Time for new skills

Large Corporate Management of taxes

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Lee Holloway considers how the role of in-house tax advisers have changed in the last decade

Key Points

What is the issue?

Three main waves of development have occurred over the last 10 years which have changed the way tax is governed by in-house tax functions.

What does it mean to me?

Tax advisers must consider how the gap between tax and technology knowledge can be addressed; and how tax functions will be enabled to serve the needs of businesses that are advancing technologically.

What can I take away?

The in-house tax function is now at a real crossroads and the skills needed to thrive are considerably different to what they were a decade ago.

As my time on the industry side of the fence comes to an end, I wanted to reflect on the changes that I have seen in the role of an in-house tax adviser over the last decade – and particularly the aspect of what I will term for these purposes 'tax governance'.

Without resurrecting any debate on tax avoidance, I wanted to first highlight that for many internal tax advisers the KPIs of tax functions had generally changed in order of priority, with some KPIs being permanently erased from the list for the majority of businesses. Tax governance has now certainly moved to the top of the list, whereas so-called 'artificial' tax savings have either dropped off the list altogether or gone right to the bottom (depending upon the risk profile of the company).

Three main waves (overlapping in places) during the last decade have changed the way tax is governed by in-house tax functions. I will summarise these and conclude on where I think the future lies.

Wave 1: The change to the tax planning industry

High profile tax avoidance cases and media reports of tax evasion put the spotlight back on the social morality of certain aspects of the tax planning industry. Heightened pressure followed for HMRC and other Revenue authorities to stop the perceived abuse of tax legislation. The result was a raft of anti-avoidance legislation and a focus on 'purpose' type tests for certain planning mechanisms and clearance procedures, which put planning in real-time scenarios that effectively resulted in many of the schemes either not working or not being viable for businesses from the outset.

A new focus from HMRC and advisers into areas such as transfer pricing followed rapidly, with tax authorities globally engaging in better methods of communication exchange and a willingness to act to resolve discrepancies between jurisdictions. BEPS legislation appears to have been effective, and further initiatives to re-align tax rules for the digital economy are now starting to be enacted globally.

In-house tax advisers have certainly responded by switching resources to so-called 'low hanging' fruit or 'super compliance', where non-aggressive benefits such as R&D tax credits are more fully explored than before and capital allowances reviews are undertaken in much more detail. Firms have responded by investing in data driven tools that help to extract the maximum benefit from the accounting data.

Whilst the approach may have changed, the drive to extract benefit from a tax function has not. The change has, however, helped to push tax into the minds of group boards, focusing them on a more risk-focused and balanced approach.

Wave 2: Governance push down

A number of key pieces of legislation have been enacted over the course of the last decade that have pushed tax governance into the boardroom and have changed the way tax functions operate. Whether this is a co-ordinated approach by HMRC or not, it matters little. The impact has meant that tax functions have to business partner effectively in order to reach the stringent tests in place.

The Senior Accounting Officer

The legislation was introduced a decade ago and effectively forced tax functions to present a picture of tax data control to a senior member of the finance team (usually a CFO), who would be effectively at fault if the tax function got this wrong. It forced tax teams into the boardroom and ensured that good in-house teams understood the flow of data into their tax calculations. It ensured that effective business partnering with general finance functions was commenced and maintained.

The missing piece was around how to tackle the manual intervention that is sometimes involved from finance functions in their data sets, sometimes making the task incredibly difficult for the tax function to follow the complete picture on data flows. This is discussed later in the article.

Tax strategy

The requirement for certain businesses to publish a tax strategy externally clearly forces them to consider what their strategy actually is. Many of them were likely not to have defined that strategy before the requirement to publish. Again, once that strategy is defined, it's wise to ensure that what is stated is actually happening. Some criticism of the approach is that most businesses will respond with the same statement but I view this as a win for HMRC. The yearly renewal of the strategy means that it should always be a 'live' policy. This results in the need for the governance and maintenance of everything around the tax function that brings the strategy to life in the business.

Corporate criminal offence for tax evasion

This is another wide reaching measure that ensures that tax functions have to business partner effectively and spread the message that adherence to tax legislation is critical. The global reach of the legislation extends beyond the UK centric measures put in place by SAO.

IR35 changes – private sector

This is a supply chain related piece of legislation, this time focused on the workforce. This has been financially successful in the public sector and it will undoubtedly be useful for HMRC to force companies into carrying out detailed due diligence on how they are engaging with their workforces. A combination of supplier on-boarding functions, HR and tax are likely to be involved in governing the process internally.

Tax functions have often sat on the edge of the process but are gradually being forced into control around the legislation. Disputes are likely, in my opinion; and the knowledge of in-house tax professionals will be sought by HR teams to ensure that these are minimalised.

These measures, when combined, may look like a daunting proposition to an in-house team. In essence, though, they are weapons in the team's arsenal to ensure that good governance is maintained. As the implementation has been spread out over the last ten years, they also should have been bedded into the tax team's planning.

Wave 3: The taxologist and tax governance

So-called ‘taxologists’ and those selling tax data tools and systems are often pitching to the wrong people. This is a key point in the changing nature of the tax function both in industry and in practice. To change or embed tax automation processes often needs a complete or significant change to an ERP system that is usually ‘owned’ by someone in a finance function.

Not only do tax teams have to battle to get the buy-in of finance, but they also need to effectively sell the need for a change with IT and systems teams that have an ever increasing list of priorities, many of which will be driven by the fact that they increase profitability and so will automatically be prioritised. Teams that can’t explain the need for new processes, by linking back to the risks and communicating across business units, quite simply will not get the changes through within the legislative time requirements. My discussions with advisers and in-house teams show that the right stakeholders are regularly being missed.

The next phase

The next phase of tax governance is clearly around data control. SAO set the scene and MTD will finish the journey. Numerous industry events now talk about data centres, Making Tax Digital and various different real-time tax requirements on sales taxes across Europe and the US. At odds with the tax change, though, are the facts that it is often quite difficult and costly to change an ERP system, and that it can create risk and potential downtime for finance colleagues. To properly embed good tax governance in a business, the need for finance teams to be your key ally is now absolutely critical.

Whether we will witness the rise of artificial intelligence in the industry remains to be seen. Some clever tools have been developed and software has been enhanced over time. This has been talked about throughout my career to date and I’d say the pace of change hasn’t been electrifyingly exciting! Many products replicate what Microsoft achieved years ago, possibly with a fancier front page – but few seem to be the end-to-end products that are initially promised.

Summary

In summary, the in-house tax function is now at a real crossroads and the skills needed to thrive are considerably different to what they were a decade ago. A head of tax needs to be a business partner, at ease with speaking to the board and also media savvy. Critically, though, it’s not enough to be a tax expert anymore. It is as important to understand the business in depth and the priorities of the IT teams.

In my view, the industry bodies must adapt to upskill trainees, or partner with other bodies that can aid in developing these critical skills. They must also address the growing hole in tax training that is tax technology.

Many of us are left thinking about how the gap between tax and technology knowledge can be addressed; and how tax functions will be enabled to serve the needs of businesses that are advancing technologically. Tax rules often follow the commercial reality some years after the change (for example, the digital services tax).

Tax governance and control has risen to the top of most tax teams’ agendas, linking with understanding the flows of data and risk inherent in the businesses. Supporting these tax functions in their quest for great governance, from an adviser’s stand point, has also changed with the realisation that most businesses now have an increased workload in the tax governance arena.