Global tax transparency and risk management

The new landscape prompts changes to operations, strategy and budgets

Tax Function of the Future series

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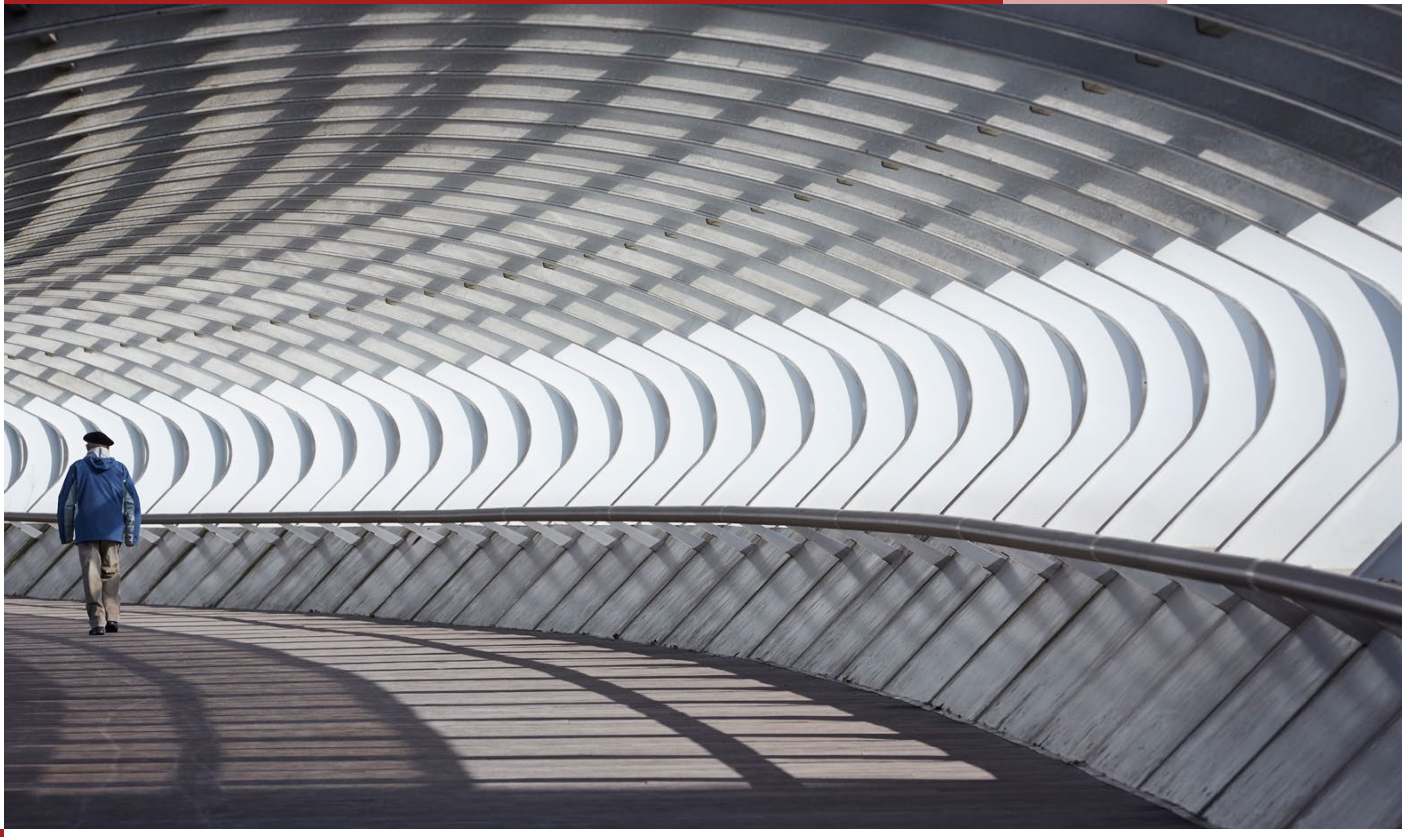

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Introduction

This is the second part in a thought leadership series exploring our predictions for the Tax Function of the Future. In our first piece, we outlined our predictions concerning the new challenges facing the tax function and why they (and other) functions will have to adapt to remain relevant. This piece focuses specifically on our predictions relating to global tax legislation and regulation as well as risk management and how legislative and regulatory change will mandate transformation.

The global predictions cover six main areas:

1. Global legislative and regulatory landscape
2. Tax function's role in risk management and governance
3. Data flow into the tax function
4. Technology automation for tax function analytical tasks
5. Tax function roles and processes
6. The tax professional of the future.

For more information on our predictions for the Tax Function of the Future, follow the link below to see the first publication in our series.

www.pwc.com/taxfunctionofthefuture

Executive summary

The challenge

The rapidly evolving global tax landscape requires a critical examination of today's tax function. For many organisations, change may be needed to address capability gaps and better manage risk.

This article highlights how the tax landscape is changing but more importantly, what changes companies may need to make and how to get started.

What is driving change?

Enhanced transparency and disclosure of tax-relevant information are the subject of much debate and becoming the new standards for business. The demand for greater transparency is reflected in the agendas and action plans of the Organisation for Economic Co-operation and Development (OECD), the G20, the European Union, and the United Nations.

Companies are voicing concern over how disclosures of transfer pricing strategy, corporate taxes paid, operational structure, and financial information to tax authorities on a country-by-country basis will be interpreted and potentially misused. Further, companies are concerned that such information may end up in the public domain with competitive and reputational implications.

The most immediate and sweeping initiative faced by tax functions is the OECD's Country-by-Country Reporting (CbCR) recommendation and template. CbCR will have a significant impact on the tax function and how it must engage with the wider organisation to be ready for initial compliance as well as meeting recurring annual obligations. Changes to the tax function also will be shaped by other pending initiatives under the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan as well as unilateral government actions that could upend existing international tax norms.

Executive summary

What potential impact might I face?

We expect base-line tax administration and other compliance burdens to expand, audits to increase, and there to be enhanced controversy creating the potential for increased and double taxation. More pressure will be placed on tax functions to better manage tax and related risks by strengthening the control environment that governs reporting processes. Overall, the tax function will need to expand its core capabilities relating to data, people, and technology. In addition, due to the potential business and reputational risks associated with many transparency initiatives, the tax function will need to be more engaged with the C-suite stakeholders about such issues.

What should I be thinking about now and what are the opportunities?

Companies should think creatively and strategically to address these risks while proactively engaging with their broader organisation and potentially the public. Now is the time for companies to create a multi-year plan to expand their tax function capabilities, integrate new reporting requirements, and provide the business case for operational investments. While risk and compliance obligations may be the main drivers for change, there may be several positive benefits to reap along the way such as management having greater real-time insight due to enhanced access to information.

"It is unclear what legislation the United States will enact going forward relating to transparency and the broader BEPS initiatives. But companies should not undertake actions simply based on their home country laws. Other countries have broader and more divergent agendas and will continue to seek more disclosure from multinationals."

— Dave Camp, Former Chairman of the House Committee on Ways and Means and now PwC Senior Policy Advisor

Let's dig deeper

What's next for tax functions?

To gauge what challenges the future may hold, tax leaders should consider PwC's predictions relative to legislation, regulation, risk management, and governance. The following discussion highlights these predictions and potential ways to meet the hurdles head on while capitalising on opportunities.

Predictions

Global tax information reporting requirements (e.g. CbCR and similar transparency initiatives) will grow exponentially and will have a material impact on the operations and related budget allocations within the tax function.

The global transparency movement: Examining the issues and challenges

The list of transparency initiatives continues to grow, with nuances and additional reporting required for particular industries and within specific countries. The issue is sparking interest from a wide group of stakeholders and comes at a time when tax functions are strapped for resources.

Examples of global transparency efforts

Mandatory disclosures to tax administrations
- US Foreign Account Tax Compliance Act (FATCA)
- BEPS 13 Transfer Pricing documentation and CbCR
- UK Disclosure of Tax Avoidance Schemes (DOTAS)

Mandatory public disclosures
- US Section 1504 of the Dodd-Frank Act
- EU Accounting Directive
- EU Capital requirements regulation and directive—CRR/CRD IV

Voluntary disclosures beyond statutory obligations
- Extractive Industries Transparency Initiative (EITI)
- Voluntary CbCR disclosures
- Co-operative compliance arrangements

Exchange of information between tax administrations
- OECD Standard for Automatic Exchange of Information in Tax Matters
- EU exchange of cross-border tax rulings/APAs

Let's dig deeper

In the United States, companies experienced enhanced disclosure requirements with FATCA and reporting of uncertain tax positions. Now, CbCR and other transparency initiatives can create a very complex and challenging tax environment around the world, which will be difficult to manage. However, there is debate in the United States about implementing CbCR (i.e. Congressional concerns). Even if certain territories do not adopt CbCR into their domestic legislation, multinationals will still need to comply at the subsidiary level with local laws. For example, a US-based multinational should consider that Spain has enacted CbCR regulations consistent with the OECD's recommendations and thus their Spanish subsidiaries must comply.

In addition, the OECD's revised transfer pricing guidelines will require access to and reconciliation of information that may not currently be readily available within the organisation. It is expected to result in reporting and operational burdens and uncertainty as to how companies should build their processes to meet the required compliance obligations.

For multinationals the deadline is imminent

The G20 countries have agreed to implement (by legislation or administrative processes) the recommendations of the OECD's June 2015 guidance. For the jurisdictions that implement the OECD guidelines, their domestic law should adhere to the OECD transfer pricing documentation (i.e. Master File, Local File, and CbCR) for fiscal reporting periods beginning on or after 1 January 2016.

Under OECD recommendations, the first CbCR report must be filed by December 2017 for the fiscal year-end reporting period that will begin on or after 1 January 2016, although it is important to note that actual filing requirements will be based on the law that each territory enacts.

Let's dig deeper

Responding to new requirements with a 'dry run'

Given the December 2017 deadline for filing the first CbCR reports, companies should stage a 'dry run' in completing the requested information to test the quality of data sources, the ease of obtaining data, the accuracy of the results, and what impact disclosure may have from a risk perspective. The 'dry run' should reveal operational, information, and technology gaps as well as what actions are needed to address such 'blind spots,' for example:

- documenting positions or rethinking legal entity structures
- analysing data to identify consolidating entries
- combining multiple sources of data
- filtering at a transaction level for certain elements within an account.

Companies should not defer engaging in a 'dry run' but instead, act now to prepare. It inevitably takes longer than expected to line up technology solutions and processes as many will involve and impact other functions in the organisation such as IT, accounting, and the broader finance function.

Tip

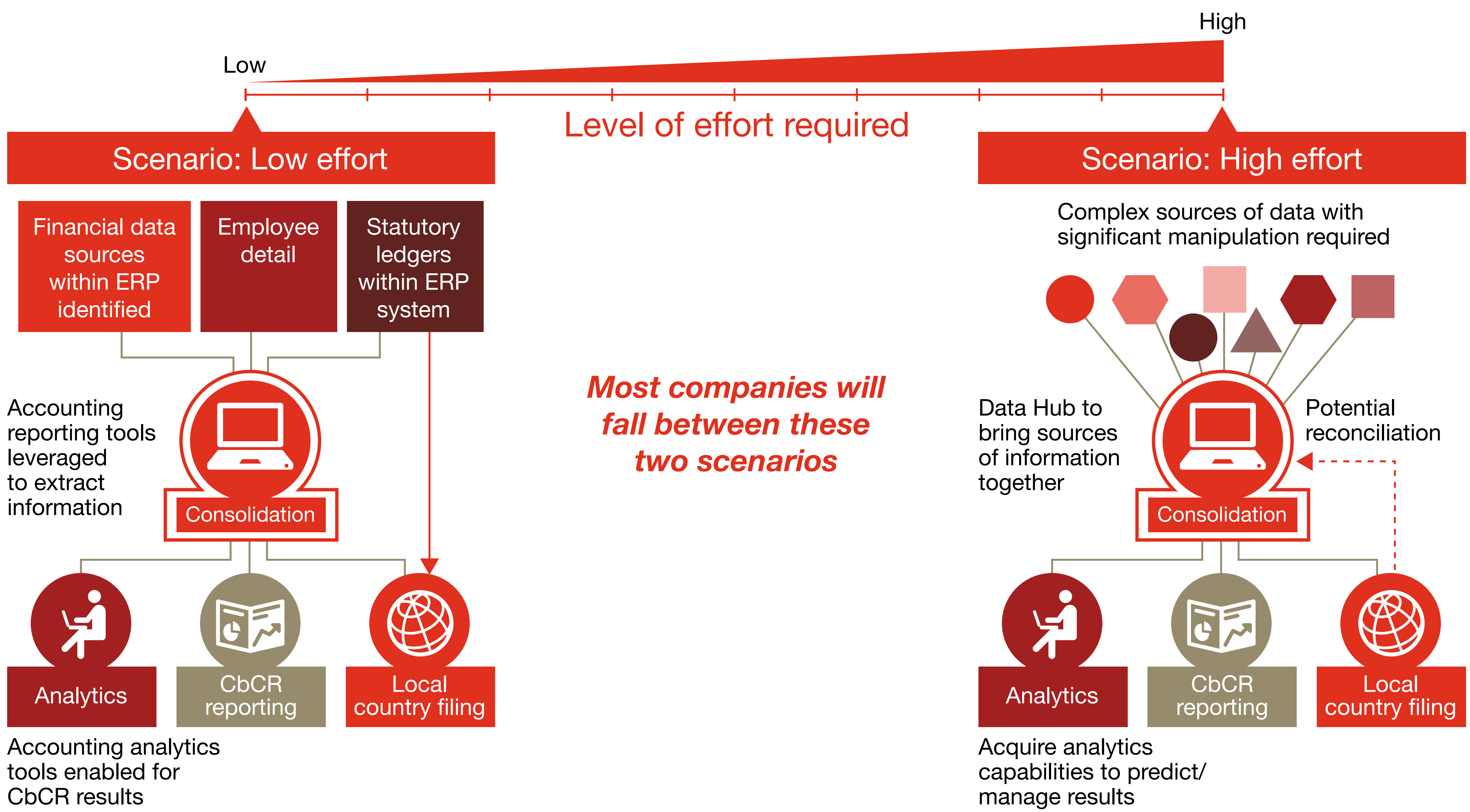
Companies should target the implementation of specific changes to operations and processes prior to the beginning of the reporting period (1 January 2016 for calendar-year taxpayers in some jurisdictions). They should engage the CFO and others in the C-suite with a clear message of the reporting and disclosure requirements and readiness plan—its impact, approach, and timeline—and requests for sponsorship, resources, and funding.

Using a dry run to create a new process

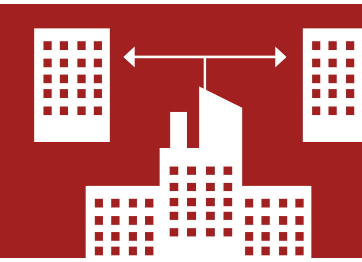
- *Analyse your company's CbCR readiness, including:*
  - *identifying the variety of data sources in specific detail*
  - *determining how the organisation will define specific elements to be reported, and*
  - *designing the review and reconciliation steps within the reporting process that leverage current work flows, thereby reducing overall effort*
- *Test the new process and then analyse the results against expectations*
- *Determine who will be responsible for each aspect of the process.*
- *Does the new process address the 'blind spots'?*

Let's dig deeper

The level of effort for companies to comply with CbCR will vary



Some companies may view CbCR as another compliance activity that could be outsourced to a third party. However, the nature of the data being gathered and validated demands the continued and time-intensive involvement of companies themselves. A dry run will bring to light the amount of time and the resources required in the data gathering process—a key step that is difficult to outsource to a third party.



Let’s dig deeper

Notwithstanding CbCR, there are other imminent difficulties for taxpayers relating to BEPS:

- *Ensure proper reporting of the company’s profitability and value chain profile*
- *Pressure on historical single-sided tests for transfer pricing purposes, such as the comparable profits method and transactional net margin method*
- *Strong bias toward disregarding the role of capital and risk in favor of people functions and the use of profit-split methods for transfer pricing purposes*
- *Tax authority assertions regarding the existence of local intangibles that would attract income*
- *Increased risks of re-characterisation and permanent establishment (PE) income attribution*
- *Changes to financing rules requiring companies to rethink their financing strategy*

Examples of tasks to perform now to help manage these concerns—all requiring technological and analytical capability:

- *Engage in a value contribution analysis—review the core competencies of the organisation, its competitors globally, and where profits are generated as compared with those competencies*
- *Bolster global transfer pricing documentation to meet evolving requirements—consider a single documentation source that is used worldwide, along with a technology solution to enable consolidation of data, collaboration, tracking of responsibilities, and document storage*
- *Strengthen the tracking of mobile employees to help manage PE risks, leveraging technology tools rather than manual methods to capture data more efficiently*

Let's dig deeper

Predictions

Enhanced stakeholder scrutiny and reputational risk will force companies to continuously re-evaluate their tax decisions.

Regulators will demand transparency regarding global taxation, necessitating clear and thoughtful communications with public stakeholders about corporate contributions to the communities in which they do business.

The C-suite's growing involvement

Increasing transparency with respect to global reporting is raising concerns that rise to the C-suite level. These include the reputational impact of making tax information available to a broader population and the potential that competitors will have access to supply chain and business operation information. While the current transparency push relates more to private disclosure like CbCR, there is a growing trend for more public disclosure of this same information.

Important areas for discussion with the C-suite include the organisation's risk profile:

- How will executives engage to take a more proactive approach to taxes and transparency?
- How do they plan to adhere to reporting requirements while at the same time protecting—or even enhancing—the company's reputation?
- Since the company's core values apply to all activities within the organisation, are executives prepared for the way increased reporting could reflect on them?
- Are they also prepared for the risk associated with greater public disclosure?

In response, the C-suite may create new key performance indicators and management reports relating to the transparency issue.

In certain situations, the senior leadership's involvement may be mandatory. As an example, the UK tax authority has recently issued a consultation on the introduction of a requirement for a large business to publish its tax strategy for activities that relate to or affect UK taxation. Evidence to demonstrate the application of the tax strategy in practice must be part of this reporting. The consultation also proposes that the tax strategy must be owned and signed by a named individual at the executive board level.

Tip

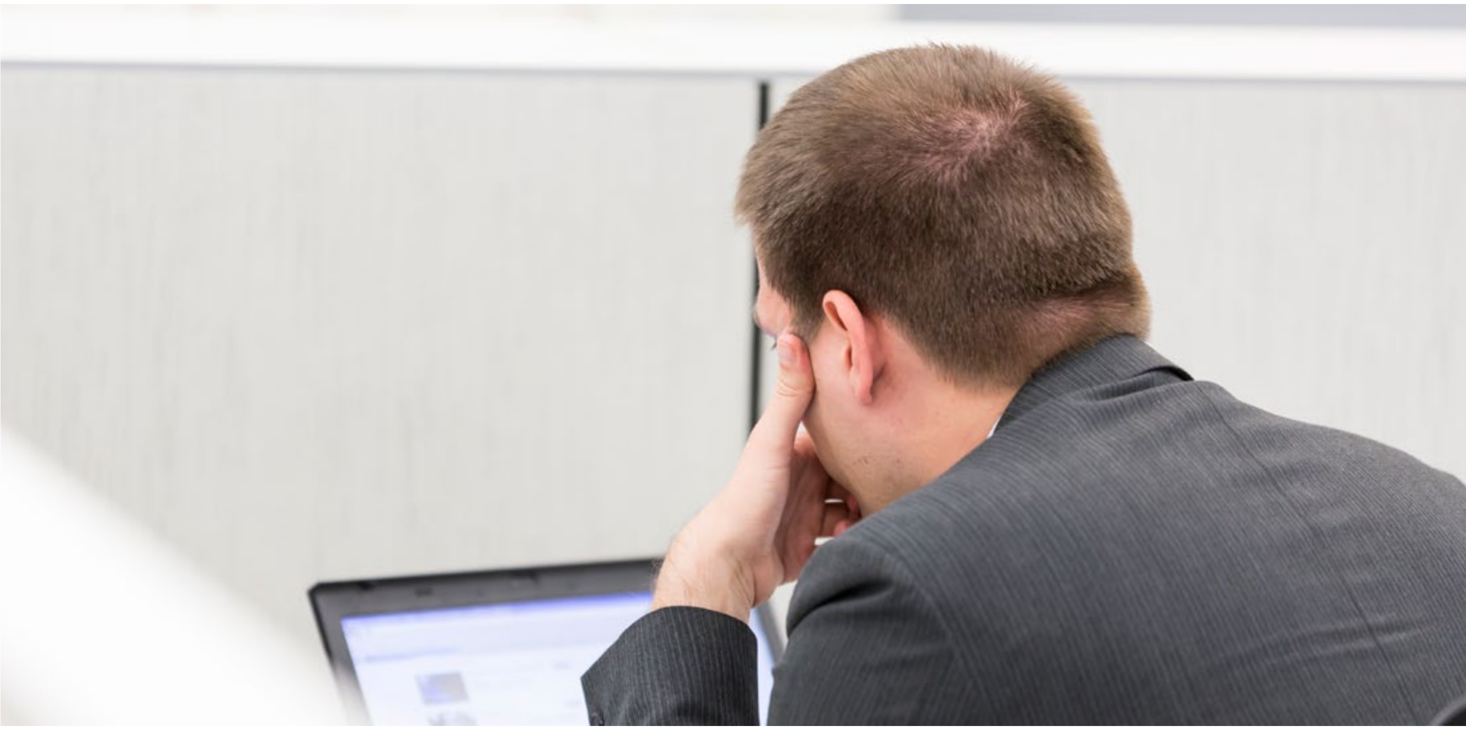
Corporate boards are engaging more regularly on tax matters reflecting the increased business risk associated with a company's tax strategy. Along with gathering information for reporting purposes, additional processes will be required to analyse the potential business and reputational impacts in advance of making tax decisions

Let's dig deeper

The increasing influence of tax on external communication strategies

Businesses should be prepared to communicate tax-related information to governments, regulators, investors, and the public. The C-suite, as well as public and investor relation teams, and finance need to address a growing public perception that multinational companies are not paying their fair share of taxes.

It will be important to establish and maintain a formalised approach to communication that delineates participants, roles, channels, format and frequency between departments (e.g. the tax function, public relations, and legal). Outside advisors can be helpful in providing peer and benchmarking insight into formulating communication strategies.



Tip

Companies should analyse whatever perception or substantive gaps exist between their stated core values and overall tax strategy and disclosures, as well as identify opportunities to highlight overall contributions—including all tax payments—to society. Companies may also want to consider consistency between communication strategies, e.g. if the business is publishing their sustainability strategy, companies should understand how it could impact their tax strategy.

"Shell believes that greater transparency about the payments we make can help build trust between our business and the communities where we work. This is the fourth consecutive year that Shell is voluntarily publishing tax payments. In 2014, this amounted to over $90 billion."

— Simon Henry, CFO, Royal Dutch Shell plc.

Let's dig deeper

Predictions

Information sharing will be commonplace among taxing jurisdictions, and taxing authorities will have the capability to mine data and conduct global audits, resulting in increased disputes.

Strategic focus on jurisdictional reporting and documentation of business activities, including transfer pricing, will be critical to managing the increased tax controversy resulting from transparency initiatives.

Number and size of tax audits and controversies will increase

As cross-border commercial transactions occur more frequently, identifying where profits are attributable will be harder to determine. The potential for complex tax disputes and double taxation increases as countries enact unilateral base erosion and profit shifting legislation. There is also a growing divergence of expectations between tax authorities and taxpayers as to the latter's ability to gather and provide audit-relevant data.

Tax authorities expect companies to have the technology to do so at their fingertips, but for the overwhelming majority of companies this is still far off.

Meanwhile, tax authorities continue to develop their own analytics and data mining capabilities to more effectively analyse data and target specific areas for scrutiny. The data requested from taxpayers is increasing in granularity. Information collected under CbCR could be the single largest trigger of audits and disputes going forward and a significant worry to companies is that governments may not have clear guidance and frameworks on how agents should use the data.

"With the escalation of controversy in the international tax arena, companies will face far greater exposure to double or multiple taxation of the same income. Tremendous pressure will be placed on the mutual agreement procedures, which are designed to eliminate that exposure. With the unsettling of established principles and a lack of widespread use of arbitration to resolve cases, we could see a chaotic, threatening environment very soon."

— Mike Danilack, PwC partner, former IRS Deputy Commissioner (International) in the Large Business and International Division

The OECD has recently released mutual agreement procedure (MAP) statistics that show the highest pending inventory of MAP cases in history and a 94% increase since 2006. These statistics reflect the surge in tax audits and treaty related disputes among OECD member countries over the last eight years. Changes under BEPS could lead to an even greater increase.

Let's dig deeper

Using proactive approaches to address tax audits and controversies

Some companies wait until audits and disputes are underway before developing documentation. That approach generally consumes significant resources and time. Often the requested information is not readily available. And, in some cases, local country income tax filings are completed in an ad hoc fashion, using 'best available' information that may not be fully reconciled to source information or other reports.

Instead, companies should take a holistic view of how audits and controversies could impact the tax function. Pre-emptive measures now can help companies avoid surprises and better manage resources. These include for example:

- Enhancing processes or implementing technology tools that can track audits so tax function management can have full visibility to the number, status, and depth of inquiries globally.
- Re-evaluating global audit and controversy roles, responsibilities, and information flows within the company to manage tax positions more consistently, efficiently share data and document audit responses, and assess potential impacts to earnings. A one-stop global portal can connect individuals across core functions and business teams while employing proper security and access measures. The adoption of these tools by companies is steadily growing.

Tip

In appropriate situations, early, upfront communication and negotiation with tax authorities can provide certainty for taxpayers, reducing future audit risk. Advance pricing agreements (APAs) are one example of beneficial negotiation expected to see greater use by taxpayers.

Let's dig deeper

Enhanced focus on reconciliation

Taxing jurisdictions will be able to share more detailed tax data with each other as transparency initiatives increase. As a result, taxpayers must be able to reconcile information between external, consolidated financial, tax, and local statutory reporting. They must also demonstrate that new filings (such as CbCR) are accurate and consistent on a global basis.

For organisations that have decentralised management or multiple ERPs (or varying instances of the same ERP) more effort may be required to gather the data and test it for accuracy, both at the time of filing and when an audit arises. To address this problem, documentation of end-to-end processes should be undertaken to identify information technology investments that will be needed (e.g. a data hub to efficiently gather, store, consolidate, reconcile and report this information).

"As a large, global company we are familiar with the level of scrutiny applied by tax authorities around the world regarding tax disclosures. We welcome a globally consistent, standard approach to the reporting of revenues, profit and income taxes paid. However, there will always be variances between jurisdictions in terms of how they interpret global requirements, which leads to additional compliance costs and potential for increased disputes and double taxation where the data is inconsistent."

—Ross Lyons, Global Head of Tax, Rio Tinto

The need for ongoing analytics capability

Transparency initiatives are mandating that companies engage in more ongoing review and analysis. CbCR is only one of three parts of the new OECD guidelines for transfer pricing documentation delivered under BEPS Action 13. The Master File and Local File should be viewed as critical companion reports to the CbCR template and need to be updated on a regular basis to ensure consistency and accuracy. Tax authorities will be looking to these documents to rationalise the results under CbCR as a starting point for transfer pricing audits.

The data needed for ongoing analytics is often not easily accessible, requiring tax functions to spend significant time and effort manually gathering and manipulating data for reporting needs. However, today's technology and data analytics capabilities provide a variety of options to improve reporting and documentation, enable greater control and access to information, and harness creative ways to make sense of large volumes of information.

Let's dig deeper

Predictions

Many jurisdictions will legislatively require the adoption of a tax control framework which follows guidelines similar to Sarbanes-Oxley and the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Growing reliance on tax control frameworks to manage tax risk

The emphasis on tax control frameworks in helping companies manage tax risk is gaining momentum globally. The Australian Tax Office recently stated that the presence of a robust tax control framework will be taken into account when determining a company's risk-assessment score. Other recent developments include so-called horizontal monitoring in the Netherlands and the Senior Accounting Officer regime in the UK. These changes enable tax authorities to give more attention to those taxpayers that are deemed higher risk. As a consequence, more companies outside the United States are reviewing their internal controls relating to key tax processes (akin to Sarbanes Oxley in the United States). This review is not just relating to corporate income taxes, but all taxes.

"The global transparency trend is not necessarily just a one-way street for tax authorities to reap the benefits. Tax functions can leverage voluntary disclosure initiatives like co-operative compliance arrangements to gain greater certainty and reduce their own administrative burden. Under such programs the taxpayer needs to be able to confirm by means of a tax control framework, that tax risks are appropriately managed and information and returns submitted are accurate and complete."

—Eelco van der Enden, PwC partner and Global Tax Administration Consulting Leader

Let's dig deeper

Currently the OECD Forum on Tax Administration is working on a guide regarding tax control frameworks for multinational enterprises and tax administrations. The guide will outline the essential features of a functional tax control framework and recommendations for the tax authorities as to how to approach its assessment. Once released, it is expected to be used as guidance in 45 OECD and non-OECD member countries of the Forum and other jurisdictions.

The state of a tax control framework can be assessed against various levels of maturity: initial, informal, standardised, managed, and optimised. Once a company identifies its current and desired maturity levels, it can assess relevant gaps and design a roadmap. The roadmap includes objectives, time frame, responsibilities, and how technology will be used to fill those gaps.

Inspired by COSO, a well-managed tax control framework will consist of:

Business and tax environment

A company's priorities and risk profile. Special attention should be paid to strategy, i.e. strong tax governance to be coupled with an agreed tax strategy.

Tax risk management

Responsibilities for the management and mitigation of key risks must be clear and the governance process documented.

Business operations

An understanding of and alignment with the full range of a company's business operations and transactions.

Monitoring and testing

Confirmation that a company's tax control framework actually works; process should be subject to regular monitoring, testing, and maintenance (for example, by Internal Audit or Risk Management).

Tax operations

The more technical aspects of tax within a company, i.e. monitoring the tax ramifications of legal entity structures and business transactions and their alignment with the tax strategy. Focus on tax accounting and compliance, including the technological infrastructure (e.g. data and workflow management).

Tax assurance

Assurance as to the quality of a tax control framework to internal (C-suite executives, corporate finance) and external (auditors, tax administrations) stakeholders. This may be performed by either internal or external auditors.

Getting started…creating a roadmap for change

Understanding where you are and where you need to be, along with a detailed plan to arrive there

Tax transparency and increased regulatory burdens should be catalysts for change. Although other factors may be present, these trends are pushing companies to re-examine how they are managing tax matters. Most companies acknowledge that the status quo in their current tax and supporting governance functions is not an option; at the same time, many remain unsure as to how to tackle the emerging challenges.

Formulating a detailed, realistic, and customised transformation roadmap is the first step—and begins with a full assessment of the company's current state through a gap assessment. This detailed analysis of the tax function's capabilities, strengths and weaknesses, and risks relating to governance, process, technology, people, and legal entity structure, is a critical tool to identify needed operational improvement, existing risks, and how to manage them.

Understanding how the tax function relies on other functional groups (and vice versa) is also a key input to the roadmap to drive solutions that streamline the full end-to-end processes of the tax function. And, the level and need for change will vary depending on the nature and number of regulatory obligations (e.g. some industries may be treated differently such as mining and financial services).

Capitalise on the opportunity for change—set the stage for success

With foundational change comes opportunity to right-fit, right-size, and invest strategically, thus setting up the tax function to be more flexible, agile, and responsive as the tax environment continues to evolve. Identifying and planning for efficiencies and opportunities that can be achieved will help measure the potential returns on upfront costs in technology, process, and resourcing improvements.

> *"We see the broad impact transparency initiatives have on the tax function, but more importantly also on the wider organisation. Tax is increasingly being embedded in the business and needs to be approached more and more holistically with a broadly supported tax awareness throughout the organisation as a basic requirement. Said initiatives (e.g. CbCR) will, as a positive spin off, expedite this process."*
>
> *—Niels Tromp, Head of Tax, ARCADIS*

Getting started…creating a roadmap for change

In addition to tackling compliance and risk management obligations, the transformation process may also generate opportunities that may be worth capturing:

- *Obtain greater usage of organisational investments in ERP and Business Intelligence systems.*
- *More upfront awareness through better controls and governance of potential impacts to earnings.*
- *Leverage enhanced access to information to gain more real-time management insight (e.g. the ability to monitor the workflow progress of staff).*
- *Participate in broader financial transformation initiatives to strengthen relationships and day-to-day information flows with other core functions.*
- *Bolster the tax function's reputation within the organisation as innovative and best in class by strengthening its capabilities (e.g. to provide more value-add support for business planning).*
- *Use this enhanced reputation to attract more world-class talent.*

Tip

For tax functions that have struggled to obtain funding for IT and other improvements, the mounting volume of compliance requirements should serve as a launch pad to streamline their overall data collection, apply analytics tools, and embed controls to manage risk and enable reconciliation. This is an opportunity to create a platform for broader reform of the tax function to facilitate greater flexibility and enable it to support the business more effectively and efficiently in the long term.

Tax functions should focus on the broader benefits of responding to new challenges by evolving into a more strategic contributor to the business. It's an opportunity to further enhance the tax function's stature within the organisation by using technology, information, and capacity for analytics to contribute to the overall corporate vision and business strategy.

Predictions

Global legislative and regulatory landscape

- Global tax information reporting requirements (e.g. CbCR and similar transparency initiatives) will grow exponentially and will have a material impact on the operations and related budget allocations within the tax function.
- Regulators will demand transparency regarding global taxation, necessitating clear and thoughtful communications with public stakeholders about corporate contributions to the communities in which they do business.
- Information sharing will be commonplace among taxing jurisdictions, and taxing authorities will have the capability to mine data and conduct global audits, resulting in increased disputes.

Tax function's role in risk management and governance

- Many jurisdictions will legislatively require the adoption of a tax control framework which follows guidelines similar to Sarbanes-Oxley and COSO (Committee of Sponsoring Organizations of the Treadway Commission).
- Enhanced stakeholder scrutiny and reputational risk will force companies to continuously re-evaluate their tax decisions.
- Strategic focus on jurisdictional reporting and documentation of business activities, including transfer pricing, will be critical to managing the increased tax controversy resulting from transparency initiatives.

Data flow into the tax function

- The majority of tax functions will receive all information in a 'tax-ready format' from either their enterprise-wide financial systems or a dedicated tax data hub.
- Dedicated tax data hubs will become mainstream and be developed internally, licensed from a third-party vendor, and/or accessed through an accounting firm as part of a co-sourcing arrangement.
- Data security will be high on the agenda of tax functions due to concerns over confidential information being inadvertently released or shared publicly.

Technology automation for tax function analytical tasks

- More companies will use their enterprise-wide financial systems to prepare tax calculations (e.g. income tax accounting and indirect taxes), thereby replacing spreadsheets and/or traditional tax technology solutions.
- The vast majority of tax functions will rely on professional data analysis tools to assist in the decision-making process in areas such as detection of risk, opportunity identification, projections and scenario planning, and overall business support.

Tax function roles and processes

- Most global tax preparatory compliance and reporting activities, including data collection and reconciliations, will be performed within the company's shared service center or will be co-sourced with a third party.
- Tax functions will use real-time collaboration tools to automate their workflow, document management, calendaring, and internal controls.

The tax professional of the future

- A successful tax professional of the future will be highly proficient in data analysis, statistics, and technology, as well as process improvement and change management.
- Tax functions will employ dedicated tax IT, data and project management specialists who will develop, champion, and execute the tax technology and transformation strategies.

Let's talk

Look for future publications exploring the Tax Function of the Future

To have a deeper conversation about how these issues and predictions may affect you and your business, please contact:

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