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Navigating BEPS: How boards can lead from the front in managing tax risk

The speed of change and intensity of scrutiny have forced tax to the top of the boardroom agenda. It's vital that you and your boardroom colleagues take the lead in managing the transfer pricing, compliance, risk communication and reputational issues thrown up by this complex and uncertain environment. So how can you get on top of this whirlwind of change?

Major tax reforms used to be infrequent and would generally have taken years to come into force. But multinational businesses now face a conveyer belt of far-reaching shifts in direct and indirect taxation, both locally and as part of international developments emanating from the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan. The challenges are heightened by the growing oversight of multinational groups' tax affairs from tax authorities, investors, non-governmental organisations (NGOs) and the media.

In the past, boards might have been happy to let specialist tax teams manage the business' tax affairs, with the key performance indicator being the effective tax rate (ETR).

But faced with so much scrutiny and change, we've noticed that priorities now are:

1. The impact on your company's reputation with stakeholders
2. Ensuring efficient and 'no surprises' compliance
3. How to gain certainty over the impact of tax developments
4. The risks relating to these other three priorities – how much risk are you comfortable with and how can risk be managed in the most informed and effective way?

The challenge of managing these four priorities is compounded by the lack of clarity in tax legislation and differences between countries, which can make it very difficult for you as a board to determine with any certainty whether your company's tax policies are appropriate.

Mid-size multinational businesses face the greatest challenges as their tax management tends to be largely decentralised. This makes it hard to develop a clear and consistent global view of the impact and implications of all these new tax developments.

As a board you clearly have a responsibility to maximise shareholder returns. And the level of ETR has a major bearing on these returns. But decisions over the management of the ETR and tax more broadly have to take full account of the strategic, reputational and compliance risks that are central to the protection of shareholders' equity.

Tax as tomorrow's headline

The level of scrutiny and oversight your business faces and the compliance and reputational risk that go with it continue to intensify.

Stakeholders can already gain information about your tax strategy from your annual report. The BEPS country-by-country reporting (CBCR) will increase transparency still further by enabling tax authorities to see how much tax you pay in different jurisdictions and compare this against the substance of value creation (or at least the number of staff as a rough proxy for this). Some countries are considering making public CBCR reporting mandatory.

The UK government for example, plans to go one step further. Proposed legislation would require a significant proportion of larger businesses based or operating in the UK to disclose the following areas of their tax strategy on their company website:[1]

- overview of internal governance
- approach to risk management
- attitude and appetite for risk in tax planning (eg whether they seek to work in accordance with the spirit – in addition to the letter of the law)
- attitude to tax planning and their relationship with the revenue authority.

This must be reviewed annually or companies could face a fine. This could create headaches for companies based outside the UK, including privately owned enterprises. Moreover, if this legislation sets a trend for other jurisdictions to follow, it could create significant reputational issues if not managed well. What we know about tax disclosure is that once the genie is out of the bottle, it's very difficult to put it back.

[1] UK Government Finance Bill 2016, Clause 65

Gaining assurance

The big question is therefore how the board can gain the assurance needed to manage this complexity and change. Drawing on our work with a variety of businesses, we believe that there are four key priorities:

1. Seeing the big picture

Engagement depends on understanding. You should have information to hand that shows your tax liabilities. How are they being managed and what risks might they create? This includes understanding the factors that drive the ETR and sensitivities to incoming and possible future changes in legislation.

This global overview will enable you to work out the impact of the changes ahead, develop a clear appetite for how much risk you are prepared to run, drive discussions within your business and provide a more informed basis for government lobbying.

A key part of the big picture is real-time data and predictive analysis. More and more affordable and quick to implement tools are coming into the market which would allow you to gain this up-to-the-minute view. New tools are also paving the way for more centralised management of transfer pricing and identification of policies and transactions that fall outside company policy and risk appetite.

But all these developments depend on timely, reliable and consistent information from across the business. You should work closely with local tax and business teams to bring data sourcing up to scratch and up to speed.

2. Clear strategy: Balancing tax risk and effective tax rate

As a board, you will have a good sense of what tax management is acceptable to staff, customers and wider public opinion. Your tax strategy should articulate this. Examples might include avoidance of ‘aggressive’ tax planning and, crucially, what this means in practice. Your strategy should also make it clear how these policies are implemented and enforced within the business, along with supporting oversight and governance.

3. Implementing and enforcing policies

While you set the strategy, it may not be fully understood or implemented locally. So clear reporting and lines of accountability are critical. We’ve found that applying an internal audit approach to tax oversight provides the most effective assurance over policies, processes and controls on the ground. To move beyond a tick box approach, why not bring tax professionals into the internal audit team? They will be better equipped to judge whether the approach is justified, whether it conforms to the spirit as well as the detail of the group tax strategy and, if not, how to overcome any issues.

4. Develop an effective tax communication strategy

How corporate tax strategies and policies are communicated is now a significant part of the equity story and investor relations teams will need to make extra effort. Extra time needs to be taken in developing corporate communications around tax. Business culture is seen as a major influence in tax and tax strategy and a compliance approach could lead to assumptions of attempting to deliberately reduce tax liabilities. Detailed strategies would lead to assumptions of lower levels of risk however bland wording such as ‘transparency’ and ‘compliance’ might be seen as indicative of an implicit strategy and therefore a higher level of risk appetite. All in all it is becoming essential to look at how your policies will be interpreted by your stakeholders.

On the front foot

As your business comes up against a growing wave of tax changes and pressure to increase tax transparency, you will need to review and possibly revise your approach to tax planning, tax risk management and tax disclosure.

The business is looking to you to take the lead. As a board, seeing the big picture, setting a clear tax risk appetite, and ensuring these are enforced throughout the organisation and communicating it effectively with all stakeholders is going to be essential in embedding tax management into successful and sustainable strategic management.

If you would like to discuss any of the areas raised in this article, please contact your own Grant Thornton adviser or one of the contacts listed.

Claire Fargeot
Consultant – Advisory
Grant Thornton UK
T +44 (0)20 7865 2262
E claire.fargeot@uk.gt.com

Martin Lambert
Partner – Head of large corporate and international tax
Grant Thornton UK
T +44 (0)20 7728 2363
E martin.lambert@uk.gt.com

Renato Zanichelli
National Managing Partner – Tax accounting risk advisory services
Grant Thornton US
T +1 312 602 9034
E renato.zanichelli@us.gt.com

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Registered number: 05523714
Registered office: Grant Thornton House, 22 Melton Street, Euston Square, London NW1 2EP