When Tax Matters Affect Corporate Reputation - Tax Strategy as a Relevant Tool for the Era of Transparency and "fair" Taxation

1. The Tendency
We live in a time where the media, politicians, NGOs and activists increasingly are preoccupied with international tax matters. A simultaneous preoccupation is observed among the OECD, G20, EU countries and most other developed countries alike. This has led to continuously increasing regulatory requirements and strengthened legislation towards companies. The tendency is clear – we are moving towards full transparency in tax matters, including information on taxes paid. Moreover, fairness in taxation or fair share taxation has become the buzzword of current times among certain policy makers. In sum it is fair to say that taxes are moving up the political and societal agenda.

International business has become increasingly exposed towards this tendency, where countries around the globe for some time now have been fighting over declining tax revenues. The latter was in particular spurred by the global financial crisis.

As mentioned fair share taxation has become increasingly important. But what does it mean? Hardly a phenomenon aimed at granting tax payers an increased sense of fair treatment from tax authorities. Fair tax is a political notion, which cannot be opposed in terms of its underlying value basis. Whenever this notion is invoked, it works as a magical password, which automatically opens the gateway for new strengthened tax legislation. In terms of politics and public relations, it would be detrimental to future career plans for any policy maker to argue against such a value based notion as fairness.

2. Potential Consequences

The recent political tendency has moreover resulted in less political emphasis on solving the problems and needs for international businesses, such as the risk of double taxation and increased tax audits. Both issues still remain largely unsolved – maybe because it is considered less political opportune to address such matters by policymakers, who seem to forget about the actual needs and interests of the large majority of businesses in the wake of the fairness debate.

The current state of debate moreover affects an increasing number of companies negatively. We have seen many companies suffering severe reputational damages, having lost public and private costumers, with significant drops in share prices – all due to negative media attention, which may be triggered although no rules have been violated, and irrespective of possible good explanations for the actual tax situation at hand. Subsequent factual corrections to the media stories do not attract the same interest in the current media landscape, whereby the damages may be of a lasting nature. Phenomena such as Luxleaks, Panama Papers have increased this tendency. Obviously, some businesses are more exposed than others. As a rule of thumb, the more consumers and public entities on the costumer list the larger the exposure. The same applies to companies, which depends on public grants or subsidies.

Top management can increasingly be held publicly responsible and be forced to appear in public and to make statements and explain themselves on tax matters. This requires well-functioning cooperation with the tax department/tax team internally, in order to prepare the top management as much as possible. Just recall the recent catastrophically public appearances in the UK hearings with top executives of certain MNEs.

3. Handling of Tax Matters by Companies

The handling of tax matters by companies has not always been approached in a strategic context. Some MNEs have developed tax policies, expressing the general view on the approach to tax matters. Hardly all companies have considered this a high priority, and as a result, the tax policy document has not been consulted very often neither by the tax team, nor by the CFO, CEO or the Board of Directors. A significant share of the companies did not (and still have not) developed a tax policy or a tax strategy exceeding a few high level statements on the corporate website. The minority has developed a distinct strategy, which is anchored in top management. However, as an international tax advisor I experience increased interest in such tax strategies and strategic thinking of tax matters.

In light of the current state of affairs, it is beyond doubt that there is a need for companies to approach taxes in a strategic context and to communicate clearly on tax matters towards external stakeholders. If not, at best the task at hand has merely been postponed for future efforts. At worst, the absence may lead to increased risk. The current era in international tax requires significant efforts by the tax teams as well as senior management. Currently, transparency and external communication seems inevitable. Within a complex and technical field such as international corporate tax, such tasks may not be easy to handle, although they are necessary.

4. The Need for a Tax Strategy

A good tax policy can demonstrate to the public, how taxes are handled by the company, especially in an era of transparency. At the same time it makes sense to develop an actual internal tax strategy, determining the guidelines for the daily tax work as well as for long term tax work, while preparing to avoid reputation damage and preparing for the constantly increasing appetite for public insight in corporate (tax) matters.

The tax strategy can describe the overall principles in terms of the company’s approach to tax planning, compliance, risk appetite, public disclosure, media attention, communication about taxes and tax audits. Moreover, it may contain a description of the short-medium-long term initiatives that should be addressed, and how.

In fact there is no good reason to postpone the task. In my view it would be a mistake if the task is not highly prioritized. It does not have to be a large and unmanageable task. On the contrary, there are good experiences to make this as practical and hands-on as possible, while ensuring buy-in within the organization. Value is best ensured through alignment within the tax team, with the CFO, the Audit committee, the Board of Directors and the media/communications team.

Unfortunately, experience demonstrates that few tax directors report directly to the chairman of the board. In light of the recent emphasis of tax matters alongside human rights and environmental issues, this seems less sustainable. Tax reporting should be directed to the board as well, in order to control significant risks, including reputational risks.

Tax directors and tax teams could be right in knocking the door of the chairman of the board in order to request a direct line of communication to the board and the audit committee. It seems nothing but a fair request to consider the tax teams as a recognized business partner, which can contribute to the promotion of the company’s interest, including reputational issues. Such a proposal evidently requires a modified skillset for the tax team, where the previous emphasis on compliance, reporting, transaction planning seems over. As an add-on task, the tax department should participate in a dialogue with the board in order to map and handle the future tax strategy as an integral part of the business model. This is best ensured through a direct line of communication to top management and not only through a direct line of communication to a controller, a treasurer or head of accounting.