ACCA

Global policy on taxation of companies: principles and practices

Think Ahead

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Through its public interest remit, ACCA promotes appropriate regulation of accounting and conducts relevant research to ensure accountancy continues to grow in reputation and influence.

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Foreword

As we enter the age of the digitalised economy, the debate on taxation remains highly controversial.

In 2014, ACCA published its broad views around the issues being discussed to help bring some structure and consistency to the debate. The paper that follows sets out the policy positions considered in an ACCA Council document which was endorsed on 23 November 2013.

ACCA's Council wished to encapsulate within the agreed text many of the pros and cons playing out in the global debate as well as to look further ahead to how the tax landscape might unfold in the future. This updated paper revisits the context within which the policy sits, as the global economy has moved on, but reiterates the policy positions, which we believe have stood the test of time.

Helen Brand OBE
Chief Executive, ACCA

Introduction

This report focuses on company taxation, an area where, thanks to its engagement with employers and businesses, ACCA can make a distinctive and constructive contribution to the creation of global principles for better taxation that supports enterprise. Although there are equally areas of concern around personal tax, the focus there is more on evasion than avoidance, and the clear criminal nature of such conduct offers less scope for discussion and debate.

The report outlines the general context for issues of corporate tax behaviour, the relevant principles underpinning the design of tax systems, and taxpayers' responses to them. It goes on to identify features of a 'good' tax system and frames principles that ACCA aims to follow in its approach to policy on corporate tax matters.

Tax remains at the centre of the global political and business debate. The capacity of governments to fund the expenditure needed in the face of changing societies is an ever-changing challenge. As society itself changes shape, the role of government and the rule of law faces must remain relevant. Business practices have changed with the rise of globalisation and the digital economy and the work programmes of the OECD and others to reflect those changes recognises that even though policy goals may remain the same, the route to achieving them will change.

Scrutiny of the accountancy profession has risen along with the profile of tax, especially in the area of tax planning. Although accountants remain the most trusted group in the tax policy debate, the message is nevertheless often heard that professional advisers must at the very least be complicit in the minimisation of corporate tax contributions by big business, or even be the prime movers behind what is seen by many as deeply anti-social behaviour. Now is good time to set out ACCA's policy on the taxation of businesses, especially MNCs. ACCA wishes to lead a constructive debate and lay down the principles that should underpin the approach of policymakers.

Tax is, and will remain for the foreseeable future, a high priority of policymakers, businesses and professional advisers around the world. As a global professional body, many of whose members are actively involved in advising on or managing tax affairs, ACCA's position on this issue not only acknowledges the legal and professional obligations of accountants to give the best advice to their clients and employers but also reflects concerns about whether current tax systems allow taxpayers to avoid paying a level of tax that is commensurate with the substance of their economic activities.

In a globalised business environment, it is undesirable and potentially counter-productive for any one country to go its own way, changing its tax laws unilaterally. Coordinated efforts should be made on an international basis to ensure that tax systems keep pace with changes in the way that business is conducted, capturing the substance of economic activity in the calculation of liability to tax. ACCA supports and is directly involved in the efforts being made at G20/OECD level to achieve this global reform.

Companies must see the management of tax obligations as part of that process of creating long-term value.

Businesses today face continued pressure to be more transparent in their tax policies and positions. This issue needs to be seen in the wider context of the responsibility of boards of directors to achieve long-term value creation for the benefit of their shareholders, and to communicate to all stakeholders their underlying commitment to the building of a sustainable business as part of a sustainable society. Companies must see the management of tax obligations as part of that process of creating long-term value.

Policymakers should be mindful of the pressures experienced by businesses in attempting to balance commercial demands and the expectations of society, including those associated with what is commonly referred to as corporate social responsibility. The moral pressures being exerted on companies by politicians and pressure groups to pay more tax than they currently do cannot absolve policymakers from their responsibility for framing clear and effective rules for tax systems and recognising that business can contribute more than simply tax revenues for the good of society.

Advisers must remain aware of the environment in which they operate and the potential reputational and commercial damage to them, to their clients and to the broader profession if they are found to have abused a tax system.

Issues and challenges – the context of taxation

THE ECONOMICS OF TAXING BUSINESS

Company taxation exists within a web of interdependencies that not only affect the behaviour of taxpayers but also act as an indicator of governments' approaches to both 'big business' and voters' interests. Corporate tax functions are increasingly under pressure from the conflicting demands of regulation, community engagement and commercial competition.

An individual tax can typically have one or more of three functions – revenue raising for government, wealth redistribution, and/or regulation/behaviour modification. Business taxes levied on corporations perform a mixture of all three functions, and are typically imposed upon the annual accounting income profits of the business.

Nonetheless, there are further significant taxes imposed in most jurisdictions. Whether a tax on profit, irrecoverable VATs and sales taxes, or income taxes generated on employees' labour, they are a burden on the company's cash flow, affecting its competitiveness, and will need to be absorbed into the cost structure of the business, passed on to customers, employees or owners. Governments are aware of the broader value of corporate investment into the economy and will often give investors incentives by offering reduced, or 'competitive', tax rates.

Many tax adjustments are deliberate policy decisions designed to promote behaviours not adequately rewarded by the market, such as research and development incentives. Policymakers also need to recognise the potential opportunity cost of imposing taxation. Not only are companies directly deprived of the tax contribution, which they might otherwise reinvest or distribute, but also – if the burden of taxation is perceived as excessive – they may relocate to another country or cease to engage in particular activities, depriving government of all the potential tax and society of any wider benefits of the economic activities concerned.

THE PURPOSE OF THE COMPANY

Businesses function as more than simply vehicles for generating profit. The interdependencies between the economic, social and wider environmental factors create a 'triple context' within which businesses exist, and there is increasing recognition that a long-term sustainable business model relies upon balancing the contribution to all three subsystems. Corporations allow for the use of investors' capital without a need for other direct engagement, opening up opportunities for achievements and returns that would otherwise be unattainable. Even so, it is being argued increasingly, with legislation in some cases, that profit maximisation should not be the only goal of companies. There is an increasing drive towards 're-incorporating society into corporate purpose' and ACCA sees a company's tax contribution as being a fundamental part of its integration into the wider tapestry of societal interaction.

TAX TRANSPARENCY

The social responsibility profile of large corporates is increasingly associated with their attitude to tax. It seems likely that, in the future, companies may need to make wider disclosure of their policies on tax and their actual contributions. Such a course is in ACCA's view fraught with difficulty, bearing in mind the disparity in sophistication of potential users of such disclosures. The level of detail appropriate for one situation or analyst will be an undue burden, or potentially confusing overload of information, for another. Detailed tax filings are commercially sensitive, and in many jurisdictions confidential to the taxpayer.

COMPANY TOTAL TAX CONTRIBUTION

The public perception of the contribution made by business to society often fails to capture not only the wider benefits of enhanced economic activity, but also the full impact of companies on the tax system. In addition to corporation taxes

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paid, businesses typically bear the burden of a range of other levies and taxes, both direct and indirect, and also act as unpaid tax collectors, withholding and paying over significant levels of employment and consumption taxes on behalf of the tax administration. This concentration of the tax function in the hands of business significantly reduces the cost to society of tax administration, and enhances the level of compliance.

A NEW GLOBAL ENVIRONMENT

Governments globally are experiencing a period of prolonged austerity following the 2007–8 global financial crisis. The crisis itself was created at least in part by the failure of business practice and regulation to keep pace with technological innovations and opportunities, and there is an increasing recognition that tax systems around the world, developed in the early 20th century, are subject to the same pressures. Public and political concern at the ability of MNCs to control their exposure to tax has driven policymakers to explore the options for change. The OECD BEPS (Anti-base ersion and profit shifting) project has already delivered a number of significant changes to the global corporate income taxes environment, including Country by Country Reporting and agreement on measures to prevent the artificial manipulation of the location of taxation, implemented through the ground breaking Multi-Lateral Instrument.

Greater challenges remain, however, as digitalisation of the wider economy drives changes in patterns of consumption and production within and between countries around the globe. Increasingly the challenge of defining value and where it arises is the main issue for highly digitalised business models, while wider technological changes are reforming supply chains and physical production processes. The OECD Inclusive Framework is exploring further reforms to the taxation of the digitalised economy amid calls from other international bodies for fundamental reform, and a stream of unilateral actions by individual governments to impose ring-fenced taxes on digitalised businesses. Mechanisms such as the global minimum tax, which would ensure multinational enterprises pay at least a set minimum rate of tax on global profits, are under active consideration alongside discussions around mechanisms reflecting Unitary Taxation based on Formulary Apportionment and Destination Based Cash Flow Taxes.

THE COMPLEXITY OF TAX AVOIDANCE

The complexities of modern accounting and tax concepts, and the increasing dislocation of tax impacts from the 'real world' substance of transactions through reliance on documentary evidence, can result in a particular transaction having many different potential tax characterisations and outcomes. The difficulty of working out whether a particular position truly reflects the law is exacerbated as governments increasingly try to blur the boundaries of acceptable behaviour, which is not helpful to taxpayers or their advisers. Tax law must be clear and certain and must take into account that businesses will try to minimise tax impact as a part of their normal commercial activity. Tax is a business cost like any other and company directors typically have a fiduciary duty to run their business in the most cost-effective manner.

While most businesses try only to comply with the law, there have been many cases of convoluted tax planning schemes that are designed not for any proper business purpose but to exploit loopholes in the law and avoid its spirit. Such schemes can be said to conflict with the underlying social contract between taxpayer and state, and in ACCA's view amount to unacceptable practice.

Nonetheless, it is widely recognised that, while the extremes of taxpayer behaviour are easily recognised and dealt with, there is uncertainty where the dividing line should be drawn. 'General anti-avoidance rules' can be as dependent on judicial interpretation as they are on the actual wording of the rules. At its most extreme, avoidance relies upon the dry words of the law, excluding all external factors such as economic impacts, in contrast to those who would advocate disregarding the specific words of individual statutes altogether in favour of a broad brush analysis of economic impacts. There is no global consensus on which approach, or what position between the extremes, is ideal but governments should always bear in mind the impact of uncertainty on business confidence and the capacity to invest.

ACCA's regulatory position

As regards principles, the area of tax advice does not present any unique issues of ethical conduct for the professional accountant.

Professional accountants, whether they work in business, the public sector or public practice, are obliged to act in the interests of their employers or clients, as the case may be, and in accordance with the wishes and instructions of those parties, as long as what they do is consistent with or at least not in conflict with the law and the standard provisions of ethical guidance, which in the case of ACCA members is the Code of Ethics and Conduct (the Code), which is based upon and fully aligned with the work of the International Ethics Standards Board for Accountants (IESBA). Members, whatever their role in practice, industry or the public sector, should note that the Code remains the reference point for guidance, and this paper does not supersede or replace it.

When providing tax advice, ACCA accountants are expected to observe the various requirements of the Code, together with other relevant regulatory guidance, in relation to situations such as the determination of independence and the disclosure of client information to third parties. Their obligation to do this is no different from the obligation they have in relation to other areas of professional activity and, in the course of determining whether any individual member has failed to act in accordance with the standards expected of them, ACCA will take into account their compliance with all applicable legal, ethical and technical guidance, including the Code. Where circumstances justify the development of more focused guidance, so as to elaborate on the application of the standard ethical principles to specific areas of professional activity, ACCA supports the development of such additional guidance. With this in mind, ACCA has already issued a dedicated guidance statement, prepared in conjunction with a number of other UK-based professional bodies, on how to apply the ethical principles in the area of tax advice: Professional Conduct in Relation to Tax.

In addition to demanding that members comply with all applicable legal and ethical rules, the standard of competence expected of members under the Code of Ethics demands that members advise their employer or client not only about what their obligations are under the law but also about any opportunities that may exist under that same law to minimise their liability to pay tax. In the tax context, it is particularly relevant, however, to stress that accountants will be expected to advise on the sometimes fluid dividing line between what constitutes 'tax planning' (ie benefiting from tax reliefs for the purposes for which they were intended), what is regarded as 'evasion' (ie criminal activity), and the grey area in between which is characterised as 'avoidance' (ie minimising tax liabilities in ways that are not illegal but may be considered ethically questionable) . Professional accountants will be expected to know where that dividing line occurs and advise their clients accordingly. The advice on tax planning should also take into account the potential consequences for the public reputation and standing of the taxpayer of adopting an overly 'aggressive' approach to the minimisation of its tax liability.

Given all the issues set out above, and the complexity they generate, ACCA's policy position on tax takes into account the competing factors and enables it to contribute to debates on the basis of a sound and considered analysis.

Given the inevitable range of opinions surrounding such a broad and emotive area, ACCA consulted with a range of external bodies, including key employers, professional bodies and policy experts, as well as the Global Forum for Taxation and ACCA's own Market Oversight Committee (MOC). A review has also been undertaken of statements on approaches to tax disclosure made by a range of companies.

ACCA's agreed policy positions are set out below. They are presented in relation to a number of stakeholders, together with the implications for each group.

FOR THE COMPANY/CORPORATE DECISION MAKER

- ACCA believes companies should not, in principle, pursue aggressive tax avoidance (by which is meant completely artificial arrangements that have no clear purpose other than to avoid tax by complicated schemes).
- Companies have a commercial imperative, but ACCA believes that they also have a wider responsibility to be good corporate citizens. Companies need to consider the wider impacts of their tax policies and recognise that some approaches to tax will be seen by some people as unethical even if they are legal.
- ACCA believes greater transparency (which may, but should not necessarily, include more public disclosure) on tax treatment and how decisions on tax are made would benefit companies' reputations and help a wider range of stakeholders to understand the issues and complexity and how these affect the organisation – this is consistent with the general direction of integrated reporting.
- Tax cannot be seen in complete isolation from companies' business models and overall strategy and plans. It is one part of the overall long-term value-creation process, which includes employment created, investment in research and development, the wider social and environmental benefits and impacts in regions where the company operates, and the value offered to consumers. This will be true for all companies but especially so for SMEs and start-ups.

FOR THE PROFESSIONAL ACCOUNTANT – AS ADVISER OR EMPLOYEE

- Professional accountants have a duty to advise their clients and employers on all options for maximising profits and prospects – this duty invariably recognises that taxpayers have no obligation to pay tax beyond the requirements of the law.
- Accountants also have a clear duty to advise on the risks and the ethical dimension, including technical and reputational issues, associated with all available options. Not to do so could lead to the possibility of committing professional misconduct.
- ACCA recognises that tax is a cost to the business, which needs to be managed effectively, alongside other business drivers, for success and profitability. Its tax liability will affect the profitability of any business, and its ability to create sustainable value for its shareholders. Professional expertise is essential to ensure that tax decisions form part of the overall financial management of the organisation.

ACCA commends the guidance developed by a number of professional bodies in the UK, to which it has contributed and which was produced in conjunction with and endorsed by HMRC, setting out an approach to good practice.

FOR THE POLICYMAKER

- Tax laws in many jurisdictions were constructed for a different era of business. ACCA calls for clearer and simpler tax laws reducing uncertainty. Laws need to reflect the ethical framework society wishes to have. Policymakers need to recognise they cannot just point the finger at business – they need to ensure that the laws themselves are fit for purpose, especially in relation to international and digital business models, including those reliant on increasingly intangible value drivers (ethical business cannot be encouraged if rules are dysfunctional). Taxpayers' rights must be recognised and a balance of interests preserved. In light of this, ACCA suggests that a different approach may be required for the taxation of companies – including considering whether corporate tax itself is workable at all in the new global environment, and therefore whether other forms of taxation of corporates need to be developed.

- Coordinated international action is appropriate to address matters that cannot be resolved by individual jurisdictions, such as transfer pricing and a level playing field to disclosure. Such matters are currently being pursued via G20 and OECD discussions.

FOR THE PROFESSION

- ACCA believes that IESBA should keep under review its standards to consider ethical issues around tax avoidance and, if necessary, clarify its guidance and standards.

- Bodies such as the International Federation of Accountants (IFAC) and other representative bodies of the accountancy profession should continue to engage in the public debate and acknowledge the role of the profession in responsible behaviours and practices.

- ACCA commends the guidance developed by a number of professional bodies in the UK, to which it has contributed and which was produced in conjunction with and endorsed by HMRC, setting out an approach to good practice. This is the document Professional Conduct in Relation to Tax previously mentioned.

Conclusion

Taxation has become an increasingly complex and public area in which debate significantly affects the global accountancy profession.

There are many drivers for this, including economic conditions and a squeezed public purse in many countries. At the heart of the issue, however, is whether tax laws, especially for corporates, reflect the new business models of the 21st century and consumers' wider ethical expectations.

Policymakers can be too quick to see accountants as part of the problem, but the profession is and should be part of the solution. Professional accountants should work with policymakers to develop approaches that work for business and allow companies to be competitive and profitable, while also meeting wider considerations of social responsibility.

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