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In today's, volatile, global business environment, boards need to identify and focus on their essential activities – the ingredients for success. Tax is one of those important activities.

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2016 Directors' Alert
Ingredients for success:
Striking the right balance

Creating a sustainable tax strategy – Considerations for the board

Multinational organizations have been attracting a lot of critical public scrutiny in recent years, with concerns expressed that they are not paying their "fair share" of tax in all of the jurisdictions in which they operate. Business leaders have been called before government commissions in different countries in order to defend their tax strategies. Investors and other stakeholders have raised concerns about the reputational risks created by this negative publicity, and the resulting potential impact on the long-term success of their organizations.

In light of these and other concerns, in 2013 the G20 asked the Organisation for Economic Co-operation and Development (OECD) to create an Action Plan on Base Erosion and Profit Shifting (BEPS). This multilateral exercise to modernize what is perceived as an outdated and complex international tax framework that is no longer suited to today's global business economy represents the most significant change to international tax principles in a generation. BEPS is intended to eliminate tax mismatches, align profits to where value is created, and enhance transparency for tax authorities across the global landscape.

Heather Evans
Deloitte Canada

The impacts of BEPS will differ from one organization to another, and organizations must ensure that they are maintaining their competiveness. Managing expectations may be a significant challenge since varying expectations can put pressure on the business.

Piet Vandendriessche
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Boards need to consider their organization's approach to tax strategy in the context of the organization's stakeholders – shareholders, employees, suppliers, customers and governments of the jurisdictions in which the organization operates – and their expectations.

The OECD released the final reports for its 15-point BEPS Action Plan on October 5, 2015, outlining a series of policy reforms that cover, among others, transfer pricing, perceived tax treaty abuse, permanent establishments and patent box regimes. Over the next few years, the G20 and other countries will begin adopting the BEPS reforms in their jurisdictions.

Some countries have already started implementing their own tax measures. Two pieces of legislation have been introduced in the United States Congress – *the Corporate Fair Share Tax Act* and the *Putting America First Corporate Act* – which would prevent corporations from using tax inversions to reduce their US tax burden. Several other countries, including Australia, Chile, China, France and the United Kingdom, have enacted legislation to limit or prohibit certain tax activities in their jurisdictions. Country-by-country reporting on transfer pricing is expected to be implemented in many jurisdictions in 2016.

For organizations with multinational operations, the changing global tax landscape is much more than just a tax issue – it is a business issue with wide ramifications. The new rules and increased scrutiny by investors and the general public could potentially impact profitability, the effectiveness of business models, competitive positioning and, ultimately, share prices and brand. Since different organizations have different business models and operating structures, the BEPS rules may impact one organization more or less than another. This could be particularly important to the board, since there may be a greater impact on their organization's earnings per share relative to its competitors if it has taken greater advantage of tax planning opportunities, and that could potentially translate into a greater negative swing in its share price.

The board's role

Tax is an important issue for directors. A board must have a good understanding of its organization's tax practices, including legacy practices, as well as the associated risks – for example, whether the organization's current or past tax activities were audited by tax authorities and how that may be perceived by the organization's stakeholders.

The board and the organization should also have an understanding of the developments occurring at the OECD and elsewhere. Having an advanced line of sight into these developments is important to give the organization sufficient time to adapt, if necessary, to new tax proposals – something that can be difficult for multinational organizations with complex structures to do in a short timeframe.

While an organization's effective tax rate is an important consideration, the board must also consider the potential risk of reassessment and its associated costs, as disputes are increasing between jurisdictions over which one has the right to tax particular income streams. Reputational risk should also be considered and whether or not the organization's tax strategies are consistent with its overall positioning and branding. Boards should consider the impact that the organization's tax strategies have on its competitive position and be comfortable that the organization's tax policy is sustainable.

Organizations may want to consider discussing tax as part of their investor relations programs.

Albert Baker
Deloitte Canada

BEPS and the global reset around tax is the largest and most significant change in international tax in a generation, and it's a significant business issue for organizations with international operations. The associated risks go beyond challenges from tax authorities or the potential for double taxation from unilateral actions. There could also be threats to the organization's brand and reputation depending upon how investors and other stakeholders perceive the organization's tax practices.

Transparency is also an increasingly important consideration. The board should be involved in assessing voluntary disclosures about the organization's tax policies and practices, since such disclosures may enhance the organization's reputation and help build investor confidence. For example, a board may choose to make public the organization's structure and the general tax implications related to that structure, and the board's role in overseeing tax policy, including the way the board engages in that role, and the type of consultation it undertakes. Also, a board may choose to separately disclose all of the taxes that the organization pays beyond income tax to provide a better perspective on its total contribution to the governments and societies where it operates.

Questions for directors to ask

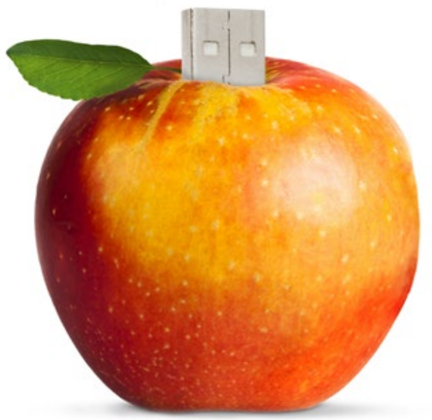
1. Do we understand our organization's tax position, both in our home jurisdiction and in other countries in which we operate? Are we comfortable with where the organization has positioned its tax practices?

2. In light of BEPS developments, should the reporting methodology employed by management in informing the board about the organization's tax practices and relevant tax developments be updated?

3. What changes to our tax policy and business model should we consider in order to be sure that our organization is aligned with BEPS initiatives and other new tax rules enacted in the jurisdictions in which our organization operates?

4. How will BEPS and other new tax developments impact our share price? How does this compare with our competitors?

5. Have we examined our legacy and current tax strategies in light of the way they may be perceived by our stakeholders? Is there a risk that they may be misunderstood and will have a negative impact on our reputation? If so, are we prepared to respond? Have we considered the potential financial impact of such reputational challenges?



Resources
Want to dig deeper? We've selected the following Deloitte Points of View to help you better identify potential risks and opportunities these issues present for your organization:

- Base Erosion and Profit Shifting: Is your organization ready for the global tax reset? (Deloitte Global, October 2015)
- BEPS Actions: An overall perspective (Deloitte Canada, October 2015)
- BEPS global survey: Base Erosion and Profit Shifting 2015 (Deloitte Global, May 2015)
- Global Tax Reset: the changing world of tax. (Deloitte Global, October 2015)
- Governance in focus: Keeping pace with tax change: a briefing for non-executive directors (Deloitte UK, January 2015)
- OECD releases final BEPS reports (Deloitte Canada, October 2015)

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