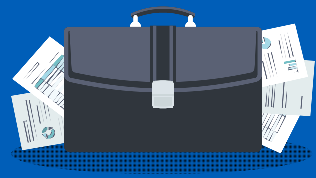
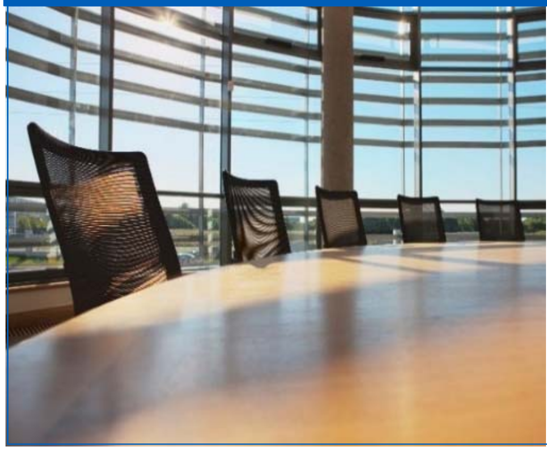
Boardroom Questions

The tax transparency and responsibility debate



Factors driving the debate are potentially creating greater policy fragmentation and disputes



- Impact of globalization
- Inequality and on-going fiscal squeeze (especially in developed countries)
- Intensity of public scrutiny and media focus/NGO activism, amplified through increasing use of social media
- Tax impact on UN Sustainable Development Goals
- Tensions between political pressure to act quickly and longer-term stability goals

Examples of increasing complexity and potential conflict and fragmentation

1. The Organization for Economic Co-operation and Development (OECD) released the 15 Point Action Plan on **Base Erosion and Profit Shifting (BEPS)** in October 2015, which seeks to ensure tax is paid where value is created. Implementation is on-going. As governments struggle to apply the new rules and increase their tax take, there is a **risk of disagreements over taxing rights** with multi national enterprises (MNEs) caught in the middle

2. MNEs with a turnover above €750m will have to use the OECD template to submit a **country by country** (CbC) analysis of where they pay tax to be **exchanged between tax authorities**. This may drive more **disputes** between countries (at least in the short term) and is also fuelling calls by civil society for **public CbC reporting**

3. There is significant pressure to change the way **"digital business"** is taxed with differing perspectives in **the EU, OECD, and the UN and the US;** absent agreement, more and more countries are introducing **unilateral measures** risking creating disputes and **double taxation**

4. **US tax reform's restructuring effects** and repatriation of cash into the US, which could lead both to changes in non-US tax regimes and WTO frictions

5. The **EU Commission** continues to raise State Aid challenges to require EU Member States to recover **large back payments of tax from MNEs**

The impacts

- **Businesses** are impacted through reputational risk, uncertainty, increased disputes and competitive disadvantage to those that can or do adapt
- **Governments** are impacted through uncertainty, higher costs and potentially less revenue
- **Individuals** are impacted either through sharing a higher burden of tax or by reduced government revenues

Why is it an issue for Boards?

Unless business collectively is seen to be part of the solution, not the problem, political pressure will increasingly lead to fragmentation of policy.

- **Brand** and potential **reputational damage**, if tax affairs are aggressive
- Potential impact on **share price**
- **Double taxation** and impact on after tax profits
- Board and senior management **time and resource** to plan and manage stakeholders including investors, customers, suppliers and employees
- **Tighter controls** possibly required, necessitating new systems and **analytics expertize**

Boardroom Questions

1. Do we have a **documented policy/strategy** on tax matters? Is it public?
2. Is our tax strategy **sustainable** and commensurate with our corporate goals and ethics?
3. Do we have the **right control mechanisms** in place to ensure that our tax policy is properly embedded in our organization and that we are paying the right amount of tax on time and in the right jurisdiction?
4. Are we confident that we can explain our tax position when challenged? What are the **reputational risks** of being perceived as not paying our "fair share"?
5. Are we **prepared for changes** in international tax rules?
6. What assurance do we have over the **validity and accuracy of the statements** we make?
7. Are we concerned **the planning we have done in the past** could cause embarrassment or reputational damage if it became publicly known?
8. To what extent do we already disclose tax payments on a **country-by-country basis**?
9. Do we support calls for **greater public disclosure** of tax payments, turnover, profits and number of employees on a country-by-country basis?
10. Are we prepared to **engage positively** in the tax debate with all stakeholders?

What actions could the Board consider?

Boards should be prepared, on the technical level, to explain their position and engage in the debate:

1. Be clear about our stance on tax, our strategy and **where we stand in the debate**
2. Ensure that we are kept **fully informed** both **locally** and **internationally**
3. Consider how these developments could affect our **tax positions** and **planning**
4. Plan for public discussion and develop a **tax narrative** – ensure that we are aware of potential questions and **challenges** from the different stakeholders
5. Think **'reputational risk'** to ensure that tax decisions consider this aspect and are not simply whether our company has complied with tax laws in various jurisdictions
6. Assess our company's **relationship with tax authorities** in the jurisdictions where we operate
7. Ensure that **tighter controls** are in place together with increased **analytical skills**

Calls for greater tax transparency will no doubt continue, and increasingly, business will need to explain their tax positions. Simply complying with the law in various jurisdictions, without due regard to potential reputational risks, is not adequate in today's evolving tax landscape. Above all, businesses have a responsibility to engage in the discussion and debate surrounding the tax system of the future.

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