TOM ROLAND

The argument over multinationals and the tax they pay could be partially defused with greater transparency and better governance for complex legal entities

COMMENT

When is a "British" company not a British company? It is a question worth considering. For generations, British companies have made vast profits overseas with the benefits brought back to this country. Our jobs and wealth creation have been supported by a system where firms repatriate their profits and pay taxes in the UK.

This is all well and good. Today, globalisation means large multinationals have local footprints in hundreds of other countries, across a multitude of legal and fiscal environments. Surely the questions raised over Apple, Amazon and Google, all American companies, need to be seen in the wider context. To murmur that large corporates are "tax dodgers" is unfair when it appears there is no evidence that they have broken the law.

Corporation tax on profits is just one of the many forms of taxation that large corporates pay – when you tally up VAT, national insurance on employees working in the UK and their income tax, this is a very significant amount into the UK coffers.

The value of high-quality jobs in the UK, in terms of enhanced skills, improvements in local infrastructure, economic development and the spin-offs from employing sub-contractors is often overlooked and too difficult to quantify.

Of course, tax breaks do work for large companies, and certainly lower levels of corporation tax in certain European Union countries have done a great deal to attract inward investment. Even within the UK there are various differentials to encourage investment and entice business to set up in different regions. The Isle of Man, Jersey and Guernsey have different jurisdictions, while Scotland and Northern Ireland are all looking at adjustments to their corporation tax rates.

Competition is rife when there are places such as the Cayman Islands, Bermuda, Ireland and the British Virgin Islands all offering low-tax environments for shell companies. Yet there is a crucial point at the heart of business. A company's duty must be to take full advantage of global tax legislation to legally reduce the burden on tax in order to increase shareholder return. Managing the costs and risks associated with complex legal entity management (LEM)– that is, the management of governance, controls, systems and processes within legal entity structures – is increasingly challenging. Organisations face higher expectations for transparency, which is only right and proper, and there are lower risk tolerances from management along with increased regulatory demands, all at a time of continued pressure to manage costs.

Next issue
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Companies can get caught up in each incremental requirement rather than develop a strategy which covers multiple fiscal jurisdictions.

Consolidated external filings are vital for shareholders and investors, and it is critical these are accurate and timely. It's a time-consuming job for finance directors and their staff in large organisations to obtain precise financial information from far-off divisions. This is no excuse.

Companies need to understand that what is occurring in a particular jurisdiction may have a fundamental impact on the profitability of a product or a service. For example, when does assembly of a product turn into a sales tax, particularly if the original product is made in Hungary, shipped to Germany for final assembly, sold by an Irish company, and dispatched by FedEx to Iceland? It gets very complex. What is clear is that more organisations must be prepared to deal with such jurisdictional requirements more visibly, and to establish comprehensive exchange of information about risk, control and responsibility.

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Of course, it is up to each sovereign government to set their own national corporation tax rates, and they do this primarily to attract inward investment. So companies obeying the law should not be singled out for using such low-tax jurisdictions. However, large global companies – particularly those with highly respected consumer brands – can ill afford to become tarnished with accusations that they are not paying their proper dues.

Encouraging proper legal entity management is at the heart of good corporate governance. LEM structures will allow transactions to be booked with profit centres in a coherent way. This might well involve setting up transfer pricing between entities so the receivers of these profits are in a low-tax jurisdiction. But this will all be above board, so everyone is clear which jurisdiction is being used.

This structure offers real corporate comfort and counters anyone who feels they can level the term "tax dodgers" at responsible international business. ■

TOM ROLAND IS MANAGING DIRECTOR OF MORGANFRANKLIN IN LONDON, AN INTERNATIONAL BUSINESS TRANSFORMATION CONSULTANCY HEADQUARTERED IN WASHINGTON