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INSIGHT: The Role of Corporate Taxation Today and the UN's 2030 Sustainable Development Goals

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The moral compass of society has shifted quite dramatically. Sustainability, responsibility and transparency are the current benchmarks for business. Being socially responsible and tax compliant is another standard that corporates should meet to be respected and successful in business. Tax structures that cannot be explained are losing their lustre and despite their potential tax savings, increasingly reconsidered and dismantled.

This is a particularly opportune time for Multinational companies and their management to adjust the way they do business in such a way that they support the United Nation's sustainable development goals (SDGs). One of these goals includes domestic revenue mobilization—tax collection—- for countries.

The Sustainable Development Goals (''SDGs'') consist of 17 goals that focus on economic growth, social development and environmental protection for countries and their population. They have a 2030 target date and were set forth at the Rio+20 Summit in 2012. The Rio+20 Summit was a major United Nations Conference on Sustainable Development held in Rio de Janeiro from June 20-22, 2012.

The SDGs are a sequel to eight Millennium Development Goals (MDGs) that were launched in 2000 during a UN Millennium Summit. The MDGs served to lead world leaders to reach goals which ranged from reducing extreme poverty rates by half to halting the spread of HIV/AIDS and providing universal primary education by 2015.

However, reaching these goals requires significant investments and countries must strengthen and increase the effectiveness of their tax systems to generate the domestic resources needed to fund the United Nation's sustainable development goals (SDGs).

This article discusses what the SDGs are, what the role of (corporate) taxation is in reaching these goals and why both in-house tax practitioners and those working in a law firm or advisory firm should pay close attention to the SDGs.

Background

The MDGs were presented as a global ''to-do'' list which specifically sought to:

1. eradicate extreme poverty and hunger;
2. achieve universal primary education;
3. promote gender equality and empower women;
4. reduce child mortality;
5. improve maternal health;
6. combat HIV/AIDS, malaria and other diseases;
7. ensure environmental sustainability; and
8. develop a global partnership for development and do so by 2015.

When in 2015 the status of the MDGs was considered, it became clear that significant progress was made towards actually reaching the MDGs:

- In November of 2015, the target to halt and begin reversing malaria incidence had been met. Progress since 2000 averted over 6.2 million malaria deaths, 97 per cent of which have been among young children.
- Globally, the number of those living in extreme poverty declined by more than half, falling from 1.9 billion in 1990 to 836 million in 2015. Net primary school enrolment in developing regions in 2015 reached 91 per cent, up from 83 per cent in 2000.
- Many more girls are in school compared to 2000, with developing regions achieving the 2015 target to eliminate gender disparity in primary, secondary and tertiary education. Global under-five mortality declined by more than half, dropping from 90 to 43 deaths per

1,000 live births between 1990 and 2015, from 12.7 million in 1990 to almost six million despite population growth in developing regions.

■ Maternal mortality declined by 45 per cent worldwide since 1990, with most of the reduction occurring since 2000. In Southern Asia, it declined by 64 per cent between 1990 and 2013, and in sub-Saharan Africa by 49 per cent.

■ New HIV infections fell by approximately 40 per cent between 2000 and 2013 from an estimated 3.5 million cases to 2.1 million, and by June 2014, 13.6 million people living with HIV were receiving antiretroviral therapy (ART) globally, an immense increase from just 800,000 in 2003. ART averted 7.6 million deaths from AIDS between 1995 and 2013.

■ Official development aid from developed countries grew by 66 per cent in real terms between 2000 and 2014.

The combined action and focus on these targets clearly led to the identified and measurable improvements. To move forward post 2015, international agreement was sought on what targets should be set and what actions should be undertaken to improve the world's living standards. Ending poverty, securing a healthy planet for future generations and building peaceful inclusive societies were defined as core needs to ensure a life of dignity for all people.

The SDGs present an integrated agenda that looks at social development, inclusive economic growth and environmental protection. A relevant difference between the SDGs and the MDGs is that the MDGs had mainly a social and anti-poverty strategy. The SDGs do not just target developing countries. Eradicating poverty remains the core of sustainable development, but the SDG targets go beyond rich countries and donors providing aid to developing countries: they simply cannot be reached without private sector involvement.

The SDGs continue with the foundation built by the MDGs. They regard:

1. Ending poverty in all its forms everywhere;
2. Ending hunger, achieving food security and improved nutrition and promoting sustainable agriculture;
3. Ensuring healthy lives and well being at all ages;
4. Ensuring inclusive and equitable quality education and life-long learning opportunities for all;
5. Achieving gender equality and empowering all woman and girls;
6. Ensuring availability and sustainable management of water and sanitation for all;
7. Ensuring access to affordable reliable and sustainable and modern energy for all;
8. Promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all;
9. Building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation;
10. Reducing inequality within and among countries;
11. Making cities and human settlements inclusive, safe, resilient and sustainable;
12. Ensuring sustainable consumption and production patterns;
13. Taking urgent action to combat climate change and its impacts;
14. Conserving and sustainably using oceans, seas and marine resources for sustainable development;
15. Protecting, restoring and promoting sustainable use of terrestrial ecosystems, sustainable managing forests, combating desertification and halting and reversing land degradation and halting biodiversity loss;
16. Promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels; and
17. Strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development.

That the SDGs are relevant to improve the world's economies and living conditions, including one's own will not take much imagination: It is estimated that in 2017, 767 million people were still living on less than 1.90 USD a day. If that number goes down and more people can finance the cost of their own livelihoods, that will likely boost the economies where they reside. If all children in low-income countries completed upper secondary school by 2030, per capita income would increase by 75 percent by 2050. (The Sustainable Development Goals Report 2017. Foreword by Antonio Guterres, Secretary-General of the UN, UN Publication ISBN 978-92-1-101368-9.)

What may perhaps require some effort is to understand the role of taxation and of those of us working in this field to help achieve the SDGs. Of course, if countries collect more tax revenue, their governments have more financial resources to allocate towards achieving the SDGs. But why would corporate and individual tax practitioners need to focus on the SDGs?

The Role of Taxes in Achieving the SDGs

Essentially, countries must strengthen and increase the effectiveness of their tax systems to generate the domestic resources needed to fund the SDGs. Tax revenues finance basic public services delivery in countries. According to analysts working in this field of expertise, tax collection in the amount of at the very least 15% of GDP would be required in a country to fund basic services, if not 20%. Low income countries should aim at 20% of GDP, according to discussions held at the First Global Conference of the Platform for Collaboration on Tax on February 14-16, 2018 in NY.

On average, OECD countries collect 34.3% of their GDP in tax. Many low-income countries achieve only half of this or less. According to an OECD/ATAF/AUC publication of 2017 "Revenue Statistics in Africa" the average tax-to-GDP ratio in the 16 African countries was 19.1% in 2015 (http://www.oecd.org/ctp/revenue-statistics-in-africa-2017-9789264280854-en).

In 2015, during an international conference on Financing for Development that took place in Addis Ababa, a so-called Addis Action Agenda was adopted. This agenda established a strong foundation to support the implementation of the 2030 Agenda for Sustainable Development. See https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf

The Addis Agenda includes commitment to enhancing revenue administration through modernized progressive tax systems, improved tax policy and more efficient tax collection. It also mentions broadening of the tax base and continuing efforts to integrate the informal sector into the formal economy.

The Addis Agenda is committed to enhancing domestic resources by redoubling efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them. This includes combating tax evasion and corruption through strengthened national regulation and increased international cooperation. Reduction of opportunities for tax avoidance and inserting anti-abuse clauses in all tax treaties are considered key steps. Enhancing disclosure practices and transparency in both source and destination countries, and transparency in all financial transactions between governments and companies to relevant tax authorities will also contribute to reducing illicit financial flows. Domestic resources are expected to increase if all companies, including multinationals, pay taxes to the governments of countries where economic activity occurs and where value is created, consistent with national and international laws and policies.

The Addis Agenda's tax paragraphs dovetail with the work of the Organization for Economic Cooperation and Development (OECD) for the Group of 20 on Base Erosion and Profit shifting (BEPS). See Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

The BEPS action items are absolutely material in this respect, as are initiatives and projects such as the OECD's inclusive Framework and the OECD ''Tax Inspectors without Borders'' initiative. See http://www.oecd.org/tax/beps/beps-actions.htm. The Inclusive Framework on BEPS brings together over 115 countries and jurisdictions to collaborate on the implementation of the OECD/ G20 Base Erosion and Profit Shifting (BEPS) Package. See also http://www.tiwb.org/

Fiscal policies can also target specific outcomes that are in line with certain SDGs. For example, by providing fiscal incentives to economic sectors where woman are prominent economic actors, such as small enterprises, SDG # 5 on promoting gender equality can be supported. Another example would be protecting the environment by incentivizing domestic and foreign investment in the production of renewable energy (SDG # 7) or encouraging healthy lives and well-being (SDG # 3), by taxing alcohol and exempting healthy foods. Similarly, imposition of carbon taxes may help reach environmental sustainability (SDG # 13).

International tax cooperation and enhanced exchange of information under automatic exchange of information standards developed by the OECD and the G20 is another tool to reduce tax evasion and underreporting of tax revenue.

Double tax treaties are relevant to help assist with reducing barriers to cross-border trade and investment in developing countries (E/C.18/2018/CRP.10. Note by the UN Secretariat and Conference Room Paper on the role of taxation and domestic resource mobilization in the Implementation of the sustainable development goals of October 3, 2018).

Double tax treaties may also help in creating certainty for taxpayers and tax administrations and avoiding fiscal evasion. However, it is recognized that treaties may present costs and capacity challenges for developing countries and possible loss of immediate revenue. To the extent that tax authorities of developing countries learn how to effectively negotiate tax treaties and make use of the UN Model Tax Convention, they should be able to maintain domestic revenue sustainability. Similarly, using the mutual agreement procedure (MAP) for dispute resolution may assist with obtaining a result where taxing rights are allocated consistent with the treaty and no double taxation results. This should help to provide certainty and a sense of fairness for taxpayers.

The Economic and Social Council (ECOSOC) of the UN is the forum for discussing trade and economic development (https://www.un.org/esa/ffd/topics/tax-cooperation.html).

A subsidiary ECOSOC body tasked with work on international tax cooperation, is the Committee of Experts on International Cooperation in tax matters (the Committee). The core mandate of this Committee is to keep under review and update as necessary the UN Model Double Taxation Convention between Developed and Developing Countries and the Manual for Negotiation of Bilateral Tax Treaties between developed and developing countries. The Committee also provides a framework for dialogue with a view to enhancing and promoting cooperation among national tax authorities; considers how new and emerging issues could affect international tax cooperation and develops assessments, commentaries and appropriate recommendations; and makes recommendations on capacity-building and the provision of technical assistance.

Meeting the SDGs is a fundament of the Committee's activities and there is acute awareness of the importance of Domestic Revenue Mobilization (''DRM'') for developing countries. Although taxation is a key ingredient to achieve the 2030 Addis Agenda, the Committee's reach goes beyond mere financing of the SDGs. Fiscal policies that are specifically focussed on SDGs can also help influence behaviour and that way contribute to reaching the SDGs. For example, at the 17th Session of the Committee, the impact and process for implementing environmental taxes was discussed, with an emphasis on guidance on designing and implementing a carbon taxation in developing countries (E/C.18/2018/CRP.14 Note by the UN Secretariat and Conference Room Paper on Environmental tax issues).

The Role of Corporates

Today's business environment presents many uncertainties for companies. Technology and innovation are boosting new developments and business models, but intense competition may mean that such businesses never manage to outgrow the start-up phase. Climate change, the gap between socioeconomic groups and public pressure plus lingering uncertainty regarding the strength of financial markets after the 2008/2009 financial crisis have caused governments and regulatory bodies to introduce strict regulatory reporting requirements, introduce privacy laws and restrictions on emissions.

Fiscal evasion on a scale displayed through the Panama and Paradise Papers has caused the G20 and the OECD to issue detailed guidance against corporate base erosion and profit shifting (the BEPS project) and the European Union has adopted an Anti-Tax Avoidance Directive with measures to prevent aggressive tax planning, boost tax transparency and create a level playing field for all business in the European Union. Raids by fiscal intelligence and crime units in countries are becoming regular occurrences it seems.

In addition, the media watchdogs relentlessly hunt for illicit financial flows (money laundering, tax evasion

and corporate mismanagement) that they can report on and corporates they can scandalize. Corporate tax contributions have become a reporting item for journalists and underpayment of taxes is an argument for corporate vilification. This is a concern for corporate management, supervisory boards and shareholders alike as corporate brand and reputation generally go hand-in-hand with investor interest and consumer approval. Being socially responsible and tax compliant has becoming a basic standard that corporates should meet to be respected and successful in business. Tax structures that cannot be explained are losing their lustre and despite their potential tax savings, increasingly reconsidered and dismantled.

There is an increasing emphasis on socially responsible business objectives and similar business models by consumers and employees. Younger consumer generations consume differently from those before them and value the story behind the product or service they buy or use. They increasingly demand products and services with a sustainable footprint (SDG # 12) and that those do not contribute to climate change (SDG # 13). Providers of products and services may have little choice but for to manufacture and produce consumer goods considering the SDGs. This means that to continue to expand and grow business, today's corporate C-suite has a lot to consider and manage.

The above developments indicate that the moral compass of society is shifting dramatically. The focus on shareholder returns for investors is being overshadowed by the importance of protecting those that are less well-off in society. Companies have good reason to support the SDGs, however: enhanced education, the contribution to society by working women, economic growth and world peace (SDGs ## 4, 5, 8, and 16 respectively) all have immediate (positive) benefit for corporates as well as for the world population.

What do the above developments mean for domestic resource mobilization? And considering the need for DRM, could corporates be induced to pay more taxes? Arguably, if a government's tax policy can be seen as serving to support business and as fair, companies may be more likely to pay taxes than otherwise. Also, if economies are doing well, and business is prospering, companies may be less inclined to focus on reducing their (tax) costs. In addition, greater transparency of corporate tax policies, business challenges and what taxes corporates eventually end up paying, might help create an understanding for the challenges of business and generate some trust from governments that corporates do not necessarily have a deliberate and evil plan to cheat them out of their due tax revenue. These all could be arguments for corporates to more easily pay (more) taxes. But is it enough to have relevant impact for effectuating the SDGs?

In pursuit of a different approach forward and an attempt to encourage more dialogue between corporates and tax authorities, a group of companies operating under the banner ''The B Team'' is advocating adherence to a series of principles that may serve to demonstrate their corporate responsibility and help to create a stable, secure and sustainable society. The thinking behind this new approach is that mistrust and antagonism between corporates and government can easily become costly and time-consuming for both parties involved: government being required to design and implement more rules and corporates being required to present more evidence and do more reporting. The B Team principles have been developed with input from civil society, investors and representatives from international institutions. They cover areas including tax management, interactions with authorities and other stakeholders and reporting.

The B Team principles essentially encourage businesses to:

- make boards accountable for tax policy;
- publish a tax strategy and be transparent about its implementation;
- be transparent about the entities owned within the corporate group around the world and why; and
- provide information on the company's overall effective tax rate, and on the taxes paid where they do business.

The B Team hopes that examples of good practice can help build a new business consensus. They maintain that business has a fundamental responsibility to comply with tax legislation in every country they operate in, to the pay the right amount of tax and at the right time. By way of reciprocity, they hope and expect that governments which collect these taxes will be more responsive and accountable to them. They see tax as a core part of corporate responsibility and governance that must be overseen by a company's board of directors. Their policy is to only use business structures that are driven by commercial considerations and aligned with business activity and which have genuine substance. They do not seek abusive tax results. Rather, they seek to develop cooperative relationships with tax authorities based on mutual respect, transparency and trust, and engage in (inter)national dialogue with governments, business groups and civil society to support the development of effective tax systems, legislation and administration. More information on the B Team, the participating companies and their Principles can be found at: http://www.bteam.org/announcements/responsibletax-2/

That the B Team Principles may not be ready for immediate adoption by every corporate entity, is understandable. For one, size matters. Larger multinational enterprises may have more critical mass and opportunity to switch to principled transparency and handle possible related audits and reviews than small or mid-size corporates. They may also be able to invest more easily in the corporate infrastructure needed to operate according to the B Team Principles. But operating in an environment in which authorities, civil society and potentially even consumers can turn against your business at the drop of a hat because they consider your company as being an opportunistic tax evader is not a sustainable option and merits reconsideration.

Clearly the B Team members must have seen good reason to change the way they do business. This cannot be mere altruism: it is an attempt to restore dignity in doing business and reaping the benefits of being a Good Corporate Citizen. Those benefits may be slim at first, but if the change in behaviour proves truthful and is successful, they could be material down the line: spending less time caught up in aggressive, costly and highly unpredictable tax audits and disputes; clear expectations about the company's tax responsibilities; and access to the right government authorities for dialogue in case that is needed. The ability to release uncertain tax provisions may assist the company with its cash flow and if those provisions are significant, reduce the cost

of the company's funding. So yes, coordination with tax authorities and shoring up the company's tax policy to be more transparent and pro-active towards paying taxes, which is a big step, may not only contribute to reaching the SDGs, it may also reduce a company's indirect tax cost, and protect or improve a company's brand and reputation.

The Role of Tax Practitioners

That a well-functioning tax system is a fundamental requirement to help meet the SDGs is discussed earlier. That corporate taxpayers may benefit from paying their fair share of taxes is discussed as well. But what should the role of tax practitioners be in this context?

Current developments foreshadow that tax practitioners need to carefully consider how they advise their clients on tax matters going forward. Most likely, the trend of regulating fiscal behaviour has not yet peaked. Although international governmental organizations and domestic tax authorities might have made their mark by issuing (proposed) rules and legislation to curb tax evasion and avoidance (witness the OECD BEPS project and the EU's ATAD proposals), there is a large set of institutions and bodies that are just now starting to follow suit: these include regulatory bodies that issue licenses to operate, such as central banks, and supervisory bodies that review standards and ethics in the industry in which tax practitioners operate.

Pressed by public opinion, political parties and governments, regulators are beginning to require financial institutions to specifically include aggressive taxation in the Know Your Customer (KYC) and Anti-Money Laundering (AML) procedures. The Dutch financial services regulator, for example, has made tax integrity a focus area for its license holders and is expected to issue guidance on aggressive tax planning the first quarter of 2019. The impact hereof has been immediate, however, as (at least the) Dutch banks are busy scrutinizing their customer bases and are offboarding customers. New customers may find that onboarding takes more time and documentation than they had initially expected. Similarly, professional service providers like trust companies are required to have adequate policies in place to avoid servicing clients that engage in aggressive tax planning. Professional organizations that oversee these service providers are also following suit and drafting frameworks to require their constituents to adhere to principles of legality, fairness, reciprocity and proportionality while practicing. The above-mentioned institutions have in common that they perform a gatekeeper function, and gatekeepers are being forced to explicitly monitor fiscal behaviour of those that want to engage in the business or professions they represent or oversee.

And there is more: the reporting of aggressive tax structures will become mainstream for tax practitioners in the European Union as of 2020, when the so-called DAC 6 Directive takes effect (EU Directive 2011/16/EU (also known as the EU Directive on Administrative Cooperation in Direct taxation), as amended by Council Directive 2018/822/EU).

Rules on mandatory reporting of certain tax transactions were adopted by the Economic and Financial Accounts Council (ECOFIN) of the European Commission on May 25, 2018, and qualifying transactions that are put in place on or after June 25, 2018 are to be included in mandatory reports to be made by those who qualify as ''intermediaries'' and submitted to a central filing place within the EU. Information obtained through the reports will be exchanged to all EU Member States as of October 31, 2020. The Directive targets ''reportable cross border arrangements'' which include transactions with at least one EU Member State and have obtaining a tax advantage as common result. At this time, it is unclear what the consequences will be of reported transactions, other than that they will be exchanged and reviewed by tax authorities.

When asked about the new rules and levels of review that are being put in place by the gatekeepers, business representatives generally mention significant concerns about the rising cost of compliance to implement and meet the new requirements. Also, inconsistent application of these rules across jurisdictions is mentioned as risk for not having a level playing field, which seems unfair and may induce moral hazard. But interestingly, it is also observed that many corporates expect they will not be picky about reporting and rather over-report than under-report, They also are quite pleased with the prospect that they can be engaged in business through or with another party that is vetted somehow as being ethical about tax matters. This, maybe more than anything, foreshadows that the change or shift in moral compass of society is gathering force and effect, and becoming ''the new normal''.

What should tax practitioners do? On the one hand keeping an eye on unreasonable and unnecessary tax cost can be considered a core responsibility of each tax professional. Advising clients to stay within the contours of the applicable tax laws obviously is a core responsibility as well. But what seems to be new is the realization that rendering tax advice necessarily includes an assessment of stakeholder impact of that tax advice as well.

Tax practitioners are finding that their role includes an added responsibility: explicitly considering and clarifying what the envisaged tax structure or tax advice means for the client and its stakeholders. The latter include the relevant tax authorities, municipality and jurisdiction in which the company does business, but also the company's employees, competitors and customers it caters to and society it operates in. With that information the client and its management can properly assess what the consequences will be of implementing the tax advice received. Once assessment of stakeholder impact becomes a common practice, the step towards embracing the SDGs from a tax perspective (if not more broadly) suddenly is not that big anymore.

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