ALLEN & OVERY

Global Tax practice

Negotiating the minefield: challenges facing the corporate tax function

Contents

Foreword

In recent years the role of tax directors has become much more complicated. They have to balance continued investor demands for increased financial returns against the reality that tax authorities are becoming more aggressive about collecting revenue. On top of that, the media and public interest in whether multinational businesses are paying their "fair share" means that even conventional tax planning may carry potential reputational risk. The court of public opinion is not a particularly impartial – or even informed – tribunal.

Add to all this the uncertainties about what the international tax landscape will look like in a few years' time, and increases in the compliance burdens faced by businesses, and one can see that the job of the tax director is not an easy one. It is time to refute once and for all the perception that tax is best left to the "geeks".

The role of the board in tax matters has also seen a major change. Boards have increasingly had to pay closer attention to tax – whether to the wider strategic and reputational issues, or to particular positions taken by the company on tax matters that may be questioned by auditors, tax authorities, politicians or the press.

Good communication between the board and the tax director is key. Explaining complex tax issues in straightforward terms is an increasingly important skill for tax specialists, and, on the flip-side, boards need to give tax the time and attention that such a key strategic issue deserves.

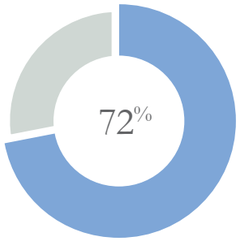
This survey delves deeper into these themes, considering the effect of government and international policy changes on how businesses approach their tax strategy, how businesses are defining their strategic goals, and the changed relationship between the board and the tax function.

350 senior-level executives (CEOs, CFOs, general counsel, tax directors and heads of audit committees) were interviewed about these issues. Respondents came from a range of industries, and from across Western Europe, the U.S. and Australia.

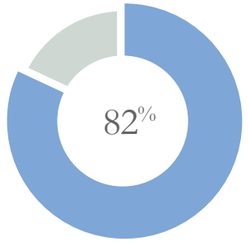
Chapter 1

Policy in the spotlight

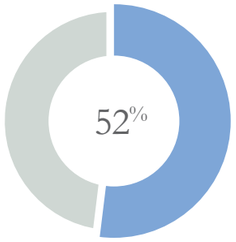
HEADLINES



of respondents identified tax as being of the 'highest importance' or 'very important' to their overall strategy



said they had made substantial or moderate changes to their tax strategy in response to reputational concerns



said they would change their tax strategy as a result of a UK-style Diverted Profits Tax (DPT) or similar legislation in their region

Tax takes on a strategic dimension

Tax is a growing influence on business strategy. The aftermath of the global financial crisis and changing social attitudes means tax is now very much under the spotlight. This survey examines the challenges corporates are facing and how they are adapting.

The tax affairs of large multinationals regularly generate negative headlines in the media, with the consequent effect on political, consumer and investor perceptions.

The public increasingly expect the companies they buy from to be good corporate citizens. That goes beyond how they treat the environment and their workforces, and increasingly includes how they manage their tax affairs.

Meanwhile, many tax authorities are becoming more intrusive as they clamp down harder on tax avoidance and evasion.

On the other hand, tax remains a significant business cost, and investors remain concerned about minimising costs and maximising returns.

Reflecting these competing pressures, this survey found that 72% of respondents now believe tax is 'very' or 'highly' important to their overall strategy.

NEW RULES CREATE NEED FOR CLEARER TAX STRATEGIES

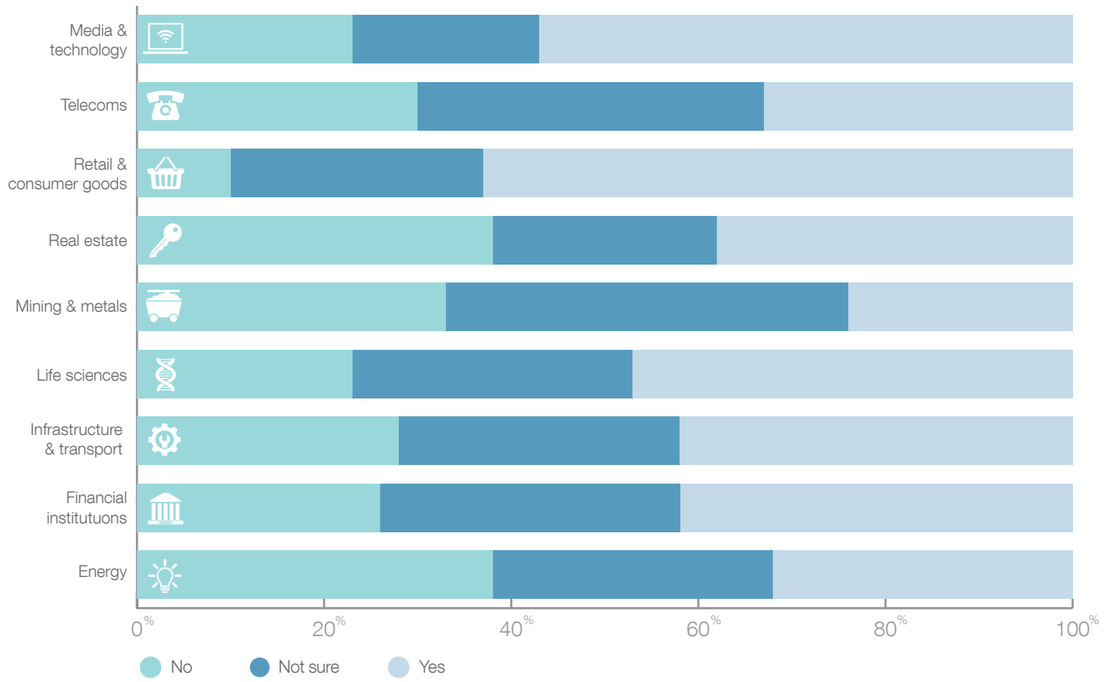
An obvious tax mitigation strategy for a multinational business is to maximise profit in low tax jurisdictions and deductible expenses in high tax jurisdictions. It is this strategy that has been at the forefront of media reports and public and political concern about the strategies employed by multinationals. International initiatives to combat this are the focus of the OECD Base Erosion and Profit Shifting (BEPS) project. Some countries are also anticipating the outcome of BEPS, for example the UK with the introduction of its Diverted Profits Tax (DPT) earlier this year. Many countries are tightening up perceived loopholes, and taking a more aggressive approach with tax payers.

Complying with these new or strengthened rules is prompting corporates to reconsider their tax strategies.

52% of respondents to the survey said they would change their tax strategy as a result of these legal developments. But there is variation between industries. In the mining and metals sector only 23% of respondents thought their tax strategy would change; this rises to 57% in media and technology and 63% for consumer goods and retail.

In parallel, transparency initiatives such as the OECD Common Reporting Standard (CRS) and in the U.S., the Foreign Account Tax Compliance Act (FATCA) are being enacted, substantially increasing the compliance burden for corporates who have become, in effect, unpaid information gatherers for tax authorities.

Do you expect that companies in your industry will change their tax strategy as a result of developments such as the DPT?



ANTICIPATING BEPS: DPT AND ITS CONSEQUENCES

The UK unexpectedly introduced the DPT with effect from 1 April 2015. The DPT, nicknamed the 'Google tax', imposes a 25% charge on "diverted" UK taxable profits which would have arisen but for arrangements designed to avoid a UK permanent establishment or which artificially inflate the expenses of UK operations.

The DPT has been widely criticised both at home and at the OECD. Pascal Saint-Amans, the Director of the OECD's Centre for Tax Policy and Administration said he was 'embarrassed' that the UK introduced the DPT before the OECD's BEPS package was finalised.

Gottfried Breuninger echoed businesses' concerns over the DPT because of the risk of double taxation occurring in different countries. He argued that businesses need to be proactive in their approach to the legislation by engaging with governments and tax authorities.

When respondents were asked how a UK-style DPT would affect their tax function, 60% said it would add to the company's compliance burden, while 59% felt it could lead to a possible change in tax strategy from the board.

Although Breuninger did not believe a UK-style DPT would happen in Germany, he said companies operating in Germany are nonetheless facing similar issues.

He explained that law makers tend to react a lot more swiftly to rulings from the German Federal Tax Court than in the past. "If it's a ruling the tax authorities disagree with then they'll seek to change the law ," he said.

Also, government ministers are now far more prone to changing the rules on taxation in response to public opinion and media pressure. This means corporates have to be well positioned to deal with a more fluid and uncertain tax environment.

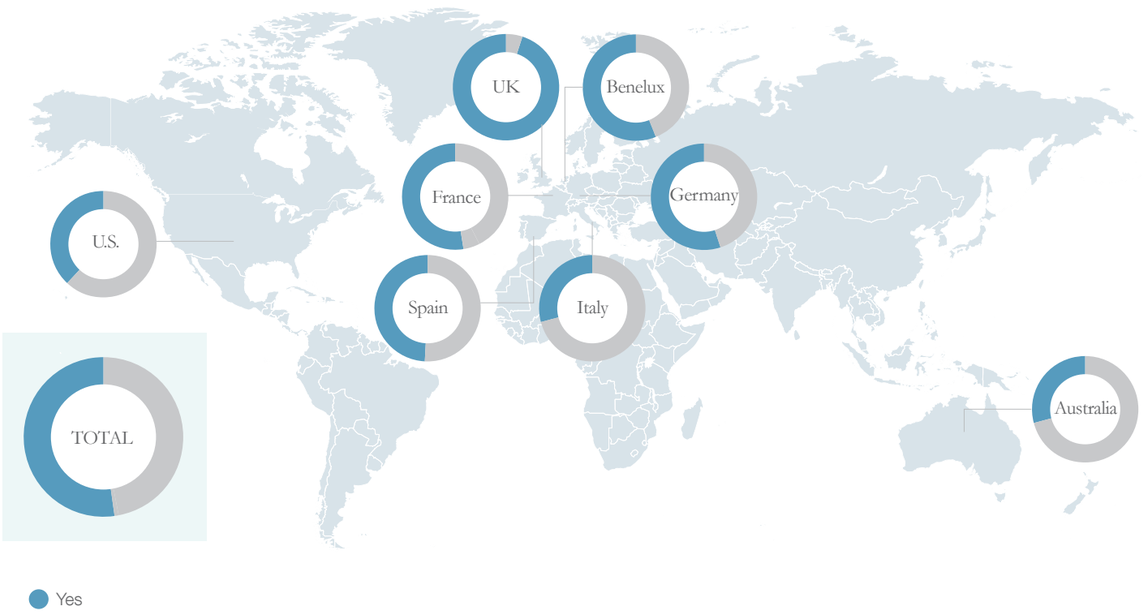
One country that has looked at introducing a UK-style DPT is Australia. The former Australian treasurer even held discussions with his UK counterpart over the feasibility of adopting a similar model. But it eventually opted for a more limited-scope anti-avoidance measure, rather than a DPT-style tax, targeting clearly egregious structures that avoid creating a "permanent establishment" in Australia.

Ka Sen Wong, Australia Tax Counsel at Allen & Overy, explained that this arose from concerns that the UK's DPT model might breach a number of Australian tax treaties, and the perception that the UK was "moving too far ahead of the OECD's BEPS project".

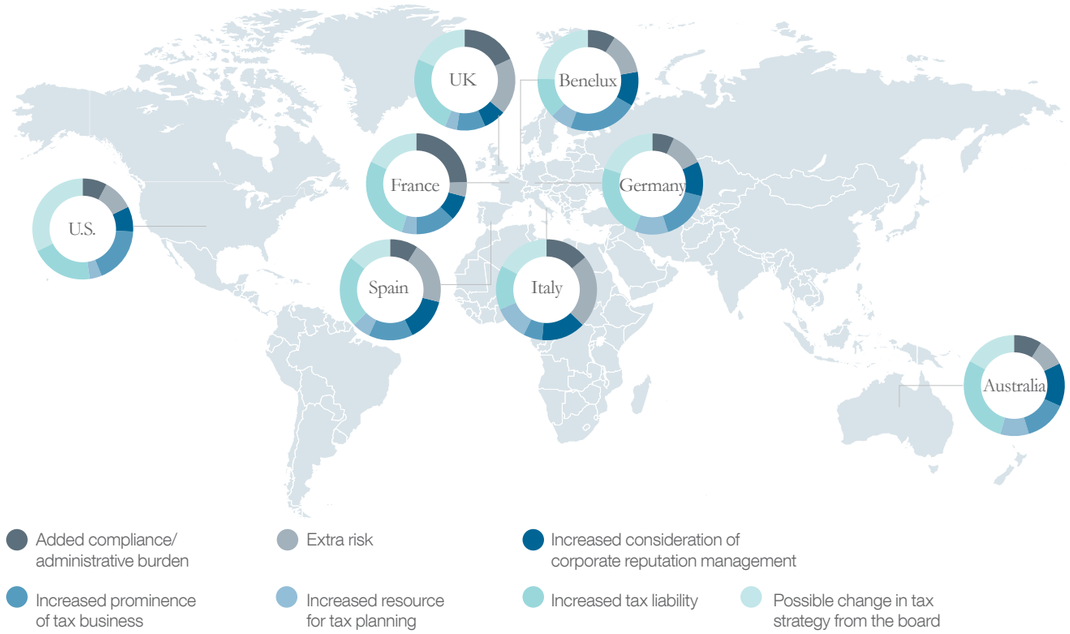
"If it's a ruling the tax authorities disagree with then they'll seek to change the law"

Gottfried Breuninger
Global Head of Tax, Munich

Do you expect your company will change its tax strategy as a result of legal developments such as the DPT?



How would you anticipate the introduction of a UK-style DPT in your region would affect you or your firm's tax function?



TAX AUTHORITIES BECOMING MORE ASSERTIVE

There aren't just reputational risks to consider when pursuing aggressive tax avoidance strategies, but also the fact that the tax authorities are much more alert and are willing to confront them.

Lydia Challen, Tax Partner at Allen & Overy in London explained that the revenue authorities are gaining more power to tackle what they view as inappropriate tax avoidance behaviour. "The general mood shift has been very significant," she said.

The UK's tax authorities, Her Majesty's Revenue & Customs (HMRC), have said they're winning 80% of the tax cases they bring to court. "They've been quite intelligent about the cases they've chosen and they nearly always have an avoidance flavour to them," she said.

Tax authorities are becoming more tenacious in other countries as well and in some jurisdictions such as Italy, they have no hesitation in using the criminal law to challenge structures they do not like.

As tax has taken on a political dimension disputes can now have wider ramifications.

According to Jack Heinberg, Head of Allen & Overy's U.S. Tax Practice, this has been a particularly big concern for companies operating in the U.S. where being highlighted in the media as trying to push the envelope too hard on tax can undermine the claim of good corporate citizenship.

Meanwhile in Europe, EU state aid investigations have been launched into old tax rulings. These include Amazon in Luxembourg, Starbucks in the Netherlands, and Apple in Ireland.

Gottfried Breuninger, Allen & Overy's German and Global Head of Tax, explained that due to European state aid investigations there is some debate over whether rulings in Germany could be interpreted as state aid or throw up other unwelcome complications.

These concerns are exacerbated by the so-called LuxLeaks affair where the media reported details of well-known multinational companies using complex structures involving Luxembourg to avoid higher taxes in other EU jurisdictions.

"I think tax-oriented restructurings will be monitored much more," said Breuninger. He added that the reputational risks relating to taxation have increased as the media is also paying much closer attention to the issue.

"I think tax-oriented restructurings will be monitored much more"

Gottfried Breuninger
Global Head of Tax, Munich

BRACING FOR THE INTRODUCTION OF BEPS

BEPS is meant to stop multinationals from exploiting loopholes to artificially shift profits to low-tax jurisdictions to reduce their corporate tax bills.

The final package of BEPS was delivered on 5 October 2015 for approval at the G20 meeting a few days later. Countries are expected to adopt BEPS into their domestic legislation from 2016 onwards.

Lydia Challen said corporates had expressed concern over a number of aspects of BEPS. "The transparency proposals from the OECD will be onerous to comply with and there are concerns about this information reaching the public domain where it might be interpreted in a partial way," she said.

Lydia also said that it is also clear that some fairly common tax planning techniques could become unavailable. Countries could also implement BEPS in slightly different ways leading to higher compliance and administrative costs, and the potential for double taxation.

This means companies need to be proactive in how the legislation is interpreted at a national level and must try and influence consistency at an international level.

"The transparency proposals from the OECD will be onerous to comply with and there are concerns about this information reaching the public domain where it might be interpreted in a partial way"

Lydia Challen
Tax Partner, London

BUT COULD THERE BE POTENTIAL WINNERS FROM BEPS?

Somewhat surprisingly, 52% of respondents said BEPS would 'somewhat' to 'greatly' positively impact their tax position. Challen observed that the jurisdictions with the highest positive response (Australia and Germany with 63% and 64% respectively) were jurisdictions with strong domestic regimes with less current scope for avoidance.

In addition, according to Godfried Kinnegim, Head of Allen & Overy's Netherlands tax practice, many of the more positive respondents are likely to have a large local customer base.

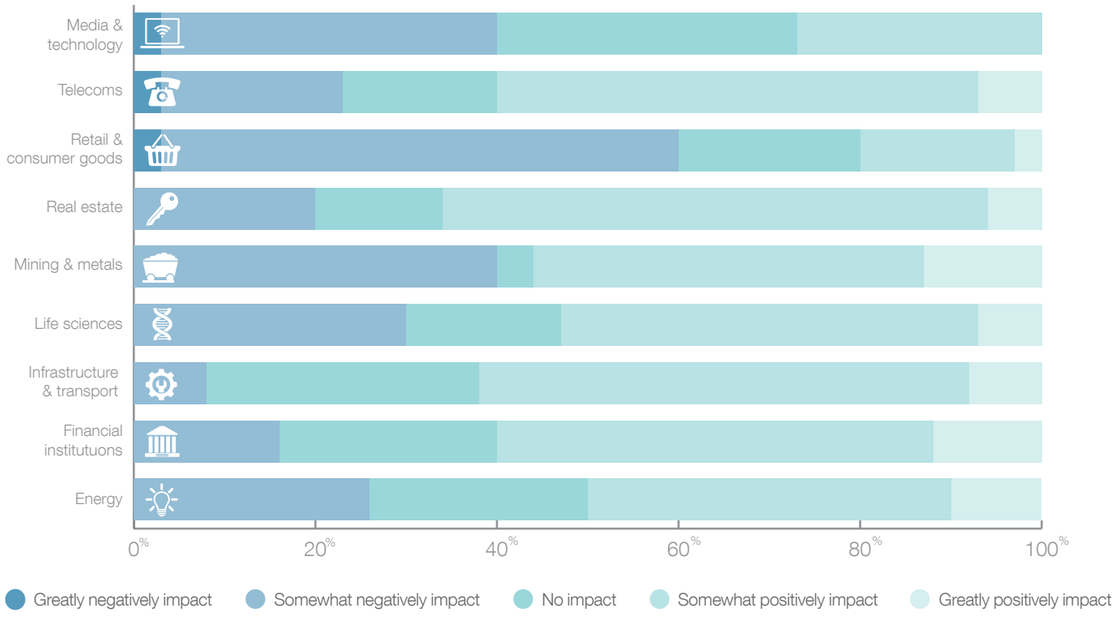
"Under those circumstances, a respondent might view BEPS as creating a more level playing field as they may not have the opportunity to implement aggressive cross-border structures to lower their effective tax rates as some multinationals have done," said Kinnegim.

He added that BEPS could bring about some simplification as certain tax structures will no longer be allowed. The greater clarity might even be positive for the tax position of some companies.

However, it's notable that 57% of respondents from the consumer goods and retail sectors believed that BEPS would 'somewhat negatively impact' their company's tax position. The increase in e-commerce had given this sector opportunities to do business in countries without incurring significant tax there. This is likely to be curtailed under BEPS, leading to higher taxes in those industries.

Wong can see why some believe there could be some positives from BEPS. "Companies whose tax strategy focuses on risk and compliance, rather than a simple question of how much tax they are paying, may benefit," he said.

What impact do you expect the BEPS project to have on your company's tax position (by industry)?



He explained that a move towards greater standardisation in areas such as transfer pricing documentation will lead to greater transparency and certainty and a more level playing field when it comes to taxation. But for those companies whose tax strategy focuses on reducing their effective tax rate, the BEPS project is only headed in one direction.

"I don't think that anyone's thinking there are opportunities from BEPS to reduce the levels of tax paid," he said.

THE ELEPHANT IN THE ROOM: U.S. TAX REFORM

The effectiveness of BEPS will be significantly affected by whether the U.S. decides to implement it. While the U.S. Treasury has played an active role in discussions at the OECD, the domestic political situation makes it much more doubtful that large-scale reform is on the cards.

A U.S.-based CFO respondent highlighted the complications caused by the U.S. system:

"We anticipate great challenges in the U.S. market. The complexities in the tax regime are a serious threat and we have to be more careful in terms of book-keeping and tax strategies."

Meanwhile, however, the U.S. has been no slouch in enacting rules that extend the reach of its Internal Revenue Servicer (IRS) well beyond its borders. The U.S. introduced FATCA in October 2009 making it harder for U.S. taxpayers to hide financial assets outside the United States. The main thrust of FATCA is that 'financial institutions', particularly foreign ones, must collect information on all of their account holders. In particular, they have to pass any information on U.S. account holders to the IRS.

This is a complex task. According to Jack Heinberg, FATCA has not necessarily impacted the tax planning of those affected but rather their tax compliance, with respect to financial institutions and, transaction execution, with respect to all financial market participants: "It's not that you plan to get around FATCA, it's that you have to deal with how you comply, and how you modify your agreements to ensure the appropriate allocation of FATCA risk and potentially what falls inside and outside the legislation," he said.

FATCA has set the precedent for multinational information exchange regimes, such as the OECD's Common Reporting Standard. Businesses will have to be alert to ensure that they can access from their counterparties the information they will need to comply.

Summary

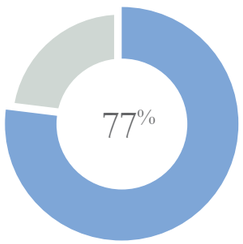
Demands on the tax function have grown substantially and will continue to increase. This places a need on senior management to stay abreast of developments and to be proactive over mitigating potential risks and allocate the necessary resources to remain compliant.

The theme of the next few years will be increased change, and more compliance burdens. Given the increased public attention on tax issues, corporates that do not pay sufficient attention to how to respond could find themselves falling foul of new rules leading to possible reputational damage.

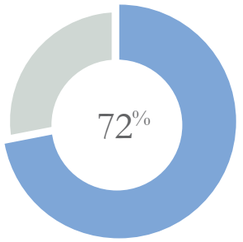
Chapter 2

Strategic goals

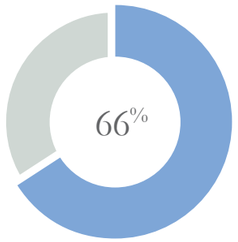
HEADLINES



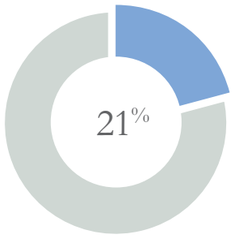
of respondents feel that investor influence on tax decisions has increased over the past five years



said their approach to tax planning sometimes or often conflicted with tax authorities ideals



said the key objective for the tax function is to achieve the lowest Effective Tax Rate (ETR)



were lacking confidence in their abilities to manage and avoid tax risks

Outside scrutiny drives more discussion around tax

More government, media and stakeholder scrutiny around tax issues has made it an increasingly important part of reputational management, according to 78% of respondents.

"Managing the increasing compliance requirements and the greater scrutiny has made taxation one of the top priorities for our board. This has led to us discussing our tax affairs more thoroughly," said the CFO of a Netherlands-based firm.

A Director of Tax Planning and Compliance with a U.S.-based consumer company said there has been a greater focus around more efficiently managing communication demands around tax issues.

"Our board has developed a defined structure internally so that all challenges, issues and situations are discussed thoroughly to ensure adequate compliance."

However, the extent to which tax has become a bigger part of reputational management differs according to the sector. For respondents in the mining and metals, financial, and telecoms sectors, 40% said that tax had become a bigger part of reputational management "to a great extent". 38% of those in the heavily-regulated energy sector agreed with them.

"If you're in a highly-regulated industry such as financial services, the extraction industry, or telecoms, then you are more concerned about your reputation and relationship with the authorities because you need licences from the government to operate," said Godfried Kinnegim.

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Godfried Kinnegim
Tax Partner, Amsterdam

"Anything related to land, such as mining, real estate and infrastructure tends to get a lot of attention in Australia as they're important sources of government revenue"

Ka Sen Wong
Tax Counsel, Sydney

But there's scrutiny on other sectors as well. For example, the large mining and commodity trading houses are receiving more attention due to the work of non-government organisations (NGOs), particularly as they often operate in politically less stable regions.

Notably, 77% of Australian respondents said public and media scrutiny had increased – more than any other region surveyed. In Australia, multinationals were subjected to a Senate inquiry and the press ran stories suggesting some of the larger mining groups engaged in transfer pricing arrangements to reduce their tax bills.

"Anything related to land, such as mining, real estate and infrastructure tends to get a lot of attention in Australia as they're important sources of government revenue," said Ka Sen Wong.

He explained that Australia managed to get through the financial crisis without going into recession thanks to its resources industry, which benefited from strong Chinese demand. However, the slowdown in China has prompted the Australian government to take another look at its revenue projections due to pressures on public finances. Policies that increase tax collections but which are framed as integrity measures rather than a widening of the tax base are a politically benign way to help plug the gap.

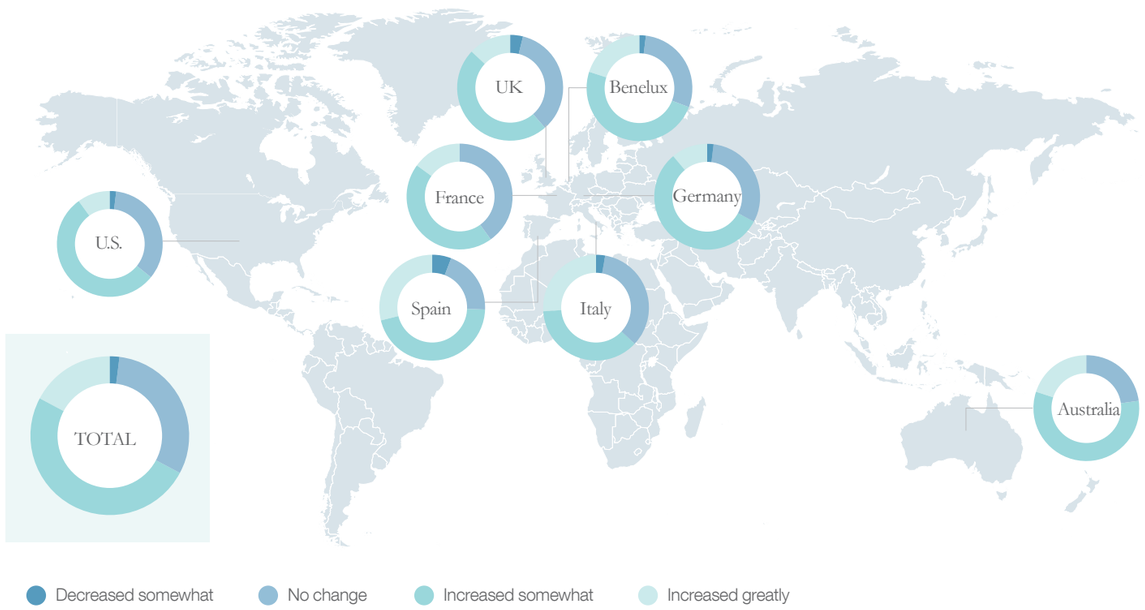
A CFO at one Australian company noted that there had been a marked increase in public and media attention towards the business' tax affairs over the last five years. "We have to be extra careful about tax compliance and in managing our corporate reputation," they said.

IN THE PUBLIC EYE

It is not only in Australia where media and public scrutiny has increased. 67% responded that public and media attention over corporate tax affairs had increased to some degree. Respondents from Spain (29%) and Italy (26%) were most likely to go further and state that public and media attention has increased greatly. "Tax issues are becoming more important in Europe nowadays due to government efforts to balance their books, and media attention is also more focused on our sector," said the tax director of an energy company in Spain.

> *"Tax issues are becoming more important in Europe nowadays due to government efforts to balance their books, and media attention is also more focused on our sector"*
>
> Tax Director
> Energy company in Spain

How has public/media attention to your business' tax affairs changed over the past five years?



INVESTORS PAYING MORE ATTENTION TO TAX

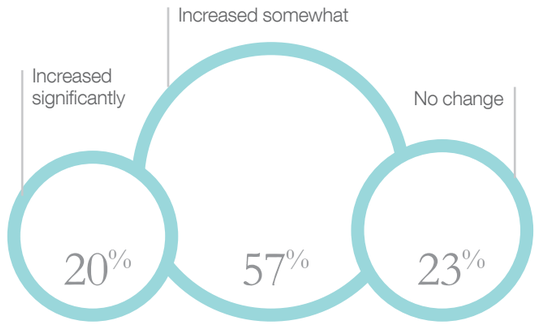
Investors are also among those paying closer attention to corporate tax affairs. In an era of growing shareholder activism, more investors are influencing the taxation policies of companies in which they own shares, according to the survey.

More than three quarters of respondents said that investor influence has increased either 'significantly' or 'somewhat' over the past five years. A quarter noted that investors had a 'substantial' influence over company tax strategy, while 51% said investors had a 'moderate' amount of influence.

A tax director with a UK-based company said all the publicity and increasing scrutiny by the authorities had put tax firmly on the radar for investors. "Tightening conditions in the tax environment have put the investor class on high alert. Their involvement in core tax and finance management is growing and this is making it difficult for management to balance investor and government pressures," they said.

While some investors are most focused on transparency, reputation and ensuring stability of the tax position, for many it is simply a question of minimising leakage on their returns. One Spanish CFO observed: "high tax liabilities have impacted investors' final returns and so they are very demanding and concerned". This is reflected in the fact that more respondents considered that minimising tax liabilities was the most pressing matter for their business now as compared to five years ago.

Has investor influence on tax strategy increased or decreased over the past five years?



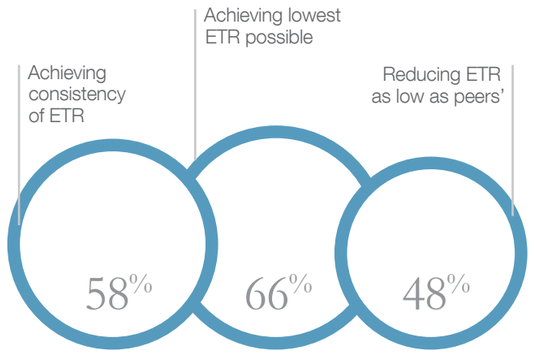
STILL FOCSED ON THE LOWEST ETR

Despite the increased scrutiny and growing reputational concerns, 66% of respondents said the key objective of the tax function is to achieve the lowest ETR for their company.

55% considered that a desirable ETR was in the 21-30% range while 31% were aiming for the 11-20% range. However only 6% achieve this in practice, with 53% in the 21-30% range and a surprising 35% in the 31-40% range. A small minority even top 50% ETR.

However, the quest for the lowest ETR by tax departments stands in contrast to the public mood. In the U.S. the practice of 'corporate inversions' has come under fire recently from politicians and the media. Corporate inversions involve moving the organisation's headquarters to a lower tax jurisdiction in order to side step some of the U.S.'s more stringent tax rules and lower the group ETR.

What are the main objectives given by your board to the tax function?



"Overall, companies have a much higher domestic tax burden in the U.S. than in other OECD countries," Jack Heinberg explained. "I think that the reason the tax debate has sparked up again in the U.S. is because corporate inversions are still viable under the current statutory framework in the right circumstances."

He added that proponents for corporate tax reform claim inversions would become irrelevant if the government reformed and simplified the tax system so as to bring it in line with other countries.

From the survey, 72% of respondents said their approach to tax planning 'sometimes' or 'often' conflicts with the ideal of the tax authorities, while only 27% said it 'never' conflicts. Some 33% of financial institutions thought their tax planning 'never conflicts with tax authorities' ideals'. This could be a reflection of the sector's increased caution after years of negative press.

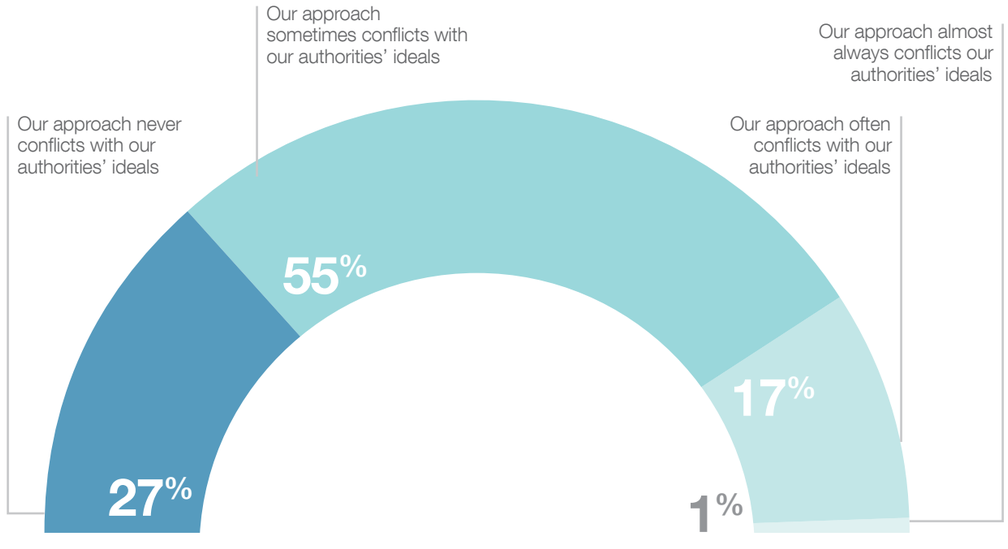
Some 22% of real estate respondents said their approach 'often conflicts with authorities' ideals'. For the telecoms sector, 80% responded that their tax planning approaches were in conflict with authorities' ideals to some extent.

As to their approach to tax planning, 57% of respondents said it varied depending on the jurisdictions they operate in. However, when asked about the factors influencing their approach, 70% said it depended on whether the jurisdiction had a general anti-avoidance rule, while 69% said the overall tax burden was decisive.

Interestingly, 66% pointed to their perception of the fairness of the tax system as influencing their appetite for tax planning. Lydia Challen observed that this was an important message for tax authorities. "Corporate tax reform needs to contain some 'carrot' as well as 'stick'," she said.

It's clear that social expectations regarding corporate taxation have changed. It's no longer just a case of playing by the rules, but also of not pushing those legal possibilities too far. Not only are governments and tax authorities on high alert for this kind of behaviour, but so are the media.

To what extent do you perceive that your approach to tax planning matches the approach that your tax authorities would like, in an ideal world, for you to take?



There's an increasingly fine line between being seen to be paying a 'responsible' level of taxation whilst minimising the overall tax burden. Getting it wrong can trigger media and political recrimination, potentially leading to loss of business and reputation.

This highlights a key feature of a robust tax strategy: ensuring that the downside risks of any tax planning – whether technical, commercial or reputational – are identified upfront, and that there is an exit strategy if the company wants to change course.

"I think that the reason the tax debate has sparked up again in the U.S. is because corporate inversions are still viable in the right circumstances"

Jack Heinberg
Head of Tax, New York

If your approach to tax planning varies among different jurisdictions, which of the following is likely to influence your approach?

Summary

The survey shows that corporates are increasingly aware of the scrutiny they're under from tax authorities, the public, politicians, investors and the media. Corporates are increasingly including these factors in their tax planning.

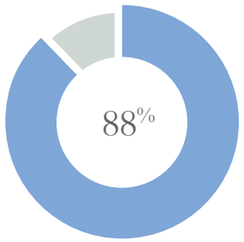
However, investor pressures for returns remain strong, and reducing the ETR is a key priority.

The need for tax planning therefore remains, but its is increasingly important to analyse the downside risks in advance.

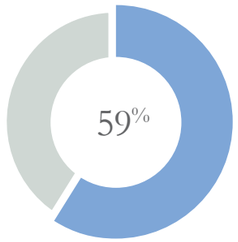
Chapter 3

The changed role of the tax function

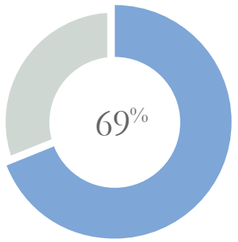
HEADLINES



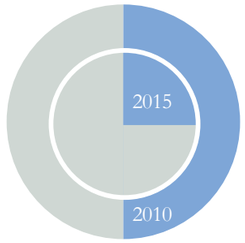
of respondents said the board's expectations of a tax director's role have changed over the past five years, 26% said to a great extent



said tax is now very important to the firm's overall strategy, compared with 22% who said it was very important five years ago



noted that expectations of the tax director's role have evolved towards being more strategic



66% responded that tax issues are now discussed by the board on a quarterly basis, compared to five years ago, when 60% said it was discussed semi-annually.

Tax function playing a greater role in the business

The role of the company's tax department has evolved considerably as tax issues have increased in priority. The survey reveals the extent of that change along with the skills and abilities required by tax managers.

Some 88% of respondents said the role of the head of tax and the board's expectations of that position had seen some change in the past five years, with 26% of respondents saying those expectations had changed to a great extent.

Respondents emphasised how important the tax function has become in the past half-decade. "We are looking for executives to have a broad understanding of tax laws as well as a sharper focus on the core strategic vision of the organisation and to balance this with the increasing risk factors and challenges ," said the CFO of a U.S.-based company.

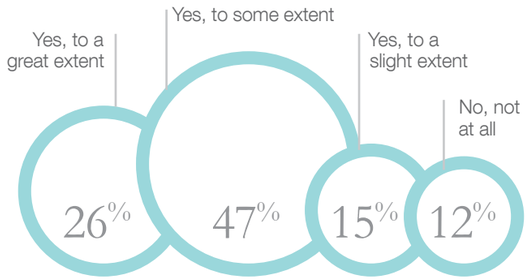
Allen & Overy's Godfried Kinnegim explained that since U.S. household names gained media attention for their alleged aggressive tax policies, company management now pay much closer attention to this area as it can have a real impact on the business. "Politicians announcing that they're boycotting certain establishments because of their tax practices has opened the eyes of a lot of C-level executives, and that has meant that tax is now more than ever a boardroom topic" he said.

This change in the way tax is perceived has meant that boards no longer expect tax directors just to be experts in this area.

The survey found that 69% of respondents said the board now expected the head of tax to be more involved in overall business strategy as opposed to playing a more technically-driven background role. Some 62% said the board now expected the tax function to have a more integral role in corporate governance as well.

The Director of Tax at a U.S.-based company said heads of tax are now more involved in key business strategies and in making sure compliance procedures are in line with core strategies and organisational goals.

Would you say that your board expectations of a tax director/ head of tax have changed over the past five years?



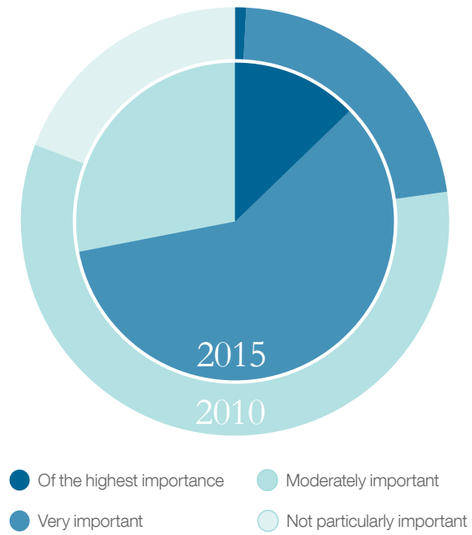
STRATEGIC THINKING IS HIGHLY VALUED

33% of respondents to the survey believe that being strategically-minded is now the most valuable skill for a head of tax.

The second most valued skill according to the survey is the ability to manage risk. "Risks have increased due to changing tax policies and greater government scrutiny. Tax directors need to stay ahead of the regulatory compliance curve," said the CFO of an Italian company. Only 11% rated technical knowledge as the most important quality in a tax director (although of course it will be a prerequisite).

TAX MOVES UP THE AGENDA

Currently, how important is tax to your firm's overall strategy?



The need for strategic thinking reflects the growing importance of taxation as a component of the overall corporate strategy.

Some 59% of respondents said tax is now 'very important' with 13% believing it to be 'of the highest importance' in terms of the overall business strategy. This contrasts with five years ago when 22% said it was 'very important'. A further reflection of the growing importance of tax is that the board's understanding of it has improved considerably in the past five years. This is possibly a consequence of the fact that 56% noted that increased communication with the board was now expected of the tax director

TAX COMPLIANCE MORE CLOSELY MONITORED

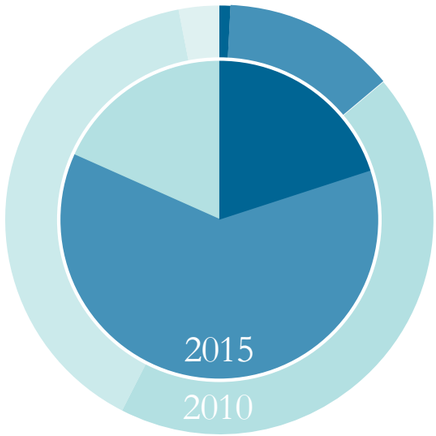
Some 71% of respondents said tax issues are now included in the overall business strategy with 66% saying there has been a parallel increase in understanding of tax matters within the business.

According to respondents, boards are calling for more frequent communication as to the company's tax position. "Directors want to be kept fully updated over compliance issues relating to taxation," said a U.S.-based Tax Director. "In Germany we've seen board members ask more detailed questions before signing off on tax returns in case there's some comeback if they weren't properly prepared," said Gottfried Breuninger.

"Directors want to be kept fully updated over compliance issues relating to taxation"

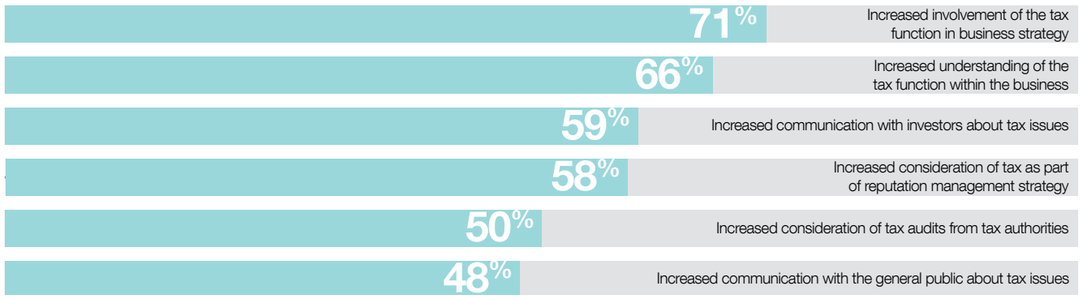
Tax Director
U.S.-based company

How would you rate your board's current understanding of tax issues compared to five years ago?



Substantial understanding of tax issues — No understanding of tax issues

What would you say have been the biggest changes in how your firm's board communicates about tax issues?



"Minimising tax liabilities was the most pressing tax matter for us in the past, and we had strategies to manage our tax position optimally. Now the requirements for transparency have increased, we have to reconsider our strategies and change our reporting structure in order to best meet the policy demands"

CFO
UK-based company

SHIFTING PRIORITIES

The introduction of BEPS has made compliance with the framework more important for firms, with 15% of survey respondents citing it as a top priority versus 9% five years ago. However, minimising tax liabilities was still seen as the most important task for the tax function by 19% of respondents, up on 15% five years ago. Meanwhile, reviewing current tax structures for reputational risk was the biggest priority for 10% of respondents, compared with 18% five years ago.

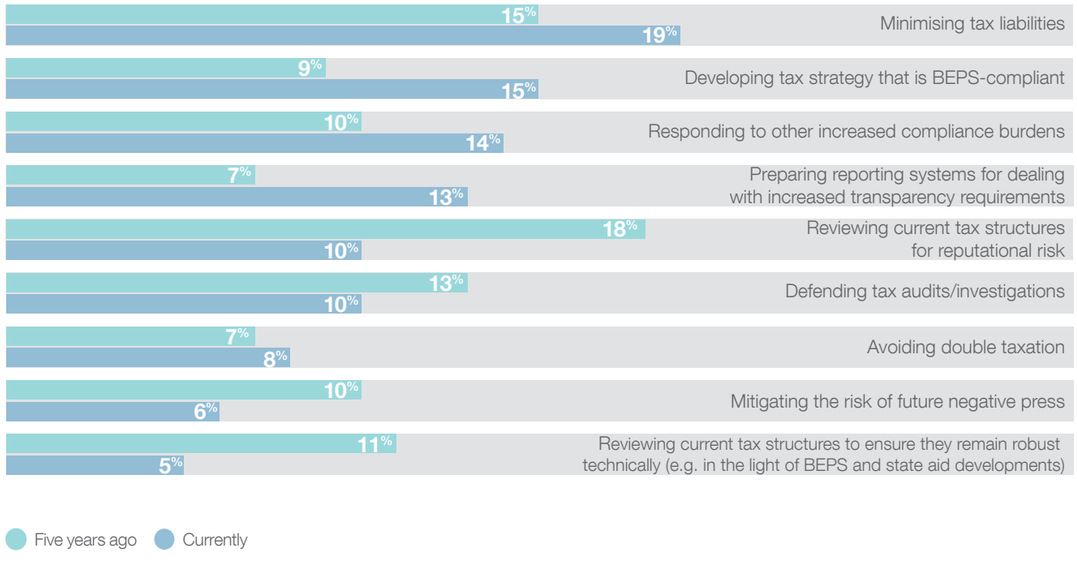
"Previously, being a good tax director was about ensuring a low effective tax rate and contact with the board was less frequent, particularly if everything was in order," said Breuninger. He added that those days are past or at least should be. The tax department now needs to be more integrated into the business and the board.

Indeed, 66% of respondents said tax is considered at board level once every quarter with 7% reporting monthly discussions on the topic. Five years ago the subject was only raised every six months at board level according to 60% of respondents, and 21% said it was an annual event.

Even though there's greater awareness of tax issues in the boardroom, Challen stressed the need for heads of tax to sustain that momentum. She said there's still some way to go in making sure all boards fully appreciate the most important issue for their companies, rather than the issues that make headlines in the financial press.

"Inevitably, boards will have to grapple with some of the complexities – and sometimes counter-intuitive aspects – of the tax system. The ability to explain these in a commercial way is key," she observed.

Which of the following is currently the most pressing tax matter for your firm? And which was the most pressing five years ago?



"Inevitably, boards will have to grapple with some of the complexities – and sometimes counter-intuitive aspects – of the tax system."

Lydia Challen
Tax Partner, London

"Previously, being a good tax director was about ensuring a low ETR and contact with the board was less frequent, particularly if everything was in order"

Gottfried Breuninger
Global Head of Tax, Munich

Summary

The role of the head of tax has expanded beyond the technical one. It now includes a strategic remit and an ability to manage risk.

Company boards are increasingly taking note of tax issues. Now that tax is an increasingly strategic issue, regular dialogue between the board and the company's tax department needs to be maintained and strengthened.

Conclusion

A delicate balancing act

This survey has shown that taxation has become an increasingly strategic issue – a topic that is routinely discussed at board level due to its potential ramifications for the whole business. It is also of increasing concern to investors.

This is placing more pressure on heads of tax as they not only have to manage the competing demands of investors and more zealous tax authorities, but also comply with an avalanche of new regulations. Their role is further complicated by the growing public and political interest in corporate tax affairs.

Four recommendations from the survey:

1

When pursuing the lowest ETR, boards need to take into account how that will be interpreted by tax authorities, governments, NGOs, politicians, consumers and the media. This has to be assessed not just from the perspective of where the company is headquartered, but in all the jurisdictions where it operates. For example, numerous U.S.-based multinationals, which face high tax rates at home, have faced negative publicity due to tax-avoidance strategies pursued elsewhere in order to reduce their overall ETR.

2

Communication is key. There have been significant improvements in communication between the board and the head of tax. That should be maintained even if the issue of tax eventually fades from the headlines.

Communication with investors and wider stakeholders will help to manage expectations about what the tax strategy can deliver.

3

Brace for BEPS: This important OECD-led project due to be implemented in 2016 is yet another source of compliance work for corporate tax departments adding to an already considerable workload. Heads of tax are naturally preoccupied with the uncertainties BEPS brings with it, such as how individual countries will interpret the rules, cross-border implications and whether their firms will be winners or losers from the new framework. This calls for engagement with governments and national tax authorities to encourage international consistency in the rules.

4

Corporate strategy should also be evaluated in view of its tax consequences to avoid unnecessary unforeseen costs later on. This means ensuring that the head of tax is fully aware of and involved in the board's plans for the company. Equally, proposals for tax-driven transactions should be carefully analysed, both within and outside the tax function, to identify downside risks or bear traps that may impede subsequent commercial activity.

Methodology

In Q3 2015, FT Remark surveyed 350 senior-level executives about their tax strategy. Respondents were sampled across a range of industries with the job titles of CEO, CFO, General Counsel, Tax Director and Head of Audit Committee.

Half of the respondents were from companies with a turnover of USD500m-1.99bn and the other half with USD2bn or more. Regional representation was split 76% in Western Europe, 14% in the U.S. and 10% in Australia.

The survey included a combination of qualitative and quantitative questions and all interviews were conducted over the telephone by appointment. Results were analysed and collated by FT Remark and all responses are anonymised and presented in aggregate.

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