Age of Fairness? Tax and Social Responsibility Dimensions

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Corporate Social Responsibility ("*CSR*") has become one of the top priorities on the Agenda of almost all supranational bodies (OECD, EU, UN) and many jurisdictions. Due to the overall lack of revenues by Countries and the innumerable tax-related leaks (Luxleaks, Panama papers, etc.) along with the recent and ongoing changes within the worldwide international tax framework, CSR has gained greater visibility and raised interest and discussions.

Civil society, NGOs and the public in general are pushing for a further commitment by multinationals and companies – as well as the latter's engagement on the payment of the so-called "*fair share*" of tax.

Tax has entered into a new, more responsible – and evidently – more "*ethical*" dimension.

The underlying problem is where to set the boundaries of "*fairness*" in taxation, where to set the limits on the extent of the demands of civil society, and whether the blurred areas of tax planning/tax mitigation are clashing with the CSR levels actually desired.

CSR is described as an area that compels companies to take into consideration the interests of the stakeholders' community, on a voluntary basis, beyond the minimum legal requirements that might have been set forth, or as the responsibility of enterprises for their impact on society.

Furthermore, a key issue for the debate is the need to acknowledge that companies are free to decide whether to take responsible tax decisions within the purview of the Law (which ought to be clear and predictable). It is left to the companies' total discretion whether to interpret the law in a less formal approach (letter of the law *versus* spirit of the law).

As such, and notwithstanding the international efforts to counteract aggressive tax planning and tax avoidance and increase companies' social responsibility, companies have the right to make whatever attempts might be necessary to minimize their tax liability within generally acknowledged legal boundaries. In addition, and as provided under the OECD Guidelines for multinationals, complying with the spirit of the law does not necessarily mean that a company is required to make payments in excess of the amounts legally due, pursuant to such interpretation.

Due to Base Erosion and Profit Shifting (BEPS), tax is in the Boardroom at the highest strategic level. The Board of Directors' traditional approach, once focused on minimizing the tax burden and on maximizing corporate profits, was complemented with a greater awareness as to the importance of CSR responsibility performance, as well as to the significant increase of tax risks that may impact companies' overall results, reputation and/or brand value.

In general, every Board strategy passes through managing tax risks and has its own risk propensity, including reputational risk. The same applies for the company's approach to CSR that might include: the amount of companies' tax contributions, the decision to increase transparency towards the public and stakeholders (i.e., which might be based on the decision to disclose country-by-country information to the public), as well as their relationship and approach to tax authorities (i.e., participation in cooperative tax compliance programs).

Countries worldwide are promoting and raising corporate consciousness as to the importance of companies' engagement in CSR, by ensuring a more responsible approach to tax-related matters by the Board, further transparency, strength of company's good governance, and an appropriate management of tax-related risks.

CSR does not strictly imply responsible Enterprises, but also responsible Countries, with the right approach to taxation, under the supervision of responsible, cooperative and transparent tax administrations.

Tax is in the law, CSR is in the Board, Tax Good Governance is in the Tax Authorities.

Is the perfect tax world in this "magical" triangle? In theory, yes. Hopefully, practice will follow.