Funding the Future

Accountancy, corruption, ethics and offshore

Published: January 13, 2026, 6:03 am

I spent a fascinating afternoon yesterday with Prof Dan Ostas of the University of Oklahoma. We weren't near a prairie. Instead we sat by the river in my home city of Ely and chewed the cud on various issues relating to accounting, tax and business ethics. Dan is supremely qualified to partake in such discussion. He has doctorates in both economics and law, but in both cases his studies focused on the philosophy of the subjects in question.

As the afternoon went on and we had set out our own positions so that we might understand each other better Dan asked me a fascinating question. His premise was that even if we could accept that some business people lacked ethics because they claimed (however inappropriately) a duty to profit maximise overcomes any other principle; and even if we could accept that some lawyers might take such a literal approach to the law so that they could argue (again, however inappropriately) that only the formal construction of its language guided their principles, surely we could not excuse the accountant who argues that legal form determines the appropriate construction of law on any issue, including tax, when there is not an accountant who has been trained since the 1970s who has not know that substance dominates form when it comes to accounting principles.

Let me explain what this means with an example. That example is leasing. In any lease contract an asset is hired by its legal owner to another person who makes use of that asset for their own beneficial purposes throughout the hire period. There is no reader of this blog who has not, I suspect hired an asset at some point in their life. Let's take an example of a commonplace hire: it's the white van to which most of use need occasional resort to move some essential item or other.

If we hire that van for a day, a weekend or even a month it's very obvious where the risks in the transaction in which we are partaking lie. We have the risk arising from the use of the asset whilst we hire it. That's why we insure it during that period. But what we know is that the risk of break down, for example, is that of the care hire company, and that they have to replace it if anything goes wrong. We simply have a right to use the van. The hire company very obviously retains its ownership, and most of the risks arising from that ownership, bar our careless driving, which we insure. Let’s be unambiguous then that this cost of hire is very clearly a cost that any person, if they were running a business, would consider a straightforward business expense to go straight to the profit and loss account. And that, for the record, is how accounting requires that it be treated.

But now suppose we lease the van for three years from new. And suppose we cannot return it during that period. And we have to maintain and insure it during that time. And we even have an option to buy it outright at the end of the hire contract for a pre-agreed price. This is still a hire contract. We have not bought the van, even if we might eventually do so. It has a legal owner quite distinct from us, and we have to pay them, come what may, even if they can take the van back if we fail to do so. The near entire value and risk of ownership of that van have passed to us during the three years that we hire it. And accounting says that if this is the case then the asset is to be treated as if the person renting the van actually does own it. They must put it on their balance sheet at its full market value. Over the three years that they own it they must write its value off, down to the agreed value at the end of the contract at which they may (or may not) buy it. The full value of van is matched by a supposed loan that is also recorded on the balance sheet, to be repaid in cash over three years, or by cancellation of the contract and return of the vehicle to its legal owner at the expiry of the rental period. And the sum that will be paid in rent in excess of the depreciation charge is treated as an interest payment to the asset owner.

Now all those accounting entries for this van are a legal fiction. The reason is that the person renting the van does not own it: someone else does. But the accounts say they do own it. And the legally is not true, but in substance it is because all the major risks of ownership have passed to them. The legal owner is just a financier; that is all. The result is that the person hiring the van depreciates even though in legal terms it is not theirs and they say they pay interest when the reality is they pay rent. Accountants ignore the literal lethal truth and substitute a form of accounting that reflects the substance of what has happened and which means that whether the van was leased or hire purchased the accounting treatment should be near enough identical.

In that case every accountant knows that the legal form of contracts can be nonsense. They have to do so: it is implicit in the whole accounting framework in which they operate. But in that case can a tax accountant - having an identical professional qualification to the auditor who signs off sets of accounts - honestly say that it is their professional duty when advising on tax to comply only with the letter of the law, when they know that the result will not necessarily reflect the economic substance of the transactions into which they are suggesting a client enters. That was Dan’s question.

My answer was simple, and straightforward. I said the accountant could not rely on the letter of the law. Their code of professional ethics and the regulations of their own profession (because accounting standards are, in effect, self determined by the accounting profession) require them to know that by doing so they can create outcomes that clearly conflict with proper reporting. And we now know that it is the goal of tax authorities around the world to make sure that tax profits are reported where their substance arises. This means that they must be reported in the right place, at the right time, and be subject to the correct tax code so that appropriate tax might be paid in the name of the correct taxpayer who suffered or enjoyed the actual economic consequence of the transaction being reported. Anything else is clearly contrary to the principles of the OECD's Base Erosion and Profit Shifting programme; to the multitudinous array of tax anti-avoidance legislation provisions and to the rules now implicit in targeted and general anti-avoidance principles for tax purposes, all of which seek to ensure that economic substance and not legal form is taxed. And there is no professional accountant on earth who cannot know the difference.

Having explained all this Dan then asked his follow up question. "Was it possible, then, that an accountant in Cayman, or wherever, could really with a clear conscience advise the use of a structure that did artificially relocate the place in which a transaction was recorded, or even advise the placement of an income stream in a structure when it was apparent that the structure was itself nothing more than a fig-leaf to disguise the true interests in the transaction?" And my answer was again straightforward, that of course no accountant could do this with a clear conscience: that was simply not possible.

"So'" Dan asked "are those accountants who do so greedy, stupid or wilfully corrupt?"

This was again easy to answer. A professional person does not have the defence of stupidity available to them, at least on something as glaringly obvious as this, especially if they chose to advise on it: they had a duty to be professionally competent, including knowing both the rules and ethics of their profession. So that option was off the table.

Greed, I said obviously came into it. But then, the pursuit of profit is not permitted by professional ethics if the two are in conflict, so that option was also ruled out as a defence.

And nor could the accountant say it was their own ethics that matter; it is public ethics that do because their profession is bound to act in the public interest.

And that left only wilful corruption as an explanation.

I could not offer Dan another alternative. And as he put it "Of all the people in the game somehow you'd think it was the accountants who'd get these things right, surely?" And then I drew his attention to my report written with Saila Stausholm of Copenhagen Business School on [the office locations of the Big 4 firms](). Each has at least 35 offices in tax haven locations.

Now you tell me: is that wilful corruption or not given that there is almost no economic substance to any of the transactions recorded in these places, and they must know that? And if it is is not, how not?