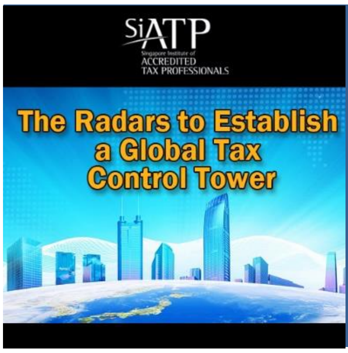

Establish a Global Tax Control Tower

Managing Ambiguity in The International Tax Arena

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Facilitated by:
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The business climate has become more challenging in recent years with the intensity and pace of change increasing simultaneously across different fronts. Tax – an area that permeates multiple aspects of a business – has evolved so dynamically that it is now elevated to being a regular board agenda item. While it is heartening that the tax function is seen as a key stakeholder of the business more than ever, the current landscape also reflects the importance and urgency to relook the tax function to ensure it retains control across the multi-jurisdiction network of the business.

Against this backdrop, Accredited Tax Advisor (Income Tax & GST) Sharon Tan, International Tax Partner, and Wong Meng Yew, Tax Partner and Southeast Asia Leader, Global Trade Advisory, Deloitte Singapore, shared their insights on what it takes to manage a tax function that spans multiple jurisdictions, at a *Tax Excellence Decoded* (TED) session organised by the Singapore Institute of Accredited Tax Professionals (SIATP).

Supporting the Business with a Well-Oiled “Tax Control Tower”

Diving further into what it takes to establish control of a tax function, it is essential to note that every organisation, with its own unique business model, risk appetite and corporate culture, will have its own factors of consideration when designing a well-oiled tax control tower. An initial step would be to understand the tax function’s internal business partner – the finance function.

The finance function of today operates in an era where information is expected to be provided in real-time, and insights drawn highlighted on time, to seize market opportunities. It is no longer just about reporting financial information and operating in a state of “business as usual”. The finance function is now expected to contribute at a higher level in the value chain and in real-time, on time.

Correspondingly, as more and more finance teams embrace technology and make real-time financial data and insights available, the tax function is also expected to leverage new technologies and evolve in tandem to better support the management in making timely business decisions.

Compliance and Governance Framework of an In-Control Tax Control Tower

Considering the dynamics behind the tax function's role in today's business environment, a customised compliance and governance framework is needed – to look into how the tax function maintains international control while providing support to its business partner. This framework is set upon establishing a solid foundation on typically four broad areas of tax – direct tax (including income tax and withholding tax), transfer price, indirect tax (including GST and stamp duty), and customs and trade. These are then pillared by factors of impact mainly in the areas of tax compliance, transparency and technology.

A strong compliance and governance framework will ensure that the technical positions taken are based on sound technical basis (and are hence more defensible). This will put the tax function in a better position to manage any tax controversies and audits. A good compliance record will in turn give the company the credibility to lobby for policy changes should the need arise. Any avoidable tax issues are managed and unexpected issues are communicated promptly.

Typical Indirect Tax and Customs Pitfalls

GST is often viewed as tax neutral by organisations and rightly so, since it is a cost to be borne by consumers and not businesses. However, when not properly managed, GST too, can have a negative impact on the business. For example, prolonged disputes with the tax authorities may create tax traps (due to delayed refunds), which can affect the company's working capital needs. Separately, negligence in documentation (for example, inability to produce valid tax invoices) may affect input tax claims and add to the company's tax burden.

From a customs perspective, changes to duty rates and incorrect use of duty deferral schemes are often cited as top pitfalls – failure to update the company's Enterprise Resource Planning (ERP) system of new duty rates may lead to filing errors, while non-compliance of conditions attached to duty schemes may result in penalties and back taxes.

Accredited Tax Advisor (Income Tax & GST) Sharon Tan, International Tax Partner, and Wong Meng Yew, Tax Partner and Southeast Asia Leader, Global Trade Advisory, Deloitte Singapore, shared their insights on the current tax environment and what it takes to establish a global tax control tower.

Reining in Control and the Interplay Between Transfer Pricing and Customs

In practice, many companies manage their transfer pricing and customs matters separately. However, tax authorities and customs authorities are increasingly collaborating in valuation matters (by sharing information and documentation) and dealing with transfer pricing and customs matters holistically. This recent development makes it vital for companies to start recognising the interplay between the two – transfer pricing adjustments can affect the customs values and can result in potential customs declaration penalties.

While many countries in the Asia-Pacific region do not have formal mechanisms to allow reporting changes to customs value declared at the point of import, companies can adopt best practices to reduce tax risks. For example, companies can consider adopting a centralised policy to manage transfer pricing adjustments and customs valuation, ensuring transfer prices are consistent from a transfer pricing perspective and customs valuation methodologies.

Companies should also consider harmonising HS Codes at the global level and apply them consistently to prevent challenges to duty rates applied and penalties being imposed. This is especially important in view of the active exchanges of information between authorities.

Internally, the tax function and business units should collaborate more closely in managing the company's indirect taxes and customs matters. Business units should be provided with adequate training and technical updates. Often, clear mandate from the management to invest in the people, systems and processes is essential to empower the tax function and business units to jointly manage this area.

KNOWING WHAT IS MEASURED IN AN IN-CONTROL TAX CONTROL TOWER

Being in control of the tax control tower is also about knowing what the measures of performance are. Some organisations measure the tax function with the "5 Cs" – compliance, controversy, cost management, control and commercial. "Compliance" and "controversy" assess the tax function's handling of engagements with the tax authorities, "cost management" concerns the efficient use of the department's budget, "control" relates to governance and tax risk mitigation, and "commercial" emphasises the need for the tax team to gain intimate knowledge of the business, in order to provide relevant and value-adding advice to the business.

Specific key performance indicators (KPIs) to measure the tax function's effectiveness in handling specific tax types may also be used. There is, however, no one-size-fits-all approach when setting KPIs as it is dependent on the company's strategic objectives and goals. Possible KPIs for direct tax may include the number of timely submitted income tax returns, number of re-submitted tax returns due to errors, and efficiency in utilising tax losses. Separately, KPIs for transfer price may include number of timely submitted transfer pricing documentation, number of Advance Pricing Arrangements (APAs) concluded, and number of tax audits closed during the year.

Unfortunately, the tax function will always be remembered by the number of unwelcomed tax surprises that could have been better managed. It is therefore the tax function's goal to minimise volatility in an environment filled with uncertainties. Achieving this will require strong familiarity and a high level of control of the business. Regular and frank communication between the tax function and the management will be crucial.

LEVERAGING TECHNOLOGY IN AN IN-CONTROL TAX CONTROL TOWER

Many tax authorities around the world are taking advantage of the latest technologies to improve tax compliance and enforcement, with the more advanced tax authorities like Australia and Singapore leading the way with sophisticated data analytics and automation. It is increasingly common for tax authorities to request electronic data, instead of paper records, from companies for risk assessment or audits.

To keep up with the trend, companies need to critically evaluate their current state of technological adoption and decide if digital transformation is necessary. For example, is the company still using Excel or dashboard, or has it started adopting data analytics or artificial intelligence for tax matters? While it is clear that technology has a role to play in minimising tax risks for companies, the practical challenge for the tax function is to procure sufficient resources, and in being able to prioritise digital transformation among other pressing business needs.

UNDERSTANDING THE RETURN AND RESERVE POSITIONS

A tax issue may fall on either the return position (the "black and white area") or the reserve position (the "grey area").

The law is clear for tax issues falling on the return positions. In such instances, if an error is uncovered during a tax audit, the company has no technical basis to defend its position. To minimise penalties, it is advisable for the company to voluntarily disclose and correct such errors. Specifically, the company should determine the relevant years of the errors to assess whether the statute of limitation has lapsed. If the issues straddle different timeframes, the financial impact on the company will have to be evaluated to determine the best approach to engage with the tax authorities.

On the other hand, tax issues falling on the reserve positions generally concern technical issues where the tax authorities and taxpayers have different interpretations (or application) of the law, and where there is no clear right or wrong. In deciding on the appropriate course of action, the company should consider the tax authorities' technical argument, the level of sophistication of the tax authorities, as well as possible motivations in undertaking the audit.

A classic example of tax issues falling in the grey areas relates to the pricing of intercompany transactions. A company may decide to advance the tax uncertainty outcome (by proceeding with an APA application to obtain certainty on the pricing of its related party transactions) or deal with the matter upon a tax audit triggered by the local tax authorities. The decision will depend on the company's culture and risk appetite, as well as the financial impact on the company.

Companies opting to advance their tax uncertainty outcome should recognise that an APA, while providing certainty and mitigating transfer pricing risks, often involves substantial upfront costs and the outcome can be uncertain, especially if there is no agreement reached between the taxpayer and tax authorities.

On the other hand, companies opting to deal with the matter upon audit will need to invest in robust documentation and ready themselves for possible challenges from the authorities. These companies must also be comfortable with potentially having higher tax reserves in their financials in view of the uncertainties. Such an evaluation outcome differs by company.

Ultimately, it is critical for the tax function to comprehend the company's return and reverse positions and be able to advise the management to make informed decisions.

PERFORMING REGULAR TAX HEALTH CHECKS

Similar to attending health checkups to make sure that you are in good shape, regular tax health checks are essential to companies' wellbeing. It is best practice for companies to conduct annual tax health checks to get an overview of their existing tax positions, uncover potential tax issues, and identify key risk areas on a timely basis.

Accredited Tax Advisor (Income Tax & GST) Sharon Tan and Wong Meng Yew, shared with tax professionals personal anecdotes and best practices.

To illustrate, in the context of a company qualifying for a tax incentive in Singapore, the company and the relevant economic agency would have agreed on a specific set of commitments at the onset of the incentive. These commitments would kick in over the course of the incentive period (for example, 10 years). As the business landscape changes, the company may need to modify its business model and business activities in Singapore. These can adversely affect the company's ability to meet its incentive commitments and can potentially lead to the withdrawal of the company's incentive status. A timely tax health check will allow the company to discover any issues early, making it possible to engage the economic agency to renegotiate for alternative terms.

As the tax environment becomes increasingly complex, companies need to take up the reins and invest in a high-performing tax function to regain control of their global tax tower. The evolution of the tax function starts now.

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