



INTERNATIONAL

Rising Global Tax Controversies – A Business’s Best Plan for Managing Tax Controversies amid Greater Transparency and Scrutiny

■ **Chung-Sim Siew Moon**

Board Member, Singapore Institute of Accredited Tax Professionals

Asia-Pacific Tax Policy & Controversy Leader & Partner, Ernst & Young Solutions LLP

Abstract

In the current turbulent tax landscape, a good way for a business to stay ahead of controversy is to adopt a global perspective everywhere it operates while establishing a global tax controversy strategy that is integrated with a strong tax risk and corporate governance framework.

Businesses should have in place a documented tax strategy setting out their approach to compliance, planning, and interactions with tax administrations. The strategy should be put into action by a knowledgeable team that is integrated into the overall business.

Embracing technology and digitalisation is key. The capability to directly submit accurate source tax information to the revenue authorities minimises potential tax controversy and tax uncertainty. In addition, having internal procedures on how to respond to requests for information from the tax authorities is important. As change is constant, businesses need to stay connected to global legislative, regulatory, and tax administration changes.

Through managing tax controversies well, businesses will be able to avoid unexpected tax bills, develop stronger relationships with the authorities, avoid reputational damage, and, in the process, increase business efficiency.

Introduction

In a world of increased information sharing among tax authorities, aggressive tax enforcement, and associated reputational risks, maintaining a global perspective on all the jurisdictions in which your business operates is critical. Governments worldwide are collecting and sharing taxpayer information at a rapid pace, and tax changes in one jurisdiction can trigger changes across the globe. As tax becomes increasingly interconnected, companies must act so that their people, policies, and systems are keeping pace.

Current Tax Controversy Landscape

Understanding the Current Landscape in the Asia-Pacific Region

Governments are collaborating more on information sharing in this increasingly digitised environment.

While this is true around the globe, it was highlighted at the 48th Annual Meeting of the Study Group on Asian Tax Administration and Research (SGATAR) in 2018, where joint areas of focus were endorsed with the goal of improving tax administration by increasing collaboration among the 17 member countries. The theme of each area of focus in the SGATAR work programme was to share, through workshops and training sessions, the best practices for personnel, training, guidelines, and policies. As a result, one can expect to see member countries sharing case studies and experiences, developing audit guidelines and policies, and identifying alternative dispute resolutions in the area of transfer pricing. Countries are also expected to explore the development of their business intelligence and data analytics systems, with a focus on developing their tax administration personnel.

Understanding the Global Direct and Indirect Tax and Transfer Pricing Controversy

While countries are busy developing their systems and

personnel, taxpayers are already seeing heightened levels of controversy. In the area of direct tax, there is a greater focus on tax disclosure and transparency as well as a review of international transactions. Countries are also shortening their timelines for tax audits and tax queries.

Controversy is also emerging on the indirect tax side as countries grapple with the rise of digital services. The modernisation of taxing regimes, especially the rise of mandatory e-invoicing as implemented in many countries and considered in others, also creates new compliance burdens. Additionally, countries are increasing their audit activity in relation to existing value-added taxes and goods and services taxes, with a heightened focus on low-value goods.

The proliferation of information sharing is especially significant as it applies to transfer pricing, with increases in the spontaneous and automatic exchange of information between countries. This is especially true as countries comply with Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action 13 regarding country-by-country reporting (CbCR).

Best Practices for Dealing with Controversy

Staying on top of tax controversy is challenging for every business, and this is only compounded by the increasing interconnectivity among tax administrations and its impact on businesses. However, based on our day-to-day experiences with the companies that we work with, adopting best practices can help businesses 1) stay on top of controversy matters by anticipating where potential tax risk is coming from and 2) design a tax function that is more efficient and responsive to the global tax environment that is continually evolving and evermore connected.

1. Adopt a Top-Down, End-to-End Global Approach to Tax Controversy

Businesses should consider adopting a global approach to tax controversy that considers the full breadth of their activities following a top-down approach encompassing the entire organisation. This begins with establishing a global tax controversy strategy that is integrated in a strong tax risk and corporate governance framework. Businesses should understand their current approach to global controversy, define their strategy, and implement a road map to achieving their future state.

Tax Strategy

To maintain global consistency, businesses should have in place a documented tax strategy setting out their approach to compliance, planning, and interactions with tax administrations. Under that strategy, businesses should establish clear frameworks for tax internal control, controversy management, digital tax compliance, and communications. An effective tax risk operating model under the adopted strategy should enable businesses to identify the tax risks in all of the relevant jurisdictions and provide opportunities to minimise tax controversy.

Tax Corporate Governance Framework

Policies and procedures should facilitate oversight and the early identification of global tax controversies. To increase oversight, businesses should consider adopting a tax corporate governance framework which formally documents their policies and procedures and provides for an overview of tax risks as expected by their leadership. Information is at the heart of managing tax controversy. The head of tax cannot be expected to know the unknown, and the best way to get ahead of surprises is to have an understanding of tax planning issues as they emerge and then have a plan and a process as to how they are dealt with and whose responsibility it is to handle them. Good governance at the planning stage will lead to fewer controversies, and mapping all controversies will minimise the balance sheet impact.

Practice Tip

We are seeing businesses implementing this best practice by establishing a global, company-wide tax controversy management strategy. They are adopting a policy statement that reflects this strategy and communicating it to their people and stakeholders.

2. Have the Right People, with the Right Skills, in the Right Jurisdictions

Businesses should determine whether they have the right people, with the right skills, in the right jurisdictions to prevent, manage, and resolve tax controversy issues. Personnel must also understand how addressing an issue in one jurisdiction could trigger controversy in another jurisdiction.

To cope with BEPS-driven enhanced reporting and disclosure requirements and greater audit scrutiny, a business should ensure that their tax department has adequate knowledge, staffing, budget, and other necessary resources to meet the new demands on the tax function. Businesses need to be prepared to confront whatever challenges may occur, from responding to aggressive audits or challenges to transfer pricing arrangements, to managing tax-related reputational concerns or examining existing business and cross-border structures.

Practice Tip

We are seeing businesses implementing this best practice by creating a global tax controversy management structure that is headed by a designated leader and supported by controversy professionals knowledgeable on local country tax controversy practices and procedures. In addition, these businesses are enhancing their internal operating procedures and communication linkages to better align business activities with the tax function to ensure all knowledgeable personnel are engaged in the execution of a business transaction.

3. Evaluate Existing Systems

Businesses should evaluate whether their existing systems can provide a complete picture of tax controversies in all the jurisdictions in which they operate. They should ask themselves the following questions:

- Do we have technology that can capture the data around tax risks, audits, and examinations?
- Do we have an accurate snapshot of the countries and jurisdictions where our tax audits are being conducted?
- Can we potentially predict where our risks will arise down the road?

As previously discussed, governments are building and improving their systems. Hence, companies must determine if their systems can properly address the new challenges. Businesses should adopt technology where possible. In this new transparent tax world, having outdated processes can add exponentially to the risk of more inquiries, penalties, and disagreements with tax authorities.

Practice Tip

Faced with these challenges and goals, we are seeing businesses develop and implement global tax controversy tracking systems to generate real-time management dashboards in order to manage, resolve, and predict controversy. Accessibility to real-time information on all global tax controversy matters offers management greater flexibility in allocating resources to a specific controversy matter and potential resolution alternatives. These businesses are also initiating efforts to develop and enhance their internal data management capabilities, often as part of their overall financial transformation efforts to streamline access to all business data. Efficiencies in managing and accessing data will further enhance the global tax controversy management objectives with audit-ready files and accessible supporting documentation.

Digital Operating Model

Businesses should ensure that their tax functions have clear audit management processes and the appropriate technology and software tools to monitor the company's global tax compliance and reporting obligations and can respond quickly to tax authority demands for data (in particular, new digital data requirements). With many governments requiring near real-time reporting and performing increasingly sophisticated data analytics, tax authorities are gaining global visibility. Businesses need to enhance their digital capabilities so that they can meet the demands of this new world of digital tax administration.

Putting in place a new digital operating model is an essential step. This means that businesses need to ensure they 1) understand the data requirements of all tax authorities, 2) can format source data for local country requirements, and 3) have the appropriate tools to prepare digital tax submissions. If a business is unable to keep pace with or match the digital technologies used by some tax administrations, they may end up with data submissions that are less "polished" and potentially less consistent across countries. Inconsistency between jurisdictions is an invitation to controversy. Businesses should also perform analytics on data before filing and put in place a process for archiving digital files for audit purposes. Businesses should consider developing a real-time compilation of data for audit defence and other potential controversies, as well as a regional or global tax portal to monitor and track audits and collections.

Practice Tip

Businesses need to rise to the digital challenge by implementing processes to comply accurately and effectively with tax authorities that have specific digital tax administration requirements. The capability to directly submit accurate source tax information to the revenue authority can minimise potential tax controversy and tax uncertainty.

A good example is where businesses ensure that their documentation processes are BEPS compliant and meet the specific country's tax schema. In light of the BEPS reforms and tax authorities' increasing enforcement efforts, businesses are revisiting their transfer pricing documentation and audit ready defence files, as well as re-evaluating tax provisions to reflect retroactive risks that might arise from aggressive inquiries and the dynamic approach taken by most countries to interpreting the BEPS amendments to the OECD Transfer Pricing Guidelines.

4. Integrate Tax with Business Planning

Businesses should integrate their tax functions and departments with business planning to facilitate proactive management of tax controversy that takes into account a company's entire tax footprint. The tax function can have greater difficulty complying with government requests when it was not involved with building the system and determining what data was sent to the government. Additionally, if some tax matters are not directly managed by the tax function, businesses should be sure there is good coordination between the tax function and the business unit(s) handling those tax matters.

Practice Tip

Businesses are increasingly tackling this challenge by ensuring processes are established to proactively include the tax function's perspective in business and tax planning discussions when considering entry into new markets, the development of new data systems, and changes to the business structure, supply chain, and operations.

Information Sharing

In this increasingly interconnected global tax environment, information provided to one tax jurisdiction will likely be available to others in short order. Countries are acting on the information received with increasing audit activity. Businesses must consider the consistency of their data submissions in a global

tax environment that continues to shift from bilateral relationships to multilateral ones in terms of information sharing, risk, and tax controversy resolution. Integrating the tax function into data management decisions allows them to better predict future controversy and manage current controversy disputes.

Practice Tip

With businesses becoming more knowledgeable on exchange of information protocols and procedures used by revenue authorities, we are seeing more businesses establishing internal procedures on how to respond when their tax return information has been exchanged between governments or how they should respond to a request for information from a revenue authority.

5. Stay Connected

Businesses should stay connected with global legislative, regulatory, and tax administration changes as change is constant.

Staying connected can help businesses to benefit from emerging trends in enforcement: for example, countries increasing their use of alternative forms of dispute resolution, such as mutual agreement procedures (MAPs), advanced pricing agreements (APAs), and arbitration, as they try to deal with the increase in tax controversy. Businesses should also consider applying for advanced tax rulings to obtain upfront tax certainty on the transactions they are contemplating undertaking.

Controversy Management

Businesses should also consider engaging with the competent authorities regarding controversy management. While MAPs and arbitration continue to remain largely government-to-government procedures, businesses and their advisers may be able to provide support to the competent authorities in navigating a dispute and successfully resolving the case. Such assistance can include engaging early before positions become polarised; providing the clearest, highest-quality information; and confirming that the same information is provided to each country.

Technology Advancements

Staying aware of advancements in government technology is also advantageous as tax administrations are harnessing the power of new technology to make better use of their limited resources and extract more value from the information they receive. They are increasingly relying on digital methods to collect taxpayer data and are using data analytics to mine this data to help them boost tax collections, target compliance, and audit initiatives and improve overall efficiency.

Practice Tip

We are seeing more businesses enhancing their relationships with revenue authorities and seeking to participate in various cooperative compliance activities. More businesses are also holding periodic internal meetings to discuss emerging regulatory and tax administration changes in order to prepare their businesses for changes that might affect them.

Benefits of Managing Tax Controversy on a Global Basis

Best practices for dealing with tax controversy on a global basis are not adopted just to benefit the tax function or ease its burdens: they are also key to overall business success and performance. While compliance and dealing with tax controversy are mandatory, doing so proactively and properly can also have benefits.

Avoiding Surprise Tax Bills

By following best practices, businesses can avoid unexpected tax bills and minimise tax uncertainty. This is especially true as tax authorities begin sharing more data and performing increasingly sophisticated data analytics. Tax authorities may take data submitted by the taxpayer as well as data received from other countries and use data analytics engines to find any discrepancies by comparing data across jurisdictions

and taxpayers. Tax authorities will make tax and audit assessments based on these analyses. Knowing what data governments have and addressing potential issues before they become controversial can avoid more difficult challenges down the road.

Building Stronger Relationships

In addition to reducing tax uncertainty, adopting tax controversy management best practices is an effective way to build trust and transparency between tax authorities and businesses. Developing stronger relationships based on a track record of cooperation, collaboration, transparency, and responsiveness to inquiries can create a “bridge” between tax authorities and businesses that eases conflict. Good governance is also a strong component of demonstrating good corporate citizenship.

Building Business Efficiency

Following these best practices could also result in business efficiencies and cost savings. While the initial planning and development of strategies, systems, and personnel may be costly and time consuming, it will result in better management oversight and accountability of tax controversy activities and provide opportunities to budget and allocate tax function resources to achieve a smoother path to controversy resolution. For example, by developing and organising personnel in a manner consistent with the tax strategy, businesses may determine that outsourcing some tax functions is advantageous as it leads to a smaller, more focused staff that has the right budget to address arising challenges. These professionals, no longer mired in routine obligations, can concentrate on strategic governance and tax risk management matters, which could also lead to increased retention as individuals are challenged in more well-defined roles.

Additionally, having systems in place to manage on-going and upcoming controversies allows for the creation of a properly allocated budget. Having the

budgetary resources available as needed permits a business to execute and deal with a problem before it gets worse, potentially reducing the tax risk and improving the overall outcome.

Avoiding Reputational Damage

Having ineffective tax processes and controls can have profound consequences for businesses not only in terms of financial penalties but also in reputational damage, which is more than just the cost of defending tax filings or incurring a tax bill in any single jurisdiction. This negative impact can lead to a whole range of issues involving customers, suppliers, investors – or even host nations. Businesses must consider whether their tax decisions will meet globally agreed coherence and substance standards as well as be deemed “fair” and “acceptable” by multiple stakeholders.

Conclusion

As Martin Luther King Jr. said: “The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.”

Overall, the tax landscape is rapidly becoming more connected, and controversy worldwide is increasing as a result. Where a business stands in times of challenge and controversy is indeed a measure of its readiness to face tax controversy. It is with this in mind that businesses should move to adopt a strategic, globally integrated approach to tax controversy management by adopting best practices that can help achieve the best outcomes and contribute to the overall business objectives.

Please see summary below.

What Businesses are Doing Today

Businesses today are reaping benefits by adopting these best practices and implementing them in various ways, as illustrated in the practice tips. These tips can be used

as a checklist to determine if your business is prepared to manage growing tax controversy.

- Adopt a top-down, end-to-end global approach to tax controversy
 - Establish and communicate a global tax controversy management strategy and policy statement
 - Create or revise global tax controversy management procedures that align to the overall tax risk management oversight and corporate governance framework
- Have the right people, with the right skills, in the right jurisdictions
 - Create a global tax controversy management structure headed by a designated leader and supported by controversy professionals
- Evaluate existing systems
 - Develop and implement a global tax controversy tracking system to generate periodic management dashboards
 - Initiate efforts to develop and enhance data management capabilities that support global tax controversy management efforts
 - Implement processes to accurately and effectively comply with tax authorities that have specific digital tax administration requirements
- Integrate tax with business planning
 - Include the tax functions in planning discussions
- Stay connected
 - Enhance relationships with revenue authorities and seek participation in various cooperative compliance activities
 - Hold periodic internal meetings to discuss emerging regulatory and tax administration changes 