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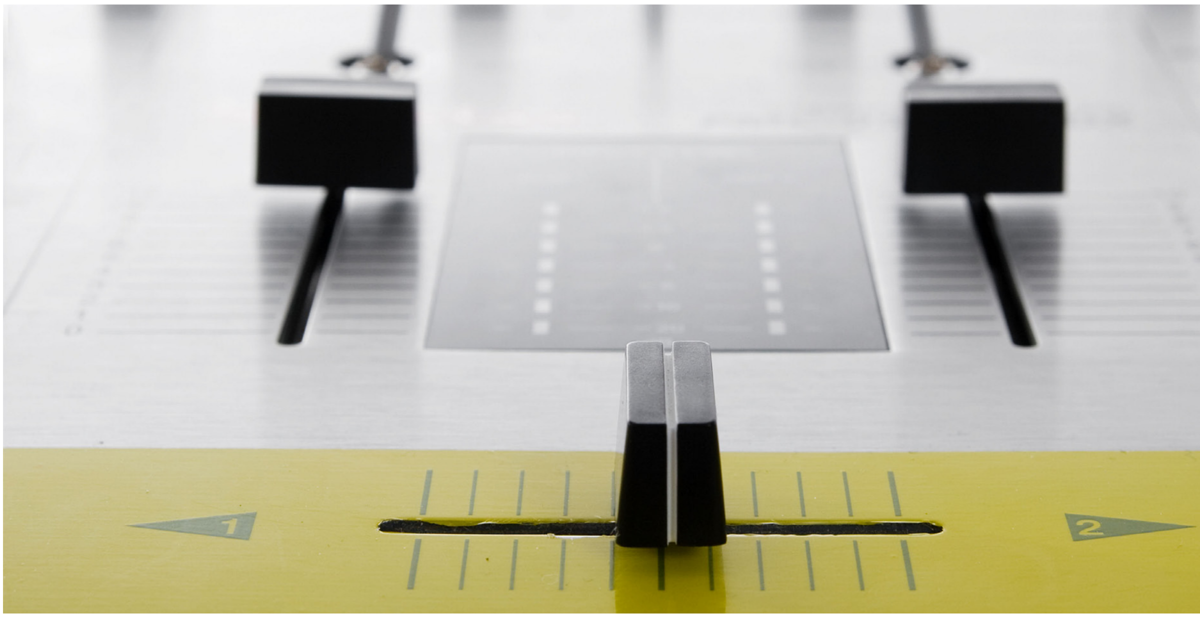
Tune into the Topic:
Global debates on Responsible Tax, Anti-avoidance, and BEPS



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Introduction

To contribute to this important and vibrant debate, I am pleased to introduce five different perspectives. Deloitte partners from Belgium, Canada, the United States, the United Kingdom, and France cover different topics but one clear and common message comes through. The matters on today's agenda are set to shape the way governments collect tax and businesses align their tax affairs and their business model in the decade ahead.

Piet Vandendriessche and Geert Lowagie from Belgium discuss the legal and ethical dimensions to the debate of letter versus spirit of the law. Board members and tax advisors play a key role by proactively discussing ethical and reputational issues related to a company's tax management.

Albert Baker writes about a Canadian slant to a problem considered by the G8 and by the OECD. Do tax authorities have the right type of information to enable them to asses properly the risks inherent in multinationals? The BEPS project includes a proposal for a high level risk map, where multinationals provide tax authorities with details of profits earned and tax paid by country. The focus here is not on more data – but on better data, costing less to produce. Canada seeks better information on financial transactions and assets and is devoting greater resources to international compliance.

U.S. partners Tim Tuerff and Gretchen Sierra explore the OECD's Base Erosion and Profit Shifting initiative. This is backed by the G20 and the United Nations. The name of the project emphasizes the Governments' desire to address issues concerning the global allocation of income resulting from related party transactions. The growth of intangibles as a key driver of business profit has led to the development of new business models not envisaged by the transfer pricing rules and guidance. The Digital market has grown significantly over the last decade and its reduced need for physical locations may ultimately lead to new approaches to taxation. My view, though, is that we should proceed carefully here. For all its high profile, digital services are a relatively small part of global trade. We should not rush into a new tax system which could put at risk the development of this vital new contribution to global economic growth.

Alan Macpherson and Mark Kennedy from the UK move the focus to business and the need to develop a tax policy and sustainable tax strategy appropriate for today's wider stakeholder group. Tax is not the preserve of the tax and finance team; it sits squarely on the Board agenda and may affect investors, customers, suppliers and employees.

French tax partner Gianmarco Monsellato reported on behalf of the Institut Choiseul in Paris on whether France should change its corporate tax system. He argues that the current international tax system imposes high taxes on an increasingly narrow tax base. The paper suggests that France needs to look at new sources of tax base and it has made some imaginative suggestions for new approaches to digital services. Gianmarco also advocates for a common corporate tax system within the Eurozone, which has not proved to be a popular cause to date.

The changing shape of international taxation will depend on the willingness of governments to reach new agreements on how and when to levy tax. The outcomes will need consensus, followed by national legislation and amendment of Tax Treaties. It is vital that those new agreements support global trade; do not impose double taxation; and minimize compliance costs for both tax authorities and for business. The OECD's Cooperative Compliance report sets out a good framework for tax authorities to work with business to achieve positive outcomes.

Deloitte globally is contributing to the debate through the work we do with business, the OECD and national tax authorities. Perspectives vary by country.

Please contact me or any of our Deloitte tax professionals to discuss this important area.

Dan Lange
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Belgium—Viewing tax management beyond the legal dimension

Tax management beyond the legal dimension

The press is full of stories about the corporate tax bills of multinationals and alleged "inappropriate tax behavior": paying too little tax must mean they're "abusing" tax legislation. Tax management and planning is designed to ensure needless tax expenses are not incurred, but public debate doesn't always address the legal and ethical dimensions.

Legal dimension

A fundamental principle of Belgian tax law is the legality principle: tax is only due when there is a provision in the law describing the taxable event, the taxable base, the person subject to tax (the taxpayer) and the tax rate.

The principle is the basis for the distinction between unlawful tax evasion and lawful tax avoidance. But should tax avoidance comply with both the letter and the spirit of the law?

The Supreme Court states taxpayers can organize their tax affairs and walk the "least taxed road," as long as they don't violate the letter of the law. The updated General Anti-Abuse Rule (GAAR 2012) states tax payers engaged in (lawful) tax avoidance schemes can be subjected to a heavier tax charge if these schemes lack commercial or other non-tax substance (i.e., artificial arrangements) and if they, although respecting the letter of the law, violate the spirit of the law.

Ethical dimension

Lawful tax avoidance and tax planning are influenced by basic ethical questions. Companies are more aware of how their approach to corporate social responsibility (CSR) applies to the management of their tax liabilities, implying that shareholders are not the only stakeholders. The state for example has an entitlement to a stake in the company's profits in the form of taxation. But companies also have the right to minimize tax within the spirit of the law. Yet the public debate focuses on expecting the company to pay its "fair" share of tax.

Arguably, "fair" reflects the intention of the legislator, but there is a gap between what the legislator considers acceptable tax avoidance and the public perception of ethical tax behavior.

In Belgium, this debate even inspired the legislature to introduce a so-called "fairness tax" in July 2013 which requires companies, under certain circumstances, to pay a minimum tax if they distribute untaxed or low taxed profits to their shareholders.

A fair and balanced debate

The press frowns on certain types of legal tax planning, with even the most benign and commercially legitimate practices deemed egregious. They suggest tax is a purely dualistic issue, implying there is a set amount of tax to pay. However, the amount of tax actually paid by a company often doesn't reflect any tax planning or avoidance: holding companies pay little or no tax as their income consists of dividends and capital gains, which (to avoid double taxation) are not taxable in most countries. In Belgium, subject to conditions, dividends and capital gains on shares are (almost) fully exempt. Companies may also pay no or little tax due to tax losses carried forward, a principle established in international law.

An important role for the board and for tax advisors

Defining the boundaries of a tax management strategy is not only a responsibility of the tax director and CFO, but also of the board of directors. They need to ensure that the company achieves excellent financial results while employing appropriate corporate governance practices (e.g., in relation to tax liabilities).

The complexity and ambiguity of tax laws makes the role of tax advisors crucial, helping their clients with their tax reporting obligations and identifying ways to help them make their tax affairs as efficient as possible. Deloitte tax consultants use their tax technical and business skills and consider the reputational issues as part of their advice on any particular strategy, but ultimately the decisions remain with the client.

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As well as for Parliament, tax authorities and courts

A major role is also played by Parliament as it determines what is or isn't appropriate. Well-crafted tax legislation, explaining the intention of the legislator, is of paramount importance in this respect.

As for tax authorities, in Belgium taxpayers can obtain in advance, from the Ruling Commission, certainty on the tax laws applicable to them. On the international scene we increasingly notice a collaborative approach built on mutual respect, trust and transparency and taxpayers with good tax management and transparent relationships with tax administrations can expect fewer audits, greater certainty and lower risk of reputational issues.

Finally, the importance of high quality tax jurisprudence cannot be underestimated. Tax courts must have sufficient number of judges specialized in tax matters, so they can deal with tax cases in a more coherent and less time-consuming manner than today.

Transparency

Any debate should be fair, balanced and recognize the complexity of organizations, their transactions, and tax legislation. Board members and tax advisors play a key role by proactively discussing ethical and reputational issues related to a company's tax management. It would also help the debate if the legislator drafts transparent tax laws, indicating as clearly as possible what is appropriate and what is not.

Canada—Enhancing transparency of transactions

As a member of the global tax and business community, Canada has not been immune from recent activity relating to the public perception of corporate taxation, particularly in the context of multinational enterprises. This issue has been the subject of Canadian press reports and has also been addressed on the political and legislative fronts. With the release of the OECD's BEPS action plan, we anticipate the possibility of additional government action. Those responsible for tax risk management in Canada are well advised to stay abreast of Canadian developments in this area, the more notable of which are highlighted below.

Canada's government has recently taken steps to enhance transparency of taxpayer transactions. In the federal budget of 2013, the Department of Finance introduced three legislative provisions in this regard:

- Enhanced reporting of foreign assets and income
- The introduction of a whistleblower program to pay individuals for information leading to the collection of tax resulting from international non-compliance
- The requirement for certain electronic funds transfers to be reported to the Canada Revenue Agency (CRA)

These measures are in addition to the earlier introduction of reporting requirements in respect of certain transactions that are considered tax avoidance transactions (as defined in the Income Tax Act).

Canada's government has also taken steps to ensure that the country's tax base is not eroded. The Department of Finance has introduced legislation addressing certain tax planning ideas that were considered to have unintended results. This legislation is in addition Canada's general anti-avoidance rule (GAAR), which addresses abusive tax planning, and various specific anti-avoidance rules. As well, the House of Commons Standing Committee on Finance held hearings and released a report on "Tax Evasion and the Use of Tax Havens" in which it provided various recommendations, including international cooperation.

The CRA has indicated its commitment to "combat international tax evasion and aggressive tax avoidance" in a recent press release and announced increased investment of $15 million dedicated exclusively to international compliance issues and revenue collection. This follows the recent implementation of a large business audit strategy that is based on a taxpayer's risk categorization. Criteria for determining risk categorization include corporate structure, audit history, industry sector issues, whether there have been unusual and/or complex transactions, whether there have been international transactions, participation in what is perceived to be aggressive tax planning, level of corporate governance, and openness and transparency.

In the current environment, where the tax affairs of corporations are in the media spotlight and tax administrations are actively engaged in curtailing perceived abuses, it is more important than ever that corporations have proper tax risk management in place. Not only is it vital to ensure that all tax planning is well founded in the law, but it is also essential to be prepared to defend this planning in the court of public opinion.

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OECD—Taking the lead on Base Erosion Profit Shifting (BEPS)

Action plan on base erosion and profit shifting released

The OECD has published its promised Action Plan on addressing Base Erosion and Profit Shifting (BEPS), after presenting the plan to the G20 Finance Ministers' meeting in Moscow on 19 July 2013.

The Action Plan sets out 15 areas for further work, including a summary of the key considerations to be addressed and the timetable for the work in each area. OECD working groups are being set up to focus on each of the issues, and interested non-OECD members of the G20 (Argentina, Brazil, China, India, Indonesia, Russia, Saudi Arabia, South Africa and South Korea) will be invited to participate. In addition, the OECD will invite other countries on an ad hoc basis, and the UN's input is welcomed to provide insights in respect of the concerns of developing countries. The outcome of the actions will include changes to international tax rules and principles (such as those in the OECD's Model Tax Convention and Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations), as well as recommendations for domestic legislation that can be adopted by countries.

The Action Plan rules out fundamental change to the international tax architecture, such as the adoption of a global unitary tax system. It also notes that the current balance between source and residence countries remains unaltered by the BEPS proposals. Countries such as China and India have argued for change here; the OECD is clear that this report addresses base erosion alone.

Fifteen areas for further action

1. **Address the tax challenges of the digital economy**
   - The focus will be to identify the main difficulties posed by the digital economy in relation to existing international tax rules, develop detailed options to address them and consider indirect tax alongside direct tax issues.
   - This will include consideration of circumstances where, under current rules, a group has a significant digital presence in a country without a corresponding taxable presence, valuing and attributing marketable location-relevant data and ensuring effective collection of VAT/GST.
   - The expected output is a report identifying the issues, together with possible actions to address them.
2. **Neutralize the effects of hybrid mismatch arrangements**
   - This work will have two coordinated strands – potential changes to the OECD's model tax convention to prevent abuse and recommendations for the design of domestic tax rules to eliminate the tax advantages arising from hybrid instruments and entities.
3. **Strengthen CFC rules**
   - The OECD will develop recommendations on the design of domestic controlled foreign company rules. This is a new area for the OECD (being to date a matter only for national governments), but is a familiar concept in many countries.
4. **Limit base erosion via interest deductions and other financial payments**
   - The OECD will evaluate the effectiveness of different types of interest limitations and develop recommendations for best practices for rules preventing base erosion through excessive interest deductions or to finance the production of exempt or deferred income. There also will be work on new guidance on the pricing of financial transactions, including financial and performance guarantees (a known gap in the current OECD transfer pricing guidelines).
5. **Counter harmful tax practices more effectively, taking into account transparency and substance**
   - On the challenging issue of harmful tax practices, the OECD will focus on improving transparency, including of tax authority rulings where they relate to low-tax regimes, and also requiring substantial activity for any such preferential low-tax regime. Part of this work will evaluate different low-tax regimes.
6. **Prevent tax treaty abuse**
   - The OECD will develop model tax convention provisions and provide recommendations for domestic rules to prevent tax treaties giving benefits in inappropriate circumstances. The treaty work may be similar in concept to the existing "limitation on benefits" clauses that the US has agreed in its tax treaties, or alternatively look at "subject to tax" requirements for treaty benefits to apply.
   - The OECD is keen to clarify that tax treaties are not intended to be used to create situations of no taxation, and at the same time to develop guidance for countries on factors to consider before deciding to enter into a tax treaty.

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7. Prevent the artificial avoidance of PE status

- This area will focus on making changes to the definition of a permanent establishment (PE) in the OECD model tax convention to prevent artificial avoidance of a taxable presence, including through commissionaire arrangements and the specific activity exemptions. This work also will address related profit attribution issues.

8. Ensure that transfer pricing outcomes are in line with value creation: intangibles

- As widely anticipated, the OECD will undertake further work to prevent profit shifting by moving intangibles among group members, including ensuring that profits from intangibles are not divorced from value creation and special measures for hard-to-value intangibles. The output will be changes to the transfer pricing guidelines, and, possibly, to the OECD model tax convention.

9. Ensure that transfer pricing outcomes are in line with value creation: risks and capital

- The OECD will develop rules to prevent high returns accruing to a company solely because risks have been contractually transferred to it or because it has been allocated excessive capital within a multinational group. The output will be changes to the transfer pricing guidelines, and, possibly, to the OECD model tax convention.

10. Ensure that transfer pricing outcomes are in line with value creation: other high risk transactions

- The OECD will develop rules to prevent profit shifting from transactions that would not, or only very rarely, occur between third parties. This will include clarification on the potentially contentious issue of recharacterization and guidance on the use of profit split methodologies where appropriate, as well as protection against common base eroding payments. Again, the output will be changes to the transfer pricing guidelines, and, possibly, to the OECD model tax convention.

11. Establish methodologies to collect and analyze data on BEPS and the actions to address it

- The OECD will develop indicators of the scale and economic impact of BEPS, and tools to evaluate the effectiveness of measures taken under the actions. One of the issues identified in the OECD's February 2013 report on addressing BEPS was the limited data available to assess the scale of the problem. Taxpayer confidentiality will remain respected, and the OECD will take into account administrative costs of further data provision for both businesses and tax authorities.

12. Require taxpayers to disclose their aggressive tax planning arrangements

- The OECD will develop recommendations on the design of domestic rules for early disclosure to tax authorities of aggressive tax planning schemes, drawing on the experiences of certain countries. One specific focus will be on international tax schemes, and a potentially wide definition of tax benefit.

13. Re-examine transfer pricing documentation

- Following on from the G8 Declaration at Lough Erne in June 2013, the OECD will look at transfer pricing documentation to enhance transparency for tax administrations, including developing a common template for providing information on the global allocation of profits, economic activity and taxes paid.
- This will result in changes to the transfer pricing guidelines and recommendations for domestic rules on documentation.

14. Make dispute resolution mechanisms more effective

- The OECD remains concerned that double taxation can hinder global trade and investment, and therefore will address issues with the practical and timely resolution of disputes under the mutual agreement procedures in tax treaties. This will include consideration of binding arbitration clauses to ensure resolution and the removal of blocks from accessing mutual agreement procedures in some cases.

15. Develop a multilateral instrument

- The final action is, as already widely referred to by the OECD, the development of a multilateral instrument to facilitate the speedy introduction of changes to the OECD model tax convention into existing treaties. This will start with an analysis of the tax and legal issues that such an instrument may present, with a view to coming up with an "innovative approach."

Timetable and next steps

The OECD has staggered deadlines for each action, beginning with September 2014 and ending with December 2015. This is an aggressive timetable, necessary to satisfy public and political scrutiny of the international tax system, while also providing some certainty for business by the end of that period. Some areas will progress faster as work has been underway for some time (such as the existing OECD work on the transfer pricing of intangibles). The OECD remains committed to consulting with business and interested stakeholders, and therefore it is expected that discussion drafts and documents will be released for comment over the coming months, either by individual organizations or through the OECD's business forum of BIAC.

Deloitte perspective in the U.S.

This is a major initiative by the OECD. OECD Tax Director, Pascal Saint-Amans, has said he expects that multinational companies will end up paying more corporate tax as a result. The outcomes will depend on international agreement and will take effect in three ways:

- Recommendations to countries to change national rules;
- Changes to the model treaty and recommendations that countries adopt the new model; and
- Changes to the transfer pricing guidelines.

Countries will ultimately choose which measures they wish to adopt—especially in the areas put forward for national action. It is not clear, for example, whether countries would tighten their CFC rules in response to OECD recommendations.

Initial indications are that there will need to be more than one stage to the review of digital taxation. There is a perception that the US would be opposed to treating digital as a separate activity, with different tax rules from other areas. Imminent change thus looks unlikely.

Companies should prepare for the changes proposed to transfer pricing documentation. There appears to be a wide-ranging agreement amongst countries that a high-level map of profits and taxation would help with risk assessment. Businesses—and countries—are aware of the potential dangers, such as the possible misuse of confidential information, and finding safeguards will no doubt be part of the action plan.

UK—Developing sustainable tax strategies

Introduction

Tax is a noisy subject right now—in public, in politics, in the press. Action groups and media campaigns have woken public interest in the tax strategies employed by large companies and high profile individuals at a time when the economy is creating pressure on taxpayers to demonstrate their contribution to society.

In response, businesses are seeking a responsible approach to the management of taxes. One which is able to deliver sustainable outcomes that are right for the business, and that would still feel right should the media spotlight settle upon them.

Here we explore this new best practice and suggest practical steps to help companies arrive at a tax strategy that is aligned with their broader corporate and risk management strategy and which the business can be confident is the right fit for the business and its aspirations. This involves:

- **Reviewing the current tax strategies** and comparing them to company policies and statements, for example Corporate Social Responsibility (CSR) or investor briefings, as well as taking a look at the tax risk profile in the light of today's environment. Do they sit well together? Can today's priorities be reconciled with historical tax positions?
- **Where differences emerge, working out how to close them.** Consider immediate changes and look forward by redefining the strategic approach and policy framework. This needs careful consideration of the impacts, both financial and reputational, and the interests of all of the stakeholders – from investors to employees and customers, and of course including governments.
- **Communicating the tax strategy,** explaining the key elements and what it means to all concerned.
- **Making the strategy work for the long term,** ensuring the business takes all its relevant decisions in accordance with it. Consider whether to periodically update investors, governments, customers, and employees on how the strategy is being brought to life day-to-day.

Definition: Policy versus Strategy?

- **Tax policy =** the governance framework that sets standards for the way tax decisions are made and subsequent activity executed. It formally sets out the organization's standards, accountabilities, and key policies for the management of taxes.
- **Tax strategy =** the plan, based firmly on data and the facts of the business, which sets out the tax decisions made in supporting the organization's goals.

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Understanding current strategies

Many businesses may be unaware of the tax risks their businesses are exposed to and whether they are in line with company policies and goals. There are a number of steps to take to get a better handle on the strategies driving the group's tax outcomes:

1. **Build a tax model.** This involves creating a mini P&L for each element of the tax strategy, incorporating benefits from the strategies and the costs of delivering them. Clearly defining the attributes contributing to the group's tax position (e.g., impact of low tax jurisdictions, permanent differences, prior year adjustments, etc.,) is key. This may involve accessing granular data that is currently not available.

The tax model will help identify the most significant drivers of tax outcomes (e.g., the Effective Tax Rate (ETR), recoverable VAT, net pay of key employees) as well as those that have a greater risk of not being sustainable in the current environment.

Example: One group that developed a tax model identified that their low ETR was dependent on a number of transactions which were vulnerable to law change and tax authority scrutiny.

2. **Identify and prioritize stakeholders.** There are many stakeholders to consider – those outside the business and those placing demands on it – for higher dividends, greater capital growth, better pay, lower priced products, more jobs, more tax. Companies should be as specific as possible in their analysis. Consider the composition of the investor base, the split between institutions and retail. What are the natures of the different types? Do they have an ethical agenda, for example?

Overlaying stakeholder needs with the strategies identified helps to determine whether specific strategies conflict with key stakeholder requirements. For example, where governments are key customers, some companies may need to review their strategy in response to signs that governments are looking at tax policies when considering commercial partners.

These stakeholders should be prioritized and, for those with the highest priority, some way of measuring whether their needs are being met is vital. Most stakeholders will have a "representative" within the business who can accelerate the process of gathering this insight. For example, where investors are concerned, typically the emphasis is on understanding the sustainability of the company's tax position and how it compares with peers. Other stakeholders will have different measures.

Example: One leading multinational has identified the impact of negative press in relation to its tax affairs on its customers. It has done this by gathering sales data and insight from its customer care teams as well as monitoring social media.

Prioritizing stakeholders and their needs should be done in conjunction with senior management. Benchmarking the group's position against competitors, in terms of risk appetite and reporting, can help inform this discussion. The endpoint is a clear and balanced view, based on facts, on what needs to be delivered and to whom.

3. **Assess risk and resource.** In addition to identifying which strategies are vulnerable to law change or adverse stakeholder reaction, organizations should also question whether they are capable of delivering the strategy. Some strategies will not be suitable where the tax team is resource constrained, and therefore where there is a risk that they will not be implemented effectively.

Definition:

Effective tax rate = "tax expense (income) divided by the accounting profit" as explained in IAS12.

Close the gaps

A review of the group's tax position will often reveal differences between where the organization is and where it wants to be. There are key steps which can be taken to close these gaps quickly but these need to be assessed carefully in light of the financial and reputational impact, while of course considering stakeholder needs.

- **Exit.** Some may consider exiting specific strategies which are perceived to be contributing negatively to overall corporate goals.

Example: One FTSE 100 company is actively reviewing ways of increasing its tax base to reduce the risk of it being seen in an unfavorable light by governments of countries in which it operates.

Exiting tax strategies may also involve group structure reorganizations. Entities which may have been set up in overseas territories to make use of available tax reliefs, may no longer be generating benefits in line with corporate goals and may be sitting dormant. These entities, particularly those in perceived "tax havens," may attract adverse press coverage and may warrant being closed down.

- **Communicate.** It is essential to have a comprehensive communications plan which ensures consistency of statements regarding tax, whether it be in the media or in financial statements. Many organizations have recently been through a process to decide which tax statements they make in their annual accounts and several are publishing statements regarding tax governance on their websites or within CSR reports.

Example: One UK consumer business was concerned that it would be scrutinised for intragroup payments paid from the UK. It has therefore prepared statements which could be used to communicate its tax position with journalists and others. It is also looking to formalize its tax policy, supporting controls, and reporting plan.

A new kind of tax policy

While many businesses have a tax policy document of some sort, the purpose they will have traditionally served and the way in which they will have been arrived at, mean that few are fit for purpose in today's environment. In the new world, the tax policy and the process of its development needs to clearly direct the business' tax choices by defining the group's goals and attitude to risk, setting expectations and clarifying boundaries.

Businesses operating without a tax policy may be taking on more tax uncertainty than they have the appetite for, or, in contrast, may be missing out on wholly reasonable tax efficiencies or government incentives. It's not uncommon for parts of the business and the tax function to take a more conservative approach to tax management than the business would consider appropriate.

An appropriate policy provides confidence to external stakeholders that tax risks have been considered and addressed. Sometimes, this allows tax authorities to adopt a more relaxed approach to compliance obligations, for example, by reducing the company's risk rating. In some cases, tax policies have helped reduce a company's exposure to penalties on historic tax issues.

There are steps companies can take to get to the right tax policy:

1. **Define the risk appetite and principles of tax governance.** Reviewing existing corporate governance documentation, tax or otherwise, will establish if commitments have been set out which may influence the group's tax policy or conflict with its tax practices. For example, the Group Governance Statement may commit the organization to complying with the purpose of the legislation and the tax policy would need to interpret this in the context of tax. Given the review of current tax strategies, what risks from the past is the company exposed to? What uncertainties does it have currently or is it planning to take? It's important to critically assess the decisions made in relation to the structuring of commercial transactions for tax purposes and see what, if any, risk they imply. What is reported for tax purposes? Financial statements tell some of the story but also look at the CSR report, analyst presentations and other communications touching on tax.
2. **Tailor and look forward.** In formulating a policy, some organizations find that they need to focus more on tax value and commit more time and energy to reducing tax bills but under appropriate controls. Establish key criteria for consideration when evaluating tax planning and set out the sign-off procedures required before it can be implemented.

   Others will want to shift towards a policy which emphasizes reputation protection and a commitment to compliance. The policy should clearly set out the approvals needed before planning can be undertaken. It's essential that the policy is developed with the intention that it will be implemented. Many policy documents exist primarily as defensive statements developed with tax authorities in mind. When this occurs, there is a risk that they say something which then prevents consideration of future tax planning or which commits the organization to something it has little chance of complying with.
3. **Test and refine.** Test the policy against past, current and planned tax activities and ask how the policy would change these activities – what tax strategies would the group need to stop, start and continue and what would the cost impact of this be? The tax model used to assess existing strategies can be used for this purpose and should indicate the impact that particular risk appetites will have to the group's success.
4. **Get the message out.** To begin the process of embedding the thinking in day-to-day activities, communication should start with those responsible for managing taxes. It won't always be appropriate to communicate the full policy. Instead the key messages can be used to inform specific communications with other stakeholders.

Example: One consumer business which found itself in the news for a tax story wanted to assure all its employees that tax matters were under control, and produced a targeted statement to this effect.

It is important to ensure that any communication on tax is consistent with the policy itself and other statements made. This involves working through not only the financial statements but also analyst presentations, sustainability reports, press releases and a host of other outputs to ensure that a consistent story is being told.

Making it work

Recent public events and the associated media coverage mean that businesses operating in the UK and elsewhere need to navigate a new tax landscape. Companies are responding and most are at the first stage of the journey – assessing what the changing environment means for them and reviewing their strategic approach and policy framework to confirm it remains fit for purpose. Staying on track involves ensuring:

- **Business ownership**
  Only when the business leadership is engaged in the development process can there be confidence that the tax policy complements the broader corporate strategy and that it will be used to determine the appropriate tax choices for the business.
- **Alignment to corporate goals**
  Both the policy and strategy should recognize the group's long-term goals and the role that the responsible management of taxes plays in their achievement. In particular, they should reflect and seek to balance the specific needs of the group's differing stakeholders.
- **Standards**
  It's essential to state the parameters within which the group's goals will be pursued in the context of tax – the type of risks the company will take and those it won't. Expectations should be defined for the criteria used in evaluating tax strategies, the standards for disclosure of tax positions, guidance for those engaging with tax authorities, and control measures (documentation, monitoring, testing). These work best when they provide a pragmatic, workable framework and are at their worst when they are too detailed and academic.
- **Defined accountabilities for the management of different taxes**
  For the most part this might be clear. For example, Group Tax typically owns corporate taxes. But what about employment taxes – who takes the lead between HR, Tax, Payroll and Finance? And what about the responsibility for financial data for tax purposes: is it down to Group Tax to adjust for everything or should Finance get the data at source?
- **Commitment to reporting**
  Ideally this would include standard metrics for measuring success and regular reporting outlets, going beyond the standard delivery of insight on the numbers to the Audit Committee.

France—Balancing taxation and competitiveness

The Institut Choiseul, a French think tank dedicated to international politics and geo-economics, has published a white paper offering a new strategic perspective on tax policy and a sound alternative to the existing repressive tax policies currently in place. The following is a brief synopsis of the report and its views on current tax policies.

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Summary

Sovereign debt crises are not new. History shows France went bankrupt in 1307 which led to the fall of the Knights of Templar. In 1897, Greece first sought foreign financial assistance to help cover its debts and more recently, Argentina in 2001 and Iceland in 2008 required help. Each time, outdated fiscal policies related to taxation were cited as one of the root causes. The result of these crises has often been great human suffering.

Government authorities are not as in tune with the current economic realities as they need to be. Today, taxation is less lucrative than it was in the past. The lack of growth in some Western countries and the increase in public expenditures are two of the obvious causes of rising government deficits, but these are not the only ones. The size and breadth of companies has grown considerably and many corporate strategies include sales and operations in international markets. As a result, both opportunities and threats are now global.

This creates complications such as understanding the dynamics of who controls economic gains created outside of a business' home state? To whom does the business owe tax? Who benefits? The world has changed and tax systems designed for a closed world must be reinvented to account for global growth and expansion beyond one's own borders.

All Western countries, even the most well developed ones, are confronting these same issues, but they are responding in different ways. The United States, including California and Illinois, almost suspended debt payments in 2011, which would have marked a significant turning point in their competitiveness and negatively impacted the growth of their economies in emerging regions.

While there are many differing opinions in the United States, there is consensus that taxation must not harm competitiveness. This is different from continental Europe where the issue has been largely taboo, with the notable exception of Germany. The U.S. continues to debate the tax question and the need for adaptation to accommodate the modern world.

France and several other European countries disagree about the logic behind the competitiveness argument. Here, the tax debate is not about how to adapt the taxation system to the twenty-first century world, but rather how to insulate outdated tax policy from global changes.

The questions are:

- How do you build a fortress that guarantees the efficiency of tax sovereignty in an open, global world?
- How do you operate a single, closed national taxation system in an integrated, cross-border market with a common currency?

This rationale does not address the fundamental issues underlying the taxation challenge. As a result, this approach is leading to a shrinking tax base that asks for more money from fewer sources. This repressive logic is leading to increased controversy. It is leading these countries down a path where government revenues are falling which in turn is fueling a downward spiral. European taxpayers understand that they are already paying more taxes for relative fewer public services than they did 25 years ago. This inevitably raises social tensions and is leading people to search for a scapegoat. International businesses, wealthy individuals with the means to pay higher taxes are all targets. It has risen to a point where taxpayers who already pay high taxes are accused of fraud simply because they have the ability to pay even more. This philosophy punishes those who are most successful.

How can France escape this destructive spiral?

Economic changes that began at the start of the this century necessitate that France builds a progressive, modern taxation system in order to thrive rather than relying on an archaic tax system of a bygone era that should have been redrawn with the fall of the Berlin Wall.

In the early twentieth century, the economic power players of the time worked to develop international tax laws. They influenced the way these laws were written to benefit the "colonial states." The globalization of trade and the emergence of new economic powers has upset the balance of power and redistributed the political cards related to taxation. This has launched a new era of geopolitical tax where each State seeks to collect the most tax possible from its share of world trade. The international tax harmonization that existed in the twentieth century gave way to an "every man for himself" philosophy. We now live in a world without efficient international tax rules. As a result, international investments include an additional level of risk that has proven particularly damaging to French businesses.

In a world without agreement on a consistent and efficient distribution of global taxes, governing authorities feel they must impose the maximum rate on companies as well as individuals in order to stake claim to their fair share of the tax revenues. These policies are put in place to limit international risk and to maintain competitiveness in global markets. However, French businesses cannot remain competitive if they are required to pay more tax than their global competitors and individuals are not willing to accept less disposable income than their neighbors that are a part of the same European community. Inadvertently, taxation has become a strategic issue for companies. It is proving to be either a competitive benefit or a competitive disadvantage to businesses and it is influencing whether individuals are choosing to remain local or relocating to lower cost jurisdictions.

In the twenty first century, tax policy must be stable and predictable to create certainty. It must be competitive. Economic efficiency must take precedent over national sovereignty. This is especially true in the Europe, where one market that relies on a single currency exists but, multiple States with different tax policies are seeking to draw tax revenue from it. As a key player in the European market, France's tax policies need to be rethought. In the past, France has been bold in creating new social contracts. We are at a crossroad and we are urgently in need of a new fiscal contract.

Continue the conversation

By analyzing the shortcomings of France's existing tax policies, the strategic white paper by The Institut Choiseul looks to offer some possible new alternatives for consideration.

In addition to research findings, the report includes case studies that highlight the effects of current tax policies on real businesses. One example clearly demonstrates that the concept of fair taxation is economically unrealistic and makes the case for France moving to a profit driven taxation model that encourages wealth creation to increase the overall tax base rather than levying more taxes on the existing base.

This white paper does not seek to outline all possible options; it is only intended to encourage open thinking about this important topic.

The full white paper in French is available for download from the Taj website at: **http://ow.ly/nFenc**