



UNIVERSITY OF TORONTO
FACULTY OF LAW

THE JAMES HAUSMAN TAX LAW AND POLICY WORKSHOP SERIES
presents

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Aggressive Tax Planning & the Ethical Tax Lawyer

Wednesday, February 25, 2015
12:30 - 2:00
Solarium (room FA2), Falconer Hall
84 Queen's Park

An ethical tax lawyer must comply with the rules of ethics that govern the legal profession and the practice of tax law before the IRS, but those rules leave tax planners with a tremendous amount of discretion. However, there is a dearth of guidance about how tax lawyers can ensure that they are behaving ethically when exercising that discretion and providing tax planning advice on aggressive tax positions. This article fills this gap.

Specifically, this article argues that a lawyer seeking to pursue a career as an ethical tax planner should identify and implement her philosophy of lawyering to help her make difficult discretionary decisions in a principled way, and when implementing that approach to lawyering, she should work to counteract the subtle factors that can skew her professional judgment. By importing into the tax context both (a) the extensive literature on lawyering and professionalism and (b) the social science literature regarding factors that contribute to biased decision-making and unintentional lapses in judgment, this article seeks to help each tax planner operationalize, on an individual basis and in a way that aligns with her values, both the general and tax-specific rules of professional conduct. Thus, this article contributes to the literature by focusing on the issues that the rules leave to the discretion of the tax practitioner (rather than on the issues that the rules address) and by approaching the discussion from a lawyering perspective (rather than from a policymaking perspective). Ultimately, by fleshing out the concept of ethical tax planning, I hope to give students confidence and guidance as they embark on (hopefully, ethical) careers as tax planners, and I hope to ease the tension between tax academics' scholarly work condemning aggressive tax planning and their classroom work, in which they often teach students how to use those same tax planning techniques. And perhaps this limited defense of the ethics of the tax planning profession can help to rehabilitate the public image of tax lawyers.

Professor Heather Field graduated from University of California, Los Angeles, BS Biochemistry (1997) and Harvard Law School, JD (2000). She joined the UC Hastings faculty in 2006, following six years of practice as a tax lawyer at Latham & Watkins LLP in Los Angeles. Her practice focused on the federal taxation of corporations and partnerships and involved advising clients on the tax aspects of mergers, acquisitions, dispositions, restructurings, joint ventures, securities offerings, financial products, and structured finance transactions. Professor Field teaches courses in taxation, and her research interests include tax elections, the role of choice in the tax law, and the effect of tax law on businesses and on business transactions.

A light lunch will be provided.

For more workshop information, please contact Nadia Gulezko at n.gulezko@utoronto.ca