Corporate tax governance

Module A

Overview of examples of tax governance related regulations around the globe

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*This module provides a high level overview of examples of corporate tax governance measures and initiatives in a number of countries around the world. The module is a supplement to PwC's Tax governance publication which can be found at **pwc.nl***

Country	Examples of corporate tax governance measures and/or initiatives
Australia	• The Australian Tax Authorities Tax Risk Management and Governance Review Guide includes recommendations and guidelines for tax risk governance of large and complex companies. With these guidelines, ATO recognises tax risk management as part of good corporate governance, as such, periodic testing of key tax controls are an integral part of risk assessment protocols used by tax authorities. • For small and medium privately owned groups, the Australian Tax Authorities have published seven principles of tax governance. • The Voluntary Tax Transparency Code of the Australian Tax Authorities sets out principles and minimum standards for medium and large businesses on public disclosure on tax related data and information.
Belgium	• A Cooperative Tax Compliance Program (CTCP) (pilot project, voluntary participation) for large enterprises with the purpose to reduce tax uncertainty, enhance compliance and foster mutual understanding. Organisations participating in the pilot must have been tax compliant in the past (no evasion) and should be able to explain their tax strategy, business processes, ERP functioning and internal risk identification. The pilot of the CTCP includes mandatory communication of a robust tax control framework to the tax authorities.
Brazil	• The Differentiated and Special Tax Monitoring Program involves periodic evaluations is taxpayer's behaviour and collection of taxes to identify questions about fluctuation and extraordinary transactions. The program provides better information of large corporate taxpayers and involves actions to ensure priority treatment in concluding tax demands and disputes; • A Digital Tax Reporting (SPED program) and Audit measure is in place for corporate taxpayers, requiring them to record every tax and accounting operation for filing with the federal, state and municipal tax authorities, in order to promote a transparent relationship between tax authorities and taxpayers and to reduce tax evasion; • A measure to consult soon is the Good Track Tax Payer Program of Federal Revenue, to stimulate companies to adopt good practices in order to avoid misconduct and create more favourable conditions for taxpayers that have a good relationship with the tax authorities.
Canada	• For all group companies with a revenue in excess of CND 250 million, the Canadian Revenue Agency undertakes a formal risk assessment, including a formal risk rating in order to develop a risk assessment of the taxpayer and develop an audit plan.
China	• The Circular (2009) No. 90 introduced the tax risk management guidelines for large business enterprises ("LBEs"), providing that the Boards of Directors/Supervisors' awareness and attitudes towards tax risks is also one of the key factors for tax risk assessment purpose. • Subsequently, the Circular (2011) No.71 introduced a new concept of concluding Tax Compliance Agreements with LBEs, with the aim to enhance taxpayers' tax compliance and to minimize noncompliant behavior through self-review and internal control. The tax authorities will regularly assess the effectiveness of the tax risk management and the monitoring measures taken by the tax authorities will be based on the effectiveness of the tax risk management assessed. Having said so, the practical implementation in China is on a case-by-case basis and is yet to be developed. • The Tax Credit Rating System for all corporate taxpayers includes a scorecard covering different aspects of measurement. The Chinese tax authorities will provide classified taxpayer services and management to taxpayers depending on their different credit ratings. • As part of the Chinese tax administration's Thousand Groups Project, large business groups ("LBGs") and entities selected should submit their financial statements on a quarterly basis, for the Chinese tax authorities to build a big-data warehouse and to strengthen big data use and analysis. This measure then becomes a triggering event for LBGs to rethink and strengthen their internal tax risk management.
France	• Reporting on Non-Financial Performance legislation includes large companies reporting on their business model, policies and governance in relation to items such as environmental protection, social responsibility and fighting against tax evasion. • A Cooperation Agreement with the French Tax Authorities (FTA) allows corporate taxpayers to enter into a contract on voluntary basis with the FTA to establish a transparent relationship, in exchange for e.g. reduced uncertainty. Providing information on the Tax Control Framework is a prerequisite. • VAT audit trail Documentation, which requires that companies must demonstrate that they have a documented audit trail tracing the chronology of the process and associated controls as a whole, from the origin of the invoice to its end. • A measure for ensuring that top management of large French companies are resident in France for tax purposes is enacted as part of the French Finance Bill for 2020. This measure applies as from 1 January 2019 as far as tax on personal income is concerned, and as from 1 January 2020 as far as inheritance and gift taxes are concerned, unless application is prevented by relevant tax treaty provisions.

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Ghana	• The Securities and Exchange Commission of Ghana has issued Corporate Governance Guidelines on Best Practices. These guidelines highlight several elements to promote good governance, which may also be linked to corporate governance in tax matters. As regards the role and responsibilities of the Board, the Code states that the Board shall assume as primary responsibility amongst others to operate in an effective, fair, ethical and prudent manner and that the interests of stakeholders and the community more generally are taken into account. With respect to duties of the internal audit committee, the company should ensure compliance of the company with legal requirements, which includes tax law. • In the spirit of promoting good corporate governance, the Bank of Ghana has also issued a Corporate Governance Directive for Banks, Savings and Loans Companies, Finance Houses and Financial Holding Companies
Germany	• A Decree is in place stating that a Tax Compliance Management System (TCMS) might be considered as indication against the existence of intent or gross negligence. Therefore, taxpayers currently decide by themselves whether they implement a tax control framework in order to reduce tax risks and liability risks for the management of the company. They are not legally required to set up a TCMS. The Institute of Public Auditors in Germany published a guideline for the design and audit of a TCMS. This includes the elements that should be included in a TCMS based on the COSO-elements and OECD Co-operative Tax Compliance principles.
India	• India has no specific tax governance measures, however, some provisions ensure compliance and reporting in respect of tax laws, e.g. the Companies Auditor's Report Order, requiring the auditor to report on the regularity of a company's depositing undisputed statutory dues, including income taxes, and in case of disputed dues, the amounts involved and the forum where dispute is pending is required to be specified.
Japan	• Under the Tax Corporate Governance guideline, the Japanese Tax Authorities assess the corporate governance level of certain large companies, including top management involvement, management of tax and accounting procedures for internal control, etc. A good tax governance status may result in extended audit intervals. The aim of the measure is for top management to be proactively involved in ensuring proper tax compliance and maintain appropriate internal controls. • By way of mandatory electronic tax filing per 2020, the use of ICT in tax filing is promoted, which should reduce costs for society.
Korea	• Under the Compliance Agreement Program, the Korean Tax Authorities assign a team to a taxpayer for regular reviews and advice. The taxpayer discloses all tax issues and internal tax control framework to the authorities in exchange for reduced tax risks and waiver of regular tax audits. • Companies that meet certain conditions are required to prepare the corporate tax returns with the assistance of the certified public accountants, certified tax accounts or tax lawyers. • Taxpayers are required to issue electronic VAT-invoices to enhance transparency of transactions.
Mexico	• Taxpayers that elected to file a Statutory Tax report must report through shareholders meeting minutes that the company complied with its tax obligations during the fiscal year. • Taxpayers are required to provide certain information related to specific transactions that may be related to aggressive tax planning to the Mexican Tax Authorities, such as transactions with foreign tax resident parties, reorganizations, transfer pricing adjustments, changes in shareholder structure of Mexican corporations, etc. • A measure for reportable tax planning/transactions has been included as part of the Mexican tax legislation in force as from January 1, 2020. The reporting obligation has been delayed until 2021 with respect to transactions implemented during 2020.
Netherlands	• The Dutch corporate governance code for listed companies includes a measure that supervisory boards of companies should supervise the companies' tax policy. • Companies can participate in a horizontal monitoring program of the Dutch Tax Authorities, aimed at increasing mutual understanding, transparency and trust. Companies in the program have one contact point with the tax authorities and may benefit from quicker certainty on their tax returns and tailored monitoring based on the quality of their Tax Control Framework. The rules have changed at the beginning of 2020. For the largest 100 companies and non-profits participation is mandatory as of 2020; for this group the individual covenant will be replaced by an individual monitoring plan. Between other large companies (determined by using the criteria of art. 2:397 Dutch Civil Code) and the Tax authorities, the terms are reflected in an individual covenant, in which the Tax Authorities can align their monitoring with the extent to which the company is 'in control' of tax. All other companies can only participate if and when their tax service provider has a covenant with the Tax Authorities. • For financial institutions it is required by law to systematically identify and control integrity risks with respect to the own organisation, but also with respect to staff, products, services and clients of the financial institution. This integrity risk management includes tax integrity risks management and asks from the organisation to develop and implement a tax policy, risk appetite statement, risk management including monitoring and more. • On 27 May 2019 the state secretary of Finance published his tax policy agenda for 2019 and called upon enterprises and tax advisers to develop a tax governance code respectively a tax code of conduct.
Nigeria	• The Nigerian Stock Exchange issues rules imposed requirements on listed companies regarding the disclosure of any transactions with related and other interested parties. This enhances compliance especially in Transfer Pricing filing returns and disclosures, and in ensuring that the proper documentation are in place to support arms length transactions.
Norway	• Companies voluntarily participating in Co-operative Compliance need to document a sufficient tax control framework, or develop this, in line with the expectations agreed with the Central Department of Company Tax Affairs. Gaining common understanding of expected tax risks, the tax office aims to provide quicker and advance clarifications on tax questions.

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Poland	• Large companies' individual tax data are published annually by the Tax Authorities to add public scrutiny in the fight against aggressive tax planning and to promote corporate responsibility by building social trust and control social behavior of enterprises. • Mandatory Disclosure Rules are introduced, including reporting obligations, documentation, internal control processes and formal procedure, with the aim to promote tax transparency and tax integrity in the Polish tax system. As the reporting obligation also applies to domestic tax arrangements, the legislation has a much wider scope compared to DAC6 and can be applicable to intermediaries (promotors), beneficiaries and supporters (depending on the specific case). • Warsaw Stock Exchange listed companies are encouraged to adopt best practices in corporate governance, which include policies and procedures aimed at transparency, etc. and may also relate to tax matters. • A voluntary Cooperation Program (type of horizontal monitoring) is about to start in July 2020 between the Tax Authorities and large companies volunteering for a pilot (10 to 20 participants). It is focused on supervision over a taxpayers internal control mechanism. This may lead to an adapted supervision and monitoring as well as increased transparency.
Singapore	• The Goods and Services Tax (GST) Assisted Compliance Assurance Program (ACAP) introduced by the IRAS, is a compliance initiative for businesses to set up a robust GST Control Framework as part of good corporate governance. It requires participating large entities to follow a methodology set out by IRAS to conduct an ACAP review at three levels (entity level, transaction level and GST reporting level). It would include documentation of GST-processes, ensuring that proper controls are put in place to detect the risks and perform substantive sample testing. Businesses may be awarded ACAP status with certain benefits. • The IRAS intends to roll out new tax governance initiatives and programs in 2020. With the increasing focus on tax governance and control framework globally, the IRAS has placed higher priorities in encouraging large companies in establishing robust and structured tax governance within their corporate governance framework. "The Tax Risk Management and Control Framework for Corporate Income Tax" is a pilot program under which selected companies were invited to participate. This program offers benefits and tax penalty concessions for early adoption companies.
South Africa	• The Institute of Directors in Southern Africa released the King IV Report on Corporate Governance™ for South Africa (King IV™) in 2016. It is a set of voluntary outcome-based corporate governance principles applicable to all organisations, regardless of their form of incorporation. Due to Johannesburg Stock Exchange (JSE) requirements, listed entities have to apply the principles and explain how they are being effectuated. It recommends that organisations provide a narrative explanation (disclosure) of the recommended practices that have been implemented, and how these achieve or give effect to the related King IV™ principles. A fundamental concept in King IV™ is that the governing body should be responsible for a tax policy that is compliant with the applicable laws, but that is also congruent with responsible corporate citizenship, and that takes account of reputational repercussions. (King IV CodeTM Part 5.1 Recommended practice 14). A responsible taxpayer, who is transparent to the public about its tax practices, is put forward for consideration as a good corporate citizen in King IV™. The governing body has the discretion to determine where the King IV™ disclosures will be made; for example in the integrated report, sustainability report, social and ethics committee report, or other online or printed information or reports. King IV™ disclosures should be updated at least annually, be formally approved by the governing body, and be publicly accessible.
Spain	• The Spanish Companies Act introduced in 2015 a list of non-delegable powers to the Board of Directors of Spanish listed companies, including setting up a tax strategy, approval of transactions with associated tax risks and determining the company's risk policies, including tax risks. It is also foreseen that the Audit Committee will have the task of supervising the effectiveness of risk management framework including tax. • The Code of Best Tax Practices of the Spanish Tax Authorities provides a self-regulatory framework for minimizing tax risks, promoting a voluntary cooperative relationship between companies and the Tax Authorities. If a company adheres, they should consider filing a (voluntary) annual fiscal transparency report. • Standard UNE 19602 is a private initiative, defining guidelines and recommendations to companies for implementing a tax compliance system to detect, manage and evaluate tax risks and to promote good tax practices. Companies can be certified under UNE 19602 for tax compliance.
Switzerland	• The Engagement Paper of Ethos (a Swiss foundation for Sustainable Development composed of pension funds and public utility foundations) encourages companies to implement a tax policy, pay taxes in the countries in which they operate and make profits, etc. Principles include e.g. responsibility for tax policy with the board of directors, tax principles integrated in codes of conduct, and companies publishing the amount of tax paid country by country. • The Code of Conduct for tax authorities, taxpayers and tax advisors in Switzerland of ExpertSuisse (organization for auditing, taxes and fiduciary) provides guidelines for good behavior of tax authorities, taxpayers and tax advisors with respect to each other.
Turkey	• As a non-audit assurance measure, the Turkish Ministry of Finance has a system of certification, under which it accepts accounts and tax returns of taxpayers that are audited and certified by Sworn Fiscal Advisers to be true and correct unless proved to be incorrect. The taxpayer and the Adviser enter into a contract specifying the work to be done, which is submitted to the Ministry of Finance. The system should ensure that taxpayers make accurate returns and that limited checking of the Tax Authorities will suffice to ensure that there is no overall loss of tax.

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UK	• Large businesses are required to publish annually their Tax Strategy, covering their approach to UK tax risk management, attitude to tax planning, risk appetite and how the business works with HMRC. • HMRC Senior Accounting Officer (SAO) rules impose a statutory obligation on SAO's of qualifying companies to establish and maintain appropriate tax accounting arrangements, with the aim of raising the importance of tax to Board level and requiring companies to monitor their tax risk management and governance processes. • The Corporate Criminal Offences of the failure to prevent the criminal facilitation of tax evasion (Criminal Finances Act 2017) makes businesses criminally liable for their 'associated persons' for the facilitation of tax evasion in the UK or overseas, where they fail to have 'reasonable prevention procedures' in place. • With the Business Risk Review (BRR) HMRC assesses the tax compliance risk profile of large companies and categorises it as low, moderate, moderate-high, or high risk. Since October 2019, HMRC rolled out "BRR+" which includes explicit consideration of other requirements, e.g. tax strategy, SAO, CCO and CbCR.
US	• The Compliance Assurance Process (CAP) is a method of identifying and resolving tax issues through open, cooperative, and transparent interaction between the Internal Revenue Service (IRS) and Large Business and International (LB&I) taxpayers (TPs) prior to the filing of a return. Through the CAP program, the taxpayer should achieve tax certainty sooner and with less administrative burden than conventional post-file examinations.

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How PwC can help

To have a deeper discussion on tax governance, please contact.

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