**INDEPTH** FEATURE

# GLOBAL TAX

2024

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First Floor, Building 3
Wall Island, Birmingham Road
Lichfield WS14 0QP
United Kingdom

Telephone: +44 (0)121 600 5910
Email: info@financierworldwide.com

www.financierworldwide.com

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INDEPTHFEATURE

# GLOBAL TAX

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# Introduction

Global tax and transfer pricing issues remain hot button topics. They are driving decisions on policy, trade, strategy and business transformation.

2024 is a major year for elections, with at least 64 countries, plus the European Union, going to the polls, representing a combined 49 percent of the global population. A key political issue will be tax and its treatment around the world.

For companies, tax is a key area of focus and debate. Technological innovation, globalisation, new business and consumer demands, and new ways of living and working are all having an impact on the tax function. Tax leaders across the globe will need innovative strategies to address the challenges they face.

Companies need to enhance their internal tax functions and elevate their tax professionals, placing them at the heart of strategic operations. By doing so, they can ensure that the tax function can add value to the organisation going forward.

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Financier Worldwide canvasses the opinions of leading professionals on current trends in global tax.

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# UNITED STATES

## *Caplin & Drysdale*

### *Respondent*

**J. CLARK ARMITAGE**
**Member**
**Caplin & Drysdale**
**+1 (202) 862 5078**
**carmitage@capdale.com**

J. Clark Armitage is a member of Caplin & Drysdale. He served for eight years with the IRS APA Program and uses that experience to advise multinational corporations on transfer pricing matters. He also advises on other US international tax issues, including sourcing of income and expense, US trade or business issues, the US federal income tax implications of bona fide Puerto Rican residency and status under Puerto Rico Act 20, Act 22, Act 60 and Act 73, and issues arising under the Tax Cuts and Jobs Act of 2017, such as GILTI, FDII, BEAT and foreign tax credit basketing.

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**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in the US over the last 12-18 months?**

**A.** In December 2023, the Internal Revenue Service (IRS) published a general legal advice memorandum (GLAM), which took the position that the interest rate on related-party borrowings must be adjusted to account for implicit support. The GLAM provides an example: if a group member would pay 10 percent interest based on its standalone credit rating, but a third party would lend to the subsidiary at 8 percent based on an expectation that the group parent would not allow the subsidiary to default, the arm's-length rate on related-party borrowings is then 8 percent. In practice, IRS audit teams have recently been using the parent or group's credit rating to determine the interest rate on subsidiary debt. The GLAM makes clear that this is not the appropriate analytical approach. Instead, an implicit support adjustment should consider the borrower's role, level of integration within the group and implicit support from affiliates. According to the GLAM, the parent could have borrowed at 7 percent rather than 8 percent. As with all things transfer pricing (TP)-related, the facts matter. Defending an audit of the issue requires drawing out those facts.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** The 2021 Inflation Reduction Act awarded the IRS additional funding of $80bn over 10 years. The IRS published a strategic operating plan indicating that it would dedicate $46bn of that to increase and improve enforcement. The IRS identified key areas of focus, including increased numbers of audits of large corporations, large partnerships and high net worth individuals, better use of data to risk-assess and select returns for audit, and identifying high-risk issues, such as complex and emerging issues and issues likely to involve low rates of voluntary compliance. An overall goal of these enforcement initiatives is to increase fairness through a balanced approach. In reality, much of the expanded budget has not become available to the IRS due to later legislative developments, and it is

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not clear that there have been substantial increases in audit rates.

**Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** TP has long been a key area of focus for the IRS. Many of the large dollar tax cases in litigation involve TP adjustments, including multibillion adjustment cases involving Coca-Cola, Microsoft, 3M, Eaton, Medtronic, Facebook and others. The IRS recently signalled a reduced interest in TP. It will no longer always request TP documentation at the start of an audit. We have seen this occur in practice, but only for companies that seem to have addressed their material TP situations, such as through advance pricing agreements (APAs). Tax directors should thus continue to focus attention on TP and consider use of APAs to mitigate audit risk.

**Q. How would you describe the tax laws in the US as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** US adoption of the global intangible low taxed income regime (GILTI) in 2017 led to the Organisation for Economic Co-operation and Development's adoption of Pillar Two. For US multinationals, a US-to-foreign rate differential of up to 35 percent in 2017 – the difference between the US top marginal rate of 35 percent and the potential applicable foreign rate of 0 percent – has dropped to a potential average rate differential of only about 10.5 percent, which is the 21 percent corporate rate less the 10.5 percent effective GILTI rate, subject to some exceptions. That rate differential is scheduled under current law to shrink further in 2026: 21 percent less 13.125 percent. The stick of GILTI, combined with the carrot of the foreign derived intangible income incentive regime, which taxes US profits from some offshore sales at a lower effective rate, have combined to reduce rate differentials materially. The incentives have thus changed. Taxpayers no longer are as incentivised to push income to low-tax jurisdictions. The IRS of course continues to focus on areas of perceived abuse that

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result from rate differentials, including those resulting from TP to low-rate foreign jurisdictions.

**Q. Have you seen an increase in tax disputes in the US? What lessons can companies learn from their outcome?**

**A.** The IRS continues to litigate cases involving cross-border issues. The target situations are wide-ranging and include TP, cross-border restructurings and acquisitions, such as Timberland and Liberty Global, technical issues like the one-time mandatory repatriation of historical earnings passed as part of the 2017 Tax Cuts and Jobs Act, with the Moore case now before the US Supreme Court, and issues involving foreign tax credits and treaty interpretation, such as FedEx and Christensen. The IRS is thus active and ready to go to litigation on any cross-border issue that it perceives to be material.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

*What is most important to audit defence is to engage directly and thoughtfully with the IRS. Full refusal to cooperate leads to a loss of credibility and can lead to large adjustments.*

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**A.** What is most important to audit defence is to engage directly and thoughtfully with the IRS. Full refusal to cooperate leads to a loss of credibility and can lead to large adjustments. Most IRS auditors respond well when taxpayer representatives understand the agent's role and engage civilly. But taxpayers must defend their rights as well. Where audits are unduly prolonged, lack defined areas of focus, or are unnecessarily factious, the adviser has a duty to address these shortcomings to protect the client's interests. The response can include engaging directly with the audit team on the area of concern, proposing specific rules of engagement to address scope and timing, and elevating issues to IRS management. Every situation is different and must be handled appropriately and thoughtfully.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** Tax authorities, including the IRS, are increasingly focused on taxpayers' internal controls and governance. This is particularly true when a taxpayer has data deficiencies that make it difficult for the IRS to evaluate the arm's length nature of transfer prices. While the IRS generally cannot require taxpayers to create information that does not exist, as IT systems become more sophisticated, and with the advent of artificial intelligence, the defence of not being able to sort information in a manner requested by an auditor is likely to be subject to more scrutiny. Taxpayers should recognise this reality and continue to improve their information-gathering abilities. ❑

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**J. CLARK ARMITAGE** Member
+1 (202) 862 5078
carmitage@capdale.com

CAPLIN & DRYSDALE

# UNITED KINGDOM

## *Slaughter & May*

### *Respondent*

**DEEKSHA RATHI**
**Senior Associate**
**Slaughter & May**
**+44 (0)20 7090 3885**
**deeksha.rathi@slaughterandmay.com**

Deeksha Rathi is a senior associate at Slaughter and May. She advises a broad range of domestic and international clients on all areas of UK corporate tax law, including M&A, corporate reorganisations, corporate finance transactions and disputes and settlements with HMRC. She has a particular focus on the infrastructure, energy and natural resources sectors.

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**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in the UK over the last 12-18 months?**

**A.** The last 12-18 months were a period of relative quiet, following the disastrous mini budget. Endless tinkering around the edges of the tax framework has, however, continued. The previously announced higher main rate of corporation tax took effect from 1 April 2023. Partly in response to the move's criticism, the generous 100 percent and 50 percent first-year capital allowances, and a temporary annual investment allowance of £1m, were made permanent. In absolute terms, some of these changes are projected to offset about two-thirds of the impact of the rate rise. Partly also in response to its criticisms, a phase-out mechanism for the Energy Profits Levy, a relatively new tax on the profits of oil & gas companies, was legislated. The legislation to implement the Pillar Two income inclusion rule continues to be amended, generally with retrospective effect, and future amendments are expected as the UK endeavours to ensure consistency with the Organisation for Economic Co-operation and Development model rules, commentary and guidance. In addition, the Pillar Two undertaxed profits rule (UTPR) will be introduced for accounting periods beginning on or after 31 December 2024.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** 2024 is the year of a general election in the UK. Tackling tax avoidance and evasion is on the agenda of all major political parties. Even aside from election politics, a programme for the modernisation of HM Revenue & Customs (HMRC) is underway, aimed at reducing taxpayer error and making it easier for HMRC to spot and tackle non-compliance. An ongoing consultation on HMRC's enquiry and assessment powers, penalties and safeguards has been paused during the election period. This focus on maximising tax collection and strengthening HMRC's ability and capacity for that will inevitably result in tougher tax enforcement. That said, HMRC's figures for the tax gap – the difference between tax collected and total theoretical tax liabilities – suggest that

*Slaughter & May*

only 4 percent of the tax gap is due to avoidance.

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**Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** Transfer pricing (TP) is a key risk for multinational enterprises (MNEs). In the UK, the diverted profits tax (DPT) was introduced in 2015 as a punitive tax for UK companies to get their TP right. In 2019, the profit diversion compliance facility was introduced to give multinational enterprises (MNEs) using arrangements targeted by DPT an opportunity to work with HMRC to bring their UK tax affairs up to date. Now MNEs with a certain turnover are also required to maintain master and local TP files, and HMRC has the power to introduce the requirement to maintain summary audit trails. Over the years, TP disputes and enquiries have grown in number, becoming longer and more difficult to manage, with resolution increasingly not available without going for mutual agreement procedure or litigation as a last resort.

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Against this backdrop, for economic and reputational reasons, it is hard to see how well-advised MNEs will not take compliance and risk management in this area seriously.

**Q. How would you describe the tax laws in the UK as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Over a decade ago, the UK enacted the controlled foreign company rules. Broadly, these apportion the profits of entities in low-tax jurisdictions to the UK entity holding a certain interest in them. The DPT was also aimed at contrived arrangements to shift profits away from the UK by avoiding a UK taxable presence or through non arm's length transactions, and till the end of 2022-23, it had raised more than £8.5bn. The Conservative government has consulted on ending DPT's status as a separate tax, and to bring an equivalent charge into corporation tax; it remains to be seen if a Labour government will follow through. Over the years, other anti-avoidance rules have been added to the armoury, such as the offshore receipts in respect of intangible property (ORIP) rules. Broadly, these impose an income tax charge on gross receipts of non-UK residents in respect of IP rights used in connection with the provision of goods or services in the UK. These rules are anticipated to be repealed when the UTPR comes into effect. Only time will tell, but in general, a wide spread of such rules has made the use of offshore entities or jurisdictions to shelter UK profits very difficult.

**Q. Have you seen an increase in tax disputes in the UK? What lessons can companies learn from their outcome?**

**A.** There has been an increase in tax disputes in some areas, such as the loan relationship unallowable purpose rules, which broadly deny deductions of interest to the extent they are attributable to an unallowable purpose which would include a main purpose of obtaining a tax advantage, incentivisation arrangements involving partnerships, IR 35 or off-payroll working rules directed at contractors providing services through personal service companies, and TP, albeit TP cases are still mainly settled rather than

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litigated. Companies aware of a potential issue in these areas should seek timely advice on managing engagement with HMRC. It would be prudent to keep these areas on the radar more generally and maintain good contemporaneous evidence, such as board minutes, structure papers, TP studies and so on, to support the commercial rationale of the transaction or arrangement. It is also crucial to focus on the facts rather than merely the contractual arrangement.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** In the face of an HMRC investigation, companies should stay calm and consider their desired outcome, and what steps are needed to achieve it. Often, the most desired outcome is convincing HMRC of the taxpayer's view or reaching a mutually acceptable compromise, which involve collaborating with the HMRC case team to enable them to achieve HMRC's internal requirements to meet those ends. It is imperative to have a clear understanding of the facts of the case, with readily accessible evidence to help HMRC develop the same. A clear grasp of the legal tests in the area and HMRC's interpretation of those will help to persuade HMRC that any settlement reached will be in accordance with the law. If faced with a formal proceeding, companies should not underestimate the importance of procedural points.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** Investment in an open and transparent ongoing relationship with HMRC is crucial. So is working closely with the company's internal commercial teams on any new transactions or plans, to help them appreciate the pressure points from a tax perspective and document the commercial rationale and steps correctly. Seemingly obvious, but if in doubt, companies should seek timely advice from a reputable tax expert. People in the tax function might move on over the years, and so it is important to have

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robust processes for maintaining records and keeping them easily accessible. This can save a lot of time and cost in an HMRC enquiry years down the line. Good documentary evidence before the First-Tier Tribunal (FTT) is crucial in a tax dispute, as it is very hard to challenge the FTT's findings of facts. ❑

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**SLAUGHTER AND MAY** is a leading international law firm. The firm's tax team advises a wide variety of clients on the tax aspects of high-end and complex commercial and financial matters, including many of the largest and most intricate domestic and international deals in the market. As a full-service tax practice, Slaughter and May provides market-leading tax counsel on clients' most sensitive matters, including M&A transactions, capital market transactions, demergers, corporate rescues, insolvencies and stressed M&A, and contentious tax matters. Slaughter and May's work includes advising on structuring transactions, negotiating documentation and managing large teams of tax advisers from around the world.

**DEEKSHA RATHI** Senior Associate
+44 (0)20 7090 3885
deeksha.rathi@slaughterandmay.com

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# REPUBLIC OF IRELAND

## *PwC Ireland*

### *Respondents*

**PARAIC BURKE**
**Partner**
**PwC Ireland**
**+353 87 679 7774**
**paraic.burke@pwc.com**

Paraic Burke leads PwC Ireland's tax practice, overseeing a team of over 700 professionals with deep expertise in managing tax affairs in Ireland and internationally. He has extensive experience in advising indigenous Irish companies on corporate tax matters. He also has experience in leading significant M&A projects, as well as in the area of group restructurings and general corporate tax advice.

**HARRY HARRISON**
**Partner**
**PwC Ireland**
**+353 87 372 0882**
**harry.harrison@pwc.com**

Harry Harrison is an international tax partner at PwC Ireland specialising in M&A related work and international tax. His principal areas of practice have involved the establishment of various Irish headquartered cross-border structures, the expansion of group activities both into and out of Ireland, together with financing and other international tax proposals involving Ireland. He has also advised on a wide variety of cross-border acquisitions by leading international private equity houses and US multinational groups. He also has extensive experience of complex tax diligence reviews, together with advising on tax efficient acquisition structuring options.

*PwC Ireland*

**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in the Republic of Ireland over the last 12-18 months?**

**A.** The Organisation for Economic Co-operation and Development's (OECD's) Pillar Two rules came into force in Ireland from 31 December 2023. Pillar Two aims to ensure that in-scope businesses pay at least a 15 percent effective tax rate on their profits in each jurisdiction they operate in. The Pillar Two rules are a game-changer for both taxpayers and tax authorities. There are significant complexities associated with the implementation of the new rules that will require continued engagement between all stakeholders going forward. The Department of Finance also intends to introduce a foreign dividend exemption with effect from 2025. Ireland currently applies a 'worldwide' method of double tax relief. This means that Irish-resident companies are subject to tax on their worldwide income, and foreign tax paid on foreign income will typically qualify for a credit against Irish tax payable on that income. Introducing an exemption for foreign dividends will simplify cash repatriation and bring Ireland into line with other European Union (EU) and OECD countries that offer this system. This development is a further positive step toward modernising the Irish corporate tax system.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** The government is heading into a likely election year in a very strong budgetary position. A headline budgetary surplus of €8.6bn is being projected for this year, which equates to roughly 3 percent of national income. The Department of Finance has repeatedly cautioned that this surplus is heavily dependent on volatile 'windfall' corporate tax receipts which have grown from €4bn to €24bn in the space of a decade. Given the strength of the fiscal position, there will certainly be a temptation to increase spending and cut taxes with an election on the horizon. Separately, we have seen a continuation of the business-friendly approach from the government and the tax authority. Revenue

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commissioners were very flexible in their approach to dealing with the €3.2bn worth of tax deferred under the debt warehousing scheme introduced during the pandemic. Revenue has extended the repayment deadline several times and offered taxpayers the opportunity to avail themselves of phased payment arrangements (PPA), and about 93 percent of this warehoused debt has now been paid in full or is in the PPA scheme.

**Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** Transfer pricing (TP) has been viewed as one of the main sources of risk by multinational groups' C-suites for some time. Given the cross-border nature of TP, companies often need to deal with multiple tax authorities in disputes and, as a result, we have seen in recent years a surge of contemporaneous multi-territory audits, and an increase in the number and complexity of mutual agreement procedure and bilateral and multilateral advance pricing arrangement cases. In 2015, base erosion and profit shifting 1.0 put a spotlight on TP through aligning its outcomes with value creation and with country by country reporting (CbCR). In recent years, stakeholders have become increasingly focused on sustainability which requires rethinking supply chains, while the tax transparency agenda continues to grow with new disclosures required under EU public CbCR requirements and the Corporate Sustainability Reporting Directive (CSRD). The convergence of these reporting initiatives all have significant TP implications.

**Q. How would you describe the tax laws in the Republic of Ireland as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Ireland's tax laws are designed to collect a fair contribution of taxes from domestic and foreign entities, but Ireland similarly tries to encourage economic growth and investment through its tax laws. Ireland is a small, open economy with a robust and competitive international tax framework. As such, the Irish government aims to

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ensure that our tax laws are certain, administrable and designed to promote investment. Ireland's membership of the OECD BEPS Inclusive Framework and the EU has required it to modernise its corporate tax rules in particular, and ensure that entities pay the right amount of tax in the right place and at the right time. Ireland has implemented EU and OECD international tax standards, including changing the taxation of outbound payments and the introduction of the 15 percent global minimum tax.

**Q. Have you seen an increase in tax disputes in the Republic of Ireland? What lessons can companies learn from their outcome?**

**A.** In Ireland, we have seen a trend of increasing compliance interventions and audits from tax authorities. This has been driven by a number of factors, including more targeted interventions, a more complex and evolving legislative landscape, a more forensic approach by tax authorities, and the leveraging of a wider range of data sources and exchange of information with tax authorities. Companies can learn several lessons

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from the outcome of these disputes. The burden of proof rests with taxpayers to substantiate their filing position and therefore it is imperative that taxpayers maintain contemporaneous documentation as evidence. Revenue is placing a greater rating on a company's tax control framework in assessing a company's risk profile and the level of penalties that is imposed on tax underpayments. In addition, engaging in constructive dialogue with tax authorities early on can help resolve potential issues before they escalate to tax disputes.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** Where tax underpayments are identified during an inquiry, it can result in serious sanctions such as publication on the tax defaulters list. If companies disclose tax underpayments at the start of an inquiry this can protect them from the most serious sanctions. Therefore, we recommend that a company conducts a full review to identify any tax underpayments. Full cooperation with tax authorities, including promptly responding to queries and providing complete and organised records, can help build trust and streamline the investigation process. A company can use this process as an opportunity to demonstrate the robustness of tax controls in place and explain the internal reviews they have carried out to identify and regularise tax underpayments. Seeking professional advice from experienced tax advisers will also help companies understand their legal rights and obligations throughout the process, making it beneficial in managing relationships with tax authorities effectively.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** Generally, the two biggest challenges the tax function faces are getting the tax strategy and governance right and handling data effectively. The first of these is increasingly important to all company stakeholders given the focus

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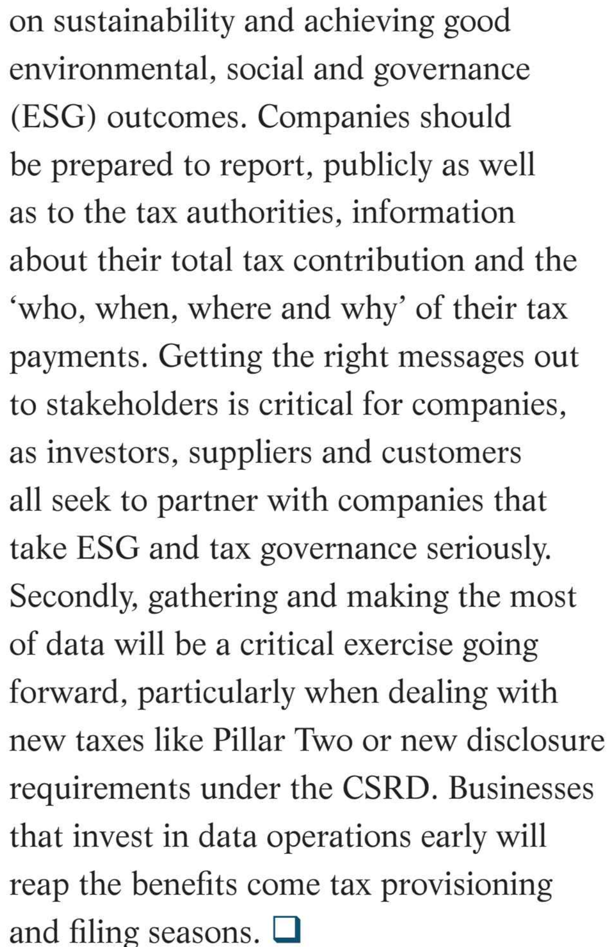

on sustainability and achieving good environmental, social and governance (ESG) outcomes. Companies should be prepared to report, publicly as well as to the tax authorities, information about their total tax contribution and the 'who, when, where and why' of their tax payments. Getting the right messages out to stakeholders is critical for companies, as investors, suppliers and customers all seek to partner with companies that take ESG and tax governance seriously. Secondly, gathering and making the most of data will be a critical exercise going forward, particularly when dealing with new taxes like Pillar Two or new disclosure requirements under the CSRD. Businesses that invest in data operations early will reap the benefits come tax provisioning and filing seasons. ❑

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**PARAIC BURKE** Partner
+353 87 679 7774
paraic.burke@pwc.com

**HARRY HARRISON** Partner
+353 87 372 0882
harry.harrison@pwc.com

**AIDAN LUCEY** Partner
+353 86 310 3568
lucey.aidan@pwc.com

# LUXEMBOURG

## *ATOZ Tax Advisers*

*Respondent*

**ROMAIN TIFFON**
**Partner**
**ATOZ Tax Advisers**
**+352 26 940 245**
**romain.tiffon@atoz.lu**

Romain Tiffon is a partner within the international & corporate tax team at ATOZ Tax Advisers. A tax professional since 2006, Mr Tiffon has experience in structuring pan-European alternative investment funds across all asset classes, as well as coordinating tax structuring advice and implementation for a wide range of institutional investors. He also has extensive experience in structured finance, M&A transactions and sovereign wealth funds, and is currently responsible for ATOZ's DAC6 and other technological initiatives, working closely with ATOZ Solutions.

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**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in Luxembourg over the last 12-18 months?**

**A.** On 20 December 2023, the Luxembourg law transposing the Council Directive on ensuring a global minimum level of taxation for multinational enterprise groups and largescale domestic groups in the European Union (EU), which implements the Global Anti-Base Erosion rules known as Pillar Two, was passed. Moreover, on 24 May 2024, the Luxembourg parliament published a draft law which amends the minimum net wealth tax rules to address its unconstitutionality, as well as the participation exemption to introduce an optionality to the regime and the Luxembourg rules on partial liquidations following the recent Luxembourg case law on share classes redemptions.
In addition, on 31 May 2024, a law introducing various tax measures to revive the construction sector was published. Some measures are limited to 2024, while others are structural. Over the past months, Luxembourg courts also issued landmark decisions, notably about the tax treatment of tax losses carried forward, the qualification of interest free loans for tax purposes and the redemption of classes of shares.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** The Luxembourg political agenda on tax matters is highly influenced by European and international regulations. However, in the current economic context, the political agenda is also driven by budget considerations. Nevertheless, Luxembourg focuses on maintaining its attractiveness as a financial centre and on positioning itself as a hub for FinTech and blockchain technology.
The political agenda does not seem to be a motivation to get tougher on tax enforcement. Luxembourg tax authorities have gradually expanded their monitoring and enforcement activities by digitalising the corporate tax return filing process, thereby alleviating administrative work for tax inspectors who now have more time to focus on tax monitoring and enforcement. Luxembourg tax authorities

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*Potential tax risks may span several years, which requires an appropriate and active tax risk management function.*

have also created a dedicated tax audit division which has to be appreciated from a broader standpoint.

**Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** Luxembourg is a renowned financial centre in Europe and a prime location for holding and financing companies. We are seeing a surge in treasury companies being set up to improve cash management within a group. These companies are frequently party to intragroup transactions and have fully onboarded transfer pricing (TP) into their overall setup. TP has now become fundamental to good corporate governance. There is a growing dispute environment in Luxembourg, of which TP is an integral part. Experience shows that TP is frequently put under the microscope during tax audits. Tax authorities can more easily challenge TP when no TP documentation has been prepared. Conversely, preparing robust TP documentation before agreements are concluded generally offers protection

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against challenges from Luxembourg tax authorities. As tax assessments in Luxembourg may generally be revised for up to five years, potential tax risks may span several years, which requires an appropriate and active tax risk management function.

**Q. How would you describe the tax laws in Luxembourg as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Luxembourg has fully adhered to European standards when it comes to foreign and offshore entities. Controlled foreign company rules have now been in place for a few years as part of the Anti-Tax Avoidance Directive transposition package. In addition, the EU list of non-cooperative jurisdictions for tax purposes has a direct impact on three different Luxembourg tax measures. First, the measure denying corporate income tax deduction of interest and royalty expenses due to entities being located in non-cooperative tax jurisdictions. For 2024, this applies based on the latest version of the EU list of non-cooperative jurisdictions for tax purposes available as of 1 January 2024, the October 2023 Blacklist. Second, the requirement to disclose in tax returns any transactions with entities located in non-cooperative jurisdictions. Lastly, the mandatory disclosure rules applicable to certain cross-border arrangements.

**Q. Have you seen an increase in tax disputes in Luxembourg? What lessons can companies learn from their outcome?**

**A.** We have seen an increase in tax disputes in Luxembourg compared to 10 years ago. The Administrative Tribunal has confirmed that, unless there is abuse of law, a share class redemption by a Luxembourg company is a sale of shares, not a dividend distribution to the extent the redemption price does not exceed the fair market value of the redeemed share class. More recently, the Administrative Court confirmed the tax treatment of an interest-free loan and qualified it as a debt instrument rather than a hidden capital contribution. The court also ruled that the use of tax losses carried forward by a company, wholly owned by an individual, that incurred those losses while it was a holding company and following several

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years of being dormant, against a capital gain made on the disposal of a newly acquired real estate asset, is not an abuse of law.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** Luxembourg is a business-friendly environment where the authorities remain approachable. More frequently, taxpayers receive information requests from Luxembourg tax authorities, which are generally geared toward better comprehending these structures, rather than a tax audit. Where this expands into a tax audit, the tax code requires Luxembourg taxpayers to cooperate with the authorities. Taxpayers are under an obligation to prove facts and provide information, assuming the evidence is available, that is reasonable for the taxpayer to have and relevant for clarification purposes. Another tax provision was added in 2015 that extended a taxpayer's duty of cooperation relating to transactions between associated enterprises, although no specific TP documentation requirements are detailed therein. This should be fixed by the draft law of 28 March 2023, which, if enacted as is, will require associated enterprises to present, upon request, documentation to justify the applied TP. There is, therefore, a greater focus on TP, which should preferably be in place when a transaction is implemented.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** The last couple of years have imposed broader compliance and disclosure obligations on taxpayers. Leaving aside the Foreign Account Tax Compliance Act, the Common Reporting Standard and registered beneficial owners, reportable cross-border arrangements under (DAC6) has added another layer of compliance which has slightly drifted into an investor relations concern. In the alternative investment fund space, limited partners are warier of DAC6 monitoring and disclosure. If a taxpayer discloses an

arrangement on the basis of a hallmark that requires the main benefit test to be met, it acknowledges that tax was the main, or one of the main, drivers for setting up the arrangement, which makes it more difficult to argue that it should be treaty eligible having passed the principal purpose test. Good governance practice demands that any transaction is presented to the board with a DAC6 analysis. ❑

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**ROMAIN TIFFON** Partner
+352 26 940 245
romain.tiffon@atoz.lu

# SPAIN

## *Ashurst LLP*

### *Respondent*

**EDUARDO GRACIA**
**Partner**
**Ashurst LLP**
**+34 91 364 9854**
**eduardo.gracia@ashurst.com**

Eduardo Gracia advises a wide range of Spanish and international corporates, funds and financial institutions on the tax planning and structuring of inbound investment into Spain relating to project finance, M&A, real estate and distressed asset deals. He has also advised on outbound investments advising on the corporate and operational restructuring of multinationals. He specialises in Spanish, EU and international taxation of companies, VAT and other indirect taxation as well as in tax dispute resolution matters.

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**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in Spain over the last 12-18 months?**

**A.** The first key development in Spain is a tax package approved for financial years 2023 and 2024 which charges windfall tax profits earned by credit entities and energy companies. It has temporarily limited the use of tax losses of group entities to 50 percent, with the possibility of carrying forward unused tax losses to each of the first 10 financial years starting on or after 1 January 2024, in equal parts. The new tax package has been strongly opposed by many credit entities and energy groups in scope, which argue that the way these contributions have been configurated is unconstitutional. The second key development is the amendment, for financial years beginning from 1 January 2024, of the rule limiting the tax deductibility of financial expenses to bring it into line with the Anti-Tax Avoidance Directive. In this regard, income or expenses that have not been included in the corporate tax base, such as dividends and capital gains exempted under the participation exemption regime, will not form part of a taxpayer's earnings before interest, taxes, depreciation and amortisation. It is also important to note that Pillar Two has not yet been implemented, but there is currently a draft law in the pipeline to transpose the Pilar II Directive.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** There are two main driving factors. First is limiting aggressive tax competition by certain jurisdictions. Pillar Two is designed to limit competition that leads to downward tax rates. Second is the search for a new paradigm for taxing digital multinationals capable of generating income without a physical presence anywhere. Pillar One is aimed at this objective with a multilateral treaty for its implementation. We will have to wait and see if the US signs the treaty, because if Pillar One is not implemented, national digital taxes will proliferate.

**Q. To what extent is transfer pricing a key challenge for multinational enterprises?**

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**Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** Around 10 years ago, a new international tax bureau, the National Office of International Taxation (ONFI), was created within Spain's Tax Agency to deal with any tax matters arising from the interpretation and application of tax treaties, in particular transfer pricing (TP) matters. Since then, the number and quality of TP reassessment notices has increased dramatically, as the number of advance pricing agreements and mutual agreement procedures (MAPs) dealing with, among others, TP matters, has also increased. This is testament to the importance Spanish tax authorities are placing on TP as one of the main areas of focus when dealing with multinational groups and investment funds. Currently, following the Organisation for Economic Co-operation and Development's 2020 'Transfer Pricing Guidance on Financial Transactions', the focus is moving toward financial transactions. Tax auditors pay particular attention to cash pooling arrangements and the interest rates applied to intragroup loans.

**Q. How would you describe the tax laws in Spain as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Spanish tax laws are wary of avoiding legal or de facto discrimination between residents and non-residents, particularly when the latter are resident in another European Union (EU) country, following myriad European Court of Justice judgments and infringement procedures sponsored by the European Commission (EC) since around 1995. There are still some differences in the tax treatment which could amount to discrimination, such as capital gains obtained on the sale of shares in real estate-rich companies being only taxable when earned by non-resident sellers. However, under EU case law the general rule is that the tax treatment does not differentiate on the basis of the residence of an investor, company, service provider or employee. That said, Spanish tax authorities are focusing on investments made by non-resident investors in Spanish assets, as the amounts at stake are usually high and the structures used quite sophisticated for

the authorities' standards. It should also be noted that an infringement procedure is currently underway against Spain in relation to non-proportional total divisions as, according to the EC, Spanish tax legislation is not in line with the Merger Directive in this respect. Finally, it is worth noting that Spain maintains a list of non-cooperative jurisdictions, which it amended in 2023 for the first time since its publication in 1991.

**Q. Have you seen an increase in tax disputes in Spain? What lessons can companies learn from their outcome?**

**A.** Tax litigation in Spain is at a record high level, due to a combination of factors. One is the fact that the variable remuneration system for tax auditors carries a 'moral hazard' with regard to issuing reassessment notices, which has an impact. Another factor is that courts are not specialised in tax matters. Unlike in other Western jurisdictions, the first instance is still assigned to the minister of finance, and thus lacks independence. Regarding foreign investors in Spain, tax auditors and the reviewing courts are generally unfamiliar with sophisticated

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international structures and concepts, unless the tax auditor on the ground is advised by ONFI, but that happens in relatively few cases. The result is frequent reassessments as tax auditors fail to understand the underlying rationale and courts then uphold the reassessments, resulting in international double taxation. Therefore, it is advisable to try the MAP or arbitration route, where the matter will be discussed by tax authorities engaged with international tax and TP-related matters on a daily basis. This route can be used along the domestic appeal path, if a taxpayer disagrees with the outcome.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** Companies should appoint lawyers from day one, so they work hand in hand with the taxpayer's in-house tax team on managing requests from the tax auditor from the outset. That way, the answers and documentation provided in response to those requests will be more accurate and, if a settlement is not reached, the lawyers will be familiar with the tax file and hence better placed to defend the case before the courts.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** First of all, companies should invest in tax advisers, whether in-house or external, so that someone keeps track of periodic compliance obligations and ensures they are met. They should report to the chief financial officer (CFO). In Spain, authorities hold the board responsible for a company or group's tax policy. Hence, the board should hire a separate adviser to those retained by the CFO and in-house tax advisers, to double-check that the company's tax strategy is reasonable and has been adequately implemented. Given the reputational issues attached to a negative headline in the media arising from tax matters, this may be considered an investment rather than a cost. ❑

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**EDUARDO GRACIA** Partner
+34 91 364 9854
eduardo.gracia@ashurst.com

Ashurst

# ITALY

## Deloitte

### Respondent

**LUCA BOSCO**
**Equity Partner**
**Deloitte**
**+39 011 554 2918**
**lubosco@sts.deloitte.it**

From 1994 to 1998, Luca Bosco worked for two Italian tax and legal firms: Studio Associato di Consulenza Legale e Tributaria and Studio Fantozzi. He then joined Andersen Legal and in 2003 he joined Deloitte. He was appointed as director in 2005 and in 2008 became a partner. He is the North South Europe Deloitte leader of transport and logistics advisory services. He specialises in Italian domestic and international corporate tax and has more than 25 years of experience in cross-border services, in particular international tax and M&A, concerning international and domestic groups, with a special focus on the consumer industry.

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**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in Italy over the last 12-18 months?**

**A.** Several significant tax measures are being implemented in the context of a comprehensive tax reform in the last year. Major changes are aimed at aligning domestic rules with international tax principles. These include reviewing tax residence rules for corporations and individuals, implementing Pillar Two provisions, and coordinating the controlled foreign corporation (CFC) rules. The ultimate goal is to outline a system capable of attracting foreign capital, including onshoring incentives, extending the participation exemption regime to European Union (EU) companies, aligning the tax administrative penalty regime with EU 'standards', increasing the attractiveness of the cooperative compliance regime by reducing the minimum entry threshold, and simplifying the access requirement or reshaping the tax incentives system.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** Over the last few years, we have experienced increasing Revenue Agency tax enforcement activity in specific sectors that are widely considered to be high risk for tax avoidance. Segmentation and modern risk assessment practices have been introduced over time by the Revenue Agency so it can work more efficiently. Focus is on transfer pricing (TP), PE-related issues, VAT compliance for cross-borders transactions and other international tax matters. Beneficial ownership is carefully scrutinised for payments where a nil or reduced withholding tax is applied. At the same time, we have also seen a dramatic increase in tax audits focused on eligibility for research and development tax credits.

**Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** TP issues are systematically scrutinised during tax inspections, regardless of the

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size of the company. Even small enterprises must face up to this issue. The outcome of the base erosion and profit shifting (BEPS) project, as well as the decrees issued by the Italian Ministry of Finance in May 2018, are gradually influencing the Italian tax authority's approach, making it more aligned with international practice, and thus more predictable. On the flip side, TP challenges are becoming more technically robust and sophisticated, with a specific focus on intellectual property and financing transactions. In November 2020, the Italian legislator enacted new TP documentation standards which allow taxpayers to join the penalty protection regime, covering both administrative and criminal law penalties. The new standards basically reflect the BEPS action 13 outcomes, however the level of detail required by the Italian rules is particularly high and new strict deadlines for preparing TP documentation are now applicable.
In recent years, though many Italian companies have adopted a more structured TP policy and prepared comprehensive TP documentation, the situation remains mixed, with a number of taxpayers still not fully aligned – especially concerning the managerial data required to apply, test

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and document the proper implementation of TP methods. An increasing number of TP audits are focusing on operational aspects, especially on the reliability of the managerial accounting figures used to segregate the profits and losses of the tested party.

**Q. How would you describe the tax laws in Italy as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Italy has always been a step ahead in the context of foreign entities. There is a general effort to tighten the use of offshore structures without a sound business substance, as well as aggressive tax planning. Automatic information reporting has catalysed cross-border tax cooperation and explains why the push for greater transparency to address offshore tax evasion may be even more important. Also, implementation of a global minimum tax aims to discourage tax avoidance. In particular, this new regime would seek to force companies to pay more taxes where they actually operate, as opposed to funnelling profits to low-tax jurisdictions. To this end, it is worth outlining the rigid application of the current CFC rules, the anti-hybrid regulations and the well-implemented general anti-abuse rule.

**Q. Have you seen an increase in tax disputes in Italy? What lessons can companies learn from their outcome?**

**A.** The number of tax disputes between Italian taxpayers and the tax authority over the last 10 years has remained fairly consistent, albeit with a reduction of new controversies during the last quarter of 2023. Reform of the tax justice system, which aims to reduce pending litigation through resolution measures and to improve the quality of judgements, is part of this framework. To pursue these objectives, the Italian tax legislator introduced new rules for the Italian Tax Authority regarding burden of proof and the possibility for the taxpayer to request written testimony. Decree 219/2023 strengthened the obligation to discuss the basis of the tax claim before issuing notice of an assessment. Nevertheless, tax audit activities have grown since 2010, which can be credited to developments in law, mainly related to cross-border

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transactions and information exchange between different countries. As the approach followed by the EU and the Organisation for Economic Co-operation and Development in relation to anti-avoidance rules became stronger, the Italian Tax Authority has focused its audit activities on cross-border challenges such as tax residence issues, hidden branches and TP, among others.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** It is always important to adopt an appropriate attitude. A 'do not panic' approach is best. Any sign of nervousness could affect the tax auditor's response. Furthermore, it is important to strike a balance between cooperating with the authorities and inflicting self-harm. Also, engaging tax professionals with a wide range of experience in tax audit assistance may help the company throughout the procedure. It is paramount to involve skilled resources, both internal and external, at the beginning of the tax audit. Headquarters should oversee and coordinate this activity in connection with their people 'on the ground'.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** Forthcoming changes to the international tax landscape will significantly alter the overall tax architecture under which multinational businesses operate. Putting the global tax regime at the top of the management agenda is becoming more crucial – and the impact will not be limited to just the tax department. Rules and their implications are so broad that boardrooms globally need to be aware and play a role in forward-planning compliance. This increased reporting obligation will require enormous additional resources from multinational enterprises. It will also involve a wide range of functions – including tax, finance, human resources and IT – to collaborate closer than ever to create new data-gathering processes. This investment in time, money and effort

will be significant, but the companies capable of future-proofing their systems by automatically sensitising tax data at source are likely to have an enormous advantage. New tax rules are also an opportunity for multinational enterprises to reshape their current structure since it cannot be 'tackled' successfully without closer integration between the finance and tax departments, and significant investment in digitalisation of the process. ❑

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**LUCA BOSCO** Equity Partner
+39 011 554 2918
lubosco@sts.deloitte.it

**LORENZO MARCHETTO** Equity Partner
+39 011 554 2993
lmarchetto@sts.deloitte.it

**PASQUALE COLACI** Partner
+39 011 554 2914
pcolaci@sts.deloitte.it

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# AUSTRALIA

## *Johnson Winter Slattery*

### *Respondents*

**STEWART GRIEVE**
**Partner**
**Johnson Winter Slattery**
**+61 3 8611 1353**
**stewart.grieve@jws.com.au**

Stewart Grieve is a taxation lawyer with 30 years' experience acting mainly for major corporate clients in relation to the conduct of Australian Taxation Office audits and enquiries and resolution processes to bring such audits or enquiries to a conclusion. His taxation disputes practice is 'end-to-end'. This means that he advises clients on all aspects of the front-end of disputes, including the conduct of taxation risk reviews and audits and the back-end of disputes, which may include alternative dispute resolution processes or litigation.

**DON SPIRASON**
**Special Counsel**
**Johnson Winter Slattery**
**+61 3 8611 1379**
**don.spirason@jws.com.au**

Don Spirason is a tax lawyer, with more than 20 years' experience gained both in leading multinational corporates and private practice. He advises clients on all areas of tax including transfer pricing, tax policy and transparency, transactions, tax disputes and engagement with regulators. He has deep knowledge of the resources sector, having spent more than a decade working at one of the world's largest mining companies. He not only provides high quality technical advice but has extensive practical experience in relation to applying that advice in a business context.

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**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in Australia over the last 12-18 months?**

**A.** The Australian government sees excessive interest deductions as a significant risk and has updated Australia's thin capitalisation rules, which limit debt deductions in certain circumstances. Broadly, Australia's former thin capitalisation rules disallowed interest deductions on debt that exceeded a safe harbour amount determined as a proportion of the taxpayer's assets. The new rules introduce an earnings-based ratio. Interest deductions may be denied where they exceed 30 percent of earnings before interest, taxes, depreciation and amortisation. Australia has also updated its rules that disallow deductions relating to debt-creation schemes that lack commercial justification. This can include amounts borrowed to fund the purchase of assets from an associate. Australia is also implementing various rules developed by the Organisation for Economic Co-operation and Development as part of its efforts to address base erosion and profit shifting (BEPS), in particular rules which implement a 15 percent global minimum tax, the so called Pillar Two reform. These rules will result in significant additional compliance burden.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** Multinational enterprises (MNEs) remain the focus of the political agenda, with a number of new tax measures aimed at ensuring that MNEs pay their 'fair share' of tax. As well as being a source of revenue in its own right, there is a perception that being tough on the 'big end of town' promotes tax compliance by other sectors of the community. There is a general reluctance to pursue structural tax reform. Recent high inflation and concerns about the cost of living for ordinary Australians mean that any potential measures impacting individuals are generally politically unpalatable. That said, there is an increased focus on collecting tax debts, particularly from small to medium businesses perceived as effectively funding their business activities by not making tax payments. There is particular

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concern over taxpayers that fail to meet tax withholding and superannuation obligations in relation to their employees.

**Q. To what extent is transfer pricing (TP) a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** Transfer pricing (TP) continues to be a key challenge for MNEs. There is a significant compliance burden due to an increasing volume of disclosures and lodgements and the need to respond to Australian Taxation Office (ATO) expectations – reflected in 'Practical Compliance Guidelines' and other ATO publications. There is significant uncertainty in the application of TP principles taken from decisions of Australian courts, meaning there can be high levels of risk in TP positions. Most companies are aware of the importance of managing TP risk. However, the ATO takes a very Australia-centric view of the operations of MNEs. Where Australia is only a small part of a foreign-headquartered MNE, the MNE may underestimate the impact of the ATO's expectations, and the intensity of ATO scrutiny, and often the local Australian tax team is under-resourced to engage in a proactive manner with the ATO on these issues.

**Q. How would you describe the tax laws in Australia as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Australia has strong laws that have been in place for some time. Australia has taken a leading role in the BEPS programme and typically has been an early adopter of BEPS measures. In addition, Australia continues to implement measures to further expand the scope of laws aimed at preventing abuse of the tax system. For example, in recent years Australia has introduced the Multinational Anti-Avoidance Law and the Diverted Profits Tax, made changes to tighten general anti-avoidance rules and TP provisions, and introduced higher penalties for "significant global entities". The Australian government has also provided additional funding to the ATO's Tax Avoidance

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Taskforce to implement extensive compliance programmes and other taxpayer engagement. A significant focus of the Taskforce is on ensuring that MNEs pay their 'fair share' of tax in Australia.

### Q. Have you seen an increase in tax disputes in Australia? What lessons can companies learn from their outcome?

**A.** Taxpayers are now more likely to have deeper and more prolonged ongoing engagement with the ATO. Under its 'justified trust' approach, the ATO will routinely seek to understand a broad range of the taxpayer's features, such as its tax governance framework and its position on key risks that the ATO has flagged to the market. Taxpayers cannot assume that the ATO will not review their tax affairs or that they will be able to assemble the necessary materials to prove their position only after the ATO has become engaged. Statistics published by the ATO show an increase in the volume of adjustments arising from audits over the last six years, although the volume of appeals to a tribunal or court has remained flat. As such, tax disputes appear to be increasing if you define a tax dispute as involving

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a disagreement between the ATO and the taxpayer concerning the proper tax assessment during the audit process.

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**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** Taxpayers should manage their engagement with the ATO proactively and hold regular meetings with the relevant ATO team to monitor progress of the ATO's activities. This also provides an opportunity to influence the ATO's thinking on issues in real-time, by correcting any ATO misconceptions about information or material that has been provided. The taxpayer should remain cooperative and professional at all times. Among other things, if ATO officers form a perception that the taxpayer is uncooperative, then they may be less inclined to exercise their statutory discretions, such as granting extensions of time in the taxpayer's favour. The taxpayer should identify relevant escalation points within the ATO and ensure that there are clear communication channels in case they are needed. If an issue needs to be escalated, then the taxpayer should generally ensure that the regular ATO team is proactively informed so that the working relationship is not damaged.

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**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** Having sound and consistent internal functions and processes across the organisation is critical to adopting sustainable tax positions. Functions and processes are typically what the ATO tests as part of its 'justified trust' approach. Sound and consistent functions and processes give the ATO confidence that tax matters are being dealt with appropriately, and better enable taxpayers and the ATO to focus only on issues where there is a genuine difference of view on the application of the tax laws. In contrast, poor or inconsistent functions and processes immediately bring into question whether the taxpayer's adopted tax positions can possibly be correct, and can limit the evidence available to support

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those positions. This can be a significant issue as taxpayers generally bear the onus of proof in tax matters. ❑

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**STEWART GRIEVE** Partner
+61 3 8611 1353
stewart.grieve@jws.com.au

**DON SPIRASON** Special Counsel
+61 3 8611 1379
don.spirason@jws.com.au

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SLATTERY

# SOUTH AFRICA

## *Cliffe Dekker Hofmeyr*

***Respondent***

**THEODOR EMIL BRINCKER**
**Director and National Head**
**Cliffe Dekker Hofmeyr**
**+27 (0)11 562 1063**
**emil.brincker@cdhlegal.com**

Dr Theodor Emil Brincker is director and national head of Cliffe Dekker Hofmeyr's tax and exchange control practice. His experience includes the areas of corporate finance, corporate reorganisation and restructuring, exchange control, export finance, funding, general banking and commercial transactions including derivative transactions, empowerment transactions, project finance and tax law including income tax, tax controversy, international tax, VAT, stamp duties, PAYE, capital gains tax and other fiscal statutes.

*Cliffe Dekker Hofmeyr*

**Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in South Africa over the last 12-18 months?**

**A.** There have been a number of key developments pertaining to tax regulation in a South African context. Specific legislation has been introduced to grant taxpayers an accelerated allowance to the extent that renewable energy assets are acquired and implemented before 1 March 2025. These incentives relate to the use of assets in the generation of electricity in the form of wind power, solar energy, hydro power or biomass comprising organic wastes, landfill gas or plant material, and have been necessitated to curb loadshedding in a South African context. Specific legislation has been introduced pursuant to which revenue authorities will issue advanced pricing agreements (APAs), which will endure for a period of up to a maximum of five consecutive years of assessment, commencing on the day after the end of the year of assessment in which the APA application is received by the revenue authorities. Legislation has been introduced to deal specifically with the deduction of interest in circumstances where proceeds of borrowings are used to on-lend to third parties. As such, interest will only be deducted up to the amount of interest income that accrues to the taxpayer during the year of assessment concerned. Interest is no longer deductible merely if the taxpayer received interest without the interest amounts being linked or incurred in the production of income. Pursuant to the commitment of South Africa to address base erosion and profit shifting, a draft global minimum tax bill was introduced in 2024 which deals specifically with the introduction of Pillar Two into South African legislation.

**Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

**A.** There is a clear intention on the part of revenue authorities to increase tax collection and to toughen their stance on recalcitrant taxpayers. This is not only driven by the fact that the budget deficit for 2023/24 worsened from 4 to 4.9 percent of gross domestic product, but debt service costs in 2023/24 have been revised higher to R356bn, thus absorbing

Cliffe Dekker Hofmeyr

more than 20 percent of revenue. Not only have revenue authorities pursued a number of high-profile individuals who were involved in alleged corruption cases, but specific divisions have been established to investigate high net worth individuals as well as the transfer pricing (TP) compliance of multinational entities.

**Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies underestimating the importance of compliance and risk management in this area?**

**A.** TP has become a key revenue generator for the revenue authorities. The number of TP matters has increased steadily over recent years and the current division within the South African Revenue Service (SARS) has been bolstered by a number of additional appointments. TP matters are mostly settled, but may run into hundreds of millions of rands. Unfortunately many companies underestimate the importance of compliance and risk management in the context of TP on the basis that standard TP models and documents are used. Not only is the focus on the function of the South African entity, but all the functions,

assets and risks of each entity need to be analysed. This must be compared to real comparable companies as opposed to entities that are dissimilar in nature from these entities. TP is very complex and can take five to 10 years to resolve. Even to the extent that these matters are referred to mutual agreement procedures in terms of double tax treaties, they are not resolved in the short term.

**Q. How would you describe the tax laws in South Africa as they relate to foreign entities? Has there been an effort to tighten laws and crack down on using offshore tax jurisdictions?**

**A.** Apart from the renegotiation of some tax treaties pursuant to which South Africa has reserved the right to accept the residency of a specific entity, the country has also adopted the multilateral instrument, thus clarifying the role of multinational enterprises within a South African context. In addition, we are seeing companies receive more and more queries from the revenue authorities pursuant to information that they have received in respect of an exchange of information or the implementation of the Foreign Account Tax Compliance Act legislation in the US and the Common Reporting System in other countries. Revenue authorities have also recently focused on implementing rules relating to controlled foreign companies, especially whether foreign subsidiaries have a foreign business establishment within a foreign country that will enable the parties not to impute their income into a South African context.

**Q. Have you seen an increase in tax disputes in South Africa? What lessons can companies learn from their outcome?**

**A.** Alongside an increase in tax disputes in South Africa, recently there has been a focus on administrative fairness and procedural compliance. It has recently been confirmed that taxpayers not only need to be represented by lawyers in tax courts, but can also be represented by accountants in these forums. The revenue authorities have actively commenced to rely upon the general anti-avoidance rules and simulated transactions. Companies are unlikely to evade taxation due to non-detection, as the information required in terms of income tax returns – especially in the context of trusts – has increased

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substantially. Most cases are settled pursuant to alternative dispute resolution processes as opposed to ending up in court. Once cases end up in court, revenue authorities have a success rate in excess of 80 percent.

**Q. If a company does find itself the subject of a tax-related investigation, or enquiry, what steps should it take to manage its relationship with tax authorities?**

**A.** The general misconception of taxpayers is that a tax enquiry or a dispute with SARS can be managed by entering into normal commercial negotiations. This is not the case, as revenue authorities are obliged to collect tax if due. Not only should taxpayers keep tax files in relation to sensitive issues, such that the information is available, they should engage professional consultants to assist them from the outset. Tax courts have recently indicated that a taxpayer is bound by the grounds that have been set out in an objection, and these grounds cannot be expanded subsequently by introducing new grounds. Taxpayers should therefore word their objection very carefully to ensure it includes all possible defences.

**Q. What general advice would you give to companies on effective management of their tax affairs? How important is it to improve internal functions and processes across the organisation?**

**A.** Apart from the fact that the revenue authorities have established a specific division to assess the specific location from which companies are effectively managed, it should be appreciated that the audit process is very thorough. This not only includes confirming the location where board decisions are made, but also emails and conference calls that may precede any meetings. It is therefore critical to show that a company's effective management takes place in a specific country, as opposed to directors going through the motions during board meetings. More often than not, decisions are made outside board meetings in the context of operating entities, and merely conducting a board meeting in a specific country is not sufficient to demonstrate effective management. In addition, relevant directors must also have experience within

the field of operation of the relevant company, as opposed to those individuals being professional directors. ❑

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**THEODOR EMIL BRINCKER** Director and National Head
+27 (0)11 562 1063
emil.brincker@cdhlegal.com

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