

# Boardroom Questions

## BEPS & the tax transparency debate

### Factors driving the debate

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

These factors are behind the Action Plan for Base Erosion and Profit Shifting (BEPS) that is currently implemented in many countries around the world. The Action Plan and its implementation within the OECD and numerous other countries address three impacts that occur when multinationals structure their operations to shift profits to low tax jurisdictions.

### The impacts addressed by the BEPS reports



#### 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.

#### Why it is 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 resources** to plan and manage stakeholders including investors, customers, suppliers, employees
- **Tighter controls** possibly required, necessitating new systems and **analytics expertise**

#### Boardroom questions

- Is your **Board's policy** adapted to the new tax landscape and the tax morality debate? Are you prepared for the changes in international rules?
- Is the policy sustainable and commensurate with your **corporate goals and ethics**?
- Do you have **uncertain tax positions**? Are you prepared to have them **scrutinized by the tax authorities** and other stakeholders including the media?
- Have you considered the **reputational implications** of your company being perceived as not paying its "fair share"?
- Are you **confident** that you can explain your tax position when challenged?
- Do you have the **right control mechanisms** in place to ensure that you are paying the "right" amount of tax on time and in the right jurisdiction?
- What assurance do you have over the **validity and accuracy** of the statements you make?

# The OECD's BEPS 15 point Action Plan: 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
- Govern the treatment of interest and financing
- Implement rules surrounding permanent establishments

## Transfer Pricing

- Align value creation with transfer pricing outcomes in the areas of intellectual property, risk and capital, management fees and head office expenses
- Define measures to deal with documentation multinationals have to provide

## Aggressive planning and abuse of the tax system

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

## Methodology

- Perform 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

## What can your Board do?

- Ensure that you are kept **fully informed** both **locally** and **internationally**
- Consider how the final BEPS reports and their implementation already affect and will affect in the future your **tax positions** and **planning**
- Plan for public discussion and develop a **tax narrative** – ensure that you are aware of potential questions and **challenges** from the different stakeholders
- Think **“reputational risk”** to ensure that tax decisions consider this aspect and not just whether your company has complied with tax laws in various jurisdictions
- Assess your company's **relationship with tax authorities** in the jurisdictions where you operate
- Ensure that **tighter controls** are in place together with increased **analytical skills**

Calls for (even) greater tax transparency will no doubt continue beyond the implementation of BEPS by numerous jurisdictions. Businesses will need to ensure they can fully explain and justify their tax figures. Simply complying with

the law in various jurisdictions, without due regard to potential reputational risks, is no longer enough. Above all, business have a responsibility to play an active and constructive part in the debate about future tax policies.

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