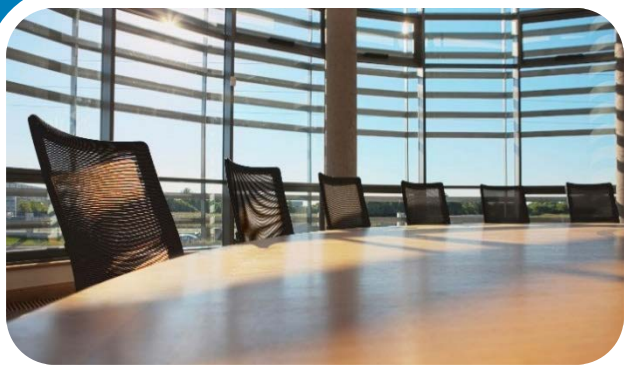
Boardroom Questions

The tax transparency and responsibility debate

KPMG International

Factors driving the debate



- Internationalization of business
- Rise of corporate social responsibility
- Intensity of media focus
- Increasing use of the internet and social media
- Post global financial crisis revenue and expenditure

These factors led to the Organization for Economic Co-operation and Development's (OECD) release of the 15 Point Action Plan on Base Erosion and Profit Shifting (BEPS) in July 2013. The Action Plan seeks to address three impacts that occur as a result of multinationals structuring operations to shift profits to low tax jurisdictions.

The impacts

Businesses are impacted through reputational risk, and competitive disadvantage to those that do not or cannot undertake such structuring.

Governments are impacted through less revenue and higher costs.

Individuals are impacted through sharing a higher burden of tax.

The OECD's15 Point Action Plan on BEPS can be classified into four categories

Structural rule changes

- Address the tax challenges of the digital economy
- Neutralize the effects of hybrid mismatch arrangements
- Strengthen Controlled Foreign Corporation rules
- The treatment of interest and financing
- Rules surrounding permanent establishments

Transfer pricing

- Alignment of value creation with transfer pricing
- Outcomes in the areas of intellectual property, risk and capital, management fees and head office expenses
- Measures to deal with documentation that multinationals will need to provide

Aggressive planning and abuse of the tax system

- Deal with preferential tax regimes
- Prevent treaty abuse
- Rules to disclose aggressive tax schemes

Methodology

- Collection and analysis on BEPS
- Make dispute resolution mechanisms more effective
- Introduce a way to shortcut the need to renegotiate large numbers of tax treaties

Why is it an issue for Boards?

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

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. Have we considered the reputational implications of our company being perceived as not paying its 'fair share'?
5. Are we confident that we can explain our tax position when challenged?
6. Do we have uncertain tax positions? Are we prepared to have them scrutinized by the tax authorities and other stakeholders?
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 for changes in international tax rules? What assurance do we have over the validity and accuracy of the statements we make?

What actions could the Board consider?

- Ensure that we are kept **fully informed** both **locally** and **internationally**
- Consider how these developments could affect our **tax positions** and **planning**
- Plan for public discussion and develop a **tax narrative** – ensure that we are aware of potential questions and **challenges** from the different stakeholders
- 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
- Assess our company's **relationship with tax authorities** in the jurisdictions where we operate
- 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, business have a responsibility to engage in the discussion and debate surrounding the tax system of the future

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