TAX FOR BOARD MEMBERS

CFO’s journey from “staying out of trouble” to being “fully in control”
Introduction

1. The world of taxation is changing rapidly. Prior to the Base Erosion and Profit Shifting (BEPS) initiative of the Organisation for Economic Cooperation and Development (OECD), non-disclosure by corporate was a realistic tool for dispute avoidance, facilitated by tolerant tax and transfer pricing (TP) regimes in multiple jurisdictions that did not require much more than some standard TP documentation and the company corporate income tax (CIT) return.

2. However, with the introduction of BEPS, TP compliance is no longer so straightforward. Multinational enterprises (MNEs) and small and medium sized enterprises (SMEs) alike are facing more and more challenges to produce Master File and country specific local files in a (growing) number of jurisdictions.

3. An exchange of these reports between multiple jurisdictions coupled with the emergence of programs such as International Compliance Assurance Program, where 7 countries (Australia, Canada, Italy, the Netherlands, Spain, the United Kingdom and the United States) are collaborating to develop a joint assessment mechanism, will provide the tax authorities ample ammunition to challenge taxpayers’ tax and transfer pricing structures.

4. In this uncertain environment, with most tax authorities adopting an aggressive approach towards corporate taxpayers – where “double/triple” tax on the same profit might become the new standard – it is also the reputation of the company and its management board at stake.

5. In short, with the introduction of BEPS, tax today goes hand-in-hand with:
   - Increased transparency
   - Increased reporting burdens
   - Tax obligations worldwide converge to a global standard and require more and more data to be made available to tax authorities
   - Tax risks overlap more with reputational risks
   - Increasing threat of tax audits
   - Threat of data being made public without having a chance to be prepared is higher than ever due to whistle blowers, LuxLeaks, Panama Papers, Paradise Papers etc.

6. Hence, it is becoming more and more important for a CFO to move away from a “staying out of trouble” attitude and adopt a proactive role in the journey towards full control. The following examples show cases in which a chief financial officer (CFO) only “stay out of trouble” (see Diagram 1 below).
i. **Being Reactive:** Taxpayers tend to be reactive to tax problems and tax risks i.e. devising a strategy only to resolving disputes and not preventing them, is a common mistake seen in most corporate taxpayers’ behaviour. This, in the post-BEPS world, easily translates into additional tax exposure through the imposition of tax penalties and interest and will lead to poor relationships with the tax authorities. Contrarily, proactive tax risk management will help eliminate the additional tax exposure, improve relationships with tax authorities, and place control of the tax risk management process back in the hands of the business.

ii. **Siloed approach:** Adopting a siloed approach where tax does not interact with other operational departments of your company is another flaw that leads to mismatches between tax and operational conduct, which is the cornerstone for BEPS. To be in full control, ensure that the tax team regularly interacts with all key stakeholders, from the chief executive officer (CEO), Business Owner, CFO, the board and the audit committee, the accountant to the legal team and tax advisors.

iii. **Lack of efficient management:** Lack of an overarching strategy to guide tax to work hand in hand with the business is a hurdle commonly faced by the tax teams of multinationals. Creating clear strategy and governance roles with clear reporting lines will go a long way in aligning tax with your operational conduct;

iv. **Lack of facts:** Lack of facts often leads to bad tax compliance and unnecessary mistakes that can be avoided. Getting to the bottom of the facts and obtaining an excellent understanding of your value chain takes time and effort on the part of the tax team and only thereafter the technical expertise can be applied properly in order to save yourself from mismatches in substance and form i.e. lack of facts to support your policies;

v. **Blind faith in internal audits:** Financial accounting supplies the numbers on which tax compliance is based. Simply relying on these numbers, as is usually the case with most managers and accountants is not enough. Internal checking or audit procedures must be expanded to self-audit and checking the higher tax risk areas in a business so as to proactively prevent controversy.

vi. **Lack of communication:** Lack of internal and external communication of your tax and other policies will lead not only to mismatches between facts and policies but also expose your company to
potential lawsuits from investors who do not fully understand and support the company’s (tax) policies.

7. Through this booklet, we present through six broad steps illustrated in Diagram 2 below, the road to control on tax matters in this tide of upcoming disputes:

- **Step 1:** Identify mismatches between the financial information presented in various tax filings by adopting a robust synchronisation of financial and tax data analytics
- **Step 2:** Adopt a software based global approach to tax compliance
- **Step 3:** Run financial and tax data scenarios backed by impact of Advanced Pricing Arrangement (APAs), tax rulings or other risk management instruments to adopt a proactive approach to risk planning, provisioning and Effective Tax Rate (ETR) impact
- **Step 4:** Assign clear responsibility profiles to the people managing your operational business model, so as to fully align governance and operational conduct
- **Step 5:** Invest in knowledge management and succession planning to efficiently manage your in-house tax team challenges
- **Step 6:** Reduce your chances of a dispute by ensuring clear/efficient communication to all internal and external stakeholders.

*Diagram 2. CFO Journey from "staying out of trouble" to being “fully in control”*
Step 1 – Robust synchronization of financial and tax data analytics

The first step to being fully in control is obtaining control over your financials and ensuring that they are fully aligned with your operational conduct. This is absolutely essential in the current tax arena as availability of information - facilitated by automatic exchange of information between governments - mandates companies to be extremely careful in their selection of reported data.

Selection of data to be reported for tax purposes begins with running financial and tax data scenarios to identify any mismatches between reported profit, tax and people in a jurisdiction. It is a highly challenging task, especially due to a number of different accounting principles applicable in different countries. Diagram 3 below illustrates the various pieces on the storyboard of an MNE that should be cumulatively assessed and aligned while preparing the financial data to be reported.

Diagram 3. Synchronisation of financial & tax data analytics

What can be done to facilitate the process?

The use of a software to store transactional level data at the level of each jurisdiction in which the company has its operations is indeed the beginning of gaining control over the quality of reliable financials, but before using any software a preliminary selection needs to be made of the country level data required. It is only after that the data can be used to run scenarios/ratio analyses to analyse the impact on the whole group or an individual entity of transfer pricing policies, tax rulings or any other intercompany or third-party arrangements that the group has entered into.

Moreover, using a software solution invariably limits room for error, increases efficiency in identifying the existence of outliers, and helps in developing strategies to mitigate any risks related to them. In Appendix A, the format of “conducting a quantitative outliers’ analysis” is provided, as published by the OECD in September 2017 to serve as guidance to tax inspectors. This has been published to serve as a guidance to tax inspectors in interpreting the data filed by taxpayers under country-by-country reporting (CbCR).

Not being adequately prepared to defend your position when questions are raised by the tax authorities upon identification of any outliers emerging from inconsistencies between the financial versus tax data
presented in taxpayers’ tax returns and, for example, CbCR, will most certainly lead to disputes. This would result not only in heavy costs, but also time and reputational burdens for the company.

Example: The Caterpillar case – A multiple stakeholders’ approach

Diagram 4: Caterpillar Case

An example of how important it is to properly maintain financial data analytics can be seen in the case of Caterpillar Inc., where the US headquartered MNE involved in producing and distributing construction equipment had employed tax planning to shift 85% of US based income to Switzerland by artificially shifting the ‘spare-parts’ business to Geneva, while all the significant people functions and R&D behind it were in the USA. Of its 118,500 employees worldwide, about 52,000, or nearly half, work in the United States, while only 400 employees, less than half of one percent, and work in Switzerland. Of its 125 manufacturing facilities worldwide, 54 are in the United States, while none are located in Switzerland. In 2012, of the $2 billion Caterpillar spent on research and development, 80% was spent in the United States, while less than 10% was spent in Switzerland.

This conduct of Caterpillar has placed it in the middle of controversy, as can be seen from the following:

- Lack of transparency by Caterpillar on issues such as the extent of profit contributed by the ‘spare-parts’ to the total profit of the company, led the employees to blow the whistle on its operations and filing a civil suit
- This, in turn led to an enquiry by the Senate Committee that decided against Caterpillar and its tax advisor
- Lastly, the IRS is challenging the set-up of the Swiss based spare-parts business and especially the economic substance for the restructuring and the resulting allocation of profits to Switzerland (which profit was reported mostly in the US)

This could have been assessed prematurely and avoided by running projections such as full-time equivalents (FTEs) versus operating profit (OP) per jurisdiction or per group entity, as an example. Moreover, even if MNEs do not run such analyses on their own, they will be done by the tax authorities upon receipt of CbCR data or via information received from leakage or whistle blowers. Hence, in an attempt to stay away from disputes, MNEs should adopt pro-activity in synchronizing financial data analytics with their operational conduct.
Conclusion

To summarise, ask yourselves some questions:
- Have you made a careful selection of data to be reported in local country and global filings?
- Have you run financial ratio analyses to identify key areas of risk?
- Are you aware of the mismatches that will appear out of CbCR vs. local tax returns?

If you hear yourself answering ‘No’ to one or more of these questions, to avoid being in the position of Caterpillar, the following should be a part of your stepped plan:

- Usage of automated-based software to ensure safe and accurate record-keeping (adaptable to local country reporting standards)
- Implementation of a tracking system of modified data in order to access changes made at any point in time
- Making the data more easily accessible to run ratio analysis
- Analysis of the growth patterns of the company backed with reliable data from over the past ten years
Step 2 – Global tax compliance approach

The next step in the journey to be fully in control is the implementation of a global tax compliance approach. After running your financial ratio analysis and selecting the data to be reported for tax purposes, it is also equally important to actually document your tax and transfer pricing realities in an efficient and compliant manner.

A holistic value chain analysis, which has become a mandatory part of the annual TP Documentation exercise of MNEs supporting the intercompany TP policies of the MNE as documented in the master file, local country file, CbCR and TP forms can significantly reduce the probability of disputes of the MNE with the tax authorities. See diagram 5 below.

In case a dispute with the tax authorities were still to arise, the use of controversy management instruments such as APAs, negotiations, mediation etc., could further reduce the chances of such a dispute landing in the courts; and

Lastly, the use of controversy management instruments aligned with each step of the value chain of an MNE can help in defending the MNE’s position in a court room in case of such a tax dispute landing in court.

However, a holistic VCA requires alignment of not only people with profit creation but also alignment of information reported in all types of tax/TP filings.

Diagram 5. Roadmap from “staying out of trouble” to being “fully in control”

This is an increasingly difficult requirement for two reasons:
- The first one being lack of consistency in reporting of information across jurisdictions due to involvement of different people in preparing those reports; and
Secondly, it is extremely difficult to keep a track of all types of CIT, TP, VAT etc. filings in every jurisdiction.

Conclusion

The risks of being non-compliant are self-evident. From monetary penalties to long and tedious courtroom battles and reputational damage, the list is long and growing. But to assess whether you are in control of your documentation, ask yourself the following:

- Are you aware of all the information that is reported in tax/TP files over the last 5 years and if there have been any changes?
- Are you aware if the information reported for CIT purposes contradicts with the profile of the taxpayers for VAT purposes?
- Are you aware of all filing deadlines and do you have a mechanism to receive alerts of approaching filing deadlines?

If you hear yourself answering ‘No’ to one or more of these questions, to avoid disputes with tax authorities, the following should be a part of your tax technology step plan:

- Just like in the previous step, software based automated preparation of TP documentation can easily be reused for multiple years and ensures consistency across jurisdictions and multiple years
- It also provides a common store for all tax/TP compliance/filing for multiple years as well as keep track of changes made and by whom
- A Global tax compliance solution i.e. an automated tracker allows you to determine high/low risk countries for VAT, CIT and other local tax filings as well as set reminders for selected jurisdictions and/or filings. Thus, a global approach to tax risk management and compliance should consist of at least the three components visualised in diagram 6 below:

Diagram 6: Global Approach to tax risk management
Step 3 – Proactive risk planning, provisioning and ETR impact

The next step that you need to take in order to be fully in control is to get involved in the proactive risk and opportunity planning, which includes a consistent way of tax provisioning and determining your ETR. After selecting your data being reported for tax purposes and securing it in all tax/TP reporting standards, the next logical step for you is to start analyzing all of the information collected and reported for the purpose of compliance (see "slice X" below), and for tax provisioning (see "slices Y and Z" below).

Diagram 7. A proactive approach to tax risk & opportunity management, provisioning and ETR impact

At this stage, the reliable financial information fed into your automated software can help you visualise options for optimising your approach to tax provisioning and its impact on ETR.

Example: Procter and Gamble has obtained over 17 APAs, most of which are bilateral by providing extensive detailed information backed by financials which has helped them reduce their tax provisioning from USD 4 billion to USD 500 million, which allows them to improve the quality of their earnings.1

The available financials can also be used to identify any mismatches that may still be existing between data across entities. For example, ratio analyses could be run at this stage to determine if there is a difference between reported ETR vs. ETR calculated based on value chain analysis. Such calculations and analyses will not only help the MNE build robust defence arguments in case of a dispute with the tax authorities but will also help to achieve process optimisation. See diagram 8 below to understand the impact of various activities of the company on its ETR.

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Determining the items impacting the ETR and classifying them as high, medium or low risk also allows you to optimize your ETR in a BEPS-proof manner. This is essential because if there are any misalignments between ETR (based on a global value chain analysis which defines the ranking of “value creation” per factor) and ETR (as reported for financial purposes) due to any high-risk items, it will invariable place the MNE in the middle of a dispute, or will mean that you have not been reporting the correct ETR to stakeholders.

**Example:** An example can be seen in case of Amazon after LuxLeaks, which transferred its "business profits" to Luxembourg, based on negotiating a low ETR with the Luxembourg Government. In this setup, the group entity in Luxembourg was paying a limited fee to the five operating websites in Europe (such as UK, DE etc.) for delivering the goods and services through the "business platforms", while the entity in Luxembourg was claiming a large share of profit resulting from sales and distribution conducted via these websites. However, based on number of employees and extent of operations in the five countries where the websites exist versus the extent of operations in Luxembourg, it is not easy to prove that the Luxembourg entity is involved in inventory, logistics, distribution, warehousing etc. and bears the risks associated.

This was already questioned at a hearing of the Public Accounts Committee of the UK Parliament on November 12, 2012, where the directors of public policy for Amazon was subject to an interrogation, where it was suggested that Amazon is engaged in shifting income out of the UK to tax havens, such as Luxembourg. More recently, on October 4, 2017, the EU Commission accused Luxembourg government of providing State Aid to Amazon Luxembourg, where certain transfer pricing arrangements were qualified as “artificial” and "in a subjective manner benefiting Amazon as a taxpayer".
Conclusion

To assess whether you are making the most optimum utilizations of your financial data collected in software, ask yourself the following:

- Have you run all possible risk scenarios - i.e. in case the tax authorities disagree with your reported income - and their impact on your financials?
- Have you assessed how to explain the existence of and the allocation of income to “stateless entities” in your company?
- Have you identified mismatches (both that raise and do not raise a red flag) between CbC reporting and local tax returns?

If you hear yourself answering ‘No’ to one or more of these questions, to avoid disputes with tax authorities, the following should be a part of your step plan:

- Just like in the previous steps, a software based automated calculation of an outlier analysis is key to bringing you a step closer to being in control.
- Additionally, making a careful assessment of items impacting your provisioning income and ETR could assist you in improving the quality of your earnings.
Step 4 – Alignment of operational and governance policies

The fourth step that you should take to be fully in control is assigning governance conduct on the operational business model. This is important because after meeting your compliance requirements in step 2 and 3, the next step is to assign clear roles and responsibilities to your people responsible for managing your business model so as to allocate responsibility and accountability to your business teams.

The following diagram 9 presents an ideal governance model and the subsequent diagrams 10 - 12 present potential questions that an in-house team in a company should ask itself, when one of the elements from the ideal set-up is missing.

Diagram 9. Generic Governance Model

Key Messages:
- Corporate governance models
- Liability issues of boards
- Corporate governance beyond tax matters

Diagram 10. Generic Governance Model

Points of discussion:
- What happens if no clear division of roles and responsibilities are defined on business and tax matters?
- Who signs off on the CbCr and tax returns?
- Who is responsible for delivering a write-up of a full “Value Chain Analysis” in China?
Absence of clear governance roles to support control over operations of the company can make it difficult for the MNE to defend itself in case of a dispute. In order to allocate a high income to an entity, it is not just sufficient to show that there are personnel on the payroll of the entity carrying out the said tasks but also that there are significant people functions actually in place controlling these functions. This can be achieved by implementing a proper RACI (Responsible, Accountable, Consulted, Informed) structure. The following diagram (diagram 13) provides an example of application of RACI on the allocation of roles and responsibilities to your in-house tax function.
In the context of tax/TP arena, as the visual shows, roles such as tax risk strategy development, tax risk management, Tax/TP documentation preparation etc. can be allocated to different members of the team which allows your company to maintain clear accountability that in turn paves the way for defending your position in case of a dispute.

**Example:** Absence of such a structure to support conduct of operations of an MNE threatens to weaken the MNEs position to defend its allocation of income across group entities. This can be seen in the case of Apple, where the tax structure shows a different distribution of roles and responsibilities (and corresponding income) between related and unrelated entities than shown by a visual on Apple's global value chain. The diagram 14 below illustrates the legal and tax world of VCA, where in the post-BEPS world, the economics of such value chain operations will prevail rather than the fairly complex tax/legal view that is mostly set on legal boundaries of Apple and its operations.

### Diagram 13. RACI for in-house tax/TP team – 9 workflows schedule

<table>
<thead>
<tr>
<th>Workflow Description</th>
<th>Head of Tax</th>
<th>Lead TP</th>
<th>Deputy TP</th>
<th>TP Operational</th>
<th>Central finance team</th>
<th>Local tax team</th>
<th>Treasury team</th>
<th>Legal team</th>
<th>Business team</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Development / maintenance of TP documentation</td>
<td>I</td>
<td>A</td>
<td>R</td>
<td>R</td>
<td>C</td>
<td>C</td>
<td>-</td>
<td>I</td>
<td>-</td>
</tr>
<tr>
<td>2. Consultancy – Advisory and implementation</td>
<td>A</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>I</td>
<td>I</td>
</tr>
<tr>
<td>3. Audit support</td>
<td>I</td>
<td>A/R</td>
<td>R</td>
<td>R</td>
<td>R/C</td>
<td>R/C</td>
<td>C</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4. Risk Management</td>
<td>A</td>
<td>R/C</td>
<td>R/C</td>
<td>R/C</td>
<td>R/C</td>
<td>R/C</td>
<td>C</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>5. Systems (central data management &amp; retrieval)</td>
<td>I</td>
<td>A</td>
<td>R</td>
<td>R</td>
<td>R/C</td>
<td>C</td>
<td>C</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>6. Capacity planning - Insourcing / outsource</td>
<td>I</td>
<td>A</td>
<td>R</td>
<td>R</td>
<td>R/C</td>
<td>C</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>7. Global benchmarking platform (outsourced to third parties)</td>
<td>I</td>
<td>A</td>
<td>-</td>
<td>R</td>
<td>R/C</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8. Sign-off TP documents</td>
<td>I</td>
<td>A</td>
<td>R</td>
<td>R</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>9. Legal agreements- set up and implementation</td>
<td>-</td>
<td>C</td>
<td>R</td>
<td>R</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>A</td>
<td>I</td>
</tr>
</tbody>
</table>
In the tax dispute between Ireland and the EU Commission, the latter claims that Apple has artificially shifted income outside of the USA to its Irish subsidiaries. These three entities were run by some of Apple’s top executives located in the USA but were located, on paper, in Ireland. One of the subsidiaries (AOI) had no employees and reported $30 billion in net income for the financial years 2009-2012, yet filed no corporate tax return and paid no income taxes to any government during those years. This, when brought to question in a US Senate committee instigation, was defended by the CEO Tim Cook by pointing out deficiencies in the tax laws of both Ireland and the USA that facilitated the allocation of
income to entities (managed and controlled from the USA) with no employees and henceforth the payment of such low taxes. The EU commission has issued a claim of EUR 13 billion euro to the Irish government for illegal state aid provided to Apple.

Conclusion

To assess whether you are in control of your operations, ask yourself the following:

- Do you have clear reporting lines (both payroll and functional) that are well documented and implemented across your organisation?
- Do you have many differences between reporting lines for payroll purposes versus reporting lines for functional roles?
- Do you have a set of RACI implemented on your operational business model as well as a tax department set-up?

If you hear yourself answering ‘No’ to one or more of these questions, to be prepared to defend your position in front of the tax authorities, the following should be a part of your step plan:

- Allocation of clear responsibility profiles (R – Responsible, A – Accountable, C - Consulted and I – Informed) to your management so as to have clear accountability within your organisation in case of a dispute
- Ensuring alignment of operational business model conduct with governance for business i.e. alignment of dotted and solid reporting lines
- Preventing criminal indictment in event of failure to comply with corporate tax governance.
Step 5 – Managing in-house challenges

The aim, at this stage, after completing steps 1-4, is to manage your in-house challenges so as to ensure that you do not get into a dispute due to or against one or more of your employees and/or shareholders which could trigger stakeholder’s faith in your tax strategies and policies.

This can be achieved only when your team is ready to adapt to changes in the industry. The organizational structure of the in-house tax department, as a part of the financial department reporting to the CFO, must move simultaneously with the technology in order to stay competitive in a disruptive business environment. See diagram 15 for illustration.

Diagram 15. Tax Technology Solutions suite offered by TPA Global network

Other examples of managing in-house challenges are:

- Ensuring your IT system facilitates storage of all relevant information and financials as well allows for easy extraction of relevant data, i.e. have a well-defined tax technology plan implemented
- Ensuring your HR team takes sufficient steps in undertaking succession planning, especially for key decision makers in your company
- Ensuring complete transparency in your operations as well as your tax related strategies to inculcate faith in your company among your employees
- Ensuring that your in-house people are up to date and BEPS compliant, so that they can manage to complete successfully the remaining 5 steps from the CFO journey.

Example: An example can be seen in the case of Caterpillar Inc., where its shareholders/investors have filed a case against it and its tax advisors for making false and misleading statements and failing to disclose that it used its foreign subsidiaries to avoid paying billions of dollars in US taxes.
Their claims included:

i. Caterpillar’s management board had exposed the company to billions of dollars in liabilities by agreeing with PwC to implement a tax strategy which led to non-payment of $2.4 billion of taxes.

ii. There was a suggested breach of fiduciary duties as a result of the management board approving an elaborate tax avoidance scheme.

The responses provided by Caterpillar and its tax advisors in front of the US Senate Committee investigation to assert that its policies were, in fact, not shifting income artificially, were found to be inadequate by the investors/shareholders who demand utmost clarity from the MNE.

The following diagram 16 illustrates the types of in-house challenges that a company wanting to be fully in control should try to control.

Diagram 16. In-house challenges

Conclusion

Some of the risks resulting from mismanagement of in-house challenges are:

- Slow response to the needs of your business people
- Running into penalties and fines, including personal liability claims for not being BEPS compliant
- Running a corporate governance not synchronized with your business model

To assess whether you are in control of in-house challenges, ask yourself the following:

- Do you have clear succession planning?
- Do you have a robust IT system and tax technology plan supporting your operations?
- Do you have employees that have faith in your organisation? (so-called “integrity test”)
• Have you made information about your strategies (both operational and tax related, such as with regards to ETR, bearing no reputational risk etc.) clearly available and understood by all stakeholders?

If you hear yourself answering ‘No’ to one or more of these questions, to be prepared to safeguard yourself from a surprise attack, the following should be a part of your step plan:

• Provide in-house coaching and training to IT departments in teaching them how to interact with your tax professionals’ team in accessing correct financial data to be reported
• Ensure knowledge and succession planning for your tax team to ensure the role of tax risk management is carried out without hiccups
• Adopt a proactive approach in preparing and making available your corporate governance documents including an element in tax strategies.
Step 6 – Communication to internal and external stakeholders

The final phase to achieve the full control is to establish a clear and efficient communication with all internal and external stakeholders. This step safeguards you and your company from not just in-house challenges but also attacks from the public domain such as LuxLeaks, Panama papers, and Paradise papers where sensitive information about your company may become available to the public at large without any fault from your side, thereby placing you, once again, at the threat of disputes.

In order to mitigate this risk, you must communicate with all stakeholders (internal and external) in a clear and efficient matter on topics such as strategy, operational conduct and allocation of income to each group entity, especially in the post-BEPS world that demands full transparency. Lack of such information being readily available can lead to many adverse circumstances, from investors filing a case against the company alleging fraud, as shown in the previous example of a case filed by Caterpillar’s investors to information being leaked in the public domain leading to questions from Senate Committees, tax authorities etc. Hence, full disclosure helps lower the risk profile of a company and brings it one step closer to being ‘fully in control’.

An organization which doesn’t disclose the strategic, operational, governance and tax policies is exposed to high risk of disputes before the tax authorities and stakeholders, while a transparent communication backed with fully aligned story lines across tax/TP filings and financial results helps provide a final layer of shielding to a company.

In short, the risk profile of a company decreases with the increase in the disclosure of data by the company. However, it is not merely sufficient to be transparent if the data being made available has not been prepared to match the operational conduct with governance structures and financials.

Example: An example can be seen in the case of a mining giant, Rio Tinto, that made its sales revenue and taxes paid by location available publicly. We added to this information another pie chart showing global allocation of FTEs, which brought about clear mismatches between location of employees versus location of sales revenue and corresponding taxes paid (see diagram below). This type of disclosure brings you back to step one above, where we stress the fact that gaining control over your financial data is a crucial step in this process.

Diagram 17: Rio Tinto Case

**Example:** Another example where lack of efficient communication to stakeholders has led to reputational damage for companies includes the case of IKEA where an independent study commissioned by the Greens/EFA Group found that IKEA has been avoiding taxes of over USD 1 billion in the past six years. Such reports in the public domain not only damage the reputation of the company, but also reduce the market value of the company over time.

*Diagram 18: IKEA Case*


**Conclusion**

Risk of not setting up efficient communications with the stakeholders are as follows:
- High risks of disputes before the tax authorities and stakeholders
- Stakeholders’ lack of trust in the organization
- Reputational issues
- Business not in accordance with a reliable and solid corporate governance policy.

To assess whether you are fully in control, ask yourself the following:

- Do you have efficient reporting systems? **See diagram 19 below** for illustration on what to report on tax to CFO/Management board/audit committee based on data that gets reported through various tax/TP filings?
- Do you have fully aligned information available for each component of your value chain that is also backed with quantified financial data?
- Do you report such details to your shareholders?

If you hear yourself answering ‘No’ to one or more of these questions, to safeguard yourself from a surprise attack, the following should be a part of your step plan:

- Start with identifying all data points that get reported and assess them from a tax risk management point of view
- Get an understanding of all information that is made public by your company and the information that gets shared between different governments through exchange of information
- Get adequate IT checks in place to secure leakage of your tax sensitive data
Always prepare and communicate your tax strategies and their alignment with operational strategies to all key stakeholders.

Diagram 19: Financial data reported through various tax/TP filings

<table>
<thead>
<tr>
<th>Data</th>
<th>CbCR</th>
<th>LF</th>
<th>MF</th>
<th>AEOI</th>
<th>ATAD</th>
<th>APA</th>
<th>Tax Ruling</th>
<th>APA</th>
<th>Tax Rulings</th>
<th>CIT Return</th>
<th>VAT Return</th>
<th>Customs Duty Return</th>
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</tbody>
</table>

Conclusion

1. This concludes the journey of a CFO from 'staying out of trouble' to being 'fully in control'. The key takeaways from the steps listed above are:

- Get a hold on your financial data that needs to be reported or is made public through annual or other filings by your company and assess whether there are any mismatches between all of this information;
- Ensure your operational strategies are in line with your tax strategies by allowing regular interaction between tax and operational departments, and have clear roles and responsibilities laid out in a corporate governance document that is regularly communicated to all key stakeholders; and
- Ensure you have invested significant time and effort in proactive tax risk management to avoid getting caught in the web of controversy. This can be achieved by keeping yourself up to date with the latest post-BEPS developments, ensuring clear succession and knowledge planning among your team, keeping a strict check on IT systems used to store and report tax data and ensuring a cohesive communication between your entire team.

Diagram 20 illustrates the path away from common mistakes made by taxpayers and towards a full control on the business and tax risks of the company.

Diagram 20:
2. Taking appropriate proactive measures to assess and manage tax related risks indeed reduces the chances of an MNE getting into a dispute. Such proactive measures can range from tax rulings from one or more governments to conducting a value chain analysis to align global allocation of income with economic activity leading to generation of that income.

3. This process begins with carrying out a global tax risk assessment to identify key areas of dispute for the MNE so as to identify and implement mechanisms for their management and resolution. Such assessment requires experts in each field and each major jurisdiction.

4. Keeping this in mind, TPA Global has invited a team of globally renowned, independent specialists with wide-ranging experience in value chain analysis, arbitration, mediation, litigation and tax rulings, to name a few. The team consists of independent experts, each with over 20 years of experience in handling tax relating disputes, covering all major jurisdiction across the globe and are able to fully support MNEs in the global risk assessment, management and resolution services.
TPA's propositions:

The need to achieve full control is imminent in the post-BEPS world. While the 6 broad steps required to establish full control are universally applicable to corporations, but the journey that each corporation needs to undertake to be fully in control differs from one to another. Keeping this in mind, TPA Global offers the following propositions that can be easily customised to suit the case of any corporation:

- **Tax Data Analytics**

  TPA offers software solutions that allow capturing of transactional level data that can be used for multiple purposes such as:

  - Identifying and harmonising the mismatches arising out of different sources of data collection (for example, via different ERP systems used in different countries) to gain a better control on the financial data reported for various purposes (**See step 1 of the journey**).
  - Identifying if the entity level financial data matches the transfer pricing policies of the group as well as the data selected for CbCR purposes (**See step 2 of the journey**).
  - Identifying scope for optimisation of ETR and provisioning income to improve the quality of your earnings (**See step 3 of the journey**).

- **BEPS/Global Tax Compliance**

  TPA promotes a global approach to tax compliance, which includes devising a strategy at group level and then implementing it at local levels using a sound corporate governance structure (**See step 2 of the journey**).

  TPA works with a number of software providers to support multinationals in automating the annual preparation of Masterfile, local files and CbCR.

- **Tax Risk Assessment and Management/ Alternative uses of Value Chain Analysis**

  Proactiveness in managing your challenges is key in gaining full control. TPA offers a variety of services in the area of risk assessment and management, which include:

<table>
<thead>
<tr>
<th>Risk Assessment Measures</th>
<th>Dispute Avoidance Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Identification of key high-risk operations of the MNE;</td>
<td>- Redesign of TP models, value chain analysis, other voluntary measures;</td>
</tr>
<tr>
<td>- Identification of key high-risk jurisdictions for the MNE;</td>
<td>- Unilateral, bilateral, multilateral APAs;</td>
</tr>
<tr>
<td>- Identification of inconsistencies between tax, operating and governance models of the MNE arising out of the annual value chain analysis conducted for TP documentation purposes;</td>
<td>- ISO certifications;</td>
</tr>
<tr>
<td>- Identification of applicable dispute avoidance instruments to the MNE.</td>
<td>- Co-operative compliance programs;</td>
</tr>
<tr>
<td></td>
<td>- Safe harbour rules;</td>
</tr>
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<td></td>
<td>- Pre-audit settlements;</td>
</tr>
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</table>
- **Tax mediation, arbitration and litigation**

TPA offers, through locally renowned specialists, services of mediation, arbitration and litigation to its multinational clients with respect to their tax/TP policies. Please visit [https://www.gtc-global.org/](https://www.gtc-global.org/) for more information on this project and specialists.

- **Coaching/training in-house teams**

TPA offers coaching and training services to in-house tax/TP teams of multinationals on topics including, but not limited to (*See steps 4, 5 and 6 of the journey*):

- Transfer Pricing after BEPS (level 1, 2 and 3)
- How to manage a TP audit?
- Value Creation Series
- Authentic Governance and Control
- Valuation Techniques

For more details on these courses, please visit: [http://www.e-bright.com/Courses](http://www.e-bright.com/Courses)

*Contact us for more details on these services and to customise a plan suited for your company!*
APPENDIX A – Conducting Outliers' Analysis – OECD Publication on 'Handbook on Effective Tax Risk Assessment' published September 2017
### Key ratios for year ended 31 December 2017

**Key ratios by tax jurisdiction**

Name of the MNF Group: MNF SA  
Fiscal year concerned: 31 12 2017  
Currency used: EUR

<table>
<thead>
<tr>
<th>Tax jurisdiction</th>
<th>Proportion of revenues from unrelated parties</th>
<th>Proportion of revenues from related parties</th>
<th>Revenues generated per employee</th>
<th>Pre-tax profit generated per employee</th>
<th>Revenues generated per EUR of tangible assets</th>
<th>Pre-tax profit generated per EUR of tangible assets</th>
<th>Pre-tax return on equity</th>
<th>Post-tax return on equity</th>
<th>Profit margin</th>
<th>Effective tax rate</th>
</tr>
</thead>
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<tr>
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<td>13</td>
<td>1.09</td>
<td>0.13</td>
<td>21%</td>
<td>14%</td>
<td>10%</td>
<td>10%</td>
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<tr>
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<td>12</td>
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<td>16%</td>
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Income tax accrued / Profit before tax

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tpa-global.com
About the authors:

TPA Global

TPA Global is an independent professional service and solutions partner that serves its client globally through a network of Members and Alliance Partners in over 60 countries. Our solutions range from international tax related services such as Tax Governance, Transfer Pricing and Indirect Taxes, to Merger & Acquisitions support to Operational Performance enhancement services like location selection, supply chain optimization, etc.

For more details, please visit our website at https://www.tpa-global.com.

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TRM™ services is a multidisciplinary world-wide practice with lawyers and accountants as consultants versed in international and domestic tax in the United States and Africa, with Tax Risk Management process and procedure experience in Europe as well.

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