TAXAND

2016 GLOBAL SURVEY

ANOTHER YEAR OF GLOBAL TAX TURMOIL

Your global tax partner

CONTENTS

FOREWORD

"What gets us into trouble is not what we don't know. It's what we know for sure that just ain't so". Mark Twain

This quote by Mark Twain, one of America's greatest thinkers, encapsulates the global view of corporate tax in 2016. A set of commonly held views, often referred to as "common sense", will shape the actions and choices made within a given community, even when those views are erroneous. But even if widely held views are erroneous, that doesn't diminish the fact that they are widely held, and that makes them real and potentially problematic.

The taxation of multinational corporations has been the subject of much public discussion and debate in recent years, amongst experts, politicians, journalists and the general public. Some of that discussion has been well informed. Much has been based on limited understanding of the very real and deep issues involved. Too much has been based upon "common sense" things people know for sure that "just ain't so".

Whether right or wrong, this common sense view shapes decisions, including public policy decisions. This may be because politicians and makers of public policy similarly hold these erroneous views, or because decision makers ignore them at their peril and act on the back of a perceived mandate from the general consensus.

The result has been a growing belief that multinationals are not paying enough tax and should be punished, through assessments running into billions of dollars or euros (see, for example, the Apple state aid case in Europe). This has occurred notwithstanding the existence of previously agreed tax rulings or other arrangements with taxing authorities on which taxpayers are supposed to be able to rely.

The confusion surrounding tax policy around the world continues to gather momentum with conflicting goals and ambitions. In Europe we continue to see a push for harmonisation with further attempts to implement the Common Consolidated Corporate Tax Base.

All whilst individual countries talk of corporate tax rate cuts to entice foreign investment in the name of competition and the authorities serve huge assessments for alleged state aid infringements.

In the US the clamp down on inversions and offshore funds continues apace, including the far-reaching "385" rules, and the tax policy of the new President remains unclear. Similarly, in Asia, authorities are conducting raids on multinationals and issuing fines for perceived cross-border tax infringements. All of which is happening as the OECD's Base Erosion and Profit Shifting (BEPS) initiative is being introduced amid a growing concern in the tax community about who is implementing what, and in which countries.

Is it any wonder that for the fifth year in a row we have seen a growth in the number of CFOs and Tax Directors (76%) stating that tax is firmly on the board agenda? Keeping in mind that what we know for sure may not be so, Taxand looks at the results of our 2016 global survey.

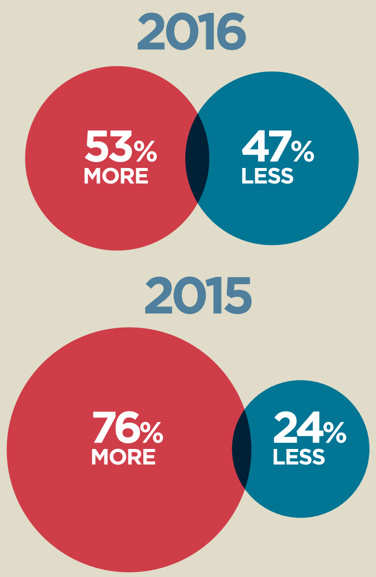
Frederic Donnedieu de Vabres,
Taxand Chairman

1 POLITICS AND COMPETITION UNDERMINES TAX CERTAINTY

The benefits of tax certainty are seemingly universally acknowledged in the global tax community. Taxpayers and tax advisors would subscribe to this almost reflexively.

Both the OECD and G20 have openly acknowledged the benefits of tax certainty and particularly what it brings in promoting investment, trade and balanced growth. Both, along with the IMF, have a mandate to continue working to enhance tax certainty.

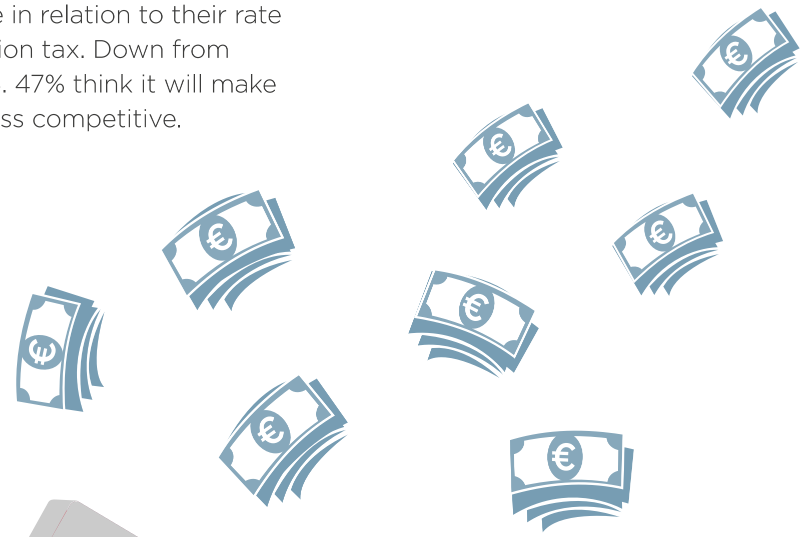
% of respondents who think the OECD's BEPS initiative will make countries more or less competitive in relation to their rate of corporation tax

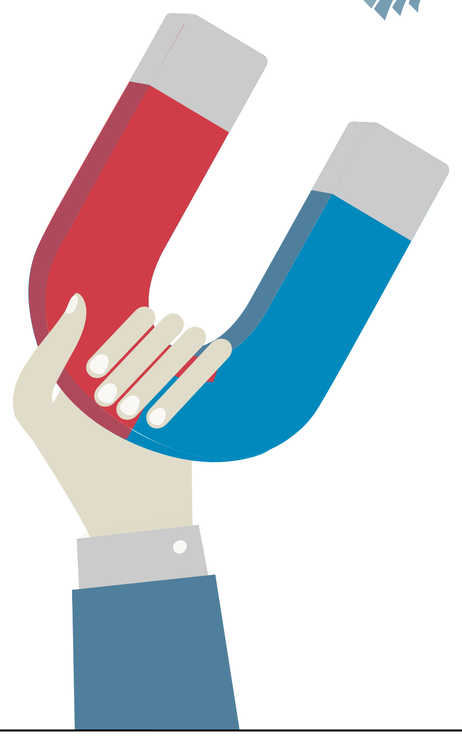


While those are noble sentiments, taxpayers and tax advisors face the reality of increasing uncertainty as national governments and the EC propose new rules, including so-called general anti-avoidance rules, BEPS proposals that are still being translated into national laws, and threats to the wisdom of continuing to rely on past tax rulings as they effectively become reversed by EC state aid rulings.

Just over half (53%) of respondents believe the OECD's BEPS initiative will make countries more competitive in relation to their rate of corporation tax. Down from 76% in 2015. 47% think it will make countries less competitive.

It seems that although supra-national organisations like the OECD and the EC are pushing for greater consistency amongst national tax systems, national governments are not cooperating, and often are moving independently. But it is not only with so-called "tightening" that they are moving independently.





81%

OF RESPONDENTS SAID THEY ANTICIPATE TAX COMPETITION BETWEEN COUNTRIES WILL INCREASE

Tax competition is becoming increasingly fierce as jurisdictions compete to attract the world's largest companies. In our survey, 81% of respondents said they anticipate tax competition between countries will increase over the next five years, despite the global drive for tax harmonisation.

So it's not surprising that our respondents say that political discussion around new tax measures continues to cause confusion and/or uncertainty amongst their board, with nearly two thirds (64%) expressing that frustration, a similar proportion to last year (63%).

For multinationals however, the tax rate is just one factor taken into consideration when choosing a HQ location. Indeed, our survey revealed that when looking at where to locate their business, 59% of respondents said tax is not a factor considered, but paradoxically just over a third (37%) confirmed that a 5% reduction in corporation tax would tempt their business to change HQ.

From a multinational perspective, while a lower effective tax rate may be achieved by placing their intellectual property or research and development operations in a jurisdiction with an attractive patent box regime, it is not the only motivation for a company to relocate.

A welcoming tax jurisdiction ultimately sits alongside other factors including a stable business and political environment, a skilled workforce and proximity to its customer base or suppliers when multinationals are deciding where to place their operations.

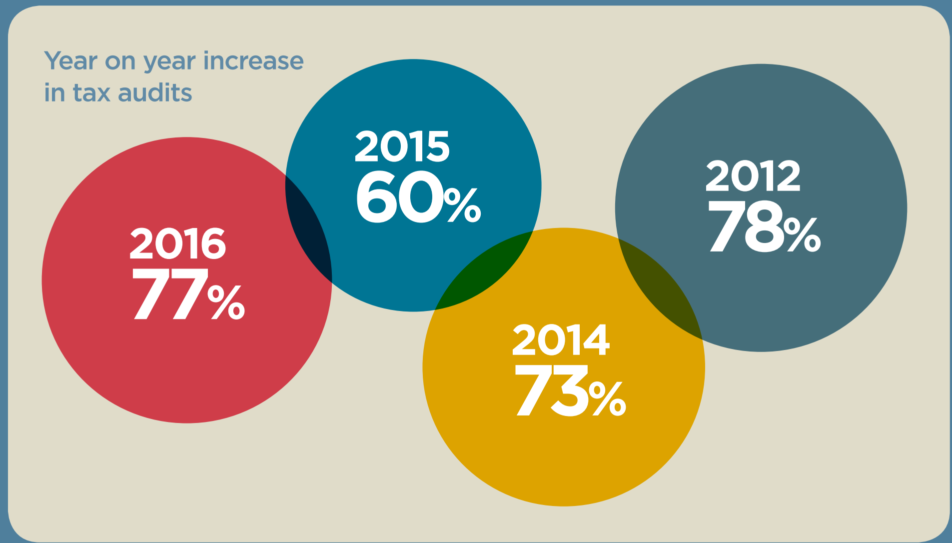
> "The current political landscape across the world means multinationals are closely watching and waiting for tax implications resulting from legislative changes. Brexit means the UK will need to find ways to ensure it continues to attract the world's largest companies and prevent them from relocating to remain within the single market. A possible tactic from the UK could be to lower its corporate tax rate, although it remains to be seen if this will reach as low as 10% as publicly stated.
>
> The US is long overdue for an overhaul of its tax policies, with the last comprehensive tax reform taking place in 1986. With the 2016 election results and a mandate by President-elect Trump to overhaul the US tax code within the first 90 days of taking office, the likelihood of US tax reform is quite high. While there is consensus among politicians that the US corporate tax rate should be dropped (potentially as low as 15%), it remains to be seen whether Congress and President-elect Trump will push through tax legislation to replace the existing system of worldwide taxation with a territorial system similar to that of many European countries. If the US lowers corporate tax rates and adopts a territorial system, other nations may face economic and political pressures to lower tax rates to continue to attract multinationals and remain competitive."

Jill-Marie Harding, Taxand USA

2 MULTINATIONALS INCREASINGLY UNDER THE MICROSCOPE

One area in which beliefs and reality seem to be coinciding is in the area of increased scrutiny of corporate taxes. CFOs and Tax Directors of big businesses report an increase in tax related audits and investigations.

These continue to be aggressive and retrospective, changing the way multinationals will operate in future, as tax agreements between companies and country authorities become at best tentative and at worst meaningless.



77% of respondents say they have seen an increase in the number of audits undertaken by tax authorities in the past year. This follows similar results in the past three years' global surveys in which a substantial number of our respondents have indicated that they have experienced an increase in tax audits. This has arisen despite many tax authorities having had their budgets and headcounts reduced as a result of austerity measures enforced by many governments in recent years. This may not be inconsistent, and may be because many tax authorities are devoting limited resources to where they can get the best return for their money, and many are focusing on multinationals and transfer pricing.

Interestingly, despite the rise in audits, 76% of respondents have indicated that their relationship with tax authorities has remained the same or, perhaps counterintuitively, improved.

This may simply be the result of an increased focus of taxing authorities on multinationals leading to more interaction and greater co-operation. It may also reflect increased focus by taxing authorities on raising the quality of their staff and their work, as noted above.

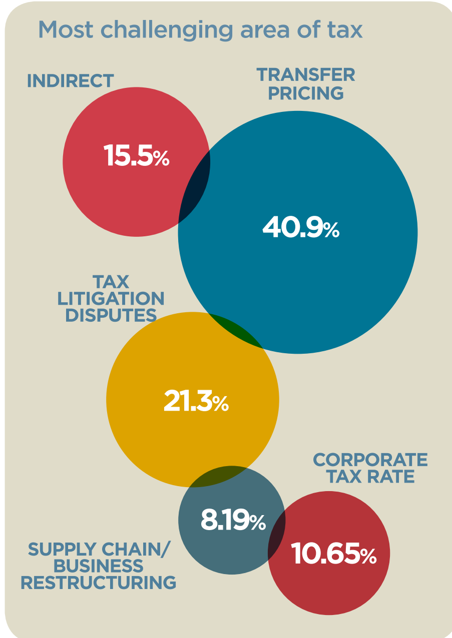
"It's the international political agenda against some of the tactics deployed by multinationals which strongly influences local tax administrations. There are an increasing number of measures directed against tax evasion and aggressive tax planning so the rise in audits, and aggressive ones at that, is a natural consequence."

Geert De Neef, Taxand Belgium

3 MULTINATIONALS LOSING OUT AS BURDEN OF COMPLIANCE SKYROCKETS

One inevitable consequence of greater scrutiny is greater compliance cost. For every step forward in establishing a harmonised approach there appears to be two steps back.

The overall aim of creating a level playing field is sensible, but while the details are thrashed out, multinationals are the losers, most evident through the increasing compliance burden, as companies grapple with ever-growing levels of disclosure and a rapidly changing landscape.

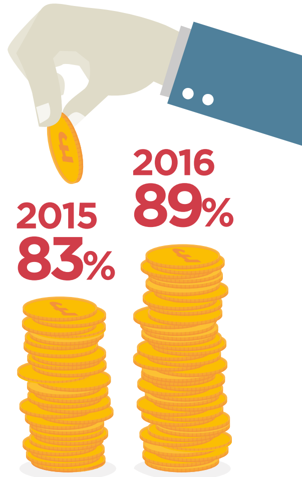


In 2016, the compliance burden is explicitly linked to the OECD's BEPS initiative in the eyes of global CFOs, with an overwhelming percentage believing it will increase compliance costs, and over a third linking it to a 10% or more increase, particularly as requirements such as country-by-country reporting take hold.

What's clear is that the dynamic between taxpayers and the authorities is shifting, as authorities push multinationals to disclose more and more information – essentially shifting the compliance burden from tax authorities to corporates themselves. This is compounded by the fact that this information is given by corporates with the sizeable risk it will be used against them in the future, as retrospective litigation becomes an increasingly popular option for the authorities.

The pressure from tax authorities and other bodies is most acutely affecting transfer pricing. So, it is unsurprising that this was viewed as the most challenging area of tax across the globe, for the fifth successive year. As companies are constantly morphing to adapt to changes and developments in their various markets, they are having to almost constantly update their transfer pricing documentation to ensure compliance.

89% OF RESPONDENTS BELIEVE THAT INCREASING GLOBAL TAX TRANSPARENCY WILL INCREASE THE COST OF COMPLIANCE



"As most Asian economies are capital importing nations, which provide tax incentives to foreign investors, they are not too concerned about the broader BEPS proposals. However, the main concern is the potential changes to transfer pricing provisions, and in particular country-by-country reporting and how each country will move forward. It will undoubtedly increase the cost of compliance and as there is no compulsion for all nations to adopt the same changes, therein lies the possibility of disruption in the international tax order."

Veerinderjeet Singh, Taxand Malaysia

4 REPUTATION, REPUTATION, REPUTATION

So what is the risk for multinationals as the rise of tax policy based upon unsound principles continues apace? For every large international business the risk is clearly its reputation in the eyes of politicians, consumers and even staff.

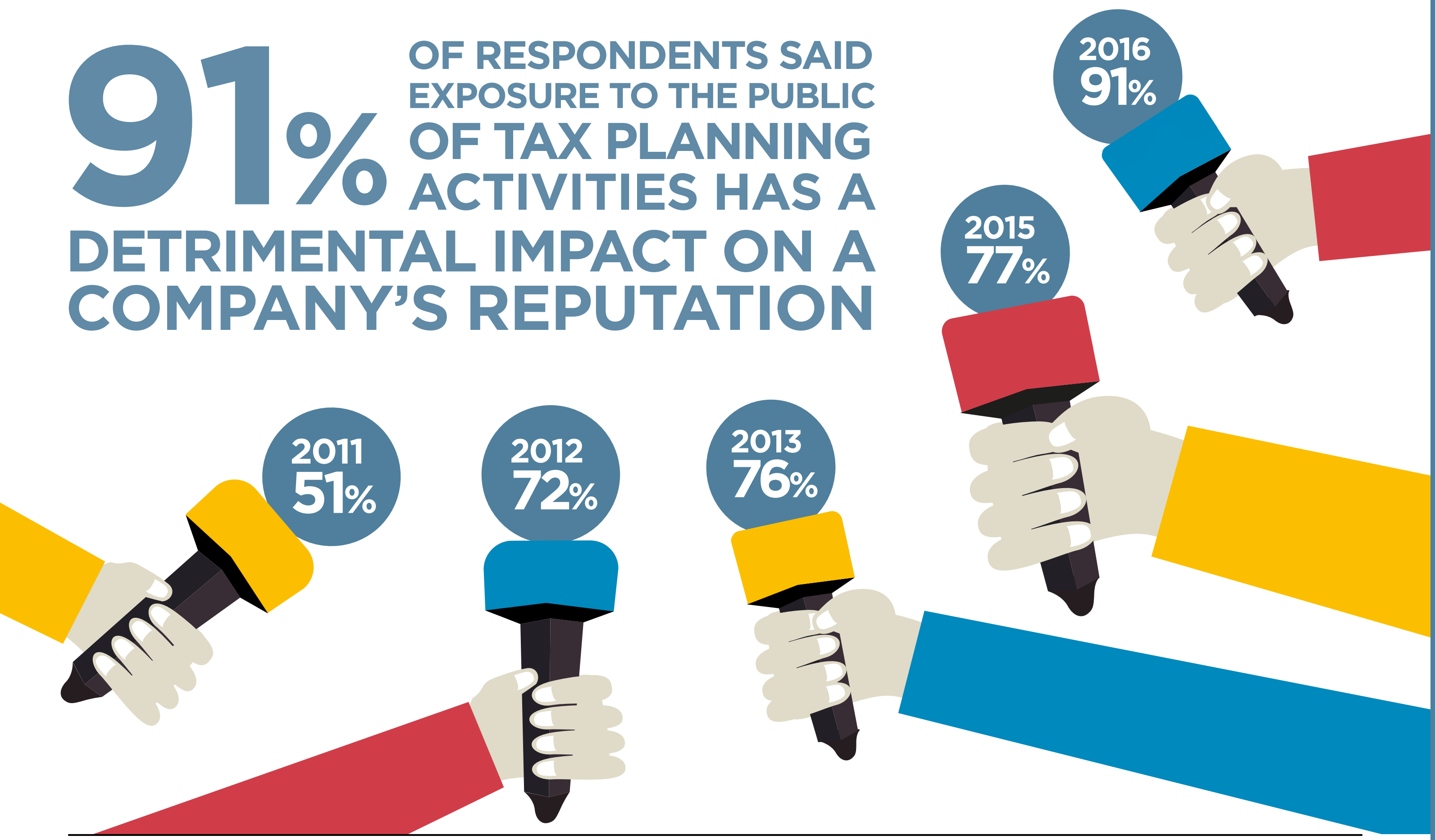
Despite corporate taxation dominating the news for a number of years, this year's survey saw the largest increase in respondents stating that exposure to the public of a corporation's tax planning activities has a detrimental impact on a company's reputation, with 91% agreeing with this statement.

This sizeable increase over the past year initially seemed surprising, considering that negative press coverage and sentiment towards multinationals has been growing for the last five years. However, the proposals earlier in 2016 for public disclosure of country-by-country reporting has no doubt stirred even greater concern amongst multinationals.

Three quarters of respondents said they are concerned about the potential exposure of information provided to meet the proposed country by country reporting standards.

This concern, no doubt, is related both to the potential for competitors to gain insights into one's corporate strategy through such information, but also to the potential for misunderstanding or misinterpretation of this information to confirm previously held erroneous beliefs – to confirm what people know for sure "that just ain't so". As Alexander Pope wrote, "a little learning is a dangerous thing; drink deep, or taste not the Pierian spring". There is a very real fear that if proposals for public release of this very little information go forward, it too will be a dangerous thing.

91% OF RESPONDENTS SAID EXPOSURE TO THE PUBLIC OF TAX PLANNING ACTIVITIES HAS A DETRIMENTAL IMPACT ON A COMPANY'S REPUTATION



The pressure on multinationals is growing in intensity and they need to ensure they have watertight policies and audit trails in place to quantify their actions. What would have previously been private collaboration with tax authorities is now being played out in a very public forum. Tax authorities are using the media to showcase their efforts to crackdown on multinationals, with dawn raids in France and public disclosure of tax audit details in Italy all being extensively covered in the media.

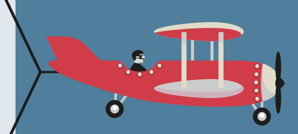
But this approach by governments and authorities will have a longer-term detrimental effect. Multinationals require and thrive off that idea of stability and clarity. They make five-year business plans incorporating what they believe to be their tax obligations, they tell their shareholders and staff and reward them accordingly, only for this all to be thrown into question through public scrutiny or retrospective investigation or application of laws.

An unpredictable environment does little to calm their fears and concerns and may mean they reassess their structures to avoid perceived problematic jurisdictions. The impact of this is already creeping into the corporate psyche, with 31% of respondents stating that increasing tax scrutiny had made them change their corporate growth strategy in specific countries.

In an era of scrutiny and a wide spread set of commonly held but ill-considered views, you need to consider the impact of public exposure of information. Assess the material that could become public, consider how it could be interpreted and prepare for how you would respond to minimise the impact. You should also be aware that because of these commonly held views, the nirvana of stability and clarity has never been quite so far away.

Lest there be any misunderstanding, we are not suggesting that the tax policy makers or tax authorities of the world are not well informed nor that they are motivated by anything other than good intentions. But like the media or the general public, they too can be guided by things that they know for sure that "just ain't so".

75% SAID THEY ARE CONCERNED ABOUT THE POTENTIAL EXPOSURE OF INFORMATION



"The consequences of public disclosure of country specific tax information could be insurmountable. Companies not bound by the rules themselves will have access to a wealth of sensitive information providing an unjustifiable advantage, gaining access to otherwise non-public information about their rivals. A company's tax position is also incredibly intricate and complex and therefore it's very easy to draw incorrect conclusions by looking at a section of a multinationals' tax position in isolation. It is the tax authorities' role to access the information, not the general public."

Xaver Ditz, Taxand Germany

SUMMARY

Perhaps the most interesting findings of our global survey are those relating to increased disclosure, increased scrutiny and reputation. The fear expressed by the participants over increased transparency is, in our view, legitimate and well-founded.

Although greater transparency is generally considered to be encouraged in modern liberal democratic societies, as Francis Fukuyama, the noted American political economist, has stated, “excessive transparency can undermine deliberation” and can have deleterious effects on the functioning of democratic institutions that require policy or administrative expertise. To Pope’s warning about a little knowledge, Fukuyama warns us that “the great mass of individuals living in a democracy are not able... to make complex public policy decisions”, which he attributes to background and temperament. We would suggest that it is also attributable to things that they know for sure that “just ain’t so”.

METHODOLOGY

Taxand has conducted its annual global survey with an exclusive selection of large multinational clients, operating across a variety of industry sectors. Survey responses comprise interviews with CFOs, tax and finance directors from across Asia, Europe and the Americas.

The survey provides a current picture of the global tax landscape and how multinational companies interact with the legislation and tax authorities that operate within it. Questions in the survey covered a range of topics, focussing on:

- **Harmonisation & transparency** – steps being taken worldwide to effect greater transparency and whether harmonisation is realistic across borders
- **Stress** – the impact of the latest tax issues on multinational tax departments
- **Scrutiny** – the impact of increasing scrutiny and cross-border cooperation on multinationals’ relationships with tax authorities
- **Reputation** – how the media and political focus on international tax issues is impacting multinationals’ market reputation and as a result, tax policies
- **Competitiveness & BEPS** – the impact of country competitiveness and OECD tax proposals on multinationals’ business activities globally.

ABOUT TAXAND

Taxand is the world's largest independent tax organisation with more than 400 tax partners and over 2,000 tax advisors in over 40 countries. Taxand focuses on delivering high quality, integrated tax advice, free from conflict creating audit work. Taxand advisors work together to deliver global tax services for clients.