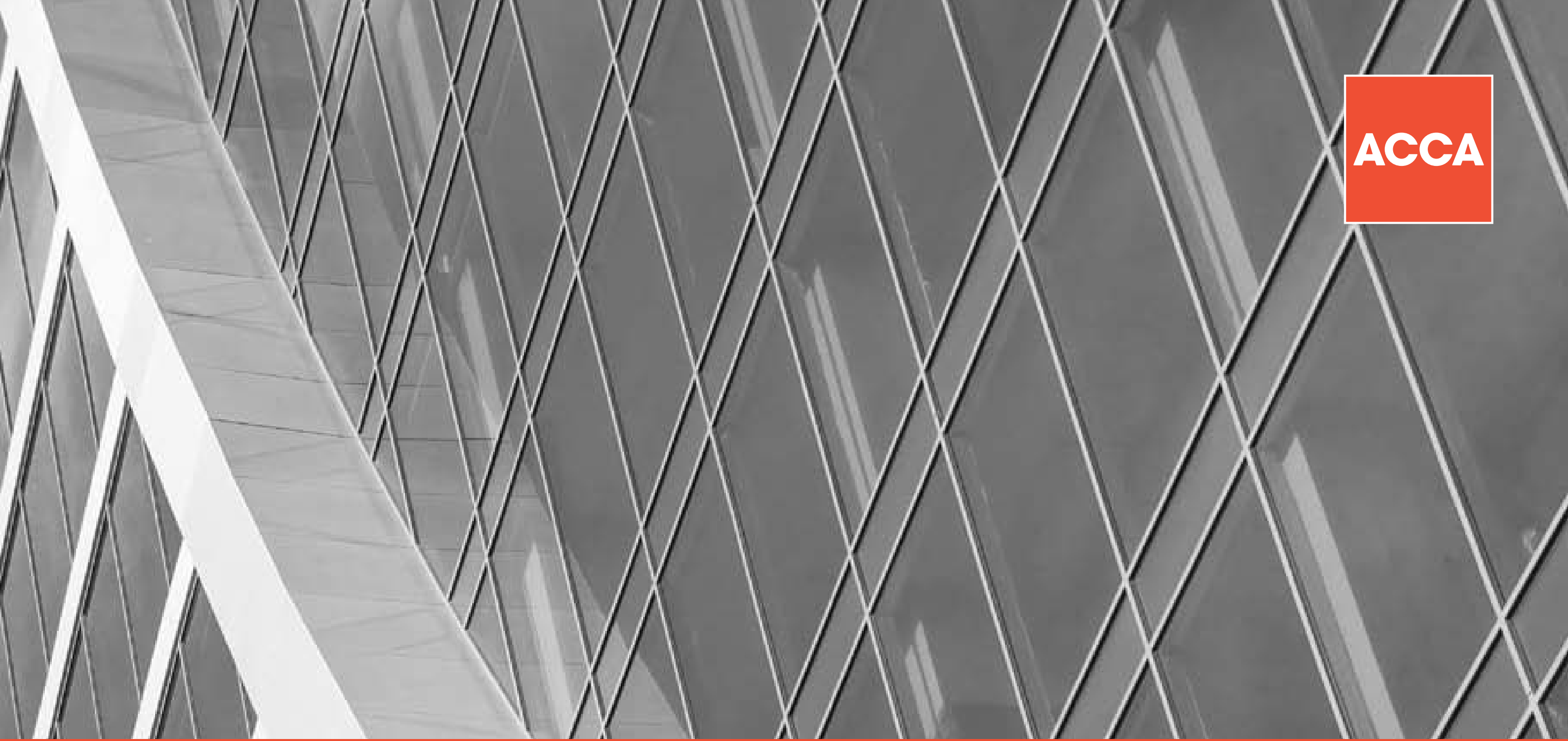

Global policy on taxation of companies: principles and practices

About ACCA

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 162,000 members and 428,000 students in 173 countries, helping them to develop successful careers in accounting and business, with the skills needed by employers. We work through a network of over 89 offices and centres and more than 8,500 Approved Employers worldwide, who provide high standards of employee learning and development.

ABOUT ACCA'S GLOBAL FORUMS

To further its work, ACCA has developed an innovative programme of global forums which bring together respected thinkers from the wider profession and academia around the world.

www.accaglobal.com/globalforums

Global Forum for Taxation
The Global Forum for Taxation reviews developments in tax policy and administration and develops ACCA's policy positions in relation to them. The Forum comprises a global network of experts and opinion formers who are all experienced in tax matters. The Forum's goals include reviewing what taxes do and how they should be administered, in the light of the widespread trend towards greater tax simplification and the increasing connection between tax and public policy on business and the environment.

This paper outlines ACCA's policy on the taxation of businesses, especially multinational corporations.

It outlines the general context for issues of corporate tax behaviour, the relevant principles underpinning the design of tax systems, and taxpayers' responses to them.

It goes on to identify features of a 'good' tax system and frames principles that ACCA aims to follow in its approach to policy on corporate tax matters.

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Foreword

In today's globalised economy the debate on taxation has been highly controversial. ACCA has approached these issues by working to bring consistency and rationale to the debate.

Given the inevitable range of opinions surrounding such a broad and emotive area, ACCA consulted widely. This included a range of external bodies including key employers, professional bodies and policy experts, as well as the ACCA Global Forum for Taxation and the ACCA Market Oversight Committee. It also reviewed statements on approaches to tax disclosure made by a range of companies.

In the light of these consultations the policies in this paper reflect the view of ACCA's Council and the ACCA Global Forum for Taxation. The agreed positions are presented in relation to a number of stakeholders, together with the implications for each group.

The paper that follows encapsulates many of the pros and cons of the global debate and looks further ahead to how the tax landscape might unfold in the future.

Martin Turner
President ACCA

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Chairman, ACCA Global Forum for Taxation

Introduction

This paper focuses on company taxation, an area where, thanks to its engagement with employers and businesses, ACCA can make a distinctive and constructive contribution to the creation of global principles for better taxation that supports enterprise. Although there are equally areas of concern around personal tax, the focus there is more on evasion than avoidance and the clear criminal nature of such conduct offers less scope for discussion and debate.

The paper outlines the general context for issues of corporate tax behaviour, the relevant principles underpinning design of tax systems, and taxpayers' responses to them. It goes on to identify features of a 'good' tax system and frames principles that ACCA aims to follow in its approach to policy on corporate tax matters.

Tax is at the centre of the global political and business debate. The consequences of the 2007–8 global financial crisis have increased pressure on governments to fund more with less. Consumers (and voters) in many markets are feeling the impact of reduced economic activity, and attention has turned as never before to the tax policies and practices of businesses, especially multinational companies (MNCs). Business practices have changed with the rise of globalisation and the digital economy and the question arises as to whether tax rules have kept pace.

Scrutiny of the accountancy profession has risen along with the profile of tax, especially in the area of tax planning. Public perception is often that professional advisers must at the very least be complicit in the minimisation of corporate tax contributions by big business, or even be the prime movers behind what is seen by many as deeply anti-social behaviour. Hence this is an opportune time to set out ACCA's policy on the taxation of businesses, especially MNCs. ACCA wishes to lead a constructive debate and lay down the principles that should underpin the approach of policymakers.

Tax is, and will remain for the foreseeable future, a high priority of policymakers, businesses and professional advisers around the world. As a global professional body, many of whose members are actively involved in advising on or managing tax affairs, ACCA's position on this issue not only acknowledges the legal and professional obligations of accountants to give the best advice to their clients and employers but also reflects concerns about whether current tax systems allow taxpayers to avoid paying a level of tax that is commensurate with the substance of their economic activities.

In a globalised business environment, it is undesirable and potentially counter-productive for any one country to go its own way, changing its tax laws unilaterally. Coordinated efforts should be made on an international basis to ensure that tax systems keep pace with changes in the way that business is conducted, capturing the substance of economic activity in the calculation of liability to tax. ACCA supports and is directly involved in the efforts being made at G20/OECD level to achieve this global reform.

Businesses today are under increased pressure to achieve transparency in their tax policies and positions. This issue needs to be seen in the wider context of the responsibility of boards of directors to achieve long-term value creation for the benefit of their shareholders, and to communicate to all stakeholders their underlying commitment to the building of a sustainable business. Companies must see the management of tax obligations as part of that process of creating long-term value.

Policymakers should be mindful of the pressures experienced by businesses in attempting to balance commercial demands and the expectations of society, including those associated with what is commonly referred to as corporate social responsibility. The moral pressures being exerted on companies by politicians and pressure groups to pay more tax than they currently do cannot absolve policymakers from their responsibility for framing clear and effective rules for tax systems.

Advisers must remain aware of the environment in which they operate and the potential reputational and commercial damage to them and to their clients if they are found to have abused a tax system.

Issues and challenges – the context of taxation

THE ECONOMICS OF TAXING BUSINESS

Company taxation exists within a web of interdependencies that not only affect the behaviour of taxpayers but also act as an indicator of governments' approaches to both 'big business' and voters' interests. Corporate tax functions are increasingly under pressure from the conflicting demands of regulation, community engagement and commercial competition.

An individual tax can typically have one or more of three functions – revenue raising for government, wealth redistribution, and/or regulation/behaviour modification. Business taxes levied on corporations perform a mixture of all three functions, and are typically imposed upon the annual accounting income profits of the business.

Nonetheless, there are further significant taxes imposed in most jurisdictions. Whether a tax on profit, irrecoverable VATs and sales taxes, or income taxes generated on employees' labour, they are a burden on the company's cash flow, affecting its competitiveness, and will need to be absorbed into the cost structure of the business, passed on to customers, employees or owners. Governments are aware of the broader value of corporate investment into the economy and will often give investors incentives by offering reduced, or 'competitive', tax rates.

Many tax adjustments are deliberate policy decisions designed to promote behaviours not adequately rewarded by the market, such as research and development incentives. Policymakers also need to recognise the potential opportunity cost of imposing taxation. Not only are companies directly deprived of the tax contribution, which they might otherwise reinvest or distribute, but also – if the burden of taxation is perceived as excessive – they may relocate to another country or cease to engage in particular activities, depriving government of all the potential tax and society of any wider benefits of the economic activities concerned.

THE PURPOSE OF THE COMPANY

Businesses function as more than simply vehicles for generating profit. The interdependencies between the economic, social and wider environmental factors create a 'triple context' within which businesses exist, and there is increasing recognition that a long-term sustainable business model relies upon balancing the contribution to all three subsystems. Corporations allow for the use of investors' capital without a need for other direct engagement, opening up opportunities for achievements and returns that would otherwise be unattainable. Even so, it is being argued increasingly, with legislation in some cases, that profit maximisation should not be the only goal of companies. There is an increasing drive towards 're-incorporating society into corporate purpose' and ACCA sees a company's tax contribution as being a fundamental part of its integration into the wider tapestry of societal interaction.

TAX TRANSPARENCY

The social responsibility profile of large corporates is increasingly associated with their attitude to tax. It seems likely that, in the future, companies may need to make wider disclosure of their policies on tax and their actual contributions. Such a course is in ACCA's view fraught with difficulty, bearing in mind the disparity in sophistication of potential users of such disclosures. The level of detail appropriate for one situation or analyst will be an undue burden, or potentially confusing overload of information, for another. Tax filings are commercially sensitive, and in many jurisdictions confidential to the taxpayer.

COMPANY TOTAL TAX CONTRIBUTION

The public perception of the contribution made by business to society often fails to capture not only the wider benefits of enhanced economic activity, but also the full impact of companies on the tax system. In addition to corporation taxes paid, businesses typically bear the burden of a range of other levies and taxes, both direct and indirect, and also act as unpaid tax collectors, withholding and paying over significant levels of employment and consumption taxes on behalf of the tax administration. This concentration of the tax function in the hands of business significantly reduces the cost to society of tax administration, and enhances the level of compliance. In the UK, for example, it is not widely appreciated that the majority of the 'tax gap' relates not to company tax avoidance but rather to organised VAT non-compliance and aggregated 'small scale' avoidance and evasion of personal taxes.

A NEW GLOBAL ENVIRONMENT

Governments globally are experiencing a period of prolonged austerity following the 2007–8 global financial crisis. The crisis itself was created at least in part by the failure of business practice and regulation to keep pace with technological innovations and opportunities, and there is an increasing recognition that tax systems around the world, developed in the early 20th century, are subject to the same pressures. Public and political concern at the ability of MNCs to control their exposure to tax has driven policymakers to explore the options for change. In the words of Vince Cable, UK Secretary of State for Business, Innovation & Skills, speaking in 2013: 'Governments have been very fragmented. They are behind the curve. We operate national systems of business taxation and enforcement in a world where companies operate on a global scale, seeking out low tax jurisdictions. Governments are at a disadvantage.'

In July 2013 the OECD published its Action Plan on Base Erosion and Profit Shifting (BEPS), which sets out a global plan aimed at allowing governments to collect the tax revenue they require while giving businesses the certainty they need to invest and grow. The plan is being pursued with an unusual degree of urgency, and the actions outlined in the plan are due to be carried out in the coming months and years by the joint OECD/G20 BEPS Project, which involves all OECD members and G20 countries on an equal footing. The project is looking at whether the current rules allow for the allocation of taxable profits to locations other than those where the actual business activity has taken place. The Action Plan recognises the importance of addressing the digital economy, including the justified concern that the tax system is running too far behind global commercial practice.

THE COMPLEXITY OF TAX AVOIDANCE

The complexities of modern accounting and tax concepts, and the increasing dislocation of tax impacts from the 'real world' substance of transactions through reliance on documentary evidence, can result in a particular transaction having many different potential tax characterisations and outcomes. The difficulty of working out whether a particular position truly reflects the law is exacerbated as governments increasingly try to blur the boundaries of acceptable behaviour, which is not helpful to taxpayers or their advisers. Tax law must be clear and certain and must take into account that businesses will try to minimise tax impact as a part of their normal commercial activity. Tax is a business cost like any other and company directors typically have a fiduciary duty to run their business in the most cost-effective manner.

While most businesses try only to comply with the law, there have been many cases of convoluted tax planning schemes that are designed not for any proper business purpose but to exploit loopholes in the law and avoid its spirit. Such schemes can be said to conflict with the underlying social contract between taxpayer and state, and in ACCA's view amount to unacceptable practice.

Nonetheless, it is widely recognised that, while the extremes of taxpayer behaviour are easily recognised and dealt with, there is uncertainty where the dividing line should be drawn. The Chartered Institute of Taxation has noted the difficulty of trying to define unacceptable avoidance for regulatory purposes. 'General anti-avoidance rules' can be as dependent on judicial interpretation as they are on the actual wording of the rules. At its most extreme, avoidance relies upon the dry words of the law, excluding all external factors such as economic impacts, in contrast to those who would advocate disregarding the specific words of individual statutes altogether in favour of a broad brush analysis of economic impacts. There is no global consensus on which approach, or what position between the extremes, is ideal but governments should always bear in mind the impact of uncertainty on business confidence and the capacity to invest.

ACCA'S REGULATORY POSITION

As regards principles, the area of tax advice does not present any unique issues of ethical conduct for the professional accountant. Professional accountants, whether they work in business, the public sector or public practice, are obliged to act in the interests of their employers or clients, as the case may be, and in accordance with the wishes and instructions of those parties, as long as what they do is consistent with or at least not in conflict with the law and the standard provisions of ethical guidance, which in the case of ACCA members is the *Code of Ethics and Conduct* (the *Code of Ethics*), which is based upon and fully aligned with the work of the International Ethics Standards Board for Accountants (IESBA). Members, whatever their role in practice, industry or the public sector, should note that the Code remains the reference point for guidance, and this paper does not supersede or replace it.

When providing tax advice, ACCA accountants are expected to observe the various requirements of the *Code of Ethics*, together with other relevant regulatory guidance, in relation to situations such as the determination of independence and the disclosure of client information to third parties. Their obligation to do this is no different from the obligation they have in relation to other areas of professional activity and, in the course of determining whether any individual member has failed to act in accordance with the standards expected of them, ACCA will take into account their compliance with all applicable legal, ethical and technical guidance, including the *Code of Ethics*. Where circumstances justify the development of more focused guidance, so as to elaborate on the application of the standard ethical principles to specific areas of professional activity, ACCA supports the development of such additional guidance. With this in mind, ACCA has already issued a dedicated guidance statement, prepared in conjunction with a number of other UK-based professional bodies, on how to apply the ethical principles in the area of tax advice: *Professional Conduct in Relation to Tax.*

In addition to demanding that members comply with all applicable legal and ethical rules, the standard of competence expected of members under the *Code of Ethics* demands that members advise their employer or client not only about what their obligations are under the law but also about any opportunities that may exist under that same law to minimise their liability to pay tax. In the tax context, it is particularly relevant, however, to stress that accountants will be expected to advise on the sometimes fluid dividing line between what constitutes 'avoidance' (ie what is legitimate practice) and what is regarded as 'evasion' (ie criminal activity). Professional accountants will be expected to know where that dividing line occurs and advise their clients accordingly. The best advice on tax planning will also be expected to take into account the potential consequences for the public reputation and standing of the taxpayer of adopting an overly 'aggressive' approach to the minimisation of its tax liability.

ACCA policy – working to improve tax systems

Given all the issues set out in this paper, and the complexity they generate, ACCA's policy position on tax takes into account the competing factors and enables it to contribute to debates on the basis of a sound and considered analysis.

FOR THE COMPANY/CORPORATE DECISION MAKER

ACCA believes companies should not, in principle, pursue aggressive tax avoidance (by which is meant completely artificial arrangements that have no clear purpose other than to avoid tax by complicated schemes).

Companies have a commercial imperative, but ACCA believes that they also have a wider responsibility to be good corporate citizens. Companies need to consider the wider impacts of their tax policies and recognise that some approaches to tax will be seen by some people as unethical even if they are legal.

ACCA believes greater transparency (which may, but should not necessarily, include more or better disclosure) on tax treatment and how decisions on tax are made would benefit companies' reputations and help a wider range of stakeholders to understand the issues and complexity and how these affect the organisation – this is consistent with the general direction of integrated reporting.

Tax cannot be seen in complete isolation from companies' business models and overall strategy and plans. It is one part of the overall long-term value-creation process, which includes employment created, investment in research and development, the wider social and environmental benefits and impacts in regions where the company operates, and the value offered to consumers. This will be true for all companies but especially so for SMEs and start-ups.

FOR THE PROFESSIONAL ACCOUNTANT – AS ADVISER OR EMPLOYEE

Professional accountants have a duty to advise their clients and employers on all options for maximising profits and prospects – this duty invariably recognises that taxpayers have no obligation to pay tax beyond the requirements of the law.

Accountants also have a clear duty to advise on the risks and the ethical dimension, including technical and reputational issues, associated with all available options. Not to do so could lead to the possibility of committing professional misconduct.

ACCA recognises that tax is a cost to the business, which needs to be managed effectively, alongside other business drivers, for success and profitability. Its tax liability will affect the profitability of any business, and its ability to create sustainable value for its shareholders. Professional expertise is essential to ensure that tax decisions form part of the overall financial management of the organisation.

FOR THE POLICYMAKER

Tax laws in many jurisdictions were constructed for a different era of business. ACCA calls for clearer and simpler tax laws reducing uncertainty. Laws need to reflect the ethical framework society wishes to have. Policymakers need to recognise they cannot just point the finger at business – they need to ensure that the laws themselves are fit for purpose, especially in relation to emerging (international) business models and the digital business era (ethical business cannot be encouraged if rules are dysfunctional). Taxpayers' rights must be recognised and a balance of interests preserved. In light of this, ACCA suggests that a different approach may be required for the taxation of companies – including considering whether corporate tax itself is workable at all in the new global environment, and therefore whether other forms of taxation of corporates need to be developed.

Coordinated international action is appropriate to address matters that cannot be resolved by individual jurisdictions, such as transfer pricing and a level playing field to disclosure. Such matters are currently being pursued via G20 and OECD discussions.

FOR THE PROFESSION

ACCA believes that IESBA should review its standards, where relevant, to consider ethical issues around tax avoidance and, if necessary, clarify its guidance and standards.

Bodies such as the International Federation of Accountants (IFAC) and other representative bodies of the accountancy profession should engage in the public debate and acknowledge the role of the profession in responsible behaviours and practices.

ACCA commends the guidance developed by a number of professional bodies in the UK, to which it has contributed and which was produced in consultation with HMRC, setting out an approach to good practice. This is the document *Professional Conduct in Relation to Tax* previously mentioned.

Conclusion

Taxation has become an increasingly complex and public area in which debate significantly affects the global accountancy profession. There are many drivers for this, including economic conditions and a squeezed public purse in many countries. At the heart of the issue, however, is whether tax laws, especially for corporates, reflect the new business models of the 21st century and consumers' wider ethical expectations.

Policymakers can be too quick to see accountants as part of the problem, but the profession is and should be part of the solution. Professional accountants should work with policymakers to develop approaches that work for business and allow companies to be competitive and profitable, while also meeting wider considerations of social responsibility.

Members of the ACCA Global Forum for Taxation

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