

Taxing issues

Responsible business

and tax

SustainAbility

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Forewords

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This exploration of whether corporate tax policies and practice should be embraced within the range of corporate responsibility (CR) issues has been an enlightening experience. We have been surprised by the polarisation of views, by the contradictory positions taken and by the level of general corporate sensitivity to even raising – let alone exploring – the issue. On the other hand, the growing media interest in and the level of research into the social and economic consequence of different tax policies tended to confirm our suspicion that this was an issue which has been largely ignored not because of its irrelevance to the CR agenda, but more as a result of tax's esoteric, obscure and complex nature. Even where companies cover their tax contribution in non-financial reports, it is almost universally positioned as a credit in a company's social balance sheet, whereas the attitude to the payment itself has generally been one of tax as a cost to be avoided. While there are examples of reputational implications beginning to enter the frame – a passive/defensive modification of tax practice – there is almost no evidence of companies taking decisions under the influence of corporate responsibility.

The seeds of this report were sown in the research programme which was reported in *The Changing Landscape of Liability*. We concluded that the economic dimension of the CR agenda is the least understood, the least explored and with the most potential to really challenge existing business models. At the time of writing, a Google search of 'corporate social responsibility' delivered over 4,500,000 results; of 'corporate economic responsibility' just 34! This probably tells us something about the state of the art and the state of the debate.

We argue that economic accountability embraces – among other things – the equitable distribution of wealth created. 'Fair Trade' is a key aspect which is rapidly mainstreaming; 'Fair Pricing' is already exercising the minds of global pharmaceutical companies; while 'Fair Taxation' is, as we will show, barely on the radar screen.

This report is, therefore, our attempt to lay out the arguments; to make the case for taxation to be seen by companies through the lens of CR; and to offer preliminary guidelines for companies seeking to understand the issue and its implications. We will have achieved our aim if we stimulate constructive debate and begin to bring 'corporate economic responsibility' to the fore.

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PricewaterhouseCoopers LLP is pleased to be one of the sponsors for SustainAbility's current project. In a business environment where tax has gone up the corporate risk agenda and corporate reporting is coming under increasing scrutiny, we believe that there is insufficient research into tax issues in the UK. Nor is there enough understanding about how tax impacts business and its stakeholders. As the leading tax practice in the UK, we are naturally interested in all aspects of the tax system and its development.

Our own research work has shown that there is a real lack of understanding of the wider impact of tax on businesses. Companies, after all, bear many more taxes than just corporation tax. This has led us to develop our 'Total Tax Contribution' reporting framework, which in essence is a way of bringing greater transparency and thus understanding into the tax reporting of companies (see www.pwc.com/uk/ttc).

The Total Tax Contribution framework is helping companies develop the challenging economic dimension of their corporate responsibility or sustainability reporting, an area our own Sustainable Business Solutions practice is heavily involved with. This all has real resonance to SustainAbility's work on *Taxing Issues*.

There are many stakeholders interested in, and directly or indirectly affected by, the ways in which businesses discharge their tax responsibilities – not just HM Revenue & Customs and the company itself. This report looks at aspects of what it means to be a responsible company when it comes to tax. It is a complex issue, not least because of the diverse and often divergent stakeholder interests.

PricewaterhouseCoopers LLP has not been involved in the development of this report and expresses no view on the report's findings, the work for which has been carried out completely independently. The one exception to this is Chapter 4 where, as readers will see, we have contributed to the discussion on corporate responsibility. SustainAbility is to be congratulated on carrying out the *Taxing Issues* work.

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After years in the shadow of its social and environmental counterparts, the economic aspect of corporate responsibility has been steadily gaining ascendancy, and with it, the issue of tax. Tax is unquestionably a material issue, yet at times, CR teams seem to wish it away: like some drunken uncle at a party whom no-one wishes to acknowledge. Well, this compelling report would suggest that business' who wish to present themselves as CR leaders in the future are going to have to account for their performance in this area, and not merely turn a blind eye.

Responsible tax planning is a fundamental component of a business' responsibility to the communities in which it operates. The Co-operative Bank has disclosed corporation tax contributions as part of its sustainability reporting since 2002, and research by the Tax Justice Network would indicate, 'so far, so good' with regard to our treatment of tax. However, the recommendations contained within this report indicate that we, like others, still have much to do.

This report reminds me very much of SustainAbility's ground breaking work in 2001 on public policy disclosure – *Politics and Persuasion*, which did so much to set the issue of responsible lobbying running. I can quite easily foresee this doing the same.

Paul Monaghan
Head of Sustainable Development
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Executive summary

1 What has tax to do with corporate responsibility?

Tax is the latest issue to emerge as part of a more thorough review of the economic impacts that companies have. It has become the subject of greater attention with a variety of stakeholder groups actively reviewing the approach that companies take to their tax policies and planning. This interest is in turn reflected in, and driven by, the media coverage of the issue, which has increased significantly in the last few years. With the growing involvement of governments, the media, non-governmental organisations (NGOs) and even religious groups, the issue is being transformed from a narrow technical discussion for specialists to one which is directly relevant to corporate responsibility (CR).

In the UK in particular the CR implications of tax policies and planning have become a heated topic of debate. Leading NGOs, government regulators, the media, investors and the tax community itself have all become actively involved, publishing regular reports and opinion pieces. There is every sign that this level of interest will continue.

Elsewhere in the world, the level of debate has been more muted. A number of trends suggest, however, that the issue will emerge elsewhere. For example:

- Corporate responsibility reporting, led by multinationals, is by definition not limited by geography. Leading companies can be expected to expand their reporting of wider economic impacts including tax.

- The payment of tax in developing countries is also likely to emerge as a key issue within the broader discussion about corporate responsibility and tax. NGOs in particular now believe tax is a key component in the development agenda and can be expected to maintain a focus on this issue.
- Wider efforts aimed at combating corruption, terrorism and organised crime are also likely to prompt scrutiny of the role and involvement of multinational corporations (MNCs) in tax havens with requests for greater transparency.
- Increasing use of fiscal instruments to achieve social and environmental objectives such as carbon taxes are also likely to foster wider discussions of the contribution companies make to national exchequers.

What is becoming increasingly apparent is that a purely technical approach to tax planning is unlikely to protect companies from charges of irresponsibility and associated reputational damage. This distinction between a financial and legalistic approach to tax and an accountability-driven, economic approach is critical. Instead of focusing exclusively on an absolute boundary between illegal and legal approaches to tax, companies should focus on understanding what is considered to be responsible and irresponsible. Figure 1 distinguishes between the legal/illegal boundary and a 'softer' boundary between what is considered to be responsible/irresponsible.

Considering tax as a CR issue does not mean that more tax must be paid than the law requires. Nor does it mean that tax planning should cease. The laws of most countries offer alternative ways in which real economic transactions can be structured and the choices often carry different tax consequences.

From evasion to mitigation

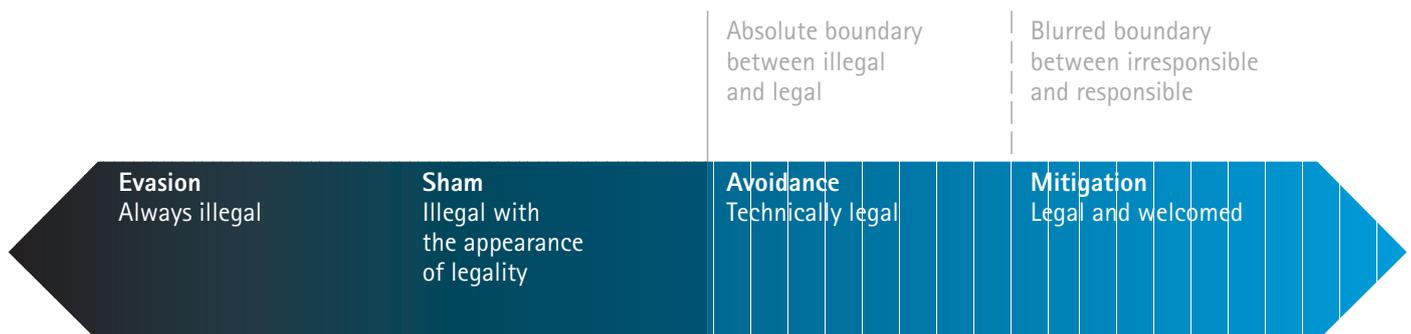


Figure 1

Report objectives
<p>This report's objectives are to:</p> <ul style="list-style-type: none"> – Set the issue of tax management and payment in the wider context of corporate responsibility. – Explore the approaches that companies take to decisions regarding the planning and payment of tax. – Provide guidance to companies that wish both to demonstrate leadership and limit potential risks arising in this area.

Box 1

Making choices between those options is a legitimate and indeed necessary management activity but it also has economic impacts for which stakeholders increasingly hold companies accountable. It is this which brings the issue into the CR frame.

Given the central importance of tax as an element of a company's economic bottom line – and the substantial sums of money that are often involved – we would expect tax to be considered a material CR issue for most companies. The checklist of questions given in Box 2 is intended to help prompt company managers to review their approach to tax in light of shifting stakeholder perspectives on the issue.

Tax as a material CR issue ¹	
1 Direct financial impacts over the short term	Does the company's approach to tax policy and planning expose the organisation to challenge from key stakeholders that are likely to result in direct financial impacts over the short term?
2 Policy-based performance	Does the company have business principles or policies that apply (either explicitly or implicitly) to economic impacts including the payment of tax?
3 Business peer-based norms	How do tax payment rates compare with company peers and what might the reasons be for any discrepancies?
4 Stakeholder behaviour and concerns	How would your stakeholders view the company's approach to tax policy and planning if it were reported on publicly?
5 Social norms (regulatory or quasi-regulatory)	Are there other standards of behaviour – either codified in regulation or not – that are likely to conflict with the company's approach to tax policy and planning?

Box 2

2 What's the business case for responsible tax policies and practice?

The main business arguments for adopting a responsible approach to tax policies and planning are:

- 1 The generalised cost that materialises across the business community as a whole through the growing scale and complexity of tax legislation which is enacted to address aggressive tax avoidance.
- 2 Reputational risk for a company whose position with stakeholders is potentially compromised by adverse publicity and campaigning.

- 3 Regime risk associated with the substantial and increasing risk of litigation in the event of a company's taxation policy being challenged by one or more of the tax authorities considering its affairs; more immediately, there is an increasing risk that unacceptable tax practices will lose access to government contracts.
- 4 Cashflow risk where extensive tax planning can reduce confidence in future cashflow through uncertainties about taxation liabilities.
- 5 For investors, post tax earnings are the basis of price/earnings (p/e) ratios, which in turn are seen as a key indicator of share value; potential tax impacts on what is otherwise robust data can have a material impact on investor confidence.

3 What constitutes a responsible approach to tax?

It appears that increasing numbers of companies now acknowledge the real risks associated with managing tax in a way that focuses purely on what is technically legal. While important, this approach is not the same as acting responsibly. Risk management is an essential component of corporate responsibility but neglects to address the accountability that companies have for their wider economic impacts. A responsible approach sees tax not as a cost to be avoided, but as a legitimate payment from wealth created to the countries and communities that contributed to the wealth creation in the first place.

An active interpretation of the core principles of accountability, transparency and consistency as described in the framework below is, we believe, likely both to provide a firm foundation for the fulfilment of corporate economic responsibilities as they relate to tax, as well as a robust approach in the face of stakeholder challenge (see Box 3).

4 Conclusions and recommendations

Conclusion 1

There is increasing attention and importance being given to the wider economic impacts that companies have on their stakeholders.

Recommendations

- Companies should build internal capacity to better analyse how issues such as 'responsible tax' are likely to develop and what the appropriate management strategies are for addressing potential risks, particularly in developing countries.

- The 'issues evolution' mapping tool presented in section 2.1 should help to put context around the issue of responsible tax and to develop a more nuanced understanding of potential trajectories.

Conclusion 2

The interests and involvement of stakeholders in the debate about corporate tax policies and planning is transforming the agenda from one driven primarily by the observance of legal and financial standards, to one focused on economic accountability to stakeholder groups.

Recommendations

- Bring tax policies and planning firmly and transparently within wider governance frameworks including business principles and corporate values.
- Adopt a two-pronged approach that includes both a technical analysis and a reputational/ethical 'screen'.
- Apply a wider screen using the 'passive to active' framework to take account of wider interests and pressures that treat tax as a critical economic contribution for companies and their stakeholders rather than merely reputational risk.

Conclusion 3

A significant barrier to the integration of CR principles into tax policies and planning is the cultural framing of tax as a specialist, technical and non-core business activity.

Recommendations

- Build capacity within both tax departments and the wider business to understand new forms of tax risk and links with wider reputational risks. Companies should consider:
- Building links with other business processes such as risk management, public policy and governmental affairs, corporate responsibility and investor relations.

- Regularly engaging with senior management to raise awareness around the role of the tax function and provide updates on the rapidly evolving range of tax risks.
- Undertaking CR and ethics training for tax professionals and developing wider initiatives to equip tax professionals with skills to understand and address the broader aspects of tax risk.
- Reinforcing governance processes to ensure that tax planning is conducted within guidelines explicitly linked to wider governance standards and principles, and make sure that this can be documented and reported (see below).

In addition, the tax profession itself should also work to demystify tax and tax planning and better articulate both the important role that tax planning plays in helping companies and individuals understand and take advantage of tax system incentives in ways that are intended by governments, but also to clarify the boundaries of what constitutes responsible practice.

Conclusion 4

Increased transparency of corporate approaches to tax is primarily an opportunity to build more robust tax strategies, and to generate greater confidence among stakeholders.

Recommendations

We recommend that companies increase the amount of transparency around tax policies and payments. Given the complexities involved, we suggest a staged approach to reporting leading from a 'basic' level to an 'integrated' approach. While companies are increasingly transparent about their approach to and payment of tax, Box 4 illustrates the extent to which transparency could be enhanced.

From passive to active tax responsibility		
	Passive tax responsibility	Active tax responsibility
Accountability	Tax seen solely as a cost to be minimised	Tax acknowledged as a key element of a company's economic impact on society
	Correct to the 'letter' of the law	True to the spirit of the law: avoids exploitation of loopholes and transactions undertaken solely/primarily for tax benefit
	Use of tax planning techniques in line with competitor or peer group	Supports moves to eliminate competition on the basis of taxation
	Use of tax avoidance schemes focused on profit and cash-flow criteria	Use of tax mitigation techniques subject to consideration of social and economic impacts
	Compliant with the laws of each state in which activity is undertaken but willing to take advantage of differences between those legal systems	Seeking to declare profits, claim costs and pay taxes in the states in which it can be best determined that the profit was earned
Transparency	Disclosure made on a 'need to know' basis as required by law	Full disclosure based on a 'right to know' basis defined by stakeholders
	Make reference to material tax issues	Share unresolved tax dilemmas quantifying risk, causes and possible outcomes
	Segmental disclosure of tax paid in accordance with law and reporting standards	Full disclosure of all taxes paid by country with relevant supporting data
Consistency	Tax policy and practice incidental to corporate governance systems	Tax policy and practice integrated into corporate governance systems
	Details of local tax regimes and relative rates as focus	Global application of responsible tax principles irrespective of rate implications locally

Box 3

Reporting stages		
Level	Examples	Description
0 Compliance	Widespread	Reporting complies with legislation and accounting standards applying within the reporting territory, but provides no additional context or reference to the issue as an element of corporate responsibility.
1 Basic	BBVA, BP, The Co-operative Bank, Kesko, Philips, Placer Dome, PotashCorp, SABMiller, Talisman, Unilever	Reporting provides basic information on tax policies and payment as part of a company's overall approach to CR. This may include general references to the payment of tax as part of overall economic impact, specific positions the company has taken on taxation issues and high-level data, but without any context or interpretation.
2 Systematic	Anglo-American, Statoil	Companies provide a clearer articulation of the system used to manage the payment of tax as a CR issue. There is likely to be evidence of overarching policies and principles as well as reasonable data quality and coverage including of different taxes paid (and subsidies received) by geography.
3 Extensive	None	Companies provide comprehensive information on their governance and management of tax, and the specific levels of tax payment across different geographies. In addition, there are likely to be clear break-downs of the different types of tax a company pays including for example pre-tax profits, levels of current and deferred tax, opening and closing tax liabilities, and payment of different types of tax including on 'capital' (corporation tax, irrecoverable sales tax, business rates), 'people' (employer's tax liabilities) and on 'product' (custom duties, excise duties).
4 Integrated	None	Reporting is both systematic and extensive in its coverage, addressing all the issues raised above. In addition, reporting provides evidence that wider business decision-making and processes are coordinated to ensure that the company is integrating the CR dimensions of tax into forward planning.

Introduction

1.0

Taxation levels have always been the subject of vigorous debate. The prominent 18th-century statesman Edmund Burke reflected philosophically on our ambivalent relationship with tax, a point that was also forcefully put 600 years earlier when Lady Godiva protested at her husband's crippling tax regime by stripping and riding through England's mediaeval streets.

And the issue of tax is no less controversial today. Democratic elections can be fought, won and lost on the issue and it inspires and inflames in equal measure. This is understandable. Tax revenues are the lifeblood of the social contract, vital to the development and maintenance of the welfare state, national infrastructure and to the sustenance of the framework of justice that underpins liberty and market economies.²

In that context it is surprising at first glance that the debate about corporate responsibility (CR), which has touched on virtually every other area of corporate engagement with broader society, has scarcely begun to question companies in one of the areas where their corporate citizenship is most tangible – the payment of tax.

Even many of the world's acknowledged 'CR leaders' do not appear to view tax as a CR issue. Soon after receiving the UK's Business in the Community 'company of the year' award in 2005, BHP Billiton received a tax, interest and penalty charge of Au\$989 million from the Australian Tax Office. The company is contesting the charge, but other CR leaders such as BP, Starbucks, Novo Nordisk and Vodafone have also all been cited in recent years as companies undertaking controversial – though entirely legal – tax planning techniques.

This report sets out to challenge this perspective by arguing that the payment of tax is a critical element of the economic bottom line for companies, and as such is a key aspect of corporate responsibility.

With this in mind, our primary objective is to consider the issues that tax raises for the management of a company. For that reason technical concerns are not our focus, but those of governance, accountability, risk management and transparency are. The report is structured as follows:

Section 2

The state of the debate reviews the evolution of the CR agenda and the emergence of tax as an integral part of this agenda.

Section 3

The business case for responsible tax policies and planning reviews the main business arguments for adopting a responsible approach to tax policies and planning.

Section 4

At the coal face presents a conversation between two leading professionals in the debate to illuminate some of the key underlying tensions.

Section 5

Corporate responsibility and tax considers how a 'responsible' approach to tax differs from tax risk management and outlines some principles for guiding corporate decision-making in this area.

Section 6

Conclusions and recommendations sets out some initial guidance to companies on how to integrate CR thinking and practices into their approach to tax. This section also provides some examples of good practice from within the corporate community, and suggests others we think might be appropriate.

'To tax and to please,
no more than to love and to be wise,
is not given to men.'
Edmund Burke 1729–97
On American Taxation 1775

1.1 Asking the right questions

It is the premise of this report that tax is not just an issue of concern for the responsible corporation, but is central to its economic interaction with society at large. That being said, the interplay between corporate responsibility and tax is, we accept, highly complex. In addition, in spite of recent publicity, the relationship between tax and corporate responsibility is still largely unexplored, which in itself is a matter of concern that we wish to highlight in this report. Consequently, while we are convinced of the importance of this issue, it would be naïve of us to expect to provide concrete answers to many of the legitimate questions that have been raised about what companies should do in this area. Nonetheless, we do believe that some guiding principles can be identified that will help to inform the ongoing debate.

This report is intended to contribute to that debate in a thoughtful and measured way, which involves a wide variety of parties. It is our ambition that it should help interested businesses and other actors to make real progress in addressing the issue of tax as part of their wider approach to corporate responsibility.

Methodology

Taxing Issues has been based on a series of steps aimed at gathering information on the relationship between corporate responsibility and wider business principles and the approach companies take to tax. Specifically it involved:

- A thorough literature review of published information including media stories, stand-alone publications from different stakeholders on tax, and corporate information contained in annual and CR reports and corporate websites.
- A workshop involving representation from leading corporations, tax advisers and academics focused on the issue of tax.
- Follow-up interviews with tax directors from leading multinational companies.

The report is intended for an international audience, though we acknowledge a bias towards UK practice and experience due to the high-level of interest in and debate on the topic in the UK. We would expect nonetheless that the underlying principles and frameworks will still have international application.

The report will be of specific interest to a wide range of stakeholders including investors, academics, NGOs and government agencies, but has been written primarily for tax and CR professionals as well as chief financial officers and other directors working in and with corporations.

Box 5

Purpose of study

Taxing Issues explores the topic of corporate responsibility as it applies to the payment of tax by corporations. It is not intended to assess whether a specific level of tax payment is fair or not, but rather to explore the process of decision-making involved in managing a company's taxation liabilities. Because corporations are liable to pay a range of taxes in addition to those charged on their profits, it does not restrict itself to the subject of profits taxation. Specifically the report seeks to:

- Set the issue of tax management and payment in the wider context of corporate responsibility
- Explore the approaches that companies take to decisions regarding the planning and payment of tax
- Provide guidance to companies wishing both to demonstrate leadership and limit potential risks arising in this area.

By choice, this report is focused on corporations and the approach that they take to the payment of tax. For this reason we do not explore in detail the role of other actors including governments. We nonetheless acknowledge that concerns about their role are real (see section 2.3) and encourage others to consider the issue of responsibility as it applies to these stakeholders.

Box 6

The state of the debate

2.0

One prominent feature of doing business in the early 21st century is the attention paid to the impact that any business has on the environment and on the communities in which it operates. Issues like climate change, poverty and HIV/AIDs are rarely out of the newspaper headlines, with news reports increasingly accompanied by commentaries on the role businesses play in combating or contributing to such issues.

For many businesses, these pressures seem to have emerged almost overnight. A closer analysis, however, reveals a slower, steadier growth in the corporate responsibility agenda that has taken place over the past few decades moving from an initial focus on environmental issues in the 1970s and '80s, to embrace social issues such as human rights and child labour in the 1990s. Most recently, the approach that companies take to economic issues such as 'fair-pricing' (e.g. in the pharmaceutical industry) and 'fair-trade' has become a more prominent issue.

In this light, tax is merely the latest issue to emerge as part of a more thorough review of the economic impacts that companies have.

Or as Jeffrey Owens, Director of the OECD's Centre for Tax Policy and Administration, has put it, 'Tax is where the environment was ten years ago.'³ The way in which these wider economic issues have been managed within companies has also run a parallel trajectory, with growing awareness and sophistication correlated with the time since the initial 'impulse' from company stakeholders. Figure 2 illustrates how many companies see their progress in developing systems to manage the different elements of the corporate responsibility agenda.

2.1 The economic bottom line

While the CR agenda continues to evolve rapidly, it is ironic that it has primarily focused on social and environmental issues while largely leaving the third, economic, element of the triple bottom line to one side. In no small part this explains why it has taken 20 years for the CR movement to debate issues such as tax. This situation is rapidly changing with a variety of different CR organisations researching both the economic bottom line and the issue of tax.

The integration of financial, environmental, social and economic issues into business practice

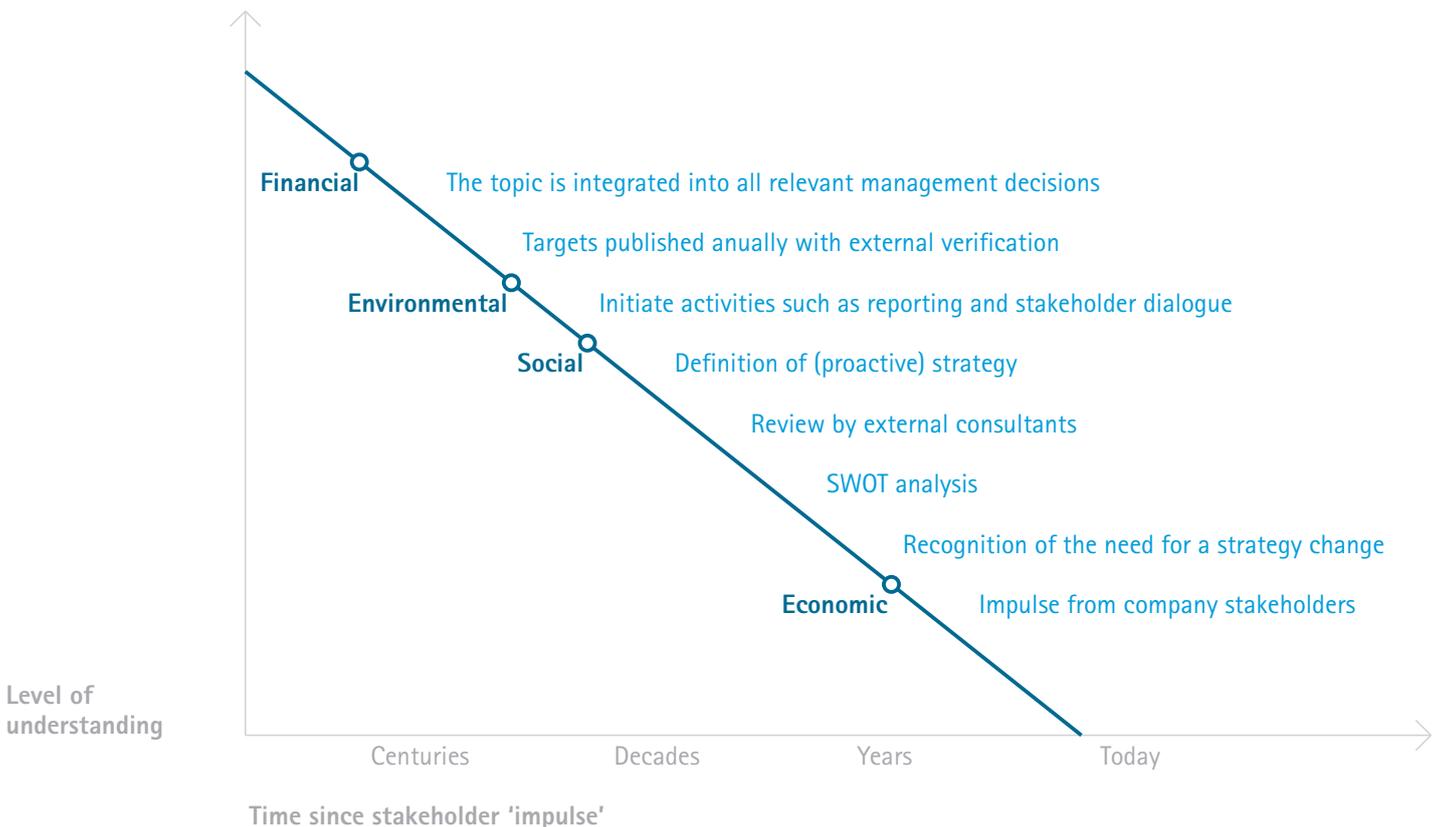


Figure 2 Adapted from Novo Nordisk

Corporate responsibility: a definition

Corporate responsibility is now increasingly understood to refer to an approach to business that embodies:

- A commitment to economic, social and environmental accountability
- Open and transparent business principles and practices
- Ethical behaviour rooted in clearly defined values
- Active respect for the full range of stakeholders.

Of nine CR organisations surveyed for this report, seven said that they were actively researching or advising companies on aspects of the economic bottom line with eight specifically focused on the issue of tax.⁴ Nonetheless, many also made clear the difficulty in understanding how to define the economic bottom line as distinct from the financial bottom line.⁵ For that reason we believe we have a duty to explain our terminology and what we believe the impact of it might be.

Confusion about the economic line is much like the confusion many people experience over the difference between accountancy and economics. Without wishing to over-simplify the issue, accountancy is about individual entities, be they individuals or corporations. As such it is focused on what happens within an organisation, and ultimately the actions that drive its cashflow. It can be fairly said that this is an organisation's financial bottom line.

It can just as fairly be said that its economic bottom line is different. It is more encompassing. An organisation's economic bottom line encompasses its financial bottom line, but it looks beyond the immediate and internal consequence of its transactions and how they simply affect its cashflow. Instead, it looks at how those internal transactions have impact on the wider economic community, both directly and indirectly and, as importantly, whether within that context they are of benefit or not.

This is not the first occasion on which SustainAbility has touched on this theme. An earlier attempt to provide greater clarity in framing the CR dimensions of the economic bottom line was provided in SustainAbility's report *The Changing Landscape of Liability*.⁶ This report, produced in partnership with financial and legal experts, sets out some basic principles in considering the economic aspects of the corporate responsibility agenda. These include:

- **Economic diversity** covering corporate roles in encouraging free and genuinely competitive markets, both being necessary components of fair markets.

Box 7

Issues evolution

Cumulative stakeholder involvement

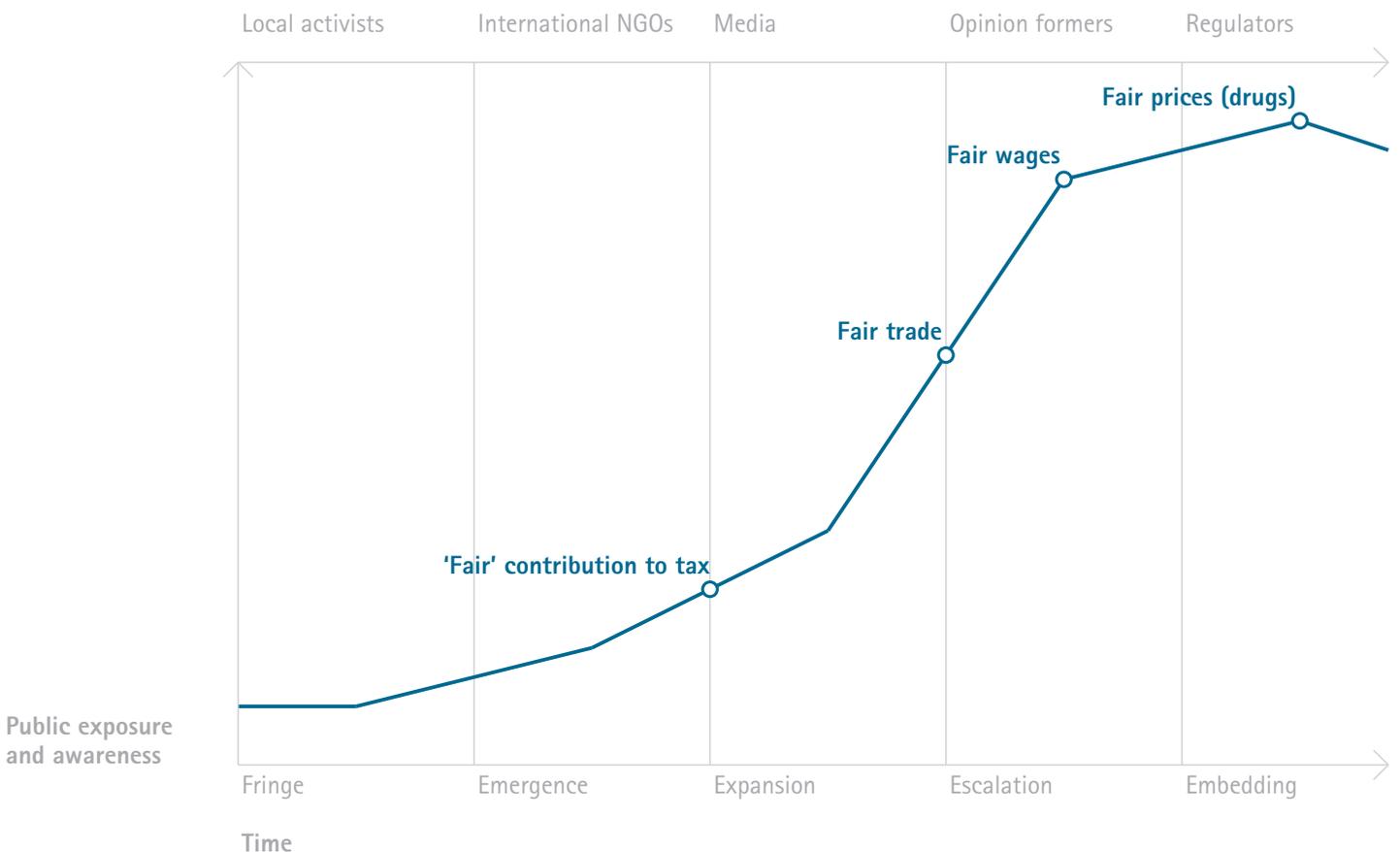


Figure 3

- **Economic equity** addressing the 'equitable' distribution of economic costs and benefits among stakeholders including tax.
- **Economic accountability** focused on the impact and influence of economic power.

These principles are also reflected in the concerns and perspectives of a variety of stakeholder groups. For example, the role that corporations play when exercising their economic muscle in the market place has long been a concern of governments intent on maintaining free and open markets. Economic equity, too, is an increasingly important topic for a variety of stakeholders including, for example, the role pharmaceutical companies have played in resisting reductions in the price of AIDS drugs in many developing countries around the world.

Suppliers have also argued – in some cases very successfully – for increased prices for their goods and services. Suppliers of coffee, chocolate and bananas, for example, have benefited from a willingness by some consumers to pay more for these 'fairly traded' products.

In fact, both of these issues have arguably crossed from fringe issues associated with niche business practices to mainstream concerns within the business community and wider society (see Figure 3).⁷

2.2 Stakeholders and tax

Most recently of all, tax has become the subject of greater attention with a variety of stakeholder groups including investors (such as Henderson Global Investors and Citigroup), government regulators, NGOs (such as Global Witness, Save the Children and the Tax Justice Network) and members of the business community actively reviewing the approaches that companies take to their tax policies and planning. This interest is both reflected in, and driven by, the media coverage of the issue, which has increased significantly in the last few years particularly in the UK (see Figure 4) but also in other countries around the world.⁸

NGOs, regulators and governments in particular, operating from a position of social concern, argue that corporate practices are having damaging impacts on local communities, and wider society (see Figure 5).

Recent reports by NGOs including Save the Children, Christian Aid and Publish What You Pay have drawn particular attention to the damaging impacts of tax avoidance on developing world economies.¹⁰

Most investors, who traditionally have only had a relatively superficial knowledge about tax, are in turn interpreting this growing attention as a source of increased risk and are developing a more nuanced and sophisticated understanding of the agenda. Henderson Global Investors, for example, has reviewed corporate approaches to tax and tax risk,¹¹ and Citigroup has published guidance notes on how to analyse tax risk.¹²

The corporate response, however, has to date been patchy. In the US for example, a proposal from the Financial Accounting Standards Board that would have required companies to reflect 'uncertain tax positions' in their accounts was opposed by the vast majority of companies¹³ and in many continental European countries, the issue has yet to receive significant profile in the media or from the private sector.¹⁴

UK press coverage of tax and corporate responsibility⁹

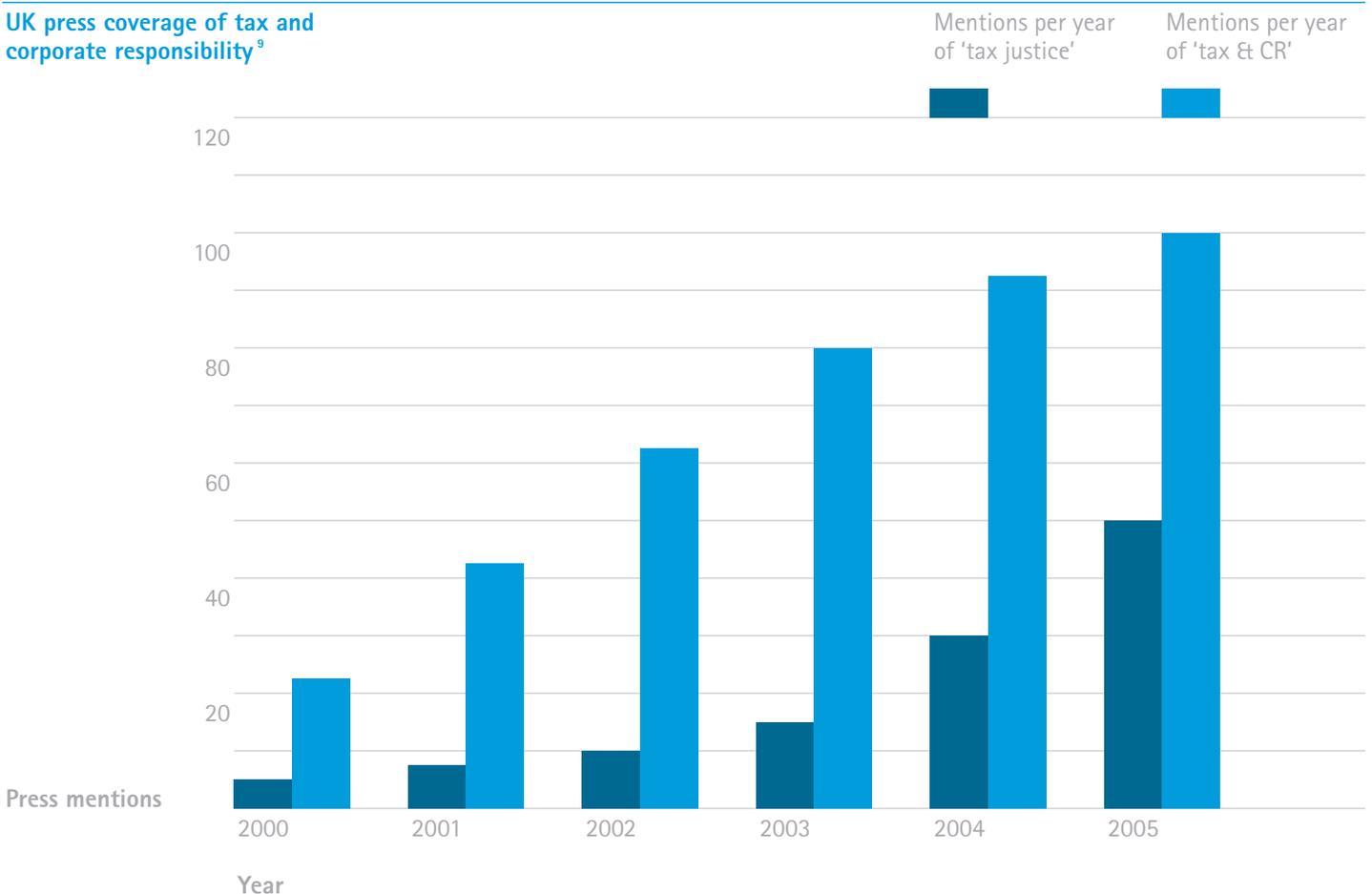


Figure 4

As noted, the debate in the UK has already achieved a significant profile, with no fewer than three of the big four accounting firms producing reports on the topic in the past year. PricewaterhouseCoopers' chairman, Kieran Poynter, has claimed that accountants in general are focusing more on tax assurance work than aggressive tax planning, and for many UK companies the issue is already clearly understood to play into existing concerns on tax risk.

A survey conducted by Deloitte in 2005, for example, found that the number of UK tax directors describing their approach to tax as 'conservative' (risk averse) has increased from 17% in 2003 to 35% in 2005.¹⁵ Henderson Global Investors too has suggested that a significant number of UK companies do not minimise the tax that they might pay, because to do so would expose them to too much risk of challenge from the taxation authorities, with consequent cost.¹⁶

Ultimately, whatever the motive, increased scrutiny from different stakeholders is fuelling further interest in the approach that companies take to tax policies and planning.

As *Tax Planning International Review* has argued, 'The attitude of revenue authorities, corporate governors and the public at large is definitely shifting against so-called aggressive tax planning.'¹⁷ Figure 5 summarises the views of a variety of stakeholders.

Tax as an ethical issue

While there is clearly growing stakeholder interest in the issue of tax and CR, for many in industry, legal distinctions are still paramount in determining levels of tax risk and wider responsibilities. As KPMG argues in a recent report, 'In the past there was a clear distinction between legal tax avoidance and illegal tax evasion. The distinction remains clear in law, but has become blurred in the minds of governments, regulators and the public.'¹⁹ But, with the ever growing involvement of governments, the media, NGOs and even religious groups such as Christian Aid and the Catholic Church, the issue is blurring as it is transformed from a narrow technical discussion for specialists to one that is overtly ethical and social.

This ethical dimension has been illustrated in the US where a number of companies have been widely criticised for being 'unpatriotic' in planning moves to avoid corporation tax by reincorporating in Bermuda. In the UK, some were stunned by a provocative comparison drawn by the UK's HM Revenue & Customs (HMRC) between drink-driving and tax avoidance. Nonetheless, the association clearly illustrates the degree of emotion that the debate now engenders.²⁰

Nonetheless, what is becoming increasingly apparent is that a narrow technical approach to tax planning is unlikely to protect companies from charges of irresponsibility and associated reputational damage. Focusing exclusively on what constitutes a legal or illegal approach, and developing planning techniques that meet the letter of the law, while infringing the spirit, are likely to be increasingly controversial in the eyes of stakeholder groups contributing to this debate. As *Financial Times* columnist Roger Cowe has argued, 'This is not an argument about legality, it is an argument about responsibility. And it is intrinsic to corporate responsibility thinking – for example on labour conditions, diversity action or community support – that it is not enough simply to operate within the law.'²¹

Stakeholders' interest in corporate approaches to tax

Investors

- Need for reliable information
- Avoid reputational risks
- Mitigation within 'responsible' parameters
- Create and maintain stable tax regimes

Business peers

- Avoid reputational risks
- Mitigation within 'responsible' parameters
- Create and maintain stable and transparent tax regimes

Intergovernmental organisations

- Combat illegal activity (money laundering, tax havens)
- Regulate harmful tax competition between states
- Support retention of capital in developing countries

National governments

- Ensure compliance with letter and spirit of the law
- Generate sustainable tax base for the provision of public goods

Company

NGOs

- Promote principle of 'equity' in taxation
- Promote accountability for business actions
- Create stable and transparent tax regimes
- Support retention of capital in developing countries

Media

- Promote debate about tax practices and payment

Figure 5

There are signs that this perspective is beginning to catch the attention of finance directors, at least in many UK companies. A survey in the autumn of 2005 by *Accountancy Age*, for example, found that of the 223 finance directors who participated, 57% said that tax avoidance did have ethical implications.²² PricewaterhouseCoopers, as part of its guidance to clients, argues for example that approaches to tax planning need to be based on, among other things:

- The importance of the company's reputation among key stakeholders (taking into account a wider perspective on which stakeholders may be interested in the company's tax position).
- How the tax strategy relates to business ethics and/or policies on corporate responsibility.

As Susan Symons, Tax Partner at PricewaterhouseCoopers, puts it to her clients, 'Do you need to redress the balance between short-term, tangible, financial benefits for shareholders, and the longer-term more intangible benefit of reputation with key groups of stakeholders?'²³

Tax as a material CR issue¹⁸

Given the central importance of tax as an element of a company's economic bottom line – and the substantial sums of money that are often involved – we would expect tax to be considered a material CR issue for the vast majority of companies.

The checklist of questions given below is intended to help prompt company managers to review their approach to tax in light of shifting stakeholder perspectives on the issue.

1 Direct financial impacts over the short-term

Does the company's approach to tax policy and planning expose the organisation to challenge from key stakeholders that are likely to result in direct financial impacts over the short term?

2 Policy-based performance

Does the company have business principles or policies that apply (explicitly or implicitly) to economic impacts including the payment of tax?

3 Business peer-based norms

How do tax payment rates compare with company peers – and what might the reasons be for any discrepancies?

4 Stakeholder behaviour and concerns

How would your stakeholders view the company's approach to tax policy and planning if it were reported on publicly?

5 Social norms (regulatory or quasi-regulatory)

Are there other standards of behaviour – either codified in regulation or not – that are likely to conflict with the company's approach to tax policy and planning?

Box 8

A survey in the autumn of 2005 by *Accountancy Age* found that of the 223 finance directors who participated, 57% said that tax avoidance did have ethical implications.

This distinction between a narrow financial and legalistic approach to tax, and an accountability-driven, economic approach is critical. Instead of focusing exclusively on an absolute boundary between illegal and legal approaches to tax, companies should focus on understanding what is considered to be responsible and irresponsible.

That being said, considering tax as a CR issue does not mean that more tax must be paid than the law requires. In a very real sense this is not possible; all tax is paid because a law requires its settlement. Nor does it mean that tax planning stops. The laws of most countries offer alternative ways in which real economic transactions can be structured and the choices often carry different tax consequences. Making choices between those options is a legitimate and indeed necessary management activity but it also has economic impacts for which stakeholders increasingly hold companies accountable. The way in which companies should make judgements on these issues is explored in further detail in Chapter 6.

Figure 6 provides a graphical representation of the distinction between the legal/illegal boundary – which in theory is absolute – and a ‘softer’ boundary between what is considered to be responsible/irresponsible. This is framed around a categorisation developed by Lord Templeman, a noted (and now retired) law lord in the UK.²⁴

It is possible for business to act responsibly with regard to the payment of tax, and some progressive businesses are already doing so. In a recent analysis of high street banks, for example, The Co-operative Bank was viewed very positively (see Box 9).²⁵

2.3 Fair tax and the role of other actors

In undertaking this research, we were warned that there were a number of important factors that complicate the question of what constitutes a responsible corporate approach to tax. Foremost among these is the question of how responsible other protagonists such as governments and individuals themselves are. In the course of this research, for example, stories about the tax-planning activities of the ‘super-rich’ were rarely far from the headlines,²⁶ and while these stories excite much popular interest, the small everyday tax avoidance – and evasion – activities of the general public pass with much less comment.

In addition, during this same period, the challenges that governments face in the way they manage policy frameworks and the impacts that they have on tax payers has also been highlighted. For many, a ‘fair tax’ is as much about government’s obligations to be responsible in raising and spending taxes as it is about the responsibilities of companies and individuals to adopt a responsible approach to its payment.

Others we have consulted have raised particular criticism of the role that governments have played in failing to agree common approaches to the taxation of multinational businesses. This lack of consistency in approaches to tax between nation states and the shifting political dynamic around tax legislation can, for example, make it difficult for companies to conduct tax planning activities responsibly when the consequences of these actions might extend over a considerable number of years.

International tax competition – the competition between nation states for inward investment from business on the basis of the effective tax rate – serves to complicate the issue further. Under pressure from corporations, governments increasingly have to play a difficult balancing act between ensuring an appropriate taxation rate that meets the needs and expectations of their electorates, while also ensuring that taxes payable by those companies are competitive with other countries.

Finally, tax planning is also a highly technical profession, and has become insulated from non-tax professionals by the complex terminology and technical nature of the work. While this has enabled the industry to develop sophisticated approaches to tax planning, the downside has been that the practice is very poorly understood by the wider public, key stakeholders including investors, and often even within the companies in which tax professionals work or to whom they supply their services.

From evasion to mitigation



Figure 6

Technical terms like 'avoidance' and 'transfer-pricing', for example, are often seen as synonymous with unacceptable behaviour, as Loughlin Hickey, Head of KPMG's Europe, Middle East and Asia Practice, has suggested.²⁷

While these issues certainly complicate the issue of 'CR and tax', most are not new to the CR agenda. Nations also compete to attract inward investment on the basis of other parameters including environmental and social legislation; the importance of other actors and their responsibilities has also been cited in other areas of corporate responsibility²⁸ and tax is certainly not the first technical discipline to have been confronted by stakeholder antipathy. In recent years the scientific community, and in particular the application of genomics, has also come in for heavy challenge. It is in fact for these reasons that CR is likely to have a great deal to offer tax practitioners in providing helpful insights into how to engage in the emerging debate.

Example of responsible behaviour – The Co-operative Bank

The Tax Justice Network recently compared levels of tax payments among a group of UK banks. The key findings from this analysis are given below, focusing in particular on the performance of The Co-operative Bank.

- The Co-operative Bank's Tax Gap is virtually non-existent. In effect this meant that The Co-operative Bank paid the tax expected of it. This is in contrast to all other banks.
- The Co-operative Bank had the simplest tax reconciliation of any bank in the sample. The tax reconciliation gave no indication of aggressive tax planning taking place.
- The Co-operative Bank enjoyed a standard of financial reporting within its accounts unparalleled with the companies surveyed; and had minimal and immaterial prior year [tax] adjustments.

On such a small sample basis it is impossible to conclude whether The Co-operative Bank's performance was a consequence of it being almost entirely UK based; because it was a smaller company [compared with FTSE 50 banks]; or whether management policy was a major influence. It may well be all three but the presence of a very high level of satisfactory reporting suggests that management policy is a major influence. This suggests that other companies could achieve this level if they wished to do so.

Source: *Mind the Tax Gap – How Companies Could Help Beat Poverty*
Tax Justice Network

Box 9

Technical terms like 'avoidance' and 'transfer-pricing', for example, are often seen as synonymous with unacceptable behaviour.

The business case for responsible tax policies and planning

3.0

Presenting responsible tax policies and planning as an issue of corporate responsibility is not the only basis for reassessing tax planning activities. There is also evidence to suggest there is an increasingly compelling business case, from the wider perspective of the business community taken as a whole, from the perspective of the company itself and, more specifically from company investors.

3.1 The case for the business community

One oft-overlooked cost to business of irresponsible tax planning is the generalised cost that can materialise across the business community as a whole. For example, in the UK, the tax code has grown by 54% in the last five years, resulting in many thousands of pages of primary and secondary legislation and supporting statements; this in itself represents a significant burden on business.²⁹ This growth is partly a function of new taxes being added to the code, but is also the inevitable outcome of aggressive tax planning that seeks to exploit legal loopholes, holes that regulators then seek to secure. As one executive told us, the calculation of benefit is one of 'instant cash prizes vs. long-term stability', with the short-term benefits going to individual businesses that exploit existing tax legislation, while the business community as a whole loses out in the longer term.

Most significant of all, however, is the essential role taxation plays in providing the legislative, cultural and market environment in which businesses thrive. Removing the source of this stability is ultimately counter-productive to business as it creates a more hostile and uncertain business environment with the potentially disastrous implications uncertainty can bring.

This issue is particularly apparent in developing countries where the temptation to provide fiscal incentives to attract inward investment is often particularly compelling for developing country governments but is cited as one of the most damaging strategies to their long-term development.³⁰ For example, the IMF recently recommended that the elimination of tax exemptions should be one of the strategies Mozambique should employ to arrest further deterioration in the country's fiscal performance. 'Raising the tax-revenue-to-GDP ratio, strengthening tax administration, eliminating tax exemptions, and improving compliance are all needed actions,' said IMF managing director Takatoshi Kato during a visit to Mozambique in the summer of 2005.³¹

3.2 The case for the company

For individual companies, the business case focuses explicitly on issues of 'tax risk'.³² Three main sources of risk are generally cited:

– Reputational risk

The importance of reputational risks to companies can be easily down-played. It is for example difficult to ascribe specific sums to the value of a corporate reputation, and even more difficult to prove causation when a weakened reputation leads to generalised business impacts. Nonetheless, it is an issue that company management take very seriously. No less than 97% of those companies surveyed by PricewaterhouseCoopers said that they would be concerned about negative press coverage of their tax planning, and 40% cited corporate responsibility as the most important driver for measuring taxes paid.³³ Ernst and Young, surveying the tax directors in over 350 large companies, found that a majority now see tax risk management as one – if not the – priority for their companies.³⁴ No longer is the focus on reducing cost or creating value, today the focus is very much on risk and, in particular, ensuring that financial reporting is accurate, that corporate governance is effective and that company reputation is not compromised.

– **Regime risk**

A second source of risk is associated with the substantial and increasing risk of litigation in the event of a company's taxation policy being challenged by one or more of the tax authorities considering its affairs. The UK's HMRC for example has expressed interest in increasing penalties for aggressive tax avoidance including more prosecutions for taxpayers suspected of dishonesty, and stiffer penalties for underpayments. Many large companies at least implicitly acknowledge this risk. It is not common for example for companies to reduce the overall level of tax payment as far as is legally possible. As US economist Martin Sullivan has put it, 'Even if everything is perfectly legal, if you get too cute, there is no end to the trouble you can stir up – with an individual auditor, with a whole tax agency, with a whole government.'³⁵ Ultimately companies need to balance their desire to minimise tax in the short term, with the need to maintain good relations with tax authorities in the long term.

More tangibly, there is also an increasing risk that companies will lose access to government contracts if they undertake their activities through tax haven vehicles or if they undertake other transactions seen as unacceptable to the government of the country offering such contracts. It has, for example, been made a condition of bidding for UK Public Finance Initiative (PFI) contracts that the company making the bid be UK based. Several attempts have also been made in the US to restrict access to government contracts for companies which have 'inverted' by moving their headquarters outside the US for taxation purposes. Indeed, this was a major element in Senator John Kerry's presidential campaign in 2004.

– **Cashflow risk**

Finally, having greater certainty about future cashflow is often in itself a valuable component for business. Extensive tax planning, however, can reduce this certainty for company management through inevitable uncertainties about some taxation liabilities, possible impacts on future cashflow and the diversion of senior management effort that dealing with such cases requires. Pursuing a less aggressive taxation strategy can pay off by securing greater certainty in this area.

3.3 The case for investors

Clearly if a company suffers for any of the above reasons, investors will usually be expected to suffer as well. Therefore for a company to face any of the risks noted in the previous section will usually be disadvantageous to its shareholders. In addition, however, there are a variety of other ways in which aggressive tax planning might represent a risk for investors. But much of this additional risk is compounded by poor communication between investors and companies. As Citigroup has argued, the 'complexity of tax planning and the lack of information [provided by companies], dissuades all but the most diligent investors from investigating.'³⁶

But these issues can be very significant, for example while a number of performance indicators are based on pre-tax profits, many are focused on after-tax figures. Small changes in overall tax liabilities therefore can have very significant effects on these indicators creating extra potential risks for investors.

For example the uncertainty of taxation reporting as a result of challenges to aggressive taxation strategies can give rise to significant variations in stated post-tax earnings. Post-tax earnings are in turn the basis of price/earnings (p/e) ratios, which are seen as key indicators in corporate valuations. If taxation impacts on what is otherwise reasonably objective data, this can have a material impact on investor confidence.

In addition, a significant component in the taxation charge of many companies is the deferred tax charge where companies register an apparent tax charge in their profit and loss account with a much lower sum being actually paid in tax. The resulting difference is treated as a deferred tax liability, which can be substantial (amounting to more than US\$15 billion on the 2003 accounts for BP, equivalent to 20% of its shareholder funds). The problem for investors is that there is no way of knowing when, or if, these liabilities might crystallise. As above, when companies are valued on the basis of after tax cashflows this creates an uncertainty that is hard to factor into valuation estimates. This issue was underlined in late 2005 when Vodafone announced that it would probably have to pay a tax bill of £5 billion from 2005 to 2008. The announcement knocked £10 billion off the group's stock market capitalisation.³⁷

And finally, once a pattern of uncertainty in taxation reporting is known to exist, then it is possible that a company may trade at a discount to its true value for fear that further uncertainties will be revealed.

Once a pattern of uncertainty in taxation reporting is known to exist, then it is possible that a company may trade at a discount to its true value for fear that further uncertainties will be revealed.

At the coal face

4.0

Many of the issues that are addressed within the corporate responsibility debate are controversial, but in our experience few if any have been as divisive as the issue of tax. As part of this ongoing debate, we invited Richard Murphy of Tax Research LLP, and John Whiting, Tax Partner at PricewaterhouseCoopers in the UK,³⁸ to discuss some of the underlying issues.

Seb Beloe

John, as a leading tax practitioner, do you think there is a corporate responsibility dimension to the issue of tax?

John Whiting

Corporate responsibility covers many areas and increasingly tax is included within it. It is clearly a company's responsibility to pay the taxes that are due as a result of its business activities. At the same time, the company has a responsibility to its shareholders to give them a proper return – which must include taking advantage of sensible planning to manage the company's tax bills appropriately. There can be no obligation on a company – or an individual for that matter – to pay more tax than is due. In planning its actions, a company must be able, when faced with two courses of action – both equally sensible in business and economic terms – to choose the course of action that attracts the lower tax bill.

The difficulty, however, lies in balancing these varying responsibilities while respecting the needs of stakeholders. In tax terms, management needs to assess the risks of its action and agree its tax strategy. What is its attitude to tax risk and how aggressive will its tax planning be? Has it assessed and planned for all the risks this entails? Then it needs to consider the appropriate level of reporting: in the interests of transparency it needs to consider reporting on what it is doing so that stakeholders can assess its actions.

Seb Beloe

So the legislative frameworks are clearly essential, with companies also needing to take account of the expectations of key stakeholders. Richard, as a leading advocate in this area, what is your view on the relationship between corporate responsibility and tax?

Richard Murphy

I think the issue is more fundamental than John suggests. Corporate responsibility is in fact nonsensical without the corporation having a sense of citizenship, of being grounded in those locations in which it conducts its trade. It is about a company's duty to its customers, its employees, its suppliers and to the communities in which they live, each of which runs in parallel with the obligation to shareholders.

Many of the needs of these communities are paid for by the governments of the territories in which those people reside. As such, for a company to seek to avoid its obligations to the territories in which it conducts its trade is a deliberate act of corporate irresponsibility. It is irresponsible because it is an action that seeks to deny both the importance of accountability within democratic society, and a company's duty to support the societies in which its stakeholders live and work. Companies do have that duty. What else can corporate responsibility be about?

Three things evidence this responsibility. The first is a desire to declare taxes where they are earned. The second is a willingness to work within the spirit as well as the letter of the law. The third is transparent reporting that proves that the first two have happened.

'For a company to seek to avoid its obligations to the territories in which it conducts its trade is a deliberate act of corporate irresponsibility!'

Richard Murphy
Tax Research LLP

Seb Beloe

One of the more controversial aspects of tax planning has been the practice of 'transfer-pricing' whereby goods and services are transferred across national boundaries while remaining within the same organisation. In such cases, companies are often caught in a dispute between different governments making contradictory claims on the same products or services. The scale of such claims can run into many millions – even billions of US dollars. In these cases, what are the respective responsibilities of companies, and of governments?

Richard Murphy

GlaxoSmithKline (GSK) is a good contemporary example of where this is happening, and the scale of the claim does indeed run into the billions – US\$7.6 billion to be precise!

The GSK case is clearly highly complex but I would argue that the fact that GSK were one of the first companies to very obviously relocate their manufacturing activities outside their traditional areas of production is not immaterial. Rather than being located in the company's countries of origin (the UK and the US), its facilities are now largely based in Singapore, Puerto Rico and Ireland, all clearly chosen for taxation reasons, and giving rise to substantial savings in tax, which the company acknowledges.

Since the company has treated tax as a cost that it is trying to avoid, it seems possible, at the very least, that the UK and US governments are responding by treating part of that saving in tax as a cost saving, meaning more taxable benefit should be declared within their territories. The company should in fact not be surprised that if it treats tax as a cost it is challenged upon the allocation of its costs. Instead, they should ask if they have applied the right criteria to the management of their taxation liabilities.

None of this is to say that governments do not have duties to companies and to each other. Unfortunately it is difficult to coordinate this duty. There is no international body which can arbitrate such disputes. There are no disclosure mechanisms that allow data of the type involved in this dispute to be resolved multilaterally. This is a failure of the international tax system. But until this is resolved, a multinational company that seeks to exploit the limits of national boundaries for its own taxation advantage should expect to suffer the consequence of a legal challenge that seeks to determine whether such approaches can be sustained in accordance with local law.

Seb Beloe

So, to an extent at least, companies involved in this kind of dispute 'have it coming to them'?

John Whiting

Multinational companies can feel very much 'piggy in the middle'. Certainly no company should embark on a saga that might open it up to the risk of tax authority investigation and double tax exposure without proper care and attention, and companies also undoubtedly have a responsibility to use proper prices for their products, and support these with appropriate documentation. That the transactions need to be real goes without saying. A company needs to make whatever tax returns are demanded by the tax authorities relevant to where it does business. Having done that all to the best of its abilities and in accordance with the laws of the countries concerned, and of course paid its taxes at the right time, it has discharged its responsibilities.

But in all these cases, governments too have responsibilities. Tax authorities can challenge the correctness of tax returns, but these challenges should be based on an understanding of the company's business; sometimes, it has to be said, that can be lacking.

This is why both industry and government need to pursue good relationships and active dialogue to ensure legislation is developed in a properly informed environment.

While this is improving, surely it must also be part of a tax authority's role to carry out its job with the minimum of intrusion. The UK HM Revenue & Customs (HMRC) has made much of its aim to work with businesses and minimise burdens on them. It is surely part of the taxman's job to liaise not just in pursuit of defaulters or what it sees as unacceptable practices, but also to help its customers by smoothing out difficulties.

And it is not just procedures that tax authorities should coordinate. Rules need to be harmonised in the first place for things as basic as cross-border trading. Governments should make sure that tax treaties address this area and provide for a dispute resolution process. Companies should not be put to unnecessary costs and concerns just because two tax authorities cannot agree how their respective rules should interact.

Seb Beloe

Clearly there is an argument about how much of a responsibility lies with government and how much with business, but what in practice do you think companies should be doing to address their responsibilities?

John Whiting

Ultimately it has to be part of a company's responsibility to pay its taxes, which includes of course making appropriate returns to the tax authorities, but also extends to all the taxes that impact on the company's activities – and there will be many, far more than just corporate profits tax.

What is considered 'appropriate' – or indeed responsible – is not always clear. Companies need to make this judgement based on their tax strategies and their attitudes to risk, as well as their activities and economic circumstances. Ideally, companies should think through these issues and have general guidelines, in the same way that they no doubt have policies in place for many of their activities.

In any case, companies also have a responsibility to report on their tax position to stakeholders. That reporting should go beyond a simple recording of the corporate tax charge; it should adhere to similar principles as laid out in PricewaterhouseCoopers' Total Tax Contribution framework including:

- Reporting the full tax contribution it has made, showing meaningful splits into major taxes.
- Commenting on its tax strategy and policies and how these link to and support overall business strategy and principles.
- Discussing its approach to the management of tax risk.
- Considering reporting taxes collected, tax administration costs and wider economic contribution (e.g. in licence fees).

The aim of this increased reporting should be to improve transparency and to give a proper picture of the tax contribution that the company is making to the country.

Responsibility cuts two ways, though. The government has a responsibility for creating and maintaining a tax system that is clear and understandable, and which facilitates compliance. That responsibility encompasses making sure that the tax system encourages business and recognises the contribution that business makes to the wider economy.

Richard Murphy

I would start by saying that companies should not in principle undertake transactions or steps in transactions that are intended mainly or entirely to secure a tax advantage and which have no commercial or practical purpose beyond securing that advantage. A company that is seeking to pursue responsible tax planning would I believe seek to avoid such transactions as a matter of course. This does not stop tax planning, but it means that it takes place within clear parameters.

Then, as John points out, transparency is essential. It is not good enough for a company simply to claim to be responsible with regard to any issue. It has to demonstrate that fact. As such greater disclosure of tax paid is not just part of a company's corporate responsibility; it is an essential element of it. Corporate responsibility is a duty of care to people and, given that tax is and can only be paid to nation states, that responsibility cannot be evidenced unless a company discloses the payments it makes to each state in which it operates.

But, and this is where I disagree with John, it is not enough to publish impressively large amounts of taxes paid. As all accountants know, data is meaningless when presented in isolation. Wider disclosure is needed to enable any tax disclosure to be understood and this includes information on inter-group and external sales and purchases, labour costs, interest charges, profit and tax paid for every country in which a group operates. The tax charge should also be analysed into the normal component elements used in notes to financial statements. Then, and only then, can the corporation be considered to have disclosed the information needed to demonstrate that it is acting responsibly.

'Responsibility cuts two ways, though. The government has a responsibility for creating and maintaining a tax system that is clear and understandable, and which facilitates compliance.'

John Whiting

PricewaterhouseCoopers

Corporate responsibility and tax

5.0

5.1 Tax risk and responsibility

As we have sought to illustrate, many – if not most – companies acknowledge the real risks associated with managing tax in a way that focuses purely on legal frameworks and does not take account of the views of key stakeholders. As Henderson Global Investors put it in a report published in October 2005, 'Where good working relationships with tax authorities and a good reputation in the eyes of government more broadly, as well as with customers, employees and the public at large . . . might be prejudiced by "aggressive" tax planning, the prudent business course might be to forgo the tax opportunity.'³⁹

We stress however, that while important, this is not the same as acting in the manner we propose. Of course, risk management is an essential component of corporate responsibility, but if it is the sole criterion for making decisions on tax then those decisions stay firmly in the compliance and 'financial bottom line' frames of reference and are not being judged against broader accountability for the 'economic bottom line'.

The distinction is relatively simple. Looking through the lens of legal, financial compliance leads to a narrow balancing of risk and opportunity in pursuit of tax minimisation. Looking through the dual lenses of compliance and accountability brings into play a range of other factors which could significantly influence the final tax strategy and outcome. This acknowledges the views and expectations of the stakeholders to whom the company holds itself accountable and, more particularly, actively manages the competing claims on the wealth (or added value) created by the enterprise.

This approach sees tax not simply as a cost to be avoided but as a legitimate payment from wealth created to the countries or communities that contributed to the creation of wealth in the first place. This does not necessarily imply higher sums of tax actually paid, but it does imply a broader and deeper appraisal of tax policy and strategy than traditional compliance thinking has required. The growing number of companies that report on their tax payments as part of their economic bottom line in their corporate responsibility reports suggests that – at least implicitly – the payment of tax is seen in this way.

As many companies have found, while the pursuit of responsible practices, whether for social, environmental or economic reasons, has given rise to apparent increases in immediate cost there have also often been benefits. It is not uncommon now to hear the argument put forward that companies engage in such ethically based, corporately responsible decision-making because it is in fact consistent with their own goals as profit-making enterprises.

This might also be true with regard to taxation. If tax is to be managed in accordance with corporate responsibility criteria then it means that these affairs will be managed from an economic and not just from a financial perspective. It may or may not follow that the tax paid will increase or decrease. It is also possible that the locations where tax will be paid will change. Neither is surprising given that a different management technique would be in use for this issue.

This approach sees tax not simply as a cost to be avoided but as a legitimate payment from wealth created to the countries or communities that contributed to the creation of wealth in the first place.

5.2 Key principles

So how should companies that are keen to address this agenda respond? We outline three key principles drawn from – and tested in – other controversial areas of corporate practice that we believe form a robust framework for a responsible approach to tax policies and planning.

Accountability

Accountability represents a core principle in any discussion of corporate responsibility and in this context refers to the need for companies to give an account of the economic contribution they make through their payment of tax. An analogy might help in illustrating *why* companies are now being held to account in this way.

When the issue of a corporation being held accountable for what occurred within their supply chain was first raised as a CR issue, many companies did not see why they should be responsible for what happened on the other side of a transaction in which they participated. That might be seen as the financial perspective. From their internal perspective the issue was not their concern. But when viewed from what might be considered the broader, economic perspective, issues such as the exploitation of child labour within their supply chain were clearly issues in which they were involved, and on which they were in some sense accountable, even if indirectly.

To their credit, many companies have accepted this argument. They realise their impact on society extends beyond the immediate issues on which they are engaged or on which they contract.

The approach that the vast majority of companies take to tax is analogous. Companies are being held accountable for their wider economic impacts, whether this is through their purchasing policies and in their supply chain, or through their payment of tax. Increasingly stakeholders are looking to companies to express their corporate responsibility in the way they consider and govern their payment of tax, i.e. by treating it not just simply as a cost to be minimised, but as a key component of their wider economic impact.

As already mentioned, the emphasis in this report is not on the actual amount of tax paid, but on the process of decision-making about tax payments. Here we would argue that the principle of accountability suggests tax planning is responsible where:

- The planning does not seek to shift the payment of a tax out of the country in which the other economic benefits of the transaction arise.
- The tax planning is secondary to the commercial purpose of the transaction and does not define or significantly alter that purpose.

Transparency

Within the last decade, debates about the disposal of Shell's Brent Spar and Monsanto's attempt to introduce genetically modified (GM) crops in Europe sparked outrage in spite of scientific and legal frameworks which said sinking the Brent Spar was the best environmental option and that planting GM crops was permissible in certain circumstances.

Responding to this and other criticisms of Shell, Cor Herkströter, then Chairman of the company's Committee of Managing Directors, argued that his and other companies were no longer operating in what he called a 'trust me' world. Stakeholders simply didn't trust them to behave responsibly, nor indeed did they even trust the ensuing reassurances from business. Instead, Herkströter argued, companies were operating in a 'show me' world, where stakeholders needed to see evidence of how companies were managing controversial issues. Transparency, Shell argued, was one way of beginning to rebuild trust.

Similarly, the issue of tax is also now under growing scrutiny from stakeholders. Bland assurances from the business community that tax is well governed inevitably fall on very sceptical ground. As KPMG argues, 'An attitude of benign assumption that tax is under control cannot provide the transparency demanded in these times of heightened sensitivity to corporate governance and responsibility issues.'⁴⁰

PricewaterhouseCoopers, too, recommends that companies provide greater disclosure of tax payments so as to increase transparency around the 'total tax contribution' that companies make, and also to 'help answer the ultimate question: what exactly is a responsible tax strategy?'⁴¹

Finance directors have had what one executive described to us as a 'conspiracy of trust' with their tax directors and advisers, whereby they have largely been trusted to ensure that their approach to taxation is both legal and responsible.

This lack of formal, transparent decision-making around tax also seems to be borne out by the relative lack of interest shown by boards in tax affairs, and the limited number of companies that have tax policies. With greater scrutiny of corporate practice generally, combined with specific pressures on companies to be transparent about their approach to tax, these approaches will probably have to change.

Transparency, however, is likely to require more than the simple disclosure of payments made, welcome as that would be. Demonstrating that a company is acting responsibly will require a wider perspective on the context surrounding payments including the underlying 'philosophy' at the company as well as the specific policies and the data on which the tax payments are based. Chapter 6 provides additional detail on the types of additional information we believe will be necessary if transparency is genuinely to contribute to greater trust.

Consistency

And finally, in the same way that companies are expected to be consistent in their application of core business principles and values to areas of social and environmental impact, so too is there an expectation that this should apply to areas of economic impact such as tax, wherever the company operates. Indeed, some companies actually reference their commitment to pay taxes as an essential component of their business principles and governance. Johnson & Johnson, for example, commits to 'bear [their] fair share of taxes' as part of the company's 'credo'.

AstraZeneca says, 'We draw a distinction between tax planning using artificial structures and optimising tax treatment of business transactions and only engage in the latter.'⁴² Being consistent both in the application of business principles throughout the organisation, including in the area of tax, and being seen to be consistent are likely to be key components in building greater trust and understanding of the validity of corporate approaches to tax.

5.3 Passive vs. active

Based on our conversations with tax practitioners, as well as other sources of research in this area, it is clear that at least some companies take an approach to tax that they believe is based, at least implicitly, on strong principles of consistency and accountability. We would argue that, as in other controversial areas of business practice, it is important for companies that wish to rebuild trust to adopt an active interpretation of these core principles.

The framework summarised in Box 10 takes these core principles and interprets them in the context of what we would consider to represent a responsible approach to tax policies and practice.

Transparency, however, is likely to require more than the simple disclosure of payments made, welcome as that would be.

From passive to active tax responsibility		
	Passive tax responsibility	Active tax responsibility
Accountability	Tax seen solely as a cost to be minimised	Tax acknowledged as a key element of a company's economic impact on society
	Correct to the 'letter' of the law	True to the spirit of the law: avoids exploitation of loopholes and transactions undertaken solely/primarily for tax benefit
	Use of tax planning techniques in line with competitor or peer group	Supports moves to eliminate competition on the basis of taxation
	Use of tax avoidance schemes focused on profit and cash-flow criteria	Use of tax mitigation techniques subject to consideration of social and economic impacts
	Compliant with the laws of each state in which activity is undertaken but willing to take advantage of differences between those legal systems	Seeking to declare profits, claim costs and pay taxes in the states in which it can be best determined that the profit was earned
Transparency	Disclosure made on a 'need to know' basis as required by law	Full disclosure based on a 'right to know' basis defined by stakeholders
	Make reference to material tax issues	Share unresolved tax dilemmas quantifying risk, causes and possible outcomes
	Segmental disclosure of tax paid in accordance with law and reporting standards	Full disclosure of all taxes paid by country with relevant supporting data
Consistency	Tax policy and practice incidental to corporate governance systems	Tax policy and practice integrated into corporate governance systems
	Details of local tax regimes and relative rates as focus	Global application of responsible tax principles irrespective of rate implications locally

Conclusions and recommendations

6.0

This discussion paper has sought to shed some light on the complex relationship between corporate responsibility and corporate tax policies and planning. In this section we offer some preliminary conclusions on the basis of our research as well as some recommendations on how companies can best integrate corporate responsibility principles and thinking into their approach to tax. It is our view that by explicitly linking tax policies and planning with corporate responsibility, companies can develop approaches that are robust in the face of challenge from stakeholders, and form a firm foundation on which to conduct responsible tax planning.

Conclusion 1

There is increasing attention and importance being given to the wider economic impacts that companies have on their stakeholders.

The wider economic contribution that companies make to local and national economies has been the subject of growing interest from a variety of stakeholder groups. Key issues that have emerged in recent years have included predatory lending practices in the financial sector, fuel poverty issues for energy companies and pricing levels in corporate value chains. These and other industry sectors are increasingly being interrogated on their approach to – and management of – their economic impacts.⁴³

Recommendations

Companies concerned about the potential business risks associated with this evolving agenda should improve their internal capacity to analyse how issues such as 'responsible tax' are likely to develop and what the appropriate management strategies are for addressing potential risks.

Particularly controversial issues such as the payment of taxes in developing countries may be areas of significant risk. As Henderson Global Investors has argued, 'Companies may be particularly vulnerable to public criticism if they are perceived as not making an appropriate contribution to poverty reduction in developing countries.'⁴⁴

The 'issues evolution' mapping tool presented in Chapter 2 is one approach that may help companies to put some context around the issue of responsible tax and help develop a more nuanced understanding of potential trajectories. Similarly, companies might also consider reviewing how their specific stakeholders view the issue and how this might evolve (see Box 8).

Conclusion 2

The interests and involvement of stakeholders in the debate about corporate tax policies and planning is transforming the agenda from one driven primarily by the observance of legal and financial standards, to one focused on responsible behaviour and economic accountability to stakeholder groups.

Tax has traditionally been the preserve of highly skilled, technical specialists. The growing interest in the topic from a variety of stakeholders is driving a more nuanced debate on what the appropriate or 'responsible' approach to corporate tax policies and planning is based on the interests and approaches of these stakeholders.

As with other areas of business practice, tax policies and planning need to be brought firmly and transparently within wider governance frameworks including business principles and corporate values.

The Australian Tax Office's 'checklist' for identifying potential tax abuse⁴⁷

Financial or tax performance that varies substantially from industry patterns:

- Significant variations in the amounts or patterns of tax payments compared with past performance and relevant economic indicators and industry trends.
- Unexplained variation between economic performance, productivity and tax performance.
- Unexplained losses, low effective tax rates, and cases where a business or an entity consistently pays relatively low tax.
- A history of aggressive tax planning by the corporation, group, board members, key executives or advisers.
- Weaknesses in the structures, processes and approaches to tax compliance.
- Tax outcomes that are inconsistent with the policy intent of tax reform.

Box 11

Recommendations

As KPMG pointed out in its 2004 report *Tax in the Boardroom*, 'Parties involved in the debate about what is an acceptable level in tax should learn from their experience in the wider corporate governance debate.'⁴⁵ Indeed, as with other areas of business practice, tax policies and planning need to be brought firmly and transparently within wider governance frameworks including business principles and corporate values.

While the specific nature of these frameworks will vary from company to company, we recommend that companies should adopt a two-pronged approach that includes what one tax director described to us as both 'a technical analysis as well as a reputational screen'. The latter, he confessed was 'infinitely more difficult'. Such screening at minimum can include basic tests such as those developed by the Institute of Business Ethics, which poses three questions:

- 1 Do I mind others knowing what I have decided?
- 2 Who does my decision affect or hurt?
- 3 Would my decision be considered fair by those affected?⁴⁶

More specifically, tests have been created that focus explicitly on tax. For example, the Australian Tax Office has generated a checklist of indicators that staff use to alert them to potential abuses. These are illustrated in Box 11.

While the Australian Tax Office approach is valuable to companies wishing to understand how – in this case – the Australian regulator assesses the potential for abuse of the system, there are wider stakeholder pressures and expectations that companies also experience. We therefore strongly recommend that companies apply a wider screen of the sort described in box 10 to take account of wider interests and pressures that treat tax as a critical economic contribution for companies and their stakeholders rather than merely as a reputational risk.

Conclusion 3

A significant barrier to the integration of CR principles into tax policies and planning is the cultural framing of tax as a specialist, technical and non-core business activity.

As with many aspects of change, the biggest challenge in bringing together CR and tax is unlikely to be in the development of the 'hardware' such as the management tools and metrics that need to be developed to enable tax professionals to review and report on their tax policies. Instead, the real challenge is likely to be cultural.

The technical nature of tax that has served to insulate tax practices in the past is increasingly emerging as a major barrier to effective communication with external and internal stakeholders. As Citigroup put it in its guidance note on tax risk, 'There are good reasons why a company's tax issues may not be investigated fully by investors. First, and probably none truer, is that tax issues are complex and require an understanding of almost alien terminology.'⁴⁸

We strongly recommend that companies apply a wider screen to take account of wider interests and pressures that treat tax as a critical economic contribution for companies and their stakeholders rather than merely as a reputational risk.

This lack of communication creates risk and probably contributes to the acknowledged mistrust of the practices employed. Even within a company there can be barriers. As a tax director at one FTSE 100 company told us, 'Tax exists in an alternative universe [to other business issues]. Even the finance director's eyes glaze over when you broach the subject of tax.'

Recommendations

Internally, the arms-length approach to the management of tax that is so prevalent in companies will need to change. Tax risks are becoming too public and too significant for the issues to be managed in this way. A recent survey by Deloitte suggests that progress is already under way with the percentage of senior management expressing an interest in the company's approach to tax growing from 50% in 2003 to 74% in 2005.⁴⁹

This does, however, leave many companies that do not appear to give tax the attention it deserves. It is also clear that much more needs to be done to build capacity within tax departments and the wider business to understand new forms of tax risk and links with wider reputational risks. The steps companies should consider include:

- Building links with other business processes such as risk management, public policy/governmental affairs (see below), corporate responsibility and investor relations.
- Specific recruitment and/or training for directors and other senior managers combined with regular engagement to raise awareness around the role of the tax function and provide updates on the rapidly evolving range of tax risks.
- Undertaking corporate responsibility and ethics training for tax professionals and developing wider initiatives to equip tax professionals with skills to understand and address the broader aspects of tax risk.

- Reinforcing governance processes to ensure tax planning is conducted within guidelines explicitly linked to wider governance standards and principles, and ensure that this can be documented and reported (see below).

The public face of the profession

The 'alien terminology' and lack of voluntary disclosure on tax issues also represents a challenge for the tax profession more broadly as well as for individual companies. The reputation of the tax industry, dented by scandals at Andersen and more recently KPMG,⁵⁰ continues to suffer from lurid newspaper headlines over the role the industry plays in assisting the 'super-rich' to avoid taxes.⁵¹ Responding to these challenges will be essential in correcting such popular impressions of the industry and underpinning a more positive environment for tax planning. In particular, efforts are needed to help demystify tax and tax planning and better articulate both the important role that tax planning plays in helping companies and individuals take advantage of tax system incentives in ways that are intended by governments, but also to clarify the boundaries of what constitutes responsible practice.

The tax 'industry' may indeed want to consider taking proactive steps by taking a leaf out of the experiences of other industries that have come under fire. While organisations like PricewaterhouseCoopers and others have developed their own codes of conduct, other industries such as the chemical industry, finance and the extractive sector⁵² have all developed frameworks against which they are also required to report publicly.

By *publicly* reporting against a code of conduct or quality standard that outlines a framework for responsible tax planning, and by taking proactive steps to ensure that this code is taught and adhered to, the tax profession could build greater awareness of its own approach and responsibilities.

Conclusion 4

Increased transparency of corporate approaches to tax is primarily an opportunity to build more robust tax strategies, and to generate greater confidence among stakeholders.

Viewing increased transparency around the reporting of tax policies, planning and payment is an essential component in building greater trust between companies and key stakeholder groups. PricewaterhouseCoopers in its 2005 report on tax reporting⁵³ suggested that increased transparency with external stakeholders will have a range of benefits including:

- Greater general awareness of the tax and economic contribution of business.
- Encouraging a balanced view of tax contributions.
- Responding to information demands of key stakeholders and transparency initiatives.
- Tailored stakeholder reporting and communication.
- Longer-term reputation risk benefits.

The report also found overwhelming support (74% of 70 respondents) from the business community for the principle of greater transparency as a helpful tool in reducing tax risk.

Viewing increased transparency around the reporting of tax policies, planning and payment is an essential component in building greater trust between companies and key stakeholder groups.

Reporting stages		
Level	Examples	Description
0 Compliance	Widespread	Reporting complies with legislation and accounting standards applying within the reporting territory, but provides no additional context or reference to the issue as an element of corporate responsibility.
1 Basic	BBVA, BP, The Co-operative Bank, Kesko, Philips, Placer Dome, PotashCorp, SABMiller, Talisman, Unilever	Reporting provides basic information on tax policies and payment as part of a company's overall approach to CR. This may include general references to the payment of tax as part of overall economic impact, specific positions the company has taken on taxation issues and high-level data, but without any context or interpretation.
2 Systematic	Anglo-American, Statoil	Companies provide a clearer articulation of the system used to manage the payment of tax as a CR issue. There is likely to be evidence of overarching policies and principles as well as reasonable data quality and coverage including of different taxes paid (and subsidies received) by geography.
3 Extensive	None	Companies provide comprehensive information on their governance and management of tax, and the specific levels of tax payment across different geographies. In addition, there are likely to be clear break-downs of the different types of tax a company pays including for example pre-tax profits, levels of current and deferred tax, opening and closing tax liabilities, and payment of different types of tax including on 'capital' (corporation tax, irrecoverable sales tax, business rates), 'people' (employer's tax liabilities) and on 'product' (custom duties, excise duties).
4 Integrated	None	Reporting is both systematic and extensive in its coverage, addressing all the issues raised above. In addition, reporting provides evidence that wider business decision-making and processes are coordinated to ensure that the company is integrating the CR dimensions of tax into forward planning.

Recommendations

So how should companies report on their approach to tax? Given the complexities involved, we would recommend a staged approach that enables companies to build increasingly sophisticated systems and frameworks providing information on both the overall principles and governance of tax planning as well as specific information on levels of payment.⁵⁴ Box 12 sets out a five-stage model leading from 'compliance' to an 'integrated' approach to reporting.

Current status of reporting

As previously noted, the coverage of economic issues in corporate responsibility reports is still a relatively novel practice. Nonetheless, a growing number of corporate reports do cover the wider aspects of economic impacts that companies have. Of these, several also cover the topic of tax – often as part of 'value added' or 'value dispersed' statements. For most though, reporting is still at a Level 1 'basic' stage. Companies like BBVA, Co-operative Financial Services, Kesko, Philips, Placer Dome, PotashCorp, SABMiller, Talisman and Unilever all provide extensive information on wider economic performance, but information on tax is generally confined to high-level data on overall taxes paid, with occasional detail on where the taxes are paid. BP provides a more qualitative discussion of its role in revenue generation as part of the company's broader responsibilities to government.

The extractive sector in particular is well represented among companies that report in some detail on their tax policies and payments. In part this is likely to be due to specific challenges that these companies have received from NGOs on their operations in developing countries,⁵⁵ and for many a direct result of their involvement in the Extractive Industries Transparency Initiative (EITI).⁵⁶

For a handful of companies, primarily drawn from the extractive sector, the quality of reporting is clearly 'systematic'. Statoil in particular, provides a comprehensive account of its tax payments both by type of tax (income taxes, indirect taxes, payroll taxes and so on) and by country in which it operates. The company does also give some sense of its overall approach to tax including as part of the EITI. Anglo-American, too, provides some detail around its tax payments and includes some limited discussion of the underlying governance of tax at the company.

6.1 The future of the responsible company and tax

One of the challenges we envisaged in writing this report was to make a compelling case that tax is indeed a corporate responsibility issue. In the event, it seems in the UK at least, where the corporate responsibility implications of tax policies and planning have become a heated topic of debate, that the case has been forcefully made for us. Here, leading NGOs, government regulators, the media, investors and the tax community itself have all become actively involved, publishing reports and opinion pieces with startling regularity. Many, if not all, have made the case that corporations would be well advised to become more engaged in this debate and review their approaches to tax policy and planning through this new 'CR lens'. For many CR and tax is mainly a risk management issue. For some it is a more fundamental component of a company's responsibility to the communities in which it operates.

Taxing Issues is just one of at least eight major reports to have addressed the topic in 2005–06 alone.⁵⁷ Furthermore, there is every sign that this level of interest will continue.

Elsewhere in the world, the debate has been more muted. Press searches reveal some activity, and certainly individual actors such as Citizens for Tax Justice in the US and the Australian Tax Office have served at the very least to foster debate in these other jurisdictions.

While the level of debate in other countries has yet to reach the energetic levels that have occurred in the UK, a number of trends suggest that the issue will emerge elsewhere. For example:

- Corporate responsibility reporting, led by multinationals, is by definition not limited by geography. At the behest of key stakeholders, leading companies can be expected to expand their reporting of wider economic impacts, including tax. In turn this is likely to foster interest from other multinational companies elsewhere in the world.
- The payment of tax in developing countries is also likely to emerge as a key issue within the broader discussion about corporate responsibility and tax. Currently the issue is focused on extractive industries, but with increasing levels of cross-border trade through offshoring in the services sector, as well as in the IT and apparel sectors, questions are also likely to be directed to these industries on their tax contribution in these countries.

- In addition, as the major NGOs involved in the Make Poverty History campaign now believe tax is a key component in the development agenda, it is likely that they will maintain a focus on this issue as they have previously on issues such as fair trade.
- Wider efforts to increase transparency within tax havens (for example in combating corruption and organised crime) might also be expected to spill over into greater scrutiny of the role and involvement of multinational companies in tax havens.
- Increasing use of fiscal instruments to achieve social and environmental objectives such as carbon taxes are also likely to foster wider discussions of the contribution companies make to national exchequers.

Ultimately, we believe that as pressure continues to build for companies to adopt more transparently responsible approaches to the question of tax, they will be best served by adopting an *active* interpretation of their responsibilities on this issue. Too many stakeholders, ranging from investors, to regulators, to society at large, are waking up to the importance of managing tax in a robust and responsible way. The days when tax could be managed by 'gentlemen's agreement' are drawing to a close.

The days when tax could be managed by 'gentlemen's agreement' are drawing to a close.

Notes

- ¹ This table is based on work undertaken by AccountAbility, specifically the report *Redefining Materiality: Practice and Public Policy for Effective Corporate Reporting*, 2003.
- ² Will Hutton, *The State We're In*, Little Brown, 2002.
- ³ Quoted in Vanessa Houlder, 'The Tax Avoidance Story as a Morality Tale', *Financial Times*, 22 November 2004.
- ⁴ Organisations included AccountAbility (UK), Aspen Institute (US), Business for Social Responsibility (US), Business in the Community (UK), CSR Europe (Bel), Forum for the Future (UK), the Global Reporting Initiative (NL), the Tellus Institute (US) and Tomorrow's Company (UK).
- ⁵ See, for example, Business for Social Responsibility, *Reporting on Economic Impacts*, 2005.
- ⁶ SustainAbility, Swiss Re, Insight Investment and Foley Hoag LLP, *The Changing Landscape of Liability: A Director's Guide to Trends in Corporate Environmental, Social and Economic Liability*, 2004.
- ⁷ For example, prices charged for AIDS medicines in least developed countries have fallen from over US\$1,000 per patient per year in May 2000 to under US\$168 in January 2005 (Medicins Sans Frontières, *Untangling the Web of Price Reductions: a Pricing Guide for the Purchase of ARVs for Developing Countries*, 2005).
- ⁸ For example, in 2005 media stories on this topic have appeared in countries including Australia, Canada, China, India, Ireland, Korea, New Zealand, Russia, South Africa and the US.
- ⁹ We have used 'tax and corporate responsibility' and 'tax justice' as both terms have come into common usage in recent years to cover key elements of this debate.
- ¹⁰ Including various reports from Publish What You Pay; Christian Aid, *The Shirts off Their Backs – How Tax Policies Fleece the Poor*, 2005; and Save the Children, *Beyond Rhetoric: Measuring Revenue Transparency*, 2005.
- ¹¹ Rob Lake, *Tax, Risk and Corporate Governance*, Henderson Global Investors, 2005.
- ¹² Kenneth Lee, *Generation (Ta)X*, Citigroup Equity Research Europe, 2005.
- ¹³ The proposal was opposed by the vast majority of companies including Microsoft, Merck, General Motors, Intel, Alcan and Ford.
- ¹⁴ This lack of engagement may change with recent NGO campaign launches on different aspects of the tax agenda taking place throughout 2005 in, for example, Finland, France, Germany, Italy Spain and Switzerland.
- ¹⁵ Nicholas Neveling, 'FDs Divided Over Ethics and Tax Avoidance', *Accountancy Age*, 20 September 2005.
- ¹⁶ Henderson Global Investors, *Responsible Tax*, 2005.
- ¹⁷ Clare Bolton, The Role of Tax Benchmarking, *Tax Planning International Review*, June 2004.
- ¹⁸ This table is based on work undertaken by AccountAbility, specifically the report *Redefining Materiality: Practice and Public Policy for Effective Corporate Reporting*, 2003.
- ¹⁹ KPMG, *Tax in the Boardroom: A Discussion Paper*, 2004.
- ²⁰ Vanessa Houlder, 'The Tax Avoidance Story as a Morality Tale', *Financial Times*, 22 November 2004.
- ²¹ Roger Cowe, 'Tax Avoidance is Rising up the Ethical Agenda', *Financial Times*, 29 November 2004.
- ²² Nicholas Neveling, 'FDs Divided Over Ethics and Tax Avoidance', *Accountancy Age*, 20 September 2005.
- ²³ PricewaterhouseCoopers, *What is a Responsible Tax Strategy?* www.pwcglobal.com
- ²⁴ CIR v Challenge Corporation Ltd (1986) 8 NZTC 5,219.
- ²⁵ The Tax Gap Ltd, *Mind the Tax Gap – How companies could help beat poverty*, Tax Justice Network, 2006.
- ²⁶ For example, there was wide coverage in September 2005 of the Tax Justice Network publication *Tax Us If You Can*, which concluded that US\$11.5 trillion is held in offshore tax havens by rich individuals.
- ²⁷ Loughlin Hickey, 'The Debate: Draw a Clear Line', *Accountancy Age*, 29 September 2005.
- ²⁸ For example, the issue of NGO accountability has been a recurring theme in recent years. See, for example, SustainAbility/UNEP, *The 21st Century NGO: In the Market for Change*, SustainAbility, 2003.
- ²⁹ Tax Faculty of the Institute of Chartered Accountants in England and Wales, 8 September 2005.
- ³⁰ Christian Aid, *The Shirts Off Their Backs: How Tax Policies Fleece the Poor*, 2005.
- ³¹ 'Mozambique Will Continue to Grant Fiscal Exemptions to Mega Projects', *Mozambique Business – Daily Investor Intelligence*, 21 September 2005.
- ³² See, for example, PricewaterhouseCoopers, *Tax Risk Management*, 2004.
- ³³ PricewaterhouseCoopers, *What is a Responsible Tax Strategy?*, www.pwcglobal.com.
- ³⁴ Ernst & Young, *Tax Risk Management: the Evolving Role of Tax Directors*, Ernst & Young, 2004.
- ³⁵ Martin Sullivan, 'Reputation or Lower Taxes?', *Tax Notes*, 29 August 2005.
- ³⁶ Kenneth Lee, *Generation (Ta)X*, Citigroup Equity Research Europe, 2005.
- ³⁷ Alex Hawkes, 'Vodafone Shares Sink Under Tax Bill', *Accountancy Age*, 24 November 2005.
- ³⁸ Both Richard Murphy and PricewaterhouseCoopers have also been involved in this report, Richard as a consultant to SustainAbility and PricewaterhouseCoopers as a sponsor.
- ³⁹ Henderson Global Investors, *Responsible Tax*, 2005.

- ⁴⁰ KPMG, *Tax in the Boardroom*, 2004.
- ⁴¹ PricewaterhouseCoopers, *Total Tax Contribution Framework – What is Your Company's Overall Tax Contribution?*, 2005.
- ⁴² AstraZeneca plc, Annual Report 2004, page 42.
- ⁴³ This trend is also reflected in the coverage of economic issues in corporate responsibility reports. According to the UNEP/Sustainability studies from 2000 to 2004, the average score for coverage of economic issues increased from 32% to 47%, reflecting an increase in the quality and quantity of information on economic issues (for more information see www.sustainability.com/insight/reporting-article.asp?id=164).
- ⁴⁴ Henderson Global Investors, *Responsible Tax*, October 2005.
- ⁴⁵ KPMG, *Tax in the Boardroom*, 2004.
- ⁴⁶ For more information see www.ibe.org.uk/tests.html
A similar 'test' developed by Texas Instruments is also widely referenced (see www.ti.com/corp/docs/company/citizen/ethics/quicktest.shtml).
- ⁴⁷ Australian Tax Office, *Large business and tax compliance*, (2003).
- ⁴⁸ Kenneth Lee, *Generation (Ta)X*, Citigroup Equity Research Europe, 2005.
- ⁴⁹ Deloitte, *Tax Moves up the Agenda for Senior Management*, 6 October 2005.
- ⁵⁰ See for example John Plender, 'How Everyone Pays For Ethical Lapses at KPMG', *Financial Times*, 20 June 2005.
- ⁵¹ This has included coverage by a range of newspapers including the *Financial Times* and *Observer* of TJN's study, *The Price of Offshore* www.taxjustice.net/cms/upload/pdf/Briefing_Paper_-_The_Price_of_Offshore_14_MAR_2005.pdf
- ⁵² Such industry sector initiatives have included Responsible Care® in the chemical industry, the Equator Principles in the finance sector and the Extractive Industry Transparency Initiative in the extractives sector.
- ⁵³ PricewaterhouseCoopers, *Total Tax Contribution Framework – What is Your Company's Overall Tax Contribution?*, 2005.
- ⁵⁴ This is also the approach that Henderson Global Investors recommends in its report, *Responsible Tax*.
- ⁵⁵ See, for example, the work of the Publish What You Pay Coalition (www.publishwhatyoupay.org).
- ⁵⁶ For more information see www.eitransparency.org
- ⁵⁷ For example, reports have been published by Christian Aid, Citigroup, Global Witness, Henderson Global Investors (two reports), PricewaterhouseCoopers and the Tax Justice Network.

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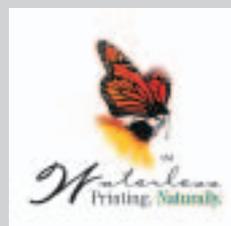
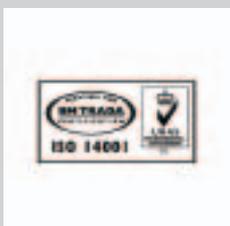
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