



Tax as part of the Corporate Governance agenda

Safeguarding future growth

1. Introduction

Though tax is a key operational business risk, few organisations adequately attend to it merely treating it as a routine financial accounting and reporting matter. Businesses lacking elaborate policies in place to guide tax governance are more likely to deal with the arising issues reactively on an adhoc basis yet a proactive stance with Board of Directors (“Board”) oversight is more beneficial to the organisation as this article sets out.

2. Corporate Governance

Corporate governance focusses on helping the Board to direct and control the organisation so that its goals are achieved for the benefit of all the stakeholders. The stakeholders in a company typically include but are not limited to the shareholders or investors, employees, customers and suppliers. Shareholders appoint the Board of Directors and the external auditors. The Board sets the strategic objectives in addition to providing leadership and supervision of the executive management.

3. Managing risk

It is a core mandate of the Board to put in place policies that help the business to mitigate risks. Despite its elevated significance in recent times, many organisations do not prioritise the handling of tax risks. Well- known Ugandan entities have shut down or wound up because of liabilities from non-compliance with tax obligations. Multinational corporations are under increased scrutiny from the tax authorities. Civil society players are also lately very attentive to issues of tax justice. Organisations and individuals featuring in recent high profile leaks of aggressive tax avoidance schemes have had their reputations tainted.

4. Board composition

As a basic requirement, it is important that some of the board members are well acquainted with tax matters. The Board should come up with a comprehensive policy that addresses the various organisational governance issues to adequately manage tax risks. The tone at the top should be loud and unequivocal of the underlying commitment of the company to comply with all its tax obligations.

5. Casual tax stance

A casual stance towards tax compliance can be costly. The sanctions for flouting tax laws do not care whether non-compliance was deliberate or inadvertent. In fact, many times, the non-compliance is unintended only arising because of the lack of prioritisation of controls to enforce tax compliance. It is a failure of responsibility for the Board if the organisation perpetually incurs tax penalties and interest that are easily avoidable with compliance.

6. Responsibility for tax matters

It is ideal that there is a dedicated team overseeing tax matters. Seeking to manage costs, many organisations merge the responsibility of tax management with the other functions of financial accounting and reporting. Tax matters however tend to be specialist and a general accountant without orientation towards the same may struggle to serve the organisation well. Continuous professional training of tax personnel is also important to enable them keep abreast with the current trends. Tax is very dynamic with amendments to the law almost every year.

7. Appointing external consultants

Value for money considerations should guide the business in appointing an external tax consultant retained to help with tax matters. Some organisations are reluctant to engage well-grounded consultants purportedly saving costs. Experience has however shown that it is more expensive in the long run for a business not to engage consultants. The avoidable tax penal charges arising because of the lack of appropriate support are significantly more than the consultant fees.

8. Tax risk and opportunity reviews

It is also good practice for an organisation to undertake a tax risk and opportunities review at least once a year or every six months. These reviews serve a twofold purpose helping the business maintain a high degree of compliance while at the same time identifying legitimate tax planning opportunities to optimise shareholder returns. It is also recommended that tax review findings are directly reported to the Board.

There are benefits in the law in the form of interest and penal waivers for the voluntary disclosure of tax liabilities. The findings of tax reviews by professional consultants are more likely to be taken up without further interrogation by the tax authorities.

9. Conclusion

Finally, directors are in most instances personally liable for corporate breaches. Directors who do not pay attention to tax compliance matters in organisations that they superintend are more likely to find themselves at the receiving end of sanctions for corporate tax breaches. For this reason in addition to the others raised above, directors should make tax a key part of the corporate governance agenda.

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Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

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Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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