

Time for SA firms to tackle a taxing issue

There have recently been some well-publicised examples of multinationals buckling under pressure because they were perceived to be paying too little income tax. Towards the end of 2012, Starbucks in the UK undertook to pay Â£20-million of corporate income over two years, despite insisting it had complied with the tax laws.



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There are also a wide range of individuals and institutions pointing fingers at multinationals. In the case of Starbucks, these included MPs (at a special hearing), Prime Minister David Cameron, the media and, perhaps most damaging, consumers.

One of the factors said to have contributed to the Starbucks tax settlement was that branches were being besieged by demonstrators - leading to fears of a consumer boycott.

The UK seems to be the most active arena for tax activists. There have even been flash mobs crying "Take a holiday in Ireland" - referring to that country's status as a destination for tax planning.

In the African context, the perception that multinationals are avoiding (or evading) their tax obligations has an additional human rights flavour.

For example, accusations by ActionAid that multinational groups are stripping African countries of tax revenue were made in an article posted in 2013 on The Guardian's website under the highly emotive headline, "Western tax avoidance hinders African development".

There is often a range of possible answers to the question of whether multinationals have paid their fair share of tax. Basically, it depends who is asking - and what their motives are in asking.

From a technical transfer pricing point of view, this issue is often highly complex. It is generally only after a very lengthy process of inquiry that a definite answer can be reached. Coverage of the Starbucks matter showed there was a range of intercompany transactions in question, including supply agreements and licensing agreements. Other typical intragroup

charges include management fees and financing structures. Determining whether a particular company has abused transfer pricing rules will often require a review of all these transactions - including a detailed audit regarding whether the company has actually received, and benefited from, these goods and services.

For this reason, transfer pricing disputes typically take a long time - sometimes many years.

However, Cameron side-stepped all this complexity by telling global companies generally, while clearly referring to Starbucks, to "wake up and smell the coffee" at the World Economic Forum in Davos in 2013.

South Africa is probably somewhat behind the curve in this area. There has been extensive coverage of some disputes between the South African Revenue Service and taxpayers, but these have tended to focus on individuals such as Dave King and Julius Malema.

This does not mean SARS has not been targeting companies. There have been some very substantial settlements reached with taxpayers recently regarding transfer pricing. But confidentiality is invariably a condition of the settlement agreement. And SARS is, in any event, bound by the confidentiality rules in our tax laws.

But South African companies should not think they can rest easy because of the fact that SARS's hands are tied in some respects. As the Starbucks example shows, there are many different channels for the tax affairs of a company to hit the headlines. These could include NGOs, politicians, trade unions and consumers.

In the South African context, there have been some indistinct public rumblings regarding transfer pricing, particularly in relation to mining companies. It is only a matter of time before a substantial South African company is accused in the media of greedy tax planning.

South African companies need to start thinking, at the highest levels, about a tax communications strategy. They need to develop a coherent message that works for shareholders, the media, trade unions, NGOs and the government. Particularly at risk is any company that does business directly with consumers, because while consumers may have little appetite for a sophisticated transfer pricing debate, they can be mobilised by a smear campaign.

Long gone are the days when a low effective tax rate was definitely a good thing. It may now be a mixed blessing, at best.

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