Managing tax risks of your business
Practical tips

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- **The tax concern =**
  - **A cost inherent to the activity of the company that needs to be managed**
  - **An issue which must be integrated into the financial management of the company**
  - **A changing issue in time (tax law changes et case law)**
  - **An issue that needs to be at all times aligned with the business strategy ➔ tax strategy**
  - **An issue which diversifies in space: variety of the national or regional tax systems ➔ urges the company to control and anticipate the questions connected to geographical locations and investments**

- **Objective = free up vital substantial financial means for the development of the company (positive or dynamic approach)**
- **Risks of discontinuity in case of inadequate choices (reactive or negative approach):**
  - **Does the enterprise bear an excessive global tax burden compared to competitors (loss of financial means which could be allocated to the other purposes) ?**
  - **Does the enterprise dedicate sufficient means and/or skills necessary for the quality of its accounting organization and for its internal control to be able to face tax audits and tax risks ?**

- **Therefore →**
  - **Optimization of the management of the company**
  - **Optimization of the fiscal management of the company**
    - **Tax constraints to this management**
    - **Optimization of tax costs**
  - **Required to adapt the tax strategy of the company to its needs and the characteristics**
  - **What is a "healthy and dynamic" management of tax issues ?**

Tips :

1. **<u>Choose your fiscal strategy and do not undergo it</u>**

- **Paying taxes is not inevitable fates in any situations;**
- **Need to understand that certain investments and\or expenses are subject to specific tax consequences → need to integrate this correctly into the strategy of company**
- **Need to know and figure out the impact of these choices on the net profit after taxes level**
- **To be conscious of the consequences in terms of administrative management which are bound to it**
- **Those who do not dedicate adequate care = neglecting the control of the actual costs**

Tips :

<u>2. Integrate the tax strategy into the financial strategy of the company and align it to the strategy of the shareholders</u>

- **Tax cost = variable belonging to the financial management**
- **Good apprehension of tax strategy → exceeds the purely formal aspects of recurring compliance reporting and obligations**
- **By applying the tax strategy in line with the medium and long-term vision of management and shareholders→ Creation of true added value**
- **Example : undisclosed income will never be an asset + potential risk for the continuity of the business and for the image**

Tips :

<u>3. Be able to diagnose correctly high-risk areas: the benefits of a preventive tax audit</u>

- **Often very expensive to wait for the visit of the tax inspectors to address the question to know whether the tax positions taken are compliant**
- **Prevention to be improved through periodical external limited and focused audits by competent tax lawyers and experts ➔ on potential zones at risks : allows to identify tax risks, to quantify them and to take the necessary measures**
- **Avoid time bombs: tax risks from past years decline the sellable value of an enterprise, or may even make it not sellable at all**

Tips :

4. **<u>Obtain appropriate tax advice and challenge usual advisors</u>**

- **Is the usual accountant or counsel able to anticipate and solve alone all the legal and tax stakes of the business?**

➔ **Often a risky bet**

- **Complexity and the frequent amendments in the various tax domains demand to be addressed by specialized counsels**
- **Smell in time when it is necessary to question (even to stimulate!) the usual counsel and not to hesitate to diversify information sources**

Tips:

5. Distinguish the recurring risks and the risks connected to the less frequent transactions

- Tax risks often correctly managed for usual deals
- Danger for unique or punctual deals which require a greater caution
- A good preventive advice from the appropriate and competent person can spare a lot of money;
- Significant damages resulting from tax schemes set up hastily without estimating well all tax risks and issues
- Consider methods to assess limits of areas of competence of the usual counsel = prevention

Tips :

6. Take care of the geography of tax risks: in every territory, its peculiarities and traps

- **Internationalization of the transactions→ Imply to measure their impact which will often vary in a significant way from a country to the other one**
- **In spite of the efforts of harmonization in particular in VAT, tax environments of every State (even region or specific local zone) create obligations and tax risks**
- **Not taken into account correctly → Reduces or annihilates the bottom-line interest of one transaction or of a flow of transactions**

Tips :

7. Evidence carefully and timely documentary supports indispensable to secure the application of the objectives of the tax strategy

- The most frequent weakness of the taxpayers in case of tax investigation?
- = Low level of quality (even the absence) of in due-time documentation of the transactions and the tax positions taken by the taxpayer.
- ➔ although simple to prevent by implementing into the process of the business a minimum set of procedures and systematization related to tax concerns

Tips :

<u>8. Manage the relation with the tax authorities: " ruling " or dispute?</u>

- **In the majority of the situations→ Possibility of securing more the delicate transactions**
- **As from an identification of a risk of difference of tax interpretation with impact which can be material→ Wonder on:**
  - **The opportunity to introduce a request of ruling, or**
  - **Whether other initiatives could be suited towards the tax authorities.**
- **Cost of an administrative tax dispute, then judicial dispute→ can be very expensive on the long term, + stress, uncertainties, possible cash impact (imputation of refunds of taxes on disputed amounts during the duration of the dispute)**

Tips :

9. Avoid approach of " seen step, not taken " and substitute it an approach of well thought optimization: take advantage and adapt operational choices by taking advantage of tax incentives

- **The real comfort of a tax strategy = pose as hypothesis that the tax inspectors will get all the information and details**

- **Stake: no longer speculating on potential controls and/or on “artificial or shamed” schemes→ but be able to set up true business transactions with full knowledge of the facts → application of “legal choice of the less taxed route” (Belgian tax principle still in force)**

Tips :

<u>10. Having the “good state of mind” in front of tax issues</u>

- **Put aside any purely emotional reaction (thesis of some people assimilating any tax to a holdup)**
- **Approach tax cost with coolness, as a simple element of enterprise cost such as cost price**
- **Have the intelligence a player knowing and respecting the “rules of the game” assuming that the opponent is as well informed on the reality of the facts and on their deep motivations and on their complexity**

Summarizing:

1. **Anticipate and plan rather than repair or cure**
   - " Consciousness of the tax concerns " at the top level of management
   - The person in charge of tax issues = strictly involved into the elaboration of budgets and financial projections = need to identify the person in charge of the management of tax risks !
   - Tax strategy on mid and long term
   - Need to share the greatest level of understanding of the operations made by the enterprise → in order to anticipate the legal, tax and accounting consequences of various available choices

2. **Need of an optimal communication within the company**
3. **Quality of the vision of the leaders, and the financial translation of this vision**
4. **Quality of the financial, accounting(and administrative organization**
   - **Reliability of the accounting system and the accounting supports**
   - **Importance of the accounting and tax documentation**

5. **Extensions of the tax issues:**

income taxes, VAT, registration duties, gift and estate taxes, local and regional taxes, taxes assimilated to income taxes, taxes connected to stamp duties, “green taxes”, the social contributions, withholding taxes requirements in case of subcontracting with certain entrepreneurs

In any circumstances ➔ need to differentiate tax risk management when:

- **The enterprise and its daily development: management of compliance obligation : recurring filing of returns in due time, delays for tax correspondence, tax payments, etc payments in time, management of the controls and disputes**
- **The enterprise and exceptional or unusual transactions: mergers and acquisitions, restructuring, investments outsides of country of origin, share capital redemption, liquidations etc**

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