it depends on (i) what you want to know, (ii) the purpose of the study, (iii) the usefulness and credibility of participants and (iv) what is possible in terms of time and resources (Patton, 1990). The sample size of a qualitative study is judged in terms of whether it enables the researcher to access enough data, with the right

focus, to answer the research questions posed (Mason, 2002). In particular, it is necessary to ask whether sufficient meaningful comparisons can be made from the data collected. Mason (2002) advises that the researcher must keep at the forefront of her/his mind throughout the study what it is the study requires to be compared and the extent to which the sample of data collected facilitates this.

Determining the appropriate sample size for a qualitative study is, therefore, tentative at the study's inception. Generally, the researcher samples until saturation is achieved, i.e., until the data stop telling anything new (Mason, 2002). Saturation point is something which cannot be anticipated or planned in advance, and, as a result, qualitative studies have been "criticised for being *ad hoc* and unsystematic" (Mason, 2002, p.135). However, qualitative sampling aims to help the researcher understand the empirical events under enquiry rather than to generate representative findings. In order to achieve this understanding, a "dynamic and ongoing practice" is required (Mason, 2002, p.135).

The sample size in this study was, therefore, chosen to ensure that sufficient data were generated to illuminate the focus of the study and to enable similarities and differences in the data to be suitably explored (Mason, 2002). A total of 25 interviews were carried out. One interview involved three individual participants, bringing the total interview participants to 27. Details of the interview participants including (i) participant group, (ii) participant position, (iii) firm type, (iv) interview duration and (v) recording duration are set out in Table 4.9.

Table 4.9: Profile of interviews conducted

	Interview reference	Participant group	Participant position	Firm type	Interview duration (minutes)	Recording duration (minutes)
1	B4_1_D	Tax accountant	Director	Big Four	60	48
2	RC1	Revenue officer	N/A	N/A	125	113
3	SP1	Tax accountant	Principal	Sole Practitioner	80	49
4	SP2	Tax accountant	Principal	Sole Practitioner	70	59
5	MS_1_D	Tax accountant	Director	Mid-Size ¹	75	52
6	B4_2_D	Tax accountant	Director	Big Four	60	36
7	B4_3_D	Tax accountant	Director	Big Four	60	37

	Interview reference	Participant group	Participant position	Firm type	Interview duration (minutes)	Recording duration (minutes)
8	MS_2_D ²	Tax accountant	Director	Mid-Size ¹	30	21
9	MS_3_D	Tax accountant	Director	Mid-Size ¹	40	31
10	B4_4_D	Tax accountant	Director	Big Four	55	40
11	BP_1_P	Tax accountant	Partner	Boutique Tax Practice	40	20
12	SF_1_P	Tax accountant	Partner	Small Practice	35	26
13	MS_4_P	Tax accountant	Partner	Mid-Size ¹	60	36
14	BP_2_P	Tax accountant	Partner	Boutique Tax Practice	30	20
15	BP_3_P	Tax accountant	Partner	Boutique Tax Practice	60	32
16	RC2 ³	Revenue officer	N/A	N/A	30	20
17	RC2 ³	Revenue officer	N/A	N/A		
18	RC2 ³	Revenue officer	N/A	N/A		
19	B4_5_P	Tax accountant	Partner	Big Four	55	40
20	PB1	Tax accountant	N/A	Professional Body	75	41
21	B4_6_D	Tax accountant	Director	Big Four	45	31
22	B4_7_P	Tax accountant	Partner	Big Four	45	31
23	SF_2_P	Tax accountant	Partner	Small Practice	50	32
24	PB2	Tax accountant	N/A	Professional Body	65	47
25	B4_8_P	Tax accountant	Partner	Big Four	60	40
26	FRC1	Former Revenue officer	N/A	N/A	100	73
27	BP_4_D	Tax accountant	Director	Boutique Tax Practice	60	23

Notes:

1. Mid-Size firms for the purposes of this study are defined as those ranking from 5–10 in the Top 20 Accounting Firms as per the Finance Dublin survey (Finance Dublin, 2012).
2. Interviewee requested to review transcript. Transcript sent and follow-up made several times. Interviewee stated that changes were required and that review was taking place by partner. No revised transcript was received. A decision was made not to follow up further because of the sanitisation of the transcript and data were not included for analysis.
3. Interview took place with three Revenue officers at the same time, as a result the duration is only included for one member. A total of 27 interviewees participated in 25 separate interviews.

As recommended by the literature, interviews were carried out until saturation point was reached. In terms of reaching saturation, after interview number 15 (14 of which

were with tax accountants), very little new information was being gleaned from the interviews with tax accountants. Their views in relation to the impact of the changes in the general anti-avoidance tax regime were consistent, when compared across firm-size categories. The interview process continued with interviews carried out with both Revenue officers and professional body representatives. However, in order to ensure that saturation was reached, six further interviews were carried out with tax accountants in a range of firms (Big Four, Mid-Size, Boutique Tax Practices, and Small Accounting Firms). This added depth to the interviewees' views previously received. On completion of the 25 interviews (20 carried out with tax accountants), saturation was reached. No new themes were emerging from the data, and no further interviews were required to be carried out.

A total of four interviewees were current Revenue officers, with another one former Revenue officer being interviewed. Those selected for interview had considerable experience of the issues under enquiry and consequently provided valuable, in-depth insights into the changes in the general anti-avoidance tax regime. In addition, a number of tax accountants interviewed had previously worked in Revenue prior to joining practice and were, therefore, in a position to speak of their experiences in both environments.

The two professional body representatives interviewed provided a valuable insight into the role of the professional bodies in responding to changes to the general anti-avoidance tax regime. In addition, a number of the tax accountants interviewed were active members of their respective professional bodies and were able to provide details of their experiences of the interaction with Revenue and responses to changes in the general anti-avoidance tax regime.

The experience in this study of reaching saturation point after approximately 14 interviews is consistent with the literature. Guest, Bunce and Johnson (2006) found that saturation occurred within the first 12 interviews, and Green and Thorogood (2009, p.120) stated that "the experience of most qualitative researchers is that in interview studies little that is 'new' comes out of transcripts after you have interviewed 20 or so people."

Following completion of the semi-structured interviews, the final research method, the focus group, was carried out in order to increase the reliability of the interview data.

4.9 Focus group

In order to increase the reliability and credibility of the data collected during the semi-structured interviews, a focus group was undertaken. Focus groups are used “to promote self-disclosure among participants” (Krueger and Casey, 2000, p.7). Given the nature of the topic under discussion, i.e., tax avoidance and the attempts by Revenue to tackle unacceptable tax avoidance, there existed the possibility that the views expressed by individual interview participants might have been self-censored. When the interviews were completed, the researcher was satisfied with the openness of participants, with many talking freely about issues encountered with the general anti-avoidance tax regime and difficulties in their relationship with Revenue. Nonetheless, despite the researcher’s view that participants appeared to be open and truthful, introducing a third research method to increase the reliability and credibility of the interview data, providing an additional form of triangulation (in addition to the documentary evidence), was deemed appropriate.

Focus groups are suitable where the objective is to test ideas and to uncover factors that influence behaviours (Krueger and Casey, 2000). The focus group was carried out as part of this study as a means of confirming whether the findings from the documentary evidence and semi-structured interviews were reflective of the participants’ experience in tax practice. Focus groups are regarded as an appropriate means to provide “insights into how and why you got the outcomes that you did” (Morgan, 1998, p.15) and, therefore, carrying out a focus group was an appropriate method to assess the credibility of the data analysis.

4.9.1 Sampling framework

It is imperative that information-rich participants are selected to partake in any focus group discussion (Patton, 1990; Krueger and Casey, 2000). The participants were selected by reference to their experience of the phenomenon under inquiry and their current position.

The participants were required to have worked in tax practice prior to the introduction of the first change to the general anti-avoidance tax regime (the introduction of protective notification in 2006) up until the Supreme Court decision in the *O’Flynn Construction* case (December 2011). In addition, participants were selected who had since moved from tax practice into other roles, primarily in industry, e.g., tax manager

or director of a multi-national or a domestic company. The second criterion was important to encourage a more open discussion, where individual participants would not be wary of disclosing insider firm knowledge or sensitive information to outsiders or competitors.

In order to achieve this, eight experienced tax accountants were invited to participate in the focus group, with a total of five accepting (63% success rate). Although the recommended size of a focus group ranges between six and eight participants (Hennink, Hutter and Bailey, 2011; Krueger and Casey, 2000), it is acknowledged that smaller groups are appropriate where participants may have a considerable amount to share on the topic and have a high level of experience. The requirement for all the focus group participants to have been working in tax practice when the changes to the general anti-avoidance tax regime changes had taken place meant that it was only possible to achieve a group of five participants. However, as each of the five participants had considerable experience of tax practice, any larger number would have limited the ability of participants to share their insights.

All participants met the criterion of having worked in professional tax practice from 2006 to 2011, and four of the five participants had since worked in tax roles in industry.

Table 4.10 sets out details of the participants. It should be noted that the focus group participants had experience of three of the Big Four firms, with a number of participants having experience of more than one firm. As a result of the homogenous nature of the focus group participants, i.e., all had Big Four experience, data from the focus group are attributed to a “focus group participant” throughout the study.

Table 4.10: Focus group participants

	Participant group	Participant position (prior to leaving practice)	Practice experience	Industry experience	Participant gender
1	Tax accountant	Manager	Big Four	Yes	Male
2	Tax accountant	Senior manager	Big Four	Yes	Female
3	Tax accountant	Director	Big Four	Yes	Male
4	Tax accountant	Senior manager	Big Four	Yes	Female
5	Tax accountant	Manager	Big Four	No	Female

Following the discussion of the three specific research methods used in this study, (i) documentary evidence, (ii) interviews and (iii) a focus group, the process by which the research was undertaken is presented in section 4.10.

4.10 Research process

The scheduling of the data collection process is an important consideration, particularly when using multiple methods for collecting data. Important steps taken prior to data being collected are first outlined, followed by details of the timing of the data collection and the processes through which the data were collected.

4.10.1 Ethical approval

Prior to any data being collected, ethical approval in line with the University College Dublin guidelines was sought. As a result of the nature of the research, methods being used and the professional status of the participants, an exemption from full ethical approval was available and was granted⁴⁹.

4.10.2 Security of data

Interview and focus group data were collected, in the first instance, using a digital dictaphone. As soon as possible following the interview or focus group, the digital recording was transferred to the researcher's laptop, using a password-protected file. A copy was also stored on a USB key as a back-up and kept in a locked safe.

A second USB key was used to give the audio recordings to the professional transcriber. The confidentiality agreement (signed by the researcher and the transcriber) made it clear that the audio recording must only be accessed and used from the USB key and was not to be transferred to the transcriber's computer. The USB key was hand-delivered to the transcriber and on completion collected by hand by the researcher. No audio recordings or transcripts were sent electronically to or from the transcriber.

All transcripts were password-protected and stored in a password-protected file on the researcher's computer. Back-ups of the data were kept in a locked safe. The qualitative data analysis software (NVivo) used by the researcher was also password-protected.

⁴⁹ Ethical approval received on 9 November 2012 [MS-E-12-140-Griffin-Pierce].

In addition to these security procedures, all transcripts were reviewed on receipt, and any information contained in the transcript that could possibly be used to identify the interviewee or focus group participant was removed.

Each of the procedures put in place ensured the security of the data throughout the research process.

4.10.3 Cultural review

This study acknowledges the prior experience of the researcher in the field of inquiry. Nonetheless, the stance being taken is that of an outside expert (Blaikie, 2007). It has been suggested that, where there is strong familiarity with the culture being examined, the researcher's powers of observation and analysis may be dulled. However, it is also recognised that familiarity has "the advantage of giving the investigator an extraordinarily intimate acquaintance with the object of the study" (McCracken, 1988, p.32), giving the investigator a "delicacy of insight" (McCracken, 1988, p.32). For the study to benefit from this acquaintance, it is necessary for the researcher to "inventory and examine the associations, incidents, and assumptions that surround the topic in his or her own mind" (Merton, Fiske and Kendall, 1956, p.4).

A cultural review⁵⁰ took place, whereby the researcher's experiences of the field under enquiry were noted in detail. The purpose of this review was three-fold. Firstly, it helped in the preparation of the interview guide, identifying issues that may not have previously been considered in the literature. Secondly, it assisted the data analysis phase, when themes and inter-relationships between issues were being identified. Finally, it helped to establish distance, by creating a clearer understanding of the researcher's own view of the social world under enquiry (McCracken, 1988). This process was then followed by data collection, details of which, for all three methods, are outlined in the following sections.

4.10.4 Documentary evidence

Documentary evidence used in this study was publicly available (as detailed in Table 4.4). Therefore, it was collected in a time-efficient manner. A portion of the data was first collected in hardcopy, which was used for the purposes of the pilot study, where

⁵⁰ A reflective analysis of the researcher's position *vis-à-vis* the topic under enquiry.

one specific regulatory change was analysed manually. Softcopies (MS Word or PDF) of all the documents were then imported into NVivo for coding.

The documentary evidence was in the first instance intended to (i) answer RQ1 regarding the actions of Revenue in tackling tax avoidance and (ii) provide an in-depth insight into the contextual setting of the study, which could then be used to inform the semi-structured interviews and focus group. However, following the analysis of the documents, it became clear that, for particular aspects of RQ2, the documentary evidence provided considerable insights, particularly in relation to the response of the accounting profession to the changes in the general anti-avoidance tax regime. The documentary evidence provided the public response, whereas the interviews and focus group enabled the private response and private impact of the changes to be examined.

4.10.5 Semi-structured interviews

As outlined in section 4.7.4, four pilot interviews were completed in February and March 2013 in order to examine the appropriateness of the research questions and to help inform the sampling strategy. As a result of the richness of the pilot interviews, these data have been included in the overall analysis together with the other interview data. They have also been incorporated into the findings and discussion chapters, as appropriate.

Following these pilot interviews, the documentary evidence was reviewed and analysed (as discussed in section 4.11). On completion of the documentary evidence review, interviews were scheduled following the sampling strategies outlined in section 4.8.2. Twenty-one interviews (with a total of 23 participants) were carried out from September to December 2014. The interviews were on a one-to-one basis, with the exception of one interview where there were three interviewees⁵¹. In the main, the interviews were carried out in the interviewees' workplaces and lasted between 30 minutes and 2 hours 5 minutes.

An information sheet and a consent form were developed for the interview phase. These documents set out the broad aims of the research, complied with University College Dublin's ethical guidelines and ensured that the participants knew that they

⁵¹ This interview was with Revenue officers and was secured by my supervisor for the purposes of both her own research project and my doctoral research. My supervisor was in attendance at the entire interview.

could withdraw from the study at anytime, without providing a reason. The consent form recorded their agreement to participate in the study and granted permission for the interview to be audio-recorded. A copy of the information sheet and consent form is set out in Appendix VI.

The interviewees were, in the most part, very welcoming and willing to be very open in their discussions. To encourage an open and truthful discussion, the researcher began each interview by providing reassurances in relation to the anonymity of the data collected, with some interviewees requesting further details in relation to the storage of the data, which was fully explained. All interviewees, with the exception of one interview⁵², agreed for the interview to be audio-recorded. Interview guides were prepared and are discussed in section 4.10.5.2. With the exception of two interviews, participants did not request interview questions in advance. A general outline of the research was instead provided by email in advance of the interview.

In order to settle the interviewees, the interview commenced with a discussion of how they and their firm (where applicable) respond, more generally, to legislative changes. This was of particular relevance as the Budget announcement and Finance Bill publication was during the interviewing period and allowed participants to begin the interview with a discussion of procedures and processes that were unthreatening and well known to them. This also provided insights into tax planning opportunities undertaken by the participants at Budget time, where changes in tax rates and tax reliefs are anticipated.

The researcher's professional tax and accounting background was a considerable advantage in carrying out the research. The interviewees were able to refer to very technical aspects of the general anti-avoidance tax regime or particular aspects of tax practice, knowing that the researcher understood the technical terms, abbreviations and acronyms used. This helped establish rapport with the participants and contributed to an open discussion.

⁵² The participants did not wish to be audio-recorded. As these participants were being interviewed by my supervisor at the same sitting, I transcribed notes for my supervisor's interview and my supervisor did the same for my interview. A clear distinction between the two interviews was made to ensure that the data collected were clearly separate. Notes of the interview were then sent to the interviewees in order to ensure their accuracy.

4.10.5.1 Order of scheduling and analysis

Decisions regarding how to schedule interviews and when to carry out coding were made. The main choices were made surrounding whether (i) to carry out an interview, code it, then carry out a second interview, code it and so on, or (ii) to carry out all the interviews and then code them all after the data collection phase. The researcher noted from the literature that coding should drive the data collection process, not be an end in itself. This is because it reshapes the researcher's perspective and enables the instrumentation, i.e., interview guide, to be adapted after each interview.

As a result of practical scheduling issues, e.g., interviewees' availability, willingness to participate within a short time frame and the time taken to have audio transcripts professionally transcribed, the researcher was unable to code each interview in full prior to the next interview taking place. However, the researcher took a number of key steps to ensure that this did not negatively impact the data collection process. For example, notes were made following each interview as to issues of particular importance that should be followed up in later interviews, including the identification of "incomplete or equivocal data" (Miles and Huberman, 1994, p.65), and the interview guide was adapted throughout the interviewing process. These processes enabled a degree of iteration between the data collection and analysis that contributed to the overall understanding of the empirical events under enquiry (Miles and Huberman, 1994).

4.10.5.2 Interview guide

Given the semi-structured nature of the interviews, an interview guide was developed prior to any interviews taking place. Whilst identifying topics for discussion, the guide also allowed the participants to develop their views, rather than being constrained by a very structured format. This helped participants' views to be explained in greater depth (Arksey and Knight, 1999).

In designing the interview guide, consideration was given to formulating questions that "contribute[d] thematically to knowledge production and dynamically to promoting a good interview interaction" (Kvale, 2007, p.57). In order to achieve this, a two-phase interview guide is recommended, one with the thematic research questions, and the second with the related interview questions posed in non-technical, everyday language (Kvale, 2007). A variety of interview questions were

used, including descriptive questions, probing questions, and direct and indirect questions to enable greater depth of knowledge to be gained (Kvale, 2007).

The interview guide was an integral part of the interviewing process, but where new themes emerged during an interview that were not covered by the existing interview guide, intuition and prior knowledge were used to probe the emerging issues. The craftsmanship involved in interviewing recognises the need to stick to the interview guide in some cases and to follow up leads in others (Kvale, 2007). The interview guide used for the tax accountant interviews is set out in Appendix VII, with the shorter interview guides used for the interviews with Revenue and the professional body representatives set out in Appendices VIII and IX, respectively.

4.10.6 Focus group

The final method used in the study was a focus group carried out in April 2015. The purpose of this final research method was to reinforce the credibility and veracity of the interview data being used to answer RQ2.

The focus group was held in University College Dublin, on the evening of 21 April 2015. The participants were selected as outlined in section 4.9.1 in accordance with their perceived ability to provide rich accounts of changes in the general anti-avoidance tax regime. In attendance were the five participants, the researcher and an academic colleague⁵³, whose role was to take notes and to indicate to the researcher where time had been exceeded for a particular issue. The participants gathered a few minutes prior to commencing the focus group and were introduced. As a result of the nature of the tax community, a number of the participants were familiar with one another and this created a friendly and open environment.

As the focus group commenced, the researcher collected consent forms and confirmed the anonymity provided to participants. The researcher also reiterated the request, previously made in writing to participants, that the views expressed should remain private and should not be attributed to any individual group member outside of the focus group. All participants agreed to proceed on this basis, and the focus group commenced.

The researcher had prepared a short PowerPoint presentation in order to set out the

⁵³ A faculty member in University College Dublin who had recently completed a PhD.

objectives of the research and the key findings from the study. The aim of the focus group was to provide insights into the findings for RQ2, and, hence, after the initial introduction of the research study, the component findings for RQ2 were presented. Each change in the general anti-avoidance tax regime was discussed and a short overview of the findings from the documentary evidence and the interviews was presented. This was followed by a discussion with the participants, where they discussed and debated the findings. The participants welcomed the opportunity to share their views and experiences and provided considerable insights into the data previously collected, both confirming and, at times, refuting the findings. Participants were offered the opportunity to review the focus group transcript for accuracy; however, no participants wished to avail of this.

4.11 Data analysis

The three research methods allowed for the elucidation of a clear picture of the changes in the general anti-avoidance tax regime and analysis of the accounting profession's response and the impact of changes on tax accountants' work practices. To facilitate a rich analysis, the documentary evidence, interview transcripts and focus group transcript were analysed using thematic analysis.

In the first instance, the audio recordings of the interviews and of the focus group were professionally transcribed. A confidentiality agreement was put in place between the researcher and the professional transcriber (see section 4.10.2). The transcripts were reviewed by the researcher. The audio recordings were listened to and the transcripts were corrected for any mistakes. In addition, notes were made where particular issues were emphasised by participants.

Computer-aided qualitative data analysis (CAQDAS) was used to assist in the analysis of the documentary evidence, semi-structured interview and focus group data. The advantages of using CAQDAS software were considered and, having discussed the usefulness with academic colleagues and their experiences of particular software packages, the researcher decided to use QSR NVivo to assist in the management and analysis of the qualitative data.

The documentary evidence was initially imported into NVivo and coded prior to the interviews taking place. This was done to gain a greater understanding of the contextual setting and to help inform the interview guide. As the transcriptions of the

interviews were received, they were reviewed and corrected and then imported into NVivo.

The data were analysed and coded, with themes and categories being identified using purposive coding (Richards, 2009). The analysis process, together with a discussion of the purposive approach to coding adopted in this study are outlined in section 4.11.1.

4.11.1 Purposive coding

Purposive coding is appropriate where the results of coding are used to develop ideas and to facilitate further inquiry. In essence, it enables the researcher to “see across the data, and above individual documents, to themes and ideas” (Richards, 2009, p.93).

A codebook was developed for the first phase of data coding and analysis. The codebook was initially influenced by the prior literature and the research questions in the study. However, as coding progressed, previously unidentified themes emerged from the data. New codes were created, allowing a truer representation of the data to be created. Examination of a large volume of documents requires openness to the emergence of new themes throughout the data analysis stage, with continual refinements being made as new data are collected and analysed (King, 1994).

The coding process began with topic coding. This analysed the data into broad topic categories. Although this involved limited interpretation of the data, this phase in the coding process was important because of the large volume of data, particularly in the case of the documentary evidence. This stage of the coding process acted as a method of data reduction, where initial themes are recorded from the data (O’Dwyer, 2004). The primary themes (first level codes) identified in the first stage of topic coding were then reviewed and refined and re-coded into sub-codes (second level codes). In addition, similarities and differences between the coding and codes were considered, and a decision was made as to whether the researcher was satisfied with how the data had been coded (Richards, 2009).

Reflection during the coding process was an important part of the data reduction process. In particular, prior coding was questioned, as recommended in the literature, to ensure that conclusions had not been reached too quickly (O’Dwyer,

2004). As new ideas emerged throughout the period of coding, this required data to be reconsidered, to establish whether or not new meanings were emerging from the data, requiring a new code. Where this was the case, the original coded data was looked at again and a decision was made as to whether it should be coded to this new code or whether a new dimension or sub-category had been developed (Richards, 2009). Appendix X provides an illustration of the topic coding of the interview transcripts.

Further refinement of the data took place following the creation of the second level codes. Appendices XI, XII and XIII illustrate this refinement process for (i) disruptive work practices, (ii) strategic response of the accounting profession and (iii) maintenance work practices.

The refinement process illustrated in Appendices XI, XII and XIII facilitated the next step in the coding process, analytical coding.

Analytical coding involves interpretation of the data, with reflection being a central feature (Richards, 2009). Analytical coding is what is not explicitly in the data, but has emerged through careful and skilful reflection on the meaning of the data. This is regarded as the most difficult stage in the coding process, but the most rewarding. The meaning of the data was considered in its context and how it reflected new ideas that emerged about the data. This final stage in the coding process was achieved by reviewing carefully the items of coded text in each category. A MS Word document was set up where notes and analyses were recorded, and quotations from the documentary evidence, interviews and focus groups were included.

This further analysis allowed the researcher to think about the data theoretically and to consider what similarities and differences from the theoretical constructs were seen in the data. "Thick descriptions" of findings were included to illustrate the main themes (Denzin, 1994, p.505), with quotations from the data being used to add richness. This analysis provided a further critique of the initial coding process and allowed further refinement to take place. Achieving a level of theorisation about the codes created and being able to identify relationships between the coded data were essential parts of the analytical process. Memos were used to facilitate a "deeper and more conceptually coherent sense of what is happening" (Miles and Huberman, 1994, p.72). Throughout the data interpretation stage, quotations were used to illustrate the findings, because it has been stated that "the liberal use of quotes is

essential in order to allow the reader to hear the interviewees' voices" (O'Dwyer, 2004, p.401).

The data analysis process was undertaken in such a manner as to maximise the quality of the findings. The "quality of the observations" is central to determining the rigour of qualitative research (Patton, 1990, p.480). Section 4.11.2 sets out the processes used to enhance the rigour of the qualitative data.

4.11.2 Maximising data quality and enhancing the rigour of qualitative data

Lincoln and Guba (1985) provide four central aspects for assessing the quality of qualitative research, stating that it should have credibility, transferability, dependability and confirmability. The steps taken to ensure that each of these criteria was achieved in the data analysis process are outlined below.

(i) Credibility

Achieving credibility in a qualitative study involves ensuring that the results are "credible or believable from the perspective of the participant" (Trochim, 2010, p.1). The objective of this qualitative study was to understand the changes in the general anti-avoidance tax regime from the perspective of those directly impacted, i.e., tax accountants, Revenue and professional bodies. In order to achieve credibility, documentary evidence was collected and semi-structured interviews were carried out with representatives of each of these groups. This allowed the views of the multiple field actors to be heard and for a broad representation of the response and the impact of the changes in the regime to be conveyed.

The use of multiple research methods also allowed credibility to be achieved in this study. The public views of the actors were gained through an analysis of public proclamations in the documentary evidence, and their private views were obtained through semi-structured interviews and the focus group. This methodological triangulation both achieved completeness and confirmed prior findings, with rival explanations identified being tested to achieve integrity in the analysis process (Patton, 1990).

(ii) Transferability

The purpose of this study was not to create generalisable results. However, the capacity of the findings in this study to be transferred to other settings or contexts was enhanced through (i) a detailed explanation of the context in which the research was undertaken and (ii) the use of thick descriptions of the findings, using many quotations to support the results. This level of detailed description allows a reader to transfer the results to a different setting and to judge the appropriateness of such transfer (Trochim, 2010).

(iii) Dependability

The concept of dependability has been used as an alternative criterion in qualitative research to reliability, and refers to the procedures undertaken by the researcher to ensure that rigorous research practices were used. Assessing reliability, in a traditional quantitative sense, involves being able to show that, if the study was repeated, in the same context, using the same methods and the same participants, similar results would arise (Shenton, 2004). As a result of the changing nature of the phenomenon under inquiry in qualitative research, this traditional approach to assessing reliability is inappropriate. The detailed description of the coding process and the checks that were undertaken throughout the data analysis phase is one method that brings dependability to the results. In addition, the in-depth understanding of the contextual setting by the researcher enabled nuances and subtleties in the data to be identified and analysed. Consistency was also ensured for all categories of data throughout the analysis phase, with comparisons being made across participants and between research methods to increase the dependability of the findings. Finally, the research design was exposed at a number of domestic and international doctoral colloquia, and academic conferences.

(iv) Confirmability

The final way in which qualitative data analysis may be judged is the extent to which it is confirmable, i.e., “the degree to which the results could be confirmed or corroborated by others” (Trochim, 2010). A number of procedures were put in place in order to enhance the confirmability of the data analysis.

Firstly, consistency checks were carried out throughout the coding process. At a number of intervals during the coding process, a clean version of a data source was re-coded and compared with the original coded records. Any inconsistencies were documented and resolved and, where necessary, all other data sources where inconsistencies may have existed were revisited and inconsistencies addressed.

In view of the importance of confirmability, the use of multiple coders was considered; however, it was ultimately deemed inappropriate. Multiple coders are often used where codes and related themes are seen to “exist in the data and can be identified in an objective way by observers who know what they are looking for” (Madill, Jordan and Shirley, 2000, p.4). However, the appropriateness of additional coders is questioned where they may not have the same knowledge of the subject matter under enquiry (Meadows and Morse, 2001). Given the nature of the study and the requirement to have in-depth knowledge of the context, subject matter and the data in order to identify nuances and subtleties in the data, it was deemed inappropriate to introduce a second coder. It was also deemed inappropriate to have a second coder as the study represented doctoral research and the entire body of work was required to be that of the researcher.

Throughout the analysis process, contradictory evidence was sought out in order to challenge the findings. Where such contradictions were identified, reasons for such were analysed and the credibility of the original findings questioned. For example, tax accountants often quickly dismissed the concept that the accounting profession serves the public interest. However, in other parts of the interviews, interviewees referred to the role played by them and their colleagues in facilitating the operation of the tax system and encouraging investment into Ireland. Therefore, whereas the interviewees may not have identified explicitly with serving the public interest, they often did acknowledge the indirect role played by the accounting profession.

Cross-validity checks were also performed with existing data. For example, a number of studies have examined the response of the accounting profession to institutional pressures, with data being coded in terms of Oliver’s (1991) five strategic responses to institutional change (Canning and O’Dwyer, 2013; Lander *et al.*, 2013). A comparison of the study’s findings with findings from prior studies of the accounting profession enabled differences and similarities of responses to be identified and reflected upon. All inconsistent responses were analysed and explanations sought

from the data and/or context. This process increased the credibility of the coding process and provided depth to the results of the study.

Each of the procedures outlined illustrates how quality was ensured and enhanced in the research process, and provides confidence to the reader about placing reliance on the results discussed in Chapters 5 to 8.

4.12 Summary and conclusions

The overarching research objective for this study led to a review of the literature, as outlined in Chapter 2. This resulted in two research questions (with a total of six sub-questions) being developed for the study. The research design, as set out in this chapter, was developed from the purpose of the study and the desire to answer these research questions and led to rigorous procedures that have been applied consistently throughout the study.

A mixed-method approach was adopted, with data being collected from documentary evidence, semi-structured interviews and a focus group. The documentary evidence provided the public view of the accounting profession to changes in the general anti-avoidance tax regime, together with the views of Revenue, publically articulated over the period. The private view of the accounting profession was gained through the analysis of in-depth semi-structured interviews with tax accountants and professional body representatives. The results, from both the documentary evidence and the semi-structured interviews, were presented to a focus group of tax accountants in order to increase the credibility of the results.

Chapter 5 presents the findings and a discussion of the results for RQ1. By focusing on the actions of Revenue and the mechanisms and strategies through which it attempted to tackle aggressive tax avoidance, the disruptive work strategies are explored.

The response of the accounting profession to the changes in the general anti-avoidance tax regime is presented in Chapter 6, with a discussion of how and why the accounting profession responded, as it did. The impact of changes in the regime on the work practices of tax accountants are presented and discussed in Chapter 7.

Chapter 5: Tackling tax avoidance – Disruptive work by Revenue

5.1 Introduction

Following the discussion of the research design and specific research methods, this is the first of three chapters presenting and analysing findings from the empirical study. This chapter focuses on how Revenue sought to tackle aggressive tax avoidance. As discussed in Chapter 3, the issue of tax avoidance was prioritised following the global financial scandals of the early 21st century. In addition, from a domestic perspective, the report on the Ansbacher Inquiry⁵⁴ signalled the need to focus on the anti-social practices involving breaches of the tax legislation and the issue of tax avoidance. The findings relating to RQ1a and RQ1b are detailed in this chapter:

RQ1: How did the Irish Government and the Office of the Revenue Commissioners attempt to tackle aggressive tax avoidance?

RQ1a: What legislative amendments were introduced?

RQ1b: How were the legislative amendments implemented and enforced (including judicial decisions in relation to the legislative amendments)?

Section 5.2 presents the findings for RQ1a, setting out an overview of the legislative amendments implemented⁵⁵.

The work of Revenue in tackling tax avoidance may be regarded as an attempt to disrupt an institutionalised practice of the accounting profession, by reducing the incidence of tax avoidance facilitated by the accounting profession. As discussed in Chapter 2, disruptive work may be undertaken where an institution is regarded as no longer meeting the needs of a particular field actor (Lawrence and Suddaby, 2006).

⁵⁴ The Ansbacher Inquiry identified breaches of banking, tax, company law and other legislative contraventions.

⁵⁵ A detailed explanation of the general anti-avoidance tax regime in Ireland is contained in Chapter 3 and, therefore, a summary is included in this chapter.

In this case, the work of Revenue in tackling tax avoidance may be construed as its attempt to disrupt the institutionalised practice of aggressive tax avoidance and the accounting profession's involvement in the promotion and facilitation of unacceptable tax avoidance practices. With institutional theory as a lens for this analysis, the disruptive work tactics employed by Revenue are examined in Section 5.3. This includes a detailed analysis of how the legislative amendments were implemented and enforced (RQ1b), including judicial decisions relating to the general anti-avoidance tax regime. In the course of analysing the disruptive work practices undertaken by Revenue, it became clear that while traditional disruptive work was undertaken by Revenue, it also engaged in work practices traditionally associated with institutional creation and maintenance (Lawrence and Suddaby, 2006). This was particularly the case when prior efforts of disruption had failed to achieve the desired level of reduction in aggressive tax avoidance. The complex nature of reality has been attributed with requiring a combination of institutional work practices to be undertaken to achieve desired outcomes (Hayne and Free, 2014; Empson *et al.*, 2013) and therefore, it is unsurprising that given the extended time-frame over which disruption is examined in this study, that a variety of different institutional work practices are identified.

The actions undertaken by Revenue to address – what it may regard as – aggressive or unacceptable tax avoidance were analysed using documentary evidence, including the analysis of legislative provisions, guidance notes, judicial decisions, Dáil⁵⁶ debates and speeches of Revenue and the Minister for Finance, supplemented by interview data with Revenue officers.

Section 5.4 provides further analysis of the disruptive work practices used to tackle tax avoidance, linking the enforcement strategies identified in this context to the responsive regulation pyramid devised to deal with tax compliance issues (Braithwaite, 2003a). A revised regulatory pyramid, to deal specifically with tax avoidance, is developed from the findings of the study.

The contributions from the study of Revenue's disruptive work practices are presented in sections 5.4.1 and 5.4.2. This includes theoretical contributions from both an institutional work and a responsive regulation perspective.

⁵⁶ Dáil Éireann is the principal chamber of the Irish Oireachtas (legislature).

The chapter concludes with section 5.5, providing a summary of the main findings.

5.2 Legislative amendments to tackle tax avoidance (RQ1a)

Despite the introduction of a General Anti-Avoidance Rule (GAAR) in Ireland in 1989, Revenue did not use this as an active method for tackling tax avoidance for many years (Mongan and Murphy, 2006).⁵⁷ They used it more as a deterrent. A number of external factors, including the Ansbacher Inquiry (1997–2002), the high profile financial reporting scandals of the early 21st century and the tax shelter cases in the US in 2003 involving members of the accounting profession may have contributed to Revenue's renewed focus on tackling tax avoidance.

An analysis of the Taxes Consolidation Act (TCA) 1997 and the Finance Act amendments since 2003 enabled a timeline of legislative amendments to be drawn up. This allows the study to be focused on a number of specific legislative changes. Table 5.1 sets out the key events since the introduction of the GAAR in Ireland.

5.2.1 Specific legislative amendments to the general anti-avoidance tax regime

Chapter 3 provides a detailed overview of the general anti-avoidance tax regime in Ireland, including the various legislative amendments introduced by the Irish Government over the period from 1989 to 2011. However, to place the documentary evidence that is discussed in the remaining part of this chapter in context, this section provides a brief summary of the key regulatory changes, protective notification, the related Finance Act 2008 amendments and mandatory disclosure.

5.2.1.1 *Protective notification*

The first amendment to the general anti-avoidance tax regime was the introduction of protective notification in 2006. This was a new legislative provision introduced to work alongside the general anti-avoidance tax rule contained in section 811. Protective notification was described by Revenue as providing taxpayers with a “*safe haven*” (Revenue, 2008⁵⁸ p.4), in the event that they notify the tax authorities of the transaction being undertaken in a prescribed form and within certain time limits.

⁵⁷ The motivation for the introduction of section 811 TCA 1997 is outlined in section 3.3 of Chapter 3.

⁵⁸ Revenue (2008) *Protective Notification – Guidance on Section 811A of the Taxes Consolidation Act 1997 (as amended)*, Revenue Commissioners, July 2008.

Where the tax authorities subsequently successfully challenge the transaction as a tax avoidance transaction under the GAAR, both a surcharge and interest charge are avoided. At the time, interest at a daily rate of 0.0273% applied.

Table 5.1: Timeline of key events: General anti-avoidance tax regime in Ireland

1988	<i>P. W. McGrath v. J.E. McDermott (Inspector of Taxes) [1988] IR 258</i> Ruled in favour of the taxpayer UK Ramsay Principle (substance over legal form) ruled as not applicable in Ireland
1989	Section 811 TCA 1997 introduced Finance Act 1989 introduced Ireland's first general anti-avoidance rule (GAAR) Canada, New Zealand and Australia had previously introduced a GAAR, and section 811 incorporates features of the Canadian and the Australian legislation
1990s	Limited use of section 811 by Revenue
2002	Publication of the report of the High Court inspectors on Ansbacher (Cayman) Limited
2003	Statements by Revenue – Increased focus on tackling tax avoidance Finance Act – Introduction of 15 specific anti-avoidance measures Aimed at targeting specific abuses of the tax legislation
2004	Report of Revenue powers group published
2005	European Court of Justice Case – Taxpayers have a right to enter into legitimate tax planning arrangements
2006	Finance Act 2006 – First Amendment to the GAAR and introduction of protective notification (section 811A) <i>The Revenue Commissioners v O'Flynn Construction Co Ltd, John O'Flynn and Michael O'Flynn [2006] ITR 81</i> Section 811 Case – High Court rules in favour of Revenue Appealed to the Supreme Court (February 2011)
2007	Increased activity by Revenue aimed at tackling tax avoidance
2008	Finance Act 2008 – Amendments to section 811A (and indirectly to section 811) No time limit for Revenue to raise assessments under Section 811 ⁵⁹ Increased incentives for making a protective notification
2010	Finance Act 2010 – Sections 817D-R – Mandatory Disclosure Public consultation process on the proposed mandatory disclosure rules
2011	Mandatory disclosure comes into effect <i>O'Flynn Construction Ltd v. The Revenue Commissioners [2011] IESC 47</i> Supreme Court judgment – Ruled in favour of Revenue

⁵⁹ The *Droog* (2011 ITR 65) case successfully challenged this; however, Finance Act 2012 amended the legislation to make it clear that Revenue could raise an assessment under section 811 at any time.

Revenue made clear in its publications that tax advisers “*should ensure that the taxpayers they advise are fully aware of their entitlement to make a Protective Notification and of the benefits of doing so*” (Revenue, 2008⁶⁰ p.5), whilst at the same time stating that “*the law requires that nothing can be inferred by Revenue from the fact that a taxpayer chooses to make a Protective Notification*” (Revenue, 2008⁶¹ p.4).

Prior to 2008, it was reported that only eight had been received (Revenue, 2008⁶²). Given the disappointing uptake in protective notification, Revenue introduced a number of changes two years later in the Finance Act 2008.

5.2.1.2 *Finance Act 2008 amendment to s.811A TCA 1997 and indirectly to s.811 TCA 1997*

Two years after the introduction of protective notification, an amendment was introduced in order to make it more attractive to taxpayers. The surcharge that would be avoided was increased from 10% to 20%. Secondly, the amendment introduced a time limit within which Revenue could form an opinion that the transaction was a tax avoidance transaction under the GAAR. This introduced another incentive for taxpayers to make a protective notification, as they would have certainty after a two-year period that the transaction would not be challenged by Revenue under the GAAR. In making this amendment, the legislation also made clear that an opinion could be raised at any time by Revenue under the GAAR, where a protective notification was not filed. Prior to this amendment, the accounting profession would have argued that the four-year time limit, applied more generally in the tax legislation, would have equally applied to the GAAR. This clarification by Revenue, that its view was that a challenge could be made at any time under the GAAR, resulted in the two-year cut-off period, where a protective notification was made, being more attractive.

Finally, the way in which appeals were determined in respect of notices of opinion issued under the GAAR was amended with, the burden of proof for Revenue lowered for transactions where a protective notification was not previously received.

⁶⁰ Revenue (2008) *Protective Notification – Guidance on Section 811A of the Taxes Consolidation Act 1997 (as amended)*, Revenue Commissioners, July 2008.

⁶¹ Revenue (2008) *Protective Notification – Guidance on Section 811A of the Taxes Consolidation Act 1997 (as amended)*, Revenue Commissioners, July 2008.

⁶² Revenue (2008) *Office of the Revenue Commissioners, Annual Report 2008*.

Each of the amendments introduced in 2008 may be seen as attempting to increase the incentives to file a protective notification. The number of protective notifications has increased, with a total of 490 being received from 2010 to 2014 compared with a total of 75 notifications received between 2007 and 2009. Figure 5.1 sets out the number of protective notifications by each year.

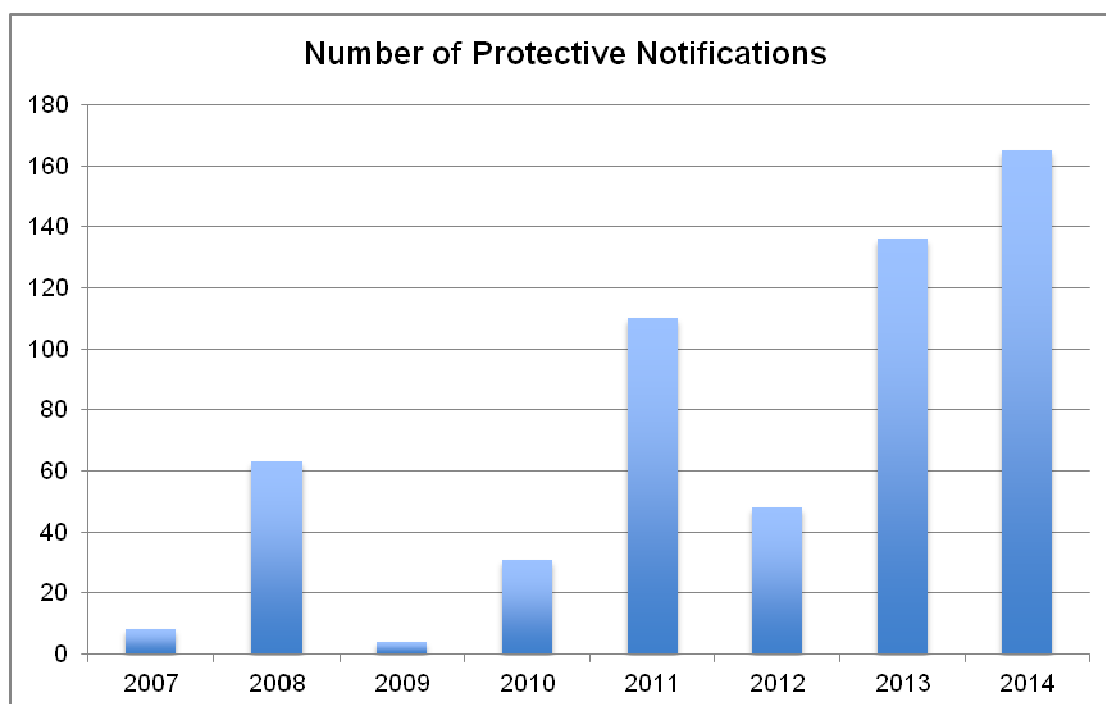


Figure 5.1: Number of protective notifications received by Revenue

Source: Revenue Annual Reports 2007–2014

As can be seen from Figure 5.1, the number of protective notifications remained relatively low in 2008 and 2009 following the Finance Act 2008 amendments. As a result, a further supplementary measure was introduced to enhance the general anti-avoidance tax regime in Ireland, mandatory disclosure.

Figure 5.1 also illustrates the increase in protective notifications filed from 2011 onwards. As discussed in Chapters 6 and 7, interviews with members of the accounting profession did not explain this increase, as the majority of interviewees stated that they had not been involved in a client filing a protective notification. However, an interview with a professional body representative revealed that the perception by the accounting profession that protective notification is underused appears to be incorrect (as a result of the increased number being filed) and that this

increase may be attributable to other non-accountant advisers in the market and tax advisers from the UK operating in Ireland.

5.2.1.3 *Introduction of mandatory disclosure*

Finance Act 2010 introduced mandatory disclosure in Ireland, whereby new legislation required the reporting of certain transactions to Revenue by tax advisers.

Mandatory disclosure is entirely separate from the GAAR, and its introduction may be viewed as Revenue's response to the low level of engagement with protective notification (Fennell, 2011). The distinguishing features between protective notification and mandatory disclosure are, firstly, that mandatory disclosure is not voluntary as was the case for protective notification and, secondly, that mandatory disclosure places a direct onus on the tax adviser to make the report, moving the reporting duty from the taxpayer to the tax adviser.

Mandatory disclosure focuses on certain types of transactions that fall within specified descriptions as set out by Revenue. Not all tax planning falls within the reporting requirements (Fennell, 2011). An important exclusion from mandatory disclosure relates to ordinary tax planning, with the Minister for Finance stating in his Finance Act 2010 speech that:

It is not intended that ordinary, everyday tax advice will come within the regime, nor will the legitimate use of various tax reliefs and incentives be jeopardised. To this end the regulations will include clear guidance so that normal tax advice planning and tax mitigation activities will not be affected by the disclosure rules.

(Minister for Finance, 2010⁶³)

The public response to each of the legislative changes (as articulated through documentary evidence) and the private response (gathered from semi-structured interviews) of the accounting profession are presented in Chapter 6.

A discussion of the impact of the legislative changes on the day-to-day work practices of tax accountants is provided in Chapter 7. From the information disclosed by Revenue in its annual reports, a total of 10 mandatory disclosures were made between 2011 and 2013. Dissatisfaction with the operation of mandatory disclosure

⁶³ Minister for Finance (2010) *Finance Act 2010 Speech*.

was illustrated by changes introduced in the Finance Act 2014, details of which are discussed in Chapter 7.

The key legislative amendments relating to the GAAR have been outlined, answering RQ1a. The methods and strategies deployed by Revenue to implement and enforce these changes to the general anti-avoidance tax regime are now considered.

5.3 Disruptive work of Revenue – Implementation and enforcement of legislative changes (RQ1b)

The strategies deployed by Revenue to tackle tax avoidance may be regarded as an attempt to disrupt the existing institutionalised practice of aggressive tax avoidance (Lawrence and Suddaby, 2006). Institutional theory provides a lens through which we can consider the strategies in greater detail (Lawrence and Suddaby, 2006). As discussed in Chapter 2, the activities of individual and collective actors that result in the creation, reproduction, change and disruption of institutions are referred to as institutional work (Lawrence and Suddaby, 2006). Focusing on institutional work brings to the fore the role played by actors in the institutionalisation process (Lawrence *et al.*, 2011).

Revenue represents a powerful actor, given its role in enforcing tax compliance and setting tax policy. Consequently, institutional work carried out by Revenue, aimed at changing an existing institutional practice of the accounting profession, may be expected to have a strong impact. Therefore, this specific context, whereby a powerful regulatory field actor attempted to disrupt the work of another powerful actor, the accounting profession, is a rich empirical setting to examine disruptive work in practice over an extended time period (2003–2012).

The type of institutional work that is of particular interest in this context is disruptive work. When an institutional arrangement no longer serves the interests of a particular actor, that actor may seek to engage in work to disrupt the institutionalised practice (Lawrence and Suddaby, 2006). For example, where the accounting profession's involvement in the tax system was regarded as not serving the interests of Revenue, the Government and society, because of perceived high levels of tax avoidance being facilitated by tax accountants, those actors sought to disrupt the existing practices by tackling tax avoidance and, hence, eliminating the undesirable practices.

Undermining or attacking the foundations or mechanisms of an institutional arrangement which previously shaped the behaviour of the institution's members is the way in which institutional disruption is achieved (Lawrence and Suddaby, 2006). It has been argued that the accounting profession's involvement in tax avoidance had become an institutionalised norm (Sikka and Hampton, 2005; Sikka, 2008). Revenue sought to disrupt this by engaging in a number of different strategies.

Despite the antecedents of deinstitutionalisation being highlighted in the literature (Oliver, 1992), there are few empirical examples of disruptive work. Where disruptive work has been identified, it has often been in studies of institutional change, rather than the focus of the studies being on disruption itself. However, disruptive work is a unique type of institutional work, and the three forms of disruptive work identified in the literature are set out in Table 5.2.

Table 5.2: Disrupting institutions

Forms of Institutional Work	Definition
Disassociating moral foundations	Disassociating the practice, rule or technology from its moral foundations appropriate within a specific cultural context
Undermining assumptions and beliefs	Decreasing the perceived risks of innovation and differentiation by undermining core assumptions and beliefs
Disconnecting rewards and sanctions	Working through state apparatus to disconnect rewards and sanctions from some set of practices, technologies or rules

Source: Lawrence and Suddaby (2006, p.235)

Attempts by Revenue to tackle tax avoidance over the period 2003 to 2012 are analysed in the context of the existing forms of disruptive work, however due to the extended time-frame over which disruption is being analysed and, as will be seen, the failure of initial attempts to achieve the desired results, Revenue adopted a number of additional work practices, traditionally associated with maintenance and creation work, to bolster its efforts to disrupt the institutionalised practice of aggressive tax avoidance. The cross-over between different types of institutional work has been previously identified in the literature, particularly when examining complex empirical events (Empson *et al.*, 2013). The different disruptive work

practices engaged in by Revenue throughout the period under enquiry are now explored.

5.3.1 Re-associating moral foundations and disconnecting rewards

One of the less direct categories of disruptive work identified in the literature involves disassociating a practice from its moral foundations. However, there are few concrete examples of this type of work in the literature. This is a less direct form of disruptive work, with a subtle and slow undermining of the institutionalised practice being used to achieve disruption (Lawrence and Suddaby, 2006; Ahmadjian and Robinson, 2001). An essential outcome of this form of disruptive work is the reduction in legitimacy of the previously taken-for-granted practice, which is the subject of the disruptive work (Ahmadjian and Robinson, 2001).

The institutional work performed by Revenue was aimed at re-associating or re-establishing moral foundations rather than trying to disassociate them from the provision of tax advice. Revenue used direct interaction with the accounting profession, in a number of speeches to professional firms and bodies, to emphasise the moral foundations and obligations of the accounting profession. Revenue actively sought to persuade and appeal to the traditional professional values of the accounting profession. This may be regarded as an attempt to re-associate the moral foundations of the accounting profession and emphasise the important role played by the accounting profession in the efficient and fair functioning of the tax system.

Elite actors are often seen as the most likely to engage in disassociating work practices (Lawrence and Suddaby, 2006). In the context of the accounting profession, large accounting firms engaged in such a strategy when they altered their organisational form and moved to multi-disciplinary practices (encompassing accounting, consulting and sometimes law) (Greenwood and Suddaby, 2006). In the current study, another elite and powerful actor in the professional field, Revenue, may be regarded as having sufficient ability to tackle tax avoidance in this slow and steady, indirect method. Revenue's regulatory status and power provided it with an ability to re-associate the moral foundations in this case, rather than attempting to disassociate them as has been seen in prior studies.

In addition to attempts to re-associate the moral foundations on which tax advice is provided, Revenue also sought to disconnect the rewards of engaging in aggressive

tax avoidance, by stressing the reputational repercussions for the accounting profession of engaging in such anti-social activities. Despite, disconnecting rewards having been traditionally seen as a more direct form of disruptive work, Revenue used this work practice in a more indirect manner, with Revenue officers referring to the changing public attitudes to aggressive tax planning in their speeches.

These disruptive work practices were the first to be deployed by Revenue. Prior to any legislative action being taken, Revenue sought to improve its working relationship with the accounting profession. It undertook persuasive tactics in an attempt to appeal to traditional professional values. The specific elements of Revenue's attempts to re-associate the moral foundations and disconnect rewards of engaging in aggressive tax avoidance, and the related persuasive techniques used, are now discussed.

5.3.1.1 Common goals of Revenue and the accounting profession

Revenue's attempt to re-associate moral foundations and, as a consequence, encourage greater tax compliance and tackle tax avoidance, included a strong acknowledgment of the common goals of Revenue and the accounting profession. Revenue also emphasised the positive and valued role played by the accounting profession.

In a 2005 speech to a Big Four accounting firm, Revenue stressed that it had a "*common cause with practitioners*" (Revenue, 2005⁶⁴ p.4), albeit acknowledging some of the more difficult aspects of the relationship:

Ladies and gentlemen, we're definitely in the same game. We may on occasion have differing goals and employ different tactics. But I do believe that when it comes to the fundamentals, we are very much on the same side. We are certainly going to disagree at times on the interpretation of elements of the tax code. We may, on occasion, disagree about where the line is between tax efficient business planning and avoidance. But we can agree that a society in which everyone pays their fair share of tax and duty in accordance with law (and I would say in accordance with the intentions of the Oireachtas⁶⁵ where that is clear), is surely an objective worthy of the support of both tax advisers and tax collectors.

(Revenue, 2005⁶⁶, p.1)

⁶⁴ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

⁶⁵ The Irish National Parliament.

⁶⁶ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

The positive role played by the accounting profession in ensuring a fair and functioning tax system was acknowledged by Revenue. Indeed, the accounting profession was described as “*shar[ing] responsibility for tax compliance*” with the tax authorities (Revenue, 2004⁶⁷, p.1), and that taxpayers’ views of tax compliance were “*being positively reinforced by their professional advisers*” (Revenue, 2005⁶⁸, p.3). The influencing effect of the accounting profession on the compliance of taxpayers was stressed on a number of occasions. In particular, the ability of tax advisers to positively influence the behaviour of their clients was emphasised.

...can I begin by re-affirming the importance that Revenue attaches to practitioners such as yourselves as key players in the tax system. Your input is important on a number of fronts: You support your clients in negotiating the complexities of the tax code – and, despite everybody’s best efforts, it is complex. You play a client advocacy role in negotiation with Revenue or in appealing particular decisions that ensures clear and professional representation of your clients’ position. Very importantly from my perspective, you can really influence and guide your clients along the path of compliance. Not only ensuring that they meet their filing and payment obligations, but also encouraging and leading them to meet those obligations in a manner that is honest and comprehensive. Through your largely unpaid (and maybe sometimes unappreciated!) work on representative bodies such as TALC, ITI, and the CCABI you engage very effectively with Revenue in articulating more general concerns about aspects of taxation and influencing the way in which we structure and administer the tax code. And it’s fair to say that to the extent that you play the above roles with efficacy and enthusiasm, you advance the agenda of creating a more general climate of tax compliance in this country.

(Revenue, 2005⁶⁹, pp.1-2)

Nonetheless, reference was also made to aggressive tax planning alongside the positive role played by the profession.

Equally importantly intermediaries have huge potential to influence the tax compliance behaviour of their clients – for good or ill. From a Revenue perspective the upside of this is the support intermediaries give to taxpayers who increasingly seek to work within, not just the letter, but the spirit of the law. The downside of this potential to influence, of course, is the temptation which some intermediaries continue to dangle in front of taxpayers in the form of aggressive tax planning options.

(Revenue, 2007⁷⁰, p.3)

⁶⁷ Revenue (2004) Paper Delivered by Liam Irwin, Collector-General, to the Irish Taxation Institute Annual Conference Galway, 24 April 2004.

⁶⁸ Revenue (2005) *Tax Responsibility* – Address by Revenue Chairman, Frank Daly, at the Leinster Society of Chartered Accountants Published Accounts Awards 2005.

⁶⁹ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners* Address by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

⁷⁰ Revenue (2007) *Tax Advisers – Undermining or enhancing the tax system? Tax Advisers, Revenue Authorities and Taxpayers – Relationships and Interactions*. Sofitel Brussels Europe, 20 November 2007.

Interviews carried out with Revenue officers confirmed the important role played by the accounting profession in encouraging and facilitating tax compliance. The ideal relationship was described by one such officer:

We're both working to ensure that the right tax is paid at the right time. That's what we're looking for. That's what we want. That's what you want. For your client, you want a certainty, to be able to say, look it's done and dusted... If the taxman comes calling you have nothing to worry about, and by the way, in those scenarios it's very likely the taxman is not going to call anyway.

Revenue Officer

The Revenue officer emphasised the common interests of Revenue, the accounting profession and the taxpayer, and that, where an open and transparent relationship exists, this is beneficial to all parties, with intervention by Revenue being minimised.

In addition to setting out the common goals between Revenue and the accounting profession, a second strategy deployed by Revenue in its attempt to re-associate moral foundations was to discuss the issue of tax avoidance with the accounting profession and to make its position clear.

5.3.1.2 *Unacceptable tax avoidance*

The involvement of the accounting profession in facilitating tax avoidance was a feature of a number of Revenue's speeches. This was described by the then Revenue Chairman, as an area, where there is "*no great meeting of minds between Revenue and practitioners*" (Revenue, 2005⁷¹, p.9). Revenue reiterated its position with regard to what constitutes aggressive tax avoidance, stating that "*the line in the sand has a lot to do with whether particular interpretations of tax law depart from what the legislators clearly intended – and I would have to say that Revenue's very long experience of the avoidance battlefield suggests that there is rarely doubt about whether or not certain interpretations breach the spirit of the law*" (Revenue, 2005⁷², p.9).

The issue of interpretation of the tax statutes was raised by the then Revenue Chairman who questioned whether it was acceptable to advise clients within the letter of the law, with no regard for social values or norms:

⁷¹ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

⁷² Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

Defenders of avoidance put the case that tax is merely a matter of law. They argue that 'if it's legal then it's ethical' and that other values or morality are irrelevant. Are they? I believe that most people would find it hard to accept the proposition that just because something can be shown (or artificially structured) to fit within the strict letter of the law it then really doesn't matter if it clearly offends against the spirit and purpose of the law or against the intention of our Oireachtas. I believe in fact that most people act by reference to principles or standards which are not defined in any Act of the Oireachtas but which are based on values derived from a sense of social and civic responsibility and from the 'norms' of the community of which they are part. Their actions have regard to an unwritten code (call it an ethical or moral one if you wish) that is influenced by these wider principles at the expense of a principle of selfish personal gain or advantage.

(Revenue, 2007⁷³, p.10)

Revenue's position having been clearly set out, the rationale for tackling tax avoidance was stressed, stating that "*avoidance offends the spirit and purpose of the law*" and "*it is a key responsibility for Revenue to protect that tax base and, where it is eroded by resort to schemes that rely on 'artificiality' or 'gymnastics' and that seek to set aside the intent of the law – where that is reasonably clear – it is our responsibility, and our intention, to challenge this*" (Revenue, 2005⁷⁴, p.4). This commitment to challenging aggressive tax avoidance is seen in the most recent efforts of Revenue to tackle tax avoidance, which are discussed in section 5.3.4. Revenue may be regarded as trying to repair a broken tax system by their use of institutional work, however in this particular empirical context, it is clear that aggressive tax avoidance was a feature of the tax system since its inception and, therefore, whilst Revenue has utilised features of institutional disruption, maintenance and creation, all of these efforts have been aimed at disrupting the institutionalised practice of aggressive tax avoidance.

The accounting profession was warned that Revenue was committed to tackling tax avoidance. Revenue stressed the wider, societal ramifications where tax avoidance takes place:

...services and programmes are curtailed or the tax burden on everybody else is increased to make up the difference – many others have to make up the shortfall caused by a small few not paying their fair share. Apart from direct erosion of the tax base it is also arguable that avoidance has a corrosive effect on the economy, creating distortionary effects for business and putting pressure on them to join the "avoidance club" to even up the competitive distortion which is created. And of course, the perception that a rather narrow group of individuals or entities create a position in which they can artificially massively reduce their tax bills is offensive to the general population of

⁷³ Revenue (2007) *Meet the Regulators – Sharing Perspectives* Address by Frank Daly, Revenue Chairman, to the ICAI Conference Marriott Hotel, Druid's Glen, Wicklow – 23 and 24 November 2007.

⁷⁴ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners* Address by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

taxpayers and leads to an attitude of "why should I pay when these people are getting away with it" – leading to erosion of compliant activity and an undermining of Revenue's key goal of promoting a compliant culture. You'll notice I'm keeping this at a practical level – I haven't even referred to morality or corporate and individual social responsibility or ethics! – that perhaps is for another day!

(Revenue, 2005⁷⁵, p.9)

The involvement of the accounting profession in aggressive tax avoidance was referred to in interviews with both current and former Revenue officers, with one former officer stating:

...within a certain group of firms, there were certain tax advisers who were well known and honoured in the tax community for having quite brilliant approaches to dealing with Revenue in terms of setting up schemes that were obviously avoidance...

Former Revenue Officer

In addition to Revenue's criticism of the involvement of some members of the accounting profession in facilitating tax avoidance, the opposition to the Government during Dáil debates also criticised the accounting profession's involvement, whilst challenging the Government's position on tackling tax avoidance.

... an industry of accountants exists whose sole purpose in life is to ensure there are people in our society who end up paying little, if any, tax. That the ordinary taxpayer must find out what his or her entitlements are without recourse to such professional advice shows the injustice as well as the imbalance in our taxation system.

(Boyle, 2006⁷⁶, pp.4-5)

The only thing about which one can be sure is that every year for the past nine the small print of the Finance Bill has contained a secret bonanza for those who understand the Masonic rituals of tax avoidance for the super rich.

(Burton, 2006⁷⁷, p.13)

5.3.1.3 Appealing to professional values

The approach of appealing to the professional values of the accounting profession, whilst acknowledging the tensions created through tax avoidance schemes, was a frequent feature in speeches by Revenue, and, subsequently, a key feature of its disruptive work in re-associating moral foundations.

⁷⁵ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address* by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

⁷⁶ Dáil Debates, Finance Bill 2006 Report Stage (7 March 2006) – Mr Dan Boyle (Green Party).

⁷⁷ Dáil Debates, Finance Bill 2006 Second Stage (7 February 2006) – Ms Joan Burton (Labour).

Revenue tended to commence by praising the accounting profession's role in the tax system. For example, *"we have been very well served in Ireland by this dedicated and professional group which operates to high standards of ethics and professional regulation and whose role in promoting economic development and investment should never be underestimated"* (Revenue, 2007⁷⁸, p.8). Revenue also firmly acknowledged the role that the accounting profession played in terms of attracting foreign investment. For example, *"the role of Irish tax professionals has also been hugely important in opening doors for inward investment; this is a reality which has not perhaps always been fully appreciated or sufficiently acknowledged"* (Revenue, 2005⁷⁹, p.3). Although tensions and conflicts are also recognised, Revenue urged the accounting profession to work with Revenue to achieve a fair and effective tax system:

We may on occasion have differing goals and employ different approaches. There are times when there will be tensions. There will certainly be times when we disagree – no doubt for example about where the line is between tax efficient business planning and avoidance – although I would suggest that most of the time all sides know where that line is and when a particular strategy has crossed it! It's best to openly acknowledge these tensions and consider how we can work to minimise their impact on our relationship. I firmly believe that co-operation and mutual understanding are far more productive than antagonism. I believe that a working relationship, defined by mutual respect, by a recognition of the absolute validity of each other's roles and a willingness on both sides to engage in open dialogue can only be to the benefit of all. We can learn from each other, work together and solve problems together without compromising either side. We can be partners rather than adversaries in advancing fair, effective and transparent tax systems that achieve norms and standards that promote compliance, encourage investment and bring clarity and common sense to what is a complex but absolutely fundamental area of life.

(Revenue, 2007⁸⁰, p.9)

5.3.1.4 *Public attitudes to tax avoidance*

The public interest dimension of the accounting profession and its role in the broader society was also emphasised by Revenue, with the detrimental impact of non-compliance and aggressive tax avoidance being stressed:

⁷⁸ Revenue (2007) *Maximising Compliance – Minimising the Burden*, Address by Frank Daly, Revenue Chairman, to the ICAI Regulation Conference Mount Wolseley Hotel, Carlow – 25 November 2005.

⁷⁹ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners* Address by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005.

⁸⁰ Revenue (2007) *Meet the Regulators – Sharing Perspectives* Address by Frank Daly, Revenue Chairman, to the ICAI Conference Marriott Hotel, Druid's Glen, Wicklow – 23 and 24 November 2007.

Before going on to look at how we can work together I would like to reflect for a moment on the responsibilities that we share, as citizens, as practitioners, business people or civil servants with regard to tax compliance. Taxation is not simply a cost, to be minimised or avoided. Taxation is the price we pay for public goods, for security, for infrastructure, for industrial development initiatives and for education. Without these the pursuit of successful business and economic development would simply not be possible. Failure to comply with our revenue obligations is not, therefore, just a matter of breaching regulations, it is depriving our fellow citizens of their rights and selling them short on their legitimate expectations. Put perhaps more directly – failure to comply is an act of theft from our fellow citizens.

(Revenue, 2005⁸¹, p.2)

Public opinion of aggressive tax avoidance was described as having *“joined drink driving, smoking in public offices, sexist language, insurance fraud as once tolerated but no longer acceptable to the vast majority of people”* (Revenue, 2006⁸², p.11). The reputational repercussions for those engaging in tax avoidance schemes were also stressed, with Revenue stating:

... tax in the boardroom is largely driven by reaction to past scandals, impact on shareholders, risk management and the requirements and scrutiny of a tougher regulatory framework (in itself partly a reaction to those same past scandals). Dare I say also driven by a recognition that a damaged reputation will damage your brand with potentially expensive consequences.

(Revenue, 2005⁸³, p.2)

This attempt by Revenue to stress the reputational repercussions of engaging in tax avoidance schemes may be categorised as Revenue attempting to disconnect the rewards for the accounting profession of being involved in aggressive tax avoidance, with the anti-social nature and changing public attitudes to such activities being highlighted.

These on-going disruptive work practices used by Revenue in appealing to the professionalism of the accounting profession, attempting to re-associate the moral foundations and disconnecting rewards, were not met with the desired reduction in aggressive tax avoidance. As a result, they were supplemented by a number of other forms of disruptive work, the first of which, the undermining of assumptions and beliefs, is now discussed.

⁸¹ Revenue (2005) *Maximising Compliance – Minimising the Burden*, Address by Frank Daly, Revenue Chairman, to the ICAI Regulation Conference Mount Wolseley Hotel, Carlow – 25 November 2005.

⁸² Revenue (2006) Address by Revenue Chairman, Frank Daly, to The 9th Annual Céifin Community Conference *“Freedom: Licence or Liberty? Engaging with a transforming Ireland”* 8 November 2006.

⁸³ Revenue (2005) *Tax Responsibility – Address by Revenue Chairman, Frank Daly, at the Leinster Society of Chartered Accountants Published Accounts Awards 2005.*

5.3.2 Undermining assumptions and beliefs

The second form of disruptive work previously identified in the literature is the undermining of assumptions and beliefs (Lawrence and Suddaby, 2006). Once again, this is an indirect form of disruption. The field actor instigating the disruption attempts to remove the cost of changing from one set of taken-for-granted beliefs in order for a new way of acting to be facilitated (Lawrence and Suddaby, 2006). Challenging the taken-for-granted position *vis-à-vis* the accounting profession's role and involvement in tax avoidance was another key strategy in the disruption process. This undermining process was facilitated by the creation of a new institutional arrangement, hence another form of institutional work, creation work was deployed with advocacy work being used to facilitate disruption in this regard.

Revenue may be regarded as engaging in this form of disruptive work when it established what is known as the co-operative compliance initiative, in 2005. The creation of this new institutional arrangement facilitated a closer, more collaborative relationship between Revenue and taxpayers and their advisers. Rather than Revenue being seen on one side and the taxpayer and adviser on the opposite side of the tax compliance process, the co-operative compliance system challenged this taken-for-granted position. It brought Revenue closer to the taxpayer, and subsequently the accounting profession, by managing tax compliance in what was promoted as a mutually beneficial way that reduced uncertainties, was more efficient in terms of resources and developed a relationship based on trust, understanding, openness and transparency (Revenue, 2005⁸⁴). This new environment created a greater sense of collaboration between the parties, and exchange of information was encouraged.

This new arrangement undermined existing assumptions and beliefs regarding how interactions should take place between Revenue, taxpayers and tax advisers, however in addition, co-operative compliance utilised a form of creation work, advocacy. Advocacy has been seen as a first step in creating new institutional arrangements, particularly where less powerful institutional actors are attempting to shape their environment (Lawrence and Suddaby, 2006). In this scenario, we see a powerful regulatory actor, Revenue, utilising advocacy as a means of encouraging

⁸⁴ Revenue (2005) *Annual Report of the Office of the Revenue Commissioners 2005*.

taxpayers and their advisers to re-assess their relationship with the tax authority and to create a more open, transparent and collaborative environment.

The background to the introduction of the co-operative compliance approach is firstly presented, followed by a discussion of the benefits of the initiative to Revenue's pursuit of tackling tax avoidance.

5.3.2.1 *Background to co-operative compliance*

In 2003, Revenue had established a specific unit, known as the Large Cases Division. This dealt with businesses with an annual turnover of more than €125m and individuals believed to have a net worth of more than €50m. The purpose of this specific unit was to counter aggressive tax avoidance, with Revenue acknowledging that the *"most important initial target in the large case area is aggressive [tax] avoidance"* and to gain an understanding of *"the mindset of the tax planner or avoidance scheme designer"* (Moriarty, 2004⁸⁵, as cited in Keena, 2004⁸⁶).

Revenue acknowledged the important influence that tax advisers have on their clients, with the then Head of Large Cases Division stating that: *"Tax advisers have recently been expressing concern about the Large Case Division programme of direct dialogue with large business management. We have, however, insisted that this parallel line of communication with business is a crucially important part of our strategy, which need not undermine the role of the adviser"* (Moriarty, 2004²⁰, as cited in Keena, 2004⁸⁷).

To strengthen Revenue's ability to influence taxpayers, in 2005 the Large Cases Division implemented a new approach to compliance, known as co-operative compliance.

5.3.2.2 *Co-operative compliance approach*

The aim of the co-operative compliance approach was to *"promote a collaborative, mutually beneficial approach to compliance; facilitate more efficient use of business and Revenue resources; reduce tax uncertainty; and promote a relationship between Revenue and business based on trust, mutual understanding, openness and*

⁸⁵ Moriarty, S. (2004) Head of Large Cases, Revenue Commissioners, Influencing Large Taxpayer Compliance, European Tax Meeting in Dublin Castle (G25), 14 April 2004.

⁸⁶ Keena C. (2004) 'Revenue monitors large-turnover firms', *The Irish Times*, 15 April 2004.

⁸⁷ Keena, C. (2004) 'Aggressive' tax avoidance is targeted', *The Irish Times*, 15 April 2004.

transparency” (Revenue, 2005⁸⁸, p.20). Businesses could opt-in to the regime, with 25 of the largest businesses choosing to participate by the end of 2005 (Revenue, 2005⁸⁹).

Having been previously acknowledged by Revenue, the continued importance of the tax adviser was again emphasised, with Revenue stating that *“these agreements are not, in any way, intended to squeeze the tax practitioner out of the relationship between your clients and Revenue. Co-operative compliance agreements do not magically simplify the tax code or eliminate filing obligations. The role of the practitioner will continue to be valued and respected”* (Revenue, 2005⁹⁰, p.5). However, Revenue’s aim of tackling aggressive tax avoidance was also referred to, when the then Revenue Chairman stressed that *“an important aspect of the agreement is that Revenue expects a degree of openness in relation to tax planning strategies where these are in place or are being considered”* (Revenue, 2005⁹¹).

The benefits to be obtained by businesses from engaging in co-operative compliance were clearly articulated by Revenue as including: *“a Revenue approach based on a better understanding of the business and a recognition of the distinction between business-driven and tax-driven decisions; less audit intrusion from Revenue; and greater certainty in relation to tax exposure”* (Revenue, 2005⁹²).

In an interview with a Revenue officer, it became clear how Revenue tried to satisfy itself about the *bona fides* of particular transactions through direct discussions with the taxpayer. The Revenue officer described the good relationship developed through the co-operative compliance programme and the open and transparent discussions that it facilitated:

I had developed a very good relationship and [would] say “look I see you did that, I have a concern that there might be a tax implication for it. Will you take me through it?” And they say “I did that and that and that”, and I’d say “Yes, that’s fine”, and most of the time, yes it’s fine. There’s no problem. “Thanks, I

⁸⁸ Revenue (2005) *Annual Report of the Office of the Revenue Commissioners 2005*.

⁸⁹ Revenue (2005) *Maximising Compliance – Minimising the Burden – Address by Frank Daly, Revenue Chairman, to the ICAI Regulation Conference Mount Wolseley Hotel, Carlow – 25 November 2005*.

⁹⁰ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005*.

⁹¹ Revenue (2005) *Same Game – Differing Goals – Revenue and Tax Practitioners Address by Revenue Chairman, Frank Daly, to the KPMG Tax Conference, 4 November 2005*.

⁹² Revenue (2005) *The Cooperative Approach to Tax Compliance – Revenue Working with Large Business*, September 2005 (<http://www.revenue.ie/en/business/running/large-businesses.html>).

now have clarification.” I now have a clear idea as to why you did it and what happened and okay if there had to be recognition on my part that, yes, it saved them tax, but yes, it was a legitimate business decision, they’re entitled to make it.

Revenue Officer

The work of Revenue in attempting to disrupt the institutionalised practice of engaging in aggressive tax avoidance continued with this strategy of undermining pre-existing assumptions and beliefs, particularly regarding the previously held view of the “them and us” type of relationship between Revenue and the accounting profession. In attempting to achieve this disruption, new institutional arrangements were created, in the form of co-operative compliance, with improved relations being encouraged through the use of advocacy. This new institutional arrangement was intended to gain increased co-operation both from taxpayers and their tax advisers.

Institutional work is focused on the actions of particular actors within an institutional field and not on the achievement of specific outcomes or accomplishments (Lawrence and Suddaby, 2006). This empirical context provides an opportunity to explore institutional work that has failed, i.e., has not achieved the desired level of disruption. The more indirect forms of disruptive work seen in this study, re-associating moral foundations, disconnecting sanctions, undermining assumptions and beliefs and advocacy, did not result in a satisfactory reduction in aggressive tax avoidance. Consequently, Revenue sought to engage in further action following these prior failures and to pursue more direct practices to tackle aggressive tax avoidance, including techniques being introduced to enable the alignment of interests, through the use of incentives for taxpayers and disconnecting sanctions and penalties for both taxpayers and tax advisers. This empirical context, therefore, provides an opportunity to witness the building of layers of disruptive work. As prior actions fail, in whole or in part, resulting in the desired outcome not being achieved, new actions are undertaken in a renewed attempt at achieving the optimal level of disruption. These more direct disruptive practices are now examined.

5.3.3 Enabling an alignment of interests – Use of incentives

Despite Revenue being engaged in efforts to disrupt the institutionalised practice of aggressive tax avoidance, it resorted to a number of institutional work practices that are more often seen as a means of maintaining institutions. Actors engage in maintenance work activities to support, repair or recreate “social mechanisms that

ensure compliance” (Lawrence and Suddaby, 2006, p.230). In this empirical context, Revenue is not attempting to repair the tax system or recreate a relationship with the accounting profession and taxpayers where aggressive tax avoidance previously did not exist. Instead, it is utilising institutional work practices, traditionally associated with maintenance, to disrupt the institutionalised practice of aggressive tax avoidance and create a fairer and more equitable tax system. This empirical context, therefore, provides an opportunity to explore how different forms of institutional work can be used to achieve particular aims and how traditional categories of institutional work may, in fact, be used to achieve different outcomes, e.g., maintenance work being used to achieve disruption.

Revenue introduced a number of incentives in an attempt to tackle tax avoidance. This strategy involved making it more attractive to taxpayers and their advisers to comply with the tax legislation and engage in more acceptable forms of tax planning from both Revenue’s and a societal perspective. These incentives may be regarded as a form of enabling work. Enabling is referred to as the “creation of rules that facilitate, supplement and support institutions” (Lawrence and Suddaby, 2006, p.230). Whilst this form of institutional work has traditionally been seen as a means to ensure the survival of an existing institutional arrangement, the use of enabling work in this empirical context has been used to disrupt and discourage aggressive tax avoidance, by way of introducing incentives for taxpayers to be open and transparent about their tax planning with Revenue and as a result, discourage them and their tax advisers from engaging in aggressive tax planning.

Incentives in the form of (i) avoiding surcharges, (ii) having certainty after a two-year period that a taxpayer’s affairs would not be challenged under the GAAR, and (iii) the more favourable appeals treatment, sought to align the interests of taxpayers and Revenue. Despite the initial disappointing uptake (in terms of the number of protective notifications filed), engagement with the incentives increased, with 136 protective notifications filed in 2013 and 165 in 2014 (up from a total of 106 protective notifications filed in the first four years [2007–2010]). The use of incentives, therefore, may provide Revenue with a greater ability to tackle tax avoidance in the future, encouraging openness and transparency from taxpayers.

The incentives available to taxpayers were introduced alongside new penalties provided for under the tax legislation. Where taxpayers availed of the new incentives, the newly enacted penalties could be avoided. These penalties and

associated incentives were introduced into the tax statute (in 2006 and 2008) to encourage taxpayers to engage with Revenue, and to be open and transparent about their tax affairs. The first penalty and accompanying incentive was introduced in 2006, with the enactment of protective notification, followed by a number of further penalties and incentives introduced in 2008.

5.3.3.1 *Incentives for being open about tax planning*

Protective notification introduced the first incentive for taxpayers to be “*open about their tax planning arrangements*” (Cowen, 2006⁹³, p.9). When initially introduced in 2006, a surcharge of 10% (the newly introduced penalty) would not apply where the taxpayer made a valid protective notification within specified time limits to Revenue, and their tax affairs were later found to be in breach of the GAAR.

Members of Government praised the actions of the Minister for Finance, with one of his coalition members stating that “*the proposed surcharge of 10% of the tax payable on undisclosed transactions that are ultimately determined to be purely tax avoidance transactions should send out a clear signal to those who seek to circumvent the system that they will be penalised if they flout it at the expense of others. Taxpayers who are open about their earnings and tax planning arrangements have nothing to fear from these revised arrangements*” (Parlon, 2006⁹⁴, p.4).

A member of the Minister for Finance’s own party also praised the initiative stating: that it “*is an excellent idea and I can understand why tax consultants oppose it. However, it is just and equitable that people who dream up schemes to avoid tax should inform the Revenue so that if they are found to be in breach, no surcharge would apply. It is not the intention of law makers to provide tax avoidance opportunities so that people can dream up such schemes. The opposite applies and there is a good case for increasing the surcharge*” (Ardagh, 2006⁹⁵, p.20).

The initiative was also welcomed by those in opposition to the Government, with one independent TD⁹⁶ stating: “*The Finance Bill further tightens the noose around tax*

⁹³ Finance Bill 2006 Second Stage (7 February 2006) – Minister for Finance, Brian Cowen.

⁹⁴ Dáil Debates, Finance Bill 2006 Second Stage (Resumed) (8 February 2006) – Mr Tom Parlon (Progressive Democrats).

⁹⁵ Dáil Debates, Finance Bill 2006 Second Stage (Resumed) (8 February 2006) – Mr Sean Ardagh (Fianna Fáil).

⁹⁶ Teachta Dála – a member of Dáil Éireann (equivalent to a Member of Parliament).

evasion and avoidance and it is to be hoped it will contribute towards everyone paying a fair share of tax. That is what it should be about” (Connolly, 2006⁹⁷, p.4).

It is clear from comments both within Government and from those in opposition that any methods attempting to tackle tax avoidance were welcomed and encouraged. Nonetheless, the low levels of protective notifications made (only eight being filed in 2007 after its initial introduction) illustrated the lack of taxpayers’ engagement with the incentive. This is discussed further in Chapter 6. As a result, two years later, the penalties and associated incentives for making a protective notification were strengthened.

5.3.3.2 *Enhancement of the incentives offered to taxpayers*

The initial response to protective notification was described as “*very disappointing with only 8 notifications received and all of these emanating from the same group of companies*” (Department of Finance, 2008⁹⁸, p.3). As a result, amendments were considered “*to make [protective notification] more effective and to provide more safeguards for taxpayers*” (Department of Finance, 2009⁹⁹, p.2). The reference to safeguarding taxpayers emphasises how protective notification was sold to taxpayers as a way to protect themselves and to be rewarded for being open and honest with Revenue. Emphasis was placed on the incentives being offered rather than on the penalties being introduced.

The 2008 changes included an increase of the surcharge from 10% to 20%, thereby providing a greater financial incentive for making a protective notification. In addition, a two-year time limit was introduced, within which Revenue were required to form an opinion under the GAAR in relation to the subject matter of the protective notification. Where no opinion was issued within this two-year time period, the taxpayer would have certainty that no future challenge would arise. The initial response to these enhanced incentives was positive. Revenue received 55 new protective notifications in the five-month period following its enactment. However, many of these notifications related to the same scheme. Therefore, the increased number of protective notifications did not result in the same number of new tax avoidance

⁹⁷ Dáil Debates, Finance Bill 2006 Second Stage (Resumed) (8 February 2006) – Mr Paudge Connolly (Independent).

⁹⁸ Department of Finance, Tax Policy Unit, Tax Strategy Group 0806.

⁹⁹ Department of Finance, Tax Policy Unit, Tax Strategy Group 0908.

schemes coming to the attention of Revenue (Department of Finance, 2008¹⁰⁰). Despite a lack of widespread protective notifications being received, Revenue believed that *“taxpayers and their advisers [were] now treating the provisions of section 811A more seriously and taking the opportunity to avail of the protections afforded by the section”* (Department of Finance, 2008¹⁰¹, p.3). This view of the Department of Finance may be contrasted to the response of the accounting profession to the 2008 changes. It is shown in Chapter 6 that the accounting profession did not alter its view towards protective notification and, as a consequence, engagement did not increase.

In addition to the incentives previously outlined, the change to the way in which appeals were determined in respect of opinions issued under the GAAR was also amended in 2008. The burden of proof for Revenue was lowered where a protective notification was not received, once again attempting to incentivise protective notifications to be filed.

The final incentive introduced was that Revenue reaffirmed its belief that notices of opinion under the GAAR could be raised at any time. Previously, it was argued by tax practitioners that a four-year time limit (applied elsewhere in the tax legislation) was applicable and, therefore, where a notice was not issued under the GAAR within a four-year period, then Revenue were unable to challenge a transaction in such a manner. This clarification by Revenue introduced the fourth and final incentive in 2008, to make protective notification more attractive to taxpayers. It did so, in the event of protective notification being given, by providing a definite two-year window within which Revenue had to challenge a transaction. Where a protective notification was not filed, Revenue now purported that it could challenge a transaction at any time.

The escalating nature of the disruptive work practices of Revenue can be seen. Beginning with less direct strategies of persuasion, appealing to professional values and introducing procedural changes to encourage an open environment for taxpayers, Revenue then resorted to more direct disruption, utilising institutional work, traditionally associated with maintenance of pre-existing institutions, by the introduction of incentives, in order to enable the alignment of its interests with those of taxpayers. Despite these intensifying efforts to tackle tax avoidance, Revenue

¹⁰⁰ Department of Finance, Tax Policy Unit, Tax Strategy Group 0806.

¹⁰¹ Department of Finance, Tax Policy Unit, Tax Strategy Group 0806.

continued with its disruptive work, using the most direct form available, disconnecting sanctions and rewards.

5.3.4 Disconnecting sanctions and rewards

The final category of disruptive work previously identified in the literature is the most direct form of disruption. It involves state actors attempting to disrupt institutions by using state apparatus to disconnect sanctions and rewards from a set of pre-existing practices (Lawrence and Suddaby, 2006). The success of disruptive work practices often rests on the legitimacy of the state's strategies and its capabilities to execute the disruption. The legal system, through the use of court challenge, has been shown to be a critical feature in the state's ability to successfully carry out this form of disruption (Jones, 2001).

Revenue was seen to engage in this final attempt to disrupt the institutionalised practice of aggressive tax avoidance, however despite the primary aim being to disrupt and eradicate this anti-social practice, Revenue may also be regarded as having engaged in a number of institutional work practices, traditionally seen as being associated with institutional maintenance – deterring and policing – and institutional creation – advocacy – in its attempt to achieve the desired level of disruption. The complexity of the empirical events and the various mechanisms used by Revenue to achieve disruption over an extended time-frame highlight the different institutional work practices used and the over-lap between the categories of creation, maintenance and disruption.

In the context of tackling tax avoidance, the case taken by Revenue against O'Flynn Construction, which was heard by both the High Court and the Supreme Court, may be seen as a very direct form of tackling tax avoidance and, therefore, a key disruptive tactic. The majority decision of the Supreme Court endorsed the ability of Revenue to tackle tax avoidance using the GAAR. The decision taken by Revenue to pursue this court challenge may also be regarded as an attempt to deter future occurrences of aggressive tax avoidance, by clearly showing Revenue's willingness to challenge such practices. Deterrence has been identified in contexts aimed at maintaining institutional arrangements, whereby coercive barriers to change are introduced, resulting in the "conscious obedience of institutional actors" (Lawrence and Suddaby, 2006, p.232). In this empirical context, we see deterrence being used

as a means to disrupt aggressive tax avoidance, rather than to encourage or facilitate the maintenance of a pre-existing arrangement.

In addition, to the deterrent effect, the decision relating to the interpretation of tax statutes and the requirement to interpret the legislation in a purposive manner that was contained in the *O'Flynn Construction* judgment (albeit that the scope of this continues to be debated, as discussed in Chapter 7) was a further strengthening of power held by Revenue.

The literature has also identified disruptive techniques where coercive work is undertaken to undermine technical definitions and assumptions on which an institution is formed. This coercive work may involve redefining a set of concepts, resulting in the reconstitution and reconfiguration of relationships between actors (Suchman, 1995). The strategy of increasing power deployed by Revenue may be seen as one method by which it sought to redefine the relationship between itself and the accounting profession, particularly in terms of the introduction of mandatory disclosure and the obligations placed directly on the accounting profession to engage with Revenue in providing information on specific types of transactions. This disruptive work also contains features of policing, an institutional work practice traditionally associated with maintenance activities. Whilst maintenance was not the desired objective, the mandatory disclosure rules, in particular, introduced a new form of monitoring and enforcement that did not previously exist in the tax system, which aimed to disrupt the accounting profession's involvement in aggressive tax avoidance.

The literature has found that large-scale change is easier to achieve when important stakeholders perceive it as being necessary. In the Irish tax context, the recessionary environment may have afforded Revenue with an opportunity to increase its power to tackle tax avoidance and the penalties for those engaged in it. This may be the result of greater societal support and media attention being given to the issue of tax avoidance during such times. This support enabled the creation of new institutional arrangements, in the form of mandatory disclosure, that were intended to support Revenue's overall objective to disrupt aggressive tax avoidance. The creation of these new rules was supported by advocacy, with Revenue being in a strong position to get government support to legislate for these new powers and penalties. Given the successive efforts undertaken by Revenue to disrupt tax avoidance that had not resulted in a desired reduction in aggressive tax avoidance, it

is unsurprising that features of creation, maintenance and disruption work were utilised as part of their strategy.

The final form of disruption under enquiry, encompassing traditional features of creation, maintenance and disruption, is now discussed, focusing on the penalties introduced for the accounting profession and the increase in Revenue's powers following the Supreme Court judgment in the *O'Flynn Construction* case.

5.3.4.1 *Penalties for the accounting profession*

The level of taxpayers' engagement with protective notification was disappointing following the increased incentives introduced in 2008, with only four protective notifications filed in 2009 (Revenue, 2009¹⁰²). As a result, mandatory disclosure was introduced, with a shift in strategy away from incentives being offered to taxpayers towards penalties being placed on tax advisers. The discretionary nature of protective notification and the co-operative compliance framework was also set aside for mandatory disclosure, with a legal obligation being placed on tax advisers to disclose. Mandatory disclosure introduced a form of policing of tax advisers that had previously not existed in the tax system.

The economic collapse that took place at the time of these changes, the oversight role played by the Troika and the general media attention given to tax avoidance meant that tackling aggressive tax avoidance was a critical issue for the Government. This created an environment in which Revenue was able to foster advocacy work, gaining the support of the government in its aim to disrupt aggressive tax avoidance. The Minister for Finance stated that he *"promised to bring forward a package of measures to improve the effectiveness of the Revenue Commissioners in tackling the shadow economy, addressing smuggling and excise frauds, and dealing with tax avoidance schemes, all of which are a matter of acute current public interest and concern"* (Minister for Finance, 2010¹⁰³, p.2).

Mandatory disclosure was regarded as *"complement[ing] the existing range of anti-avoidance measures at the disposal of Revenue"*, with it being *"designed to act as an 'early warning' system for Revenue so that schemes that are considered aggressive*

¹⁰² Annual Report of the Office of the Revenue Commissioners 2009.

¹⁰³ Dáil Debates, Finance Bill 2010 Second Stage (9 February 2010) – Minister for Finance, Brian Lenihan.

can be closed down before significant fiscal damage is done” (Revenue, 2010¹⁰⁴, p.35). It was seen as an essential tool in Revenue’s fight to tackle tax avoidance, with aggressive tax avoidance being deemed *“just as big a risk to the Exchequer as tax evasion”* (Feehily, 2011¹⁰⁵, p.4).

This direct form of disruptive work arose where the accounting profession failed to comply. Financial penalties fell directly on the tax adviser where a report was not made under mandatory disclosure. In addition to the monetary penalty, the reputational risk associated with a failure to comply may also be regarded as a key tactic in this disruptive work practice. Mandatory disclosure represented the first departure in strategy, previously aimed at taxpayers, towards now tackling those advising on tax avoidance schemes. The success of this initiative is discussed in Chapters 6 and 7.

5.3.4.2 *Challenge through the courts*

Over time, the Government of the day tackled tax avoidance by strengthening the powers of Revenue. These powers were initially granted through the introduction of the GAAR in 1989. The GAAR introduced the significant power to Revenue of challenging transactions which, although not contravening specific legislative provisions, were carried out primarily for tax avoidance purposes.

The introduction of the GAAR enabled Revenue to tackle aggressive tax avoidance by challenging tax avoidance transactions in the courts. This disruptive work practice was clearly seen in the *O’Flynn Construction* case¹⁰⁶.

With Revenue’s initial case having been defeated before the Appeals Commissioner, Revenue successfully appealed to the High Court, with the taxpayers then appealing to the Supreme Court. This was the first case concerning the GAAR to be held before the highest court, and a decision in favour of Revenue would, therefore, be a substantial win and represent an increase in its power to tackle tax avoidance.

Revenue was successful at the Supreme Court, with a 3:2 majority ruling. Mr Justice O’Donnell stated that: *“...it is now necessary to consider whether the transaction*

¹⁰⁴ Office of the Revenue Commissioners, Annual Report 2010.

¹⁰⁵ Press Conference Revenue Commissioners Annual Report 2010, Introductory Comments by Commissioner Josephine Feehily, Chairman.

¹⁰⁶ *O’Flynn Construction Ltd v. The Revenue Commissioners [2011] IESC 47.*

constitutes a misuse or abuse of that relief having regard to the purposes for which it was provided” (Para 66). The power gained by Revenue in this case derives from the ruling that the tax legislation is to be interpreted in a purposive, rather than literal, way. However, the profession has debated whether the purposive interpretation extends beyond the misuse or abuse exception (contained in the GAAR) to the entire tax statute. Despite this on-going debate, the decision provides judicial support for Revenue bringing the purpose of the legislation into consideration when tackling tax avoidance and, therefore, may be regarded as an important increase in power and disruptive work practice undertaken by Revenue.

In addition, the ruling by the Supreme Court gave credibility to the ability of the GAAR to challenge aggressive tax avoidance and legitimacy to the use of the GAAR by Revenue. By challenging a tax avoidance transaction before the courts, Revenue publically displayed its commitment to tackling tax avoidance and to using the powers it has to do so.

The disruptive work practices used by Revenue to tackle tax avoidance have been discussed and analysed. Traditional disruptive work has been identified, alongside institutional work, previously seen in the context of institutional creation and maintenance. A summary of the institutional work undertaken by Revenue is presented in Table 5.3.

The escalating nature of Revenue’s disruptive work may be viewed in the context of responsive regulation. The extension of the regulatory pyramid (Braithwaite, 2003a) to take into account attempts to tackle tax avoidance is now discussed.

Table 5.3: Revenue’s disruptive work practices

Form of disruptive work	Specific tactics and strategies used
Re-associating moral foundations	<ul style="list-style-type: none"> • Emphasising the common goals between Revenue and the accounting profession • Stressing the unacceptable nature of tax avoidance • Appealing to professional values
Disassociating rewards	<ul style="list-style-type: none"> • Highlighting public attitudes
Undermining assumptions and beliefs	<ul style="list-style-type: none"> • Introduction of the co-operative compliance approach
Advocacy	<ul style="list-style-type: none"> • Attempting to develop collaborative relations with the accounting profession
Enabling the alignment of interests – Use of incentives	<ul style="list-style-type: none"> • Protective notification – introduction of surcharge and ability to avoid it • Increase in surcharge • Reaffirming belief that a challenge may be raised at any time under the GAAR • Amendment to the grounds for appeal
Disconnecting sanctions and rewards Policing Advocacy	<ul style="list-style-type: none"> • Mandatory disclosure – financial penalties and reputational risk for the accounting profession
Deterring	<ul style="list-style-type: none"> • Successful challenge of tax avoidance transaction through the courts

5.4 Tackling tax avoidance: A pyramid extended

The analysis of disruptive work practices used by Revenue to tackle aggressive tax avoidance and the progressive nature of such practices enables a hierarchy to be demonstrated. Chapter 2 outlined the approach taken by tax authorities to tackle non-compliance and, in particular, the responsive regulation approach and resulting tax compliance pyramid were discussed (Braithwaite, 2003a, 2007). Figure 2.1 in Chapter 2 presented the tax compliance pyramid implemented by the Australian Tax Office (ATO). In particular, the compliance pyramid, identifies enforcement strategies at the base of the pyramid that aim to bring about the greatest impact in terms of encouraging compliance, with the escalating strategies being used to tackle an increasingly smaller group of non-compliant taxpayers.

The literature acknowledges the inability of the existing tax compliance pyramid to deal with tax avoidance (McBarnet, 2003; Freedman, 2011) due to the fact that tax avoidance activity does not directly contravene legislation. Consequently, it is not non-compliance in its traditional sense. The analysis of disruptive work practices used by Revenue to tackle tax avoidance provides an opportunity to revisit the tax compliance pyramid with the aim of incorporating tax avoidance.

Figure 5.2 presents an extension of the traditional tax compliance pyramid, using the data provided by the documentary evidence and the interviews with Revenue officers. Enforcement strategies that may be used by tax authorities to tackle tax avoidance – commencing with less active strategies including persuasion and incentives, leading to more active strategies of penalties and increased powers where the incidence of tax avoidance remains unacceptable – can be built into the pyramid.

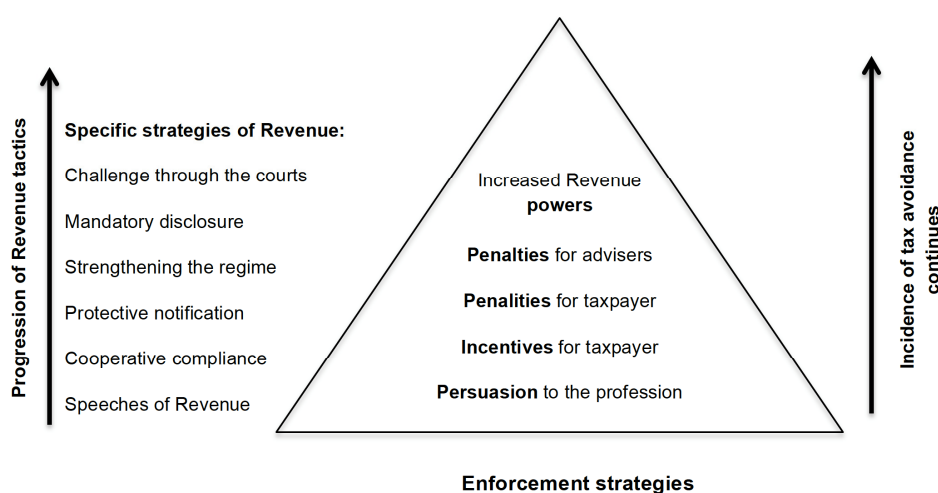


Figure 5.2: Tackling tax avoidance pyramid

The tackling tax avoidance pyramid presents the enforcement strategies identified in the data. The longitudinal nature of the study enabled the various strategies adopted by Revenue to be understood and how these were added to and supplemented over time.

Revenue began attempting to tackle aggressive tax avoidance by using less active enforcement strategies of persuasion, appealing to the professional values of the accounting profession and offering incentives for taxpayers to engage in a more open and co-operative relationship with Revenue. This form of enforcement strategy was displayed in Revenue speeches and in the establishment of co-operative

compliance. In addition to persuasion, incentives were introduced in the form of protective notification (introduced in 2006) to make it more attractive to taxpayers to engage with Revenue.

It would have been hoped by Revenue that these strategies alone would have been sufficient to reduce the incidence of tax avoidance to an acceptable level. However, whilst these strategies were used with the intention of influencing the greatest number of taxpayers and their advisers and encouraging them to disengage with aggressive tax planning, the incidence of tax avoidance remained at an unacceptable level. Consequently, Revenue supplemented these original enforcement strategies, by introducing new enforcement strategies, with the level of severity increasing over time, both for taxpayers and their advisers. Penalties for taxpayers (through protective notification changes in 2008) and penalties for their advisers (through mandatory disclosure) were introduced, with Revenue simultaneously taking action through the courts to tackle the most aggressive incidences of tax avoidance. These supplemental enforcement strategies enabled an increase in Revenue powers, providing the tax authority with legislative and judicial backing to tackle those taxpayers and tax advisers continuing to engage in aggressive tax avoidance. These strategies sit at the top of the tackling tax compliance pyramid as they are intended to be used to impact aggressive tax planning that has not been successfully discouraged through the prior measures in place, e.g., persuasion and incentives, and hence it is hoped will be aimed at directly impacting a smaller section of taxpayers and their tax advisers (on the premise that prior measures have discouraged a larger segment of taxpayers/tax advisers).

The tackling tax avoidance pyramid represents the array of strategies introduced by a tax authority and utilised to address the incidence of tax avoidance. It also presents the escalating manner in which these changes are made overtime as each successive strategy is deemed ineffective, on its own or in conjunction with other existing measures, to bring tax avoidance to an acceptable level.

5.4.1 Theoretical contribution

The tackling tax avoidance pyramid contributes to the tax literature by providing a framework for how tax authorities may challenge unacceptable tax avoidance, indicating the increased initiatives adopted as softer incentives fail to deliver sufficient results on their own. The current tax compliance pyramid does not deal

with this because of the legal nature of tax avoidance. Avoiding tax involves complying with the letter of the law. Consequently, the strategies are not appropriate for dealing with non-compliance.

The significant difference between the enforcement strategies for non-compliance and the enforcement strategies for tackling tax avoidance surrounds the applicability of the strategies. With non-compliance, tax authorities have discretion to move up the tax compliance pyramid as an individual taxpayer becomes less engaged and, hence, the enforcement strategy is required to be intensified. The tackling tax avoidance pyramid operates at a tax system level, showing the longitudinal expansion in strategies available to a tax authority. Where the less active strategies of persuasion and incentives did not achieve the desired widespread reduction in the incidence of aggressive tax avoidance, Revenue increased penalties and its powers more generally, potentially impacting all classes of taxpayer and tax adviser, not just those directly engaging in aggressive tax avoidance. The response of the accounting profession to this widespread approach is discussed in Chapter 6, with its impact on the day-to-day work practices of tax accountants discussed in Chapter 7.

5.4.2 The tackling tax avoidance pyramid and its contribution to disruptive work

The analysis of the enforcement strategies used by Revenue to tackle tax avoidance provides an empirical context in which disruptive work practices may be examined and how they changed or were supplemented over time. As has been discussed in this chapter, the enforcement strategies used by Revenue may be analysed as representing institutional work, carried out by Revenue to disrupt the institutionalised practice of aggressive tax avoidance. A number of traditional disruptive work practices were identified in the empirical setting, however due to the complex relationship between Revenue, taxpayers and their advisers, a number of institutional work practices, previously associated in the literature with institutional creation and maintenance were also identified. This supports prior studies that have found that institutional work often crosses categories and is not as easily categorised into the distinct work of creation, maintenance and disruption (Empson *et al.*, 2013).

Revenue initially used less direct disruptive work, employing strategies of re-associating moral foundations and disconnecting rewards. Over time, more direct practices were added, with Revenue seeking to undermine assumptions and beliefs

regarding the tax system, with advocacy being used to gain the support of the accounting profession in developing more open, collaborative relationships between the tax field actors, i.e., Revenue, taxpayers and tax advisers.

These practices were further supplemented by the use of a traditional maintenance work practice, enabling, to bring about the alignment of interests between Revenue and taxpayers, by introducing incentives into the tax system. When this form of disruptive work was not regarded as having successfully brought about a sufficient reduction in aggressive tax avoidance, it was finally supplemented by the most direct form of disruptive work that has previously been seen, disconnecting sanctions and rewards, where coercive, legal methods are used to enable Revenue to have further powers to tackle taxpayers continuing to engage in aggressive tax avoidance. Within this final category of disruptive work, the use of maintenance and creation practices, were also identified: policing, deterrence and advocacy. Once again, demonstrating the over-lapping of institutional work practices and the ability of maintenance or creation work to be used to achieve the overall aim of institutional disruption.

This study contributes to the institutional work literature by providing a longitudinal analysis of the disruptive work practices used over time by a powerful regulatory actor in the tax field. The ability of different categories of institutional work, such as maintenance and creation work, to be used to supplement traditional disruptive work practices was identified. In addition, the escalating nature, from less direct to more direct techniques (persuasion to challenge through the courts), is clearly shown, albeit that Revenue did not move from one disruptive work practice onto the next, each form of disruptive work practice remained in place, being added to over time as new avenues were explored to tackle the remaining unacceptable levels of aggressive tax avoidance. Figure 5.3 illustrates the disruptive work practices identified (incorporating the traditional disruptive work, together with the maintenance and creation work practices identified in the study) alongside the enforcement strategies and specific Revenue strategies identified in the tackling tax avoidance pyramid.

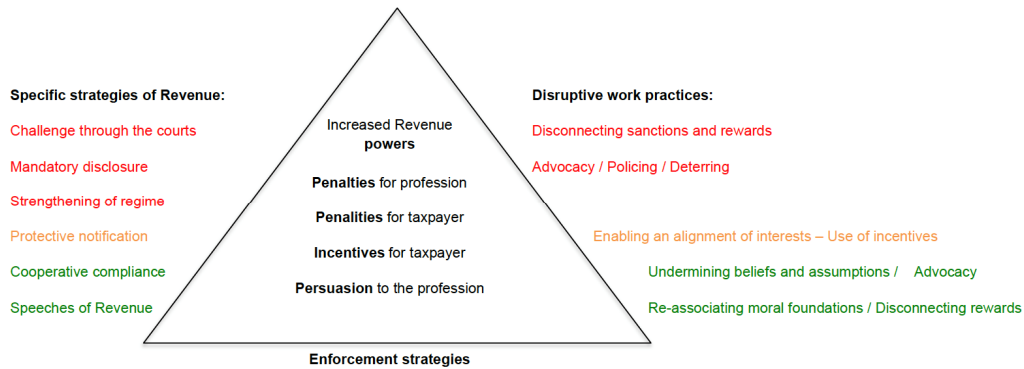


Figure 5.3 Enforcement strategies and disruptive work practices

5.5 Summary and conclusions

This chapter has reported findings relating to RQ1, setting out the legislative amendments to the general anti-avoidance tax regime in Ireland (section 5.2), followed by the disruptive work practices deployed by Revenue to implement and enforce these changes (section 5.3). With two very powerful actors, the tax authority and the accounting profession, a wide range of disruptive work practices were seen to have been used, beginning with less direct forms, building up to and being supplemented by the more direct Revenue use of coercive, legal methods of disruption, when tax avoidance remained at an unacceptable level. This empirical context also enabled elements of institutional work traditionally categorised as being undertaken to achieve institutional creation and maintenance, to be identified as having been utilised together with the traditional forms of disruptive work, in Revenue's attempts to tackle aggressive tax avoidance.

The traditional regulatory pyramid for dealing with non-compliance with tax law has been extended to demonstrate how tax avoidance in the grey areas of the legislation may be tackled, as discussed in section 5.4. This responds to criticism in the literature (McBarnet, 2003; Freedman, 2011) stating that the current tax compliance pyramid does not sufficiently target this group of taxpayers and their advisers. The contribution made by this empirical study to both the tax compliance and disruptive work literatures are presented in sections 5.4.1 and 5.4.2, respectively.

The response of the accounting profession to changes in the general anti-avoidance tax regime is discussed and analysed in Chapter 6, with the impact of the changes on the day-to-day work practices of tax accountants presented in Chapter 7.

Chapter 6: Response of the accounting profession to changes in the general anti-avoidance tax regime

6.1 Introduction

Following from the discussion and analysis of the techniques used by Revenue to tackle aggressive tax avoidance, detailed in Chapter 5, this chapter focuses on the response of the accounting profession to the disruptive work practices of Revenue and answers the following two research questions:

RQ2a: How did the accounting profession respond to the legislative changes/measures introduced to tackle aggressive tax avoidance?

RQ2b: Why did the accounting profession respond in such a manner?

Chapter 4 explained how documentary evidence, semi-structured interviews and focus group data were used to explore these questions in detail. Research Question 2c, which examines the impact of increased regulation on the work practices of tax accountants is dealt with in Chapter 7.

In this chapter, the reaction of the profession to external pressures, specifically (i) protective notification (s.811A), (ii) changes introduced to s.811 and s.811A, (iii) mandatory disclosure and (iv) the *O'Flynn Construction*¹⁰⁷ decision are discussed and analysed. Data collected from documentary evidence and semi-structured interviews with various field actors (including members of the accounting profession, professional body representatives and Revenue officers) are analysed using Oliver's (1991) typology of strategic responses to institutional pressures. Oliver's (1991) framework has been previously used to examine changes in the institutional environment of the accounting profession (Canning and O'Dwyer, 2013; Lander *et al.*, 2013). In particular, its ability to facilitate "consideration of the nature of the strategies available to actors in a regulatory space realignment" has been found (Canning and O'Dwyer, 2013, p.172).

¹⁰⁷ *O'Flynn Construction Ltd v The Revenue Commissioners [2011] IESC 47.*

The accounting profession's response will be shown to depend on the extent to which changes in the regulatory environment impacted it directly. For example, changes to the general anti-avoidance tax regime, which were targeted at taxpayers, elicited minimal reaction from the accounting profession. This contrasts starkly with the extensive engagement and response by the accounting profession to the introduction of mandatory disclosure. This is unsurprising given that mandatory disclosure introduced a reporting requirement directly on the tax adviser and, consequently, created a major change for the accounting profession, described by one interviewee as a "*seismic shift*." However, the reasons behind the changes in response over time demonstrate the critical role played by clients, the media and society.

Oliver's (1991) typology identifies five response categories, moving from less active to more active: acquiescence, compromise, avoidance, defiance and manipulation. Conducting this analysis helps explain how and why the accounting profession responded to changes in the general anti-avoidance tax regime as it did. Table 6.1 illustrates the five strategies, together with the tactics that may be used in relation to each, previously presented in Table 2.4 of Chapter 2.

This study contributes to Oliver's (1991) framework by extending further Canning and O'Dwyer's (2013) contribution. Canning and O'Dwyer (2013) extended the implicit focus of the framework to take into account the perspective of two classes of actor, the regulator and regulatees. Archival data was used to understand the shift in responses over time. In this study, the focus is also on a longitudinal regulatory shift, with the actions of both Revenue and the accounting profession being analysed over time. Documentary evidence did not provide sufficient insight into the response of the accounting profession to regulatory change. Therefore, the public response of the accounting profession (as articulated in the documentary evidence) has been supplemented with interview data, in order to understand the private response.

The chapter begins with the first response strategy identified: defiance. This response was employed in response to the introduction of protective notification and subsequent changes to the general anti-avoidance tax regime in 2008. The reasons for the lack of engagement by the accounting profession are discussed and analysed in section 6.2.

Table 6.1: Strategic responses to institutional processes

Strategies	Tactics	Examples
Acquiesce	Habit	Following invisible, taken-for-granted norms
	Imitate	Mimicking institutional models
	Comply	Obeying rules and accepting norms
Compromise	Balance	Balancing the expectations of multiple constituents
	Pacify	Placating and accommodating institutional elements
	Bargain	Negotiating with institutional stakeholders
Avoid	Conceal	Disguising nonconformity
	Buffer	Loosening institutional attachments
	Escape	Changing goals, activities, or domains
Defy	Dismiss	Ignoring explicit norms and values
	Challenge	Contesting rules and requirements
	Attack	Assaulting the sources of institutional pressure
Manipulate	Co-opt	Importing influential constituents
	Influence	Shaping values and criteria
	Control	Dominating institutional constituents and processes

Source: Oliver (1991, p.152)

The second response strategy identified was defiance/compromise. A high level of engagement was shown by the accounting profession in response to the introduction of mandatory disclosure, as presented in section 6.3. Despite compromise tactics being deployed, they were supplemented by defiant tactics – challenge and dismissal. The approach and strategies adopted by the accounting profession are discussed and the degree of successful resistance to change analysed.

The final response category identified was public acquiescence and private avoidance and defiance. This dichotomy of response by the accounting profession was seen following the Supreme Court decision in the *O'Flynn Construction* case and is discussed and analysed in section 6.4.

A summary of the accounting profession's response strategies is provided in section 6.5. An analysis of why the accounting profession responded as it did is presented in section 6.6, followed by the theoretical contribution of this section of the study in section 6.7.

The chapter concludes with a summary of the results and analysis in section 6.8.

6.2 Defiance by the accounting profession

Defiance has been identified in the literature as a key response strategy where the accounting profession wish to "dilute key aspects of the proposed legislation" (Canning and O'Dwyer, 2013, p.181). Defiant strategies have also been witnessed where the accounting profession appears to be in denial regarding the social and political pressures questioning its ability to self-regulate (Canning and O'Dwyer, 2013).

A response strategy of defiance was identified where changes in the general anti-avoidance tax regime were aimed at the taxpayer, rather than directly at the tax adviser. The interview data provided an insight into the defiance response of the accounting profession to both protective notification and the 2008 changes. A critical feature of these changes to the general anti-avoidance tax regime was that all incentives and penalties were aimed directly at the taxpayer. Non-filing under protective notification had no direct implications for the tax adviser. This enabled the accounting profession to dismiss or ignore them, as it did not feel threatened by the changes, and its power was not undermined.

This defiance strategy of dismissing protective notification was possible in this situation because of the lack of penalties for the accounting profession. Moreover, when risks for clients of not filing a protective notification against making a notification were weighed up, it was perceived that protective notification would almost certainly result in scrutiny by Revenue. Defiance is seen as more likely to occur when an institutional actor believes that it has "little to lose" or when the cost of non-compliance is low (Oliver, 1991, p.157). This was evident when protective notification was introduced, where there was no legal coercion on the accounting profession to comply, and defiance was, therefore, an appropriate response.

6.2.1 Public response of the accounting profession

Protective notification was introduced without any formal consultation with the accounting profession. Although there is no publicly available record of any communications that took place between Revenue and the accounting profession on this matter, protective notification did receive attention both in professional periodicals and newspaper reports. From an analysis of these documentary sources, the views of the profession and its initial response to the legislation can be discerned.

6.2.1.1 *Tactic: Dismissing the regulatory changes*

The initial reaction of the profession was indicated by the then chief executive of the Irish Tax Institute (ITI) stating that the new provision was “*very narrow in its scope*” and would be “*highly focused on extreme cases*” (Keena, 2006¹⁰⁸). This suggests a belief by those within the accounting profession that the General Anti-Avoidance Rule (GAAR) and protective notification related to a small section of the tax community and, therefore, its broad applicability was dismissed.

This belief was reiterated during an interview with a representative of one of the professional bodies, who described aggressive tax avoidance as a “*minority sport*” Professional Body Representative. This opinion may rely on a view that taxpayers have a right to manage their affairs in the most tax efficient manner and, provided that this is achieved within the boundaries of the legislation, it is acceptable. This opinion emphasises the distinction made between acceptable and unacceptable tax avoidance and also the issue, previously raised by the Commission on Taxation that tax avoidance “*...like beauty... [is] in the eye of the beholder*” (Commission on Taxation, 1985, Para 11.25). What is regarded as aggressive tax avoidance by the accounting profession may differ significantly from the view of Revenue. Consequently, the accounting profession may regard aggressive tax avoidance as being a minority issue, when Revenue may remain of the opinion that aggressive tax avoidance is more rampant. This point of view was demonstrated in an article commenting on and analysing the changes introduced by protective notification, which began as follows:

¹⁰⁸ Keena, C. (2006) ‘Bid to flush out tax avoidance’, *The Irish Times*, 3 February 2006.

“The difference between tax avoidance and tax evasion is the thickness of the prison wall” [Tomlin LJ in *Duke of Westminster v. Commissioners of Inland Revenue* [(1933 – 1935) 19 TC 490]] It is perfectly legal to plan one’s affairs within the parameters of the law in order to achieve the best possible tax result.

(Mongan and Murphy, 2006, p.1)¹⁰⁹

The difference of opinion between Revenue and the accounting profession as regard what does, and what does not, constitute unacceptable tax avoidance is an on-going struggle (Revenue, 2005¹¹⁰). However, this was not resolved by protective notification, as Revenue did not receive the level of information regarding tax avoidance schemes it had hoped, because of the low level of engagement (Department of Finance, 2009¹¹¹).

Despite the increased incentives offered to taxpayers to file protective notifications with the 2008 changes to the general anti-avoidance tax regime, the accounting profession remained defiant. It dismissed the incentives offered and did not increase its engagement with protective notification. This dismissal is evidenced by the low number of protective notifications filed in the period immediately following the 2008 changes – a total of four protective notifications were filed in 2009 and 31 in 2010. This response is supported by the interview data that is discussed in section 6.2.2.

The accounting profession’s position regarding the making of a protective notification remained unchanged from its initial dismissal in 2006, as emphasised by a tax adviser at the Irish Tax Institute (ITI) 2008 Annual Conference:

The objective of the FA 2008 amendments is to hugely shift the odds in favor of the use of s811A, and thereby increase the information flow on tax avoidance to the Revenue.

The benefits of the [protective notification] procedure now are:

- No 20% surcharge;
- 2 year time limit on Revenue to issue an Opinion; ·
- No interest; and·
- Absolute interpretation on appeal

These advantages must be weighed against the significantly increased likelihood of the Revenue issuing a s.811 Opinion on receipt of a s.811A [protective notification]. The cynic would comment that if the taxpayer considers his activity might fall within s.811, the Revenue is unlikely to disagree. The filing of a [protective notification] is more likely to result in

¹⁰⁹ Mongan D. and Murphy D. (2006) ‘General anti-avoidance revisited following the changes in Finance Bill 2006’, *Irish Tax Review*, March 2006, pp. 62–67.

¹¹⁰ Tax Responsibility – Address by Revenue Chairman, Frank Daly, at the Leinster Society of Chartered Accountants Published Accounts Awards 2005.

¹¹¹ Department of Finance, Tax Policy Unit, Tax Strategy Group 0908.

the subsequent application of s.811 by the Revenue. The taxpayer is also exposed to a Revenue assertion that the [protective notification] is in some way defective if it fails to give either full details of the transaction (including events that have not yet occurred), or fails to identify all the statutory references that might apply to the technical analysis of the transaction. Conversely, not filing a [protective notification] has the advantage that the onus remains on the Revenue to identify the alleged tax avoidance and its component parts. What is without doubt is that the Finance Act 2008 amendments do move the goal posts in favour of the [protective notification] filing. Whether taxpayers will be prepared to put their heads above the proverbial parapet remains to be seen.

(Kenny, 2008¹¹², p.10)

The dismissal by the accounting profession of the 2008 changes to protective notification is evidenced by the lack of public engagement with the amendments. There was very little commentary in relation to the 2008 changes with the exception of the changes introduced to the appeals procedures that were publicly challenged and which are discussed in section 6.2.1.2.

6.2.1.2 *Tactic: Challenging the amendments*

A second response tactic employed by the accounting profession was to challenge the changes to the general anti-avoidance tax regime, by stressing taxpayers' rights. This is unsurprising given the advocacy role played by tax advisers in the provision of their services. This strategy has been particularly popular in dealing with undesirable changes to the tax system. In doing so, the accounting profession emphasised taxpayers' rights and the requirement to have a tax system that provides a high degree of certainty, whilst remaining as uncomplex as possible. The potential additional cost to taxpayers, as a result of protective notification was raised by Chartered Accountants Ireland following publication of the Finance Bill (Business World, 2006¹¹³). The "*time and resources (financial and otherwise), both with regard to putting together the notification and dealing with any further queries or correspondence from Revenue*" that may result from making a protective notification was also raised as an issue (Mongan, 2006, p.6¹¹⁴).

The advocacy role of the accounting profession was evident in a professional article on the Finance Act 2006 changes. A number of issues were outlined, including

¹¹² Kenny, K. (2008) 'The Irish anti-avoidance landscape', *Irish Tax Institute – Annual Conference*, 25 April 2008.

¹¹³ Business World (2006) 'Finance Bill: Tax experts critical', *Business World*, 3 February 2006.

¹¹⁴ Mongan, D. (2006), 'General anti-avoidance revisited following the changes in Finance Act 2006: Part 2', *Irish Tax Review*, May 2006, pp. 59–62.

concerns regarding the lack of certainty of protective notification and the consequent negative implications for taxpayers:

Some additional clarity in relation to the interaction between the GAAR, and, in particular, the notification procedure under s811A, and the Revenue power to audit transactions, would be useful. Where a transaction is notified under s811, there is no obligation on Revenue to provide any form of advance clearance on the transaction. Therefore, while Revenue has all the details of the transaction from the outset, it still appears to be in a position to audit the transaction and issue a notice of opinion on it at any time in the future.

(Mongan, 2006¹¹⁵, p.5)

The accounting profession's response focused on protecting and defending taxpayers' rights, stating that protective notification "*seems to distort the system unfairly against the taxpayer who chooses to notify the transaction and runs contrary to the principle of certainty in the tax code*" (Mongan, 2006¹¹⁶, p.7). Explicit references to the impact on the accounting profession, or to the implications for the provision of its services were not made in the documentary evidence examined.

The changes to the appeals procedure in 2008 provides the clearest example of the more active tactic of defiance – challenge. The accounting profession formally challenged the changes made to the appeals determination procedures¹¹⁷ on the basis of inequity, constitutional and administrative legal issues.

In particular, the amendments also involve changes to the appeals process, which appear to give rise to constitutional and administrative law issues. The changes also raise equity issues in that it appears as though two taxpayers with exactly the same set of circumstances will now be treated differently at the Appeal Commissioners depending on whether they have lodged a voluntary, non-statutory notice with the Revenue. The Institute is also very concerned at what appears to be an open-ended route of enquiry for Revenue into a taxpayer's affairs, absent any allegation of fraud or negligence, which can be tested by the courts. Should this be the case, it could cause an unacceptable level of uncertainty amongst taxpayers who can never have the legitimate expectation of their tax affairs being closed off. It could also have serious practical consequences for business transactions in that final tax sign off for e.g. sale of a business may no longer be possible.

(ITI, 2008¹¹⁸, p.1)

¹¹⁵ Mongan, D. (2006), 'General anti-avoidance revisited following the changes in Finance Act 2006: Part 2', *Irish Tax Review*, May 2006, pp. 59–62.

¹¹⁶ Mongan, D. (2006), 'General anti-avoidance revisited following the changes in Finance Act 2006: Part 2', *Irish Tax Review*, May 2006, pp. 59–62.

¹¹⁷ Finance Act 2008 introduced an amendment to the treatment of appeals for s.811 cases, with the burden of proof differing depending on whether or not a protective notification was previously filed.

¹¹⁸ Irish Tax Institute (2008), Committee stage changes to sections 811 and 811A, *Special Tax Fax*, 20 February 2008.

There is a lack of publically available documentation surrounding the discussions between the accounting profession and Revenue or the Government in relation to the issue. However, the challenge eventually succeeded, with the appeals issue being repealed in 2013 and the same burden of proof being applied to all taxpayers, regardless of whether or not a protective notification was made. This repeal demonstrates the efficacy of a defiance strategy through a successful challenge by the accounting profession, although it took a prolonged period for the change to be made on this occasion.

In addition to the arguments raised in terms of protecting taxpayers' rights, the accounting profession also mounted its challenge by questioning the constitutionality of the general anti-avoidance tax regime.

As its title suggests, the object of section 811 is to prevent tax avoidance. However, it operates so that, where a taxpayer acts to minimise the tax he must pay, he may – notwithstanding that he has complied with the letter of the tax code – be deemed to be engaged in tax avoidance and be subjected to further taxes. This constitutes an interference with the taxpayer's property rights...

Furthermore, the section creates evidential presumptions in favour of the Revenue Commissioners so that the taxpayer will be required to establish his or her "tax innocence".

(Brady, 2008¹¹⁹, p.3)

The issue of constitutionality has been raised many times since the introduction of the GAAR. For example, Michael McDowell TD, during the Dáil debates in 1989 dealing with the GAAR, stated that he felt the new GAAR "*runs into constitutional difficulties*" because of the powers being granted to Revenue to interpret the statute (Dáil Debates, 1989¹²⁰). However, the Supreme Court in the *O'Flynn Construction* case stated that these arguments were "*obviously misplaced*" (Maguire, 2014, p.35). These comments may have now silenced this line of objection.

The public response of the accounting profession to the 2006 and 2008 changes to the general anti-avoidance tax regime has been presented. The private response, articulated in the semi-structured interviews, illustrates the true extent of the defiance strategy deployed.

¹¹⁹ Brady, P. (2008) 'General anti-avoidance: Time for a re-think?', *Irish Tax Review*, July 2008, pp. 64–67.

¹²⁰ Dáil Debates, Finance Bill, 1989: Second Stage, 18 April 1989.

6.2.2 Private response of the accounting profession

The accounting profession engaged, to some extent, externally with the protective notification rules through formal communications, but the internal response gathered during interviews with members of the accounting profession provided an insight into the on-the-ground defiance engaged in by the profession.

Interviewees, at partner and director level in Big Four and Boutique Tax Practices, were very clear in their opinion of protective notification. One partner described how *“there is a lot of noise at the time when [changes in the GAAR] come in and you know there is probably concern at the time when they come in, I think when the dust settles and when people analyse them, certainly on 811A, I think the concern within my world was pretty low”* Boutique Tax Practice Partner. Although there were other interviewees who shared this view, there were many others who described the lack of engagement and, furthermore, the nonsensical nature as they saw it of protective notification:

I think there was certainly a feeling that if we were putting our hands up over the parapet and saying we think we might have a problem here that the risk was that Revenue would come and look at it.

Big Four Firm Director

You are poking the bear right, I think that is a big part of it, I think that is a piece to it that you are opening yourself up and it's like making an expression of doubt. They have to deal with it, you have put a red flag there and it will be dealt with.

Big Four Firm Director

I think if somebody is going to do something, they do it; they are not going to tell.

Boutique Tax Practice Partner

That is logical, nobody is going to, you know, come up with a, if to call it, a nefarious tax scheme and then say well we will tell the Revenue about it. So, if you are minded to come up with a very aggressive tax scheme, you are just not going to tell them.

Boutique Tax Practice Partner

I think people said we could potentially be within 811 and we don't care about protective notification.... we are not going to sell everything we have, advanced notification to the Revenue, if they wanted that system they could have brought it in like the UK¹²¹.

Boutique Tax Practice Director

¹²¹ The interviewee was referring to the DOTAS (Disclosure of Tax Avoidance Schemes) regime introduced in the UK in 2004. This regime is similar in nature to mandatory disclosure that came into force in Ireland in 2011 and is discussed in section 6.3.1.3.

The focus group participants reiterated the views of interviewees, stating that they had never witnessed a situation where a client was advised to make a protective notification. One participant stated that *“everything always is so heavily caveated anyway, it is already within all the caveats that this could potentially be challenged by Revenue”* Focus Group Participant. These views demonstrate the accounting profession’s lack of engagement with protective notification.

The accounting profession also dismissed the other changes made to protective notification in 2008 (an increased surcharge and a two-year cut-off limit where a notification is made). The interview data showed that these changes were regarded as not providing sufficient incentives to advise their clients to file a protective notification. Interviewees answered a resounding “no” when asked whether the 2008 changes had resulted in them reconsidering advising their clients to make a protective notification.

In relation to the 2008 changes, the focus group participants also agreed that the incentives offered were not sufficient to prompt recommendations for clients to file a protective notification, with one participant commenting that, by the time of the Finance Act 2008 changes, *“everybody had kind of got over the initial shock, figured out a way to deal with it and there was no benefit really from advising”* Focus Group Participant.

In the years that followed, protective notification did not result in the level of engagement desired by Revenue. Eight protective notifications were filed in 2007, followed by 63 in 2008 (with many relating to the same tax scheme). As a result, Revenue introduced its next strategy to tackle tax avoidance, mandatory disclosure, and a new combined response strategy was seen on the part of the accounting profession, defiance/compromise.

6.3 Defiance/compromise by the accounting profession

The introduction of mandatory disclosure by Revenue followed the defiance shown by the accounting profession to both protective notification on its introduction in 2006 and the increased incentives in 2008. Revenue changed its approach by moving from a voluntary disclosure scheme targeted at taxpayers to a mandatory disclosure scheme targeted at tax advisers. In addition, Revenue changed its tactic by inviting consultations on the proposed mandatory disclosure rules. The accounting

profession responded to this invitation in a very direct manner, using the formal consultation process and discussions with Revenue to articulate its concerns and request for amendments to be made to the rules. The approach of both Revenue and the accounting profession is in stark contrast to protective notification as previously discussed, where there was no consultation and a purely defiant response adopted. The consultation process is discussed in section 6.3.1.

The accounting profession engaged in a combined defiance/compromise response strategy. This strategy was appropriate as the accounting profession was presented with mandatory disclosure rules that conflicted with its professional role (of serving client needs and generating revenues). A purely avoidance or defiance approach was inappropriate in this scenario as mandatory disclosure was directly aimed at the accounting profession and placed a direct onus on it to report to Revenue. Where compliance with the new rules did not take place, there were significant reputational and financial implications. The ability to defy or avoid the changes in their entirety, as had previously been witnessed, was not available to the same extent due to the legally binding, direct nature of the reporting obligations now facing the accounting profession.

The accounting profession responded in a strategic manner, outlining the implications of mandatory disclosure for those beyond the accounting profession itself, and it engaged in lengthy submissions and discussions in order to make significant amendments to mandatory disclosure.

The accounting profession was seen to engage in a combined strategy of defiance/compromise. Tactics of both defiance, including challenge and dismissal were witnessed, alongside compromise tactics of balance and bargain. The use of these combined tactics is discussed in sections 6.3.1.1, 6.3.1.2 and 6.3.1.3, respectively.

As will be shown, the accounting profession was successful in achieving a number of concessions and amendments to mandatory disclosure. This is consistent with prior research, which has shown the accounting profession to be successful at influencing new regulations (Malsch and Gendron, 2011). Compromise is regarded as an essential aspect of the regulatory process, with regulators and regulatees being required to come to an agreement regarding the practical meaning of regulations (Hancher and Moran, 1989). Compromise is only an appropriate response where

there is willingness on the part of both actors, in this case Revenue and the accounting profession, to engage in productive discussions. Canning and O'Dwyer (2013) found that, despite the accounting profession's attempt to compromise on proposed changes in its regulatory environment, the regulator's unwillingness to compromise made this strategy redundant, with the accounting profession being required to pursue more active responses.

In the empirical context under enquiry, there was willingness on the part of both Revenue (as demonstrated by the availability of the consultation period) and the accounting profession (as seen in its formal responses to the consultation period) to compromise. However, despite the accounting profession engaging actively in compromise tactics, undertones of challenge and dismissal were also evident.

6.3.1 Consultation period

Mandatory disclosure presented a relatively unique opportunity for the accounting profession to engage in formal consultation with Revenue and the Department of Finance in advance of implementation of a change in Revenue's practice and policy. This process contrasted starkly with prior changes in the GAAR, which were introduced without consultation¹²².

Revenue published a consultation document on 17 June 2010 inviting interested parties to make submissions by 15 September 2010. Included in the consultation document were draft guidance notes, which provided detailed commentary on the draft regulations and how Revenue proposed that they would work in practice.

The objective of mandatory disclosure was reiterated by Revenue stating that its purpose was *"to create an early warning system for the Revenue Commissioners of tax schemes that may be potentially damaging to tax revenues. By obtaining information on tax avoidance schemes at an early stage before a loss of tax revenue has become apparent, the Government can decide, if appropriate, to close them down before significant damage is done"* (Revenue, 2010¹²³, p.1). In addition, Revenue stated: *"It is important to note that the new disclosure rules will not impact*

¹²² For example, the introduction of protective notification (s.811A) in 2006 and the changes made to s.811 and s.811A in 2008.

¹²³ Office of the Revenue Commissioners (2010), *Possible Tax Avoidance Schemes: Revenue Consultation on Mandatory Disclosure of Certain Transactions*, 17 June 2010.

on day-to-day tax advice or on ordinary tax planning that uses standard statutory exemptions and reliefs as intended by the legislature” (Revenue, 2010¹²⁴, p.1).

The response of the accounting profession focused both on the objective of mandatory disclosure and on the impact on the day-to-day work of the accounting profession.

The consultation process was welcomed by the accounting profession. At the outset, reference was made in one submission to the need for advance consultation prior to the publication of legislation. The ITI referred to OECD recommendations, whereby consultation and *“meaningful discussion with interested parties”* should take place during the development of legislation and in advance of a first draft. A request was made for this to be the case for any further amendments to mandatory disclosure (ITI, 2010¹²⁵, p.6).

This consultative approach to developing tax legislation was also referred to in the cover letter to the Consultative Committee of Accountancy Bodies – Ireland’s (CCAB- l’s) submission, when it requested that a special purpose Tax Administration Liaison Committee (TALC) forum be established. It appears that the accounting profession very clearly acknowledged the positive contribution that may be made where it is given the opportunity to discuss and have collaborative involvement in the legislative process.

The accounting profession responded with a degree of urgency to the proposed mandatory disclosure rules, with the ITI formally writing to the Minister for Finance on 23 February 2010, immediately following publication of the Finance Bill, setting out its initial views and concerns regarding the rules. A number of key themes were identified in this opening communication, including thorough emphasis being placed on: (i) societal issues, including commercial and investment implications; (ii) the impact on compliant taxpayers and Revenue; and (iii) the inequality of the proposed treatment of those advisers in a position to claim legal professional privilege.

¹²⁴ Office of the Revenue Commissioners (2010), *Possible Tax Avoidance Schemes: Revenue Consultation on Mandatory Disclosure of Certain Transactions*, 17 June 2010.

¹²⁵ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

The specific tactics used by the accounting profession may be analysed by their relationship to different institutional field levels. The profession began by outlining the potential negative impact of mandatory disclosure on foreign direct investment (FDI). The importance of FDI in the Irish context is both well understood and supported by those in the accounting profession, and the negative impact that any tax regime changes may have on this sector was well articulated.

The second tactic focused on the impact on compliant taxpayers and, in turn, the additional workload for Revenue where over-reporting took place. In such circumstances, Revenue might be required to analyse large volumes of disclosures that might relate to legitimate, ordinary tax planning.

Finally, the impact of mandatory disclosure on the accounting profession and the specific objection to features of the rules that placed its members at a disadvantage *vis-à-vis* the legal profession was strongly resisted. However, as with the first two tactics, the impact of this disadvantage on the accounting profession was, similar to protective notification, linked back to the taxpayer level, with the argument being made that taxpayers should have the ability to choose their tax adviser without any disadvantage arising from choosing a member of the accounting profession rather than a tax lawyer. The combined defiance/compromise tactics used by the accounting profession and the institutional field level targeted are outlined in Figure 6.1 and are discussed and analysed in the following sections.

6.3.1.1 Tactic 1 (balance / challenge): Impact on foreign direct investment

The first combination of tactics used by the accounting profession was balance and challenge. The accounting profession articulated the various stakeholders to whom the rules would potentially impact, i.e., FDI, society, Revenue, compliant taxpayers and the accounting profession. The requirement to tackle tax avoidance whilst maintaining a tax system, that was not unnecessarily complex was also identified by the accounting profession. The ability of FDI to choose between different jurisdictions and the importance of a competitive and certain tax system was emphasised. Respect for the right of taxpayers to engage in tax planning strategies, whilst protecting the tax system from aggressive tax avoidance, was also highlighted.

The importance placed on these aspects underlined the balance required and the responsibility of Revenue to ensure that no aspect of the general anti-avoidance tax regime upset this balance.

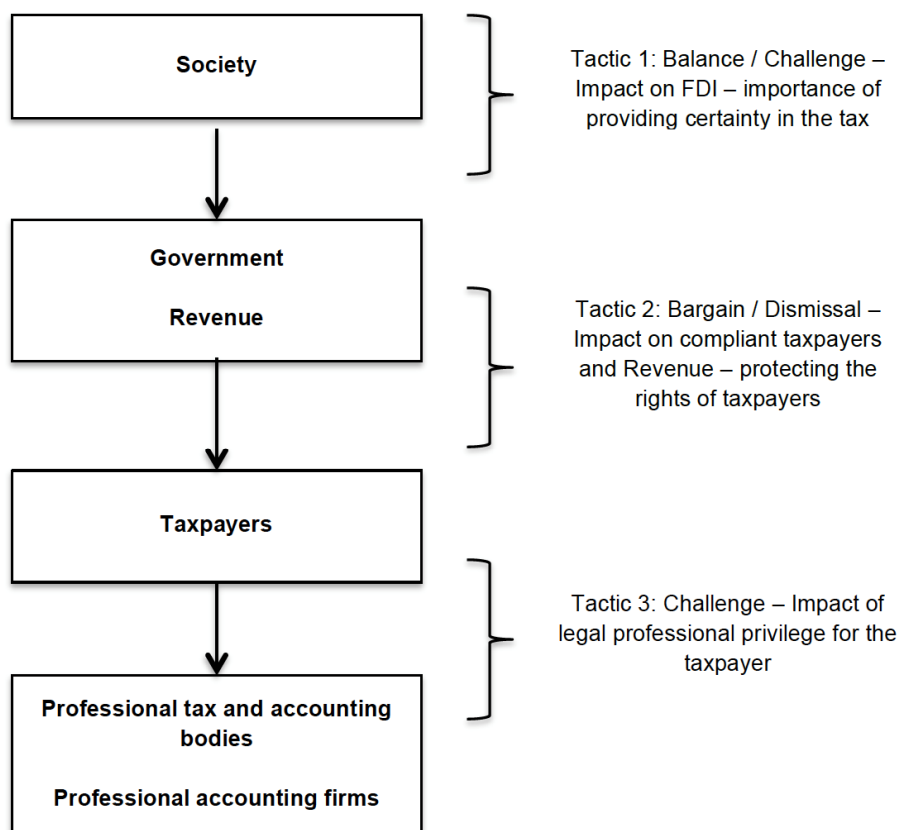


Figure 6.1: Compromise tactics of the accounting profession to the proposed mandatory disclosure rules

Despite the accounting profession presenting the need for balance as part of mandatory disclosure, it also challenged the proposed changes. It emphasised Ireland’s reputation as a good place to do business and the complexity that mandatory disclosure would introduce. These challenging arguments were a key feature of the accounting profession’s formal response. The CCAB-I’s formal submission made reference to prior experiences with changes in regulatory regimes and the potential negative impact on FDI:

The lack of clarity and the lack of a feedback mechanism increases the complexity of doing business in Ireland. Recent conditions laid down by certain regulatory bodies in Ireland that disclosures be made shows how the regime can be used inappropriately and to the detriment of international business looking to locate in Ireland. Every effort must be made to avoid

these unintended consequences. The importance of FDI in Ireland cannot be overestimated and neither can the importance of continuing to grow sustainable domestic businesses both within Ireland and internationally in order to drive job creation.

(CCAB-I, 2010¹²⁶, p.5)

The emphasis placed by the CCAB-I on the common goal of the various actors, i.e., the Government, the Department of Finance, Revenue and the accounting profession, to encourage and facilitate FDI was clearly articulated, and emphasis was placed on the optimal conditions under which foreign companies choose to base themselves in Ireland:

Where there is a choice between two jurisdictions and one offers more certainty than the other, the one with more certainty is chosen – the transparency of the Irish tax system has been one of our advantages in marketing Ireland to international investors and Ireland must remain on the right side of this line. Confirmation of a deadline for a Revenue response would therefore be useful. It would reassure investors that Ireland operates a consistent tax system within clear pre-determined tax laws and rules. This would continue to encourage informed investment decisions in Ireland's favour.

(CCAB-I, 2010¹²⁷, p.5)

The economic environment in which mandatory disclosure was first proposed is an influencing factor. Attracting FDI and retaining multi-national companies was of utmost importance to the recovery of the Irish economy. The accounting profession was, therefore, well positioned to leverage this to encourage concessions and alterations to be made to the proposed mandatory disclosure rules. It was appealing to the common goals of all stakeholders, being aware of the importance of FDI and the accounting profession's role in encouraging and facilitating FDI. The importance placed by the accounting profession on the impact that mandatory disclosure may have on FDI is evidenced by its being the first argument made against the proposed rules (see Figure 6.1).

The ITI commenced its formal response to the consultation with a strong appeal to Revenue to reconsider the way in which changes to the GAAR were being implemented. Whilst thanking Revenue for the opportunity to participate in the consultation process, it added that: *"a broader tax policy discussion needs to take place between all interested parties on government's tax avoidance policy objectives*

¹²⁶ CCAB-I (2010) *CCAB-I Response to the Consultation on Mandatory Disclosure*, 24 August 2010.

¹²⁷ CCAB-I (2010) *CCAB-I Response to the Consultation on Mandatory Disclosure*, 24 August 2010.

and where these sit in terms of our overall tax strategy for the next ten years” (ITI, 2010¹²⁸, p.4). It highlighted the economic importance of FDI, “70% of GDP in the Irish economy relies on foreign direct investment” and echoed the views contained in the CCAB-I’s submission stating that “any reporting regime which is introduced must strike the right balance between targeting aggressive tax avoidance and allowing business the freedom to manage their taxes with certainty in an open environment of support and encouragement” (ITI, 2010¹²⁹, p.4).

The ITI went further than the CCAB-I by focusing on the already “*complex general anti-avoidance provision and protective notification system enshrined in the legislation*” (ITI, 2010¹³⁰, p.4). The additional benefit to be gained from adding “*an additional layer of administrative complexity and uncertainty on to business and investors*” was questioned, especially given the economic circumstances where “*we are striving as a nation to remain competitive and win projects and jobs against strong international competition*” (ITI, 2010¹³¹, p.4).

The accounting profession engaged in formal consultation with Revenue, emphasising the need to balance anti-avoidance tax provisions with the requirement to maintain as uncomplex a tax regime as possible. However, this response also involved an aspect of challenging the proposed changes, albeit that such challenge was facilitated through the consultation process and shrouded within the compromise tactics of the accounting profession.

6.3.1.2 Tactic 2 (bargain / dismissal): Impact on compliant taxpayers and Revenue

As part of the accounting profession’s compromising response to mandatory disclosure, it also engaged successfully in a bargaining tactic, whereby it sought specific reassurances to be made and concessions to be granted. The most

¹²⁸ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

¹²⁹ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

¹³⁰ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

¹³¹ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

important of these concessions related to the exclusion of ordinary day-to-day tax planning.

The fundamental right of taxpayers to engage in “*normal tax planning and tax mitigation*” (ITI, 2010¹³², p.5) was central to this bargaining tactic. This was, in fact, supported by the Minister for Finance in his comments at Committee Stage to the Finance Bill 2010, and these comments were reproduced in the ITI’s formal submission:

The primary purpose of the new disclosure regime is to constitute what can be regarded as an effective early warning system by obtaining information on aggressive tax avoidance schemes at an early stage before a loss of taxation becomes apparent... Let us be clear, it is not the intention of the rules to prevent tax advisers advising clients in the normal way about their tax affairs and the various legitimate tax incentives provided in the tax code. That is entirely acceptable tax planning and will remain so... It is not the intention that ordinary everyday tax advice will come within the regime, nor will the legitimate use of tax reliefs and incentives be jeopardised. To this end the regulations will include clear guidance so that normal tax advice planning and tax mitigation activities will not be affected by the disclosure rules”.
(Select Committee on Finance and the Public Service, 24 February 2010)

In spite of these comments, the accounting profession requested a “*very clear articulation*” (ITI, 2010¹³³, p.5) of this position in the final regulations. The importance of this issue was demonstrated by the ITI stating that it would also be making this request to the Minister for Finance directly. The draft regulations were described as being drafted in such a way as to result in disclosures being required for a “*very broad range of transaction... much broader than was anticipated by the Minister in his Dáil comments*” (ITI, 2010¹³⁴, p.5). This apparent inconsistency was played on by the professional bodies, with the aim of ensuring that significant amendments were made in the final regulations and guidance notes.

The CCAB-I also tackled this issue, although it came at it from a different perspective. It focused on the increase in workload from both the tax practitioners’ and ultimately Revenue’s perspective. As a result of the “*lack of clarity*”, the CCAB-I

¹³² Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

¹³³ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

¹³⁴ Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

contended that this would put “*pressure on tax practitioners to disclose more rather than less, due to reputational considerations and the potential penalties*” (CCAB-I, 2010¹³⁵, p.4). This issue would then ultimately impact on the workload of Revenue, as “*many more matters will be reported to Revenue than may be required... This over-reporting would be counter-productive as it would take Revenue much longer to focus on matters which are of real interest to them*” (CCAB-I, 2010¹³⁶, p.4). This alternative argument had the same aim of seeking boundaries to be placed around what did and did not fall under mandatory disclosure and of providing greater autonomy to the accounting profession in deciding what did and did not constitute ordinary day-to-day tax planning.

This course of action had considerable implications for the proposed mandatory disclosure rules. Several concessions were made, and indeed examples of acceptable tax planning were included in the final guidance notes (Revenue, 2011¹³⁷). This enabled the accounting profession to take greater comfort when deciding what to disclose. This issue has resulted in tensions developing and a perception by Revenue that there are tax advisers not disclosing transactions that it would have originally foreseen as disclosable under the rules.

Revenue officers described this issue in detail during an interview, describing the guidance notes as “*quite generous and more broad than was intended*” Revenue Officer. The differing interpretation of ordinary day-to-day tax planning from Revenue’s and the accounting profession’s perspective has resulted in a lower number of disclosures than originally anticipated by Revenue¹³⁸.

Interviews with tax practitioners supported this finding, with many interviewees stating that mandatory disclosure does not apply to them, as they are, as they perceive it, not involved in aggressive tax planning. This on-the-ground response illustrates dismissal of mandatory disclosure, with members of the accounting profession able to get comfortable that the new reporting regime did not apply to them. Focus group participants reiterated this, stating that, from the participants’

¹³⁵ CCAB-I (2010) *CCAB-I Response to the Consultation on Mandatory Disclosure*, 24 August 2010.

¹³⁶ CCAB-I (2010) *CCAB-I Response to the Consultation on Mandatory Disclosure*, 24 August 2010.

¹³⁷ Office of the Revenue Commissioner (2011), *Guidance Notes on Mandatory Disclosure Regime*, January 2011.

¹³⁸ A total of 10 mandatory disclosures were made from 2011 to 2013 (Source: Office of the Revenue Commissioners, Annual Reports).

experience, Big Four firms are unwilling to engage in very aggressive tax planning, although it was acknowledged that there are a “few rogues,” “specific partners that would push the boundaries,” “but not the majority” Focus Group Participants-

This perception by tax advisers that the tax advice that they are providing is ordinary day-to-day tax planning may have accounted for the relatively limited number of cases reported under mandatory disclosure and the ability of the accounting profession to successfully dismiss the reporting requirements. A sample mandatory disclosure flowchart was presented at a professional seminar, which was confirmed by focus group participants as being representative of the documentation they have seen in place in Big Four firms. A copy of this documentation is reproduced in Appendix XIV.

It can be clearly seen from the flowchart that the overarching question posed is “Does the transaction constitute ‘ordinary day-to-day tax planning?’” where the answer to this question is “yes”, the flowchart brings you to a “Transaction is not disclosable” conclusion. This is the case regardless of whether the answer to all prior questions is ‘yes’; for example, is the tax advantage a main benefit?; is Revenue confidentiality an issue?; is the “premium fee”¹³⁹ hallmark an issue? The ability of a transaction being regarded as ordinary day-to-day tax planning to result in non-disclosure, regardless of the other attributes of the transaction (as demonstrated in the flowchart), depicts the high weighting placed by the accounting profession on the exclusion provided for ordinary day-to-day tax planning and the success of its submissions to Revenue in this regard.

The “comforts” Revenue Officer as they were described by Revenue, contained in the final 2011 guidance notes, were later perceived as being too wide and giving cause to a lack of mandatory disclosures. This issue was addressed in changes to mandatory disclosure and revised guidance notes, which were issued in January 2015. As a result of the timing of these changes, they are beyond the scope of this study, as the impact of the changes could not be assessed at the time of the data collection. However, the impact of these changes will be of great interest to both the accounting profession and Revenue and represents an opportunity for future research, discussed further in Chapter 8.

¹³⁹ The “premium fee” hallmark asks the question as to whether “it might reasonably be expected that the promoter would be able to charge a premium fee for the scheme on the basis of how it gives rise to and secures the expected tax advantage” (Source: Revenue (2011) *Guidance notes on mandatory disclosure regime*, January 2011).

6.3.1.3 *Tactic 3 (challenge): Impact of legal professional privilege for the taxpayer*

The final tactic used by the accounting profession was a challenge tactic in relation to the legal professional privilege (LPP) issue. The accounting profession strongly rejected the inequity created across the two professions by mandatory disclosure, but the issue was somewhat set aside following the success of the other tactics used and the various concessions granted in relation to other aspects of mandatory disclosure. The pacifying response of Revenue to the consultation period enabled the initial challenge to the inequity of LPP to be set aside.

The accounting profession had a significant concern relating to the “*inequity of the legal professional privilege*” exemption provided for under the proposed mandatory disclosure rules. As a result, the professional accounting bodies were very strong in their arguments to “*provide a level playing field*” (CCAB-I, 2010¹⁴⁰, p.5). The arguments made by the accounting profession in its objection to the LPP reiterated previous tactics. The submissions made reference to the accounting profession’s role in supporting tax compliance in Ireland (CCAB-I, 2010¹⁴¹). The integral role played by the accounting profession in helping the tax system function in an efficient and effective manner was a theme reiterated by interviewees, with a number of interviewees expressing dissatisfaction with the recognition received.

Tax advisers seriously do so much to keep the tax system running, it is a self assessment system and frankly, since the tax advisers have been doing the data input, the quality of the assessments coming out has risen hugely.... but the Revenue don't see it like that, Revenue see it as we are the bad guys and we're conspiring against Revenue and Revenue can beat us up at any point because they are the Revenue and they are holier than thou.

Mid-Size Firm Director

The critical role played by the accounting profession in ensuring that tax returns are submitted and tax liabilities paid was used as a means to challenge the competitive advantage being given to the legal profession.

The CCAB-I outlined a number of options in its submission including: the removal of LPP in respect of tax matters, an extension of LPP to all tax advisers or applying the

¹⁴⁰ CCAB-I (2010) *CCAB-I Response to the Consultation on Mandatory Disclosure*, 24 August 2010.

¹⁴¹ CCAB-I (2010) *CCAB-I Response to the Consultation on Mandatory Disclosure*, 24 August 2010.

same reporting obligations to everyone irrespective of LPP; this would be achieved by moving the reporting obligation to the taxpayer. This latter suggestion is of particular interest as it directly contradicts what Revenue was trying to achieve by placing a reporting obligation on the tax adviser, rather than asking the taxpayer to report (as is the case for protective notification). The lack of engagement by the accounting profession with protective notification may explain its suggestion to move the reporting requirement from its members back onto the taxpayer. The profession would remain responsible for explaining the disclosure rules to its clients, but the ultimate decision and responsibility to report would rest with the taxpayer. However, Revenue did not adopt this suggestion, and the reporting requirement remains with the accounting profession.

The ITI, despite having members that include both accounting and legal professionals, also engaged strongly with the LPP issue. Understandably, the ITI did not focus its arguments on the high degree of work performed by accountants in supporting the tax system; rather, it focused its anti-LPP arguments on the market for tax services and the implications for taxpayers. Again, we see a tactic being used, with the ultimate aim of protecting the accounting profession, based on protecting those outside of the profession, the tax-paying public. The ITI argued that *“all taxpayers should be in a position to avail of the best possible taxation advice without any impediment”* (ITI, 2010¹⁴², p.12).

Interviews provided insight into the undocumented discussions between the accounting profession and Revenue. The consultation period and the discussions that took place were described as *“a little bit like asking somebody to give you their experience and impressions of the time they were in hospital to get their tonsils out!”*

Professional Body Representative. Mandatory disclosure was described as having been effectively lifted from the UK DOTAS¹⁴³ regime and presented as a *“fait accompli”*

Professional Body Representative. One of the main issues identified by a representative of one of the professional bodies was that the Irish Revenue could not understand why the Irish professional bodies were not satisfied with mandatory disclosure, where many of its elements were agreed with professional bodies in the UK.

¹⁴² Irish Tax Institute (2010) *Mandatory Disclosure of Certain Transactions – Irish Taxation Institute Response to the Revenue Commissioners’ Consultation Documentation*, September 2010.

¹⁴³ Disclosure of Tax Avoidance Schemes (DOTAS).

The significant issue of difference was the LPP issue. In the UK, the accounting profession had fought for the LPP patch, as the regime had originally excluded lawyers altogether. As the starting point in the UK had been very different, the UK professional accounting bodies were satisfied with the result on LPP. However, in the Irish context, when provided with an approach on LPP from the outset, the professional bodies described it as “*absolutely untenable*” Professional Body Representative. Indeed, the competitive disadvantage that has arisen from the LPP issue continues, with a number of interviewees making reference to law firms having a distinct advantage following the introduction of mandatory disclosure:

I mean you have law firms advertising on the back of not having to make disclosures in the same way as accountancy firms. If you speak to any of the guys in the Big Four, they will tell you that their US clients will sometimes look to get advice from a law firm because they are sensitised to this in the Irish context.

Professional Body Representative

Yes, I mean I certainly do remember that debate coming up and I also remember one particular law firm maybe had a circular, almost selling or marketing themselves on the basis of non-disclosure which I was quite surprised at as that was quite offensive to the Revenue that they would suggest that. And yes there are clearly competition issues in that it has to be a level playing pitch.

Big Four Firm Partner

The LPP issue, as evidenced in the interview data, has not yet been resolved, and the inequity of mandatory disclosure for the accounting profession remains. A possible reason for the lack of continued lobbying and challenge on this point may be the lack of mandatory disclosures made in practice, which is discussed in detail in Chapter 7 and is seen in the following quotation:

...the other point when it came out and that we would have been a little bit concerned with at the time was the legal privilege point, so from an accounting profession point of view, I think we would have been joined up with lobbying with the rest of the guys as it could be seen to potentially put us at a disadvantage, if the legal firms could have relied on professional privilege...I am not sure where that ended up other than I think mandatory disclosure didn't become as big as people thought it might and, therefore, it seemed to be less of an issue...

Big Four Firm Director

The concessions granted, most notably the exclusion for ordinary day-to-day tax planning, allowed the accounting profession to take comfort in relation to what would need to be disclosed, and, hence, the overall impact on its practices was reduced. Following these “wins”, the issue of LPP was no longer viewed as such a

considerable issue, and the initial challenge dissipated. This was highlighted by one interviewee:

...I think mandatory disclosure didn't become as big as people thought it might and, therefore, it seemed to be less of an issue.

Big Four Firm Director

6.3.2 Specific changes sought to mandatory disclosure

In addition to the tactics used by the accounting profession, the profession also sought a variety of specific changes to mandatory disclosure. Appendix XV sets out the range of issues raised by the accounting profession and the outcome of the consultation process. As can be seen, a large number of concessions were made in response to representations by the professional bodies. This was particularly the case in relation to: (i) the carve out for ordinary day-to-day tax planning (as previously discussed), (ii) clarification of what constitutes confidentiality from competitors (e.g., other tax advisers) and Revenue and (iii) the issue of what constitutes a premium fee.

The arguments put forward for each amendment were made in such a way as to emphasise the need to provide certainty (Tactic 1) in order not to discourage FDI and to protect taxpayers' rights (Tactics 2 and 3) by providing for ordinary day-to-day tax planning and amending the LPP inequality.

Mandatory disclosure presented new challenges for the accounting profession, and new tactics were developed in response. The final change to the general anti-avoidance tax regime under consideration is the Supreme Court decision in the *O'Flynn Construction* case. The response of the accounting profession, and in particular the dichotomy between the public and the private response, is discussed and analysed in section 6.4.

6.4 Dichotomous response – public acquiescence and private avoidance/defiance

The contribution made by examining both the public and the private response of the accounting profession is seen to the greatest extent in its response to the *O'Flynn Construction* case, with the public and the private response providing considerable insights into the behaviours of the accounting profession.

6.4.1 Public acquiescence

The initial response of the accounting profession to the *O'Flynn Construction* case was an in-depth analysis of the judgments, followed by much discussion and debate. The decision in the *O'Flynn Construction* case was the first ruling by the Supreme Court concerning the GAAR and consequently was viewed with trepidation by the accounting profession and received considerable attention throughout its time at both the High Court and the Supreme Court. It was clear from interviewees that the decision received considerable attention.

Yes so there would have been an awful lot again of internal communication around it. We have a specific tax technical group that look at things like this and will pull together their considered view and circulate that and that becomes the byline when talking to clients so that we have something, we have a holistic... ...an homogenous view, consistent view across the practice ... so there would have been a lot of stuff around the O'Flynn decision at various stages of it going through.

Big Four Firm Director

The accounting profession's response to the Supreme Court ruling involved an in-depth analysis of the majority and minority judgments presented at a professional body seminar. A paper was presented, followed by discussion and debate amongst those in attendance. The documentary evidence analysed from this professional body seminar represents the written paper presented. However, it should be noted that the author of these comments has acknowledged that he was the tax adviser to O'Flynn Construction (Kenny, 2006¹⁴⁴), and, therefore, it may be fair to say that his comments are not representative of the entire accounting profession.

The majority and the minority judgments are polarised to an extraordinary degree. Rarely will two decisions in any tax case arrive at such diametrically different conclusions. Judge O'Donnell had "no doubt" about the result; Judge McKechnie held that it was "impossible" to hold other than he did.

(Kenny, 2012¹⁴⁵, p.13)

The method followed by each judge in arriving at his decision was discussed, with Mr Justice O'Donnell's majority judgment being referred to as being "*more ideologically*

¹⁴⁴ Kenny, K. (2006) 'The Irish anti-avoidance landscape', *Joint Conference on Key Taxation Issues*, 8 September 2006.

¹⁴⁵ Kenny, K. (2012) 'An update on Section 811/811A developments and case law including O'Flynn decision, Sections 811 & 811A Anti-avoidance and the Mandatory Disclosure Regime – the Comprehensive Update Seminar', 24 January 2012.

based and adopts a generic ‘purposeful’ approach” (Kenny, 2012¹⁴⁶, p.13). In contrast, Mr Justice McKechnie receives praise for the “forensic examination of the relevant legislation” (Kenny, 2012¹⁴⁷, p.13). The majority judgment was criticised on a number of technical grounds, with the commentary being described as “mystifying” (Kenny, 2012¹⁴⁸, p.19). This contrasts starkly with the praise given to the minority judgment, “no summary commentary would do justice to the minority judgment. It is one of the most structured and logical tax judgments I have ever read.... Every conclusion is firmly grounded in a thorough examination of the statutory provisions” (Kenny, 2012¹⁴⁹, p.23).

The judgment was also discussed and debated in professional periodicals, with one of the key issues centring on the interpretation of tax statutes and the potential wide-ranging implications of the majority judgment:

It is not entirely clear if, as a result of the decision, a purposive approach applies more generally to the interpretation of tax statutes in cases of ambiguity etc., but on one reading it would so appear. It is noteworthy that McKechnie J's minority judgment covers the issue of interpreting tax statutes in some detail, but it does not explicitly indorse a purposive approach.

(Ramsay, 2012¹⁵⁰)

Whilst the wider ranging implications of the judgment in terms of purposive interpretation continue to be questioned and debated, it was accepted that:

A purposive approach should be adopted to the application of the misuse/abuse test [and] a purposive approach may also have wider application.

(Ramsay, 2012¹⁵¹)

¹⁴⁶ Kenny, K. (2012) ‘An update on Section 811/811A developments and case law including O’Flynn decision, Sections 811 & 811A Anti-avoidance and the Mandatory Disclosure Regime – the Comprehensive Update Seminar’, 24 January 2012.

¹⁴⁷ Kenny, K. (2012) ‘An update on Section 811/811A developments and case law including O’Flynn decision, Sections 811 & 811A Anti-avoidance and the Mandatory Disclosure Regime – the Comprehensive Update Seminar’, 24 January 2012.

¹⁴⁸ Kenny, K. (2012) ‘An update on Section 811/811A developments and case law including O’Flynn decision, Sections 811 & 811A Anti-avoidance and the Mandatory Disclosure Regime – the Comprehensive Update Seminar’, 24 January 2012.

¹⁴⁹ Kenny, K. (2012) ‘An update on Section 811/811A developments and case law including O’Flynn decision, Sections 811 & 811A Anti-avoidance and the Mandatory Disclosure Regime – the Comprehensive Update Seminar’, 24 January 2012.

¹⁵⁰ Ramsay, C. (2012) ‘The Revenue Commissioners v O’Flynn Construction Company Limited, John O’Flynn and Michael O’Flynn: Supreme Court Decision’, *Irish Tax Review*, 1.

¹⁵¹ Ramsay, C. (2012) ‘The Revenue Commissioners v O’Flynn Construction Company Limited, John O’Flynn and Michael O’Flynn: Supreme Court Decision’, *Irish Tax Review*, 1.

Despite the debate that followed the Supreme Court judgment, the accounting profession, with time, appears to have acquiesced and accepted the application of purposive interpretation as applying at a minimum to the misuse/abuse test contained within the GAAR and with the possibility of a wider application to tax statutes more generally. However, given that the judgment was delivered by the highest court, the accounting profession may be seen as having had no choice, but to acquiesce, in this regard. This response is predicted by Oliver's (1991) framework that states that "acquiescence best serves the organization's interests when legal coercion is high, that is, when the consequences of nonconformity are highly punitive and strictly enforced" (Oliver, 1991, p.168). The higher the degree of legal coercion behind an external pressure, the more likely it is that less resistance will be shown in response. In this study, the accounting profession faced strong legal coercion, as the external pressure was in the form of a legally binding Supreme Court decision. Therefore, it is unsurprising that the least active response strategy was adopted. A similar response has also been witnessed in prior studies using the framework (Clemens and Douglas, 2005; Etherington and Richardson, 1994).

6.4.2 Private avoidance and selective defiance

The accounting profession from a public response perspective was seen to eventually acquiesce to the decision. However, from a private perspective, this acquiescence may be explored in more depth. An avoidance strategy was evident in the private response of the accounting profession. The ability of the accounting profession to buffer itself from the judgment, by its decision not to engage in similarly aggressive tax planning, was evident. In addition, the accounting profession privately challenged the issue of statutory interpretation, illustrating an element of defiance in its private response.

6.4.2.1 *Buffering the accounting profession from aggressive tax planning*

A considerable number of interviewees regarded the *O'Flynn Construction* case as being an exemplary case of aggressive tax avoidance and, hence, saw it as a very strategic decision by Revenue to choose it as the case to challenge. Interviewees took great comfort from the detailed analysis of the case and felt that the particular facts were very aggressive and, therefore, did not concern them.

...the O'Flynn side had literally admitted this was for tax avoidance purposes, there was an element of, from my reading, a bit of a cavalier attitude saying, we have done 24 steps, yes, it is for tax avoidance, but

we fall within this and in some respects if the 811 Section was to stand, that is the type of case you would expect to lose so there was that aspect of it as well.

Big Four Firm Director

I was not surprised that the case was found in favour of the Revenue because if the taxpayer had won, Section 811 would have fallen away. The scheme was very contrived, I believe there were 50 steps involved in the scheme and how directors of a construction company could get the benefit of Export Sales Relief reserves which is an exporting manufacturing process as you well know is very artificial.

Mid-Size Firm Partner

The accounting profession also gained comfort from the fact that the case concerned Export Sales Relief, a provision no longer available, allowing it to regard the judgment as less relevant to their day-to-day activities.

This avoidance strategy involved the accounting profession shielding itself from the ramifications of the *O'Flynn Construction* judgment by tax accountants not involving themselves in tax planning that they regarded as having the same degree of complexity or aggressiveness as that of the Supreme Court case.

I don't deal with transactions of that complexity.

Mid-Size Firm Director

I don't think the O'Flynn structure is something that we would have done in the first instance so you are going... that gives you a bit of comfort, how relevant is it to what we are actually planning.

Big Four Firm Director

The ability of the accounting profession to buffer itself from the *O'Flynn Construction* decision enabled it to adopt the final tactic of defiance in relation to the wider-ranging implications of the judgment concerning statutory interpretation.

6.4.2.2 *Selective defiance of statutory interpretation*

The area that received most attention following the ruling was the issue of statutory interpretation. This was discussed and debated by the accounting profession and the legal profession. The shift from a literal to a purposive interpretation of the tax legislation was at the heart of this debate.

There are two camps out there in relation to that decision. Number one that purposive interpretation now applies to all legislation including tax which people would not have seen applying before. That when it came to tax you'd follow the literal interpretation and purposive interpretation was something else. And now we have a purposive interpretation. If one takes that view and I call it the doctrine of doubtful penalisation, [one]

would have said previously... that if there is a doubt in relation to the imposition of a tax charge, then the benefit of the doubt lies with the taxpayer. Now as a result of purposive interpretation if one takes the view that one has to look at the purpose of the legislation then the concept of doubtful penalisation is no longer with us. So that is a seismic shift.

Big Four Firm Director

Despite the Supreme Court decision, there remains uncertainty and disagreement regarding the extent to which purposive interpretation applies.

The purposive interpretation is the be all and end all from a tax perspective...There are other people's views; one is a Senior Counsel that recently said that no you still apply the literal interpretation... So there are differing views out there. Anyway that's a debate that won't end until we get another case on O'Flynn.

Big Four Firm Director

Chapter 7 explores the impact of the *O'Flynn Construction* decision in further detail and discusses the views of interviewees and focus group participants regarding the issues encountered when an attempt is made to purposively interpret the tax legislation.

Despite the uncertainty created and criticism of the judgment from some commentators within the accounting profession, the interview data indicate that the public acquiescence shown by the accounting profession is less as a result of it complying or agreeing with the Supreme Court decision, especially in terms of the application of purposive interpretation of tax law, and more as a result of the changes in the tax planning landscape that has arisen in the post-*O'Flynn Construction* era. This changing tax planning landscape is discussed further in Chapter 7.

In addition, the accounting profession appears to be waiting on future s.811 cases to come before the courts in order to relieve the perceived uncertainty created by the *O'Flynn Construction* decision and to see how the courts deal with future cases regarding the GAAR.

Now I think there are a few other 811 cases in the works at the moment so I think practitioners are very keen to see what is going to happen with those and what way some of those get decided because it's a really interesting area and it is one where until that case there hadn't really been any significant case law so I think that if we had a cluster of these cases together I think it would allow us better understand what potentially can happen when these cases get that far....So I think there is uncertainty around aspects of 811 and I think actually probably it would take a fair amount more case law until some of these nuances are teased out.

Big Four Firm Partner

The public acquiescence shown by the accounting profession may in fact be only short lived, as the profession is very much anticipating future case law regarding the application and interpretation of s.811. Future legal cases will, therefore, determine the lasting impact of the *O'Flynn Construction* Supreme Court decision.

6.5 How the accounting profession responded to Revenue's strategies to tackle tax avoidance

The response of the accounting profession to changes in the general anti-avoidance tax regime has been varied, with the strategies adopted differing depending on the external challenges being faced. Throughout all such challenges, the accounting profession has actively responded, with an avoidance strategy only being partially adopted as a private response to the *O'Flynn Construction* decision. This is consistent with prior results, showing the accounting profession actively responding to changes in its environment (Lander *et al.*, 2013). Table 6.2 provides a summary of the strategic responses of the accounting profession found in this study.

As the accounting profession responded to each external change, Revenue analysed that response and followed up with a further response on its part. This can particularly be seen with the move towards mandatory disclosure, following a disappointing level of submissions under protective notification. Figure 6.2 sets out the enforcement strategies used by Revenue as discussed and analysed in Chapter 5 and maps the strategic responses of the accounting profession evidenced through the analysis of documentary evidence and interview data.

Table 6.2: Examples of strategic responses of the accounting profession

Strategic response by the accounting profession	Tactic used	Example of response
Defiance	Dismissal	<p>The accounting profession did not regard the incentives offered by protective notification to be sufficient to advise its clients to disclose.</p> <p>The additional incentives, introduced in 2008, to engage with protective notification were dismissed by the accounting profession as not being sufficient for it to recommend its clients to disclose.</p> <p>Ability to dismiss mandatory disclosure due to comforts given in relation to the exclusion of ordinary day-to-day tax planning.</p>
	Challenge	<p>The changes made to the appeals determination were challenged by the accounting profession, with the amendment being repealed in 2013.</p> <p>Challenged the negative impact that the changes may have on foreign direct investment.</p> <p>Initial challenge of LPP, however eventual abandonment of challenge due to “wins” in other areas.</p> <p>The majority judgment of the <i>O’Flynn Construction</i> case is challenged on technical grounds and the applicability of purposive interpretation debated.</p>
Avoidance	Buffer	<p>The accounting profession buffered itself from the <i>O’Flynn Construction</i> decision by not engaging in what it regarded as transactions with a similar level of aggressiveness.</p>
Compromise	Balance	<p>Emphasis on requirement to balance tackling tax avoidance whilst minimising the uncertainty and complexity of the tax system.</p>
	Bargain	<p>Successful exclusion of ordinary day-to-day tax planning.</p> <p>Success of arguments made for amendments to be made to the confidentiality, premium fee and standardised documentation hallmarks.</p>
Acquiescence	Comply	<p>The legally binding Supreme Court decision, together with the changing tax planning environment and reduction in aggressive tax planning (as evidenced in interview data), resulted in the profession acquiescing to the <i>O’Flynn Construction</i> decision.</p>

Figure 6.2 extends the tackling tax avoidance pyramid, discussed in section 5.4 of Chapter 5, by including the strategic response of the accounting profession to each enforcement strategy. As Revenue supplemented its efforts to tackle aggressive tax avoidance with new enforcement strategies, the accounting profession changed its response. The enforcement strategies of persuasion, followed by incentives and penalties for the taxpayer, enabled the accounting profession to adopt a defiant response. Overtime the response of the accounting profession was required to adapt, including the adoption of compromise tactics to complement a continuing degree of defiance. Finally, the most recent efforts of Revenue to tackle tax avoidance, including the court challenge of aggressive tax avoidance schemes, elicited an eventual public acquiescence to the Supreme Court judgment. However, privately, the accounting profession attempted to buffer itself from the debated changes to statutory interpretation and challenged the wide-ranging application of the judgment. The tactics used by the accounting profession and the reasons for the shift in response overtime are explored further in section 6.6.

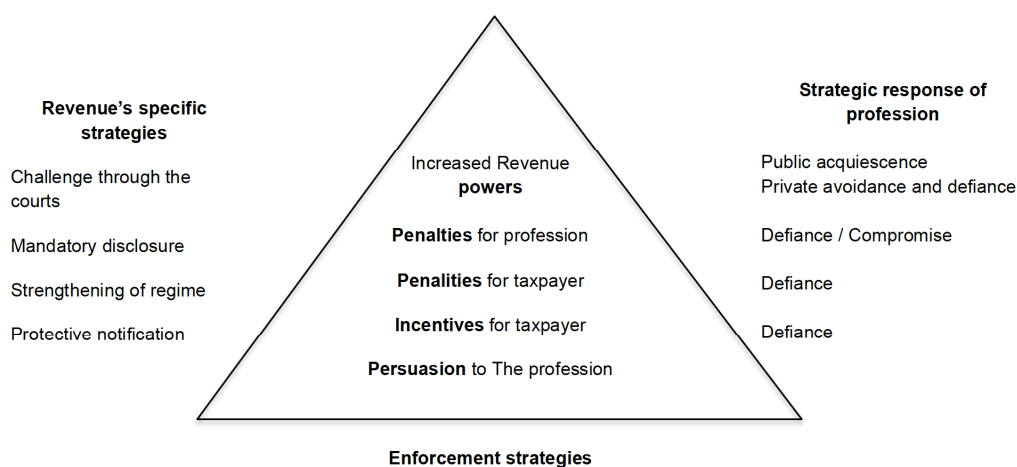


Figure 6.2: Strategic responses of the accounting profession to changes in regulation to tackle tax avoidance

6.6 Why the accounting profession responded in such a manner

The preceding analysis of how the accounting profession responded to changes in the general anti-avoidance tax regime identified a range of responses, from defiance

to avoidance, compromise and acquiescence. This section moves to examine RQ2b: Why did the accounting profession respond in such a manner?

Oliver (1991), along with providing a framework of strategic responses to institutional change, also provides predictors for the type of response strategy that will be used. These predictors are based on the antecedents to institutional change, including the cause, constituents, content, control and context of the particular situation. This section discusses the antecedents as they apply to the accounting profession and how the antecedents changed over the course of the amendments to the general anti-avoidance tax regime.

6.6.1 Cause of the regulatory changes – tackling tax avoidance

The changes in the general anti-avoidance tax regime were introduced as a means of tackling – what was regarded by Revenue – as unacceptable tax avoidance. Whereas this issue may have been of equal importance to Revenue throughout the period of regulatory change being examined in this chapter (2006–2012), the social context in which the accounting profession and its clients were operating changed considerably over this time period, with the level of public and media attention given to tax avoidance increasing significantly¹⁵². As a result of this increased attention, taxpayers may be regarded as having faced an increased risk to their reputation and tax advisers may be regarded as having faced increased threats to their legitimacy and reputation, where involvement in aggressive tax avoidance was identified. Social attitudes to aggressive tax avoidance, particularly during the recessionary period in Ireland (commencing in 2008), supported Revenue's attempts to curb the level of involvement in, what may be regarded, as an anti-social activity.

Figure 6.3 illustrates the increasing attention placed on tax avoidance by both the media and, hence, the general public. As a result of this increased attention, taxpayers and tax advisers faced increased legitimacy and reputational threats overtime. The changes in the general anti-avoidance tax regime from 2006–2012 responded to the increased attention placed both by Revenue and society at tackling aggressive tax avoidance. Finally, the response strategy deployed by the accounting profession in response to each regulatory change is identified.

¹⁵² In the five-year period from 2003 to 2007, 282 newspaper articles contained the search terms “tax avoidance”, “anti avoidance” or “section 811” compared with 468 articles in 2012.

2006

2012

Protective notification

Changes to regime

Mandatory disclosure

O'Flynn Construction case

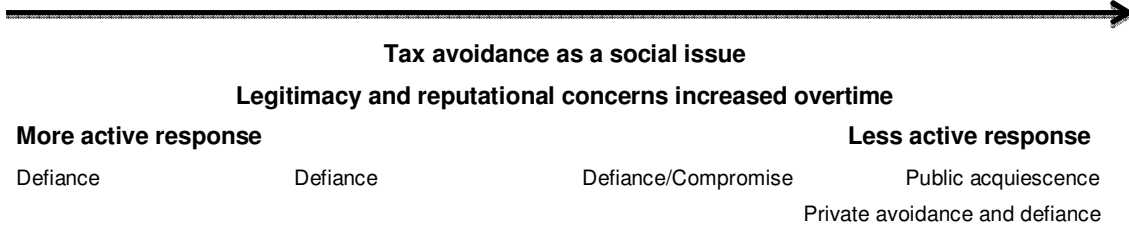


Figure 6.3 Changing attitudes to tax avoidance

The interview data and explanations for the private response to each of the regulatory changes provided the ability to attribute the change in response to the concerns of taxpayers, and hence clients of the accounting profession, of being involved in aggressive tax planning.

The impact of public opinion on tax avoidance resulted in a shift in the tax planning landscape, with clients less willing to engage in what could be viewed as aggressive tax avoidance. The interview data conveyed this view and highlighted the responsibility of the accounting profession to act in its clients' best interests; this meant not advising on schemes that could be challenged by Revenue, as this was undesirable from a client's perspective. This view was reiterated in the focus group, with one participant stating:

I think an awful lot more companies are definitely taking the view that they don't want to do anything that is going to end up in the papers or maybe damage their reputation and certainly from our perspective we wouldn't do anything that we were advised was even slightly aggressive, we would definitely fall on the more conservative side.

Focus Group Participant

The reputational risks associated with aggressive tax planning were articulated by both interviewees and focus group participants. The changing attitude of taxpayers and the increasing concern for their reputation are discussed in further detail in Chapter 7.

The accounting profession remained committed to its clients and acted in accordance with their interests, which, as time moved from 2006 to 2012, was to publically acquiesce to Revenue's strategies for tackling tax avoidance and privately avoid engaging in aggressive tax planning.

It may have been regarded as socially desirable for the accounting profession to publically acquiesce and privately buffer itself, but it may also have been regarded as a good practice economically, with clients becoming increasingly concerned with their reputation. Therefore, aligning the actions of the accounting profession and its response to regulatory changes with its client interests was seen as important from the perspective of the accounting profession's revenue generation. The avoidance tactic of buffering also illustrates the accounting profession's desire to ensure that it was not impacted by the changing attitude of the courts to tax avoidance.

Oliver (1991) predicts that more active response strategies may be deployed where there are lower economic benefits accruing from compliance. The accounting profession, in this study, may be regarded as having adopted a more active response when the regulatory changes imposed penalties on taxpayers, however where the introduction of mandatory disclosure meant that the profession itself would face financial penalties for non-disclosure, a similar purely defiant response was not appropriate and, hence, the adoption of both compromise and defiant tactics.

Within the accounting profession itself, there was a divergence in the responses of accounting firms to mandatory disclosure, which are discussed in Chapter 7. The smaller firms were more likely to adopt a defiant response, in particular, ignoring the regulatory changes, on the basis that they were not applicable to the operations of the firm. In contrast, the larger accounting firms, e.g. the Big Four and Mid-Size firms, were more likely to engage with the regulatory changes, introducing risk management changes and educating staff. This response, once again, supports Oliver's (1991) predictions that smaller actors, e.g. the Boutique Tax Practices and Small Accounting Firms, are more likely to engage in more active resistance strategies.

6.6.2 Constituents of the institutional pressures

The overt constituents of institutional change may be regarded as the Government and Revenue, with the changes introduced to the general anti-avoidance tax regime exerting pressures on the accounting profession to refrain from engaging in aggressive tax avoidance. However, there is, again, another group that may have had a greater impact on the changing response strategy of the accounting profession – its clients. As clients' risk appetites reduced and reputational concerns increased,

pressure was exerted on the accounting profession to provide advice in a more socially acceptable manner.

The early changes to the general anti-avoidance tax regime were greeted with defiance, with the accounting profession continuing to advise clients and to meet their needs. However, as client attitudes shifted, we see a shift in the response strategy of the accounting profession. This led to a situation where the accounting profession's responsibility to meet client needs and to act in their best interests aligned with the desires of Revenue.

A group that appeared to be absent from influencing the attitudes of the accounting profession to tax avoidance is the professional bodies. In contrast to the UK, where the professional bodies have actively engaged in the tax avoidance debate and in setting guidelines for members, the professional bodies in Ireland did not see it as their role to tell their members what they should and should not engage in. One professional body representative felt that it was not acceptable to ask its members to sign up to an unenforceable code of conduct that would apply across a range of professional bodies, which *"individually have different regulatory standards and different accountabilities for their regulation... I wasn't going to drag down the professional standards of this body by asking them to sign up to something which didn't apply equally and at the same rigour across all of the member bodies"* Professional Body Representative. The resistance to engaging along the lines of the UK professional bodies was reiterated by another professional body representative:

I think it would cause a lot of angst and a lot of confusion, to try and put down markers for the profession, to say that they cannot engage in types of activity... but if they engage in it, there are consequences, but it is not our job to police it, it is not, we are not Revenue.

Professional Body Representative

It was acknowledged by one professional body representative that the UK were an *"outlier"* in relation to the pronouncements made and that it *"would be absolutely unique in terms of other countries in Europe... they have taken a different approach really from any other country that I have seen even other countries where the governments have kind of taken a very hard line like Australia on tax avoidance, you still wouldn't see the professional bodies telling their members what they should or shouldn't be doing on tax avoidance"* Professional Body Representative.

The interview data with professional body representatives indicate that it fell primarily to Revenue and the accounting profession's clients (influenced by changing social attitudes) to exert pressure on the accounting profession to reduce the incidence of advice surrounding unacceptable tax avoidance.

6.6.3 Content of the changes to the general anti-avoidance tax regime

The regulatory changes were introduced with the aim of reducing the incidence of tax avoidance. The response of an institution to external pressures often depends on the extent to which the change is consistent with its norms and goals. The professional goal of the accounting profession may be viewed as meeting its clients' needs and, therefore, as has been previously discussed, as clients' attitudes to tax avoidance changed over the period of regulatory change, so too did the response of the accounting profession. In addition, the degree of compromise adopted by the profession in response to mandatory disclosure indicates the importance placed by the profession on engaging with a change that would impact it directly in terms of having both financial and reputational repercussions, where a breach of the rules arose. Therefore, it was in the accounting profession's interest to engage with mandatory disclosure and to encourage changes to be made that were consistent with its goals.

6.6.4 Control of the regulatory changes – legal coercion

The pressures exerted on the accounting profession to curb its involvement in tax avoidance schemes increased over the period of regulatory change. The initial changes were discretionary, allowing taxpayers (clients of the accounting profession) to protect themselves from a surcharge where they provided details of their tax planning to Revenue. As a result of the voluntary nature of protective notification, the response of the accounting profession was to dismiss it. However, the regulatory changes moved from discretionary to obligatory, with legal coercion being used in the form of mandatory disclosure to force the accounting profession to make details of tax avoidance schemes known to Revenue. In addition, Revenue used the court system to achieve a legally binding decision on the GAAR, and this resulted in the purposive interpretation of the tax statutes, a system that favours Revenue's position on tackling tax avoidance.

We can see that as Revenue used legal methods to tackle tax avoidance and, hence, the consequences became more severe, the regulatory changes were more

effective, with less active response strategies being used by the accounting profession. In line with Oliver's (1991) predictions, the accounting profession engaged in less active response strategies as more legally, coercive measures were introduced. This in itself may be unsurprising, however what is of particular interest is the true cause of such shifts in response.

The interview data highlighted the changing societal attitudes to tax avoidance and the subsequent desire of clients not to be associated with aggressive tax planning as the key driving forces behind the accounting profession's response, as opposed to the legal coercion exerted on the accounting profession. This finding supports Oliver's (1991) prediction that where changes are "widely and voluntarily diffused and supported within the regulator's and regulatee's environment, a lower likelihood of the adoption of active, resistant strategies is expected" (Canning and O'Dwyer, 2013, p.173). The desire of clients to behave in a socially acceptable manner and, hence, refrain from engaging in aggressive tax avoidance, supported the less active response of the accounting profession.

6.6.5 Environmental context of regulatory changes

Oliver's (1991) framework refers to the context in which institutional changes are being sought in terms of environmental uncertainty and the interconnectedness of those within the institutional field. It is predicted in the framework that, where environmental uncertainty and interconnectedness are lower, resistance is greater. In terms of the accounting profession, environmental uncertainty initially increased over the course of the regulatory changes, with the economic environment becoming increasingly uncertain during the period of regulatory change. In addition, the attitude of the courts to tax avoidance was also uncertain and continues to be, as evidenced by interview participants. This increased uncertainty in the environment led to less active resistance from the accounting profession.

In terms of interconnectedness, the accounting profession operates within an institutional field that includes the regulatory agency – Revenue – and its clients. The relationship with Revenue appears to have deteriorated over the course of the regulatory changes and was raised by the majority of interviewees and members of the focus group. There is an increasing "them and us" approach, with frustrations continually increasing (this deteriorating relationship with Revenue is discussed in detail in Chapter 7). Despite this situation increasing over the course of the

regulatory changes, greater resistance as predicted by Oliver's (1991) framework was not evidenced. The reason for this lack of consistency with the framework appears to be the pressure to meet client demands, which shifted over the course of the regulatory changes, with reputational issues becoming increasingly important, hence leading to less active response strategies.

6.7 Theoretical contribution

This study extends prior work that has examined the response of the accounting profession to changes in its regulatory environment (Canning and O'Dwyer, 2013). Canning and O'Dwyer (2013) adopted a two-way approach to examining institutional pressures, with the response of the accounting profession and the follow-up response of the regulator being examined using archival data. Canning and O'Dwyer (2013) extended Oliver's (1991) framework by taking a model designed to examine the response of one class of actor and extending it beyond this implicit focus to examine the interactive dimension of regulatory change. This study adopts a similar methodology, with a longitudinal approach being adopted and examining (i) how and why the accounting profession responded to each instance of regulatory change and (ii) the escalating response of Revenue as outlined and discussed in Chapter 5. However, it must be noted that a limitation of this study is the inability to establish a clear cause-and-effect relationship between the actions of the regulator (and subsequent escalation of regulatory changes) and the response of the accounting profession. This is due to the complexity of the empirical setting and the ability of multiple field actors, other than those directly examined, e.g., the government, taxpayers, non-accountant tax advisers, to influence regulatory changes.

The contribution made by this study, therefore, lies in the depth of analysis, providing evidence of both the public and the private response of the accounting profession, using documentary evidence to understand how the accounting profession responded publically, and the data from semi-structured interviews and a focus group to understand the private response. Understanding the on-the-ground response is an important aspect in evaluating the success of a regulatory regime change, and the interview and focus group data enabled rich insights to be gained.

In terms of the predictors of response strategies, the empirical context provides an understanding of issues, beyond the direct regulatory measures, that can impact the institutional response. The semi-structured interviews and focus group allowed

insights to be gained into why the profession responded to particular regulatory changes. Despite the increasing legal coercion being placed on the accounting profession, which would predict less active response strategies, it became clear that the driving force to compromise and acquiesce was client demands. This would not have been revealed through archival documentary analysis alone. Examining changes in an institutional environment from multiple perspectives and identifying pressures other than those directly being examined is essential to discover the motivation and rationale behind an actor's response (Etherington and Richardson, 1994; Clemens and Douglas, 2005).

Prior studies found results that conflicted with the original framework, where large firms were seen to adopt more active resistance strategies; however, it was noted that this may vary depending on the empirical context under review (Clemens and Douglas, 2005; Clemens and Papadakis, 2008). This study found the Big Four accounting firms engaged more with the changes in the general anti-avoidance tax regime than smaller firms. As discussed in Chapter 7, the Big Four and Mid-Size firms responded to the introduction of mandatory disclosure by implementing specific procedures and risk management changes. This was not evidenced from interviews with smaller practices, e.g., Boutique Tax Practices and Small Accounting Firms.

Despite the accounting profession previously having been seen to engage in manipulation strategies, even where social legitimacy was threatened (Canning and O'Dwyer, 2013), this study does not identify manipulation by the accounting profession, even though its autonomy may also have been regarded as being diminished following changes in the general anti-avoidance tax regime. This absence of manipulation may be attributed to a change in client attitudes and the requirement of clients to retain their social legitimacy. Therefore, although the accounting profession itself may not have been concerned with changes in public attitudes, because of their clients' concern, a less active response was adopted. This complexity in the professional accounting field and the requirement to delve into the rationale behind the chosen response is illustrated in this study.

6.8 Summary and conclusions

This chapter has discussed and analysed the public and the private response of the accounting profession to changes in the general anti-avoidance tax regime. A range of responses was identified, from defiance, to avoidance, compromise and

acquiescence. Section 6.2 discussed the defiant response of the accounting profession to protective notification and the 2008 changes. This defiance was responded to by Revenue introducing mandatory disclosure through legislative changes, with the reporting onus shifting from the taxpayer to the tax adviser. The combined defiance/compromise response strategy adopted by the accounting profession was discussed and analysed in section 6.3, presenting the specific tactics used: balance/challenge, bargain/dismissal and challenge. The dichotomous response to the *O'Flynn Construction* Supreme Court decision was analysed in section 6.4. The eventual public acquiescence contrasted with the private avoidance and defiance evidenced in the interview and focus group data. Section 6.5 provided an overview of the various response strategies and tactics employed by the accounting profession.

The motivation and rationale behind the accounting profession's response was examined in section 6.6, with the shift from more active to less active resistance being attributed to the management of client needs and expectations. The importance of understanding the multiple factors in the institutional field and the in-depth explanations for resistance strategies through the collection of semi-structured interview and focus group data, in addition to the documentary evidence, is illustrated. The theoretical contribution made by the study of the public and the private response of the accounting profession to changes in the general anti-avoidance tax regime was presented in section 6.7.

The public and the private response of the accounting profession to changes in its environment leads to the final research question:

RQ2c: Did the legislative amendments and related measures result in changes to the day-to-day work practices of tax accountants and, if so, how have the work practices been impacted?

This research question is discussed and analysed in Chapter 7, using data collected from the semi-structured interviews. In addition, data collected from the focus group is used to add completeness to the findings and also to confirm the views of the interview participants. This analysis focuses primarily on the private impact of the changes in the general anti-avoidance tax regime on the type of advice tax accountants are willing to give. This analysis enables a more nuanced and detailed understanding to be gained.

Chapter 7: Maintenance work of the accounting profession

7.1 Introduction

The response of the accounting profession to changes in the general anti-avoidance tax regime was presented in Chapter 6. The discussion and analysis now moves from the professional level to the organisational level, with the work practices of tax accountants within individual accounting firms being analysed, to answer RQ2c:

RQ2c: Did the legislative amendments and related measures result in changes to the day-to-day work practices of tax accountants and, if so, how have the work practices been impacted?

The empirical context provides an opportunity to examine the ways in which a profession responded to external pressures, specifically those exerted by a powerful regulatory actor, Revenue. These external pressures are characterised as disruptive work. Chapter 5 outlined the disruptive work practices of Revenue in tackling tax avoidance. Chapter 6 discussed and analysed the specific strategies deployed by the accounting profession in response to those external pressures. This chapter moves from the professional field level into the individual accounting firm-level, with interviews and focus group data enabling the analysis to be deepened. The ways in which the accounting firms sought to prevent disruption of their work practices is considered, using institutional maintenance work as a theoretical lens to guide the analysis.

When an institution comes under pressure, it may respond by engaging in institutional work in order to maintain its *status quo*. Early examples of maintenance work were identified in studies of institutional change. However, more recently, studies have focused specifically on identifying maintenance work practices undertaken in response to internal or external pressures. A number of forms of institutional work have been identified in the studies of institutional change, including

enabling, policing, deterring, valourising and demonising, mythologising, and embedding and routinising (Lawrence and Suddaby, 2006).

Table 7.1: Maintaining institutions

Forms of institutional work	Definition
Enabling work	The creation of rules that facilitate, supplement and support institutions, such as the creation of authorizing agents or diverting resources
Policing	Ensuring compliance through enforcement, auditing and monitoring
Deterring	Establishing coercive barriers to institutional change
Valourising and demonising	Providing for public consumption positive and negative examples that illustrates the normative foundations of an institution
Mythologising	Preserving the normative underpinnings of an institution by creating and sustaining myths regarding its history
Embedding and routinising	Actively infusing the normative foundations of an institution into the participants' day to day routines and organizational practices

Source: Lawrence and Suddaby (2006, p.230)

In more recent studies, three main categories of maintenance work have been developed: custodial work, negotiation work and reflexive normalisation work (Lok and De Rond, 2013). Custodial work involves rule creation, socialisation, monitoring and enforcement activities (Lawrence and Suddaby, 2006; Lawrence *et al.*, 2009; Lok and De Rond, 2013). Negotiation work enables the maintenance of existing practices through on-going discussions and negotiations between organisational members (Lok and De Rond, 2013; Barley, 2008). Finally, reflexive normalisation work refers to the way that “people tend to account for unexpected interactions in terms of a general background of knowledge and expectancies in such a way that it normalizes these interactions” (Lok and De Rond, 2013, p.188). This form of maintenance work allows divergent behaviours to be temporarily smoothed over (Lok and De Rond, 2013).

Lok and De Rond differentiated between minor and major breakdowns and the different maintenance work engaged in as a consequence. In this study, the disruptive work practices carried out by Revenue are interpreted as being minor or major breakdowns depending on the individual tax accountant or firm-type to which

they belong. For example, tax accountants working in large accounting firms placed much greater importance on the mandatory disclosure changes than those in smaller accounting firms, providing an example of where a disruptive work practice was viewed as major or minor depending on firm-type. Another example of differing interpretations was the reaction to the *O'Flynn Construction* judgment. The importance placed on this judgment and the work practice implications differed between tax accountants within individual firms and firm-types. As a result of these different interpretations amongst different tax accountants, a distinction between major and minor breakdowns has not been made in this study.

Institutional maintenance has been used previously as an analytical tool in professional contexts, including in the medical and legal professions (Currie *et al.*, 2012; Micelotta and Washington, 2013; Empson *et al.*, 2013). In these prior examinations, the professional groups used overt maintenance tactics to emphasise the importance of the elite professionals and the need to protect the profession (Currie *et al.*, 2012; Micelotta and Washington, 2013). The maintenance work of the accounting profession has also been the subject of enquiry (Hayne and Free, 2014; Ramirez, 2013). However, the tax accountant context provides the opportunity to explore external regulation and societal pressures being exerted on a professional group to disrupt the way in which they performed their day-to-day work practices and, as a result, the subtle and covert maintenance work engaged in by this professional group may be examined.

Prior studies of institutional work have identified the ability of institutional work to cross-categories, from creation, to maintenance, and disruption (Hayne and Free, 2014; Empson *et al.*, 2013). As identified in Chapter 5, traditional forms of creation and maintenance work were used together with traditional disruptive work practices in Revenue's efforts to disrupt the institutionalised practice of aggressive tax avoidance. The work of tax accountants in attempting to maintain their *status quo* also involved the use of multiple maintenance work practices, with a number of forms of creation work identified as assisting in this process.

The first clear example of maintenance work by the accounting profession was demonstrated by its negotiation work in response to mandatory disclosure. Despite attempts by Revenue to tackle tax avoidance through the introduction of protective notification, this did not require active maintenance work on the part of tax accountants, as the provisions were aimed at the taxpayer. In contrast, mandatory

disclosure introduced a direct onus on tax advisers and, hence, maintenance work was required. A form of creation work, advocacy, was also identified in the formal consultation process engaged in by Revenue and tax accountants. The ability of tax accountants to maintain their work practices through negotiating for the specific inclusion of the ordinary day-to-day tax planning exemption in the Revenue guidance notes to mandatory disclosure is discussed in section 7.2. In addition, the achievement of the ordinary, day-to-day tax planning exemption resulted in policing and enabling work being undertaken by tax accountants, ensuring that the exemption for non-disclosure was met and undertaking significant analysis of tax advice given to achieve the required comfort level for the purposes of availing of this exemption.

Section 7.3 presents the second category of maintenance work undertaken by the accounting profession in response to changes in the general anti-avoidance tax regime – custodial work. Changes in risk management procedures and the adoption of centralised responses reinforced the maintenance of current work practices. Within the custodial work practices, elements of policing and enabling work were identified. In addition, education, traditionally a form of creation work, was identified in the internal training introduced across the large accounting firms. Finally, embedding and routinising practices were used to diffuse the centralised risk management approach to mandatory disclosure.

The on-going internal debate surrounding the scope of the *O'Flynn Construction*¹⁵³ Supreme Court decision has resulted in a varied impact on work practices, with dichotomous views co-existing within the accounting profession. However, a number of tax accountants appear to have utilised this on-going debate as a form of enabling work, to facilitate them maintaining the *status quo* in terms of how they advise their clients. This form of maintenance work is outlined in section 7.4.

The final category of maintenance work identified was reflexive normalisation work. This specifically involved realigning the interests of the accounting profession and its clients and also utilised valourising and demonising work in terms of emphasising the reputational repercussions for taxpayers and their advisers of engaging in aggressive tax avoidance. These final maintenance work practices are discussed in section 7.5.

¹⁵³ *O'Flynn Construction and Ors v. Revenue Commissioners 2011 IESC 47.*

The consequences of the disruptive work of Revenue and maintenance work of tax accountants is analysed in section 7.6. The relationship between the accounting profession and Revenue was raised by the majority of interviewees and focus group participants as a major factor impacting work practices. This deteriorating relationship and the perceived causes of the change in the relationship are presented in section 7.6.1. This is followed in section 7.6.2 by a discussion of the public service ethos of tax accountants and the views of interview and focus group participants of their role in serving the public interest, a central feature of professionalism.

The theoretical, methodological and tax policy contributions of this section of the study are discussed in section 7.7. The chapter concludes with a summary of the main findings in section 7.8.

7.2 Consultation on mandatory disclosure: Tax accountants' negotiation work

The first clear evidence of maintenance work carried out by the accounting profession was its response to the introduction of mandatory disclosure. This legislative change impacted the accounting profession directly, with the reporting onus moving from the taxpayer to the tax adviser. In response, institutional maintenance, in the form of negotiation work, was clearly undertaken by tax accountants. This was achieved using the formal consultation process for mandatory disclosure. Embedded in this negotiation work, was a form of institutional work traditionally associated with creation – advocacy. Tax accountants used the negotiation process to make a number of significant changes to mandatory disclosure and, hence, managed to get Revenue to support its work practices as a result.

Chapter 6 presented the various strategies deployed by the accounting profession when responding to the introduction of mandatory disclosure and the compromise and defiance strategies employed. In terms of day-to-day work practices, the most significant outcome from the negotiation work was the inclusion in the Revenue guidance notes of an exclusion from reporting for ordinary, day-to-day tax planning. This exclusion enabled tax accountants to be much more comfortable in terms of the applicability or, more importantly, the inapplicability, of mandatory disclosure to their day-to-day work practices. The negotiation work provided tax accountants with the

opportunity to carry out advocacy work and to convince Revenue that the exclusion for ordinary, day-to-day tax planning was both reasonable and necessary.

Negotiation work has been seen in the prior literature as a successful maintenance work practice (Micelotta and Washington, 2013). When the legal profession in Italy was not consulted in relation to professional reforms, it forced the Italian Government to retreat from its coercive approach and consider different, more acceptable ways to achieve reforms. Taking part in active negotiations enabled the legal profession to convince the Italian Government that autonomy should be reinstated and the “one-size-fits-all” approach to professional reform should be abandoned (Micelotta and Washington, 2013, p.1153). This demonstrates the effectiveness of another professional group that has engaged in negotiation work, but the context is very different from that of tax accountants. The legal profession in Italy is regarded as having a “special status compared to all other professional groups” and is “extremely powerful” and “extremely conservative” (Micelotta and Washington, 2013, p.1142). In the case of tax accountants, the actor exerting pressure, Revenue, is seeking active disruption of existing work practices, and therefore the ability of tax accountants to rely on professional power and status is curtailed. The empirical context outlined in Chapter 3 demonstrates that Revenue was increasingly focused on tackling aggressive tax avoidance and that it was not satisfied with the role played by tax accountants in this regard. This is in stark contrast to the high degree of status held by the legal profession in Italy during its period of maintenance work. This study is focusing on direct disruption of the work practices of tax accountants, compared with the scenario faced by the legal profession in Italy, where it was caught up in a one-size-fits-all, regulatory reform of professions. Despite tax accountants being at a disadvantage *vis-à-vis* their ability to rely on professional power and status, the negotiation work was successful, as described in section 7.2.1.

7.2.1 Importance of the ordinary, day-to-day tax planning exclusion

The negotiation work of tax accountants resulted in the exclusion of ordinary day-to-day tax planning from the mandatory disclosure rules. The right of taxpayers to organise their affairs in a tax efficient manner was stressed. Unsurprisingly, there was no overt reference to the potential impact that the reporting of a wide range of tax planning activities could have on the work of tax accountants. However, the concessions granted in the guidance notes by Revenue, described in an interview with Revenue officers as “*comforts*”, provided an opportunity for tax accountants not

to report. What is regarded as ordinary, day-to-day tax planning may differ significantly from one tax accountant to another, or from one accounting firm to another and, therefore, a Revenue officer stated that what Revenue regard as ordinary, day-to-day tax planning may certainly differ from the views of individual tax accountants.

Following the success of the negotiation and advocacy work, the issue of what might constitute normal tax planning was a major issue for consideration by the larger tax practices (Big Four and Mid-Size firms):

... as with everything with tax, there are always gaps, there are always going to be matters that are subject to interpretation and, I think, so you had a list of essentially hallmarks of what was considered, all kinds of planning that needed to be disclosed and, I think, the practicalities for firms in complying would be, at a basic level, putting processes in place to make sure that we are capturing what needs to be captured and any disclosures that need to be made that they take place, as and when required. I think the more difficult issues are whether some of the planning that we do falls within some of the hallmarks in the first place and there are certainly one or two I can think of where there is probably still some disagreement as to whether they are actually properly in or not and as I say around this concept of what constitutes normal tax planning.

Big Four Firm Partner

The importance of the ordinary day-to-day tax planning exclusion was also clearly articulated by the focus group participants:

For most things you probably shove it into ordinary tax planning like not that much that wouldn't be regarded as ordinary.

Focus Group Participant

Well in the mind of a tax adviser, with the level of experience that perhaps the partners would have, everything was almost ordinary.

Focus Group Participant

The majority of interviewees and focus group participants did not regard mandatory disclosure as having had an impact on the type of advice given, on the basis that large accounting firms (Big Four and Mid-Size firms) are not engaging in very aggressive tax schemes, and as one focus group participant described it, *"did it ever have an impact, no you always got into the...this isn't an off the shelf product..."* and that, although a transaction may not have been prevented going ahead because of mandatory disclosure, *"it would have taken a bit of time to get there"*.

Despite the initial consideration of what may or may not constitute ordinary day-to-day tax planning, this exclusion enabled tax accountants to maintain their current work practices on the basis that they could argue that their existing advice fell within

the scope of the exclusion. As a result, reporting under mandatory disclosure could be avoided.

The views of interview and focus group participants regarding the importance of the ordinary day-to-day tax planning exclusion were supported by documentary evidence. Seminar documentation (see Appendix XIV), outlining the decision-tree for whether a transaction was disclosable or not, illustrated the importance placed by the accounting profession on the ordinary, day-to-day tax planning exclusion. This was confirmed by the focus group participants, who stated that the same or very similar decision-trees were used in their prior employer firms and that the ordinary, day-to-day tax planning exclusion was of particular importance.

7.2.2 Policing and enabling work - greater analysis of tax advice

In order for tax accountants to be comfortable that the advice being offered could be considered ordinary, day-to-day tax planning and, therefore, fall outside the reporting requirements, a new stage in the tax advisory process was introduced. Detailed consideration of the applicability of mandatory disclosure played a new key role. This may be regarded as representing policing work, a form of maintenance work identified by Lawrence and Suddaby (2006), whereby compliance is ensured through enforcement, auditing and monitoring. This additional analysis was aimed at deciding whether or not mandatory disclosure was required, and interviewees articulated that the process involved a much more careful consideration of the transactions being advised on:

I think if the aim was to create more awareness and to make people think a bit more closely about what they were structuring, before they actually go ahead and do it, then that has definitely been achieved.

Big Four Firm Director

I think it has made the profession stop and think and I think that is probably really a good thing.

Mid-Size Firm Partner

Despite the majority view that mandatory disclosure resulted in more careful analysis and time being spent documenting why a transaction did not fall within the disclosure rules, one interviewee was particularly open in his views on the impact of mandatory disclosure, describing the response of Big Four partners to its introduction:

Definitely, I think mandatory disclosure had a big impact on partners I worked with, it would have had a big impact on how they gave advice, kind of put more manners on tax advice because the tax adviser was on the hook for large penalties and we would have put mandatory disclosure paragraphs into tax opinions ... and we would have put a lot of work into why we convinced ourselves mandatory disclosure didn't apply.

Former Big Four Firm Director

This interviewee claimed that mandatory disclosure “*put more manners on tax advice*”. This may initially indicate that work practices were impacted and aggressive tax planning was curtailed. However, the interviewee continued to state that tax accountants engage in considerable analysis to get themselves comfortable that reporting it not required under mandatory disclosure. This coincides with the view of other participants that tax accountants used formal documentation and analysis as a means to maintain their existing work practices.

This interviewee's insights provide evidence of enabling work, a further category of maintenance work identified by Lawrence and Suddaby (2006). Enabling work involves the creation of rules that help support institutions. In this case, tax accountants are described as spending considerable time formally documenting within client advice, why a particular transaction falls outside mandatory disclosure. These new requirements, to document and advise clients of the implications of mandatory disclosure, enabled tax accountants to achieve comfort as to the inapplicability, or otherwise, of mandatory disclosure and ensure that work practices may be maintained whilst carefully documenting the rationale for non-disclosure.

7.2.3 Subsequent response of Revenue

Tax accountants' negotiation and advocacy work, in particular, may be regarded as having been very successful from their perspective. However, Revenue was dissatisfied with the level of reports received under mandatory disclosure and attributed the low level to the “*comforts*”^{Revenue Officer} provided in the guidance notes. As a result, the operation of mandatory disclosure was revisited with amendments introduced in the Finance Act 2014. A number of changes were introduced including:

- (a) clarification of the main benefit test;
- (b) introduction of an objective test for the hallmark confidentiality from Revenue;
- (c) a new discretionary trust hallmark;
- (d) inclusion of additional examples of ordinary day-to-day tax planning; and

(e) the introduction of transaction numbers.

A consultation process was carried out and final revised guidance notes were issued in January 2015. The January 2015 guidance notes contain some subtle, but important, changes to the ordinary day-to-day tax planning exclusion. The January 2011 guidance notes (those relied upon in the past and by interviewees) stated that “*the Mandatory Disclosure rules do not impact on ordinary day-to-day tax advice between a tax adviser and a client **or** on the use of schemes that rely on ordinary tax planning using standard statutory exemptions and reliefs in a routine fashion for bona fide purposes, as intended by the legislature*” (emphasis added).

In contrast, the January 2015 guidance notes state that “*the Mandatory Disclosure rules do not impact on ordinary day-to-day tax advice between a tax adviser and a client **that involves**, for example, the use of schemes that rely on ordinary tax planning using standard statutory exemptions and reliefs in a routine fashion for bona fide purposes, as intended by the legislature*” (emphasis added). A number of additional examples of what Revenue considers as routine day-to-day tax advice and the routine use of statutory exemptions and reliefs are also included in the January 2015 guidance notes.

Despite the differences in the two sets of guidance notes being subtle, the intention of Revenue is clear. The “*comforts*” previously granted, which were deemed too wide and too generous, have been curtailed. It is currently too early to examine the impact of these changes on the day-to-day work practices of tax accountants and the number of reports made under mandatory disclosure. However, the Finance Act 2014 amendments provide rich, future research opportunities (discussed in Chapter 8) and illustrate the prior success of the accounting profession’s maintenance work practices, which were such that legislative reform was required.

7.3 Internal responses to changes in the general anti-avoidance tax regime: Custodial work of the accounting profession

Custodial work is described as “intentional efforts to maintain institutions through rule creation, socialization, monitoring, and enforcement activities” (Lawrence and Suddaby, 2006, Lawrence *et al.*, 2009, as cited by Lok and De Rond, 2013, p.187). This is a common form of maintenance work and has been identified in many prior studies of institutional maintenance (Fredriksson, 2014; Lok and De Rond, 2013;

Currie *et al.*, 2012; Fox-Wolfgramm *et al.*, 1998). However, despite the frequent use of custodial work, the way in which it was used by tax accountants to maintain their work practices differs from prior studies.

Prior studies have identified government agencies using policing work to respond to the global financial crisis (Fredriksson, 2014), custodial work to manage internal breakdowns within a University Boat Club (Lok and De Rond, 2013) and the use of auditing to monitor the implementation of new banking regulations (Fox-Wolfgramm *et al.*, 1998). The literature has also identified policing work, in particular, as being a prevalent maintenance technique in professionalised fields (Lawrence and Suddaby, 2006), with the medical profession being seen to use both policing and educating to maintain control and ensure compliance by new role holders (Currie *et al.*, 2012). Tax accountants enlisted very specific work practices in response to the disruptive work of Revenue. For example, internal training, formal procedures and centralised risk management were introduced. This maintenance work involved aspects of custodial work, such as policing, enabling work and embedding and routinising – each regarded as institutional work practices traditionally associated with maintenance. In addition, there is evidence of education playing a critical role, particularly in the internal training following the introduction of mandatory disclosure. Education is traditionally categorised as a form of creation work, whereby actors are provided with the necessary skills and knowledge to support a new institutional practice (Lawrence and Suddaby, 2006). The identification of creation work being used to achieve institutional maintenance provides further support to prior studies that have argued that institutional work does not always occur within the strict boundaries of creation, maintenance and disruption and that due to the complex nature of reality, institutional work may be required to cross-categories (Empson *et al.*, 2013).

7.3.1 Defiant strategy adopted by tax accountants

As discussed in Chapter 6, a defiance strategy was deployed in response to a number of the specific legislative amendments, namely, the introduction of protective notification and the related 2008 changes. Interviews with individual tax accountants enabled this defiance to be explored in greater detail, the arguments used for the lack of engagement with the changes to the general anti-avoidance tax regime to be examined and the impact on the work practices of tax accountants to be explored.

The initial acknowledgement of the changes, followed by the “*comforts*” used to support the defiant approach, are discussed.

7.3.1.1 Acknowledgement of the legislative changes and comforts used to support defiance

As with any legislative change, tax accountants acknowledged protective notification when it was introduced. One focus group participant stated that “*it would have been taken seriously*”, with another saying that “*there was a lot of ‘Oh what is this and what does it mean and does it change our advice?’*” However, in terms of actual impact, it was made very clear by both interviewees and focus group participants that protective notification did not impact work practices in terms of the type of advice given. This was clearly articulated by one interviewee:

... there is a lot of noise at the time when [changes] come in and there is probably concern at the time when they come in. I think when the dust settles and when people analyse them, certainly on 811A, I think the concern within my world was pretty low. Really on the basis that it didn't really change anything because, I think, I am not going to advise on a transaction where I can't give a 'should' level on 811 anyway, so it really from our perspective just didn't impact...

Boutique Tax Practice Partner

As illustrated in the quotation, the majority of interviewees referred to advising clients and the requirement to analyse the transaction under s.811 to determine whether the transaction was a tax avoidance transaction. Once this step was completed and a ‘should’ opinion established, i.e., that the transaction should not fall within s.811, the view was that s.811A was irrelevant. This was on the basis that a tax adviser would not advise a client to file a protective notification if he/she held the view that the transaction should not fall within s.811. This process was described by a number of interviewees:

I don't think we would let ourselves get to that situation [advising a client to file a protective notification]. It's rare where you are trying to get to anything less than a should level opinion and I think where you are getting to a should level opinion, you are less likely to have to rely on something like protective notification.

Big Four Firm Director

I think we probably wouldn't have expected there to be a flood of [protective notifications] made and that is essentially because for the accounting firms, in general, I think things have moved to a point now where you are not really going to advise a client unless you believe that their chances of actually succeeding are greater than 50%. Essentially, you come to the kind of typical levels of opinion that you would grant and, therefore, I think we would never really be in a situation, in our view, where you had something that was caught by 811 and, [which] therefore, puts you into an 811A scenario.

Big Four Firm Partner

This 'should' level opinion was again referred to by a focus group participant stating that *"in practice everything always is so heavily caveated anyway, it is already within all the caveats that this could potentially be challenged by Revenue and I don't know if that has necessarily changed."* This emphasised the importance of protecting the adviser by the inclusion of caveats within the advice and that this, together with a 'should' level opinion, was seen as sufficient not to warrant a recommendation to a client to make a protective notification.

The procedures to reach and document the 'should' level opinion represent maintenance work by the accounting profession. Reaching this comfort level enabled tax accountants to carry on with their existing work practices and not to feel required to recommend their clients to make a protective notification. Hence, Revenue's attempts to tackle tax avoidance through protective notification had limited success.

7.3.1.2 Anomaly between documentary evidence and interview data

One anomaly was identified between the documentary evidence review and the interviews and focus group data. The number of protective notifications has increased significantly since 2011, with a total of 459 protective notifications filed between 2011 and 2014. This is in contrast to a total of 106 protective notifications in the previous four-year period.

There was no evidence in the interviews or focus group discussions that the participants' current or prior firms had changed their attitudes to protective notification and that this has resulted in more protective notifications being filed. The vast majority of interviewees stated that they had never been involved in making a protective notification. A possible explanation of the anomaly was provided by a professional body representative:

There is a perception that there is not a lot [of protective notifications] going in and there may not be a lot going in from a firm or from the Big Four, but there are other advisers in the market and there are also the UK advisers in the market that there is not really a huge knowledge of their activity or what they are doing and I think people might be surprised that there have been more protective notifications in the last few years.

Professional Body Representative

This insight from the professional body representative highlights the activity of non-accountant tax advisers and UK advisers and their impact on the tax market. This

perhaps provides an explanation for the increased protective notifications without any acknowledgment by those accountants interviewed about their involvement in such reporting. Therefore, it appears that tax accountants have not engaged to any great extent with protective notification and, from the interview and focus group data, protective notification has not impacted the day-to-day work practices of tax accountants.

7.3.2 Custodial work and education: Internal training and formal procedures – mandatory disclosure

Custodial work was seen to the greatest extent in the response of the accounting firms and individual tax accountants to mandatory disclosure. This was regarded as the most significant external threat to tax accountants. They could no longer rely on discretionary, client-led reporting (protective notification); instead, tax advisers now had a legal obligation to report when their activities fell within mandatory disclosure. As a result, maintenance activities, in the form of custodial work, were evident in the activities surrounding the management of risk relating to mandatory disclosure in the Big Four and Mid-Size firms. In addition, a form of creation work – education – was also identified, as supporting the maintenance work practices of tax accountants.

Internal training was undertaken to ensure that all tax advisers, at partner level and below, understood the implications of mandatory disclosure. Training was also reinforced through the use of formal manuals and decision-trees (see Appendix XIV). This process involved educating all tax accountants about mandatory disclosure and in particular the new procedures that were being put in place to deal with it. The action undertaken by the larger accounting firms may be regarded as recognition of the seriousness of mandatory disclosure. It was clear from the interviewees that the attention given to mandatory disclosure far surpassed that given to previous changes to the general anti-avoidance tax regime, e.g., protective notification.

That was another seismic shift... An awful lot of attention was given to it. An awful lot of attention is still given to it in relation to disclose or not to disclose.

Big Four Firm Director

It would have been driven by our risk management specialists and the partner of risk management, in terms of looking at the legislation, what actually it means, what is the impact for us, what falls into it, what kind of advice have we given in the past that could potentially have fallen into it and what kind of structures are in place to make sure that when we are giving advice in future,

that we are mindful of the mandatory disclosure rules and whether something might fall foul of the legislation.

Big Four Firm Director

Internal training ensured that all staff members and partners understood the rules and the procedures in place to deal with them. The creation of new institutional procedures and rules and the resulting education of tax accountants in these new institutional arrangements, was a key aspect in responding to mandatory disclosure and ensuring that work practices were not disrupted as a result, i.e., that maintenance of current work practices was achieved.

Obviously we would have had to do a fair amount to train and educate people as to the changes, to make sure that they are aware what this is all about, what it means for them on a day-to-day basis. [We had] to talk about things like what is normal tax planning, what is acceptable.

Big Four Firm Partner

In order to assist in determining whether a disclosure was required or not, significant documentation was produced. In addition, flowcharts and decision-trees were provided to assist tax accountants in deciding whether a transaction was disclosable or not and what internal procedures should take place (see Appendix XIV). The focus group members were asked whether these details were indicative of the type of documentation that they would have used in their prior employing firms, with all participants agreeing that the flowcharts were the same or very similar to what they would have used. Appendix XVI contains a sample mandatory disclosure checklist. It can be seen that this checklist is completed by the client manager and partner. It is then reviewed by another member of the management team (uninvolved in the provision of tax advice to the client).

The process of working through the flowcharts and completing the mandatory disclosure checklist was described in detail by one interviewee:

... we probably got a 40 or 50 page pack going through each of the types of transactions and the legislation itself... we would have had probably nearly two flowcharts, one where it talked about, well, could this be a disclosable transaction?, is there a tax advantage?, what are the main benefits?, is the firm a promoter? and yes's or no's. Do I need to consider mandatory disclosure? And then, there was probably, I would say, the more firm page which was okay has the client, do the client team think mandatory disclosure is necessary, no, client team think maybe, yes, okay well who do you talk to?, do you talk to Head of the Tax Technical?, do you talk to the Tax Risk Management Partner?, moves from there into the Tax Executive Committee,

moves from the Tax Executive Committee into the Executive Committee so it [is] very layered if we are going to make a mandatory disclosure

Big Four Firm Director

It is interesting to observe, in relation to the mandatory disclosure checklist, what is referred to by the interviewee as the “firm page”. Even in circumstances where the client team is of the view that a mandatory disclosure should be made, the internal procedures ensure that the issue is first circulated to the highest level, e.g., the Executive Committee. This centralised approach to mandatory disclosure and the use of this control procedure as a form of institutional maintenance is now considered.

7.3.3 Enabling work and embedding and routinising – centralised risk management changes

Mandatory disclosure was regarded as such a significant event that new risk management procedures were established, with internal personnel taking on the role of key internal liaison within the accounting firms. These new procedures are evidence of enabling work being carried out by the firms. Where any individual tax adviser within a firm was of the view that mandatory disclosure might be applicable to a particular transaction, prior to any reporting taking place, the issue was escalated up the firm. These rules and procedures enabled the overarching view of the accounting firm to be considered and supported prior to any external reporting taking place.

It was clear from the interview data that the decisions and the strategy relating to mandatory disclosure were taken at a very high, central level and then communicated across the firm.

Once that had been held on high, I suppose then it filtered down per department or per partner going okay we are doing X, Y and Z, here now is this impacted by these new provisions?... and I suppose that is kind of where it comes in.

Mid-Size Firm Director

... you would have to send it off to a particular partner who had responsibility for deciding whether it was within the mandatory disclosure rules, it was taken away from you on occasion, which was very odd.

Former Big Four Firm Director

If you take a firm our size, you have a central response, so everything comes from the centre and then feeds out, and then there is a process, and because whatever we do across anything whether it's protective notifications, mandatory disclosures, whatever else, you are setting precedents for the rest

of the firm and what you do and how you approach it. So it typically would have come from say our Tax Technical Team which [was] in conjunction with probably the main Tax Risk Partner and then set out to the rest of the firm as to how we go about it and there would be a relatively structured response for how you consider doing those things.

Big Four Firm Director

This centralised approach was referred to in a positive manner, with individual participants indicating that this was a very appropriate and thorough response that ensured that all instances that fell within mandatory disclosure were reported. However, the centralised response strategy also achieved another possible aim – that of ensuring that the highest levels within the firm had knowledge and control over what was reported to Revenue. This process is evidence of embedding and routinising work carried out by the accounting firms in response to mandatory disclosure. Organisational practices were amended in order to ensure a consistent response to mandatory disclosure across the accounting firm and to develop day-to-day routines that supported the chosen strategy of the firm.

Individual autonomy was removed by the centralised reporting channels. The individual tax accountant could no longer decide her/himself whether or not he/she should disclose under mandatory disclosure. The involvement of centralised decision-makers prevented this. This centralised approach may, therefore, be seen as protecting the accounting firms from individual accountants having differing views as to what constitutes ordinary day-to-day tax planning.

This development resulted in the erosion of individual professional autonomy, with the decision to report or not under mandatory disclosure being removed from individual tax accountants. This may be regarded as significant in relation to the professionalism of individual tax accountants. As despite tax accountants working within professional service firms, professional advice would traditionally have remained within the remit of the individual client partner. The centralised response to mandatory disclosure, therefore, has had the effect of eroding individual professional autonomy achieved through the embedding and routinising of responses to mandatory disclosure.

7.3.4 Actual reports made under mandatory disclosure

Active custodial work in the form of rule creation, through risk management procedures and centralised decision making, ensured that the day-to-day work

practices were not threatened by what might have been regarded as rogue reporting by individual practitioners. The small number of mandatory disclosures made (with 10 reports received by Revenue between 2011 and 2013) would indicate that this centralised strategy was successful.

Interviewees from the Big Four firms reported either a couple of disclosures made or none at all.

We haven't made a single one as far as I am aware, last I have heard up to probably, the early part of last year, Big Four Firm B hadn't made any, I think Big Four Firm C had made one or two, I think Big Four Firm D had made a couple, which I think primarily related to share scheme stuff, now again that is anecdotal, but that is kind of what we heard.

Big Four Firm Director

I would say the number of disclosures that we have made over the years, we might have done four or five. I would say my sense from what I hear is that the absolute number of disclosures is pretty low and, therefore, Revenue of course, think this means that people aren't disclosing what they should be disclosing and that always generates the concern of well what is coming next because generally it will, some ratcheting up of the requirements will follow.

Big Four Firm Partner

The lack of disclosures being made, and the problems that Revenue may have in gauging the success of mandatory disclosure, were raised by one interviewee. For example, the impact of mandatory disclosure in making advisers re-assess the type of transactions on which they are willing to advise cannot be viewed in terms of actual disclosures made. Revenue may feel that the rules are unsuccessful because of the number of disclosures received. However, if behaviours have changed, mandatory disclosure may in fact have succeeded, but this was described as difficult to measure, as one cannot measure disclosures not made as a result of the underlying transactions not occurring.

I am sure there are firms not doing transactions that they may have previously otherwise done so it is hard to gauge the success of something like 811A or the mandatory disclosure when it causes things not to happen... so it is a tricky one.

Boutique Tax Practice Partner

The active maintenance work undertaken by the large accounting firms was evident from the interviews and the focus group. In contrast, the Boutique Tax Practices and Small Accounting Firms did not engage in similar activities. The reasons for this lack of active maintenance work are now discussed.

7.3.5 Mandatory disclosure – difference in impact on Boutique Tax Practices and Small Accounting Firms

The significant changes to risk management procedures and the centralised approach adopted by the Big Four and Mid-Size firms contrasted with the perceived non-impact of mandatory disclosure in the Boutique Tax Practices and Small Accounting Firms.

7.3.5.1 *Boutique Tax Practices*

Partners in Boutique Tax Practices were comfortable that they were unaffected by mandatory disclosure because of the type of tax advice that they provide. Although these Boutique Tax Practices would often have a high net worth client base and advise on complex tax issues, those interviewed were very confident in the inapplicability of mandatory disclosure to their work. This absence of any formal engagement with mandatory disclosure may in fact result from the nature of the Boutique Tax Practices, where discussions can take place in a much less formal manner because of their size and structures. Although meetings may not have been convened to discuss mandatory disclosure nor formal guidelines put in place, it is unlikely that mandatory disclosure was as inapplicable to the circumstances of these firms as was described by the interviewees. Instead, it is likely that the informal discussions between colleagues enabled comfort to be gained regarding the new rules.

We meet all the other partners every day at the printer so there is a lot, it is a very informal, low level structure and I think we have never had cause to consider it [mandatory disclosure]... so we don't have any procedures, but I almost couldn't imagine us ever having a situation where we would have cause to consider it. We are all aware it is there, it is at the back of our mind, but really for our business and what we do, which is tax compliance and basic tax planning, availing of very clearly legislated reliefs like CAT [Capital Acquisitions Tax] Business Property Relief you know, Share Re-organisation, it is just not relevant.

Boutique Tax Practice Partner

The absence of impact on work practices in Boutique Tax Practices was also seen in Small Accounting Firms.

7.3.5.2 *Small Accounting Firms*

Those accountants working in Small Accounting Firms, who advise clients on a range of accounting and tax issues, felt unaffected by mandatory disclosure and as a

result did not see any change to work practices, even in terms of risk management.

We are a small business... we wouldn't deal with these cases, we actually don't come across them at all, so while we would be aware of legislative changes, it would be more [that] we would look at it and say does that effect us? Does that have an effect on our practice? No, it doesn't have an effect on our practice. So, we don't normally need to consider it.

Small Accounting Firm Partner

This response was unsurprising given the very routine tax compliance work (as described by the interviewees) in which the Small Accounting Firms engage. All partners of small firms and sole practitioners interviewed very clearly stated that they did not engage in complex tax planning, and, consequently, the general anti-avoidance tax regime was not applicable to their practices.

The final example of custodial work carried out by tax accountants in response to changes in the general anti-avoidance tax regime is now considered.

7.3.6 Re-assessment of commercial rationale following *O'Flynn Construction* case

The Supreme Court decision in the *O'Flynn Construction* case also offered tax accountants an opportunity to engage in custodial work. Following the judgment, tax accountants reported re-assessing the commercial rationale for particular transactions.

Since *O'Flynn*, there is a lot more thought and focus... Are we absolutely happy with this? Is the commercial rationale actually there? In the past, you might say that you need a commercial rationale. Now, you would get...what is the answer on the commercial rationale? Really, is it actually a genuinely commercial rationale?

Big Four Firm Director

Articulating the rationale for claiming particular reliefs was another impact of the judgment, with one interviewee describing the prolonged process of assessing whether the GAAR could be applied to a particular transaction and whether a relief was genuinely being claimed. This process was described as being very different from what would have arisen prior to the *O'Flynn Construction* decision where “*that wouldn't have been given that degree of prominence*”. The resulting impact, in terms of the GAAR, was described, with the interviewee stating:

I certainly can't remember in [the pre-O'Flynn] days any one partner saying let's hold off now until we fully cover 811 on advice or anything like that.

Big Four Firm Director

The more formal procedures for ensuring that tax advice being provided did not fall foul of the GAAR was a key feature following the Supreme Court decision.

The focus on the no misuse or abuse exception to the GAAR (which was a critical feature of the *O'Flynn Construction* case) was reiterated by another interviewee stating:

They are getting worried now that even if you can say it looks okay, is it a misuse or an abuse? So yes people are focusing on that particular side of it and trying harder to come up with commercial uses to defend everything because of that ruling.

Boutique Tax Practice Director

The re-assessment of tax advice in the post-*O'Flynn Construction* era was described as tax accountants now engaging in “*self-editing*” Mid-Size Firm Director. The perceived power gained by Revenue in successfully challenging a transaction through the courts under the GAAR meant that tax accountants are “*so afraid of the ramifications of it, that we are self-editing*” Mid-Size Firm Director. Even in firms that would have historically described their own activities as conservative, it was acknowledged that this “*has gone up a little notch*” Mid-Size Firm Director. This view was reiterated by a Big Four firm director describing a number of the partners as being “*a lot more afraid of [the GAAR]... conscious of it*”. As discussed in Chapter 5, the *O'Flynn Construction* judgment enabled coercive barriers to be established, introducing a form of deterrence for tax accountants from engaging in aggressive tax avoidance. The “*self-editing*” being undertaken by tax accountants following the judgment illustrates this deterrence in action.

As discussed, maintenance work in the form of negotiation and custodial work was identified in the interview and focus group data. A third category of maintenance work – enabling work – utilising on-going internal debate, was demonstrated as a response to the *O'Flynn Construction* judicial decision.

7.4 Enabling work: on-going internal debate – *O'Flynn Construction* decision

As outlined in Chapter 6, the response of the accounting profession to the Supreme Court decision in the *O'Flynn Construction* case may be regarded as public

acquiescence; however, the private response, and hence the impact on the work practices of tax accountants, has varied. Individual tax accountants have shown acquiescence, avoidance and defiance. The on-going internal debate regarding the judgment has enabled those tax accountants who disagree with the judgment to maintain their work practices.

7.4.1 Statutory interpretation – uncertainty and on-going debate

The majority ruling in the *O'Flynn Construction* case has resulted in much debate amongst tax practitioners within the accounting and legal professions, particularly because of its impact on the interpretation of tax law and the many uncertainties and questions raised by the ruling (Hunt and Galvin, 2012). What is clear from the ruling is that the courts will give weight to the GAAR and that the facts of the individual case are extremely important. However, it is currently uncertain as to how the courts will have regard to the background of a legislative provision and whether and how this will operate within the confines of the Interpretation Act 2005 (Hunt and Galvin, 2012).

The impact on statutory interpretation was described as being one of the most significant outcomes of the *O'Flynn Construction* case:

To me the most fundamental thing that comes out of *O'Flynn* is that essentially the long-standing rules of statutory interpretation around tax were essentially set aside. So, it wasn't around looking at the language of the legislation and I think essentially [Mr Justice] O'Donnell seemed to bring in a purposive view into interpretation which had never existed before [in tax law]. So, I think the view is it is probably quite a political decision.

Big Four Firm Partner

The possible move from a literal to a purposive interpretation of the tax statutes has been at the heart of this debate. Dichotomous views arose within the profession (regarding purposive versus literal interpretation) and have led to considerable debate amongst tax accountants. Some members of the profession have argued that purposive interpretation applies to all tax statutes, whereas others have argued that it is confined to the misuse or abuse provision of the GAAR.

A number of interviewees discussed the issues that may be encountered in attempting to purposively interpret tax legislation.

Now you just look at the purpose of the legislation to find out what that purpose is and that's a pretty difficult thing to do.... In the UK, they can look to Parliamentary debates following the *Pepper v Hart* decision. We can't,

following *Crilly v Farrington*, so we look at the rule. We look at the words used in the legislation, whereas the UK can have wider regard to what's out there.

Big Four Firm Director

The worry that I would have is that my interpretation of the purpose of the law and a court's interpretation of the purpose of the law may differ. So if I'm giving a piece of advice, I'll be comfortable in relation to what I think the purpose of the law is. But that worry would still be there. Therefore, the firm's reputation will need to be suitably caveated in the advice to that extent. Because only a court can be a final arbiter in relation to it.

Big Four Firm Director

I think it still left a lot of uncertainty in terms of interpretation and what is and isn't valid for interpretation.

Boutique Tax Practice Partner

The practical issues in relation to applying purposive interpretation to the tax legislation and the overall impact of the decision were described by a focus group participant:

There was the odd person who was saying Oh well this has changed everything, the legislation can no longer be interpreted literally in the context of the words, it is now purposive and we have to look at the purpose of the legislation. But, that is actually unworkable. So, most people were like, it will not work, the legislation will not work if you are going to be imposing purpose on the literal words of the legislation and, therefore, [the *O'Flynn*] judgment can only be taken in the context of those particular facts and could not possibly impact on the advice that we are giving. So, I think that was the majority of people's take on that case.

Focus Group Participant

The discussion of the *O'Flynn Construction* case with interviewees and focus group participants illustrated the range of views and the level of debate that the Supreme Court decision received in the tax community. The absence of impact noted by a significant number of interviewees is of interest, given the decision was delivered by the highest court in Ireland. This, therefore, brings into question the regard held by those within the accounting profession for what is a legally binding decision. This view was supported by a number of interviewees who stated that they were awaiting future cases concerning the GAAR in order to deal with the uncertainties arising from the *O'Flynn Construction* decision.

I think there is uncertainty around aspects of 811 and I think... it would take a fair amount more case law until some of these nuances are teased out.

Big Four Firm Partner

The on-going internal debate represents a form of enabling work, whereby those tax

accountants who disagree with the judgment continue to question the scope of the application of the judgment and how tax statutes should now be interpreted. The response of tax accountants to the *O'Flynn Construction* Supreme Court decision may be regarded as tax accountants having seen the courts erect an outer boundary as to what it regards as unacceptable tax avoidance and, therefore, challengeable under the GAAR. The desire by those interviewees to see future cases concerning the GAAR before the courts indicates a desire for an inner boundary as regards what is regarded as acceptable tax planning to be established, which would provide greater certainty when advising clients. The interview and focus group data indicated that the internal debate and disagreement regarding the implications of the *O'Flynn Construction* decision is unlikely to be resolved until future judicial decisions concerning the GAAR are delivered. As a result of these on-going internal debates and the uncertainty regarding how the courts will rule in relation to future cases concerning the GAAR, it is difficult to ascertain at this point in time the long-term impact of the *O'Flynn Construction* decision on the work practices of tax accountants.

7.4.2 Primacy of the tax legislation

Tax accountants' continued focus on the primacy of the tax legislation and the belief that, provided tax advice is given within the confines of the legislation, no issues should arise, were emphasised by many interviewees. Despite the interviewees being clearly focused on the issue of tax avoidance and the interviewees all being aware that tax avoidance is not defined as an illegal activity, they often made reference to the primacy of the tax legislation.

Despite calls to exercise professional judgement in a more societally friendly manner, as emphasised in Revenue's persuasion strategy and the *O'Flynn Construction* Supreme Court ruling regarding purposive interpretation, tax accountants remain committed to advising strictly within the letter of the law. This was emphasised by a number of interviewees:

I think if you have got a problem with something, legislate against it. You can't coerce people into doing things that they aren't obliged to do and I think if you have an issue with something, change the law. From a professional perspective, I make no apologies for what I do, in that we are there to use the law in the way that it was written to give our clients the best answer. I have zero time for people who say Oh that is not fair, that is not right. Well look they are the rules if you have got a problem with it, change the rules.

Big Four Firm Director

The law has got to be absolute and it has got to be applied and anything else opens up the vagaries of discretion and it can't be. People are entitled to certainty. There is law. There is a legislative process. If they want to pass law, pass law.

Boutique Tax Practice Partner

The emphasis placed on the primacy of the tax legislation indicates that how tax accountants define aggressive tax avoidance, and how it is defined by Revenue, are likely to differ.

The on-going debate between tax accountants regarding how far-reaching the Supreme Court judgment is and the practical implications for statutory interpretation has perhaps provided a mechanism for those who disagree with the judgment or do not believe that purposive interpretation now applies broadly to tax law to maintain their current work practices, whilst waiting for future judicial decisions.

7.5 Reflexive normalisation work – realigning interests

The final category of maintenance work identified is reflexive normalisation (Lok and De Rond, 2013). This final category is much less conscious, with field actors smoothing over divergent behaviour. It has been previously identified as including excepting and co-opting, where those within an organisation frame their actions as pragmatically necessary exceptions to the norm, due to the unique circumstances facing them (Lok and De Rond, 2013). This previous identification of reflexive normalisation work related to the internal operations of a University Boat Club, rather than to the external pressures of powerful regulatory actors or clients. In the case of tax accountants, over time, the tax risk appetite of taxpayers was described as having reduced. Therefore, tax accountants needed to respond to their clients' needs and preferences not to be involved in transactions that could adversely impact their reputation. This realignment of interests between the service provider (tax accountants) and the service recipient (the taxpayer) resulted in a shift over time away from aggressive tax planning and represented a form of reflexive normalisation work.

Within this maintenance work category, there is evidence of valourising and demonising work (Lawrence and Suddaby, 2006). The reputational concerns for taxpayers and tax accountants represent the demonisation of being involved in aggressive tax avoidance. Due to societal changes, being involved in aggressive tax

avoidance is no longer regarded as socially acceptable and as a result taxpayers no longer wish to be associated with it.

This shift in attitude was also evident amongst tax accountants with interviewees being careful in terms of new client engagements and not wishing to be involved in tax planning that could damage their reputation. Potential clients wishing to engage in aggressive tax planning were demonised by interviewees and were regarded as representing a threat to them and their firms.

7.5.1 Changes in the tax planning landscape

The impact of the general anti-avoidance tax regime on the incidence of aggressive tax planning was questioned by interviewees. Changes in tax practice were, instead, attributed to the reputational implications, for both taxpayers and their advisers, of being involved in aggressive tax schemes.

7.5.1.1 Taxpayers' reputational concerns

The changing attitude of taxpayers to aggressive tax avoidance was articulated by the majority of interviewees and confirmed by focus group participants. The shift in attitude was described by one interviewee, who stated that being involved in aggressive tax schemes may in the past have been seen as *"a badge of honour"*, but *"those days are gone"* Big Four Firm Partner. The *"mood has changed"*, with tax advisers and their clients being *"more concerned with protecting themselves and their own brand"*, and *"as a result there are less people likely to do an aggressive transaction and there are less people probably selling them"* Big Four Firm Partner.

An example of taxpayers' concern with reputation was illustrated when interviewees described client-led decisions to file protective notifications, because of client demands to manage potential risk.

There would have been discussions that we would have had with [the client] in terms of outlining, this is what your options are, you can either say nothing and hope that Revenue don't trigger an audit in the next while or you can basically put your hand up and put in the protective notice and see how it goes and ultimately at the end of the day it comes down to the client's risk profile and how willing they are to take on that level of risk. At the time the two clients involved they wanted to go ahead and do it [file a protective notification], but there was a lot of discussion around going that way in the first place.

Big Four Firm Director

...there is one structure that I know of which I would have advised on [where a protective notification was filed] and it wasn't, I would have said, terribly aggressive. [The client] was a household UK name and that was the only time I was involved in advising someone [where a protective notification was filed] and they chose to report it ... I think it is probably a case where because the client was a blue chip household name, company, they probably liked the fact that, they probably wanted almost to call the odds on themselves and let's, if you like, get this over with and know whether we are out the door.

Big Four Firm Partner

The examples of where protective notifications were filed illustrate how some clients are very concerned with managing tax risk and having certainty in terms of their tax affairs. The associated reputational risk was another recurring theme in both the interviews and focus group discussion.

The reputational aspect was described as a critical feature, with taxpayers being *"quite concerned about being in the press for the wrong things"* Big Four Firm Partner and they *"would be scared of their life of any threat of publication"* Boutique Tax Practice Director.

Interviewees reported that clients were much less willing than previously to engage in aggressive tax schemes. This change was perceived to have taken place prior to the introduction of mandatory disclosure. Consequently, mandatory disclosure, in particular, was not a driver of change from the client's perspective.

I think from a mandatory disclosure perspective, I don't think it had the impact it needed to because you had less of an attitude or appetite to be more risky in your tax.

Big Four Firm Director

I think the reason for that is maybe the changing environment whereby there are certain things I think tax practitioners might have done, there are certain structures that might have been implemented in maybe the 90s, 80s, maybe early 2000s, but I think the mood has changed and it is not so much the anti-avoidance, well it is obviously each year there is more anti-avoidance to close out structures, but I think it is also [that] there is a far more, I guess, both the taxpayer and I think their advisers, are a lot more concerned with protecting themselves and their own brand.

Big Four Firm Partner

This was reiterated when the *O'Flynn Construction* judgment was raised with interviewees and in the focus group discussion. Interviewees got comfort from the fact that they felt that they were not operating within the same sphere, in terms of aggressive tax avoidance. One focus group participant, reflecting on their

experience in accounting practice and knowledge of other tax practices, suggested that the *O'Flynn Construction* case reflected an atypical approach:

I don't think the O'Flynn structure is something that we would have done in the first instance... that gives you a bit of comfort, how relevant is it to what we are actually planning... I just don't think that changed how we go about doing business, I just really don't.

Big Four Firm Director

I think most tax practices had probably moved on from structuring things in that way anyway by the time the [O'Flynn Construction] decision was handed down, partly because of 811A and mandatory disclosure, not hugely, but the general feeling was [that there are] always going to be some partners and some practices [who] are going to push it, but I think for most, they wouldn't really have given advice that would have been that far over the line. I didn't come across any anyway, but I can think of one or two names, but in general, I think anything that was that far over the line went through significant risk assessment when it came to insurance policies.

Focus Group Participant

The increased reputational concern of taxpayers was attributed to tax “*being higher up the agenda*” and “*a board level concern*” Big Four Firm Director more so than was the case in the past. As a result, clients were described as being “*far more conscious of not just what their tax bill is, but how they are approaching their tax bill*” Big Four Firm Director. The tax advisers' role in assisting clients in this regard was described by one interviewee:

I mean obviously any adviser's main and almost, I suppose, sole obligation is to your client, but that is in the round, I mean it is not in the client's interest to have a big scandal, to lose an 811 case or any of those things, so you look at all of that environment in the context of advising the client... The adviser's goal is to advise their clients in the best way possible. Now in that context, it is not in the client's best interest to have them on the front page in terms of aggressive tax avoidance.

Big Four Firm Director

7.5.1.2 Tax advisers' reputational concerns

Clients' reputational concerns may have been a driving force in the changing tax landscape and the reduction in aggressive tax avoidance since the early 21st century; but interviewees also emphasised the reputational concerns of tax advisers, with the accounting profession “*less likely to entertain clients where they have an appetite for doing something that's incredibly artificial because at the end of the day the firm's reputation will suffer*” Big Four Firm Partner.

Reputational concerns have influenced not only the type of advice provided, but also appear to have influenced new work taken on by the accounting profession and the refusal to engage with clients interested in very aggressive tax planning. Interviewees described turning away work where they feared that their *“objectivity and professionalism could suffer”* Mid-Size Firm Director because they needed to protect their name and reputation.

A number of interviewees were, in fact, surprised at some of the tax avoidance cases being heard before the courts. One interviewee described an artificial loss scheme being heard before the courts and said *“it just surprised me that that transaction was out there”* Big Four Firm Director. This surprise was reiterated by another interviewee in relation to a mass marketed scheme, which the interviewee described as *“ridiculous”, “technically wrong”* and *“naïve from a taxpayer perspective and from an adviser perspective”* Big Four Firm Partner. The interviewee was *“really surprised at that kind of thing actually [having] a market”* and just did not *“see sensible advisers working on them or sensible taxpayers getting involved in them either”* Big Four Firm Partner. Focus group participants supported this view stating that *“they wouldn’t run the risk”,* as *“if word got around that they were doing this scheme, that would impact their reputation”*.

7.5.1.3 Societal impact and the role of the media

The interview and focus group data indicated that the change in attitudes to tax avoidance was client rather than profession driven. Societal attitudes to tax avoidance and, therefore, the appetite of taxpayers (both corporate and individual) to engage in aggressive tax avoidance has decreased, particularly because of media attention, with tax being described as *“massive”* in the media Big Four Firm Partner. The capacity of the media to disseminate information widely and quickly was also a factor in limiting the appetite for engaging in aggressive tax planning. The reputation of the taxpayer, and the requirement to protect it, has been the key driver of the change in the attitude of the accounting profession.

7.5.2 Realigning client and professional interests

The interview and focus group data suggested that the tax planning landscape did not change as a direct result of Revenue’s efforts to tackle tax avoidance through the

specific amendments to the general anti-avoidance tax regime. Instead, global and domestic attitudes to tax avoidance led to an escalation of tax issues to board of director level within companies. Moreover, increased media coverage contributed to taxpayers having a reduced appetite for aggressive tax avoidance.

Responding to client needs and desires was offered as a critical aspect of the day-to-day work practices of tax accountants and therefore, in order to maintain their client base, a realignment of interests was required.

The maintenance work practices of the accounting profession have been discussed. The consequences of the disruptive work practices of Revenue are now presented – the deteriorating relationship between tax accountants and Revenue and the level of identification of tax accountants with serving the public interest.

7.6 Consequence of disruptive and maintenance work

The disruptive work practices of Revenue were discussed and analysed in Chapter 5. The maintenance work practices deployed in response to Revenue's disruptive attempts have been presented in the current chapter. The interview and focus group data allowed for a number of consequences of the disruptive and maintenance work to be explored. The first of these consequences was the perceived deterioration in the relationship between tax accountants and Revenue and is discussed in section 7.6.1.

The second issue, examined in 7.6.2, relates to the public interest dimension of tax accountants work and their identification, or lack thereof, with serving the public interest and whether the disruptive work practices of Revenue have resulted in a renewal of a public service ethos amongst tax accountants.

7.6.1 Deteriorating relationship with Revenue

One of the more frequently cited impacts of Revenue's actions to tackle tax avoidance raised by interviewees and focus group participants was the deteriorating relationship between tax accountants and Revenue. The importance of collaboration between the parties and maintaining a good relationship was highlighted by both interviewees and focus group participants. Revenue also attempted to build a strong working relationship with the accounting profession, as was seen in its persuasive

tactics discussed in Chapter 5. However, despite the historic efforts made to build up a good relationship between the parties, a number of explanations for the perceived breakdown in relations were opined by interviewees.

7.6.1.1 *Importance of the relationship between the accounting profession and Revenue*

A large number of interviewees stressed the importance of maintaining a good relationship with Revenue. The reason for this centred on ensuring that they were not coming up on Revenue's radar, as this would result in their clients being scrutinised and audited. One interviewee described the need "*to have a strong relationship with The Revenue*", whilst acknowledging that you do not "*have to agree with them on everything*" and "*a healthy debate*" Mid-Size Firm Director is welcomed.

Co-operation and collaboration between Revenue and the accounting profession was discussed and acknowledged by interviewees. However, this was somewhat qualified, with positive relationships existing primarily in the Large Cases Division, rather than in every district, where smaller taxpayers are dealt with. In particular, the Tax Administration Liaison Committee (TALC) was referred to as a very positive forum for technical issues to be raised and discussed:

TALC is excellent at a technical level, it does brilliant work.

Mid-Size Firm Director

Despite the positive view of the collaboration between the accounting profession and Revenue, increasing frustration was a feature clearly articulated by interviewees and focus group participants.

7.6.1.2 *Deteriorating relationship*

The interviewees described a shift in the relationship from a more collaborative approach to a "*them and us*" Mid-Size Firm Director style relationship since around 2010. Revenue was described by interviewees as being "*unhelpful*", "*less than fully competent*" and "*not responsive*" Mid-Size Firm Director. Another interviewee indicated that Revenue may no longer require the same level of co-operation and collaboration with the accounting profession, saying:

I don't think the engagement is what it used to be, the Revenue [is a] much more confident organisation, they get what they want through the Department

of Finance and the government of the day. So, if they want something, they get it. I think they have too many powers, there are far few[er] safeguards and there is very little that the taxpayer can do at the end of the day if the individual Revenue official decides in a particular way.

Boutique Tax Practice Partner

This deteriorating relationship was also attributed to the loss of institutional knowledge following a large number of early retirements amongst senior Revenue officers, described as a “*brain drain*” and “*the flight of the grey*” Mid-Size Firm Director. The resulting change in the relationship was described by one interviewee, who stated:

You would sit across the table with the Revenue official, the Revenue official would have a strong grasp of the legislation, a strong grasp of case law... the top level officials would have pretty good tax knowledge and would be able to engage in a pretty good debate across the table. I just get the feeling that that world just doesn't exist anymore and that there is very much a case of, here is our interpretation and here is our guidance notes and our briefings and whatever and if you don't fall within that, we are going to hammer you.

Boutique Tax Practice Partner

There was frustration on the part of tax accountants in what they have seen as a reduction in the level of knowledge and expertise, with one interviewee describing Revenue as having “*lost a lot of their bench strength*” Big Four Firm Partner. This loss of personnel has impacted negatively on both tax accountants and their clients, with interviewees describing it as being “*far more difficult to get a Revenue ruling*”, with refunds being delayed because of a lack of understanding of the specific business circumstances. In an attempt to regain the technical knowledge lost, Revenue has been on a recruitment drive and has recruited many tax accountants. This development was not greeted positively by those interviewed and may have contributed to the worsening of relations between the parties, as discussed in section 7.6.1.3.

This changing relationship, perceived as a deteriorating one by tax accountants, may in fact be a feature of Revenue's disruption work, discussed in Chapter 5. Where the prior collaborative relationship with tax accountants was not resulting in the desired reduction in aggressive tax avoidance, a reconsideration of this relationship may have been deemed appropriate. However, interview data with Revenue officers did not indicate a desire to re-position their relationship with tax accountants, and therefore whether this changing relationship has been a result of purposive action on the part of Revenue would require further enquiry.

7.6.1.3 Tax accountants in Revenue

Interviewees and focus group participants saw Revenue's recruitment of tax accountants who previously trained and worked in large accounting firms as representing a significant threat to their work practices. One focus group participant described those new recruits as needing "to make a case for why they are there", resulting in very long-drawn-out audits, with the new recruits trying to "prove a point".

It may be questioned why Revenue are recruiting tax accountants where they have been criticised as facilitating aggressive tax avoidance. However, their expertise (following the loss of critical institutional knowledge in Revenue due to early retirements) and prior knowledge of tax planning (attained during their time in professional tax practice) may be regarded as increasing Revenue's ability to tackle aggressive tax avoidance.

One interviewee articulated the fear felt as a result of tax accountants moving into Revenue. Practitioners fear that these accountants' in-depth knowledge of the accounting firms and their experience of complex tax planning might put them at a significant advantage when Revenue is tackling tax avoidance. Potentially, they could be more successful than those without this practical experience. This was regarded as a "significant risk" Former Big Four Firm Director, and a call was made for more "safeguards in the context of confidentiality" Former Big Four Firm Director. This view was also expressed by the focus group participants, who feared that those newly recruited Revenue officers, who may have been involved in complex tax planning schemes in their prior firms, may seek to "challenge their former firms on some of these schemes" Focus Group Participant.

In addition to the threats that some interviewees and focus group participants perceived from the movement of tax accountants into Revenue, there was also a concern that new recruits would not have the confidence and pragmatism to make judgement calls on particular issues. This was described by one interviewee:

I would be somewhat concerned that while these people might be technically very smart, whether they have the confidence or in some cases the business judgment.

Big Four Firm Partner

Another interviewee, when commenting on the transfer of personnel, highlighted the fact that, when self-assessment was introduced in the late 1980s, there was a lot of

movement from Revenue into private practice. The shift in expertise and knowledge from Revenue to the tax advisers is now evident in that hiring is going in the other direction with Revenue hiring tax accountants. No longer are Revenue personnel moving into the accounting practices, instead there are professionally trained, senior members of accounting firms moving into Revenue. This is a shift of knowledge with which tax accountants appear to be very concerned. In particular, the fact that Revenue is building up both its technical expertise and its commercial understanding is a cause of concern for tax accountants.

7.6.1.4 *Revenue's lack of commercial understanding*

A final aspect in relation to the relationship between Revenue and tax accountants was raised by the focus group participants. They articulated the view that Revenue does not have sufficient “*commercial awareness*”. As a result, Revenue may come to the conclusion that a particular structure is being devised for tax avoidance purposes when it is, in fact, being undertaken for business reasons.

They don't know how business operates, business planning to take your business to that next level, tax avoidance isn't part of it.

Focus Group Participant

The tax planning landscape was described by focus group participants as the “*driver usually [being] a commercial reality at the start*” and that “*it would be very unusual for the tax strategy, except in certain cases, to drive the business, it is more likely that the business is driving the tax and you are trying to work out how to minimise your exposures*”.

Attacking the commercial understanding and, therefore, the competence of Revenue represents a defiance strategy being deployed by tax accountants (Oliver, 1991). This attack may have aided tax accountants' ability to rebuff disruptive work on the part of Revenue as they sought to undermine the source of the external pressure.

The mismatch between commercial reality (as perceived and described by focus group participants) and Revenue's interpretation of tax planning resulted in work practices not changing in response to Revenue's pressures to tackle aggressive tax avoidance.

The changing nature of Revenue personnel and the attitude of Revenue to tackling tax avoidance has culminated in a working relationship that is perceived as less than

optimal, where tax accountants and their clients are experiencing increased frustrations. This finding is of particular importance from a tax policy perspective.

7.6.2 Public interest dimension of tax accountants' work

The overarching Research Question 2 asks whether the changes to the general anti-avoidance tax provisions have impacted the professionalism of tax accountants. As discussed in Chapter 2, there are a number of different ways in which the literature defines professionalism and for the purposes of this study, professionalism is being viewed as deriving from the “ideal-typical discourse of public service and disinterest in commercial matters” (Friedson, 2001; as cited by Malsch and Gendron, 2013, p.880). A key aspect of understanding the impact on professionalism, is examining whether the regulatory changes resulted in greater emphasis being placed on serving the public interest by tax accountants. This concept of serving the public interest was explored with interviewees and focus group participants.

Evidence collected from the interviews and focus group, illustrated that there is no meaningful acknowledgment of serving the public interest by tax accountants. This is noteworthy given its central role in distinguishing professional groups from other occupational groups (West, 1996; Lee, 1991; Mautz, 1988) and the fact that professional bodies continue to refer to this concept as a central aspect of accountants' work in their codes of ethics (IFAC, 2014). Moreover, references to the requirement to serve the public interest do not distinguish between accountants in audit and in non-audit roles.

There was almost a sense of surprise when interviewees and focus group participants were asked to consider the concept of the public interest. The majority of interviewees immediately stated that they saw no public interest dimension in their role. This was clearly illustrated by a number of interviewees and focus group participants:

Well I think it is probably somewhat out-dated for me. I try to act in my client's interests within the realms of revenue law and not in a broader socio context of acting in the public interest.

Mid-Size Firm Partner

Your interest tends to be just the individual client and that's just the nature of it.

Boutique Tax Practice Director

The first thing, on the top of your mind, when you are doing any kind of memo or structuring, is your client, it is not the public.

Focus Group Participant

This view was held across the various firm sizes, from Big Four to Small Accounting Firms, and across levels, including partners and directors. There was an indication that the Government is responsible to the public and, therefore, where the tax law is not operating to achieve what the Government considers to be in the public interest, it should amend it. It was articulated that it was not the role of the accounting profession to serve this role.

It is not something I would ever consider myself, my job is to do the best work for my client and follow the law, so my job certainly isn't to make them pay more tax if the law has not said it.

Boutique Tax Practice Partner

...but my overriding concern is not the public interest that is up to the legislators, in their ivory towers, to deal with.

Boutique Tax Practice Partner

I think the public interest is for the Government and the legislature to be interested in and to sort out and to set the rules and the boundaries.

Focus Group Participant

The lack of identification with acting in the public interest is a surprising finding given that it is a central concept of professionalism (West, 1996; Lee, 1991; Mautz, 1988). The “inevitable tension” (Stuebs and Wilkinson, 2010, p.13) that exists for tax accountants between serving the public interest and serving their clients has been acknowledged. However, the activities of some members of the accounting profession, which have led to “the explicit pursuit of commercial gain at the expense of the public interest” (Stuebs and Wilkinson, 2010, p.3), have been raised as a serious concern for the accounting profession. A call has been made for cultural changes aimed at restoring the public interest dimension within the accounting profession, with communication and training in professionalism being recommended (Stuebs and Wilkinson, 2010). Despite the high profile tax scandals involving members of the accounting profession (Wang, 2003), the identification of tax accountants with the professional requirement to serve the public interest continues to be absent. This is an issue of concern for both those within the accounting profession, who wish to rebuild their professional status, and for regulators and tax policymakers aiming to have a fair and functioning tax system, facilitated by the accounting profession.

The changes to the general anti-avoidance tax regime do not appear to have resulted in the reigniting of the public interest dimension of tax accountants' work, with clients' needs remaining the primary concern. As a result, the professionalism of accountants in terms of the expectation to serve the public interest has not been impacted by the disruptive work practices of Revenue.

The changes in the general anti-avoidance tax regime have been discussed, alongside the maintenance work practices employed by tax accountants in response to Revenue's attempts to disrupt their work and the consequences of such disruptive and maintenance work. The contributions of the study are now presented.

7.7 Contributions of the study

Studying the impact of changes in the general anti-avoidance tax regime on the work practices of tax accountants has led to a number of contributions from a theoretical perspective, but also from a methodological and tax policy perspective.

7.7.1 Maintenance work – theoretical contribution

The empirical setting provided an opportunity to explore the maintenance work of a professional group (Lawrence and Suddaby, 2006) that was under threat. The work practices of tax accountants were criticised by Revenue, and society was not willing to condone the involvement of taxpayers or their advisers in facilitating aggressive tax avoidance. As a result, a series of events occurred, whereby a powerful, regulatory actor, Revenue, was seen to attempt to disrupt the work practices of tax accountants. In contrast to the prior studies of institutional maintenance work by professional groups, tax accountants did not have significant status or power that they could rely on to maintain their work practices. In a prior study of the legal profession, it held a very powerful position and as a result was able to re-assert the norms of institutional interaction and regain institutional leadership (Micelotta and Washington, 2013). Maintenance work performed by the accounting profession in response to internally generated changes in Hayne and Free's (2014) study, again represented a very different empirical context, where changes were being made from within the profession rather than a response being required to coercive external pressures. In this study, tax accountants did not have the same level of status and respect due to their perceived involvement in facilitating aggressive tax avoidance as

discussed in Chapter 3. Consequently, tax accountants may be regarded as less powerful in their ability to resist external pressures. This required them to use covert, internal methods in order to resist disruption and maintain their work practices.

Another prior study of a professional group, specialist doctors, also demonstrated how social position and status can assist in the maintenance of work practices (Currie *et al.*, 2012). Tax accountants had experienced a loss of societal trust and a deterioration in their relationship with Revenue. Hence, the maintenance work practices selected were required to take this reduction in power into consideration and maintain their work practices without being able to rely on professional dominance as has been witnessed in prior studies (Currie *et al.*, 2012; Micelotta and Washington, 2013). Analysis of the maintenance work practices of a professional group that has lost some of its professional power and status is, therefore, a contribution to the existing studies of institutional maintenance.

Table 7.2 summarises the maintenance work practices identified in this study. This empirical context provided the opportunity to identify a number of different maintenance work practices being deployed by members of the accounting profession in response to external pressures. Tax accountants used custodial work practices, including policing and enabling, to buffer themselves from external threats – a form of maintenance work that has been seen as prevalent in professional fields (Lawrence and Suddaby, 2006; Currie *et al.*, 2012). Despite this form of work being identified in other professional contexts, prior studies of the maintenance work of the accounting profession did not identify policing being used as a form of maintenance work (Hayne and Free, 2014). However, in this study, tax accountants were dealing with external disruption and, as a result, policing and other custodial work practices were required to deal with the external pressures.

Table 7.2: Tax accountants' maintenance work practices

Form of maintenance work	Nature of work
Mandatory Disclosure Consultation	
Negotiation work	<ul style="list-style-type: none"> • Active engagement with the consultation for mandatory disclosure
Advocacy	<ul style="list-style-type: none"> • Achieving the exclusion for ordinary day-to-day tax planning
Policing	<ul style="list-style-type: none"> • Detailed consideration of whether tax advice falls within the ordinary, day-to-day tax planning exemption
Enabling	<ul style="list-style-type: none"> • Detailed analysis of tax planning enabled tax accountants to gain comfort that their activities fell outside of mandatory disclosure
Internal responses to changes in the general anti-avoidance tax regime	
Custodial work	<ul style="list-style-type: none"> • Formal procedures implemented to deal with protective notification and mandatory disclosure • Re-assessing the commercial rationale for transactions following the <i>O'Flynn Construction</i> decision
Policing	<ul style="list-style-type: none"> • New stage in tax planning process implemented to document the requirement, or lack thereof, to report under mandatory disclosure
Enabling	<ul style="list-style-type: none"> • New risk management procedures put in place following the introduction of mandatory disclosure
Educating	<ul style="list-style-type: none"> • Internal training was undertaken to ensure that all tax accountants were aware of mandatory disclosure and the new risk management policies
Embedding and routinising	<ul style="list-style-type: none"> • Centralised approach to risk management ensured that there was knowledge and approval of all reports being made under mandatory disclosure
Enabling work following <i>O'Flynn Construction</i> judgment	
Enabling work	<ul style="list-style-type: none"> • On-going internal debate following the <i>O'Flynn Construction</i> decision facilitated those that disagreed with the judgment to maintain their current work practices
Reflexive normalisation – Changing tax environment	
Reflexive normalisation work	<ul style="list-style-type: none"> • Tax accountants realigned their interests with those of their clients following a change in the tax planning environment and clients becoming increasingly concerned with the reputational risks of engaging in aggressive tax avoidance
Valourising and demonising	<ul style="list-style-type: none"> • Emphasis placed on the negative reputational repercussions of being associated with aggressive tax avoidance

This empirical context also identified advocacy and education, traditional forms of creation work, being used to support the maintenance work of tax accountants. This cross-over between different forms of institutional work has been identified in prior studies of professional groups (Hayne and Free, 2014; Empson *et al.*, 2013) and these findings are, therefore, supported by this study.

This study of tax accountants, within their organisational setting, contributes to a more nuanced understanding of how professional field actors respond to external threats of disruption, particularly when faced with coercive, legally enforceable changes. The difference in response across a range of firm sizes also illustrates the diverse nature of tax accountants, in that maintenance work was undertaken only by the larger accounting firms.

In addition, this empirical setting provides an opportunity to explore the institutional work practices undertaken by a professional group that could not use previously identified strategies based on their professional status and power (Suddaby and Viale, 2011). It has been seen that professionals use their “high occupational status and prestige” (Johnson, 1972, cited by Suddaby and Viale, 2011, p.433) to influence their institutional environment. However, due to the widespread criticism of tax accountants’ involvement in aggressive tax avoidance, their ability to utilise this social skill and influence the regulatory process was curtailed. As a result, a range of more covert and subtle maintenance work practices were seen to emerge.

7.7.2 Professionalism of accounting – methodological contribution

Prior studies of the professionalism of accountants have tended to focus on stated values rather than actual behaviours (Suddaby *et al.*, 2009). As a result, there has been criticism that, as accountants may behave differently from the values stated in a survey instrument for example, our understanding is curtailed (Sikka, 2009). This study responds to this criticism by adopting a qualitative approach to the study of professional work practices, in the specific setting of tax accountants.

The accounting profession has been criticised for its role in facilitating tax avoidance; therefore, rich insights were gained from studying how tax accountants’ work practices were impacted by changes in the general anti-avoidance tax regime. Revelation of the covert maintenance work tactics used by tax accountants to maintain their work practices provides a deeper understanding of how accounting

firms operate and respond to external pressures. These insights would not have been possible without the use of semi-structured interviews with information-rich participants.

The incorporation of the experiences and opinions of focus group participants increased the reliability and credibility of the findings. The description of how tax accountants behave and react to Revenue's efforts to tackle tax avoidance provides rich insights into the micro-level practices of members of the accounting profession.

7.7.3 Tax policy implications

The examination of work practices also provides policymakers with a deeper understanding of how tax accountants respond to changes in their external environment and the impact on their day-to-day practices.

Despite the ability of tax accountants to rebuff the legislative amendments to the general anti-avoidance tax regime, the influence of clients and the importance placed on responding to their needs and preferences were clearly illustrated in the findings. In addition, the important role of the media and changes in societal views regarding tax avoidance have influenced clients' attitudes and, as a consequence, their attitudes to engaging in aggressive tax planning. A surprising finding was the lack of recognition by interview or focus group participants of the reputational risks that could result from a failure to comply with mandatory disclosure. However, the level of custodial work undertaken by the accounting firms may have provided comfort in this regard.

These findings provide regulatory agencies with insights into how tax accountants respond to changes in terms of their day-to-day work practices and the influence of taxpayers on their actions. As a consequence, future disruptive work may be better aimed at directly tackling tax avoidance at the taxpayer level and their concern with protecting their reputation, as this has been seen to directly impact the work of tax accountants.

An issue of concern raised by tax accountants was the deterioration in their relationship with Revenue. Given the considerable time and effort spent by Revenue developing the co-operative compliance approach and investing in a collaborative working relationship with the accounting profession, these insights provide Revenue

with an opportunity to re-assess its relationship with the accounting profession and to determine what action, if any, is required to facilitate it in achieving its goals.

Finally, the traditional professional value of serving the public interest was explored in this study. A lack of identification with this aspect of professionalism was a consistent finding across all participants. This should prompt policy debate regarding the role of tax accountants in society and a discussion of ways in which to rebuild relationships between the Government, Revenue and the accounting profession.

7.8 Summary and conclusions

This chapter has presented the findings for RQ2c, examining the impact of changes in the general anti-avoidance tax regime on the day-to-day work practices of tax accountants, by collecting data at the organisational level.

Section 7.2 discussed the first category of maintenance work undertaken by tax accountants – negotiation work – in response to the introduction of mandatory disclosure. In addition to negotiation work, aspects of advocacy, policing and enabling work were identified. The success of this maintenance work was shown by Revenue’s renewed focus and the changes introduced to mandatory disclosure in the Finance Act 2014.

Custodial work was seen as the most significant maintenance strategy in response to protective notification and mandatory disclosure and was outlined in section 7.3. Procedural changes were introduced, including centralised risk management, in order to manage the internal response to changes in the general anti-avoidance tax regime. From a professional values perspective, this form of maintenance work was seen to reduce the professional autonomy of individual tax accountants, with the potential for an individual tax accountant to make a report under mandatory disclosure being significantly curtailed. In addition, education, traditionally a form of creation work, was identified in the internal training undertaken following the introduction of mandatory disclosure. Finally, the centralised risk management procedures provided the opportunity for tax accountants to engage in enabling work and embedding and routinising, bolstering their attempts to minimise any impact on their work practices.

In response to the *O'Flynn Construction* Supreme Court decision, enabling work was undertaken in the form of on-going internal debate. This form of maintenance work, discussed in section 7.4, was relied on to prevent the disruption of the work practices of individual tax accountants who disagreed with the Supreme Court decision.

Section 7.5 presented the final category of maintenance work, reflexive normalisation. It was clear from interviewees and focus group participants that the changing tax environment was the main contributory factor to changes in tax accountants' work practices. Tax accountants realigned their interests with those of their clients. This led to a reduction in aggressive tax planning. Valourising and demonising work was witnessed as taxpayers and tax accountants emphasised the reputational repercussions of engaging in aggressive tax avoidance.

In the discussions on the changing work practices of tax accountants, a recurring theme was the deterioration in the relationship between the accounting profession and Revenue. The reasons for this deterioration were discussed in section 7.6.1. This was followed by an analysis of the views of tax accountants in relation to the expectation for them to carry out their work in the public interest. The lack of identification with serving the public interest was evident across all participants.

Section 7.7 presented the contributions from the study of the work practices of tax accountants. Insights into the maintenance work practices of a professional group under threat from external forces were outlined. In addition, a methodological contribution was made by the in-depth, qualitative study of tax accountants' behaviours and practices at the organisational level. Finally, tax policy implications from the study's findings were presented.

Chapter 8: Conclusion

8.1 Introduction

The professionalism of accounting literature has tended to focus on stated professional values of accountants (Suddaby *et al.*, 2009). This stream of research has been criticised for its lack of attention on the actual behaviours and, consequently, the work practices of accountants (Sikka, 2009). This study responds to this criticism by examining the public and the private response of the accounting profession to changes in its external environment, and more specifically to the impact of external changes on the day-to-day work practices of tax accountants.

Despite the fact that a large proportion of the accounting profession specialise in the provision of taxation services, the professionalism of accounting literature has not examined the response of this unique sub-set of the profession to external pressures. Tax authorities worldwide are focused on tackling tax avoidance and as a result have introduced General Anti-Avoidance Rules (GAARs) and implemented changes to their general anti-avoidance tax regimes. This provides a fruitful empirical context in which the professionalism of tax accountants can be explored.

The research questions and the main findings for each of these questions and the contributions made are summarised in this chapter.

The motivation and purpose of the study were presented in Chapter 1. Chapter 2 discussed the prior literature that has informed the study. The literature review identified a number of research gaps that have been addressed throughout the study. The empirical setting under enquiry, the general anti-avoidance tax regime in Ireland, was outlined in Chapter 3. The specific research questions (based on the literature review and formulated to address the specific research opportunities) were presented in Chapter 4, together with the research design employed to examine: (i) the actions of Revenue in its efforts to tackle tax avoidance, (ii) the response of the accounting profession to changes in the general anti-avoidance tax regime and (iii) the impact of such changes on the work practices of tax accountants. The results

obtained from the documentary evidence review, semi-structured interviews and focus group were presented and discussed in Chapters 5, 6 and 7.

In this final chapter, the research findings and contributions are summarised. Sections 8.2 and 8.3 outline the main findings and contributions for RQ1 and RQ2, respectively. This is followed by a discussion of the limitations of the study in section 8.4, and future research opportunities and remaining questions are identified in section 8.5. The dissertation is drawn to a conclusion in section 8.6.

8.2 Main findings and contributions: RQ1

Prior to examining the impact of changes in the general anti-avoidance tax regime on the professionalism of tax accountants, it was necessary to examine how Revenue sought to tackle tax avoidance. To achieve this, RQ1 was developed, with two sub-questions, RQ1a and RQ1b:

RQ1: How did the Irish Government and the Office of the Revenue Commissioners attempt to tackle aggressive tax avoidance?

RQ1a: What legislative amendments were introduced?

RQ1b: How were the legislative amendments implemented and enforced (including judicial decisions in relation to the general anti-avoidance tax regime)?

Publically available documentary evidence was used to answer these questions. However, to add depth and further understanding of the issues, semi-structured interviews were carried out with current and former Revenue officers. The main findings from the documentary evidence and interviews are presented in section 8.2.1, followed by a summary of the contributions of these findings to the prior tax compliance and institutional theory literatures in section 8.2.2.

8.2.1 Main findings

The legislative amendments introduced by Revenue to tackle tax avoidance were firstly identified in Chapter 3, and the methods used to enforce and implement these amendments were discussed further in Chapter 5. A range of enforcement

strategies were identified, commencing with more indirect strategies, including persuasion and building to more direct strategies, including increases in Revenue powers and enforcement through the courts. Using disruptive work practices as a theoretical lens, these enforcement strategies deployed by Revenue to implement and enforce the changes in the general anti-avoidance tax regime were analysed. The disruptive work of Revenue included: (i) re-associating moral foundations, (ii) undermining beliefs and assumptions and (iii) disconnecting sanctions and rewards. However, in addition a number of institutional work practices, traditionally associated with institutional creation (advocacy) and maintenance (policing, enabling and deterrence) were also identified as being used to achieve the desired level of disruption. This finding is supported by prior studies that have highlighted that the complex nature of empirical events may lead to a cross-over between categories of institutional work (Empson *et al.*, 2013).

The escalating nature of the disruptive work practices was identified, with Revenue beginning with less direct forms and building up to the direct use of coercive, legal methods of disruption, when tax avoidance remained at an unacceptable level.

The inability of the traditional regulatory pyramid to deal with tax avoidance was responded to in this study. The pyramid was extended to illustrate the escalating enforcement strategies used by Revenue. These strategies include: (i) persuasion to the profession, (ii) incentives for taxpayers, (iii) penalties for taxpayers, (iv) penalties for advisers and (v) increased powers for Revenue.

8.2.2 Contributions of RQ1

The tackling tax avoidance pyramid contributes to the tax literature by illustrating the escalating nature by which tax authorities may tackle tax avoidance. In light of the growing attention being placed globally on curbing unacceptable tax avoidance, understanding the mechanisms used in a jurisdiction that has both a GAAR and a mandatory disclosure requirement provides other countries with helpful insights when they are considering implementing legislative changes of a similar nature. The nature of the changes also highlights that these enforcement strategies result in tax system level changes, potentially impacting all taxpayers and tax advisers, e.g., increased disclosure requirements and changes to statutory interpretation. This contrasts with the traditional tax compliance pyramid where tax authorities aim to move up the pyramid and use more coercive measures to tackle individual non-

compliant taxpayers. As a result, the tackling tax avoidance pyramid has a much more far-reaching impact across the tax system.

This study also provides a longitudinal analysis of the disruptive work practices used by a powerful regulatory actor. Revenue is seen to have initially used less direct forms of disruptive work. However, when the level of tax avoidance remained unacceptable, it resorted to more and more direct forms of disruptive work, incorporating elements of creation and maintenance work to achieve the desired disruption. This study, therefore, provides an opportunity to witness a regulatory actor building layers of disruptive work, when the first attempt at achieving disruption did not result in the desired outcome, these prior efforts were supplemented and built on, resulting in an array of disruption work being deployed. Initial efforts to disrupt the institutionalised practice of aggressive tax avoidance were not abandoned and replaced by more coercive, direct measures. Revenue added to the existing more subtle indirect measures as time passed and the level of aggressive tax avoidance remained at an unacceptable level. This study, therefore, provides insights into how regulatory actors may respond where initial disruption attempts are not as successful as intended and the building of layers of disruptive work practices that consequently result.

8.3 Main findings and contributions: RQ2

The insights and understanding gained from studying the methods used by Revenue to attempt to tackle tax avoidance enabled the study to shift to the accounting profession and to explore how changes in the general anti-avoidance tax regime have impacted the professionalism of tax accountants. An overarching RQ2 was developed, with three sub-questions:

RQ2: Have the general anti-avoidance tax provisions changed the nature of the professionalism of tax accountants?

RQ2a: How did the accounting profession respond to the legislative changes/measures introduced to tackle aggressive tax avoidance?

RQ2b: Why did the accounting profession respond in such a manner?

RQ2c: Did the legislative amendments and related measures result in changes to the day-to-day work practices of tax accountants and, if so, how have the work practices been impacted?

Each of the three sub-questions of RQ2 are dealt with in the sections that follow, with the overarching RQ2 dealt with in section 8.3.3.

8.3.1 Reaction of the profession to increased regulation: RQ2a and RQ2b

RQ2a and RQ2b focused on understanding how and why the accounting profession responded to changes in the general anti-avoidance tax regime as it did. Publicly available documentary evidence, in the form of formal submissions made by professional bodies in response to the regulatory changes, was used to analyse how the accounting profession responded to each change in the general anti-avoidance tax regime. Oliver's (1991) typology of strategic responses to institutional pressures was used as an analytical tool. This documentary analysis enabled the public response of the accounting profession to be analysed. To add depth of understanding, the private response of the accounting profession was analysed through semi-structured interviews and a focus group with tax accountants. The main findings from the documentary evidence, interviews and focus group are summarised in section 8.3.1.1, followed by a summary of the contribution to Oliver's (1991) framework in section 8.3.1.2.

8.3.1.1 *Main findings*

The accounting profession was seen to be defiant in response to changes in the general anti-avoidance tax regime when the legislation did not place a direct onus on the accounting profession to report or change its behaviour, for example, when protective notification was introduced. Following this defiant response and the low level of protective notifications received, Revenue introduced a non-discretionary, direct onus on the accounting profession in the form of mandatory disclosure. As a result of the direct reporting requirement placed on the accounting profession, it engaged in a response strategy combining defiance and compromise, utilising specific tactics: balance/challenge, bargain/dismissal and challenge. The accounting profession emphasised the negative implications that changes in the general anti-avoidance tax regime might have on foreign direct investment and the right of taxpayers to manage their affairs in a tax efficient manner. The combined defiance/compromise strategy was successful, with a large number of concessions

granted, most notably in relation to the exclusion of ordinary day-to-day tax planning from the scope of the mandatory disclosure requirement.

The accounting profession responded in a dichotomous manner to the Supreme Court decision in the *O'Flynn Construction* case. Following initial public debate and challenge from interested parties within the accounting profession, this led to eventual public acquiescence. This may be contrasted with the private avoidance and defiance evidenced in the interview and focus group data. In particular, the application of purposive interpretation of tax statutes continues to be privately challenged, with many within the accounting profession regarding it as unworkable in practice. The accounting profession is eagerly awaiting future judicial decisions relating to the GAAR, with the anticipation that such judgments will provide greater clarity regarding the application and interpretation of the GAAR. The longer term implications of the *O'Flynn Construction* and other related judgments are as yet not possible to ascertain, but provide future opportunities for research.

The cause of the varied responses by the accounting profession to changes in the general anti-avoidance tax regime was not attributed, as might be anticipated, to the increasingly coercive methods used by Revenue. Instead, the accounting profession's primary concern was its response to client needs. Over time, tax avoidance became a greater issue from a societal perspective with the attention placed on it increasing from both Revenue and the media's perspective and, as a result, clients became increasingly concerned with their public reputation. The interview and focus group data provided an insight into how these reputational concerns drove the response of the accounting profession from defiance to defiance/compromise and acquiescence.

8.3.1.2 Contributions

This study contributes to Oliver's (1991) framework by extending prior work that has examined the response of the accounting profession to changes in its regulatory environment (Canning and O'Dwyer, 2013). Canning and O'Dwyer (2013) extended the implicit focus of Oliver's (1991) framework by examining the response of both regulator and regulatees over an extended period of time. A longitudinal approach was also adopted in this study, enabling the response of the accounting profession overtime to a changing regulatory environment to be explored. The research methods used enabled both the public and the private response of the accounting

profession to be examined. The semi-structured interviews and the focus group enabled the on-the-ground response of the accounting profession to be understood. Therefore, this study extends prior studies by examining both the public response of the accounting profession and the private response of individual accountants within their organisational contexts. This is of particular importance when assessing the overall success of a regulatory change and provides much greater depth of understanding than the publically articulated responses.

The predictors of strategic responses were also examined, with the large accounting firms seen to engage more actively with changes in the general anti-avoidance tax regime than smaller firms. The more active resistance by smaller actors is in line with Oliver's (1991) predictions. Manipulation, a response strategy, previously identified where the accounting profession's social legitimacy was threatened (Canning and O'Dwyer, 2013) was not identified in this study. The analysis of the on-the-ground response enabled an understanding of the absence of manipulation to be gained. This was due to the accounting profession's concern for responding to client needs and their changing attitudes to aggressive tax planning. The main driver of the accounting profession's response strategies was the wants and needs of its clients. The qualitative research methods enabled the rationale behind response strategies to be explored, with the driving force behind the response to regulatory change being identified as meeting client demands. Examining the institutional change from both the public and the private perspective and being able to identify pressures, such as meeting client needs and reacting to societal attention on the issue of tax avoidance, were essential aspects of this study.

8.3.2 Day-to-day work practices: RQ2c

RQ2c examined the impact of changes in the general anti-avoidance tax regime on the day-to-day work practices of tax accountants. Semi-structured interviews and a focus group with tax accountants enabled this impact to be explored and analysed, using the concept of maintenance work, a form of institutional work employed where an organisation is under threat from external change agents. The main findings from the interviews and the focus group are discussed in section 8.3.2.1, followed by a summary of the contributions – theoretical, methodological and tax-policy related – in section 8.3.2.2.

8.3.2.1 Main findings

The maintenance work practices used by tax accountants in response to the attempts by Revenue to tackle tax avoidance and disrupt their institution as a result were explored in Chapter 7. A range of maintenance work practices was identified. The need for tax accountants to engage in a broad set of maintenance work practices may be unsurprising given the escalating disruptive work practices deployed by Revenue. The study identified the use of four broad categories of maintenance work: (i) negotiation work, (ii) custodial work/policing, (iii) enabling work/embedding and routinising and (iv) reflexive normalisation/valourising and demonising. However, within the broad categories, a number of complimentary creation work practices were identified, including advocacy and educating. This supports prior studies that have found that the complex nature of real-life results in a cross-over between the traditional institutional work categories of creation, maintenance and disruption (Empson *et al.*, 2013; Hayne and Free, 2014).

The negotiation work represented the active engagement by tax accountants in the consultation process that took place following the announcement of the proposed mandatory disclosure rules. This process involved the use of advocacy work by tax accountants and the success of this form of maintenance/creation work was seen in the level of concessions granted, particularly in relation to the exclusion of ordinary day-to-day tax planning from the mandatory disclosure requirement. Tax accountants through the combined negotiation/advocacy work convinced Revenue of the need for this exemption. In response to this successful negotiation, tax accountants engaged in enabling work, whereby they carefully considered transactions to determine if they fell within the exemption and hence outside the scope of mandatory disclosure.

In response to both protective notification and mandatory disclosure, custodial work was undertaken by tax accountants. This was particularly the case in the large accounting firms with policing and enabling work undertaken. Centralised risk management procedures were implemented and extensive training was carried out. The education undertaken across the accounting firms provides a second example of a traditional creation work practice being used to support the overall maintenance work of tax accountants. In terms of the professionalism of tax accountants, the centralised risk management procedures reduced the autonomy of individual accountants, as these did not have the option of deciding to make a mandatory

disclosure themselves; instead, the issue was required to be escalated up the firm, often to the executive, senior partner level. However, despite individual autonomy being reduced, the centralised approach provided an opportunity for maintenance work aimed at embedding and routinising to be achieved.

The interview and focus group data revealed that there was considerable disagreement in relation to the majority Supreme Court judgment in the *O'Flynn Construction* case. This disagreement centred on the majority judgment's application of a purposive interpretation of tax law. It has been a long-held view that tax statutes should be interpreted in a literal manner and, as a consequence, this judgment was met with considerable debate. In order to prevent a significant impact on the work practices of tax accountants who disagreed with purposive interpretation extending to tax law more generally, tax accountants have been engaging in on-going internal debate regarding the judgment. For example, some commentators have argued that, as the case related to the specific abuse of Export Sales Relief (a provision no longer available), the judgment is not as far reaching as anticipated. This on-going internal debate represents enabling work, allowing those tax accountants that disagree with the judgment to continue advising clients without adopting a purposive approach to statutory interpretation.

The final form of maintenance work identified was reflexive normalisation. The desire of tax accountants to meet their clients' needs was evident throughout the semi-structured interviews and the focus group. As clients became increasingly concerned with their reputation and, hence, their desire to engage in aggressive tax planning diminished, tax accountants realigned their interests with those of their clients, resulting in a reduced involvement in aggressive tax planning by all parties. Elements of valourising and demonising were also identified with emphasis being placed on the negative implications of engaging in aggressive tax avoidance.

8.3.2.2 *Contributions*

The study of the maintenance work practices of tax accountants provided an insight into how a professional group responded when under threat from external forces. This empirical context differed from prior studies of maintenance work by professionals (Micelotta and Washington, 2013; Currie *et al.*, 2012), as there had been diminishing societal trust and confidence in tax accountants and, hence, they could not rely on their professional status to maintain their work practices. In prior

studies, maintenance work practices had relied on the professional status and ability of the professional groups (legal and medical) to assert their authority and maintain their power and professional privilege (Micelotta and Washington, 2013; Currie *et al.*, 2012). Other prior studies of professional groups have examined institutional work in response to internally generated changes (Empson *et al.*, 2013; Hayne and Free, 2014), however this study examined the response of tax accountants to external disruption, providing an opportunity to examine the different set of maintenance work practices required to be implemented.

As a result of the external disruptive work practices of Revenue and loss of professional power and status, tax accountants engaged in a range of specific maintenance work activities aimed at limiting the impact of the changes in the general anti-avoidance tax regime. For example, custodial work that resulted in the erosion of individual professional autonomy protected tax accountants from rogue reporting under mandatory disclosure, and negotiation work was successful despite the low level of trust in the profession. Enabling work, in the form of on-going internal debate, demonstrated how disagreement amongst tax accountants regarding the Supreme Court decision in the *O'Flynn Construction* case was dealt with internally, enabling those who did not agree that purposive interpretation should be applied to the tax statute generally to continue with their current work practice, i.e., interpreting tax legislation in a literal manner.

This study also makes a methodological contribution to the professionalism of accounting literature. Prior studies have tended to focus on stated values rather than actual behaviours (Suddaby *et al.*, 2009). The criticism of this stream of research has been that individuals may behave differently from the values stated in a survey instrument (Sikka, 2009) and, as a result, understanding is curtailed. The use of semi-structured interviews in this study enabled the actual professional work practices to be explored. A focus group was also used in order to increase the reliability and credibility of the findings.

From a tax policy perspective, this study sheds light on how changes in the general anti-avoidance tax regime have impacted the day-to-day work practices of tax accountants. The importance placed on clients' desires to protect their reputation should enable tax authorities to design and implement more effective measures to tackle tax avoidance in the future. In addition, the deteriorating relationship between the accounting profession and Revenue identified in the semi-structured interviews

and in the focus group may be a cause of concern for regulators. Despite considerable efforts having been made to develop a collaborative working relationship between the parties, this study has shown the accounting profession's dissatisfaction with Revenue. This provides an opportunity for Revenue to re-assess this relationship and determine what action, if any, is required to facilitate the functioning of a fair and efficient tax system.

Finally, the lack of identification of tax accountants with the expectation to serve the public interest was clearly articulated by the study's participants. This finding, combined with the deteriorating relationship between Revenue and the accounting profession, may present future challenges from a tax policy perspective.

8.3.3 Professionalism of tax accountants – RQ2

The findings from Chapters 6 and 7 allow the overarching RQ2 to be answered. The changes in the general anti-avoidance tax regime themselves have not resulted in a shift towards the ideal-type professionalism – categorised by a commitment to serve the public interest and disinterest in commercial matters (Freidson, 2001) – amongst tax accountants. The response of the accounting profession to regulatory changes was steered by a primary concern to respond to client needs and only as clients' attitudes shifted was a corresponding shift in response by the accounting profession witnessed.

Similarly, the maintenance work practices of tax accountants resulted in a strong attempt to subtly and covertly rebuff any changes to the type of tax advice offered to their clients. The public interest dimension of the profession's work was not identified with and any resulting changes to work practices, were once again attributed to changing attitudes of clients, rather than being as a result of a reconnection by tax accountants with traditional professional values. It may, therefore, be concluded that the nature of professionalism amongst tax accountants is driven by client needs and desires and the disruptive work practices of Revenue have not been successful in reducing the impact of commercialism on the professionalism of tax accountants.

8.3.4 Summary of contributions

This study makes a number of contributions to (i) theory, (ii) research methods and (iii) tax policymaking.

(i) Theoretical contributions

Firstly, the study progresses existing work regarding responsive regulation by extending the tax compliance pyramid to take into account how tax authorities might deal with tax avoidance at a tax system level. From an institutional theory perspective, this empirical context facilitated a longitudinal analysis of the disruptive work practices used by a powerful regulatory actor. Specifically, the escalating nature of disruptive work practices was identified, with layers of disruptive work being used and supplemented over time in an attempt to achieve the desired level of disruption. In addition, this empirical context supports the claims of prior studies that the complex nature of reality may result in an over-lap between different institutional work practices – creation, maintenance and disruption. This cross-over is identified in this study, with elements of creation and maintenance work being used in Revenue's continuing attempts to tackle aggressive tax avoidance.

Secondly, the in-depth examination of both the public and the private response of a professional group to external regulatory changes advances to our understanding of responses to institutional change pressures. The study highlights the differing public and private responses of the accounting profession deployed in response to actions of the tax authority.

Thirdly, the empirical context provided an opportunity to explore the maintenance work practices of a professional group following a loss of societal trust and respect. This study extends the existing literature examining the maintenance work of professionals where reliance was placed on their professional status to resist changes in their work practices (Micelotta and Washington, 2013; Currie *et al.*, 2012). Once again, the complex nature of empirical events under review provided an opportunity to witness the crossing over of traditional institutional work categories, with elements of creation work being used to achieve institutional maintenance.

(ii) Methodological contributions

From a methodological perspective, this study contributes to the professionalism of accounting literature by responding to the call to examine the professional behaviours of accountants (Sikka, 2009). The research design allowed the interaction between regulatory guidelines and micro-level practices to be examined and understood (Arnold, 2009; Hopwood, 2009; McSweeney, 2009; Lounsbury, 2008; Cooper and Robson, 2006). The semi-structured interviews and the focus group enabled a rich understanding of the day-to-day work practices of tax accountants to be explored.

(iii) Tax policymaking contributions

The study makes a number of contributions to tax policymaking. Firstly, the study examines how changes in the general anti-avoidance tax regime impacted the day-to-day work practices of tax accountants. These insights enable regulators to assess more fully the impact of past regulatory changes and the potential impact of proposed future changes.

Secondly, the study highlights the deteriorating relationship between Revenue and the accounting profession. In light of the importance placed by tax authorities on having a strong, working relationship with tax intermediaries (OECD, 2008), this finding might prompt Revenue to re-assess its relationship with the accounting profession and attempt to re-build a stronger alliance with those within the profession.

Finally, from a tax policy perspective, the lack of identification by tax accountants of their role in serving the public interest may represent a concern, prompting both tax authorities and professional bodies to reignite this traditional professional value amongst tax accountants.

8.4 Limitations of the study

It is acknowledged that there are limitations to this study and its research design. The limitations are discussed in sections 8.4.1 to 8.4.4 under the sub-headings of sampling strategy, empirical setting, researcher bias and research methods.

8.4.1 Sampling strategy

The sampling framework was presented in section 4.8.2 of Chapter 4. A purposeful sampling approach was adopted in order to obtain depth rather than breadth of responses. This enabled the issues under enquiry to be examined and understood, with participants chosen on the basis of their experience and knowledge of the area. It is acknowledged in the literature that, in order to obtain sufficient depth of findings, it is necessary to place boundaries on the study, and those boundaries were decided upon after careful consideration and following pilot interviews (Patton, 1990).

The inability to interview a wider range of tax accountants, particularly a greater number from Mid-Size and smaller accounting firms (Boutique Tax Practices and Small Accounting Firms) resulted from the unwillingness of such individuals to participate in the study. Contact was made and either no response was received or unwillingness on the part of the potential participant was communicated. Although this restricted the number of participants from these firm groups, this issue was not considered a threat to the reliability and credibility of the findings, as saturation point was reached across all firm-size categories.

The size of the focus group could be perceived as a second limitation. Ideally, a group of six to eight individuals participate in the discussion (Hennink *et al.*, 2011; Krueger and Casey, 2000). However, the selection criteria (requiring participants to have been working in professional accounting practice during the legislative changes, i.e., from 2006 to 2011, and to have subsequently left practice), made it difficult to identify potential participants that: (i) met the criteria and (ii) were willing to participate. As the focus group was made up of a group of experienced tax accountants, with a considerable amount to share in relation to the issues under enquiry, a larger group would, in fact, have limited the ability of participants to share their insights.

It is noted that the findings in this study are not statistically generalisable. However, this was not the purpose or goal of the study. This study was exploratory in nature, and the research methodology and specific research methods were chosen as being the most appropriate to answer the research questions and achieve the overall purpose of the study.

A final limitation identified is that this research was specifically undertaken to examine the professionalism of tax accountants. It must, however, be acknowledged that there are a number of other groups of tax advisers who are not members of the accounting profession, for example, tax lawyers. Knowledge of the response of these other groups of tax professionals to changes in the general anti-avoidance tax regime and the influence that they have had on the tax planning landscape would further add to our understanding of the empirical context under enquiry.

8.4.2 Empirical setting

The study explores changes in the general anti-avoidance tax regime in the Irish context. Therefore, it may be argued that the findings are very context specific. It is acknowledged that this may be true in relation to certain aspects of regulatory changes, but the study deals with regulatory changes that have also been taking place in a number of other jurisdictions. Countries globally are increasingly turning to a GAAR and related measures, such as mandatory disclosure, as methods of tackling tax avoidance. The European Commission has recommended the introduction of a GAAR across all EU member states, and the OECD BEPS project includes the introduction of mandatory disclosure as one of its action points. Consequently, the examination of a country where both of these anti-avoidance features already form part of its tax regime provides insights for other tax authorities into how best to implement and enforce changes in general anti-avoidance tax provisions.

Ireland is one of only four countries to currently have a GAAR and mandatory disclosure in force and therefore offers a fruitful empirical context in which to explore how the accounting profession responded to changes in the general anti-avoidance tax regime and how it impacted day-to-day work practices of tax accountants. Consequently, the findings of this study will be of relevance to those outside the Irish context.

8.4.3 Researcher bias

Qualitative research is often criticised as being too subjective because the researcher is the person both collecting and interpreting the data and because of the closeness of the researcher to the phenomenon under enquiry (Patton, 1990). A stance of neutrality must, therefore, be adopted by the researcher. This means entering the field without any pre-determined results to prove and with a commitment

to understand the social world through the complexities and multiple perspectives that emerge (Patton, 1990).

The issue of subjectivity has been addressed in the research design and has been managed throughout each step in the research process, particularly in the sampling and data analysis procedures, as discussed in Chapter 4.

The issue of managing researcher bias and taking the appropriate safeguards is of course important, but being an outside expert offered advantages in this study. The fact that the researcher was a qualified accountant and tax adviser and had worked in a professional accounting firm facilitated an understanding of the tax legislation and of the technical nature of the amendments to the general anti-avoidance tax regime. Consequently, the researcher was able to explore complex issues in greater depth with interviewees and focus group participants.

The researcher's background in the accounting profession enabled the arrangement of access that would have been difficult for a non-tax professional or another academic. The researcher's prior experience added credibility and also facilitated an open discussion with research participants.

8.4.4 Research methods

Three research methods were chosen for the study: documentary evidence, semi-structured interviews and a focus group. This increased the credibility and reliability of the findings. Despite the multiple methods used in the study, a limitation is that observations of individual behaviour were not obtained. The ability to observe tax accountants in their natural environment and to witness first-hand the decision process when, for example, a new piece of advice is being discussed and debated amongst colleagues would have added considerable depth to the study. However, due to the phenomenon under enquiry and the confidential nature of professional accounting practice, this was not feasible. Tax accountants would have been unwilling to disclose sensitive information to someone from outside the firm, and therefore any observations permitted would likely have been made in a sanitised environment, if this was at all possible.

In order to increase the reliability and credibility of the semi-structured interviews, the focus group was held. This offered an opportunity to gain the views of those that had

recently left professional accounting practice, who had been in practice when the various legislative changes were enacted and therefore were in a position to clearly recollect their experiences and were willing to share these as they were no longer being employed within a professional accounting firm.

The limitations identified in the study offer opportunities for future research; these are presented in section 8.5.

8.5 Future research opportunities

A number of future research opportunities have been identified. Section 8.5.1 presents the opportunity to extend the current study to examine the Finance Act 2014 changes to the general anti-avoidance tax regime and the impact of such changes on the accounting profession. The emphasis being placed on tackling tax avoidance at a global level provides further research opportunities that are discussed in section 8.5.2. The findings from the study also identify further research avenues, outlined in sections 8.5.3, 8.5.4, 8.5.5 and 8.5.6.

8.5.1 Finance Act 2014 changes to the general anti-avoidance tax regime

The changes to mandatory disclosure introduced in the Finance Act 2014 were discussed in section 7.2.3. As the data for this study were collected prior to the legislation being enacted (23 December 2014), these changes were beyond the scope of this study. This amendment was a response to the low level of mandatory disclosures made by tax advisers and to the perception by Revenue that the comforts previously provided were too generous. This study supported this assertion by Revenue, with tax accountants stating their belief that the majority of the advice given falls within ordinary day-to-day tax planning. The response of the accounting profession to this further strengthening of the general anti-avoidance tax regime and, in particular, whether it prompts future mandatory disclosures or results in a change in the type of advice provided to clients, represents a fruitful opportunity to extend the current study.

In addition to the changes to mandatory disclosure, changes were also introduced to the GAAR. These were the first substantial changes since its introduction in 1989. The most significant of these changes was to lower the burden for Revenue to challenge a transaction under the GAAR. Previously, Revenue was required to form

an opinion that a transaction was a tax avoidance transaction, thereby placing the onus on Revenue. The new rules state that a transaction may be challenged under the GAAR where it is reasonable to consider that the transaction gave rise to a tax advantage and was not undertaken primarily for purposes other than to give a tax advantage. This amendment lowers the entry point at which a transaction may be challenged under the GAAR; and, rather than a notice of opinion being required to be raised by Revenue, a transaction can now be challenged in the normal way, by raising an assessment, which the taxpayer may then appeal. These changes are effective for transactions post 23 October 2014. Consequently, future research examining the use of the revised GAAR by Revenue and the response of both tax professionals and taxpayers provides future research opportunities.

A further change in the Finance Act 2014 was the introduction of the concept of a qualifying avoidance disclosure. This amendment introduced new incentives for taxpayers who may have engaged in a tax avoidance transaction to make a settlement with Revenue. For transactions that took place prior to 23 October 2014, taxpayers had until 30 June 2015 to make a qualifying disclosure. An analysis of the level of engagement with this disclosure regime, compared with the level of engagement with protective notification, would provide insights into the most efficient and effective ways to tackle tax avoidance.

8.5.2 Global efforts to tackle tax avoidance

In addition to changes taking place in the Irish context, tackling tax avoidance is an international issue. As previously mentioned, the European Commission has issued a recommendation for all EU member states to introduce a form of GAAR into national legislation. This provides a research opportunity to carry out a comparative study of the adoption of a GAAR by member states, the different approaches adopted, and the response by national tax professionals and taxpayers.

The OECD BEPS project also provides significant opportunity to study the implications of the various action points. Relating specifically to this study, the recommendations for the introduction of mandatory disclosure across OECD countries provides a further opportunity to carry out a comparative study of the implementation and impact of such a disclosure regime.

8.5.3 Tackling tax avoidance – the taxpayers' perspective

A key finding from this study was the influence of clients' reputational concerns on the work practices of the accounting profession. The shift in societal attitudes to tax avoidance and the resulting impact on taxpayers' demands for aggressive tax planning is a worthwhile future research avenue, particularly for policymakers to understand the motivations behind taxpayers' attitudes to engaging in aggressive tax planning and whether the specific efforts of tax authorities have been effective in reducing the incidence of tax avoidance. Interviews with tax managers and directors of corporate entities would provide an insight into the impact of shifting societal attitudes to tax avoidance.

8.5.4 Non-accountant tax advisers

This study focused on the response of the accounting profession to changes in the general anti-avoidance tax regime and the impact of such changes on the day-to-day work practices of tax accountants. Knowledge of the response of other groups of tax professionals, e.g., tax lawyers – as discussed in section 8.4.1 – would enhance our understanding of the tax advisory environment and the impact on regulatory changes. For example, the role of the legal profession in contributing to the changes made to mandatory disclosure would provide further insight into the strength of the accounting profession's consultation in this regard.

8.5.5 Role of professional bodies

The role of professional bodies in tackling tax avoidance was an issue that emerged during this study. In particular, the difference in approach taken by UK professional bodies compared with those in Ireland and across Europe was identified. An examination could take place of the role of UK professional bodies in tackling tax avoidance and the benefits that may be gained from, or disadvantages associated with, professional bodies providing markers for their members in terms of what is and is not acceptable tax planning. Future research in this area may provide guidance as to what role professional accounting and tax bodies, their members and the regulators may gain from working together to tackle tax avoidance.

8.5.6 Relationship between the accounting profession and Revenue

Finally, the findings in this study highlighted a changing relationship between Revenue and the accounting profession, perceived as a deteriorating one by tax accountants. The Irish Revenue was regarded as having a strong working relationship with its tax intermediaries. However, it is possible that this prior arrangement is no longer regarded as desirable by regulators. The semi-structured interviews and the focus group demonstrated the high levels of frustration being experienced by those within the accounting profession in their dealings with Revenue, particularly following the loss of institutional knowledge by Revenue as a result of early retirements. The influx of accounting professionals into Revenue has also created unease amongst the accounting profession. This provides the opportunity for further analysis of this relationship and the changing environment in which Revenue and the accounting profession are operating.

8.6 Conclusion

Tackling tax avoidance has become an issue of critical concern on both the domestic and the international stage. As a result, tax authorities are turning to general anti-avoidance tax regimes as they attempt to protect their tax base and counteract anti-social, unacceptable tax avoidance. The tax compliance literature has illustrated the responsive regulation techniques that may be used to deal with non-compliant taxpayers. However, as tax avoidance involves technical compliance with the law, these techniques are not appropriate to deal with this mounting issue.

This study responds to this knowledge gap by examining the escalating measures undertaken to strengthen the general anti-avoidance tax regime and tackle unacceptable tax avoidance. The concept of disruptive work is used to understand, more fully, the actions of the tax authority as it attempts to address this societal issue. Layers of disruptive work are identified, with institutional work traditionally associated with creation and maintenance being used to achieve its overall disruptive aims.

Legislative changes may result in a response from interested parties. In this study, the focus is placed on members of the accounting profession. Oliver's (1991) framework is extended by analysing both the public and the private response of the accounting profession, using documentary evidence, semi-structured interviews and

a focus group. The escalating nature of legislative reforms are met with a reduction in the level of active public response by the accounting profession, moving from defiance to compromise and acquiescence. However, surprisingly, it was not the coercive nature of these legislative amendments that resulted in greater engagement. The interview and focus group data indicated that societal changes and the impact of such on their clients, and the subsequent increase in concern by their clients for their reputation, were the key driving force behind the accounting profession's response.

The maintenance work activities undertaken by tax accountants in response to Revenue's disruptive work was evident, with a centralised approach adopted by the large accounting firms to protect them from what they might regard as rogue reporting. Protection of the firm's reputation was evident in the level of risk management changes introduced following the introduction of mandatory disclosure. The influence of clients was also seen in terms of the impact of changes in the general anti-avoidance tax regime on the day-to-day work practices of tax accountants, with client reputational concerns being a driving force behind the type of advice being given by tax accountants. A range of maintenance work practices, together with elements of creation work, were used by tax accountants in their attempts to protect their work practices and rebuff the disruptive work of Revenue.

The importance of meeting client needs, including responding to clients' concerns about protecting their reputation, was seen as the most considerable influencing factor on: (i) the response of the accounting profession to changes in the general anti-avoidance tax regime and (ii) the impact on tax accountants' work practices. Where tax accountants were advising clients in a more socially acceptable manner, this appeared to be led by client demands, not by a desire or obligation to serve the public interest. This was a significant, unexpected finding, given the professional values that underpin the accounting profession. This study indicates that the traditional values on which professionalism was built have been replaced, in the contemporary profession, by a client-led professionalism, influenced by current social norms.

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Appendices

Appendix I: Section 811 TCA 1997

811 Transactions to avoid liability to tax

FA89 s86; FA06 s126(a); VATCA2010 s123 & Sch7; FA12 s130(1); FA13 s97(1)(a), s92 and Sch1Pt2(e)

(1)

(a) In this Section and Section 811A-

“*the Acts*” means-

(i) the Tax Acts,

(ii) the Capital Gains Tax Acts,

(iii) the Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act,

(iv) the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act,

(v) [...]¹,

(vi) the statutes relating to stamp duty, and

(vii) Part 18D,

and any instruments made thereunder;

“*business*” means any trade, profession or vocation;

“*notice of opinion*” means a notice given by the Revenue Commissioners under subsection (6);

“*tax*” means any tax, duty, levy or charge which in accordance with the Acts is placed under the care and management of the Revenue Commissioners and any interest, penalty or other amount payable pursuant to the Acts;

“*tax advantage*” means-

(i) a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment, or

(ii) a refund of or a payment of an amount of tax, or an increase in an amount of tax, refundable or otherwise payable to a person, including any potential or prospective amount so refundable or payable,

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction;

“*tax avoidance transaction*” has the meaning assigned to it by subsection (2);

“*tax consequences*”, in relation to a tax avoidance transaction, means such adjustments and acts as may be made and done by the Revenue Commissioners pursuant to subsection (5) in order to withdraw or deny the tax advantage resulting from the tax avoidance transaction;

“*transaction*” means-

- (i) any transaction, action, course of action, course of conduct, scheme, plan or proposal,
- (ii) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and
- (iii) any series of or combination of the circumstances referred to in paragraphs (i) and (ii),

whether entered into or arranged by one person or by 2 or more persons –

- (I) whether acting in concert or not,
- (II) whether or not entered into or arranged wholly or partly outside the State, or
- (III) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions.

(b) In subsections (2) and (3), for the purposes of the hearing or rehearing under subsection (8) of an appeal made under subsection (7) or for the purposes of the determination of a question of law arising on the statement of a case for the opinion of the High Court, the references to the Revenue Commissioners shall, subject to any necessary modifications, be construed as references to the Appeal Commissioners or to a judge of the Circuit Court or, to the extent necessary, to a judge of the High Court, as appropriate.

(c) For the purposes of this section and section 811A, all appeals made under section 811(7) by, or on behalf of, a person against any matter or matters specified or described in the notice of opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction, if they have not otherwise been so determined, shall be deemed to have been finally determined when–

- (i) there is a written agreement, between that person and an officer of the Revenue Commissioners, that the notice of opinion is to stand or is to be amended in a particular manner,
- (ii) (I) the terms of such an agreement that was not made in writing have been confirmed by notice in writing given by the person to the officer of the Revenue Commissioners with whom the agreement was made, or by such officer to the person, and
(II) 21 days have elapsed since the giving of the notice without the person to whom it was given giving notice in writing to the person by whom it was given that the first-mentioned person desires to repudiate or withdraw from the agreement, or

- (iii) the person gives notice in writing to an officer of the Revenue Commissioners that the person desires not to proceed with an appeal against the notice of opinion.
- (2) For the purposes of this section and subject to subsection (3), a transaction shall be a "tax avoidance transaction" if having regard to any one or more of the following-
- (a) the results of the transaction,
 - (b) its use as a means of achieving those results, and
 - (c) any other means by which the results or any part of the results could have been achieved,

the Revenue Commissioners form the opinion that-

- (i) the transaction gives rise to, or but for this section would give rise to, a tax advantage, and
- (ii) the transaction was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage,

and references in this section to the Revenue Commissioners forming an opinion that a transaction is a tax avoidance transaction shall be construed as references to the Revenue Commissioners forming an opinion with regard to the transaction in accordance with this subsection.

- (3)
- (a) Without prejudice to the generality of subsection (2), in forming an opinion in accordance with that subsection and subsection (4) as to whether or not a transaction is a tax avoidance transaction, the Revenue Commissioners shall not regard the transaction as being a tax avoidance transaction if they are satisfied that-
 - (i) notwithstanding that the purpose or purposes of the transaction could have been achieved by some other transaction which would have given rise to a greater amount of tax being payable by the person, the transaction-
 - (I) was undertaken or arranged by a person with a view, directly or indirectly, to the realisation of profits in the course of the business activities of a business carried on by the person, and
 - (II) was not undertaken or arranged primarily to give rise to a tax advantage,or
 - (ii) the transaction was undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement provided by any provision of the Acts and that the transaction would not result directly or indirectly in a misuse of the provision or an abuse of the provision having regard to the purposes for which it was provided.
 - (b) In forming an opinion referred to in paragraph (a) in relation to any transaction, the Revenue Commissioners shall have regard to-
 - (i) the form of that transaction,
 - (ii) the substance of that transaction,

- (iii) the substance of any other transaction or transactions which that transaction may reasonably be regarded as being directly or indirectly related to or connected with, and
 - (iv) the final outcome and result of that transaction and any combination of those other transactions which are so related or connected.
- (4) Subject to this section, the Revenue Commissioners as respects any transaction may at any time-
- (a) form the opinion that the transaction is a tax avoidance transaction,
 - (b) calculate the tax advantage which they consider arises, or which but for this section would arise, from the transaction,
 - (c) determine the tax consequences which they consider would arise in respect of the transaction if their opinion were to become final and conclusive in accordance with subsection (5)(e), and
 - (d) calculate the amount of any relief from double taxation which they would propose to give to any person in accordance with subsection (5)(c).
- (5)
- (a) Where the opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction becomes final and conclusive, they may, notwithstanding any other provision of the Acts, make all such adjustments and do all such acts as are just and reasonable (in so far as those adjustments and acts have been specified or described in a notice of opinion given under subsection (6) and subject to the manner in which any appeal made under subsection (7) against any matter specified or described in the notice of opinion has been finally determined, including any adjustments and acts not so specified or described in the notice of opinion but which form part of a final determination of any such appeal) in order that the tax advantage resulting from a tax avoidance transaction shall be withdrawn from or denied to any person concerned.
 - (b) Subject to but without prejudice to the generality of paragraph (a), the Revenue Commissioners may-
 - (i) allow or disallow in whole or in part any deduction or other amount which is relevant in computing tax payable, or any part of such deduction or other amount,
 - (ii) allocate or deny to any person any deduction, loss, abatement, relief, allowance, exemption, income or other amount, or any part thereof, or
 - (iii) recharacterize for tax purposes the nature of any payment or other amount.
 - (c) Where the Revenue Commissioners make any adjustment or do any act for the purposes of paragraph (a), they shall afford relief from any double taxation which they consider would but for this paragraph arise by virtue of any adjustment made or act done by them pursuant to paragraphs (a) and (b).
 - (d) Notwithstanding any other provision of the Acts, where-
 - (i) pursuant to subsection (4)(c), the Revenue Commissioners determine the tax consequences which they consider would arise in respect of a transaction if their opinion that the transaction is a tax avoidance transaction were to become final and conclusive, and

- (ii) pursuant to that determination, they specify or describe in a notice of opinion any adjustment or act which they consider would be, or be part of, those tax consequences,

then, in so far as any right of appeal lay under subsection (7) against any such adjustment or act so specified or described, no right or further right of appeal shall lie under the Acts against that adjustment or act when it is made or done in accordance with this subsection, or against any adjustment or act so made or done that is not so specified or described in the notice of opinion but which forms part of the final determination of any appeal made under subsection (7) against any matter specified or described in the notice of opinion.

- (e) For the purposes of this subsection, an opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction shall be final and conclusive-

- (i) if within the time limited no appeal is made under subsection (7) against any matter or matters specified or described in a notice or notices of opinion given pursuant to that opinion, or
- (ii) as and when all appeals made under subsection (7) against any such matter or matters have been finally determined and none of the appeals has been so determined by an order directing that the opinion of the Revenue Commissioners to the effect that the transaction is a tax avoidance transaction is void.

(5A)

- (a) In this subsection—
“*assessment*” includes a first assessment, an additional assessment, an additional first assessment and an estimate or estimation;

“*amendment*”, in relation to an assessment, includes the adjustment, alteration or correction of the assessment.

- (b) Where the opinion of the Revenue Commissioners, that a transaction is a tax avoidance transaction, becomes final and conclusive, then for the purposes of giving effect to this section, any time limit provided for by Part 41 or 41A, or by any other provision of the Acts, on the making or amendment of an assessment or on the requirement or liability of a person to pay tax or to pay additional tax—

- (i) shall not apply, and
- (ii) shall not affect the collection and recovery of any amount of tax or additional tax that becomes due and payable.

(6)

- (a) Where pursuant to subsections (2) and (4) the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction, they shall immediately on forming such an opinion give notice in writing of the opinion to any person from whom a tax advantage would be withdrawn or to whom a tax advantage would be denied or to whom relief from double taxation would be given if the opinion became final and conclusive, and the notice shall specify or describe-

- (i) the transaction which in the opinion of the Revenue Commissioners is a tax avoidance transaction,
- (ii) the tax advantage or part of the tax advantage, calculated by the Revenue Commissioners which would be withdrawn from or denied to the person to whom the notice is given,
- (iii) the tax consequences of the transaction determined by the Revenue Commissioners in so far as they would refer to the person, and

(iv) the amount of any relief from double taxation calculated by the Revenue Commissioners which they would propose to give to the person in accordance with subsection (5)(c).

(b) Section 869 shall, with any necessary modifications, apply for the purposes of a notice given under this subsection or subsection (10) as if it were a notice given under the Income Tax Acts.

(7) Any person aggrieved by an opinion formed or, in so far as it refers to the person, a calculation or determination made by the Revenue Commissioners pursuant to subsection (4) may, by notice in writing given to the Revenue Commissioners within 30 days of the date of the notice of opinion, appeal to the Appeal Commissioners on the grounds and, notwithstanding any other provision of the Acts, only on the grounds that, having regard to all of the circumstances, including any fact or matter which was not known to the Revenue Commissioners when they formed their opinion or made their calculation or determination, and to this section-

- (a) the transaction specified or described in the notice of opinion is not a tax avoidance transaction,
- (b) the amount of the tax advantage or the part of the tax advantage, specified or described in the notice of opinion which would be withdrawn from or denied to the person is incorrect,
- (c) the tax consequences specified or described in the notice of opinion, or such part of those consequences as shall be specified or described by the appellant in the notice of appeal, would not be just and reasonable in order to withdraw or to deny the tax advantage or part of the tax advantage specified or described in the notice of opinion, or
- (d) the amount of relief from double taxation which the Revenue Commissioners propose to give to the person is insufficient or incorrect.

(8) The Appeal Commissioners shall hear and determine an appeal made to them under subsection (7) as if it were an appeal against an assessment to income tax and, subject to subsection (9), the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications; but on the hearing or rehearing of the appeal-

- (a) it shall not be lawful to enquire into any grounds of appeal other than those specified in subsection (7), and
- (b) at the request of the appellants, 2 or more appeals made by 2 or more persons pursuant to the same opinion, calculation or determination formed or made by the Revenue Commissioners pursuant to subsection (4) may be heard or reheard together.

(9)

(a) On the hearing of an appeal made under subsection (7), the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard under this section, and-

(i) in relation to an appeal made on the grounds referred to in subsection (7)(a), the Appeal Commissioners shall determine the appeal, in so far as it is made on those grounds, by ordering, if they or a majority of them-

(I) consider that the transaction specified or described in the notice of opinion or any part of that transaction is a tax avoidance

transaction, that the opinion or the opinion in so far as it relates to that part is to stand,

(II) consider that, subject to such amendment or addition thereto as the Appeal Commissioners or the majority of them deem necessary and as they shall specify or describe, the transaction, or any part of it, specified or described in the notice of opinion, is a tax avoidance transaction, that the transaction or that part of it be so amended or added to and that, subject to the amendment or addition, the opinion or the opinion in so far as it relates to that part is to stand, or

(III) do not so consider as referred to in clause (I) or (II), that the opinion is void,

(ii) in relation to an appeal made on the grounds referred to in subsection (7)(b), they shall determine the appeal, in so far as it is made on those grounds, by ordering that the amount of the tax advantage or the part of the tax advantage specified or described in the notice of opinion be increased or reduced by such amount as they shall direct or that it shall stand,

(iii) in relation to an appeal made on the grounds referred to in subsection (7)(c), they shall determine the appeal, in so far as it is made on those grounds, by ordering that the tax consequences specified or described in the notice of opinion shall be altered or added to in such manner as they shall direct or that they shall stand, or

(iv) in relation to an appeal made on the grounds referred to in subsection (7)(d), they shall determine the appeal, in so far as it is made on those grounds, by ordering that the amount of the relief from double taxation specified or described in the notice of opinion shall be increased or reduced by such amount as they shall direct or that it shall stand.

(b) This subsection shall, subject to any necessary modifications, apply to the rehearing of an appeal by a judge of the Circuit Court and, to the extent necessary, to the determination by the High Court of any question or questions of law arising on the statement of a case for the opinion of the High Court.

(10) The Revenue Commissioners may at any time amend, add to or withdraw any matter specified or described in a notice of opinion by giving notice (in this subsection referred to as "*the notice of amendment*") in writing of the amendment, addition or withdrawal to each and every person affected thereby, in so far as the person is so affected, and subsections (1) to (9) shall apply in all respects as if the notice of amendment were a notice of opinion and any matter specified or described in the notice of amendment were specified or described in a notice of opinion; but no such amendment, addition or withdrawal may be made so as to set aside or alter any matter which has become final and conclusive on the determination of an appeal made with regard to that matter under subsection (7).

(11) Where pursuant to subsections (2) and (4) the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction and pursuant to that opinion notices are to be given under subsection (6) to 2 or more persons, any obligation on the Revenue Commissioners to maintain secrecy or any other restriction on the disclosure of information by the Revenue Commissioners shall not apply with respect to the giving of those notices or to the performance of any acts or the discharge of any functions authorised by this section to be performed or discharged by them or to the performance of any act or the discharge of any functions, including any act or function in relation to an appeal made under subsection (7), which is directly or indirectly related to the acts or functions so authorised.

(12) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions, including the forming of an opinion, authorised by this section

to be performed or discharged by the Revenue Commissioners, and references in this section to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so nominated.

(13) This section shall apply as respects any transaction where the whole or any part of the transaction is undertaken or arranged on or after the 25th day of January, 1989, and as respects any transaction undertaken or arranged wholly before that date in so far as it gives rise to, or would but for this section give rise to-

- (a) a reduction, avoidance or deferral of any charge or assessment to tax, or part thereof, where the charge or assessment arises by virtue of any other transaction carried out wholly on or after a date, or
- (b) a refund or a payment of an amount, or of an increase in an amount, of tax, or part thereof, refundable or otherwise payable to a person where that amount or increase in the amount would otherwise become first so refundable or otherwise payable to the person on a date, which could not fall earlier than the 25th day of January, 1989.

Notes

1	Deleted by FA13 s97(1)(a) and applying to any transaction (within the meaning of section 811(1)(a) of the Taxes Consolidation Act 1997) undertaken or arranged on or after 13 February 2013
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Appendix II: Section 811 notices issued as at July 2013

	Description	No. of notices	Status
1	Contrived pre-disposal dividend payment thus reducing value of subsidiary (s51(b) FA 1996 refers).	3	Case finalised.
2	Contrived intra-group transfer of assets and subsequent sale of group companies (s51(a) FA 1996 refers).	3	Case finalised.
3	CGT on disposal of asset was avoided by the creation of a 75% capital gains tax group (using shares with special rights) and the utilisation of unconnected trading losses (s56(1)(b) FA 1999 refers).	2	Case settled.
4	Company shareholders obtained fully exempt Export Sales Relief dividends from third parties funded by their respective companies.	16	3 cases: Supreme Court held in favour of Revenue that the transactions were tax-avoidance transactions. 7 cases settled. 6 cases listed for appeal before Appeal Commissioners on additional issues in relation to s811 .
5	Carry-forward of artificial capital gains tax losses created prior to s86 FA 1989 (s811 TCA 1997) coming into force.	2	Appeal settled by agreement.
6	Capital gains tax loss-buying scheme (s57 FA 1999 refers).	1	Case settled.
7	Creation of artificial deficits to avoid surcharge under s440 TCA 1997.	1	Settled by agreement.
8	Film partnership losses.	14 368	Circuit Court upheld Revenue's opinion that the transaction was a tax-avoidance transaction. The appeal against one of these notices was withdrawn by the appellant in October 2012 before High Court hearing. In 2007, 368 notices were issued to investors in 35 similar partnerships. Of the 368, 36 are closed, and the remainder are under appeal. In 2009 the Appeal Commissioners determined that a notice was invalid as being out of time. Revenue appealed to the High Court. The High Court upheld the decision of the Appeal Commissioners. Revenue has appealed this to the Supreme Court. Remaining cases are awaiting Supreme Court decision.
9	VAT scheme – leases and taxable supply (s99 FA 2002 refers).	1	Section 811 notice withdrawn in favour of treating transaction as an abusive practice in accordance with ECJ decision in <i>Halifax</i> case. Taxpayer withdrew appeal. Case closed.
10	VAT – property development by exempt body (s99 FA 2002 refers).	4	Determined under s811(1)(c) TCA 1997. Case settled.
11	Student accommodation.	6	Appeal Commissioner held in favour of the taxpayer in July 2009. Case under appeal to the High Court. Hearing yet to be arranged.

	Description	No. of notices	Status
12	Investment in business partnerships – the issue is whether an artificial loss was created and claimed by investors against personal taxes.	Unspecified	The appeal against one of the notices in the scheme (refer to Scheme 8) was heard by the Appeal Commissioners. The Appeal Commissioners determined that the notices were invalid as being out of time. Revenue appealed to the High Court. The High Court upheld the decision of the Appeal Commissioners. Revenue has appealed this to the Supreme Court.
13	Extraction of reserves from company by shareholder without exposure to income tax.	1	Appeal Commissioner held in favour of the taxpayer on 24 February 2009. Case under appeal to the High Court.
14	Cash extraction from company's reserves for the benefit of directors and their children without income tax exposure.	10	Appeal settled by agreement.
15	Cash extraction from company by shareholder without exposure to income tax (CGT was paid).	1	Settled by agreement. Appellant withdrew the appeal and paid full tax advantage.
16	CGT was avoided by availing of inter-spousal relief and the provisions of a double taxation treaty (s75 FA 2006 refers).	1	Under appeal to the Appeal Commissioners. This case is awaiting a decision in a case that is being appealed to the Supreme Court on a material issue that could affect this case.
17	Credit claimed by taxpayer for CGT on "same event" against CAT liability. Credit claimed in respect of what were in substance "gifts" (s119 FA 2006 refers).	4	Cases settled.
18	Creation of artificial capital losses that were then offset against chargeable gains.	29	All notices are under appeal to the Appeal Commissioners.
19	Artificial creation of loan within group and payment of interest to low-tax jurisdiction.	4	Under appeal to the Appeal Commissioners. This case is awaiting a decision in a case that is being appealed to the Supreme Court on a material issue that could affect this case.
20	Artificial creation of loan within group and payment of interest to low-tax jurisdiction.	96	Appeal settled by agreement.
21	Individuals claimed relief for interest payments against their income tax on artificial loan to invest in a company	2	Under appeal to the Appeal Commissioners.
22	Artificial creation of loan within group – charging interest and claiming a deduction at Irish rates and paying tax on the interest in low-rate jurisdiction.	1	Under appeal to the Appeal Commissioners. This case is awaiting a decision in a case that is being appealed to the Supreme Court on a material issue that could affect this case.
23	Use of inter-spousal relief under s1028(5) TCA 1997 (pre-FA 2006 amendment) and double taxation agreement to avoid CGT on disposal of shares.	4	Under appeal to the Appeal Commissioners. Hearing took place in October 2012, and further hearing to be rescheduled.
24	Extraction of cash reserves by shareholder without income tax exposure.	1	This is same case as Scheme 15. Settled by agreement. Appellant withdrew the appeal and paid full tax advantage.
25	Tax-free cash extraction from close companies through use of discretionary trusts.	6	5 of these cases are under appeal to the Appeal Commissioners.
26	Series of transactions whereby capital gains tax was avoided on disposal of shares in a company to an offshore trust.	2	Preliminary hearing took place in November 2012, and further hearing in May 2013. Decision awaited.

	Description	No. of notices	Status
27	Capital loss scheme where tax losses are matched by tax-exempt gains.	26	Initially, notices of opinion issued in 6 cases, all appealed to Appeal Commissioners. Judicial review proceedings were taken in 4 cases, and the High Court found in Revenue's favour. A further 20 notices issued in 13 cases: 16 of these notices were appealed. Judicial review has been requested in 7 cases. In 2013, 3 of the cases appealed have been settled.
28	Tax-free extraction of funds from companies by individuals through transfer of rights attaching to shares.	7	All under appeal to the Appeal Commissioners.
29	Person acquired certain assets temporarily to reduce value of a substantial gift for the purposes of CAT.	1	Currently no appeal.

Source: Revenue Commissioners (Byrne 2013)

Appendix III: S.811A TCA 1997 – Protective notification

811A Transactions to avoid liability to tax: surcharge, interest and protective notification

FA06 s126(b); FA08 s140; F(No. 2)A08 s95; VATCA2010 s123 & Sch 7; FA12 s129 and Sch4 Pt2(d) and (g); FA13 s97(1)(b)

(1)

(a) In this section references to tax being payable shall, except where the context requires otherwise, include references to tax being payable by a person to withdraw from that person so much of a tax advantage as is a refund of, or a payment of, an amount of tax, or an increase in an amount of tax, refundable, or otherwise payable, to the person.

(b) For the purposes of this section the date on which the opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction becomes final and conclusive is—

(i) where no appeal is made under section 811(7) against any matter or matters specified or described in the notice of that opinion, 31 days after the date of the notice of that opinion, or

(ii) the date on which all appeals made under section 811(7) against any such matter or matters have been finally determined and none of the appeals has been so determined by an order directing that the opinion of the Revenue Commissioners to the effect that the transaction is a tax avoidance transaction is void.

(c) This section shall be construed together with section 811 and shall have effect notwithstanding any of the provisions of section 811.

(1A) Without prejudice to the generality of any provision of this section or section 811, nothing in section 959Z, 959AA or 959AB shall be construed as preventing an officer of the Revenue Commissioners from—

(a) making any enquiry, or

(b) taking any action,

at any time in connection with this section or section 811.

(1B) Where the Revenue Commissioners have received from, or on behalf of, a person, on or before the relevant date (within the meaning of subsection (3)(c)) a notification (referred to in subsection (3) and (6) as a 'protective notification') of full details of a transaction, then the Revenue Commissioners shall not form the opinion that the transaction is a tax avoidance transaction pursuant to subsections (2) and (4) of that section after the expiry of the period of 2 years commencing at—

(a) the relevant date, or

(b) if earlier, the date on which the notification was received by the Revenue Commissioners,

but this subsection shall not be construed as preventing an officer of the Revenue Commissioners from making any enquiry at any time in connection with this section or section 811.

(2) Where, in accordance with adjustments made or acts done by the Revenue Commissioners under section 811(5), on foot of their opinion (as amended, or added to, on appeal where relevant) that a transaction is a tax avoidance transaction having become final

and conclusive, an amount of tax is payable by a person that would not have been payable if the Revenue Commissioners had not formed the opinion concerned, then, subject to subsection (3)–

- (a) the person shall be liable to pay an amount (in this section referred to as the “*surcharge*”) equal to 20 per cent of the amount of that tax and the provisions of the Acts, including in particular section 811(5) and those provisions relating to the collection and recovery of that tax, shall apply to that surcharge, as if it were such tax, and
- (b) for the purposes of liability to interest under the Acts on tax due and payable, the amount of tax, or parts of that amount, shall be deemed to be due and payable on the day or, as respects parts of that amount, days specified in the notice of opinion (as amended, or added to, on appeal where relevant) in accordance with section 811(6)(a) (iii) construed together with subsection (4) (a) of this section,

and the surcharge and interest shall be payable accordingly.

(3)

(a) Subject to subsection (6), neither a surcharge nor interest shall be payable by a person in relation to a tax avoidance transaction finally and conclusively determined to be such a transaction if the Revenue Commissioners have received from, or on behalf of, that person, on or before the relevant date (within the meaning of paragraph (c)), notification (referred to in this subsection and subsection (6) as a “*protective notification*”) of full details of that transaction.

(b) Where a person makes a protective notification, or a protective notification is made on a person’s behalf, then the person shall be treated as making the protective notification–

- (i) solely to prevent any possibility of a surcharge or interest becoming payable by the person by virtue of subsection (2), and
- (ii) wholly without prejudice as to whether any opinion that the transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

(c) Regardless of the type of tax concerned–

(i) where the whole or any part of the transaction, which is the subject of the protective notification, is undertaken or arranged on or after 19 February 2008, then the relevant date shall be–

- (I) the date which is 90 days after the date on which the transaction commenced, or
- (II) if it is later than the said 90 days, 19 May 2008,

(ii) where –

- (I) the whole of the transaction is undertaken or arranged before 19 February 2008, and would give rise to, or would but for section 811 give rise to, a reduction, avoidance, or deferral of any charge or assessment to tax, or part thereof, and
- (II) that charge or assessment would arise only by virtue of one or more other transactions carried out wholly on or after 19 February 2008,

then the relevant date shall be the date which is 90 days after the date on which the first of those other transactions commenced, or

(iii) where –

(I) the whole of the transaction is undertaken or arranged before 19 February 2008, and would give rise to, or would but for section 811 give rise to, a refund or a payment of an amount, or of an increase in an amount of tax, or part thereof, refundable or otherwise payable to a person, and

(II) that amount or increase in the amount would, but for section 811, become first so refundable or otherwise payable to the person on a date on or after 19 February 2008,

then the relevant date shall be the date which is 90 days after that date.

(d) Notwithstanding the receipt by the Revenue Commissioners of a protective notice, paragraph (a) shall not apply to any interest, payable in relation to a tax avoidance transaction finally and conclusively determined to be such a transaction, in respect of days on or after the date on which the opinion of the Revenue Commissioners in relation to that transaction becomes final and conclusive.

(4)

(a) The determination of tax consequences, which would arise in respect of a transaction if the opinion of the Revenue Commissioners, that the transaction was a tax avoidance transaction, were to become final and conclusive, shall, for the purposes of charging interest, include the specification of–

(i) a date or dates, being a date or dates which is or are just and reasonable to ensure that tax is deemed to be due and payable not later than it would have been due and payable if the transaction had not been undertaken, disregarding any contention that another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction, and

(ii) the date which, as respects such amount of tax as is due and payable by a person to recover from the person a refund of or a payment of tax, including an increase in tax refundable or otherwise payable, to the person, is the day on which the refund or payment was made, set off or accounted for,

and the date or dates shall be specified for the purposes of this paragraph without regard to–

(I) when an opinion of the Revenue Commissioners that the transaction concerned was a tax avoidance transaction was formed,

(II) the date on which any notice of that opinion was given, or

(III) the date on which the opinion (as amended, or added to, on appeal where relevant) became final and conclusive.

(b) Where the grounds of an appeal in relation to tax consequences refer to such a date or dates as are mentioned in paragraph (a), subsection (7) of section 811 shall apply, in that respect, as if the following paragraph were substituted for paragraph (c) of that subsection:

(c) “the tax consequences specified or described in the notice of opinion, or such part of those consequences as shall be specified or described by the appellant in the notice of appeal, would not be just and reasonable to ensure that tax is deemed to be payable on a date or dates in accordance with subsection (4) (a) of section 811A”

and the grounds of appeal referred to in section 811(8)(a) shall be construed accordingly.

(5) A surcharge payable by virtue of subsection (2)(a) shall be due and payable on the date that the opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction becomes final and conclusive and interest shall be payable in respect of any delay in payment of the surcharge as if the surcharge were an amount of that tax by reference to an amount of which the surcharge was computed.

(6)

(a) A protective notification shall—

(i) be delivered in such form as may be prescribed by the Revenue Commissioners and to such office of the Revenue Commissioners as—

(I) is specified in the prescribed form, or

(II) as may be identified, by reference to guidance in the prescribed form, as the office to which the notification concerned should be sent, and

(ii) contain—

(I) full details of the transaction which is the subject of the protective notification, including any part of that transaction that has not been undertaken before the protective notification is delivered,

(II) full reference to the provisions of the Acts that the person, by whom, or on whose behalf, the protective notification is delivered, considers to be relevant to the treatment of the transaction for tax purposes, and

(III) full details of how, in the opinion of the person, by whom, or on whose behalf, the protective notification is delivered, each provision, referred to in the protective notification in accordance with clause (II), applies, or does not apply, to the transaction.

(b) Without prejudice to the generality of paragraph (a), the specifying, under—

(i) section 81 of the Value-Added Tax Consolidation Act 2010,

(ii) section 46A of the Capital Acquisitions Tax Consolidation Act 2003,

(iii) section 8 of the Stamp Duties Consolidation Act 1999, or

(iv) section 959P of this Act,

of a doubt as to the application of law to, or the treatment for tax purposes of, any matter to be contained in a return shall not be regarded as being, or being equivalent to, the delivery of a protective notification in relation to a transaction for the purposes of subsections (1B) and (3).

(c) Where the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction and believe that a protective notification in relation to the transaction has not been delivered by a person in accordance with subsection (6)(a) by the relevant date (within the meaning of subsection (3)(c)) then, in giving notice under section 811(6)(a) to the person of their opinion in relation to the transaction, they shall give notice that they believe that a protective notification has not been so delivered by the person and section 811 shall be construed, subject to any necessary modifications, as if—

(i) subsection (7) of that section included as grounds for appeal that a protective notification in relation to the transaction was so delivered by the person, and

(ii) subsection (9) of that section provided that an appeal were to be determined, in so far as it is made on those grounds, by ordering that a protective notification in relation to the transaction was so delivered or that a protective notification in relation to the transaction was not so delivered.

(6A) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners, and references in this section to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so nominated.

(7) This section shall apply—

(a) as respects any transaction where the whole or any part of the transaction is undertaken or arranged on or after 19 February 2008, and

(b) as respects any transaction, the whole of which was undertaken or arranged before that date, in so far as it gives rise to, or would but for section 811 give rise to—

(i) a reduction, avoidance, or deferral of any charge or assessment to tax, or part thereof, where the charge or assessment arises only by virtue of another transaction or other transactions carried out wholly on or after 19 February 2008, or

(ii) a refund or a payment of an amount, or of an increase in an amount of tax, or part thereof, refundable or otherwise payable to a person where, but for section 811, that amount or increase in the amount would become first so refundable or otherwise payable to the person on or after 19 February 2008.

Appendix IV: Mandatory disclosure

Chapter 3 – Mandatory disclosure of certain transactions

817D Interpretation and general (Chapter 3)

FA10 s149; VATCA2010 s123 & Sch 7; FA13 s97(1)(c)

(1) In this Chapter, unless the context otherwise requires—

“*the Acts*” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) [...],¹
- (d) the Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act ,
- (e) the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act,
- (f) the Stamp Duties Consolidation Act 1999, and the enactments amending or extending that Act,
- (g) the statutes relating to the duties of excise and to the management of those duties, and
- (h) Part 18D,

and any instruments made thereunder and any instruments made under any other enactment relating to tax;

“*disclosable transaction*” means—

- (a) any transaction, or
- (b) any proposal for any transaction, which—
 - (i) falls within any specified description,
 - (ii) enables, or might be expected to enable, any person to obtain a tax advantage, and
 - (iii) is such that the main benefit, or one of the main benefits, that might be expected to arise from the transaction or the proposal is the obtaining of that tax advantage,

whether the transaction or the proposal for the transaction relates to a particular person or to any person who may seek to take advantage of it;

“*marketer*”, in relation to any disclosable transaction, means any person who is not a promoter but who has made a marketing contact in relation to the disclosable transaction;

“*marketing contact*”, in relation to a disclosable transaction, means the communication by a person of the general nature of the disclosable transaction to another person with a view to that person or any other person considering whether—

- (a) to ask for further details of the disclosable transaction, or
- (b) to seek to have the disclosable transaction made available for implementation, and “*makes a marketing contact*” shall be construed accordingly;

“*PPS Number*”, in relation to an individual, means the individual’s personal public service number, within the meaning of section 262 of the Social Welfare Consolidation Act 2005;

“*promoter*”, in relation to a disclosable transaction, means a person who in the course of a relevant business—

- (a) is to any extent responsible for the design of the disclosable transaction,
- (b) has specified information relating to the disclosable transaction and makes a marketing contact in relation to the disclosable transaction,
- (c) makes the disclosable transaction available for implementation by other persons, or
- (d) is to any extent responsible for the organisation or management of the disclosable transaction;

“*relevant business*” means any trade, profession, vocation or business which—

- (a) includes the provision to other persons of services relating to taxation, or
- (b) is carried on by a bank (within the meaning of section 124(1)(a) of the Stamp Duties Consolidation Act 1999),

and for the purposes of this definition—

- (i) anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business referred to in paragraph (b) carried on by another company, where both companies are members of the same group, and
- (ii) “*group*” has the meaning that would be given by section 616 if in that section references to residence in a relevant Member State were omitted and for references to “*75 per cent subsidiaries*” there were substituted references to “*51 per cent subsidiaries*”, and references to a company being a member of a group shall be construed accordingly;

“*relevant date*”, in relation to a disclosable transaction, means the earliest of the following dates—

- (a) the date on which the promoter has specified information relating to the disclosable transaction and first makes a marketing contact in relation to the disclosable transaction,
- (b) the date on which the promoter makes the disclosable transaction available for implementation by any other person, or
- (c) the date on which the promoter first becomes aware of any transaction forming part of the disclosable transaction having been implemented;

“*specified description*” has the meaning assigned to it by subsection (2);

“*specified information*” means any information specified in regulations made under section 817Q;

“*specified period*” means the period of time, or time, specified in regulations made under section 817Q;

“*tax*” means any tax, duty, levy or charge which, in accordance with the Acts, is placed under the care and management of the Revenue Commissioners;

“*tax advantage*” means—

- (a) relief or increased relief from, or a reduction, avoidance or deferral of, any assessment, charge or liability to tax, including any potential or prospective assessment, charge or liability,
- (b) a refund or repayment of, or a payment of, an amount of tax, or an increase in an amount of tax refundable, repayable or otherwise payable to a person, including any potential or prospective amount so refundable, repayable or payable, or an advancement of any refund or repayment of, or payment of, an amount of tax to a person, or
- (c) the avoidance of any obligation to deduct or account for tax,

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction;

“*tax reference number*”, in relation to a person, means—

- (a) in the case of a person who is an individual, the individual’s PPS Number, and
- (b) in any other case—
 - (i) the reference number stated in any return of income form or notice of assessment issued to the person by the Revenue Commissioners, or
 - (ii) the registration number of the person for the purposes of value-added tax;

“*transaction*” means—

- (a) any transaction, action, course of action, course of conduct, scheme or plan,
- (b) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and
- (c) any series of or combination of the circumstances referred to in paragraphs (a) and (b),

whether entered into or arranged by one person or by two or more persons—

- (i) whether acting in concert or not,
- (ii) whether or not entered into or arranged wholly or partly outside the State, or
- (iii) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions,

and any proposal for any transaction shall be construed accordingly.

(2)

- (a) For the purposes of this Chapter, unless the context otherwise requires, a reference to a specified description shall be construed as a reference to a class or classes of transaction which are specified in regulations made under section 817Q.
- (b) A class of transaction referred to in paragraph (a) and which is specified in regulations made under section 817Q shall fall within at least one of the categories of transaction referred to in paragraph (c).

(c) The categories of transaction referred to in paragraph (b) are as follows:

- (i) a transaction where, but for the provisions of this Chapter, a promoter or person would, or might reasonably be expected to, wish to keep the transaction or any element of the transaction (including the way in which the transaction is structured) which gives rise to the tax advantage expected to be obtained, confidential from—
 - (I) the Revenue Commissioners, or
 - (II) any other class of person prescribed under section 817Q for the purposes of this subparagraph,for any purpose prescribed by regulations made under section 817Q;
- (ii) a transaction in relation to which a promoter, whether directly or indirectly, obtains from or charges to, or might reasonably be expected to obtain from or charge to, a person implementing, or considering implementing, such transaction, fees that are to a significant extent attributable to, or to any extent contingent upon, the obtaining of a tax advantage;
- (iii) a transaction which involves standardised or mainly standardised documentation, the form of which is largely determined by the promoter and which require the person implementing the transaction to enter into a specific transaction, or series of transactions, that are standardised, or substantially standardised, in form;
- (iv) a transaction, or any element of such transaction (including the way in which the transaction is structured), which gives rise to a tax advantage of a class or classes prescribed in regulations made under section 817Q for the purposes of this subparagraph.

817E Duties of promoter

FA10 s149

Subject to this Chapter, a promoter shall, within the specified period after the relevant date, provide the Revenue Commissioners with specified information relating to any disclosable transaction.

817F Duty of person where promoter is outside the State

FA10 s149

Any person who enters into any transaction forming part of any disclosable transaction in relation to which—

(a) a promoter is outside the State, and

(b) no promoter is in the State,

shall, within the specified period after so doing, provide the Revenue Commissioners with specified information relating to the disclosable transaction.

817G Duty of person where there is no promoter

FA10 s149

Any person who enters into any transaction forming part of a disclosable transaction as respects which neither that person nor any other person in the State has an obligation to

comply with section 817E or 817F shall within the specified period after so doing provide the Revenue Commissioners with specified information relating to the disclosable transaction.

817H Duty of person where legal professional privilege claimed

FA10 s149

(1) Any person who enters into a transaction forming part of a disclosable transaction as respects which the promoter, by virtue of section 817J, does not comply with section 817E, shall within the specified period concerned after entering such transaction, provide the Revenue Commissioners with specified information relating to the disclosable transaction.

(2) A promoter who by virtue of section 817J does not comply with section 817E shall inform each person to whom the promoter has made the disclosable transaction available for implementation of the obligations placed on that person by virtue of subsection (1).

(3) A promoter who by virtue of section 817J does not comply with section 817E shall inform the Revenue Commissioners accordingly within the specified period.

817I Pre-disclosure enquiry

FA10 s149

(1) Where the Revenue Commissioners have reasonable grounds for believing that—

(a) a person is the promoter of a transaction that may be a disclosable transaction, or

(b) a person has entered into a transaction that may form part of a disclosable transaction, which if it were such a transaction would require the person to comply with section 817G,

the Commissioners may by written notice (in this Chapter referred to as a “*pre-disclosure enquiry*”) require the person to state—

(i) whether, in that person’s opinion, the transaction is a disclosable transaction, and

(ii) if in that person’s opinion the transaction is not considered to be a disclosable transaction, the reasons for that opinion.

(2) A notice under subsection (1) shall specify the transaction to which it relates.

(3) The reasons referred to in subsection (1)(ii) (in this Chapter referred to as a “statement of reasons”) shall demonstrate, by reference to this Chapter and regulations made under it, why the person holds the opinion that the transaction is not a disclosable transaction and, in particular, if the person asserts that the transaction does not fall within any specified description, the reasons shall provide sufficient information to enable the Revenue Commissioners to affirm the assertion.

(4) For the purposes of this section, it is not sufficient for the person to state that they have received an opinion given by a barrister or solicitor or a person referred to in subparagraph (i) or (ii) of section 817P(5)(a) to the effect that the transaction is not a disclosable transaction.

(5) A person to whom the Revenue Commissioners have issued a notice under subsection (1) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice, or such longer period as the Commissioners may agree.

817J Legal professional privilege

FA10 s149

Nothing in this Chapter shall be construed as requiring a promoter to disclose to the Revenue Commissioners information with respect to which a claim to legal professional privilege could be maintained by that promoter in legal proceedings.

817K Supplemental information

FA10 s149

(1) Where a person has provided the Revenue Commissioners with information in purported compliance with section 817E, 817F, 817G or 817H(1) and the Commissioners have reasonable grounds for believing that the person has not provided all of the specified information, the Commissioners may by notice in writing require the person to provide the information, specified in the notice, that the Commissioners have reasonable grounds for believing form part of the specified information.

(2) Where a person has provided the Revenue Commissioners with specified information in compliance with section 817E, 817F, 817G or 817H(1) the Commissioners may by notice in writing require the person to provide such other information about, or documents relating to, the disclosable transaction, as the Commissioners may reasonably require in support of or in explanation of the specified information.

(3) A person to whom the Revenue Commissioners have issued a notice under subsection (1) or (2) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice, or such longer period as the Commissioners may agree.

817L Duty of marketer to disclose

FA10 s149

(1) Where the Revenue Commissioners have reason to believe that a person is a marketer in relation to a transaction that may be a disclosable transaction, the Commissioners may by written notice require the person to provide the Commissioners with the name, address and, where known to the person, the tax reference number of each person who has provided that person with any information in relation to the transaction.

(2) A notice under subsection (1) shall specify the transaction to which it relates.

(3) A person to whom the Revenue Commissioners have issued a notice under subsection (1) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice or such longer period as the Commissioners may agree.

817M Duty of promoter to provide client list

FA10 s149; FA11 s72

A person who is a promoter shall, subject to subsection (2), in relation to each disclosable transaction in respect of which specified information has been provided by that promoter under section 817E, provide to the Revenue Commissioners—

(a) within the period of time set out in regulations made under section 817Q, and

(b) at such times falling after the end of that period as may be set out in those regulations,
the name, address and, where known to the person, the tax reference number of each person to whom that person has made the disclosable transaction available for implementation (in this Chapter referred to as the “*client list*”).

(2) A client list provided to the Revenue Commissioners under paragraph (a) or (b), as the case may be, of subsection (1) shall not include the name, address or tax reference number of any person to whom the promoter has made the disclosable transaction available for implementation where the promoter is satisfied, at the time of providing the client list, that such person has not entered into any transaction forming part of the disclosable transaction.

817N Supplemental matters

FA10 s149

(1) Where a promoter provides the Revenue Commissioners with specified information relating to a disclosable transaction and the client list in respect of that disclosable transaction, the provision of that information shall, as respects any person included on the client list who implements the transaction, be wholly without prejudice as to whether any opinion that the disclosable transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

(2) Where a person, other than a promoter, provides the Revenue Commissioners with specified information relating to a disclosable transaction the person shall be treated as making that information available wholly without prejudice as to whether any opinion that the disclosable transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

(3) Where a person provides the Revenue Commissioners with specified information relating to a disclosable transaction, the provision of that information shall not be regarded as being, or being equivalent to, the delivery of a protective notification by that person in relation to the transaction for the purposes of section 811A.

(4) Nothing in this Chapter shall be construed as preventing the Revenue Commissioners from—

(a) making any enquiry, or

(b) taking any action,

at any time in connection with section 811 or 811A.

817O Penalties

FA10 s149

(1) A person who fails to comply with any of the obligations imposed on that person by this Chapter and any regulations made under it shall—

(a) where the failure relates to the obligation imposed on a person under section 817H(2), 817H(3), 817I, 817K(1), 817K(2), 817L or 817M, be liable to—

(i) a penalty not exceeding €4,000, and

(ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €100 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph, and

(b) where the failure relates to the obligation imposed on a person under section 817E, 817F, 817G or 817H(1), be liable to—

- (i) a penalty not exceeding €500 for each day during the initial period, and
- (ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €500 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph.

(2) In subsection (1)(b)— “*the initial period*” means the period— (a) beginning on the relevant day, and (b) ending on the day on which an application referred to in subsection (3) is made; “*relevant day*” means the first day after the specified period.

(3)

(a) Notwithstanding section 1077B, the Revenue Commissioners shall, in relation to a failure referred to in subsection (1), make an application to the relevant court for that court to determine whether the person named in the application has failed to comply with the obligation imposed on that person by a section referred to in subsection(1)(a) or (b), as the case may be.

(b) In paragraph (a) “*relevant court*” means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts of Justice Act 1924, as amended, and the Courts (Supplemental Provisions) Act 1961, as amended.

(4) A copy of any application under subsection (3) shall be issued to the person to whom the application relates.

(5) The relevant court shall determine whether the person named in the application referred to in subsection (3) is liable to the penalty provided for in subsection (1) and the amount of that penalty, and in determining the amount of the penalty the court shall have regard to paragraph (a) or (b) of subsection (6), as the case may be.

(6) In determining the amount of a penalty under subsection (5) the court shall have regard—

(a) in the case of a person who is a promoter, to the amount of any fees received, or likely to have been received, by the person in connection with the disclosable transaction, and

(b) in any other case, to the amount of any tax advantage gained, or sought to be gained, by the person from the disclosable transaction.

(7) Section 1077C shall apply for the purposes of a penalty under subsection (1). (8) Section 1077D shall not apply for the purposes of a penalty under subsection (1).

817P Appeal Commissioners

FA10 s149

(1) The Revenue Commissioners may, by notice in writing, make an application to the Appeal Commissioners for a determination in relation to any of the following matters—

(a) requiring information or documents to be made available by a person in support of a statement of reasons (to the effect that a transaction is not a disclosable transaction) given by that person to the Revenue Commissioners in compliance with a notice under section 817I,

(b) requiring information, that the Revenue Commissioners have reasonable grounds for believing forms part of the specified information relating to a disclosable transaction, to be made available by a person to the Revenue Commissioners, following the failure of the person to comply with a notice under section 817K(1),

- (c) requiring information about, or documents relating to, a disclosable transaction to be made available by a person to the Revenue Commissioners, following the failure of the person to comply with a notice under section 817K(2),
- (d) that a transaction is to be treated as a disclosable transaction, or (e) that a transaction is a disclosable transaction.

(2) On the hearing of an application made—

- (a) on the grounds referred to in subsection(1)(a), the Appeal Commissioners shall determine the application by ordering if they—
 - (i) consider that the information or documents should be so made available, that the information or documents should be so made available,
 - (ii) consider that the information or documents should not be so made available, that the information or documents should not be so made available,
- (b) on the grounds referred to in subsection (1)(b), the Appeal Commissioners shall determine the application by ordering if they—
 - (i) consider that the Revenue Commissioners have reasonable grounds for so believing, that the information be so made available to the Revenue Commissioners,
 - (ii) consider that the Revenue Commissioners do not have reasonable grounds for so believing, that the information not be made available to the Revenue Commissioners,
- (c) on the grounds referred to in subsection (1)(c), the Appeal Commissioners shall determine the application by ordering if they—
 - (i) consider that the information or documents (or, as the case may be, a part of that information or some of those documents) should be so made available, that the information or documents (or, as the case may be, a part of that information or some of those documents) should be so made available,
 - (ii) consider that the information or documents should not be so made available, that the information or documents should not be so made available,
- (d) on the grounds referred to in subsection (1)(d), the Appeal Commissioners shall determine the application by ordering if they—
 - (i) are satisfied that the Revenue Commissioners have taken all reasonable steps to establish whether the transaction is a disclosable transaction and have reasonable grounds for believing that the transaction may be disclosable, that the transaction is to be treated as a disclosable transaction,
 - (ii) are not satisfied that the Revenue Commissioners have taken all reasonable steps to establish whether the transaction is a disclosable transaction or have reasonable grounds for believing that the transaction may be disclosable, that the transaction is not to be treated as a disclosable transaction,
- (e) on the grounds referred to in subsection (1)(e), the Appeal Commissioners shall determine the application by ordering if they—
 - (i) are satisfied that the transaction is a disclosable transaction, that it is a disclosable transaction,

- (ii) are satisfied that the transaction is not a disclosable transaction, that it is not a disclosable transaction.

(3) For the purposes of the hearing of an application made on the grounds referred to in subsection (1)(d)—

- (a) reasonable steps may (but need not) include the making of a pre-disclosure enquiry or the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), and
- (b) reasonable grounds for believing may include—
 - (i) the fact that the transaction falls within a specified description,
 - (ii) an attempt by the promoter to avoid or delay providing information or documents about the transaction on foot of a pre-disclosure enquiry or on foot of a determination of the Appeal Commissioners following the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a),
 - (iii) the failure of the promoter to comply with a pre-disclosure enquiry or a determination of the Appeal Commissioners following the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), in relation to another transaction.

(4) An application under subsection (1) shall, with any necessary modifications, be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax.

(5)

- (a) On any application, the Appeal Commissioners shall permit any barrister or solicitor to plead before them on behalf of the Revenue Commissioners or the other party either orally or in writing and shall hear—
 - (i) any accountant, being any person who has been admitted a member of an incorporated society of accountants, or
 - (ii) any person who has been admitted a member of the Irish Taxation Institute.
- (b) Notwithstanding paragraph (a), the Appeal Commissioners may permit any other person representing the Revenue Commissioners or the other party to plead before them where they are satisfied that such permission should be given.

817Q Regulations (Chapter 3)

FA10 s149

(1) The Revenue Commissioners may, with the consent of the Minister for Finance, make regulations—

- (a) specifying a class or classes of transaction which are to be transactions of a specified description for the purposes of this Chapter,
- (b) prescribing a class of persons referred to in section 817D(2)(c)(i), (c) prescribing a purpose referred to in section 817D(2)(c)(i),
- (c) prescribing a class or classes of tax advantage for the purposes of section 817D(2)(c) (iv),
- (d) specifying the information to be provided to the Revenue Commissioners by a person in relation to a disclosable transaction (in this Chapter referred to as the “specified information”),
- (e) specifying the period of time within which, or time by which, as the case may be, the information referred to in paragraph (e) shall be provided to the Revenue Commissioners (in this Chapter referred to as the “specified period”),
- (f) specifying the period of time within which, or time by which, as the case may be, any other information required to be provided to the Revenue Commissioners under this Chapter, is to be provided,

- (g) specifying the circumstances in which a person is not to be treated as a promoter in relation to a disclosable transaction, and
 - (h) specifying the procedure to be adopted in giving effect to this Chapter, in so far as such procedure is not otherwise provided for, and providing generally as to the administration of this Chapter including—
 - (i) the form and manner of delivery of information to be provided under the regulations, and
 - (ii) such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary.
- (2)
- (a) In relation to regulations made pursuant to subsection (1)(a), the regulations may specify the circumstances in which the regulations—
 - (i) shall apply, or
 - (ii) shall not apply,

to a particular class of transaction.
 - (b) The circumstances referred to in paragraph (a) shall be specified by reference to the categories of transaction referred to in section 817D(2)(c).
- (3) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation.

817R Nomination of Revenue Officers

FA10 s149

The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this Chapter and regulations made under it to be performed or discharged by the Revenue Commissioners, and references in this Chapter to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so appointed.

Appendix V: Newspaper coverage search terms (Lexis Nexis)

Type of Newspaper Coverage	Search Terms	Time Period	Newspaper Category
General	Tax Avoidance Anti-Avoidance Section 811	2003 – 2012	Irish Publications
Protective Notification	Protective Notification Section 811A	2003 – 2012	Irish Publications
Mandatory Disclosure	Mandatory Disclosure Section 817D	2003 – 2012	Irish Publications
<i>O'Flynn Construction Decision</i>	<i>O'Flynn Construction and (Revenue Appeals or Revenue Commissioners)</i>	2003 – 2012	Irish Publications

Appendix VI: Interview information sheet and consent form

Information Sheet

- My name is Ms Susan Holst and I am a PhD candidate at the Michael Smurfit Graduate School of Business, University College Dublin. Under the supervision of, Professor Aileen Pierce and Dr. Gerardine Doyle, I am carrying out a research project, which aims to better understand the evolution of anti-avoidance tax legislation in Ireland and its impact on the accounting profession. This research project will form part of my PhD thesis.
- Data for the study will be gathered through interviews with members of the accounting profession, professional bodies and members of the Revenue Commissioners. Each interview is expected to last between 60 and 90 minutes. With the interviewee's consent, I would like to tape the interview.
- Each interview will focus on the following themes:
 - The interviewee's personal involvement in or experience of the introduction of amendments to the general anti-avoidance rule (Section 811 TCA 1997) in Ireland and additional measures, including the protective notification and mandatory disclosure regime.
 - The interviewee's views of the response of the accounting profession to anti-avoidance legislation and the interaction between policymakers and the profession.
 - The interviewee's personal experience of the impact of the anti-avoidance provisions on the everyday life of accounting professionals providing taxation advice.
- The interviewee has the right to refuse to answer any question, and may stop the interview at any time, without having to provide any justification.
- This research project may benefit participants by providing them with an opportunity to contribute their views and personal experiences of the anti-avoidance tax regime in Ireland. The findings from this study may, therefore, positively influence future tax practice and tax policymaking.
- There are no risks to the participants of the study. Anonymity will be provided to protect participants.
- The following steps will be taken with regard to anonymity and confidentiality of information:
 - In working papers, the identity of the interviewee and professional firm/employing entity will be kept anonymous. An alphabetical/numerical code will be used to refer to the interviewee.

Anyone who helps me transcribe taped interviews will only know the interviewee by this code.

- No other member of the professional firm/employing entity will have access to the information disclosed during the interview.
 - Only active members of the research team, i.e., myself, my supervisors and other academic advisers, will have access to the transcripts of the interview. However, it should be noted that all transcripts will be anonymised prior to other members of the research team (excluding my principal supervisors) having sight of them.
 - Once the interview is transcribed, and if the interviewee requests it, I will send her/him a copy of the transcript. The interviewee will then verify the accuracy of the transcript and have the opportunity to add changes s/he feels might be needed to make her/him comfortable with what s/he said during the interview. Each interviewee will be given six weeks to communicate to me any concern or modification. Once the six-week period is over, I will assume the interviewee agrees with the transcript.
 - When a draft of a research paper/thesis chapter is produced, and if the interviewee requests it, I will send her/him a copy of the research paper/thesis chapter. The interviewee will then review the document. The interviewee will be given six weeks to communicate to me any concern or comments. Once the six-week period is over, I will assume the interviewee has no comments.
 - The audio recordings will be destroyed 2 years after the interview or on completion of the study, whichever is the latest.
 - The final anonymous transcripts will be kept in a locked file for 10 years after the project is completed or until the final publication has been accepted, whichever is the earliest.
- Research papers / PhD thesis / presentations will be written from the data gathered and eventually published in academic and/or practitioner journals.
 - A summary of the research will be sent to participants who request it.
 - If you would like any further information on the research project / interview format or if you have any questions or concerns regarding the study, please do not hesitate to contact me (susan.holst@ucdconnect.ie) or my supervisors Professor Aileen Pierce (aileen.pierce@ucd.ie) / Dr Gerardine Doyle (gerardine.doyle@ucd.ie).

Consent Form

DECLARATION

I have read this information sheet and have had time to consider whether to take part in this study. I understand that my participation is voluntary and that I am free to withdraw from the research at any time without disadvantage.

Therefore, I agree to take part in this research. (please tick the box)

I hereby give permission for the interview to be recorded (audio) and for the data collected during the interview to be used for the purposes of the research project and subsequent research publications. (please tick the box)

Name of Participant (in block letters):

Signature: _____

Date: / /

Appendix VII: Interview guide (tax accountant)

RQ1: How did the Irish Government and the Office of the Revenue Commissioners attempt to tackle aggressive tax avoidance?

RQ1a: What legislative amendments were implemented?

Answered through documentary evidence review

RQ1b: How were the legislative amendments implemented and enforced (including judicial decisions in relation to the legislative amendments)?

Preliminary findings from documentary review: Power, Penalties, Persuasion and Incentives

Explore effectiveness in interviews

Theme 1B: Implementation and enforcement of legislative amendments

1. Revenue has introduced a number of amendments and supplementary provisions to s.811 since 2006, how would you view the **implementation** of these changes?

Include discussion of Protective Notification ('PN'), changes to s.811 and PN, and Mandatory Disclosure ('MD').

- a. Prior discussions with the profession?
 - b. Consultation via the professional bodies / TALC?
 - c. How would you describe the relationship between the profession and Revenue? Is there a shared understanding of the goals of both organisations?
 - d. Efficiency of change – Finance Bill/Act process
 - e. Information provided – clear, easy to interpret?
2. In terms of **enforcement** of the changes, Revenue has used a number of different strategies to help increase compliance, are there any particular strategies that you think have worked best?
 - a. Increase in Revenue **powers** – how effective?
 - b. **Penalties** for taxpayers – does this impact the profession and the advice given?
 - c. **Incentives** for taxpayers, e.g., reduced penalties, no review after 2 years

- d. **Persuasive** tactics – public interest role of the profession – Revenue speeches – how effective?
3. Why do you think the mandatory regime was introduced? What was Revenue trying to achieve?
 4. Response of the courts to tax avoidance – how has this been interpreted by the accounting profession?

<i>Prompts</i>	<i>Probes</i>
Silence Can you tell me about that? What happened? Could you give me a more detailed description of...? Do you have any further examples...? How do you believe other...? When you say... do you mean...?	Power Penalties Persuasion Incentives Changes in social norms Media attention Sentences for tax avoidance

RQ2: Have the general anti-avoidance tax provisions changed the nature of the professionalism of accountants involved in tax?

RQ2a: How did the accounting profession respond to the legislative changes/measures introduced to tackle aggressive tax avoidance?

Theme: Response of accounting profession

RQ2b: Why did the accounting profession respond in such a manner?

Theme: Motivation/rationale for response

RQ2c: Did the legislative amendments and related measures result in changes to the day-to-day work practices of tax accountants and, if so, how have the work practices been impacted?

Theme: Work practices

Theme 2A: Response of accounting profession

Firm reaction – To legislative changes generally

1. When legislative changes take place (or are proposed), what type of action do you or your firm engage in?
 - a. Are there firm briefings?
 - b. Do you have management meetings where responses to changes are discussed?
 - c. How are responses decided, e.g., on a firm-level or individual-level?

<i>Prompts</i>	<i>Probes</i>
Silence Can you tell me about that? What happens at the meetings? Could you give me a more detailed description of...? Do you have any further examples...? How do you believe other...? When you say... do you mean...? What did you actually do?	Firm-wide decisions Email briefings Partner meetings Technical division Input from non-partners Discussions with other firms or professional bodies Specific partners for MD Risk management team Internal processes and timelines Consistency of response across firm Response: Acquiesce Compromise Avoidance Defiance Manipulate

Profession's reaction (Professional bodies)

1. Is there interaction with the professional bodies in terms of pre-Budget submissions etc.?
2. Did you or your firm engage in directly responding to the increased regulation? What types of activities did you engage in?
3. How effective do you think collective firm or professional body action is?

<i>Prompts</i>	<i>Probes</i>
Silence Can you tell me about that? Could you give me a more detailed description of...? Do you have any further examples...? How do you believe other...? When you say... do you mean...? What did you actually do?	Professional bodies Pre-budget submissions Meetings with Revenue Meetings with Department of Finance MD consultation process

Relationship with Revenue:

1. How would you describe the accounting profession's relationship with Revenue? Has it changed since the increased focus of Revenue on tackling tax avoidance (PN, MD etc.)

Overall response – specifically related to legislative changes under enquiry:

1. Post the introduction of legislative amendments, do you think that the tax planning landscape changed? How did the profession respond?
2. How did the firm respond to protective notification? What was the level of engagement?
3. Was the response different to mandatory disclosure? Has it impacted on the type of advice provided? If not, do you think this is due to the changed economic environment? Has this now changed due to an increase in economic activity?

Theme 2B: Motivation and rationale for response

1. What would you identify as being the **key differentiating factor** for you and your firm? e.g., reputation, expertise, client-service, quality, commercial know-how etc.
2. **“Acting in the public interest”** is a phrase associated with professional groups, how do you identify with this? – Revenue’s speeches – conflicting role; dual role of the profession – enforcer and exploiter.
3. How has the **news coverage of tax avoidance** impacted you and your firm? How has the **profession’s reputation** been impacted?
4. How do you think increased **regulation** has impacted the profession, e.g., more accountable, responsible?
5. In carrying out your work, what is the most important aspect?

<i>Prompts</i>	<i>Probes</i>
Silence Can you tell me about that? Could you give me a more detailed description of...? Do you have any further examples...? How do you believe other...? When you say... do you mean...? What did you actually do? What was surprising, different etc.?	Professionalism Commercialism Expertise Autonomy Status Social Capital Resistance to change Industry v. Profession Accountability Responsibility Public interest

Theme 2C: Work practices

1. Has the **day-to-day work** of a tax accountant changed over recent years? – Changes in social norms, recessionary environment, media coverage of tax avoidance.
2. What are the **pressures** (if any) facing you and your firm? – Client retention, growth, demand for staff, competition from other firms, are other firms willing to offer services (aggressive tax planning) that you would not engage in?
3. In terms of day-to-day activities, how have you **responded to increased regulation?** – PN, MD, OFC
 - a. Have you filed any protective notifications? Do you think it is an important regulatory change?
 - b. Did the introduction of the increased surcharge and removal of time limits change your view of protective notification?
 - c. What are your views of mandatory disclosure? Have you been required to make any disclosures? Do you think that it is achieving its objectives?
 - d. Has the *O'Flynn Construction* decision impacted your work? – Statutory interpretation (purposive versus literal) – What is your view of the decision? Described as a 'seismic shift' – do you agree?
4. How have **risk management** procedures adapted to the increased regulation?
5. Have your **relationships with clients** been affected? – Communication of legislative changes, changes in tax opinion letters/engagement letters.

<i>Prompts</i>	<i>Probes</i>
Silence Can you tell me about that? What happened? Could you give me a more detailed description of...? Do you have any further examples...? How do you believe other...? When you say... do you mean...? What did you actually do?	Firm-wide decisions Risk management procedures How did that come about? Autonomy Time pressures Statutory interpretation 3:2 Majority (OFC)

Appendix VIII: Interview guide (Revenue)

Implementation and enforcement of legislative amendments

1. Revenue has introduced a number of amendments and supplementary provisions to s.811 since 2006, in terms of enforcement of the changes, Revenue has used a number of different strategies, e.g., increased power, penalties, incentives, to help increase compliance, are there any particular strategies that you think have worked well?

Profession's reaction to legislative change

2. In terms of proposed legislative changes to the general anti-avoidance provisions, is there much interaction with the professional bodies?
3. How effective do you think the consultation process for mandatory disclosure was?
4. What has been your view of the accounting profession's response to the increased regulation (e.g., protective notification, mandatory disclosure)? – Did they engage, avoid etc.?

Relationship with Revenue

5. How would you describe the accounting profession's relationship with Revenue? Has it changed since the increased focus of Revenue on tackling tax avoidance?

Overall response – specifically related to legislative changes under enquiry:

6. Post the introduction of legislative amendments, do you think that the tax planning landscape has changed for the accounting profession?

Impact on work practices

7. Have you witnessed any changes in the work practices of accountants, following the introduction of protective notification, mandatory disclosure and the *O'Flynn Construction* decision? Are accountants still providing similar advice or do you think this has changed?

Tax accountants

8. In terms of unacceptable tax avoidance, from your experience how involved are the accounting profession in engaging in it? Is it generally more prevalent at a certain firm-size or in specific industries etc.?
9. Do you think that the media coverage of tax avoidance has impacted how accountants view themselves in terms of their role in the tax system? Has this been evident from your dealings with them?

Appendix IX: Interview guide (professional bodies)

Implementation and enforcement of legislative amendments

1. Revenue has introduced a number of amendments and supplementary provisions to s.811 since 2006, in terms of enforcement of the changes, Revenue has used a number of different strategies, e.g., increased power, penalties, incentives, to help increase compliance, are there any particular strategies that you think have worked well?

Profession's reaction to legislative change

2. In terms of proposed legislative changes to the general anti-avoidance provisions, is there much interaction between the accounting firms and the professional bodies? Are submissions discussed internally with committee members? What is the procedure?
3. How effective do you think the consultation process for mandatory disclosure was? Do you think that the guidance notes were generous to the profession? How do you think ordinary day-to-day tax planning is interpreted by Revenue and the profession?
4. How did the accounting profession respond to the increased regulation (e.g., protective notification, mandatory disclosure)? – Did they engage, avoid etc.?

Relationship with Revenue

5. How would you describe the accounting profession's relationship with Revenue? Has it changed since the increased focus of Revenue on tackling tax avoidance?

Overall response – specifically related to legislative changes under enquiry:

6. Post the introduction of legislative amendments, do you think that the tax planning landscape has changed for the accounting profession?

Impact on work practices

7. Have you witnessed any changes in the work practices of accountants, following the introduction of protective notification, mandatory disclosure and the *O'Flynn Construction* decision? Are accountants still providing similar advice or do you think this has changed?

Tax accountants

8. Code of Ethics – Is tax avoidance an issue that should be included? Refer to pronouncements from UK professional bodies in relation to tax avoidance.
9. In terms of unacceptable tax avoidance, from your experience how involved are the accounting profession in engaging in it? Is it generally more prevalent at a certain firm-size or in specific industries etc.?
10. Do you think that the media coverage of tax avoidance has impacted how accountants view themselves in terms of their role in the tax system? Has this been evident from your dealings with them?

Appendix X: Illustration of topic coding of transcripts

Segment of text to be coded	First level code Primary theme	Second level codes Sub-themes
<p>...I think the reason for that is maybe the changing environment whereby there are certain things I think tax practitioners might have done, there are certain structures that might have been implemented in maybe the 90s, 80s, maybe early 2000s, but I think the mood has changed^{code 1} and it is not so much the anti-avoidance^{code 2} well it is obviously each year there is more anti-avoidance to close out structures^{code 3}, but I think it is also there is a far more I guess both the taxpayer^{code 4} and I think their advisers are a lot more concerned with protecting themselves^{code 5} and their own brand^{code 6} and, therefore, I think to a certain extent one of the reasons for the lack of Protective Notifications ...is the change in the environment^{code 7} and the other thing I would say is so there is less people likely to do an aggressive transaction^{code 8} and there is less people probably selling them^{code 9} and there is probably less transactions to sell as there is more anti-avoidance coming in.^{code 3}</p> <p style="text-align: right;">Big Four Firm Partner</p>	Tax landscape	<p>Code 1: Change in tax appetite</p> <p>Code 2: Not a direct impact of anti-avoidance provisions</p> <p>Code 3: Increase in specific anti-avoidance provisions</p> <p>Code 4: Issue for client</p> <p>Code 5: Protecting the adviser</p> <p>Code 6: Importance of reputation</p> <p>Code 7: Reason for lack of protective notifications</p> <p>Code 8: Reduction in willingness to engage in certain tax planning</p> <p>Code 9: Fewer advisers willing to sell schemes</p>
<p>Absolutely because I mean if you think about it, in the Big Four there is not much, we all do practically the same thing.^{code 1} So how do you differentiate yourself^{code 2} and it comes down to ultimately the people^{code 3} and the expertise^{code 4} and the ideas that you are able to bring and how active you are in bringing those ideas to the table^{code 5} and I have often heard you know clients or prospective clients saying that you know they might have one adviser that kind of does their on-going compliance work, but if somebody brings them an idea and they like it, they will tend to go with the person that brings the idea, it doesn't matter if it's not the firm, so they are not going to take an idea and go off with their normal firm to implement it^{code 6} So I think there is definitely a challenge for us as advisers to be a bit more innovative and bring good ideas to the clients.^{code 5}</p>	Tax planning	<p>Code 1: Similarity of Big Four firms</p> <p>Code 2: Differentiating factors</p> <p>Code 3: Importance of people</p> <p>Code 4: Expertise</p> <p>Code 5: Requirement to be innovative</p>

Segment of text to be coded	First level code Primary theme	Second level codes Sub-themes
Big Four Firm Director		Code 6: Willingness of clients to change adviser
<p>I think part of the difficulty is that what is aggressive to one tax adviser is not aggressive to another^{code 1} and, therefore, Revenue don't have sort of safe harbours that they have in the US as to what is considered acceptable and what is considered not acceptable. Now in fairness in the Mandatory Disclosure notes they give examples of routine tax planning [which] is not considered to be within Mandatory Disclosure and list out all the various exemptions and reliefs that apply and the proper application of those reliefs are not considered to be aggressive tax planning and that is fine, but unfortunately that doesn't cover the full picture^{code 2} and I think there is a bit of tension between the profession and the Revenue^{code 3}, but my own personal view is that it is only a small minority of people who would be into aggressive tax planning^{code 4} and it is a lengthy and can be a costly process.^{code 5}</p>	Mandatory disclosure	<p>Code 1: Different interpretations of what constitutes aggressive tax avoidance</p> <p>Code 2: Issue with level of detail in guidance notes</p> <p>Code 3: Tension between the profession and Revenue</p> <p>Code 4: Aggressive tax avoidance – minority sport</p>
Mid-Size Firm Partner		Code 5: Complexity of the regime and the impact on time and cost of providing advice

Appendix XI: Disruptive work practices: First and second level coding

First level code	Second level code	Second level code refined	Disruptive work practice
Persuasion	Tax responsibility	<ul style="list-style-type: none"> • Shared responsibility • Corporate social responsibility • Reputational damage • Positively reinforced by tax advisers 	<ul style="list-style-type: none"> • Re-associating moral foundations
	Common goals	<ul style="list-style-type: none"> • Vital role • Influence of tax intermediaries • Promoting investment • Encouraging compliance • Mutual respect 	<ul style="list-style-type: none"> • Re-associating moral foundations
	Conflicting goals	<ul style="list-style-type: none"> • Tensions • Tax minimisation within constraints of tax legislation • Strict letter of the law • Interpretation of tax law • Acceptable versus unacceptable tax planning • Promotion of tax avoidance 	<ul style="list-style-type: none"> • Re-associating moral foundations
	Tax compliance	<ul style="list-style-type: none"> • Voluntary nature • Role of accounting profession • Compliance burden • Fairness • Enforcement officers on behalf of Revenue • Increased Revenue powers • Effective and efficient • Compliance culture • Need for balance 	<ul style="list-style-type: none"> • Re-associating moral foundations
	Reputation	<ul style="list-style-type: none"> • Damage brand • Importance of tax in the boardroom 	<ul style="list-style-type: none"> • Disconnecting rewards
	Public attitudes	<ul style="list-style-type: none"> • Growing intolerance • Changing attitude to avoidance and evasion • Impact on provision of public goods and services 	<ul style="list-style-type: none"> • Disconnecting rewards

		<ul style="list-style-type: none"> • Social responsibility • Unfairness 	
	Equality and fairness	<ul style="list-style-type: none"> • Appropriate amount of tax paid • Protection of vulnerable in society • Reasonable and proportional • Tax administration • Importance of tackling tax avoidance • Efforts to increase fairness 	<ul style="list-style-type: none"> • Re-associating moral foundations
Collaborative mechanisms	Co-operative compliance	<ul style="list-style-type: none"> • Relationship of trust, openness and transparency • Mutually beneficial • Certainty • Large Cases Division • Support compliance • Identification of tax avoidance • Proactive engagement • Positively influence taxpayers • Tax adviser respected and valued 	<ul style="list-style-type: none"> • Undermining assumptions and beliefs
	Collaboration with the accounting profession	<ul style="list-style-type: none"> • Formal and informal engagement • TALC • Consultations • Shared responsibility • Large Cases Division • Co-operative compliance • Partnership • Vital role of tax intermediaries • Co-operation and liaison • Emphasis of common goals 	<ul style="list-style-type: none"> • Advocacy
Anti-avoidance measure	Protective notification	<ul style="list-style-type: none"> • Avoidance of 10% surcharge • Rewards for being open about tax planning • Just and equitable 	<ul style="list-style-type: none"> • Enabling alignment of interests – use of incentives

2008 changes to protective notification	<ul style="list-style-type: none"> • In response to disappointing uptake • Increase in surcharge to 20% • 2 year time limit to review transactions disclosed • Clarification of time limits under GAAR • Change to appeals procedures • More effective • Greater safeguards for taxpayers 	<ul style="list-style-type: none"> • Enabling alignment of interests – use of incentives
Mandatory disclosure	<ul style="list-style-type: none"> • Obligation on promoters to disclose • Tax avoidance transactions • Consultation • Legal professional privilege • Penalties for non-disclosure • Early warning system 	<ul style="list-style-type: none"> • Disconnecting sanctions and rewards • Policing • Advocacy
<i>O'Flynn Construction</i>	<ul style="list-style-type: none"> • Statutory interpretation • Purposive versus literal interpretation • Background to legislation • Commercial transactions • Aggressiveness of transaction • Minority judgment • Specific facts of the case – selection 	<ul style="list-style-type: none"> • Disconnecting sanctions and rewards • Detering

Appendix XII: Strategic response of accounting profession: First and second level coding

First level code	Second level code	Second level code refined	Response strategy
Anti-avoidance measure	Protective notification	Public response <ul style="list-style-type: none"> • Narrow scope • Constitutional issues • Entitlement to tax minimisation strategies • Discretionary nature • Onus on taxpayer • Criticism 	• Defiance - Dismiss
		Private response <ul style="list-style-type: none"> • Change in tax landscape • Client decision – risk attitude • Global changes to tax landscape • Incentives • No protective notifications made • No formal response • Not applicable for small practices • Not applicable as would go back to GAAR • Penalties • Phishing exercise • Some discussion but no major impact • Lack of external dialogue • Increased protective notifications – non-accountant tax advisers, UK advisers 	• Defiance - Dismiss

2008 changes to protective notification	Public response <ul style="list-style-type: none"> • Increased incentives • Appeal procedures • Time limit under GAAR • Advantages versus increased scrutiny • Certainty • Taxpayers' rights 	<ul style="list-style-type: none"> • Defiance – Dismiss / Challenge
	Private response <ul style="list-style-type: none"> • No increase in engagement • No protective notifications made • No benefit from engaging • Nonsensical nature • Caveated advice 	<ul style="list-style-type: none"> • Defiance - Dismiss
Mandatory disclosure	Public response <ul style="list-style-type: none"> • Formal consultation process • Specific changes sought • Societal issues • Foreign direct investment • Complexity of tax system • Certainty in tax system • Competitiveness of tax system • Ordinary day-to-day tax planning • Pressure to disclose • Concessions sought • Impact on compliant taxpayers • Impact on Revenue - workload • Legal professional privilege 	<ul style="list-style-type: none"> • Compromise – Balance • Defiance – Challenge • Compromise – Bargain • Defiance – Challenge

	Private response <ul style="list-style-type: none"> • Change in tax appetite of clients • Insufficient consultation • Legal profession privilege issue • Major attention given to it by profession • Onus directly on profession • Penalties • Revenue power • Small practices – not relevant • UK DOTAS • Guidance notes • Consultation with profession • Need for more specific guidance 	<ul style="list-style-type: none"> • Defiance – Dismiss • Defiance – Challenge
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<i>O'Flynn Construction</i>	Public response <ul style="list-style-type: none"> • Complexity of case • Aggressiveness of transaction • Challenge majority judgment • Praise of minority judgment • Statutory interpretation • Interpretation Act 2005 Private response <ul style="list-style-type: none"> • Criticism of judgment • Differing views on statutory interpretation • Impact on statutory interpretation • Need for more case law 	<ul style="list-style-type: none"> • Acquiescence - Comply • Avoidance - Buffer • Defiance - Challenge
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- Increased Revenue power
 - Surprise at aggressiveness of scheme
-

Appendix XIII: Maintenance work practices: First and second level coding

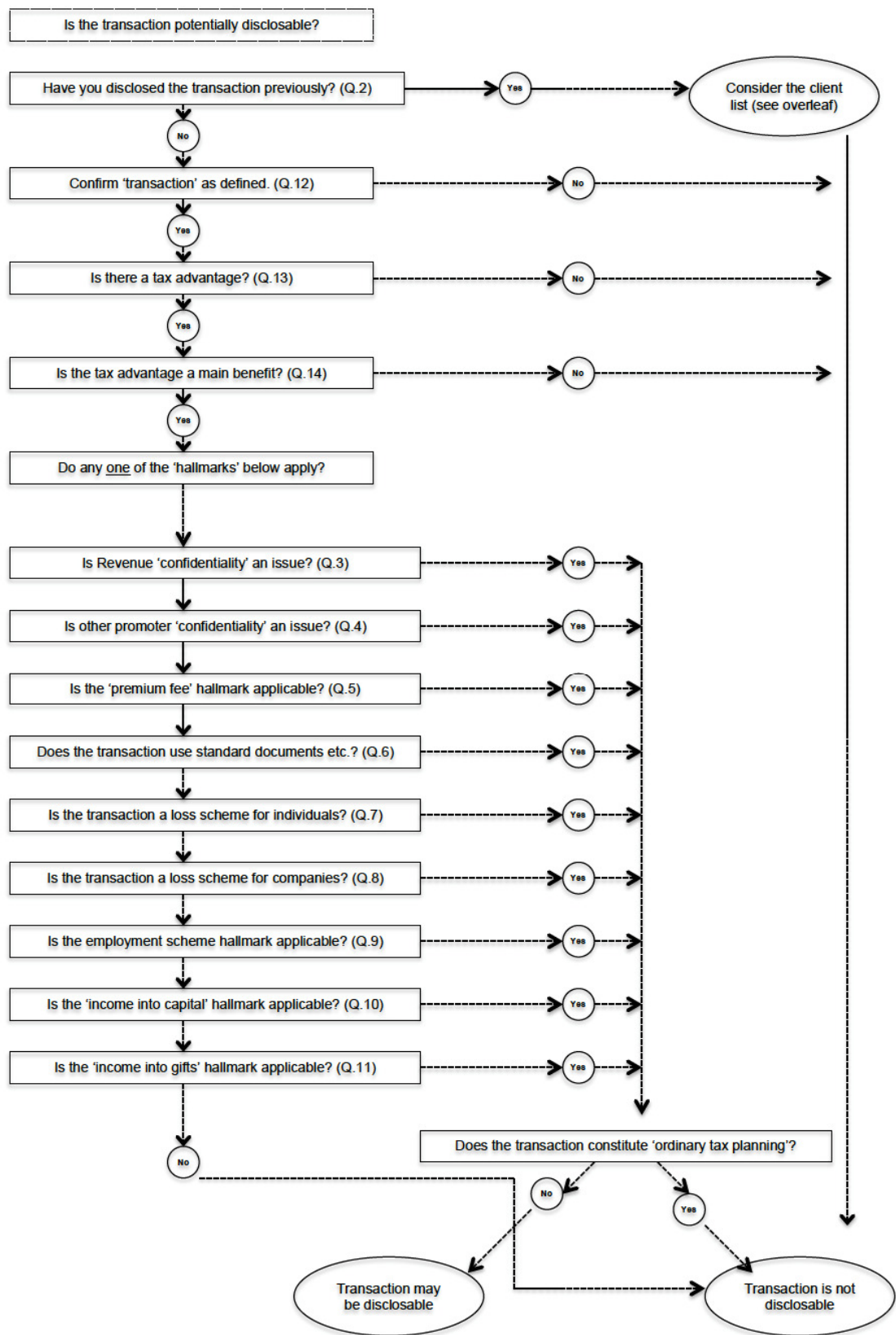
First level code	Second level code	Second level code refined	Maintenance work practice
Protective notification	Work practice changes	<ul style="list-style-type: none"> • Central response • Change in tax landscape • 'Should' level opinion • Client decision – risk attitude • Global tax landscape changes • Hard to gauge impact • Incentives • No protective notifications made • Not applicable for small practices • Not applicable as would go back to GAAR and check if falls foul • Penalties • Phishing exercise • Some discussion but no major impact 	<ul style="list-style-type: none"> • Custodial work
Mandatory disclosure	Consultation process	<ul style="list-style-type: none"> • Difference in approach in UK to DOTAS • Insufficient consultation • Involvement of the profession • Issue with guidance notes • Legal professional privilege issue • Ordinary day-to-day tax planning exemption 	<ul style="list-style-type: none"> • Negotiation work • Advocacy
	Work practice changes	<ul style="list-style-type: none"> • Actual disclosures made • Change in tax appetite – no major impact • Counsel's opinion • Difference in advisers' view of aggressive tax schemes • Impact on advice given – no real change • Major attention given to it 	<ul style="list-style-type: none"> • Enabling • Policing

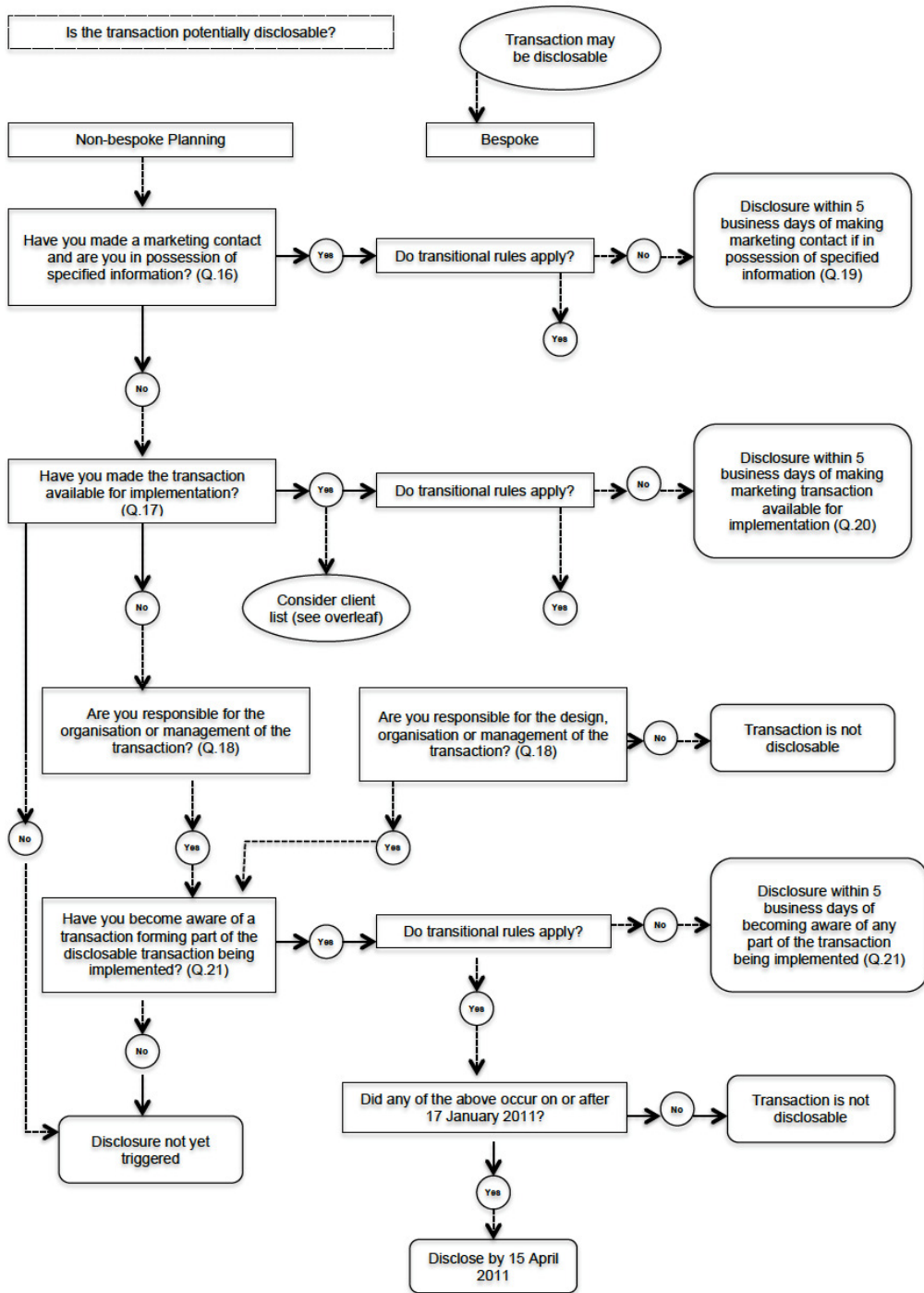
		<ul style="list-style-type: none"> • Not very relevant to work of the firm • Not wanting to have to disclose • Onus directly on profession • Penalties • Small practice – not relevant 	
	Risk management	<ul style="list-style-type: none"> • Central firm view • Documentation process • Decision taken away from client partner 	<ul style="list-style-type: none"> • Custodial work • Policing • Enabling • Embedding and routinising
	Training	<ul style="list-style-type: none"> • Firm briefings • Documentation/flowcharts 	<ul style="list-style-type: none"> • Educating
O'Flynn Construction	Internal debate	<ul style="list-style-type: none"> • Attention given to decision • Complexity of commercial transactions • Criticism of judgment • Issue of competency of judges • Need for greater case law • Surprise at level of aggressiveness 	<ul style="list-style-type: none"> • Enabling
	Statutory Interpretation	<ul style="list-style-type: none"> • Differing views on statutory interpretation • Purposive interpretation • Literal interpretation 	<ul style="list-style-type: none"> • Enabling
	Impact on work practices	<ul style="list-style-type: none"> • No impact on advice being given • Reassess advice given and how it is given • Revenue – serious about tackling tax avoidance 	<ul style="list-style-type: none"> • Custodial work
Work practices	Tax planning	<ul style="list-style-type: none"> • Admiration • Aggressive tax planning • Career progression • Different interpretations of aggressive • Equity analyst interest in tax planning 	<ul style="list-style-type: none"> • Reflexive normalisation

		<ul style="list-style-type: none"> • Interpretation of the law • Legitimate tax planning • Minority sport • Morality • Need to be innovative • Negative impact on taxpayer • Uncomfortable with aggressiveness 	
	Tax planning landscape changes	<ul style="list-style-type: none"> • Changes across all firm size • General anti-avoidance provisions • Importance of the courts • Less aggressive environment • Impact of the media • Not concerned with the courts • Revenue powers post <i>O'Flynn Construction</i> • Specific anti-avoidance provisions • Spirit of the legislation • Surprise in relation to tax avoidance cases • Economic recovery – turnaround in level of planning 	<ul style="list-style-type: none"> • Reflexive normalisation
	Risk management	<ul style="list-style-type: none"> • As a result of GAAR changes • General risk management • Increased importance of documentation • New clients • Protecting the adviser 	<ul style="list-style-type: none"> • Custodial work • Policing
Reputation	Concern for clients	<ul style="list-style-type: none"> • Media coverage of tax avoidance • Issue for clients • Multi-national companies 	<ul style="list-style-type: none"> • Valourising and demonising
	Concern for tax accountants	<ul style="list-style-type: none"> • Importance of reputation to Big Four firms • Importance of working within the confines of the law • Long term focus 	<ul style="list-style-type: none"> • Valourising and demonising

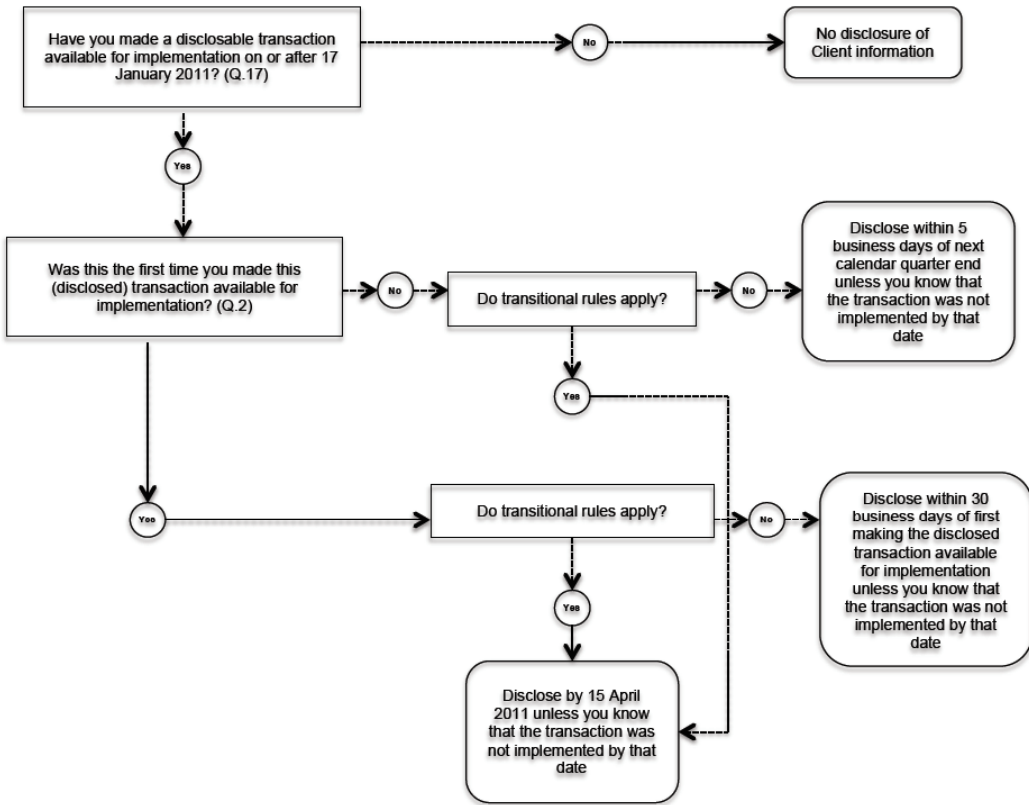
		<ul style="list-style-type: none"> • No reputational damage seen • Prior culture of never refusing work • Reputation with Revenue • Turning away work 	
Relationship with Revenue	Negative relationship	<ul style="list-style-type: none"> • Anti-business • Decrease in quality of service • Fear of repercussions • Inconsistency of treatment • Issue with getting refunds • No accountability • Resource issues • Revenue Appeals • “Them and us” • Lack of response/engagement by Revenue • Revenue expertise • Work done by accounting profession 	N/A – consequence of disruptive and maintenance work
	Positive experience	<ul style="list-style-type: none"> • Large cases • Acknowledgment of some good personnel 	
	Accountants moving into Revenue	<ul style="list-style-type: none"> • Expertise • Industry knowledge • Loss of institutional knowledge • Fear from tax accountants 	
Public interest	No recognition of public interest	<ul style="list-style-type: none"> • Pay in accordance with the law • Client needs and interests • Government’s role • Not a consideration • Facilitating business • Tax compliance – by-product • Out-dated concept • Advocacy role 	N/A – consequence of disruptive and maintenance work

Appendix XIV: Mandatory disclosure – Transaction disclosure flowchart





Client Lists



Appendix XV: Outcome of the consultation process for mandatory disclosure

	Issue Raised during Consultation Period	Raised by:	International Comparison:	Outcome:
1.	Exclusion of day-to-day advice from mandatory reporting	CCAB-I ITI	UK Canada	<p>Concessions granted</p> <p>Additional comfort given in final guidance notes. For example: “It is reasonable to assume that the tax advice given by most tax advisers to clients would be of an ordinary routine nature.”</p> <p>Examples of ordinary tax planning provided in Appendix to the guidance notes</p>
2.	Narrow scope of confidentiality hallmark	CCAB-I ITI	UK Canada	<p>Concessions granted</p> <p>“Notwithstanding, that certain promoters would routinely insist on an explicit confidentiality agreement from their clients, Revenue would accept that the test is not met if the scheme is reasonably well known in the tax community as evidenced from, for example, articles in the tax press, textbooks or case law.”</p> <p>Clarity and certainty also granted in relation to confidentiality from Revenue (wording replicated from UK DOTAS scheme as recommended)</p>
3.	Narrow scope of premium fee hallmark	CCAB-I ITI	UK Canada	<p>Concessions granted</p> <p>“Revenue recognises that almost any fee obtained in relation to tax planning can to some extent be said to be attributable to obtaining a tax advantage. In that regard, however, fees charged or calculated purely on the basis of ‘scale rates’ or ‘time and materials’ are not to be considered as premium fees for the purposes of this test</p> <p>Neither is a fee a ‘premium fee’ solely on account of factors such as:</p> <ul style="list-style-type: none"> • The adviser’s location – fees might be higher in Dublin than elsewhere • The urgency with which the advice is sought • The size of the transaction involved • The skill or reputation of the adviser. <p>As the definition of premium fee makes clear, it is a fee that could be charged in respect of the scheme, such that it would to a significant extent be attributable to the tax advantage or contingent</p>

	Issue Raised during Consultation Period	Raised by:	International Comparison:	Outcome:
				no the tax advantage being obtained.” The test is to be applied from the perspective of a client who is experienced in receiving tax advice or other services of the type being provided.”
4.	Narrow standardised documentation hallmark	CCAB-I		Concessions granted “Revenue accepts that tax professionals often maintain ‘solutions registers’ and hold ‘precedent documents’ that enable the same or similar tax solutions to be provided to more than one client, sometimes using relatively standard documentation. As regards ‘precedent documents’, the type of documents Revenue would see as coming within this term would include, for example, legal documents providing for group loans, corporate reorganisations and the like. It will be a matter of scale and degree as to whether schemes included in these registers or using precedent documents fall within <u>this</u> specified description. Revenue would not expect such schemes to be caught where, before they can be implemented, the relevant transactions or documents require significant tailoring to suit the client’s circumstances or where the input from the tax professionals etc. goes substantially beyond the rudimentary oversight and checking that is a feature of the ‘mass marketed’ schemes that this specified description is primarily aimed at. It is important to note, however, that even though schemes included in these ‘solution registers’ or schemes using ‘precedent documents’ may not fall within the ‘standardised tax product’ specified description, they may be disclosable under one or more of the other specified descriptions.”
5.	Amendments to information to be disclosed	CCABI-I ITI	UK	Concessions not granted
6.	Extend deadline for providing information	CCAB-I ITI	UK	Concession partially granted Extended from 5 days to 5 working days
7.	Amendments sought to client list requirements	CCAB-I ITI	UK	Concession partially granted Inclusion on client list not required where “the promoter has satisfied him/herself that the client has not actually implemented the scheme at the time such information is required”

	Issue Raised during Consultation Period	Raised by:	International Comparison:	Outcome:
8.	Timing of information provided on marketed schemes	CCAB-I		No concession made
9.	Amendment to commencement date	CCAB-I ITI		Concession granted: Back-dating of regime removed Applies on or after the effective date of the Regulations (17 January 2011)
10.	Inequity of legal professional privilege (LPP)	CCAB-I ITI		Guidance notes state that LPP does not apply to legal professionals marketing schemes. Inserted into final guidance notes: "This means that such 'marketed' schemes are subject to the disclosure rules and the legal professional must disclose." Inserted into final guidance notes: "In a case where a client is required to make a disclosure due to the promoter asserting legal professional privilege, only the information outlined above must be provided on the relevant disclosure form. There is no requirement to furnish privileged documentation or advice between the client and his legal adviser. The information required to be provided is the name, address, telephone number and tax reference number of the promoter."
11.	Inequity of penalties for LPP and non-LPP cases	CCAB-I		No concession made

Appendix XVI: Mandatory disclosure checklist

MANDATORY REPORTING REVIEW CHECKLIST

Transaction Description		
	Name (List of reviewers below)	Date reviewed (Add review date)
Client Manager		
Client Partner		
Practice Reference Number		

Summary	1. I have provided a summary of the transaction	Initials	
	2. The transaction is similar to a previously disclosed transaction	Transaction ref:	

Disclosable Transaction	Yes	No	Not determined
3. Does the practice wish to keep any element of the transaction confidential from Revenue to facilitate repeated or continued use?			
4. Could it reasonably be expected that any promoter would wish to keep any element of the transaction confidential from other promoters?			
5. Could a premium (or contingent) fee be obtained?			
6. Does the transaction constitute a standardised tax product?			
7. Is the transaction a loss scheme for individuals?			
8. Is the transaction a loss scheme for companies?			
9. Is the employment scheme 'hallmark' in point?			
10. Does the transaction convert income into capital?			
11. Does the transaction convert income into a gift?			
12. Is there a transaction or a proposal for a transaction?			
13. Is there a tax advantage?			
14. Is the tax advantage a main benefit?			
15. Does the transaction consist of 'ordinary tax planning'?			
Conclusion: Is there a disclosable transaction?			

Disclosure Status	Yes	No	Not determined
16. Has the practice made marketing contact in connection with the disclosable transaction?			
17. Has the practice made the disclosable transaction available for implementation?			
18. Is the practice responsible for the design, organisation or management of the disclosable transaction?			
19. Date on which marketing contact made – give date			

or state 'not applicable' or 'none yet'.			
20. Date made available – give date or state 'not applicable' or 'none yet'.			
21. Date the practice first became aware of a transaction forming part of arrangements having been implemented – give date or state 'none yet'.			

22. Conclusions:	Write yes against the relevant option
Practice is not required to make a disclosure.	
Practice and the client are grandfathered by virtue of the commencement provisions.	
Practice is required to make a disclosure – state the date.	
Practice may be required to make a disclosure at some future date but the relevant date has not yet been triggered.	
Practice has already made a disclosure in respect of this type of transaction. Client details to be included on client return – state due date.	

Reviewer commentary:
