Best Practices for Good Tax Governance

2024 Discussion Paper

The Tax Executives Council of the Conference Board ("TEC"), the B-Team and the European Tax Business Forum ("EBTF") cooperated on the development of a paper on Best Practice for Good Tax Governance[i] that was launched in 2022. Participants from the three organisations have continued their cooperation and shared experiences since the launch and have now concluded that it would be appropriate to publish a limited update to the original document, raising some of the more important issues which have been discussed.

This is a discussion paper, not a comprehensive update of the document. Comments and suggestions from all interested parties that are prompted by the issues discussed would be extremely welcome. Based on that feedback, a fuller update of the original document may be considered.

Among the most relevant developments that have been noticed are:

- More widespread adoption of ESG principles in corporate reporting and stakeholder engagement and increasing recognition of these principles as of importance in investor relationships and investment decisions.
- Aside from ESG, stakeholders and investors are seeking or demanding greater transparency over decisions and outcomes within enterprises, recognised by such developments as the WEF Davos Manifesto[1] and the US Business Roundtable[2] definition of the purpose of an enterprise.
- Greater attention from tax administrations to tax governance in understanding the risk profile of enterprises, particularly larger and more internationally exposed enterprises.
- Increased sophistication from tax administrations in accessing, analysing and assessing financial and other data in respect of indirect as well as direct taxes. More tax administrations now also have direct access to corporate data through digital filing obligations.
- The international corporate tax landscape is undergoing significant change through the OECD-led development of Pillar I and Pillar II, prompting legislative and reporting changes and data challenges for multinational enterprises.
- As more enterprises respond to these changes and implement tax governance principles and policies, experience sharing has highlighted where improvement could be made.

---

[1] https://www.conference-board.org/publications/best-practices-for-good-tax-governance

[1] https://www.weforum.org/focus/the-davos-manifesto/

[2] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

However, not everything has changed: it is still noticeable, particularly from social media that multinational enterprises do not enjoy public trust in relation to taxation and paying appropriate or fair taxes. This is matched by a general lack of understanding about how international tax works in practice.

Tax remains in many enterprises a separate and sometimes poorly understood function that is not always sufficiently informed about or involved in business decisions and processes and often lacks full access to data on a timely basis.

In late 2023, formal experience sharing between members of the TEC, B-Team and EBTF was organised. There were many examples of common issues, challenges, successes, and areas for improvement, not all of which will be described here. This document focuses on a few matters that were seen to be of greater importance to the participants and where the original best practice document could be updated and amended.

In approaching an amendment to the best practice document, further input and comment from other interested parties or stakeholders is recognised as critical. This update is therefore a discussion paper and may be further amended based on additional feedback and information.

The areas of the document for potential update are set out below. The areas are not mutually exclusive and there are overlaps and commonalities.

Tax governance, in common with other governance processes, with which it should be closely linked can be seen to be essentially aimed at one issue. Investors, owners and all stakeholders whether acknowledged or not have limited knowledge of how the enterprise is managed and controlled. Without detailed knowledge, there is a reliance on trust, reinforced by controls, reviews and audits.

For tax in particular, public trust has been very low in recent years and remains at low levels. Trust is not going to improve without demonstrable robust governance policies and practices. These need to include greater transparency over data and risks with suitable explanations that directly address the different perspectives of important stakeholders.

The 2022 paper focused on providing assurance to stakeholders, investors, auditors and other interested parties about best practices in tax control frameworks. This update reflects a recognition that good governance best practices are evolving in response to changing stakeholder expectations.

Areas for potential update or amendment

Integration and alignment with other corporate governance policies and practices
An effective and robust tax governance process requires significant investment of time and resource to develop and implement. Suitable policies and processes cannot be simply copied from other organisations or proposed by consultants and put in place by the tax department to meet the expectations of external stakeholders. Tax processes and controls are also reliant on data, processes and actions elsewhere in the enterprise, whose integrity will be fundamental to the effectiveness of the enterprise governance policy. It is unlikely to be either effective or efficient for a tax governance process to establish its own standards and controls separate from an enterprise governance policy and processes.

One of the key requirements of effective tax governance is strong leadership from the enterprise board of directors and senior management including commitment to the principles and policies and their implementation throughout the enterprise. Experience of many tax organisations confirms the fundamental importance of this support and endorsement which is most effective where the board is committed to clear principles of governance and integrity across all the enterprise activities. Where there are other corporate governance improvement projects, it is most effective for tax to be an integral part and build on existing or newly developed policies and practices wherever possible.

Best practice guidance should therefore be updated to stress the importance of tax governance being closely linked with other enterprise government policies and practices.

Identification and understanding of stakeholders' expectations and needs.
Governance recognises that the senior leadership of an enterprise is responsible and accountable to others for its stewardship and management of the organisation and not solely its economic performance. The WEF and US Business Roundtable policy statements clearly recognise that there are other interested parties or stakeholders to whom the enterprise board of directors or senior management have some obligations and who have a legitimate interest in how the enterprise is managed and governed.

As the stakeholders will have different interests and objectives, and differing levels of expertise and knowledge, it is increasingly recognised that they also have different needs for information and explanation.

Understanding of these needs and objectives helps clarify what the stakeholder perceives as being the principal benefits of the governance process and whether or how much these benefits can be delivered. A possible hierarchy of stakeholder needs could also be identified, and priorities established as not all stakeholder expectations can be met.

Recognising different stakeholder needs can support the development of modification or enhancement of parts of the governance process to provide the stakeholder with specific information or verification or greater depth of analysis and explanation than other stakeholders need or can easily understand. Tax administrations have legal rights to financial information and analysis, but as stakeholders could benefit from other information, explanations and assurance over process integrity.

Experience of higher stakeholder expectations points towards future development of tax governance processes to allow more focused reporting, analysis, controls and assurance to meet the more important expectations. However, it is also apparent that stakeholders do not all have a good understanding of tax governance and therefore may have low expectations of its benefits. Greater engagement with and education of stakeholders would be beneficial for all parties.

Transparency: about what, for whom and how it is delivered.

A few years ago, there was a widely held view that what was seen as unacceptable tax practices by multinational organisations would be changed quickly if only there was greater transparency about where taxes were paid. The initial focus was on publication of country-by-country data, particularly that which is reported to tax administrations following the implementation of the BEPS recommendations by many countries.

Some sectors, particularly extractive industries and banking institutions were subject to earlier reporting requirements and there has been some voluntary reporting of some or all the country-by-country data.

The publication of this data may not have significantly changed social media or public perception of international tax integrity, and the limited responses to individual companies' disclosures suggest that the users of the data either have insufficient knowledge to draw conclusions from it, or that the raw data by itself does not facilitate better understanding. The expectation that simple publication of country-by-country or other data would radically change corporate behaviour has not been realised. However, there has been broader recognition that good governance practice needs to include a commitment to greater transparency about data, policies and practices adapted to stakeholder needs and expectations.

Best practice also acknowledges that transparency should not only involve reactive publication of data that is reported to national tax administrations. If the purpose of governance is to reassure and demonstrate to stakeholders that the enterprise is appropriately and effectively managed, it could be beneficial to be able to provide evidence of the process and outcome through structured and targeted sharing of information. Transparency has become an essential tool in demonstrating behaviours and building a public image of the integrity of the enterprise. This commitment can often include voluntary reporting of total tax contributions by companies in the countries where they have activities to supplement or substitute for the country-by-country data.

Good tax governance requires a degree of transparency over tax and supporting information for stakeholders to assist them in drawing conclusions about the levels of tax paid, how this reconciles with stated policies and risk profiles and therefore the effectiveness of governance. Furthermore, as stakeholder expectations on disclosures grow together with increasing legislative obligations to report information either publicly or to tax administrations, tax governance policies and best practice will have to pay greater attention to delivering and managing greater transparency with some or all stakeholders.

A common experience has been that data collection for increased reporting has significant challenges and requires improvements to systems and data recording and collection processes. Public reporting of data that is not audited or reconciled to audited publicly reported information creates difficulties and costs. Some data may not be held on centralised financial systems, require manual processing and its integrity may not be within the responsibility of finance or tax. The cost of providing supplementary data needs to be balanced with the benefits to a range of stakeholders.

The principles of transparency also apply beyond reporting of tax and financial data. Stakeholders may have an expectation that they are appraised of significant tax uncertainties, ongoing disputes, and the assessment of tax risk. The governance process needs to be clear (and transparent) about whether and how such matters will be disclosed and to whom.

Transparency is a critical part of building trust and therefore a key component of effective tax governance. Careful review and improvement of all aspects of transparency, geared to the needs of key stakeholders needs to be an element of developing best practice governance as they are updated.

Data ownership, integrity, and mechanisation

An unresolved question in many organisations is about the ultimate ownership and responsibility for data that is the basis of tax reporting, disclosures, and additional transparency initiatives. Tax departments rarely have responsibility or control over data entry and integrity or its processing, but if it is published or used in a tax context, or even perceived tax context, the responsibility for its accuracy and completeness will be deemed to rest with the tax group.

With the increasing requirement for tax administration to have direct access to basic data included in indirect tax reporting and other e-filing developments, there is an incremental risk of discovery of data errors or anomalies which undermine the integrity of all tax returns and the risk profile of the enterprise in the view of tax examiners.

Additional disclosures of country-by-country or total tax contribution data could require access to data and analysis which may not have been held centrally or been subject to internal review or audit. For many enterprises, particularly those which have grown through acquisitions, there may be no single accounting system and challenges around the operation of system interfaces. Developing processes to collect data from diverse systems can be difficult, and manual processes create risk to the integrity of the consolidated data. Where new disclosures are made of information that does not form part of the audited and published accounts, the question of reconciliation of the disclosed information to audited accounts needs to be addressed and explained.

For all these reasons, best practice tax governance should include clarity over data ownership, controls over data integrity and processing and utilisation wherever possible of automated processes. There should also be clear agreement within the organisation over responsibilities and accountability for data entry, management, control, and processing at each stage of the process.

Leveraging technology and systems to improve the quality, availability and reliability of data carries benefits for tax controls and governance as part of enterprise investments in infrastructure.

Ultimately reliable and timely tax reporting is essential to good tax governance and policies and processes should be updated and expanded to emphasise this requirement. As tax reporting is dependent on data integrity and processing consistency that is outside of the direct control of the tax department, shared responsibility for this element of governance will be required.

Controls, control processes, internal and external validation and review "Finding the right mix between trust and control"

A fundamental element of an effective tax governance process is a clear and well-understood tax control framework. The tax governance policy will set out expectations, requirements and guidance for behaviours and processes, but the operationalisation of the vision requires a framework of controls, checks, and reviews that together give confirmation to the responsible senior executives or board members that the governance process is working in practice and identifies areas where improvements or corrections are required.

Experience of implementation and maintenance of tax governance highlights ongoing difficulties with the full operationalisation of governance policies at all levels and locations within a global enterprise. Challenges include education and training of non-tax staff about the existence and purpose of the policy and their role in its operation together with the need for regular re-training and reinforcement of expectations and obligations. Even more important is the failure to achieve appropriate tax involvement in or even knowledge of business changes and decisions which the policy has mandated: behavioural change in other business roles to routinely include tax in decision making has not been universally accepted or adopted.

Tax control frameworks, to be fully effective, need to be developed and tailored to the enterprise and should be subject to regular review, appraisal and amendment or adjustment to ensure that they continue to serve their purpose efficiently and appropriately. There will be other control frameworks within the enterprise and the tax framework should build on and complement other controls without duplication or conflict.

In addition to this periodic review, there should be internal or external checks, assessment or critical review of the effectiveness of the controls. Who carries out this review, and with what frequency is a decision for the senior management of the organisation, on which it may be appropriate to consult with key stakeholders.

In some cases, internal periodic review from within the tax organisation may be suitable, at least as a first level of review. Best practice is likely to include the use of internal audit to perform testing on a regular basis. For some enterprises, additional review or audit by the external auditor or a specialist expert may be best practice.

As a significant stakeholder, tax administrations will have a close interest in the effectiveness of tax governance as evidenced by reviews or audits: including specific assurance tests to meet these stakeholder needs may be an effective way to build on an existing review process to help build confidence in the control framework.

Cooperative Compliance is a focus of some tax administrations seeking to build greater understanding of complex taxpaying enterprises, including their internal governance and controls. The Vienna University Global Tax Policy Centre supports research on cooperative compliance, including developing proposals for:

> "…*the foundations for an international agreement on an audit assurance standard for tax control frameworks (including the role of the Organisation for Economic Co-operation and Development (OECD), the European Union (EU), and other international organizations*".[3]

It should be noted that the tax control frameworks in this document are internal management controls that are not necessarily intended to be subject to external audit assurance standards, but which could, in some cases, be developed or adapted for those purposes. The purpose of creating a control framework within a tax governance policy is not for internal or external assurance reviews, but to create operational standards, define and clarify roles and responsibilities for all data, actions and reviews that form part of the enterprise tax process.

For all enterprises that have implemented tax governance policies and participated in experience sharing, the implemented tax control framework was specifically designed to suit the enterprise circumstances, global footprint, business sector, internal systems and processes and the enterprise culture. It is not clear how these effective and embedded controls could be reconciled to an external audit assurance standard.

[3] https://www.wu.ac.at/en/taxlaw/institute/gtpc/current-projects/cooperative-compliance/cooperative-compliance-handbook

The usefulness and full benefits of effective control frameworks is enhanced where stakeholders have clear understanding of how they operate, their effectiveness and rigour. Specific engagement with stakeholders to improve understanding and improve design and focus of controls to meet concerns is recommended.

Clarification of roles and responsibilities for taxes, governance and data. RA(S)CI and similar matrices

A tax governance policy or control process will cover a range of activities within an enterprise that are not carried out wholly or partly within the tax department. Data, process ownership, analysis, decision making, internal advice, reporting and engagement with stakeholders will involve cooperation with other internal groups, internal and external service providers, and other parties. Effective governance demands that there is always clarity about roles and responsibilities and that this clarity continues to be reviewed and updated as business, technology and external requirements evolve.

Experience of operational problems with tax control frameworks has shown that outside of the tax organisation, individuals and teams do not always get involved in the expected activities and may not accept responsibility or accountability for their designated role within the control framework.

There are several commonly used models that can be used to analyse and determine responsibility: the RACI and RASCI frameworks are in general use, but others can be used providing that they deliver sufficient specific clarity over roles and responsibilities within the governance policy. The RA(S)CI framework identifies who has Responsibility for outcomes, processes or decisions, who is Accountable for performance of specific tasks or processes, who has a Supportive role in providing resources for processes, who should be Consulted prior to decisions being made or other changes and who should be Informed routinely about specific issues or actions. Experience of implementing tax governance and control frameworks is that absolute clarity over the relevant RA(S)CI framework is critical to the success of initial roll out and continued effectiveness.

The RA(S)CI model applies not only to identification of who, within the organisation owns data, is responsible for its processing and integrity and its hand over to partners within the enterprise but is critical for building an environment where relevant parties are informed, consulted or included in accountability for business decisions. Where tax is not considered or consulted about future business changes, investments or divestments, an effective RA(S)CI framework within a governance process could help correct that omission.

An RA(S)CI framework could also be used in understanding and clarifying stakeholder attributes, needs and wants. Stakeholders may have other responsibilities and accountability but recognising that they should be consulted or informed in specific circumstances to assist them in meeting their other obligations develops trust and cooperation.

Existing tax governance policies have not in all cases resulted in clear understanding and acceptance of roles and responsibilities across the enterprise that form part of tax processes and controls. Consequently, these policies and their implementation and acceptance need to be carefully reviewed and updated with senior management support.

Tax and business partnership supporting good tax governance
Other changes to the Best Practices for Good Tax Governance paper have focused on identifiable deliverables: integration with other policies, better understanding of stakeholder needs, increasing transparency, improving data management and tax control frameworks and clearer definition of roles and responsibilities.

Experience sharing among members or TEC, EBTF and B-Team who have implemented a tax governance policy highlighted common concerns that have a material impact on the effectiveness of governance, and which also have for many years limited the ability of tax departments to achieve their goals of managing risk. Two principal concerns could be summarised as:

- Implementing robust processes that ensure that there is timely and appropriate involvement of company tax professionals in business decision making or, potentially even better, a good interaction and interest from the CFO who ensures that "tax" has a seat at the table even where tax professionals are not physically present.
- Ensuring that other process owners throughout the enterprise understand and recognise their important role in helping deliver accurate and timely tax reporting, effective risk management, and identification of business changes that have a tax implication.

Addressing both concerns may require behavioural changes that become embedded as standard future working practices, not only from individuals outside of tax, but also within the tax department. As such they will not be delivered by a stand-alone governance policy roll-out but by a long-term commitment to changing relationships and responsibilities.

For many years tax has been treated as different, a black box, difficult to understand without detailed tax knowledge, and therefore excluded from mainstream controls and expectations. This has contributed to the widely held perception that tax departments are not held to account and are free to exploit international loopholes to artificially reduce tax. There are concerns that senior management may not consider tax because the subject is seen as too difficult. Managers with commercial responsibilities in some cases have been reluctant to consult or inform tax on a timely basis, or at all, because of a perception that any advice given will be uncommercial, prevent profitable business development and add pointless administrative complexity.

The treatment of tax as different or separate also discourages shared use of data, controls, processes and risk assessment and can increase commercial and tax risk. It is for the ultimate benefit of the enterprise and its stakeholders that there is a closer integration of tax into business processes, decision hierarchies, understanding of risks and rewards and effective controls.

Enterprises that have rolled out tax governance report difficulties in delivering appropriate training and education about tax and tax governance and maintaining understanding and appreciation of the role and importance of tax over time as staff rotate to different roles and the business evolves. If tax does not have full ownership of data entry and integrity, analysis or reporting, and does not participate in business management and development, implementing a robust tax governance process requires other business functions to be trained and educated to recognise their role and accountability in processes that have a tax outcome. Perhaps because of the perception of tax as different and technical, a common experience is that achieving a suitable level of education and commitment to tax governance expectations has been difficult.

Most stakeholders will expect that the tax department will have an input at the right time into decisions that may have a material tax effect for the enterprise, ensuring that the way in which international tax law will apply to transaction flows are understood, contributing to risk mitigation from unanticipated tax consequences, facilitating the understanding of alternative ways of structuring transactions or business developments and helping to ensure that complete, correct and efficient tax reporting can be delivered. Stakeholders may also expect cross-departmental cooperation in identifying, understanding and mitigating tax risks arising from transactions, data collection and processing, from business changes and the effects of national and international regulatory developments.

Tax governance good practice may mandate a tax review of critical decisions and contracts and recommend tax involvement in commercial planning, but what is arguably more important is appropriate consultation and participation prior to the event or document for which a review is mandated. A requirement for formal review at identified key moments is essential, but ideally there would be involvement from the tax team at an earlier stage as part of a trusted advisor relationship with decision makers.

Key to addressing this long-standing experience of tax departments is likely to be found in another area where traditional tax departments may not have been focused or effective: developing strong long-term relationships with colleagues in other enterprise management roles, in finance, business operations strategy and development, data processing, logistics and operations. With better understanding of business operations and experience of providing helpful input into decision making, tax can earn its place at the table where change is discussed and become part of integrated enterprise teams supporting common goals through shared governance policies and practices. A strong cooperative relationship with all business partners will improve the ability to implement a robust and effective tax governance process, as well as providing an environment where better business decisions and more efficient processes are developed and implemented.

Good tax governance cannot be achieved by a single implementation programme: it requires a permanent commitment to new attitudes and behaviours across the enterprise. What may be becoming clear from the experience of organisations that have begun implementation of new policies and practices is that one of the principal requirements is that the tax department itself makes changes to its operational processes and business relationships to become a trusted and valued business partner.

Sustainability and governance

ESG principles are being more widely understood and adopted by enterprises that recognise they have wider societal obligations and not simply a responsibility to maximise shareholder returns. Tax governance can be seen as a good fit with those principles, leading to a more explicit recognition that the enterprise has at least a moral obligation to implement tax policies that seek to ensure that taxes paid in each jurisdiction are appropriate and do not exploit unintended opportunities to artificially minimise tax. However, defining what is "appropriate" in this context, or what are unintended regulatory opportunities and how these can be reconciled with potentially conflicting domestic and international tax laws and regulations is a significant challenge. A fundamental expectation of good tax governance is to ensure enterprise commitment to reporting and paying taxes in all jurisdictions in full compliance with local and international tax laws.

Adoption of an ESG focus also encourages a different approach to risk that recognises not only financial risk, but also reputational risks which are less easy to measure and require different, clearly defined assessment criteria to be included in procedures that are subject to a robust control and governance environment. Enterprise and tax governance policies and controls are likely to require careful adaptation and continued review to support any evolving commitment to different external value principles.

Global shifts continue in stakeholder and public values, expectations and investment evaluation criteria, and policies and controls will need to evolve and improve to reflect them. Tax governance should be firmly based on other enterprise governance policies and be integrated with them, so an adoption of a greater ESG focus or similar principles will likely require a critical reassessment of tax governance and ensure alignment with the enterprise commitments which will bring different expectations from stakeholders.