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Regulating havens: The role of hard and soft governance of tax experts in conditions of secrecy and low regulation

Sheila Killian, Philip O'Regan, Ruth Lynch, Martin Laheen and Dionysios Karavidas

Kemmy Business School, University of Limerick, Limerick, Ireland

Abstract

International tax governance is significant societally as it impacts both inequality and the capacity of governments to deliver on their social contracts. Tax experts forma key, under-researched, heterogeneous element of the tax ecosystem, subject to a range of hard and soft governance influences. While problematic tax regimes are appropriately identified by reference to lax regulation or financial opacity, few empirical studies explore how operating in these jurisdictions affects the governance of tax experts individually. Using international survey data, we find that the influence of soft governance on tax experts varies across conditions of secrecy or lax regulation. Soft governance, including that of the workplace and the profession, is most influential in challenging regimes. Beyond a tipping point of economic freedom, regulatory knowledge and the threat of sanction become less influential. Elements along the continuum between hard and soft governance interact in a non-homogenous way that indicates a role for professional bodies and firms in tax governance.

Keywords: expertise, governance, orchestration, profession, secrecy, tax.

1. Introduction

Taxation and its practice are key elements of the governance of nations, facilitating wealth distribution or concentration, motivating taxpayer behavior, curbing negative spillovers, and providing revenue to governments to fund social support and public services. In this context, the propensity of some taxpayers, notably large multinational firms and high net worth individuals to avoid or evade their tax liabilities has become a cause for international concern. Tax evasion and avoidance can be seen as distinct – the former being illegal, the latter being compliant but aggressive. Alternatively, they can be viewed as part of a continuum of harmful tax practices, which deplete the public coffers, exacerbate inequality, erode the capacity for states to govern and ultimately, threaten the operation of democracy (Harrington 2016). In this context, the governance of the international tax system has been the subject of a growing body of research. There is an emphasis in this literature on the harder regulatory variables, including the power of sanction over aberrant jurisdictions by more powerful governments and other authorities, and on the propensity or otherwise of governments, which compete for Foreign Direct Investment (FDI) to cooperate on tax regulation. The impact of such international sanction at a government level and the way in which it is enacted between states, including the challenges of international tax cooperation have been well-analyzed by work such as Rixen (2011a,b); Hakelberg (2016); Hakelberg and Schaub (2018), and others.

However, the growing focus on the impact and practice of tax avoidance, and the concerted response of regulators such as the OECD also illustrate how taxation may be viewed as a social practice with significant implications for society as a whole, in which the work of tax practitioners is best seen as socially consequential (Sikka & Willmott 2010; Radcliffe *et al.* 2018, pp. 46–47). Tax experts and intermediaries play a key role in the ecosystem of international tax, acting as mediators of practice and sometimes pushing the bounds of the regulation. In their daily work, they can generate new and significant precedents, leading sometimes to new case law which augments (or challenges) existing legislation. In this way, tax professionals play a quasi-regulatory role as well as intervening between regulators and the targets of the regulation (Abbott *et al.* 2017). The interplay between externally-imposed rules and outcomes deriving from the decisions and actions of tax experts is complex and somewhat

Correspondence: Professor Sheila Killian, Raheen, Ballyneety, County Limerick, C94 CD5H, Ireland. Email: sheila.killian@ul.ie
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under-researched. This dynamic is particularly important since global tax avoidance is a transnational challenge, a quality evident in the level of attention taxation has attracted from governments and policymakers (Radcliffe *et al.* 2018). The response of regulators is most clearly seen in recent initiatives by the OECD to implement its Base Erosion and Profit Sharing (BEPS) action plan, an intervention "specifically directed at modernizing the international tax system" and addressing perceived governance deficiencies in the taxation culture of multinational companies (MNCs) and their advisors (Radcliffe *et al.* 2018, p. 45; OECD 2019). This response is also driven by the growing attention paid by the media, public, and NGOs to the tax behavior of large multinationals and their taxation advisors (Sikka & Hampton 2005).

For this reason, and in response to calls for "more empirical work looking at the experience of tax-professionals" (Radcliffe *et al.* 2018, p. 47), there has been an increasing focus on the role of tax experts themselves and the implications of their claims to disciplinary expertise in the context of decision-making, professional agency, and ethical formation (Suddaby 2013; Viale *et al.* 2017; Anesa *et al.* 2019). On the one hand, this has highlighted the socio-cultural nature of tax work and the broad parameters within which the tax professional operates (Sikka & Hampton 2005; Suddaby and Viale 2011; Suddaby 2013). On the other, it has reinforced the extent to which tax professionals "draw upon their resources of technical expertise in order to endogenise institutional change" (Radcliffe *et al.* 2018, p. 47). This stream of literature reflects the increasingly international nature of tax work and the extent to which the decision-making skills of tax practitioners must be alert to both transnational issues as well as the exigencies of large MNC clients (Sikka & Hampton 2005; Dyreng *et al.* 2015; Radcliffe *et al.* 2018). This approach, focusing on the experience of the individual tax expert, has a contribution to make to the global regulation literature as a complement to work on harder sanctions. We situate our work in this space, drawing on an international survey to explore the influences of a range of governance elements on tax experts working in what are seen as problematic regimes. Our aim is to determine the strength of influence exerted by various elements of regulation and governance on the day-to-day decisions of tax experts working in varying levels of secrecy/transparency, or high/low regulation levels. Using a field study approach, we presented tax experts in a number of jurisdictions with a range of governance factors and asked them to rate on a Likert scale how influential each is in their day-to-day work. The survey, therefore, elicits the direct self-perception of tax experts working in the field and reveals the heterogeneity of regulatory influences in differently-characterized jurisdictions.

Global tax avoidance and evasion is a problem for regulators, of the kind discussed in Black (2008), presenting greater challenges due to the multiplicity of regulatory and governance influences. Because tax work involves actors in various settings, informed by professional bodies and workplace norms, responsive to different regulations and guidelines, tax governance sits at the locus of a myriad of public and private regulation. While tax rules *per se* are enacted nationally, tax professionals may work for domestically-based or multinational firms, with local or international clients. They may also be responding to global trends in tax regulation and taking advantage of mismatches in national regulation to shift profit, tax allowances, or intellectual property across boundaries. At the same time, the experts themselves are governed by professional codes as accountants and lawyers and are also guided by the ethos of their employing organizations. This reflects the mix of state and non-state agents in regulation observed by Bennett and Raab (2018), and the need "to move beyond a state-centered model of governance" (Poon *et al.* 2019, p. 55).

Hard governance is generally understood as legally binding regulation, imposed by an appropriate authority, generally with power to impose compliance (Abbott & Snidal 2000). Soft governance can be seen as closer to social norming, a way of steering behavior (Brandsen *et al.* 2006). However, the line between the two is not at all clear, and the distinction and overlap between hard and soft governance are discussed in more detail in Section Two of this paper. Recognition of the value of the softer elements of governance is a key element of the kind of "public orchestration" proposed by Abbott *et al.* (2012) and Henriksen and Ponte (2018), which involves the effective steering of expert networks. However, effective implementation of such orchestration is challenged by the diversity of influences on the targets of regulation, in this case, tax experts. As noted in the editorial to this special issue, regulation in the tax field is increasingly indirect (Unger & Rixen 2020). The area is relatively under-research; some work in accounting journals highlights how regulatory and governance concerns overlap, and how concepts of accountability and transparency impact societally and professionally. This work links to professional claims of privilege based on both professional expertise and on "serving the public interest" (Sikka *et al.* 1989; O'Regan & Killian 2014; Seabrooke & Wigan 2016). The work is also useful in identifying some of the challenges inherent in the reconciliation of agency and structural pressures in the broader intersection of social and institutional priorities (Suddaby 2013; Radcliffe *et al.* 2018). However, this stream of research suffers from a dearth of evidence-based knowledge of the day-to-day influences on tax experts themselves, which might enable international regulators to better focus their efforts. We can hypothesize, for instance, that tax experts will be influenced by the current tax regulation, by the risk of sanction by the taxing body (either domestic or foreign), by their own professional body, and by the ethos of their workplace. However, we do not have a sense of the relative importance of these variables. More pertinently, we do not know how that importance might fluctuate in distinct or problematic situations or jurisdictions. This paper aims to address this lacuna, basing our work on the day-to-day realities of tax work, as reported by the tax workers themselves. By determining when and where a range of softer governance variables are most impactful, we aim to provide support for the effective enrolment of "soft" elements as part of an orchestrated governance strategy. We find that the strength of various governance influences varies in conditions of secrecy or loose regulation. These are both characteristics of problematic tax jurisdictions, but we find that their influence on tax experts are distinct. Our findings identify the conditions in which elements of soft governance, notably the professional body and workplace, are more influential.

The issue of global tax avoidance and evasion is often framed in terms of such problematic jurisdictions, sometimes called tax havens. In general, this is understood as referring to more than a country with low tax rates, and also incorporates concerns about loose or accommodating forms of regulation (Eden & Kudrle 2005; Wayne 2012; Palan *et al.* 2013) or high financial secrecy (Murphy 2009; Cobham *et al.* 2015; Cobham & Janský 2018; Janský *et al.* 2018; Poon *et al.* 2019). A location with loose or flexible regulation can lend itself to aggressive tax avoidance while, as noted by Hassan and Giorgioni (2015), financial secrecy can create the conditions for more illicit activity, which would include tax evasion. If we accept that jurisdictions with low regulation or high financial secrecy are problematic for a global tax and that tax experts are key influencers of tax practice, responding to a range of hard and soft governance levers, then it is worth investigating how the influence of such levers may vary in these kinds of problematic regimes. While the elimination of unacceptable levels of secrecy or lax regulation would be an obvious and effective solution to the problem generated by such jurisdictions, this is challenging to achieve given tax competition between countries (Rixen 2011a,b, 2013). A complementary (rather than alternative) approach is to focus on the governance of tax mediators and experts operating in such environments. Aguilera *et al.* (2016) describe how institutional and jurisdictional logics can influence the relative effectiveness of governance levers. For individuals working in a country known to embrace light-touch regulation or financial secrecy, the peer norms of what is acceptable in terms of tax work may be different. Essentially, echoing the observation in Aalbers (2018, p. 918) on the use of language around tax avoidance, working in such an environment may "naturalize" practices, which are seen as less mainstream elsewhere. What is still largely unknown is which governance influences are most effective in these situations. For example knowing how the significance of the professional body might be affected by, say, financial secrecy should assist in the formulation of more effective orchestration of regulation of tax experts. In order to move toward policy solutions that address the issue of global tax loss, an understanding of how the relative influence of hard and soft governance levers vary by jurisdiction type is required.

The characteristics of problematic tax jurisdictions – loose or low regulation and financial secrecy – often occur together or are grouped together in discussions about tax regimes. We aim in this paper to unpick this coupling, following work such as that of Meinzer and Cobham (2013); Janský *et al.* (2018). Rather than focusing on tax havens or countries on a gray list or blacklist, we seek to explore the different influences of the regulatory environment itself, expressed in the two dimensions of economic freedom and financial secrecy. These can be characterized, following Brandsen *et al.* (2006), as hard governance elements – the conditions created by formal regulators that impact on transparency or tightness of regulation. We are interested in the interaction of these well-studied facets of regulation with others that are on the spectrum between hard and soft, including those emanating from the firm, the professional body, the tax experts' knowledge of regulation or regulatory trends, and the threat of sanction from the taxing body. Our core question can, therefore, be expressed as follows: how does operating in financial secrecy or low regulation environments affect the felt influence of a range of regulatory influences on tax experts that derive from a mix of hard and soft governance elements?

Tax experts operate in a range of diverse settings. Without directly interrogating the experts themselves, it is difficult to assess the power of these influences. We address this question by engaging directly with tax experts through a large-scale international survey in which we collect their self-reported rating of the significance of a range of governance elements in their daily work. Drawing on responses from 1,061 professionals working in taxation in corporate and public practice settings across 59 countries, we explore variation in the level of felt influence of these potential governances and regulatory influences across jurisdictions characterized by high or low financial secrecy, and by high or low levels of economic freedom. In doing so, we follow the call by Black (2008, p. 137) "to pay far greater attention to the dynamics of accountability and legitimacy relationships, and to how those in regulatory regimes respond to them," in order to identify, which key levers are most effective in the regulation of tax experts in regimes that are perceived as problematic. This analysis ultimately aims to inform new ways for public regulators to use enrolling, steering, or public orchestrating strategies (Abbott & Snidal 2013) to move this loose and diverse network of tax professionals toward closer compliance. The results also shed some light on how hard and soft regulations interact.

The rest of this paper is set out as follows. The next section discusses tax governance, and the range of factors that make up the governance of working tax experts, followed by an outline of relevant jurisdictional issues, focusing specifically on what we understand by "financial secrecy" and "economic freedom." Section 3 describes our method and data. Section 4 gives the key findings. Section 5 discusses the implications and concludes.

2. Tax governance and jurisdictional issues

Soft governance can be understood as "an approach to policy implementation in which the central government relies less on hierarchy than on information to steer local organizations" (Brandsen *et al.* 2006, p. 546). Using this definition, the EU has engaged with the idea of soft governance as an "alternative to hierarchical 'command and control' approaches, to involving cooperation and co-production of norms by various partners, rather than coercion" (Dehousse 2016, p. 20). The benefit of this approach is that it "allows for a combination of formal accountability and professional autonomy that improves the quality of public services in both the short and the long term" (Brandsen *et al.* 2006, p. 546). Soft governance can facilitate an improvement in performance "without having to alter the formal regulatory framework (which often carries with it financial, political, and administrative burdens)" (Brandsen *et al.* 2006, p. 546). Globally, soft governance may also have the potential to partly address asymmetry in regulation, particularly between more or less developed economies. Given the globalized nature of market forces in today's world, "there is already a wide consensus on basic principles and norms [that] suggests the desirability and feasibility of moving to a single set of global soft law standards" (Kirton & Trebilcock 2017, p. 26).

This is often contrasted with hard governance, which has been defined as "precise, legally binding obligations with appropriate third-party delegation" (Abbott & Snidal 2000, p. 421). However, the distinction is not always clear, and the hard-soft distinction can be best framed as a continuum rather than a binary categorization (Kalimo & Staal 2014; Oberthür 2019). Furthermore, even where they can be clearly distinguished, the relationship between hard governance in the form of legally-enforceable rules, and soft governance in the form of quasi-voluntary standards or professional norms, is often more intertwined at both national and international levels, "in part because it is typically impossible to write a complete set of hard rules without softer supporting arrangements regarding implementation" (Abbott *et al.* 2017, p. 17).

Trends over the last 30 years that have seen already unequal wealth distribution worsen in terms of the disparity between the upper and lower tiers are widely believed to have been facilitated, in part, by aggressive tax evasion and avoidance strategies. A "rapacious tax avoidance industry" (Sikka & Hampton 2005, p. 326) is identified as a key agent in this process, both facilitating and perpetuating a view of social responsibility that eschews notions of sustainability and fairness in favor of ever-more aggressive attachment to ideas of "total shareholder value". One consequence, as outlined earlier, is increased attention to the role and actions of what has become known as the tax avoidance industry, and to the place of tax experts and their professional bodies in this ecosystem. This is especially relevant in a context in which, as "commercial concerns, accountancy firms prioritize private profits and encourage competitive individualism" (Sikka & Hampton 2005, p. 331). A key enabler of this trend is the growth of "organizational cultures and practices that place increasing emphasis upon the commercial acumen of their staff" (Sikka & Hampton 2005, p. 329). The consequence is a working environment that encourages tax aggression or avoidance while simultaneously deploying the language of "public interest," "sustainability," and "corporate social responsibility" in a manner intended to occlude broader commercial interests (Bourdieu 2005; Carter & Spence 2014; Addison & Mueller 2015).

Tax advisors have a role to play in regulation, especially as part of the orchestration of hard and soft governance elements discussed in the previous section. However, the institutional logics, which demand a focus on profit (Spence & Carter 2014) and the simultaneous professional focus on public interest, can create sites of conflict in this role. Murphy and Stausholm (2017) identify opacity or secrecy as an element of this conflict. Such complexity is difficult to observe in totality, and so this paper aims to complement work that focuses on the Big Four accounting firms or on national policy, by a direct exploration of the key decision-making drivers under which tax experts operate. This is particularly pertinent in environments in which the regulatory culture is mutable, or in which there is little oversight of how the public interest is balanced with what are essentially commercial imperatives (Robson *et al.* 1994; Sikka & Hampton 2005). In these circumstances, both the individual decision-making capacity of the tax expert and the formative influences of the wider profession (Sikka & Hampton 2005) converge to produce outcomes that, on the one hand, conform to widely accepted regulatory expectations, while simultaneously delivering on the expectations of MNCs seeking aggressive taxation benefits. In such circumstances, "[i]n addition to cementing jurisdictional claims (Abbott 2014) and increasing the partners' share of profits" (Burrows & Black 1998), these influences have the effect of prioritizing private profits under the cover of serving the public interest (Sikka & Hampton 2005, p. 329).

Tax experts increasingly operate, therefore, in contexts that can be best understood as focused on commercial logics (Spence & Carter 2014), while ostensibly serving the public interest and satisfying the highest requirements of international regulation and governance expectations. This poses particular challenges for regulators. Broadly, the regulation of expert professionals can be seen as having moved to a combination of hard and soft regulatory elements, requiring regulators to have a better knowledge of the multiplicity of influences bearing on practitioners (Black 2001). Despite this, there is considerably less work on how individual tax experts respond to the interplay of hard and soft governance influences on their daily work.

The factors considered here are a mix of hard and soft regulation – workplace ethos and professional norming on the one hand, and sanction and regulation on the other. We see these as necessarily operating together in a form of orchestration (Abbott *et al.* 2012), particularly in the regulation of tax experts in large accounting and law firms, which have international reach. As noted by Ruggie (2018) in the context of corporate social responsibility, "in light of the multinational's power, authority, and relative autonomy, the time-worn mandatory/voluntary dichotomy inhibits rather than advances our coming to grips with the challenges posed by corporate globalization" (p. 329). However, despite their interweaving, by examining how the relative influence of these governance components varies in the presence of tight regulation and financial transparency, we go some way to exploring the interaction of the hard and soft elements.

Fotaki *et al.* (2019) find a strong role for workplace ethos in influencing compliance with corporate governance codes among employees. There are several reasons why this may be so. Linderberg and Foss (Lindenberg & Foss 2011, p. 500) posit that the ethos and organizational structure can create a series of "cues in the environment", which affect the goals and attitudes of workers. In turn, this has the potential to cause them to think in terms of joint organizational goals rather than individual goals, adopting a "we frame" rather than an "I frame" in day-to-day decisions (Bacharach 2006). Assuming this to be the case among tax workers, this "we frame" could be particularly relevant to the governance of tax experts operating in problematic regimes, where there is a perception that decisions are made, which may push the boundaries of tax compliance. If workplace ethos, for instance, were to be more of an influence in countries broadly designated as tax havens or secrecy jurisdictions, then this would be a signal for regulators to focus their efforts on the firm rather than on the individual expert, as a more efficient way of shifting the governance ecosystem.

For tax experts, their own professional body is also a potential source of soft governance. Professions claim a public interest mandate, which in the case of tax planning could be expected to moderate tax aggression although the introduction of a more social focus. It is unclear how effective such bodies are in influencing tax experts in jurisdictions with high economic freedom or secrecy. Carter and Mahallati (2019) consider the role of a professional association in norming behavior, and so acting as a soft governance mechanism. Professional associations are considered to be influential because they offer networking, "training and education that develops shared understanding … and may play an important role in establishing and enforcing collective standards for appropriate behavior" (p. 51) and so can "influence or mediate the authorized relationships between regulatory agencies and intermediaries" (p. 64). While professional associations are not completely synonymous with professional bodies, these functions are close to those performed by accounting bodies, for example. Professional bodies also act as intermediaries of regulation of the kind noted by Bothello and Mehrpouya (2019), enacting the self-regulatory role afforded to the profession in implicit exchange for a public interest focus. Since this public interest element is particularly challenged in situations of low regulation or high secrecy, the potential for the professional body to moderate tax aggression in such circumstances is important to examine.

As well as the softer levers of workplace ethos and professional norming, tax experts respond to hard regulations such as the risk of sanction by the taxing authority. Kirchler *et al.* (2008), while proposing a framework in which voluntary compliance is higher in situations of trust, nonetheless acknowledge the response of taxpayers to hard regulation and the power of the taxing authority. They define this as "taxpayers' perception of the potential of tax officers to detect illegal tax evasion, for example by conducting frequent and thorough tax audits, and to punish evasion, for example by fining evaders to a noticeable extent" (p. 212). We frame this as the risk of sanction by the taxing authority, which includes sanctions from international bodies. While tax havens are generally not expected to have a high-risk of domestic sanction, it is worthwhile to explore whether or not this is something that influences individual tax experts in their daily work in such jurisdictions. Hakelberg and Schaub (2018), for example found that even in tax havens and secrecy havens, the threat of sanction can be an effective influence. This is an important finding, given the "black box" nature of tax and secrecy havens. It may be, however, that this is more or less effective in conditions of secrecy, or of low regulation and economic freedom. More fundamentally, an international sanction may be more influential on official policy than on practice, having a significant normalizing impact on jurisdictions, which are blacklisted or otherwise publicly isolated (Sharman 2009), while not necessarily being on the daily radar of tax experts working in the country, even where their tax work may generate new precedents and case law.

The interaction of national tax legislation and case law, tax treaties, and international law produce a complex and dynamic web of ever-changing regulation. Knowledge of these rules and of the trends in regulation affords a tax expert a significant advantage in framing tax planning on behalf of their employer or client, even beyond that of directly influencing regulation as noted by Galland (2017). Because at any given time, so much of tax law is new, tax experts often find themselves in the situation described by Paiement (2019) of implementing the first enactment of regulation. In this case, actors who are aware of a wider context can, through their actions, create precedent and practice that will become significant and lasting; "intermediaries may themselves partake as jurisgenerative actors, proffering their own interpretations of how a text should apply to the situation before them" (Paiement 2019, p. 285). This can happen at an individual or a firm level and points to the significance for regulators of having an understanding of the degree to which tax experts are aware of emerging trends in tax regulation.

As previously noted, much of the discourse on tax avoidance as a global problem centers on countries, which engage in problematic tax competition (Killian 2006; Genschel & Schwarz 2011), and which are often included on blacklists or gray lists by transnational bodies, or labeled as tax havens. The characteristics that lend themselves to a jurisdiction being used as part of a multinational firm's tax avoidance strategy (Desai *et al.* 2006) include low tax rates, financial secrecy, and a generally low level of regulation. This can create an environment, which lends itself to large capital flows and very much reduced global tax liabilities for multinational firms (Dyreng *et al.* 2013). In turn, this has a knock-on impact on the ability of other countries, notably developing countries, to mobilize domestic revenue (Killian 2006; Hearson 2018). In part, the problem with tax havens and problematic tax jurisdictions arise because, even where international regulation or directives are in place, the manner in which they are enacted or transposed into domestic legislation can vary by country (Dörrenbächer & Mastenbroek 2019).

Beyond this government-level transposition, Sikka and Hampton (2005) note the significant role of accountants and accounting firms in this process. The governance and regulation of tax experts, including self-regulation by professional bodies, cannot be assumed to be uniform in these environments. In this paper, we focus on two elements – financial secrecy and light-touch regulation – and explore how working in these conditions impacts on the landscape of governance levers.

Secrecy is problematic for a number of reasons, not least because it clouds the lines of accountability, which are especially important in areas with a significant societal impact such as international taxation. Certainly, transparency itself will not automatically generate accountability (Gupta & van Asselt 2019), and the propensity of firms to avoid accountability is well documented (see Ahrens & Rixen 2020, e.g. in this issue). Nonetheless, a lack of transparency around the transactions of multinational firms creates a rich environment for aggressive tax avoidance or tax evasion (OECD 2019). Challenges to institutionalized secrecy are inherently political, and transparency itself, and notably its antonym, secrecy, can be seen "as a terrain of political conflict" in terms of governance (Ciplet *et al.* 2018, p. 131). Financial secrecy locations have been implicated in a range of financial wrongdoing, including corruption, money laundering, and tax evasion. The focus of this paper is more narrowly defined, addressing tax avoidance more than evasion, and focusing on how those working in the area of tax, and their self-reported level of influence from a range of hard and soft governance variables. The countries in which our respondent's work can be categorized according to their level of financial opacity. In order to achieve this, we use the Financial Secrecy Index (FSI) developed by the Tax Justice Network (TJN, www.taxjustice.net), which "ranks countries and jurisdictions according to their contribution to opacity in global financial flows" (Cobham *et al.* 2015, p. 281). This index has proven effective in prior work in identifying problematic jurisdictions (Cobham & Janský 2018), and has been described as the "best-researched source" of such jurisdictional secrecy data (Murphy & Stausholm 2017). The detail on the way in which the index has been compiled is included in TJN (2013 and 2019). We use this index, as described further in the methodology section below, to identify those respondents to our survey who are working in the highest or lowest secrecy locations.

Secrecy, while significant, is not present in all countries, which are considered to be tax havens (Cobham & Janský 2019). A second important characteristic of such problematic jurisdictions, which often goes hand in hand with secrecy, is lax regulation (Christensen 2012). This can be a rather nebulous concept, loosely aligned with neoliberalism and free-market orientation, translating into a business-friendly environment with slight oversight, low compliance burden, and minimal government or regulatory intervention into private business transactions. In a world of global tax mobility, countries displaying these characteristics can be used as a base for international tax arbitrage or to exploit mismatches in international taxation. As a way of capturing this variable, we use the Index of Economic Freedom (IEF) developed by the Heritage Foundation (www.heritage.org), a US think tank dedicated to conservative public policies, limited government, and free enterprise (www.heritage.org). The IEF is a holistic measure based on 12 factors, including government spending, taxes, business freedom, etc. the detail on the methodology behind the index is available at Heritage Foundation (2019). We use the IEF to identify the responses to our survey that come from high or low economic freedom locations, in the same way as we use the FSI to locate those operating in conditions of high or low financial secrecy.

It is important to note that indices such as the IEF and FSI can in themselves act as a form of governance and that the inclusion of jurisdiction on an index of problematic countries can be seen as a way to nudge greater transparency or compliance with international norms. Sharman (2009, p. 573) argues that inclusion on such blacklists can force "otherwise recalcitrant states" into greater compliance. Seabrooke and Wigan (2015, p. 887) see such benchmarks as "weapons of symbolic violence", useful for activists, distinguishing between those which are characterized as a reformist, and those, including the FSI, which can be understood as revolutionary because they challenge public perception of the basic logic of the system. This "weaponizing" property of an index is acknowledged as "the capacity of global benchmarks to cloak normative agendas in languages of neutral and technocratic assessment" (Broome & Quirk 2015, p. 814).

While NGOs and other interest groups use indices to both "neutralise and universalise a range of overlapping, normative values and agendas" (Broome & Quirk 2015a, p. 819), critics charge that these indices "often simplify complex public policy issues" (Cooley & Snyder 2015, p. 102) and are open to manipulation. This disquiet has been expressed largely in relation to the use of such indices to frame policy, but it is also a valid concern where indices are used, as we do in this paper, as a way to identify those jurisdictions in which the operating environment of tax experts is characterized by opacity or loose regulation. As noted above, the indices we use are the IEF developed by the Heritage Foundation (IEF), and the FSI developed by the TJN (FSI). The IEF has few equivalents, but has been compared to the Fraser Institute economic freedom measures by previous researchers, including Heckelman (2000) and Ott (2018). While noting that at the time the IEF had only four years of historical data available, researchers opted to use it as a primary measure of economic freedom largely because of the robustness of measurement, the regularity with which the index is updated, and the fact it is based on policy factors controlled by the individual governments. Ott (2018) directly tests the IEF against some alternative measures of economic freedom and finds that it can be used as an equivalent to the main alternative, that developed by the Fraser Institute. The IEF is also used in recent work on issues as varied as macro-economic stability (Yevdokimov *et al.* 2018), press freedom (Bjørnskov 2018), and FDI (Imtiaz & Bashir 2017). We are, therefore, satisfied that it is a suitable measure of economic freedom for the purposes of this study. The FSI is a far more recent development, and so is less cited in the academic literature than the IEF. Unlike the IEF, there is no real equivalent index that can be deployed as an alternative. There is, however, a range of peer-reviewed work, which uses the index, including Emmenegger (2014); Schjelderup (2016); Janský (2015); Cobham *et al.* (2015); Janský *et al.* (2018); Cobham and Janský *et al.* (2018); Phillips *et al.* (2020), and we follow this stream in using the FSI as a way to categorize countries. In doing so, we add to the range of work, which deploys these indices and provides an indication of their usefulness in research.

3. Methodology

Our primary data derives from a survey of professionals working in the field of taxation and was designed, *inter alia*, to determine to what extent they felt that a range of potential governance variables was influential in their day-to-day work. The survey instrument was designed and built on the *Qualtrics* platform, which is secure and General Data Protection Regulation (EU GDPR) compliant. Ethical clearance for the survey was obtained from our university's Research Ethics Committee. For the purposes of this study, we were primarily interested in the degree of influence of a range of hard and soft governance variables. Our underlying assumption following Rest (1986) is that awareness is the foundational level of influence. Directly interrogating tax experts on their awareness of the influence of various factors involves capturing their own self-perception, accepting the degree of subjectivity that this entails. Respondents to the survey were asked to indicate on a five-point Likert scale the significance of a range of factors. In all cases, one (to the left) indicates low influence or applicability of the factor, while five (to the right) indicates high. The relevant question for this study was the following:

In your day-to-day tax work, how influential are the following factors? (one is very low influence; five is very high)

- Workplace ethos
- Your professional body
- Knowledge of regulations
- Risk of sanction by taxing body
- Trends in tax regulation

The logic behind the question is that without a day-to-day awareness of these levers, they are unlikely to be effective in governing behavior. Note that we are not in any way inferring the nature of this influence, positive or negative in terms of tax aggression or avoidance. Neither can we preclude the possibility that other influences are in play. However, the data does speak directly to the felt influence of these levers in the governance of tax professionals in different types of jurisdictions, and so is potentially valuable to regulators. The five key governance variables in the survey are on the spectrum of hard and soft regulatory influences. As well as considering the absolute Likert scores given to these variables, we also used this data to generate rank variables, isolating how each respondent ranked each of the five governance variables relative to a wider list of potential influences. For robustness, we ran all tests on both the absolute scores and the rank variables, and the score variables and rank variables produced compatible results.

The five variables point to the potential levers, which might be deployed by regulators intending to influence tax experts in their daily work. As noted earlier, this cohort forms an important part of the regulatory ecosystem, given the jurisgenerative potential of tax professionals as intermediaries of policy and practice. The first two of the five relate to potential pathways of soft regulation, through the employing firms (workplace ethos) or through the professional bodies. The next two relate to both regulation as it currently stands (knowledge of regulation) and the tax expert's awareness of the direction of future regulation (trends in tax regulation). The final variable relates to the threat of sanction from the taxing body and should shed light on the power of regulatory penalties.

In all cases, we are interested in how the relative felt the influence of these variables varies in conditions of high or low secrecy, or high or low economic freedom. In combination, this informs the discussion on how regulatory efforts could best be deployed in problematic regimes.

Following a pilot phase that led to the refining of some questions, the survey was rolled out internationally. Several large firms and professional bodies agreed to distribute it internally, and responses were also gathered at conferences of tax practitioners. The survey data were anonymous, but asked for some basic demographics, including the country where the respondent worked. The survey design included some tests of internal validity, and these were used to eliminate unsuitable responses. We also eliminated very incomplete responses.

To test for differences across high or low financial secrecy and high or low regulation, we coded each country by reference to its position on the FSI and IEF described in the previous section. Prior to this we tested for correlation between the indices and found very small and no significant correlation (Pearson Correlation of −0.042, P = 0.184). We calculated the 20th and 80th percentiles of the index and isolated those responses in our dataset coming from the countries in the top and bottom quintile of each of financial secrecy and economic freedom. This gave us a usable group of 497 responses from countries falling into either high or low secrecy and 561 responses from countries with high or low economic freedom.

Table 1 summarizes the number of observations within each group and shows how each subgroup relates to the sample overall.

We used crosstabs to check that the sample was sufficiently balanced by reference to key demographic variables. We wanted to ensure that our sample, when partitioned into high and low levels of financial secrecy and economic freedom, included a good spread of age and gender, as well as respondents from small as well as large firms. Figures 1–3 below shows the results for gender, age, and firm size.

We concluded that the data are sufficiently well-balanced for the interpretation of our results to be precise and not skewed by these demographic variables. It is particularly useful to note that a reasonable proportion of

Table 1 Data as partitioned by high and low FSI and IEF

	Number of responses	% of subsample	% of overall sample
High financial secrecy (HFS)	282	56.7	26.6
Low financial secrecy (LFS)	215	43.3	20.3
High economic freedom (HEF)	345	61.5	32.5
Low economic freedom (LEF)	216	38.5	20.4

FSI, Financial Secrecy Index; IEF, Index of Economic Freedom.

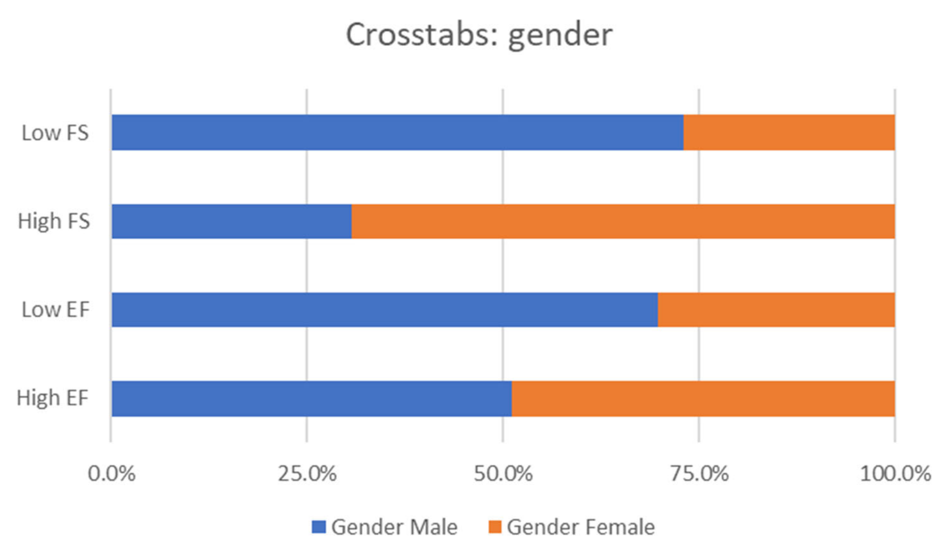

Figure 1 Balance in sample: gender.

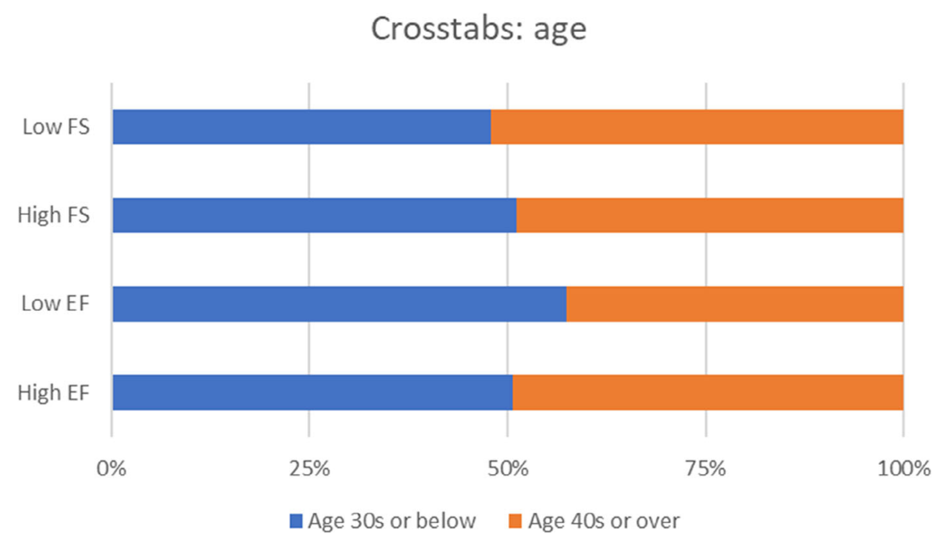

Figure 2 Balance in sample: age.

respondents come from smaller firms, defined as those with fewer than 100 employees in total.[1] This is relevant given the dominance of studies that are based solely on the Big Four accounting firms and the fact that we are testing for the relative influence of some local factors, which could be perceived as being less impactful in large multinational firms. Our aim is to test for differences in the Likert score and rank governance variables across the boundaries of high or low financial secrecy and again across high or low economic freedom. Because our data are not normally distributed, we use the non-parametric Mann Whitney *U* test for this purpose to test for differences between the level and ranking of the five key governance variables in high or low secrecy and in high or low economic freedom. For added robustness, these tests were repeated using quartiles rather than quintiles to partition the data, and the results were consistent.

Our findings are presented in the next section.

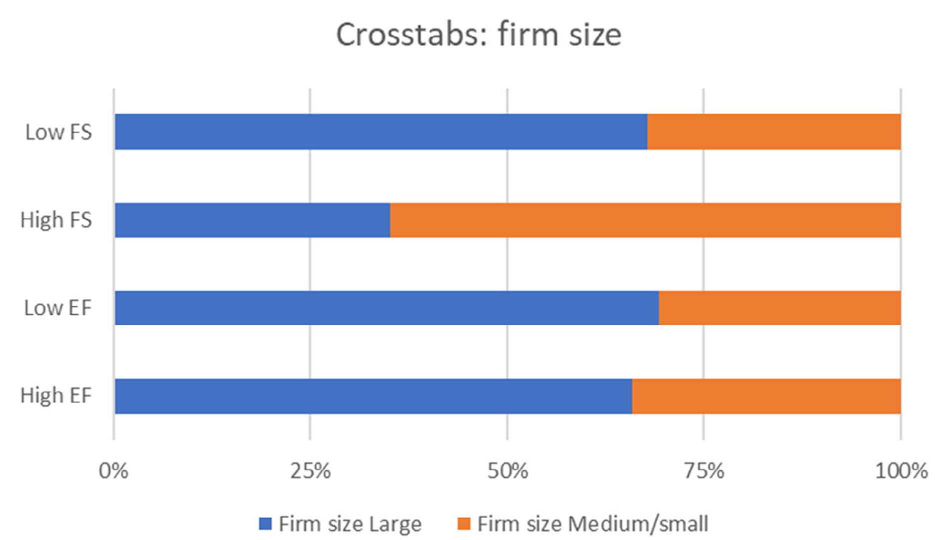

Figure 3 Balance in sample: firm size.

4. Findings

In this section, we present the results of Mann Whitney *U* tests across the groups of high or low financial secrecy and high or low economic freedom, testing for differences in the level of self-reported influence of the key governance variables identified above. As noted earlier, tests are done using both the absolute Likert score given by each respondent to show the level of influence the variable had on their day-to-day work and using a derived rank variable. The rank variable is used for robustness and shows how the score allocated to a given variables ranks among scores given to other influence variables by each respondent.

Table 2 presents the results for the tests for differences between respondents from countries with the highest and lowest levels of financial secrecy. The first column lists the five key governance variables. The second two columns show the direction of difference in the results of the Mann Whitney *U* tests across countries with high or low levels of financial secrecy for both the score and rank for each variable. The final two columns give the statistical significance of the Mann Whitney *U* test and highlight those with strongly significant results.

The Mann Whitney *U* tests indicate that in countries with high levels of financial secrecy, tax experts report the influence of the workplace ethos and the professional body to be significantly higher than in countries with low levels of financial secrecy. These are both soft governance levers. The tests indicate no significant differences between high or low financial secrecy jurisdictions in the self-reported influence of the tax expert's knowledge of regulations, or of trends in tax regulation. In contrast, the power of the taxing authority is felt slightly more keenly in countries with low financial secrecy, although this result is statistically less significant, and does not apply in the tests based on rank variables.

These results indicate that soft regulatory levers are more significant in countries with high financial secrecy, with no significant differences across the boundary of financial secrecy for the relative influence of harder regulatory variables.

Table 3 presents the results of the tests for differences between respondents from countries with the highest and lowest levels of economic freedom, following the same format as for financial secrecy above. The first column lists the five key governance variables. The second two columns show the direction of difference the results of the Mann Whitney *U* tests across countries with high or low levels of economic freedom for both the score and rank

Table 2 Mann Whitney *U* test for differences across high and low financial secrecy

	Most influence in countries where secrecy is:		Significance	
Governance variables	Score	Rank	Score	Rank
Workplace ethos	High	High	0.043**	0.013**
Your professional body	High	High	0.000***	0.000***
Knowledge of regulations	—	—	0.832	0.386
Trends in tax regulation	—	—	0.954	0.837
Risk of sanction by taxing body	Low	—	0.091*	0.014

*$P \leq 0.1$; **$P \leq 0.05$; ***$P \leq 0.01$.

Table 3 Mann Whitney *U* test for differences across high and low economic freedom

	Most influence in countries where economic freedom is:		Significance	
Governance variables	Score	Rank	Score	Rank
Workplace ethos	High	High	0.058*	0.003***
Your professional body	—	—	0.934	0.704
Knowledge of regulations	Low	Low	0.001***	0.001***
Trends in tax regulation	Low	Low	0.004***	0.034**
Risk of sanction by taxing body	Low	Low	0.003***	0.002***

*$P \leq 0.1$; **$P \leq 0.05$; ***$P \leq 0.01$.

for each variable. The final two columns, as before, give the statistical significance of the Mann Whitney *U* test and highlight those with strongly significant results.

The results for economic freedom differ in a number of key ways from those for financial secrecy. The Mann Whitney *U* tests show that the workplace ethos is more influential for tax experts working in jurisdictions with high economic freedom, but there is no significant difference across the boundaries of high and low economic freedom for the influence of the professional body. The "harder" governance variables of regulations, regulatory trends, and risk of sanction by the taxing authority are all felt significantly more strongly in countries that are low on the IEF. These results apply to tests using both score and rank variables.

We discuss the implications of these findings in the final section.

5. Discussion and conclusions

In this paper, we have separately explored the impact on governance levers of financial secrecy and economic freedom. While both are "tax haven" characteristics, they behave differently in terms of their relative influence on regulatory or governance variables. This indicates that problematic regimes could usefully be characterized separately by reference to financial secrecy, and by reference to the wider regulatory environment. Such an approach would empower regulators to act in a targeted way in individual jurisdictions by emphasizing different elements of governance. Most pertinently in this domain, we find that beyond a certain level of economic freedom, tax experts are less influenced by the traditional levers of regulatory trends and sanction by the taxing authority, and more influenced by the ethos of their workplace. In jurisdictions characterized by a lack of transparency, the workplace and the professional body are more influential.

Results for the relative influence of the professional body present challenges to the profession. They are considered more influential in the day-to-day work of tax experts in countries with high financial secrecy, and this influence is unaffected by conditions of economic freedom. It is an interesting result since financial secrecy is associated with a general lack of accountability, but it may indicate that tax experts and professionals operating in such locations are more conscious of their professional body as a source of ethical guidance or ethical norming. Alternatively, the profession may fulfill a risk management function, or operate as a form of secondary regulation. In either of these cases, the profession may occupy a governance position. It is also possible that the increased influence of the profession in conditions of high secrecy is less positive in terms of the regulation of tax avoidance. In either case, however, the profession is shown as influential in "harder to reach" jurisdictions, and in the absence of "harder" regulatory forces at play, it should not be ignored by regulators as a vector of influence for tax experts.

Workplace ethos is significantly more influential on the day-to-day work of tax experts in high-risk jurisdictions, both those with light-touch regulation and those with high financial secrecy. This may be because the ethos of firms operating in such jurisdictions is more controlling because of high-value and confidential tax work carried on there. It may also be due to the workplace filling a governance vacuum created by the lack of other forms of external oversight. In either case, this result could provide a cue to regulators to focus energy on the accounting and law firms operating in these jurisdictions as a potentially influential lever to guide the actions of individual tax experts. This needs to be tempered by an awareness of the role of large accounting firms (Fransen & LeBaron 2019) in seeking to influence regulation in a way that could focus on self-interest rather than public interest, the "jurisgenerative role" described in another context by Paiement (2019, p. 280). Abbott *et al.* (2017) outline the complex impact of soft, intermediary-led regulation on regulatory capture. This is a significant concern for state bodies involving both professional bodies and large tax firms. However, this risk may be outweighed by the potential benefits of their involvement. For example researching a similar dynamic in an unrelated field, Van der Heijden (2017) found that involving intermediaries in regulation "muddies the visibility of [regulatory] capture" (Van der Heijden 2017, p. 221), but nevertheless concludes that "while the model of intermediation is sometimes flawed, regulators and targets are generally better off with the involvement of regulatory intermediaries than without it." (Van der Heijden 2017, p. 207).

Knowledge of regulations is most important in jurisdictions with low economic freedom, as is an awareness of future trends in tax regulation. It is not surprising that regulation will be relatively more important where there is a lot of regulation, but it is interesting that there is more of a focus on the horizon-scanning or trend-awareness in such jurisdictions. This flags potential interactions between intermediaries and regulators and highlights the political role of intermediaries. The fact that trends in tax regulation are a less significant influence in countries with high economic freedom suggests a certain level of complacency among tax experts about the longevity of such environments. It may also be that there is a tipping point of low regulation, which moves tax experts beyond being conscious of regulatory trends. Further research on this finding would be welcome. The risk of sanction by a taxing body is more on the minds of tax experts in highly regulated environments, and to a lesser extent, in less secretive ones. This may tell us something about the low level of such sanction in jurisdictions labeled as having high economic freedom, and again suggests a level of comfort among tax experts with the power of tax authorities there.

The results highlight the way in which a set of regulatory variables – either transparency and accountability or tight regulation – impacts on the overall landscape of regulation, affecting the relative importance of other elements. We have examined a mix of hard and soft governance elements, following Kalimo and Staal (2014) and Oberthür (2019) in seeing these as points along a spectrum rather than a binary categorization. The findings in this paper support the utility of the FSI and suggest that indices of economic freedom could be a useful complement in identifying distinct sub-fields of international taxation. We find that economic freedom and financial secrecy foster very different governance landscapes in terms of the felt influence of key levers of regulation and governance for tax experts. If regulators are to deploy an effective orchestration of a wide range of governance elements, they need to be aware of the non-homogeneity of this landscape. The results also indicate that tax experts working in countries considered problematic for global tax avoidance for different reasons report a significantly different degree of influence on their day-to-day work of what can loosely be characterized as hard or soft regulation. The workplace ethos emerges as a key factor, which is felt as more influential in situations of high financial secrecy or loose regulation.

Our core findings are that workplace ethos and the professional body are perceived as more influential in conditions of secrecy; that regulations, regulatory trends, and risk of sanction are less effective where there is high economic freedom, and that in that circumstance, again, workplace ethos comes to the fore. This supports a significant role for law and accounting firms and their professional bodies in norming the culture around tax and tax decisions within their organizations. The findings in this paper may provide cues for regulators as to the value of focusing and tailoring the concentration of effort with regard to soft governance levers appropriate to the characteristics of the jurisdiction.

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Endnote

[1] Note that due to the anonymity of the survey, responses from Big Four firms are not separately identifiable

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