EUROPEAN
AUDIT COMMITTEE LEADERSHIP NETWORK
ViewPoints

4 January 2016

TAPESTRY NETWORKS, INC o WWW.TAPESTRYNETWORKS.COM o +1 781 290 2270

The evolving tax landscape and oversight of tax strategy

On 23–24 November 2015, members of the European Audit Committee Leadership Network (EACLN) convened in Barcelona for their 24th stand-alone meeting. In a session on current developments in the tax arena and board and audit committee oversight of tax, they were joined by Josephine Feehily, former chair of the Office of the Revenue Commissioners in Ireland and former chair of the Forum on Tax Administration at the Organisation for Economic Co-operation and Development (OECD); Matthew Mealey, international tax partner at Ernst & Young LLP; and Chris Sanger, partner and global tax policy leader at Ernst & Young LLP.[1] For biographies of the guests, see Appendix 1, on page 12. For a full list of participants, see Appendix 2, on page 14.

Executive summary

The expert guests and EACLN members touched on four topics:[2]

- **Global tax trends** *(page 2)*

  Corporate taxation has become a prominent issue in recent years, with several interrelated trends unfolding across the globe. Governments have become more intent on bringing in tax revenue, even as they continue to encourage investment by offering tax incentives to multinational companies. Meanwhile, the public and media have become much more aware of the tax strategies used by both companies and governments, sparking anger and more scrutiny. These developments have led governments to initiate coordinated reform efforts to reduce the ability of companies to avoid taxes. These efforts include modifying tax rules, increasing transparency and collaborating on enforcement.

- **EU initiatives on tax** *(page 3)*

  The European Union (EU) is moving aggressively to address taxation issues, creating uncertainty for companies in Europe and beyond. The European Commission's (EC's) competition directorate is waging a campaign against special deals between companies and tax authorities, based on the charge that these deals constitute illegal state aid. In addition, the EC's tax directorate and the European Parliament have launched a variety of initiatives in pursuit of objectives such as better reporting on tax and tax rulings, a common consolidated corporate tax base across Europe and improved transfer pricing.

- **The OECD's Base Erosion and Profit Shifting (BEPS) project** *(page 5)*

  To aid the Group of 20 (G-20) in its focus on tax, the OECD has recently completed a project to tackle base erosion and profit shifting, known as BEPS. Its recommendations include country-by-country reporting to tax authorities, new rules on transfer pricing and intellectual property regimes, and more exchange of information on tax rulings. While some of these issues are already being addressed, the completion of the project will accelerate the changes being implemented around the globe, with significant implications for how companies manage their tax affairs and conduct business.

---

[1] In another session, members discussed transactions risks. See European Audit Committee Leadership Network, "Oversight of Major Transactions," *ViewPoints* (Waltham, MA: Tapestry Networks, 2016).

[2] *ViewPoints* reflects the network's use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments are not attributed to individuals or corporations. Italicized quotations reflect comments made in connection with the meeting by network members and other meeting participants. The meeting guests have permitted their comments to be attributed.

- **The board and audit committee's oversight of tax** *(page 7)*

  Tax issues often rise to the board and the audit committee, where various aspects of tax strategy and administration are discussed. A key concern is how the goal of minimizing tax is balanced against compliance concerns and reputational considerations. Boards may also review relations between the company and tax authorities, and the nature of disclosures about tax. The tax function itself comes under scrutiny as well: its critical processes and procedures, the qualifications of the staff and the use of outside advisers. In all these areas, the recent wave of changes is forcing boards to reassess their companies' basic assumptions and approaches.

For a list of discussion questions for audit committees, see Appendix 3, on page 15.

Global tax trends

Corporate taxation has become a front-page issue in recent years, with controversies involving both companies and governments sparking scrutiny, debate and significant new policy initiatives. Corporate taxation is a global arena involving players with multiple (and sometimes conflicting) objectives. Taxation has an impact on corporate profitability, so reducing the amount of tax paid is a focus of tax strategy. But this goal is typically balanced against other goals, especially the desire to avoid conflict with tax authorities and protect the company's reputation.

The way companies balance these conflicting objectives is heavily influenced by the broader environment in which they operate, including public perceptions of corporate taxation (especially for businesses that sell directly to individual consumers) and government policies and enforcement efforts. But governments too have conflicting goals, and they may find themselves competing with each other (for example, to attract business investment) even as they attempt to cooperate on common objectives in various international fora. All these factors make for a complex and dynamic environment.

The expert guests in Barcelona highlighted a number of trends and forces shaping the environment in which multinational companies operate with regard to tax. These often-interrelated trends have been evident for a number of years, producing both gradual changes and more abrupt shifts:

- **Drive for increased revenues.** In 2008 and 2009, as the financial and economic crisis deepened and government budget deficits grew, governments became increasingly intent on bringing in tax revenue. That focus continues strong. Mr Sanger noted, *"Governments are in real trouble. They have large debts and don't expect to even start to reduce them until the end of this decade."* Looking at the large multinational companies doing business within their borders, governments today are determined to tax a greater share of profits and to foil attempts to shield corporate profits in tax havens, even if, as Mr Sanger pointed out, corporate taxes represent only 8%–10% of total tax revenue.

- **Desire to stimulate investment.** At the same time, governments also want to encourage companies to set up operations in their jurisdictions, creating good jobs and other benefits for their citizenry. This has led companies to compete on tax, striving to outdo one another in the establishment of low corporate tax rates. Ireland, for example, just lowered its already low tax rate from 12.5% to 6.25% for profits related to patents and software copyrights, in a bid to encourage companies to invest in research and development in Ireland.[3] The goal of luring investment has also spurred governments to offer special

[3] Sinead Moore, "Ireland Cuts Corporate Tax to 6.25%," *Economia,* 16 October 2015.

deals to some companies, often involving even lower tax rates. Ireland, and other countries, have been accused of offering tax deals to prominent technology companies in order to bring investment to regions in need of development.[4]

- **Public outcry over corporate tax payments.** Several much-publicized cases of multinational companies paying very little corporate tax in certain jurisdictions have caused a public furor that has put companies on the defensive regarding their tax strategies. Strategies such as tax inversions, in which a company acquires a foreign company in order to become a subsidiary of a new parent company in another country and thereby take advantage of more favorable tax laws, are receiving scrutiny by the media and various watchdogs. Governments, too, have felt pressure regarding agreements that have let companies legally avoid taxes. In a scandal that became known as "LuxLeaks," Luxembourg was subjected to intense criticism when an accountant leaked financial documents showing that hundreds of large, global companies had obtained tax rulings enabling substantial tax breaks.[5]
- **Focus on reform.** Public outrage, combined with the need for revenue, is accelerating governmental efforts to reform their tax regimes and improve their enforcement efforts. One thrust is to improve the amount and quality of information about taxes paid and deals between companies and tax authorities. Governments are increasing cooperation with each other, making efforts to align their tax policies more effectively and exchanging information, including on enforcement and audits. A key issue is base erosion and profit shifting, that is, company tax-planning strategies that exploit gaps and mismatches in tax rules to "artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid."[6] Ms Feehily explained that the political focus has shifted *"from avoiding double taxation to avoiding double non-taxation."* Mr Sanger added that governments are also looking at the variations in the actual tax rates imposed: *"We have governments trying to convince other governments not to compete as aggressively on tax as they have in the past."*

These trends have been playing out in countries all over the globe in ways that are both similar and different. EACLN members noted that the drive for revenue was prevalent in many countries and presented difficulties when doing business in some countries. One member remarked, *"Every state is fighting to get taxes. Brazil wants more, for example, but the US wants taxes also. We end up in the middle as countries fight about taxes. It's endless."* Another member noted that while some countries have relatively predictable tax regimes, countries that are politically unstable may present challenges such as sudden reversals of policy.

EU initiatives on tax

In Europe, multinational companies face not only the policies and enforcement efforts of national governments, but also the efforts of the EU and its institutions, which are becoming increasingly ambitious. The EC, the Council of the EU and the European Parliament have all been active this year in the area of tax policy, putting forth initiatives and approving measures that reflect the general trends outlined above. Notably, the EU itself does not impose taxes, but it can act in a variety of ways to help national governments coordinate their tax policies and enforcement efforts, and in some areas, such as the intersection of taxation with competition policy, the EC has significant powers of its own.

[4] Christian Oliver, "EU Tax: Tough Love for Multinationals' Sweetheart Deals," *Financial Times,* 13 July 2015.
[5] Duncan Robinson, "'I Am Not a Martyr', Says LuxLeaks Whistleblower Facing Jail," *Financial Times,* 22 February 2015.
[6] "About Base Erosion and Profit Shifting (BEPS)," Organisation for Economic Co-operation and Development, accessed 19 October 2015.

The EC's attack on preferential tax rulings

The EC's competition directorate, led by Margrethe Vestager, is waging a campaign against preferential tax deals, arguing that such deals constitute illegal state subsidies.[7] The *Financial Times* notes that "Brussels is using a revolutionary but highly contentious methodology to argue its case, and if it rules that there has been wrongdoing, it has the powers to impose some of the biggest penalties in the EU's history."[8] In October, the EC ruled on two of its initial investigations, announcing that tax deals the Netherlands made with Starbucks and Luxembourg made with Fiat were illegal and requiring both countries to reclaim between €20 million and €30 million in taxes from the companies.[9]

While appeals are likely, the EC's new approach will have major repercussions, according to experts. Mr Sanger said, *"If a member state gives aid to a company and it's selective, that is against EU rules. But, at the time, no one considered how that applied to tax rulings. Now, if there has been a selective tax regime for a particular company, that breaks competition rules and that company has to repay."* He went on to note that the cases being targeted involve transfer pricing – often a gray area where there is no obviously correct answer – so the probability of finding violations is high, and it is difficult for national tax authorities to challenge findings.

The EC's approach will create uncertainty for hundreds of companies around past and future tax liabilities, and it may increase the cost of doing business. It could also affect decisions on mergers and acquisitions and investment in Europe more generally.[10] EACLN members were startled by the implications: *"It sounds like, if you are getting a ruling from a member state, it's not a binding rule at all? We dislike uncertainty more than taxes!"* A member asked if there was some safe-harbor protection for member state rulings made in good faith with companies, but Mr Sanger explained that only the EC can give companies certainty.

Other EU initiatives

Other organizations within the EU are also taking steps to address tax issues. For example, the European Parliament has launched its own investigation of preferential tax deals, establishing a special committee on tax rulings. Known as the TAXE committee, it produced a non-binding resolution that the parliament approved in a November 2015 plenary.[11] Meanwhile, the EC's directorate for tax has put forth several measures – known as the Tax Transparency Package – that address both tax avoidance by companies and tax competition by member states. These measures include, among other things, a directive to establish automatic sharing among member states of basic information about cross-border tax rulings and an initiative to assess whether companies should disclose additional corporate tax information – for example, in the form of country-by-country reporting.[12]

In June, the EC followed up on the Tax Transparency Package by communicating a more comprehensive European approach to corporate taxation, which includes five areas for action. One is to relaunch and strengthen the Common Consolidated Corporate Tax Base (C3TB) originally proposed in 2011, which

---

[7] Oliver, "EU Tax: Tough Love for Multinationals' Sweetheart Deals."

[8] Ibid.

[9] Tom Fairless, "EU Regulators to Require Starbucks, Fiat Pay Millions of Euros in Back Taxes," *Wall Street Journal,* 21 October 2015.

[10] Ibid.

[11] European Parliament, "Special Committee: From Country-by-Country Reporting to Protecting Whistle-Blowers," news release, 24 March 2015; European Parliament, "Parliament Calls for Corporate Tax Makeover," news release, 25 November 2015.

[12] See European Commission, *Communication from the Commission to the European Parliament and the Council: On Tax Transparency to Fight Tax Evasion and Avoidance* (Brussels: European Commission, 2015).

would reduce compliance costs for companies and remove opportunities for profit shifting.[13] Mr Sanger explained that the ultimate goal is to equalize tax rates: *"The C3TB … would like to see everyone at the same level so you get no advantage."*

The flurry of EU activities constitutes a sustained, multifront effort to crack down on tax avoidance, an effort that experts say is transforming the tax environment for companies in Europe and beyond. Mr Sanger reflected, *"No one thought of the EU as a tax authority risk, but it is now."* Ms Feehily agreed: *"There is an air of determination that we haven't seen before."*

The OECD's Base Erosion and Profit Shifting (BEPS) project

Global policy efforts on tax also achieved a significant milestone in 2015, one that is likely to have a major impact on the global tax regime going forward. As part of the G-20's focus on taxes, the OECD has been working on a 15-point action plan to tackle base erosion and profit shifting, known as the BEPS project. The package was approved by the G-20 leaders at their November meeting in Turkey. Because the G-20 includes major non-OECD countries like China and India, its approval extends the reach of BEPS to the bulk of the global economy.

Key elements

The package consists of recommendations for how governments should modify international tax laws and treaties to address base erosion and profit shifting. According to the *Economist,* the proposals are "the biggest shake-up of multinational taxation since the basics of the current framework were put in place in the 1920s."[14] Divided into a series of reports, the package addresses a wide range of issues in great detail, such as the tax challenges of the digital economy, company and country reporting on tax, transfer pricing rules and intellectual property regimes.[15] The expert guests and EACLN members in Barcelona focused on two broad areas in particular:

- **Country-by-country reporting by companies (Action 13).** For each tax jurisdiction in which it does business, a company with group revenues equal to or exceeding €750 million will have to report the following annually to the tax authorities in each jurisdiction in which it operates: its revenues, profits before income taxes, taxes paid, as well as other information about its business in each jurisdiction. This report, which will be filed in the jurisdiction where the company has tax residence and then shared with other tax authorities, is intended to give tax authorities a clear picture of where profits are being booked and taxes are being paid.[16] However, companies will not have to report this information to the public. Mr Mealey said country-by-country reporting was the single biggest change in the area of transparency: *"It's a simple document that maps out the tax footprint of a multinational group. It should show the implications of taxes. Previously, authorities have only had information for what is within their borders. Now they will have information from everywhere."*
- **New rules on transfer pricing (Actions 8–10).** In addition to expanding the documentation of transfer pricing, the new requirements focus on transfer pricing itself, modifying existing guidelines so as

---

[13] European Commission, *Communication from the Commission to the European Parliament and the Council: A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action* (Brussels: European Commission, 2015), page 7.

[14] "New Rules, Same Old Paradigm," *Economist,* 10 October 2015.

[15] See Organisation for Economic Co-operation and Development, *Executive Summaries: 2015 Final Reports* (Paris: OECD, 2015).

[16] Ibid., pp 5, 39.

to better "ensure that transfer pricing outcomes are aligned with value creation."[17] Each of the actions focuses on specific problem areas, such as transactions involving intangibles, the allocation of risks and the resulting allocation of profits to those risks, and profit allocations resulting from transactions which are not commercially rational.[18] The executive summary for these actions explains that "the revised guidance requires careful delineation of the actual transaction between the associated enterprises by analysing the contractual relations between the parties in combination with the conduct of the parties. The conduct will supplement or replace the contractual arrangements if the contracts are incomplete or are not supported by the conduct."[19] As Mr Mealey noted in Barcelona, these modifications will make it that much harder to move profits without moving the substance behind the profits.

Implementation by governments

Some governments have already taken unilateral action in many of the areas addressed by the OECD, and many of the EU's initiatives reflect the OECD's approach. As EY's Global Tax Alert on the final package notes, "There has been significant BEPS-driven legislative and tax administration activity around the world since the OECD issued its Action Plan on BEPS in July 2013."[20] But the completion of the project will accelerate changes being implemented around the globe. By early 2016, the OECD and the G-20 countries intend to have a framework developed to support and monitor governmental implementation of the final BEPS package. Nevertheless, implementation is likely to vary across countries, and companies will need to track its progress carefully.[21]

Some EACLN members expressed concerns about how the recommendations might be implemented and possible unintended consequences. One member wondered if governments fully understand the potential impact of changes to the transfer pricing regime: *"They might underestimate the impact of changes. Because we have been so careful to conform to transfer pricing rules, a small change could have ripple effects across the company."* Another member noted that the restrictions on interest deductions could also have unintended consequences, especially for private equity firms. More generally, observers see the potential for BEPS-related effects on many aspects of business, including operational arrangements and even business models.

However, some members saw broader benefits from improvements to the transfer pricing regime. One member noted that better transfer pricing would help companies track performance: *"Transfer pricing rules that force companies to align costs more closely to where the activity around those costs took place are ultimately the right approach for holding management accountable for performance."*

The guests at the meeting in Barcelona highlighted the impact of the new transparency being introduced, which could bring both benefits and risks. Mr Sanger explained, *"What BEPS has done is [make] information really … the currency of the tax authority. Now if any of your groups file with one tax authority, it is readily shared with all tax authorities. That information sharing used to be on request; now it is happening regularly. But unless an organization is very well organized, the information that they share with authorities may not have the right context. For example, the tax information could be written in*

---

[17] See Organisation for Economic Co-operation and Development, *Executive Summaries: 2015 Final Reports,* page 27.

[18] Ibid., pp 27–28.

[19] Ibid., page 28.

[20] EY, *OECD Releases Final Reports on BEPS Action Plan,* Global Tax Alert (London: EYGM Limited, 2015), page 14.

[21] See EY, *Board Oversight of Tax Risk: Understanding the Global Focus on Base Erosion and Profit Sharing,* EY Center for Board Matters (New York: Ernst & Young LLP, 2015).

French, then translated to English, and then translated to German. Our experience with electronic translation programs tells us this can be an issue. There is a huge risk inherent in transparency and sharing of information for companies."

The board and audit committee's oversight of tax

The evolving tax environment is forcing companies to review and modify their tax strategies and policies. Because tax is an important aspect of doing business, tax issues often rise to the board, where the audit committee may play a key role. One EACLN member said, *"Every year, at least once a year, we get an overview of tax risks of the company. We have discussions of tax strategy and changes in the tax environment and the risks. We get a clear view from the tax department of the tax strategy."*

EACLN members highlighted several issue areas they typically address, including substantive issues involving company strategy on tax, but also issues involving the tax function itself, such as the quality of the staff and its communications. All are likely to be impacted by the EU's initiatives on tax and the BEPS project:

- Balancing tax minimization with other strategic objectives
- Maintaining relations with tax authorities
- Handling tax-related disclosures and financial reporting
- Managing the tax function and its staff

Balancing tax minimization with other strategic objectives

Companies know they must strike the proper balance between tax minimization and other important objectives. Tax minimization is important; indeed, one EACLN member said they expect the company to minimize taxes to the *"fullest extent legally possible,"* and that the tax director should be compensated based on reductions to the company's tax payments. However, another key objective is tax certainty. With tax authorities clamping down and tax laws and policies in flux, both tax experts and many EACLN members believe it is unwise to push the boundaries of tax planning in ways that increase the possibility of burdensome tax controversies.

One member noted, *"I've worked in companies where we've put up structures to avoid tax, but what we are seeing now is companies having to tear down what they built. The world has moved beyond aggressive tax [avoidance] …. I do not know any company where a tax director has been rewarded for minimizing tax. But they are rewarded for getting to a balanced and predictable situation."* Another member said, *"We invited the head of tax to give a brief on tax strategy with high-level numbers only, because we wanted to see how he interpreted it. He said that we are trying to optimize, not minimize. That means we're trying to avoid disputes. If something pushes the limits, it's probably not worth it."* Members explained that tax has shifted from being a *"value-creating lever"* to being more of a compliance issue, and that business strategies relying too much on tax-related schemes – such as tax inversions – make less and less sense. For more on tax-related aspects of mergers and acquisitions, see the *ViewPoints* on transactions.

Another important objective of tax strategy is to protect the company's reputation, which goes beyond avoiding controversies with tax authorities. Even if the amount of tax a company pays in a given jurisdiction is perfectly legal and goes unchallenged by tax authorities, it may draw media scrutiny and raise the ire of the public if it is perceived as too low. One member said, *"Reputational risk plays a more and more important* *role for global companies. Is a loophole worth using, or is it increasing reputational risk too much?"* Ultimately, the ire of the public can also drive tax authorities to act.

Establishing the right approach is a complex task involving integrating tax strategy with risk management. In a pre-meeting conversation, one member reflected, *"It has to be defined case-by-case, whether to be aggressive or cautious, and important cases are discussed with the audit committee – what strategy we should follow."* The point was echoed at the meeting in Barcelona: *"It's challenging to evaluate reputational risk, and it's not possible to delegate this task to management. Reputational risk may differ from region to region. You have to discuss it at the audit committee, and with management, to evaluate the risk."* Mr Mealey noted that the issue of reputation is further complicated by the fact that tax is sometimes used as a lever by stakeholders with other grievances, so focusing too much on tax might fail to address the real issues involved. Tax departments by themselves may be ill equipped to deal with these broader cases.

In pre-meeting conversations, members mentioned some specific ways to assess how aggressive the company is being in the area of tax. One member brought up benchmarking: *"What is the tax average of our competitors compared to our average? If one is 30% and the other is 10%, what is behind that?"* Reviewing the reserves set aside for potential additional tax payments was also mentioned, though one member noted that reserves are created when a tax dispute is already underway, so they are a warning that arrives too late.

One member said that it is more productive for the board to take a high-level approach to this issue: *"Looking at it from a general top-down level will yield more benefit than combing through the numbers. The latter always includes detailed analysis of why competitors paid a little bit more or a little bit less. That's not that helpful."*

Maintaining relations with tax authorities

Another issue that boards may consider is the relationship between the company and tax authorities. Good working relationships create more certainty about taxes by facilitating advance resolution arrangements between companies and tax authorities, with tax liabilities agreed up front. Better relationships also facilitate the use of alternative dispute resolution processes such as fast-track settlements, and they help companies understand the red flags that trigger audits. One EACLN member said that discussions with tax authorities are critical: *"One thing that has worked is to debate with the tax authorities all the tax engineering you want to do."* Observers have noted that good relations are especially important in the current environment, with its increasing transparency and greater sophistication on the part of tax authorities.

Multinational companies face the challenge of managing relations with tax authorities in many countries, but one member pointed out another benefit of building a strong relationship with the tax authority in the home country: *"We use that relationship as much as we can when we're in a dispute with other countries' tax authorities. [Those authorities] have good relations with the tax authorities in our home country. Getting [our home country's authorities] to argue our case with other jurisdictions is one way to approach relations with others."*

However, a few members said that efforts to build good relations with tax authorities sometimes fail to yield significant benefits due to factors such as institutional inertia within the tax administration: *"We have not seen the key objectives of building more transparency and trust between companies and tax authorities. It was a fair try, but it didn't work because at the lower levels of the tax administration, the staff had certain habits, and it's very hard to break out of habits."* Another member pointed to problems with the ultimate tax authorities – the politicians – who can change tax laws suddenly and arbitrarily: *"There is a lack of security in the tax law. Politicians might create a tax on utilities, for example, to help immigrants. In the same way that [companies] should be transparent, politicians should not behave like outlaws."*

Handling tax-related disclosures and financial reporting

Companies already disclose a good deal of information about their taxes, but the coming reforms will require even more disclosures and will complicate the process of making them. When discussing the new BEPS recommendations, EY noted that companies should "focus on the new reporting requirements, including the requirement for [country-by-country] reporting, in order to assess whether the necessary data is available, what must be done to gain access to such data in the required form, and how tax administrations are likely to interpret such data."[22] An EY expert remarked in *Compliance Week* that "the country-by-country reporting template is a brand new concept, so that makes it particularly significant because companies will have to get ready for a type of reporting that they've never had to do before."[23]

There have been calls for companies to share this information with other stakeholders in addition to tax authorities. Some observers believe securities regulators and investors focused on corporate social responsibility will want broader reporting. In a pre-meeting conversation, an EACLN member doubted that companies would freely release it more broadly: *"In most companies, there's a reluctance to publish it to all shareholders on the basis that one does not know what exactly will happen if the public, as opposed to the tax authorities, get ahold of it. As long as publication of the information to shareholders is not required, most companies will go down the route of complying but not sharing it more widely. I assume in due course this will all be publicly available, but due course is a ways down the road."*

At the meeting, Mr Sanger also predicted that some of the information will be made public. He offered a recommendation to companies: *"There is an opportunity to get out in front of it. The experience so far of companies that have [shared information] is that they may get a lot of attention at first, but then, down the road, when someone comes back to it, you can say, oh, we released that information six months ago. It takes it down on the reporter radar. Less emotion is generated."*

Meanwhile, audit committees will continue to be vigilant with regard to other tax-related financial reporting issues. As EY has pointed out, tax-related problems are a major element in financial statement restatements and material weaknesses in internal control. Income tax accounting is complex, requiring the use of estimates and judgments across various jurisdictions.[24]

Managing the tax function and its staff

In addition to reviewing the substance of important tax issues, many audit committees oversee the tax function itself, including the processes through which strategies are developed and issues resolved. In this role, the audit committee focuses on the operations and characteristics of the tax department, including its interactions with the board:

- **Critical processes.** A member noted that the audit committee *"needs to look carefully at internal controls around tax."* Indeed, an EY report on tax risk stated that "the internal controls a company puts in place across the tax lifecycle of accounting, provision, compliance and controversy are critical to the

[22] EY, *OECD Releases Final Reports on BEPS Action Plan,* 6 October 2015, page 15.
[23] Jaclyn Jaeger, "Global Tax Overhaul Moves Forward," *Compliance Week,* 20 October 2015.
[24] EY, "Income Tax Accounting Challenges Can Lead to Errors," *Board Matters Quarterly,* September 2014, page 7.

effective management of operational tax risk."[25] In previous discussions of the tax function, EACLN members have questioned how well the tax function communicates with the risk management and financial staff, such as the controller.[26] Mr Mealey made a similar point in Barcelona, especially regarding reputational risk. He recommended the creation of a cross-functional team (including public relations, corporate relations, government relations and the tax departments) to evaluate overall risk. Other commentators have noted that the BEPS reporting requirements will require lines of communication to new groups, such as the human resources department.[27]

Members have brought up communications with the board itself. In a pre-meeting conversation, one member said, *"The big difficulty for boards and the audit committee is finding out what the tax policies are. It's tough to know what key tax policy decisions a company is making."* Another member suggested that the board has to be rigorous in its approach: *"The discussion needs to be structured. Tax needs to be a standing agenda item. You need the CFO and the advisers in the room."*

- **The staff.** Boards and audit committees may assess the allocation of resources to the department and evaluate the qualifications and performance of the staff, especially the director. Members have noted that, because the audit committee cannot explore all the details of tax strategy, they need to be able to trust the tax staff. One member noted that their audit committee decided to replace a tax director who appeared to be focusing too much on tax minimization. In previous discussions of tax, a few members have also brought up the importance of retention – since tax issues may take years to resolve – and hence compensation.[28]

  Reflecting on the challenges emerging from BEPS, Mr Mealey observed that boards are showing increasing *"concern about the ability of the tax function to tackle the full breadth of issues in the current environment."* Mr Mealey said that some companies have struggled to recruit tax directors that are capable of taking a strategic, holistic view of tax, as well as communicate effectively to the board. He noted that the views of the tax function in a global company are often skewed by the tone in the country where the company is headquartered, even though that is just one piece of a puzzle that includes tax authorities in other countries.

- **Outside advice.** EACLN members have highlighted the importance of outside expertise, including tax lawyers and tax accountants, for both the company and the board. Mr Mealey noted that outside advice might be particularly important today, when such dramatic global changes are underway. There are a wide range of reasons why the architects of existing structures, whether internal or external, might be more resistant to changing perspectives and/or accepting new norms.

  One member brought up the role of the external auditor in assessing reputational risks around tax: *"We have discussions with our auditors, and I would expect them to point this out and give input based on their experience from other companies. They play an important role, and I would expect more from them than just assessing if tax strategies are legal."* Another member noted that the external auditor can also help evaluate the staff: *"They will give us feedback and tell us what they think of the tax director."*

[25] EY, "Managing operational tax risk," *2014 Tax Risk and Controversy Survey series,* 2014, page 14.
[26] Audit Committee Leadership Summit, "Tax Issues and the Audit Committee," *ViewPoints* (Waltham, MA: Tapestry Networks, 28 July 2010).
[27] Jaeger, "Global Tax Overhaul Moves Forward," 20 October 2015.
[28] Audit Committee Leadership Summit, "Tax Issues and the Audit Committee," 28 July 2010.

At the same time, laws and norms around using the external auditor for tax advice vary from country to country, and some countries may restrict the kinds of engagements auditors can undertake.

Conclusion

As the expert guests in Barcelona noted, corporate taxation has become *"interesting"* despite its technical and arcane character: tax is now a front-page issue, as the aggressive tax strategies of both companies and governments have come under scrutiny and efforts at reform have escalated. Tax avoidance – pursued by multinational companies and abetted by governments – has been vigorously attacked in the last several years by both the EU and the G-20, which have launched initiatives on multiple fronts. Ms Feehily remarked on the accelerating pace of change: *"There has been demand for transparency across tax authorities for 30 years, but as in business, increasing agility, advancing technology and social networks have caused the discussion to move faster in the last 10 years than in the previous 20."* For companies and their boards, this dynamic new landscape entails a reassessment of company strategies and processes, including the company's objectives in the area of tax, its relations with tax authorities, its disclosures to the public and the tax function itself.

About this document

The European Audit Committee Leadership Network is a group of audit committee chairs drawn from leading European companies committed to improving the performance of audit committees and enhancing trust in financial markets. The network is organized and led by Tapestry Networks with the support of EY as part of its continuing commitment to board effectiveness and good governance.

ViewPoints is produced by Tapestry Networks to stimulate timely, substantive board discussions about the choices confronting audit committee members, management and their advisers as they endeavor to fulfill their respective responsibilities to the investing public. The ultimate value of *ViewPoints* lies in its power to help all constituencies develop their own informed points of view on these important issues. Those who receive *ViewPoints* are encouraged to share it with others in their own networks. The more board members, members of management and advisers who become systematically engaged in this dialogue, the more value will be created for all.

EYG no: AU3716

Appendix 1: Guest biographies

Josephine Feehily

Josephine Feehily is the chairperson designate of a new independent policing authority announced by the Irish government as part of a suite of reform measures in the justice sector.

Ms Feehily was a career civil servant for some 41 years until her retirement at the end of January 2015 from the position of chair of the Office of the Revenue Commissioners – the Irish Tax and Customs Authority – a position she held since 2008. From 1998 until her retirement, she was one of the three commissioners who form the Board of Revenue and the first woman to hold that position in Ireland. In that time, her board-level executive responsibilities included policy and legislation, tax collection, strategy and organization development, large cases division and the customs service.

For three years, from June 2011, Ms Feehily was elected as chair of the World Customs Organization, an organization of some 180 member countries. From November 2012, she also chaired the OECD Forum on Tax Administration – a commissioner-level forum of advanced tax authorities who share best practices – at a time of significant international debate about global policy and administration matters. During that time, the FTA positioned commissioners to work together to begin to implement elements of the OECD BEPS project.

Ms Feehily is a graduate of the National College of Ireland and Trinity College Dublin.

Matthew Mealey

Mr Mealey is the partner leading EY's International Tax Services (ITS) team in Europe, the Middle East, India and Africa. ITS provides tax consultancy services to a wide range of UK and foreign-based multinational companies. Mr Mealey has over 20 years of experience advising clients on international tax matters. His clients include both inbound and outbound multinational enterprises across all industries.

Mr Mealey is experienced in strategies to manage corporate income tax cost and risk globally. He is a leading authority on the UK's controlled foreign company (CFC) rules. He is also a coauthor of EY's handbook on disclosure and transparency rules as well as a contributor to its CFC handbook and to Tolley's *Guide to the UK/US Tax Treaty*.

Mr Mealey has a policy role on international tax matters at EY and has regular meetings in this role with government ministers in HM Treasury and HM Revenue & Customs. As part of this role, he has worked closely with the UK government on the UK tax reform and the consequences of this for business. Mr Mealy has a lead role for EY developing global response strategies to the OECD BEPS initiative.

Since 2012, Mr Mealey has been recognized by *International Tax Review* as a leading adviser in his field. He is a member of the Institute of Chartered Accountants in England and Wales (ICAEW) and the Chartered Institute of Taxation (CIOT). He earned a first-class BA (Hons) degree in economics and econometrics and was a multiple national prizewinner in his professional exams.

Chris Sanger

Mr Sanger has wide-ranging experience at a senior level in advising governments internationally on technical policy options, tax legislation, economic matters and fiscal costings. Mr Sanger advised the previous UK government on their business tax proposals prior to the 1997 election, and subsequently, from 1998 to 2001, he joined HM Treasury as head of business tax policy. In that role, he advised the chancellor of the exchequer, junior ministers and special advisers on reforming the business tax system.

Since leaving HM Treasury, Mr Sanger has continued to advise governments, private-sector groups, industry associations, individual companies and not-for-profit organizations on tax policy. Mr Sanger leads EY's global tax policy network, uniting their network of tax policy advisers in the 140-plus countries in which EY operates.

Mr Sanger is chairman of the tax policy committee of the Institute of Chartered Accountants in England and Wales (ICAEW), and the past chairman of the ICAEW's tax faculty and the Chartered Institute of Taxation's committee on the management of taxes. He is a member of United Nations' Committee of Experts on International Cooperation in Tax Matters and the tax law review committee of the Institute for Fiscal Studies, as well as being the founding chairman of the tax committee of the Alternative Investment Management Association.

He is a member of the Forum of Tax Professionals convened by the financial secretary to HM Treasury, in which capacity he advises on the creation of tax policy.

Mr Sanger is a chartered accountant (FCA), a chartered tax adviser (CTA), holds a first-class degree from Oxford University and has an MBA (with distinction) from Warwick Business School.

Appendix 2: Participants

Members participating in all or parts of the meeting sit on the boards of about 40 public companies:

- Dr Werner Brandt, Audit Committee Chair, Lufthansa and RWE
- Mr Aldo Cardoso, Audit Committee Chair, ENGIE
- Mr Carlos Colomer, Audit Committee Chair, Telefónica
- Mr Ángel Durández, Audit Committee Chair, Mediaset España
- Dr Byron Grote, Audit Committee Chair, Tesco, Akzo Nobel, and Anglo American
- Ms Liz Hewitt, Audit Committee Chair, Novo Nordisk
- Mr Lou Hughes, Audit Committee Chair, ABB
- Ms Shonaid Jemmett-Page, Audit Committee Chair, GKN
- Dame DeAnne Julius, Audit Committee Chair, Roche Holdings
- Dr Maurizio Lauri, Chair of the Board of Statutory Auditors, UniCredit
- Ms Hanne de Mora, Audit Committee Chair, Sandvik
- Mr John Rishton, Audit Committee Chair, Unilever
- Ms Guylaine Saucier, Audit Committee Chair, Wendel
- Dr Erhard Schipporeit, Audit Committee Chair, SAP
- Mr Jakob Stausholm, Audit Committee Chair, Statoil
- Mr Lars Westerberg, Audit Committee Chair, Volvo

EY was represented in all or parts of the meeting by:

- Mr Christian Mouillon, Global Risk Management Leader
- Mr Jose Luis Perelli, Country Managing Partner, Spain
- Mr Don Zimmerman, Global Assurance Strategic Accounts and Relationship Leader

Appendix 3: Discussion questions for audit committees

- What trends have you seen in the tax environment? Has the environment your company faces changed in significant ways? How does the situation vary by jurisdiction?
- Has your board or audit committee discussed the recent activity by EU institutions? What questions do you have regarding the current efforts by the EU?
- What is your view of the impact that these recommendations could have? What should governments keep in mind as they begin to implement them?
- Has your company discussed the BEPS project? Has it assessed the business impact? How will your companies and boards begin to prepare for its implementation?
- What tax issues is your board most concerned about? How does the board oversee these issues?
- How should the board evaluate the impact of emerging changes to the global tax regime? What factors should it consider as it reviews the repercussions for tax strategy, relations with tax authorities and tax-related reporting?
- How does the board evaluate the tax function itself, including its processes, its staff and the use of outside advisers?