Dr Louise Gracia and Professor Lynne Oats

Boundary-Work and Tax Regulation: A Bourdieusian View

Abstract

Boundaries are ubiquitous in modern social life, and the work of creating and maintaining boundaries is particularly evident within regulatory fields. Through the analysis of a recent critical incident in the tax field (Arctic Systems) with which the accounting profession is intimately associated, this paper uses a Bourdieusian lens to unravel the relational complexities of the regulation of tax avoidance at the complex and fuzzy boundary between acceptable and unacceptable tax practice. We develop an alternative, relational interpretation of tax regulation and contribute to a more nuanced understanding of regulatory practice within the tax field that also raises questions about regulatory practice more widely. We conclude by highlighting how a move towards 'relational' regulation might contribute to improved understanding of regulatory processes and practices.

Keywords – boundaries, tax field, tax avoidance, compliance, regulatory practice.

Boundary-Work and Tax Regulation: A Bourdieusian View

Introduction

This paper uses Bourdieusian concepts to explore, using an interpretive approach, the relational aspects of regulation at a particularly contentious and complex boundary within the tax field. Boundaries are ubiquitous in modern social life and their shaping, writing, control, maintenance and re-writing – termed 'boundary-work' (Gieryn, 1983, 1999) – are important sites for the operation of practices and their regulation.

The concept of boundary work has particular value in understanding relational processes (Lamont & Molnar, 2002). For example, it has been applied in the study of professional jurisdictions to explore the mechanisms through which the parameters of professional fields are circumscribed and defended (Burri, 2008; Llewellyn, 1998). The work of Humphrey et al. (2009) also demonstrates the value of understanding regulatory relationships within audit practice. Such relational studies resonate with Bourdieu's (1977) theory of social practice that develops a relational understanding of structure and action. Responding to what Bourdieu perceived as the flawed polarisation of objectivism and subjectivism, a central integrative theme emerges from his work. His theory highlights how the relationship between subjective experiences and the objective social world frame experiences and contribute to the production and reproduction of practice within social fields (Bourdieu, 1987, 1996, 1998).

Although not widely used within accounting research (Malsch & Gendren, 2011), a number of accounting studies (e.g., Kurunmäki, 1999; Neu et al., 2003; Shenkin & Coulson, 2007; Baxter & Chua, 2009) draw on Bourdieu to develop understandings of aspects of accounting practice. Whilst such studies indicate a usefulness and applicability of Bourdieu's social theory to the accounting field generally, there is little Bourdieusian exploration of the social processes working at the junctures of acceptable and unacceptable practice especially within the tax field. This is significant since regulatory struggles over authority and control of practice descriptions intensify, not only at the boundaries between fields, but also at the boundaries within fields (Lawrence, 2004). In particular the processes used to construct, defend and maintain the boundaries *within* fields (in contrast to *between* fields) that are prevalent, within for example the field of tax avoidance, are noticeably absent within the literature.

This paper responds by considering boundary- work, using a Bourdieusian lens, to explore the relational aspects of tax regulation through analysis of a critical incident in the tax field where meaning is contested and practice emergent. We present a different view of regulation, as a relational process that creates, negotiates and enforces the boundary between acceptable and unacceptable practice. Our approach offers an alternative, reflexive perspective of the regulatory processes at play across an important boundary within a significant social field – the tax field. It contributes to understandings of both intra and inter field boundary interactions between related fields including those of accounting and law. We aim to make visible relational aspects of regulation that hitherto remain obscured and in doing so contribute to a more nuanced understanding of regulatory practice.

To explore the dynamic interplay between boundary-work and regulatory practice, we analyse a recent UK tax avoidance case – Arctic Systems.[1] This case involves a particularly

[1] *Jones v. Garnett (Her Majesty's Inspector of Taxes)* [2007] UKHL 35 (known as the Arctic Systems case).

complex, visible power struggle and boundary interaction between participants in the tax field, including the United Kingdom's tax authority (Her Majesty's Revenue & Customs – HMRC), the taxpayer, the accounting profession, the judiciary and lobby groups. The case centres on a complex and layered[2] boundary between acceptable and unacceptable tax avoidance practice. It will be explained that as the dispute moves from the private to the public domain, the overlapping fields and relational processes become more complex. Focusing on this intra-field boundary exchange allows us to investigate how regulation emerges as a social process within the tax field. The tax field is a specialised and important area of accounting practice, and is of considerable importance to wider society (Boden et al., 2010; Martin et al., 2009).

Within the accounting literature, tax scholarship appears intermittently and tax as a field of enquiry is not dealt with systematically. In part, this stems from tax's inherent interdisciplinarity that leads to fragmentation of scholarship across a variety of disciplines (Oats 2012a, 2012b). For example strands of both economic[3] and accounting literature[4] draw on psychological approaches, paying much attention to the propensity of taxpayers to *evade* taxes (i.e., the deliberate and fraudulent non-payment of taxes). Less closely examined, however, is the notion of tax *avoidance*, the legal minimisation of one's tax liability, and by examining this phenomenon, this paper contributes to new understandings of avoidance, as distinct from evasion. Another strand of tax literature, within accounting and elsewhere, deals with global manifestations of tax non-compliance,[5] often without sufficiently distinguishing evasion from avoidance. Much of this work centres on the activities of large multi-national corporations and their advisors with significantly less scholarly attention being paid to national concerns, small taxpayers and their advisors. This paper, by addressing the latter issues, opens up new avenues of inquiry for accounting researchers, an issue to which we return later in the paper.

Our approach, therefore, presents a different and previously unexplored view of intra-field boundary practice, and an alternative view of regulatory struggles between groups within the tax field where participants shape, and are shaped by, the game being played. This opens the way for a new perspective on the regulation of social fields by addressing the important issues about how boundaries of practice are constructed, experienced, negotiated and regulated over time. A Bourdieusian lens, drawing on concepts of habitus, doxa and capital, provides an opportunity to construct an interdisciplinary understanding of regulatory practice and critically question both the actions and motives of agents involved in the boundary struggle. This in turn allows us to contribute to understandings of tax regulatory practices and highlight wider implications across regulatory and social fields more broadly.

The paper is structured as follows. To begin, we elaborate our central theoretical constructs by drawing on literature relating to regulation and recent developments in regulatory thinking, boundaries and boundary work, and relevant Bourdieusian concepts including field, habitus and capital. We then describe the tax field as a particularly complex regulatory arena

[2] The boundary between acceptable and unacceptable tax avoidance is indistinct and open to interpretation by its many varied field participants, e.g. taxpayers, accountants, regulator and tax advisors. These actors interact, ascribing particular interpretive meanings of the nature and locus of the boundary. The boundary is thus layered both in the sense of the diversity of actors occupying its space and the range of alternative meanings assigned to it. Peeling back these layers of interaction and meaning are central to developing understanding of the relational aspects of tax avoidance regulation.
[3] See, e.g., Kirchler (2007).
[4] See, e.g., O'Neil & Samelson (2001), and Blanthorne & Kaplan (2008).
[5] See, e.g., Sikka and Hampton (2005).

encompassing not only behavioural requirements, as do all regulatory fields, but also the transfer of funds (taxes) from the regulatee to the regulator. Against this background, we interrogate the specific detail of the Arctic Systems dispute, constructing an alternative view of regulatory practice leading to concluding observations relevant to the tax regulation field.

Regulation, boundaries and Bourdieu

In recent years, considerable attention on regulation has highlighted its significance (see, e.g., Cooper & Robson, 2006; Humphrey et al., 2009; Richardson, 2009). This attention includes the appropriate balance between older style 'command and control' models, and more responsive approaches to securing compliance, particularly within governmental regulation. John Braithwaite's seminal contribution to this debate (Ayres & Braithwaite, 1992; Braithwaite, 1985; see also OECD, 1988) has led to widespread adoption of responsive regulation, under which regulators begin by assuming that regulatees are cooperative, but if this proves not to be the case, regulators respond with escalating punitive strategies until cooperative compliance is achieved. In this process, the aim is to move towards an environment where regulatees comply voluntarily, and there is mutual trust and respect between regulators and regulatees. Braithwaite's model has been adapted and extended in a number of ways. Gunningham and Grabosky (1998), for example, take responsive regulation one step further in their 'Smart' regulation by introducing other parties into the regulation game, leveraging non-governmental agents to act as 'surrogate' regulators thereby blurring the public/private boundary. Baldwin and Black (2008) also extend responsive regulation into what they describe as "really responsive regulation", which recognises the ways in which different regulatory mechanisms interact with each other in distinct ways. They state that "[r]egulation is really responsive when it knows its regulatees and its institutional environments, when it is capable of deploying different and new regulatory logics coherently, when it is performance sensitive and when it grasps what its shifting challenges are" (2008, p. 94). In a further extension, the same authors bring to the fore the pervasive modern trend of risk management (Power, 2007) into regulation describing what they term "really responsive risk-based regulation" (Black & Baldwin, 2010). Combining these two concepts allows risk-based regulation to shift from a mechanical mode of regulation using quantitative approaches towards risk evaluation. Each of these regulatory models envisage a pyramid-shaped distribution of regulatees and corresponding regulatory tactics and strategies. In turn, each model recognises that most regulatees comply and generally only a minority, depicted at the narrow top of the pyramid, fail to comply with regulatory requirements.

In terms of enforcing adherence to government regulation, we can envisage a continuum of strategies. At one end is a deterrence strategy, typified by confrontational enforcement backed by significant sanctions. Underpinning this command and control approach is a rational-actor model that assumes regulatees respond to threats of punishment. This adversarial approach relies on the regulating authority's capacity to detect and penalise defaulters (Braithwaite, 2009; Kirchler, 2007). At the other end of the continuum of strategies, we move through responsive regulation towards more radical and innovative forms of regulation including self-regulation. For the purposes of this paper, responsive regulation is most relevant as a number of tax authorities have adopted this approach (Job et al., 2007), including the UK (which we discuss later).

The tax system of any country, and the manner in which it operates on a practical level, can be viewed as a regulatory institution. Valerie Braithwaite (2009, p.35) defines a regulatory institution as "an enduring and organized set of rules, norms and roles that socially prescribe the behaviour expected" of those responsible for enforcing and 'living' the regulatory code. She describes the relationship between regulator and regulatee as a 'dance' in which both regulators and regulatees demonstrate patterned behaviour. The regulatee's behaviour is reflected in 'motivational postures' linked to the notion of social distance that involves "approaching, withdrawing, confronting and circumventing manoeuvres of the regulated as they manage authority" (Braithwaite, 2009, p.40). The smooth and consensual routines of practice are essential to the efficient operation of the tax system yet the potential for actors to become out of step in the regulatory exchange exists in forms of unacceptable tax avoidance (and, more markedly, in tax evasion) occurring at its practice boundaries.

Boundaries are important facets of social life (Zeitsma & Lawrence, 2010) and significant objects of scholarly attention. They have been a prevalent feature in studies of professions and knowledge; for example, between occupational scope leading to jurisdictional struggles (Abbott, 1988; Dezalay & Garth, 1995), between lay and expert knowledge (Kerr et al., 2007), and in the allocation of organisational tasks (Llewellyn, 1998). Others, including Gieryn (1999), describe the work of boundary drawing and maintenance as a resource used to establish epistemic authority.

Within regulatory environments, boundaries take on particular significance. Lying at the heart of the regulatory tax regime is the compliance boundary that delineates compliant and non-compliant regulatees. In this context, the key task of any regulatory authority is to police this boundary and, using appropriate regulatory strategies, move regulatees into the compliant zone. This is problematic since a compliance boundary is not imposed on the regulator or regulatee by some exogenous source as a discrete divide. Participants engage with the boundary, and through particular interactions and interpretations, contribute to its very development and positioning as well as shaping the wider tax field.

This brings us to the question of what is understood within this paper by 'field' – a concept we use in its Bourdieusian sense. The work of Bourdieu is particularly useful in this study because of its understanding of practice as emerging from the relational interaction of subjective experiences and the objective social structures that frame those experiences. Within this framing, cultural fields are positioned as relatively autonomous social spaces that comprise of objective hierarchies that create and legitimise particular activities and discourses (Bourdieu, 1977). They are dynamic with shifting, permeable boundaries and relations to other fields and are "occupied by the dominant and the dominated … always relational, dynamic social microcosms ... contingent and ever changing" (Everett, 2002, p. 60). They are understood as sites of struggle (Madsen & Dezalay, 2002) wherein participants challenge each other (although generally not the field itself) for forms of capital including symbolic or disguised forms of capital, such as prestige, that command credit or respect within a particular field (Bourdieu, 1977).

A participant's position within a field is dependent on their success in the struggle to define, access and acquire forms of capital (Bourdieu, 1986). Capital here is whatever is regarded as powerful or valuable within a field; for example, qualifications or social connections. There are four main types of capital to which Bourdieu (1977) refers: economic, cultural, social and symbolic. Each type of capital is "manifest in a different 'currency'… and also has a different degree of liquidity, convertibility, and susceptibility to attrition" (Everett, 2002, p. 64). Economic capital generally includes money and property, and underpins other forms of capital. Cultural capital refers to culturally authorised attributes, including educational credentials, general cultural awareness, tastes and aesthetic preferences. Cultural capital is less stable than economic capital and therefore not so readily managed. Social capital refers to the support provided from having acquaintances of influence or inclusion in social networks valued within particular fields.[6] Finally, symbolic capital refers to the legitimisation or recognition of an actor's status within a field (e.g., prestige) acquired by using other forms of capital (Bourdieu, 1977). Symbolic capital is a disguised form of capital that "conceals the fact that it originates in material forms of capital" (Bourdieu, 1990, p. 122). An agent high in symbolic capital commands more credit or respect within a field than one with low symbolic capital.

Struggles within cultural fields are influenced, in part, by symbolic violence - non-physical limiting influences exerted on individuals - which include being denied access to resources, rights or opportunities or being treated as inferior. Symbolic violence serves to create order through constraint (Bourdieu & Wacquant, 1992) obscuring, through the disguise of legitimacy, the power relations that underpin its existence (Jenkins, 2002). Authority is therefore a necessary precursor for symbolic violence. This authority is described by Madsen and Dezalay (2002, p. 194) as "the power to construct and impose mental structures, categories of perception and thought, which become institutionalised in social and mental structures, and so present themselves as a matter of fact, or even natural". Acts of symbolic violence or domination are hence normalised by field participants as intrinsic facets of the field. Bourdieu (1977) refers to this process as "misrecognition" or a "form of forgetting" that social actors are caught up in, and produced by the field games they engage with. Bourdieu and Waquant (1992) use the metaphor of a game (amongst other metaphors such as marketplace) to explain the operation of fields. The metaphor of game highlights how the competitive struggle between field participants over the definition and possession of capital relies on participants' "feel for the game" or habitus (Bourdieu, 1998, p. 65).

Habitus refers to a set of attitudes, values and behaviours that dispose agents to behave in particular ways. Thomas (2002) describes how shared internalised dispositions arise from collective immersion in particular socio-cultural milieu that value particular types of capital. Habitus is produced or developed over time in response to one's life experience or cultural history as individuals undergo "inculcation into the conditions of existence, including socialization and formal education" (Xu & Xu, 2008, p. 73). Bourdieu and Waquant (1992) describe how the habitus becomes so deeply internalised that it is experienced as 'second nature', which although durable remains capable of adaptation to the values and imperatives of the fields across, and through which agents move (Baxter & Chua, 2009; Hamilton & Ó hÓgartaigh, 2009). Although habitus is frequently discussed as a facet of the individual, the concept is equally applicable to shared beliefs between groups of individuals, for example, organisations or institutions (Goddard, 2004).

Habitus is central to the "continual reproduction of belief in the game, interest in the game and its stakes" (Bourdieu, 1996, p. 227). Being 'caught up' in the game in this way (termed 'illusio') predisposes participants to collude with (as opposed to challenge) the directives of the dominant participants who shape the field logic. Indeed, it is this collusion of agents in the illusio (termed 'collusio') that is "the root of the competition which pits them against each other and which makes the game itself" (Bourdieu, 1996, p. 228). In this way, collusio fosters the iterative reproduction of fields.

[6] The concept of social capital has been appropriated by a number of disciplines; most notably, economics, and to some extent taken on a life of its own. For a discussion of the use and abuse of the concept, see Fine (2010).

Despite their common sets of beliefs and shared processes (termed 'doxa' by Bourdieu, 1987), fields are in a constant state of flux. This flux occurs not only in terms of the external boundaries that control entry and participation in the field, but also *within* the field itself and manifested by a shifting control of forms of capital amongst the players in the game (Albertson & Diken, 2004; Ramirez, 2001). An important part of this constant shifting is the struggle over the definition and positioning of boundaries: "To define boundaries, defend them and control entries is to defend the established order in the field" (Bourdieu, 1996, p. 225). Each protagonist in the game attempts to impose the definitions that are favourable to their own interests. The game in this sense is not one of benign play, but rather a constant and competitive struggle for power in which tensions are most acutely present at the boundaries of practice.

In the next section, and in light of the preceding literature, we examine the tax field more closely in order to contextualise the dynamics of the regulatory 'dance' at the compliance boundary.

The tax field

The imposition of taxes in modern states is an important point of interaction between the state and its citizens (Boden et al., 2010; Martin et al., 2009). Indeed, Campbell (2009, p. 256) describes tax revenues as the "life blood of the modern state". The process by which the state extracts tax revenue from its citizens is not, however, a simple bilateral arrangement involving regulator and regulatee. It is an intricate relationship, mediated by other actors including highly specialised expert professionals operating in both the public and private realms.

Hence, the modern tax field is complex and not confined to a single site of autonomous social practice, but overlaid and intertwined with a number of other social and professional fields including the accounting, political, bureaucratic and juridical fields. It is shaped by a series of constantly changing questions including: Who should pay tax? How much should be paid? On what should tax be levied? These questions are not only concerned with achieving political objectives but social objectives too. The process of answering these questions is influenced by a host of actors including expert practitioners, lobby groups and professional associations. Thus the nature, frequency and positioning of tax boundaries within and around the field emerges as a body of tax law that is socially negotiated and constructed; although sometimes misrecognised as stable codified knowledge (Burton, 2007; Hasseldine et al., 2011; Morris & Empson, 1998). In this paper, we use the term 'tax law' as extending beyond the legislative provisions to encompass the practices through which the legislation is put into play by various actors, including professionals and the courts. In the context of accounting regulation, Cooper and Robson (2006, p. 427) note that most literature assumes rules act to constrain practice and fails to recognise the capacity of corporate managers to "exercise discretion as to how rules are enacted". We suggest that the same observation is applicable to tax rules (tax law) enacted by taxpayers and their advisors. Tax rules are not immutable, but rather are fuzzy and open to interpretation – taxpayers, like corporate managers, have discretion as to how rules are enacted. In exploring this observation further, we turn first to the issue of boundaries.

The related accounting field contains numerous boundaries including temporal boundaries that delineate a period of account; spatial boundaries that determine the location of activities and the consequent identification of which set of rules is to be applied; and technical boundaries that control, albeit incompletely, classification of activities and events such as the debt/equity divide. Boundaries also exist in terms of who performs the accounting and is examined in analyses concerning struggles for professional jurisdiction (Burri, 2008; Kurunmäki, 1999; Llewellyn, 1998). Sometimes the same boundaries are used for both accounting and tax purposes (Oats & Tuck, 2008), and sometimes new boundaries are drawn that are specific to the tax field. However, the logic of the tax field is different to that of related fields, such as the accounting field. This is due to existence of more complex, and often cross-disciplinary relationships, many of which arise only in the tax field without replication in other fields. These relationships complexify the boundaries of practice, as actors occupying different fields of practice, often with contrasting doxic logic and practice meet. Doxic practices are often inscribed within codes of practice and rules, such as within the fields of tax and accounting. These create opportunities for actors to engage in gamesmanship (or discretionary enactment), at the intersecting boundaries, in an attempt to impose particular doxic logic, and hence influence doxic practice, within a field (Shah, 1995).

In terms of the tax field, as with all regulatory fields, one significant boundary lies between compliance and non-compliance. While field participants may agree on the distinction between full compliance with the tax law and illegal non-compliance (usually described as tax evasion); activities between these two extremes are the subject of on-going contestation, broadly termed 'tax avoidance'. Tax avoidance may be viewed as the minimisation of one's tax liability through legal means or, in practical terms, a form of beating the tax authority at its own game.[7] To put it another way, tax evasion as a form of non-compliance involves failure to comply with a crystallised tax liability. Tax is due but the taxpayer simply chooses not to pay it. Tax avoidance, in contrast, is concerned with the question of whether or not a liability exists, and includes actions taken to make sure that the taxpayer does not fall within a category that attracts a tax liability, or a greater tax liability than would otherwise arise. We are not concerned here with the boundary between avoidance and evasion, but rather with the boundary between acceptable and unacceptable practice, which is not simply a case of legality on one side and illegality on the other; rather it is conceived of as legal (compliant) on one side and *potentially* illegal (non-compliant) on the other. This potentiality creates opportunities for discretionary enactment, which is what makes this particular boundary so contentious.

Potentiality arises, in part, from the subjective interpretation of the boundary. Habitus is useful here, explaining how the parameters of the compliance game are perceived differently for participants. This can result in individuals who, based on their subjective understandings of the regulatory requirements (tax habitus) that drive particular forms of discretionary enactment, are compliant but face being categorised as non-compliant by the regulator's alternative subjective understanding (Picciotto, 2007). Taxpayers' conceptual view of tax avoidance as a legitimate social practice may also be at odds with the regulator's view of it as

[7] There is a vast literature on tax avoidance using a variety of perspectives. These include technical studies undertaken from a legal perspective (e.g., Freedman, 2007); rational economic studies that seek to understand taxpayer behaviour as a rational decision-making process where the distinction between forms of non-compliance is irrelevant (e.g., Kirchler et al., 2003); psychological studies drawing on models of ethical decision-making (e.g., Reckers et al., 1994; Wenzel, 2005); emerging perspectives of 'tax morale' (e.g., Torgler, 2002) that include social and personal norms within analysis of tax compliance as a cognitive process, and behavioural studies (e.g., Braithwaite, 2003) that identify a number of motivational 'postures' that taxpayers may adopt in their interactions with the tax authority. See Kornhauser (2007) and Leviner (2009) for discussions of further recent work. Without denying the value of this prior literature, it focuses largely on external influences on tax avoidance practice and largely omits consideration of the often subtle, diffuse and unconscious relational influences that underpin it and its regulation.

a failure to comply with the spirit of the law (Shah, 1995). These destabilise the location of the boundary since its position varies depending on the position of the viewer. Variable views of acceptable and unacceptable tax practice make this boundary fuzzy. A fuzzy boundary is problematic for regulatory practice since its discursive positioning is crucially important for the clear functioning of the tax field and field doxa; as this positioning controls what can and cannot be done with impunity, circumscribing the extent of a taxpayer's fiscal obligation.

Modern tax systems rely on the legal process to assist them with this boundary issue. A desire for precise and explicit tax practice rules has led to a complex labyrinth of tax legislation (McBarnet & Whelan, 1991). Ironically, the complexity of tax legislation has exacerbated rather than prevented tax avoidance as opportunities to exploit loopholes within its many intricacies have increased and has intensified subsequent struggles over the interpretation of its form and application (McBarnet, 1991, 2003, 2006). Although regulators may view a prescriptive approach as providing more certainty and clarity to the site and nature of the boundary between acceptable and unacceptable practice, Picciotto (2007) argues that this detailed complexity actually encourages tax avoidance, stimulating the cat-and-mouse game-playing between taxpayers and regulators (see also Braithwaite, 2005).

The prevailing view, in the UK and elsewhere, is that tax avoidance has increased in recent years warranting greater control by the government.[8] This has created a heightened impetus for the tax authority to demonstrate mastery of the rules and enforcement of the boundaries – intensifying the struggle to control it.[9] The power to name and define these boundaries is a key and valuable feature of the tax field for HMRC, since their field status is directly linked to their ability to succeed in this naming and defining struggle. It is a valuable form of symbolic capital, allowing them to impose a particular view of reality and thereby control the field.

The practice of extracting tax revenue from often-reluctant taxpayers is a complex regulatory endeavour and, in this regard, tax authorities are different from other regulatory agencies (Ventry, 2008). Many agents are involved in the game creating layered and nuanced relationships between them. Although Bourdieu's work has yet to be used within the field of tax regulation, it is exactly this relational aspect of the tax field, which lends itself so well to a Bourdieusian analysis (Oats and Gracia (2012). His framework provides a unique opportunity to explore, more dynamically, the interplay of professional/regulatory discourses and the overarching relational social contexts from which they emerge. It is to these relationships that the paper now turns, beginning by considering the central regulatory relationship – that between regulator (tax authority) and regulatee (taxpayer).

In the UK, HMRC is charged primarily with the task of ensuring that taxpayers pay the right amount of tax at the right time. The use of the word 'right' in this context is part of the illusio of the tax field[10] and imbues HMRC with knowledge authority – valuable field capital. This entails enforcing a number of boundaries, in recent years increasingly through responsive

---

[8] Notwithstanding that the nature and extent of tax avoidance is a contested issue, a variety of studies attempt to quantify it. E.g., recent research (TUC, 2008) based on the analysis of government data and the accounts of the UK's 50 largest companies over the last 7 years, estimates the cost of tax avoidance in the UK at £25 billion per annum.

[9] HMRC have established an Anti-Avoidance Group and Strategy.

[10] This phrase is often used by both HMRC and other parties. For example, in a section of HMRC's website entitled 'Tax in the Boardroom' it is stated "HMRC has a responsibility to ensure that the right tax is paid at the right time and to promote a fair and efficient tax system". See <http://www.hmrc.gov.uk/lbo/tax-in-the-boardroom.htm>.

regulatory tactics and strategies (HMRC, 2009). As an organisation, HMRC is accountable to a number of parties, most notably wider society, to whom the integrity of the tax system is important such that those required to pay tax actually do so, and also to the state that expects a certain level of performance in terms of revenue collection. Pressure to perform not only comes from government and politicians, but also from taxpayers and their representatives who seek equitable and respectful treatment. As Gergen (2001, p. 147) observes in a US context "the health of the tax law depends upon practitioners believing that it is principled".

As part of the bureaucratic field, a tax authority's habitus is imbued with notions of service to society, and procedures and processes are controlled to secure equitable treatment across the taxpayer population. Technical skill, i.e., mastery of the labyrinthine tax laws is important as are displays of symbolic power associated with state authorisation of activities (Braithwaite, 2009). The suite of tactics and strategies available to HMRC (to be used responsively) in the course of patrolling the compliance boundary include educating taxpayers who are willing to voluntarily comply with the tax law, sanctions such as fines and penalties for those who fail to comply, and legal action to impose compliance where there is deviation from the tax law. There is some evidence of an enforcement habitus, particularly with regard to relations with smaller taxpayers, such that tax "[i]nspectors are seen as having an aggressive attitude towards taxpayers and being 'out to get' as much tax from them as possible" (PCG, 2006), which sits uneasily with the notion of responsive regulation. One challenge then for tax authorities adopting a co-operative regulatory model (Ventry, 2008) is to balance persuasion and punishment, and also play a longer game dealing with non-compliance now while at the same time building consent for the future (Braithwaite, 2003).

Taxpayers vary enormously in their willingness to pay the taxes for which they are liable, which has been linked to various attributes such as social norms (Bobek et al., 2007), ethical dispositions (Reckers et al., 1994; Wenzel, 2005), motivational postures (Braithwaite, 2009) and occupational group membership (Ashby et al., 2009; Ashby & Webley, 2010). Taxpayers also vary in terms of the power that the tax system bestows upon them. Abreu (1996) distinguishes two types of power in this regard: avoidance power and burden power. The former relates to the ability of the taxpayer to avoid their liability to tax; usually considered to be those taxpayers with more economic capital at their disposal who can pay for specialist tax advice. The latter relates to the capacity of taxpayers to pass the tax liability to another party and thereby not directly bear the burden of the tax. This capacity depends more on the nature of the tax under consideration. For example, in the case of tax on income, an employee subjected to tax withholding by an employer will have very little burden power; in comparison, a company has substantial power to pass on the burden of a tax on its profits through, inter alia, increasing prices.

The relationship between taxpayer and tax authority in part depends on the extent to which taxpayers trust in the ability of the organisation to treat them fairly (Feld & Frey, 2002; Ventry, 2008). HMRC, for their part, categorise taxpayers according to their perceived willingness to comply (Braithwaite, 2009), amenability to regulation (Black & Baldwin, 2010) and adopt enforcement strategies accordingly. HMRC's 2002 departmental report describes its approach to relations with 'customers' (see Fig. 1), which follows the regulatory pyramid model, and envisages most taxpayers (the base of the pyramid) as willing to comply and informed about their obligations (compliant habitus). HMRC's regulatory response to such taxpayers is designated as 'encouragement'. In contrast, at the top of the pyramid is a much smaller group of taxpayers who refuse to engage with the tax system (non-compliant habitus) and for whom HMRC must devise 'big gun' tactics (Ayres & Braithwaite, 1992) to enforce compliance (see also Levi, 1998). HMRC's stated aim is to move taxpayers down the pyramid through its interventions and minimise the number of taxpayers who refuse to participate in the system.

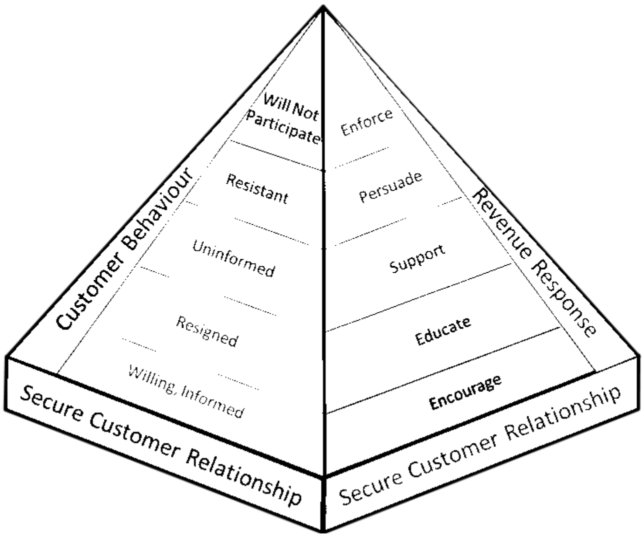

Fig. 1: Regulatory Pyramid   Source: Inland Revenue (2002)

The development of taxpayer habitus emerges from their experiences and interactions with the tax field. As in many jurisdictions, the dense complexity of tax law puts its requirements beyond the grasp of many taxpayers, strengthening the cultural capital of the tax authority. Some taxpayers therefore choose to acquire the expertise of professional advisors to help not only with compliance, but also with strategies to minimise future tax obligations through judicious planning. This will occur more often under systems of self-assessment (as in the UK). Usually, but not always, tax professionals will be accountants or lawyers, and it is to this category of actor that we now turn.

Bourdieu (1990) describes how professionals such as accountants and tax advisors acquire knowledge, skills, and awareness of current and emerging professional practice (such as taxation), developing practical mastery of a field-specific language. These regimes of training and qualification structure professionals' habitus in line with the emergent doxa of the overarching professional body (Parnaby, 2009). In the tax field this is grounded in the naturalized logic of contemporary tax practice/planning and market economics – in that advice is 'sold' to clients for financial return and seeks to provide a financial gain (tax saving) to the taxpayer clients. Advisors' possession of relatively higher levels of relevant capital, for example, mastery of the rules and practices of tax and its boundaries (an experienced 'feel for the game'), confers valuable professional capital (Kurunmäki, 1999) and hence power onto these players within the tax compliance game.

Acquiring the valued social, cultural and symbolic capital provides field authority to professional accountants/tax advisors, enabling them to attract and retain clients, and to some extent influence and control the habitus of their clients through their professional advice. Parnaby (2009), in his analysis of the work of financial advisors, describes this mechanism whereby professionals develop extensive professional experience (cultural capital) that is exchanged for symbolic capital (expertise) and subsequently used to establish legitimacy of their advice. It is worthy of note here that the taxpayer is not helpless in their relationship with tax advisors and actively seeks to minimise their tax liability. Legitimate tax planning consequently reduces the tax paid by them. In turn, the amount of tax revenue collected, which is used to fund (amongst other things) systems of public health and education, is reduced. In this way, the taxpayer who plans to reduce their tax liability (and engages in tax avoidance) is seen to minimise, albeit legally, their contribution to wider societal support systems and obligations. On the one hand, this may be construed as a failure of entrepreneurial clients to share their part of the tax burden of society. On the other hand, Stringfellow and Shaw (2009) observe the wider societal importance of entrepreneurial capital, especially in the case of small professional service firms relevant to this paper. Such perspectives highlight the importance SME sector to the national economy in terms of providing employment, generating profits and creating wealth – all of which generate tax revenue.

The role of the professional advisor is hence not simply one of exerting control and authority over the impotent client, since their advice emerges from the social negotiations of professionals with other field actors (Plinick, 1998; Maynard, 1991). These 'others' include professional groups and the tax authority as well as their clients who are active partners in the professional discourse. As Ventry (2008, p. 483) notes "tax practitioners cannot change the hearts of taxpayers nor, for that matter, their desire for lower taxes. But [they] have a responsibility to lead clients". The validity of tax avoidance (planning) practices must be mutually recognised by the professional advisors and their taxpayer clients. Furthermore, the tax authorities also recognise the validity of many tax avoidance practices, reinforcing the integrity of the field doxa. Hence, the relationship and interactions of HMRC with other field actors is a critical interaction in the tax field, but this relationship between HMRC and what are increasingly referred to as 'intermediaries' (OECD, 2008) is quite different from that between HMRC and taxpayers.[11] Intermediaries, be they accountants or lawyers or with some other form of qualification,[12] possess similar levels of mastery of the technical rules of the tax system as the revenue authority. Here mastery of the rules within the interactions between these players is not such an overt source of power between these particular field actors, although there is some imbalance between the numbers of experts in the public and private spheres (Schizer, 2006). Rather the relationship concerns the integrity of the tax system as a whole, the doxa, which both the regulator and the intermediaries have an interest (collusio) in maintaining. Intermediaries have the power to subvert the operation of the tax system through tax avoidance practices; although the size of the intermediary (the Big Four or small practitioner) and their professional affiliations arguably affect the degree of influence.

In this way, tax advisors, professional groups and their taxpayer clients together engage in field collusio. Brubaker (1985, p. 755) describes the mechanism of operation of the collusio through an 'economy of practices' – predominantly discursive – that align client's subjective structures (habitus) with the objective structures that comprise the overlapping fields they occupy. Naturalisation (confidence in the integrity of the taxation advice) is crucial for tax advisors to secure the client taxpayer and their fee. We have discussed that taxpayers are not merely passive recipients of advice, but they also exert power over their advisors through the extent to which they disclose information on which the professional advice is then based (Parnaby, 2009). Only the taxpayer can know the full nature of his or her financial affairs and the extent to which these are revealed can significantly influence the ensuing tax obligation. Taxpayer clients, although motivated by financial gain (economic capital), thus engage with

[11] The role of the tax intermediaries in the compliance process is also the subject of increasing scrutiny in the tax literature (see, e.g., Murphy, 2004; Sakurai and Braithwaite, 2003).
[12] In the UK, there is no formal requirement for professional accreditation of tax advisors and some, particularly in the SME sector, are former tax administration employees without accountancy or legal training.

HMRC and their advisors in the game of tax avoidance. Such routines of practice naturalise the industry of tax planning and avoidance, and more controversially tax evasion (Sikka & Hampton, 2005), reinforcing and stabilising its existence.

The role of the accounting profession in tax avoidance has led some commentators to suggest there exists a "rapacious tax avoidance industry … dominated by accountants, lawyers, and bankers … with ordinary citizens, equality, democracy and fairness as the visible casualties" (Sikka & Hampton, 2005, p. 326; see also Steubs & Wilkinson, 2010). This perhaps polemic view[13] is countered, although not completely negated, by HMRC's analysis that "[t]he overwhelming majority of tax agents advise their clients appropriately and calculate the right amount of tax ... If this were not the case, the tax system as we know it simply would not function" (HMRC, 2009). It should be noted that Sikka and Hampton (2005) are referring primarily to 'big' players in the tax game, and also primarily to the United States where cooperative regulation has not yet emerged and an adversarial approach to tax compliance predominates where there has been clear evidence of the failure of self-regulation among tax professionals (Ventry, 2008). Sikka and Hampton, also (deliberately) conflate tax avoidance and tax evasion to challenge the distinction, and thereby necessarily disregard the issue of potential legitimacy of the former and illegality of the latter (Barker, 2009; Ordower, 2010). We argue that the distinction between tax avoidance and tax evasion is conceptually important and, as previously noted, it is the former that we are concerned with in this paper, specifically the complex boundary within the category of tax avoidance that delineates acceptable and unacceptable field practices.

Interlinked with professionals offering tax compliance and planning services to taxpayer clients is the role of professional associations, who are important 'regulatory agents' (Greenwood et al., 2002, p.58). The accounting profession are significant actors here too and deeply embedded in the struggle for boundary control within the wider game of taxation. They compete with other professionals and regulators for control of the definition and description of valid field knowledge and approaches (Greenwood et al., 2002), seeking to influence the construction and control of the boundaries of legitimate or compliant practice (Picciotto, 2007), and shape the rules by which the tax game is played (Ventry, 2008).

The tax field also overlaps significantly with the juridical field, not only in terms of the way in which tax laws are enacted, but also in the way in which they are interpreted. The compliance boundary is overlaid by technical boundaries, which specify in legal terms details of who should pay tax and on what it should be paid. However, the indeterminacy of tax law means that disputes frequently arise over their meaning. Indeed, Ventry (2008) goes so far as to describe tax law as stochastic in nature. For many taxpayers the complexity of regulations and bureaucracy are 'accepted' or legitimised as the natural order of things, or field illusio and therefore remain unchallenged, reproducing the status quo. In this way, the authority of dominant field actors, such as HMRC is legitimised (Jenkins, 2002) – normalised through the process of 'misrecognition' or a form of forgetting that taxpayers themselves are caught up in the game of taxation. Such normalisation lends a degree of stability and certainty to the social practice and discourse within the field evidenced in part by a tax collection culture (habitus) developed in the UK over a long period of time (Mumford, 2003). When meaning is disputed between the tax authority and the taxpayer, with or without the mediation of a professional

[13] 'Polemic' in the sense of using selected statistics and anecdotal evidence to highlight controversy and stimulate debate. In this way polemics play an important role in raising public awareness of contentious issues, but need to be identified as such.

advisor, the courts may well be called upon to adjudicate, which opens up a new set of relations.

Judges should not be viewed as neutral, impartial decision makers in the tax field. James (2010) reminds us that judges have substantial power conferred on them through their discretion in the way cases are adjudicated. Schnieder (2005), in a US context, finds that the social background of judges is correlated with their decisions in terms of whether they find in favour of the taxpayer or the tax authority. In addition, the capacity of a taxpayer to challenge the tax authority is not a given, it is contingent on resources (Edgely, 2010). For many taxpayers, expensive litigation is not an option. This confers power on the tax authority, which is able to use a threat of litigation as a regulatory enforcement tactic in the pursuit of compliance.

At this point, in the paper we move on to analyse a critical incident that Herr and Anderson (2003) suggest provides a fruitful way of studying social practices, such as regulation. The practice of tax avoidance has created such a critical incident – the Arctic Systems case.

The Arctic Systems dispute

Exploring the relational aspects of regulation requires a focus on the social construction of relationships and interactions between field participants involved in the regulatory encounter. We have detailed earlier how Bourdieusian theory is well suited to such a contextualised study of the complex relational encounter attempted here. This study also lends itself to an interpretive research approach – founded in the idea that reality is socially constructed. Our analysis of the Arctic Systems dispute is therefore interpretive. We have systematically searched and examined a variety of publicly available texts and documents including the written decisions of the various court hearings, HMRC pronouncements, commentaries of academic scholars, archival data, and commentaries from tax practitioners, lobby groups and the media. Our case study data combines a rich variety of data sources from a range of informants and sources including highly knowledgeable expert commentary as well as the accounts and experiences of the individual non-expert taxpayers concerned. The data includes printed material and various internet discussions and texts. The story of the case is intertwined with theory to draw out key issues and contribute relational insights into existing regulatory theory.

The Arctic Systems case is a tax compliance boundary dispute between HMRC and an individual taxpayer – information technology (IT) consultant, Mr Jones. The case concerns a relatively obscure, but long-standing anti-avoidance provision in UK income tax legislation. Initially designed in the 1920s, the provision prevents a higher rate taxpayer from transferring an asset to someone taxed at a lower rate on the income it generates. This 'settlements' provision has the consequence that income from the asset transferred is treated as if it belongs to the original owner of the property and subsequently taxed at the higher rate.[14] Much has been written about this case from a legal perspective, and we do not seek to delve into the intricacies of the legislation, nor the court's interpretation of it, since others have already done so (Loutzenhiser, 2005, 2006, 2007; Tiley, 2006; Gammie, 2007; Redston, 2007; Mumford, 2010). We do, however, draw on the details, judgements and discussions surrounding the case to explore relational aspects of regulation at the boundary of practice.

[14] The relevant legislation is contained in the Income and Corporation Taxes Act 1988, Section 660A, as in force for tax year 1999 / 2000.

Suffice to say that the 'settlements' legislation is a textual representation of a specific boundary within the tax field designed to describe a point of crossing between acceptable and unacceptable practice. Application of the settlements rule occurs when there is evidence of unacceptable tax avoidance, resulting in an increased tax liability for the taxpayer concerned. It is, therefore, a very specific manifestation of the broader compliance boundary. Although this case can be framed as a 'technical' disagreement between the taxpayer and HMRC, we seek to recognise the influence and interaction of many other actors comprising of a network of relationships of power and control (regulation), information and advice, financial support, influence and opinion, and commercial interest.

Mr Jones, was an IT professional whose wife did not work. Made redundant from employment in 1992, he and his wife decided to become self-employed at that time. Their decision to incorporate this business was driven by Mr Jones' interaction with his potential clients and hence a response to industry norms – since his potential clients would only outsource services to incorporated entities, not individuals. On the advice of their accountant, Mr and Mrs Jones each subscribed £1 for a share in an off-the-shelf private company, Arctic Systems Ltd. Mrs Jones had prior experience in managing a company and agreed to act as company secretary for the company (Gammie, 2007). In relation to Mrs Jones' participation, Malcolm Gammie QC, who appeared as counsel for the Joneses throughout the case, observed that "nobody doubted that Mrs Jones made a genuine contribution to the running of the business and nobody who met Diana Jones would have been left in any doubt of her managerial capabilities" (2007, p. 1).

Although a response to industry norms, in choosing to operate their business through a company, Mr and Mrs Jones were able to take advantage of an unsatisfactory boundary in the UK tax system between the tax treatment of incorporated and unincorporated businesses. In Abreu's (1996) terms, they availed themselves of avoidance power granted to them by the tax system. Tax savings arise because of structural features in the UK tax system that are common in other countries, namely: lower rates of tax on companies than on individuals, lower rates of tax on income from capital (dividends) compared to labour income (salary), and reduced NICs, which create further boundaries between different categories of receipt (Crawford & Freedman, 2010).

The arrangement between Mr and Mrs Jones was not in any sense unusual[15] and had been common practice following the introduction of independent taxation of spouses in the UK in 1990.[16] It is of interest to note that the incentive to adopt such arrangements for family businesses only arises because of independent taxation. If the family (however that boundary is defined) were the tax unit, the incentive to incorporate may not arise (Oliver & Harris, 2008). The Jones' decision to incorporate was apparently made on commercial grounds (Gammie, 2007); although limited liability provides protection for a new business venture

[15] The tax motivated formation of companies by husbands and wives/civil partners is common in many countries.

[16] Indeed, the then Chancellor is quoted as saying on the introduction of independent taxation: "Independent taxation is bound to mean that some couples will transfer assets between them with the result that their total tax bill will be reduced. This is an inevitable and *acceptable* consequence of taxing husbands and wives separately … we have made it clear that we expect income splitting will occur … we see absolutely no case for imposing a tax penalty on the income from those assets" (quoted in CIOT et al., 2004). As Mumford (2010) observes by reference to a study by Stephens and Ward-Batts (2004), the introduction of independent taxation led to reallocation of family assets, mainly into the hands of women who are generally in a lower tax bracket.

and was widely understood to be on the compliant side of the boundary of acceptable tax practice (Freedman, 2006). Indeed, the common practice of incorporation of family businesses generally caused a significant increase in their numbers during the late 1990s and early 2000s – in part due to the fiscal advantages of incorporation in terms of considerably lower tax rates for companies (Crawford & Freedman, 2010; Freedman, 2006).

At this point in the tale, we can reveal several important relationships and interactions. The structure of the UK tax system provides different tax treatments depending on the type of income (capital or labour) and the vehicle through which it is earned (individual or company). These are technical boundaries enshrined in tax law with which tax specialists are intimately familiar. In making the decision to run their business as a company, the Joneses were advised by their accountant that they would save tax. Their professional advisor leveraged specialist expertise (professional capital) to 'persuade' their client to adopt a particular course of action. As Xu and Xu (2008) suggest, the tax advisors inculcated and socialised the Joneses into existing field doxa, exerting influence over the development of their taxpayer habitus. Importantly, the Joneses also faced additional pressure to incorporate flowing from clients for whom Mr Jones would work to earn taxable profits for Arctic Systems. These clients therefore also shaped the taxpayer habitus in this regard. In addition, these clients, some large multinational companies, are also taxpayers, and in coercing IT specialists such as Mr Jones to operate through a company they also save tax (specifically the employment related taxes payable by employers). Therefore, an interesting dynamic of the case, at least in terms of business format, is the relative power of different types of organisation that shaped the Jones' decision to incorporate.

At first blush, the arrangement appears to be innocuous, the Joneses were merely acting on the advice of professionals, but also coerced into operating their business through a company structure by those clients for whom Mr Jones would work. However, positioning the Joneses as a benign party in this practice is questionable when we dig a little deeper. The case arises in a tax environment where, in common with many other modern income tax systems, progressive rates of income tax result in higher rates of tax being paid by those receiving higher levels of income. In addition, and in common with other jurisdictions, employers are subjected to employment related taxes on salary payments to employees (Crawford & Freedman, 2010) in the UK, these are national insurance contributions (NICs). Arctic Systems' services to clients were performed by Mr Jones, who worked full time, whilst Mrs Jones worked approximately five hours a week. Arctic Systems earned profit which could then be distributed as either salary or dividends; the latter creating a lower tax and NIC liability than the former under the UK tax rules. A contentious aspect of the arrangement therefore was the level of salary paid. While Mrs Jones' salary was set at a reasonable commercial rate for the services she performed, Mr Jones' salary was arguably not commensurate with the level of professional expertise he provided. A consequence of this salary arrangement was that the profit available for distribution as dividends by the company was higher than it would otherwise have been had a market salary been paid to Mr Jones. This was on the advice, once again, of their accountant, and was clearly tax driven (Gammie, 2007). Gammie observes that "[g]iven the national insurance penalty that attached to withdrawing amounts as salary rather than dividends, they would have been mad, badly advised or major benefactors of the state to adopt a different course. If governments design a tax system that dictates particular outcomes, it should be no surprise when rational people adopt the course that produces that outcome" (2007, p. 2). Hence, although we note here that some element of financial gain appears likely to have influenced Mr Jones' business format decision, exploring the wider desirability and appropriateness of a tax system, which permits such behaviour, is beyond the scope of this paper. The key point here is that, motivation aside for the moment, this arrangement was not in any sense unusual and constituted widespread, common practice as part of the accepted and normalised field doxa.

However, HMRC interpreted the situation differently – as a breach of the compliance boundary – and applied the settlements legislation to Mr Jones. They issued Mr Jones with a tax bill claiming that dividends paid to Mrs Jones as a shareholder of Arctic Systems were effectively income belonging to Mr Jones and taxable in his hands at a higher rate of tax. HMRC's rejection of the tax planning of the Joneses presented an alternative or "competing discourse" (Bourdieu, 1977, p. 168) of their tax behaviour as non-compliant, unacceptable tax avoidance. Although at first sight we might interpret HMRC's actions as an attempt to 're-educate' the Joneses (the process of managing external and competing discourses – Bourdieu, 1977), basing their challenge on the settlements provisions created a conflicting rather than competing discourse that disturbed field doxa.

HMRC's application of the settlements provisions was exceptional since they had rarely been used to tackle tax avoidance in recent years, and there existed an apparent common and shared understanding (prior to this case) that the provisions only applied to blatant arrangements to alienate income streams to other parties, most commonly through the use of trusts (HMRC, 2003). The rules had certainly not previously been applied in a situation analogous to that of Arctic Systems. Hence, HMRC's regulatory response conflicted with field doxa, and was unanticipated by the taxpayers, their advisors and the tax professional community more broadly.

This unprecedented and unanticipated shift in HMRC's view of this practice boundary is illustrated by the reflection of Mark Lee (then Chairman of the Institute of Chartered Accountants in England and Wales – ICAEW):[17]

> Although some aspects of the Revenue's April guidance on the settlements legislation were previously known … key elements affecting everyday situations were not. Many taxpayers have taken actions, often with professional advice that reflected best practice, which they believed to be in accordance with the law, but which is now coming into question.

The fundamental difference between the regulator's and taxpayer's interpretation of practice caused this compliance boundary, already a site of technical and regulatory complexity, to move from a position of prior consensus (stable doxa) to one of dynamic contention, uncertainty and anxiety.

Drawing on Bourdieu here, existing regulatory processes rely partly on the 'illusio' of determinacy – i.e., that practice(s) have exact and discernible limits. It is the illusio that shores up field practice and through processes of misrecognition puts them beyond challenge. In this way, illusio legitimises regulatory authority, bringing control and stability to a field (Bourdieu, 1979). Within this case it follows that we might anticipate that the normalising influence of the field illusio would allow the dominant regulator's interpretation to be unchallenged by the less powerful taxpayer – the latter accepting it as an intrinsic field feature. Indeed, HMRC routinely challenge assessments without invoking resistance, but the

[17] In CIOT et al. (2004); see http://old.tax.org.uk/showarticle.pl?id=1933 (accessed 16 June 2011).

nature of HMRC’s regulatory response in this dispute resulted in it being perceived as unfair and unjust.

Ventry (2008) reminds us that the perception of being treated fairly is crucial for regulatory stability. Without this perception, HMRC’s actions damaged the field illusio – their view was not normalised. This destabilises the field and disrupts doxic understandings of the rules of the game, concurring with the finding of Lawler (2004, p. 120) that regulators’ decisions must “accord with doxic truths” or face their authority being contested. Within the Arctic Systems case, we interpret HMRC’s regulatory response as moving against the logic of the field doxa, destabilising the field, causing uncertainty and undermining their regulatory authority. The loss of illusio allows the taxpayer to challenge and contest the regulator’s response.

Although the fracturing of consensus emerges initially from the apparent shift in the tax authority’s stance away from the previous consensual interpretation of the regulations, this became deeper and more divisive when resisted by the taxpayer. This divergence created further tension and uncertainty in the field, leading to dissonance between the parties and a rapid loss of the field stability – the regulatory ‘dance’ becomes out of step (Braithwaite, 2009) and prompts a shift in the ‘motivational posture’ of the taxpayer towards confrontation.

What resulted was an intense boundary conflict fuelled by a significant shift in HMRC practice. The exceptional nature of this shift is sufficient to suggest that HMRC sought to use regulation, not as a tool to defend or impose the established order, but as a means of imposing a new order through the reinterpretation of an important boundary in the tax field. Drawing on the work of Gieryn (1999), HMRC’s regulatory response could be interpreted as an attempt to re-draw rather than defend (reposition as opposed to regulate) the boundary. Its actions suggest that its regulatory motive was more focused on addressing unsatisfactory structural disparities in the tax system (the macro concern), rather than the regulation of this particular individual’s tax affairs (the micro concern).

In addition, in terms of HMRC’s regulatory strategy, its actions do not appear ‘responsive’ in that there is no evidence of a preliminary assumption that the Joneses were cooperative, nor of any sensitivity towards them or the wider environment. These would be expected of regulators operating models of responsive regulation (Braithwaite, 1985; Baldwin & Black, 2008). It appears that HMRC, at best, misplaced the Joneses within the regulatory pyramid (see Fig. 1 above). Instead of categorising them at the base of the pyramid – as ‘willing and informed’ taxpayers – HMRC positioned them higher up, warranting more stringent enforcement regulation. This misplacing is concerning since evidence links levels of tax compliance with the perception of the tax system as fair and just (e.g., Braithwaite, 2003). Additionally procedural fairness is an important underlying condition of compliance, which is improved if taxpayers feel that they have been treated respectfully, honestly and impartially (Murphy, 2003). By incorrectly classifying the taxpayers, the belief that HMRC was acting in a principled manner was undermined, which Gergen (2001) identifies as important for field stability. The resultant destabilising effects also had significance beyond the parameters of the case itself since a much wider audience of interested parties were watching HMRC’s actions, and HMRC itself serves a much wider public and governmental interest. Indeed, the stability and perceived fairness of the tax system is fundamental to its successful operation.

Hence, aspects of HMRC’s regulatory habitus (particularly motive and strategy) were not seen as fair, which destabilised consensual field doxa, as well as compromising the taxpayer's trust in the tax system and, as the dispute escalated, their wider ability to regulate it.

The dispute escalates: new fields introduced

Mr Jones subsequently disputed the tax assessment, facilitated by financial support from the Professional Contractors Group (PCG) – a trade association established in 1999 to protect the interests of small, self-employed taxpayers operating as freelance contractors who had been targeted by HMRC. The PCG's creation was catalysed by the regulatory agenda of HMRC, resonating with Neu's (2006) observation that 'social groupings are formed and reformed by the peculiarities of the field'. Many of the PCG's members operate as one or two person limited companies, and it describes itself in its logo as: 'The voice of freelancing'.

Fuelled by PCG support, the site of regulation shifts.[18] Cooper and Robson (2006) observe that the location of regulation affects both its outcome and legitimacy. In the Arctic Systems case, what began as a private interaction between the tax authority and the taxpayer (represented by a tax intermediary) shifted to a more public arena as it moved into the legal field. Moving into the public arena also introduces other parties into the game, whom Gunningham and Grabosky (1998) suggest may act as surrogate regulators in a process of 'smart regulation'. However, there is no evidence to support that in this case. On the contrary, it appears that support lay with the Joneses and not HMRC as the dispute emerged into the public glare. Had the Joneses accepted HMRC's assessment "their situation would now be subject to an HMRC interpretive gloss on legislation that Parliament did not intend to apply to their situation" (Gammie, 2007, p.4). Hence, if the regulation had remained in the private sphere, tax practice would not only have significantly changed, but a contrary outcome would have been secured against the taxpayer. However, as the dispute moved into the public sphere, this permitted other parties, such as the PCG to support the Jones' resistance. The move into the public sphere also allowed the emergence of a popular media-painted picture of the Joneses as innocent victims who merely enacted the advice of their professional advisors to incorporate and hence followed widespread tax practice in this regard. Indeed, in 2006 the Joneses were given the LexisNexis Butterworths' award for 'Tax Personality of the Year' (Harris, 2006). The support of the media and PCG did little to quell HMRC's aggressive regulatory response as they responded by embarking on an increasingly intense and protracted legal wrangle to impose their revised field doxa through confrontational, enforced regulation rather than through more responsive tactics. Hence HMRC's actions pushed the regulatory practice further into the public sphere that ultimately also moved the outcome in the taxpayer's favour.

The legal dispute was taken through the full hierarchy of the UK tax appeal system. Initially the two Special Commissioners hearing the first appeal found in favour of HMRC, on the Senior Commissioner's casting vote.[19] The taxpayer appealed to the High Court and lost in 2005.[20] The taxpayer subsequently appealed to the Court of Appeal that found in the taxpayer's favour by three to nil. HMRC were initially refused leave to appeal against this decision, but petitioned the House of Lords for permission that was granted. The final decision in the Arctic Systems case was subsequently decided by the House of Lords in July

[18] We are grateful to an anonymous reviewer for highlighting this within the case.
[19] [2005] STC (SCD) 9.
[20] [2005] STC 1667.

2007.[21] It was held that the arrangement was a settlement, but because of the special exclusion that applies to spouses the rules did not apply to Mr Jones. HMRC was therefore found to be incorrect in seeking to tax Mr Jones on the dividends paid to his wife. The decision was unanimous in the House of Lords, although different views were expressed by the five judges as to the reasons for finding in favour of the taxpayer. This is an important aspect of the case[22] and highlights the fuzziness (the potentiality) of the tax compliance boundary. Until the courts had finished their deliberations, the Jones' actions were only potentially illegal and although the final decision was that they acted legally, along the way, there was considerable difference of opinion among the judges hearing the case. As Tiley observed, "matters were finely balanced" (2006, p. 298). This underscores the indeterminacy of law and the complexity of the tax regulatory field in its relationship with the juridical field (Burton, 2007).

The fallout from the decision

The day after the House of Lords' decision, the Government released a ministerial statement, together with some guidance to taxpayers, the content of which strongly suggesting that this outcome was anticipated. A previous document issued by HMRC in November 2004 in response to the Court of Appeal decision was entitled *A Guide to Settlements Legislation for Small Business Advisers*. In addition to promising to update this guidance, the government now signalled an intention to change the legislation in respect of what has come to be known as 'income splitting' as follows:

> The Government is committed to maintaining fairness in the tax system. The case has brought to light the need for the Government to ensure there is greater clarity in the law regarding its position on the tax treatment of 'income splitting'.

This signalled an intention to broaden the scope of 'attack' on income splitting by taxpayers who are married or in civil partnerships beyond the Arctic Systems type of situation (Loutzenhiser, 2007). While acknowledging the deficiency of the law in terms of its clarity, the government nonetheless appeals to a notion of fairness, suggesting that notwithstanding the decision of the courts, there remained an inequitable tinge to the outcome.

It might be considered here that this pattern of events constitutes normal tax regulatory practice – an individual appears to transgress the rules and the regulator's response is to enforce compliance through the force of the law – the cat-and-mouse regulatory game of tax practice. However, we consider this interpretation of HMRC's regulatory behaviour to be limited in a number of ways and instead offer an alternative Bourdieusian interpretation.

Firstly, as discussed above, the tax practice of the Joneses within the Arctic Systems case had been accepted, standard and widespread practice (Freedman, 2006) for some time and as such the taxpayers were merely following both government and accountants' advice, considering such practice as safe, lawful, low risk and normal. Consequently, there was no transgression of the rules by the taxpayer that would warrant regulatory action by HMRC.

Secondly, when considering the social processes involved in the interpretation of legal texts, Bourdieu (1987) describes how powerful field participants manipulate interpretations of texts

[21] For discussions of the House of Lords decision, see Kerridge (2007). For discussions of the decisions at lower levels of court, see Loutzenhiser (2005, 2006).
[22] As highlighted by an anonymous reviewer.

in order to control practice. We suggest there is evidence of this within this case, where HMRC uses both an unexpected and unusual interpretation of the text (tax law) to regularise and control practice consistent with *its* interpretation. HMRC appears to ignore or dismiss alternative, widely held interpretations as invalid. Such manipulated interpretation is made possible by the imprecision or indeterminacy of legal rules, arising in part from the inherent ambiguities of language (Endicott, 2001) and the existence of different normative perceptions (Avery Jones, 1996). As Lord Justice Carnwath on hearing the Arctic Systems case in the Court of Appeal observed[23]:

> For the first time, [HMRC] seek to apply the concept to what has been found to be a normal commercial transaction between two adults, to which each is making a substantial commercial contribution, albeit not of the same economic value … If the legislature wishes such an arrangement to be brought within a special regime for tax purposes, clearer language is necessary to achieve it.

This also indicts legislators for their part in the creation of uncertainty through their failure to provide adequate clarity within the body of the legislation itself.

Thirdly, HMRC's regulatory interaction with the taxpayer was through enforced compliance. This mode of regulation appears inappropriately matched to the taxpayer's likely positioning within the regulatory pyramid (as outlined in Fig. 1). The Joneses were arguably 'willing and informed' taxpayers, which suggests they should be met with a regulatory response based in 'encouragement' rather than 'enforcement'. HMRC is not seen to respond using the tactics of 'encouragement' nor those of 'education' since it withheld useful clarification and guidance. Furthermore, HMRC's regulatory intent is questionable in appearing to use regulation to change doxic practice rather than enforce it.

Lastly, within the boundary negotiations, we consider that HMRC could be further criticised for deploying silence (failing to produce guidance texts) and the dimension of time to exert power within the field by controlling its pace; for example, not responding or being tardy in responding to sustained requests for clarity from a number of parties. Although refusing to formally acknowledge that Arctic Systems was a test case, HMRC nonetheless delayed decisions on similar cases pending the House of Lords decision. Indeed, the publication of HMRC's view of the scope of the settlements provision in April 2003 was only in response to a request for clarity from the Chartered Institute of Taxation (CIOT) and then only managed to produce "clarifications" in a "technical manual rarely read even by tax specialists" (CIOT et al., 2004). Although the professional bodies continued to request further guidance from HMRC, this was without success until November 2004. Even then, the revised guidance met with a cool reception – John Beattie, President of the Chartered Institute of Taxation (CIOT) commented that:[24]

> The professional bodies have been requesting further and better guidance from [HMRC] on key issues for over a year. The 'new' guide to the settlements legislation, published last week, consists almost entirely of repackaged earlier comments and does not address the key areas of uncertainty which we have repeatedly highlighted. We have read it from cover to cover, but it deals only with the black and white and not with the important grey areas, which remain

[23] Court of Appeal Judgement, [2006] 1 WLR 1123, para. 108

[24] Press release dated 23 November 2004, available at < <http://old.tax.org.uk/showarticle.pl?id=2952;n=435,> accessed on 14 May 2009.

> just as murky as before. After all this time, we hoped for more than a sunburnt zebra.

Withholding (through silence) much needed guidance texts allowed HMRC to sustain a climate of uncertainty and anxiety, reinforcing their dominance and control over the field. Evidence of further aggressive regulatory actions can be found within their decision to enforce retrospective claims, and retrospectively applying their developing view. The latter resulted in many small businesses being presented with large and unexpected tax bills, and draws attention to the personal dimension that runs through the case. The actions taken by HMRC affected the individual taxpayers not only in terms of enduring the financial and practical aspects of this boundary negotiation, but also in terms of suffering a personal cost – in terms of anxiety and stress. Mr Jones' statement issued immediately following the House of Lords decision in their favour gives an insight into these costs:

> This is the end of three years of uncertainty for us – at one point we thought we'd lose our home. It's been extremely stressful and we've been made to feel like criminals, just for running our own business.[25]

HMRC's regulatory practice is thus seen to create an impact on taxpayers beyond fiscal concerns, i.e., to have a personal dimension. Positioning regulation as a social and relational practice allows these 'human' costs to be included in regulatory analysis and raises issues surrounding the ethical dimensions of regulation. One of the main problems is how systemic (macro) concerns and the personal (micro) concerns relate and are balanced within the course of the regulation.

It is also notable that the Arctic Systems case is part of a much wider struggle currently taking place in the UK between self-employed taxpayers and HMRC, the details of which are beyond the scope of this paper (see Crawford & Freedman, 2010; Freedman, 2001, 2006). This raises some uncomfortable questions for reflection in terms of the justification of the severity of HMRC's regulatory actions in this case. The regulator could be seen as using a 'soft' route to impose new interpretations of tax practice, where regulatory force was used against an individual in order to clarify legislation rather than impose it. Furthermore, it is reasonable to assume that HMRC would be aware that the cost of disputing their interpretation of the tax avoidance boundary through the hierarchy of the court system would be well beyond the financial capabilities of many taxpayers, including Mr Jones. Indeed this case was only made possible by the financial backing of the PCG. For most individual taxpayers, the costs of sustaining a dispute with HMRC would be prohibitory.

The scope of the impact of HMRC's actions in this case were extensive affecting tens of thousands of family-run businesses. The destabilising of the field created undue and prolonged uncertainty surrounding the provisions that hung over these businesses for a considerable period. This has contributed to the view that the Government is antagonistic to small business (Freedman, 2006). As David Kilshaw, Head of Private Client Advisory at KPMG observed (quoted in a bulletin issued on 3 August 2007):

[25] Quoted in Hawkes (2007).

> Tens of thousands of couples who run businesses together will breathe a sigh of relief. The spectre of horrendous tax bills has disappeared. Thousands of businesses have literally been saved from bankruptcy by the House of Lords.

Tax practitioners' views of the Arctic Systems affair were overwhelmingly negative, illustrated by the comment of a prominent tax commentator (Ross Martin, 2007):

> The knock on cost to SMEs of this 'test case' must be truly staggering, hundreds of thousands of pounds have been wasted by anxious business owners on advice over its duration, and this over and above the cost of legal proceedings, and of course it was us, the taxpayers, who paid HMRC's legal costs.

Interestingly, the ultimate decision of the House of Lords in favour of the taxpayer presented a further opportunity for accounting professionals to increase their client bases and thereby their economic capital. For example, KPMG's weekly tax briefing commented on the House of Lords' decision and its implications for clients in several of its newsletters in July and August 2008, stating: "Please get in touch with your usual contact in KPMG's Tax and People Services practice if you have any queries on how this affects you and your business". This illustrates the ongoing inventiveness of social agents in taking commercial advantage of shifts in relationships and practices within fields, and to some extent, their contribution to fuelling the practice and business of tax avoidance.

The attempt by HMRC to cast the arrangement as being unacceptable tax avoidance, and of the taxpayer, Mr Jones, as someone not paying his fair share of tax, was an attempt to redefine the scope of the tax practice and the position of the tax avoidance boundary rather than regulate it. Their interpretation was out of line with extant field doxa and ultimately judged as incorrect. Their regulatory pursuit of the Joneses was via enforcement, driven forward through escalating levels of legal action. In using an aggressive regulatory mode, HMRC undermined field collusio and provoked an ultimately unsuccessful legal battle, against much smaller actors within the field. Its regulatory actions in this regard have, perhaps at best, been criticised as a "lazy approach to policy making" (Freedman, 2006).

Our analysis of the Arctic Systems case raises concerns about further aspects of the operation of the tax system in terms of other, largely hidden, boundaries that it touches upon. One such boundary is that between market and non-market transactions, wherein both the tax and accounting systems fail to recognise the latter (Mumford, 2010). Much of the focus of valuation models within accounting and tax practices draw heavily on market-based, economic conceptions of events and transactions. This excludes the possibility of incorporating others types of events and transactions whose value remains unrecognised. Within this case, Mrs Jones' contribution to the family company was considered only in terms of the paid work she performed, and no consideration was given to her unpaid labour. Another influential boundary here lies between marriage and co-habitation. If Mr and Mrs Jones had not been married, the case would not have arisen because the settlements provision would not have applied (Tiley, 2006). Prior to 2005, the settlements rules would not have applied to same-sex couples either, and even now they only apply to same-sex couples who have entered into a civil partnership. Wosner (2005) raises the question of whether this apparent discrimination against married couples is in breach of the Human Rights Act 1988. These additional boundaries raise interesting issues in relation to the impact of accounting practices and the use of tax law in framing societal norms and field doxa, which although beyond the scope of this paper are worthy of further study.

Conclusion

In this paper, we have drawn on Bourdieu's conception of social practice, synthesised with notions of boundaries and regulation to tease out and interpret the relational aspects of intra-field boundary practice. Popular depictions of tax avoidance as 'taxpayer bad/state good', or as a matter of legal determinacy, obscure the complexities and influences of relationships on regulatory practice and processes within the tax field. Applying a Bourdieusian approach to a critical tax avoidance incident – the Arctic Systems dispute – we explored the interactions of actors, in terms of what is valued and defended, within this regulatory field. In common with other regulatory fields, the tax field experiences complex compliance boundary negotiations as sites of fierce power struggles where consensus is sought, or imposed. Additionally, in recent years, there has been an important shift in regulatory practice generally from command and control approaches to more responsive regulation. This shift is evident within HMRC's self-declared move towards the latter. By unravelling the detail of this boundary struggle, with its consequent shifts in the balance of power, authority and control, we develop an alternative and relational understanding of aspects of regulatory practice as it develops at the practice boundary.

From a Bourdieusian perspective, relative stability and certainty in the tax compliance game emerges from the relational interactions, or collusion, of the dominant players (tax professionals and the tax authority), which maintains HMRC's illusio of legitimacy to control, act and regulate the field. This normalises the tax practices of dominant actors through demonstration of mastery, i.e., professional capital over the rules, hence controlling the tax game. Collusio thus produces and reproduces the status quo within the field. In the Arctic Systems case, however, struggles over the boundary of tax avoidance intensified, in an unexpected way, beyond the normalised limits of accepted field practice. HMRC's interpretations and actions created an unacceptable disruption to the normalised game and balance within the field which became upset – the illusio became disrupted. We interpret this as brought about through a number of regulatory actions, emerging from particular relational positions.

Firstly, the tax authority (mis)interpreted the taxpayer's practice by framing it as an act of non-compliance, crossing the boundary of acceptable tax avoidance. This was problematic to the field – in that their view was so strikingly out of line with the wider and longstanding field doxa that positioned it as accepted practice. Disruption of the illusio made the usually concealed presumption of HMRC's legitimacy visible. This in turn makes possible a shift in the nature of the relationship between taxpayer and regulator that permits challenge of the regulator's actions.

Secondly, HMRC's erroneous framing of the taxpayer's actions was compounded by its regulatory classification of the taxpayer's behaviour, positioning them higher in the compliance pyramid. Such positioning consequently influenced HMRC's regulatory relationship with the taxpayer. In turn this dubious positioning triggered a third problematic action, namely an enforcement mode of regulatory response from HMRC, which further disrupted field doxa. HMRC's regulatory relationship with the taxpayer became changed and characterised by the adoption of aggressive regulatory strategies to enforce compliance. This shift to an enforcement habitus resulted in HMRC deploying an increasing range of legal actions, bringing the full weight of the legal process to bear against the Joneses. The regulatory relationship hence becomes one of the ‘command and control’ of a deviant taxpayer rather than one that sought compliance through responsive regulation.

Lastly, HMRC’s regulatory relationship with the taxpayer was further challenged by its demonstration of symbolically violent aspects in terms of its text manipulation (particularly its erroneous interpretation of the Jones’ tax affairs). This symbolic violence is also illustrated by HMRC remaining persistently silent (i.e., failing to ‘respond’) when guidance was sought, delaying decisions on similar cases, withholding written guidance and failing to clarify key issues. Taken together these draw into question the ‘responsiveness’ of their regulatory approach. This leads us to interpret HMRC’s regulatory actions, not as the legitimate defence of tax principles, but as disruptive regulation. This manifested through the instigation of protracted legal action, controlling the timing of guidance, and issuing retrospective claims and delaying other determinations – in an attempt to command and control allegedly ‘deviant’ taxpayers towards its subjective view of compliance. Additionally, regulation that relies on legal process to reposition practice puts it beyond the financial reach of most taxpayers. Indeed, without the funding of the PCG, the Joneses ability to resist and defend against HMRC’s actions would not have been as robust. Moreover, the legal case with its favourable taxpayer outcome may not have come to fruition. The field of taxation therefore is not immune to, nor isolated from, the influence of other significant actors within the field, including accounting practitioners and professional groups.

Collectively, these actions demonstrate a breakdown in the consensual tax relationships with the field. HMRC’s actions are not interpreted as representing their claimed tactics of responsive regulation and by instigating regulation in this way mutual trust was also undermined – a necessary condition for responsive regulation to operate. Additionally, public money was wasted on pursuing legal cases and hence the interests of taxpayers and wider society were also compromised by HMRC’s regulatory choices.

A Bourdieusian unpacking of the relations within the case therefore prompts a more critical questioning of the tax regulator’s actions and practice, and paints a different and perhaps more troubling picture of the regulatory landscape. In particular, it lays its behaviour open to some tough questioning in terms of whether it is fair, reasonable, appropriate or professional. HMRC’s aggressive regulatory actions (confrontational enforcement with significant legal and potential financial sanctions) demonstrate reliance on punitive strategies – more typical of a traditional command and control approach. This is not to deny that instances of tax avoidance collectively have the potential to be an issue, nor to claim that the legal process itself is damaging to tax regulation since regulation can derive stability and interpretive certainty from legal determinations. Although punitive strategies are useful tools in HMRC’s arsenal of methods to regulate tax practice, to be a beneficial stabiliser they must be used appropriately, or risk the contrary effect (Gergen, 2001) as witnessed within the Arctic Systems case. Indeed, here HMRC’s erroneous interpretation of the taxpayers’ affairs and its legalistic regulatory response destabilised the field, creating uncertainty of practice. Thus, what our paper does question is whether HMRC’s approach to tackling the potentially big issues through an aggressive regulatory pursuit of an individual taxpayer is acceptable. From a Bourdieusian stance, HMRC appear to utilise the fuzzy boundary (where practice is open to interpretation) as an opportunity to adopt a position, in terms of it running contrary to existing doxa, and deploy regulation as a tool to transform field doxa in line with its non-doxic position. In other words, what appeared at stake for HMRC was the bigger picture of tax compliance in relation to income splitting between husbands and wives, rather than its concern with the individual tax affairs of the Joneses – a macro rather than micro focus. The ethics of seeking to achieve pivotal changes in tax practice through the pursuit of an individual taxpayer is questionable.

Little research has been undertaken in terms of exploring regulation as an ethical practice. Potential explorations could draw on the work of Buchholz and Rosenthal (2006) and Messner (2009), who argue that organisations as well as individuals can be considered as moral agents and consequently hold ethical responsibilities. This may open up the path for discussion of the ethics of compliance regulation that considers both the needs of the individual and the organisation (the micro and the macro). Although outside the scope of this paper, this is an important area for further investigation.

Our Arctic Systems analysis suggests a need for HMRC to better balance their wider regulatory accountabilities (as a public body), with its regulatory duty of care to individual taxpayers. Traditional, old style command and control regulatory practices may have led to more clearly defined positions and relations in regard to the habitus of regulator and regulatee. However, the move towards responsive regulation perhaps blurs these positions, intensifying the requirement for the regulator to become more attuned to the habitus of regulatees in order to better respond in the regulatory 'dance' (Braithwaite, 2009). HMRC's ability to adapt rests partly on its capacity and/or willingness to invest in developing an institutional, regulatory habitus that can *be* responsive within its interactions with taxpayers, i.e., to appropriately classify taxpayers (interpret their habitus) and respond to each accordingly (adjust its institutional habitus).

Such responsive regulation might require less reliance on tax avoidance practice being contested through legal channels and the courts, and more reliance on developing regulation as emerging from relational processes of social construction. Hence, we suggest that expanding regulatory inquiry to include perspectives that position and develop regulation as an interactive or reflexive process – a social and relational process – mediated via socio-cultural interactions between the tax authority and taxpayers – might encourage what Black (2002) refers to as a deeper and more productive 'regulatory conversation'. This might also offer potential for adapting responsive tax regulation to become more relational in a way that would harness a focus on more cooperative and inclusive regulatory responses.

A key issue for the regulator then is to better understand the limits of its existing regulatory practice, acknowledging its practice limitations and to draw informatively on the lessons from the Arctic Systems case. There is a need for greater dialogue between field participants about the challenges faced, where information is shared and interests converge, making possible a more relational form of regulation. This would perhaps give rise to more stable regulatory outcomes emerging from "the product of shared meaning and negotiated positions" (Humphrey et al., 2009, p. 822). Relational regulation would respond to what appears missing at the regulatory boundary of tax compliance – i.e., the mechanisms that allow meaning to emerge as shared understanding through cooperative and consensual practice that recognises multiple perspectives. This new 'game' of relational regulation would require a reshaping of HMRC's institutional habitus such that it engages with taxpayers and their advisors in a different way; responding sensitively and appropriately to taxpayers (or 'customers') depending on an informed classification of taxpayer disposition (habitus) as part of its claimed agenda of responsive regulation (Fig. 1). This might offer a means of creating more stable tax avoidance practice that would also respond to Picciotto's warning that "tax reform should not be viewed as a technical contest ... conducted only within closed circles of experts" (2007, p. 30). One benefit for HMRC of more open discussion is that it may guide the regulator away from using regulation as a device to reposition practice boundaries and towards using regulation to more appropriately secure compliance within existing boundaries. The responsibility for repositioning boundaries would therefore be relocated outside of the practice of compliance regulation. Although Star and Griesemer in their study of other regulatory fields (1989, pp. 388–9) caution that achieving consensual, reflective practice involves “considerable labour at the boundaries through processes of translation, negotiation, debate, triangulation and simplification”, we contend that such labour is necessary if meaningful shared practice norms are to evolve within the tax field.

The relative neglect of tax practice as an object of scholarly attention within the accounting literature, particularly beyond studies of the tax practice of large multi-national organisations, is a cause for concern. In some jurisdictions, for example the UK, this feeds into a skewed policy making dynamic where regulatory decisions are made in respect of both substantive tax rules and their practical operation without being scrutinised and held to account by the scholarly academic community. Thus, in terms of field power relations, this confers power on both the regulator and the professionals to construct shared understandings (collusio) of the complex boundaries within and around the field, which in the absence of critical incidents, such as the one we examine here, potentially have dysfunctional effects. There is considerable scope for challenging the orthodox positivist approaches to tax scholarship within the accounting literature by using interpretive and critical methodologies, such as those used in this paper, particularly in terms of framing aspects of taxation, including tax avoidance, as distinct (albeit interdisciplinary) social practices. The influence of mainstream economics, psychology, and law colours received understandings of the practical functioning of tax systems and needs questioning. One way this could be achieved is through broader, more situated research, that explores ‘tax in action’ and examines the linkages and relationships between tax, accounting and regulatory practices and the influence of the wider contexts in which these practices operate.

Beyond the tax field, this paper has shed light on the relational aspects of boundary construction and maintenance as an integral part of field practice. This includes not only boundaries around social fields, but also those within fields, as points at which struggles for field capital intensify. Consensual understandings of the scope and locus of intra-field boundaries are not static, and can be challenged through critical incidents. Within these field participants call into question field doxa, which may result in boundary shifts or more subtle shifts in power relations, as demonstrated in the Arctic Systems dispute.

References

Abbott, A. (1988). *The system of the professions: An essay on the division of expert labor.* Chicago: University of Chicago Press.

Abreu, A. G. (1996). Taxes, power and personal autonomy. *San Diego Law Review, 33,* 1–77.

Albertson, N., & Diken, B. (2004). Artworks' networks: Field, system or mediators? *Theory Culture and Society, 21*(3), 35–58.

Ashby, J., Webley, P., & Haslam, A. S. (2009). The role of occupational taxpaying cultures in taxpayer behaviour and attitudes. *Journal of Economic Psychology, 30*(2), 216–227.

Ashby, J., & Webley, P. (2010). Exploring the existence of distinct occupational taxpaying cultures in Australia. *Australian Tax Forum, 25*(1), 29–55.

Avery Jones, J. (1996). Tax law: Rules or principles? *Fiscal Studies, 17*(3), 63–89.

Ayres, I., & Braithwaite, J. (1992). *Responsive Regulation: Transcending the deregulation debate.* New York: Oxford University Press.

Baldwin, R., & Black, J. (2008). Really responsive regulation. *The Modern Law Review, 71*(1), 59–94.

Barker, W. B. (2009). The ideology of tax avoidance. *Loyola University Chicago Law Journal, 40*(2), 230–251.

Baxter, J., & Chua, W. F. (2009). Be(com)ing the chief financial officer of an organisation: Experimenting with Bourdieu's practice theory. *Management Accounting Research, 19*(3), 212–230.

Black, J. (2002). Regulatory conversations. *Journal of Law and Society, 29*(1), 163–196.

Black J., & Baldwin, R. (2010). Really responsive risk-based regulation. *Law and Policy, 32*(2), 181–213.

Blanthorne, C., & Kaplan, S. (2008). An egocentric model of relations among the opportunity to underreport, social norms, ethical beliefs, and underreporting behaviour. *Accounting Organizations and Society, 33*(7–8), 684–703.

Bobek, D. D., Roberts, R.W., & Sweeney, J. T. (2007). The social norms of tax compliance: Evidence from Australia, Singapore and the US. *Journal of Business Ethics, 74*(1), 49–64.

Boden, R., Killian, S., Mulligan, E., & Oats, L. (2010). Critical perspectives on taxation. *Critical Perspectives on Accounting, 21*(7), 541–544.

Bourdieu, P. (1977). *Outline of a theory of practice*. Cambridge: Cambridge University Press.

Bourdieu, P. (1979). *Distinction: A social critique of the judgment of taste*. Cambridge, MA: Harvard University Press.

Bourdieu, P. (1986). The forms of capital. In J. G. Richardson (Ed.), *Handbook of Theory and Research for the Sociology of Education* (pp. 241–258). New York: Greenwood.

Bourdieu, P. (1987). The force of law: Toward a sociology of the juridical field. *Hastings Law Journal, 38*, 805.

Bourdieu, P. (1990). *The logic of practice.* Cambridge: Polity Press.

Bourdieu, P. (1996). *The rules of art*. Cambridge: Polity Press.

Bourdieu, P. (1998). *Practical reason*. Cambridge: Polity Press.

Bourdieu, P., & Wacquant, L. J. D. (1992). *An invitation to reflexive sociology*. Chicago: University of Chicago Press.

Braithwaite, J. (1985). *To punish or persuade: Enforcement of coal mine safety.* Albany, New York: University of New York Press.

Braithwaite, J. (2005). *Markets in vice, markets in virtue.* Oxford: Oxford University Press.

Braithwaite, V. (2003). Dancing with the tax authorities. In V. Braithwaite (Ed.), *Taxing democracy: Understanding tax avoidance and evasion* (pp.15–40). Aldershot: Ashgate.

Braithwaite, V. (2009). *Defiance in taxation and governance: Resisting and dismissing authority in a democracy*. Cheltenham: Edward Elgar.

Brubaker, R. (1985). Rethinking classical theory: The sociological vision of Pierre Bourdieu. *Theory and Society, 14*(6), 745–775.

Buchholz, R., & Rosenthal, S. B. (2006). Integrating ethics all the way through: The issue of moral agency reconsidered. *Journal of Business Ethics, 66*(2), 233–239.

Burri, R. V. (2008). Boundary work and symbolic capital in radiology. *Social Studies of Science, 38*(1), 35–62.

Burton, M. (2007). Responsive regulation and the uncertainty of tax law – Time to reconsider the Commissioner's model of cooperative compliance?. *Journal of Tax Research, 5*(1), 71–104.

Campbell, J. C. (2009). Epilogue: A Renaissance for Fiscal Sociology? In I. W. Martin, A. K. Mehrotra, & M. Prasad (Eds.), *The New Fiscal Sociology* (pp.256–266). Cambridge: Cambridge University Press.

CIOT, ICAEW, ACCA, ICAS, AAT, ATT (2004). *Settlement Provisions: Guidance Note on Disclosure*. <http://www.tax.org.uk/attach.pl/2948/3200/Smallbiz660Aprofbodies231104%20final.pdf> Accessed on 14 July 2009 .

Cooper, D., & Robson, K. (2006). Accounting, professions and regulation: Locating the sites of professionalization. *Accounting, Organizations and Society, 31*(4–5), 415–444.

Crawford, C., & Freedman, J. (2010). Small business taxation. In S. Adam, T. Besley, R. Blundell, S. Bond, R. Chote, M. Gammie, P. Johnsons, G. Myles & J. Poterba (Eds.), *Dimensions of tax design* (pp.1028–1099). Oxford: Oxford University Press.

Dezalay, Y., & Garth, B. (1995). Merchants of the law as moral entrepreneurs: Constructing international justice from the competition for transnational business dispute. *Law and Society Review, 29*(1), 27–64.

Edgley, C. (2010). Backstage in a legal theatre: A Foucauldian interpretation of 'Rationes Decidendi' on the question of taxable business profits. *Critical Perspectives on Accounting, 21*(7), 560–572.

Endicott, T. (2001). Law is necessarily vague. *Legal Theory, 7,* 379–385.

Everett, J. (2002). Organizational research and the praxeology of Pierre Bourdieu. *Organizational Research Methods, 15*(1), 56–80.

Feld, L. P., & Frey, B. S. (2002). Trust breeds trust: How taxpayers are treated. *Economic Governance, 3*(2), 87–99.

Fine, B. (2010). *Theories of social capital: Researchers behaving badly*. London: Pluto Press.

Freedman, J. (2001). *Employed or self-employed? Tax classification of workers and the changing labour market.* Tax Law Review Committee Discussion Paper No 1, London: Institute for Fiscal Studies. <http://www.ifs.org.uk/comms/dp1.pdf> Accessed on .

Freedman, J. (2006). Why taxing microbusiness is not simple – A cautionary tale from the 'Old World'. *Journal of the Australasian Tax Teachers Association, 2*(1), 58–77.

Freedman, J. (2007). Interpreting Tax Statutes: Tax avoidance and the intention of Parliament. *Law Quarterly Review,* 123, 53–90.

Gammie, M. (2007). Reflections on Jones v Garnett. *British Tax Review, 6,* 687–691.

Gergen, M. P. (2001). The common knowledge of tax abuse. *SMU Law Review, 54*, 131–148.

Gieryn, T. F. (1983). Boundary-work and the demarcation of science from non-science: Strains and interests in professional ideologies of scientists. *American Sociological Review, 48*, 781–795.

Gieryn, T. F. (1999). *Cultural boundaries of science: Credibility on the line*. Chicago: University of Chicago Press.

Goddard, A. (2004). Budgetary practices and accountability habitus. *Accounting, Auditing and Accountability, 17*(4), 543–577.

Greenwood, R., Suddaby, R., & Hinings, C. R. (2002). Theorising change: The role of professional associations in the transformation of institutional fields. *Academy of Management Review, 45*(1), 58–80.

Gunningham, N., & Grabosky, P. (1998). *Smart regulation: Designing environmental policy*. New York: Oxford University Press.

Hamilton, G., & Ó hÓgartaigh, C. (2009). The third policeman: 'The true and fair view', language and the habitus of accounting. *Critical Perspectives on Accounting*, *20*(8), 910–920.

Harris, C. (2006). Fighters rewarded. *Financial Times*, 25 May 2006.

Hasseldine, J., Holland, K., & van der Rijt, P. (2011). The market for corporate tax knowledge. *Critical Perspectives on Accounting, 22*(1), 39–52.

Hawkes, A. (2007). Arctic Systems: Timeline and background to the case. *Accountancy Age,* 8 November, 2007. <http://www.accountancyage.com/accountancyage/specials/2149834/arctic-systems-geoff-diana> Accessed on 31 October 2010.

HMRC (2003). *Tax Bulletin Number 64*. <http://www.hmrc.gov.uk/bulletins/tb64.htm#a> Accessed on .

HMRC (2009). *Modernising powers, deterrents and safeguards working with tax agents: A consultation document*. < http://www.hmrc.gov.uk/budget2009/tax-agent-6440.pdf> Accessed on .

Herr, K. & Anderson, G. (2003). Violent youth or violent schools?: A critical incident analysis of symbolic violence. *International Journal of Leadership in Education, 6*(4), 415–434.

Humphrey, C., Loft, A., & Woods, M. (2009). The global audit profession and the international financial architecture: Understanding regulatory relationships at a time of financial crisis. *Accounting, Organizations and Society*, *34*(4), 810–825.

James, M. (2010). Humpty Dumpty's guide to tax law: Rules, principles and certainty in taxation. *Critical Perspectives on Accounting*, *21*(7), 573–583.

Jenkins, R. (2002). *Pierre Bourdieu*. London and New York: Routledge.

Job, J., Stout, A., & Smith, R. (2007). Culture change in three tax administrations: From command and control to responsive regulation. *Law and Policy, 29*(1), 84–101.

Kerr, A., Cunningham-Burley, S., & Sutton, R. (2007). Shifting subject positions: Experts and lay people in public dialogue. *Social Studies of Science, 37*(3), 385–411.

Kerridge, R. (2007). Jones v Garnett (Arctic Systems): Another way of getting to the same result. *British Tax Review*, *5*, 591–597.

Kirchler, E. (2007). *The economic psychology of tax behaviour.* Cambridge: Cambridge University Press.

Kirchler, E., Maciejovsky, B., & Schneider, F. (2003). Everyday representations of tax avoidance, tax evasion, and tax flight: Do legal differences matter? *Journal of Economic Psychology*, *24*(4), 535–553.

Kornhauser, M. (2007). A tax morale approach to compliance: Recommendations for the IRS. *Florida Tax Review, 8*(6), 599–640.

Kurunmäki, L. (1999). Professional vs financial capital in the field of health care – struggles for the redistribution of power and control. *Accounting, Organizations and Society*, *24*(2), 95–124.

Lamont, M., & Molnar, V. (2002). The study of boundaries in the social sciences. *Annual Review of Sociology*, *28*, 167–195.

Lawler, S. (2004). Rules of engagement: Habitus, power and resistance. In L. Adkins &, B. Skeggs (Eds.), *Feminism after Bourdieu* (pp. 110–128). Oxford: Blackwell Publishing.

Lawrence, T. B. (2004). Rituals and resistance: Membership dynamics in professional fields. *Human Relations*, *57*(2), 115–143.

Levi, M. (1998). A state of trust. In V. Braithwaite, & M. Levi (Eds.), *Trust and governance* (77–101). New York: Russell Sage Foundation.

Leviner, S. (2009). A new era of tax enforcement: From big stick to responsive regulation. *University of Michigan Journal of Law Reform*, *42*(2), 381–429.

Llewellyn, S. (1998). Boundary Work: Costing and caring in the social services. *Accounting Organizations and Society*, *23*(1), 23–47.

Loutzenhiser, G. (2005). Jones v Garnett: High Court gives taxpayer the cold shoulder. *British Tax Review*, *4*, 401–411.

Loutzenhiser, G. (2006). Jones v Garnett: Court of Appeal puts HMRC on ice. *British Tax Review*, *2*, 140–147.

Loutzenhiser, G. (2007). Income splitting and settlements: further observations on Jones v Garnett. *British Tax Review*, *6*, 693–716.

Madsen, M. R., & Dezalay, Y. (2002). The power of the legal field: Pierre Bourdieu and the Law. In R. Banakar and M. Travers (Eds.), *An introduction to law and social theory* (pp. 189–204), Oxford and Portland, Oregon: Hart Publishing.

Malsch, B., & Gendren, Y. (2011). Investigating interdisciplinary translations: The influence of Pierre Bourdieu on accounting literature. *Accounting, Auditing and Accountability*, *24*(2), 194–208.

Martin, I. W., Mehrotra, A. K. & Prasad, M. (2009). The thunder of history: The origins and development of the new fiscal sociology'. In I. W. Martin, A. K. Mehrotra, & M. Prasad (Eds.), *The new fiscal sociology: Taxation in comparative and historical perspective* (pp. 1–128). Cambridge: Cambridge University Press.

Maynard, D. (1991). Interaction and asymmetry in clinical discourse. *American Journal of Sociology, 97*(2), 448–495.

McBarnet, D. (1991). Whiter than white collar crime: Tax, fraud insurance and the management of stigma. *British Journal of Sociology, 42*(3), 323–344.

McBarnet, D. (2003). When compliance is not the solution but the problem: From changes in law to changes in attitudes. In V. Braithwaite (Ed.), *Taxing democracy, understanding tax avoidance and evasion* (pp. 229–244) Aldershot: Ashgate.

McBarnet, D. (2006). After Enron will 'Whiter than White Collar Crime' still wash? *British Journal of Criminology, 46*(6), 1091–1109.

McBarnet, D., & Whelan, C. (1991). The elusive spirit of the law: Formalism and the struggle for legal control. *Modern Law Review, 54*(6), 848–873.

Messner, M. (2009). The limits of accountability. *Accounting, Organizations and Society, 34*(8), 918–938.

Morris, T., & Empson, L. (1998). Organisation and expertise: an exploration of knowledge bases and the management of accounting and consulting firms. *Accounting, Organizations and Society, 23*(5–6), 609–624.

Mumford, A. (2003). *Taxing culture: Towards a theory of tax collection*. London: Ashgate.

Mumford, A. (2010). *Tax policy, women and the law: UK and comparative perspectives.* Cambridge: Cambridge University Press.

Murphy, K. (2003). The importance of procedural justice in securing compliance: A study of tax scheme investors. *Australian Journal of Social Issues, 38*(3), 365–390.

Murphy, K. (2004). Aggressive tax planning: Differentiating those playing the game from those who don't. *Journal of Economic Psychology, 25*(3), 307–329.

Neu, D. (2006). Accounting for public space. *Accounting, Organizations and Society, 31*(4–5), 391–414.

Neu, D., Friesen, C., & Everett, J. (2003). The changing internal market for ethical discourses in the Canadian CA profession. *Accounting, Auditing and Accountability Journal, 16*(1), 70–103.

Oats, L. (2012a). Taxation as a social and institutional practice. In L. Oats (Ed.), *Taxation: A fieldwork research handbook* (pp. 3-8). London: Routledge.

Oats, L. (2012b). Tax research going forward. In L. Oats (Ed.), *Taxation: A fieldwork research handbook* (pp. 242-245). London: Routledge.

Oats, L., & Gracia, L. (2012). Insights from Bourdieu. In L. Oats (Ed.), *Taxation: A fieldwork research handbook* (pp. 114-119). London: Routledge.

Oats, L., & Tuck, P. (2008). *The relationship between HM Revenue & Customs and large corporate taxpayers: The changing role of accountants.* London: ICAEW Centre for Business Performance.

OECD (1988). *Administrative responsiveness and the taxpayer*. Paris: OECD.

OECD (2008). *Study into the role of tax intermediaries.* Paris: OECD.

Oliver, D., & Harris, P. (2008). Family connections and the corporate entity: income splitting through the family company. In J. Avery Jones, P. Harris, & D. Oliver (Eds.), *Comparative perspectives on revenue law: Essays in honour of John Tiley* (pp. 244–287). Cambridge: Cambridge University Press.

O'Neil, C.J., & Samelson D.P. (2001). Behavioral research in taxation: Recent advances and future prospects. *Advances in Accounting Behavioral Research, 4*, 102–139.

Ordower, H. (2010). The culture of tax avoidance. *Saint Louis University Law Journal, 55*(1), 47–128.

Parnaby, P. F. (2009). Sit back and enjoy the ride: Financial planners, symbolic violence and the control of clients. *Canadian Journal of Sociology, 34*(3), 1065–1086.

Picciotto, S. (2007). Constructing compliance: Game-playing, tax law and the regulatory state. *Law & Policy, 29*(1), 11–30.

Plinick, A. (1998). 'Why didn't you just say that?': Dealing with issues of asymmetry, knowledge and competence in the pharmacist/client encounter. *Sociology of Health & Illness, 20*(1), 29–51.

Power, M. (2007). *The risk management of everything: Rethinking the politics of uncertainty.* London: Demos.

Professional Contractors Group (PCG) (2006). *Submission to the Mirrlees Review: Reforming the tax system for the 21st Century*. <http://www.pcg.org.uk/cms/documents/POLICY_AND_CAMPAIGNS/taxation/pcg_submission_to_the_mirrlees_review.pdf> Accessed on .

Ramirez, C. (2001). Understanding social closure in its cultural context: Accounting practitioners in France 1920-1938. *Accounting, Organizations and Society, 26*(4–5), 391–418.

Reckers, P. M. J., Sanders, D. L., & Roark, S. J. (1994). The influence of ethical attitudes on taxpayer compliance. *National Tax Journal, 47*(4), 825–36.

Redston, A. (2007). Income sharing: the Nelsonian option. *British Tax Review, 6*, 680–686.

Richardson, A. (2009). Regulatory networks for accounting and auditing standards: A social network analysis of Canadian and international standard-setting. *Accounting, Organizations and Society, 34*(4), 571–588.

Ross Martin, N. (2007). Jones v Garnett: Overview of the final judgement (25 July 2007) Accounting Web. <http://www.accountingweb.co.uk/topic/tax/jones-v-garnett-overview-final-judgment-nichola-ross-martin> Accessed on .

Sakurai, Y., & Braithwaite, V. (2003). Taxpayers' perceptions of practitioners: Finding one who is effective and does the right thing? *Journal of Business Ethics, 46*(4), 375–387.

Schizer, D. M. (2006). Enlisting the Tax Bar. *Tax Law Review, 59*(3), 331–372.

Schnieder, D. M. (2005). Using the social background model to explain who wins federal appellate decisions: Do less traditional judges favour the taxpayer? *Virginia Tax Review, 25*, 201–249.

Sikka, P., & Hampton, M. P. (2005). The role of accountancy firms in tax avoidance: Some evidence and issues. *Accounting Forum, 29*(3), 325–343.

Shah, A. (1995). Creative compliance in financial reporting. *Accounting, Organizations and Society, 21*, 23–39.

Shenkin, M., & Coulson, A. B. (2007). Accountability through activism: Learning from Bourdieu. *Accounting, Auditing and Accountability Journal, 20*(2), 297–317.

Star, S. L., & Griesemer, J. R. (1989). Institutional ecology. 'Translations' and boundary objects: Amateurs and professionals in Berkeley's Museum of Vertebrate Zoology, 1907-39. *Social Studies of Science, 19*(3), 387–420.

Stephens, M., & Ward-Batts, J. (2004). The impact of separate taxation on the intra household allocation of assets: Evidence from the UK. *Journal of Public Economics, 88*(9–10), 1989–2007.

Steubs, M., & Wilkinson, B. (2010). Ethics and the tax profession: Restoring the public interest focus. *Accounting and the Public Interest, 10*(1), 13–35.

Stringfellow, L., & Shaw, E. (2009). Conceptualising entrepreneurial capital for a study of performance in small professional service firms. *International Journal of Entrepreneurial Behaviour & Research, 15*(2), 137–161.

Thomas, L. (2002). Student retention in higher education: the role of institutional habitus. *Journal of Education Policy, 17*(4), 423–442.

Tiley, J. (2006). Tax marriage and the family. *Cambridge Law Journal, 65*(2), 289–300.

Torgler, B. (2002). Speaking to theorists and searching for facts: Tax morale and tax compliance in experiments. *Journal of Economic Surveys*, *15*(5), 657–683.

TUC (2008). *The missing billions. The UK tax gap*. Tax Research LLP. <http://www.tuc.org.uk/touchstone/Missingbillions/1missingbillions.pdf> Accessed on 31 October 2010.

Ventry, D. (2008). Cooperative tax regulation. *Connecticut Law Review, 41*(2), 391–431.

Wenzel, M. (2005). Motivation or rationalisation? Causal relations between ethics, norms and compliance. *Journal of Economic Psychology, 26*(4), 491–508.

Wosner, J. (2005). The business of human rights. *Taxation*, 154. <http://www.taxation.co.uk/taxation/articles/2005/02/17/2960/business-human-rights> Accessed on .

Xu, Y., & Xu, X. (2008). Social actors, cultural capital and the state: The standardization of bank accounting classification and terminology in early twentieth-century China. *Accounting, Organizations and Society*, *33*(1), 73–102.

Zeitsma, C., & Lawrence, T. B. (2010). Institutional work in the transformation of an organisational field: The interplay of boundary work and practice work. *Administrative Science Quarterly*, *55*(2), 189–221.