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Special Report: Global Tax Audit and Controversy Risk Management

by Daniel N. Erasmus II
Adjunct Professor of Law, Thomas Jefferson School of Law,
Attorney at Law, Chairman & CEO of Tax Risk Management
(TRM®) Services (http://www.taxriskmanagement.com)

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Offices: **U.S.A** *New York, West Palm Beach*; **U.K.** *Gloucestershire*; **R.S.A.** *Johannesburg, Cape Town*; **Mauritius**

Administration office: *telephone* + 27 11 782 2751 *facsimile* + 27 11 782 3898 *e-mail* info@hgicfin.com
postal address PO Box 1650, Gallo Manor, 2052, South Africa

SPECIAL REPORT: Global Tax Audit & Controversy Risk Management

By Prof D N Erasmus
Thomas Jefferson School of Law
daniel@dnerasmus.com

Introduction

We have maintained in our publications and workshops over the years that managing tax risk is one of the greatest challenges for tax departments around the world (creating the opportunities to build lasting world class relationships with Revenue Services), starting with the verification audit through to the resolution of tax controversies. A recent big 4 survey supports this contention. 541 companies from 18 countries took part in a 2008 survey, aimed to identify global trends in tax function priorities, time allocation and success measures.

Key aspects that emerged can be summarized as follows (key points are **highlighted**):

Tax risk is everywhere

… companies continue to face increased pressure on the tax function. As a result, tax functions are focused on addressing risks in every major area of the tax lifecycle - planning, provision, compliance **and controversy**. Improving the tax function is clearly more important than ever, with **more than 90% of companies indicating this will be an important area for them over the next two years**.

People are a tax risk

87% of respondents identified people issue as an important challenge facing the tax department. Companies are **struggling to get enough people** to staff their tax department. They are also challenged to train the people they have, with **77%** of companies indicating that the **lack of skilled resources** is a contributing factor to tax risk.

The trend - proactive versus reactive

Today, companies report a significant **increase in the time they're**

MANAGING DIRECTOR: G. H. Ferreira
SENIOR CONSULTANT: *D.N Erasmus, *BA, P Proc, H Dip Tax*
CONSULTANTS: J Faber, *B Proc*; G. Goertz, *B Proc, LL M*; **G. Kaplan, *B Proc, MBA*; M. A. Korten, *B. Comm, LLB, H Dip Tax*; S. A. Krause, *H Dip Tax & Inter, Tax*; F. Louw, *CA (SA) H Dip Tax & Inter. Tax*; T. K. I. Scott, *BL, LLB H Dip Tax*; A. Ross, *BA, LLB*; A Simpson, *BA LLB, B Comm (Hons) Cert Int. Tax*; K.A. Watkin, *BA, LL B, H Dip Tax & Inter. Tax*

* Foreign Attorney & Legal Consultant in USA ** Admitted to USA Supreme Court

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spending identifying, managing, tracking and responding on tax risk. The number of companies who spend at least 20% of their time on tax risk increased over the last two years from 16% to 25%. Leading tax functions are responding by becoming more efficient and broadening their response to risk. **Building linkages to other parts of the organization is becoming increasingly important**.

Communication is key
According to our findings, companies that have regular communications with their board about tax risk are also more likely to report having specific measures in place to address those risks. The difference seems to be that they take a **broad approach to tax risk assessment and work to efficiently leverage their people, processes and technology**.

Pravin Gordhan now plays a world role, as will become evident from this report.
Any tax question or issue (before it becomes material) should be considered at a central division or consultation facility in order to determine what the approach should be to that question or issue – after being exposed to the proper factual analysis, and then to the applicable broad set of legal principles – tax and constitutional & administrative law. Without a central considering authority, one can never know in a large organization exactly where a tax review (potential or actual) may end up. Stated otherwise, many companies group tax will not know exactly what is going on if each and every tax review is not reported to a centralized office that will then in turn decide how the matter should be dealt with.

A global TRM project will ensure consistent:

§ up-to-date international best practice;

§ relationships with Revenue Services;

§ engagement with Revenue Services at various levels;

§ analysis and resolution of potential and actual tax reviews;

§ record keeping, filing and data securitization

The aim of this report

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The aim of this report and the supporting presentation is to convince the Head of group tax of multi-nationals that the appropriate emphasis should be placed on the tax audit process through a tried and tested methodology, where this area of tax risk management can be streamlined and improved.

The focus is a pro-active engagement with Revenue Services, supported by a process (from analyzing & strategizing the facts & law, through to a data securitization process) to deal with potential tax exposure issues **before** they become material risks. This precise methodology is currently not followed. It is a process that has significant merit in the correct circumstances.

These circumstances include a global environment where there is:

- ‘country collusion’ between Revenue Services;
- increased verification audits through Large Tax Units (LTU’s), and in the areas of indirect taxes, transfer pricing, and anti-avoidance;
- more litigious Revenue Services; and
- global tax administration being influenced by the head of the South African Revenue Service, Pravin Gordhan – the detailed experience on numerous tax issues for taxpayers’ with Pravin Gordhan and SARS stands on record as a resounding success.

The challenge in convincing the Head of group tax is that this area of tax risk should be a high priority, and should be implemented on a broad scale across the group, region by region, in a staged manner. The urgency with which this must be done will become apparent from the results of the survey, that will justify the additional time and expense. It is also noteworthy that the benchmark case study recognizes this as a high priority and has commenced an implementation process.

Analysis of various sources to compile this report

This report has been compiled after analyzing various information sources.

The OECD Centre for Tax Policy and Administration released a report dated 28 January 2009, prepared by the Forum on Tax Administration under the leadership of Pravin Gordhan. The report is headed Tax Administration in OECD and selected non-OECD countries: Comparative information series (2008).

In addition to this, and the analysis of various EU and Latin America Tax Reform and Development texts, numerous survey questions were prepared. Careful analysis was made of tax policies, processes and procedures to create a benchmark against which the reported information of a major LSE listed company can be compared, for illustrative purposes.

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The OECD report covers 43 countries.

The Financial Statements of the large listed LSE company makes the following disclosure, which comment occurs in many other Financial Statements of listed entities:

> Company law requires the directors to prepare consolidated financial statements for each financial year. Under that law the directors have prepared the consolidated financial statements in accordance with International Financial Reporting Standards (IFRSs) as adopted by the European Union. The consolidated financial statements are required by law to give a true and fair view of the state of affairs of the group and of the profit or loss of the group for that year.

This requires comment - During February 2006 the FASB and the IASB concluded a Memorandum of Understanding stating their intention to seek a convergence of their standards and interpretations by 2008. FIN 48 is the FASB standard, requiring a two-step evaluation:

- the business determines whether it is more likely than not (50% or greater likelihood) that a tax situation would be upheld in an examination, including resolution of any potential ensuing litigation process, based on the technical merits of the tax situation;
- the tax situation that meets the more likely than not recognition threshold is measured to determine the amount to recognize on financial statements.

As a result, the advent of FIN 48, like SOX 404, underpins the requirement for businesses to embark upon a systematic TRM process to limit and expose, with the view to efficiently minimizing the incumbent tax risks. IFRS looks to do exactly the same.

Most multi-nationals have extensive worldwide TRM process in place. The process works on a decentralized basis where each business unit reports to the taxpayer's group tax risks when they become material. The gap between the commencement of verification audits and the creation of a tax dispute (when it becomes material) is an area of TRM that we propose requires more careful attention, in each region, to ensure better risk management of any potential emerging tax risk exposure, before it becomes material.

Major observations from the survey on an LSE listed entity

The management style of group tax is run on a decentralized basis with a clear distinction between the roles of group tax and the individual business units.

The group tax compiles quarterly reviews of the ongoing open and closed audits, obtaining the information from each region. No specific information appears to be shared in the quarterly report about specific tax risks, areas of concern in respect of on the radar or off the radar tax issues, or what has or may become tax litigious.

Each business unit determines when tax issues become material enough to notify the group tax. Group tax will create the appropriate tax provision at group level, and will assist in any dispute process once it becomes material. The trigger to 'becoming material' appears to happen when the tax audit is completed and the Revenue Services decide to raise revised assessments.

Group tax is not involved in lobbying or creating relationships with LTU's.

There is no process in place addressing the gap between the commencement of a tax verification audit and the formation of a tax dispute. The reason appears to be driven by statistics in the group that less than 10 tax disputes exist worldwide, and that more that 85% of verification audits result in no tax dispute.

These statistics are divergent from the benchmark case, and from the statistics contained in the OECD report. It also does not appear to take into account the experiences in other countries where major tax risks were encountered. A total estimated exposure in the project, with the subsequent emerging tax issues, created tax risks with an estimated value of US$ 350m. That for a region with an annual tax bill of US$ 460m. This as a case study for the taxpayer shows on the radar and off the radar screen tax issues subject to verification audits of 76% of the total annual tax bill. That being the case, where the company's current verification audits are undetermined in any specific detail, the question arises whether or not the company's tax provision is sufficient?

Added to these facts, is the one resounding fact. The company predominantly operates in transitional tax jurisdictions – Latin America, Eastern European countries and Africa. These countries in their tax reform processes are where South Africa was 10 years ago. Pravin Gordhan, who led SARS to its current success levels, is now guiding and leading the combined Tax Administration at the OECD. The results of the LTU's in the Eastern European countries also show markedly lower values than more established OECD countries. This is simply because they are new to the game. South Africa is at 57%, whereas Hungary is at 9,8%. This will change in the immediate following years.

As to provisions, and extract from the company's Financial Statements, the following is stated:

Provisions

> Provisions are recognized when there is a present obligation, whether legal or constructive, as a result of a past event for which it is probable that a transfer of economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Such provisions are calculated on a discounted basis where the effect is material to the original undiscounted provision. The carrying amount of the provision increases in each period to reflect the passage of time and the unwinding of the discount and the movement is recognised in the income statement within interest costs. Restructuring provisions comprise lease termination penalties and employee termination payments. Provisions are not recognised for future operating losses however provisions are recognised for onerous contracts where the unavoidable cost exceeds the expected benefit.

'Provisions are recognized when there is a present obligation, whether legal or constructive…". Current trends worldwide are to narrow down tax provisions, so as to avoid the scrutiny of Revenue Services. In terms of IFRS and FIN 48, the 'present obligation, whether legal or constructive' tells the Revenue Service that the company has a more than 50% chance of losing a tax issue.

It is only through a centralized detailed analysis process and procedure that the tax provisions can be accurately aligned to that is reported by the company. If group tax is not made aware of the potential arising tax controversies, their estimates may be inaccurate, or overstated in that the quality of the tax dispute is questionable - due to one of the many mistakes made by Revenue Services in issuing revised assessments.

World stage and 15 OECD Report Countries in which the researched company operates

The anticipated total direct tax bill of all the company's subsidiaries is estimated at between US$ 976 million and US$1,085 billion. The indirect tax bill is approximately US$ 4 bn a year.

As already mentioned, the group carries a tax provision. Details of how the tax provision is made up are not made available.

The 15 countries that fall within the OECD report that have operating companies in the company researched in Europe, Asia, Africa and North America make up approximately 76% of the total direct tax exposure of the group.

If one combines the estimated total taxable bill of approximately US$1,085 bn with a tax provision, 77% of this figure amounts to between US $1,116 bn.
As will be seen later, the total value of verification audits conducted in the OECD report countries through Large Tax Units (LTU's) is in the region of US$45 billion.

In the OECD Report countries where the company conducts operations the LTU value of completed actions to the value of all completed actions in these 15 countries stated as a percentage ranges between 9.5% in Romania, 57.7% in South Africa and 46.7% in the UK.

The total number of tax dispute driven by the LTU in these 15 countries is in the region of 12,96 million tax disputes.

A significant amount of attention is given to, and additional tax revenue is generated by, the LTU's in these countries. The trend is likely to increase as the transitional tax jurisdictions follow the footsteps of South Africa, and become more successful in the concerted effort to verify and audit the tax disclosures made by corporate and large taxpayers.

Global trends
Factors that contribute to increased verification audits and tax disputes include: the lead global economic meltdown where the revenue services will be placed under increasing pressure to collect on deficit budgets, a general focus on indirect taxes, a continued focus on transfer pricing, the closer collusion between states (as is clear from the content of the OECD report) and more careful vigilance of anti-avoidance provisions.

With increased verification audits and the pressure on Revenue Services to collect more taxes, companies can expect that Revenue Services "will throw more mud than before to see what sticks". In order to ensure, as in the past, that most of "the mud does not stick", more resources and management of the verification audits, leading into tax disputes, should be undertaken globally.

Part of the management process should include a process of lobbying and engaging on a regular basis with LTU's. This is currently not taking place in many companies.

OECD influence: tax administration
Pravin Gordhan is chairman of the Centre for Tax Policy and Administration: Forum on Tax Administration. This is an example of a pivot point around which collusion between OECD report countries is taking place. There is no doubt that the management style of Gordhan will influence other participants. That management style is to create focused verification audit teams, with monetary incentives, to issue more revised assessments.

Most of the 15 countries have a unified semi-autonomous body governing the Revenue Service, so the stage is set. Some have a single directorate in the ministry of finance and others have a multiple directorate in the ministry of finance. China has a separate body with a minister.

Taxpayer rights and Constitutions

Many of the countries that are part of the OECD report have a Constitution.

The significance of a taxpayer Bill of Rights and Constitution comes in at the level where legal support is sought for engaging with the Revenue Services of the various countries to convince them softly that they are duty bound to make certain disclosures at the time of the commencement of a verification audit, or that they are duty bound to share a comprehensive set of facts, with supporting law, that results in a logical conclusion, setting out the results of any verification audit. These principles give the taxpayer the opportunity to be heard on each of the detailed tax issues raised by the Revenue Services. Revenue Services cannot merely ignore the representations made by the taxpayer to it, failing which it would be acting contrary to the taxpayer Bill of Rights and the Constitution.

Evidence of this process can be found in the methodology that was followed in South Africa. It is noteworthy that South Africa does not have a Taxpayer Bill of Rights. Reliance was simply placed on provisions in the broader Constitution.

Evidence again shows that the approach to Revenue Services in South Africa to engage with the taxpayer at the commencement of the verification audit, to supply the taxpayer with a detailed letter of findings, and then to give the taxpayer ample opportunity to respond in detail to the letter of findings, before any revised assessment was issued, gave rise in many instances to the conclusion of a matter that may otherwise have turned into a litigious tax dispute. In all cases, these matters, by virtue of this methodology, were settled favourably for the taxpayer.

Large Taxpayer Units (LTU's)

The focal point of tax collections in the OECD report countries revolves around LTU's. LTU's are responsible for a substantial value of the completed actions against taxpayers.

As already stated, many companies do not have any relationships with the LTU's. In order to manage and take control of increased verification audits that will take place worldwide, and in particular in the OECD report countries, companies will have to change its policy in this regard.

A recent big 4 survey on tax risk management mirrors the philosophy of our team, where this approach has been successfully with numerous multi-national corporations:

> Companies are looking to work more effectively with tax authorities, especially with increased global enforcement and information exchange across geographies. The OECD's proposals for enhanced relationships with large companies underscores the trend. Companies, boards of directors, independent auditors and other stakeholders are holding tax professionals accountable to identify and address risk issues in an effort to identify and address potential controversy.
>
> Another area where tax executives have noticed a change since 2006 is in the increased sophistication of many global tax authorities. In the UK, the UK tax authority is focusing much more resource on high-risk companies particularly those that have undertaken significant amount of tax planning combined with having processes and systems that are not robust. Companies will need to be prepared for undertaking ward at readiness and documentation reviews and more generally undertaking risk, process and control reviews to lower their risk rating to avoid being rated high risk by revenue authorities.

This more targeted approach of investigation is taking place in other jurisdictions around the world as well. A good starting point for companies is to focus their attention on building the interaction with Revenue Services LTU's.

Verification audits and tax disputes

In the survey conducted, the company states that it is impossible to quantify the values of any current Revenue Service verification audits. It relies on reports from each business unit when a tax dispute comes material. Currently there are material verification audits in USA, Hungary, Romania, Tanzanian, Botswana and Ecuador.

The benchmark case is able to quantify the value of verification audits in each of the regions where the business units are situated.

On a further analysis of the survey facts, the company has tax provisions. These provisions are against probable and possible risks. Group tax is not aware of any situations where a provision is held against a verification audit. If a matter is determined to fall into the 'right risk category', then a provision may be raised. The group tax policy is: because Revenue Service raises questions on the matter, does not necessarily mean it will be provisioned against. However, a gap exists between a question being raised by the Revenue Services, and a tax issue becoming material (as defined by each business unit).

The verification audit policy of group tax may result in unnecessary exposure if the tax audit process is not streamlined and improved: this requires a proactive engagement with the LTU's of the various Revenue Services in a proactive manner, before the tax risks become a material.

In the OECD report, the 15 OECD report countries generated approximately US$ 45bn value of tax issues in the various verification audits.

In addition to this approximately 12,96 million tax dispute cases were reported in the OECD report. The benchmark case also has 4 times more tax disputes (more than 40) against the company's (less than 10). The company studied operates in more than 50 countries. The benchmark case only operates in some these countries. The value of tax disputes is estimated at between US$ 10m and US$ 20m. The benchmark case estimates in excess of US$ 40m tax disputes. This may be an indication that all potential tax disputes are not being brought to the attention of group tax in time.

US$30 bn value of verification audits took place in Europe. 12, 6 million tax dispute cases were reported in Europe. This is followed by US$13bn value of verification audits in North America, and 343,000 tax dispute cases. Asia delivered US$1bn in verification audits and 19,000 tax dispute cases. Taking a look at the European statistics, it is clear that this may very well become a high tax risk area in relation to verification audits and tax dispute cases. Hungary is a more recent example.

The necessary pro-active measures should be put into place, together with the streamlined, improved, tried and tested methodology of managing and controlling tax audits from the point when any tax audit commences.

OECD information and access powers

In all 15 OECD report countries taxpayers are obliged to produce all records requested by a Revenue Services. The Revenue Services have the powers to obtain any relevant information to the tax returns submitted by the taxpayers.

Because all these countries have Constitutions, it is highly probable that the distinction drawn between civil investigations and criminal investigations will exist in all of these countries. This becomes a significant distinction in the approach to the Revenue Services in the manner in which they conduct audits, and the value of any evidence that is made available to them to create a letter of findings. Their demands are simply not met at face value, but are met in the context of what the rule of law requires and entitles them to act upon.

In addition all, but three, of the 15 OECD report countries require the Revenue Services to either obtain the consent of the taxpayer, or produce a valid search warrant, in order to gain access to any premises of the taxpayer. The three exclusions are the Czech Republic, Hungary and Poland.

Usually the powers of the Revenue Services to obtain any required information do not go unchecked. Based on this principle of law, namely, that the Revenue Services can only request that information which is specifically relevant to the verification audit which it is conducting, gives the taxpayer the opportunity to engage with the Revenue Services at the commencement of the audit, in order to determine for what specific purpose the audit is being conducted. In this regard the taxpayer has the right to know whether it is a routine audit, a random audit or a risk-based audit. All three have their own issues.

If it is a routine audit, the taxpayer is entitled to know what criteria have been taken into account by the Revenue Services in order to bring it within the scope of a particular type of routine audit.

In the case of a random audit, the taxpayer is entitled to know the basis on which the random selection has taken place, and in respect of which areas of its tax return the verification audit will take place.

If it is a risk-based audit, the Revenue Service must share the criteria used in order to determine the potential risk, with the taxpayer.

In all these instances, the taxpayer has the opportunity to pose questions, and gain access to the information in the hands of the Revenue Services, so that the taxpayers know exactly what they are answering to. This prevents open-ended protracted audits that turn into fishing expeditions.

This streamlined, improved, tried and tested pro active tax audit methodology will ensure that a unified process is followed by the various business units in the company from the point of the engagement of a verification audit by Revenue Services, worldwide.

Revenue service interaction

Currently, within the group with the LTU's of the various countries are not targeted. This policy should change. Pro-active approaches must be made in those countries where there are LTU's.

On approaching each LTU, a relationship should be created between the taxpayer and a relationship manager. It is at this level where the taxpayer is given the opportunity to

forewarn the relationship manager what the taxpayer's expectations will be in respect of future verification audits, and the manner in which the parties will conduct themselves with each other, the issue of the letter of findings, the opportunity for the taxpayer to respond to the letter findings and the final response that is expected from Revenue Services.

At the initial meetings with the relationship manager, it would be appropriate for the taxpayer to share with the relationship manager the brought parameters of the taxpayer's tax risk management plan. This usually entails obtaining a list of outstanding tax issues from the LTU. These outstanding tax issues can then be compared to the outstanding tax issues as listed by the taxpayer. Any discrepancies can be resolved. This immediately shows good will to the LTU.

The next item on the agenda is to discuss the precise manner in which a future verification audit will take place. This will eliminate any antagonistic correspondence between the parties, where the taxpayer seeks to understand the nature and scope of the LTU. The LTU will expect in advance that this is one of the steps that must take place in any future verification audit.

The precise terms of engagement should be reduced to writing and exchanged between the parties. The pro-active tax audit methodology envisaged for the group will take care of us.
Should a verification audit take place, the taxpayer can expect a detailed letter of findings setting out the premise upon which the applied legal principles are based, to arrive at a logical conclusion. Revenue Service often errs in issuing a complete letter of findings, giving the taxpayer an opportunity to point out the flaws in their facts, legal interpretation and their conclusion. It is incumbent for the Revenue Service to respond properly, otherwise any revised assessment will be fatally flawed.

This engagement will simplify the interaction between the parties, and prevent protracted audits where the Revenue Service expects to walk away with large revised assessments ripe for settlement negotiations. The results on slide 16 demonstrate the effectiveness of the approach in a cross-section of work undertaken in the recent past by TRM Services.

Analysis of the revised assessment

Once the tax issue becomes a tax dispute on the issuing of the revised assessment, a careful legal analysis is required. This is an appropriate opportunity to revisit the facts and the law set out in the letter of findings, as compared against the taxpayer's response. The differences on the factual findings, and the application of the legal principles should be set out in tabular form, to highlight the discrepancies.

The next step is to request the Revenue Service to give their detailed reasons for the revised assessment. The reasons are then compared to the tabulated comparison drawn between the letter of findings, and the response given by the taxpayer.

This information and analysis forms the basis for the letter of objection.

Pre-objection & objection

The analysis of the revised assessment with the letter of findings process is required pre-assessment.

The appropriate objection submissions must be prepared to:

§ object to the incorrect factual account and supporting law;
§ postpone the payment of tax till completion of the dispute;
§ remit penalties and interest charges imposed.

Both the latter two points above require advance planning, in an orchestrated manner. The various country tax and constitutional provisions must be researched, and exploited to convince the Revenue Services not to enforce payment. The remittance of penalties and interest requires a careful early approach to obtaining positive (non contentious) opinions (which in itself is a careful process), to support the conduct of the taxpayer when the transactions were entered into.

If the discrepancy between the letter of findings and the reasons fro the revised assessment are significant, the taxpayer can consider launching a petition to the courts to have the revised assessment set aside as invalid.

Similarity research & analysis

A concern in the group is the lack of information at group tax in respect of current verification audits. The approach appears to be a decentralized one, where the business units are expected to bring any tax risks that they consider to become material, to the attention of group tax, so that the appropriate provision can be raised. Group tax does not bring tax risks to the attention of the business units – per the survey result. Formal quarterly reports are compiled based on the tax risks identified by the business units. Regional tax managers compile the information for the quarterly tax report created by group tax. There is a possibility for a lack of communication to group tax of current key emerging tax risk areas.

Group tax do not attend to post mortem analyses on completed verification audits or completed tax disputes. They also do not issue written opinions or advice, but participate in outside advice sought.

Emerging tax risks are not necessarily identified so that similar tax problems in other jurisdictions can be managed pro-actively.

Patterns internationally on verification audits and tax disputes should be determined. Many tax issues are similar in most tax jurisdictions. For instance:

- VAT;
- Customs & excise;
- Transfer pricing;
- Fishing expeditions;
- Prolonged audits without specific direction;
- Others.

Once the similarities analysis is done, the best outcome can be determined, and planned for. For instance, the benchmark MNC engage internal audit to check VAT and Customs & Excise tax return information. The group has a hand's off approach – internal audit have a global work framework. This is assumed cascades into the various regions. To the extent that tax is on their agendas in their 3 year cycles – they will do an appropriate audit. They do not do work specifically for the tax teams in checking compliance. It's seen as part of the overall review and governance process in the group.

The group communicates monthly with the various business units to assess the high level tax risk indicators. This is done through personal meetings, telephone calls, and the group intranet.

Results

Public Figure	R 65m	5%	✔	✔
Prof Firm	R 150m	0	✔	
Manufacturer	R 3,5bn	10%	✔	✔
Int Exporter	R 1bn	0	✔	
Bank	R 1,5bn	0	✔	✔
Manufacturer	R 350m	0	✔	
Int Manufacturer	R 2,5bn	10%	✔	✔
Hospitality	R 500m	5%	✔	✔
Hospitality	R 200m	0	✔	
US Investor	R 30m	0		✖

Column 1 – concluded pre-assessment using streamlined process in this report;
Column 2 – concluded on pre-arranged basis after revised assessment;
Column 3 – court.

Our team's expertise is diverse enough to participate as objective outside consultants, to guide your tax personnel, in their respective countries, with their tax advisors, to execute

the global streamlining and unifying process. The results in the table above are self explanatory. We have wide ranging international experience in tax and similar controversies. Trying to do this with each external advisor in each country, without a single overseeing consulting firm such as ours, will result in a disjointed process, that we believe will ultimately take too long to implement, without the same results. A centralized strong and direct objective leadership is required to build the model, under your direction. Our team can provide the support globally.

Each region (North America, Latin America, Europe, Africa, South Africa and Asia, under the direction of your UK office (with our outside assistance to you) will:

- have a tax risk committee (chaired by the country FD, in-house tax compliance officer;
- engage with Revenue Service in each country and agree processes as discussed above;
- establish off-the-radar screen tax issues and manage these;
- establish on-the-radar screen tax issues and manage these;
- quantify tax risk especially those issues that are or may be subject to verification audit;
- analyze facts and appropriate legal principles;
- participate in global tax planning processes after analyzing and reviewing current risks.

We are proprietors of an intranet web-based system that will collate this information in a central location as part of a data securitization process for easy access, analysis and reporting.

Proposal

An outside specialist team skilled in TRM should supplement the existing TRM strategy, in rolling out the following streamlined and uniform processes throughout the various regions. This will give rise to a uniform process that will assist you in controlling tax issue outcomes worldwide, in line with the expectations created by the OECD, in tax surveys and by the developing IFRS standards:

- § streamline and unify the process of engagement with the various Revenue Service offices ("RS") at the time of commencement of an audit, the questions to ask as to their authority, scope of audit, focal point of the audit, compulsory nature of the information provided, establish if the audit is routine, random or tax risk process driven. In this way, in a uniform manner and on a universal basis, your country tax teams will be able to tackle any tax audit in a controlled and uniform manner, familiar to you centrally, so as to take charge of the process. This helps to avoid the age-old technique of simply falling over to the simplistic demands of RS officials, and allows the taxpayer to softly challenge the very methodology being imposed by RS in a constructive manner. This pro-active approach always affects the outcome of an audit positively for the taxpayer.

- § streamline and unify the audit engagement letter that will be sent out containing the parameters of the audit, leading to the point where the audit is completed, the RS will issue the important letter of findings. Here it is important to ensure that the RS understands what is expected of them, namely: a full disclosure of the facts and law upon which their conclusions are based. They must also understand that the taxpayer must be given the opportunity to respond, before the RS reach a final conclusion and issue revised assessments. The undertaking by the RS is key. A line of communication to the Revenue Services, negotiating the audit engagement process in advance with the Revenue Services, and then the systematic communication processes as set out above and below, so they, the Revenue Services, are not surprised by anything, but are softly led into the process that will tie down their vast powers.

- § streamline and unify the 'request for reasons' when the Revenue Services finally issue revised assessments after the letter of findings process. This is another key step, in that discrepancies often exist between the final letter of findings conclusions, and the reasons for the assessment. From an administrative law perspective, this gives rise to opportunities to show arbitrary and capricious conduct by

Revenue Services, resulting in:

- an opportunity to negotiate to suspend the assessment pending resolution of the discrepancy, suspending payment, penalties and interest;
- an opportunity to apply to have the assessment set aside by a court, pending resolution of the discrepancy on administrative law grounds.

§ streamline and unify the 'objection' process, again revisiting the process described above, including submissions to suspend payment, and remit penalties and interest, which effectively eliminates negative cash flow consequences for the taxpayer in question, with an opportunity to negotiate a settlement.

§ from a more practical perspective, country and regional lists of outstanding tax audits, and collating similar tax issues that arise, eg. free beer throughout Europe, should be done. This requires an analysis of the similarities of the facts and law, and then finding the softest jurisdiction to introduce a settlement process, as a precursor to tackling the problem in other countries in a similar fashion. This will allow our team to participate as 'trouble shooters' in those jurisdictions where immediate attention is required.

In essence, if becomes a global TRM project:

- identifying the on-the-radar screen issues, and the off-the-radar screen issues;
- collectively looking for opportunities to minimize any tax exposure pre and at audit commencement;
- using some of the unconventional methods we have successfully applied over the past 8 years;
- together with streamlining and unifying the process and procedures in all operating countries, as described above.

Interactive Intra-net communication process

The purpose of this section is to set out the IT specification of a Tax Risk Management Web Interface System ("{TRM} Web Interface") and the functionality required for its operation. The {TRM} Web Interface is a multi-level system "installed" in businesses to determine that organization's tax risk, and from that point forward to help manage that tax risk. The {TRM} Web Interface is one of the Tax Risk Management tools used.

The following aspects are important in the execution of a {TRM} Web Interface:

- **Security -** {TRM} Web Interface security is key. The information housed in the system is very sensitive and can only be viewed by pre-selected persons.

  For this reason the following security measures are vital:

  - Secure login system;
  - SSL encryption from point of login;
  - Secure database environment;
  - Secure *remote* hosting facility;
  - File locking facility.

- **Intended audience** - {TRM} Web Interface will be made available to the tax team (including the tax manager), the CEO and CFO, and any other consultants authorized by the tax team;

- **Hosting** – so as to ensure legal privilege, the {TRM} Web Interface should be hosted in a *secure remote* facility controlled and under the supervision of *the legal team*, with access via the internet using SSL encryption.

- **Database** – the database needs to be scalable and secure.

- **Interface** – this is web based. Easy navigation is important so that most people using the facility can identify with and are used to operating on.

- **Third Party media** – the standard word processing and spreadsheet documents are required to be viewed through the system, with rights only given to defined people within the team to edit such documents. The uploading of these files need to be secure to avoid any tampering of the documents.

- Tax Returns details are to be published.

The {TRM} Web Interface design should entail some of the following features:

- ☐ Interface customization according to each division in the business to be separately identifiable, with a consolidation option.

- ☐ Logon through a three level logon secure method:

    - Username
    - PIN code with five digits
    - Individually selected password;

- ☐ Dashboard, being the landing page, where once an authorized user has logged onto the system, it will display all the critical information that is important to view at a glance, with the following sections:

    - A **Notice Board** that can be changed by select users to make announcements to the team;
    - **Work in Progress** showing any tax compliance issues that must be attended to in the next 30 days;
    - **Work Completed** in the last 30 days;
    - The **Tax Team Diary** and agenda for each forthcoming meeting;
    - **On-the-radar screen** issues, with each one quantified with a risk weighting attached to the estimate;
    - **Off-the-radar screen** issues, with each one quantified with a risk weighting attached to the estimate;
    - **Tax planning issues** identified, with each one quantified with a risk weighting attached to the estimate.

Notice Board

This is a simple notice area, displaying relevant information to those who are using the system. It requires the following fields;

- Date posted;
- Person who posted notice;
- Detail of notice.

Work in Progress (WIP)

Work in progress defines the work currently being done on any tax return within the organisation. This is put in place in order to ensure that every single tax return is completed on time and as accurately as possible, using the defined guidelines proposed by the Tax Risk Committee. A return will appear in the work in progress as soon as it is received from The Revenue Service and added to the system.

The data required for the Work in Progress section is:

- Date Received;
- Due Date;
- Project Manager (linking to Users, with all contact Information);
- Operator (person who task has been assigned to - linking to Users, with all contact Information);
- Project status (percentage complete);
- Preparation Schedule (PDF) - this is the supporting document, explaining what is to be submitted in the tax return;
- Tax Return (PDF) - this is to be updated as the return is completed;
- Revenue Service Guideline (PDF) - this is the Revenue Service guideline for the completion of the tax return;
- Preparation guideline (PDF) - this will be a general document defined by the Tax Risk Committee for the processing of such tax returns. Each different tax return will have its own guideline.

Work in Progress Comments

The project manager and operator is required to enter comments throughout the process.

These comments include:

- Date submitted;
- Comment body;
- Person who posted comment;
- Date tax return was submitted to The Revenue Service;
- Other key dates that may be required in the management process are:
  - Date of prescription;
  - Date of query letter from The Revenue Service;
  - Date query response due to The Revenue Service;
  - Date reply to response due from The Revenue Service.

Work In Progress Work Flow Process

The WIP workflow process is important as this defines how and what is done in order to ensure that the returns are submitted in time.

- Receive TAX return;
- Return added to {TRM} Web Interface in PDF format;
- Entry created in Work In Progress (WIP);
- Project Manager assigns operator;
- E-mail sent to all members of Tax Committee notifying them of the receipt of tax return, due date and people responsible for completing tax return;
- 30 days prior to the return due date entry is added to the WIP area on the "Switchboard";
- 30 days prior to return due date the system sends an e-mail to all members of Tax Committee notifying them of status (the e-mail displays return receipt date, due date & people responsible within the organisation);
- 1 week prior to return due date entry is marked RED (CRITICAL) on the WIP area on the "Switchboard";
- 1 week prior to return due date a CRITICAL e-mail sent to all members of Tax Committee notifying them of status (the e-mail displays return receipt date, due date & people responsible within the organisation);
- From this point an e-mail Is sent daily to each member of the committee until the due date;
- If the return is not submitted marked for send-off on the due date the return is automatically added to the "Radar Screen";
- An e-mail is sent to each member of the Tax committee notifying them that the due date has not been met. An e-mail is sent daily informing each member of the status;
- When the return is submitted it is automatically removed from WIP and placed **Work Completed**.

Work Completed

Work completed shows all returns that have been successfully submitted.

Important information required:

- Date Received;
- Due Date;
- Project Manager (linking to Users, with all contact information);
- Operator (person who task has been assigned to - linking to Users, with all contact information);

- Preparation Schedule (PDF) - this is the supporting document, explaining what is to be submitted in the tax return;
- Tax Return (PDF) - this is to be updated as the return is completed;
- The Revenue Service Guideline (PDF) - this is the The Revenue Service guideline for the completion of the return;
- Preparation guideline (PDF) - this will be a general document defined by the Tax Risk Committee for the processing of such tax returns. Each different tax will have its own guideline;
- WIP Comments - The project manager and operator is required to enter comments through out the process. These comments include:
    - Date submitted;
    - Comment body;
    - Person who posted comment;
    - Date tax return was submitted to The Revenue Service;
    - Other key dates that may be required in the management process are:
        - Date of prescription
        - Date of query letter from The Revenue Service
        - Date query response due to The Revenue Service
        - Date reply to response due from The Revenue Service

Work Completed Work Flow Process

- On submission of return the WIP item is automatically added to the "Work Completed" Section;
- An e-mail is sent notifying each member of the Tax Risk Committee of the submission of the return;
- For 30 days after the submission the entry is displayed in "Work Completed" area on the "Switchboard";
- 30 days after the submission the entry is removed from the "Switchboard" but is still available to view in the Work Completed section.

Tax Risk Committee Diary

The Diary acts as a notice board, notifying the members of the Committee of the next meeting. The secretary of the committee is responsible for the submission of information.

The data displayed is as follows:

- Meeting Date;
- Meeting Time;
- Meeting Venue;

- People to attend;
- Discussion points;
- Facility to upload complete agenda;
- Facility to add to agenda (by each member of the committee).

Tax Committee diary Work Flow

- On submission of diary event an e-mail is sent to each member of the committee notifying them of such an event;
- The "Switchboard" displays the NEXT committee meeting;
- A notification e-mail is sent to each member 1 month prior to meeting;
- A notification e-mail is sent to each member 1 week prior to meeting;
- A notification e-mail is sent to each member 2 days prior to meeting;
- A notification e-mail is sent to each member 1 day prior to meeting;
- Diary entry is automatically removed from "Switchboard" at time of meeting, and if the next date is already added this will be displayed.

On Radar Screen Issues

This is one of the key areas on the {TRM} Web Interface System. This displays all tasks that have been identified by the Tax Risk Committee as risk areas within the organisation. These risks have been quantified, and a total Tax Risk is displayed in order to show the overall tax risk exposure of the organisation.

Tax Planning

Once a RISK has moved off the Radar screen it becomes an opportunity for Tax planning. This section quantifies each Tax Planning project, showing an overall Tax Planning value as well as the completion status.

Education

Education of the Tax Team plays a very important role in the process of implementing a successful Tax Risk Management process in the organisation. Through the {TRM} Web Interface, web seminars (webinars) and visual presentations will be utilised to keep the team completely up to speed at all times. Instead of having to arrange physical training sessions or “meetings” the {TRM} Interface plays an important role of providing the platform for the Educational material to be delivered.

It thus becomes the holistic interface for managing the risk as well as keeping up to date with latest developments.

Implementing a {TRM} Web Interface System

It is important to understand that your organization will more than likely have different requirements from the next, and it is, therefore, critical that the following people in your organisation are involved in the specification and development of the system:

- CFO – Chief Financial Officer;
- Tax Manager;
- Tax Team;
- External Tax Consulting Team;
- Legal Team;
- CTO – Chief Technology Officer;
- IT Team.