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Tax Control Framework

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Editorial
Lothar Härteis | Managing Partner | WTS Munich

Lothar Härteis

Dear Reader,

The growing attention towards tax compliance is caused by both developments in tax legislation and tax administration following a broad public discussion on fair taxation and aggressive tax planning[1]. Tax compliance and tax risk management have moved into the focus of management, tax administrations and other stakeholders. Finally, taxes and tax risks have entered the boardroom. Tax authorities have also recognised the importance of tax risk management and established new forms of cooperation with taxpayers, such as horizontal supervision, which aims to increase tax certainty and to reduce tax risks and litigation[2]. There is a significant trend towards a cooperative compliance approach as opposed to a rather bureaucratic administration of taxes.

This cooperative compliance approach is supported by the OECD, which promotes a perspective that combines the taxpayers' processes and the administration by the revenue bodies' processes into one holistic process that starts with the taxpayer carrying out his business and ends with the final correct tax being paid. Following the report of the Forum on Tax Administration on Co-operative Compliance: A Framework – From Enhanced Relationship to Co-operative Compliance[3] the OECD, in 2016, published a guide for Building Better Tax Control Frameworks[4] and started an initiative for an International Compliance Assurance Programme.

In the context of cooperative compliance, the design and establishment of a tax control framework (TCF) constitutes a central and important means of managing a company's tax affairs and to be 'in control' of its tax risks. An increasing number of countries require the existence of a TCF as a condition for the participation in a compliance programme. Tax control frameworks offer many benefits for a company, its management and stakeholders, for instance:

- Minimisation and avoidance of tax risks and penalties for the company
- Avoidance of liability risks for the management, tax department and supervisory board
- Transparency and certainty regarding the tax position
- Increased quality of tax data and reporting
- Changing the manner and reducing the risks of tax audits
- Improved cooperation with the tax authorities and faster ruling procedures

The objective of this report is to provide information and guidance regarding recent developments in important countries. All countries that were included in our study have recognised the importance of cooperative tax compliance and the relevance of tax control frameworks in this context. Most countries have already established schemes regarding cooperation and monitoring for large businesses and corporate taxpayers which are based on general principles, voluntary participation or special legislation. Many countries offer different benefits as a reward for participation in tax compliance programmes and the establishment of a TCF. These benefits complement the benefits of the TCF, such as increased transparency, reliability and certainty.

I would like to take this opportunity to thank all of my colleagues at WTS Global for their valuable contributions and constructive discussions.

1) OECD Report on Tax Administration 2006; OECD Base Erosion and Profit Shifting, October 2015

2) OECD Forum on Tax Administration ("FTA"), Compliance Management of Large Business Task Group, July 2009; Horizontaal Toezicht (Horizontal Monitoring in the Netherlands.

3) OECD A Framework: From Enhanced Relationship to Co-operative Compliance, July 2013

4) OECD Co-operative Tax Compliance, Building Better Tax Control Framework, May 2016

Extended responsibility of management

In today's globalised world, top management is not only liable for compliance regarding its represented company. In the case of multi -national group companies, the parent company and its management are responsible for ensuring tax compliance with regard to its subsidiaries within the country, but also for its activities abroad which are performed by separate legal entities or Permanent Establishments (PE). This is the result of the Administrative Offence Law in Germany (and similar regulations) stating that appropriate personnel must be chosen.

In the case of separate legal entities, this responsibility is doubled: direct liability of the local management and indirect responsibility of top management.

In the case of Permanent Establishments (PEs) abroad, there is an extended risk. PEs are not a separate legal entity. They are part of a local legal entity performing activities abroad. They exist even though one may not have already realized their existence and even though a registration has not yet been performed, e.g. by exceeding a specific duration of time or due to sales activities abroad. Therefore, local management must ensure tax compliance not only for the local part of its legal entity but also for its PEs. Management must ensure that all registered and also all potential PEs fulfil tax compliance. This includes, in the first instance, the detection within the organisation, but also registration, fulfilling all foreign tax and legal requirements as well as complying with local foreign rules in respect of PEs. Additionally, the PEs may need to be registered also according to the local tax law of the country in which the legal entity (= head office) is registered. Also, within the tax returns of the legal entity, the results of the PE need to be taken into consideration according to the respective rules. Hence, in light of BEPS and its extended PE definition, ensuring worldwide tax compliance is a key responsibility of management, even more so in the case of PEs. This may be less apparent but is more hazardous, as non-compliance may lead to severe results such as the blacklisting of the company in the case of non-compliance.

Tax Control Framework as enabler for compliant treatment of permanent establishments

An appropriate Tax Control Framework set up in order to ensure tax compliance not only locally but also globally and for Permanent Establishments enables transparency throughout the whole organisation. This is a good start so as to avoid contentious tax controversy with the tax authorities - showing taxpayers' the company´s interest in behaving in a compliant manner all over the world. Due to the fact that also the authorities, not only tax authorities, are deeply interconnected, companies need to make sure that they have full transparency within their organisation to ensure respective compliance.

Joint Audit

Joint Audits have already been considered to be very efficient and successful in the past - from both tax administrations as well as the tax payer. In light of the extended global transparency requirements resulting from country-by-country reporting, management should be aware that tax compliance is not only a local issue but a global one.

Impact of digitisation

Considering the fact that many countries already require electronic tax filing in all areas of taxation, especially in the case of Multi National Enterprises and cross-border activities, digitisation and the transparency of processes and numbers is vital. Also tax authorities will focus on direct data access and respective analysis. With a global transparency, a cross-border application of international standards will also be enabled, avoiding the inconsistent application of different local tax laws - the latter relevant particularly to the increasing number of Permanent Establishments.

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National rules in respect of a Tax Control Framework, differences due to size

In May 2016, the OECD released a report on "Co-operative Tax Compliance" outlining the essential features of a Tax Control Framework (TCF) and the tax authorities' expectations with respect to a TCF. Although the Austrian Ministry of Finance is very anxious to follow the OECD's recommendations, currently no domestic legislation exists requiring taxpayers to install such an instrument.

However, following the Netherlands example, the Austrian MoF had already introduced an enhanced relationship called "Horizontal Monitoring" (HM) in 2011 which was offered to Austrian corporate taxpayers on a voluntary basis. To participate in this process of continuing and permanent tax auditing, the existence of an internal TCF was required or at least the willingness to develop such a tool in cooperation with the tax authorities in the course of the monitoring process. In fact, this requirement limited the participants to large Austrian corporate groups. Between 17 June 2011 and 30 June 2016, a total of 17 Austrian corporate groups covering 249 tax IDs participated in the HM. An evaluation report about experiences collected by the tax authorities is available for download at: **https://www.bmf.gv.at/services/publikationen/BMF_Evaluationsbericht_Horizontal_Monitoring.pdf?5s3qa1.**

Benefits for the taxpayer resulting from a TCF

The final evaluation of the HM project, which came to its preliminary end in mid-2016, came to the conclusion that this form of enhanced cooperation brings more legal certainty for taxpayers, promotes tax compliance, can reduce compliance costs and secures contemporary and lawful collection of taxes in favour of the state budget. Between 2011 and 2016, the HM process was not set by law but based on a manual developed by the MoF together with the Federation of Austrian Industries and the Chamber of Austrian Auditors and Tax Consultants. The MoF is currently working on HM legislation in order to create a legal basis for the HM process in the future. It is expected that such legislation will be passed by the end of 2017.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

The MoF has already announced that future participation in the HM programme will require corporate taxpayers to have introduced an effective TCF. So it is to be expected that a taxpayer's TCF will be examined by the tax auditors before the HM starts. In the course of tax audits, an existing effective TCF can avoid the application of financial penal law.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

Cross-border activities of Austrian enterprises are subject to Austrian taxation and, in many cases, to foreign taxation as well. Experience shows that non-compliance with tax obligations abroad may result in sensitive penalties for the enterprise, its managers and employees. In practice, "co-operative compliance" has to cover both domestic and foreign tax requirements in order to avoid such impacts.

Are there any rules regarding digitisation of tax processes?

In Austria there are no special regulations as far as digitisation of TCF is concerned. However, most of the filings, tax returns and appeals to be done by the Austrian taxpayer, including tax returns and assessment notices issued by the tax authorities, have to be communicated electronically via "FinanzOnline" based on a particular regulation released by the MoF. This online platform can be accessed by visiting **http://finanzonline.bmf.gv.at** after the taxpayer has duly registered.

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National rules in respect of a Tax Control Framework, differences due to size

Although the Tax Control Framework has not been adopted in Brazil in line with the studies promoted by the OECD, the Brazilian Federal Revenue Service (RFB) introduced a programme called "special tax follow-up", which provides for a more detailed review of the payment of federal taxes by certain Brazilian legal entities (major taxpayers).

This programme was introduced in late 2007 with the main objective of notifying tax auditors of any discrepancies in the payment of federal taxes to increase tax collection, with no benefits to the taxpayers. Brazilian legal entities falling under certain criteria (amount of gross revenues, total federal taxes paid, total wages paid to employees and total social security contributions paid) would be selected to take part in the special tax follow-up. Unlike co-operative compliance, the special tax follow-up is performed unilaterally by the tax authorities.

In 2015, the regulation of the special tax follow-up was altered so that the main objectives of the program were to provide updated information about the behaviour of major taxpayers, allow the tax authorities to act in close proximity with the taxable event, and promote regularisation of federal taxes by taxpayers prior to any tax procedures/assessment (self-regularization), among others.

Benefits for the taxpayer resulting from a TCF

If the objective of the special tax follow-up of promoting self-regularisation of federal taxes were implemented in practice, this would allow Brazilian legal entities to pay federal taxes relating to previous periods without the levy of ex-officio fines.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

Despite the existence of the special tax follow-up programme since 2007, the Brazilian taxpayers and Brazilian tax authorities still view each other with mistrust.

Up to now, no proper action aiming to promote self-regularisation has been implemented and all preliminary analysis provided by tax authorities under the special tax follow-up is not definitive.
We point out that, in 2015, the Federal Government tried to implement a tax planning disclosure system in which taxpayers should disclose any acts or business that could eliminate, reduce or defer taxes, leaving it to the tax authorities' discretion whether the tax effect of such acts would be accepted, or whether the reduced tax would be fully charged. This attempt was not well received by Brazilian taxpayers, being revoked before it came into force.

In practice, tax assessments tend to take place very near the end of the statute of limitations, with the transactions implemented by the taxpayers being qualified as fraud in a number of cases, the increased fine of 150% being demanded and the legal entities' officers and/or shareholders being indicated as liable for the tax debts.

It is expected that this mistrust will increase as of 2017 due to the establishment of a bonus to tax auditors based on the amount of tax assessments issued, which will only increase the tax litigation (and not reduce it, as intended by co-operative compliance).

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

Although co-operative compliance has not been adopted internally, the Brazilian tax authorities are known to exchange information with tax authorities in other countries in an efficient manner.

Are there any rules regarding digitisation of tax processes?

Brazil is at the forefront of digitisation of tax processes, allowing Brazilian tax authorities online and immediate access to very detailed accounting, tax and social security information on Brazilian legal entities, among others. Tax audits (and, sometimes, even tax assessments) may be carried out only by crossing data from electronic reports.

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National rules in respect of a Tax Control Framework, differences due to size

China's State Administration of Taxation (SAT) established the Large Business Taxation Department in 2008. The Department is seeking to develop a new approach to supervise taxation and control the company tax risk via TCF. SAT issued two circulars on the TCF in 2009 and 2011 respectively. The circular issued in 2009 introduced a guideline on TCF for large businesses and suggested a set of key elements for the internal TCF system.

Another circular issued in 2011 is on the tax administration of large businesses. This circular specified the definition of a large business as being the group companies earmarked by SAT and the tax authorities at the provincial level. Some provincial tax authorities have rolled out their own regulations for the administration of local large businesses.

Benefits for the taxpayer resulting from a TCF

A well-established TCF system is beneficial for taxpayers in that it could help ensure the efficient control and management of taxation, and prevent damage to financial goals and corporate image. The tax bureau regularly evaluates the implementation and effectiveness of the TCF and passes the questions it discovers to the taxpayer. Further, companies with TCF system are more likely to be granted advance rulings for specific tax issues.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

China's tax authority encourages the taxpayer to set up a TCF but does not make it mandatory. The tax authority controls the tax risk via investigating the implementation of the TCF.

TCF is an important factor in the company's tax risk management work. Therefore, tax auditors will consider the TCF in their practical work to determine how to conduct the investigation work on the company, though TCF does not offer any statutory protection.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

A cooperative tax compliance agreement between the taxpayer and the tax administration is also encouraged. Starting from 2012, signing of the tax compliance agreement was gradually implemented, firstly done by SAT with large businesses and later extended to provincial-level tax authorities. Such a compliance agreement is still not yet available for companies not classified as a "large business".

No cross-border cooperative compliance request has yet been formalised. Nonetheless, some local provincial tax authorities have taken initiatives during their management of tax issues dealing with large multi-national enterprises (MNEs). For example, some tax authorities in eastern China have been continuously issuing guidelines for the MNEs within their jurisdiction to include cross-border tax risk management in the internal tax risk management system.

Are there any rules regarding digitisation of tax processes?

China has also invested substantial resources in promoting tax process digitisation. Most tax compliance tasks now can be completed online, even on a mobile phone. In addition, the concept of big data also stirred up new thinking in taxation administration and risk management. It is foreseeable that digitisation will be a phenomenal trend under which the details of tax matters will become more transparent, and the prediction and identification of tax risks will be made possible at an earlier stage.

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National rules in respect of a Tax Control Framework, differences due to size

Czech legislation does not explicitly regulate a Tax Control Framework (TCF), enhanced relationship or cooperative compliance. Nor has this topic been the subject of non-binding information or instructions issued by the tax administration. According to our information, no amendment to the legislation or internal instructions of the tax administration concerning TCF, enhanced relationship or cooperative compliance is planned in the near future.

However, the legal basis for a TCF, enhanced relationship and cooperative compliance can be found in one of the general principles applying to tax proceedings defined in the Tax Code (which is the basic act governing the tax process in the Czech Republic). This is the principle of cooperation according to which taxable entities and the tax administration should cooperate with each other, the tax authorities accommodating taxable entities in administering taxes where possible.

Benefits for the taxpayer resulting from a TCF

The very existence of a TCF does not automatically mean that the taxable entity gains an advantage. For example, the tax administration can require that a tax audit is carried out more quickly.

So far, the Czech tax administration has little experience with a TCF, not only in the case of small and medium-sized enterprises; thus, it is not yet possible to evaluate the benefits it has brought.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

The tax authorities are not explicitly bound by the existence of a TCF. They are not obliged to check or consider the TCF in administering taxes, in particular in the course or result of a tax audit.

On the other hand, it follows from the basic tax principles (apart from the obligation to cooperate) that tax authorities are obliged to take account of everything that came out during tax administration. Consequently, tax authorities should deal with the introduction of a TCF when performing their activities.

As already stated above, the tax administration has little experience with a TCF, which does not allow us to draw more general conclusions.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

As mentioned above, the cooperative compliance concept lacks any basis in national law (with the exception of the aforementioned basic tax principles) or in non-binding information or instructions issued by the tax administration.

Are there any rules regarding digitisation of tax processes?

In the Czech Republic, clear legislative rules regarding the digitisation of tax processes have been in place for several years. In particular, tax returns and other statements (such as VAT recapitulative statements or VAT control statements) should be filed electronically using the prescribed format.

Electronic filing means filing through (i) a special application of the tax administration, (ii) a data box or (iii) by e-mail accompanied by an advanced electronic signature, all of that solely in XML format.

The obligation to file tax returns and further statements electronically using the prescribed format currently applies to all trading companies and a number of individuals, with a view to implementing full digitisation.

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National rules in respect of a Tax Control Framework, differences due to size

Since the OECD report (2013) and the OECD guidance (2016) were issued, several tests have been carried out to explore the advantages and drawbacks that can be derived from a TCF.

In 2013, the government established the principle of the "relationship of trust", which means a new relationship between companies and tax administration. The principle was to support the company throughout their reporting processes for all taxation falling within the "Direction Generale des Finances publiques" (DGFiP). The revenue authorities and taxpayers had been encouraged to establish a working environment, processes and protocols within which a working relationship based upon mutual trust, transparency and cooperation can be achieved.

Thus, the FTA and the company conducted a complete review of the tax options and tax obligations of the company. This new procedure began in October 2013 with a sample of companies before considering how it could be extended. It was reserved for mid-sized companies whose turnover did not exceed EUR 150 million.

Benefits for the taxpayer resulting from a TCF

The first test was positive but not conclusive. It concerned 11 companies and was followed by a second test in 2014. Unfortunately, at this point, the test has neither been extended nor repeated. However, the enhancement of the relationship between the tax authority and the taxpayer has become a major concern and a key element in government policy and all signs indicate that this movement will continue further.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

In France, there is no clear evidence of effective "co-operative compliance", but there is a real and strong intention to ease the relationship by the previous and current government. To make this goal more concrete, the government in its electoral commitments would like to encourage a relationship based on co-operation and trust by having "the right to make mistakes".

This right could put an end to the automatic suspicion of deliberate intention or recklessness in complying with tax duties by recognising the possibility of an error instead and opening a dialogue. What is expected is a state that accompanies and facilitates the tax and legal step that needs to be taken by the taxpayer to comply with its duties by applying this right. The role of the tax administration would be to correct the taxpayer, help them to apply it and not to reduce to sanction all the time. We are waiting for the next financial bill which will give us more information. No further details have been provided yet.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

In France there are no internal rules on co-operative compliance.

Are there any rules regarding digitisation of tax processes?

Digitisation exists in all segments of taxes and tax processes. In the case of a tax audit, the accounts need to be delivered to the French tax authorities in a standardised electronic format (fichier d'écritures comptables = FEC). Most tax returns need to be filed electronically, for example in the following matters: value added tax, corporate tax, income tax.

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National rules in respect of a Tax Control Framework, differences due to size

Despite the fact that there is an OECD report dated 2013 and the OECD guidance was issued on 13 May 2016, there is no German national legislation but only guidance from the Ministry of Finance issued in May 2016. This deals with one article of the German Fiscal Code regarding correction of tax returns and has to be considered in close context with the allegation of tax fraud. Tax fraud is connected to penalties on both financial and personal (criminal) liability, in addition to reputation damage.

According to this guidance, a certain benefit may be seen: "If a tax control framework is implemented to comply with the tax duties, this may been considered as an indication against deliberate intention or recklessness. It does, nevertheless, not release from checking the particular case." Unfortunately, no clear further guidance has so far been given by the tax authorities either on the form or size of the TCF or on differences for companies of various sizes.

Benefits for the taxpayer resulting from a TCF

In Germany, no benefits – such as an instruction to speed up tax audits, get advance certainty due to faster rulings or material benefits – are laid down in writing. Nevertheless, there is clear commitment from the German tax authorities to look into the implemented TCF. Also, once the timely tax audit ("zeitnahe Betriebsprüfung") is in place (currently only if all past tax audits have already been completed) there is a strong focus on tax audit checking and on processes implemented by the taxpayer such as a TCF.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

In Germany, no clear instructions from the Ministry of Finance have yet been received by the tax auditors but broad training is planned as, in the past, there was strong pressure on tax auditors to involve the tax fraud investigation departments. With the new guidance, it will be clearer in which cases there is no initial suspicion – in default of intention or recklessness. In their own interest, the tax authorities will also consider an implemented TCF in order to get a better insight into the structure and organisation of the taxpayer.

In Germany there is also no clear guidance on this yet, but we expect that TCFs may be considered by the tax authority only for future years. Nevertheless, the implementation of a TCF may be considered as an indication that a taxpayer is following the rules, mainly not evading tax either with intent or out of carelessness.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

In Germany, there is a clear concept of hierarchy of the tax administration towards the taxpayer, even more so as large companies are under ongoing scrutiny by the tax audit, not only randomly as in other countries. Hence, no risk-based selection of taxpayers is applied. Nevertheless, in most cases there is now already a fair relationship between the tax administration and taxpayers based on mutual respect and trust.

Despite the fact that there are not even local rules on cooperative compliance in Germany, the German Ministry of Finance has realised that, in a globalised world and with the implementation of BEPS, tax audits also need to cooperate globally on a grand scale. A high level of success can be seen in the "joint audits". The Cooperative Compliance Model may even be widened cross-border, possibly also with the testing of systems and processes.

Are there any rules regarding digitisation of tax processes?

In Germany, digitisation is already a reality in most areas of taxation. Especially in mass areas such as VAT and wage taxation, digitisation was already implemented some years ago. Electronic filing of corporate tax returns and tax balance sheets has also been required since 2015 and is also highly appreciated for personal income tax returns. Tax auditors are bound to get an insight into the IT tools that are used and they have had data access on the accounting system for more than 10 years.

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National rules in respect of a Tax Control Framework, differences due to size

There is no such measure in the national jurisdiction so far. Until 2012, it was obligatory for the tax authority to audit the 3,000 largest taxpayers every 3 years. In order to have a better insight into large companies' activities and have follow-up on the tax audits, the tax inspectors were dedicated to companies. This model can still be found in practice for large taxpayers, facilitating a better communication on tax issues between the authorities and the companies.

Benefits for the taxpayer resulting from a TCF

The timely internal discovery of discrepancies is the best way to avoid tax penalties. Self-revision is one of the most important legal institutions of the Act on Rules of Taxation, which allows companies themselves to correct any tax bases filed incorrectly or any tax liability, so as to avoid these issues being detected by the tax authority during a potential tax inspection. Obviously, self-revision is more expensive than managing to declare everything correctly in the tax return the first time round, since the general rule is that self-revision interest has to be paid if the liability increases, but this is still much cheaper than when the tax authority finds the tax shortfall and imposes a 50% tax penalty alongside late payment interest.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

Currently, there is no such measure implemented in the Hungarian jurisdiction that explicitly states that a company will be exempted from fines if it operates a TCF. Nevertheless, the tax authority is legally bound to check all circumstances before levying a penalty. We take the view that establishing a TCF at the company may be considered by the tax authority as a commitment to transparency and rule-keeping.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

During a cooperative procedure, which is a new element of the customer-friendly tax authority concept, the Hungarian tax authority makes a direct request to the taxpayer to conduct a self-revision (presumably in cases when an issue can be judged easily based on data in the system) or contacts the taxpayer to remedy the detected errors and shortcomings together, using the professional support of the tax authority.

Participation in the cooperative procedure is voluntary and companies can decide for themselves whether to avail themselves of the opportunity offered by the Hungarian tax authority. Passing up on it would not be very wise, however, because no sanctions can be applied to any violations of law identified and resolved during the procedure, whereas if the cooperative procedure is not successful, the tax authority can resort to a proper inspection at any time.

Are there any rules regarding digitisation of tax processes?

Digitisation is one of the main areas which seems to be rapidly evolving in Hungary. Since 2016, the invoicing software should contain a separate, built-in program function called "tax audit data reporting", which can export the data of the invoices falling into a specific period determined by the starting and closing date of issuance (year, month, day), and a specific number range determined by the starting and closing invoice number. The next stage of digitisation will be online data provision, which will be mandatory from 1 July 2018 when using invoicing software, while taxpayers can test this way of providing data from 1 July 2017. The Government expects that this new tool will be of great assistance in legalising the economy (as well as electronic cash registers and the EKAER (Electronic Public Road Trade Control System)).

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National rules in respect of a Tax Control Framework, differences due to size

We understand that the Central Board of Direct Taxes (CBDT) i.e. apex Tax administration body has developed a Central Action Plan 2016-17, providing an internal framework on several aspects of tax compliance and tax administration *inter-alia* including

- Strategy for undertaking quality audits , collection and recovery of tax demands;
- Widening of taxpayer base;
- Developing speedier mechanism for disposal of tax payer grievances;
- Using technology for improving tax compliance and tax administration

In line with the Central Action Plan, the CBDT has been issuing instructions from time to time on various aspects of tax compliance and tax administration. Some of these instructions have been discussed below:

- **Selection of scrutiny audits:**
  Tax authorities in India have the power of initiating scrutiny audits. The CBDT has issued criteria for selection of scrutiny cases. Cases are selected manually for compulsory scrutiny audit based on certain parameters. Cases are to be selected through Computer Aided Scrutiny Selection ('CASS'). The CASS is an intelligent risk-based system where the Income-tax administration has fed certain red-flag indicators to select cases for scrutiny.

- **E-assessments:**
  Recently, the Income-tax administration has initiated e-tax audits enabling taxpayers to interact with Tax authorities for the audit proceedings on e-mail.

- **Automatic stay of demand:**
  To streamline the process of grant of stay of demand, where the outstanding demand is disputed before the Commissioner (Appeals) (i.e. First Appellate authority), the Tax officer shall grant stay of demand till disposal of first appeal on payment of 20 percent of the disputed demand.

Benefits for the taxpayer resulting from TCF

Selection of revenue potential cases for scrutiny by using the CASS is expected to bring overall improvement in assessments as unimportant cases are filtered out in the selection process. By adopting the CASS, a small number of cases are expected to be selected under the compulsory criteria thereby reducing dependency on manual discretion.The e-assessment facility will also enable tax payers to interact in audit proceedings without having the need to visit tax office. The automatic stay of demand achieves a balance as reduces undue hardship for tax payers for an immediate payment of a high tax demand payment; at the same time, it also helps the tax administration in obtaining tax collections.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

The instructions, circulars issued by the CBDT are binding on the Tax Officers.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

The concept of co-operative compliance agreement has not been introduced in India so far.

Are there any rules regarding digitisation of tax processes?

The Income-tax Act has introduced provisions for digitisation of several processes. E-filing facilities for filing of tax returns, online payment of taxes, online information on availability of withholding tax credits and withholding tax certificates are already functional. A Central Processing Centre (CPC) has been set up by the Tax administration for speedier processing of tax returns and refunds. With the introduction of GST, the Government has been working on developing the GSTN portal where several indirect tax compliances are digitised. Over the long run, the digitisation is expected to smoothen GST compliance for tax payers and provide transparency with a comprehensive taxpayer dashboard and ledgers.

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National rules in respect of a Tax Control Framework – differences due to size?

With legislative decree no. 128, of 5th August 2015, art. 3-7, followed by ministerial decrees of 14th April 2016, 15th June 2016 and 26th May 2017 and the ministerial circular letter n. 38/E of 16th September 2016, Italy provides a clear set of rules for companies that want to take advantage of the "TCF".

The taxpayers that can join the TFC at present are: resident and non-resident entities whose turnover or level of revenues is not less than ten billion euros; resident and non-resident entities whose turnover or level of revenues is not less than one billion euros, provided that they have asked to join the pilot project that the Italian Tax Authority started in 2013; companies wishing to execute the agency's ruling on new investments – Dlgs no. 147/2015, art. 2 – regardless of the level of turnover or revenues.

The above-mentioned taxpayers must adopt an effective tax risk control system which allows the company to exercise a constant control of the internal processes with a tax risk and, if necessary, to intervene, adopting the necessary measures to correct any failure.

Participation in the scheme is also allowed for group companies other than the one with the above-mentioned requirements, if that group company pursues activities with a relevant impact in relation to the tax risk control system.

Benefits for the taxpayer resulting from the TCF?

In Italy, taxpayers joining the TCF have different advantages.

First of all, they can take advantage of the "preliminary opinion" of the tax authorities. In fact, before the submission of the tax return, the taxpayer can ask the tax authorities' position on the issues that are discussed from time to time. If the taxpayer does not agree with the tax authorities' preliminary opinion, and lends a different tax treatment to the topics discussed, in the case of an assessment, the penalties are halved.

In addition to the above, the taxpayers have access to faster ruling procedures since, differently from the ordinary rules, the answer to the rulings submitted by those tax payers must be granted by the relevant tax office within 45 days.

Finally, the taxpayers joining the TCF are exempted from the submission of the guarantee in the case of a request for the reimbursement of CIT and VAT.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

The admission to the TCF is subject to a formal request of the taxpayer followed by an assessment by the tax authorities on the tax risk control system adopted by the company aimed to confirm the existence of the requisites for the admission. Further assessments on the tax risk control system are carried out on a regular basis, and the related outcomes discussed with the taxpayer. To the extent that the taxpayer maintains the requisites for joining the TCF, the tax authorities are bound to consider it with effect from the date of the admission onwards.

Cooperative compliance – agreed by fiscal authority? Cross-border applicability of cooperative compliance?

The TCF system implemented in Italy does not contain special rules for cross-border transactions. Nonetheless, topics associated with these transactions may be brought to the attention of the tax authorities so as to obtain their "preliminary opinion" and can access the same benefits provisioned for domestic matters.

Are there any rules regarding the digitalisation of tax processes?

Digitalisation is already a reality in mass areas such as VAT and bookkeeping. The electronic filing of corporate tax returns and tax balance sheets is also required.

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National rules in respect of a Tax Control Framework, differences due to size

Despite the fact that there is a 2013 OECD report and 2016 OECD guidance, as yet there is no Mexican legislation on Tax Control Frameworks (TCF), no enhanced relationship or cooperative compliance, nor any further guidance or recommendations on the form or size of TCFs or differences for companies of various sizes.

We expect that, in the future, government authorities will give a recommendation with settings and essential building blocks for existing enterprise-wide models of internal control that provides more certainty for taxpayers.

Benefits for the taxpayer resulting from a TCF

In Mexico, there are no official benefits – such as a right to faster tax audits or other material benefits. Nevertheless, in audits, the tax authorities might consider a TCF to be support documentation indicating the accuracy and completeness of the tax returns and disclosures made by an enterprise.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

In Mexico, the tax authorities are not bound to check the TCF. However, once a tax audit is in place, the tax authorities may consider the TCF in order to obtain a better insight into the structure and organisation of the taxpayer. On the other hand, the TCF may be considered as an indication of the disclosure and transparency of the taxpayer.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

Despite the fact that there is no regulation on cooperative compliance or the enhanced relationship in Mexico, there is an alternative tax dispute resolution procedure (conclusive agreement) in the Mexican system through which an independent public organisation known by its acronym as PRODECON acts as a contact forum between the tax administration and the taxpayer.

The conclusive agreement is an alternative procedure that allows for discussion and negotiation between both parties before negotiation tables organised by PRODECON regarding the classification of acts or omissions identified by tax authorities within an audit procedure before a tax assessment are imposed.

This procedure for a tax dispute resolution promotes an enhanced relationship between taxpayers and government to obtain a common understanding of all the relevant facts and circumstances in order to speed up the process and resolve disputes quicker.

Another incipient programme is the programme of verification in real time, which currently applies to a reduced group of taxpayers, notably including entities involved in certain trusts that issue publicly traded securities and that invest in companies dedicated to energy and infrastructure (informally known as Fibra E's).

Are there any rules regarding digitisation of tax processes?

On 2011, new rules were added to the Federal Tax Code introducing the electronic invoicing system. All taxpayers that have over MXN 4,000,000 of annual income and are operating with another domestic taxpayer with a Mexican Tax ID (this law is not applicable to foreign invoices) must submit and store all of their invoices worth over MXN 2,000 in official electronica data format.

In addition to electronic invoicing, along with the 2014 Mexican tax reform, the Mexican Congress made several amendments to tax laws, one of which relates to the digitisation of tax processes.

As a part of the 2014 tax reform package, the Federal Tax Code establishes the requirement of taxpayers to maintain accounting books and records through electronic systems and report on a monthly basis to the fiscal authorities by uploading this information to the Tax Administration Service Internet portal through the electronic tax mailbox.

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National rules in respect of a Tax Control Framework, differences due to size

In 2005 the Dutch tax authorities introduced 'Horizontal Monitoring' (HM) or, in Dutch, Horizontaal Toezicht. The philosophy behind HM was that it can provide an instrument for the tax authorities to better utilise their limited tax audit capacity. The most efficient way to use that capacity is to audit taxpayers that, based on a risk analysis, show the highest risk in terms of material non-compliance. Capacity can be freed up by giving minimum attention to (groups of) taxpayers that are deemed to have a low non-compliance risk because they are 'in control' of their tax position. By relying on the TCF of such taxpayers, the activities of the tax authorities can be minimised. At first, HM was applied to large multinational enterprises on an individual basis. Later it was expanded to smaller companies and was introduced as a collective arrangement, i.e. with respect to tax advisers who monitored the tax positions of their clients when preparing their returns.

Benefits for the taxpayer resulting from a TCF

After implementation, taxpayers can expect easy access to their tax inspector if there are real-time issues they want to resolve, e.g. if there is a Dutch tax issue involving an acquisition. Certainly for big Dutch multinationals, this can be beneficial as very material issues can be resolved in real time. Frequent contact with the tax inspector will be part of such an arrangement, so that each party remains informed on issues that are of importance to the other party. The taxpayer will be expected to proactively share material uncertain tax positions with the tax authorities before the tax return is filed. Understanding, transparency and trust are keywords in that respect. In return, the taxpayer can expect not to be audited unless the tax authorities have indications that the taxpayer is not holding to their end of the agreement. Taxpayer and tax authorities can still agree to disagree, which ensures room for discussion for following the most tax efficient route and for eventually going to court. The taxpayer will have to file returns as soon as possible and pay its (advance) taxes within the payments terms. The tax authorities will raise assessments as soon as possible and try to handle the levying of taxes as quickly as possible.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

HM is strictly voluntary and implemented through an agreement with the tax authorities, though the overriding aspect of the arrangement is (to build) mutual trust. However, no formal statement can be expected from the tax authorities on whether the taxpayer is in control. Before an agreement can be concluded, the tax authorities will, however, review whether the TCF of the taxpayer is adequate and whether there are any tax issues pending that need to be resolved first in order to start with a clean slate. Should there be issues from past years, the tax authorities will usually press to resolve these matters before HM is implemented.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

HM as a form of cooperative compliance is voluntary and not regulated by specific legislation. It is, in principle, a domestic instrument. Cross-border application is not a focus, but for multinational groups there are clear cross-border aspects, like the link with country-by-country reporting.

Are there any rules regarding digitisation of tax processes?

Digitisation of tax processes is already old news in The Netherlands as practically all tax returns are filed electronically. The tax authorities offer a service so that Individuals can download their personal income tax returns with all known data, like taxable wages received, wage tax paid, known bank accounts, deductible interest etc. already recorded in the return, where the taxpayer only has to review the return and add or change data. Where possible, tax audits are performed based on statistical information derived from the systems of the taxpayer.

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Tax Control Framework in Poland

National rules in respect of a Tax Control Framework, differences due to size

Poland has not turned any Tax Control Framework rules into legislation. That said, businesses committed to good practices create their own internal tax procedures to ensure that their tax matters are properly managed in compliance with tax and accounting regulations and to develop a sound document and information flow framework within the organisation. Importantly, however, internal Tax Control Frameworks do not bind the tax authorities nor will they facilitate official tax audits should these occur.

Benefits for the taxpayer resulting from a TCF

Having internal tax procedures is good for the company because it:

- limits the company's tax risk;
- makes it possible to identify those responsible for tax risk or arrears of tax that arise;
- limits the criminal liability of the management board as Polish law imposes such liability on the management board whenever persons specifically responsible for the arrears of tax may not be identified and brought to account.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

Poland does not have TCF laws, while internal tax procedures or controls do not bind the tax authorities.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

Generally, Poland does not have a procedure for businesses to cooperatively agree correct tax treatments with tax authorities. If a taxpayer is in doubt about the treatment of a transaction, they can apply to the relevant authority for a private tax ruling applicable to the taxpayer's specific case.

It must be noted that, in Poland, tax compliance is not checked by authorities until during a tax audit.

If an audit finds arrears of tax, the taxpayer may:

- pay the arrears with interest pursuant to the audit report (this is called "self-adjustment"), which will release them from criminal liability, or
- appeal/seek judicial review, but if they lose, they cannot avoid being held criminally liable.

Are there any rules regarding digitisation of tax processes?

E-audit: Poland has had a new tax compliance audit regime since 1 July 2016. Certain businesses are required to make detailed tax disclosures with the data to be generated and transmitted electronically in a format called Single Audit File For Tax (JPK in Polish).

The JPK format comprises logical structures of electronic tax records and accounting vouchers. Currently JPK consists of seven structures:

- books of account – JPK_KR
- bank statement – JPK_WB
- inventories – JPK_MAG
- VAT sales and purchases records – JPK_VAT
- VAT invoices – JPK_FA
- tax book of receipts and disbursements – JPK_PKPIR
- revenue records (flat-rate tax) – JPK_EWP

"Large enterprises" have been required to send JPK files on request by the tax authorities (except JPK_VAT) since 1 July 2016. This duty will start to apply to micro, small and medium enterprises as of 1 July 2018.

Single audit file for tax in VAT: There is a new law, in effect since 1 July 2016, requiring large enterprises to make monthly electronic filings of their VAT sales and purchases records using JPK_VAT format without request. The same duty applies to small and medium enterprises as of 1 January 2017, with micro enterprises required to make their monthly JPK_VAT filings as of 1 January 2018.

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National rules in respect of a Tax Control Framework, differences due to size?

There is no law or guidance with regards to a Tax Control Framework for corporate taxes. However, the Singapore tax authorities do suggest that, to improve compliance with tax laws, businesses are encouraged to have good internal controls and to conduct periodic reviews of their tax returns. No clear further guidance has been given so far by the tax authorities, neither on form nor size of the TCF nor on differences for companies of various sizes.

For Singapore VAT (i.e. GST), businesses can apply for ACAP status for GST on a voluntary basis.

Benefits for the taxpayer resulting from a TCF?

No benefits, except for Singapore VAT (i.e. GST). Businesses that demonstrate good internal controls for the preparation of their GST returns and pass a specific review process can expect a lower level of GST audits, expeditious GST refunds, a dedicated team to handle GST rulings/issues and the auto-renewal of GST schemes.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

As part of field audits carried out by the Singapore tax authorities, they interview the management of the company on their internal control procedures. But this is a general review as there is no specific framework.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance?

The Enhanced Taxpayer Relationship (ETR) programme was introduced in 2008 as a service initiative and aims to build an open and collaborative taxpayer relationship through regular engagement with large companies, mutually benefitting IRAS and these companies.

The ETR programme is designed to address the needs of large companies and help these companies manage their tax compliance. It offers large companies the benefits of finalising their tax assessments in a timely manner through a collaborative review process with IRAS, as well as tax certainty on significant current events through consultation with IRAS. At the same time, IRAS gains a better understanding of the company's business operations and, with this knowledge, IRAS is better able to identify and address revenue risk early on.

One of the key areas of engagement could include a review of the tax control system where gaps can be identified and remedial actions can be discussed.

There is no guidance on the applicability of cooperative compliance on a cross-border basis.

Are there any rules regarding digitisation of tax processes?

In Singapore, digitisation is already a reality in most areas of taxation. Especially in mass areas such as GST and personal income tax returns, digitisation has been implemented. The electronic filing of corporate tax returns has recently been introduced and will be required by 2020. IRAS uses data analysis to pick companies for audit.

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National rules in respect of the Tax Control Framework – differences due to size?

As of today, there is no national legislation in Switzerland explicitly referring to Tax Control Frameworks (TCF). Nevertheless, implementing a TCF is of key importance and may be considered part of the inalienable duties of the board of directors. This especially holds true when it comes to VAT, because non-compliance in the VAT treatment of a transaction in the selling or buying of goods will be multiplied for all similar cases and therefore might have a considerable financial impact.

The board of directors is responsible for the implementation, design and supervision of internal control systems (ICS). ICS are subject to examination by auditors in companies required to conduct an ordinary audit, i.e. listed companies or companies exceeding certain thresholds.

That said, there is no clear guidance as to how a TCF should look. Swiss corporate law in particular provides considerable leeway in the board of directors' structuring of internal control systems and it does not name any specifics with regard to audit requirements.

Benefits for the taxpayer resulting from a TCF?

Swiss law does not provide specific benefits such as faster tax audits or increased certainty if an effective TCF is in place.

Are the tax authorities obliged to check or consider the TCF? If yes, also for past years?

In Switzerland, tax authorities are not obliged to check or consider the TCF. It may, however, have an impact on tax authorities' perception of taxpayers' compliance in general.

Cooperative compliance – agreed by fiscal authority? Cross-border applicability of cooperative compliance?

In Switzerland, the relationship between the tax payer and the tax authorities is usually very professional and based on respect and trust. It is possible to agree in advance the tax consequences of a special case in a tax ruling.

Are there any rules regarding the digitalisation of tax processes?

In Switzerland, digitalisation is, to a certain extent, implemented as far as it concerns individual income tax returns as well as VAT declarations.

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National rules in respect of Tax Control Framework (TCF), differences due to size?

Whilst we do not have a requirement to publish a tax control framework September 2016 saw the introduction of legislation for large companies to publish a tax strategy as it relates to UK taxation. This applies to groups with parent companies inside and outside the UK with at least either £200m turnover or £2bn assets. Also in scope are UK sub-groups and subsidiaries/PEs of multinational groups with €750m global turnover. The rules apply for the first accounting period beginning after 15 September 2016 and the business must publish its tax strategy document on the internet before the end of its first year. Penalties apply for non compliance. The published tax strategy must cover the following points: approach to risk management and governance arrangements in relation to UK taxation; attitude of the business towards tax planning (so far as affecting UK taxation); level of risk in relation to UK taxation that the business is prepared to accept; and approach of the business towards its dealings with HM Revenue & Customs (HMRC).

In addition to this, a new UK corporate criminal offence in relation to the facilitation of tax evasion was introduced from 30 September 2017. This impacts all UK businesses; there is no minimum threshold to be caught by the rules. Specifically, this means a corporate entity can be criminally prosecuted if one of its associated persons (such as an employee) facilitates UK or foreign tax evasion in relation to a customer or client. It is a defence for the company if it can prove that they had put in place reasonable procedures to prevent its associates from facilitating tax evasion. Companies are therefore undertaking detailed risk assessments to understand their internal tax procedures and to ensure that they have put in place sufficient controls to identify any issues. There are unlimited fines for businesses that are convicted under these new rules.

Benefits for the taxpayer resulting from TCF?

There are no direct tax benefits from publishing a tax strategy. If the tax strategy document is sufficiently detailed, it is likely that this will reduce the risk of HMRC opening a tax enquiry. Furthermore, it is widely recognized that tax transparency is important to gain trust from customers and suppliers and therefore there may be wider commercial benefits to publishing such a document. In many cases, larger companies share their internal procedures and controls with HMRC for information and feedback. If HMRC considers the procedures are appropriate for the size and nature of the company this will act as a defence if the company is connected to any tax evasion.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

No; there is no requirement for HMRC to check the tax strategy document or any documents produced detailing the internal controls. However, it is common for companies to have an open dialogue with HMRC to discuss their tax strategy and tax control procedures.

Cooperative compliance – agreed by Fiscal authority? Cross border applicability of cooperative compliance?

There are no cooperative compliance rules in the UK, but HMRC is keen to encourage a cooperative compliance framework with large corporates. In the UK, large corporates are allocated a dedicated Customer Relationship Manager within HMRC. Frequent and open dialogue is encouraged to reduce issues and disputes. The UK operates a risk-based approach to select taxpayers for a tax audit. The UK cooperates effectively with other countries in joint tax audits.

Are there any rules regarding digitalization of tax processes?

At the Budget 2015, the Government announced its intention to digitalize the tax system by 2020. A substantial period of consultation followed with some draft legislation published on 31 January 2017. The UK already has digitalization in place for most taxes, VAT, Payroll taxes and filing of tax returns. The full digitalization of the tax system will ensure more effective use of third party information to reduce the error rate, reduce the administration burden and enable quicker reporting.

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National rules in respect of a Tax Control Framework, differences due to size

There currently are no proposals for legislation or regulations that would require companies to implement a Tax Control Framework (TCF). This is surprising, since there is an ongoing active discussion among politicians about how best to reform the federal tax rules to provide for more economic growth.

Benefits for the taxpayer resulting from a TCF

There are no benefits at either the federal or state level for a company to implement a TCF.

Are the tax authorities bound to check or consider the TCF? If yes, also for past years?

The tax authorities have not proposed or promulgated procedures to check for or consider whether a TCF has been implemented.

Cooperative compliance – is it agreed by the fiscal authority? Cross-border applicability of cooperative compliance

In the last twenty years, the IRS has implemented a variety of cooperative compliance programmes for taxpayers with respect to federal tax issues. These programmes have been very successful. However, the IRS has faced severe budget cuts in the last few years and many of these programmes are being curtailed.

The United States is not currently implementing programmes to coordinate audits with foreign countries.

Are there any rules regarding digitisation of tax processes?

In the United States, most larger companies have digitised their tax processes (both from a compliance and an accounting standpoint).

Electronic filings are required for most business tax and information returns. For individuals, electronic filing is generally optional, but many choose to file that way. With the recent cuts in the IRS' budget, compliance with tax laws is being administered more and more through matching of tax data and filings.

There is currently no requirement for businesses to submit source data in electronic form to the government on audit.

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