

Managing Tax Risks

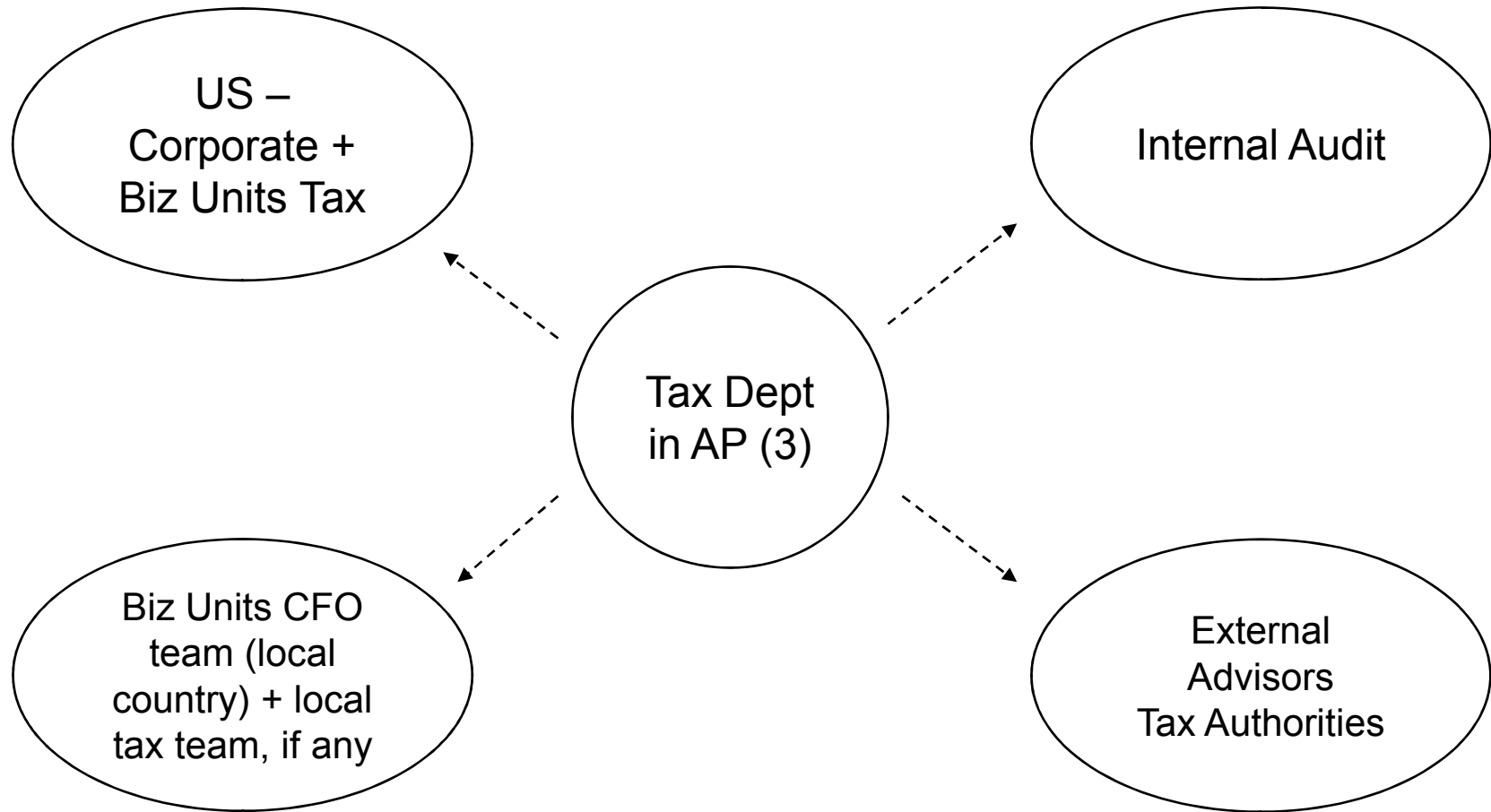
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Overview



What is Managing Tax Risks

- Managing uncertainties arising from tax
 - re application of tax law and practice to particular facts
 - uncertainty over the facts themselves
 - uncertainty as to how well control systems operate to arrive at the intended tax outcome of the business activities and operations
- Understanding where the risks are
- Making judgment calls as to how they are to be managed
- Managing “surprises” that come along

Main areas of Tax Risks

- Compliance
- Financial accounting
- Operations
- Transactions
- Tax Planning
- Legislation
- Reputation

Compliance Risk – Tax Returns

Risk regarding the company's tax compliance obligations

Compliance with tax laws and regulations in all jurisdictions

- Timely, complete & accurate income tax return filing
 - to avoid late filing penalty, or excessive assessments being raised
- Timely completion and filing of statutory accounts
 - to enable timely filing of the income tax return
 - to apply for the Tax Residence Certificate
- Understand various countries' procedural requirements
 - technical basis under the rules vs. practical procedures
- Ability to gather accurate and timely tax data to support global tax compliance
- Other taxes e.g. GST/VAT, withholding taxes etc

Compliance Risk – Tax Audits

- Tax Audits & Investigations
 - CFO of local business units to inform Tax if there is a tax audit, and
 - also of the progress and advise on any tax reserve requirements
 - potential audit adjustments may have implications elsewhere
 - any audit settlements or issues to be agreed with the VP Tax

- Proper documentation to support tax position
 - lack of which could result in potentially significant audit adjustments
 - loss of knowledge on account of changes in people
 - business units have been advised to keep tax records not only for local country but for US IRS tax purposes

Compliance Risk - Transfer Pricing

- Increased tax audits in the region
- Increasingly aggressive & sophisticated tax authorities
- Focus of the tax audits has been transfer pricing
- Keeping up with the requirement to have contemporaneous transfer pricing (TP) documentation
 - the latest being China to require companies above certain thresholds to maintain TP documentation (tax return, Related Party Transaction Forms)
- To ensure entities have the contemporaneous TP documentation to comply with the country's TP rules

Financial Accounting Risk

Risk relating to the reliability of the tax figures and disclosures in the accounts

- Sarbanes-Oxley Section 404
- Tax accounting (FAS 109)
- FIN 48

Sarbanes-Oxley Section 404

- Requires internal controls over financial reporting
- Entities are required to put in place the controls over tax process
- Examples of control activities
 - Are all income tax returns filed timely and accurately and reviewed by the local CFO?
 - Has Tax Dept been notified by the local CFO of tax audits?
 - Has documentation been maintained to support material inter company transactions as required by the relevant taxing jurisdictions?
 - Has Tax Dept been notified of new business activities?
 - Have significant changes in tax law been reviewed for their impact to the tax provision?
 - If so, have any required changes been reviewed by the local CFO?

Tax Accounting (FAS 109)

- Tax accounts (P/L & B/S) are significant
- Internal Audit reviews the tax accounting process
 - Tax Dept conducts training sessions for finance people
 - External auditor reviews process of significant entities
- Focus on key areas of tax risk
 - Tax provision
 - Reconciliation of tax payable
 - Documentation of deferred tax assets/liabilities
 - Valuation allowances
 - Reconciliation of effective tax rate
 - Tax Return

FIN 48

- FASB Interpretation No 48 issued in 2006
- Applies to Uncertain Income Tax Positions
- Increased documentation and disclosure
- Requires us to:
 - review open tax years
 - obtain technical opinion for positions taken; and
 - evaluate possible resolution & the likelihood of risk
- “More likely than not” criteria
- Need to evaluate the likelihood of the risks
e.g. positions taken, PE, transfer pricing, audit issues etc

Operational Risk

Risk arising from the day to day operations and management decisions

- Major contract with a key customer
- Permanent Establishment
- Entity Minimization
- New business activities
- Operating in new locations

Transactional Risk

Risk and exposure associated with specific transactions undertaken

- Business reorganization & restructuring
- Moving operations from other locations into Asia
- Mergers & Acquisitions
- Divestitures
- New joint ventures, new investments
- Financing transactions

Why Managing Tax Risks is Important

- Financial impact
 - Could result in adjustments to the tax cost (usually upward)
 - Affects profitability – overpayment of tax, penalties and interest
 - Affects the effective tax rate
 - Affects the Earnings per share
 - Cash flow is impacted
- Compliance profile of the companies
- Reputation of the company
- Managing tax risks would depend on the resources available, and working closely together with the business units, external advisors etc
- Important to hire good people, good advisors and to ensure the processes and controls are in place