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CANADIAN TAX JOURNAL
REVUE FISCALE CANADIENNE

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Differently Trained Practitioners' Approaches to Tax Work: Divergence, Convergence, and Further Insights for the Profession — *Till-Arne Hahn, Tisha King, and Suzanne Landry*

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Christine Purden

It is with deep gratitude that we acknowledge the contribution of Christine Purden to the *Canadian Tax Journal*. With this issue, after more than four decades of exemplary service, Christine is retiring as our lead copy editor. The journal's reputation as a pre-eminent tax publication, built and solidified during her tenure, owes much to her skill in bringing Foundation manuscripts to the lucid condition essential for strong tax writing. Admired by her peers, Christine has set a lasting standard of clarity, precision, and intellectual energy that Foundation editors will strive to uphold, and the work that has gained so much from her expert touch, preserved in TaxFind, will continue to enlighten and instruct. Her contribution has been immeasurable.

Christine Purden

Nous tenons à exprimer notre profonde reconnaissance envers Christine Purden pour son importante contribution à la *Revue fiscale canadienne*. Après plus de quatre décennies de service exemplaire, ce numéro marque le départ à la retraite de Christine à titre de réviseure. La réputation de la revue en tant que publication fiscale phare s'est bâtie et solidifiée pendant son mandat, et ce, surtout grâce à son habileté à faire en sorte que les manuscrits de la Fondation soient compréhensibles, qualité indispensable à toute rédaction fiscale solide. Admirée par ses pairs, les éditeurs de la Fondation s'appliqueront à maintenir les hauts standards que Christine a instaurés en matière de limpidité, de précision et d'énergie intellectuelle, ainsi que le travail, préservé dans TaxFind, qui a tant profité de son expertise et qui continuera d'éclairer et de former. Sa contribution a été inestimable.

Call for Book Proposals

The Canadian Tax Foundation, an independent, not-for-profit research and educational organization, is seeking proposals for books in the areas of taxation and public finance.

Since its inception in 1945, the Foundation has published many books and articles on a wide range of subjects within its areas of interest. The Foundation seeks proposals for research projects that will

- result in a book on a single topic of interest in the area of taxation or public finance;
- be undertaken by an experienced researcher who has expertise in an area of taxation or public finance; and
- be carried out within a time frame that is reasonable, given the nature of the project.

Projects selected by the Foundation may qualify for its full or partial financial support of the research and for its underwriting of the publication costs. The Foundation retains the absolute right at its sole discretion to choose whether to support a given proposal or to publish a project.

Interested parties should send a brief written outline of a proposal, for initial consideration by the Foundation, to:

Heather Evans
Executive Director and Chief Executive Officer
Canadian Tax Foundation / Fondation canadienne de fiscalité
145 Wellington Street West, Suite 1400
Toronto, Ontario M5J 1H8

hevans@ctf.ca

For further information, please contact the director, as indicated above, or the co-chairs of the Canadian Tax Foundation Research Committee:

Kim Brooks
c/o Canadian Tax Foundation / Fondation canadienne de fiscalité

Michael Lubetsky
c/o Canadian Tax Foundation / Fondation canadienne de fiscalité

Appel de propositions de livres

La Fondation canadienne de fiscalité (FCF) / Canadian Tax Foundation, un organisme sans but lucratif indépendant de recherche et à caractère éducatif, souhaite recevoir des propositions de livres dans les domaines de la fiscalité et des finances publiques.

Depuis sa fondation en 1945, la FCF a publié de nombreux livres et articles sur divers sujets dans ses champs d'intérêt. La FCF souhaite obtenir des propositions de projets de recherche qui :

- mèneront à la rédaction d'un livresur un sujet unique d'intérêt en fiscalité ou en finances publiques;
- seront dirigés par un chercheur chevronné ayant une expertise dans un domaine de la fiscalité ou des finances publiques;
- seront effectués dans un délai raisonnable, compte tenu de la nature du projet.

Les projets qui seront sélectionnés par la FCF pourront être partiellement ou totalement admissibles à une aide financière pour la recherche et les frais de publication. La FCF se réserve le droit absolu, et à sa seule discrétion, d'appuyer une proposition particulière ou de publier un projet.

Toute personne intéressée doit faire parvenir un bref sommaire de la proposition pour examen initial par la FCF à :

Heather Evans
Directrice exécutive et chef de la direction
Canadian Tax Foundation / Fondation canadienne de fiscalité
145 Wellington Street West, Suite 1400
Toronto, Ontario M5J 1H8

hevans@ctf.ca

Pour plus d'information, veuillez communiquer avec le directeur, tel qu'il est mentionné plus haut, ou avec les co-présidentes du comité de recherche de la Fondation canadienne de fiscalité :

Kim Brooks
a/s Canadian Tax Foundation / Fondation canadienne de fiscalité

Michael Lubetsky
a/s Canadian Tax Foundation / Fondation canadienne de fiscalité

■ Recent and Upcoming Events*
■ Activités récentes et à venir*

TRANSFER PRICING & LIVE WEBCAST
Toronto & via webcast, February 27, 2025

CANADIAN TAXATION OF TRUSTS CONFERENCE
Toronto and via webcast, May 5, 2025

JOURNÉE D'ÉTUDES FISCALES
Montreal and via webcast, May 29, 2025

PRAIRIE PROVINCES TAX CONFERENCE & LIVE WEBCAST
Calgary and via webcast, June 2-3, 2025

YOUNG PRACTITIONER FOCUS CONFERENCE
Virtual, September 3, 2025

BRITISH COLUMBIA TAX CONFERENCE & LIVE WEBCAST
Vancouver and via webcast, September 15-16, 2025

ONTARIO TAX CONFERENCE & LIVE WEBCAST
Toronto and via webcast, October 27-28, 2025

ATLANTIC PROVINCES TAX CONFERENCE
Halifax, November 7-8, 2025

77TH ANNUAL TAX CONFERENCE
Calgary, November 30-December 2, 2025

* For further details on upcoming events, please visit the Canadian Tax Foundation website at www.ctf.ca. / Pour plus de renseignements, veuillez consulter le site Web de la Fondation à www.fcf-ctf.ca.

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■ Canadian Tax Journal

INVITATION TO SUBMIT

The *Canadian Tax Journal* publishes research in, and informed comment on, taxation and public finance, with particular relevance to Canada. To this end, the journal invites interested parties to submit manuscripts for possible publication as peer-reviewed articles, and it especially welcomes work that contributes to the analysis, design, and implementation of tax policies.

Articles may be written in English or French and should present an original analysis of the topic. Submitted work, or any substantial part or version thereof, must not have been previously published, either in print or online, and it must not be submitted or scheduled for publication elsewhere. The journal welcomes shorter submissions (from 4,000 to 8,000 words) focused on specific topics as well as longer submissions that analyze issues in depth.

PEER REVIEW

Submitted articles are subject to a double-blind peer review; authors' identities are not known to reviewers, and reviewers' identities are not known to authors. (Non-peer-reviewed contributions may appear elsewhere in the journal.) Final decisions on the publication of articles are made by the editors—Kim Brooks, Kevin Milligan, and Daniel Sandler—on the advice of reviewers. Reviewers are experts in the area who are chosen by the editors to provide an opinion on the publishability of the submission and to make suggestions for improvement. Submissions may be (1) accepted outright; (2) accepted if recommended revisions are made; (3) revised by the authors, as requested by the editors on the advice of reviewers, and resubmitted for further review; or (4) rejected with reasons. The time from submission to the first editorial decision is usually two months or less.

SUBMISSION DETAILS

Prospective contributors should submit a copy of the manuscript to the journal's editorial department. The preferred method of submission is by e-mail with an attached Word document. E-mail inquiries are welcome: write to CTFeditorial@ctf.ca. Contributors are responsible for providing complete and accurate citations to sources, a detailed abstract (200 to 400 words), and up to six keywords for indexing purposes.

Manuscripts accepted for publication are to be prepared in the prescribed format. For details, see the Foundation's Style and Format Guide.

Because all articles are subject to double-blind review, a separate cover page should accompany each submission. The cover page should include the author's name, e-mail and postal addresses, telephone number, and fax number. Authors should take care not to identify themselves directly or indirectly in their articles.

POLICY FORUM CONTRIBUTIONS

The Policy Forum section includes both articles commissioned by the journal editors and articles proposed by prospective authors. All articles should aim for short and rigorous analysis (3,000 to 5,000 words) and be written for an audience of policy makers, tax practitioners, and students of fiscal and tax policy. Articles may be based on original research, or they may synthesize and apply established research findings to a particular policy context.

Calls for proposals for upcoming Policy Forum sections appear on the Foundation's website and Twitter feed and are circulated by e-mail. To receive these e-mails, please contact CTFeditorial@ctf.ca and ask to have your name added to the mailing list. Proposals will be reviewed by the journal editors, and authors whose proposals are selected will be invited to prepare articles.

All Policy Forum articles are reviewed by the journal's editors prior to publication.

ACCESSING THE JOURNAL

The full text of all articles that have appeared in the *Canadian Tax Journal* since its first issue in 1953 can be found in the Canadian Tax Foundation's TaxFind database and, with a minimum one-year delay, in HeinOnline, ProQuest, and EBSCO's Business Source Ultimate database. Also, peer-reviewed articles since 1991 are publicly available on the *Canadian Tax Journal*'s Issues Index web page.

The *Canadian Tax Journal* is also indexed in Scopus, LegalTrac, EconLit, Wolters Kluwer Canada's Canadian Income Tax Research Index, Carswell's Income Tax References, Canadian Periodicals Index, and Scott's Index to Canadian Legal Periodical Literature.

■ Revue fiscale canadienne

Invitation à soumettre

La *Revue fiscale canadienne* publie des articles de recherches et des commentaires éclairés sur la fiscalité et les finances publiques, qui sont particulièrement pertinents pour le Canada. À cette fin, la Revue invite les personnes intéressées à soumettre des articles, qui seront évalués par des pairs, pour une éventuelle publication et elle accueille plus particulièrement les écrits qui contribuent à l'analyse, à la conception et à la mise en œuvre des politiques fiscales.

Les articles peuvent être rédigés en anglais ou en français et doivent présenter une analyse inédite du sujet. L'article soumis, ou toute partie ou version substantielle de celui-ci, ne doit pas avoir été publié antérieurement, que ce soit sous forme papier ou numérique, et il ne doit pas avoir été soumis ou prévu d'être publié ailleurs. La Revue accueille les soumissions plus courtes (de 4 000 à 8 000 mots) axées sur des sujets précis et également les soumissions plus longues qui analysent des problèmes en profondeur.

Révision par les pairs

Les articles soumis font l'objet d'une révision anonyme par les pairs; l'identité des auteurs n'est pas connue des réviseurs, et l'identité des réviseurs n'est pas connue des auteurs. (Les propositions non évaluées par des pairs peuvent être publiées ailleurs dans la Revue.) Les décisions concernant la publication des articles sont prises par les rédacteurs — Kim Brooks, Kevin Milligan et Daniel Sandler — à partir des conseils des réviseurs. Ces derniers sont des experts établis en la matière, ils sont choisis par les rédacteurs pour donner leur avis en ce qui concerne le bien-fondé de publier la soumission et formuler des suggestions d'amélioration. Les soumissions peuvent être 1) acceptées sans réserve; 2) acceptées sous réserve des changements recommandés; 3) révisées par les auteurs, en fonction des exigences des rédacteurs qui suivent les conseils des réviseurs, et soumises à nouveau pour une révision supplémentaire; ou 4) rejetées avec motifs. Le délai entre la soumission et la première décision de la rédaction est généralement de deux mois ou moins.

Préparation de la soumission

Les contributeurs potentiels doivent soumettre une copie de leur article à la rédaction de la Revue. La méthode de transmission privilégiée est le courriel avec un document Word en pièce jointe. Toutes demandes de renseignements par courriel sont les bienvenues : vous pouvez contacter le CTFeditorial@ctf.ca. Les contributeurs ont l'entière responsabilité de fournir les références complètes et précises des documents qu'ils citent, un résumé détaillé (200 à 400 mots) et jusqu'à six mots-clés qui seront utilisés à des fins d'indexation.

Les articles acceptés pour publication doivent être préparés selon le format prescrit. Pour en savoir plus, se rapporter au Guide de rédaction et de présentation de la Fondation.

Puisque tous les articles font l'objet d'une révision anonyme par deux personnes, une page couverture séparée doit accompagner chaque article. Sur la page couverture, inclure le nom de l'auteur, l'adresse courriel et l'adresse postale, le numéro de téléphone et le numéro de télécopieur. Les auteurs doivent s'assurer qu'il est impossible de les identifier de manière directe ou indirecte dans leur article.

CONTRIBUTIONS AU FORUM DE POLITIQUES

La section Forum de politiques comprend à la fois des articles commandés par les rédacteurs en chef de la Revue et des articles proposés par des auteurs potentiels. Tous les articles doivent présenter une analyse courte et rigoureuse (3 000 à 5 000 mots) et être rédigés pour un auditoire de décideurs, de fiscalistes et d'étudiants en politique fiscale. Les articles peuvent être fondés sur des recherches originales, ou ils peuvent synthétiser et appliquer les résultats de recherche établis dans un contexte politique particulier.

Les invitations à soumettre des propositions pour les prochaines sections du Forum de politiques sont publiées sur le site Web de la Fondation, sur le fil Twitter, et elles sont également envoyées par courriel. Pour recevoir ces courriels, veuillez communiquer avec CTFeditorial@ctf.ca et demander que votre nom soit ajouté à la liste de diffusion. Les propositions seront examinées par les rédacteurs en chef de la Revue, et les auteurs des propositions retenues seront invités à rédiger des articles.

Tous les articles du Forum de politiques sont révisés par les rédacteurs en chef de la Revue avant leur publication.

ACCÈS À LA REVUE

L'intégralité de tous les articles parus dans la *Revue fiscale canadienne* depuis son premier numéro en 1953 se trouve dans la base de données TaxFind de la Fondation canadienne de fiscalité et, après un délai minimal d'un an, dans HeinOnline, ProQuest et dans la base de données Business Source Ultimate d'EBSCO. De plus, les articles révisés par les pairs depuis 1991 sont accessibles au public sur la page Web de l'Index des numéros de la *Revue fiscale canadienne*.

La *Revue fiscale canadienne* est également indexée dans Scopus, LegalTrac, EconLit, dans la section de recherche en fiscalité canadienne de Wolters Kluwer Canada, dans la section de références de Carswell, dans le Canadian Periodicals Index et dans le Scott's Index to Canadian Legal Periodical Literature.

■ Canadian Tax Foundation

The Canadian Tax Foundation is Canada's leading source of insight on tax issues. The Foundation promotes understanding of the Canadian tax system through analysis, research, and debate, and provides perspective and impartial recommendations concerning its equity, efficiency, and application.

The Canadian Tax Foundation is an independent tax research organization and a registered charity with over 12,000 individual and corporate members in Canada and abroad. For more than 70 years, it has fostered a better understanding of the Canadian tax system and assisted in the development of that system through its research projects, conferences, publications, and representations to government.

Members find the Foundation to be a valuable resource both for the scope and depth of the tax information it provides and for its services, which support their everyday work in the taxation field.

Government policy makers and administrators have long respected the Foundation for its objectivity, its focus on current tax issues, its concern for improvement of the Canadian tax system, and its significant contribution to tax and fiscal policy.

MEMBERSHIP

Membership in the Foundation is open to all who are interested in its work. Membership fees are $446.00 a year, except that special member rates apply as follows: (a) $222.00 for members of the accounting and legal professions in the first three years following date of qualification to practise; (b) $222.00 for persons on full-time teaching staff of colleges, universities, or other educational institutions; (c) complimentary for students in full-time attendance at a recognized educational institution; and (d) $191.00 for persons who have reached the age of 65 and are no longer actively working in tax. Memberships are for a period of 12 months dating from the receipt of application with the appropriate payment.

Applications for membership are available from the membership administrator for the Canadian Tax Foundation: facsimile: 416-599-9283; Internet: www.ctf.ca; e-mail: ctfmembership@ctf.ca.

■ Fondation canadienne de fiscalité

La Fondation canadienne de fiscalité est un organisme indépendant de recherche sur la fiscalité inscrit sous le régime des œuvres de charité. Elle compte environ 12 000 membres au Canada et à l'étranger. Depuis plus de 70 ans, la FCF favorise une meilleure compréhension du système fiscal canadien et aide au développement de ce système par le biais de ses projets de recherche, conférences, publications et représentations auprès des gouvernements.

Les membres considèrent l'étendue et le détail de l'information offerte par la FCF comme une importante ressource. Ils apprécient également les autres services de la FCF qui facilitent leur travail quotidien dans le domaine de la fiscalité.

Les décideurs et administrateurs gouvernementaux respectent depuis longtemps l'objectivité de la FCF, son attention aux questions fiscales de l'heure, sa préoccupation envers l'amélioration du système fiscal canadien et son importante contribution au développement des politiques fiscales.

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Toute personne intéressée aux travaux de la FCF peut en devenir membre. Les droits d'adhésion sont de 446,00 $ par année, à l'exception des tarifs spéciaux suivants : a) 222,00 $ pour les personnes faisant carrière en comptabilité ou en droit pendant les trois premières années suivant leur admission à la profession; b) 222,00 $ pour le personnel enseignant à temps plein dans un collège, une université ou une autre maison d'enseignement; c) gratuite pour les étudiants fréquentant à temps plein une maison d'enseignement reconnue; et d) 191,00 $ pour les personnes qui ont 65 ans et plus et qui ne travaillent plus activement en fiscalité. La période d'adhésion est de 12 mois, à compter de la réception de la demande accompagnée du paiement approprié.

Il est possible de se procurer les demandes d'adhésion auprès de l'administratice responsible de l'adhésion à la FCF : télécopieur : 514-939-7353; Internet : www.fcf-ctf.ca; courriel : adminmtl@ctf.ca.

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The Foundation's publications comprise a range of forms and delivery formats. A number of the regularly issued publications are distributed without charge to Foundation members: the *Canadian Tax Journal* (4 issues), *Perspectives on Tax Law & Policy* (4 issues, delivered electronically), *Tax for the Owner-Manager* (4 issues, delivered electronically), *Canadian Tax Focus* (4 issues, delivered electronically), *International Tax Highlights* (4 issues, delivered electronically), and the annual conference report. Monographs and books may be purchased on the Foundation's website at www.ctf.ca.

Canadian Tax Journal — issued quarterly to members via www.ctf.ca (Non-Members $75 per copy, $343.75 per year).

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Differently Trained Practitioners' Approaches to Tax Work: Divergence, Convergence, and Further Insights for the Profession

Till-Arne Hahn, Tisha King, and Suzanne Landry*

PRÉCIS

Dans de nombreux pays, les fiscalistes ont des formations et des parcours diversifiés. Cependant, comme peu d'études empiriques les comparent directement, on sait peu de choses sur la manière dont les fiscalistes ayant reçu une formation différente (par exemple, les comptables et les avocats) abordent leur travail en fiscalité. À l'aide de méthodes mixtes axées sur la qualité, nous avons premièrement procédé à des entretiens approfondis avec 38 fiscalistes, principalement cadres supérieurs. Ces entretiens nous ont permis d'induire quatre dimensions — orientation de base, mentalité de base, sensibilité élargie et orientation du processus — qui distinguent les fiscalistes, ainsi qu'une philosophie générale qui semble sous-tendre l'approche à leur travail en fiscalité. À partir de ces résultats, nous avons mené une deuxième étude, une enquête à réponses ouvertes, qui nous a permis d'affiner et de corroborer ces dimensions et ces philosophies. Dans une troisième étude sous forme d'enquête, nous avons effectué une triangulation quantitative des dimensions et des

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philosophies cernées à partir de nos données qualitatives pour approfondir la question de la mesure dans laquelle les fiscalistes évoluent et s'il existe une convergence au fil du temps dans les approches des fiscalistes ayant reçu une formation différente. Nos trois études contribuent à la littérature de plus en plus abondante sur les fiscalistes et leur travail en faisant progresser la compréhension de la manière dont les approches globales de travail diffèrent généralement d'une personne à l'autre, en donnant un aperçu de la croissance comparative de la compétence, et en offrant une explication possible de la raison pour laquelle certains groupes de fiscalistes sont impliqués plus activement que d'autres dans la planification fiscale. Nos résultats ont des implications pour les associations professionnelles et les autres acteurs du domaine qui supervisent la compétence et la qualité du travail des fiscalistes, ainsi que pour les établissements d'enseignement et autres qui sont responsables de leur formation.

ABSTRACT

In many countries, tax practitioners represent a diverse set of professionals with different backgrounds and training. Yet, because there is limited empirical research directly comparing them, little is known about how differently trained practitioners (for example, accountants and lawyers) approach tax work. Employing mixed methods in a qualitatively driven manner, we first draw on in-depth interviews with 38 mostly senior-level practitioners. From these interviews, we inductively identify four dimensions—basic orientation, basic mindset, broader sensitivity, and process orientation—along which tax professionals are seen to differ, as well as an overall philosophy that appears to guide how they approach tax work. On the basis of these findings, we conduct a second study, an open-ended response survey, that allows us to refine and substantiate these dimensions and the philosophies identified. In a third study, we use a survey to quantitatively triangulate the dimensions and philosophies identified through our qualitative data, and to delve more deeply into the extent to which practitioners may evolve and whether there is any convergence in the approaches of differently trained professionals over time. Our three studies contribute to a growing body of literature examining tax professionals and their work by advancing the understanding of how individuals typically differ in their overall approaches to tax work, by offering insight into the comparative growth in competence, and by offering a possible explanation for why some groups of professionals may be more actively involved than others in tax planning. Our findings have implications for professional associations and others who oversee the competence and quality of work of tax practitioners, as well as educational institutions and others who are charged with their training.

KEYWORDS: TAX PROFESSIONALS ■ TAX WORK ■ MIXED METHODS

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INTRODUCTION

Growing public scrutiny of tax avoidance has spotlighted tax practitioners[1] and sparked increasing academic interest in their work.[2] Yet, owing to the diverse nature of actors providing tax services, "tax practitioners" remain difficult to define as a

1 See, for example, Harvey Cashore, "KPMG Offshore 'Sham' Deceived Tax Authorities, CRA Alleges," *CBC News*, September 9, 2015 (www.cbc.ca/news/business/kpmg-offshore-sham-deceived-tax-authorities-cra-alleges-1.3209838); "Grand Dodgy," *Economist*, June 30, 2016 (www.economist.com/news/finance-and-economics/21701532-good-deeds-luxembourg-leakers-do-not-go-unpunished-grand-dodgy); and Nick Hopkins, "Why We Are Shining a Light on the World of Tax Havens Again," *Guardian*, November 5, 2017 (www.theguardian.com/news/2017/nov/05/why-shining-light-world-tax-havens-again-paradise-papers).

2 Susan Addison and Frank Mueller, "The Dark Side of Professions: The Big Four and Tax Avoidance" (2015) 28:8 *Accounting, Auditing & Accountability Journal* 1263-90; Emer Mulligan and Lynne Oats, "Tax Professionals at Work in Silicon Valley" (2016) 52 *Accounting, Organizations and Society* 63-76 (https://doi.org/10.1016/j.aos.2015.09.005); Anna Feller and Deborah Schanz, "The Three Hurdles of Tax Planning: How Business Context, Aims of Tax Planning, and Tax Manager Power Affect Tax Expense" (2017) 34:1 *Contemporary Accounting Research* 494-524 (https://doi.org/10.1111/1911-3846.12278); Vaughan S. Radcliffe, Crawford Spence, Mitchell Stein, and Brett Wilkinson, "Professional Repositioning During Times of Institutional Change: The Case of Tax Practitioners and Changing Moral Boundaries" (2018) 66 *Accounting, Organizations and Society* 45-59 (https://doi.org/10.1016/j.aos.2017.12.001); and Till-Arne Hahn and Rodrigo Ormeño Pérez, "Tax Professionals in the Academic Spotlight: A Review of Recent Literature" (2020) 6:1 *Journal of Tax Administration* 96-161.

category,[3] potentially muddying the understanding of their work.[4] For instance, in many common-law countries, lawyers and accountants have traditionally played key roles,[5] with members of both professions regularly engaging in tax research and planning.[6] Given the degree of overlap, some suggest that the two professions may be viewed as interchangeable.[7] However, even if lawyers and accountants often perform similar work, their initial training is clearly different,[8] and can influence their approach to typical tasks.[9] Given the limited empirical evidence directly comparing professional groups, we believe that it is important to develop a more comprehensive and nuanced understanding of how differently trained practitioners approach tax work.

Empirically grounded studies of work are necessary for research to keep pace with changes in the division of labour.[10] Adopting a "doing lens"[11] and largely relying on an inductive approach,[12] we employed mixed methods to "shed deeper

3 Ken Devos, "The Impact of Tax Professionals Upon the Compliance Behaviour of Australian Individual Taxpayers" (2012) 22:1 *Revenue Law Journal* 1-26, at 5.

4 Lynne Oats and Gregory Morris, "Tax Avoidance, Power and Politics," in Nigar Hashimzade and Yuliya Epifantseva, eds., *The Routledge Companion to Tax Avoidance Research* (Oxon, UK: Routledge, 2017), 458-71.

5 John L. Carey, "Relationship of Accountants and Lawyers in Tax Practice" (1951) 26:4 *Accounting Review* 449-55; and Jane Frecknall-Hughes and Margaret McKerchar, "Historical Perspectives on the Emergence of the Tax Profession: Australia and the UK" (2013) 28:2 *Australian Tax Forum* 276-88.

6 Mark J. Cowan and Joshua Cutler, "Cross-Fertilizing the Tax Classroom" (2022) 19:2 *Pittsburgh Tax Review* 329-69 (https://doi.org/10.5195/taxreview.2022.161).

7 For example, Jacob L. Todres, "Malpractice and the Tax Practitioner: An Analysis of the Areas in Which Malpractice Occurs" (1999) 48:2 *Emory Law Journal* 547-645; Brian M. Studniberg, "The UK Supreme Court Rekindles the Debate over a Privilege for Accountants," Current Cases feature (2013) 61:2 *Canadian Tax Journal* 435-60; and C.D. MacArthur, "Legal Advice Privilege for Accountants' Tax Advice," in C.D.L. Hunt, ed., *Perspectives on Evidentiary Privileges* (Toronto: Carswell, 2019), 167-92.

8 Katherine D. Black and Stephen T. Black, "A National Tax Bar: An End to the Attorney-Accountant Tax Turf War" (2004) 36:1 *St. Mary's Law Journal* 1-98; and Cowan and Cutler, supra note 6.

9 C. Bryan Cloyd and Brian C. Spilker, "Confirmation Bias in Tax Information Search: A Comparison of Law Students and Accounting Students" (2000) 22:2 *Journal of the American Taxation Association* 60-71 (https://doi.org/10.2308/jata.2000.22.2.60).

10 Stephen R. Barley and Gideon Kunda, "Bringing Work Back In" (2001) 12:1 *Organization Science* 76-95.

11 Michel Anteby, Curtis K. Chan, and Julia DiBenigno, "Three Lenses on Occupations and Professions in Organizations: Becoming, Doing, and Relating" (2016) 10:1 *Academy of Management Annals* 183-244.

12 Kathleen M. Eisenhardt, Melissa E. Graebner, and Scott Sonenshein, "Grand Challenges and Inductive Methods: Rigor Without Rigor Mortis" (2016) 59:4 *Academy of Management Journal* 1113-23.

light"[13] on how tax practitioners broadly approach tax work.[14] Following an exploratory sequential design,[15] we first conducted a qualitative study consisting of in-depth interviews, mostly with tax partners and other experienced practitioners. We entered the field with the initial question: How do differently trained professionals typically approach tax work? We identified four dimensions—basic orientation, basic mindset, broader sensitivity, and process orientation—along which professionals are perceived to differ, as well as an overall philosophy that appears to guide their work. In our second study, we triangulated these dimensions,[16] using open-ended responses collected through an independently administered survey. To build on these findings, we conducted a third study in which we examined more systematically our initial observations, using a survey involving self-assessments by 208 practitioners. In addition to quantitatively corroborating the dimensions, we explored the question: What is the relation between experience and the approaches to tax work? As expected, we found that practitioners generally evolve, growing the most in traditional areas of weakness and leading to an overall, though incomplete, convergence in the approaches of differently trained professionals.

The resulting insights into practitioners' approaches to tax work offer several contributions to theory and practice. At an empirical level, we contribute to a small but growing body of literature that examines tax professionals and their work.[17] We also answer calls for more mixed-methods research,[18] as well as for more detailed investigations of work.[19]

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13 Margaret A. McKerchar, "Philosophical Paradigms, Inquiry Strategies and Knowledge Claims: Applying the Principles of Research Design and Conduct to Taxation" (2008) 6:1 *eJournal of Tax Research* 5-22, at 21.

14 We recognize that some division of labour exists within the tax field, with variations among different jurisdictions. See V. Thuronyi and F. Vanistendael, "Regulation of Tax Professionals," in V. Thuronyi, ed., *Tax Law Design and Drafting* (Washington, DC: International Monetary Fund, 1996), 135-63. Litigation is normally the purview of lawyers, and accountants typically assume more of the compliance work. To the extent that professionals deal with different kinds of problems, their approaches will naturally differ. The aim of our study is to understand how differently trained professionals—specifically, lawyers and accountants—approach tax work overall, with a particular focus on those tasks that both regularly perform, such as tax planning and research. Further, while we acknowledge that firms providing tax services may also differ in their approaches, our focus is on the individual.

15 Robert L. Harrison, Timothy M. Reilly, and John W. Creswell, "Methodological Rigor in Mixed Methods: An Application in Management Studies" (2020) 14:4 *Journal of Mixed Methods Research* 473-95 (https://doi.org/10.1177/1558689819900585).

16 Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting* (Toronto: Lawbook, 2010).

17 See the sources cited in note 2, supra.

18 Sven Modell, "Bridging the Paradigm Divide in Management Accounting Research: The Role of Mixed Methods Approaches" (2010) 21:2 *Management Accounting Research* 124-29; and Jennifer Grafton, Ann M. Lillis, and Habib Mahama, "Mixed Methods Research in Accounting" (2011) 8:1 *Qualitative Research in Accounting & Management* 5-21 (https://doi.org/10.1108/11766091111124676).

19 Barley and Kunda, supra note 10.

From a practical perspective, this study should be of interest to anyone who is charged with the hiring and training of tax professionals. As tax complexity increases, expertise becomes crucial.[20] Most specialized training typically occurs after the completion of undergraduate studies,[21] leaving new professionals with skill gaps.[22] As learning periods become shorter,[23] owing to the outsourcing of certain tasks[24] and advances in technology,[25] getting specialized tax training right will be increasingly important. Moreover, the inability to adequately perform tasks can be a source of frustration for junior staff and lead to turnover, which should matter to employers, given the shortage of skilled professionals.[26]

This article begins with a literature review, followed by an outline of how professional work can be theoretically understood according to Abbott.[27] We then discuss our three studies in turn, first summarizing the method and participant background,

20 Thomas Hoppe, Deborah Schanz, Susann Sturm, and Caren Sureth-Sloane, "The Tax Complexity Index—A Survey-Based Country Measure of Tax Code and Framework Complexity" (2021) 32:2 *European Accounting Review* 239-73 (https://doi.org/10.1080/09638180.2021.1951316).

21 Black and Black, supra note 8.

22 Timothy J. Fogarty, R. Drew Sellers, and David E. Jones, "Reverse Engineering Tax Education: How Tax Practice Can Inform the Classroom Experience" (2023) 21:1 *International Journal of Management Education* (https://doi.org/10.1016/j.ijme.2022.100761).

23 Noel Rowland, "A Review into the Future of the Tax Profession" (2017) 52:2 *Taxation in Australia* 51.

24 Jesse Robertson, Dan Stone, Liza Niederwanger, Matthew Grocki, and Ed Smith, "Offshore Outsourcing of Tax-Return Preparation" (2005) 75:6 *CPA Journal* 54-57; Jay A. Soled, "Outsourcing Tax Return Preparation and Its Implications" (2005) 75:3 *CPA Journal* 14-15; and Brian E. Daugherty, Denise Dickins, and M.G. Fennema, "Offshoring Tax and Audit Procedures: Implications for US-Based Employee Education" (2012) 27:3 *Issues in Accounting Education* 733-42.

25 Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (New York: Oxford University Press, 2015); Carl Benedikt Frey and Michael A. Osborne, "The Future of Employment: How Susceptible Are Jobs to Computerisation?" (2017) 114 *Technological Forecasting and Social Change* 254-80 (https://doi.org/10.1016/j.techfore.2016.08.019); Benjamin Alarie, Anthony Niblett, and Albert H. Yoon, "How Artificial Intelligence Will Affect the Practice of Law" (2018) 68, supplement 1 *University of Toronto Law Journal* S106-24; Renée Iori and Susie Cooke, "Technology and the Tax Adviser of the Future," in *Report of Proceedings of the Seventy-First Tax Conference*, 2019 Conference Report (Toronto: Canadian Tax Foundation, 2020), 11:1-16; Patrick Buckley, Elaine Doyle, Brendan McCarthy, and Ruth Gilligan, "Artificial Intelligence and the Tax Practitioner" (2022) 7:2 *Journal of Tax Administration* 6-26; and Benjamin Alarie, "The Rise of the Robotic Tax Analyst" (2023) 178:1 *Tax Notes Federal* 57-63.

26 Jay Nibbe, "Talent Spotting—Are You Ready for the Next Era?" (2016) 15 *Tax: Insights for Business Leaders* 3; and Heather L. Evans, "Message from the Executive Director" (November 2023) (www.ctf.ca/EN/Newsletters/Directors_Message/2023_Monthly_Messages/November_Message_2023.aspx).

27 Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago Press, 1988).

and then presenting the findings. An overall discussion and a conclusion follow, outlining potential implications and some possible future research directions.

LITERATURE REVIEW

Although the literature has been described as piecemeal,[28] possibly owing to the multiplicity of actors,[29] the work of tax professionals has been extensively studied.[30] Because tax practice involves many forms of work,[31] practitioners will often not perform the same tasks (at least regularly). The division of labour varies by context,[32] but in Canada, tax practice has historically been characterized by extensive collaboration between the legal and accounting professions.[33]

In a comprehensive review of the early literature, Roberts[34] offers a model summarizing the factors that potentially influence practitioners' judgment and decision making. Most studies focus on individual and environmental influences.[35] As an individual cognitive factor, knowledge is sometimes measured directly, but experience is the single most frequently considered variable, often serving as a proxy for expertise, notwithstanding its mixed results.[36] As individual affective factors, advocacy and ethical attitudes matter, and a long stream of studies has extended research into both.[37]

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28 Brian Erard, "Taxation with Representation: An Analysis of the Role of Tax Practitioners in Tax Compliance" (1993) 52:2 *Journal of Public Economics* 163-97, at 164-65; and Jane Frecknall-Hughes and Erich Kirchler, "Towards a General Theory of Tax Practice" (2015) 24:2 *Social & Legal Studies* 289-312, at 289.

29 Mattia Anesa, Nicole Gillespie, A. Paul Spee, and Kerrie Sadiq, "The Legitimation of Corporate Tax Minimization" (2019) 75 *Accounting, Organizations and Society* 17-39 (https://doi.org/10.1016/j.aos.2018.10.004).

30 Michael L. Roberts, "Tax Accountants' Judgment/Decision-Making Research: A Review and Synthesis" (1998) 20:1 *Journal of the American Taxation Association* 78-121; and Hahn and Ormeño Pérez, supra note 2.

31 John Hasseldine, Kevin Holland, and Pernill van der Rijt, "The Market for Corporate Tax Knowledge" (2011) 22:1 *Critical Perspectives on Accounting* 39-52 (https://doi.org/10.1016/j.cpa.2010.06.019); and Jane Frecknall-Hughes and Peter Moizer, "Assessing the Quality of Services Provided by UK Tax Practitioners" (2015) 13:1 *eJournal of Tax Research* 51-75.

32 Thuronyi and Vanistendael, supra note 14.

33 Tamar Satov, "Canadian Tax Foundation Celebrates 50 Years" (1995) 128:6 *CA Magazine* 12-13; and Robert D. Brown and Paul D. Paton, "Public Interest, Public Accountability, and Canadian Tax Professionals After Sarbanes-Oxley," in *Report of Proceedings of the Fifty-Fourth Tax Conference*, 2002 Conference Report (Toronto: Canadian Tax Foundation, 2003), 35:1-45.

34 Roberts, supra note 30.

35 Ibid.

36 Ibid.

37 Cheryl A. Cruz, William E. Shafer, and Jerry R. Strawser, "A Multidimensional Analysis of Tax Practitioners' Ethical Judgements" (2000) 24:3 *Journal of Business Ethics* 223-44; Scott A. Yetmar and Kenneth Eastman, "Tax Practitioners' Ethical Sensitivity: A Model and Empirical Examination" (2000) 26:4 *Journal of Business Ethics* 271-88; Donna D. Bobek and Robin R.

Despite the diversity of the field,[38] most research does not explicitly consider professional background. Some studies compare professional accountants with those without a chartered professional accountant (CPA) designation;[39] more recently, Klassen, Lisowsky, and Mescall[40] have contrasted the tax aggressiveness of external advisers and in-house professionals. Some studies that Roberts reviews include other professionals, but he focuses on tax accountants. With the notable exception of Cloyd and Spilker's investigation of the confirmation bias of law and accounting students in tax information search,[41] empirical research directly investigating categories of practitioners remains remarkably limited.

There are clear differences in the undergraduate education of lawyers and accountants.[42] To become client advocates, law students learn to argue. As Cloyd and Spilker suggest, this helps them to explain their position better and prepares them to anticipate opposing positions.[43] With a focus on legal reasoning and research skills, and exposure to the reading of court cases, the training of law students also sensitizes them to the importance of negative precedents, encouraging them to hone their analogical reasoning.[44] However, some have suggested that lawyers may be

Radtke, "An Experiential Investigation of Tax Professionals' Ethical Environments" (2007) 29:2 *Journal of the American Taxation Association* 63-84; Elaine M. Doyle, Jane Frecknall-Hughes, and Keith W. Glaister, "Linking Ethics and Risk Management in Taxation: Evidence from an Exploratory Study in Ireland and the UK" (2009) 86:2 *Journal of Business Ethics* 177-98; Donna D. Bobek, Amey M. Hageman, and Richard C. Hatfield, "The Role of Client Advocacy in the Development of Tax Professionals' Advice" (2010) 32:1 *Journal of the American Taxation Association* 25-51; Cynthia Blanthorne, Hughlene A. Burton, and Dann Fisher, "The Aggressiveness of Tax Professional Reporting: Examining the Influence of Moral Reasoning," in Donna Bobek Schmitt, ed., *Advances in Accounting Behavioral Research*, vol. 16 (New York: Emerald, 2014), 149-81; and Jane Frecknall-Hughes, Peter Moizer, Elaine Doyle, and Barbara Summers, "An Examination of Ethical Influences on the Work of Tax Practitioners" (2017) 146:4 *Journal of Business Ethics* 729-45.

38 Devos, supra note 3, at 5.

39 For example, Peggy A. Hite and John Hasseldine, "Tax Practitioner Credentials and the Incidence of IRS Audit Adjustments" (2003) 17:1 *Accounting Horizons* 1-14 (https://doi.org/10.2308/acch.2003.17.1.1).

40 Kenneth J. Klassen, Petro Lisowsky, and Devan Mescall, "The Role of Auditors, Non-Auditors, and Internal Tax Departments in Corporate Tax Aggressiveness" (2016) 91:1 *Accounting Review* 179-205.

41 Cloyd and Spilker, supra note 9.

42 Cowan and Cutler, supra note 6.

43 Cloyd and Spilker, supra note 9.

44 Garry Marchant, John Robinson, Urton Anderson, and Michael Schadewald, "Analogical Transfer and Expertise in Legal Reasoning" (1991) 48:2 *Organizational Behavior and Human Decision Processes* 272-90; Garry Marchant, John Robinson, Urton Anderson, and Michael Schadewald, "Analogy and Tax Problem Solving" (1992) 4 *Advances in Taxation* 225-46; Garry Marchant, John Robinson, Urton Anderson, and Michael Schadewald, "The Use of Analogy in Legal Argument: Problem Similarity, Precedent, and Expertise" (1993) 55:1 *Organizational Behavior and Human Decision Processes* 95-119; and Anne M. Magro and Sarah E. Nutter, "Evaluating the Strength of Evidence: How Experience Affects the Use of Analogical Reasoning and Configural Information Processing in Tax" (2012) 87:1 *Accounting Review* 291-312.

more innumerate compared to other professionals.[45] Law schools typically neglect the financial or mathematical aspects associated with tax compliance, with the view that "[t]hat's what accountants are for" being common,[46] perhaps reflecting the stereotype that accountants are methodical number crunchers.[47]

As for accountants, given the importance of audit, students of accounting are taught professional skepticism.[48] To properly assess and protect against audit risk, they also learn how to acquire an in-depth understanding of their client's business, the importance of documenting positions in files, and how to use the threshold of materiality as a guide. However, their education, as it pertains to tax, is typically more about learning how to apply the rules[49] or follow a recipe to get to "the answer,"[50] rather than how to interpret the rules. Thus, accountants' initial legal skills tend to be weaker, and because they learn about tax (at least initially) through structured and largely linear processes, they are often less comfortable with ambiguities in the law.[51]

Beyond obvious differences in early training, there are also clear distinctions in the respective codes of ethics of the two professions.[52] Lawyers' professional duties require their primary loyalty to be toward their clients.[53] Notwithstanding arguments against zealous advocacy in non-adversarial situations,[54] its commonly accepted

45 Lisa Milot, "Illuminating Innumeracy" (2013) 63:3 *Case Western Reserve Law Review* 769-814; but compare Arden Rowell and Jessica Bregant, "Numeracy and Legal Decision Making" (2014) 46:1 *Arizona State Law Journal* 191-230.

46 Black and Black, supra note 8, at 80.

47 Andrew Lloyd Friedman and Stephen Lyne, "The Beancounter Stereotype: Towards a General Model of Stereotype Generation" (2001) 12:4 *Critical Perspectives on Accounting* 423-51; and Tony Dimnik and Sandra Felton, "Accountant Stereotypes in Movies Distributed in North America in the Twentieth Century" (2006) 31:2 *Accounting, Organizations and Society* 129-55 (https://doi.org/10.1016/j.aos.2004.10.001).

48 R. Kathy Hurtt, "Development of a Scale To Measure Professional Skepticism" (2010) 29:1 *Auditing: A Journal of Practice & Theory* 149-71; and Christine J. Nolder and Kathryn Kadous, "Grounding the Professional Skepticism Construct in Mindset and Attitude Theory: A Way Forward" (2018) 67 *Accounting, Organizations and Society* 1-14.

49 Cloyd and Spilker, supra note 9.

50 Cowan and Cutler, supra note 6.

51 Ibid.

52 Maria Italia, "Tax Ethics: Accountants and Lawyers" (2008) 4:4 *International Review of Business Research Papers* 118-27.

53 L. Ray Patterson, "Legal Ethics and the Lawyer's Duty of Loyalty" (1980) 29:4 *Emory Law Journal* 909-70; and Arthur Cockfield, *Introduction to Legal Ethics*, 2d ed. (Markham, ON: LexisNexis Canada, 2016).

54 Murray L. Schwartz, "The Professionalism and Accountability of Lawyers" (1978) 66:4 *California Law Review* 669-97; Linda M. Beale, "Tax Advice Before the Return: The Case for Raising Standards and Denying Evidentiary Privileges" (2005) 25:3 *Virginia Tax Review* 583-669; and Richard Lavoie, "Am I My Brother's Keeper? A Tax Law Perspective on the Challenge of Balancing Gatekeeping Obligations and Zealous Advocacy in the Legal Profession" (2013) 44:3 *Loyola University Chicago Law Journal* 813-64.

primacy may lead lawyers to adopt more aggressive tax positions.[55] Accountants, for their part, are guided by a professional code that focuses mainly on their role as auditors. Even if the advocacy role in tax matters may be recognized,[56] the public interest is stressed.[57] Further, in contrast to the lawyer's duty of loyalty, in the case of audit, professional independence is emphasized.[58] Thus, while both professions are bound by their respective code of ethics, the influence on tax work may be limited, since those codes have been drafted, for the most part, with more traditional legal or accounting work in mind.[59]

Although the differences noted can affect how practitioners will initially approach tax work, most specialized tax training usually occurs after individuals have completed their primary degrees.[60] Tax practice, by definition, clearly requires an understanding of the law,[61] but many undergraduate law degrees in North America largely ignore the subject.[62] With the exception of one or two tax courses, professional accountants will normally receive no legal training beyond an introductory business-law course.[63] Many may opt for tax careers during their initial studies,[64] but

55 Tanina Rostain, "Sheltering Lawyers: The Organized Tax Bar and the Tax Shelter Industry" (2006) 23:1 *Yale Journal on Regulation* 77-120; Tanina Rostain, "Travails in Tax: KPMG and the Tax-Shelter Controversy," in Deborah L. Rhode and David J. Luban, eds., *Legal Ethics: Law Stories* (New York: Foundation Press, 2006), 89-118; and Leigh Rosenthal, "Evaluating the Demand for Tax Professionals: Tax Accountants or Tax Attorneys" (PhD dissertation, Florida Atlantic University, College of Business, 2016).

56 See, for example, American Institute of Certified Public Accountants, "Statements on Standards for Tax Services," January 1, 2024 (https://insights.aicpa.org/story/ssts/page/1).

57 C. Richard Baker, "What Is the Meaning of 'the Public Interest'? Examining the Ideology of the American Public Accounting Profession" (2005) 18:5 *Accounting, Auditing & Accountability Journal* 690-703; and Dean Neu and Cameron Graham, "Accounting Research and the Public Interest" (2005) 18:5 *Accounting, Auditing & Accountability Journal* 585-91.

58 Rick Antle, "Auditor Independence" (1984) 22:1 *Journal of Accounting Research* 1-20; Max H. Bazerman, Kimberly P. Morgan, and George F. Loewenstein, "The Impossibility of Auditor Independence" (1997) 38:4 *Sloan Management Review* 89-94; and Yves Gendron, Roy Suddaby, and Helen Lam, "An Examination of the Ethical Commitment of Professional Accountants to Auditor Independence" (2006) 64:2 *Journal of Business Ethics* 169-93.

59 Italia, supra note 52.

60 Theodore S. Sims and Emil M. Sunley, review of Myron S. Scholes and Mark A. Wolfson, *Taxes and Business Strategy: A Planning Approach*, in (1992) 45:4 *National Tax Journal* 451-55; and Black and Black, supra note 8.

61 Robert A. Prentice, "The Case for Educating Legally-Aware Accountants" (2000) 38:5 *American Business Law Journal* 597-631; and Brian Studniberg, "A Privilege Primer, Part III: Reconsidering Accountants' Tax Services as Legal Services," *Canadian Accountant*, June 26, 2024 (www.canadian-accountant.com/content/thought-leaders/a-privilege-primer-part-iii).

62 Cowan and Cutler, supra note 6.

63 Black and Black, supra note 8, at 79.

64 Derek W. Dalton, Steve Buchheit, and Jeffrey J. McMillan, "Audit and Tax Career Paths in Public Accounting: An Analysis of Student and Professional Perceptions" (2014) 28:2 *Accounting Horizons* 213-31 (https://doi.org/10.2308/acch-50665).

to become tax practitioners, most will pursue further training once they are professionally qualified,[65] or will acquire requisite skills on the job through a form of situated learning.[66] Given that tax is recognized as a specialty area requiring additional expertise, this extra training is crucial for professionals to develop the competency levels demanded.[67]

Overall, the common forms of specialized training in tax, the view that lawyers and accountants who work as tax professionals are interchangeable,[68] and the finding that, regardless of background, most who pursue tax careers are largely motivated by the intrinsic nature of the work,[69] all suggest that practitioners might eventually converge in their approach to tax work, notwithstanding their initial education.[70] In the next section, we discuss how professional approaches to tax work can be theoretically understood.

THEORETICAL UNDERSTANDING OF PROFESSIONAL WORK

According to Abbott,[71] professions must be understood first and foremost through the tasks that they perform. In his seminal book, he identifies three modalities of action that form the trichotomy of professional work: diagnosis, inference, and treatment. Diagnosis, as the client brokering process at the front end, involves taking "information into the professional knowledge system"[72] or the process of understanding a problem.[73] As Abbott elaborates, diagnosis entails both colligation and classification, or processes of structuring and ordering problems. Whereas colligation involves the gathering of relevant facts or the "assembly of a picture," classification refers this assembled picture to a "dictionary of professionally legitimate problems."[74] Treatment is the mediating act at the back end, providing a prescription

65 In this regard, individuals from different professions may enrol in the same formal programs. For example, in Canada, most who decide to specialize in tax will pursue a tax-related master's degree or the in-depth tax courses offered by CPA Canada. See Gabe Hayos and Joseph Petrie, "The Role and the Contribution of the Accounting and Legal Professionals in the Canadian Income Tax System," in Jinyan Li, J. Scott Wilkie, and Larry F. Chapman, eds., *Income Tax at 100 Years: Essays and Reflections on the Income War Tax Act* (Toronto: Canadian Tax Foundation, 2017), 24:1-14.

66 Fogarty et al., supra note 22.

67 Todres, supra note 7.

68 Ibid.; Studniberg, supra note 7; and MacArthur, supra note 7.

69 Till-Arne Hahn and Tisha King, "When I Grow Up . . . Understanding the Motivations That Individuals Have for Pursuing a Career in Tax" (2021) 36:3 *Issues in Accounting Education* 1-21 (https://doi.org/10.2308/ISSUES-19-118).

70 Cowan and Cutler, supra note 6.

71 Abbott, supra note 27.

72 Ibid., at 40.

73 Ibid., at 40-44.

74 Ibid., at 41.

or solution to clients. Ranging from the general to the more specific, treatments must ultimately fit a client's circumstances.[75] The link between diagnosis and treatment can at times be simple, but whenever the relation is obscure, resort must be made to inference.[76] As Abbott explains, inference, or the "thinking" about problems, is less formulaic than the two other processes.[77] This "middle game" is what ultimately distinguishes professional work from more routine or non-professional work. Actual strategies of inference pursued depend on how many chances professionals typically have at providing a treatment. Those with only one chance will build longer chains of inference and work by processes of construction, whereas those with multiple chances work by processes of exclusion, regularly tacking back and forth between diagnosis and treatment.[78] As Abbott states, though, all professions must ultimately be effective in the treatments that they offer in order to maintain the jurisdictional claims to the work that they perform.

Directly applying Abbott's theoretical framework to the tax field, Hahn[79] summarizes how tax work and expertise are fundamentally different from more traditional accounting work and expertise. For example, in searching for a "truth,"[80] auditors focus on the identification of problems and the resulting impact on financial statements, whereas tax practitioners, seeking to find optimal solutions for clients,[81] will try to identify both problems and opportunities. In terms of the thinking process, the former involves "backward reasoning from 'symptoms' (financial indicators and other information) to causes (possible errors)," and the latter, "forward reasoning from 'symptoms' (facts) to consequences (tax effects)."[82] Relating to closed-fact situations, auditing largely involves reductive processes. In contrast, tax practitioners are often faced with open-fact situations, at least in the context of tax planning, and will thus rely more on constructive processes.[83] As Hahn suggests, these are akin to the processes of exclusion and construction, which Abbott identifies in describing professionals' strategies of inference.

75 Ibid., at 44-48.

76 Ibid.

77 Ibid., at 48-52.

78 Ibid.

79 Till-Arne Hahn, "The Practice of Tax in Canada: Understanding the Community, the Work and Structural Initiatives of an Emergent Profession" (PhD dissertation, Queen's University, 2021).

80 M. Shields, I. Solomon, and K.D. Jackson, "Experimental Research on Tax Professionals' Judgment and Decision Making," in Jon S. Davis, *Behavioral Tax Research: Prospects and Judgment Calls* (Sarasota, FL: American Taxation Association, 1995), 77-126.

81 Sarah E. Bonner, Jon S. Davis, and Betty R. Jackson, "Expertise in Corporate Tax Planning: The Issue Identification Stage" (1992) 30, supplement *Journal of Accounting Research* S1-28.

82 Ibid., at S2-3.

83 Shields et al., supra note 80.

Overall, the expertise associated with inference and the other modalities of action may entail the exercise of certain mental powers or abilities, such as "intuition,"[84] "special judgement,"[85] or talent that "cannot be taught."[86] On a more basic level, though, it relies on procedural knowledge or the "rules for doing skilled tasks."[87] Such deliberative skills can be taught, and even if many undergraduate tax courses focus on transmitting the required declarative knowledge ("knowing that"), professionals entering the field will normally also have acquired some of the "knowing how" that matters in tax, otherwise described as the "logical rules, tactical maxims and technical canons" that guide the "half-trained."[88] Given that tax laws are the primary object of reference, practitioners, regardless of background, should enter the field with similar forms of "knowing that," certainly with respect to the basic rules. However, as Cowan and Cutler discuss,[89] there can be important divergences in the "knowing how." While lawyers may have learned how to argue their position well, accountants have been conditioned to getting to "the answer." Further, because lawyers are trained in the law more generally and accountants learn financial reporting rules, each will start their career with additional forms of "knowing that" on which they can draw (and which the other will not have). Ultimately, though, to the extent that both perform the same tasks, to be equally effective they must eventually acquire similar skill sets. In short, while lawyers and accountants enter the field with different forms of background knowledge and are trained to approach tax work differently, as they learn to address many of the same problems with similarly effective solutions, one can expect there to be a convergence over time, at least in terms of diagnosis and treatment. However, whenever the link between these two modalities is ambiguous, professionals will have to resort to inference, and it is not clear whether those who have been trained differently will adopt the same approaches in engaging in this process.

Given the range of potential influences, we entered this field of study without any specific expectations. Because our objective was to investigate how practitioners broadly approach tax work, we adopted a sequential mixed-method design, with our initial findings informing our later studies.[90] We first discussed practitioners'

84 Hubert L. Dreyfus and Stuart E. Dreyfus, "Peripheral Vision: Expertise in Real World Contexts" (2005) 26:5 *Organization Studies* 779-92.

85 Feller and Schanz, supra note 2.

86 Magali Sarfatti Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets* (Oxon, UK: Routledge, 2013), at 41. (This work was originally published in 1977 by the University of California.)

87 Bonner et al., supra note 81, at S7.

88 Gilbert Ryle, "Knowing How and Knowing That: The Presidential Address" (1945) 46 *Proceedings of the Aristotelian Society* 1-16, at 14.

89 Cowan and Cutler, supra note 6, at 343.

90 McKerchar, supra note 13; and McKerchar, supra note 16.

perceptions of typical differences between the two professions in a set of semi-structured interviews (study 1). We then conducted a survey (study 2) to assess the wider applicability of the differences identified. On the basis of our initial findings, we designed a further study (study 3) involving a second survey, which allowed us to quantitatively triangulate the dimensions and to explore the degree to which there might be a convergence in the approaches. The three studies and their findings are discussed in turn in the sections that follow.

STUDY 1: TAX PRACTITIONERS' APPROACHES TO TAX WORK

Method and Interviewee Background[91]

In studying practitioners' approaches to tax work, we started with an inductive approach. As Eisenhardt, Graebner, and Sonenshein explain, "inductive research usually begins with a research question, but without predefined constructs and theoretical relationships."[92] This approach is "particularly useful for exploring constructs that are difficult to identify or measure."[93]

We directly engaged practitioners by conducting 38 in-depth interviews. Broadly adopting a comparative design,[94] we used a purposeful sampling approach[95] to recruit a diverse group of practitioners with a legal, accounting, or other background, working in a range of organizations and locations in Canada. We began with existing contacts, but as the interviews progressed, we used the snowballing technique.[96] To strengthen our findings, efforts were directed toward identifying negative cases,[97] or individuals with differing views. While we developed a preliminary interview protocol based on McCracken's guidance,[98] the actual questions that were asked evolved, often depending on the interviewees and their responses. Appendix 1 reproduces the questions related to study 1.[99]

91 Study 1 and study 2 are part of a larger project examining the practice of tax in Canada. The method and participant background sections are derived from Hahn's prior study, supra note 79, which draws on different material from the same interviews and survey.

92 Eisenhardt et al., supra note 12, at 1115.

93 Ibid., at 1117.

94 Anteby et al., supra note 11.

95 Amy Koerber and Lonie McMichael, "Qualitative Sampling Methods: A Primer for Technical Communicators" (2008) 22:4 *Journal of Business and Technical Communication* 454-73.

96 Michael D. Myers, *Qualitative Research in Business and Management* (London, UK: SAGE, 2013), at 129-30.

97 Susan Spiggle, "Analysis and Interpretation of Qualitative Data in Consumer Research" (1994) 21:3 *Journal of Consumer Research* 491-503.

98 Grant McCracken, *The Long Interview* (Newbury Park, CA: SAGE, 1988); and McKerchar, supra note 13.

99 The full protocol received ethics approval (as did all parts of this study). It is available upon request.

Interviews were carried out in 2015, and conducted to the point of initial saturation.[100] Discussions averaged 67 minutes. All but two of the interviews were recorded and professionally transcribed.[101] Express permission was obtained prior to recording. After verifying the accuracy of the transcriptions, we made initial notes on copies of the texts, reflecting our spontaneous reaction to what we read. Drawing on Charmaz's guidelines,[102] we prepared a summary of the themes identified, which was repeatedly updated and modified as additional interviews were analyzed. Our dimensions emerged conceptually as the data were manually organized into a framework through this open coding process.[103]

Table 1 lists the 38 interviewees.[104] By background, 19 (50 percent) were CPAs, 13 (34 percent) were lawyers, 2 (5 percent) were both, and 4 (11 percent) were neither. As for their current or most recent tax-related position, 12 (32 percent) worked for large law or accounting firms, 12 (32 percent) worked for small firms, 4 (11 percent) worked in industry, 4 (11 percent) worked in government, and 6 (16 percent) worked for organizations such as CPA Canada or the Canadian Tax Foundation (CTF), or were full-time students in a master of taxation program.

On the whole, our interviewees had extensive experience on which they were able to draw. With an overall average of 23 years in the workforce, most participants were in either the middle or the late stage of their career. Further, 22 (58 percent) had reached the level of partner, and at least 7 (18 percent) held more senior positions (for example, as head of a department, or of the firm's local or national practice). Thus, having managed teams of professionals, many were able to provide insights extending beyond their own direct experience. Finally, at least 12 (32 percent) had worked in more than one environment (for example, had switched from an accounting firm to a law firm, or vice versa, or from public practice to industry) and thus could offer more than one perspective.

We embarked on this study with the broad objective of determining how differently trained professionals typically approach tax work. The intent was to discuss the approach toward tax work in general, rather than to examine practitioners' ability to carry out certain tasks. While the approach to the various forms of work will

100 Myers, supra note 96. Saturation was considered from an interpretivist perspective. See Bertrand Malsch and Steve E. Salterio, " 'Doing Good Field Research': Assessing the Quality of Audit Field Research" (2016) 35:1 *Auditing: A Journal of Practice & Theory* 1-22 (https://doi.org/10.2308/ajpt-51170). Since there is almost always something new in any data collected, interviews were conducted up to the point where the additional insights being obtained had become too marginal to warrant continuation.

101 Extensive notes were taken for both interviews that were not recorded. For one of the recorded interviews, a transcription was not possible because there was too much background noise.

102 Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (London, UK: SAGE, 2006), chapter 3, "Coding in Grounded Theory Practice," at 42-71.

103 McKerchar, supra note 13.

104 Because many of the interviewees preferred to remain anonymous, pseudonyms (reflecting the assumed gender of individuals) have been used throughout.

TABLE 1 Study 1: Background of Interviewees and Duration of Interviews

	Interviewee[a]	Interview length (minutes)	Professional background	Work organization[b]	Career stage[c]
1	Arthur	72	CPA	Other	Late
2	Yadin	62	Lawyer	Big law firm	Mid
3	Donald	75	Lawyer	Industry	Mid
4	André	66	Lawyer	Other law firm	Mid
5	Liam	98	Lawyer	Big 4	Mid
6	Ophelia	93	Lawyer	Government	Mid
7	Andrew	57	CPA	Other	Late
8	Ryan	62	Lawyer	Big 4	Late
9	Evelyn	46	Lawyer	Big 4	Late
10	Everett	70	CPA	Other	Late
11	Nico	46	CPA	Government	Late
12	Lucy	80	Lawyer	Big 4	Mid
13	Ivan	61	CPA	Big 4	Late
14	Alex	75	Lawyer	Other law firm	Late
15	Immanuel	60	Lawyer	Big law firm	Mid
16	Audrey	75	Lawyer	Other law firm	Mid
17	Anne	56	CPA	Midsize accounting firm	Mid
18	Henri	74	CPA	Industry	Mid
19	Ibrahim	69	CPA	Small accounting firm	Mid
20	Anthony	70	Other	Big 4	Mid
21	Robert	70	Lawyer and CPA	Big law firm	Late
22	Eric	89	Other	Government	Late
23	Ian	89	CPA	Government	Late
24	Naomi	51	Lawyer	Other	Early
25	Leilani	61	CPA	Small accounting firm	Early
26	Andrew	78	CPA	Industry	Mid
27	Allison	63	Lawyer	Other	Late
28	Natalie	86	CPA	Small accounting firm	Mid
29	Amir	88	CPA	Small accounting firm	Mid
30	Leah	43	CPA	Big 4	Mid
31	Luc	83	CPA	Small accounting firm	Late
32	Raymond	83	CPA	Small accounting firm	Late
33	Ulrika	62	CPA	Big 4	Mid
34	Hector	37	CPA	Big 4	Late
35	Albert	91	Lawyer and CPA	Small accounting firm	Late
36	Lauren	55	Other	Industry	Early
37	Kaylee	72	Other	Other	Early
38	Benoit	78	CPA	Small accounting firm	Late

(Table 1 is concluded on the next page.)

TABLE 1 Concluded

CPA = chartered professional accountant.

a Because many interviewees preferred to remain anonymous, pseudonyms have been used.

b The big law firms are the 6 firms with the largest tax practices in Canada (Lexpert [www.lexpert.ca], under "Practice Area Rankings," 2016). The Big 4 accounting firms include the respectively associated legal firms, and the mid-size firms are the 6 that round out the 10 largest accounting firms in Canada (Gundi Jeffrey, "Canada's Accounting Top 30," *Bottom Line*, April 2016, at 13). All other accounting firms, including sole practitioners, are classified as small accounting firms. Those who did not work for a firm or in industry or government have been classified as Other. Individuals were classified according to their position at the time of the interview, except for two former tax professionals, who were classified according to their last tax-related position.

c Interviewees with less than 8 years of experience are considered to be at the early stage of their career; those with 8 to 25 years of experience, at the middle stage; and those with more than 25 years of experience, at the late stage.

Source: Till-Arne Hahn, "The Practice of Tax in Canada: Understanding the Community, the Work and Structural Initiatives of an Emergent Profession" (PhD dissertation, Queen's University, 2021). Hahn's study draws on different material from the same interviews and survey employed in the present study. Reproduced by permission.

inherently vary, any differences would be attributable more to the nature of the task itself than to the individual performing it or their training. Consequently, particular attention was paid to interviewees' descriptions of how individuals in the respective professions approach work that both accountants and lawyers commonly engage in, such as tax planning more generally, and structuring more specifically.

Findings

We identified four dimensions along which accountants and lawyers were perceived to differ (at least initially), as well as a philosophy that appears to guide their overall approach. In this section, we discuss each of these in turn.

Basic Orientation: Focus on (the Impact of) Numbers Versus (the Meaning of) Words

> Well, I guess at the most fundamental level, the lawyer's work is working with words, and the accountant's work is working with numbers. So, lawyers are very focused on the language, the statute of case decisions, of administrative decisions. And of course, when you work with language, it's all a question of interpretation, of understanding. So, all of these things are the lawyer's skill set—is being a wordsmith and a word interpreter or a language interpreter, understanding what's being said, what it means, what are the options. Is it vague? Is it not? What is it saying? [Immanuel, lawyer]

As Immanuel said, the first and most basic dimension is the orientation toward either words or numbers. Confirming existing stereotypes,[105] accountants were described

105 See Friedman and Lyne, supra note 47; and Dimnik and Felton, supra note 47.

as being more comfortable with numbers and lawyers with words, the former being focused on counting or calculating, and the latter on reading or writing.[106] The following is illustrative of this notion:

> People tend to laugh at this fact that lawyers always produce memos, and accountants always produce Excels. So whatever question, you can ask the same question to both, and one will write to you a memo that will potentially not have a single number in it. It may have the answer in written form, but not necessarily "$20,000 of tax." The accountant will typically send you an Excel that has only numbers and very few letters in it, and it will be "$20,000." So that's the distinction, I guess. [Immanuel, lawyer]

This quotation again highlights the orientation of the respective professions toward words or numbers, but it also suggests that, regardless of their professional background, differently trained practitioners will often ultimately arrive at basically the same response. In short, accountants and lawyers recommend identical treatments, even if their approaches and ways of expressing a solution may differ.

While it was suggested that accountants may be more aware of what things translate into "in terms of monetary impact" (Ibrahim, CPA), many interviewees stated that accountants were less sensitive to nuance. On the other hand, lawyers, as "wordsmiths" (Immanuel, lawyer), were described as being sensitive to interpreting subtleties in language, as illustrated by the following comments:

> It's hard to explain the differences that lawyers are more focused on words—why the Act uses this word or some other words or a combination of words. I remember spending hours thinking and researching what's the difference between "consists of" and "derived from" and phrases like this. And we focus more on case law and the differences in case law, and even different opinions expressed by the judges. And sometimes we would even explore a particular dissent, opinion of dissent, and how this developed during the years, and whether this would at one point become the dominant position or not. So, we tend to focus more on the words and how commentators, judges, have interpreted those words, and how this can be useful for a file. [Ophelia, lawyer]

The ability to better understand the use of language is arguably the basis for lawyers being more skilled at interpretation. Specifically, it alerts them to vagueness in language, or in the case of the Income Tax Act,[107] the many grey areas of the law, which can often be understood only in the context of other laws, as further elaborated below. Most interviewees confirmed that lawyers tend to be more proficient at interpretation. However, although words were generally viewed as being more open to interpretation, some suggested that in a way numbers were also "codes" (Henri, CPA)

106 As Ivan (CPA) and Ibrahim (CPA) suggested, though, compared to lawyers more generally, tax lawyers often also have a relative ease with numbers; otherwise, they would likely not have pursued a career in tax.

107 RSC 1985, c. 1 (5th Supp.), as amended (also referred to herein as "the ITA" or "the Act").

and thus subjective as well. This observation is linked, partly, with the broader understanding of a client's reality, discussed later.

Basic Mindset: Compliance Versus Advocacy

> [My] sense at the beginning when I started practising was that the accountants were more deferential to the tax authorities, and the lawyers are more willing to go to bat for their clients. I don't know if that's because the legal training, it's an adversarial way of training. Right? Think about the litigation elements and others. You're representing your client. Whereas [for] the accountants and the CPAs, in particular, the fundamental professional responsibility is independence. Right? It's a very different way of coming at that public service aspect. [Evelyn, lawyer]

The second dimension that we identified is the basic mindset, which is closely linked to some of the basic tax work commonly performed by the accounting and legal professions. For accountants, the product is often a number in a tax return or a financial statement, in the case of tax provisions, whereas for lawyers it may be the wording in a contract or other legal document, which might eventually be contested. As Evelyn's comments above suggest, accountants—particularly those with an audit background—are taught to be independent of their clients; thus, they may enter the field with more of a compliance mindset.[108] Lawyers, on the other hand, are more inclined "to go to bat," or be resolute advocates, for their clients.[109] This more adversarial approach may be tied to litigation, but—being part of their basic training—it can lead to a deeply rooted mindset among lawyers, as the following comment suggests:

> [Attorneys] are taught all along to think how the other one is going to hit us and how we should hit back, or hit first, to protect our client. So it gives a totally different approach when you are looking at a problem. [André, lawyer]

It is important to note that, regardless of their background, few of the individuals that we interviewed actually worked full-time in compliance or litigation.[110] Nevertheless, it was suggested that accountants would generally be more familiar with tax forms and their instructions, which would give them "a very complete picture of, and

108 Although accountants may enter the field with more of a compliance mindset, we acknowledge that this does not preclude them from sometimes engaging in aggressive tax planning. As others suggest (Feller and Schanz, supra note 2; and Hahn, supra note 79), creativity matters in tax planning, which, as we explain later, may be more directly associated with some of the other dimensions.

109 See Patterson, supra note 53; and Cockfield, supra note 53.

110 This is not unusual. Full-time tax litigators are a minority among tax lawyers, since most work is in the planning area. As for those trained as accountants, many have compliance experience, but most of it will have been obtained early in their career. Routine work in compliance is typically performed by junior staff or, more recently, outsourced by the larger firms: see Robertson et al., supra note 24; and Daugherty et al., supra note 24.

of exactly how the system works" (Yadin, lawyer). As Yadin elaborated, though, "[the] flip side . . . is [that] sometimes accountants will treat these forms and guides and tax returns as though they're gospel." In this sense, the compliance mindset can manifest itself in the deference to tax authorities to which Evelyn and others referred. As another interviewee suggested, this may be the opposite of an advocacy mindset:

> [A] lot of the accountants, will say, "Okay, what will the CRA [Canada Revenue Agency] say," and they'll stop there. If the CRA's not gonna bless them, they're not gonna do it. The lawyers will say, "Well, the CRA says that, but they probably can't win in court." So, on that side, the lawyers tend to be more aggressive. [Ryan, lawyer]

At the same time, a compliance mindset may also instill a certain sensitivity, particularly to something that might raise a red flag (Robert, lawyer and CPA), as the following illustrates:

> [Accountants] are much more sensitive to information that can be gleaned from the filings that support tax planning or positions taken, because they're doing the compliance. Right? Lawyers typically don't do compliance. If they do, they're not very good at it. I can say that as a lawyer. Whereas I think accountants, even the very junior ones, understand [that] when you put something on a form that's filed with the government, especially now where it's electronic, the CRA can use data analytics and other technology tools to basically extract information and analyze significant volumes of data. You're basically communicating things in a way that may not be obvious to others, and I think accountants are in tune to that, and they're much more sensitive to what they would call filing positions. What does this filing position reveal about the underlying tax approach that a client is taking? [Evelyn, lawyer]

While this sensitivity to what might be gleaned from the information contained in filing positions might be born of a compliance mindset, it could also be viewed as a more defensive equivalent to the advocacy mindset.

As stated, only a minority of tax lawyers are actively involved in litigation, yet the advocacy mindset engendered by it pervades their approach to tax work. Tied to their previously discussed facility with language, this will often be discernible in their writing:

> [Lawyers] always think about "How will we express this in the contract?" So, they can express things better because they know that someone will have to write it in plain English so that it's understandable and it doesn't lead to 10 different interpretations. It's not subject to contestation 10 years down the road. [Ivan, CPA]

Being effectively a way to preclude multiple interpretations and to avoid future disputes, the attentiveness to words that Ivan describes is defensive in nature. However, as Lucy (lawyer) explains, the advocacy mindset can also manifest itself in more elaborate and assertive ways:

> I see the closing agenda. And then I start thinking about how I'm going to evidence my story. Where I can leave traces, clues, as to. . . . Maybe there's a grey area in the law and I'm trying to make an argument, and this is my story, then I ensure, I leave traces of that everywhere to make sure that this implementation has the best argument. If I were going to get audited, what document would I show? Where, strategically, would the document be? Would it be in a separate document? Would it be an appendix? Even really basic things, is it going to be in the appendix? Is it going to be misconstrued because it's mixed in with another document? . . . So, it's about clarifying your intent, and ensuring that your objective is as well documented as possible in order to be supported if there was a litigation situation. So, we always think, how do I build my file in case there's litigation? [Lucy, lawyer]

While the aspect of clarifying or avoiding ambiguity remains, Lucy's approach is more strategic. Crafting her "story" with what she labelled as "self-serving evidence," she systematically builds up support for her arguments. Despite having done "zero litigation" herself, Lucy demonstrates that, as a lawyer, she is sensitive to how something may be viewed in a dispute, or to the definitive test that a tax plan might face in the courts. This aspect of tax practice is linked with the broader understanding of the law discussed next, as well as the emphasis on achieving the right result, as discussed later.

Broader Sensitivity: Understanding the Broader Client Reality Versus the Broader Law

> It's crazy how I never realized this. As a tax lawyer, you don't know the client, because you don't know anything about them. You never did their tax returns, you don't know the CFO [chief financial officer], you don't know the controller; you don't [know] anything. You don't have any historical information. [Lucy, lawyer]

The third dimension relates to the broader context that influences or informs the approach of practitioners. While accountants often have a better awareness of a client's specific circumstances, lawyers are more sensitive to any broader legal issues. Interviewees suggested that those trained as accountants have a broader view of the overall context and a narrower view of the relevant legislation, typically being more focused on the facts of a situation rather than the applicable law. The differences hint at somewhat distinct approaches to diagnosing problems. As Ophelia (lawyer) stated, "the accountant's background is more fact-specific." The greater focus on facts may be due to the fact that accountants—if they have experience working as auditors—are specifically trained to acquire sufficient knowledge of their client's business. It may also relate to the more repetitive nature of the other work routinely performed by accountants and their "ongoing relationship" with clients (Albert, lawyer and CPA).

As suggested by Lucy's comment above, more continuous relationships provide accountants with a better understanding of a client's history. Others observed that "accountants are generally more business oriented" and "more in the front lines"

(Albert, lawyer and CPA). As Lucy explained, the lack of background information could leave her detached from certain practical realities:

> So, you're coming in there with very little historical information. And it's a very abstract concept to put together a step plan. So, let's say I would say, "Oh roll over"; my step plan would say, "Roll over, using the smallest elected amount possible." I don't know what the elected amount is going to be; I don't do that. I don't know. I don't compute the ACB [adjusted cost base]. I don't know. The concept is that's what you do. And then I might put in the agreement, "The parties will agree to select an elected amount chosen by the bank." And then I never know what happens. So, it's very easy to sit on your ivory throne and say, "Roll over, just roll over." [Lucy, lawyer]

Lucy's further discussion revealed, however, that this disconnect was potentially related to her work environment. She claimed that after switching to an accounting firm, she became more sensitive to what might be operationally feasible. Providing the example of a monthly markup to be calculated for the purposes of a tax plan designed for a client with a "terrible" computer system, she elaborated:

> I know for a fact that they will never be able to punch out and get the number that I want in order to compute this markup that needs to be done every month. So, this is completely impossible for them to do. So, what I do is, now I know, . . . I call and say, "What number can you come out with easily if you punch in three keys from your computer system?" They're like "Oh yeah, yeah, gross revenues. Yeah, that's easy. That, we have." Or whatever, or like net revenues, "That number we have." Just perfect; I'll just use that number. So had I not been aware of that, I would have made up something completely in the abstract, and the client would have been required to live with that. [Lucy, lawyer]

As described, being more mindful of a client's reality allows a practitioner to be more aware of what might inadvertently create problems in implementation. As Abbott emphasized, treatments must ultimately fit a client's circumstances.[111] Beyond this better understanding of what might be practically possible, it was also suggested that accountants might have a greater sensitivity to more far-reaching potential consequences:

> In terms of lawyers and accountants, sometimes the lawyers don't really understand the impact the plan will have on the financial statements, and the accountants understand that if the financial statements don't look right, that may affect the financing. [Alex, lawyer]

The attentiveness to the financial implications that Alex describes is linked to the basic orientation and accountants' tendency to focus on the impact of numbers.

111 See supra note 78 and the related text.

While accountants might be more conscious of the realities of the client's context, lawyers were described as having a better grasp of the legal context, which is often relevant in tax practice, as illustrated by the following comments:

> [W]hen it gets to estate tax planning, for instance, you have to refer to the Civil Code in Quebec and common law in other provinces, and know and understand the difference between a usufruct and legal beneficiary or de facto beneficiary. Many concepts, lawyers have more ease at understanding when it gets very conceptual or it refers to a legal concept, especially. [Ivan, CPA]

Given their training, lawyers tend to see the Act not only as a "completely legal thing" (Yadin, lawyer), but also in the context of wider laws:

> [T]here's a lot of private-law issues that arise in tax files, which an accountant, I would assume, is not really in a position to comment on, because while an accountant would have a lot of familiarity with the Income Tax Act, they wouldn't have received training in property law, contract law, the applicable private-law principles that are driving what's going on in the Income Tax Act. [Yadin, lawyer]

Elsewhere in the discussion, Yadin offered an example of how he would be able to draw on broader fields of the law to understand a term that might be relevant for tax:

> [A]s a lawyer, I'm familiar with all kinds of case law and all kinds of topics [that are] relevant in the context of interpreting the Income Tax Act. If I'm interpreting a provision of the Income Tax Act that uses the word "seizure" (or whatever it is), I may be aware of jurisprudence that has nothing to do with tax on the meaning of the term "seizure." [Yadin, lawyer]

As Yadin stated, the ability to draw on a wider range of jurisprudence allows him to better interpret certain provisions of the Act. In many regards, this capacity is linked to greater proficiency, overall, in matters of interpretation. Not having this broader understanding, accountants may be prone to reading the Act more literally or "as is" (Anne, CPA), as the following suggests:

> [C]ourts have told us to read the Act, contextually, purposefully. I think because probably the accountants do not have a legal background . . . they tend to read the words textually. They're not as used to reading the words contextually or purposefully. They don't have the background to go on to see how words are interpreted in other statutes in other areas of law. [Ryan, lawyer]

Given their background, lawyers are generally more adept at understanding the law, on the basis of its broader intent. As Ryan explained later in the interview, lawyers are consequently more aware of what may work legally, compared to practitioners trained as accountants:

> [A] lot of times the accountants will read the Act very contextually and so say, "I can do this," and the lawyers will say, "Wait a minute. Yeah, you can interpret the

> words to say that, but I don't think you're ever gonna succeed if it gets to court." [Ryan, lawyer]

Relating to the appreciation of what may be feasible from a legal perspective, lawyers were also described as being more sensitive to specific issues in the legal execution of tax plans. For example, while from a tax perspective the differences between a merger and a liquidation may not be very significant, legally the latter can create many more complexities:

> A merger is much simpler, commercially, often than a liquidation. A liquidation entails a transfer, in a sense, and if it's a regulated organization, if it's [a] regulated industry, if there are a lot of permits, if [incomplete] . . . I know the legal documents often will include a merger as a non-event, often in a lot of the material contracts. But a liquidation is a transfer of assets, so it's a completely different legal transaction. So it's much more complicated. So, let's say if you don't appreciate that difference, and this is a very basic example, if you don't appreciate that difference, you say, "Oh, an amalgamation creates a year-end, a liquidation doesn't. Let's just liquidate." But if you know that it's much more complicated to liquidate from a commercial standpoint, then you wouldn't propose a liquidation. [Lucy, lawyer]

As Lucy stated elsewhere, "knowing how it's going to be implemented makes you a better planner." In the other examples previously discussed, she explained how practitioners trained as lawyers would perhaps be less inclined to have a practical view of the implementation of a tax plan, one that takes a client's realities into consideration. Here, she illuminated how lawyers would be more cognizant of how a plan would work legally. In short, while lawyers might be less proficient at tailoring treatments, they might have a better sense of the effectiveness of proposed solutions.

Process Orientation: Application Versus Procedure

> [L]aw is more abstract, conceptual, whereas accounting is very geared toward finding a specific number, counting things properly, and making things balance out together. It's maybe part of the training, so your mind . . . that's your first reflex, right? It's got to balance out; it's got to add up. Whereas a lawyer doesn't . . . there's no such . . . it doesn't have to add up. That's why I'm asking myself the question, and I could argue the answer that I want. Your end result is not finding an answer to put on the balance sheet, or to rectify or to ensure that that's the right answer. [Lucy, lawyer]

The last dimension relates to the approach typically adopted by practitioners in the performance of their work. Simply put, accountants were perceived to be more adept at applying the rules, and lawyers at interpreting and arguing, with the former focusing the process on the result and the latter on the process itself. The distinctions identified suggest that individuals may approach the task of inference in fundamentally different ways, reflecting their initial training. As Lucy and others explained, accountants tend to be more fixated on arriving at a definitive answer. Starting with "your basic debit equals credit," they "have to come up with something that balances"

(Albert, lawyer and CPA). While experienced practitioners are unlikely to simply follow the cookbook approach to which Cowan and Cutler refer,[112] those who were trained as accountants were nevertheless described as being more focused on the application aspect of the rules, and overall, given their tendency to look at "the structural way things get done" (Andrew, CPA), more structured or result-oriented in their approach. For those who were trained as lawyers, concepts were perceived to matter more than calculations. Lawyers were described as not being nearly as driven by the end result; possibly on account of their greater level of comfort with interpretation, argument, and ambiguities in general, their approach was perceived to be guided by an ongoing questioning rather than a gravitation toward premature responses. Perhaps because they are more procedurally oriented by training, lawyers were seen as more methodical and rigorous in their analyses. Being less directly focused on the outcome, the answer to a question is whatever is supported by sufficient reasoning or a systematic following of the process.

Overall, the application focus of accountants goes beyond the need "to find the right number" (Lucy, lawyer) for compliance purposes. Relating to the broader sensitivity discussed earlier, interviewees suggested that accountants had a better overview of the implementation of plans, partly because they are frequently responsible for the specific filings. As Lucy explained, for tax plans to work, all the steps must actually be implemented:

> So, [. . .] you could have a tax plan, the most beautiful tax plan in the world, and if it's not implemented in the legal transactions as such, you have nothing. Okay, so fine, you've implemented perfectly in the legal transactions and [if] it hasn't been filed properly, there's no point in having that beautiful plan in your slide deck. So, I never thought of the compliance part before I joined [a Big 4 accounting firm], but then I realized how that's also a very critical point. That hasn't been played up enough, I think [. . .] you do the plan, you implement it, and then you never see the tax return reflecting it. How is [. . .] the person doing the tax return going to know what to reflect? And the way they reflect it is also part of your story. [Lucy, lawyer]

As Lucy suggests, the compliance aspect—with which accountants are more comfortable—is critical to the proper execution of plans. However, her comment also hints at accountants' ability to "take it to the end" (Albert, lawyer and CPA), or in the words of Ibrahim (CPA), helping clients to "get there":

> I find that non-accountants have trouble helping you get there. They can tell you what it is, but they can't help you to actually get to the end destination by implementing and saying, "Okay. This is what we recommend you to do, and now we're going to do it for you. You're going to need to fill this out. You're going to need to reflect it like that in your tax returns. You need to think about these other forms that need to be filed,

112 Cowan and Cutler, supra note 6, at 339.

> and these are the numbers. This is how you reflect it in your financial statement." So, all of that goes with a certain planning. Accountants, I feel . . . and I've always felt that way, that we can go all the way, rather than stopping at some point and saying, "Okay. I gave you the plan, but I don't know how to implement it." [Ibrahim, CPA]

While accountants' application mindset may help them to navigate through the different steps required to carry out tax plans more proficiently, this skill may also permit them to evaluate different options better, for example in the case of a sale of a business:

> [Accountants] are really good at running through the numbers and building one step slowly until you come up to the end result. [Accountants] are very good at presenting different scenarios—let's say, sale of shares as compared to sale of assets and how the different tax attributes would play into this. In this respect, I find that the tax accounting profession is really ahead of the lawyers. You have a mastery of this which not many lawyers do have. Like, I know lawyers that are brilliant in all they do, but I don't think it comes at such an ease as for accountants. [Ophelia, lawyer]

Although accountants may be more focused on the "solution" and its implementation because of their orientation toward the application of the law, it was suggested that they are less naturally adept at the process of working through some problems, particularly those requiring research. As Anne (CPA) confessed, when she started working, she would avoid reading the Act "like the plague" because it is "a law book." Expanding on this, she explained that she learned the importance of methodically referring back to the law to resolve issues only during her advanced training:

> You'll see the [CPAs], for the first couple of years I find—and I think it's normal because we have had no training, right—we'll always go to commentary, we'll always go to IT [interpretation] bulletins. And then you start reading now, especially when I started going into In-Depth and they start teaching you right away, well, there is an ordering to, let's say, how respected is your research and your tax position. And initially when you come in, they try, they would sit you down and explain that, but you'd still try and go to the commentary. And I remember I'd get flak. I'd go to my partner, I'd be like, "Oh, I found the answer. It's here in this article." And they'd be like, "Well, what does it say in the law?" They're like, "I didn't read the law." And he's like, "Go back and read the law." It was a constant battle for, like, a year. You never had that with lawyers. [Anne, CPA]

Others similarly observed that the methodical approach to looking at tax problems would come more naturally to lawyers:

> It's just we have a methodology that was taught to us in a certain way. It's like, "You all look at the Act and then you look at the case law, and case law is super important," and you just think in that way. I think it's more natural for us to start from that methodology. [Lucy, lawyer]

As Lucy's comment suggests, the methodical approach encompasses more than just rigour in research, because it prompts lawyers to think in certain ways. As she explained later, lawyers learn to become more skeptical when it comes to interpretation:

> And you become a lot more skeptical, where it's, "Is that really what it says? Is this really what they mean?" Because you're always wondering about how they interpret, how this provision can be interpreted completely differently from the other provision in the Act that has the same words. [Lucy, lawyer]

The skepticism that Lucy described manifests itself in constant questioning. Albert, who became a lawyer after being an accountant, confirmed that it was law school that taught him to question more and, overall, "how to think":

> But I learned maybe more questioning, more understanding that every word has a meaning and how to find that meaning, in terms of jurisprudence, administrative law, stuff like that. It taught me how to think. And I was a good thinker before. [Albert, lawyer and CPA]

Elsewhere in the discussion, Albert offered an example of how this way of thinking and approaching problems in general would prompt him to investigate issues more deeply than accountants:

> I remember sitting here once and there was an accounting issue. And a bunch of people around the table, [. . .] they just took up the handbook and they started reading it. And saying maybe it means this, maybe it means that. And over, and over, and over again. And I just said, "Look," I said, "This doesn't help. You've got to this point. Now do your research into it. There are commentaries. There are experts in the field. Don't just stop here and read it and debate amongst yourselves." And that's a law thing, to my mind. That's what lawyers learned. They read cases. Some of them even argue cases. Not that many, from what I see. But some of them argue cases. And they know that just doing a moot court teaches you how to do this, how to find a reasoned answer. You may be wrong, but you've reasoned it. [Albert, lawyer and CPA]

As Albert explained, it is through the systematic process of research that lawyers learn to reason and build up arguments, ultimately allowing them to arrive at a "motivated opinion" or "reasoned answer." In short, in working through problems, lawyers may gravitate more naturally to constructive processes of inference.

Overall, in comparing the approaches of accountants and lawyers, Albert offered an analogy from mathematics:

> [L]et's remember back to your math days. Algebra was formulas; that's like accounting. Geometry was logic. You start here and you come to here, saying this is your proposition, this is your proof, and here's how you get to the proof and you say, "Yes. It's true." So, law could be more of a geometric process. And accounting is more formulaic. [Albert, lawyer and CPA]

Whereas the approach of accountants may be akin to stepwise working through a formula to arrive at a specific solution, the approach of lawyers consists of arriving at a certain "truth" through systematic reasoning. While the approach to tax work can be summarized along the four dimensions discussed, a difference in overall philosophy also emerged.

Overall Philosophy: "Does It Matter?" Versus "Is It Right?"

> It's not that lawyers are not practical. The thing is, [. . .] I didn't appreciate the concept of, you may be wrong, but if you correct something, it comes to the attention of the tax authorities. Therefore, sometimes it pays to be consistently wrong. So, consistency has a very important value. So, you have to then say, "What are my risks?" That's being practical. Now if you say, "We always have to do everything correctly," then consistency is not . . . it's not an issue. But you're representing your client, so you have to tell your client, "These are the risks, this is what happens if you do make a change." That's a matter of practicality. [Alex, lawyer]

Stated glibly, the respective overall philosophies of accountants and lawyers can be summarized as the former focusing on the question "Does it matter?" and the latter on the question "Is it right?" Like Alex, many suggested that accountants generally have a more practical or pragmatic attitude, possibly because they are typically "closer to the ground" (Robert, lawyer and CPA). In turn, lawyers were seen as being more guided by principles,[113] or by a more conceptual, abstract, or theory-driven approach. In offering the example of two mentors, Albert (lawyer and CPA) stated that the one who was an accountant was "more practical" because he had "a lot more client contact," while the other, a lawyer, was "very much an academic" and "much more of an ivory tower person."

Overall, as Ibrahim (CPA) described it, the distinction can be viewed as the difference between finding a "suitable solution" for a "particular situation," and the "best" or "theoretical answer," or, alternatively, determining "What works in this particular case?" rather than "What is the ultimate perfect scenario?" The impulse to get to a useful or relevant answer as opposed to a "right" answer may be explained by the financial reporting objectives that accountants are taught. Beyond the notion of consistency to which Alex (lawyer) referred, accountants may be influenced by the concepts of decision usefulness and materiality. Lucy (lawyer) elaborated on the latter:

> [I]f you're looking at a tax cushion, the accountant will look at the technical provision, but there's a pretty big margin to apply in law whether you're right or wrong. Or "Do you think, more likely than not, that this is right or wrong?" . . . there's a threshold of materiality that [accountants are] ready to take, whereas lawyers are much more keen.

113 To be clear, "more guided by principles" does not mean more ethical. While perceived differences related to aggressiveness were discussed, overall there was no suggestion that lawyers were more ethical or moral than accountants, or vice versa.

> There's no materiality; the answer is the answer to the question. The legal arguments need to be set out in a certain way. The intellectual, the logical, things have to be set out in a certain way. There's no materiality concept. That's one of the things that I found strange. And I say that because what's strange is, when I look at a question, the level of materiality to me is not relevant. What's the answer? What's the likelihood of risk? My goal is to try to find the answer, and if there's no answer, I try to make it; I try to define the level of risk as clear, as accurate as possible for the client. And they make the decision based on my assessment on the level of risk, whereas an accountant, what's built into their reflection is this materiality. It's like "if this is not important, why do you care?" [Lucy, lawyer]

As Lucy stated, lawyers tend to be "more keen" to find "the answer" and to be "as accurate as possible." On the other hand, accountants—perhaps on account of being more practically minded—may be more willing to accept a broader range of responses, provided that they satisfy a basic threshold, and they will question the value of refining an answer beyond that point. While the overall philosophy can be seen as the general mindset guiding each profession in its approach to tax work, the philosophies are clearly linked to the four dimensions. Our second study permitted us to corroborate and refine both, as discussed next.

STUDY 2: REFINING DIMENSIONS AND PHILOSOPHIES IN PRACTITIONERS' APPROACHES TO WORK

Method and Respondent Background

Recall that in studying tax practitioners' approaches to work, we employ multiple methods, because these can offer insights into "different aspects of empirical reality."[114] Thus, for our second study, we conducted an independently administered web-based survey in 2017 to refine the findings from study 1. Supplementing interviews with a survey is not new[115] and is how methods are most frequently mixed.[116] This triangulating strategy is effective[117] because it combines a less structured approach, entailing a high level of researchers' involvement with a chosen population, and an approach that is more structured, involving researchers less directly.[118]

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114 Norman K. Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (Oxon, UK: Routledge, 2009), at 26 (original work published in 1970).

115 Sam D. Sieber, "The Integration of Fieldwork and Survey Methods" (1973) 78:6 *American Journal of Sociology* 1335-59.

116 Alan Bryman, "Integrating Quantitative and Qualitative Research: How Is It Done?" (2006) 6:1 *Qualitative Research* 97-113 (https://doi.org/10.1177/1468794106058877).

117 McKerchar, supra note 13; and McKerchar, supra note 16.

118 William G. Axinn and Lisa D. Pearce, *Mixed Method Data Collection Strategies* (New York: Cambridge University Press, 2006).

For the distribution of the survey, we solicited and obtained support from the CTF and the Association de planification fiscale et financière (APFF).[119] The executive director of the CTF endorsed it in her monthly message, and an announcement with a link was posted on the CTF website.[120] The APFF similarly endorsed the survey in its quarterly publication.[121] Overall, 116 completed responses were collected, corresponding to a participation rate of 55 percent and a completion rate of 79 percent.[122]

As for the respondents, 45 (39 percent) were legal professionals, 49 (42 percent) were CPAs, 2 (2 percent) were both, and 20 (17 percent) were neither. Most (103, or 89 percent) were full-time tax practitioners with advanced tax training in the form of either a tax-related master's degree (72, or 62 percent) or the in-depth tax course offered by CPA Canada (35, or 30 percent).[123] The largest proportion (57, or 47 percent) worked in public practice for accounting firms (39, or 34 percent), law firms (12, or 10 percent), or as sole practitioners (6, or 5 percent), whereas 15 (13 percent) worked in industry and 24 (21 percent) worked in government. The remaining 20 respondents worked for other organizations (including academia) or preferred not to provide this information. As to age, 25 (22 percent) were under 30, 43 (37 percent) were between 30 and 45, and 42 (36 percent) were between 45 and 65. The remaining 6 were over 65 or preferred not to provide this information. Overall, compared to the interviewees in study 1, the survey sample was more balanced in representing a range of ages, suggesting that we managed to access a wider population through our survey.[124]

119 The APFF is a Quebec-based organization that focuses on both tax and financial planning. Similarly to the CTF, many of its members are lawyers or accountants, but the APFF also appeals to a range of financial advisers.

120 Heather L. Evans, "Message from the Executive Director" (May 2017) (www.ctf.ca/EN/Newsletters/Directors_Message/2017_Monthly_Messages/May_Message_2017.aspx).

121 Maurice Mongrain, "Éditorial" (June 2017) 22:2 *Stratège* [Association de planification fiscale et financière] 5.

122 Response rates cannot be determined for web-based surveys without knowing how many individuals have seen the survey or its links. See Barbara K. Kaye and Thomas J. Johnson, "Research Methodology: Taming the Cyber Frontier: Techniques for Improving Online Surveys" (1999) 17:3 *Social Science Computer Review* 323-37; and Martine Van Selm and Nicholas W. Jankowski, "Conducting Online Surveys" (2006) 40:3 *Quality and Quantity* 435-56. Accordingly, Eysenbach proposes other metrics for online surveys. The participation (or recruitment) rate measures how many of the unique visitors to the first page of a survey commenced a response, and the completion rate measures how many of those commencing the survey also completed it. See Gunther Eysenbach, "Improving the Quality of Web Surveys: The Checklist for Reporting Results of Internet E-Surveys (CHERRIES)" (2004) 6:3 *Journal of Medical Internet Research* (https://doi.org/10.2196/jmir.6.3.e34). In the case of our survey, 268 individuals visited the first page, and 147 effectively started the survey.

123 The relatively high proportion of individuals who had completed a tax-related master's degree reflects the fact that a disproportionate share of respondents were located in Quebec, where this form of training is more common.

124 McKerchar, supra note 13.

While the dimensions of practitioners' approaches and their overall philosophy emerged from study 1, the survey allowed us to further examine the perceived differences between the approaches of accountants and lawyers to tax work, and to refine our findings. Respondents who indicated that they viewed the two professions as at least somewhat different in their general approach were asked in an open-ended question to elaborate on what they believed to be the biggest differences.[125] Open-ended survey questions are a useful tool for further exploring broader populations and collecting data from which to make analytical generalizations.[126]

Overall, 94 participants responded to the open-ended question. For the most part, the responses were relatively short, averaging 28 words, but they ranged up to 143 words. One author analyzed these responses and, coming up with 30 different codes, coded them 211 times. A second author independently applied the same set of codes to the responses, and the rate of initial agreement was 73 percent. Differences in the coding were discussed and resolved.

Findings

The Question of Wider Applicability

Table 2 provides a summary of the codes and the grouping of these codes in relation to the four dimensions and the overall philosophy described in study 1.[127] The single most frequent code concerning the approach adopted by accountants related to their orientation toward the impact of numbers (n = 32), whereas for lawyers, the most frequent code related to their sensitivity to the legal context (n = 35). In both cases, the second most frequent code corroborated the overall philosophy guiding practitioners in each of the two professions. Although the survey did not permit us to delve as deeply into the perceived differences, it triangulated the findings of study 1[128] and

125 Respondents were specifically first asked, "Thinking now of how lawyers or accountants, in general, approach tax problems, to what extent, if any, do you believe accountants and lawyers differ (or not differ) in their approaches?" Those who responded, "Somewhat different," "Very different," or "Extremely different," were then prompted with the open-ended question "Please describe what you believe are the biggest differences." Both questions were part of the broader survey exploring several themes related to the practice of tax in Canada. The full survey instrument is available upon request.

126 McKerchar, supra note 13; and Margaret McKerchar, "Designing and Administering Surveys," in Lynne Oats, ed., *Taxation: A Fieldwork Research Handbook* (Oxon, UK: Routledge, 2012), 34-41.

127 Table 2 contains only 27 codes, excluding 3 codes that did not directly relate to the survey dimensions or philosophies. Those other codes were as follows: "Gaps tend to diminish with experience" (coded five times), "Differences depend on area of practice or the actual person" (coded four times), and "Other" (coded nine times).

128 McKerchar, supra note 13; and McKerchar, supra note 13.

TABLE 2 Perceived Differences in Approaches to Tax Work According to Survey Respondents

Dimension	Description	Accountants	Lawyers
Basic orientation	Basic focus (or aptitude) of practitioners when they approach tax work	Focus on (the impact of) numbers	Focus on (the meaning of) words
		Oriented/sensitivity toward numbers/results/quantitative aspect, financial/economic implications/outcome, monetary impact n = 32	Sensitivity to legal subtleties/nuances in language/less "black and white" n = 9
			Better at writing n = 1
Basic mindset	Actual client objective (or deliverable) that influences approach to work	Focus on compliance	Focus on advocacy
		Oriented (sensitivity) to (more comfortable with or guided by) (technical) compliance/forms n = 10	Oriented/sensitivity toward potential litigation n = 4
			Focused on agreements/legal documentation n = 1
			Develop better arguments n = 1
			Questioning/dissecting the law/less deference to the CRA/tax authorities n = 5
			More strategic/better at planning n = 2
Broader sensitivity	Wider contextual understanding that influences the work	Understanding the broader client reality	Understanding the broader law
		Focus on the facts n = 1	Focus on (understanding) the (broader) law/legality, jurisprudence, legal implications/aspect n = 35
		Business oriented/sensitivity n = 4	

(Table 2 is concluded on the next page.)

TABLE 2 Concluded

Dimension	Description	Accountants	Lawyers
		Real (versus purely legal) application of the law/non-tax implications n = 6	
		Sensitivity to client (accounting) information n = 3	
Process orientation	Aspect of the process that is emphasized in the approach	Approach focuses on the result (or the implementation of the solution)	Approach focuses on the process itself (or working through the problem—the result is secondary)
		Focus on (applying/following) the "rule" (versus the ITA) = "nuts & bolts"/ mathematical approach n = 7	Guided by a methodical/analytical (rigorous/theoretical) approach = better researchers n = 9
		Mechanical approach n = 2	Detail oriented/focus on technicalities in the law (versus broader application) n = 7
		Cartesian approach n = 1	Better at analogous reasoning n = 1
		Guided by comparative models n = 1	
Overall philosophy	What tends to guide the overall approach	Oriented toward pragmatic result—"Does it matter?" (idea of getting most suitable/ practical result)	Oriented toward theoretically correct result—"Is it right?" (driven by principle/idea of getting to "right" result)
		Practical/pragmatic approach (focus on risk, probability, experience) n = 18	Conceptually oriented, holistic view (of the law)/ focused on principles/policy/theory n = 16
		Focus on materiality n = 2	
		Focus on obtaining a consistent result n = 1	
		More concise n = 2	
		Seeking tax savings/financial/pecuniary advantage/more aggressive n = 3	

CRA = Canada Revenue Agency; ITA = Income Tax Act.

confirmed that the dimensions initially identified were not an artifact of the way we conducted the interviews.[129]

Overall, the four dimensions outlined—the basic orientation, the basic mindset, the broader sensitivity, and the process orientation—along with the overall philosophy, provide deeper insight into the predispositions with which differently trained professionals typically approach tax work, at least initially. However, because in both study 1 and study 2 the participants were directed to compare the two traditional professions, the dimensions highlight the relative differences between practitioners, rather than assess the aptitude of differently trained tax professionals. Further, because the interviewees in study 1 were asked to focus on what struck them when they first entered the field, the distinctions could be based on magnified contrasts. As one survey respondent suggested, "with experience, these differences fade greatly." Because many interviewees also stated this, we discuss the question of convergence next.

The Question of Convergence

> I would say that junior tax lawyers and junior tax accountants are trained very differently. That's stating the obvious. The professional skills they bring to the table are quite distinct in the early years, but I would say to be a successful and well-rounded tax advisor to clients, you really have to acquire some of the skill sets from the other profession. So, I'd say the people who are successful, around about six, seven, eight years of experience, do practise in a way that's substantially similar. That would include detailed ability to engage in statutory analysis and research, critical thinking, writing, presentation of ideas to clients, understanding and assessing and explaining risk and consequences to clients, interfacing with the tax authority and understanding how to do that in the appropriate professional manner. [Evelyn, lawyer]

As Evelyn stated, lawyers and accountants enter the field with different training, but to succeed as tax practitioners, they must acquire some of the skills from the other profession. As she suggested, successful individuals will practise in "substantially similar" ways within about seven years, regardless of their background. Most interviewees agreed that the approaches largely converge, at least with respect to the "tax" aspect:

> [I]f you think only taxes, I think there is no difference. After a few years of practice what attorneys do and what accountants do will be pretty much the same. [André, lawyer]

129 Denzin, supra note 114; Sven Modell, "Triangulation Between Case Study and Survey Methods in Management Accounting Research: An Assessment of Validity Implications" (2005) 16:2 *Management Accounting Research* 231-54 (https://doi.org/10.1016/j.mar.2005.03.001); Sven Modell, "In Defence of Triangulation: A Critical Realist Approach to Mixed Methods Research in Management Accounting" (2009) 20:3 *Management Accounting Research* 208-21; Grafton et al., supra note 18; and David L. Morgan and Kim Hoffman, "Searching for Qualitatively Driven Mixed Methods Research: A Citation Analysis" (2021) 55:2 *Quality & Quantity* 731-40.

Particularly with respect to the forms of work that both professions regularly perform, such as tax planning, most believed that "good" practitioners would attain the "same level" of competence:

> I believe that tax accountants, tax lawyers, they're pretty much on the same level. I don't think there's any magic, in the sense of a good tax accountant can do the tax plan, or a good tax lawyer can do the tax plan. [Alex, lawyer]

Even if lawyers and accountants may continue to assume different tasks, there was still a sense that a "good" practitioner "can do the other party's work to a great extent" (Immanuel, lawyer):

> A good accountant would know how to read legislation and interpret it and read case law and interpret it. A good tax lawyer would know how to compute tax and review tax returns and understand what's going on. [Immanuel, lawyer]

The common perception that most practitioners eventually acquire similar skill sets, despite differences in their original training, may be attributable to their aptitude more generally, as one interviewee suggested:

> [S]ome accountants could have been lawyers[,] they just chose to be accountants[,] and some lawyers could have been accountants. They have this particular intelligence with numbers but they just chose to be a lawyer. [Ivan, CPA]

Notwithstanding the widespread view that the approaches to tax work would converge, there were also suggestions that some differences might persist:

> I would say in 90% of the situations, we come to the same answer, but sometimes in a different way. [Robert, lawyer and CPA]

As Robert suggested, the convergence is not complete, and even if professionals may arrive at the same answer or treatment most of the time, their manner of doing so may still differ, implying distinctions in terms of inference. Henri (CPA) offered the following insight in this regard:

> I think over time, the difference between a tax practitioner who comes from an accounting or a legal background, I think it will become less and less. So over time, you gain more experience so you become better or you reduce your weaknesses. Over a long period of time, accounting and lawyer come fairly close to one, but again, personally, I would never be as comfortable interpreting the law, the legislation, as a lawyer. Because, well, at least my perception is that law, it's more natural to lawyers, because they go to school and they have much more experience in how to read, than myself. So, I think overall, yes, accountants, lawyers should come closer to one, but me personally, I think I would never be able to become as sufficient, or proficient, as a lawyer practising tax law. [Henri, CPA]

As Henri stated, the differences between the two professions will diminish over time because individuals will grow in areas of initial weakness. Despite this growth, though, a practitioner may never fully attain the same level of competence or comfort in the areas in which they were not professionally trained.

To explore more systematically the question of convergence and individual growth, we designed a further study. As described below, study 3 allowed us to probe more deeply into this relationship and to quantitatively confirm the dimensions that we identified in our first two studies.[130]

STUDY 3: TRIANGULATION AND THE QUESTION OF CONVERGENCE

Method and Respondent Background

As mentioned, the objective of study 3 was twofold: (1) to collect further data to provide quantitative support for the dimensions and overall philosophies; and (2) to examine more systematically the relation between experience and the approaches to tax work, including the question of convergence. To achieve this, we followed a multi-step approach.

First, informed by 23 statements initially included in study 2, we drafted a series of statements based on the four dimensions and the overall philosophies. The statements were drafted as self-assessments, but ones in which respondents were not asked explicitly to compare themselves with other practitioners. Since the themes of ethics and tax aggressiveness also emerged in our interviews, we developed and included several statements on these topics. Second, we refined the series of statements by consulting with colleagues and other experts in tax. This allowed us to design statements suitable for conducting a factor analysis, since our goal was to quantitatively corroborate the dimensions.

To further refine the statements, we performed a card-sorting task, drawing on Moore and Benbasat[131] and Santos[132] for guidance. The card-sorting technique is a qualitative alternative to exploratory factor analysis. Broadly, it consists of subject experts acting as judges to organize a list of potential items into conceptual categories. Several further colleagues and experts agreed to act as judges for our card-sorting task. In an initial sort, the judges define categories on their own, and in later sorts, another set of judges will organize the items into predetermined categories. If judges consistently sort items into the same categories, this will help to demonstrate

130 McKerchar, supra note 13.

131 Gary C. Moore and Izak Benbasat, "Development of an Instrument To Measure the Perceptions of Adopting an Information Technology Innovation" (1991) 2:3 *Information Systems Research* 192-222.

132 Gilmar J. Santos, "Card Sort Technique as a Qualitative Substitute for Quantitative Exploratory Factor Analysis" (2006) 11:3 *Corporate Communications: An International Journal* 288-302.

both convergent and discriminant validity of the constructs.[133] According to Santos,[134] the card-sorting technique is especially well suited to studies such as ours, where the research population is small or difficult to access. Appendix 2 provides the final set of 50 statements, as they appeared in the survey.[135]

Next, we used Qualtrics to program the online survey, following Dillman, Smyth, and Christian's guidelines,[136] and incorporating feedback obtained from colleagues and experts in the field. To allow participants to respond in English or French, the final instrument was professionally translated. The APFF agreed to support our survey by directly sending an e-mail invitation to its members (n = 2,604), as well as three reminders. The survey ran for two full months in 2022, during which we collected 208 usable responses.[137] This represents a response rate of 8 percent.[138]

Table 3 presents the respondents' backgrounds. As in the case of the interviews and the study 2 survey, CPAs accounted for the largest proportion (48 percent), followed by legal professionals (38 percent). Whereas 101 respondents (49 percent) worked for an accounting firm (or an affiliated law firm), 42 (20 percent) worked for a law firm, 21 (10 percent) were sole practitioners, and 44 (21 percent) worked in industry, government, academia, or elsewhere. Most (89 percent) worked at least 1,000 hours annually in tax and can therefore be considered full-time practitioners. Overall, individuals had an average of 17 years of experience working in tax.

As stated, our first objective was to quantitatively confirm the dimensions. In this regard, we used confirmatory factor analysis, which is appropriate whenever an a priori structure exists for the data to be analyzed.[139] In our study, the a priori process consisted of both our initial qualitative analysis (studies 1 and 2) and the card-sorting technique used to refine the items for our expected factors.

We first conducted the confirmatory factor analysis on each dimension, using the items that had been drafted for those dimensions. We employed a direct oblimin rotation and confirmed that all the extracted factors had an eigenvalue greater

133 Moore and Benbasat, supra note 131.

134 Santos, supra note 132.

135 The survey also included questions related to the participants' training and experience, as well as other demographic background information. The full instrument is available upon request, in both English and French.

136 Don A. Dillman, Jolene D. Smyth, and Leah Melani Christian, *Internet, Phone, Mail and Mixed-Mode Surveys: The Tailored Design Method* (Hoboken, NJ: Wiley, 2014).

137 Of the 406 individuals who accessed the survey, 352 agreed to participate by signing the letter of information. Of those, 90 dropped out before starting the main part, 52 did not complete the main part, and 2 failed to complete the demographics section.

138 Response rates for surveys involving tax professionals tend to be low. The range for recently published studies is between 4 percent and 25 percent. See Hahn and Ormeño Pérez, supra note 2.

139 Amy E. Hurley, Terri A. Scandura, Chester A. Schriesheim, Michael T. Brannick, Anson Seers, Robert J. Vandenberg, and Larry J. Williams, "Exploratory and Confirmatory Factor Analysis: Guidelines, Issues, and Alternatives" (1997) 18:6 *Journal of Organizational Behavior* 667-83.

TABLE 3 Study 3: Background of Survey Participants

		N	Percent[a]
Gender	Male	110	53
	Female	96	46
	Prefer not to answer	2	1
Profession	Lawyer	71	34
	Notary	8	4
	CPA	99	48
	Other	30	14
Annual hours in tax	> 1,000	184	89
	< 1,000	23	11
	Prefer not to answer	1	0
Work location	Accounting firm	101	49
	Law firm	42	20
	Sole practitioner	21	10
	Industry	16	8
	Government	6	3
	NGO, academia, or other	18	9
	Prefer not to answer	4	2
Age (years)	Under 25	1	0
	25 to 34	40	19
	35 to 44	55	26
	45 to 54	53	25
	55 to 64	39	19
	Over 65	17	8
	Prefer not to answer	3	1

CPA = chartered professional accountant; NGO = non-governmental organization.

a Percentages listed for each category may not add up to 100 because of rounding.

than 1.[140] We next examined how the statements loaded onto the factors. For loadings less than 0.36, we considered possible reasons as to why the statement did not load as expected. This is in line with recommendations for studies with a sample size of 200, where only loadings above the 0.36 threshold are interpreted.[141] Following this criterion, we dropped seven statements because they were not sufficiently clear conceptually. We also reassigned two statements that, upon closer examination, appeared to conceptually capture more than one dimension and for which we also had a possible alternate expectation based on our card-sorting technique.

140 Andy Field, *Discovering Statistics Using IBM SPSS Statistics*, 4th ed. (London: SAGE, 2013).

141 Andrew L. Comrey and Howard B. Lee, *A First Course in Factor Analysis*, 2d ed. (New York: Psychology Press, 1992); and Field, supra note 140.

Findings

Confirmatory Factor Analysis

Table 4 presents the final loadings for each dimension based on the 43 statements retained. All of the items retained had a factor loading of 0.36 or more, and 37 had a loading of at least 0.6. Most dimensions also had a reliable Cronbach alpha, the only exception being "Overall philosophy—Principled," which had a Cronbach alpha of 0.482.[142] Accordingly, we find that these statements are good measures of the underlying dimensions, since they correlate highly with each other, demonstrating convergent validity.[143] On the basis of these results, we created a variable for each factor, averaging the response for all of the associated items. We used these variables in our subsequent analyses.

To confirm that our dimensions capture conceptually distinct constructs and display sufficient divergent validity, we considered the correlations. As detailed in table 5, none of the dimensions correlate highly with each other (that is, by more than 0.8), so there is adequate divergence between all four dimensions. Nevertheless, because the dimensions are interconnected, we anticipated a fair degree of correlation, especially between the various dimensions associated with each profession. As expected, the correlation between the basic orientation to numbers was higher with each of the other subdimensions associated with accountants compared to those associated with lawyers. Similarly, the correlation between the basic orientation to words was higher with each of the other subdimensions associated with lawyers compared to those associated with accountants, except for the overall philosophy.

Table 6 compares the factors on the basis of professional background. As expected, accountants directionally rated themselves higher (lower) than lawyers on each dimension associated with accountants (lawyers), although the differences were statistically significant for only five subdimensions. Specifically, accountants ranked themselves higher on the basic orientation to numbers and a compliance mindset, and lower on the basic orientation to words, the sensitivity to the broader law, and being guided by a principled philosophy. Overall, the confirmatory factor analysis and the results in table 6 provide strong preliminary support for the findings of our first two studies. As discussed next, we used these factors to delve further into whether the approaches to tax work converge, as well as whether there is evidence of individual practitioner growth.

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142 Relying on Jum C. Nunnally, *Psychometric Theory* (New York: McGraw-Hill, 1978); and Robert F. DeVellis, *Scale Development: Theory and Applications* (Newbury Park, CA: SAGE, 1991), we consider a Cronbach alpha of 0.70 or more to be good, and lower alphas (for example, 0.50 or 0.60) to be acceptable. See Keith S. Taber, "The Use of Cronbach's Alpha When Developing and Reporting Research Instruments in Science Education" (2018) 48:6 *Research in Science Education* 1273-96.

143 Gilbert A. Churchill, "A Paradigm for Developing Better Measures of Marketing Constructs" (1979) 16:1 *Journal of Marketing Research* 64-73; and Tatiana Sandino, "Developing Good Measures To Advance Management Accounting and Control Research: A Discussion of 'Corporate Frugality: Theory, Measurement, and Practice'" (2011) 28:4 *Contemporary Accounting Research* 1388-96 (https://doi.org/10.1111/j.1911-3846.2011.01110.x).

TABLE 4 Study 3: Confirmatory Factor Analysis of Dimensions Identified and Refined in Study 1 and Study 2

Primary dimension	Subdimension	Statement from survey	Factor loading	Cronbach alpha
Basic orientation (BO)	BO numbers	I am comfortable with the numbers	0.901	0.783
		I am focussed on the financial impact of a tax issue	0.583	
		I am comfortable with the calculations	0.902	
		My understanding of the economic implications of a tax issue is . . .	0.682	
	BO words	I am comfortable with the meaning of words	0.823	0.742
		My understanding of the nuances in the law is . . .	0.709	
		I am sensitive to legal subtleties	0.877	
Basic mindset (BM)	BM compliance	I am sensitive to how something may raise a red flag to an auditor	0.633	0.725
		My understanding of the reporting requirements is . . .	0.839	
		My understanding of the tax compliance requirements is . . .	0.862	
	BM advocacy	I will always consider the CRA's position on an issue	0.482	0.709
		I am willing to go all the way for the client in arguing a position	0.674	
		I tend to have well-developed arguments	0.828	
		I am sensitive to issues that may be litigated	0.476	
		I think about how a tax position can be defended	0.742	
		I tend to take a very strategic approach	0.573	

(Table 4 is continued on the next page.)

TABLE 4 Continued

Primary dimension	Subdimension	Statement from survey	Factor loading	Cronbach alpha
Broader sensitivity (BSY)	BSY client	My understanding of the broader context of the relevant client is . . .	0.633	0.816
		My understanding of the history of the relevant client is . . .	0.698	
		I make sure that the client understands the tax risk at stake	0.843	
		I pay careful attention to the specific facts and circumstances of a client	0.611	
		I am very concerned with the needs of the client	0.820	
	BSY law	My understanding of the legal documents necessary to implement a tax plan is . . .	0.807	0.732
		I am focussed on the relevant law	0.587	
		My understanding of the broader legal context is . . .	0.829	
		My understanding of the intent of the tax law is . . .	0.700	
Process orientation (PO)	PO result	I believe the application of tax rules should be consistent with prior years	0.534	0.508
		I orient my approach to the desired outcome	0.673	
		I believe that there is a value to getting to an answer as quickly as possible	0.668	
		I believe that tax savings are very important for my client	0.664	
	PO process	I refer to the law first and then follow up with the CRA's guidance	0.846	0.695
		I am methodical in my analysis	0.641	
		I pay careful attention to the specific provisions in the relevant tax law	0.858	

(Table 4 is concluded on the next page.)

TABLE 4 Concluded

Primary dimension	Subdimension	Statement from survey	Factor loading	Cronbach alpha
Overall philosophy (OP)	OP practical	I tend to take a very business-minded approach	0.766	0.542
		I tend to be concise	0.630	
		I am concerned about arriving at a practical answer	0.741	
	OP principled	I believe that risk to a client should always be taken into consideration	0.683	0.482
		I am concerned about arriving at the right answer	0.625	
		I am concerned about the corrections to be made in the case of an error	0.815	
Other (OT)	Ethics	I am concerned about moral issues	0.732	0.596
		I am concerned about ethical issues	0.839	
		I am concerned about my reputation	0.600	
	Aggressiveness	I consider myself conservative	0.662	0.715
		I consider myself aggressive	0.827	

CRA = Canada Revenue Agency.

Growth and Convergence

As mentioned, our second objective was to examine more systematically both the individual growth of practitioners and the question of convergence in terms of the approaches to tax work. To empirically confirm this, we conducted further analyses based on our respondents' experience. As discussed, the interviewees in study 1 (for example, Evelyn, lawyer) had suggested that after about seven years, there is a convergence. Table 7 compares junior practitioners (those with seven years of experience or less) with more senior practitioners (those with more than seven years of experience).[144]

144 Initially, we divided our sample into three categories: (1) those with less than 7 years of experience; (2) those with 7 to 15 years of experience; and (3) those with more than 15 years of experience. Since we found virtually no statistical difference between categories 2 and 3 (and because we did not have any expectation based on our interview findings), we combined those categories in our analysis. To test for robustness, we performed further analyses using 10 years instead of 7 as the cutoff for experience, and using age (< 35 versus > 35) instead of years as a proxy for experience. The results (untabulated) were all qualitatively similar.

TABLE 5 Correlations Between Identified Factors

	Basic orientation		Basic mindset		Broader sensitivity		Process orientation		Overall philosophy		Other	
	Numbers	Words	Compliance	Advocacy	Client	Law	Results	Process	Practical	Principled	Ethics	Aggressiveness
Basic orientation												
Numbers	1	.149**	.654***	.343***	.500***	.303***	.237***	.156**	.449***	.185***	.332***	.208***
Words		1	.305***	.640***	.446***	.696***	.133	.619***	.349***	.227***	.173**	.155**
Basic mindset												
Compliance			1	.420***	.501***	.418***	.134	.261***	.362***	.236***	.336***	.184***
Advocacy				1	.550***	.537***	.316***	.550***	.473***	.395***	.262***	.266***
Broader sensitivity												
Client					1	.515***	.218***	.341***	.549***	.308***	.324***	.146**
Law						1	.181***	.563***	.423***	.198***	.158**	.152**
Process orientation												
Results							1	.075	.332***	.319***	.132	.298***
Process								1	.239***	.221***	.202***	.184***
Overall philosophy												
Practical									1	.166**	.154**	.189***
Principled										1	.362***	.086
Other												
Ethics											1	.177**
Aggressiveness												1

** Significant at the 0.05 level (2-tailed).
*** Significant at the 0.01 level (2-tailed).

TABLE 6 Differences in Approaches: Comparison of Lawyers, Accountants, and Others

Orientation	Total	Lawyers (n = 79)	Accountants (n = 99)	Neither (n = 30)	One-way ANOVA	Post-hoc comparisons: Lawyers versus accountants	Post-hoc comparisons: Lawyers versus neither	Post-hoc comparisons: Accountants versus neither
Basic								
Numbers	6.089	5.706	6.316	6.350	<0.001***	<0.001***	<0.001***	0.989
Words	6.006	6.350	5.805	5.767	<0.001***	<0.001***	<0.001***	0.964
Compliance								
Compliance	5.697	5.342	5.976	5.711	<0.001***	<0.001***	0.125	0.319
Advocacy	5.917	5.979	5.887	5.856	0.511	0.291	0.616	0.967
Sensitivity								
Client	6.273	6.246	6.263	6.386	0.538	0.490	0.523	0.589
Broader law	5.814	6.060	5.687	5.578	<0.001***	<0.001***	0.004***	0.735
Process								
Results-oriented	5.296	5.263	5.285	5.417	0.617	0.489	0.600	0.675
Process-oriented	6.221	6.388	6.205	5.833	0.003***	0.122	0.002***	0.048**
Philosophy								
Practical	5.670	5.684	5.710	5.500	0.415	0.486	0.507	0.389
Principled	6.389	6.481	6.249	6.611	0.005***	0.017**	0.582	0.014**
Other								
Ethics	6.134	5.974	6.128	6.567	0.001***	0.361	<0.001***	0.014**
Aggressiveness	4.408	4.333	4.490	4.333	0.353	0.381	1.000	0.599

** Significant at the 0.05 level (1-tailed for the post-hoc comparisons between lawyers and accountants on all the dimensions except "Other"; otherwise, 2-tailed).

*** Significant at the 0.01 level (1-tailed for the post-hoc comparisons between lawyers and accountants on all the dimensions except "Other"; otherwise, 2-tailed).

TABLE 7 Differences in Approaches: Comparison of Lawyers and Accountants Based on Years of Tax Experience

Panel A Lawyers and accountants (early versus late stage)

Orientation	Total	≤ 7 Lawyers (n = 26)	> 7 years' tax experience Lawyers (n = 53)	ANOVA	Total	≤ 7 Accountants (n = 20)	> 7 years' tax experience Accountants (n = 79)	ANOVA
Basic								
Numbers	5.696	5.183	5.952	<0.001***	6.324	6.150	6.369	0.035**
Words	6.350	6.140	6.453	0.018**	5.816	5.533	5.889	0.033**
Mindset								
Compliance	5.321	4.680	5.667	<0.001***	5.980	5.650	6.064	0.008***
Advocacy	5.981	5.705	6.113	0.003***	5.896	5.742	5.936	0.108
Sensitivity								
Client context	6.238	5.877	6.426	<0.001***	6.265	6.090	6.310	0.065*
Broader law	6.051	5.664	6.255	<0.001***	5.699	5.450	5.763	0.027**
Process								
Results-oriented	5.269	5.067	5.359	0.041**	5.301	5.300	5.301	0.497
Process-oriented	6.393	6.295	6.434	0.194	6.207	6.100	6.235	0.233
Philosophy								
Practical	5.684	4.949	6.044	<0.001***	5.731	5.450	5.803	0.024**
Principled	6.474	6.449	6.487	0.382	6.252	6.400	6.214	0.150
Other								
Ethics	5.974	5.705	6.109	0.035**	6.133	6.083	6.145	0.746
Aggressiveness	4.333	4.231	4.385	0.425	4.495	4.375	4.526	0.437

(Table 7 is concluded on the next page.)

TABLE 7 Concluded

Panel B Lawyers versus accountants (early versus late stage)

		≤ 7 years' tax experience			> 7 years' tax experience			
Orientation	Total	Lawyers (n = 26)	Accountants (n = 20)	ANOVA	Total	Lawyers (n = 53)	Accountants (n = 79)	ANOVA
Basic								
Numbers	5.603	5.183	6.150	<0.001***	6.202	5.962	6.369	0.001***
Words	5.877	6.140	5.533	0.003***	6.115	6.453	5.889	<0.001***
Mindset								
Compliance	5.101	4.680	5.650	<0.001***	5.895	5.667	6.064	0.012**
Advocacy	5.721	5.705	5.742	0.490	6.009	6.113	5.936	0.107
Sensitivity								
Client context	5.970	5.877	6.090	0.238	6.354	6.426	6.310	0.236
Broader law	5.571	5.664	5.450	0.267	5.956	6.255	5.763	<0.001***
Process								
Results-oriented	5.168	5.067	5.300	0.248	5.329	5.359	5.301	0.453
Process-oriented	6.210	6.295	6.100	0.336	6.318	6.434	6.235	0.147
Philosophy								
Practical	5.167	4.949	5.450	0.036**	5.903	6.044	5.803	0.051*
Principled	6.428	6.449	6.400	0.466	6.323	6.497	6.214	0.023**
Other								
Ethics	5.870	5.705	6.083	0.241	6.131	6.109	6.145	0.958
Aggressiveness	4.293	4.231	4.375	0.767	4.469	4.385	4.526	0.597

* Significant at the 0.10 level (1-tailed for the comparisons on all the dimensions except "Other"; otherwise, 2-tailed).
** Significant at the 0.05 level (1-tailed for the comparisons on all the dimensions except "Other"; otherwise, 2-tailed).
*** Significant at the 0.01 level (1-tailed for the comparisons on all the dimensions except "Other"; otherwise, 2-tailed).

In panel A of table 7, we compare junior lawyers with senior lawyers, and junior accountants with senior accountants. This comparison reveals that the rating for senior practitioners was higher than for junior practitioners for almost all of the 10 subdimensions for which we had an expectation. For lawyers, the differences were statistically significant for 8 subdimensions, the exceptions being following a process-oriented approach and being guided by a principled philosophy. For accountants, the differences were statistically (or marginally statistically) significant for 6 subdimensions, the exceptions being having an advocacy mindset, following a results-oriented or a process-oriented approach, and being guided by a principled philosophy. Overall, this suggests growth. Notably, for almost all of the dimensions, there also generally appears to be more growth in the subdimension in which each profession was described as weaker in the interviews, corroborating the suggestion that practitioners reduce their weaknesses over time.

In panel B of table 7, we compare junior lawyers and accountants with each other, and we also compare senior lawyers and accountants. Although the results for both professions suggest growth, especially in the dimensions in which they are initially weaker, the findings do not support the suggestion that there is a full convergence. In part, this may be attributable to the fact that, for half of the subdimensions, there was no statistical difference at the outset. However, it is also partly explained by the finding that lawyers and accountants showed growth on the dimensions in which they were already stronger. For example, while the sensitivity to the broader law is statistically significantly higher for both senior lawyers and accountants (compared to junior lawyers and junior accountants, as shown in panel A), higher suggested growth among the former accounts for a divergence between the two sets of practitioners. Interestingly, senior accountants rated themselves lower than junior accountants on the principled subdimension of the overall philosophy. While the difference between senior and junior accountants is not statistically significant, the lower rating results in a statistical difference with senior lawyers. Another interesting observation is that while junior accountants are more likely to be guided by a practical philosophy than are junior lawyers, senior lawyers are more likely to be guided by such a philosophy than are senior accountants. This suggests that over time tax lawyers may adopt a more practical philosophy.

Despite our limited sample size, overall, the results of the study 3 survey confirm the dimensions identified in the first two studies and many of the broad distinctions in the approaches to tax work between differently trained professionals. While our findings also suggest that, with experience, practitioners appear to acquire many of the skills of the other profession and overall demonstrate growth, we find limited support for the suggestion that there is a full convergence.

DISCUSSION

> One of my mentors described this . . . , "The difference between an accountant and a lawyer when they're faced with a problem would be the lawyer would look at the words in the statute and bash away at the words in the statute and try to make the situation that he's faced with fit the statute." He said, "In contrast, what an accountant will do is

> they'll read the statute. They'll look at the situation and they'll say, 'Can I change the situation to fit the words of the statute?'" [Andrew, CPA]

As the quotation above suggests, even if individual practitioners will necessarily refer to the same statute in addressing any given issue, their approaches to resolving problems may differ fundamentally, largely on the basis of their educational background. Examining in detail the overall approaches to tax work, we inductively identified four dimensions along which practitioners in the two professions traditionally associated with the tax field—that is, lawyers and accountants—tend to diverge, as well as an overall philosophy that appears to guide them in their work. Whereas our interviewees expressed the belief that experienced tax practitioners ultimately acquire similar skill sets and offer treatments that are largely the same, our findings suggest that there is some variance in how differently trained practitioners approach diagnostic tasks, as well as in the strategies of inference that they adopt.

As mentioned, our study considers tax work in general rather than focusing on individual tasks, which will inherently vary not only in the skills required, but also in who might normally perform those tasks. For example, interviewees explained that junior accountants usually assume much of the compliance and reporting work, including the preparation of tax returns, tax provisions, and other tax filings, as well as certain computations (such as safe-income calculations) and much of the due diligence work. Lawyers, for their part, are frequently involved in negotiations, drafting the tax part of agreements, as well as the legal documentation more broadly, such as corporate minutes and, in the case of public deals, work associated with disclosure, such as prospectuses and other publicly issued documents. While our goal was to understand more generally the logic with which differently trained practitioners approach tax work, the approaches will inevitably be conditioned by regular involvement in or familiarity with specific tasks. As suggested, even if some tax professionals may not be directly involved in any compliance or litigation, their earlier training or experience increases their sensitivity to the cascading effects of tax planning on these more peripheral forms of work.

Overall, there may be circular and reinforcing processes that explain some of the differences in approaches. An initial education may build on individual predispositions; for instance, some participants in our studies attributed the more argumentative approach associated with lawyers to personality differences. Subsequently, working in a specific environment, with its own further training, may, depending on the specific context, further accentuate original differences or alternatively lead to the convergence that many suggested. As discussed, the specific training of professionals influences their approaches to tax work, including, for example, accountants' propensity to view issues through the lens of materiality and lawyers' inclination to be advocates. The actual work assumed will also shape individuals' approaches. For example, if lawyers are mostly involved only in larger mandates, their clients may be more willing to battle out an issue in court or alternatively to pay a premium to get advice that is tailored to their situation. On the other hand, small or medium-sized firms may more typically rely on accountants for their advice and may be less willing

to contest a matter, since the amount at issue may not be worth the cost of a protracted legal dispute. For clients who wish to avoid any fight, it makes more sense to simply refer directly to CRA guidance than to build up a file that could be defended in court.[145]

The organizational context may also matter. For instance, some participants pointed out that in the tax departments of large accounting firms—where many tax lawyers work—tasks are often assigned on the basis of individuals' relative strengths. Thus, in a deal, accountants may be asked to write the step memorandums, and lawyers may be tasked with preparing the corresponding position papers, effectively reinforcing the prior skills of each. The work environment also matters, given the broader socialization processes within firms. As the following comment suggests, lawyers working in accounting firms might become more like accountants in their approach:

> The interesting thing, and I get this from a lot of my lawyer colleagues working in accounting firms, and my sense is from working with the accountants who work in law firms, that a lawyer working in an accounting firm becomes an accountant more or less, or at least in style, and works with accountants, starts to think like an accountant, and then an accountant in a law firm starts to think like a lawyer or work like a lawyer. [Yadin, lawyer]

Yadin's comments are notable because they imply that the firm and its internal culture are, or may over time become, more important than initial training in determining the approaches to tax work. This appears to be corroborated by interviewees, such as Lucy (lawyer), who said that their approach changed when they switched from working in a law firm to an accounting firm (or vice versa), or from public practice to industry. Although we identified several explanations that may account for why professionals approach tax work differently, our study made no systematic attempt to delve into the specific reasons. We encourage future studies to disentangle these causes.

On the whole, the four dimensions and the overall philosophy offer important insights into how differently trained practitioners will tend to approach tax work, which can serve as "ecologically attuned building blocks"[146] for future research. Considering the approaches in general rather than focusing on specific tasks makes it possible to achieve a more holistic understanding of the broader competence of individual professionals as tax practitioners. As suggested, the subdimensions associated with each profession are indicative of the common strengths with which practitioners trained in the two traditional professions will typically enter the field. However, it should not be assumed that all accountants or all lawyers will start their tax careers with the strengths normally associated with their profession, and some aspects of their training may not always be beneficial. For instance, related to the

145 We thank Alan Macnaughton for this insight.

146 Barley and Kunda, supra note 10, at 86.

focus on words, Lucy (lawyer) indicated that lawyers might be trained to be skeptical of wording almost to the point of being "paranoid," and Ophelia (lawyer) suggested that lawyers' opinions can be "so nuanced and sometimes totally useless because at the end, like, exactly what you're saying is worthless."

By providing insight into potential weaknesses among differently trained practitioners, the dimensions can be helpful in identifying skill gaps. Detecting possible weaknesses or a lack of requisite skills is important: as a number of interviewees suggested, successful tax practitioners must acquire some of the expertise associated with each profession (that is, accounting and law). This matters especially from a competence perspective, since tax practitioners, as specialists, are held to a higher standard of care in the provision of tax services.[147] While the interviewees suggested that distinctions largely diminish with experience, this cannot be assumed to occur automatically, and our survey results indicate that the convergence may not be as strong as perceived. With the continued outsourcing of work[148] and the technological disruptions anticipated,[149] individuals will have to become skilled in ever-shrinking periods of time.[150] Given that the ability of professionals to develop on the job the expertise in which they are less proficient may be reduced as time goes on, it will become increasingly critical to get the necessary specialized training right.

Deepening the understanding of the general approach to tax work by differently trained practitioners also offers further insights into the tax field, including potential explanations for some theoretical puzzles.[151] Sharing a field of practice, as accountants and lawyers traditionally have, can induce jurisdictional conflicts.[152] Accordingly, one aspect that we considered prior to conducting the interviews was the extent to which there might be tensions between differently trained practitioners within the work arena. However, consistent with others' observations of the Canadian context,[153] the interviewees suggested that even if individual firms compete, there was relatively little friction between the two professions more broadly. The tendency for individuals to converge at least partially in their approaches may not only explain the general lack of conflict, but may also lend further support to the idea that tax can be viewed as a distinct field that is presently not under the direct jurisdiction of either profession.[154]

Although disputes between the two professions may be limited, interviewees identified other forms of tension that commonly arose early in their career. Specifically, some superiors could be impatient with individuals who were relatively less skilled

147 Todres, supra note 7.

148 See Robertson et al., supra note 24; and Daugherty et al., supra note 24.

149 See the sources cited in note 25, supra.

150 Rowland, supra note 23.

151 Barley and Kunda, supra note 10, at 86.

152 Abbott, supra note 27.

153 See Satov, supra note 33; and Brown and Paton, supra note 33.

154 Hahn, supra note 79, at 2-3.

at certain tasks outside their principal training, and some interviewees felt frustrated in trying to catch up with colleagues and learn things that might be second nature to those trained in the other profession. Such frustrations may be tied to overall strengths and weaknesses, but since they may affect an individual's job satisfaction, they should matter to employers competing for talent.[155]

There may also be specific implications related to the understanding of the approaches to tax work more broadly. As Andrew (CPA) stated in the quotation at the beginning of this section, while lawyers are typically more comfortable with interpretation and arguing how the law could be interpreted favourably to fit a given situation, accountants may be more at ease adapting a situation to fit the Income Tax Act. This partly links to the practicality observed, as well as what was described as accountants' greater willingness to adapt treatments to the terms dictated by a client's situation. Many suggested that accountants (or perhaps more accurately, accounting firms) may be more ready to tailor solutions to clients' demands. As discussed, the fact-oriented approach can give accountants a better ability to build up and work through multiple scenarios, a skill that is particularly useful when trying to conceive tax plans. While this facility with strategies for inference might imply that accountants have more of the creativity that matters for tax planning,[156] the suggested difference in approaches has important implications for how plans may be propagated. Specifically, by learning how to change the facts of a situation, tax practitioners who are trained as accountants acquire the ability to adapt plans and effectively make them more easily replicable. Ultimately, this adaptability combined with a greater client orientation may not only account for some of the success of accounting firms in the tax-planning field, but also explain why some might have engaged more actively in more controversial avoidance schemes.[157]

CONCLUSION

Employing a mixed-method approach, we investigated how differently trained professionals broadly approach tax work by following an exploratory sequential design.[158] In study 1, we explored the perceived differences through in-depth interviews, mainly with lawyers and professional accountants. On the basis of these discussions, we identified four dimensions along which practitioners in these professions generally differ, as well as an overall philosophy guiding their approach. In study 2, we refined these dimensions and philosophies with qualitative survey responses. Our first dimension confirms that whereas the basic orientation of accountants is toward numbers and their impact, lawyers—being better trained in interpreting legislation—are more focused on the meaning of words. Our second dimension, which is tied to some of the tax work typically assumed, reveals that accountants are

155 Nibbe, supra note 26.

156 Feller and Schanz, supra note 2.

157 Addison and Mueller, supra note 2.

158 Harrison et al., supra note 15.

comparatively more likely to adopt a compliance mindset while lawyers generally adopt an advocacy mindset. Our third dimension relates to the sensitivity to context, with accountants demonstrating a better understanding of the broader client reality and lawyers a better grasp of the broader law. Our fourth dimension suggests that in process orientation, accountants tend to focus more on the result and the application of rules, and lawyers on the relevant law and process itself. Combined, the dimensions can be summarized in an overall philosophy: Whereas the ultimate question "Does it matter?" appears to guide accountants, lawyers appear to be guided more by the question "Is it right?" Finally, in study 3, we quantitatively corroborated the dimensions and then delved into the questions of whether there is evidence of practitioner growth and whether there is a convergence in the approaches over time. While we find some evidence of practitioner growth, our survey offered only limited evidence concerning full convergence.

Our study provides further insight into tax work and the tax field more generally. Specifically, both refining and adding to the existing understanding of how individuals may differ in their approaches to tax work, the dimensions we identified and elaborated lend themselves to further theorization as "ecologically attuned building blocks."[159] Beyond potentially breaking some new conceptual ground, our detailed study of work may also help to "resolve existing theoretical puzzles."[160] Occupations are defined by their tasks and practices,[161] and how individual members perform these tasks ultimately affects the jurisdictional claims that professions can make.[162] As suggested, our study may help to explain why no single profession has come to dominate tax practice in jurisdictions such as Canada, and why accountants may have been traditionally more active in propagating tax plans.

By examining the ensemble of practitioners in a manner that tries to avoid the piecemeal approach that has characterized the field,[163] we also help to synthesize and extend a growing stream of research on tax professionals.[164] While there is an extensive literature examining the judgment and decision making of tax accountants,[165] we specifically add to the narrower stream of empirical research directly comparing different categories of practitioners[166]—an area of study that matters, given the multiplicity of actors in the tax field.[167] Mixing methods in a qualitatively driven

159 Barley and Kunda, supra note 10, at 86.

160 Ibid., at 86.

161 Anteby et al., supra note 11.

162 Abbott, supra note 27.

163 See Erard, supra note 28; and Frecknall-Hughes and Kirchler, supra note 28.

164 Hahn and Ormeño Pérez, supra note 2.

165 Roberts, supra note 30.

166 Cloyd and Spilker, supra note 9.

167 Devos, supra note 3; and Anesa et al., supra note 29.

way,[168] we also respond to calls to combine qualitative and quantitative approaches[169] and to undertake more empirically grounded studies of work.[170]

Overall, our study highlights the strengths and weaknesses with which differently trained professionals typically enter the field. Having a better understanding of both should allow for more tailored instruction, which in turn will help to more quickly reduce potential gaps in skills and ultimately decrease the likelihood of blind spots. In a context of shrinking learning periods, owing to technological advances that are expected to disrupt tax work,[171] getting the specialized training of future tax practitioners right will become increasingly important. While this may matter from an efficiency perspective for employers, for employees it can affect job satisfaction, since the inability to adequately perform certain tasks may lead to frustration. More generally, by drawing attention to potential areas of concern, our study should be of interest to professional associations and any others charged with ensuring the competence of tax practitioners or the quality of tax work. As we shed more light on how accountants and lawyers approach tax work and the actual degree of convergence in the field, our findings can also potentially contribute to the debate on extending legal privilege to accountants' tax advice.[172]

Some of our findings point to potential avenues for future research. For instance, the consequences of our finding that certain practitioners, notably accountants, are more likely to have ongoing relationships, and hence greater familiarity, with clients and their histories could be examined more thoroughly. As suggested, future investigations could delve more deeply into the causes of the initial divergences, as well as the factors that might account for the convergence of professions, including the role of specific forms of specialized training and the organizational context within which much on-the-job learning may occur. Some of the limitations of our study could also be addressed. Whereas our investigation only considered Canada, where accountants and lawyers have worked rather harmoniously in the tax field—potentially facilitating the convergence that we observe—research could examine the approaches in jurisdictions where different professionals divide tax work in less collaborative ways, to confirm whether our insights are transferable to such other contexts. Also, while our data collection spanned seven years, including the period of the COVID-19 pandemic, we did not explore how broader changes to work environments might affect the approach to tax work in the years ahead. Finally, studies could be developed to measure the actual differences along the dimensions identified, and more longitudinal approaches using a within-subject design could directly investigate the growth of practitioners and the actual extent of convergence.

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168 Jennifer Mason, "Mixing Methods in a Qualitatively Driven Way" (2006) 6:1 *Qualitative Research* 9-25 (https://doi.org/10.1177/1468794106058866).

169 Modell (2011), supra note 129; and Grafton et al., supra note 18.

170 Barley and Kunda, supra note 10.

171 See the sources cited in note 25, supra.

172 Studniberg, supra note 7; Studniberg, supra note 61; and MacArthur, supra note 7.

APPENDIX 1 STUDY 1: PRELIMINARY INTERVIEW PROTOCOL QUESTIONS

As a professional, how do you identify yourself?

a. What image do you believe tax professionals have outside of their profession?
b. Do you feel that as a tax professional, you approach matters differently than other accountants, lawyers or other professionals who are not involved in tax?
c. Can you please elaborate on some of these differences?
d. As a [lawyer/accountant] do you feel that you approach tax differently than [accountants/lawyers]? Can you please elaborate on this?

Can you please describe the typical work that you carry out?

a. To what extent do you have working relationships with other accountants, lawyers or other professionals who are not involved in tax?
b. Can you describe the nature of these relationships?
c. Can you describe any challenges that you face in such working relationships?
d. Do you feel that there are any tensions between lawyers and accountants in practicing in the area of tax?

APPENDIX 2 STUDY 3: SELF-ASSESSMENT SURVEY QUESTIONS

SECTION 5—Approaches to Tax

Screen 8a and 8b

The statements in this question and the next three relate to aspects of tax work and how this work is performed. Please read each statement carefully, and provide the appropriate rating.

Please remember to not press the return button on your browser at any point. You cannot return to questions that you have already answered. However, if you wish, you can stop and return to the survey later.

(The questions will appear in a randomized order.)

Q13a:

Please indicate the extent to which you agree with each statement, using a scale from 1 = Strongly Disagree to 7 = Strongly Agree.

(The statements will appear in a randomized order, each with the appropriate scale.)

In general, when it comes to tax work . . .

I interpret the law literally.
I tend to see the tax law as less "black and white".

I am sensitive to issues that may be litigated.
I think about how a tax position can be defended.
I am more inclined to question the CRA's (or Revenu Quebec's) position on an issue.
I refer to the law before looking at the CRA's (or Revenu Quebec's) guidance.
I tend to use different scenarios to demonstrate the effect of the application of the tax rules.
I pay careful attention to the specific facts and circumstances of a client.
I am methodical in my analysis.
I believe that risk to a client should always be taken into consideration.
I believe that the tax savings matter.
I am concerned about the corrections to be made in the case of an error.
I consider myself more conservative than others in my overall approach.
I am concerned about moral issues.

Q13b:

Please remember to not press the return button on your browser at any point. You cannot return to questions that you have already answered. However, if you wish, you can stop and return to the survey later.

Please indicate how you rate yourself, using a scale from 1 = Not very good to 7 = Excellent.

(The statements will appear in a randomized order, each with the appropriate scale.)

In general, when it comes to tax work . . .

My understanding of the financial implications of a tax issue is . . .
My understanding of the nuances in the tax law is . . .
My understanding of situations that could raise a red flag for a tax auditor is . . .
My understanding of the financial reporting requirements of a tax issue is . . .
My understanding of the tax compliance requirements is . . .
My understanding of the legal steps necessary to implement a tax plan is . . .
My understanding of the broader context that is relevant to the client is . . .
My understanding of the client's history is . . .
My understanding of my client's actual ability to implement a tax plan is . . .
My understanding of the broader legal context is . . .
My understanding of the intent of the tax law is . . .

Q13c:

Please remember to not press the return button on your browser at any point. You cannot return to questions that you have already answered. However, if you wish, you can stop and return to the survey later.

Please indicate the extent to which you agree with each statement, using a scale from 1 = Strongly Disagree to 7 = Strongly Agree.

(The statements will appear in a randomized order, each with the appropriate scale.)

In general, when it comes to tax work . . .

I am comfortable with the calculations.
I am comfortable with the meaning of words.
I am sensitive to legal subtleties.
I tend to focus on what matters from a business perspective.
I am very concerned with the needs of the client.
I am focussed on the interpretation rather than the application of the tax law.
I am willing to go all the way in arguing a position.
I tend to be concise.
I will start by carefully reading the specific provisions in the law.
I believe that there is a value to getting to an answer as quickly as possible.
I believe that the concept of materiality is irrelevant.
I tend to be more willing than others to recommend an aggressive position.
I am concerned about ethical issues.
I am concerned about my reputation.

Q13d:

Please remember to not press the return button on your browser at any point. You cannot return to questions that you have already answered. However, if you wish, you can stop and return to the survey later.

Please indicate the extent to which you agree with each statement, using a scale from 1 = Strongly Disagree to 7 = Strongly Agree.

(The statements will appear in a randomized order, each with the appropriate scale.)

In general, when it comes to tax work . . .

I am comfortable with the numbers.
I am focussed on the financial impact of a tax issue.
I am more concerned with the facts of a case than the relevant law.
I make sure that the client understands the tax risk at stake.
I am focussed on the relevant law.
I make sure I have well-developed arguments.
I tend to take a very strategic approach.
I am focussed on how tax rules are to be applied.
I orient my approach to the desired outcome.
I am less likely to limit my research on an issue because of time considerations.
I believe the application of tax rules should be consistent with prior years.
I am concerned about arriving at a practical answer.
I am concerned about arriving at the right answer.

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https://doi.org/10.32721/ctj.2024.72.4.pf.editors

Policy Forum: Editors' Introduction—Critical Tax Theory

Tax scholarship that focuses on identifying biases in the design of tax-law frameworks has burgeoned over the past 50 years, and policy reforms have followed at least some of the changes recommended in that work. Most work that fits within critical tax scholarship is attentive to how tax law affects people differently depending on their race, gender, sexual orientation, class, disabilities, and family structure. More recently, critical tax scholarship has also attended to third world approaches to international law (sometimes referred to as TWAIL), with a view to informing changes that primarily affect international tax policies and provisions. And there has always been a vein of scholarship that might be described as critical tax work, which focuses on achieving greater fairness in tax system design and draws primarily on insights gleaned from the application of the equity criterion of tax policy analysis.

Two articles are presented in this Policy Forum. The first article, by Allison Christians and Samuel Singer, provides a framework for understanding critical tax studies. The authors situate critical tax scholarship as a natural component of the conventionally deployed criteria for analyzing tax policy. They argue that attending to the criterion of equity, for example, in an analysis of the deductibility of child-care expenses naturally leads to considering the consequences of that deduction for different taxpayers based on, say, race or gender. The distribution of externalized costs of pollution illustrates how the neutrality criterion can come to life in a way that reflects "critical tax" concerns, and the readability of tax laws is an example of how critical tax approaches have been used to advance simplicity. The authors offer other illustrations as well, with the objective of demonstrating how a critical tax approach can support the cultivation of intellectual diversity and thereby foster the development of better tax policy.

The second article, by Gillian Petit, Lindsay M. Tedds, and Selvia Arshad, demonstrates the application of critical tax analysis to three longstanding federal tax credits available to Canadian individual taxfilers: the universal basic personal amount, the spousal or common-law partner credit, and the eligible dependant credit. In particular, the authors aim to determine whether the equity objectives underpinning the provision of each of these credits are being met. Following a brief history of the credits, the authors use Statistics Canada's social policy simulation database and model (SPSD/M) to analyze the distribution of each credit in 2023 by income and gender. Their analysis offers some new insights; for example, low-income filers have significant unused credits, and there are some differences between gender categories (men and women) in the receipt of the spousal credit.

The authors suggest reforms that would better achieve the equity goal of these credits. For example, the credits could be refundable with a phaseout based on income, or they could be replaced with direct government expenditure programs that target the intended recipients of these credits.

Kim Brooks
Kevin Milligan
Daniel Sandler
Editors

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Policy Forum: The Role of Critical Questions in Tax Policy Analysis

Allison Christians and Samuel Singer*

PRÉCIS

Cet article explique ce que signifie poser des questions fiscales critiques, afin de montrer que les études fiscales critiques sont essentielles à une bonne analyse de la politique fiscale. Nous montrons que, lorsqu'elle s'appuie sur les trois principes fondamentaux de la politique fiscale que sont l'équité, la neutralité et la simplicité, une analyse de la politique fiscale est critique par nature, et que les études fiscales critiques ne constituent pas un changement radical. Parce qu'elles examinent si et comment une règle ou un régime fiscal touche les gens différemment selon leur classe sociale, leur structure familiale, leur handicap, leur race, leur genre ou leur orientation sexuelle, les études fiscales critiques contribuent à mettre en lumière les situations où ces principes fondamentaux de la politique fiscale sont bafoués. La théorie fiscale critique favorise donc une analyse rigoureuse de la politique fiscale parallèlement à l'analyse qui se concentre sur l'incertitude doctrinale, les résultats économiques indésirables et d'autres sujets. L'article conclut qu'un bon discours sur la politique fiscale exige de cultiver la diversité intellectuelle, ce qui nécessite de poser des questions fiscales critiques.

ABSTRACT

This article explains what it means to ask critical tax questions, in order to show that critical tax studies are an essential component of good tax policy analysis. We demonstrate that, grounded in the three core tax policy principles of equity, neutrality, and simplicity, all tax policy analysis is critical by nature, and critical tax studies constitute no radical departure. By expressly reflecting upon whether and how a tax rule or tax regime affects people differently depending on their class, family structure, disability, race, gender, or sexual orientation, critical tax studies are instrumental in highlighting instances when these core tax policy principles are violated. Critical tax theory thus fosters rigorous tax policy analysis alongside analysis that focuses on doctrinal uncertainty, undesirable economic outcomes, and other topics. The article

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concludes that good tax policy discourse requires cultivating intellectual diversity, which necessitates asking critical tax questions.

KEYWORDS: TAX POLICY ■ EQUITY ■ NEUTRALITY ■ ADMINISTRATION ■ COMPLIANCE ■ TAX EXPENDITURES ■ CRITICAL TAX THEORY

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INTRODUCTION

This article highlights the benefits of including critical tax studies in Canadian tax policy analysis. Our goal is to demonstrate that critical tax studies, which involve applying critical tax theories to legal texts and regimes, are a key tool for developing good tax policy analysis. Virtually all tax policy analysis is by nature "critical" in the broadest sense because the very function of tax policy analysis is to evaluate existing or proposed legal rules. Much of tax policy analysis therefore focuses on highlighting and proposing reforms to overcome uncertainty in, or undesirable economic impacts of, tax laws.

Critical tax studies are in no way a radical departure from other approaches to tax policy analysis. When policy analysts ask whether and how a tax rule or tax regime affects people differently depending on their class, family structure, disability, race, gender, or sexual orientation, they are asking a question grounded in critical tax theory. When these kinds of questions animate a focused inquiry, policy analysts are undertaking critical tax studies.[1] By expressly reflecting upon those individuals or communities whom a rule of law may exclude or disproportionately affect, critical tax theory helps foster rigorous tax policy analysis.

In forthcoming scholarship, we show how critical perspectives have been essential to identifying inequities in tax law, and we spotlight the particular contributions of scholars to critical tax scholarship in Canada.[2] In this article, we highlight how

1 "Call for Proposals: Critical Tax Theory in Application," Canadian Tax Foundation (www.ctf.ca/EN/EN/Publications/Canadian_Tax_Journal/FoN/Call_for_Proposals_CTJ-032624.aspx), for vol. 72, no. 4, 2024. For more about critical tax theory, see Anthony C. Infanti and Bridget J. Crawford, *Critical Tax Theory: An Introduction* (Cambridge, UK: Cambridge University Press, 2009), at 11-15.

2 Samuel Singer and Allison Christians, "Critical Perspectives in Canadian Tax Law," in Jena McGill, Karen Drake, Kyle Kirkup, Anne Levesque, and Joshua Sealy-Harrington, eds., *Critical Conversations in Canadian Public Law* (Ottawa: University of Ottawa Press, forthcoming).

critical tax theories are grounded in three key tax policy principles: equity (sometimes called fairness), neutrality (sometimes called efficiency), and simplicity (sometimes called administrability).[3] These concepts are widely accepted both in Canada and around the world, having been continuously developed throughout more than a century of use and analysis in every kind of public discourse on tax. One or more of the three principles underlies virtually every tax policy argument and every policy-based call for tax reform. Regardless of the method or lens applied, critical questions are ever-present in tax policy analysis.

To demonstrate that tax policy analysis is critical by nature and that critical tax studies are a principles-based analytical method for undertaking tax policy analysis, we begin by explaining the tax policy criteria of equity, neutrality, and simplicity, a set of principles that has widespread acceptance around the world. Using concrete examples from tax law policy and practice, we then show that critical tax theory is consistently integrated into tax policy analysis involving each of the three principles, across the public, private, non-profit, and academic sectors. We conclude by calling on fellow scholars and analysts to reject any discourse that discourages critical thinking, and instead to continue to cultivate intellectual diversity in support of rigorous tax analysis.

THE THREE CORE PRINCIPLES OF TAX POLICY ANALYSIS

Tax policy analysts disagree on many things. The proper tax treatment of capital gains and the wisdom of taxing corporations, for example, attract much debate and spark many reform proposals.[4] Despite the wide spectrum of policy perspectives, however, the three fundamental tax policy principles of equity, neutrality, and simplicity are consistently employed across political differences and international borders.

In the briefest of terms, equity references the need to treat people fairly, neutrality means that tax should not distort economic outcomes, and simplicity refers to the need for a reasonable administrative and compliance burden. Few tax policy outcomes meet all three principles in practice, so this equity/neutrality/simplicity taxonomy is a normative framework and not an empirical one. This is precisely why tax policy analysis is fundamentally critical in nature: its core goal is to examine which of the principles a given rule may violate, such that legal reform may be appropriate. "Critical tax studies" describes the particular kinds of questions that should be asked during this evaluation. Accordingly, a correlated benefit of critical tax theory is that

3 See Kim Brooks, "Delimiting the Concept of Income: The Taxation of In-Kind Benefits" (2004) 49:2 *McGill Law Journal* 255-307; and Allison Christians, "Introduction to Tax Policy Theory" (May 2018) (ssrn.com/abstract=3186791).

4 See, for example, the Policy Forum on the rate of taxation on capital gains in (2021) 69:4 *Canadian Tax Journal* 1151-1250; and Kim Brooks, "Learning To Live with an Imperfect Tax: A Defence of the Corporate Tax" (2003) 36:3 *University of British Columbia Law Review* 621-72.

it asks policy analysts to be thoughtful about which perspectives and methods they bring to their analysis, and which they exclude.[5]

Just as tax law is not neutral, neither is tax policy analysis. A holistic analytical framework includes multiple methods to assess tax policy proposals.[6] The issues that an analyst identifies as of concern—and the weight that is given to various concerns—differ depending on an analyst's methodology, perspective, and professional background. Some prefer taking a mostly economics-based lens to tax rules and regimes, and their analysis, which is governed by specialized methodologies, may focus on the economic neutrality principle yet bring into view the intersection of neutrality with equity and simplicity. Others use their practice of law to provide a practical lens on tax policy issues, and their approach, which typically follows established doctrinal analysis methods, might reflect principles of simplicity, yet bring into view the intersection of simplicity with neutrality or equity. Others still may employ empirical or doctrinal legal research to identify trends in case law and problems with legislative provisions and assess whether they align with or deviate from any of the key principles.

All of these inquiries are in essence critical inquiries even when they are not explicitly named as such. What makes something a critical tax study is the focused attention on critical tax questions when evaluating whether tax rules and regimes reflect one or more of the three tax policy principles. Below, we describe the three principles in turn and highlight the relevance of critical tax theory to each.

EQUITY

Since taxation involves transfers of resources among individuals in society, it is no surprise that concerns about equity are ubiquitous in tax policy discourse everywhere that governments use taxation to raise revenue for public spending.

Equity is generally understood in two dimensions: horizontal and vertical. These concepts, seen throughout the academic literature, are encapsulated in what is likely the most important document in Canadian tax policy history, the *Report of the Royal Commission on Taxation* issued in 1966-67 (informally referred to as "the Carter

5 See, for example, Lisa Philipps, "Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy" (1996) 11:1 *Canadian Journal of Law and Society* 141-76 (https://doi.org/10.1017/S0829320100004622).

6 As the Association of International Certified Professional Accountants explains, an objective evaluation of reform proposals depends on the formulation of such proposals using principles-based analytical frameworks: "Any suggestion for modifying tax rules—whether major or minor—raises the question of how to best analyze and compare proposals. A framework based on appropriate tax policies is needed to effectively analyze proposals to change tax rules and tax systems. Such a framework, based on widely accepted principles, also provides an objective approach for evaluating and improving existing tax rules." See Association of International Certified Professional Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals* (Durham, NC: AICPA, 2017), at 2 (https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf).

report," after the commission's chair, Kenneth LeM. Carter).[7] As the report states, "[h]orizontal equity requires that individuals and families in similar circumstances bear the same taxes. Vertical equity requires that those in different circumstances bear appropriately different taxes."[8] The theory is similarly encapsulated in Canadian government publications, such as the 1998 *Report of the Technical Committee on Business Taxation*, which notes that

> [f]airness is not easy to define to everyone's satisfaction but the concept is well rooted in the principles of horizontal and vertical equity. Horizontal equity means that individuals in the same or equivalent circumstances are taxed in a similar way, including a recognition of the benefits received from the use of public resources. Vertical equity connotes a tax system where individuals in different circumstances should bear appropriately different levels of tax. For example, taxes levied on individuals vary according to their ability to pay.[9]

Asking whether a tax rule or regime is equitable starts with a theoretical question: What does equity mean in the tax context? Tax policy theory gives us horizontal and vertical equity as two dimensions to consider in this normative analysis but the analysis is incomplete if it stops at the abstract theory. Critical tax questions are needed to determine whether a given rule or regime satisfies the equity requirement. We can see this in the Carter report, which notes that the equity principle leads to policy questions about "[w]hat personal circumstances should be recognized in allocating tax burdens among individuals and families" and "[b]y how much should tax burdens differ between those in one circumstance relative to those in another?"[10] Critical tax studies provide an analytical lens when debating whether a rule or regime satisfies the equity criterion.

We see many instances of critical tax questions at work in analyses of tax policy involving the equity principle. Critical tax theories are reflected and recognized by the legislature through the implementation of the Canadian Gender Budgeting Act,[11] which expressly articulates a principle with which presumably few would disagree: that laws should not disproportionately burden a person solely because of their gender. A significant contribution of critical tax studies in Canada focuses on how tax law may discount or exclude expenses that are often gendered in nature. For example, scholarship about the Supreme Court of Canada's decision to deny the deduction of

7 Canada, *Report of the Royal Commission on Taxation*, vol. 1 (Ottawa: Queen's Printer, 1966), at 4-8.

8 Ibid., at 4-5.

9 Canada, *Report of the Technical Committee on Business Taxation* (Ottawa: Department of Finance, 1998), at 1.2 (informally referred to as "the Mintz report," after the committee chair, Jack Mintz).

10 Carter report, supra note 7, vol. 1, at 5.

11 SC 2018, c. 27, section 314.

child-care expenses as a business expense in *Symes v. Canada*[12] analyzes biases in the tax system's treatment of child-care expenses, the intersection of child-care expenses with class and race, and which government policy instruments are best suited to support child-care needs.[13]

Similarly, the tax treatment of health-related costs is a policy area in which critical tax questions assist with the tax policy inquiry. Scholars have identified equity concerns when assessing the eligibility of people with disabilities for support through the tax system and the evidence threshold required to justify some medical expenses but not others.[14] These equity concerns often overlap with simplicity concerns about an excessive compliance burden for some taxpayers.

Critical tax perspectives can also inform courts and the tax authorities when they are applying legal tests that are intended to be objective, but differences in a rule's application can cause significant equity issues. For example, the due diligence test for directors' liability is an objective test, but in its application, decisions about which "comparable circumstances" to consider when assessing a director's actions against the reasonable person standard can lead to equity concerns.[15]

Likewise, in international tax policy, critical tax theories are reflected in studies that examine Canada's participation in global economic and fiscal policy measures, often through intergovernmental bodies including the Organisation for Economic Co-operation and Development (OECD) and the United Nations. Here, the question being assessed is what equity means when it is applied to nations and their interactions with one another. For example, critical tax questions posed by an international tax policy scholar might involve whether a nation's domestic tax laws or international treaties, even if neutral in textual terms, disproportionately benefit wealthier nations at the expense of poorer ones, and what individual nations ought

12 [1993] 4 SCR 695.

13 See, for example, Faye L. Woodman, "Women and Children in the Economy: Reflections from the Income Tax System" (1998) 47 *University of New Brunswick Law Journal* 311-24; Faye Woodman, "A Child Care Expenses Deduction, Tax Reform and the Charter: Some Modest Proposals" (1990) 8:2 *Canadian Journal of Family Law* 371-87; Audrey Macklin, "Symes v. M.N.R.: Where Sex Meets Class" (1992) 5:2 *Canadian Journal of Women and the Law* 498-517; and Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver: University of British Columbia Press, 2002).

14 See, for example, David G. Duff, "Disability and the Income Tax" (2000) 45:4 *McGill Law Journal* 797-889, at 814; Lisa Philipps, "Disability, Poverty, and the Income Tax: The Case for Refundable Credits" (2001) 16 *Journal of Law and Social Policy* 77-114; Hugh Neilson, "Policy Forum: Improving the Canada Revenue Agency's Delivery of Social Benefits—A Practitioner's Perspective" (2021) 69:1 *Canadian Tax Journal* 115-29; and Samuel Singer, "Marginalizing Trans Medical Expenses: Line-Drawing Exercises in Tax" (2013) 31:2 *Windsor Yearbook of Access to Justice* 209-28.

15 Samuel Singer and Monica Cheng, "Directors' Liability in Canadian Tax Law: Critically Analyzing the Due Diligence Standard" (2022) 55:3 *UBC Law Review* 713-44.

to do in response.[16] There is as yet still no consensus on what equity among nations means or requires in practice, but critical tax studies have been instrumental in pointing out weaknesses in past arguments and advancing a rigorous global discourse.

There are many other questions of equity to which critical tax studies could turn its attention and Canadian tax policy analysis will be stronger for it.

NEUTRALITY

The principle of neutrality, also referred to as efficiency, is that taxation should, to the extent possible, refrain from distorting economic outcomes. This principle is also encapsulated in the Carter report, which explains the need

> [to] increase the productivity of Canadian resources by adopting a tax system that is as neutral as possible so that the market will allocate resources efficiently. However, where other more effective means are not available, the tax system should be used to compensate for the misallocation of resources resulting from imperfections in the market mechanism.[17]

The *Report of the Technical Committee on Business Taxation* defines neutrality in similar terms, noting that "[t]he tax system can impair economic efficiency—and hence job creation and economic growth—by interfering with decisions made by businesses and entrepreneurs in their pursuit of economically profitable opportunities."[18]

Neutrality has two main components: first, that the tax system should facilitate the efficient allocation of resources; and second, that the tax system should be used to correct for market failures. Critical tax studies can be instrumental in providing empirical data and analysis with respect to both of these concerns. For instance, critical tax studies that examine the tax treatment of income earned by Indigenous people with status under the Indian Act[19] identify neutrality concerns about the lack

16 Peggy B. Musgrave and Richard A. Musgrave, "Inter-Nation Equity," in Richard M. Bird and John G. Head, eds., *Modern Fiscal Issues: Essays in Honor of Carl S. Shoup* (Toronto: University of Toronto Press, 1972), at 72-73; Kim Brooks, "Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Value," in John G. Head and Richard Krever, eds., *Tax Reform in the 21st Century: A Volume in Memory of Richard Musgrave* (Alphen aan den Rijn, the Netherlands: Kluwer Law International, 2009); Anthony C. Infanti, "Internation Equity and Human Development," in Yariv Brauner and Miranda Stewart, eds., *Tax, Law and Development* (Boston, MA: Edward Elgar, 2013); Nancy H. Kaufman, "Fairness and the Taxation of International Income," in Reuven S. Avi-Yonah, ed., *International Tax Law*, vol. 1 (Boston, MA: Edward Elgar, 2016); Ivan Ozai, "Inter-Nation Equity Revisited" (2020) 12:1 *Columbia Journal of Tax Law* 58-88; and Adam H. Rosenzweig, "International Vertical Equity" (2021) 52:2 *Loyola University Chicago Law Journal* 471-502.

17 Carter report, supra note 7, vol. 2, at 18.

18 Mintz report, supra note 9, at 1.1 to 1.2.

19 RSC 1985, c. I-5.

of certainty regarding who may access the tax exemption, as well as simplicity concerns regarding the high costs of assessing eligibility, alongside concerns that access to the exemption is inequitably denied.[20]

Policy analysis concerned about the preferential tax treatment of owning a home versus renting one similarly exposes a lack of neutrality that may lead to an overheated housing market,[21] and research on barriers to housing market entry for Black people and Indigenous people helps tax policy analysts identify the equity issues exacerbated by the housing affordability crisis in Canada.[22] The fact that these allocative inefficiencies exposed by critical tax questions also have equity components tied to such factors as class, age, and race only magnifies the important contributions to public policy discourse provided by critical tax theory.

Further, critical tax studies may be particularly helpful in considering the principle that taxes should be used to correct for "market failures." Market failures come in different forms. An example can be seen in the increasing attention of governments around the world to the overproduction of goods that are only cost-effective to produce because they can externalize costs to the public, such as by creating excess levels of pollution.[23] The type and magnitude of such externalized costs are subject to considerable debate. To the extent such costs can be accurately identified, measured, and priced, they may be countered with targeted taxes, which will move the market toward

20 See, for example, Cheyenne Neszo, "The Section 87 Tax Exemption as a Tax Expenditure" (2020) 4:1 *Lakehead Law Journal* 50-64; Martha O'Brien, "Income Tax, Investment Income, and the Indian Act: Getting Back on Track" (2002) 50:5 *Canadian Tax Journal* 1570-92, at 1588; and Bradley Bryan, "Indigenous Peoples, Legal Bodies, and Personhood: Navigating the 'Public Body' Exemption with Private Law Hybrid Entities" (2020) 6 *Canadian Journal of Comparative and Contemporary Law* 58-77.

21 See, for example, Allison Christians and Samuel Singer, "The Case for Fixing the Unprincipled Residence Tax Exemption," *Osgoode Hall Law Journal* (forthcoming); Jinyan Li, "Tax Reform: A Missing Piece in Canada's National Housing Policy," in Stephanie Ben-Ishai, ed., *Dangerous Opportunities: The Future of Financial Institutions, Housing Policy, and Governance* (Toronto: University of Toronto Press, 2021), 101-30; Umair Muhammad, "We Need To Talk About Canada's $3.2 Trillion Home-Grown Tax Shelter—The Principal Residence Exemption," *Generation Squeeze*, September 7, 2022 (www.gensqueeze.ca/canadas_home_grown_tax_shelter_principal_residence_exemption); and Paul Kershaw, "Policy Forum: A Tax Shift—The Case for Rebalancing the Tax Treatment of Earnings and Housing Wealth" (2018) 66:3 *Canadian Tax Journal* 585-604.

22 Canada Mortgage and Housing Corporation, "Buying While Black: Barriers to Black Homeownership," October 4, 2021 (www.cmhc-schl.gc.ca/en/nhs/nhs-project-profiles/2021-nhs-projects/buying-while-black-barriers-black-homeownership); and Canada, House of Commons, *The Effects of the Housing Shortage on Indigenous Peoples in Canada*, Report of the Standing Committee on Indigenous and Northern Affairs, 44th Parl., 1st sess., June 2022, at 40-45.

23 In economic terms, externalized costs are produced when private firms can offload costs to the public and the market does not correct this situation.

greater efficiency.[24] Critical tax studies can be instrumental in identifying, illuminating, and quantifying externalized costs, especially when such costs involve disparate effects based on class, family structure, disabilities, race, gender, or sexual orientation.

A legislative expression of the need for understanding cost externalization as a policy concern with critical tax theory dimensions can be seen in the recently announced Act Respecting the Development of a National Strategy To Assess, Prevent and Address Environmental Racism and To Advance Environmental Justice,[25] which reflects a view that environmental laws should not disproportionately burden vulnerable communities. While not directly implicating tax policy at the formative stage, this law concerns itself with, inter alia, the distribution of the externalized costs of pollution. This distribution is impacted by tax policies that provide tax incentives to industries that produce such externalities. Specific critical tax studies in Canada that examine whether tax laws that provide incentives to one form of business or another result in disproportionate burdens on persons because of their geographic location or employment would provide much-needed content to the discourse about who bears the environmental costs of business tax incentives.

Accordingly, a critical perspective—asking, "What impact do tax laws have on historically disempowered groups?"[26]—helps define the scope of possible external costs produced through tax laws and regimes which may be written in neutral terms but have economic effects that are anything but neutral.

SIMPLICITY

Finally, the principle of simplicity, sometimes referred to as administrative capacity or administrability, also has two dimensions, namely, that states ought to be able to enforce the tax systems that they create; and, conversely, that those who are subject

24 In this way, taxes can be used to force people to internalize (or bear) their own costs rather than allowing the public to bear the costs of production while private market participants extract the benefits thereof. Because it was Arthur Pigou who developed the idea of internalizing externalities through taxation, taxes designed specifically to correct externalities are typically characterized as "Pigouvian" taxes. See Arthur C. Pigou, *The Economics of Welfare*, 4th ed. (London: Macmillan, 1932) (www.econlib.org/library/NPDBooks/Pigou/pgEW.html). Pigouvian taxes are sometimes intended to raise money to compensate the victims of behaviours that have dispersed social effects. Difficulties include properly identifying the perpetrators and the victims, and assessing the relative contributions to harms, and harms suffered, respectively.

25 Bill C-226, Act Respecting the Development of a National Strategy To Assess, Prevent and Address Environmental Racism and To Advance Environmental Justice; royal assent June 20, 2024. See also Environment and Climate Change Canada, "Government Supports Bill Toward Progress on Environmental Justice," *News Release*, June 21, 2024 (www.canada.ca/en/environment-climate-change/news/2024/06/government-supports-bill-toward-progress-on-environmental-justice.html), which states, "Everyone should have a healthy, clean, and sustainable environment. The Government of Canada recognizes the need to advance environmental justice across Canada and the importance of continuing to work toward eliminating racism and racial discrimination in all their forms and manifestations."

26 Infanti and Crawford, supra note 1, at 11.

to the tax should not be overwhelmed by compliance burdens.[27] A premise of the simplicity principle is that governments have fiduciary duties, as agents of societies, to practice careful management of the resources and systems entrusted to them.[28]

In 1998, the Technical Committee on Business Taxation suggested that the simplicity principle is primarily connected to the neutrality principle, stating that

> [t]he objective of simplicity in the tax system is primarily related to the goal of reducing as much as possible compliance costs for taxpayers and administrative costs for governments. When compliance and administrative costs are reduced, resources are freed up to be used by business and governments to produce more of the private and public goods desired by Canadians.[29]

Minimizing compliance costs to increase a taxpayer's ability to comply without imposing an undue burden may also serve equity goals, such as the need to administer the tax equally across society and to avoid focusing on taxpayers based on how easy it is to collect the tax. When tax authorities lack the ability to monitor and enforce compliance evenly, it increases the risk of vertical and horizontal inequities. As stated by Milka Casanegra de Jantscher, and often repeated, "tax administration *is* tax policy."[30]

The principle of simplicity is described without normative explanation in the Carter report, which states:

> A taxpayer should be able to determine promptly, with great certainty and at modest cost, the tax consequences of a proposed course of action before making a decision.[31]

Yet there is also an element of equity, and even access to justice, in the report's subsequent statement that

> [t]he law should be well known by all taxpayers, and it is the responsibility of the government to explain the law to them in so far as it is possible to do so. What is more, when the law or its administration is altered by a successful appeal, or by administrative practices, it is only fair that such alteration be made known to all taxpayers.[32]

27 Evan Fox-Decent, *Sovereignty's Promise: The State as Fiduciary* (Oxford, UK: Oxford University Press, 2012).

28 For an exploration of states as institutions with fiduciary duties toward their populations, see Fox-Decent, ibid.

29 Mintz report, supra note 9, at 1.2.

30 Milka Casanegra de Jantscher, "Administering the VAT," in Malcolm Gillis, Carl S. Shoup, and Gerardo P. Sicat, eds., *Value Added Taxation in Developing Countries* (Washington, DC: World Bank, 1990), 171-79, at 179 (emphasis in original).

31 Carter report, supra note 7, vol. 2, at 14.

32 Ibid., at 15.

As in the case of equity and neutrality, critical tax questions are instrumental in revealing systemic weaknesses involving simplicity. For example, research on the lack of readability in the Canadian tax system highlights concerns about both increased compliance and administrative costs, and access-to-justice barriers.[33] Empirical research in tax law identifies tax administration barriers and inconsistencies that result in less-resourced individuals having less access to taxpayer remedies.[34] Accordingly, a critical perspective improves tax policy analysis when it uncovers simplicity-related issues that may otherwise be obscured.

INTELLECTUAL DIVERSITY FOR BETTER TAX POLICY

The Canadian tax policy community plays an important role in analyzing and translating a technical discourse that is daunting for many yet is relevant to every Canadian taxpayer. The primary goal of tax policy analysts is to critically analyze tax laws and regimes. A dynamic tax community should embrace a broad mix of methodologies and perspectives. Critical tax theory plays a key role in that analytical mix. It helps tax policy analysts recall that tax law is not neutral; every policy decision affects different people in different ways. Critical tax theory guides us to consider who might be excluded or disproportionately impacted by existing laws or proposed reforms. By illuminating the disparate impacts of seemingly objective tax rules and proposing alternative policy solutions, critical tax law scholars initiate and facilitate public debate about the hidden costs and benefits of tax policy choices.

Tax policy makers and educators should resist being drafted into ideological conflicts with politically charged language that provides only heat and no light. The design of tax rules in the context of our complex and rapidly evolving modern economy deserves broad-based, inclusive policy attention. Likewise, methodological and analytical diversity in tax analysis fosters better tax policy. We must continue to embrace divergent viewpoints in the tax community, as we encourage current and future generations to participate actively in improving our tax system.

33 Colin Jackson, "Readability in the Canadian Tax System" (2021) 44:3 *Manitoba Law Journal* 63-115.

34 See, for example, Samuel Singer, "Evaluating Canadian Tax Remission Orders: A Debt Relief Vehicle for Taxpayers" (2019) 42:2 *Dalhousie Law Journal* 397-425; and Colin Campbell, "Access to Justice in Income Tax Appeals" (2012) 63 *University of New Brunswick Law Journal* 445-58.

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Policy Forum: Who Benefits? A Critical Analysis of Canada's Federal Basic Personal Amount and Personal Tax Credits

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PRÉCIS

Le montant personnel de base (MPB), le montant pour époux ou conjoint de fait (MECF) et le montant pour personne à charge admissible (MPCA) existent, sous une forme ou une autre, dans le système fiscal canadien depuis sa création en 1917. Si l'intention initiale de ces crédits était d'exempter les gens de l'impôt afin d'assurer qu'ils aient les moyens d'assumer un coût de la vie minimum équitable, les changements apportés aux calculs et aux montants, ainsi que l'évolution du marché du travail et de la constitution des familles, ont modifié l'effet distributif de ces crédits. S'inspirant de l'analyse critique de la fiscalité, les auteures procèdent à une analyse distributive du MPB et du MECF. Elles concluent leur analyse par une discussion de la signification de leurs résultats pour la structure des crédits d'impôt selon l'évolution future des objectifs politiques.

ABSTRACT

The federal basic personal amount (BPA), the spousal or common-law partner credit (SC), and the eligible dependant credit (EDC) have existed, in some form or other, in Canada's tax system since its inception in 1917. While the original intention of the credits was to exempt persons from paying tax to ensure that they had enough to cover a fair minimum cost of living, changes in the calculations and amounts, as well as changes in the labour market and family formation, have changed the distributional impacts of these credits. Drawing on critical tax analysis, the authors conduct a distributional analysis of the federal BPA and SC. They conclude by discussing what their results mean for the structure of tax credits dependent on policy objectives moving forward.

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KEYWORDS: CANADA ■ FEDERAL TAXES ■ PERSONAL INCOME TAX ■ INCOME TAX CREDITS ■ TAX ALLOCATION ■ DISTRIBUTION

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INTRODUCTION

The federal basic personal amount (BPA), the spousal or common-law partner credit (SC), and the eligible dependant credit (EDC) have existed, in some form or other, in Canada's tax system since its inception in 1917. The original purpose of the BPA, SC, and EDC was to reduce or eliminate the income tax burden for low-income married men—a purpose that was quickly eroded by the increasing revenue needs of the federal government, growing support for the notion that even low-income persons should pay for the services that they use, and (later) the change from tax deductions to non-refundable tax credits.[1] Even though the estimated cost of the BPA in the 2023 tax year is around $50.8 billion—making it the largest federal tax expenditure—with an additional $2.3 billion for the SC and $1.3 billion for the EDC,[2] little attention has been paid recently to the distributional impacts of these tax credits.

Given structural changes to the tax system, the labour market, and family formation since the inception of the BPA, SC, and EDC, the distributional patterns of these credits have likely changed significantly over time, particularly from a gender perspective. Our inquiry and methodology take inspiration from the evolving literature on critical tax theory (CTT). CTT seeks to uncover bias in tax laws, questioning aspects that may seem normal or natural, and challenging the notion that tax law is neutral and unbiased.[3] In one strand of CTT, scholars examine the impact of tax

1 Shirley Tillotson, *Give and Take: The Citizen-Taxpayer and the Rise of Canadian Democracy* (Vancouver: University of British Columbia Press, 2017), at chapters 3, 4, and 5.

2 Canada, Department of Finance, *Report on Federal Tax Expenditures: Concepts, Estimates and Evaluations 2024* (Ottawa: Department of Finance, 2024).

3 Anthony C. Infanti and Bridget J. Crawford, *Critical Tax Theory: An Introduction* (Cambridge, UK: Cambridge University Press, 2009), at xxi.

laws on historically disempowered groups.[4] Applying a critical lens to the tax system has led CTT scholars to interrogate why tax expenditures (such as the BPA, SC, and EDC) are privileged over spending on government programs and services that could be better targeted and have greater impact.[5]

With this critical lens in mind and building on work by Goffman, McGregor, and Kesselman,[6] we engage in a distributional analysis of the federal BPA and SC.[7] The BPA and SC are universal non-refundable tax credits that were established with clear policy objectives. Given the magnitude of these tax expenditures, it is worthwhile asking who is benefiting from these credits, by how much, and whether there are differential impacts based on gender, economic class, and/or the way in which "benefit" is defined. We use Statistics Canada's social policy simulation database and model (SPSD/M) to simulate the distributional effects of the BPA and the SC, and compare the results with the government's intended (stated) policy purpose in providing these credits.

BACKGROUND

The concept of a BPA that varied with family type was embedded in Canada's first federal income tax statute, the Income War Tax Act, 1917.[8] Initially, the BPA was a deduction from income[9] (as opposed to a non-refundable tax credit), and the amounts were $1,500 in the case of an unmarried person or a widow/widower without children, and $3,000 for all other (married or widowed) persons. The original intent of these deductions was to exempt most people from paying tax, so that they had enough income to cover a "fair minimum cost of living."[10] In 1918, a deduction of $200 per dependent child was introduced. In the decades that followed, the deductible amounts were sporadically, albeit modestly, changed.[11] In 1974, the deductions were

4 Anthony C. Infanti, "Tax Equity," in *Critical Tax Theory*, ibid., at 60-61.

5 Anthony C. Infanti, "A Tax Crit Identity Crisis? Or Tax Expenditure Analysis, Deconstruction, and the Rethinking of a Collective Identity" (2005) 26:3 *Whittier Law Review* 707-821.

6 Irving Jay Goffman, *Erosion of the Personal Income Tax Base in Canada and the United States*, Canadian Fiscal Theses Series no. 2 (Toronto: Canadian Tax Foundation, 1960); Gwyneth McGregor, *Personal Exemptions and Deductions*, Canadian Tax Paper no. 31 (Toronto: Canadian Tax Foundation, 1962); and Jonathan R. Kesselman, "Credits, Exemptions, and Demogrants in Canadian Tax-Transfer Policy" (1979) 27:6 *Canadian Tax Journal* 653-88.

7 While we would have liked to analyze the distribution of the EDC, we were unable to do so owing to a very small sample size.

8 SC 1917, c. 28.

9 Deductions are subtracted from total income before computing taxes owed. The value of deductions therefore depends on the taxfiler's tax rate, which, because of the progressive nature of personal income taxes, increases with rising annual income.

10 See Tillotson, supra note 1, at 65.

11 A notable, yet temporary, change occurred between 1942 and 1946, when the deductions were effectively changed to tax credits as the cost of the war mounted: Canada, Department of

indexed to inflation. At that time, they were not much different (in nominal terms) from the original measures introduced in 1917 and 1918.

It was not until the 1988 tax year that these personal deductions were converted to non-refundable tax credits. The amount of the benefit was increased across the board, but the new credits were only partially indexed to inflation.[12] In introducing this change, the finance minister stated:

> The conversion of the personal exemptions to credits is a major step in improving the fairness of the tax system. Credits make the tax system more understandable. Converting [deductions] to tax credits directs more resources to those in need and reduces the after-tax value of benefits to higher-income Canadians. Greater use of tax credits provides a major building block which can be used in the future to improve and better target assistance to Canadians in need.[13]

It should be noted that it was a priority for the federal government at that time to restore fiscal responsibility after a period in which it had built up a massive public debt and deficit, and expenditures needed to be restrained. Tax credits—assuming that they are computed by reference to the lowest statutory tax bracket, as opposed to the individual's marginal tax rate—are less expensive to the fiscal purse than tax deductions.

There have been only two notable changes to these basic credits since 1988. First, the government reintroduced full indexation of the thresholds in the 2000 tax year, arguing that this measure would help low-income Canadians in particular.[14] Second, as of the 2020 tax year, the value of the BPA was enhanced.[15] The enhancement was intended to "help to make life more affordable for Canadians."[16] It would "mean that middle class Canadians, and people working hard to join the middle class, would pay

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Finance, 1942 Budget, Budget Speech, June 23, 1942 (https://publications.gc.ca/collections/collection_2016/fin/F1-23-1-1942-eng.pdf). For the 1947 tax year, these credits were returned to deductions on the basis that the blend of deductions and credits made the tax system overly complex and the government no longer had to fund the war effort: Canada, Department of Finance, 1946 Budget, Budget Speech, June 27, 1946 (https://publications.gc.ca/collections/collection_2016/fin/F1-23-1-1946-eng.pdf).

12 Between 1989 and 1999, the thresholds for all tax rates and credits were indexed only for inflation in excess of 3 percent. This resulted in no indexation of the thresholds between 1992 and 1999.

13 Canada, Department of Finance, *The White Paper: Tax Reform 1987* (Ottawa: Department of Finance, June 18, 1987), at 31 (https://publications.gc.ca/collections/collection_2016/fin/F2-75-1987-2-eng.pdf).

14 Canada, Department of Finance, 2000 Budget, Budget Speech, February 28, 2000, at 22.

15 In 1998, a similar tax measure was introduced that provided an additional $500 to low-income Canadians. However, that measure was eliminated in 1999, and the value of the BPA and SC was increased for all taxpayers.

16 Canada, Department of Finance, 2019 Economic and Fiscal Update, December 16, 2019, at 6.

no federal taxes on the first $15,000 they earn," while "the benefits of the increased BPA [would be phased out] for wealthy individuals."[17] As of the 2023 tax year, this enhanced BPA—herein referred to as "the EBPA"—is a maximum of $15,000 for taxfilers with net income below $165,430 and is then reduced for taxfilers with net income between $165,430 and $235,675. At that upper threshold, the enhancement is fully phased out, and the maximum BPA is $13,520. Both the EBPA and BPA are valued at the current lowest statutory tax rate of 15 percent, for a maximum (non-refundable) reduction in federal taxes on taxable income of $2,250 and $2,028, respectively.[18] We refer to the EBPA and BPA collectively as the (E)BPA and analyze it as one credit.

The current SC and EDC are also non-refundable tax credits. The SC is targeted at couples where one partner is income-dependent on the other: that is, one partner must have income while the other must have net income under $15,000.[19] The credit amount is reduced, dollar for dollar, for every dollar of the dependent partner's net income. Similarly, the EDC—previously known as the "equivalent-to-spouse" credit—is a tax credit that is typically claimed by a single parent with whom a dependent child resides. Because a single parent is not able to claim the SC, the EDC is an attempt to equate these households. The SC and EDC essentially transfer the unused portion of the (E)BPA from the dependent spouse or child to the supporting adult.

The permanent change from deductions to tax non-refundable credits that occurred in 1988, as well as the introduction of the (E)BPA, is noteworthy because the research that has previously been conducted on the distributional impacts of these credits occurred while they were deductions. Goffman[20] argued that the exemptions were costly and eroded equity in the tax system. McGregor[21] instead considered the relative benefits of the deductions in terms of the share of total income, arguing that the deductions played a critical role in reducing taxes for lower-income individuals compared to those with higher incomes. Finally, Kesselman[22] focused on the absolute benefits of these basic deductions. He showed that they conferred greater tax savings on individuals with higher incomes and recommended that the basic deductions be converted into tax credits. In particular, he argued that in order to restore equity in the tax system, the thresholds for the credits should be based on some measure of poverty; that a possible alternative to the standard non-refundable tax credit would be one that had minimum and maximum thresholds, similar to the current (E)BPA; and that greater consideration needed to be given to making the tax credits

17 Ibid.

18 The provinces and territories offer a similar basic personal credit at varying thresholds and tax rates. In this article, we consider only the three specified federal credits.

19 Or under $17,499 if the income-earning partner is eligible for the Canada caregiver credit (for the 2023 tax year).

20 See Goffman, supra note 6.

21 See McGregor, supra note 6.

22 See Kesselman, supra note 6.

refundable. It is interesting to note that these various conclusions relating to tax expenditures are all consistent with arguments made by CTT scholars,[23] and appeared in the literature long before CTT emerged as a distinct field of study.

DATA AND METHODOLOGY

Data

To examine the distribution of the (E)BPA, SC, and EDC, we use the SPSD/M, version 30.1, created and maintained by Statistics Canada. The SPSD/M contains a representative database of all Canadians and their income based on the Canadian Income Survey and administrative tax-filing data. The SPSD/M is often used in Canada to model changes to taxes and transfers.[24]

There are drawbacks to using the SPSD/M. First, it does not contain information on people living in the territories or on reserves. Second, it does not contain (reliable) information on disabilities, race/ethnicity, Indigeneity, or other demographics that are important for an intersectional analysis. We are limited to the categories of "sex"—specifically, male and female (biological traits whose relationship with expressions of gender/socialized gender is unclear)—and economic class.

To examine the distributions of the current 2023 tax credits, we export the database of the SPSD/M and run distributional analyses using Stata 18.0.[25] Our simulations are based on 2023 tax parameters and (simulated) incomes for taxfilers aged 16 years and over. This leaves us with a total weighted sample of 32,703,660 taxfilers.

Methodology

In examining the federal tax credits, we use the "operational" amount. That is, for each credit, there is a maximum amount that individual taxfilers are potentially eligible to claim. For taxfilers with high taxable income and therefore high federal taxes on that income, the operational amount of the credit will be identical to the maximum amount that they are eligible to claim; that is, they can make use of the full credit amount for which they are eligible. For taxfilers with low taxable income and therefore low federal taxes on that income, the operational amount of the credit may

23 See Infanti, supra note 5.

24 See, for example, David A. Green, Jonathan R. Kesselman, Lindsay M. Tedds, Daria Crisan, and Gillian Petit, *Basic Income Simulations for the Province of British Columbia*, research paper commissioned by the Expert Panel on Basic Income (Victoria: Government of British Columbia, 2020); Robin Boadway, Katherine Cuff, and Kourtney Koebel, "Designing a Basic Income Guarantee for Canada," in Elizabeth Goodyear-Grant, Richard Johnston, Will Kymlicka, and John Myles, eds., *Federalism and the Welfare State in a Multicultural World* (Kingston, ON: Queen's University Press, 2019); and Office of the Parliamentary Budget Officer, *Distribution and Fiscal Analysis of a National Guaranteed Basic Income* (Ottawa: PBO, 2021) (https://distribution-a617274656661637473.pbo-dpb.ca/71f12c2a896208681dcd59ff69f19e1a6c024d00a60c2e2c195f56293f8fff1c).

25 Stata code available upon request. SPSD/M code instructions also available upon request.

be less than the maximum amount for which they would have been eligible if they had had a higher level of taxable income. For these taxfilers, we assume that the tax credits that can be claimed are applied in the order in which they appear on the tax form. The operational amount is the amount of each credit (applied line by line) that the taxfiler can claim before their federal tax on taxable income is reduced to zero. We believe that this approach is informative for an equity analysis of non-refundable tax credits.[26]

To illustrate, we start with the (E)BPA (line 30000 of the T1 income tax form). To calculate the operational (E)BPA, we take the maximum amount of the (E)BPA for which a taxfiler is potentially eligible (between $2,028 and $2,250, depending on net income). If a taxfiler has federal tax on taxable income that is greater than their maximum (E)BPA, the operational (E)BPA is the maximum (E)BPA amount.[27] If a taxfiler has federal tax on taxable income that is *less than* their maximum (E)BPA amount, their operational (E)BPA is their federal tax on taxable income.[28] We proceed with a similar exercise for the SC (line 30300), remembering that the (E)BPA (and, where applicable, the age credit) is applied to federal taxes on taxable income before the SC. Finally, we finish with the EDC (line 30400).

RESULTS

Distribution of the Current (E)BPA

Using the SPSD/M and the methodology described above, we estimate that the total value of the operational (E)BPA in 2023 was $62.7 billion. We split taxfilers into three groups:

1. those who are potentially eligible for the (E)BPA but are unable to make use of it because they have no federal tax on taxable income;
2. those who use the (E)BPA to reduce their federal taxes on taxable income to zero; and
3. those who have federal tax on taxable income owing after the full application of the (E)BPA.

26 Our estimates of operational credits are different from the Department of Finance's expenditure estimates for credits. We do not calculate expenditure but rather the "operational" amount of each credit, as explained. To calculate expenditure, Finance uses a micro-simulation model that calculates tax revenues and income-tested entitlements (in the case of individuals) with and without a given tax expenditure for each taxpayer. This model generally optimizes the tax situation of each taxpayer in the counterfactual scenario where the measure under consideration is not in place, by assuming that the taxpayer would use all available deductions or credits to offset a potential increase in taxes payable. See Canada, Department of Finance, supra note 2.

27 For example, if a taxfiler has federal tax owing of $10,000 and their (E)BPA is $2,250, they can claim the full amount of the (E)BPA and reduce their federal tax to $7,750.

28 For example, if a taxfiler owes federal tax on taxable income of $200 and their (E)BPA is $2,250, they can claim only $200 of the (E)BPA, reducing their federal tax to zero.

Table 1 presents summary statistics for these three groups in columns 1, 2, and 3, respectively.

From column 1, 7.2 percent of taxfilers derive no benefit from the (E)BPA because they have no federal tax on taxable income. These taxfilers are more likely to be

- receiving some form of social assistance (30 percent),
- women (59 percent), and
- living in market basket measure (MBM) poverty[29] (38 percent).

Column 2 shows that 15.8 percent of taxfilers are able to use the (E)BPA to reduce their federal tax on taxable income to zero. Their average amount of operational (E)BPA per taxfiler is $1,189 or 53 percent of the maximum amount. Similar to the group in column 1, these taxfilers are more likely

- to be women (58 percent) and
- to live in MBM poverty (23 percent).

Finally, column 3 shows that 77 percent of taxfilers are able to use the full amount of the (E)BPA to reduce their taxes on taxable income but still have positive federal tax on taxable income after the application of the (E)BPA. This group of taxfilers has

- an almost equal gender divide (48 percent women),
- very few in receipt of some form of social assistance (2 percent),
- a very low MBM poverty rate (3 percent), and
- a much greater likelihood of being employed for the full tax year (60 percent).

On the basis of these data, we estimate that because the (E)BPA is non-refundable, about $10.7 billion is unavailable for use. That is, if the (E)BPA were to be made refundable, the operational (E)BPA would be $10.7 billion more in 2023 and would go to taxfilers with the lowest (taxable) income (those in the first two columns of table 1).

To better understand the distribution of the (E)BPA, we look at the total operational (E)BPA in more detail. Table 1 shows that taxfilers in column 2 represent 15.8 percent of all taxfilers but use only 10 percent of the total operational (E)BPA, whereas those in column 3 represent 77 percent of all taxfilers and use 90 percent of total operational (E)BPA. Building on this, figure 1 and table A1 in the appendix break down the total operational (E)BPA by income decile and (E)BPA use. We see that the

29 The MBM measure of poverty is Canada's official poverty measure. It is based on the cost of a specific basket of goods and services representing a modest, basic standard of living. An economic family's disposable income is compared to the cost of the basket for their region and family size. If the family's income is below the cost of the basket, they are considered to be living in MBM poverty: Statistics Canada, "Dictionary, Census of Population, 2021: Market Basket Measure (MBM)," updated July 13, 2022 (www12.statcan.gc.ca/census-recensement/2021/ref/dict/az/Definition-eng.cfm?ID=pop165).

TABLE 1 Summary Statistics for Taxfilers by (E)BPA Use

	Operational (E)BPA = 0 (1)	Operational (E)BPA reduces taxes to zero (2)	Operational (E)BPA reduces taxes (but taxes after operational (E)BPA > 0) (3)
Percentage of all taxfilers	7.2%	15.8%	77%
Average total income	$5,597	$12,198	$77,692
Average taxable income	$0	$8,030	$69,609
Average operational (E)BPA	$0	$1,189	$2,243
Percentage receiving social assistance	30%	13%	2%
Average age	38	43	51
Percentage who are women	59%	58%	48%
Percentage in MBM poverty	38%	23%	3%
Percentage employed for full year	7%	23%	60%
Total (percent) operational (E)BPA expenditure	$0 (0%)	$6.14 billion (10%)	$56.5 billion (90%)

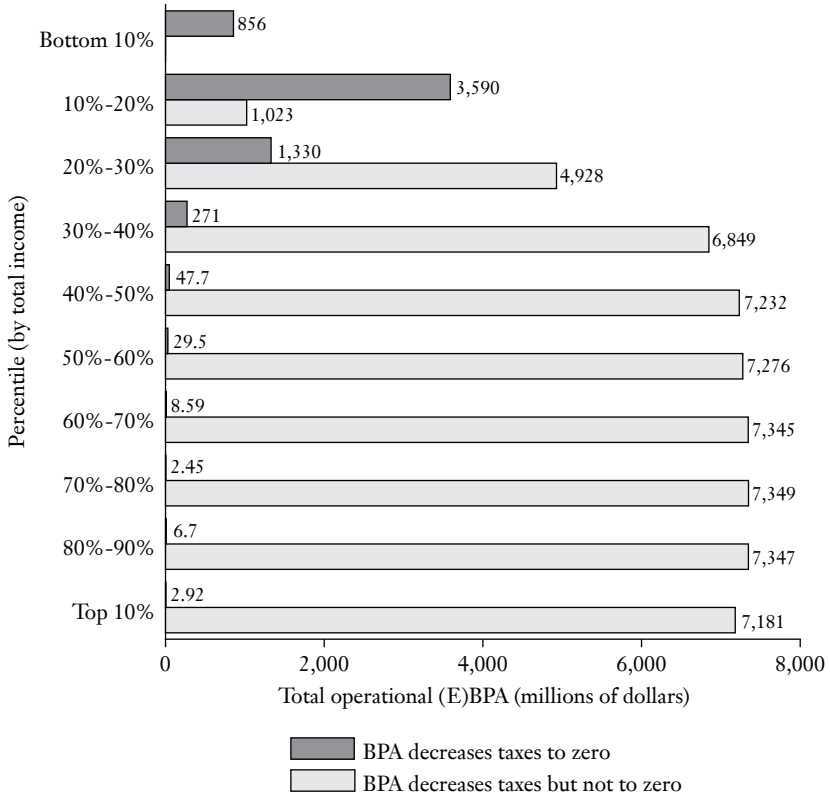
(E)BPA = (enhanced) basic personal amount; MBM = market basket measure.

majority of the operational (E)BPA is used by taxfilers in the top seven deciles, for whom the (E)BPA reduces taxes but not all the way to zero (for example, those in column 3 of table 1). They make up 69 percent of all taxfilers and use 81 percent of total operational (E)BPA. Taxfilers in the bottom two deciles, for whom the (E)BPA decreases taxes to zero, make up 12 percent of all taxfilers but use only 7 percent of operational (E)BPA. This suggests that there is a disproportionate use of operational (E)BPA in the top deciles by taxfilers for whom the (E)BPA does not reduce federal taxes to zero.

We further break down the total operational (E)BPA by gender in figure 2. Overall, $31.8 billion (51 percent) of operational (E)BPA is used by men (50 percent of taxfilers) and $30.8 billion (49 percent) is used by women (50 percent of taxfilers). Figure 2 shows that while the aggregate operational (E)BPA is higher for women (compared to men) in lower deciles and higher for men (compared to women) in higher deciles, overall there is a disproportionate use of operational (E)BPA by decile but not by gender. In the top two deciles, women use 8.3 percent of operational (E)BPA and make up 7.1 percent of all taxfilers. Operational (E)BPA is 16.2 percent higher than expected, given the proportion of women taxfilers in the top two deciles. Similarly, in the top two deciles, men use 14.9 percent of aggregate operational (E)BPA and make up 12.9 percent of taxfilers. Operational (E)BPA is 15.7 percent higher than expected, given the proportion of male taxfilers in the top two deciles. Thus, in the top two deciles, women use a slightly higher percentage of operational (E)BPA than men.[30]

30 A similar finding holds in the bottom two deciles, although women receive a slightly lower percentage of operational (E)BPA compared to men.

FIGURE 1 Aggregate Operational (E)BPA by Decile and Use



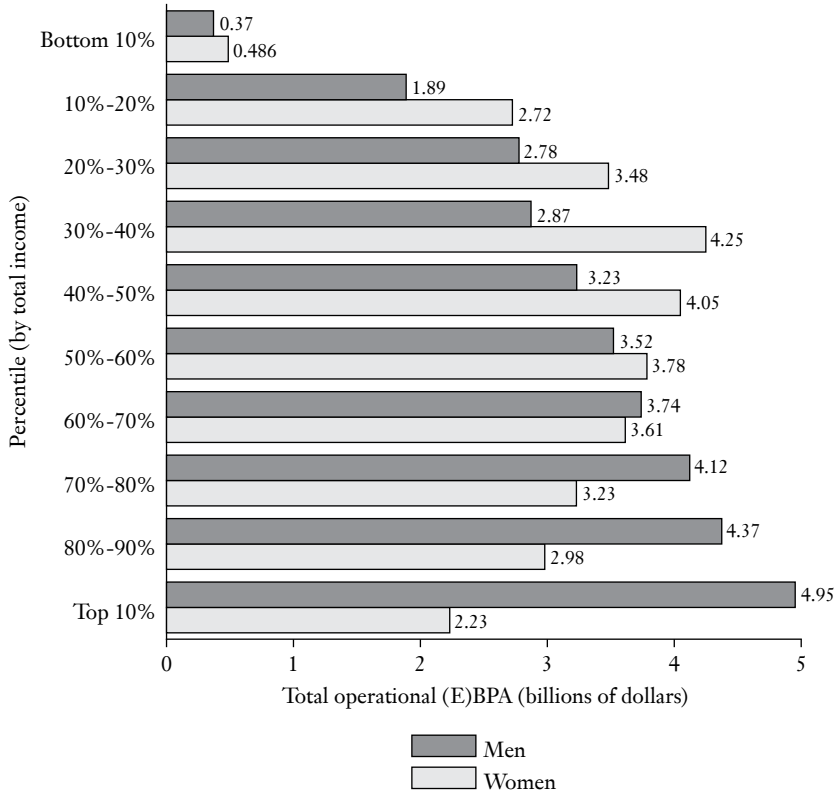
(E)BPA = (enhanced) basic personal amount.

We next examine the individual relative benefit for the (E)BPA—a different way to measure the impact of tax policy. That is, we look at the ratio of the operational (E)BPA to total income for the three (E)BPA use groups.[31] If the ratio of the (E)BPA to total income is relatively higher for one group than others, this suggests that that group has a larger individual relative benefit.

Figure 3 is a histogram of the ratio of the operational (E)BPA to total income. The lighter bars represent taxfilers for whom the (E)BPA decreases federal tax on taxable income but that tax remains greater than zero after the (E)BPA is applied. The darker bars represent taxfilers for whom the (E)BPA decreases federal tax on taxable income to zero. There are significantly different patterns across the two groups. In the group

31 We use "total income" (line 15000) in the denominator because total income is calculated before deductions are applied.

FIGURE 2 Aggregate Operational (E)BPA by Decile and Gender



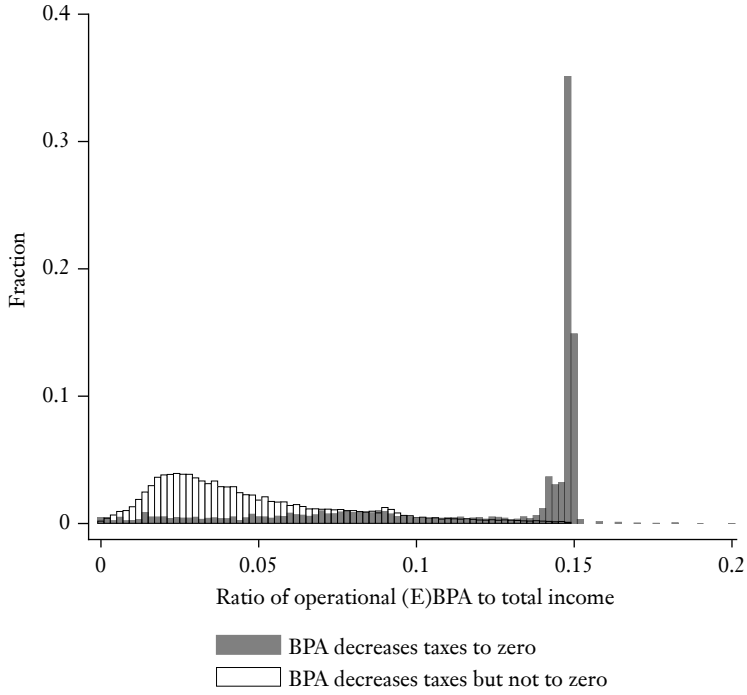
(E)BPA = (enhanced) basic personal amount.

for whom the (E)BPA decreases federal tax to zero, the median taxfiler has a ratio of operational (E)BPA to total income of 0.15. In the group for whom the (E)BPA decreases federal tax but not to zero, the median taxfiler has a ratio of operational (E)BPA to total income of 0.04. The (E)BPA confers a larger individual relative benefit on taxfilers for whom the (E)BPA decreases federal tax to zero compared to taxfilers for whom federal tax on taxable income is greater than the maximum (E)BPA amount. This is a similar finding to McGregor's.[32]

We further examine the individual relative benefits by gender. Figure 4 shows that, compared to men, women receive a somewhat higher benefit from the operational (E)BPA relative to total income, but the distribution is similar.

32 See McGregor, supra note 6.

FIGURE 3 Share of Operational (E)BPA to Total Income for Individual Taxfilers by Use Group



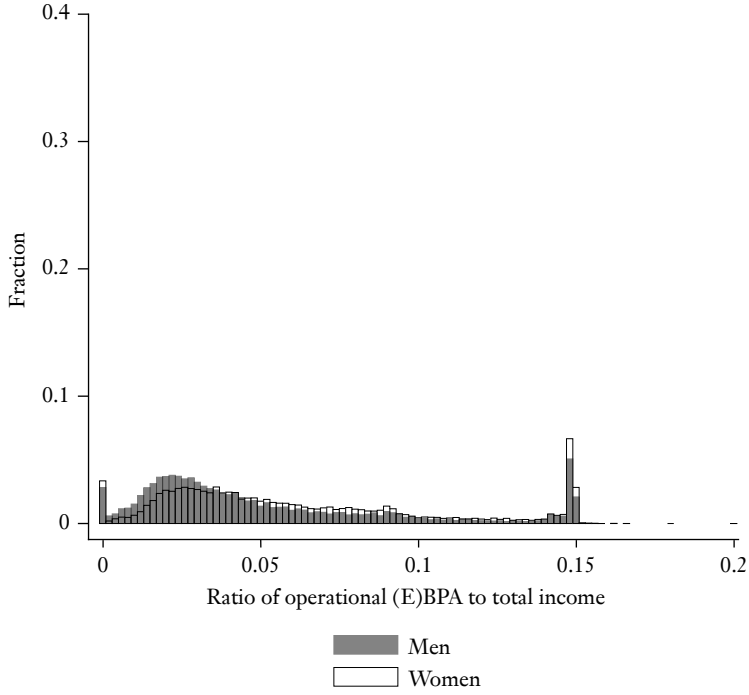
(E)BPA = (enhanced) basic personal amount.

Distribution of the Current SC

We next turn to the distribution of the SC. For this analysis, we focus on taxfilers who are eligible for the SC (those who meet the eligibility conditions to claim the credit, whether or not they use it), constituting 2,907,345 taxfilers, or 9 percent of the weighted sample. As with the operational (E)BPA, the operational amount of the SC is the amount of the credit that is used to reduce federal tax on taxable income, provided that a taxfiler is eligible to claim it.[33] We estimate that the total value of operational SC was $3.4 billion in 2023—a significantly smaller amount than the value of the operational (E)BPA. We also estimate that $1.3 billion of the SC is unavailable for use; that is, there is $1.3 billion of SC that remains unclaimed by taxfilers who are potentially eligible but who do not have sufficient federal tax on taxable income to make use of the credit.

33 Because we are applying credits line by line, before applying the SC, we have applied the age credit. We do not discuss the distribution of the age credit in this article.

FIGURE 4 Share of Operational (E)BPA to Total Income for Individual Taxfilers by Gender



(E)BPA = (enhanced) basic personal amount.

Table 2 reports summary statistics for taxfilers who are potentially eligible for the SC according to their use of the credit. Column 1 shows that 21 percent of SC-eligible taxfilers cannot use the SC at all, either because they have no taxable income or because, by the time they use their (E)BPA, they have no remaining federal tax on taxable income. Similarly, in column 2, 9.7 percent of SC-eligible taxfilers use only a partial amount of the SC to reduce their federal tax on taxable income to zero. Taxfilers in these first two columns are

- more likely to be women,
- less likely to be employed for the full tax year,
- more likely to be receiving social assistance,
- more likely to be in MBM poverty, and
- have lower total and taxable incomes.

From column 3, we see that taxfilers who use their full maximum SC amount make up 69 percent of taxfilers eligible for the credit. Taxfilers in this group

TABLE 2 Summary Statistics for Taxfilers by SC Use

	Operational SC = 0 (1)	Operational SC reduces taxes to zero (2)	Operational SC reduces taxes (but taxes after operational SC > 0) (3)
Percentage of taxfilers eligible for the SC	21%	9.7%	69%
Average total income	$15,371	$26,511	$97,391
Average taxable income	$6,795	$22,704	$87,528
Average operational (E)BPA	$893	$2,250	$2,239
Average operational SC	$0	$1,025	$1,541
Percentage receiving social assistance	37%	11%	2%
Average age	17	45	46
Percentage who are women	58%	52%	31%
Percentage in MBM poverty	55%	38%	5%
Percentage employed for full year	18%	52%	78%
Total (percent) operational SC expenditure	$0 (0%)	$0.3 billion (8.5%)	$3.1 billion (91.5%)

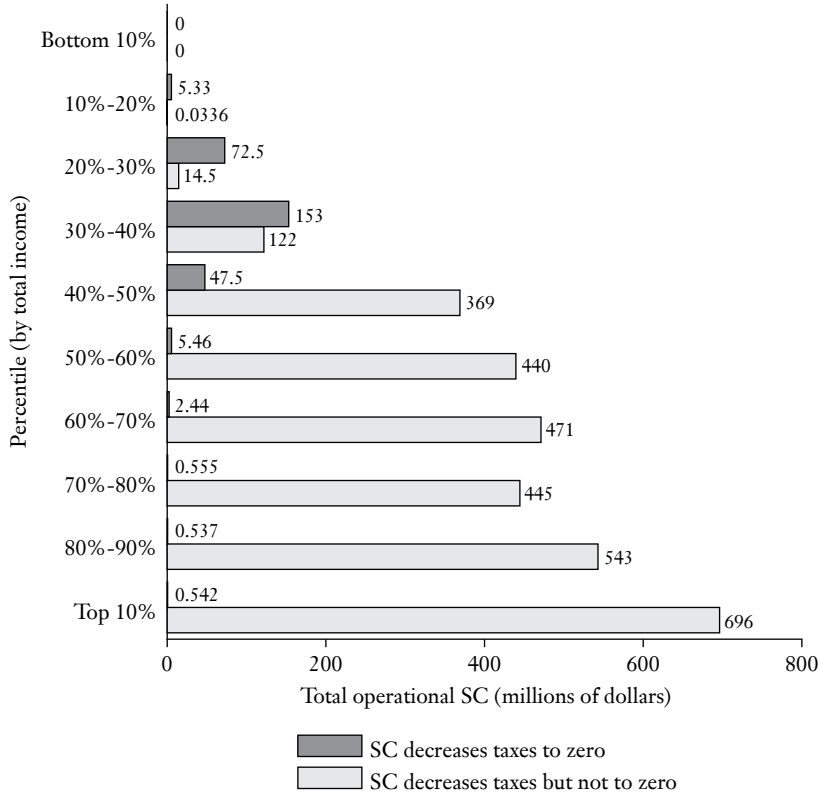
SC = spousal or common-law partner credit; (E)BPA = (enhanced) basic personal amount; MBM = market basket measure.

- are predominantly male (69 percent),
- have a lower dependency on social assistance (2 percent),
- are less likely to live in MBM poverty (5 percent),
- are more likely to be employed for the full year (78 percent), and
- have relatively high total and taxable incomes.

Moving on to total operational SC, we observe that while taxfilers who can make use of the maximum amount of the credit make up 69 percent of SC-eligible taxfilers, they receive 91.5 percent of the total operational SC; thus, operational SC is disproportionately high for this group. Taxfilers who can use only a portion of the credit (to decrease their federal tax on taxable income to zero) make up 9.7 percent of SC-eligible taxfilers yet receive only 8.5 percent of the total operational SC; thus, operational SC is disproportionately low for this group.

Figure 5 and table A2 in the appendix show this result in more detail by decile (of total income). Figure 5 shows that no one in the bottom decile can make use of the SC (even though 5 percent of taxfilers who are potentially eligible for the SC are in the bottom decile). Figure 5 also shows that most of the operational SC is used by taxfilers in the top two income deciles, whose taxes are not fully reduced to zero. These individuals make up 25 percent of SC-eligible taxfilers and receive 37 percent of the total operational SC. Conversely, the share of total operational SC for those whose federal tax is reduced to zero is disproportionately lower: 8.2 percent of the

FIGURE 5 Total Operational SC by Decile and Use



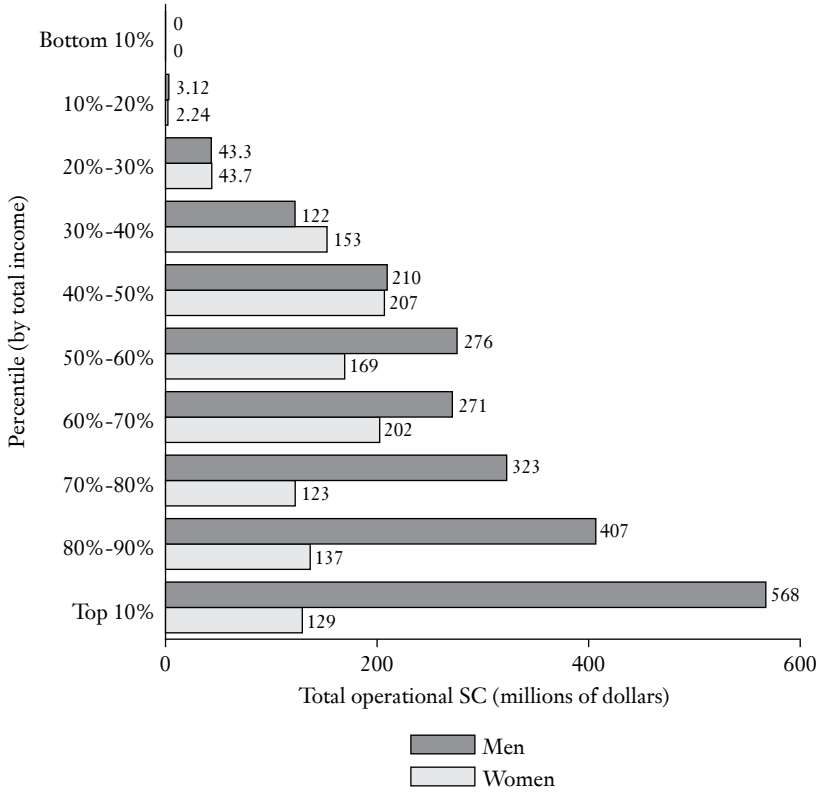
SC = spousal or common-law partner credit.

total operational SC is used by taxfilers in the 10th to 50th deciles, who constitute 9.4 percent of all taxfilers potentially eligible for the SC. As with the operational (E)BPA, total operational SC is disproportionately allocated to taxfilers in the top income deciles, who can make use of the maximum amount of the SC.

Looking at the results by reference to gender, we see that of all taxfilers who are potentially eligible for the SC, 61 percent are men and 39 percent are women. Of the total operational SC, 65 percent is used by men and 35 percent is used by women; thus, total operational SC use by gender is proportional, on the basis of potential eligibility. However, of all taxfilers, about 50 percent are men and 50 percent are women. This suggests that men are more likely to be potentially eligible for the SC compared to women.

Figure 6 provides a further breakdown of total operational SC by gender and decile (of total income). Operational SC is similar for women and men in the bottom three deciles. In the top three deciles, total operational SC used by men is much

FIGURE 6 Total Operational SC by Decile and Gender

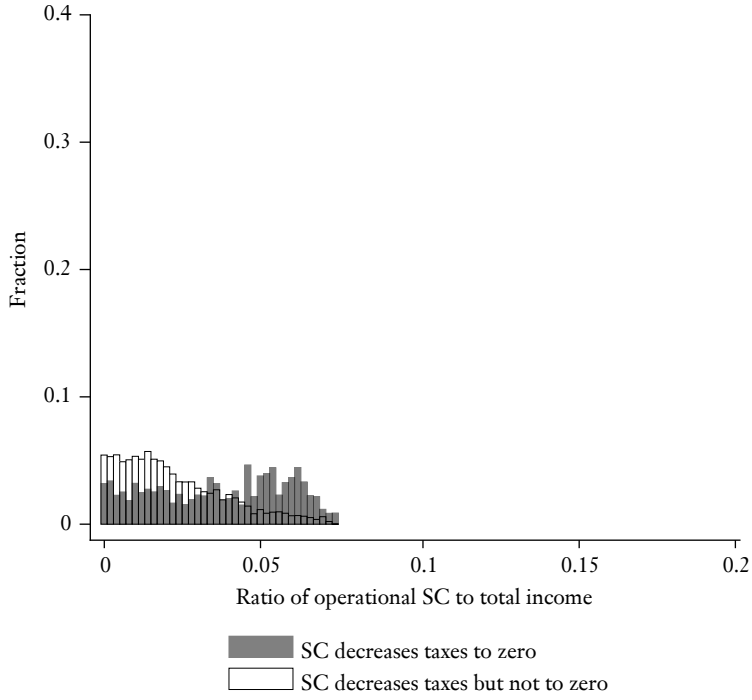


SC = spousal or common-law partner credit.

larger than operational SC used by women. However, in the top three deciles, men receive 38 percent of the total operational SC and make up 27 percent of taxfilers potentially eligible for the SC. Their share of operational SC is 40 percent higher than expected, given their share of taxfilers in these deciles. By comparison, women in the top three deciles make up 8 percent of taxfilers potentially eligible for the SC and receive 12 percent of total operational SC. Their share of operational SC is 41 percent higher than expected, given their share of taxfilers in these deciles. That is, total operational SC relative to the proportion of taxfilers is slightly higher for women in the top three deciles.

As with the (E)BPA, we next examine the ratio of operational SC to total income. We plot this in figure 7. Figure 7 shows that taxfilers whose taxes are reduced to zero by the SC (represented by the lighter bars) have a higher ratio of operational SC to total income: their median ratio of operational SC to total income is 0.039. By comparison, taxfilers who can use their maximum SC (represented by the darker

FIGURE 7 Share of Operational SC to Total Income for Individual Taxfilers by Use



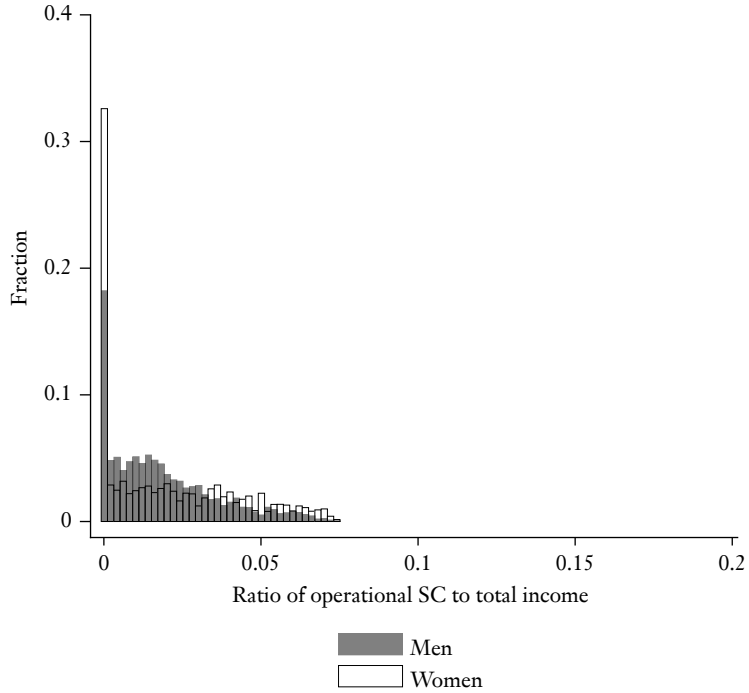
SC = spousal or common-law partner credit.

bars) have a median operational SC to income ratio of 0.019. This suggests that taxfilers who can use only part of their maximum SC receive a larger personal benefit from the credit compared to taxfilers for whom taxes are reduced by the SC, but not to zero.

Additionally, from figure 7 we observe that the ratio of operational SC to total income is smaller than the ratio of operational (E)BPA to total income shown in figure 3. While the maximum potential SC is the same as the (E)BPA, it is reduced by the income of the spouse, so that the average operational SC is lower than the potential maximum SC (see table 2). Moreover, those who can make use of the SC have higher average taxable and total incomes compared to taxfilers who can make use of the BPA (see tables 1 and 2).

Finally, figure 8 shows the ratio of operational SC to total income for all taxfilers potentially eligible for the SC by gender. We make two observations. First, women are more likely to be unable to make use of the SC (as indicated by the spike at zero). Second, for those women who can make use of the SC, the ratio of operational SC to total income is slightly higher than that for men; thus, women are slightly more likely to benefit from the SC than men.

FIGURE 8 Share of Operational SC to Total Income for Individual Taxfilers by Gender



SC = spousal or common-law partner credit.

Distribution of the Current EDC

The final tax credit that we consider is the EDC. Unfortunately, the sample size is too small to allow us to examine the distribution of the EDC. In the unweighted sample, there are 2,427 taxfilers (0.19 percent) who are potentially eligible for the EDC (reduced to 101,053 in the weighted sample). Of these, there are only 35 taxfilers in the unweighted sample who make use of the maximum amount of the EDC (893 in the weighted sample), and 27 taxfilers in the unweighted sample (2,440 in the weighted sample) who use a partial amount of the EDC to reduce their federal tax on taxable income to zero.

DISCUSSION

There are a few things to note from this analysis. First, a significant amount of the available tax credits cannot be used by lower-income taxfilers, including $10.7 billion of the (E)BPA and $1.3 billion of the SC, because they do not have sufficient federal tax on taxable income. Those with unused credits are more likely to be women and much more likely to be living in MBM poverty.

Second, on the one hand, total operational (E)BPA is disproportionately high for taxfilers in higher income deciles, who receive a smaller individual relative benefit from the (E)BPA. On the other hand, while total operational (E)BPA is disproportionately low for taxfilers in lower income deciles, who use the (E)BPA to decrease their federal tax on taxable income to zero, their individual relative benefit from the (E)BPA is larger. We also see no significant differentiation of total operational (E)BPA or individual relative benefit of the (E)BPA by gender.

Third, as with the operational (E)BPA, total operational SC is disproportionately high for taxfilers in higher income deciles, who receive a smaller individual relative benefit from the SC. On the other hand, while total operational SC is disproportionately low for taxfilers in lower income deciles, who use the SC to decrease their federal tax on taxable income to zero, their individual relative benefit from the SC is larger.

In contrast to our findings for the (E)BPA, we observe differences by gender in the distribution of the SC. In particular, men are more likely to be potentially eligible for the SC and receive a higher absolute level of total operational SC, although the distribution is relatively proportionate as between men and women, conditional on the taxfiler's eligibility for the credit. While women who are eligible for the SC are more likely to be unable to use the credit, those who can use it receive a slightly larger benefit from the SC (a higher ratio of operational SC to total income), compared to men.

Our findings highlight the tension that came out of the papers by McGregor and Kesselman in terms of how to consider who is benefiting from these tax credits. From a relative perspective (McGregor's argument), those with lower income who are able to take advantage of the credits obtain a larger share of the benefit from the credits when considered in terms of total individual income. However, from an absolute perspective (Kesselman's argument), the total cost of the credits accrues to higher-income taxpayers, with those with the lowest income deriving no benefit at all. The change from tax deductions to non-refundable tax credits did not alter this finding.

Our findings also highlight that the way in which policy goals are set and phrased matters. On the one hand, these credits are directing more resources to higher-income taxfilers. The finance minister in 1988 would not have met his goal of transferring more resources to lower-income taxfilers using these credits: they would have had to be made refundable and phased out with rising income for that statement to be true. On the other hand, these credits are conferring a larger relative individual benefit on taxfilers with low taxable income (albeit no benefit on those with zero taxable income). Thus, it could be argued that the current (E)BPA is meeting the stated intention of helping low-income (but not zero-income) Canadians.

Our findings also highlight that increasing these tax credits would not improve tax equity for all taxfilers. That is, increasing these credits would reduce taxes owing and increase resources allocated to taxfilers with relatively high taxable income. For taxfilers with no taxable income and taxfilers who are already exhausting the credits (for example, by using the existing credits to reduce their federal tax owing to zero), increasing the credits would not change their income position or increase their individual benefit. This takes on a gendered dimension when we consider the

SC: increasing the credit would benefit men more than women, in terms of improving their tax position, even though women are much more likely to be (unpaid) caregivers.

If a goal of tax policy is to improve tax fairness while reducing income inequality for the lowest-income taxfilers, moving beyond the merely symbolic (for example, by increasing tax credits), what is needed is improved redistribution with consideration for the forms of discrimination that perpetuate inequality. One approach would be to convert the non-refundable (E)BPA, SC, and EDC to refundable tax credits. Doing so would marginally increase the incomes of the lowest-income taxfilers. However, this approach is costly. It leaves in place three tax expenditures that have a significant impact on the fiscal position of the federal government, the opportunity cost of which could be a lack of support for the development of better-targeted programs and services that could more effectively address the problem of inequality.[34] While the tax credits could also be phased out, as has been done with the (E)BPA,[35] the question remains whether these tax expenditures are achieving their policy goals. Another approach would be to eliminate the (E)BPA, the SC, and the EDC, and redirect the funds to other government programs and services. This could include expansion of the new Canada disability benefit,[36] enhancement of the goods and services tax credit,[37] and/or enrichment of the Canada social transfer, adding conditions that require provinces to use the funds to increase social assistance rates and family legal aid programs.[38] Used in this way, the $50 billion to $60 billion currently spent on these non-refundable credits (depending on how the costs are estimated) could better address income inequality. Perhaps it is time to think more carefully about these long-established tax credits, given the present goals of governments in Canada.

34 See Goffman, supra note 6.

35 Recall that the (E)BPA is phased out for taxfilers with net income greater than $165,430 and less than $235,675. The BPA (for taxfilers with net income greater than $235,675) is not phased out.

36 Jennifer Robson and Lindsay M. Tedds, "The Canada Disability Benefit: Battling Ableism in Design and Implementation," *Osgoode Hall Law Journal* (forthcoming).

37 Gillian Petit, "The Best, Fastest Way To Meaningfully Help Low-Income Canadians," *Policy Options*, April 15, 2024 (https://policyoptions.irpp.org/magazines/april-2024/welfare-gst-hst-credits).

38 Gillian Petit and Lindsay M. Tedds, "Systematic Barriers to Justice: Financial Eligibility for Legal Aid—A Gendered Analysis" (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4419064).

APPENDIX

TABLE A1 Percentage of (E)BPA Expenditure and Percentage of Taxfilers by Decile and Use of the Credit

	Operational (E)BPA reduces taxes (but taxes after operational (E)BPA > 0)		Operational (E)BPA reduces taxes to zero		Operational (E)BPA = 0	
	Expenditures	Taxfilers	Expenditures	Taxfilers	Expenditures	Taxfilers
			percent			
Bottom decile ...	0.00	0.00	1.37	5.07	0.00	4.93
10-20	1.63	1.39	5.73	7.13	0.00	1.48
20-30	7.86	6.70	2.12	2.82	0.00	0.49
30-40	10.93	9.31	0.43	0.55	0.00	0.14
40-50	11.54	9.83	0.076	0.12	0.00	0.051
50-60	11.61	9.89	0.047	0.063	0.00	0.039
60-70	11.72	9.98	0.014	0.018	0.00	0.0079
70-80	11.72	9.99	0.0039	0.011	0.00	0.0024
80-90	11.72	9.98	0.011	0.015	0.00	0.00050
Top decile ...	11.46	9.98	0.0047	0.0075	0.00	0.012

(E)BPA = (enhanced) basic personal amount.

TABLE A2 Percentage of SC Expenditure and Percentage of SC-Eligible Taxfilers by Decile and Use of the Credit

	Operational SC reduces taxes (but taxes after operational (E)BPA > 0)		Operational SC reduces taxes to zero		Operational SC = 0	
	Expenditures	Eligible taxfilers	Expenditures	Eligible taxfilers	Expenditures	Eligible taxfilers
			percent			
Bottom decile ...	0.00	0.00	0.00	0.00	0.00	5.10
10-20	0.00099	0.018	0.16	1.09	0.00	7.65
20-30	0.43	1.30	2.14	3.29	0.00	4.86
30-40	3.60	4.17	4.52	3.77	0.00	2.67
40-50	10.9	8.61	1.40	1.25	0.00	0.46
50-60	12.9	9.62	0.16	0.14	0.00	0.24
60-70	13.9	10.2	0.072	0.068	0.00	0.065
70-80	13.1	9.84	0.016	0.018	0.00	0.011
80-90	16.0	11.31	0.016	0.012	0.00	0.075
Top decile ...	20.6	14.13	0.016	0.016	0.00	0.023

SC = spousal or common-law partner credit; (E)BPA = (enhanced) basic personal amount.

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Finances of the Nation

STUDENT ASSISTANCE IN CANADA— A LONG-TERM PERSPECTIVE

*Alex Usher**

For almost 60 years, the Canadian Tax Foundation published an annual monograph, Finances of the Nation, *and its predecessor,* The National Finances. *In a change of format, the 2014* Canadian Tax Journal *introduced a new "Finances of the Nation" feature, which presents annual surveys of provincial and territorial budgets and topical articles on taxation and public expenditures in Canada.*

Canada's system for providing financial support for students in post-secondary education is a complicated one. In part, this is because student assistance is a field in which institutions, provincial governments, and the federal government all have roles to play, some of which overlap. It is also because there is a wide range of policy tools in use: need-based loans, grants, and loan remission, as well as scholarships, tax measures, and matching savings programs. This article provides a narrative and statistical history of student assistance in Canada to clarify the current student aid landscape and to explain how it has changed over time.

The underlying data for the Finances of the Nation *monographs and for the articles in this journal will be published online in the near future.*

KEYWORDS: STUDENTS ■ LOANS ■ TAX CREDITS ■ SCHOLARSHIPS AND FELLOWSHIPS ■ HIGHER EDUCATION ■ REGISTERED EDUCATION SAVINGS PLANS

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INTRODUCTION

Student aid in Canada is deeply opaque. In most parts of the country, students receive aid from federal and provincial levels of government and from institutions. Most aid is paid to students, but some is paid to parents. Aid can come in the form of loans, loan remission, grants of various kinds, and tax assistance. And the balance between these forms of aid, in terms of both source and type, is continually changing. At present, there is no consolidated set of government statistics that attempts to keep track of all of this.

Yet this is a policy field deserving of more attention. Student assistance is what allows Canadian post-secondary institutions to charge the tuition fees necessary to support a world-class education, while still ensuring that financial considerations do not bar those who stand to benefit the most from attending a post-secondary institution. Understanding how our system of student aid works and how money is spent is key to understanding Canada's relative success in maintaining social mobility.

This article examines the various policy instruments for delivering student aid, separated into two broad categories: need-based aid and non-need-based aid. It is partly a historical tale, highlighting the key moments of policy development at the federal and provincial levels. But it is also a statistical tale, drawing on data going back to 1992 to show the financial evolution of the system. The tale it tells is likely unfamiliar to most readers, because the complexity of the system tends to obscure its generosity. But when Canada's student aid system is seen in the round, it is clear that, despite its awkwardness, the system does a reasonably good job of assisting students and has, in fact, become more generous over time.

GOVERNMENT NEED-BASED OR INCOME-BASED STUDENT ASSISTANCE

The largest component of student aid in Canada is government assistance provided on the basis of either need or income. Roughly $10 billion per year is transferred to students through government programs, which include grant, loan, and loan remission programs. Two factors need to be understood in order to make sense of these programs: first, how the administration of the programs is split between the federal and provincial governments; and second, how student eligibility for the programs is determined, and in particular how "need" is calculated.

FEDERAL-PROVINCIAL RESPONSIBILITIES

From Grants to Loans

The Canada student financial assistance program (CSFAP), known as the Canada student loans program (CSLP) from 1964 to 2021, has always been a joint federal-provincial enterprise. It was built on the foundation of the Dominion-provincial student loan program, begun in 1939, in which the government of Canada provided block cash grants to provinces that administered their own scholarship programs, to enable them to provide aid on the basis of some combination of need and merit. The

actual details of the program varied significantly from one province to another; at the time, the federal government did not place much importance on "national programs" with common elements.

When the Pearson government was elected in 1963, it promised to create a "national scholarship program," something that had long been a demand of the National Federation of Canadian University Students. In fact, as Tom Kent described in his memoir, *A Public Purpose*, the government had already decided to move away from grants and toward loans.[1] But what the government wanted to create was a step beyond what the Dominion-provincial student loan program had been delivering for more than two decades. The older program was a block grant: the federal government handed out money to provinces, which designed programs more or less as they pleased. Under the proposed CSLP, provincial governments would still be designated as the responsible administrative agencies, but the program itself would be a single national entity run more or less consistently across all provinces.

The first challenge to implementation was that not all provinces agreed with the idea of a national student assistance program. In particular, the Lesage government in Quebec, though it had recently undone the Duplessis-era policy of refusing federal grants to Quebec universities, was not open to this idea, in the same way that it was not open to a number of other Pearson government initiatives in areas of social policy, including the creation of the Canada Pension Plan. The problem was resolved in April 1964 when Tom Kent went to Quebec for secret negotiations with the Lesage government and emerged with a set of principles that came to be known as "opting out with compensation." Quebec would not veto the creation of the CSLP, but neither would it participate in the program. Instead, it reserved a lump sum of money "in respect of" student assistance, which it could use to create its own system of student aid—an arrangement that has continued to the present day. Later, Quebec would be joined by the Northwest Territories (in 1984) and Nunavut (in 1999) in opting out of the federal program with compensation.

In administrative terms, Canada in effect is composed of two student aid "zones." The first zone comprises Quebec, the Northwest Territories, and Nunavut; in it, the student aid program is administered by the province or territory entirely on its own. The second zone—what might be called "the CSFAP zone"—comprises the remaining provinces and territory; in it, the CSFAP provides the majority of aid to students but is not an exclusive provider, since jurisdictions in the CSFAP zone also run their own parallel, often integrated, aid programs.

Across zones, the principles of need-based assistance are very similar. Students must be enrolled full time[2] to access the main student assistance program, and

1 Tom Kent, *A Public Purpose: An Experience of Liberal Opposition and Canadian Government* (Kingston, ON: McGill-Queen's University Press, 1988).

2 The federal government has had a separate program for part-time students since 1995, but it has never been well subscribed.

they must be enrolled for a minimum period of study leading to a degree, diploma, or certificate. In most student aid programs, the minimum period is 12 weeks; however, some programs have a lower threshold and, in any event, these minimums are being re-evaluated in the light of the growing popularity of micro-credentials and governments' desire to support them. All students who meet these criteria are in theory eligible for student aid, although "independent" students (discussed below) must also pass a minimal credit check.

In many countries, student aid is determined simply on the basis of an allowance principle. That is, students who qualify for grants receive a flat grant of so many dollars per week, month, or year, while those who qualify for loans may draw a loan of up to X dollars per week, month, or year. Canada is not one of those countries, particularly with respect to loans. Instead, Canadian student aid programs have for most of their history been based on something called "assessed need," which is defined as "assessed costs" minus "assessed resources." Assessed costs include tuition and fees, plus an estimate for the cost of books and materials, an allowance based on place of residence, and an allowance for child care (where applicable). Assessed resources include a student's income, plus in some cases the student's assets, the income of the student's spouse, and, if the student is considered to be "dependent"[3] on their parents, parental income as well. In the case of both spousal and parental income contributions, these are "deemed" on the basis of the spouse's and parents' income—that is, the system does not take account of how much money actually gets transferred to the student, but rather assumes that a certain amount of money is transferred on the basis of the student's income, according to a fairly high implicit marginal tax rate. If assessed resources exceed assessed costs, no loan is issued. If assessed costs exceed assessed resources, the student is deemed to have "assessed need" and is issued a loan in this amount up to a maximum amount per week. The maximum varies somewhat by province and student status, but in 2023-24 it was at least equal to $500 per week of study ($17,000 per academic year) for most students in most provinces, up from $350 per week ($11,900 per academic year) in the decade or so previous to that.

Once need is established, the question becomes which government is responsible for meeting this need. In Quebec, the Northwest Territories, and Nunavut, the answer is simple, since only one government is involved. In the CSFAP zone, the answer is more complicated. Between 1964 and 1994, the federal government was responsible for the "first" dollars of need, and provincial student aid programs took care of any need in excess of this amount. Because provincial student aid programs were not required to help students from their first dollar of need, they had smaller

3 As of 2024, under federal rules and the rules of eight provinces, a student ceases to be dependent when they are either four years out of secondary school or have spent two years continuously in the labour market. In Ontario, the test is two years in the labour market and six years out of secondary school; in Quebec, it is two years in the labour market or 90 credits obtained at the university level, or seven years since the end of compulsory education without full-time study.

client bases than the federal programs, which made it possible for them to help their students with grants rather than loans.

The situation changed in the early 1990s. Provincial governments were faced with a very challenging fiscal situation and were looking to reduce their expenditure levels. This meant cuts to institutional grants and a corresponding increase in the cost of tuition. These changes in turn stoked demand for student aid, which was already rising as a result of weak youth employment in the aftermath of the 1990-1992 recession. In addition, most provinces were dealing with a fiscal crisis, which pushed many of them to seek economies in income support programs generally. Into this situation came the federal government, which wanted both to keep its own spending under control and to respond to valid student critiques about an inadequate student aid system: the federal assistance limit of $105 per week had not been raised in a decade.

The solution, which the federal government effectively imposed on the provinces, was twofold. The first action was to raise the federal maximum to $165 per week. The second was more consequential: it was to meet only 60 percent of any student's need, and to make the provinces responsible for the remaining 40 percent. In effect, this action forced a form of cost sharing on every single student. At a stroke, provinces were required to serve a significantly larger client base. In addition to escalating need resulting from higher tuition and increasing budgetary pressures, this change pushed most provinces into converting all or part of their grant programs into loan programs. This 60-40 split (which is not quite accurate in every case, because some provinces may choose to meet need above the federal maximum) has been maintained to the present day. The federal maximum has been raised twice since then: once in 2005, to $215 per week (an implied $350 per week with the provincial aid included), and again in 2020, to $300 per week (an implied $500 per week with provincial aid).[4]

This combination of policy changes in the mid-1990s led to an explosion of student borrowing, and student debt levels rose substantially. This in turn led to two policy responses to control debt, one at the provincial level and one at the federal level.

The Rise of Loan Forgiveness and the Return of Grants

At the provincial level, the country saw a proliferation of provincial programs that involved student loan forgiveness or loan remission (the two terms can be used interchangeably). The details varied by province, but all programs involved provincial governments choosing not to collect money that they had previously loaned to students. For example, prior to 2017 in Ontario, single students who were enrolled for two standard-length terms per academic year could borrow up to $11,400, of which $4,300 (that is, the entire provincial portion of the loan) could be forgiven

4 Loan limits were temporarily raised to $350 per week during the first year of the COVID-19 pandemic, then fell back to $210 per week in loan year 2021-22.

if the student successfully completed the year. In the early days of these policies, students were required to apply for forgiveness, and/or the forgiveness was applied at the end of a program of studies rather than within every loan year. (This was very helpful for provinces that needed to reduce expenditures briefly but temporarily, as the Ontario government did during the "social contract" period from 1993 to 1995.)

Various auditor general reports put paid to these two practices, at which point "loan forgiveness" programs became virtually indistinguishable from grant programs, in the sense that they reduced borrowing on an annual basis. The only difference was that, because the loans were issued at the beginning of the academic year and were not forgiven until the end of the year, provincial governments could avoid providing remission assistance to students who dropped out during the year. For a period in the 1990s and early 2000s, loan remission became a significant part of the policy tool box in Canada, which made the country something of an outlier internationally. However, these programs have been on the wane for the last decade, though loan remission remains a significant element of the program mix in Nova Scotia.

At the federal level, the expansion of student debt created a policy opportunity. In fiscal year 1997-98, the government of Canada posted a surplus for the first time in close to 30 years. In its 1998 budget, the government opted to use this surplus to endow a time-limited student grant agency known as the Canada Millennium Scholarship Foundation, which would distribute over $3.6 billion in funds to students between 2000 and 2009. As with the CSLP, the program was delivered mainly by provincial governments. At the time, this represented a significant fraction of all federal assistance. The foundation spent down its endowment and quietly went out of business in 2010; the federal government then substantially ramped up its own annual expenditure on grants to replace the foundation's spending.

One lasting effect of the millennium scholarship was a change in the way that non-repayable assistance was delivered. In 1999, essentially all grant aid was distributed on the same basis as loans—that is, according to assessed need. Research conducted by the foundation into the distribution of its own assistance revealed that when need was used as the criterion, grants were given disproportionately to students who were older (and hence had no deemed parental contributions), studied in more expensive programs, lived away from home, and chose not to work; that is to say, the "needy" were not necessarily "poor."[5] In 2005, both the foundation and the CSFAP began issuing part of their grants on the basis of income (family income for dependent students, individual income for independent students) instead of need, in order to ensure that grants were in fact being directed to students from the least fortunate backgrounds. Now, nearly all federal grants plus those made by the Ontario provincial government—over $4 billion per year in total—are distributed this way.

5 Alex Usher, *Are the Poor Needy? Are the Needy Poor? The Distribution of Student Loans and Grants by Family Income Quartile in Canada* (Toronto: Educational Policy Institute, 2004), at 21.

Since the beginning of the program in 1964, the federal and provincial programs have been fairly closely integrated. Students do not apply separately for federal and provincial aid; rather, they submit a single form that provides information sufficient to determine eligibility for both programs. Over time, the provincial and federal programs have become more deeply connected. Provinces have tended to adopt the CSFAP's rules for need assessment (though they are not obliged to, and in some cases they choose to diverge in significant ways, particularly with respect to when students are considered "independent" and thus not subject to a parental contribution assessment). After 2000, when the federal government switched to a system of "direct lending" to students (in which banks and other financial institutions were cut out of the financing process), the federal and provincial governments tied their programs even more tightly together by agreeing to "harmonize" their loans into a single product, thus making it easier for students to manage their loans in repayment.

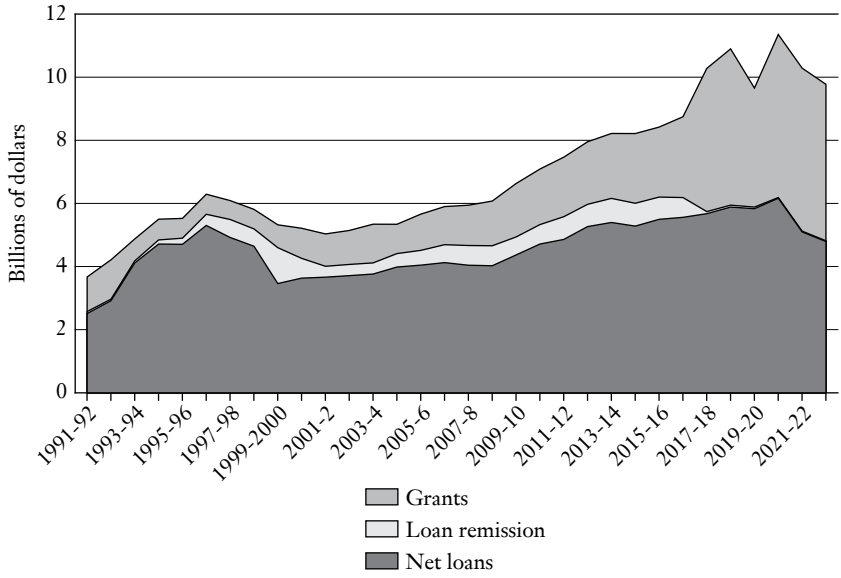
THE LONG-TERM EVOLUTION OF STUDENT AID IN CANADA

With this tour of student aid policy complete, it is now possible to turn to an analysis of the evolution of program expenditures. Data have been collected from the federal government and the provinces. In some cases (CSFAP, Quebec, Saskatchewan), jurisdictions publish data on the distribution of loans and grants. Until 2010, most of the others responded to an annual survey run by the Canada Millennium Scholarship Foundation; since that time, I have been using freedom-of-information requests to update data every year up to 2022-23.

Figure 1 shows the total need-based assistance issued by type in Canada over the past 29 years, in constant 2022 dollars. In order to avoid double counting, the figure shows net loans—that is, total loans minus loan remission—rather than total loans. Student loans reached a peak during the recession in the mid-1990s, when tuition fees were rising quickly, before tapering off as a result of a combination of lower need (as students began to earn more income in the post-1996 recovery) and a tightening of student loan criteria to exclude more students at private vocational colleges. From about 2000 onward, the total amount of student aid provided by Canadian governments, both federal and provincial, increased by about 4 percent per year on average after inflation. It then increased very substantially in 2017-18 as a result of changes in the federal program and the Ontario program, both of which eliminated tax credits and converted them to grants. Another major increase in grants occurred during the COVID-19 pandemic, when the federal government doubled its grant program for a three-year period in order to provide extra assistance during the crisis. This was in addition to the one-time temporary Canada emergency student benefit to provide financial support to students who were having difficulty finding employment during the pandemic—a subsidy that in the end worked out to be slightly less than $3 billion (not depicted in figure 1).

In 2022-23, the latest year for which data are available, total government need-based aid was roughly $9.8 billion, of which 49 percent was distributed in the form

FIGURE 1 Total Annual Loans and Grants Issued, Canada, 1991-92 to 2022-23, in 2022 Dollars

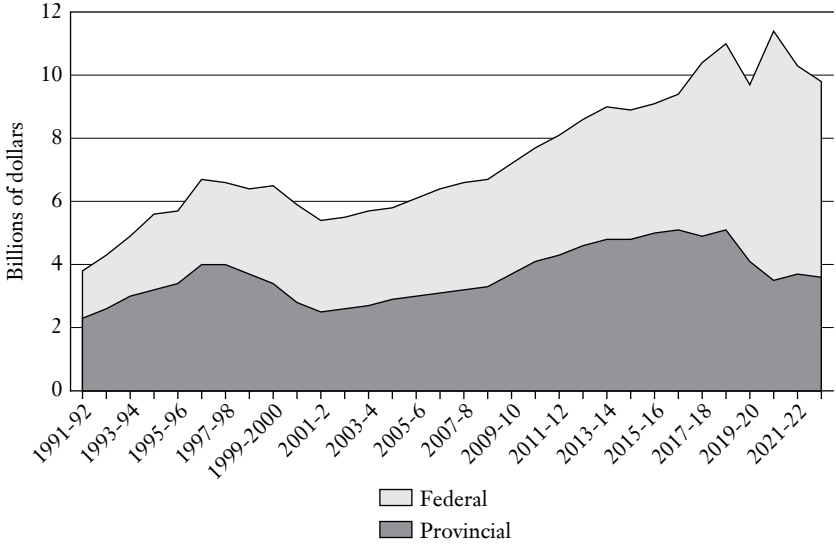


of loans. Of the remainder, roughly 99 percent was delivered in the form of grants and the rest was provided through various forms of provincial loan forgiveness.

There have been significant shifts over time in the sources of student aid, as shown in figure 2. In the mid-1990s, most of the aid came from provincial governments. After 2000 and the creation of the Canada Millennium Scholarship Foundation, the balance shifted, with an increasing proportion of funds being provided either directly or indirectly by the federal government. In the early 2010s, provincial funding grew substantially, thanks mainly to Ontario, and between 2012 and 2016 it was provinces that again provided more than 50 percent of support to students. However, beginning with the election of the Trudeau government in 2015 and, perhaps more pertinently, the election of the Ford government in Ontario in 2018, the pendulum swung back again, and by 2022-23 the federal government provided nearly two-thirds of all student aid in Canada.

In addition to the $10 billion in need-based aid that is administered by provincial governments, another $400 million or so is delivered through the post-secondary student support program (PSSSP). The PSSSP is funded by Indigenous Services Canada and is distributed through First Nations band councils. Very little public information is available about how this program is administered. There is a federal policy manual that resembles the CSFAP manual in the sense that it outlines how to estimate costs, but the PSSSP does not attempt to ration assistance on the basis of available resources.

FIGURE 2 Total Annual Need-Based Student Aid by Source, Canada, 1991-92 to 2022-23, in 2022 Dollars



NON-NEED-BASED AID

There are three main sources of non-need-based assistance in Canada. Two come from governments: assistance in the form of tax relief, and assistance in the form of Canada education savings grants. The third source comes in the form of institutional bursaries and scholarships, which are primarily (but not exclusively) given as merit awards with little or no regard for personal need. These sources are discussed in turn below.

Tax Relief

The most important form of non-need-based assistance is delivered through the tax system. Tax-based assistance for post-secondary education in Canada predates the student loan system. The Diefenbaker government (1957-1963) was under pressure to introduce a national system of scholarship, but felt unable to do so because of opposition from the government of Quebec, which at the time was already embroiled in a fight with Ottawa over subsidies to universities. As a solution, the president of the Progressive Conservative Party's youth wing, Ted Rogers, proposed providing assistance directly to students and their families through the tax system—specifically, by allowing tuition fees plus a small monthly allowance to be deducted from tax, either by a student or by one of the student's parents. Future prime minister Brian Mulroney—then a law student at Laval but a close confidant of Diefenbaker's and a leader of the national youth party—acted as a go-between. It was eventually

determined that the new Quebec Liberal government of Jean Lesage had no constitutional opposition to such a scheme, and the proposal was adopted.[6]

From then until 1996, there were only minimal changes to the measure: the value of the monthly allowance went up somewhat and, as part of a major tax reform carried out by the Mulroney government in 1987, deductions were turned into credits (thus mostly eliminating the regressive aspect of the associated tax expenditure).

In 1996, the federal government increased the value of the education credit from $60 to $80 per month. In 1997, the government increased the credit again to $120, and then to $200 per month for 1998; it also allowed part-time students to enjoy partial access to the credit and incorporated mandatory ancillary fees within the ambit of the tuition tax credit. Another change allowed students to carry forward any unused tax credits to future years—a measure that was very beneficial for students who did not have enough income to be liable for tax. In 2000, the monthly amount doubled to $400, with a corresponding increase for part-time students. In 2006, the Conservative government under Stephen Harper created a new textbook tax credit worth $65 per month, which worked in precisely the same way as the education credit.

The question of why the federal government moved so aggressively to improve tax-based assistance when it did is an interesting one. Certainly, the fact that tax credits were a policy tool that could be used without involving the provinces made them useful in an era when federalism was much more competitive than it was cooperative. The fact that the tax credits could be portrayed as spending but also as tax cuts was certainly another point in their favour, given the tenor of the times. And the fact that US President Bill Clinton coasted to re-election on a platform that included significant tax breaks for parents sending their children to university may have been a factor. It is impossible to say for sure; whatever the case, these few years fundamentally changed the nature of student financial aid in Canada.

Until 2000, provincial taxes were calculated as a function of federal taxes. Therefore, whenever a federal tax credit was implemented, the credit implicitly reduced the provincial tax payable as well. In 2000, the country moved from a tax-on-tax system to a tax-on-income system, under which provinces were given a great deal more freedom over the calculation of taxes (for example, provinces could apply different rates at different income bands) and the creation of tax concessions (for example, provinces could design their own tax credits). The one provision that they all agreed on was to let Ottawa define "income." A majority of provinces froze tuition tax credits at the level they were at prior to the 2000 budget ($200 per month), while some chose to mirror the federal government's $400 rate. Alberta and Ontario decided to do the federal government one better by matching the $400 credit rate and then indexing the rate to inflation.

Over time, a number of other tax benefits came into existence. In 1972, the government introduced a $500 tax exemption for scholarships. As with many other deductions, this was turned into a credit in the more general tax reform of 1987. Also

6 John Sawatsky, *Mulroney: The Politics of Ambition* (Toronto: McClelland and Stewart, 1992).

in 1972, the government created registered education savings plans (RESPs), which offered a means of sheltering education savings from tax. The final major tax innovation was the credit for interest paid on government student loans, which was introduced in the 1998 budget. This credit has been worth as much as $70 annually; it is now virtually irrelevant because the federal government eliminated interest on student loans in 2023.

Some provinces have also created tax incentives of their own. The main vehicles for these have been "graduate tuition tax credits"—that is, tax holidays for post-secondary graduates. At one time or another, these credits have been used in Manitoba, Nova Scotia, and Saskatchewan, though only the latter two provinces still employ them. In effect, these programs exempt individuals from all or some of their provincial tax liabilities for a number of years after graduation. These incentives are variously billed as a bid to keep students in the province or as a way of attracting post-secondary graduates from other provinces, though there is no evidence that either is successful in influencing graduates' choice of location.

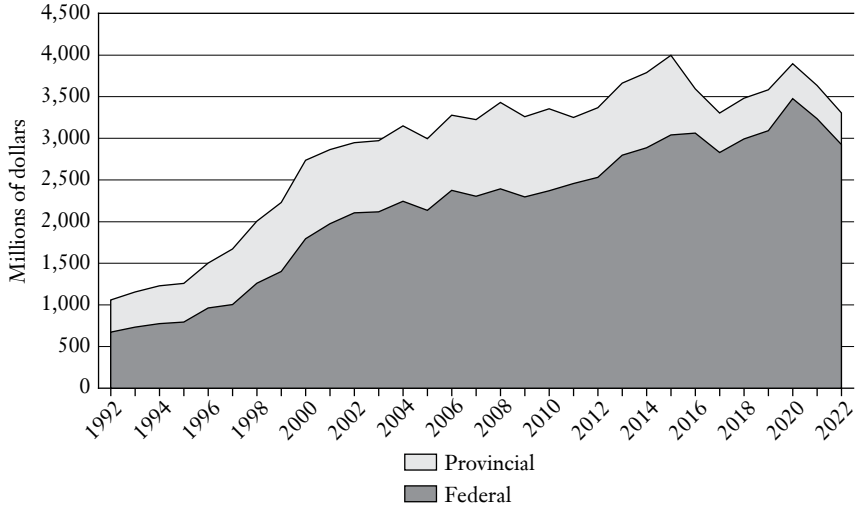
The enthusiasm for tax measures to support education has waned in the past decade or so. In 2015, the federal Liberals came into power with a plan to move away from tax credits as a funding mechanism. In the 2016 budget, the government eliminated the education and textbook tax credits, leaving only the tuition tax deduction. The money was used to pay for an increase in student grants. Ontario and New Brunswick followed suit by getting rid of their education and tuition tax credits starting in 2017, and reinvesting the proceeds in student grants and creating what were effectively "targeted free tuition" programs. In 2019, after changes of government in both provinces, these new programs were eliminated; in New Brunswick, the new government reinstated the tuition tax credit, whereas Ontario's did not. Other provinces that eliminated tuition and education tax credits include Alberta (in 2020) and Saskatchewan (in 2017). Quebec eliminated its education credit, but not its tuition credit, in 2012.

Figure 3 shows the total value of education and tuition tax credits across Canada since 1992. The value of these credits rose from just over $1 billion in 1992-93 to nearly $4 billion in 2015-16, in constant 2022 dollars. As noted above, major policy changes in the federal and Ontario programs reduced total tax credits by almost $500 million in 2017-18, with most of this being turned into grants. Currently, the total annual value of tax credits is estimated to be $3.3 billion, with over 85 percent of this coming from the federal government.

Canada Education Savings Grants

As noted above, the RESP—a savings account in which growth is not taxed—was introduced in 1972. In 1998, the federal government introduced a savings matching scheme under which it would contribute 20 cents for every dollar contributed to a RESP, up to an annual maximum of $400 (later increased to $500). This program, the Canada education savings grant (CESG), was very popular and takeup rose rapidly (see figure 4). Major changes to the program came in 2004, when the government addressed the complaint that CESGs were mostly a regressive giveaway to wealthier

FIGURE 3 Total Value of Education and Tuition Tax Credits by Source, Canada, 1992 to 2022, in 2022 Dollars



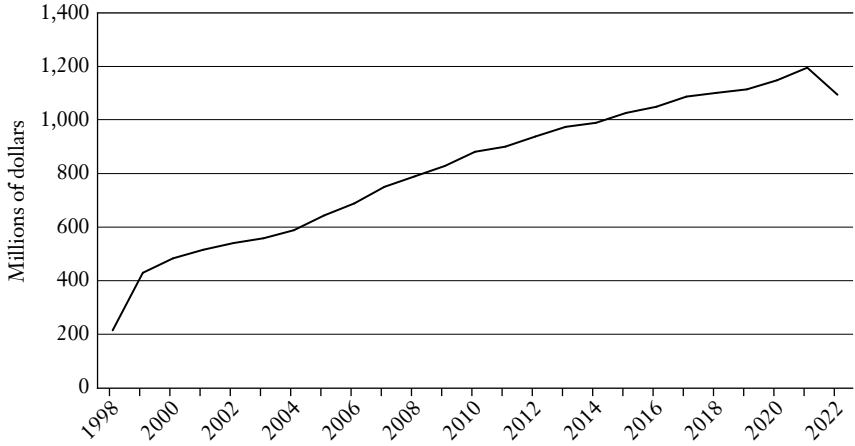
families. First, it increased the matching rate for lower-income parents to 40 percent (this was known as the A-CESG). Second, it introduced a new program called the Canada learning bond. This program adds money to children's RESPs automatically if their parents' income is less than $49,020 per year (the threshold amount adjusts upward if the family has more than three children). In the first year of eligibility, the child's account receives $500; in every subsequent year until the child turns 18, another $100 is added. Until 2024, parents needed to open an account in order for the transfer to occur, and since many did not, the program had only a mediocre takeup rate. In the federal government's 2024 budget, however, registration in the program was made automatic.

The CESG has been successful beyond the wildest dreams of its creators. In its first few years of operation, it was expected to cost $300 million per year or so; today, thanks to high participation rates in the program, the amount is over $1 billion. In 2022, 3.1 million RESP accounts received CESG and/or A-CESG payments. That is to say, 54.8 percent of all Canadians under the age of 18 received some kind of CESG payment in 2021, while another million or so have an RESP in their name that did not receive a contribution that year. In the same year, 493,300 current students used money from their RESPs to pay for their education, in an amount totalling $5.1 billion. Not included in these figures are expenditures by two provincial governments—Quebec and Saskatchewan—that top up RESP contributions.

Institutional Bursaries and Scholarships

In addition to the programs described above, there are a variety of government merit programs whose total expenditures are hard to estimate. At the federal level,

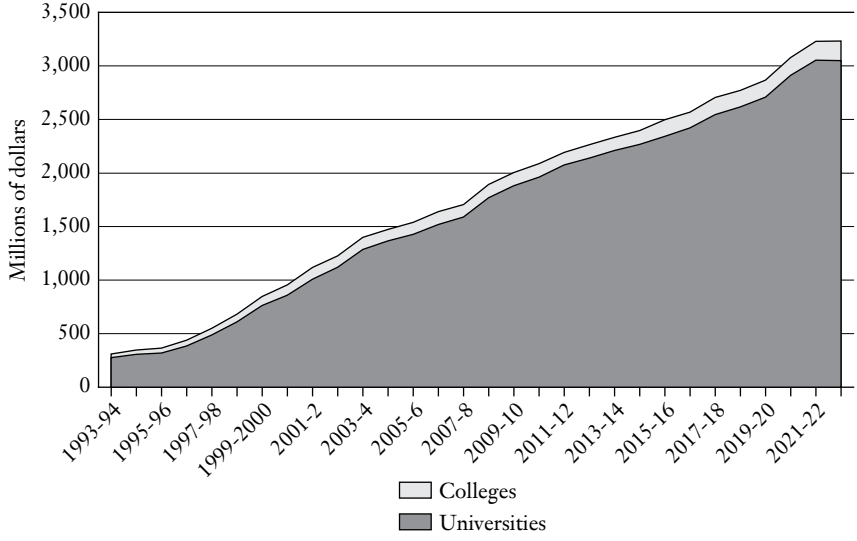
FIGURE 4 Total Canada Education Savings Grant Payments, 1998 to 2022, in 2022 Dollars



hundreds of millions of dollars go out through granting councils in the form of scholarships for graduate students, the best known of which are the Vanier graduate scholarships and the Banting post-graduate awards. In total, scholarship spending in these areas is about $250 million per year. Quebec's Fonds de recherche du Québec provides similar support, as does the Ontario graduate scholarships program, though the Ontario program is not run by an arm's-length research agency. For students leaving secondary school, both Alberta and British Columbia have large-scale scholarship programs worth tens of millions of dollars per year. Most other provinces have some kind of merit program, but they are not very large. At their peak, these awards totalled more than $100 million per year, but they have been declining in value over the past number of years. Prince Edward Island also has a set of "universal" grants (known as "George Cole grants" for university students and "Island grants" for college students) that are available to all students from the province who attend an Island post-secondary institution.

However, government merit scholarships are small in aggregate size compared to institutional scholarships, which are currently worth about $3.2 billion per year (see figure 5). The overwhelming majority of this money (95 percent) comes from universities rather than colleges, in part because universities have greater fundraising resources and in part because financial aid is a more important part of the enrolment management process at universities. Scholarships are perhaps the fastest-growing element of university expenditures in Canada, having increased more than tenfold since 1992-93. University expenditures on scholarships now total more than $2,500 per full-time-equivalent student per year. Institutions provide very little public information about how this money is spent—specifically, whether the money is awarded on the basis of need or merit, and whether funds support undergraduates or graduate students. Surveys conducted in the 2000s suggested that only about 25 percent of

FIGURE 5 Total Institutional Scholarships by Institutional Type, Canada, 1993-94 to 2022-23, in 2022 Dollars



funds went to undergraduates, and those funds were split roughly 50-50 between merit and need-based aid. This implies that the bulk of the funding—75 percent of it—is supporting graduate students, and that institutional aid spending is probably in the area of $650 per student per year at the undergraduate level and $7,250 per student per year at the graduate level.

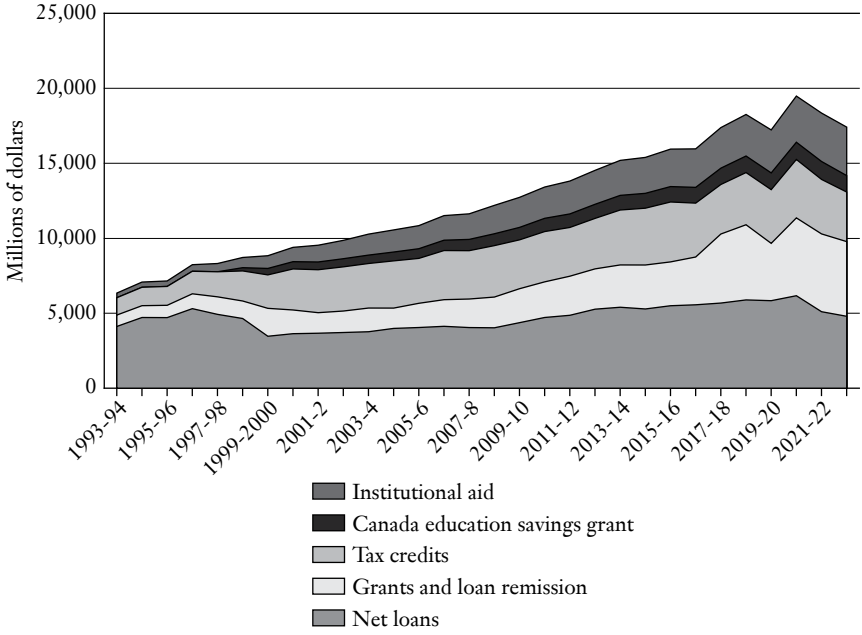
UNDERSTANDING THE SYSTEM AS A WHOLE

Figure 6 aggregates the five major sources of aid (excluding the government merit programs noted above) to provide a nearly complete picture of how student assistance has increased over the past two decades.

A few key observations emerge from this. First, the total amount of money given to individual Canadians has roughly tripled over the past 27 years, even after we account for inflation. A student aid system that provided $6.4 billion per year in 1993-94 now provides $17.5 billion per year. Second, the system is less loan-based than it used to be. In the mid-1990s, loans made up two-thirds of all student aid; by 2022-23, that figure had fallen to about a quarter (27.4 percent). Since the mid-1990s, government grants have increased more than sixfold after inflation, while institutional grants have increased ninefold. Meanwhile, tax credits have more than doubled after inflation, and education savings grants have gone from zero to more than $1.1 billion per year. All of this represents a sea change in the way that post-secondary education is financed.

The total amount of non-repayable assistance—that is, total assistance minus loans—exceeded $12.6 billion in 2022-23. If recurring money from other sources

FIGURE 6 Total Student Financial Assistance by Type, Canada, 1993-94 to 2022-23, in 2022 Dollars



(not included in figure 6) is added, the amount is more than $13 billion. This is substantially higher than the total amount of tuition paid by domestic students, which was estimated to be just under $10 billion in 2022-23. Since very little financial assistance is available to international students, it is possible to say that the total amount of non-repayable assistance given to Canadians each year is higher than the total amount of tuition fees paid by Canadian students. Put another way, once various forms of student assistance are taken into consideration, Canada likely has net negative tuition for domestic students. This does not mean that every student receives more in assistance than they pay in tuition, but it does mean that, on average, per-student subsidies exceed per-student fees.

To return to the point made in the introduction, one should not mistake the system's complexity for miserliness. Canada has a very generous system of student aid; it just does not prioritize clarity or coordination. Indeed, one might argue that it is the lack of coordination—and in particular the peculiarly Canadian tradition of competitive federalism—that has allowed the system to grow as rapidly as it has done over the past couple of decades. From the early 1990s, when austerity forced the country into substituting grants for loans, we have seen a period of almost 30 years now in which policy has been entirely directed toward making the system of student aid more generous. The relative importance of grants, tax credits, and education savings grants may have changed over time, but the overall direction of public policy has not.

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https://doi.org/10.32721/ctj.2024.72.4.ustd

Selected US Tax Developments

Co-Editors: Peter A. Glicklich* and Michael J. Miller**

TREATY PROVIDES UNIQUE BENEFITS TO CANADIANS MIGRATING TO THE UNITED STATES

*Jonathan Rhein*** and Rhonda Rudick*****

Canadians who emigrate to the United States or elsewhere face many decisions and considerations associated with departure, but careful tax planning should not be an afterthought. When an individual ceases to be resident in Canada, the individual is deemed to dispose of all of the individual's property (subject to certain listed exceptions) for fair market value proceeds immediately before departure and is required to pay Canada's departure tax on the deemed disposition. This tax presents an opportunity for the individual to step up the US tax basis in the property under the US-Canada treaty.

KEYWORDS: DOUBLE TAXATION ■ GIFT TAXES ■ US-CANADA ■ TREATY ■ EMIGRATION ■ DEPARTURE TAXES

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Current Tax Reading

Co-Editors: Kim Brooks, Jinyan Li, Alan Macnaughton, and Michael Veall*

Samuel Kapon, Lucia Del Carpio, and Sylvain Chassang, "Using Divide-and-Conquer To Improve Tax Collection" (2024) 139:4 *Quarterly Journal of Economics* 2475-2523 (https://doi.org/10.1093/qje/qjae018)

Canada is a country with high tax compliance and, it is thought, relatively little tax delinquency and relatively low coercive tax collection. Peru, the subject of this article, has higher delinquency and limited collection enforcement capacity. Its collection capacity may be spread too thin or applied too randomly to significantly deter tax evasion, even with maximal penalties for non-compliance. An inability to collect sufficient tax revenues can hamstring even a good government in its attempts to address societal goals.

Bassetto and Phelan[1] advanced a theoretical model of economic behaviour to address this dilemma. Seeing the basic problem as a shortage of resources for ensuring tax compliance, they proposed that a tax collection authority should impose measures of coercive collection (such as audits or garnishments) on taxpayers in a clear, known priority sequence rather than randomly.

A theoretical example may help to illustrate the idea. Suppose that there are 10 neighbourhoods with an equal number of households in each but differing levels of prosperity, so that the neighbourhoods can be ranked from most to least prosperous. Suppose further that the tax collection authority has enough resources to verify individuals' tax compliance in only one neighbourhood. Finally, assume that the authority has enough general information to establish tax revenue targets for each neighbourhood, and that these targets would be consistent with sufficient compliance.

In the context of this theoretical example, the tax collection authority could pursue "prioritized iterative enforcement" (PIE) by publicly announcing its revenue target for the most prosperous neighbourhood ("neighbourhood A"). The authority could further announce that if the revenue target is not met, it will verify compliance

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1 Marco Bassetto and Christopher Phelan, "Tax Riots" (2008) 75: 3 *Review of Economic Studies* 649-69 (https://doi.org/10.1111/j.1467-937X.2008.00484.x).

for every single household in the neighbourhood. As long as the revenue target is perceived to be ambitious enough, and sufficient penalties are imposed on a household when non-compliance is detected, all of the households of neighbourhood A will find it optimal to pay their taxes.

To the extent that the threat of enforcement elicits compliance from the households in neighbourhood A, the revenue target for the neighbourhood will be met without the actual use of any tax collection resources. Then, the tax collection authority can turn its attention to the second most prosperous neighbourhood ("neighbourhood B") and make the same kind of announcement that it made for neighbourhood A. Now, households in neighbourhood B have an incentive to comply, and the revenue target for neighbourhood B will be met. The tax collection authority can then move on to neighbourhoods C, D, E, and so on. In theory, this "divide-and-conquer" strategy can induce all households in all neighbourhoods to pay their taxes. Indeed, the resources initially assigned to tax collection can be reassigned to other purposes.

Could anything like this work in the real world? Kapon, Del Carpio, and Chassang report on a variation of this strategy that was tried in an experiment involving 13,432 property taxpayers in Lima, Peru. The issue facing the tax collection authority was not evasion through false reporting but rather undisputed tax bills not being paid by delinquent taxpayers. The district chosen for the experiment was relatively affluent; its collection rates were ultimately high, but its delinquency rates were approximately 30 percent at some point in the annual collection process, despite considerable resources being spent on tax collection. The enforcement mechanism that is generally used in Peru, garnishment orders, is costly because of the legal and banking environment. However, when delinquent taxpayers in the experiment were sent narrowly targeted orders guided by PIE, rather than formal writs, tax revenues rose by almost 10 percent.

The experiment randomly assigned property taxpayers in the district to one of two groups: a control group or a treated group. For the control group, the collection process was the same as that used historically by the city. To begin with, all delinquent taxpayers were informed of their debt by writ. Those who failed to pay their tax bill within 12 weeks could then be subject to a garnishment order. However, since garnishment capacity was limited, the writs were issued on the basis of subjective evaluations by tax authority administrators. Administrators are thought to issue garnishments in order to maximize expected payments, leading, for example, to greater focus on taxpayers who owe the most taxes.

In contrast, property taxpayers in the treated group were subjected to PIE in relatively small batches. About 400 taxpayers per week were put in a group called G1. G1 members received targeted notices. The notices clearly stated that if payment was not made within 6 weeks, garnishment would proceed. Another 400 were put in a group called G2 and given targeted notices with a clear deadline of 12 weeks, with a warning that they could be moved to G1 if they failed to comply. All deadlines were enforced with actual garnishment as necessary. The remaining individuals in the treated group were given writs but no deadlines, although they were told that they

could be moved to G2, and in fact were moved when garnishment capacity allowed. The idea was to achieve fast settlements in groups G1 and G2—so fast that the settlements that were received compensated for the relatively low number of taxpayers targeted at any one time, and quickly enough that the collection resources that were freed up could be used to apply meaningful deadlines to more and more taxpayers. As noted, the strategy worked: collections increased modestly but significantly.

In my view, while the theory behind the experiment is interesting, it obscures a basic pragmatic empirical result. The essential finding of this study is confirmation that credible deadlines work. There is a large difference in the behavioural response to different threats of enforcement—on the one hand, informing a taxpayer that if payment is not received within a certain period of time, garnishment *may* proceed, and on the other, informing the taxpayer credibly that if payment is not received by a specific deadline, garnishment *will* proceed.

MV

James Cloyne, Nicholas Dimsdale, and Natacha Postel-Vinay, "Taxes and Growth: New Narrative Evidence from Interwar Britain" (2024) 91:4 *Review of Economic Studies* 2168-2200

The role of Keynesian fiscal policy in ending the Great Depression remains a matter of some debate, although many would argue that it was the channel through which the onset of the Second World War operated on the economy. For example, the US economy clearly began its recovery with the increased military spending that predated the United States' entry into the war. To some, this suggests that if Keynesian fiscal policy had been aggressive enough, the Depression could have ended much sooner than it did.

In the Keynesian model, when there are considerable unemployed resources (particularly labour) in the economy, the diagnosis is deficient demand. One possible policy response is to increase government expenditures; another is to cut taxes. Both options typically entail an increase in government debt, which may have longer-run consequences. In the short run, though, the idea is that those who are recipients of increased government spending (say, workers on new highway construction) or those who benefit from a tax cut (that is, consumers) will spend some of their now higher after-tax income on more goods and services, and this spending will in turn generate further spending—will be multiplied—as the original fiscal stimulus ripples through the economy. Hence, through this multiplier effect, an increase in government spending of one dollar or a tax cut of one dollar can lead to an increase in output of more than one dollar. Some Keynesian models suggest that government spending has a higher multiplier than tax cuts in times of economic uncertainty, because much of extra income provided by a tax cut may be saved rather than spent. Other Keynesian models, however, suggest that tax cuts have a higher multiplier than government spending because lower taxes (1) also increase incentives to work or to invest, and (2) may reduce uncertainty about the future consequences of government borrowing, because tax cuts increase tax room—in the event of a future debt emergency, the

government can simply return taxes to their original level, rather than defaulting or taking other drastic action.

Most of the academic discussion of fiscal policy during the Great Depression focuses on government spending, perhaps because government military spending is seen by many as the reason the Depression ended. Cloyne, Dimsdale, and Postel-Vinay instead consider the impact of taxation policy using what is called the narrative approach.[2] Specifically, they examine the period between the First and Second World Wars in the United Kingdom. This was a prolonged episode of economic depression that lasted much longer than the depression in Canada and the United States. The idea behind the narrative approach is that changes in tax revenues depend on what happens to the economy, where many factors are at play. Hence, instead of analyzing tax changes by focusing on revenues, researchers examine budgetary statements to isolate individual tax policy changes. This approach is judged to be more likely to yield a compelling cause-and-effect analysis.

The narrative analysis conducted by the authors confirms the generally held belief that Britain pursued what was at the time non-Keynesian economic orthodoxy in promoting two goals: low taxes and debt repayment. But these goals conflict. The narrative concludes that some chancellors of the Exchequer put more weight on one goal over the other. These policy variations allow the authors to estimate a Keynesian tax multiplier effect even when the policies were not explicitly Keynesian. It is worth noting that the authors do not emphasize the period of British rearmament, from 1936 to 1938, because it is regarded as a time when government spending dominated budgetary matters, and changes in tax revenue were "endogenous"—that is, they followed purely from the stimulative effects of the spending.

After applying some relatively complex econometric methods to utilize the data from the narrative approach and other sources, the authors estimate that a tax cut equal to 1 percent of gross domestic product (GDP) increased GDP by 2 to 3 percent—a substantial multiplier effect. The authors note that their estimates are somewhat lower than those of Keynes himself, but large compared to the multiplier effects that have been estimated for more recent periods. The UK interwar experience was a prolonged period of low economic activity. It was therefore a time when Keynesian policies might have been particularly potent if they had been used explicitly and boldly.

MV

2 The narrative approach to studying fiscal taxation policy was discussed in "Current Tax Reading" (2024) 72:2 *Canadian Tax Journal* 561-75, at 572-73 (https://doi.org/10.32721/ctj.2024.72.2.ctr), in the review of Syed M. Hussain and Lin Liu, "Macroeconomic Effects of Discretionary Tax Changes in Canada: Evidence from a New Narrative Measure of Tax Shocks" (2024) 57:1 *Canadian Journal of Economics* 78-107 (https://doi.org/10.1111/caje.12689).

Gerald Auten and David Splinter, "Income Inequality in the United States: Using Tax Data To Measure Long-Term Trends" (2024) 132:7 *Journal of Political Economy* 2179-2227 (https://doi.org/10.1086/728741)

I should begin this review by noting that this article by Auten and Splinter challenges the work of a team that includes Emmanuel Saez, a prominent scholar in the economic analysis of inequality. I have worked with Professor Saez as a co-author,[3] so my comments here are undoubtedly shaped by that experience. Auten and Splinter also engage detailed issues in US data, in which I have limited expertise—all my related work has been on Canadian data.

Auten and Splinter (herein referred to as "AS") focus on a central question in the literature: quantification of the increase in income inequality that most modern economies experienced in the last part of the 20th century and, perhaps less clearly, in the 21st century. In this case, the AS study concerns income inequality in the United States from 1960 to 2019. Most studies base their analyses on the use of tax data, but AS augment this common approach with other data sources.

The unusual thing about the study is that the estimates reported in AS are quite different from those reported in an earlier article by Piketty, Saez, and Zucman[4] (herein referred to as "PSZ2018"). But even as the AS article was in the process of being published, a rebuttal by Piketty, Saez, and Zucman (herein referred to as "PSZ2024") was published on Professor Saez's website,[5] arguing for adjustments to the AS series that would make it very close to the series reported in PSZ2018.

The PSZ2024 rebuttal has not yet been peer-reviewed. While it might seem premature to describe this debate, I pursue it now because I think AS and the rebuttal have produced interesting and enlightening tax reading on an important question.

The literature regarding the top end of the income distribution (the top 1 percent of taxpayers) originally focused on market income. This was done partly for data reasons: much of the data required for the analysis could be obtained directly from samples drawn from anonymized tax returns. Another reason is that scholars in the field, myself included, were trying to understand the economic processes that caused the income share of the affluent in many countries to fall in the post-war period, and top-end inequality to rise beginning around 1980. While there is disagreement about

3 For example, Emmanuel Saez and Michael R. Veall, "The Evolution of High Incomes in Northern America: Lessons from Canadian Evidence" (2005) 95:3 *American Economic Review* 831-49 (www.aeaweb.org/articles?id=10.1257/0002828054201404).

4 Thomas Piketty, Emmanuel Saez, and Gabriel Zucman, "Distributional National Accounts: Methods and Estimates for the United States" (2018) 133:2 *Quarterly Journal of Economics* 553-609.

5 Thomas Piketty, Emmanuel Saez, and Gabriel Zucman, *Income Inequality in the United States: A Comment*, Technical Note no. 2024-04 (Paris: World Inequality Lab, September 2024) (https://eml.berkeley.edu/~saez/PSZ2024.pdf). An earlier version of this comment was available in July. As of this writing, I am not aware of further contributions to this exchange from either side.

the size of the increase in market inequality and whether that increase has stopped, it is generally accepted that there was a significant increase in top-end inequality of market income in the United States between 1980 and 2008.

However, much of discussion about the rise in top-end inequality was not about the economic processes that were causing it, but rather about the quantification of its distributional consequences. What groups were and were not gaining from economic growth? How much were they gaining? While it was known that top-end inequality of market income (at least as reported for tax purposes) had increased substantially, PSZ2018 contributed to this debate by going beyond market income to include transfers (both cash and in-kind) as well as taxes. They also embarked on a series of adjustments in the estimates to incorporate 100 percent of national income as recorded in the national income accounts, as compared to 60 percent in the earlier efforts, which used only administrative tax microdata. These adjustments involved, for example, capturing untaxed fringe benefits and untaxed or yet-to-be-taxed capital income. PSZ2018 write, "[I]mputing all national income, taxes, transfers, and public goods spending requires making assumptions on a number of complex issues, such as the economic incidence of taxes and who benefits from government spending. Our goal is not to provide definitive answers to these questions but to be comprehensive, consistent, and explicit about what assumptions we are making and why."[6]

There are many strands of interest in AS, but for the purposes of this review I will focus on the top 1 percent share comparison with PSZ2018. It turns out that most of the differences in the estimates between AS and PSZ2018 pertain to pre-tax income. First, perhaps surprisingly, there is a much smaller gap in the estimates of the adjustments from pre-tax income to after-tax income. Second, the differences occur largely in the estimates of the rate of increase from 1979 to 2019. Specifically, AS estimate that the top 1 percent pre-tax income share rose by 4.4 percentage points, from 9.4 percent to 13.8 percent, over the period, while updated PSZ2018 numbers[7] show an increase of 8.3 percentage points, from 10.8 percent to 19.1 percent, over the same period. That is, PSZ2018 find an increase that is $8.3 - 4.4 = 3.9$ percentage points larger than the increase found by AS. This 3.9 percentage point difference will be the focus of much of the discussion below.

According to AS, one of the most important reasons for the difference lies in the adjustments made to account for effect of the US Tax Reform Act of 1986. Unfortunately from an analytical perspective, the legislative reforms occurred at the peak (some would argue) of the shift toward income concentration resulting from a combination of technological, economic, political, social, and cultural changes. The reforms changed taxpayers' incentives, causing more high-income individuals to

6 Supra note 4, at 556.

7 Updated values were obtained from Professor Saez's website (https://eml.berkeley.edu/~saez/) in the Excel file that accompanies PSZ2024 (see sheet "DataTab2," column E, "PSZ top 1% factor income"). The values are not the same as those in PSZ2018, but were updated mainly to include years up to 2019.

convert their business organizations from C corporations to S corporations. In S corporations (flowthrough entities), profits flow through to personal income and hence are subject to personal income taxation, whereas in C corporations (akin to Canadian corporations), profits may be kept inside the corporation but are subject to corporate taxes, with personal income taxes due when income is eventually withdrawn. AS and PSZ2018 agree that the conversion of C corporations to S corporations would inflate estimates of the increase in inequality in personal incomes: some of the apparent increase in the income shares of the top 1 percent based on personal income tax data at the time was just an effect of relabelling income that formerly was retained earnings but that now was flowed through into personal income and reported in the personal income tax data. However, the AS adjustments for these conversions are larger than the PSZ2018 adjustments, leading to a smaller estimated rate of increase in AS than in PSZ2018.

AS explain some of the differences with PSZ2018 as follows: (1) by relying on tax returns for reported social security income, PSZ2018 miss unreported social security income by low-income individuals, which AS pick up by using Social Security Administration data directly; (2) PSZ2018 attribute much more underreported income to those with high incomes than was found in Internal Revenue Service audits, primarily because PSZ2018 allocate underreported income only to those with positive business income, while audits find that a substantial percentage of underreported income is allocable to those with negative business income; and (3) PSZ2018 overattribute distributions from funded pension plans and individual retirement accounts that are not non-taxable (and are not reported for personal income tax purposes) to the top 1 percent—an overattribution that AS argue is worsened by the fact that some of the distributions are rollovers, which should not be counted as income at all.

In their rebuttal, PSZ2024 state that AS attribute a large and growing amount of partnership income—which is legally exempt from taxation under depreciation allowances—to owners of sole proprietorships. Sole proprietors are much less likely than owners of partnerships to be in the top 1 percent. This leads AS to underestimate the top 1 percent share as well as the top 1 percent rate of increase, since exempted depreciation was negligible in 1980. PSZ2024 state that this approach was not employed in earlier versions of AS, which would explain why it was not caught before publication. They also state that the AS estimate of the amount in question is $318 billion, which obviously is a significant sum. In terms of the top 1 percent share, PSZ2024 calculate that this accounts for 1.2 percentage points of the 3.9 percentage point difference between AS and PSZ2018.

PSZ2024 also argue that there are three more problems in the AS estimation of pre-tax income. They state that the capital income generated by funded pension plans is misallocated by AS to holders of both funded and unfunded pension wealth, when it should be allocated only to holders of funded pension wealth, who are more likely in the top 1 percent. Similarly, PSZ2024 state that AS allocate the tax-exempt income of S corporations to C corporations, while it would be more appropriately allocated to S corporations. PSZ2024 further state that AS understate inequality because—surprisingly to me—ultimate ownership of C corporations is less concentrated

among the affluent, in part because some portion of C corporation equity is owned by pension funds. PSZ2024 also argue that AS should not have moved from factor-price national income to market-price national income, given that the latter includes sales taxes and excise taxes, because such taxes are not anyone's earnings. PSZ2024 find that, together, these changes in estimation account for another 1.1 percentage points of the difference between AS and PSZ2018. They also find further differences totalling 0.8 percentage points, which PSZ2024 attribute to other AS assumptions that they find questionable.[8]

PSZ2024 therefore find that 1.2 + 1.1 + 0.8 = 3.1 percentage points of the 3.9 percentage point difference between AS and PSZ2018 can be accounted for by assumptions that PSZ2024 describe collectively as being "empirically biased or conceptually unsound."[9] They buttress their position with a number of further calculations, one of which emphasizes that the AS assumptions imply that the share of untaxed business income accruing to the top 1 percent would have increased at a very slow rate compared to the much more rapid increase in the share of taxed business income accruing to the top 1 percent.

When the PSZ2024 adjustments to the AS numbers are made, the resulting top 1 percent pre-tax income share series looks very much like the updated PSZ2018 series from 1979 to 2019, although the AS values are slightly lower.

Statistics Canada now provides estimates for top income shares for Canada from 1982 to 2021.[10] These values are not conceptually comparable to the PSZ2018 or AS values, because they are only based on anonymized personal income tax and transfer payment microdata in the Longitudinal Administrative Databank (LAD); the income share values do not include all components of national income, as is attempted in PSZ2018, AS, and PSZ2024. That said, it is still relevant to note that the LAD data show increases in Canada in top income shares, though the increases are much smaller than those that PSZ2018 find for the United States. (It is estimated that in 1982 the top 1 percent in Canada received 7.4 percent of all income, including capital gains, and that by 2019 their share had risen to 11.8 percent—an increase of 4.4 percentage points. Using the same LAD data to examine changes in shares with other definitions of personal income yields similar estimates.) The trend in these Canadian numbers was very similar to the US trend as estimated by PSZ2018, from

8 Specifically, they do not accept the AS approach on tax evasion, arguing that AS allocate too much income from undetected tax evasion to those with low incomes, while PSZ2018 allocate such income proportionally to each component of reported income. They also argue that AS should not allocate retained earnings largely based on dividends, while PSZ2018 allocate retained earnings using equity wealth.

9 Supra note 5, at 15.

10 Statistics Canada table 11-10-0056-01 (formerly CANSIM 204-0002), "High Income Tax Filers in Canada, Specific Geographic Area Thresholds" (www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110005601).

1982 up to the early 2000s,[11] but then the Canadian trend stops. Wolfson, Veall, Brooks, and Murphy[12] find that when retained earnings in Canadian-controlled private corporations are included as personal income, Canadian income inequality is estimated to increase significantly, although not to the same degree that PSZ2018 estimate for the United States.

Given the unfolding literature, my views on this subject are not fixed. That said, my own conclusion at the moment is that the AS results likely underestimate the rise in US income inequality. But it is also likely that the US increase substantially exceeds any Canadian increase. There is research to come, but my tentative prediction is that the US period from about 2000 to the present will be seen to be exceptional among nations, not only in terms of rising inequality but in terms of other metrics as well, particularly rising real GDP per capita. My guess is that one important factor will be the increase in the returns to intangible assets such as brands, intellectual property, and platforms.

MV

Ross McKitrick, "Economic Implications of a Phased-In EV Mandate in Canada," *Canadian Journal of Economics* (forthcoming) (https://drive.google.com/file/d/10XK8wH2Pbd2MfUj8C1iacY5Tdxx7aW7m/view)

This article examines the costs of mandates that set targets for the number of electric vehicles sold in Canada. The author constructs an economic model of the auto industry with both electric and internal combustion cars, with the former being more expensive and less desirable to consumers, at least initially. (If electric cars were perceived as being just as good as internal combustion vehicles at the same purchase price, the electric vehicle mandate would not be binding.) The author examines two scenarios. In one, the difference in purchase price and performance between electric vehicles and internal combustion vehicles is reduced to zero by 2035. In the other, the difference is reduced to zero by 2050. In both scenarios, the author finds that the cost per tonne of CO_2 emissions abatement from electric vehicle mandates in 2030 exceeds $2,500. The costs are even higher (and last longer) when parity between electric vehicles and internal combustion vehicles is not achieved until 2050. The author notes that the cost per tonne of CO_2 reduction from the electric vehicle mandates far exceeds the cost per tonne with a carbon tax, which is usually pegged at less than $300. The author concludes that if CO_2 emission reductions are desired, carbon taxes are a much more efficient public policy tool than electric vehicle mandates.

MV

11 Indeed, Saez and Veall (supra note 3, at 832) argued that the increase in income inequality in the United States during the period up to about 2000 may have been a causal factor in the Canadian rise.

12 Michael Wolfson, Mike Veall, Neil Brooks, and Brian Murphy, "Piercing the Veil: Private Corporations and the Income of the Affluent" (2016) 64:1 *Canadian Tax Journal* 1-30.

Herb Emery and Wayne Simpson, "A Half-Century of Canadian Public Policy/Analyse de politiques: Early Ambitions and Evolution with Specific Reference to Income Security Research" (2024) 50:S1 *Canadian Public Policy* 1-23 (www.utpjournals.press/doi/full/10.3138/cpp.2023-036)

To celebrate the 50th volume of *Canadian Public Policy/Analyse de politiques*, the journal is publishing a special issue. (By way of disclosure, I am the editor of the journal.) Topics addressed in the volume include monetary policy, climate policy, early childhood education, the health-care system, the immigration system, and federal policy regarding Indigenous nations. This article, which opens the volume, presents a brief history of the journal, with an emphasis on its contributions to policy research and discussion of income security and its tax implications.

One interesting strand from the early years of the journal is its commentary on the Macdonald commission—formally, the Royal Commission on the Economic Union and Development Prospects for Canada—which issued its report in 1984. The commission is best known today for its recommendations regarding free trade, but it also proposed the introduction of a universal income security plan to replace the guaranteed income supplement, much of what was then called unemployment insurance, and allowances and tax credits involving children. The commission also proposed the establishment of a transitional adjustment assistance plan for displaced workers. Studies examining these two plans were the focus of a special issue of the journal.[13]

Another interesting strand is the first application in the journal of Statistics Canada's Social Policy Simulation Database and Model, by Woolley, Vermaeten, and Madill,[14] who found that the new child tax benefits were concentrated in lower-middle-income families rather than the poorest, and that the working income supplement increased marginal tax rates for average families. (Both findings were an important part of the research that led to policy reform.)

More broadly, the authors highlight the increased use of anonymized tax microdata, such as Statistics Canada's LAD, and emphasize again the "enduring public policy significance" of much of the work on economic security that has been published in *Canadian Public Policy/Analyse de politiques*.[15]

MV

13 Anthony D. Scott, "The Macdonald Report: The Reviews in Review" (1986) 12, Supplement *Canadian Public Policy* S1-22 (www.jstor.org/stable/3551287).

14 Frances Woolley, Arndt Vermaeten, and Judith Madill, "Ending Universality: The Case of Child Benefits" (1996) 22:1 *Canadian Public Policy* 24-39 (https://doi.org/10.2307/3551747).

15 At 16.

Daniel Béland, André Lecours, Vanessa MacDonnell, Peter Oliver, and Trevor Tombe, "Interdisciplinary Collaboration, Public Policy Research, and Fiscal Federalism in Canada: Bringing Together Economics, Law, and Political Science" (2024) 50:S1 *Canadian Public Policy* S24-35 (www.utpjournals.press/doi/abs/10.3138/cpp.2023-041)

This article, also drawn from the 50th volume celebration issue of *Canadian Public Policy/Analyse de politiques* (discussed above), presents several different perspectives on fiscal federalism. From these perspectives, the authors explore two potential policy options for the federal equalization program, which is intended to redistribute resources from more affluent to less affluent provinces. Option 1 is the incorporation of a measure of need into the equalization formula. Option 2 is the creation of an arm's-length fiscal commission to manage equalization. Of the potential economic, legal, and political drawbacks discussed, the most serious to me are those understood through a political science lens. With option 1, the central concern is the achievement of a stable agreement. With option 2, the decentralized nature of Canada's federation poses a range of difficulties for any commission, from provincial pushback to resistance in providing information. The authors do not think that the establishment of a separate fiscal commission would necessarily reduce the political difficulties associated with equalization.

MV

Richard Collier and John Vella, "Formative Politics and Policies of Pillar Two," in Werner Haslehner, Georg Kofler, Katerina Pantazatou, and Alexander Rust, eds., *The "Pillar Two" Global Minimum Tax* (Cheltenham, UK: Edward Elgar, 2024), 1-27

Now that pillar 2 has been implemented into law in Canada by way of the Global Minimum Tax Act (GMTA),[16] the "global" origin and the politics and policies behind pillar 2 should be relevant considerations in the interpretation of the GMTA. This paper by Collier and Vella sheds light on how pillar 2 came about through the work of the Organisation for Economic Co-operation and Development (OECD), the objectives that it was expected to achieve, and its relationship with pillar 1 and the arm's-length principle. One of the authors (Collier) was personally involved in the OECD process in developing the two pillars, and the paper is very insightful.

The authors recognize that, once implemented, pillar 2 should have a substantive impact on the international tax system, but there are some outstanding and foreseeable issues that threaten the longer-term success of the two-pillar project agreed upon by 137 countries on October 8, 2021. First, there is now uncertainty over the implementation of pillar 1, which means that the problems arising from digitalization to be addressed by both pillars may remain unaddressed. Originally, pillar 2 was intended to supplant rather than complement pillar 1, which was designed to

16 SC 2024, c. 17, section 81.

reallocate some taxing rights to market jurisdictions. The design of pillar 2 was influenced by the 2017 US tax reform package that included the new global intangible low-taxed income (GILTI) and base erosion and anti-abuse tax (BEAT). Prior to 2017, issues relating to effective tax rates (ETRs) and tax competition hardly featured in the OECD discussions.

As to the thinking behind the pillar 2 proposal, low ETRs in some states were viewed as a fundamental problem for the international tax system. Tax competition is a broader concept than the concept of profit shifting attributable to taxpayer behaviour or harmful tax competition in regard to paper profit. The central idea outlined by the pillar 2 proposal to address tax competition was to establish a right for countries to "tax back" what is lost to low-ETR states. Interlocking mechanisms were created: the default income inclusion rule (IIR), to allocate undertaxed profits to the parent entity; a "reverse" controlled foreign company (CFC) rule or undertaxed payments (profits) rule (UTPR), to deny the deductibility of payments from one related party to another low-tax related party in the event that the IIR is not applied; a subject-to-tax rule (STTR), to modify double tax treaty articles giving exclusive taxing rights to the payee jurisdiction based on a residence test or the existence of a permanent establishment (PE); and, finally, a switchover rule, to deny exemptions to residents of a state for a given category of income if such income is subject to a low level of tax.

However, as the authors note, the objectives of pillar 2 became uncertain: in January 2019, the objectives were to address profit shifting and the remaining issues of base erosion and profit shifting, and perhaps to mitigate tax competition; in February 2019, both profit shifting and tax competition were referred to as objectives, but it was unclear whether tax competition over "real activity" was targeted; in January 2020, disagreements among states were noted, and "ultimately, no clear policy decision was made between the profit shifting and tax competition objective and a limited formulaic SBIE [substance-based income exclusion] was agreed. Pillar Two is thus a political compromise that purports to address both objectives. In practice, it goes beyond profit shifting but allows for some tax competition."[17]

The authors show that the political compromise creates costs for the pillar 2 system. Measures that were subsequently introduced to reach a political compromise (for example, the qualified domestic minimum top-up tax, or QDMTT, and qualified refundable tax credits, or QRTCs) have created incentives that may not be entirely desirable or expected. Further, "the lack of agreement on the policy underlying the objectives pursued by Pillar Two increases the likelihood of disputes arising among countries on the implementation and interpretation of the OECD Model Rules" and "make it harder to resolve disputes when they arise."[18]

The authors point out the failure of pillar 2 in responding to the problems of digitalization. Because pillar 1 and pillar 2 originally had wholly different thinking

17 At 13.

18 At 15.

about the allocation of taxing rights and focused relatively little on the reallocation of taxing rights, subsequent measures were added to give more taxing rights to more countries under the UTPR and QDMTT.

The impact of pillar 2 on the future stability of the international tax system is uncertain. Pillar 2 "doubles down" to backstop the existing "source"-based system that has proved controversial for many states. It adds complexity by not repealing the CFC or other existing anti-avoidance rules. It gives rise to rules that "cannot be squared with the notion of value creation"[19] (such as the UTPR), and leaves the problematic arm's-length principle unchanged. In conclusion, the authors state that because pillar 2 does not provide a clear policy direction on the degree to which tax competition will be acceptable in the future, "disputes are likely to arise around its implementation and interpretation that will be hard to resolve in a principled manner."[20]

JL

Leopoldo Parada, "Tax Neutrality Regimes and GloBE," in Werner Haslehner, Georg Kofler, Katerina Pantazatou, and Alexander Rust, eds., *The "Pillar Two" Global Minimum Tax* (Cheltenham, UK: Edward Elgar, 2024), 260-81

Leopoldo Parada, "Flow-Through Entities and the OECD Pillar Two" (https://ssrn.com/abstract=4910765)

In these two papers, Parada examines the OECD global anti-base erosion (GloBE, or pillar 2) model rules in respect of transparent or flowthrough entities. Under general tax regimes, the income of a transparent entity is not taxed at the entity level but at the owner's level. This ensures that there is a single level of income taxation on the income earned through such entities. These regimes are qualified as "tax-neutral" for the purpose of the pillar 2 rules. However, because the pillar 2 rules compute ETR at the entity level, the interaction between the tax-neutral regimes and the pillar 2 rules is complex, giving rise to unintended outcomes.

In the first piece, a book chapter, Parada argues that the design of top-up tax in pillar 2 creates a risk that an ultimate parent entity (UPE), which is treated as a transparent entity in its country of establishment, may be considered to be non-compliant under pillar 2. Even though the OECD GloBE model rules (for example, article 7.1) attempt to preserve the tax neutrality of transparent entities, there remain interpretive issues and policy concerns associated with implementation. Parada provides several examples to illustrate his points. One example is about a UPE that has owners who are not members of the same multinational enterprise (MNE) group.

In the second piece, Parada focuses on flowthrough entities such as trusts, foundations, and similar arrangements as UPEs or constituent entities. Through several scenarios, he explains the intricacies of ETR calculations, the technical rules for the

19 At 23.

20 At 26.

allocation of income, loss in regard to such entities, and the specificities of the rules for the allocation of covered taxes in the context of the entities and their owners, as well as in the context of hybrid entities. Overall, the author confirms that the rules in articles 3.5, 4.3.2, and 7.1 offer a "valuable approach that does not only seem to respect the tax policy rationale of fiscally transparent regimes, i.e., the idea of taxing no more than once, but also allows a coherent and streamlined enforcement of the global minimum tax."[21]

JL

Thomas Horst, "Estimating Pillar 2's Effect on U.S. Multinationals and Treasury Revenue" *Tax Notes International*, September 24, 2024 (www.taxnotes.com/tax-notes-today-international/oecd-pillar-2-global-minimum-tax/estimating-pillar-2s-effect-u.s-multinationals-and-treasury-revenue/2024/09/27/7l62g)

Giuseppe Pulina and Skerdilajda Zanaj, "The Economics and Impact of Pillar Two," in Werner Haslehner, Georg Kofler, Katerina Pantazatou, and Alexander Rust, eds., *The "Pillar Two" Global Minimum Tax* (Cheltenham, UK: Edward Elgar, 2024), 28-46

Generating additional tax revenues is a main reason why pillar 2 (the global minimum tax, or GMT) has been implemented or is in the process of being implemented in a growing number of countries, including Canada. Additional revenues can be raised by preventing the erosion of the standard corporate tax as a result of the profit-shifting practices of MNEs and/or by collecting top-up taxes under the IIR or UTPR. The estimated amount of such additional revenues varies, ranging from US$220 billion annually by OECD countries in 2023[22] to US$155 to US$192 billion annually in 2024,[23] and €80 billion annually for members of the European Union.[24]

The revenue impact of the GMT in the United States was also estimated differently. In a June 2023 report, the Joint Committee on Taxation (JCT) estimated that US tax receipts for 2025-2028 will be reduced by US$1.7 billion under its scenario 2 (in which the GMT is enacted in the United States and the rest of the world), and

21 At 40.

22 Organisation for Economic Co-operation and Development, "Revenue Impact of International Tax Reform Better Than Expected," *Press Release*, January 8, 2023 (www.oecd.org/en/about/news/press-releases/2023/01/revenue-impact-of-international-tax-reform-better-than-expected.html).

23 Felix Hugger, Ana Cinta González Cabral, Massimo Bucci, Maria Gesualdo, and Pierce O'Reilly, *The Global Minimum Tax and the Taxation of MNE Profit*, OECD Taxation Working Papers no. 2024 (Paris: OECD, 2024).

24 Mona Barake, Theresa Neef, Paul-Emmanuel Chouc, and Gabriel Zucman, *Revenue Effects of the Global Minimum Tax: Country-by-Country Estimates* (Paris: EUTax Observatory, 2021) (www.taxobservatory.eu/www-site/uploads/2021/10/Note-2-Revenue-Effects-of-the-Global-Minimum-Tax-October-2021-1.pdf).

increased by US$9 billion under its scenario 3 (in which the GMT is enacted in the United States but not in the rest of the world).[25] Horst adopts alternative profit-shifting assumptions and estimates that the average annual US tax receipts for 2025-2028 will be increased by approximately US$34 billion. He hopes that the JCT staff will reconsider its profit-shifting assumptions.

The large discrepancy between the JCT report and Horst's paper in the estimated revenue effects of the GMT shows the importance of assumptions about MNEs' profit-shifting behaviour. Another variable is the policy response by low-tax countries as well as high-tax countries (especially countries in which UPEs are located). If all low-tax jurisdictions adopted the QDMTT, there would be no IIR or UTPR taxes in high-tax countries. If UPE jurisdictions imposed IIR top-up taxes, there would be no room for the backup tax under the UTPR in other high-tax countries.

Pulina and Zanaj, who are public economists, provide insights on the economic and fiscal impact of the GMT through the lens of tax competition. They highlight the role of endogenous tax adjustments and the role of complementary policy instruments that would potentially offset the desired revenue effect. They emphasize how countries strategically respond to the global tax agreement on implementing the GMT, and the way in which non-tax instruments used by countries for international tax competition could partially or entirely offset the effects of the agreement. Using insights from the literature on tax competition, they explain that it is likely that low-tax countries will respond to the GMT agreement by raising their tax rates to the global minimum rate, which will potentially reduce the expected revenue gains for high-tax countries. On the other hand, it is possible that high-tax countries may be prompted to increase their tax rates. So, theoretically, it is conceivable that the GMT ends up benefiting high-tax countries. The authors also discuss the constraints on less-developed countries in using non-tax instruments to attract foreign investment. Overall, they remain "cautious about the effectiveness of Pillar Two in increasing tax revenues, particularly for developing countries."[26]

JL

Cedric Döllefeld, Joachim Englisch, Simon Harst, Deborah Schanz, and Felix Siegel, "A Simplification Safe Harbour for Pillar Two," in Werner Haslehner, Georg Kofler, Katerina Pantazatou, and Alexander Rust, eds., *The "Pillar Two" Global Minimum Tax* (Cheltenham, UK: Edward Elgar, 2024), 242-59

Safe harbours are everywhere in law, including tax law. The newly enacted GMTA is an example. Based on the OECD GloBE model rules, the Canadian GMTA contains two "permanent safe harbours" (the "qualified domestic minimum top-up tax safe

25 United States, Congress, Joint Committee on Taxation, *Possible Effects of Adopting the OECD's Pillar Two, Both Worldwide and in the United States* (Washington, DC: Joint Committee on Taxation, June 2023 (www.jct.gov/publications/2023/oecd-pillar-two-report-june-2023).

26 At 46.

harbour" and the "simplified calculations safe harbour") and a "transitional country-by-country reporting (CbCR) safe harbour." A safe harbour's effect is self-evident—it provides welcome assurance and certainty for taxpayers and tax administrations.

Döllefeld et al. propose a new administrative safe harbour for the GMT, called a "simplification safe harbour." This proposal has a two-level test to determine whether a full GloBE ETR calculation should be required from an MNE for a jurisdiction where it is established: a country-level test and, when necessary, an MNE-level test. The country-level test looks at a country's tax system—that is, whether the national tax system has low nominal tax rates or whether there are any substantial deviations between a country's tax base and the GloBE income. The MNE-level test becomes relevant only if the country-level test identifies potential red flags.

If no red flags are present, the MNE is not required to file a full GloBE declaration in respect of that country and does not have to pay any top-up taxes. If a red flag is present (for example, if there are deviations between GloBE financial accounting standards and the country's national tax law that are neither addressed by the adjustments provided by the GloBE regime nor considered immaterial or unproblematic, or if the ETR is lower than 15 percent as a result of incentives for specific sectors, regions, or income types), the MNE-level test comes into play, and a simplified ETR could be calculated by the MNE. The authors provide detailed illustrations of how the country-level and MNE-level tests can be applied.

In the scheme of the GMTA, which is highly technical and complex, any simplification safe harbour that can actually work should be welcome. Should the OECD be persuaded of the merit of the proposed safe harbour, the new safe harbour may eventually find its way into the Canadian GMTA.

JL

Takato Masuda, "The Compatibility of the UTPR and Japan's Tax Treaties" (2024) 114:8 *Tax Notes International* 1127-45

Lucas de Lima Carvalho, "The UTPR: A Symptom of Malleable Sovereignty?" (2024) 115:6 *Tax Notes International* 871-81

Ana Paula Dourado, "The Pillar Two Top-Up Taxes and Tax Treaties," in Werner Haslehner, Georg Kofler, Katerina Pantazatou, and Alexander Rust, eds., *The "Pillar Two" Global Minimum Tax* (Cheltenham, UK: Edward Elgar, 2024), 282-303

The issue of treaty compatibility of the UTPR part of the GMT (pillar 2) has been actively debated among commentators. The issue is unsettling to such a degree that Canada's Department of Finance proposed an amendment to the Income Tax Conventions Interpretation Act (ITCIA) when the UTPR rules were added to the GMTA. Proposed section 4.4 of the ITCIA clarifies that Canada's tax treaties do not prevent the taxation of income in accordance with the GMTA, including the UTPR. This new provision will be deemed to have come into force on January 1, 2024. If the UTPR is otherwise found to be incompatible with Canada's tax treaties, section 4.4 may

constitute a treaty override, which may be challenged as being incompatible with Canada's treaty obligations.

Among the three commentators whose work is reviewed here, Masuda argues that it is unlikely that a Japanese court would find the UTPR to be incompatible with Japanese tax treaties, while Carvalho and Dourado argue that the UTPR is not aligned with the general principles of international law and tax law that underlie tax treaties.

Masuda begins by pointing out weaknesses in the argument that the UTPR would conflict with existing tax treaties. They include:

- It would be difficult to identify which tax treaty is breached, because the "pooling" system used to compute and allocate top-up tax arising from low-taxed entities makes it difficult to know in which country the undertaxed profits are earned.
- Since the UTPR is imposed on domestic resident entities, article 7(1) is not applicable and thus cannot be violated.
- An MNE would not be interested in spending litigation resources on the UTPR matter because, even if it were successful in one country, the top-up taxes would be thrown back to the pool and reallocated to other countries, so that the MNE group as a whole would not save any UTPR taxes.

According to Masuda, a Japanese court would need to be more convinced before finding that a Japanese UTPR is a treaty violation, given the "formalistic approach" to treaty interpretation. He explains that the formalistic approach was adopted by the Japanese Supreme Court in a case involving the compatibility of Japanese CFC rules with Japanese tax treaties. The court found no violation of article 7 based on the interpretation of article 7 of the treaty. Masuda writes: "Undoubtedly, the UTPR is enforced in the form of taxation on Japanese domestic corporations. As a result, Japanese courts would find that the UTPR is 'not prohibited nor restricted' by the business profit provision. If so, the court could find a treaty violation only when the UTPR is clearly incompatible with the purpose and objective of the treaty."[27] As to treaty objectives, Masuda remarks: "One question that needs to be asked is why encouraging treaty partners to raise taxes is clearly incompatible with the purpose of tax treaties, even though tax treaties do not seem to regulate tax hikes by treaty partners on their residents."[28]

Carvalho maintains that the "strongest argument against the UTPR is that it imposes a tax charge on an item of income that was undertaxed someplace else, regarding activities carried out by somebody else, all without any nexus to them as local taxpayers, and that this top-up tax violates their ability to pay."[29] He explains that

27 At 1145.

28 Ibid.

29 At 881.

under domestic tax law, the taxpayer is not the MNE group which included low-taxed entities that earned the low-taxed profits triggering the UTPR. To counter Masuda's point on article 7's relevance, Carvalho argues that the OECD GloBE model rules adopted the pooling mechanism, thus erecting "a wall between the UTPR taxpayer and finding out the source of the UTPR top-up tax"[30] that should not prevent access to the taxpayer's rights under applicable tax treaties. He sees pillar 2 as a recent move toward a global tax governance that would render tax sovereignty malleable.

Dourado assesses the UTPR in light of article 2(2) of the OECD model convention and concludes that the UTPR is in the nature of a tax on income, and the method of levying this tax and the mechanism for computing the tax are not relevant for excluding it from the category of taxes on income or capital.[31] As a tax on income or capital, the UTPR is in the scope of bilateral tax treaties and "incompatible with the OECD model convention's allocation of taxing rights as set out in Article 7."[32] Because UTPR taxes "fall on the income of residents in other contracting states or permanent establishment abroad,"[33] the saving clause in article 1(3) would not be applicable. She writes: "A contracting state cannot claim that the allocation of taxing rights as defined in the OECD Model Convention is overruled by a top-up tax because the other contracting state does not apply a minimum effective tax rate of 15 per cent. This overrules the allocation of taxing rights agreed between the contracting states."[34] Furthermore, the saving clause was not intended to apply where the application of the UTPR is not effectuated by the taxpayer and tax-planning behaviour. According to Dourado, applying the UTPR tax without amending existing tax treaties is a violation of article 31(1) of the Vienna Convention on the Law of Treaties.

JL

Peter Harris, *Corporate Tax Law: Structure, Policy and Practice*, 2d ed.
(Cambridge, UK: Cambridge University Press, 2024)

This book is about corporate tax law at a conceptual and a practical level. It adopts a comparative approach by considering the corporate tax law in the United Kingdom, United States, China, and Germany. It situates corporate tax as part of a direct tax system and explains why corporations cause many difficulties in the allocation of income to identifiable persons, especially in a cross-border context. The author offers an excellent examination of the relationship between the inherent artificiality of the corporate form and the objectives of income taxation. As Harris notes, one theme that runs throughout the book is the "artificial nature of the corporation";[35]

30 Ibid.

31 At 301.

32 Ibid.

33 Ibid.

34 At 302.

35 At 9.

another theme is "a consideration of the extent to which tax law follows corporate law classification and regulation of these activities."[36]

Following an introductory chapter, the author discusses the taxation of corporate income when it is derived and distributed, as well as the international aspect of corporate tax. The author then focuses on the creating, transferring, terminating, and varying of share interests, and ends with a chapter on dividend and capital stripping and value shifting. Overall, this book is an excellent read for beginners as well as for seasoned practitioners and policy makers.

JL

36 At 10.

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