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A Contemporary Approach to Tax Complexity: Polycentrism in an Increasingly International Tax Environment

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Published in:
Tax Simplification

Publication date:
2015

Document Version
Publisher's PDF, also known as Version of record

Citation for published version (APA):
Pedersen, F. H. (2015). A Contemporary Approach to Tax Complexity: Polycentrism in an Increasingly International Tax Environment. In C. Evans (Ed.), Tax Simplification (pp. 9-23). Kluwer Law International.

Tax Simplification

Edited by
Chris Evans
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Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wklawbusiness.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-5976-2

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Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

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CHAPTER 2

A Contemporary Approach to Tax Complexity: Polycentrism in an Increasingly International Tax Environment

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§2.01 INTRODUCTION

Our society is experiencing an unprecedented level of complexity, but nevertheless succeeds in muddling through.¹ For example, today tax experts cannot achieve full comprehension of the entire tax system² in which they work; however, as a group, they still manage to reach useful, functional solutions. This chapter attempts to advance the field of tax complexity by presenting a theoretical frame of reference for contemporary tax complexity which can better encapsulate tax systems' current condition, and which may provide a stronger basis from which scholars and policy-makers can address the challenges of present-day tax complexity.

The way in which complexity appears today, as well as how it is managed by society in general, have changed radically compared with, for example, the 1970s or, to an even greater extent, the 1930s. For instance, nowadays it is more common for

1. Lars Qvortrup, *The Hypercomplex Society*, at, e.g., 3, 34 (Peter Lang, 2003) [hereinafter, *The Hypercomplex Society*]. Regarding complexity growth in society in general, see, e.g., Eric Beinhocker, *The Origin of Wealth: Evolution, Complexity, and the Radical Remaking of Economics* (Harvard Business School Press, 2007). Regarding the difficulties in general in measuring complexity, see, e.g., Melanie Mitchell, *Complexity: A Guided Tour* (Oxford University Press, 2009).

2. This chapter uses the term 'tax system' in a broad and generic sense (as it pertains to countries with comprehensive and mature tax systems) which includes the confluence of tax statutes, regulations, and the like along with the authorized administrative organs, without reference to any particular country or limitation to any country's system.

agents³ managing a high-level task to depend on advice and assistance from other professionals; this has become common for tax professionals as well. Another example is how information and communication technology (ICT) so clearly has changed how agents – including taxpayers and tax professionals and officials – manage complexity, leaving much of the ‘handling’ to the software. The enhanced capabilities of ICT and developments in modes of cooperation are examples of changes in what is referred to as the ‘coupling capacity’⁴ of agents. Hence, agents’ ability to cope with complexity is much improved from what it was forty or eighty years ago. Further, if the level of tax complexity is much higher today, but agents’ ‘coupling capacity’ has developed (or can develop) in tandem with the increasing complexity, does this imply that a related development could, or has already begun to, occur in our mindset and our conception of what to aim for? In other words, is it possible that within the academic field of tax complexity, a new approach to managing complexity, different from previous understandings, is emerging?

The sociologist Lars Qvortrup’s monograph entitled *The Hypercomplex Society* deals with the topic of how the growing level of complexity represents the basic challenge of our current society.⁵ The essence of his thesis is that our ability to manage complexity increases when we have a correspondingly up-to-date understanding and acceptance of the basic structures of contemporary society, including how complexity arises. Otherwise, ‘we become mistrustful, and complain that things are less and less like the expectations we have for them – instead of trying to comprehend where we are heading’.⁶ This chapter’s proposed interpretation of contemporary tax complexity is based on Qvortrup’s concept of *hypercomplexity* as the phenomenon which most fundamentally characterizes our society.⁷

The tax literature has, from its early years to the present, offered warnings and discussions about the alarming increase in tax complexity.⁸ For example, in 1936 William H. Crow and U.S. Greene noted ‘the increasing complexity and importance of tax laws’,⁹ and in 1950 Henry Simons presaged, more colourfully, ‘[i]f [present legislation] is not simplified, half of the population may have to become tax lawyers and tax accountants’.¹⁰ In 1979, Sidney Roberts issued the apocalyptic warning that

3. This chapter uses the term ‘agents’ broadly to include taxpayers, privately as well as publicly employed tax professionals, and any other individuals or entities working with taxation.

4. See also §2.02 below.

5. Qvortrup, *The Hypercomplex Society*, above n. 1. The Danish version, which is more comprehensive, was first published in 1998 as *Det Hyperkomplekse Samfund: 14 fortællinger om informationssamfundet*. [hereinafter *Det Hyperkomplekse Samfund*] (2nd ed., Gyldendal, 2000).

6. Qvortrup, *Det Hyperkomplekse Samfund*, above n. 5, at 11 (this author’s translation).

7. Qvortrup’s thesis is inspired by the German sociologist Niklas Luhmann and his work in systems theory, see Qvortrup, *The Hypercomplex Society*, above n. 1, at viii. However, it is beyond the scope of this chapter to review systems theory and its characteristic terminology. A useful general introduction to systems theory and its terminology is provided in Hans-Georg Moeller, *Luhmann Explained: From Souls to Systems* (Carus Publishing Company, 2006).

8. The first report on tax simplification in the United States was issued in 1927 by the Joint Committee on Internal Revenue Taxation. See generally Edward J. McCaffery, *The Holy Grail of Tax Simplification*, [1990] 5 Wis. L. Rev. 1267, 1269.

9. William H. Crow & U.S. Greene, *Planning for Tax Economy* (Waldrep-Tilson, 1936).

10. Henry C. Simons, *Federal Tax Reform*, 28 (University of Chicago Press, 1950).

‘we cannot reach agreement on a solution unless we agree, with only a marginal difference in intensity, on the proposition that the present course of development of the tax law, if not reversed, will result in a breakdown of the self-assessment system’.¹¹ A contemporary example can be found in Lawrence Zelenak’s essay *Complex Tax Legislation in the Turbo Tax Era*: ‘[W]hat is needed is not structural reform, but a basic change in attitudes – in hearts and minds – among the members of Congress. This may be too much to hope for – but if it is, then there is no hope’.¹²

Throughout the decades, then, there has been no lack of pessimism in the tax literature regarding complexity. And however critically one might view the tax system’s current stage of development, it would be difficult to maintain that the outcome has been as dire as predicted. Drawing on the concept of hypercomplexity, this chapter offers an explanation as to why one might misjudge where the tax system, like the rest of society, is heading, and become overly sceptical – and run the risk of overlooking possible options for improvement of the status quo.

This chapter examines different meanings of ‘complexity’.¹³ Moreover, it discusses how the fact of complexity growth (an increasing number of elements in the observed system, such as a tax system, or a rise in the extent of possible actions available to an agent)¹⁴ cannot by itself support a conclusion that the management of tax-related tasks has become more difficult for agents. A previous work by this author has examined the reason therefor: how well a task is managed is a concrete and context-dependent empirical phenomenon, and thus is distinguishable from a description of the level of complexity in, for instance, a tax statute.¹⁵ For this reason, increasing levels of complexity do not inevitably result in more resource expenditure, frustration, and other undesirable effects; rather, the ways in which various agents actually carry out their tax-related tasks – for instance, the use by taxpayers of tax-preparation software – largely influences the success of their outcomes. However, the growth of complexity does lessen the possibility that anyone can actually be in control of the system or fully comprehend it; in addition, complexity growth redefines accepted definitions and norms regarding rationality.¹⁶ Finally, with national sovereignty in a process of de facto erosion¹⁷ it is becoming less clear to whom expectations

11. Sidney I. Roberts, *The Viewpoint of the Tax Adviser: An Overview of Simplification*, *The Tax Adviser* 32, 33 (January 1979).

12. Lawrence Zelenak, *Complex Tax Legislation in the TurboTax Era*, 1(1) *Colum. J. Tax L.* 91, 93 (2010).

13. See §2.02 and §2.03[A] below.

14. See §2.03[A] below.

15. Frank H. Pedersen, *Advancing the Study of Tax Complexity with the Usability Model*, 12(2) *Hous. Bus. & Tax L.J.* 282 (2012) [hereinafter *The Usability Model*]. For the distinction noted, see *The Usability Model*, at 314. See also §2.02 below.

16. See §2.03[C] below.

17. See generally Angus Cameron, *Turning Point? The Volatile Geographies of Taxation*, 38(2) *Antipode* 236, 244 (2006) (‘What might have seemed to be a normal and self-defining fiscal space ... in the early 19th century ... is so compromised by changes in the economic praxis barely a century later as to need shoring up through a proliferation of domestic and international legal structures’); John Braithwaite & Peter Drahos, *Global Business Regulation*, Pt. I (Cambridge University Press, 2000) (addressing ‘how the regulation of business has shifted from national to global institutions’).

of being in control can be directed,¹⁸ and consequently to whom demands for simplification in the traditional sense can be made.

According to the concept of hypercomplexity, industrial society's overarching presumption – that control can be achieved by making a supreme effort – is retreating. Industrial society's self-understanding was embedded in anthropocentrism, with its belief in human rationality and control. During the twentieth century, however, a new perspective – that of polycentrism – has emerged.¹⁹ A polycentric approach implies a different understanding and different goals. It finds attempts to attain control merely through rules and regulations illusory, and instead places its confidence in achieving solutions through modes of decision-making that can adjust more rapidly to the concrete demands of the surrounding society.²⁰

The transition period between these two mindsets, the anthropocentric and the polycentric, is difficult when a new structure has emerged in society to accommodate the contemporary level of complexity, but the prevailing mindset and accompanying expectations continue to be marked by ideals befitting the former time.²¹ Qvortrup calls such a transition period 'the complexity of complexity', a sign of which is a high level of frustration that things are not the same as they were in the past.²² This chapter suggests that some of the overly sceptical predictions made through the decades regarding the tax system's condition due to complexity might be explained by our being in the midst of such a prolonged transition period. Furthermore, it suggests that awareness and acceptance of changes in society's level of complexity are necessary to allow freedom to organize the tax system differently, where such alteration would be beneficial.

In §2.02, I explain that complexity growth does not necessarily have to result in more resource expenditure, frustration, or other undesirable effects. In §2.03, I present Qvortrup's concept of hypercomplexity and link it to the tax system. In §2.04, I illustrate how the scholarly tax literature may be in the midst of a period of transition between anthropocentric and polycentric mindsets. Section §2.04 also presents the example of the advance tax ruling as a legal instrument which provides an alternative to traditional rules and regulations as a means of providing certainty. The chapter ends with a brief conclusion (§2.05).

18. With intensified international engagement, tax law and administration are becoming less monopolistic and more polycentric: see generally OECD, *Explanatory Statement*, OECD/G20 Base Erosion and Profit Shifting Project (2014), www.oecd.org/tax/beps-2014-deliverables-explanatory-statement.pdf; OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency, 2014, Report on Progress*. See also e.g., Georg Kofler & Pasquale Pistone, 'General Report', in Georg Kofler, Miquel Poiares Maduro & Pasquale Pistone (eds), *Human Rights and Taxation in Europe and the World* 3, 3 (IBFD Publications, 2011); Daniël S. Smit, 'General Report', in Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer & Alfred Storck (eds), *Tax Rules in Non-Tax Agreements* 1 (IBFD Publications, 2012); Hans Gribnau, *Soft Law and Taxation: EU and International Aspects*, 2(2) *Legisprudence* 67 (2007).

19. See §2.03[C] below.

20. See §2.04[B] below.

21. See §2.04[C] below.

22. See §2.04[C] below.

§2.02 NOTIONS OF TAX COMPLEXITY

This section outlines various conceptions of tax complexity. Moreover, it explains the principle that how well a task is managed is a concrete and context-dependent empirical phenomenon, independent of and distinguishable from the level of complexity in, for example, a tax statute or some other part of a tax system.²³ This distinction is central because it underlies the proposition that complexity growth in a tax system can take place without any necessary decline in how well tax-related tasks are managed. Consequently, complexity growth does not inevitably have implications for society's welfare.²⁴

Although the tax literature is rich with warnings regarding tax complexity,²⁵ broad references to 'tax complexity' without further clarification do not in themselves reveal much about what is considered to be the problem in question.²⁶ Various underlying phenomena which have been referred to in the tax literature as tax complexity can be characterized as: (1) linguistic difficulty ('plain English' discussions);²⁷ (2) mere compliance costs;²⁸ and (3) specific characteristics of tax statutes, e.g., the degree of differentiation in a statute's rules.²⁹ Particularly in the US literature, references to 'compliance complexity', 'transactional complexity', and 'rule complexity' are common, although which concrete phenomena these terms might include is often unclear.³⁰

How well a tax-related task is managed can be assessed only on the basis of the empirical occurrences that derive from it: cost, time consumption, uncertainty, frustration, and the like. The resulting resource expenditure, level of psychological well-being, and extent of actual accomplishment in managing the task are the empirical occurrences that have welfare implications.³¹ Important to the argument in this chapter

23. As mentioned in §2.01, this argument was set forth in my previous article, *The Usability Model*, above n. 15. For the distinction noted, see *The Usability Model*, at 314.

24. See Pedersen, *The Usability Model*, above n. 15, at 284 and 314–316 (explaining that empirical occurrences, such as resource-spending derived from managing a tax-related task, imply welfare propositions, whereas descriptions of levels of complexity in a legal authority, such as a tax statute, involve a static account of the attributes of the object in question).

25. See §2.01.

26. Pedersen, *The Usability Model*, above n. 15, at 301–308.

27. Pedersen, *The Usability Model*, above n. 15, at 303.

28. Pedersen, *The Usability Model*, above n. 15, at 295–297 and 302.

29. See Pedersen, *The Usability Model*, above n. 15, at 302. Definitions of complexity encompassing degrees of differentiation and/or numbers of elements in the observed object, such as a statute, are common general definitions. See §2.03[A] below.

30. See Pedersen, *The Usability Model*, above n. 15, at 304–306. Another notion of tax complexity in the literature encompasses situations in which the underlying empirical occurrences that derive from a tax-related task, such as resource expenditures (of time and money) and the degree of accomplishment of the task, are appraised as unsatisfactory. *The Usability Model*, at 303–304 and 352–353.

31. In *The Usability Model*, I recommend that when the interest lies in what taxpayers and tax professionals encounter empirically when managing compliance-related tasks, and the focus concerns empirical occurrences beyond mere resource-spending, the terminology 'low or high usability level' is preferable as providing more clarity than 'complexity' and its cognates: *The Usability Model*, at 350. For an outline of the above-mentioned notions of tax complexity and the underlying phenomena which are their real focus, see *The Usability Model*, at 326, fig. 4.

is that all management of a task occurs within a context, and this context very much influences the resulting empirical occurrences. Context is comprised of the physical and social environment in which an agent is actually performing the activities³² required to complete the task at hand. Elements of this environment include how well the agent cooperates with other people and the equipment to which the agent has access, such as information and communication technology.³³ These elements are part of what this chapter refers to as the agent's 'coupling capacity'. Other elements of coupling capacity, which are also part of the context influencing how well a task is managed, include the agent's skills and other abilities.³⁴

Inquiries as to what occurs for taxpayers and tax professionals in their management of tasks thus always concern empirical occurrences,³⁵ which must be assessed based on their real-world settings. By contrast, a description of a part of the tax system, such as its level of complexity as ascertained by the degree of differentiation in a tax statute, cannot be used to make inferences regarding expected empirical occurrences and outcomes,³⁶ as those occurrences are not intrinsic to the degree of complexity in the tax statute³⁷ but are heavily influenced by specific settings.³⁸ Depending on specific agents' coupling capacities, complexity growth in the tax system therefore need not result in more resource expenditure, frustration, or other undesirable effects.

§2.03 THE CONCEPT OF HYPERCOMPLEXITY

This section introduces Qvortrup's concept of hypercomplexity and links the comprehension of tax complexity to the society's development in accordance with this concept. Qvortrup intends his hypercomplexity concept to be an 'exploratory guide into the complexities of our current society',³⁹ such that hypercomplexity may help to

32. The management of a task, such as a taxpayer's preparation of a tax return for filing, requires a number of activities, such as information retrieval and computation. See *The Usability Model*, at 300–301. Tax professionals such as those working for the tax authority have other tasks, which involve other kinds of activities.

33. Pedersen, *The Usability Model*, above n. 15, at 312–313.

34. Pedersen, *The Usability Model*, above n. 15, at 310–311.

35. Pedersen, *The Usability Model*, above n. 15, at 354 (explaining that this also holds for references to 'tax complexity' which pertain to what occurs for taxpayers).

36. Pedersen, *The Usability Model*, above n. 15, at 315 (explaining that assessment of empirical occurrences can be characterized as *process-oriented* because it is taxpayers' multiplicity of encounters from carrying out activities for tax-related tasks that is being assessed. By contrast, a *product-oriented* description of a legal authority, such as a tax statute, is a static account of the attributes of that statute).

37. Pedersen, *The Usability Model*, above n. 15, at 314.

38. Assessment of empirical occurrences by estimating the level of complexity in a tax statute is an assessment through a proxy. The well-known example of referring to the size of the tax code as a symbol for complexity – whether its size is assessed by number of sections, word count, or dimensions of the complete set of volumes – is also an application of a proxy, if the reference is meant to imply welfare implications; and it requires an explanation as to why the size of the code is appropriate for illuminating the empirical occurrences that derive from how taxpayers and tax professionals carry out tax-related tasks. See *The Usability Model*, at 318.

39. Qvortrup, *The Hypercomplex Society*, above n. 1, at 10.

explain a growing number of phenomena in contemporary⁴⁰ as well as emerging society.⁴¹ The basic thesis of his book is that the fundamental challenge of our society is complexity: ‘namely the situation of there being more points of connection in the world than we are able to connect to as a society. What is special about this challenge is that complexity cannot be removed or neutralized’.⁴² An application of this thesis to taxation – which Qvortrup himself does not discuss – might mean that the focus for improvement should be on enhancing agents’ coupling capacity, and that attempts to eradicate tax complexity may have a lesser chance of success.

[A] Complexity

In Qvortrup’s conception, complexity, and the growth of complexity, can be defined by two factors: space and time.⁴³ Space is understood to entail both the number of elements in the observed system and the extent of possible actions for an agent.⁴⁴ Qvortrup explains our current society’s environment as ‘complex in the sense of space because we live in a global society’⁴⁵ and ‘complex in the sense of time because we live in a society that changes at an ever-increasing rate’,⁴⁶ constituting a situation in which there are more points of connection than any agent is able to connect with. Hence, complexity growth refers to individuals and society being able to engage in as well as experience more and more possibilities – many more than individuals living in earlier societies.⁴⁷

Linking these factors to an observed tax system might aid in an examination of its complexity growth. (The observed system might be a national tax system or a small or large part of it, or it might span multiple national tax systems.) Has the number of elements increased in the observed system?⁴⁸ Has the number of potential actions increased, due to an increase in agents’ ability to engage in possible actions (e.g., through sophisticated tax planning offered by tax professionals)? Has the rate of change itself increased – either within the system, through accelerated change in statutes, regulations, and the like, or for taxpayers, through more rapid change in the sources of income that is subject to taxation? Affirmative answers to these questions seem likely.

40. Qvortrup, *The Hypercomplex Society*, above n. 1, at 14.

41. Qvortrup, *The Hypercomplex Society*, above n. 1, at 10.

42. Qvortrup, *The Hypercomplex Society*, above n. 1, at 34. Qvortrup clarifies that he is not contending that current society ‘is’ a hypercomplex society – rather, that hypercomplexity constitutes a framework for analysis: *The Hypercomplex Society*, at 14.

43. Qvortrup, *The Hypercomplex Society*, above n. 1, at 38.

44. Qvortrup, *The Hypercomplex Society*, above n. 1, at 5, 10 (‘... and it is a question not only of the number of elements in the observed system...’).

45. Qvortrup, *The Hypercomplex Society*, above n. 1, at 5.

46. Qvortrup, *The Hypercomplex Society*, above n. 1, at 5.

47. Qvortrup, *The Hypercomplex Society*, above n. 1, at 10.

48. Ascertaining complexity growth based on this factor alone is comparable to applying the designation ‘complexity denoting some characteristic of a tax statute, e.g., its degree of differentiation in the rules’, as referred to in §2.02 above. Such a definition can be characterized as product-oriented, since it provides a static account of the attributes of the observed statute.

Qvortrup finds it palpable that current society is becoming ‘more complex’ than earlier societies.⁴⁹ However, he clarifies that complexity is neither simply a quantitative phenomenon, nor something that should be conflated with answers to the question of whether current society is more challenging for its agents as they attempt to manage complexity than earlier societies were for their inhabitants:

For me, “complexity” is a relative, not an absolute, concept, and it is a question not only of the number of elements in the observed environment, but also of the coupling capacity [meaning the context in which the task is managed, including tools and resources for management] of the observer.⁵⁰

The point Qvortrup makes here is similar to what was established in §2.02 above: that there is no intrinsic relationship between the complexity of a particular statute or regulation and how well a task subject to that statute or regulation is handled, since the entire context – or ‘coupling capacity’ – influences the outcome to such a significant extent.

To sum up, one aspect of the concept of hypercomplexity is the observation of complexity growth based on the factors of space and time. These factors also appear useful for analyses of tax system complexity, and are likely to demonstrate that tax systems have experienced a significant growth in complexity. Thus, it would not be unique to tax systems, but merely indicate that those systems have developed in the same way as society more generally. It is important to note, however, that how well taxpayers, tax professionals, and tax officials manage their tasks is a separate question from the extent of complexity growth, and hence that complexity growth does not in and of itself support an inference that agents working on tax-related tasks within a more complex tax system necessarily face greater challenges.

[B] Differentiation and Complexity Management

A related use of the term ‘complexity’ describes degrees of social differentiation, where a society’s level of complexity is rising with increasing functional differentiation.⁵¹ An illustration of such differentiation could be the structure of an early modern tax system, which might have consisted of an income tax, a property tax, a wealth tax, and an inheritance tax. Each of these types of tax contained sub-differentiations: for the income tax, for example, between taxation of income from work and taxation of income from capital.⁵² Current tax systems’ comparatively higher levels of differentiation are one example of increased complexity. Depending upon the perspective (e.g., of

49. Qvortrup, *The Hypercomplex Society*, above n. 1, at 10.

50. Qvortrup, *The Hypercomplex Society*, above n. 1, at 10.

51. Qvortrup, *The Hypercomplex Society*, above n. 1, at 21. See also e.g., Moeller, *Luhmann Explained: From Souls to Systems*, above n. 7, at 40–41.

52. See generally Frank H. Pedersen, *Skatteaversion: en retssociologisk og skattepolitisk analyse med hovedvægten på indkomstopgørelsen*, 98 (Jurist- og økonomforbundets forlag, 2000) [hereinafter *Skatteaversion*].

business or of a tax authority), this can be construed as either external or internal complexity.⁵³

Qvortrup's explanation for this aspect of hypercomplexity is that development of society arises from continuously more detailed functional differentiation. As a result, agents, including individuals as well as organizations, must develop an internal complexity – a coupling capacity – to correspond to the level of external complexity.⁵⁴ The external complexity has thus been broken down into smaller pieces, so to speak, in order for the internal structure to succeed in coupling with it.⁵⁵

How this internal complexity has developed is one of the core diagnostics in the concept of hypercomplexity. Qvortrup describes twentieth century internal complexity-building in this way:

In the world of organizations the first reactions to the growth in complexity in the world was to meet external complexity with bureaucracy. Private enterprises developed horizontal specialization and vertical lines of command based on a strict hierarchy, and public institutions created detailed rules and procedures, based on the belief that surrounding complexity could be met and balanced by a similar amount of internal bureaucracy-based complexity.⁵⁶

For the tax system, this meant growth in the number of tax statutes and also in their differentiation, in an attempt both to cover the expansion in the number of types of underlying enterprises subject to taxation, and to do this with greater differentiation between kinds of income or expenses. In terms of tax authorities' organization, it meant establishment of manifold offices, with specializations matching the various subject matters (property taxation, taxation of corporations, inheritance taxation, and the like).⁵⁷ Correspondingly, businesses established internal tax departments, and among tax professionals, in addition to smaller companies, the 'Big Eight' (now the 'Big Four') grew into massive enterprises offering highly sophisticated audit and tax services.⁵⁸

One of the most important causes of increased internal complexity, and thus of agents' coupling capacity, is the use of tax software.⁵⁹ By all appearances, the development of tax software and the electronic services offered by tax authorities have

53. See, e.g., George Ritzer & Jeffrey Stepnisky, *Contemporary Sociological Theory and Its Classical Roots*, 102–103 (4th ed., McGraw-Hill, 2013).

54. Qvortrup, *The Hypercomplex Society*, above n. 1, at 171.

55. Qvortrup, *The Hypercomplex Society*, above n. 1, at 101–102.

56. Qvortrup, *The Hypercomplex Society*, above n. 1, at 41.

57. See, e.g., Mikael Venge, 'Skatter på Slotsholmen før 1975', 22–23, in *Festskrift: Glimt fra 25 år 1975–2000* (Skatteministeriet, 2000).

58. For references to 'Big Eight'/'Big Four' see e.g., Mark Stevens, *The Big Six*, 13–14 (Simon & Schuster, 1991) and Thomas D. Tolleson & Kalpana Pai, *The Big 4 Accounting Firms: Too Big to Fail*, 5(1) *Int'l J. Bus. Acct. & Fin.* 56 (2011).

59. Qvortrup depicts information and communication technology as having a paradoxical role with regard to the complexity challenge. On the one hand, they are a cause of complexity growth, as they broaden the range of possible actions as well as speeding them up. On the other hand, they represent the necessary tools for handling the problem. *The Hypercomplex Society*, above n. 1, at 10 (Qvortrup discusses 'electronic proximity' with reference to renowned Professor in Computer Science, Michael Dertouzos); see also *The Hypercomplex Society*, at 45–46.

been the most significant developments in managing tax complexity.⁶⁰ As a result, access to and mastery of such tools has become a de facto necessity for managing tax-related tasks.⁶¹ Alternatively, some taxpayers can rely on the revenue authority's preparation and assessment, when such services are offered.⁶² Confidence in the revenue authorities' work then becomes crucial.

[C] Society's Development Away from Anthropocentrism and toward Polycentrism

A separate aspect of the concept of hypercomplexity is that in society, specific historical periods are characterized by different epistemes,⁶³ i.e., systems of understanding or bodies of ideas which give shape to the knowledge base of the time.⁶⁴ Modern society – which in technological terms can be called industrial society⁶⁵ – has been characterized by an episteme of anthropocentrism.⁶⁶ Since the twentieth century, however, a new phase has emerged, characterized by an episteme of polycentrism, which moves contemporary society in the direction of a hypercomplex society.⁶⁷ Currently, anthropocentrism and polycentrism overlap as the bases for discourse and the expansion of knowledge in our society.⁶⁸ A main difference between these epistemes relates to their understanding of rationality. A characteristic of anthropocentrism is the belief in unlimited rationality: that society can control its environment by pushing the limits of rationality to their extremes. In contrast, polycentrism is associated with bounded rationality and polycontextual observations.⁶⁹

60. See §2.02 above.

61. See e.g., Zelenak, above n. 12, at 92–95 (describing the development of the use of return preparation software in the United States, and its necessity for satisfying the computational demands of tax returns).

62. See e.g., OECD, *Tax Administration 2013: Comparative Information on OECD and other Advanced and Emerging Economies*, 236 (2013). 'In its most advanced form, pre-filing services and related facilities have just about fully automated return preparation and assessment; some seven revenue bodies reported having capability to prepare fully completed tax returns for the majority of their PIT [Personal Income Tax] clients'.

63. Qvortrup, *The Hypercomplex Society*, above n. 1, at 6.

64. Dictionary.com, 'episteme', in *Dictionary.com's 21st Century Lexicon*. Source location: Dictionary.com, LLC. <http://dictionary.reference.com/browse/episteme>. Available: <http://dictionary.reference.com> (accessed on 1 August 2014).

65. Qvortrup, *The Hypercomplex Society*, above n. 1, at 23.

66. The historical period before modern society is designated 'traditional society'. Traditional societies have had an episteme of theocentrism, which characterizes a society with God or destiny as the focus of the knowledge horizon. *The Hypercomplex Society*, at 14. The decisive cultural change from traditional to modern society was the replacement of the belief that God was the structural and semantic centre of the world by the belief that man, i.e., human reason and creativity, was the central force of the world. *The Hypercomplex Society*, at 23.

67. Qvortrup, *The Hypercomplex Society*, above n. 1, at 6.

68. Qvortrup, *The Hypercomplex Society*, above n. 1, at 48–49.

69. Qvortrup describes how '[t]oday, the belief in unlimited rationality has been replaced by the concept of bounded rationality [by Herbert A Simon], reflecting the social fact that in every decisional situation the number of possibilities, not only for observation-based conclusions, but also for determining the premises of observation, exceeds the capability to make decisions'. *The Hypercomplex Society*, at 13.

Hypercomplexity is inextricably linked to polycentrism. Qvortrup explains how the concept of hypercomplexity represents a way to express a developmental characteristic of present-day society: ‘The ground structure in society is not a relationship between a center of control and rationality and a world of disorder that is to be brought into control’.⁷⁰ Qvortrup further explains how the fundamental challenge is the growth in external complexity, which renders it impossible for any entity to attain control: ‘It is not a realistic project to build up an even greater capacity, devise far more rules and regulations, and employ even more bureaucrats, as it was believed in the twentieth century. This marks a break with industrial society’s self-understanding’.⁷¹ For taxation, this development might mean that it is becoming increasingly difficult to prepare ‘off-the-shelf’ answers, so to speak, in advance.

Because industrial society’s self-understanding was embedded in anthropocentrism, the emergence of polycentrism challenges industrial society’s entire mode of reasoning. A way to portray this change is through the notions of *complex simplicity* and *organized complexity*.⁷² Complex simplicity stands for the notion that while a system or organization might be quite comprehensive, each small unit functions according to simple principles. This was the industrial society’s mode of organization. The archetype is a watch or other mechanical device. An organizational example is the Ford Motor Company, which had, enthroned at its pinnacle, reason personified: the paragon of industrial leadership, Henry Ford.⁷³ Such companies, like large public bureaucracies, worked by breaking down all elements into their smallest units.⁷⁴ In organized complexity, by contrast, rather than an arrangement of small, simple pieces, there are multifarious interactions by each unit, each of which is also complex.⁷⁵ A contemporary tax system – which frequently deals with tax issues across national borders – might best be understood using the notion of organized complexity.

The concept of hypercomplexity implies that current society is not necessarily more complex in some quantitative sense.⁷⁶ Hypercomplexity represents ‘complexity inscribed in complexity’.⁷⁷ General anti-avoidance rules (GAARs) and doctrines might

70. Qvortrup, *The Hypercomplex Society*, above n. 1, at 35.

71. Qvortrup, *The Hypercomplex Society*, above n. 1, at 34. Qvortrup emphasizes that society’s self-identification as hypercomplex has yet to be fulfilled. *The Hypercomplex Society*, at 7, 14.

72. Qvortrup, *The Hypercomplex Society*, above n. 1, at 101–105.

73. In the Charlie Chaplin film *Modern Times* (1936), a comic look at complex simplicity, one finds in the centre the President of Electro Steel Corp., the anthropocentrically rational leader who has indirect insight and control over the whole complicated organizational machine.

74. Qvortrup, *The Hypercomplex Society*, above n. 1, at 101–102.

75. Qvortrup, *The Hypercomplex Society*, above n. 1, at 103–104 (also explaining that the question of how organized complexity should be interpreted, beyond being a new type of complexity, is one that science is still working on). The originator of the notion of organized complexity is Warren Weaver: see Warren Weaver, *Science and Complexity*, 36(4) *Am. Scientist* 536 (1948). For a version with foreword by Ross Wirth, see <http://philoscience.unibe.ch/documents/uk/> (accessed on 15 August 2014).

76. Qvortrup, *The Hypercomplex Society*, above n. 1, at 10. See also discussion in §2.03[A] above.

77. Qvortrup offers this short definition of hypercomplexity: ‘hypercomplexity is complexity inscribed in complexity, e.g., second-order complexity. As an example, hypercomplexity is the result of one observer’s description of another observer’s descriptions of complexity, or it is the result of a complex observer’s description of its own complexity’. *The Hypercomplex Society*, at 6. Based on this, Qvortrup argues that for contemporary society it ‘is not that rationality must be

be an example of such hypercomplexity, i.e., complex, ambiguous rules about the meaning and application of the underlying complex rules.⁷⁸

§2.04 IN THE MIDST OF A PERIOD OF TRANSITION

This section expounds upon the difference between anthropocentric and polycentric approaches to the income tax system. Moreover, it illustrates the possibility that the tax environment may currently be in the midst of a period of transition between the two mindsets, and that one's understanding of the condition of the current tax system depends on whether one uses an anthropocentric or polycentric approach.⁷⁹ This section first briefly illustrates the two approaches, using examples from the taxation context: (1) the anthropocentric mindset, with its general desire for tax experts (if no one else) to be capable of attaining full comprehension of the tax system that is their subject of expertise; and (2) the polycentric mindset, which is able to relinquish the possibility of achieving clarity by means of the tax code alone. This relinquishment, however, can be balanced by other factors; one example is the introduction of procedural devices such as advance tax rulings. The advance tax ruling is a legal instrument through which a taxpayer, if in doubt, can request an answer from the tax authority about the taxable consequences of a future disposition which the inquirer is considering.⁸⁰

[A] 'Ought to Know'

Should professors of taxation and top officials at the tax authorities, if no one else, be expected to fully comprehend the tax system? An answer based on an anthropocentric understanding of society would be 'yes'. And according to this mindset, something is wrong if that is not the case. An example of this perspective might be Kenneth Ryesky's references to certain confessions by IRS executives:

given up, but that the ideal of unlimited rationality must be replaced by the concept of bounded rationality, i.e., that the state of hypercomplexity is constituted by the mutual observations and self-observations of complex systems'. *The Hypercomplex Society*, at 13–14.

78. Another example might be the mutual agreement procedure in the OECD Model Tax Convention on Income and on Capital. Article 25(3) reads as follows: 'The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention'. This procedure, like a GAAR, can be said to be a complex rule about underlying complex rules. See also generally, Pedersen, *The Usability Model*, above n. 15, at 327 (discussing 'complexity experience'). For a discussion of the UK general anti-abuse rule and the role of the 'GAAR Panel', see also Judith Freedman, *Creating new UK institutions for tax governance and policy making: progress or confusion?*, [2013] 4 Brit. Tax Rev. 373, 378.
79. Applying a different theoretical framework Oats and Morris describe in their chapter the notion of 'doxa' and the fight to influence the form of the primary experience of the social world. In their terminology, one can say that what is ongoing is a contest between anthropocentrism or polycentrism as the foundation for 'the way in which we all understand the game'. See Lynne Oats & Gregory Morris, *Tax Complexity and Symbolic Power*, this volume, §3.03.
80. See §2.04[B], with reference to Carlo Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System?*, 119 (IBFD Publications, 2002).

The Internal Revenue Service ('IRS') itself has had occasion to hesitate and waver in its interpretation and application of the tax statutes, and indeed, several IRS officials have admitted to retaining professional assistance to prepare their personal income tax returns. . . . [including] Carol Landy, Director of [an] Internal Revenue Service Center. . . : 'I don't do my own tax return. I'm afraid to make a mistake.' . . . [and] Internal Revenue Commissioner Fred Goldberg [, who] reportedly admitted... to engaging an accountant to prepare his personal income tax returns.⁸¹

This quote illustrates the anthropocentric ideal that, at a minimum, those at the top of a hierarchy should be capable of comprehending the full component of available knowledge. Within a polycentric mindset, however, accounts of executives managing their personal tax affairs in the same way they are expected to run their organizations – by delegating tasks to experts – seem quite acceptable.⁸² Under a polycentric approach, no single person is expected to be able to interpret all obtainable information.⁸³

[B] Procedural Leeway

According to the anthropocentric ideal, the tax code should be a manifest example of unlimited rationality. Optimally, it would be a centre of control and scientifically based order, articulated through rules and regulations.⁸⁴ A polycentric approach, by contrast, renounces such ideals, finding them illusory. Instead, a polycentric approach sees the tax code as contextually joined with the outcomes of procedural operations – which themselves are elements of the tax code's authority.

The legal instrument known as the advance tax ruling,⁸⁵ and the development of other such procedural devices, can serve to illustrate the differences between these approaches. Advance ruling procedures have been an issue for debate since at least the 1960s.⁸⁶ Since then, the prevalence of such devices has steadily increased

81. Kenneth H. Ryesky, *Tax Simplification: So Necessary and So Elusive*, 2(2) *Pierce L. Rev.* 93, 93–94 and 94, n. 7 (2004). This is not to say that Ryesky adheres exclusively to an anthropocentric viewpoint.

82. However, ordinary taxpayers nowadays might expect not to need paid professional assistance, because tax software makes it manageable to submit tax returns themselves. See generally Pedersen, *The Usability Model*, above n. 15, at 348.

83. See Qvortrup, *The Hypercomplex Society*, above n. 1, at 42 (explaining how a single person is unable to interpret all the information with which an organization is bombarded).

84. The 'plain English' literature and corresponding sub-specialty in the field of tax complexity, which attempts to improve taxpayers' welfare through the rewriting of tax legislation, might originate in such an anthropocentric mindset. For a general, brief discussion of the 'plain English' tax complexity literature, see Pedersen, *The Usability Model*, above n. 15, at 303 and 318–319. See also Erich Kirchler, *The Economic Psychology of Tax Behaviour*, 7–8 (Cambridge University Press, 2007) (noting that 'plain English' projects in New Zealand and Australia have not been successful).

85. Romano offers this definition: 'an advance tax ruling may be generally defined as any advice, information or statement provided by the tax authorities to a specific taxpayer or group of taxpayers concerning their tax situation in respect to future transactions and on which they are (to a certain extent) entitled to rely'. See Romano, above n. 80, at 119.

86. Romano, above n. 80, at 118. The 1965 resolution from the Congress of the International Fiscal Association reads as follows: 'The Congress points out that the complexity of fiscal legislation is

worldwide.⁸⁷ Today the common view among scholars is that advance tax ruling procedures are essential procedures to taxpayers.⁸⁸

However, this procedural device has also had its opponents. An example of such criticism comes from Danish Professor Svend Gram Jensen, who finds it difficult to see the introduction of advance tax rulings⁸⁹ as progress, and instead advocates replacement of the current Danish tax code with a new, rewritten version.⁹⁰ From an anthropocentric viewpoint, Gram Jensen's criticism is quite sound, since it sees the introduction of advance tax rulings as an abandonment of attempts to provide clarity purely through the tax code. By contrast, from a polycentric viewpoint, supplementing traditional rules- and regulations-based navigation with optional procedural devices might be viewed as a more realistic and pragmatic way to proceed.⁹¹

Maintenance of an adequate level of confidence in the tax system and between its agents becomes essential in a tax environment without a central source of order, transparency, or control of the system. As a consequence, institutions, procedures, and policies to safeguard a well-founded confidence become a necessity.⁹²

[C] Tax in 'the Complexity of Complexity'

The Danish debate about advance tax rulings, as well as Ryesky's references to IRS executives' admissions, illustrates how the tax environment remains in transition between the anthropocentric and polycentric epistemes. Such a transition period between two phases, when a new episteme has emerged but expectations and ideals continue to be marked by the previous episteme, is disturbing in its discrepancies. Qvortrup even has a name for such a period: 'the complexity of complexity'.⁹³

constantly increasing in all countries and for this reason it has become increasingly difficult for the taxpayers to obtain reliable information concerning the application of tax law...Therefore, it is important that taxpayers be provided with an opportunity to obtain an authoritative opinion on the meaning of the law before taking measures, the fiscal consequences of which are uncertain....'. See Romano, above n. 80, at 118.

87. See Yehonatan Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*, 29(1) Va. Tax Rev. 137, 139–140 (2009) (discussing reasons for infrequent use of advance tax rulings in the United States). See also LexMundi World Ready, Global Practice Guide, *Tax Rulings*, http://www.lexmundi.com/lexmundi/Tax_Rulings_Guide.asp (accessed on 15 November 2014).

88. See Givati, above n. 87, at 147–149.

89. The advance tax ruling was introduced in Denmark in 1983 (Lov nr. 143 af 13/4 1983).

90. Svend Gram Jensen, *Skattemyndighedernes kompetence*, 104–107 (3rd ed., GadJura, 1997).

91. See Qvortrup, *The Hypercomplex Society*, above n. 1, at 42 (discussing how the use of collective, decentralized functions allows organizations to make evaluations and adjust themselves to the demands of the surrounding society).

92. See, e.g., generally, Bogumił Brzeziński, 'Taxpayers' Rights: Some Theoretical Issues', in Włodzimierz Nykiel & Małgorzata Sęk (eds), *Protection of Taxpayer's Rights: European, International and Domestic Tax Law Perspective*, 17, 17 (Wolters Kluwer, 2009) (explaining how the rights of taxpayers became the subject of discussion in the last quarter of the twentieth century); OECD, *Taxpayers' Rights and Obligations: A Survey of the Legal Situation in OECD Countries* (1990). For a review of the internal and external oversight mechanisms established in the case of the US tax system, see John Hasseldine, *Oversight Mechanisms and Administrative Responses to Tax Complexity in the United States*, this volume, §17.04 and §17.05.

93. Qvortrup, *The Hypercomplex Society*, above n. 1, at 48–49.

§2.05 CONCLUSION

The growth of tax complexity has for almost 100 years caused concern and fear that the tax system will eventually cease to function properly under its burden of complexity. Are we witnessing a century-long downward spiral, or is something else going on? In this chapter, I have suggested that the tax system – like the rest of society – is in the midst of a transition period. By means of this transition, society is moving away from the order and related ideals of industrial society and towards an emerging period of increased cross-border activity and polycentrism, in which it is no longer possible to create absolute order in any system or institution, including the tax system. Things certainly are not as they used to be, but nonetheless the tax system, like society as a whole, continues to function. How well tax-related tasks can be managed in the face of increasing complexity is influenced not only by the level of complexity itself, but also by the extent to which taxpayers' and tax professionals' coping capacity has been enhanced, particularly through the use of ICT such as tax software.

A fresh examination of the tax system through the lens of hypercomplexity is not intended to demonstrate that the current system is free of problems; rather, it suggests that attempts to return to an expectation that the system should be fully comprehensible by someone, if only the experts, will provide fewer solutions than will a polycentric approach. Acceptance of a more contemporary approach, polycentric in character, would allow for some optimism that our ability to cope with tax complexity can continue to develop. In the field of tax complexity, such a shift in mindset might reduce pessimism and liberate creative thinking, and as a result enhance the ability of the field to contribute to improvements in the tax system, which continues to pose real challenges. Not the least of these challenges will be that of sustaining confidence in a tax system which, while not out of order, has shed the perceived order of earlier, less complex times.

