The Effective Board
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Dealing with tax at board level

Thanks to recent controversies, tax is now moving up the board agenda – or should be. Public pressure and NGO noise means a cry of "pay your fair share" could strike at your reputation. And the politicians and authorities will soon get involved. But at the same time shareholders expect a low and competitive tax rate and competitors could be gaining commercial advantage from clever tax planning. Whatever balance is struck between these conflicting pressures, it will be the board's fault if it goes wrong.

Tax is complex and tricky. So boards can be reluctant to discuss it because most directors aren't – and don't want to be – tax experts. But boards don't need to out-expert their executives to be effective. The key, as with many other technical areas, is to approach it as a managed business process. And to remember that it's a strategic and risk issue – not just a question of compliance which can be delegated away from the board level.

Good practices to consider...	Things to avoid...
Approach the issue of tax management as a system or framework that needs to be followed. You can then see more clearly where and how the board can add value in terms of direction, strategic choices and ensuring accountability.	Looking too much at the detailed issues. This will draw you into attempting the kind of decisions that you employ the tax director to make.
The board's primary job is to get solid assurance that the tax experts are fulfilling their mandate – and that the mandate is appropriate. This needs objective critical thinking not a deep understanding of tax. Treating the tax function like any other business process means you can use your director skills to assess its management in terms of vision, values, organisation and competence.	Running for cover because it's all far too technical... or supposing that if someone quotes enough tax statutes at you then it must be fine.
Keep the discussion grounded on the fact that the tax function is there to serve the business. Ensure that the board and the tax function have the same ideas about objectives and values by talking to them directly.	Thinking about the tax function as some form of priesthood that the uninitiated must steer clear of, and encouraging the idea that tax is different by not engaging with the tax function in a business-like manner.

Good practices to consider...	Things to avoid...
Understand that there are many shades of grey in the tax rules. A position might seem to be well within the law, but may still be challenged if governments or community groups decide they don't like the outcomes. Try to focus on the spirit, rather than just the letter of the law.	Thinking that the tax position is clear cut. And even if – improbably – it is, enforcement might not be. Sometimes a more nuanced approach is the best – but remember that nuance rarely gets a fair hearing in the court of public opinion.
Consider possible tax outcomes under various scenarios – organisation, legal, economic and social. Standing back and seeing the big picture will help you imagine how the tax position might be interpreted by stakeholders and society. Keep questioning the assumptions until you are satisfied.	Assuming things will stay the same in tax terms, or that only major changes will have an effect. Overlooking the cumulative impact of gradual changes on the perception of the authorities and the public.
Assume that your tax strategy will be exposed to public view. Consider how you and others will feel about your tax stance and how it may affect employee morale, key external relationships and brand values.	Hoping for the best and assuming that your tax affairs will never be exposed to the public. Or believing that your tax strategy will be acceptable because it's what others are doing. Don't under estimate the speed with which public opinion can change.
Make sure management have a crisis response plan ready for if (when?) things go wrong and tax protesters are waving their placards outside your head office.	Supposing that the PR people and the tax director will intuitively know what the board would like them to do...
Accept that in practice it may be impossible to simultaneously achieve the lowest tax rate while maintaining your reputation and avoiding tax surprises. Like so many other strategic decisions, it's about striking the right balance between risk and reward.	Taking too narrow a view of the technical merits of a tax planning position without considering how it will be viewed in the broader context, and what long term impact this may have.
Think of tax as another risk area that needs mitigating and ask about possible strategic outcomes, probabilities and impact; how the big risks are being managed; accountabilities; long term trends and the big picture rather than the detail of specific tax provisions.	Thinking it's all about defending the tax position rather than getting well-grounded assurance that the tax function is operating as it should.

If you have any questions on the issues covered here, please contact Richard Sheath at richard.sheath@independentaudit.com

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