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Tax Professionals at work in Silicon Valley

ABSTRACT

This paper analyses a previously unexamined but nonetheless important facet of modern society - the nature and impact of the relationship between in-house tax professionals in large multinational organizations, and the external business, tax and regulatory environments within which they operate. Drawing on face-to-face interviews conducted with senior tax executives in US multinational enterprises (MNEs), we uncover the social reality of the world in which MNEs' tax executives operate, and find that these tax professionals are a powerful, elite group of knowledge experts who can significantly shape tax law and practices. We analyze the activities of these experts who, although working largely in the shadows of their organizations, are very much engaged in constructing and shaping the wider institutional environment. From a theoretical perspective that brings together institutional work and the endogeneity of law, we find these elite professionals engaging in subtle and diffuse exercise of power at a micro level within their organizations, a meso level between organizations within the field and at a macro level within the wider external environment. This has important implications for our broader understanding of the tax and regulatory environments which corporate actors inhabit.

KEYWORDS: Tax, institutional theory, endogeneity of law, power, knowledge experts

“I had a friend who was a Tax Director of a company here, a very large company... that is ... quite aggressive in tax planning and ... somebody ... asked him ‘how do you decide which organizations ... you will join or you’ll be active in?’ He said ‘I don’t join an organization unless I can control it’.” (Silicon Valley Tax Executive (TE), 2005)

“Its [General Electric] extraordinary success is based on an aggressive strategy that mixes fierce lobbying for tax breaks and innovative accounting that enables it to concentrate its profits offshore. G.E.’s giant tax department, led by a bow-tied former Treasury official named John Samuels, is often referred to as the world’s best tax law firm. Indeed, the company’s slogan “Imagination at Work” fits this department well. The team includes former officials not just from the Treasury, but also from the I.R.S. and virtually all the tax-writing committees in Congress.” (New York Times, 2011)

INTRODUCTION

There has been considerable hype recently surrounding corporate tax practices including serious accusations of misconduct. In this environment new vocabularies are emerging to describe corporate tax related behaviour: ‘fair share’, tax ‘dodging’, ‘aggressive avoidance’. We are witnessing unprecedented levels of attention and attempted ‘tax shaming’ on named multinationals by the media, non-government organisations (NGOs), by national governments, parliamentary committees and even supranational bodies. Yet despite all the strident protests and verbiage, there is an alarming level of misunderstanding and misinformation; and we still know very little about the actual tax practices of multinational corporations. We are left to wonder: who are the architects of these allegedly devious plans and how widespread are these apparently aberrant practices?

In this paper we shed light on some of these issues, but in so doing we go back to an earlier, more secretive time, before the current cacophony commenced. We draw on a series of interviews with in-house tax professionals who ply their trades *within* companies; embedded within organisations to manage the tax affairs, including the relationship with the various tax authorities to whom they are accountable. In the context of large, multinational organisations (henceforth MNEs), these professionals are an elite group of knowledge specialists who engage as individuals and collectively in institutional work across three levels of practice, within their organisations, between organisations

and within the wider environment. We uncover the hidden power of tax professionals in practice; in shaping tax policy, which in turn has an important and significant role in fundamentally shaping society (Covaleski et al., 2005; Boden et al., 2010).

The contributions of this paper are twofold. Firstly, at an empirical level, we contribute to a small but rapidly growing body of literature that views tax as a social and institutional practice (Gracia & Oats, 2014) and adopts an interpretive approach to provide a new and rich insightful perspective on the way the tax field operates in practice. We find MNE tax executives to be a powerful group of experts, working largely in the shadows of their own organisations, but also engaged in collective institutional work, contributing to shared understandings across organisations of the ‘rules specifying how the game is to be played’ and ‘how the specified actors are supposed to behave’ (Scott 2008a, p.55). At the same time, some of these powerful professionals are actively engaged in shaping the wider regulatory environment, by for example, making direct representations to government as well as feeding into the knowledge bases of their peers and of future generations of tax professionals. We thus shed light on an aspect of organisational life that has received scant attention previously, examining one organisational function (the tax function) and tracing its impact beyond the organisation.

Secondly, at a theoretical level, we bring together two strands of institutional theory, dealing respectively with the institutional work of professionals and the endogeneity of law. Supported by our findings, we conceptualise the institutional work of in-house tax professionals, including that which shapes the laws to which they are then subjected, as occurring within three layers of fields, demonstrating the complexity and rationale of the overlapping practices that calls into question more simplistic and sometimes invalid accounts of the work of tax professionals. Unlike studies that consider the role of professionals in generating profound social change (e.g. Suddaby & Viale, 2011), the phenomenon we study here is more subtle and diffuse. Importantly, we view organisations themselves as sub-fields (Bourdieu, 2005), and power as relational (Lawrence, 2008), rather than a resource to be ‘possessed’ (Cooper, Ezzamel & Willmott, 2008). In this way we are able to bring to the fore the dynamic and contingent practices within the tax field (Gracia & Oats, 2012).

Before discussing the specific findings of the empirical study, we first clarify the theoretical positioning of the paper in the next section. This is followed by elaborating on the role of in-house tax professionals in each of the fields of practice within which they operate.

Theoretical Considerations

There is growing interest in the institutional work of the professions. This body of research reconnects institutional theory to questions of both agency and power, to consider how institutions operate through individual agency (Suddaby, 2010). Associated with this is a strand of theorizing that brings law and society scholarship together with institutional theory, recognizing the malleability of law and the interactions between law and organizational practices. Edelman (2007) for example, describes how legal logic enters into and transforms organizational fields through a process she terms “endogeneity of law”. The professions are intimately implicated in this process. Here we draw together the notions of law’s endogeneity and the institutional work of a group of professionals who are actively, but not overtly, engaged in shaping the legal environment in which they operate, and ultimately society.

A number of studies have sought to explicate the institutional work performed by professionals in various contexts. Scott (2008b) charts the shift in scholarship dealing with the professions from the functionalist thinking of the early twentieth century, through the emergence of a conflict lens highlighting political aspects of the professional project from the 1960s onwards, through the more recent institutional perspectives, some of which introduce a social constructionist conception to develop new insights.

Lawrence and Suddaby (2006) introduced a taxonomy of institutional work, identifying various categories of activity within three broad categories, specifically creating, maintaining and disrupting institutions. Currie et al. (2012) seek to extend Lawrence and

Suddaby's (2006) typology, demonstrating the interaction between the different types of institutional work in a medical professional setting. Suddaby and Viale (2011) demonstrate the dynamics through which professionals reconfigure institutions and fields, describing the professional project as an endogenous mechanism of institutional change. They observe that professions wield considerable power not only as a result of their expert knowledge, but also through their ability to manipulate the social order within the field.

The professions play a key role in translating legal prescriptions into organizational practices. But they do more than this - indeed they are implicated in the very process by which laws come into being, or once in place, may be modified in the light of practice and experience. Edelman and Suchman (1997) suggest that law develops meaning through the process of professional interpretation, and substance through its enactment by organizational actors responsible for compliance. They further argue that organizations do not only respond to the law, but are also actively engaged in constructing and configuring legal regimes; indeed that it is rare for legal regulations to come into being independently of those at whom they are directed. It is rare for regulations to "emerge independently of the organizational actors whom they ostensibly govern" (Edelman & Suchman, 1997, p.488).

The endogeneity of law perspective allows us to pay particular attention to active agency in the context of understanding the social construction of tax laws. According to Edelman, Uggen and Erlanger (1999), law is rendered "endogenous" whereby "organizations are both responding to and constructing the law that regulates them...the content and meaning of law is determined within the social field that it is designed to regulate." (p.407). Even seemingly clear laws are subject to new interpretations and actors create, as well as respond to, uncertainties in interpretation (Kelly, 2003).

Much of the scholarship drawing on Edelman and colleagues' work analyses

organizational practices around mediation and employment law¹. Like employment law, tax is often viewed as a ‘back office’ function, largely as a result of its highly specialized knowledge base². Morris and Empson (1998), for example, quote a Tax Partner from a large accounting firm as saying “tax is highly complex, like an intellectual puzzle”. Tax knowledge is frequently (mis) represented as codified knowledge, on the assumption that it resides primarily in the legal field, governed by statute and interpreted by the judiciary. But this is a narrow view of the nature of tax rules which are, in practice, socially constructed, highly negotiated, fluid, contested and indeterminate (e.g. Gracia & Oats 2012; Morrell & Tuck 2014; Picciotto, 2007). The knowledge base of tax professionals is in large part abstract (Abbott, 1988), and it is this abstract specialized knowledge that binds these professionals into a distinct and cohesive group (Larson, 1977; West, 2003) and also provides them with linguistic capital (Bourdieu, 1991) that serves as a source of power in their dealings with non-specialists within (and beyond) their parent organizations (Ezzamel & Burns, 2005, p. 757-8).

The line of institutional research that has developed at the interface between institutional theory and law and society has its origins in dissatisfaction with prior treatments of law, which is frequently treated as being an exogenous, binding force, based on the reductionist view that the legal field produces the regulatory rules of the game for organizations (Powell, 1996), thereby giving priority to the regulatory pillar (Scott, 2008a).

There is no doubt that law in the form of rules and accompanying sanctions is a prominent source of coercive isomorphism (DiMaggio & Powell, 1991). We argue, however, that its coercive nature has been overstated. The endogeneity of law perspective calls into question in particular the effectiveness of the state as a source of coercive isomorphism. All laws contain some degree of ambiguity, and their mere existence alone does not, in itself,

¹ Although see Kelly (2003) for an extension into employer sponsored child care, where a curious overlap between employment law and tax law created a financial incentive to employers to sponsor child care for employees.

² Unlike employment law specialists who reside within Human Resources and similar functions, tax specialists are dealing with compliance issues that directly impact on the financial performance of the organization.

necessarily constitute a source of organizational isomorphism. Arguably institutional theory has paid insufficient attention to law as dynamic, fragmented and ambiguous (Suchman & Edelman, 1996). Scott (2008a) observes that the ambiguity inherent in many legal prescriptions means that they are incapable of providing clear guidance for conduct. Powell (1996) discusses the value of research conducted by Edelman and colleagues in drawing together law and society and organization theory, noting in particular the way in which it demonstrates the variability of organizational responses to law and the strategic nature of legitimacy. He also notes that in-house staff plays a mediating role in both interpreting and implementing the law (1996, p.964).

In addition to helping to shape the regulatory environment enacted in law (Covaleski, Dirsmith & Mantzke, 2005), organizational actors also actively engage in the institutional work of constructing the meaning of compliance with the law (Lange, 1999). Organisations, by constructing the meaning of compliance, mediate the impact of law on society (Edelman, 1992). Edelman et al. (1999) examined the construction of the meaning of compliance with European employment opportunity law by considering the interactions between organizations, the professions and the courts, suggesting that their arguments in this context may well be applicable to other areas: our paper examines the extent to which this holds in the area of tax law.

The reciprocal relationship between law and organizations appears at intra-organizational, organizational field and environment levels (Suchman & Edelman, 1996). In relation to the first of these, these authors make an important point in the context of addressing why and how laws such as tax law become perceived as ‘important’ or high profile, and thus embedded within an organization:

Political considerations will move certain camps within the organization to portray a particular legal threat as uniquely fearsome or to portray a particular solution as

uniquely effective. If the organization acts on these alarms, and if other organizations imitate its actions, the standards for compliance in the organizational field are likely to strengthen, and the law may matter more than the rules on paper would suggest. (p.939)

When the legal (juridical) field is viewed as a social field, that overlaps and intersects with a number of other fields (Bourdieu, 1987; Edelman, 2007; Madsen & Dezalay, 2002), the process of institutional change can be seen to emerge from a blurring of organizational and legal logics. Edelman (2007) defines the legal field as comprising “flows of influence, communication and innovation among the various organizations and professions that interact with legal institutions”, in which the core logic “highlights rules and rights”, in contrast to the core logic of the organizational field which is (or has been since the 1990s) “efficiency and rationalization”. These contrasting and divergent logics create a space in which agents can initiate institutional change. As Kelly (2003, p.613) notes, “the ambiguity of the law prompts the process of the collective construction of compliance by professionals, managers and legal actors such as judges”. A central argument of this paper is that in-house tax professionals are actively engaged in institutional work, defined as “the purposive action of individuals and organizations aimed at creating, maintaining and disrupting institutions” (Lawrence & Suddaby, 2006, p.215), and which includes initiating and influencing institutional change. The scope and nature of their institutional work is not sufficient, however, in our view, to warrant categorization as “institutional entrepreneurs”³, as will be demonstrated later.

Empirical context

As noted earlier, organizations’ tax departments are frequently viewed as back room operations and so ‘black boxed’, which tends to obscure the power and influence of the

³ Unlike Covaleski et al. 2013 who link mutual endogenisation and institutional entrepreneurship in the context of market based welfare delivery.

organizational tax function, and the unsuspected links with other organizations and the external environment with respect to tax. In-house tax professionals may work in the shadows of their organizations, but they are not isolated - indeed their level of professional interaction and influence within the field and wider environment is significant, and is inextricably linked to the highly specialised nature of their expertise. The institution of tax affects us all as citizens, often in ways that are not fully understood (Boden et al., 2010; Gracia & Oats, 2012; Oats, 2012) particularly in the context of taxing the profits of large organizations. The process by which tax revenue is extracted from multinational companies has increased in complexity significantly in recent decades, in line with MNEs' growing power and mobility (Scott, 2010) as well as the fierce competition between nations to secure tax revenues from those corporate operations conducted within their jurisdictional boundaries. Such companies' attempts to develop strategies to minimise their tax liabilities now involve considerable creativity and ingenuity (Braithwaite, 2005, 2013; Gramlich & Wheeler, 2003; Knuutinen, 2014; Picciotto, 2007), and include the use of complex financial instruments to disguise the nature of their transactions, which arguably contributed to the 2008 financial crisis (Keen, Klemm & Perry, 2010)⁴.

For the multinational company, the tax on profits is a significant cost, which carries significant compliance requirements. Most companies have a team of tax specialists whose responsibility it is to manage the process of computing the tax liability, ensure that filing and payment obligations are discharged appropriately and manage the relationship with the relevant tax authorities. Thus the in-house tax department is responsible for tax compliance: but it is also likely to be responsible for tax planning - arranging the corporation's transactions and interactions in ways that will minimise its tax liabilities. Indeed - discussing

⁴ The use of complex tax planning arrangements by multinationals is, of course, currently the subject of significant debate worldwide. The empirical work on which this paper is based, however, predates these developments. For an overview of the OECD Base Erosion and Profit Shifting work, endorsed by the G20 in September 2013, see the special issue of the Bulletin for International Taxation, June/July 2014, in particular the editorial by Ault et al. (2014).

the cyclical nature of tax shelter activity - Braithwaite and Braithwaite (2006) note that tax planning may go beyond tax minimization, and that corporate tax departments can become profit centers, presenting ‘gaming’ with tax laws as a business opportunity (see Rostain & Regan (2014) for insights into the US tax shelter industry).

As a largely ‘hidden’ aspect of organizational and institutional life - one that has received too little academic research attention - it is important to clarify the nature and effects of tax activities in this setting. It is important to understand that in-house tax professionals play roles at three different levels of engagement - micro, meso and macro. In this we concur with Zietsma and Lawrence (2010) that focusing the analytic lens too tightly can lead to patterns of activity being misunderstood or oversimplified. Different groups of actors co-exist at each of these levels, and have varying degrees of influence - and different roles are played out at each level (sometimes by the same actors adopting different identities) ranging from the implementation of tax plans and associated processes at the organizational level (micro), to developing and setting standards of practice at the organizational field level (meso), to developing and enacting tax laws at the economic and political level (macro).

The micro level comprises individual organizations, and the primary actors here are their in-house tax professionals - the leaders and executives within their tax departments - who are charged with managing the organization’s tax functions. These include both compliance with the regulatory requirements of the jurisdictions where the organization does business, as well as tax planning - i.e., ensuring its activities are structured in ways that will minimize its tax liabilities. These actors interact with other organizational professionals as well as the Chief Financial Officer (CFO) and Board of Directors. The questions we seek to answer at this level are what is the role of in-house tax directors within their respective organisations and what are the effects of how they operate?

Moving beyond the organization, we dissect the external environment into two levels,

meso and macro. The meso - organizational field - level is particularly important in terms of understanding the tax arena. Kelly (2003, p. 613) suggests that collective activity in reconstructing the practical implications of law in organizational fields is more common than previously recognized in institutional scholarship. For the purpose of this analysis, the constituents of this group include professional institutes, industry and geographically based representative groups, external tax advisers and auditors, (primarily Big 4), suppliers and competitors, analysts and the media. It is important to recognize, however, that for MNEs the notion of organizational field is considerably more complex than at a purely national level. At this level “fields are multiple, fragmented, ambiguous and inconsistent” (Kostova, Roth & Dacin, 2008, p. 998) and also includes organizations in these roles in other countries. At this level of engagement, our questions are how do in-house tax directors interact within the organizational field and what are the effects of how they operate?

At the macro level stands the wider external environment; the overall economic and political level within which society’s norms and rules are established, and which “sets the dominant ideology for the organizational field to translate into organizational controls” (Hopper & Major, 2007, p.56). The primary actors at this level include government ministries and regulatory and legislative authorities. The tax laws by which states extract revenue from multinational companies are a source of tension resulting partly from the conflict governments face between the desire to enact tax laws that generate sufficient revenue to meet their needs, and tax laws that are ‘good for business’ (and thus attract MNEs to operate in their countries, with the attendant advantages for employment opportunities) while at the same time achieving a wide range of social objectives. By and large, political systems worldwide approve of, support and facilitate companies’ tax planning activities through, for

example, the provision of specific tax incentives⁵. Other relevant actors at this macro level of engagement are supranational bodies such as the OECD, IMF, European Commission and NGOs, each of which have an interest in tax policy and practice both within and across member states. At this level, our questions are how do in-house tax professionals collectively seek to influence the external environment and what are the effects of such influence?

These three levels can be mapped onto Fligstein's (1991) institutional spheres namely "the existing strategy and structure of the organization, the set of organizations comprising the organizational field, and the state" (p. 312); although arguably 'state' is too limited a construct to capture the dynamics of the macro environment in an era of expanded transnational activities (Suddaby, Cooper & Greenwood, 2007). The actors and interest groups operating at these three levels of engagement have different interests, different sources of power and different audiences to whom they must articulate their claims for legitimacy which ensures there will be tension and controversy between them, and that their inter-relationships will be dynamic, dialectic and recursive.

Methods

This study focuses on 15 MNEs in the information technology sector. The headquarters of all our respondent companies are located in the Silicon Valley area of California.⁶ These US MNEs operate in many jurisdictions throughout the world, 62 in the case of one of the MNEs, and accordingly have many and varied tax issues to address on a worldwide basis. Silicon Valley also provided a geographically concentrated relevant sample

⁵ Although this has changed recently somewhat with the OECD Base Erosion and Profit Shifting (BEPS) agenda which specifically designed to respond to allegations of disregard by MNEs of national boundaries and their respective regulatory regimes in their attempts to minimize global tax liabilities, see <http://www.oecd.org/ctp/beps.htm>.

⁶ Although one company has a Cayman Islands-based tax structure. In this context it is interesting to note Hines' (1999) point: "It is striking that, in spite of the appeal of low tax rates, very few multinational firms actually relocate their corporate homes to tax havens. In part, this reflects the tax and regulatory costs of doing so, but in part, it also reflects the unwillingness of governments to impose excessively heavy tax burdens that encourage *widespread departures*." (p.313).

of companies, which facilitated an efficient scheduling of interviews.⁷ Choosing these MNEs was a deliberate attempt to seek out companies and individuals engaged in the subject being studied; i.e. “purposive sampling” (Miles & Huberman, 1994, p.27). US MNEs invest heavily in tax planning activities (Scholes, Wolfson, Erickson, Hanlon, Maydew & Shevlin, 2015), which incorporate engagement with the external environment, and there is good evidence to suggest this investment is economically worthwhile⁸. Importantly for the context of this study, as noted by Kenney (2000), Silicon Valley “is indeed a rich prize for social science theories” (p.1).⁹ Focusing on one industry (IT in this study) facilitates more in-depth interviews: companies operating in the same industry frequently face similar business and planning issues which have to be managed from a tax perspective, so this limited focus provides insights into the commonalities (or otherwise) of why and how such companies engage with their external environment and the implications for their subsequent tax planning activities. Table 1 presents some background facts on all fifteen companies involved in this study, covering the nature of their business, turnover, number of employees and so forth. This is a diverse group of companies in terms of turnover, number of employees, age and worldwide presence.

⁷ See Suchman and Cahill (1996) also for a qualitative study focussing on Silicon Valley area.

⁸ Mills, Erickson and Maydew (1998), examining the tax related expenditures of 365 large US corporations, estimate that (on average) they save \$4 for every \$1 they spend on tax planning

⁹ See Kenney (2000) for a discussion of the history of Silicon Valley, and some observations and explanations around critical institutions and organisational routines for the region.

Table 1 Companies' Details

Company Code	Business Description	Headquarters	Year Founded	Auditors	Stock Exchange	No. of employees	No. countries (excl. US)	Turnover (\$)
C1	Manufactures computer products and develops software	Cupertino CA	1970s	Big 4	Nasdaq	10,000-15,000	10K*	6,000m-12,000m
C2	Provider of services and equipment for semi-conductor industry	Santa Clara CA	1960s	Big 4	Nasdaq	10,000-15,000	18	6,000m-12,000m
C3	Provides consumers and advertisers with information retrieval products	Oakland CA	1990s	Big 4	Nasdaq	500-1,000	6	Less than 1,000m
C4	Provider of internet Marketplace	San Jose CA	1990s	Big 4	Nasdaq	5,000-10,000	26	3,000m - 5,000m
C5	Technology solutions provider	Palo Alto CA	1930s	Big 4	NYSE	In excess of 75,000	62	30,000m - 80,000m
C6	Semi-conductor manufacturer	Santa Clara CA	1960s	Big 4	Nasdaq	In excess of 75,000	10	30,000m - 80,000m
C7	Manufactures disk drives	San Jose CA	1980s	Big 4	Nasdaq	10,000-15,000	15	3,000m - 5,000m
C8	Developer of network administration and security software	San Jose CA	1990s	Big 4	Nasdaq	1,000-3,000	16	Less than 1,000m
C9	Enterprise software	Redwood CA	1980s	Big 4	Nasdaq	40,000-50,000	58	6,000m-12,000m
C10	Developer of sales and marketing information software	San Mateo CA	1990s	Big 4	Nasdaq	3,000-5,000	31	1,000m-2,000m
C11	Content and network security s/w, it consulting and training	Cupertino CA	1980s	Big 4	Nasdaq	5,000-10,000	30	1,000m-2,000m
C12	Developer of design automation software for integrated circuits etc	Mountain View CA	1980s	Big 4	Nasdaq	3,000-5,000	21	1,000m-2,000m
C13	Manufactures programmable devices and provides design software	San Jose CA	1980s	Big 4	Nasdaq	1,000-3,000	14	1,000m-2,000m
C14	Scientific instruments and vacuum technologies	Palo Alto CA	1940s	Big 4	NYSE	3,000-5,000	15	1,000m-2,000m
C15	Man:storage devices and provides storage related software	Scotts Valley, CA, (Cayman Islands based)	1970s	Big 4	NYSE	40,000-50,000	18	6,000m-12,000m

* Only Ireland and Japan listed

Face-to-face interviews were carried out with 26 tax executives from these 15 companies. These executives were almost all heading up the worldwide, US, or international tax function in their respective organisations from the US. Notably, three of the interviewees hold senior VP positions, The higher the level/position held in an organisation by the head of tax, the more embedded the tax function is likely to be whereby one's position and status is a source of power within the organisation. Job titles held by the tax executives included: Senior Director of Taxes, VP Tax and Trade, VP Tax, VP Tax, Licensing and Customs, International Tax Director, Director, US International Tax and Audits, and Senior VP Taxation. These interviewees were all part of the 'elite'¹⁰ set of tax executives.

Data Collection

Our primary research method was face-to-face interviews with tax executives of 15 Silicon Valley IT companies, conducted by one of the authors during 2005, subsequent to the Enron scandal, but predating the financial crisis.¹¹ In terms of Ahrens and Chapman's (2006) observation that interviews can be used with different methodologies "depending on the notion of reality they are supposed to explore" (p.4), we use them here in line with a constructivist notion of a social reality of tax planning in MNEs. The interviews enabled us to

¹⁰ We consciously use the term 'elite' here to designate a select group of actors whose knowledge, abilities and power set them apart from their peers (as distinct from the more political connotations of the term used to designate an outcome of the class system, for example in the UK – see Williams (1988).) These tax professionals are 'elites' due substantially to the seniority of their position within their respective companies, the highly specialized nature of their expertise and the high level access they can secure to senior and influential government officials, representing power beyond economic power. Indeed they also satisfy many of the criteria of elite standing identified by Odendahl and Shaw (2001) including a shared set of attributes and values. This elite tax community is akin to some of the tax 'elites' interviewed by Tuck (2013). Powell (1991), recognising "the exercise of power" as an avenue of institutional reproduction asserts that "[e]lites may be both the architects and products of the rules and expectations they have helped devise" (p.191) which is demonstrated in this paper with respect to these tax professionals (See Aguiar & Schneider's (2012) book entitled 'Research Amongst Elites' for further evidence pointing to tax professionals being 'elites'.)

¹¹ Notably the interviewees were active members of some of the various tax representative groups operating at the meso level referred to later, for example, the Silicon Valley Tax Directors Group, the Tax Executives Institute and the High Technology Tax Institute. Whilst being a member of these groups shapes the interviewees' perspectives, interviewees were not speaking directly on behalf of these groups. Interviewing the executive membership of such groups and indeed other members of the meso and macro levels would be a valuable extension of this study, but the focus of this study was very much on the in house tax executives own account of how they operate.

focus on how the tax executives construct and understand their experience and thereby work towards understanding the social reality of the world in which they operate. The interviews were in-depth and semi-structured giving us some flexibility and spontaneity and allowing the interviewees “a degree of freedom to explain their thoughts” (Horton, Macve & Struyven, 2004, p.340). The interview schedule, used to guide the interviews was informed by tax planning literature, potential theoretical underpinnings (including new institutional sociology) and by secondary research conducted on the MNEs participating in the study and on some topical international tax planning areas. Questions contained in the interview schedule revolved around themes which included: background and organisation of the tax planning function in the company, tax and strategy, the importance of the tax function within the company, the interplay between tax and accounting, outsourcing, the role of tax advisors, technical approach to tax planning, the external influences on the company’s overall approach to the practice and process of tax planning, networking among tax professionals, and key regulatory bodies/participants influencing tax policy. Interviewees were informed of these themes in advance of the interviews. Some interviewees sent emails to the interviewer following the interview to provide further information and/or clarify some point made during the interview. Throughout the course of the interviews, patterns emerged and some probes became more appropriate than others in the context of stories around the main themes of enquiry emerging. Importantly, through this process, ‘the validity of responses is to some extent confirmed by their consistency among different interviewees, which enabled a reasonably coherent overall picture to be developed’ (Horton et al., 2004, p.348).

We also examined each of the last 10K¹² reports filed by each company prior to the interviews. These reports, which include financial statements, provided important contextual

¹² Form 10K is the annual report that publicly quoted companies file with the U.S. Securities & Exchange Commission: it provides a comprehensive overview of the company’s business. We did not undertake a systematic content analysis of these reports, but they nonetheless provide valuable background information that was used to enhance the interviewing process.

documentary information on the nature of the company's business, the countries in which it had a physical presence, the identity of its auditors and so on. While examining financial reports can yield some valuable information on companies, they do not give real insights into their tax situations, their approaches to tax management or details about how they interact with their external environments - as one of our respondent tax executives (TEs) pointed out: "I better be careful saying this on tape but financial statement disclosures are no more transparent today than they were before. You could not tell what we're doing." (TE 14). We also examined the companies' websites, recent company press releases, press comments, and internet accessible executive biographies of the interviewees.

Data Analysis

All interviews were recorded and written up immediately afterwards, noting the tone of the interview, overall impression formed, and any other significant observations.¹³ The interview transcripts, post-interview notes and email correspondence from interviewees before and after the interview amounted to a significant amount of data for analysis. Our data analysis involved processes of reduction, classification and interpretation (Lillis, 1999) which facilitated making sense of our large volume of data (Patton, 2002). We used QSR NVivo to assist our data management and data interrogation and analysis (Mulligan, Cunningham, & Gawley, forthcoming), and it also provided a form of 'audit trail' (Bringer, Halley & Johnson, 2006). However, as with other qualitative data analysis software, as noted by O'Dwyer (2004, p.395), it 'is merely a tool designed to assist analysis'. Our coding, a form of 'ongoing, iterative reflection' (Miles & Huberman, 1994, p.56) started with us using a number of codes initially based on the themes addressed in the interview schedule. Upon

¹³ For example, some individuals were keen to distinguish his/her company from others in Silicon Valley using phrases like: 'we are different', 'maybe other companies don't do it this way', 'SOX may have changed things for other companies, but not for us'.

reading all of the documents again, new codes were created (for example, *Information Sharing, Power, Relationship with the IRS*) and others eliminated (for example, *Tax as a profit centre, Outsourcing*) as deemed appropriate. This exercise was critical in ensuring we gave ‘voice to the informants’ in the early stage of analysing the data and ‘to represent their voices prominently in the reporting of the research’ (Gioia, Corley & Hamilton, 2012). The focus here was to allow the story of the data to emerge in its ‘raw’ state without much concern for theoretical insights.

Following the coding process, we read and re-read the coded reports and started the process of extracting the richest and most appropriate quotations, bearing in mind our objective to unfold the nature of the relationship between these in-house tax professionals and the external business, tax and regulatory environments within which they operate. This was followed by further analysis, now drawing on the theoretically relevant constructs from institutional theory, endogeneity of law and power. At this stage, it became clear that the richness of the story is in the understanding of how these tax professionals co-exist with other actors at the micro, meso and macro levels of engagement. The final stage of data analysis was to categorise the voices of the informants and theoretically informed insights from the final themes, across these three levels of engagement. This is presented in the next section which is followed by further detailed consideration of the way in which the tax professionals engage in institutional work to subtly influence and exercise their power on the regulatory environment.

THE INSTITUTIONAL WORK OF IN-HOUSE TAX PROFESSIONALS

The tax professionals working in large US based MNEs are mostly qualified

accountants or lawyers, many having trained with and worked for one of the Big 4¹⁴ international accountancy practices or a large legal practice: some also hold Masters in Tax or MBA degrees. So they are a group of knowledge experts, likeminded individuals, who understand each other's perspectives, are similarly trained and may know each other from prior work experience, providing social capital, and potentially constituting an epistemic community (Davis Cross, 2013; Haas, 1992) or moral community (Shadnam & Lawrence, 2011).

Micro level: intraorganization

At this level of analysis, we are interested in understanding the role of in-house tax directors and their relations with other actors within the organization, how they operate, the degree of embeddedness of the tax function, its perceived importance in the wider organization, the power of the tax department along with the effects of this power, and the ways in which the role is changing. Viewing the organization as a sub field (Bourdieu, 2005) in which struggles take place over valuable capital, allows us to better understand the position of the tax function in terms of its dominance or subordination, reflected in the extent to which tax considerations drive organizational strategy. While there is evidence to suggest that the tax function tends to be more embedded in larger organizations (Rego, 2003), we found the degree of embeddedness depends on a range of factors from the attitude of the CFO, to size and change in profitability levels, to increasing risk levels arising from international expansion, to a changing regulatory environment and the extent of integration processes. In particular, the higher the level position the head of tax holds in an organization, the more embedded its tax function is likely to be. Having a VP Tax in place, regardless of the exact nature of their activities or real powers, indicates that the company takes tax matters

¹⁴ 'Big 4' is the collective term commonly used to refer to the largest four international accountancy practices, namely, PWC, KPMG, Deloitte and Ernst & Young

seriously, and so is a source of symbolic capital.

Our study revealed some variation in the wider organization's perceptions of the importance of the tax department i.e. its position within the organizational sub field. Some informants were not convinced that the tax function was highly valued within the organisation - TE 25, for example, thought it would be viewed as "being slightly academic and technical and something that happens in the background": he was not confident that a lot of people in the company understand its *tax structure*, nor that "the tax people have ever gone out of their way to explain it, it's sort of on a need to know basis almost". Much of a large organization has no need to engage directly with the tax function, which makes it easy for tax professionals to retreat into the shadows, which sometimes happens. However, there is a growing trend towards involving tax executives up front in organizational decision-making, partly driven by those professionals pushing themselves forward over time and so becoming more engaged with the business. This increasing prominence is also driven by the fact that these companies are operating in so many different countries that their tax risks are greater:

I do think that the message is getting [across] loud and clear that tax is a key player and especially as we expand internationally, there is a lot of concern about taxes, there is a lot of concern about the structure that we have and so the groups tend to involve me a lot more early on. (TE 2)

Education by the tax department of new staff in the business units was identified as critical:

In-house executives have a role to educate others within the company of the importance of tax for us - it's a constant re-education process of every new person that comes in to a business unit because they're usually coming from a small failed dot.com where they've been a VP — and I'm sure you've heard this one before you know with their Harvard MBA and they had two plus years in the defunct company and then they come here and they're very used to going by the seat of their pants and

we don't function that way. So it is our job to educate and evangelize for the tax department in the different business units. (TE 7)

This particular quote highlights the importance of alignment between professional habitus and the organisational sub-field, and the need for realignment in the event of misfit. Some of the interviewees have been employees of their respective organisations for a very long period of time and TE 2 recognised the value of the knowledge of the business and structures which himself and his boss built up over the years:¹⁵ “Something that most companies don't value enough is institutional knowledge. It's not something that you can replace. You either have it or you don't”. Such institutional knowledge, a source of cultural capital, coupled with long-term internal business relationships provides a rich internal source of power which helps the profile of tax within any company, and therefore the capacity of tax executives to influence decision making and effect change.

We find evidence of distinctive tax cultures linked to the importance the organization attributes to tax function. The CFO has emerged as one of the most powerful organizational actors in terms of tax being seen as an integral part of how MNEs do business. Being very well positioned to engage in the necessary political processes associated with the institutionalisation of tax, the CFO is a key player in setting an organization's tax culture, so the introduction of a new CFO can lead to its deinstitutionalisation and/or reinstitutionalisation; lending support to the notion that institutionalization is always an ongoing process.

Many informants described the company's tax strategy in terms of its overall goals and objectives: common among these across the companies were legally minimizing companies' effective tax rates, looking for opportunities to lower taxes further, tax law compliance worldwide, keeping out of trouble (with tax authorities), and being responsive to

¹⁵ One tax executive for example was with his company over 18 years.

such internal ‘customers’ as, fellow professionals in accounting and human resources. There was general agreement that a tax strategy should not drive the business, but that, “the business should drive tax and company tax strategies” (TE 14). TE 5 believed “the tax tail shouldn’t wag the operational dog”, while TE 15 observed “we can’t have the business behaving in an aberrant way just for tax purposes”, and TE 10 was keen to point out “we are not an Enron where we view tax as a standalone function that should be creating its own planning and savings, tax is an adjunct to the business”.¹⁶ This latter reference demonstrates the heightened sensitivities among tax professionals following the corporate scandals and subsequent US government response, such as the enactment of Sarbanes Oxley legislation¹⁷, which spotlights internal control processes.

The size of MNEs in-house tax departments (in terms of staff and other resources) varies, as does their relative importance, and the extent to which they are integrated or embedded in those organizations. While their size depended on both internal and external factors, size and complexity of the company and the amount of resources a company is willing to put into the tax function, and the increasing demands on tax departments arising from the changing regulatory environment, were the recurring determinants referred to by our interviewees. The constitution of in-house tax departments tended not to be static, and tax team numbers fluctuated over time. In the US, there tends to be considerable movement of tax professionals between in-house roles and positions in public law and accounting firms (at this level, generally Big 4 companies) or the revenue authority (IRS) (Borkowski, 2005). We

¹⁶ For more detailed findings and discussion on the relationship between tax and business strategy, see Mulligan, E., Cunningham, J. & Gawley, J. (forthcoming).

¹⁷ Sarbanes Oxley established new/enhanced standards for all US public company boards, management, and public accounting firms. It also established a new ‘quasi-public’ agency, the Public Company Accounting Oversight Board (PCAOB), also referred to by many of the interviewees. This Board is charged with overseeing, regulating, inspecting, and disciplining accounting firms in their roles as auditors of public companies. Interviewees were particularly exercised about s.404 of SOX which requires management and the external auditor to report on the adequacy of the company’s internal control over financial reporting. The latter therefore, requires documenting and testing important manual and automated controls with respect to tax.

also found evidence of MNEs taking a strategic attitude towards recruiting ex IRS officials and ex partners from accounting and law practices, with the latter in particular being well positioned to “orchestrate the company’s efforts” in the endogenous process of tax law making (Suchman & Edelman, 1996), and manage external impressions of the companies (Covaleski et al., 2005) – for instance, Byrnes and Lavelle (2003) refer to companies building “powerhouse tax departments staffed with former government tax experts”. TE6 emphasised these ex-IRS officials ‘had the relationships that were needed’,¹⁸ and the companies certainly do value and use these relationships, a form of social capital. In the context of IRS officials moving to tax practice, as opposed to industry, TE 14 sees them being hired:

...because of their ability to get things done. They have channels inside of the IRS but they also know the inner workings, what is it that makes the IRS click? What is it that makes the IRS do what they do?

Similarly TE 15 referred to the hiring of their two ex-IRS economists, to bring the perspective of the ‘other side’ and importantly “they’ll fight them when they step out of line...and they step out of line a lot”. Also, hiring economists could reflect what Meyer and Rowan (1991) refer to as “[t]he rise of professionalised economics...econometric analyses help legitimate the organization’s plans in the eyes of investors, customers...and internal participants” (p.51). With economists on board, for example, it becomes more difficult for tax authorities to challenge decisions such as transfer prices, which are a particular source of conflict.

Within the organizational sub-field, the in-house tax professionals’ role and power is conditioned by the organizational doxa. Agency in terms of strategic responses to

¹⁸ The implications for the IRS from losing such personnel warrants further examination but is not relevant for this study. There is also movement into the IRS from practice, but this was not explored in detail in the interviews.

institutional pressure is constrained, some professionals will lean towards acquiescence to regulatory requirements as a way to stay under the radar, keep out of trouble. Others will lean towards avoidance, giving an appearance of acquiescence and disguising non-conformity with regulatory expectations.

Meso level – inter organizational relationships

In this context, the organizational field is the level at which attempts to secure, or to resist, institutional change are most visible, bridging the micro and macro levels. Here we are interested in how in-house tax professionals interact with one another and with other actors in the field, and the effects of such interactions. Two actors in particular are relevant at this level – market analysts and professional organizations - although there are other significant players (such as the media), which are beyond the scope of this paper.

Market analysts exert meso level influences on MNEs' tax practice through their evaluations of firm performance, which influence Boards' perceptions about tax, and also puts pressure on CFOs - as well as issuing commentaries which impact MNEs' share prices. They are particularly interested in companies' effective tax rates - what rates they should use for their modelling purposes and why, and why they might differ from their competitors' rates. When a CFO has to deal with analysts' questions about their company's effective tax rate, tax is pushed onto their agenda.

Importantly, in-house tax executives interact frequently with their counterparts in other organizations via their professional associations. Such bodies articulate a collective voice for their field, which can then be relayed to the macro level with the clear intention of influencing the regulatory environment to the advantage of the organizational field as a whole, but also of its individual organizations (some more than others). Professional institutes and organizations were clearly very important external influences (as sources of normative and coercive isomorphism) on all of our informants. Equally some informants seek to, and

are able to, heavily influence the work and agenda of the institutes. Some professional institutes (for example the Tax Executives Institute) have a technical tax focus across a broad range of sub-industries within the sector (IT in this case) and provide significant educational, and networking and lobbying platforms. Others - such as the Silicon Valley Tax Directors Group¹⁹ is a more select group representing high technology companies, which concentrates on making very significant lobbying efforts, while others - such as the American Electronics Association - cover particular IT sub-industries. All these various groups provide their members with valuable networking opportunities, but each one also provides something unique - all of them are clearly important constituents of the organizational field enabling their members to operate and have impact across the meso level. Some of our informants were more actively involved in running these institutes and setting their agendas - for instance, our informants included the present and past presidents and board members of the Silicon Valley Chapter of the Tax Executives Institute, and one was the former head of the international Tax Executives Institute.

This paper opened with a quote from one of the Silicon Valley tax executives describing a counterpart in another organization. He continued his story by saying “He says ‘well I’m not interested in just being a member of an organization; I want an organization that I can influence to represent the best interest of my company’” and that is probably not an isolated viewpoint:

So, you know, where you think there’s this so called supportive tax community, there are a number of people who are that way but there are a number of organizations who are participating solely for the purpose of advancing their own company. (TE 23)

This further underlines agency in action at the organizational field level. The in-house tax executives interviewed were well attuned to who were members of the tax professional

¹⁹ The companies represented by this group are dependent on research and development in order to remain on the cutting edge of technology innovation and to compete in the international market place.

community and their respective social capital. TE 11 referred to his VP Tax being “fairly well known in the tax circles”, and described a key player in the High Tech Tax Institute as “a real mover and shaker in the tax community”. TE 18 described the tax community in Silicon Valley as being “a very robust tax community, very, very”, while TE 12 referred to using it as a “private network” when researching the best tax plans and structures, perhaps in preference to formally engaging external advisors such as specialist tax service firms. There is a significant power effect at play here whereby information on tax plans diffuses across companies, often resulting in implementation and gaining credibility.

Information sharing

The level of information sharing between executives in collaborating and competing MNEs is particular to tax executives, even within the Silicon Valley area, and there appears to be ‘leaders’ and ‘adopters’ of tax plans co-existing happily within this area. This suggests tax is still a ‘black box’ business item, even if (as noted earlier) it has become more visible in the recent, post-corporate scandals, environment²⁰. Sharing information, particularly about tax plans and technical advice about dealing with ambiguities in tax laws serves to provide legitimacy to preferred tax positions, yielding a form of power for these companies when taking tax positions in dealing with Revenue Authorities. This essentially amounts to a risk management strategy as well as (as it always does) giving those involved a greater sense of social legitimacy among trusted network contacts and beyond. TE 9 explained how this information sharing works between competing companies:

I have known the people at [named company] and [our VP Tax] has known the tax people at [that company] for twenty years or more...there is a lot of history there and there is a lot that we can share...there can be sensitivities too because we are a customer of theirs and sometimes the business

²⁰ Clearly this has now changed even further and in current times we find corporate tax plans open to considerable scrutiny in the public arena.

relationships between companies like [ours] and [theirs] or [with another named company] for example, major suppliers to [us], there can be real tensions in those relationships about contracts and prices and stuff like that. But on the tax side we generally seem to be able to put that aside.

Clearly, the specialized nature of the expertise involved allows these in-house professionals to operate outside of the normal rules of the commercial confidentiality game, further evidence of their ‘working in the shadows’. This is not to say there is full and frank disclosure between them - caution is still necessary to ensure commercially sensitive information remains confidential. As one respondent observed: “there is a limit to how far you can go...it’s touchy, you have to be careful...you can’t talk about pricing at all, no pricing, no market shares, any of that kind of stuff.” (TE 5)

Not all tax arrangements are shared with other firms - one informant explained why he would prefer to keep some tax plans out of the network: “sometimes you wish they wouldn’t take it public ... because it’s a good idea and you don’t want anybody to know about it.” (TE 22) This suggests that at times, if too many businesses engage in tax planning which was not intended by the legislator, but has now become common practice, it effectively forces the Revenue Authorities to deal with it, perhaps through a change in legislation – otherwise Revenue may well choose to ignore it. It is clearly within the interests of companies to try to contain such tax planning ideas within a limited group.

The Silicon Valley Tax Directors Group gets together once a month and

shares problems, concerns...and that is where a lot of sharing takes place. There are competitors in that group, one guy in particular who I have known for years is good about calling and asking, for example, what have you done in France on this particular

issue. (TE 3).

The group, which only has 38 members²¹ - the largest companies in Silicon Valley, facing many of the same issues - facilitates the sharing of information in a more focused and relevant way:

if you've got \$500 million in sales you know you don't have time, you don't have the resources and your issues generally aren't as complex. So you're really looking at companies like you know \$1 billion and plus or \$2 billion and plus. Well there's probably only 30 of those...the guy at a start up he's got different problems you know. He's trying to figure out how to file his tax returns...to make sure he meets payroll and...if you had the top 30 Silicon Valley companies involved, if you had [named four large Silicon Valley based companies]...well you know as you get further down their issues ... there just isn't as much to share. (TE 14)

This suggests that companies' tax priorities differ according to their size and the larger companies, as members of the Silicon Valley Directors Group present as very powerful and are prepared to share information on tax matters to enhance this power further.

Links to Higher Education

The High Technology Tax Institute (based at San Jose State University) is also influential in facilitating education, networking and information sharing, as well as - rather exceptionally - engaging academics in tax practice. The Institute is a well-respected forum in Silicon Valley - many of our informants have presented at its conferences or sat on its advisory board. "It's really very good and because it's here in Silicon Valley it doesn't cost very much money" (TE 16). Attendance at the various educational seminars and conferences

²¹ It had 38 members when these interviews were conducted. In May 2015 it has 81 members.

hosted by such bodies facilitate networking among tax professionals. One informant (commenting on Tax Executive Institute seminars) said: “ [they are] good for networking, just because you’re seen, the people in the Valley here are going to go to them.” (TE 7), while another noted: “it’s interesting to see, just by how many people attend, how hot a topic is.” (TE 19). This highlights how these in-house professionals have to engage with and keep abreast of the constantly changing tax rules and regulations. Another described the workings of this elitist network of tax experts in the following terms:

we’re on a number of tax mailing lists where tax, leaders of tax groups communicate. So if there’s an issue that you know one big company has come out with they sort of hop it out and it goes to the top tax guys at big companies...so there is a fair amount of communication among the Tax Directors sort of circuit as to you know current issues that are going on. (TE 16).

The combination of networking, relationship building, continuing education, dissemination of research findings and sharing of information generally apparent among Silicon Valley tax executives, all facilitated through the workings of various representative institutes and organizations (members of the organizational field) constitute multiple isomorphic pressures (Edelman & Suchman, 1997). This explains the origins of the homogeneity (DiMaggio & Powell, 1991) of the tax plans, prevailing industry practices (Suchman & Edelman, 1996), processes within these companies and power effects. The roles played by the various institutes, combined with consideration of the language - terms like “tax circle”, “tax community” and “social clubs” were regularly used by our interviewees - suggests the existence of “networks of power” in Silicon Valley with respect to tax (Edelman et al., 1999; Suchman & Edelman, 1996). The intensity of the social interaction (through both formal and informal fora) between these Silicon Valley based tax executives results in a social reality very peculiar to the tax world of these companies. This professional network, which spans

across these Silicon Valley companies, also provides a vehicle for the rapid diffusion of new practices between them (DiMaggio & Powell, 1991).

At this level the tax professionals are to some extent freed from organizational structures and their relational, third dimension (Lukes, 2005) power in the organizational field derives not only from personal attributes but also those of the organization that they represent. Some, but not all, of these professionals will engage in manipulation; shaping values and criteria that are then taken back into the organization to varying degrees through mimetic processes.

Macro level - Relations with wider environment

This final section analyses the positioning and roles of in-house professionals - individually and collectively - in the wider social and political environment. Here we examine relations between organisations and the IRS as an organ of the state, but also the wider regulatory environment. Here, the state creates a “complex, ambiguous and uncertain legal environment that organisations must monitor and negotiate” (Kelly, 2003, p.611). We find more overt evidence of tactics (Oliver, 1991) designed to influence the regulatory framework within which the in-house professionals operate.

The technology sector in which Silicon Valley companies operate is changing rapidly in terms of technologies, geographies, mergers and acquisitions, and ways of doing business, all of which give rise to new tax obligations and opportunities. Some companies, for example, have recently made their first entries into the retail market, and selling direct to the consumer - whether through a shop or via the internet - means there are new tax implications to be examined and managed. Operating in non-US jurisdictions also throws up particularly problematic and costly issues: one informant spoke of significant clashes between his company’s business model and the local tax regimes in China and Singapore. Indeed, one

significant challenge for in-house tax professionals is how to respond to the increasing uncertainties about tax legislation stemming from some national finance ministries adopting strategies to deal with companies' 'creative' tax planning: in the US, for example, these include 'naming and shaming' as well as civil prosecutions.

One of the key actors at the external environment level is the revenue authority. Relationships with our interviewed Silicon Valley tax executives and the US authority - the Internal Revenue Service (IRS) - were complex and nuanced, but nonetheless were much valued by in-house tax professionals and needed to be carefully managed. One noted:

we never get confused as to where our loyalties lie and what our responsibilities are...we don't let the tax authority govern what we do, they are not our boss but still they are important... there are certain things you could do that would do so much harm to that relationship relative to the benefit you got from it, that you don't want to do it. (TE 9)

Another informant highlighted an important tension in the in-house tax professional's role - of acting in the interests of the organization which engaged them, but still having a professional obligation to maintaining the overall integrity of the tax system:

I want to develop a good relationship with the IRS so I will never do anything, which would jeopardize because it's not my money right. I want to do the right stuff for the company and for the government ... [I think of myself as] like a semi government agent. (TE 13)

Another informant stressed the coercive power of the fiscal authority: "the positions that [the fiscal authorities] take, how they enforce the laws [have] a huge impact on what we do". (TE 5) Arguably the fiscal authorities are engaged in symbolic violence (Oakes, Townley & Cooper, 1998), using their symbolic power to exert influence in the field (Gracia & Oats 2012), a finding that runs contrary to some other accounts of the superior power of MNEs vis

a vis the tax authority (for example Morrell & Tuck, 2014).

Many interviewees referred to having ‘good’ relationships with the IRS. One described the process of IRS officials coming to trust him and his team over time, highlighting an important temporal dimension - the importance of developing relationships, i.e. building social capital, over time with other tax professionals (even from the IRS):

It’s an interesting process, ... they usually come in, very suspicious - here is a big company, lots of income, there must be something bad going on. When they get into it and they realize that we try to do a reasonable job, we will be a little bit aggressive in certain areas, fine, we are not going to hide it from them and we develop a working relationship where we can have ... conversations on ... technical issues, because that is more fun...it’s not contentious on our part...the whole relationship is good but there are individual issues that can get pretty heated. (TE 3)

This underscores the complexity of corporate tax practice as an institution. Specialised knowledge - technical, as well as abstract - is not only held by in-house tax professionals to be provided as a service to their commercial employers: regulatory authority agents have similar, but not necessarily identical, knowledge bases, and the two are brought into play in the negotiations, confrontations and consensus building interactions between the regulator and the regulatees (Lange, 1999). This is consistent with Kelly (2003) who found that notwithstanding the apparent concreteness of law, interested actors were able to work with the regulatory agency to “reconstruct the practical meaning of the law” (p.617).

Having a ‘good relationship’ with the IRS (and tax authorities in other jurisdictions) stems particularly from a concern for building credibility with the State (Carruthers, 1995) and maintaining a position within the field. We find specific evidence to support the idea of the endogenisation (Edelman & Suchman, 1997) of the IRS audit process within MNEs’ tax

management, a process which, arguably, supports the illusion of the field. We found that IRS officials and tax executives frequently attended the same conferences, which therefore provided them both with opportunities to build good communications (Wilson, 1995) and so develop and maintain what they clearly both see as important, recursive relationships.

Having canvassed the structure and power relationships within which in-house tax professionals operate, observing the way in which strategic responses play out differently at the different levels of analysis, the next section considers in more detail the way in which these actors engage in institutional work to subtly influence and exercise their power on the regulatory environment which enables their practices but also constrains them.

INFLUENCING THE REGULATORY ENVIRONMENT

We found that in-house tax professionals working in large multinational organizations operated in a highly complex and heavily regulated environment. It is tempting to assume they are passive recipients of regulatory edicts with which they have no choice but to comply (Meyer & Rowan, 1991), but this would be a dangerous over simplification that can obscure how tax policy is made and effected in society (Baker, 2005; Covalleski et al., 2005; Gramlich & Wheeler, 2003). As Oliver (1991) suggests, organisations don't blindly mimic but adopt various tactics to achieve workable compromise. Importantly, here the strategic tactics are not those of the organization as a whole, but *individual* actors within a specific organizational function. In house tax directors are actively engaged in institutional change, either individually – by taking direct action on behalf of their specific employers, or collectively via their professional representative organizations. We found many of these were heavily involved in lobbying, a form of interplay between organizations and legislators that has been described as a “highly endogenous and reciprocal” relationship (Suchman & Edelman, 1996, p.938) resulting at times in a softening of regulations that counter corporate interests

(Edelman et al., 1999), or in the bringing forward of new ones that serve those interests. These representative groups and their members could never be accused of being passive pawns (Scott, 2008a) when it comes to tax laws, and their lobbying activities employ both symbolic and social capital (Bourdieu 1986; Covalleski et al., 2005), and can be seen as strategic responses (Oliver, 1991) which are carefully orchestrated, thereby making tax professionals very active players in the construction and configuration of tax laws (Edelman & Suchman, 1997).

We also found evidence of the exercise of power and influence at both the institute level and by certain individuals - typically, long standing Senior Tax VPs of the largest companies, the elites of the Silicon Valley tax community - driving agendas within those institutes. Some of these individuals appear to use the ‘clout’ of their representative groups purposefully - and even craftily - to serve their own organizations’ interests –which, of course, frequently align with those of many other Silicon Valley companies: since many of them operate in the same business contexts and thus face similar tax challenges, this homogeneity with respect to tax plans and practices is hardly surprising. This “power-play” is important (Scott, 2008a), and the level of respect and extent of a hearing that these representatives and individuals appear to receive from key decision makers – right up to Congress level - calls into question the success of state regulations as engines of coercive isomorphism (Scott, 2008a). There is also evidence of an endogenous relationship extending to compliance and standards, with one company (at least) being consulted by Financial Accounting Standards Board - the US body that sets accounting standards - for assistance in developing one of its position papers. Lobbying is at the forefront of the Silicon Valley Tax Directors Group’s activities, and is funded by its relatively high annual membership fee (\$10,000, compared to a mere \$200 for the Tax Executives Institute). As one informant observed

It's the lobby fees. They're not trying to make money. What they're having to do is pay the person in Washington DC that will take their lobby message to whoever it needs to go to...they represent some huge companies and Washington listens to huge companies. (TE 14)

Being able to demonstrate empathy with their position, and recognizing that there is some element of trading in the process of influencing regulatory authorities, is extremely important. One informant emphasized the importance in the 'game' of not just going to Congress in times of need:

There are times when we will assist the legislature and the IRS on regulatory matters but it might not be something we really care about. You can't just go to Congress when it's really important to you - they want to see you there all the time. (TE 8)

A number of these companies have appointed external affairs personnel, usually based in Washington DC, with whom company tax executives are in regular contact, and whose brief it is to lobby for particular tax policies and object to others. These agents are regarded as powerful and political:

That's one of the banes in the US you know ... a small circle of corporations or other individuals have so much influence in getting tax laws enacted: those laws affect us all but they're in place to optimize the positions of a few organizations ...that's how the game's played and you've got to accept that to some extent if you want to be in that arena...I'd say there's maybe four or five companies in this Valley that shape legislation because they're focused on it, they're bright companies and they've got the resources. (TE 23)

So many of these companies liaise directly with politicians at Washington DC in relation to federal tax policy matters on a continuous basis. Relationships are formed and these external affairs personnel influence how tax policy is formed. At times, companies pursue changes to

tax legislation (or propose new legislation) which suit them specifically - perhaps even them only. TE 3 for example referred to a couple of occasions where his company essentially ‘went it alone’ in crafting and proposing legislation that would be beneficial to it alone; TE 8 referred to having had an input into the Homeland Investment Act²² (part of the American Jobs Creation Act 2004) while TE 10, referring to the work of his external affairs tax staff member, said “he does an enormous amount of State stuff. So California State, they come to him to write laws”.

The exercise of power is an avenue of institutional reproduction. Elites – who tend to be ‘knowledge experts’ and/or skillful negotiators - “... may be both the architects and products of the rules and expectations they have helped devise” (Powell, 1991, p.191). Covaleski et al.’s (2005, p.135) study reinforced the notion that, after negotiations, “the form the resulting institution takes depends on the relative power of the actors who support, oppose, or otherwise strive to influence it” (see also Barley & Tolbert, 1997; Covaleski & Dirsmith, 1988). Marcussen (2006), in a study of central bankers, similarly found individuals to be important components, with the core of the field’s transnational network being small, coherent and highly interconnected, composed of a few key individuals able to make an impact on national and international monetary affairs.

Engaging in external affairs, incorporating direct lobbying of legislators/Congress staff is an essential business activity for some Silicon Valley companies. The larger

²² A detailed analysis of the evolution of this Act (similar to Bozanic et al’s (2012) work on a recent rule change, SEC’s Rule 10b5-1, on insider trading) through the theoretical lens utilised in this paper would further enhance our understanding of the role of tax professionals and other players in the process. A number of studies of the Act focus on measuring the ‘success’ of the Act and demonstrating that the main beneficiaries of the concession engaged in manipulation and even deception. Alexander et al. (2009) find that lobbying in relation to the Act has a significant effect on return on investment. Further analysis could include examining the role and influence of lobbyists and an examination of data available via the Center For Responsive Politics on lobbyist companies, campaign contributions etc. Other relevant literature in the lobbying and political donations domains should also be addressed in such work (e.g. Brasher and Lowery, 2006; Baumgartner & Leech, 2001).

companies invest a separate and dedicated human resource to managing this activity, which clearly indicates they derive important benefits from it, presumably increased economic capital. These companies clearly have and utilize their social capital to demand and secure access to the right people - once secured, the access makes the associated benefits possible, which in turn makes the companies even more powerful. The evidence strongly suggests some of the advantage these companies achieve lies in having real input into shaping tax legislation that will benefit their own interests - but not necessarily those of all companies, nor - perhaps even more importantly – of all taxpayers or of wider society. These companies, through their elite tax professionals are involved in proposing tax legislation, and reacting to proposed tax legislation (Edelman et al., 1999) - as well as in actively resisting certain tax laws proposed by the regulatory authorities (McBarnet & Whelan, 1992) – clear evidence of endogenisation of tax law making. Our informants used the language and activities of endogeneity – “negotiation plan”, “game”, “play” - which all the “players” involved considered “rational”, doxic, practices.

DISCUSSION

In-house tax professionals ostensibly work largely ‘in the shadows’ within their own organizations, yet are able to significantly influence and shape tax law and practices, both in their organizational fields and in the wider economic and political environments. Drawing on their own accounts of how they operate, we uncover this overlooked aspect of organizational life and demonstrate the way in which relational power allows these professionals to actively participate in the endogenisation of law. While each of the in-house tax professionals have similar knowledge bases and backgrounds, and mix in similar circles, they are not equally powerful, which supports the view of power here as relational. The power to engage in institutional work can be understood as deriving from the relative power *within* the

organization in which the tax professional works.

At the micro level the role and power of the in-house professionals is constrained by the organizational sub-field in which they operate; some will have more freedom than others for creativity in terms of strategic action responses. There is variation in the role, and more importantly the profile within the organization of the in house tax professional, linked to the size and complexity of the organization, which is invariably, reflected in the complexity of their tax arrangements. We find in-house tax directors, for example, performing valuable educational functions, promoting the importance of tax to the organization and shaping and being shaped by the organizational tax culture.

At the meso level, the extent to which the work of shaping the regulatory environment to the ends of particular organisations is undertaken will be influenced not only by the habitus of the particular professionals involved, but also the attributes of the organizational sub-fields from which they come. This is where mimetic pressures emerge, but the extent to which the in-house professionals take these pressures back to their own organizations varies. In house tax directors interact with counterparts from other organisations, both individually and through professional network associations. The Silicon Valley professional tax associations, in particular the Silicon Valley Tax Directors Group, undertake similar work to that observed by Suchman and Cahill (1996) in their analysis of business lawyers servicing Silicon Valley organizations: specifically, they engage in creating social structures that help to reduce environmental turbulence by developing shared understandings and diffusing legitimate practices, creating a normative and cognitive order that allows in-house professionals to make sense of regulatory requirements at the micro level, but at the same time shaping that regulatory environment in the interests of the field. The spatial boundaries of fields are in constant flux, and the tax field is increasingly transnational, but at the same time more exposed than many at national levels, with new rules and regulations exposing practices to

greater scrutiny, allowing chinks of light to penetrate into the shadows where in-house tax professionals operate²³.

At the macro level, both collectively and individually, but not as a single uniform body, some in-house tax directors shape and influence the external environment through input to the legislative process, as part of the game in which they are all engaged. At the intraorganizational, micro, level of engagement, in house tax executives apply their professional knowledge base to local problems with varying degrees of improvisation. They are able to influence the tax culture within their own organisations for example by inculcating new organizational actors. They engage in shaping the framework of their professional work at the meso level, and also participate in interorganizational events, discussions and networks. It is at the meso and macro levels where their institutional work is most visible and most influential, as they emerge from the shadows of their respective organizations to participate in complex networks of interactions. It is at these levels also that the struggle for influence, where the legal field meets the regulatory, bureaucratic and economic fields, and all of which spill across national borders, is affected by, and affects, transnational governance developments.

We have demonstrated complex and dynamic interactions between key economic, political and organizational field level actors, mediated by the institutional work of in-house tax professionals. Specifically, multinational companies have a significant level of influence over the design and implementation of the tax regulations to which they themselves must ultimately adhere, without much regard, if any, of wider societal consequences. Legislators meet with and listen to the external affairs executives of such companies and respond to their particular interests (Edelman & Suchman, 1997). The question of who should be judge and

²³ This is part of the wider “unstoppable escalation of regulation and governance” (Djelic & Sahlin-Anderson, 2003, p.380-1) which are being fed by increasing levels of societal distrust, leading to calls for greater transparency, calls for responsibility reflected in soft regulation requiring voluntary compliance or explanations for non-compliance, and a search for control.

jury over the whole process is an interesting one, which requires further research from other perspectives, including that of the legislators (in this context including Congress staffers) - only then could one get a sense of the extent to which a second order effect is at play (where regulators anticipate regulatee responses) which arguably brings some balance and pragmatism to the process. The financial crisis and subsequent responses by governments, NGOs and supranational organisations provides scope for research into how the dynamics we describe here play out differently at times of economic and social stress.

The theoretical perspective adopted here, drawing on the interplay between institutional work and the endogeneity of law, has allowed us to examine the otherwise hidden exercise of power. These elite professionals are engaging in subtle and diffuse activities that constitute exercises of power to varying degrees, within their organizations, between organizations within the field and in shaping the wider environment. Some of this institutional work has sinister overtones, for example in terms of manipulation tactics designed to advantage particular organisations and reduce tax contributions in ways not envisaged by legislators, with negative consequences for wider society. But it is misleading to assume that this is always the case; as professionals with a shared interest in certainty and stability in the wider tax field, maintaining the field doxa, the institutional work of in-house tax directors is also directed towards working with the regulators and constraining the excesses of fellow professionals.

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