

# A Taxonomy of Tax Professionals

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At this time of year, many tax professionals are inundated with tax questions and assumptions about how busy they may (or may not) be. The answer may be surprising. While it's true that tax professionals of all stripes are generally busier during tax season, it's not necessarily from preparing tax returns. As an example, most tax lawyers do not prepare tax returns.

To many, including other lawyers, the tax lawyer is the nerdy wallflower of the legal profession, stuck with noses in code books and citing obscure personal tax deductions and “loopholes.” Based on these prejudices, you will sadly never see a television show based on the daily struggles of tax lawyers (although the classic John Grisham legal thriller “The Firm” featured Tom Cruise as a tax lawyer in the movie version). These views ignore the complexity of tax law and the multiple, distinct types of practice as a tax lawyer.

Tax lawyers are a part of a dynamic group of professionals who practice a notoriously complex—and interesting—area of law. Taxation as a practice area has a substantial daily direct impact on every single person and business in our country and around the world. Tax lawyers and other tax professionals do not just serve the wealthy; tax professionals assist clients from all income levels and business complexity.

Admittedly, most people spend little to no time thinking about tax professionals and probably would prefer thinking about their next visit to the dentist. Nevertheless, as a public service to assist those who may otherwise fall victim to vicious stereotypes or ignorance, I have prepared a brief taxonomy of tax lawyers and tax professionals generally to demonstrate the differences in the various types of work that tax professionals perform to make non-tax lawyer introductions and small talk at dinner parties more enjoyable ?.

**Tax professionals** include tax lawyers, Certified Public Accountants (CPAs) in the US., Chartered Professional Accountants (again, CPAs) in Canada, and Enrolled Agents (EAs), or accountants generally to use a colloquialism. The primary division among tax professionals is between accountants and lawyers. In the US, any tax professional who “practices” before the Internal Revenue Service is subject to the standards of professional conduct set forth in [Circular 230](#). In Canada, there is no similar comparable standard although the Canada Revenue Agency did, a number of years ago, try to introduce a registration system for tax preparers but it abandoned the idea shortly after its introduction.

**Tax Planning** is perhaps the closest to what most lay people think a tax lawyer generally does. Tax planning lawyers and tax accountants assist their clients primarily with identifying tax advantaged positions, credits, deductions, the timing of such positions before the filing of the taxpayer's tax returns, as well as structuring transactions. For many CPAs, enrolled agents, and some tax lawyers, this work also includes tax return preparation. **Tax Controversy** in contrast addresses everything that goes wrong after a return is filed. Tax controversy focuses on audits, tax litigation, and collection. Tax controversy seeks to justify the positions taken on the original return, to mitigate the tax consequences of

adjustments, and to demonstrate reasons why penalties should not be imposed on the taxpayer for inaccuracies of the amounts reported or delinquencies in filing and paying.

There is no minimal requirement for someone to call him or herself a **tax lawyer** in the US or in Canada. Essentially any lawyer can self-apply this label. As with other types of lawyers, **tax lawyers** possess a Juris Doctor (JD) degree and will have successfully passed a state/provincial bar/law society examination and met various experience requirements. A reputable tax lawyer should at minimum also have additional coursework or training focused on federal and state/provincial tax laws and procedures. In many cases, particularly in the US, a tax lawyer will have an LL.M. (Master of Laws) in Taxation. An LL.M. is an advanced law degree that focuses on individual, corporate, partnership, and trust taxation issues. In some US jurisdictions, the bar will certify qualifying lawyers as “**specialists**” in tax law. All lawyers are required to follow the rules of professional conduct for their respective jurisdictions. All US tax lawyers must also observe the requirements set forth in Circular 230, and sometimes also the American Bar Association Model rules for practice before the US Tax Court and other federal courts.

Tax lawyers can then be broken down into distinct practice areas, often with considerable overlap. For US tax lawyers, the following are the most salient but are by no means limited to my description:

- State and Local Tax (SALT) attorneys are experts in multi-state taxation and state and local income tax, and sales and use tax, primarily for businesses. SALT attorneys largely do not work with US federal income tax issues. SALT attorneys perform both planning and controversy work related to their practice area.
- Mergers and acquisitions (M&A) and business tax address the tax consequences of entity formation, merger, and disposition, as well as transactions between individuals and entities. Many of these issues address both US and state tax law as well as state corporate and partnership laws.
- Estate planning attorneys by necessity need to be familiar with US federal estate and gift taxation as well as the taxation of trusts and estates.
- International tax lawyers address the tax consequences of conducting business across borders or generally the application of US tax law outside of the US
- Tax controversy lawyers tend to practice across practice areas and may be familiar with a broad variety of taxation issues. In addition to representing taxpayers during examinations or before the US Tax Court or other federal or state courts and for a, many tax controversy lawyers also assist in private letter ruling requests and other potentially adversarial positions with the IRS but generally do not advise on planning or transactions.
- ERISA stands for “Employee Retirement Income Security Act.” Attorneys whose practice involves ERISA may call themselves ERISA attorneys or tax attorneys, or something else altogether. ERISA attorneys are familiar with both the Labor Code and portions of the Internal Revenue Code related to pension and health plans.
- In-House Tax Attorneys at Accounting Firms. Many tax attorneys work in accounting firms performing planning, compliance and controversy work. Compliance work is an accounting function, tax return and reporting requirements, generally not a legal function. The controversy work that accounting firms perform, however, will never progress beyond the audit stage because accounting firms generally cannot directly engage in litigation or engage in the practice of law.
- Criminal tax lawyers very likely also practice in white collar crime defense and do not engage much in tax planning or potentially even civil controversy issues.
- Lawyers in other tax-related practice areas also address significant tax-related issues within their practice, such as bankruptcy and real property, but these lawyers tend not to call themselves tax lawyers.

Accountants include **CPAs** and broadly **EAs** (in the US). CPAs are licensed by the state/province and will often have a background in finance and accounting. EAs are regulated by the IRS directly rather than by the states. In the US, for a CPA to practice before the IRS they must be qualified as a US CPA and cannot be subject to suspension or disbarment. Canadian and US CPAs are also subject to the rules of professional conduct established under the laws of the jurisdiction where they are licensed, and more broadly are subject to national and international standards established by various organizations. An EA is a person who demonstrates special competence in US tax matters by written examination administered by the IRS, which allows the EA to represent taxpayers before the IRS.

While accountants in theory can do much of the same work as a tax lawyer, accountants are not lawyers. And vice versa – lawyers are not accountants. Accountants and tax lawyers will ordinarily approach the same tax issue very differently but often in a complimentary fashion. This is a key reason why our firm purposely employs tax lawyers and tax accountants from both Canada and US jurisdictions.

The distinction between an accountant and tax lawyer is also important when discussing potential sensitive matters that may have a willful or criminal component. Under US law, non-lawyers have a limited “tax preparer privilege,” which does not apply to criminal issues. Conversely, non-lawyers do not have such limited tax preparer privilege. Accordingly, taxpayers should be wary of discussing potentially criminal matters or generally matters that may adversely implicate the taxpayer for a willful violation (for example willfully not reporting your foreign bank accounts) with non-lawyers, or attorneys who perform accounting functions because some US courts have held that the attorney-client privilege does not apply in such situations.

Whether or not a tax professional is a tax lawyer or an accountant, all reputable tax professionals can help with most tax issues or will indicate what type of tax professional is appropriate in the particular situation. If there’s a special tax professional in your life, let them know how much you appreciate all they do for you—on May 17, 2021 (the recently announced extended filing deadline for US persons) for US tax professionals or April 30, 2021 for Canadian tax professionals when they’ll likely be asleep or dreaming of sunny beaches in tropical climes.