CHAPTER 5

The Contemporary Corporate Tax Strategy Environment

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5.1 Introduction

Corporation tax is a material cost for companies, making corporate tax planning a crucial activity (Hardeck and Hertl 2014; Kubick et al. 2015). Traditionally the objective of companies' corporate tax strategy (CTS) was to minimise the tax cost, as part of the directors' fiduciary duty to their investors to maximise shareholder post tax profits (Wahab and Holland 2012). With this objective as the sole focus, the corporate tax function operated in isolation; it had little regard for the impact on other stakeholders. By reducing their tax burden, corporations (i) deprive governments of vital tax receipts, essential to funding key public services and (ii) potentially transfer the tax burden onto other tax payers such as small and medium sized enterprises (SMEs) and individuals. The traditional corporate tax reporting environment permitted such corporate tax behaviour to go unnoticed. Significant changes, however, in the contemporary tax environment mean that companies' CTS now need to embrace more than just good cost management of their corporation tax liability.

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Two other essential factors that this chapter will explore are the ethical stance of the CTS and the management of the increasingly stringent compliance and disclosure requirements of the tax regimes in which companies operate. With respect to the first factor, globalisation has increased the range of tax planning opportunities for companies that operate internationally. There are, however, large overseas operators which have made aggressive use of the tax planning opportunities presented. This has led to a very animated debate about whether companies pay their fair share of tax leading to intense public scrutiny of the ethical stance of companies' CTS. There is a great risk of damage to a company's legitimacy, reputation, brand relations and brand equity should the public perceive a company's CTS to be immoral. As for the stringent compliance and disclosure requirements, it is essential that companies proactively manage this aspect. There is a high risk of punitive penalties and sanctions where a company fails to comply with the compliance or disclosure regulations of the various tax regimes in which it operates.

Consequently, the CTS of corporations now must look beyond just efficient cost management of their corporation tax liability. They need to consider the ethics of the CTS and what measures to adopt to reduce the risk of failure and the associated consequences of not fulfilling the compliance requirements.

5.2 The Cost Component

The corporation tax cost to a company is based on its taxable profits, as calculated in accordance with the regulations of the tax regime where the value has been created and taxed at the prevailing corporation tax rate. It is potentially a significant cost for a company, reducing shareholder wealth (Hardeck and Hertl 2014; Kubick et al. 2015). It is the fiduciary duty of directors to maximise shareholder wealth, by managing their business costs; this includes the management of the corporation tax liability. As such it is appropriate that companies adopt tax planning activities to manage this cost efficiently. Not only is it a fiduciary duty for directors in some countries to promote the success of the company, but it can also be a legal duty; for example in the UK, under section 172 of the Companies Act 2006 "A director of a company must act in a way he considers, in good faith, would be the most likely to promote the success of the company for the benefit of its members as a whole" (Scott Slorach and Ellis 2017, p. 72).

Traditionally tax planning focused on the timing of revenues and expenses, and by companies making use of the tax reliefs and incentives available. This landscape began to change as companies started to expand their operations overseas. The internationalisation of business brought a proliferation of cross border transactions, an increase in capital and labour mobility, the growth of intellectual property and the associated royalties, as well as the rise of internationally active businesses, especially Multinational Enterprises (MNEs). As a result corporations are now able to operate in numerous tax jurisdictions all with different tax rules and regulations, all proactively competing for the foreign direct investment (FDI) these organisations bring. This has provided a wealth of new opportunities for corporate tax planning.

One such opportunity is exploiting the differences in international corporation tax rates. For example the lowest tax rate of Organisation of Economic Cooperation and Development (OECD) members as at April 2017 was levied by Switzerland, 8.5% in contrast the highest corporation tax rate levied was 35% by the United States (OECD 2017). Such differences have led to corporations, especially MNEs, establishing their taxable presence in locations with low or minimal tax rates, such as tax havens thereby "…significantly minimising their total tax payments" (Kyj and Romeo 2015, p. 298). According to these authors almost 15% of the world tax regimes are tax havens, providing many opportunities for companies to structure their operations so that taxable income is taxed in tax havens at much lower rates.

Another popular tax planning device is transfer pricing. Transfer pricing enables corporations to benefit from the different corporation tax rates across the world (Hardeck and Hertl 2014). Whilst it is based on commercial accounting practices, it has become a popular technique whereby group companies divert taxable profits to related companies located in lower tax jurisdictions (Kyj and Romeo 2015). An example of this tax planning device was used by Starbucks UK when they purchased the green coffee beans from a Swiss affiliate at much higher prices than normal commercial rates. Another example of transfer pricing is through the use of intra-group loans to subsidiaries. Finance costs for the borrower are often a tax allowable expense, although there may be criteria to be satisfied first. By ensuring that the lender is located in a lower tax rate jurisdiction, groups of companies can shift profits by charging interest rates above commercial arm length's rates. Starbucks is again an example of where this technique was used (Campbell and Helleloid 2016).

A third tax planning opportunity for companies, lies around the fact that many tax regimes have different definitions of corporation tax residency. This allows companies to generate income in a country without necessarily being classified as tax resident in that country and so the income escapes taxation. In the UK, companies that are either incorporated in the UK or centrally managed and controlled in the UK, are deemed to be UK resident for corporation tax purposes. In contrast the tax residency in Ireland is defined according to where the functional management of the company is, so companies can be incorporated in Ireland, but if their functional management is elsewhere the income arising in Ireland avoids taxation. In their study of Microsoft, Kyj and Romeo (2015) found that the company incorporated two interrelated subsidiaries in Ireland, but ensured the functional management and control of one of them was overseas in a tax haven. Known as the 'Double-Irish' it minimises the tax due by the companies involved in the arrangement; yet simultaneously the Irish subsidiaries provide the group with several commercial benefits, namely the free access Ireland gives to Euro-zone countries and access to a stable currency, the Euro, so there is less exposure to currency fluctuations. This technique has been used very effectively in reducing the corporation tax burden by software companies such as Microsoft Inc (Kyj and Romeo 2015). Kyj and Romeo (2015, p. 297) describe this technique as a "….method relies on Irish law, under which a company is taxed where it is functionally managed, but not necessarily where it is incorporated (territorial taxation). It requires two or more interrelated Irish companies to implement, with one of the companies in a tax-haven country such as Bermuda or the Cayman Islands." Lanis and Richardson (2015) identified that Apple Inc saved $US 2.4 billion of tax in 2011 using this residency device; in their research Payne and Raiborn (2018) found that Apple Inc generated $US 74 million between 2009 and 2012, but paid negligible tax on this income.

The rise of technology companies has generated another tax planning opportunity. Technology companies play a vital role in the economies of many countries, therefore numerous tax jurisdictions offer favourable tax incentives for research and development costs, such as the US and the UK. For technology companies, such as Microsoft Inc., innovation is vital to their long term survival, but the associated research and development expenditure is a significant part of their operating cost base.

According to Kyj and Romeo (2015) the research and development costs for Microsoft Inc. were 24% of total operating costs in 2009, reducing to 19% in 2014. In their analysis of the tax planning activities of Microsoft Inc., Kyj and Romeo (2015) found that the company's research and development activities predominantly occurred in the US, where the company benefits from the favourable tax treatment of these costs. The intellectual property rights to the resulting innovations were, however, distributed amongst the group's overseas companies, allowing Microsoft Inc. to keep the associate income to the intellectual property rights off-shore from the US and so avoid the higher US taxation rates (35%). A convoluted subsidiary structure meant most of the associated income was taxed in Bermuda, at significantly lower tax rates.

Microsoft is not the only group to manipulate intellectual property rights so that the associated royalty income is taxable in lower tax regimes whilst simultaneously tax relief for the associated costs is given in tax regimes with higher tax rates. Starbucks UK paid royalties to a Swiss affiliate for the use of the Starbucks brand and a range of business operations (Campbell and Helleloid 2016); the tax benefits of this arrangement are explained in more detail in the next section of this chapter.

These are just a few of the international tax planning opportunities presented to corporations. There are other opportunities such as the benefits of multilateral agreements (Klassen and LaPlante 2012), different definitions of various tax regimes of arms-length transfer prices, or individual tax jurisdictions offering favourable tax agreements such as Luxembourg and the Netherlands offered to Fiat and Starbucks respectively (Campbell and Helleloid 2016).

There are a vast array of tax planning opportunities available, to assist companies in efficiently and effectively managing their corporation tax costs, which are a material cost. However, the ability of large international companies, such as MNEs, to employ tax experts, has enabled them to 'cherry pick' from these tax planning opportunities, in a way Small and Medium Enterprises (SMEs), micro businesses and individuals cannot (Payne and Raiborn 2018). As Hardeck and Hertl (2014) point out this can lead to the burden of corporation tax shifting from the large international corporations to these other tax payers who do not have access to such tax planning opportunities. As people have become aware of such inequities there has been an increase in the scrutiny of the morality of the tax planning activities of corporations, especially international businesses such as MNEs. The bona fide use of the tax planning mechanisms as well as the tax reliefs and incentives available are considered to be morally acceptable. This is not so where a company's CTS involves aggressive tax planning; such CTSs are considered immoral, with stakeholders such as governments, consumers, public action groups, and the media, all willing to expose and tackle such unethical corporate behaviour. Consequently companies now need to consider not just managing their corporation tax cost but also the morality of the tax planning activities they adopt. As explored in the next section, companies who ignore the ethical component of their CTS risk adverse public reaction, negatively impacting their reputation, brand relations and brand equity.

5.3 The Ethical Component

There is no clear boundary between bona fide tax planning and aggressive tax planning. Neither are illegal. Both have the objective of reducing company's corporation tax liability, within the bounds of the relevant tax legislation (Datt 2014; Lavermicocca and Buchan 2015). Bona fide tax planning is morally acceptable for it merely seeks to release the benefit of the tax reliefs and incentives offered by the government under the tax legislation, in a way that is understood to be fair (Datt 2014). An underlying principle of UK tax legislation is that the "Taxpayers are entitled to organise their financial affairs in such a way so as their tax burden is minimised" (Melville 2018, p. 12).

In contrast, aggressive tax planning gives rise to tax avoidance, which is not illegal in itself, but in the words of Margaret Hodges, "immoral" (Datt 2014, p. 421). It involves the aggressive exploitation of loopholes in the tax legislation, as well as aggressive interpretation of the tax legislation. Tax avoidance has serious consequences for society. It erodes the tax base of governments thereby reducing their tax revenue, negatively impacting on public services provided (Lanis and Richardson 2015; Payne and Raiborn 2018). In addition, it transfers the burden of taxation from the tax avoiders to other tax payers such as SMEs, micro businesses and individuals who do not have access to the tax planning opportunities to which larger corporations have access (Hardeck and Hertl 2014).

The morality of the corporation tax strategies of corporations, especially large corporations, has come under increasing scrutiny by governments, the international community and the general public (Antonetti and Anesa 2017). These stakeholders expect corporations to be socially responsible, not to engage with tax avoidance, but to pay their fair share of tax (Lanis and Richardson 2015; Kanagaretnam et al. 2016). The revelations of the tax avoidance behaviour of such MNEs as Starbucks UK, Apple Inc., Google, and Amazon has given rise to a very emotive public debate as to whether corporations are paying their fair share of tax.

Yet what constitutes a 'fair share of tax' is a very hazy and subjective concept (Datt 2014). What is fair to one group of tax payers may not be fair on or to another group of taxpayers. For corporations the question is, 'is it fair for them to pay more tax than legally required just because of public sentiment?' For other taxpayers, the question remains, 'Is it fair that the tax burden gets shifted on them, because of unfair tax planning practices of some corporations?' It is a debate that is likely to run for years.

The numerous revelations about the aggressive tax planning behaviour of corporations, especially MNEs such as Amazon, Apple, Google, Microsoft, and Starbucks has put the CTS of many corporations under intense scrutiny by the international tax community, domestic tax authorities, and the general public (Kubick et al. 2015). Both the international tax community, through such bodies as the OECD, and domestic tax authorities have been proactively developing a wide range of measures to tackle tax avoidance, for many years. These include the Base Erosion and Profit Shifting (BEPS) programme by the OECD or the tax avoidance measures introduced in the UK such as Declaration of Tax Avoidance Schemes (DOTAS). Measures which some corporations (but not necessarily all) have been cooperating with, adapting their CTS over time.

Meanwhile the general public has also added its voice to the debate. Investigative journalism, public pressure groups, and consumers have each made it clear that they will not tolerate tax avoidance by companies. The case of Starbucks UK in 2012 is a good example of the adverse public response to the tax avoidance behaviour of a company.

Campbell and Helleloid (2016) record that by 2012, Starbucks UK had paid minimal UK corporation taxes since it began its operations in the UK in 1998, despite reporting large profits for its UK operations to its investors, as well as reporting billions of pounds of sales, and an 11% growth in revenue. In comparison, Dowling (2014) points out that Costa paid an effective UK tax rate of 30.5% for 2010–2011. The disparity between the high revenue receipts and the minimal corporation tax paid by Starbucks was reported by Reuters in late 2012 and investigated by a UK Parliamentary Investigative Committee.

According to Campbell and Helleloid (2016) this tax situation arose due to a combination of three tax planning mechanisms; (i) the use of intergroup royalty payments, (ii) the purchase of coffee beans from a Swiss affiliate at unusually high prices, and (iii) through intracompany financing arrangements. Firstly Starbucks made intragroup royalty payments so that it could use such intellectual property as the Starbucks brand and a range of business operations; this expense was tax deductible in calculating UK taxable income. These royalties were paid to various overseas affiliated companies diverting the associated taxable profits to tax regimes that had lower tax rates. This reduced the effective tax rate of the UK operations to less than 5% (Campbell and Helleloid 2016), at a time when the UK tax rate ranged between 31% in 1998 (HMRC 2009), reducing to 24% in 2012 (HMRC 2012, p. 16). The second method, transfer pricing, saw the purchase of its green coffee beans from an affiliated trading company whose legal address was in Switzerland. The green beans were purchased at unusually high prices, thereby significantly reducing the company's UK taxable income. The corresponding income of the Swiss affiliate was only taxed at 5%. The tax advantages gained were further enhanced by the fact that the green beans were then roasted in Netherlands by another Starbucks entity. The cost of the roasted beans to Starbucks UK was a major cost component to Starbucks UK products sold, reducing its taxable income, but the corresponding income of the Dutch affiliate was taxed at a lower rate because the Starbucks group had negotiated a preferential tax treatment with the Dutch tax authorities.

The third tax planning mechanism that the group aggressively deployed was the use of intercompany loans to Starbucks UK, where the interest rate charged on these loans being substantially higher than corporate bond rate. Again the interest payments were an allowable expense against the taxable income of Starbucks UK. This meant that in 2012, when the relevant UK corporation tax rate was 24%, Starbucks paid £1 million more interest than if it had paid at the corporate bond rate, saving UK tax of £240,000 (Campbell and Helleloid 2016). The combination of these three tax planning devices enabled Starbucks to generate a loss for UK corporation tax purposes and so Starbucks UK paid negligible UK corporation tax.

Once this knowledge was in the public domain, activists descended on UK outlets of Starbucks. Initially the company tried to defend this CTS, explaining it paid millions of pounds in other UK taxes such as NIC, as well as contributing to the economy by creating thousands of new jobs, and through the supply chain relationships, economic activities which themselves contributed to UK tax revenues. This did not appease the public feelings. In the end the company paid £20 million in voluntary tax repayments spread over 2013 and 2014 (Lavermicocca and Buchan 2015; Campbell and Helleloid 2016; Austen and Wilson 2017). Yet even this did not pacify the public outrage, seeing this tax sweetener as an unacceptable charitable donation. In a public statement on 8 December 2012 the organisation UK Uncut denounced the voluntary tax repayments, stating, "Offering to pay some tax if and when it suits you does not stop you being a tax dodger" (Campbell and Helleloid 2016, p. 48). The whole situation was further exacerbated by the fact that the Starbucks CTS strategy was not congruent with the rest of its Corporate Social Responsibility (CSR) strategy issued in 2001.

This aggressive CTS posed a serious threat to the viability of the company's UK operations. In the fiscal year 2013 Starbucks experienced its first ever decline in sales (Campbell and Helleloid 2016). In order to restore and protect its reputation the company moved its regional head-quarters from Amsterdam to London, knowing that this would increase the UK company's tax cost overall. In 2015 Starbucks UK reported a pre-tax profit of £34 million and paid taxes of just over £8 million (Campbell and Helleloid 2016).

The experience of Starbucks UK is a salutary lesson of the intolerance of tax avoidance practices both tax authorities and the public and the increasing scrutiny of these stakeholders (Antonetti and Anesa 2017). Lanis and Richardson (2015) and Kanagaretnam et al. (2016) all found that stakeholders, particularly governments and the public, are increasingly expecting corporations to be socially responsible corporate citizens, not engage with tax avoidance, but to pay their fair share of tax.

To continue devising CTSs that deploy aggressive tax planning techniques is likely to put the company's legitimacy, reputation, brand relations and brand reputation at risk (Hardeck and Hertl 2014; Antonetti and Anesa 2017; Lavermicocca and Buchan 2015; Payne and Raiborn 2018; Austen and Wilson 2017). It is likely to lead to customer boycotts, as experienced by Starbucks UK in 2012. Research by Payne and Raiborn (2018) found that about one-third of British consumers were willing to boycott companies they perceive as not paying their fair share of tax and that 66% of Britons believe tax avoidance is morally wrong, with 57% believing it should be made illegal. Yet companies need to be aware that consumer behaviour is potentially asymmetric. Antonetti and Anesa (2017) found that whilst consumers are willing to boycott corporations who operate CTS they perceive to be immoral, they were much less willing to reward companies by paying a price premium because that company practices acceptable tax planning.

A further risk of aggressive tax planning, as Kubick et al. (2015) point out, is that it is likely to undermine the public trust in companies, exposing them to accusations of greed and dishonesty. The trust of stakeholders is an essential component of the relationship between a company and its stakeholders, as well as being vital to the company growth, but has been damaged in recent years, partly due to the 2007 financial crisis and partly due to the aggressive tax behaviour of companies (PwC 2013; Kubick et al. 2015).

The general public (particularly consumers, the media and public action groups) potentially have a powerful voice. In their report PwC (2013) noted that 97% of CEOs surveyed believed customers and clients are the most influential stakeholder. In their paper, Lavermicocca and Buchan (2015) identified that 40% of CEOs agreed that the media influenced the company's strategy and 12% acknowledged this influence was significant. In the same paper 76% of the CFOs surveyed were of the opinion that the media's focus on companies' CTS was detrimental to the company's reputation. In particular investigative journalism, together with the work of public action groups (such as The Tax Justice Network, Occupy Movement, Uncut UK, Uncut US, Action Aid), play a key role in identifying and exposing corporations who are considered to have not paid their fair share of tax or have been perceived to have practised aggressive tax planning (Datt 2014; Hardeck and Hertl 2014; Lavermicocca and Buchan 2015; Kanagaretnam et al. 2016). As Starbucks UK experienced in 2012, this voice can be immensely powerful.

When managing these risks to reputation, brand relations and brand equity companies need to be highly mindful of the risks posed by social media. As PwC (2013) and Eckert (2017) point out social media can see the rapid dissemination of negative information about a company on an extensive scale; the risk is further aggravated by the fact that social media messages tend be very succinct, blunt even brutal in their form and the information is readily available, often in great detail. This acute risk is difficult for companies to manage and the damage can be extensive (PwC 2013).

One of the by-products of all these risks is that investors, are now also becoming increasingly concerned about unethical corporate tax behaviour. Wahab and Holland (2012), building on the research of Desai and Dharmapala (2009) and Wilson (2009) (as cited in Wahab and Holland (2012)), concluded that UK shareholders no longer value tax planning. This is due to the information asymmetry between directors and shareholders in respect of tax planning, giving rise to either a moral hazard or a fear of a moral hazard. There is a risk, therefore, that tax planning is likely to reduce shareholder value. Wahab and Holland (2012), found that in UK corporates, good corporate governance procedures did not moderate this outcome (unlike Desai and Dharmapala (2009) and Wilson (2009), as cited in Wahab and Holland (2012), who found that in US corporations good corporate governance reduced shareholder concern and the risk to equity value).

The risks that all this poses to a company's reputation, brand relations and brand equity are risks that companies ignore at their peril; they need to be embraced as an essential part of their CTS. One approach advocated by Lanis and Richardson (2015) and Antonetti and Anesa (2017) is to adopt a more conservative CTS that is perceived to be fair and ethical, particularly if it is included in the company's CSR policy. For the public such an approach demonstrates the company is socially responsible and a good corporate citizen. Lanis and Richardson (2015), in their research of US listed companies, found that companies with a higher CSR were associated with a lower level of tax avoidance and so receive more public support. Research by Hardeck and Hertl (2014) similarly found that consumers with high tax morals are more likely to have a negative attitude towards a company they perceive to be operating an aggressive CTS, thereby undermining corporate success. Likewise Eckert (2017) found that new customers were more likely to form a relationship with companies perceived to have a positive CSR.

An alternative approach for UK companies is to seek to be accredited with the Fair Tax Mark (FTM). The objective of the FTM is to certify that the accredited company "…is paying the right amount of tax in the right place at the right time and applying the gold standard of tax transparency" (Fair Tax, n.d.-b). Founded in 2014 the FTM Ltd, as a not-for-profit organisation, was established to ensure a level playing field for firms to pay their fair share of tax and encourage businesses to show responsible tax leadership and improve transparency, ensuring taxable income is taxed in the place value is created, not shifted to lower tax regimes (Fair Tax, n.d.-a, b). The FTM is supported by the Tax Justice Network and assisted by the Ethical Consumer Research Association. It gives publicity to businesses operating a responsible and transparent CTS, providing a map so that consumers can easily locate them. It has helped build up trust between business accredited with a FTM, such that, for example: "64% of people trust a business with a Fair Tax Trade mark than one without it" and "77% of people would shop in favour of a company which can prove it is paying its fair share of tax" (Fair Tax Mark, n.d.-c). SSE was the first FTSE-listed business to achieve the FTM; other companies include Lush Cosmetics (UK's first high street retailer to achieve the Fair Trade Mark), the Co-Op group and now increasingly more.

Corporations now face increasing scrutiny of the ethical stance of their CTS by many stakeholders. Where such stakeholders perceive the company not to be paying their fair share of tax, the company risks significant damage to their legitimacy, reputation, brand relations and brand equity, as evidenced by the experience of Starbucks UK in 2012. The risk is heightened by such factors as the ready availability of information, and dissemination mechanisms such as social media. Such risks that cannot be ignored when devising a CTS. CTS can no longer just focus on managing their corporation tax cost, but need to embrace a more moral stance, that is transparent. The next section examinations the final aspect this chapter reviews, that is the management of compliance costs and risks that companies need to consider when adopting and operating a CTS.

5.4 The Compliance Component

The importance of taxation to governments cannot be underestimated. It is the biggest source of revenue for the government, the only practical means of raising the large amounts required to fund key public services and is a vital tool in managing their economy to ensure economic growth (Mirrlees et al. 2011; James and Nobes 2013; Datt 2014; Payne and Raiborn 2018; OECD 2017). Through the symbiotic relationship between taxation and the economy, governments can use their tax system to generate vital government revenue, promote research and innovation, productivity and inclusive growth. This is a challenging balance to achieve, especially post the 2008 financial crisis, as governments have tried to protect and nurture the fragile economic recovery, whilst simultaneously overcoming enormous fiscal debt and rebuilding their fiscal position.

In order to protect this source of revenue, tax jurisdictions, especially in advanced economies, operate a rigorous compliance environment. The purpose is not only to deter tax avoidance, but to ensure corporations make full and accurate declarations of their taxable income, as well as pay the associated corporation tax liability in full and on time. This is often enforced by stringent penalties and actions, alongside extensive investigative powers of the tax authorities.

To this end, individual tax jurisdictions and the international tax community have been developing tax systems that ensure corporations contribute fairly to the tax revenue of all the countries in which they operate and create value (Lavermicocca and Buchan 2015). This is principally achieved by establishing robust tax compliance environments, targeting harmful tax practices, tackling BEPS, and driving greater transparency and accountability. It is a challenging task for both the international tax community and for domestic tax jurisdictions, given the complexity of the business environment.

The OECD is the key agent working on behalf of the international community to tackle such issues as tax avoidance. The OECD has led the way in respect of international tax issues for over 50 years resulting in major advances in tackling tax avoidance, tax evasion and making the international tax system stronger and fairer (OECD 2017), successfully implementing a range of policies to improve tax disclosure, transparency and address tax avoidance. The OECD has developed standards for exchange of information between tax authorities, in particular the Common Reporting Standard (CRS). The CRS requires the automatic exchange of financial account information between tax authorities (AEOI) facilitated through a Common Transmission System; 98 members have committed to implementing the CRS in 2017 or 2018 (OECD 2017). Furthermore the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, which has 132 country members, is developing a tax transparency standard in respect of the Exchange of Information on Request (EOIR) (OECD 2017). Not only do these targeted measures on transparency tackle tax avoidance, but also encompass money laundering activities. In addition to the CRS, the AEOI and the EOIR, the OECD have pioneered other tax avoidance measures, including the BEPS project (Base Erosion and Profit Shifting) with over 100 jurisdictions involved; the OECD tax treaty model tax convention and tax inspectors without borders (OECD 2017).

Unilaterally, various tax jurisdictions have also been adopting a range of measures to achieve greater transparency and public accountability. In some instances these measures have been legislative such as in Australia and the UK. Australia have established the ASX Corporate Governance Principles which require companies listed on the Australian Stock Exchange, to act ethically and responsibly, including in respect of their CTS (Lavermicocca and Buchan 2015). The Australian Tax Office also requires mining companies with total income of $AU 100 million or more to publish a range of corporation tax information.

Another tax jurisdiction that has introduced accountability and transparency legislation is the UK. Under new measures introduced in the Finance Act 2016 Schedule 19 designated large businesses operating in the UK are required to publish their tax strategy in respect of their UK tax position and responsibilities. These designated businesses were qualifying UK companies, partnerships, qualifying UK groups, and qualifying UK sub-groups of foreign MNEs, which in the previous tax year had turnover that exceeded £200 million or the balance sheet exceeded £200 billion (Fair Tax 2017). It is aimed at increasing the transparency of the CTS of such companies, thereby discouraging aggressive tax behaviour. Designated businesses are responsible for the CTS, which must be published annually. Under the legislation designated businesses were required to publish their CTS, free of charge, on the internet before the end of the company's first financial year commencing after 15 September 2016. No publication will lead to penalties. The objective is to provide the general public with information, on a country-by-country basis, about the approach the company adopts in respect of the management of risk and governance of their UK tax position. In the published CTS the executive must disclose its attitude to tax planning and the level of risk the group is prepared to accept regarding their UK tax position. It must also detail the company's approach to their dealings with the Her Majesty's Revenue and Customs (HMRC).

At the time of writing it is difficult to evaluate the benefits of such legislation. Whilst aimed at improving transparency and accountability, there is no guarantee that legislation of this nature will provide sufficient assurance that the company is paying their fair share of tax. Furthermore there is a risk that the additional disclosures will be misunderstood by the public at large as the general public may not understand the legal and technical intricacies to properly evaluate the CTS information available. Certainly there is some evidence at the time of writing indicating poor compliance with Schedule 19. To date research published by Fair Tax Mark (2017) in October 2017 found that only 17 (34%) of the FTSE 50 companies had published their CTS online by 30 June 2017; the remaining two-thirds had failed to respond to the Schedule 19 requirements. Of the 17 that had published their CTS by 30 June 2017, 11 demonstrated basic compliance or less. Of the total FTSE 50 companies only 6 companies (12%) demonstrated compliance that was 'good' or better. On the face of this, this would appear to be a poor response to this mandatory legislation, but as yet companies may still be within the required timeline of publishing before the end of the company's first accounting period commencing after 15 September 2016.

There are other examples of tax disclosure requirements implemented by individual tax regimes, for example, the DOTAS regulations in the UK or the use by the tax authorities in New Zealand and Italy of questionnaires to target certain taxpayers in certain risk areas. Other countries have adopted advance rulings mechanisms, penalty linked disclosure rules (for example Ireland), co-operative compliance programmes (for example Australia, Ireland, The Netherlands, Italy, Spain, UK and the USA), or have additional reporting obligations (for example, The Netherlands, Italy, USA). Disclosure initiatives such as these promote greater compliance and create a more level playing field for all tax payers.

Such transparency and accountability legislation compounds the compliance risk to which corporations are now exposed. Many international tax regimes now have robust compliance regimes with stringent penalties and sanctions for non-compliance in respect of the accuracy, completeness and timeliness of the submission of tax returns and tax payments. Whether a company just operates in one tax jurisdiction, or several, they now operate in a complex international tax environment. They have a myriad of complex tax regulations to navigate across a range of different tax jurisdictions; the UK tax system alone contains over 8000 pages of tax legislation (Mirrlees et al. 2011). The corporate tax environment, especially for companies operating internationally, is a dynamic environment with tax regulations being constantly updated and revised in response to the constantly changing business environment and socio-economic and political influences. The risk of default, however unintentional and accidental, is now much higher, bringing unwelcome and costly penalties and sanctions. To avoid such punitive responses from the tax authorities, companies need to ensure their CTS secures the submission of tax returns and payments that are accurate, complete and timely in each and every tax jurisdiction they operate, as well as meeting all the requisite disclosure requirements. This requires a range of dedicated resources, including investment in the experience and training of high quality tax professionals, whether internally sourced or out sourced; tax professionals who are supported in keeping up to date with the frequent changes in tax legislation.

Another key investment is the need for reliable and rigorous accounting information systems and internal controls in place that enable them to effectively manage the compliance risks they face. Such systems and internal controls need to ensure that companies have calculated their tax position correctly; provide disclosure that is accurate, complete and timely, as well as provide assurance that tax payments are made properly and in a timely manner. Such systems and internal controls are essential to minimise the risk of non-compliance and need to be embraced as an essential part of contemporary CTS. This is especially true for those companies that operate in multiple jurisdictions, as the compliance regime in each one will have its own requirements. In addition, an inescapable aspect of tax compliance risk is ensuring access to professional tax advisors with the necessary expertise, whether that facility is in-house or out-sourced. It is a vital part of properly managing the tax compliance risk, escalating the dead weight of compliance costs.

Overall companies need to adopt a CTS that recognises and addresses the tax compliance risks to which corporations are exposed. This involves managing the compliance risks of correctly declaring their tax position in good time, and ensuring prompt and full payment of the associate tax liability in each tax jurisdiction, but it extends beyond this. Companies' CTS also need to recognise the need to co-operate with the transparency and accountability requirements of both individual tax jurisdictions and the international tax community, whether this is formal legislation, political enquiry or agreed international practice. These strands produce a complex tax compliance environment. It requires a robust response from corporations to efficiently and effectively manage the associated risks.

5.5 Conclusion

The traditional need of CTS to embrace efficient and effective tax planning still remains. The fiduciary duty of directors of maximising shareholder wealth remains a fundamental aspect (Datt 2014). It is now no longer, however, the only consideration. Now they must navigate through a much more complex corporation tax environment, particularly when they operate in more than one tax jurisdiction. Whilst globalisation has opened up a wealth of new tax planning opportunities, companies are now under immense pressure from the public and the government to deploy these opportunities in a fair manner that evidences they are paying their fair share of tax. These stakeholders now have a strong voice, requiring companies to be good corporate citizens and pay their fair of share of tax. Consumers, the media and public action groups are highly proactive in scrutinising the tax positions of companies. They are increasingly vocal if they suspect corporations have not been paying their fair share of tax, with a very powerful voice. If such stakeholders consider that the company have not paid their fair share of tax, then the company's legitimacy, reputation, brand relations and brand equity are at great risk. However, where corporations can demonstrate that their CTS is ethical and that they are good corporate citizens, then they reduce such risks. To that end companies that have highly acceptable CSR policies are often considered to be good corporate citizens.

A crucial element of managing this tax risk is controlling the information available. This is much easier said than done. Information about companies' tax position is much more readily available and disseminated. The media and public action groups are proactive in obtaining and publicising this information. Social media facilitates the instant, extensive and brutal dissemination of sensitive information that can be very damaging.

Another key element of CTS is the management of the tax compliance risk. The complexity of tax compliance legislation domestically and internationally makes this very challenging. It requires access to relevant, up-to-date expertise, plus the investment in appropriate accounting information systems with strong internal controls to minimise such risks. The risks surrounding tax compliance are not just restricted to timely disclosure and submission of accurate and complete information of the company's tax position and effecting prompt payments of the correct amount of tax. It must also recognise the risk of non-compliance with a wide range of disclosure and accountability measures adopted by both domestic tax regimes and the international community. Failure to fulfil the compliance requirements, however inadvertent, exposes the company to costly sanctions and penalties.

Today's contemporary reporting environment is much more exacting and unforgiving of companies and their CTS. To ignore the resultant tax risks would be folly indeed. Today the fiduciary duty of directors can no longer solely focus on reducing the corporation tax cost, in order to maximise shareholder wealth. Today there are other threats to shareholder equity, namely more stringent compliance regimes, greater intolerance by both tax authorities and the public of tax aggressive behaviour. To manage such threats, directors need to adopt a more proactive approach in devising an appropriate CTS, ensuring their corporate governance policy embraces such a need.

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