KPMG

Personal Perspectives

KPMG Private Client Magazine

2017

KPMG.co.za

Introduction

Welcome to the second edition of our Private Client tax publication, Personal Perspectives. Tax compliance continues to be on the top agenda for both government and corporates. Taxpayers and civil society are asking the right questions in terms of stakeholder accountability on proper tax expenditure.

The global transparency and illicit flow of funds debate has intensified. The era on exchange of information and country by country reporting has kicked off and legislation has been tightened to ensure that the movement of funds out of the country is properly tracked and any failure to declare is penalised. The Special Voluntary Disclosure Program deadline was the 31st of August 2017 and going forward individuals would have to adhere to the VDP process as stipulated by SARS.

Tax authorities across the globe are now more focused than ever on ensuring that collection is thorough and complete, putting increasing pressure on companies to comply with regulations. Complexity is also on the rise, and family businesses must process vast amounts of data to ensure that the correct amount of taxes are paid. Tax authorities don't just want returns filed accurately and on time, but also seek confidence in taxpayers ability to get their numbers right.

As a result, tax compliance costs are on the increase and the compliance burden takes valuable time away from time to be spent on other strategic business activities. Failure to meet your obligations in all jurisdictions can result in reputational damage as well as financial penalties.

Tax experts are in agreement that disputes between taxpayers and SARS have increased in recent years. A contentious dispute environment has arisen, as SARS is conducting more vigorous audits and remains reluctant to accept and finalise settlement agreements. This correlates with the results of a recent global benchmarking survey conducted by KPMG in 35 countries regarding disputes and audits, which revealed a marked increase in dispute and audit activities between SARS and taxpayers in recent years.

New legislation on deemed interest on Trust structures was imposed from 1 March 2017. The deemed interest is now the difference between the official interest rate and any interest actually charged.

The KPMG Global Initiative of Responsible Tax has placed the tax compliance and accountability aspects as cornerstones in the sustained development framework for any economy.

We hope you enjoy this new edition of Personal Perspectives. As always, if you have any comments, feedback or suggestions of what you would like us to cover in future issues, please do get in touch.

Dermot Gaffney
Head of Tax Markets
T: +27 82 686 9345
E: dermot.gaffney@kpmg.co.za

Content

1 Is there a lack of Trust?

Following our article in the first edition, 'Who do you Trust?', there have been fairly significant developments in respect of two regulatory bodies revealing their stance on trusts:

– The first is the South African Revenue Service (**SARS**), which is looking to remove the perceived tax avoidance benefits of the structures high net worth individuals (**HNWIs**) have put in place to preserve wealth, often generated from their successful family business(es), for their family and, in many cases, the future generations of the family.

– The second is the Master of the High Court, who recently issued a directive requiring family business trusts to appoint an independent trustee to ensure the appropriate administration/governance of trusts.

Although families are generally not prepared to 'corporatise' how they manage their family enterprises and wealth, there is a trend to 'professionalise' their approach in this regard. The key objective of this is to protect both the family business and the family wealth from the 'normal, yet unpredictable, challenges' that family involvement brings.

Accordingly, what do those charged with governance, of the family wealth and the associated family enterprises, need to consider with regard to the recent regulatory changes?

SARS's anti-avoidance tax considerations for loans to trusts

Current anti-avoidance tax legislation

The most recent change to the tax legislation[1] (effective 1 March 2017) introduced an anti-avoidance provision[2] to prevent, what SARS views as, estate duty and donations tax avoidance through the use of interest-free or low interest loans made to a trust (**affected loans**) which often houses growth assets.

Affected loans are specifically legislated to include loans/credit advanced by a natural person directly or indirectly to a trust, where that natural person and the trust are connected persons, and is also applicable to loans to companies who are connected persons in relation to such natural persons or to the trust, which lend to the trust.

Of course, certain loans (e.g. to fund the acquisition of a primary residence or Sharia compliant financing arrangements) and/or specified trust structures (approved PBOs and special trusts) are excluded from the scope of the anti-avoidance provision[3] but, as can be seen these are very specific situations.

In its current form, the anti-avoidance provision seeks to levy a donations tax charge at the rate of 20% on interest foregone in respect of affected loans. The interest foregone is calculated as the difference between the official rate of interest (currently 7.75%[4]) and the interest (if any) actually charged on the loans. The donations tax charge is levied in the hands of the natural person (the taxpayer) at whose instance the loan was granted, and will be triggered at the end of the taxpayer's year of assessment.

[1] Tax Laws Amendment Act of 2016

[2] Contained in section 7C of the Income Tax Act No. 58 of 1962 (the **Income Tax Act**)

[3] Section 7C(5) of the Income Tax Act

[4] Repo plus 1%

Thus, as the most common mechanism to fund trusts, such affected loans are now subject to an additional tax cost in the form of the deemed annual donation triggered by the anti-avoidance provision.

Proposed update to the anti-avoidance tax legislation

These days SARS appears to be more in-tune with transactions taxpayers implement 'on the ground', and in response to certain debt restructuring transactions effected by taxpayers to mitigate the additional tax cost discussed above, SARS has proposed amendments to the current anti-avoidance legislation.
The two relevant proposals included in the recently released first draft of the 2017 Taxation Laws Amendment Bill (**2017 TLAB**) seeking to curb the recent schemes are:

- The first is to expand the reach of the currently effective anti-avoidance provision, to include interest-free or low-interest loans, advances or credit made by an individual or a company (at the instance of an individual) to a company that is a connected person in relation to a trust.
  In our view the current version of the proposed amendment is too broad and may subject loans made to companies which are in no way related to a trust, other than the common shareholder/ beneficiary, to the anti-avoidance provision. It is evident that a refined update will be presented in the second draft of the 2017 TLAB.
- The second seeks to curb the individual taxpayer, subject to the anti-avoidance provision, from transferring their loan claim against the trust to another person, usually a current beneficiary of the trust or a future beneficiary of the trust, such as a child or a spouse. There is argument that the transfer of the loan claim breaks the link between the natural person who initially *provided the* advance, loan or credit (a requirement of the section) and the loan.
  To remove any uncertainty in this regard, the proposed amendment will, in essence, *deem* the person who acquires the loan claim to have *provided* the amount of that claim as a loan on the date that person acquired that claim. Thereby, the anti-avoidance provisions (resulting in donations tax) will apply.

Once promulgated, the proposed changes to the anti-avoidance provision will be effective from 19 July 2017.

Independent trustee requirements

The second regulatory change aligns with the global trend for family owned and/or managed enterprises to 'professionalise' how they manage their family enterprises and wealth.

With particular reference to the investment structures/vehicles (specifically trusts) families have put in place to manage the family assets and wealth, the Chief Master (of the South African Master's office) recently formalised the requirement for newly registered family business trusts to appointment an independent trustee. The practice of the Master's office insisting on an independent trustee being appointed has in fact been on-going since judgement was laid down in the Parker case (2004)[5]. However, because it was merely a judgement and not a legislative change, it created uncertainty as to whether the practice of the Master's office could be contested. The recent directive (number 2 of 2017) issued by the Master's office has now put it beyond doubt that it is a requirement for newly registered family business trusts to have an independent

[5] Land and Agricultural Bank of South Africa v Parker and others 2005 (2) SA 77 (SCA)

trustee (unless good cause is shown via a representation to the Master).

The Master's requirement of appointing an independent trustee is to ensure that adequate separation of control over the assets of the trust from the enjoyment thereof (by the beneficiaries) is maintained. This, in our view, should assist those charged with governance to protect both the family enterprises and the family wealth from the 'normal yet unpredictable challenges' that family involvement brings.

This regulatory change for South Africa further aligns with the governance structures of offshore trusts, where it is common practice to have an independent offshore trust company.

Implications for those charged with governance?

For those responsible with putting in place governance structures/processes to manage the family enterprises and the family wealth, these two regulatory changes will be key to how the family wealth is managed in terms of the vehicles (trust or company) in which the assets are housed and, importantly, how such vehicles are funded..

The more worrying situation arises where high net wealth (**HNW**) families do not have any formal governance structures/processes in place to monitor and timeously account for such regulatory changes.

Strengthening governance within the family enterprise context

KPMG Enterprise promotes the trend for family owned and/or managed enterprises to 'professionalise' the governance processes/structures to support the family enterprises and the wealth of the family for not only the current and next generation, but for the many generations of the future.

As such, no matter what vehicle(s)/structure is put in place to manage the family enterprises and the wealth of the family, regulatory changes should be attended to timeously because of the good governance principles applied.

The principles behind the Master's requirement for an independent trustee can, however, be extrapolated and taken to the next level, being the appointment of an independent trusted advisor who is able to facilitate how a family goes about making decisions which effect both the family enterprises and the family wealth. The independent trusted advisor should be in a position to remove the emotion from such decisions given the 'normal, yet unpredictable challenges' that family dynamics brings.

Are there any clear choice alternatives to the additional tax cost arising from the recent and proposed changes?

Some HNWIs and their families have been looking at ways to mitigate the annual donations tax cost the anti-avoidance provision triggers, while maintaining the non-tax commercial benefits (in most cases the primary rationale for setting up the trust structure) of a trust structure owning the family assets. Ultimately, preservation of the family wealth is the primary focus in mind.

In light of the proposed update to the anti-avoidance provision set out in the 2017 TLAB, there may be some solutions which can be implemented in a manner which may assist many of the impacted trust structures. Some of the solutions, yet to be tested, look beyond a trust structure, with a focus on maintaining the longevity of the assets.

As with all HNW families, each family's situation is different (eg different trust structure / different assets / different levels of interest-free funding), and thus there is no one single solution (silver bullet) that will fit every scenario. In most cases, it could come down to a combination of solutions.

Let's discuss

Should you wish to discuss any questions you have in respect of the recent regulatory changes, or family governance considerations, please contact the one of our specialists:

Creagh Sudding
Enterprise: Family Business – Western Cape
T: +27 (0) 82 719 1995
E: creagh.sudding@kpmg.co.za

2 Global automatic exchange of information

The global automatic exchange of financial information between tax jurisdictions (commonly known as the Common Reporting Standard ("CRS")) means that detailed financial information would automatically be shared between jurisdictions on an annual basis as from September 2017, i.e. right after the closing of the SVDP window.

The CRS will assist governments to reduce the possibility for tax evasion by providing for the exchange of non-resident information with the tax authority in the taxpayer's country of residence.

Comments from SVDP specialists at the start of 2017 opined that the SVDP might yield less than expected. It was mentioned that High Net Worth Individuals ("HNWI's") were reluctant to disclose their offshore assets because "… people are suspicious about coming clean and concerned about the expensive nature of the programme." The expectation that the SVDP would raise between R10 billion and R15 billion was said to be mere conjecture. The limited SVDP relief also meant that HNWI's might consider leaving South Africa, rather than to part with a substantial portion of the illegally-accumulated offshore assets. But, despite the SVDP's short-comings, tax practitioners warned that it was unlikely that individuals would get away with non-disclosure going forward. The international landscape was becoming increasingly transparent and the automatic exchange of information worldwide was a much bigger issue than amnesty.

Furthermore, there was the risk that international financial institutions might ultimately shun HNWI's with undisclosed assets, forcing them to either regularise or to move / close the tainted accounts.

Since the jury is still out regarding the ultimate uptake of the SVDP, the million dollar question for HNWI's remains: do I apply under the current SVDP dispensation or do I adopt a wait-and-see attitude to see whether there comes another (and maybe a less costly) regularisation opportunity going forward?

Over the long term tax confidentiality will wane and detection risk will increase

Liberal Western democracies impose tax through statute. The old English case of *Partington* held that "If the person…comes within the letter of the law he must be taxed, however great the hardship might appear to the judicial mind to be." Hitherto, taxpayer confidentiality has been the "bed-rock" of global tax administration. Tax confidentiality was supposed to allow taxpayers to make honest and full disclosure.

Following the Global Financial Crisis ("GFC") and its dire consequences, there has been a strong world-wide shift to tax transparency. The OECD claims to have presided over a "tax transparency revolution" since 2009. There even are expectations that tax transparency would result in the present international tax system becoming more just and equitable.

It is important to note that tax confidentiality is at odds with the general "default position" of transparency that prevails in liberal Western democracies. Joseph Stiglitz, for example, argues "…that there should be a strong presumption in favor of transparency and openness in government." Academics point out that the arguments in favour of transparency, and that open government was an essential element of a functional liberal democracy, could be traced back to the beginnings of modern liberal democratic theory. One thus finds traces of transparency's grounding in the classical liberalism of Locke, Mill, and Rousseau, as well as Bentham's utilitarian philosophy and Emmanuel Kant's moral philosophy.

Whereas transparency is regarded as a virtue of liberal democracies, secrecy is seen as negative. The German theorist Max Weber commented on the inherent nature of bureaucracies to be secretive and for the professional insider to finding ways of keeping secret its knowledge and intentions. Jeremy Bentham likewise warned that secrecy, being "an instrument of conspiracy…ought not, therefore, be the system of a regular government." So Stiglitz observes that "the issue of secrecy in matters of public affairs has been long a source of public concern" and that "…secrecy is corrosive: it is antithetical to democratic values, and it undermines democratic processes."

Following Habermas' reasoning the argument is that government should give public justifications for its policies and promote rational, critical public debate and unrestricted communication in order to enable development of a functional, democratic public sphere. In short, liberal democratic theory requires the state to give an account of itself to its public and to justify its actions to the individual and community.

As Stiglitz shows, secrecy reduces the information available to the citizenry, hobbling their ability to participate meaningfully. Accordingly, for Stiglitz, transparency would be one of the major attributes of a good tax system.
In taxation the interconnectedness between secrecy, tax havens, tax evasion and criminality is well-documented. Sociologist Georg Simmel warned against the dangers of secrecy (which he saw as "consciously willed concealment") in 1906 already. He was prescient in warning more than a century ago that the danger of secrecy particularly manifested itself in "dealings with foreign money."

Whereas transparency is seen as foundational to liberal democracies, regards taxation writers have referred to the prevailing "tax privacy exceptionalism," i.e. taxation has thus far escaped the global transparency tsunami. However, in light of the consequences of the GFC, the growing global inequality and the groundswell of support for greater tax transparency, it's probable that the shift to tax transparency would gain momentum. As one academic put it: "Tax information is no longer exceptional."

All indications are that, going forward, tax confidentiality will come under increasing pressure and will be watered-down. The OECD's recent CRS and BEPS initiatives bear testimony to this trend. Simultaneously world-wide bank secrecy is being eroded, especially in Switzerland, long seen as impenetrable when it came to foreign tax authorities accessing personal financial data. Hand-in-hand with this goes the threat of data theft which unscrupulous employees steal from financial institutions to on-sell to well-paying tax authorities.

The US IRS recovered USD 15 billion in back taxes and penalties from American HNWI's and the whistle-blower reward paid to Bradley Birkenfeld amounted to a staggering USD 104 million. In his recently published book ("*Lucifer's Banker*"), Birkenfeld takes credit for having single-handedly "destroyed Swiss Bank Secrecy."

In short the answer is that prospective applicants who decide "to take their chances" by not accessing the available SVDP might soon find that the world has changed fundamentally and that "ducking and diving" is becoming increasingly hazardous the world over.

Eligible SVDP Tax applicants

The SVDP Tax is open only to individuals and companies. Trusts do not qualify for the SVDP Tax, but settlors, donors, deceased estates and beneficiaries of foreign discretionary trusts may participate in the SVDP Tax, provided they elect to have the trust's offshore assets and income deemed to be held by them personally for tax purposes.

Persons may not apply for the SVDP Tax if they are aware of a pending audit or investigation in respect of foreign assets or foreign taxes or where an audit or investigation in respect of foreign assets or foreign taxes has commenced already. (Note, this exclusion from the SVDP is not absolute, and depends on the actual scope of the audit or investigation underway.)
The shift to tax transparency means that, going forward, the odds are heavily stacked against those who prefer to wait-and-see.

With the SVDP window now closed, applicants would need to follow the standard Voluntary Disclosure Programme (VDP) process. For more information, contact the SVDP team.

Contacts

Elle-Sarah Rossato
Associate Director, Corporate Tax
E: elle-sarah.rossato@kpmg.co.za

Finn Elliot
Associate Director, Corporate Law Advisory
E: finn.elliot@kpmg.co.za

3 UK transparency for non-UK companies

Do you own a UK company, a UK business, or property through a non-UK company? Are you aware of the legal obligations, including those which bring personal obligations for individuals who are the ultimate owners?

Non-UK co owns UK co

The existence of a UK company, whether it is owned by a direct shareholding or via a non-UK company (non-UK co), triggers legal obligations in the UK. Some are the responsibility of the UK company's directors, but others look through a non-UK co and are the personal responsibility of the ultimate individual shareholders.

A UK company is required to create and maintain 'statutory books' comprising registers of members, directors, charges and now also a 'PSC' register (people with significant control). In addition the company needs to file an annual confirmation statement and accounts.

It is important to comply with these legal obligations. Failure to do so can be a criminal offence and can also have commercial ramifications. For example, if a potential sale, a new investor or simply raising more finance is on the agenda, statutory records will be checked during any due diligence work undertaken before a transaction can go ahead.

From April 2016, un-listed UK companies must maintain a publicly available register of individuals who ultimately exercise, or have the right to significant influence or control over the company (a PSC). These rules also introduce new legal obligations for the individuals who are themselves a PSC.

Only an individual can be a PSC. Where a UK company is owned by a non-UK co, it must 'look through' its structure to identify any individual who ultimately is a PSC.

The existence of a UK company triggers legal obligations to maintain a 'PSC' register.

For further information about PSCs including who is or may be a PSC see: kpmg.com/uk/pscregister

Each UK company must take 'reasonable steps' to identify its PSCs. There is no guidance on what actions the company must take as 'reasonable steps', but failure to do so is a criminal offence for the company's directors.

In turn, any individual who is a PSC is obliged to notify the company within a month of becoming a PSC (unless they have received a notice from the company). Failure to comply (including not responding to an information request) is a criminal offence which can lead to a fine or imprisonment and a company may find itself obliged to disregard shareholder rights to vote or transfer shares or receive dividends if an incomplete response to its requests is received.

Non-UK co owns UK business

Even if there is not a UK company, trading, undertaking a business, regularly conducting business or just having a place of contact in the UK can all result in a UK business which is legally obliged to meet certain filing requirements in the UK.

For example, a non-UK co such as a Jersey company, undertaking a UK business would normally (depending on where the company is incorporated) be required to file a form of accounts with companies' house.

Non-UK co owns property

There are proposals for a UK register recording the ultimate individual owners of non-UK co which own property in England and Wales. Non-compliance could result in civil and criminal sanctions and restrictions to the charging, sale and assertion of rights in relation to the property.

Action required

Whilst superficially it might seem that a UK company, UK business or property appear to be hidden if owned by a non-UK co, both the ultimate individual shareholders and any companies in the structure need to take care that they understand their legal obligations and do not allow them to be masked behind the structure.

For further information see:
kpmg.com/uk/legalservices
Courtesy of KPMG UK member firm

Contacts

Richard Phillips
Director, Legal Services
T: +44 (0)207 694 5667
E: richard.phillips@kpmg.co.uk

Rebecca Flanagan
Senior Manager, Legal Services
T: +44(0)207 311 3074
E: rebecca.flanagan@kpmg.co.uk

4 Would you like to live in the UK?

With an impending Brexit, we are expecting to see restricted access to the UK for EU citizens – but the UK is still a welcoming and very attractive place to relocate to.

With beautiful countryside and vibrant cities, many seeped in history and abundant with culture, the UK has much to offer. Combined with a settled and rewarding lifestyle the UK is a compelling place to work and live.

Despite the anticipated changes restricting access to the UK for EU citizens, there are still many ways for non-UK nationals to apply for access to the UK. Although this could also change in the future, one route, which is currently only used by non-EU nationals (EU nationals currently have unrestricted access), is the investor visa.

With the purpose of encouraging overseas investment to help drive productivity and the growth of the UK economy, the Government currently allows non-UK nationals a visa if they invest in the UK.

Many non-EU citizens have invested in the UK with a view to being allowed to live in the UK and some use this investment as a route to UK citizenship. For others, it is purely a financial consideration and a UK visa can be a useful by-product.

A Tier 1 Investor visa is for those willing to invest a minimum of £2m in the UK. In return they are allowed an initial three years and four month visa which provides access with the possibility of continuous two year extensions if certain criteria are met.
After five years, an investor may be eligible to apply for Indefinite Leave to Remain (ILR or 'Permanent Residence'). There are also programmes available for £5m and £10m investments, each with progressively shorter terms to reach ILR.

Benefits of the investor visa

Provided the conditions set out by the UK Home Office are met, there are relatively few requirements for applicants. With no initial language requirement and no requirement to work, this is a very popular way to access the UK. As funds can include inherited or legally acquired funds from other sources, for those with sufficient enough wealth, no previous 'business experience' is needed.

The investor visa allows applicants to bring partners/spouses and children under 18 years, all of whom have full access to work (except doctor or dentist in training) and education in the UK. Ultimately, an investor visa can lead to citizenship and a British passport.

Pitfalls

Some of the most common issues that befall applicants in this category is meeting visa compliance requirements.
This includes investing within 90 days of entering the UK into a qualifying investment, maintaining the investment level and more importantly, not thinking through their personal strategy from the outset.

Additionally, there is much administrative housekeeping to keep in order, such as the need to register, calculate and pay UK tax.

Personal strategy

Before making decisions on the level of investment, it is worth considering the reasons for wanting an investor visa.
The investment strategy should align with considerations such as whether the individual wants more permanent residence or whether they view their move to the UK as temporary.

Time outside of the UK and language skills will impact on eligibility for ILR and citizenship, so it is important to identify objectives and make clear decisions from the outset.

Conclusion

The UK is encouraging investment by overseas individuals, with many factors to consider, good advice is essential.

For further information see:
kpmg.com/uk/legalservices

Courtesy of KPMG UK member firm

Contacts

Greg Limb
Partner, Private Client
T: +44 (0)207 694 5401
E: greg.limb@kpmg.co.uk

Paul Jones
Senior Manager, Legal Services
T: +44(0)207 311 1475
E: paul.jones2@kpmg.co.uk

5 The responsible approach for taxes and taxation to enable the developing world to flourish

Among a variety of conversations, the topics that took precedence at the KPMG South Africa Roundtable on 04 July 2017 were ones that are important to the ordinary citizen as well as business: what makes tax a fundamental part of the functioning of society, the role of government in the tax system as well as whether or not there is transparency in tax.

The theme of the round table was: "Why is Responsible Tax in a developing economy so crucial for stability, infrastructure projects and social inclusion? What is the responsible approach for taxes and taxation to enable the developing world to flourish?"

Referring to the SDG 17.1: "*Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection*", the roundtable moderator noted that according to the IMF, once the tax to GDP ratio reaches about 15% there is a step change in economic development; it has also been estimated that to reach the SDGs a ratio of about 20% is required.
Many developing countries are below these thresholds while developed countries typically have a ratio of over 30%. It was asked if the issue is that developing countries are not raising enough tax and how this could be addressed.

Overview

Attendees came from a wide background: Industry Bodies (Institute of Tax Professionals; Institute of Chartered Accountants); Corporations; the Tax Ombud; the Davis Tax Committee; Chamber of Mines; King Committee on Corporate Governance; Civil Society; Academia and Social Entrepreneurs.

There was a clear and unanimous feeling that, especially in South Africa, business and citizens believe that they are being overtaxed. During the 1990s the amount of tax collected increased as the economy grew but this is now in reversal. The economy has stagnated but people see the number of civil servants and the bureaucracy increasing.
Government's response appears to be introducing more and more taxes - sugar tax, plastic bag tax and potentially a wealth tax - or increasing the personal tax rates but people are not seeing the benefit. There is a belief that there is a lot of inefficiency, bureaucracy and also corruption. It was noted that there is a real possibility of a tax revolt whereby citizens will refuse to pay tax (already there has been a revolt against the etolling charge and about 20% of people simply refuse to pay this).
It was recognised that if there was a tax revolt it would seriously undermine tax morale; once people stop believing that paying tax is part of the social contract it is very difficult to re-establish voluntary compliance.

The key issue which was identified was the lack of trust between government and taxpayers. Taxpayers are unwilling to pay more tax and government is afraid to enter into a dialogue about how to resolve the issues. It was noted that if the tax collected was invested wisely in improving the economy this would create economic growth which would in turn increase the overall tax take allowing more money to be invested back into the community.

Themes which emerged were the need:

- To rebuild trust;
- For government to be accountable and transparent and for people to see how tax spend benefits them;
- For clarity about policy;
- For investment in and strengthening of the tax authority;
- To widen the tax base and ensure that all taxpayers (whether high net worth individuals or SMEs) paid the tax due;
- For companies to be more transparent about all the tax they paid and collected, in which countries, their tax strategy and their wider contribution to society; and

– The mining sector is not a cash cow; it needs support in order to create jobs.

Part 1: The Stakeholders

The first part of the round table focused on the role of different stakeholders in the tax system.

Government & tax morale: Transparency over policy and tax expenditure

If people know where tax is spent they are encouraged to pay voluntarily. There is a need for transparency from government as to how the tax raised is spent. Furthermore people need to see that the expenditure has an effect on their lives, in the places where they live and work. When taxes appear to disappear into a black hole, tax morale is undermined.
It was argued that citizens and taxpayers need to have rights that are enforceable against governments in court.

Tax authorities

There was a general perception that tax authorities in Africa are under resourced. More and more taxes are being introduced which puts pressure on collection; they have to deal with very complex rules such as transfer pricing and they are underfunded. Rather than initiating an open dialogue with companies about where they see risk areas they will simply raise an assessment. Sometimes this is accompanied with personal accusations against the tax department. Companies need to behave responsibly and openly but this also applies to tax authorities.

The Profession

The profession has an important role to play in education the public about tax policy. It was recognised advisers need to engage with clients over what constitutes responsible tax planning.

Part 2: Types of tax

The second half of the discussion focused on different types of taxes.

Corporation tax

The general view was that corporation tax should not be increased. The issue however is not so much one about the statutory rate but the base. On the one hand where there is tax avoidance it means that the tax is not being collected so there is a temptation (which should be resisted) to increase the tax burden on compliant companies. On the other, where tax systems does not give proper deductions for expenditure, even if the rate is low the overall tax burden is high. What is needed is a system which properly taxes income and relieves expenditure and is then enforced across the board.

Personal tax

It was felt that the top rate of tax was high enough and should not be increased. There is a need to broaden the tax base so that more people are paying income tax. The reason why this is not done is largely one of tax authority capacity rather than fairness. It is the case that there are high net worth individuals who are avoiding personal income tax. This was noted as a problem particularly outside South Africa – in countries such as Nigeria – where the tax paying percentage of the population is very small.

VAT

VAT is badly managed in South Africa. Refunds are not paid or take an inordinate amount of time. Sometimes VAT is treated as a multiple customs duty rather than as a true value added tax. It was thought it would be necessary to increase the tax in South Africa due to the fiscal deficit and it would be necessary to find ways of compensating poorer members of society to mitigate the regressive effect.

Wealth tax

There has been a proposal for a wealth tax in South Africa. The general view was that South Africans are so angry about the current tax burden and lack of visible return for what they pay, that introducing a new tax at present would not be productive.

Chris Morgan
Head of EU Tax Group
Portal: Global Responsible Tax initiative.

kpmg.com/socialmedia

kpmg.com/app