



Tax and the Reputation Impact

Steps companies should be taking to prepare for the tax media storm

“In this world nothing can be certain, except death and taxes” and being viewed as not paying those taxes could put you in bother with more than just the tax authorities. What started more than 10 years ago at the height of the financial crisis with media attacks on private equity funds and “non-doms” has morphed into one of the biggest reputational challenges of our time.

“ An average of 17 articles a day were published in British newspapers in the first half of 2016, up from 5 a day in 2011 ”

The world of offshore assets and tax havens is nothing new and many a well-known figure has come unstuck by signing up to complicated tax arrangements that look as if they have got something to hide. The shift in attitudes started in the UK in 2008 with the then Labour Government proposed new anti-avoidance rules which sought to prevent companies saving tax by shifting profits out of the UK through a worldwide tax on “passive” income. The rules caused a huge backlash from companies, with some threatening to move their tax residence out of the UK. Though the rules were ultimately dropped, they marked the start of a shift in attitudes to aggressive tax planning. And just as things were changing in Britain, so it was in the US. President Obama launched a

crackdown on tax loopholes used by multinationals amid hugely negative sentiment from household business names.

Four years later in 2012, companies started to hit the headlines for their tax practices. Starbucks was reported to have paid just £8.6m of tax in the previous 14 years despite at the time being worth £25 billion and having generated £3 billion of sales in the UK since it opened in 1998. More stories followed in rapid fire with names such as Vodafone, eBay, and Microsoft all hitting the headlines over their apparently small payments to the UK Exchequer.

The Organisation for Economic Coordination and Development (OECD) formalised this changing view of tax avoidance through the Base Erosion and Profit Shifting (BEPS) Action Plan released in 2013. The ability to make changes to international tax law with multiple countries in agreement seemed impossible and many thought the project would quietly fade away as with previous tax initiatives. Finalising and publishing the reports a mere two years later likely came as a surprise to many.

Armed with amended tax legislation and the media hype around tax avoidance, the authorities have been attacking

suspected tax avoidance with gusto. In France this drive has led to police raids on MNCs suspected of avoiding tax, McDonald's being the latest to fall victim.

So what started as a fairly predictable response to the post-financial crisis austerity mood and the imperative for governments around the world to cut tax avoidance, within five short years created a reputational minefield. This is no longer just a media issue, but takes in a whole array of interest groups from investors, to consumers, analysts to NGOs.

Transparency is coming

To add fuel to the fire, on the 12 April 2016, the European Commission proposed a new Directive that would require multinational companies to **publicly disclose tax related information** including profits and cash tax paid. The data will need to be provided for each European country in which the company operates with a consolidated figure for the rest of the world. This data will not be only for the eyes of the tax authorities, but will be required to be published on the company website. Additionally, the UK has legislated a requirement for companies to publish their tax strategy giving the public both the numbers and the strategy behind them. These proposals look like the first of many to come – governments are asking for transparency, transparency and more transparency.

“ 70% of consumers say that they will think twice before buying from a company with an aggressive tax strategy ”

Putting data firmly in the hands of the public will only leave more companies open to media scrutiny.

This will likely result in even more public interest, creating social media noise and calls for boycotts.

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Managing the risk

The most important point is to accept that the mood has changed and hiding behind legal advice is simply not going to cut it. Many companies have got themselves into hot water because although their tax arrangements were legal, they have fallen foul of society's "contract" of paying reasonable taxes in the country where the profits were made. And since the pressure started building, so the law has caught up. The OECD has moved to tighten up international co-operation on tax, so moving money to lower tax regimes without moving the appropriate people and functions is going to get harder and harder to justify, and companies should take heed that sticking one's head in the sand is not going to work anymore.

Companies need to start now by reviewing the business and tax policies with a fresh pair of eyes. Focusing on the areas of concern from the European Commission and OECD, such as: (i) when transfer pricing involves financing companies whose only activities are passing-on funds or intellectual property rights; (ii) tax rulings which allow deductions for deemed payments; (iii) rulings based on a one-sided approach i.e. only determining the remuneration of one party to the intra-group transaction; and (iv) control and management of key risks, should highlight the tax Achilles heels. Businesses should then be prepared to prove that the tax polices match the economic reality, in other words, make sure your contracts and paper support the 'real deal'.

Should a company hit the headlines because of tax, be aware that everyone from customers to regulators will be quick to put the boot in and so having a robust and transparent response will be critical, and consistency key. This is not an issue that is going away anytime soon.

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