Taxation

Tax legality vs tax morality: A brand reputation issue?

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In the last year, the focus on the tax affairs of multinational companies has seldom been more intense. Fuelled by sluggish economic recovery and in the wake of burgeoning fiscal deficits post the GFC, governments are under severe political pressure to stabilise their tax receipts and plug the growing fiscal gaps. A key area of focus which has emerged is the tax contribution of multinationals. Beyond simply complying with the letter of the law, governments are concerned that many multinational groups are taking unfair advantage of the global tax system to avoid paying their "fair or moral share" of tax.

The momentum of the debate has gathered steam at a global level. The issue has grabbed the attention beyond the traditional stakeholders of government and tax authorities and now new, non traditional stakeholders are also weighing in. These include the media, non-government organisations, politicians, charities and importantly, consumers.

As a result, the tax behaviour of multinationals is being scrutinised and examined by a much wider audience than ever before. The tax behaviour of multinationals is now a highly emotive issue and has the potential to negatively (and in some cases, positively) impact the multinationals' brands and corporate reputations.

Multinationals with well known consumer brands are especially susceptible to brand and reputational damage in the event that they are perceived by their customers to have avoided their "moral obligation" to make an equitable contribution to society through the tax system - despite the fact that most comply within the letter of the law.

This issue will gain momentum over the coming months both globally and in Australia. The OECD has recently published an action plan to address their concerns around Base Erosion and Profit Shifting (BEPS). The plan targets a number of perceived "tax concerns" - including addressing the digital economy's tax challenges, transfer pricing, excessive debt funding and permanent establishments - and sets out a timeline of between 12 and 18 months to action. One theme that comes out clearly from the action plan is the need for multinationals to be more transparent about their global tax affairs.

Australia at the forefront

The OECD action plan was quickly endorsed by the finance ministers of the G20 countries governments, evidencing the political momentum behind the issue. Australia will chair the G20 later this year, and has already stated that it will use its presidency to continue to drive this issue.

In many ways, Australia has already started to address some of the actions of the OECD action plan, showing other countries a roadmap for unilaterally tackling some of the perceived problems.

Australia has recently enacted modernised, more robust transfer pricing rules and announced new stricter debt funding rules and general anti-avoidance rules.

Australia's Assistant Treasurer also recently took the unusual step of naming and shaming a number of major multinationals over international tax planning and the impact it is having on Australia's tax revenue base.

Continuing the drive for greater transparency, a Tax Bill has recently been passed requiring the ATO to publically report for companies with greater than $100m turnover, the companies' annual income, taxable income and tax payable. This reporting is to commence from the 2013-14 financial year. This drive towards increased transparency is likely to be part of a more global trend towards greater tax transparency reporting.

Further, in the last two months, a BEPS taskforce has since been set up within the ATO to investigate the tax affairs of multinationals doing business in Australia. And finally, in the recent Federal budget, just over $100 million in funding was allocated to the ATO to enable it to increase its compliance activity in relation to multinationals.

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Impacts on brand and corporate reputation

These global and local tax developments have taken the risk of brand and corporate reputational damage to new levels. The modern day consumer is probably more connected to a company's brand than ever before. Developments in social media have facilitated increased awareness amongst consumers of the societal contribution being made by the corporate owners of their favourite brands.

For those multinationals that are judged by their customers to have "loose tax morals", the results can be catastrophic. In the UK for example, consumers recently protested outside a well known chain of cafes because they believed the group was not paying their fair share of tax to the UK government. In response, the group took the unprecedented step of making a voluntary payment to the UK revenue office to abate the damage being done to its business and brand reputation. Several other companies have faced similar levels of scrutiny in the UK and elsewhere.

Other interesting developments out of the UK include the Fair Tax Campaign which awarded Fair Tax Marks to a number of well known UK retailers in an attempt to assess their general tax conduct. This development poses a number of interesting questions - what if governments introduced such a measure as an attempt to increase transparency of the issue? How would it change the buying behaviour of customers? What would such an action say about your company and your brands?

What should multinationals be doing?

It is clear that in the current environment the risk of damaging repercussions for brand and corporate reputation is high. As such, tax can no longer be viewed as simply a regulatory issue isolated from the business. Indeed, its inherent complexity lends itself to potential misinterpretation with potentially far reaching consequences for the business as a whole. Acting within the confines of international tax law may no longer satisfy socially aware consumers and multinationals will need to help their customers understand what should be perceived as "fair" or "moral" with regards to tax.

Whilst multinationals are still coming to terms with these developments, there are a number of key questions around risk management that CFOs and CEOs of multinationals should, as a minimum, start thinking about:

- How do you balance your obligation to shareholders to maximise after-tax returns with the view of many of your consumers that multinationals have a moral obligation to pay their fair share of tax?
- Who are the key stakeholders for this issue and how do you educate them about your global tax position?
- What is your assessment of your company's risk and would it align with that of your stakeholders?
- In response to the push for companies to pay their "fair share" of tax, some countries are changing long standing tax laws with little or no notice. Are you prepared for such a change? Do you understand the political climate in the key countries where you have a presence?
- When was the last time your tax strategy was updated? Does it consider these issues or is it time for it to be refreshed? Does the Board have a perspective on this?
- Are the Board and senior management across the global environment and the potential financial and reputational impact this debate could have on your organisation?
- What if there was a consumer protest about your tax affairs? How would you respond? Is it enough to say that you comply with the law and maximise shareholder returns?
- Does the current environment for increased transparency provide you with an opportunity to differentiate your brand and disclose more tax information than is currently legally required?

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WL127006817