ALLEN & OVERY

Where is the T in ESG?

How Tax intersects with ESG issues

2024

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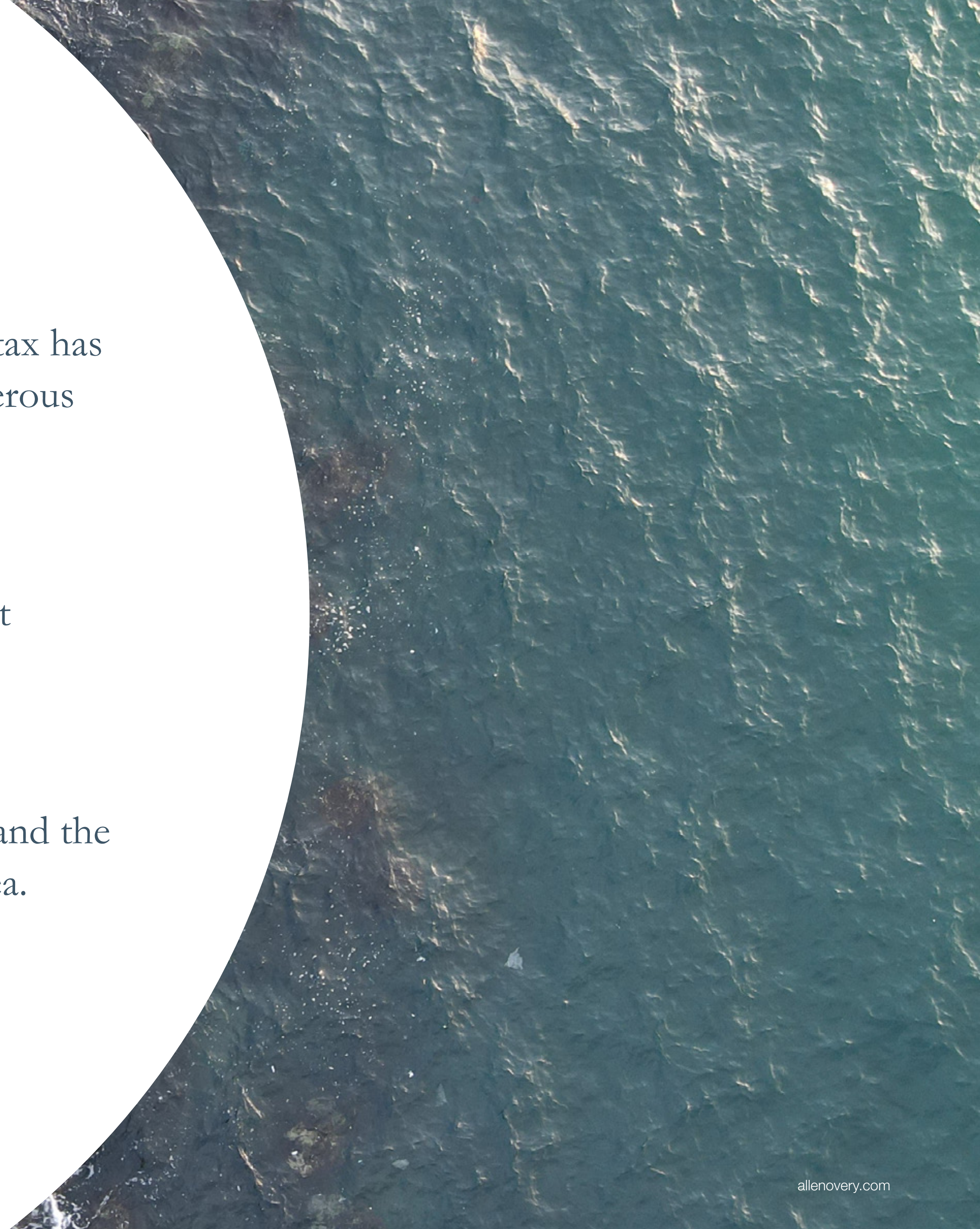
There is a growing focus on the role that tax has to play in the world of ESG and the numerous ways that tax intersects with ESG topics.

From factoring in the tax implications of decisions that are made in an ESG context to understanding how tax can help drive environmental and social change.

It is crucial to understand the risks, costs and the opportunities that tax can bring in this area.



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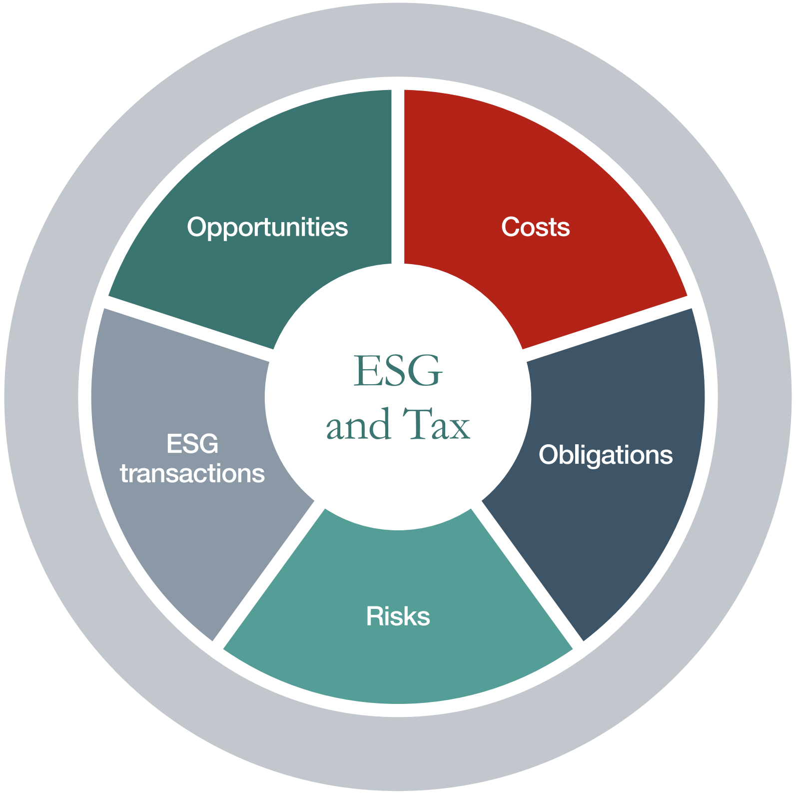

Tax and ESG practice

Contacts

What do we do?

ESG transactions

Being aware of the tax implications when choosing how to structure or finance environmental projects can be an important factor in choosing the right option for a solar, wind, hydrogen or nuclear project or looking at a shift to a more circular economy. Plus with a wide range of new financial products with ESG components emerging, understanding the potential tax treatment of these innovative products will be crucial.

Obligations

Do groups have the necessary procedures in place in respect of tax compliance to meet sustainability reporting requirements and to avoid civil and, in some cases, criminal liability? Changes are being introduced on a national and multinational level to ensure groups have adequate tax risk management strategies and processes. Multinationals are being required to publish increasing amounts of tax information: on their tax strategy, the tax they are paying or their effective tax rates.

Risks

With increased transparency comes added scrutiny, from tax authorities, investors and activists. The potential for multilateral disputes and challenges has never been higher. Reputationally, it is important that what you say in your strategy matches what can be seen in your reports. With new ways of working, are companies getting the tax right? Could green incentives be wiped out under the OECD's pillar two proposals or face challenge by the European Commission as state aid?

Opportunities

Environmental incentives help encourage a wider pool of investors and funding to promote investment in green technologies and innovation. New markets are emerging around green tax credits. Tax levers can also be used to promote social change, such as impact investing and gender equality. Governments are working together to relax tax rules to encourage flexible working.

Costs

The increase in "green" taxes and initiatives focused on multinationals paying their "fair share" could all lead to increased tax liabilities. In addition, there are significant costs associated with setting up systems to collect and report the data associated with such taxes as well as new tax transparency measures. In addition, multinationals are having to create different processes and hire or re-allocate people who can handle the latest technology and the reams of additional data businesses are now required to collect.

Supply chains

What are the implications for your supply chain of new environmental taxes such as CBAM? To what extent could you be held responsible if others in your supply chain fall down on tax compliance? By choosing suppliers carefully, it can encourage businesses to align their strategies with your group's ESG objectives.

Recent Tax and ESG publications

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Tax incentives for sustainable investments: what businesses should be thinking about

Improving gender equality: five ways tax could help – key takeaways from the 2023 OECD Report

UK

Podcast: Are tax incentives the key to driving sustainable investments in the UK and beyond?

The UK gives the green light to a UK CBAM and consults on the UK ETS

Tax based finance leasing: a forgotten tool for green finance in the UK?

ESG x Tax in the UK Spring Budget 2023

A new sustainable finance champion – demystifying the Community Investment Tax Relief (CITR) for institutional investors

U.S.

U.S. Inflation Reduction Act takes climate change out of political cycle

Energy provisions and related tax credits in the Inflation Reduction Act of 2022

Takeaways from Treasury's proposed regulations on U.S. tax credits for clean hydrogen production

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