Macro forces affecting taxpayers

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I've said it before and I'll say it again… the tax profession is extremely difficult. Like society, it is continuously changing and such changes challenge taxpayers and their advisors to keep up to date and respond proactively. In the past, many people in need of tax advice would simply turn to their accountants given the fact that many accountants are schooled in tax return preparation and therefore, by extension, such people assume that accountants are tax experts. However, tax return preparation and tax advisory services are truly two different service areas. While it is true that there is some overlap, tax advisory requires extensive, rigorous training and practice on an ongoing basis. A significant portion of the tax advisor's role is to keep up to date with the forces of change that impact a client's tax affairs. Below are some of the tax forces that are currently impacting client's affairs:

The desire for transparency

The days of tax secrecy are over. One only needs to look at the recent examples of the United States ("US") piercing Swiss banking secrecy as an astounding example of an age old industry that can be destroyed by its refusal to embrace transparency. Another example is the US law that will require foreign financial institutions and non-financial foreign institutions to disclose the identity of their US citizen customers they are dealing with. This law, known as FATCA, is a significant game changer which will increase the transparency of a US citizen's tax affairs. Another is the introduction by the US in 2010 of a reporting regime that requires taxpayers to report their uncertain tax positions. Similarly, Canada recently introduced[1] a reporting regime that requires taxpayers and their advisors to report, pursuant to newly released form RC312, certain aggressive tax transactions.

Overall, the move towards transparency will continue to be the norm in tax affairs as governments seek to understand taxpayers' behaviors and ensure that tax laws are obeyed.

Tax avoidance vs. Tax evasion

As most people know, tax avoidance is legal whereas tax evasion is illegal. However, the line between the two has never been clear and at times somewhat grey. The already blurred line has become even more difficult to discern in recent years and months with the introduction by certain governments and commentators of morality into the equation. So-called "tax avoision" makes the line between tax avoidance and tax evasion very grey and paints tax advisors into a negative light to the extent that their tax plans minimize or avoid tax. Is the introduction of morality into the tax avoision appropriate? That's a difficult question to answer with many different points of view.

Profit shifts

Large corporations, like Apple, Starbucks and Google, have been in the news recently regarding their tax affairs. Consistent with the two previously mentioned forces, such large corporations' tax practices (which appear to purposely shift profits away from their "home" country) are being openly questioned. The OECD has recently released a report entitled "Base Erosion and Profit Shifting" which explored whether, and if so why, the current rules allow for the allocation of taxable profits to locations different from those where the actual business activity takes place. The OECD report concluded that many countries' laws provide opportunities to associate more profits with legal constructs and intangible rights and obligations, and to legally shift profits within a consolidated group of companies. The report recommends the development of an action plan to address base erosion and profit shifting issues in a comprehensive manner. This issue will be front and center for many countries in the near term.

Regulation of the tax industry

As I have written about before, many countries around the world are starting to regulate the tax profession. The US, Australia, South Africa and the United Kingdom ("UK") are all recent examples of this. While registration of paid tax preparers has recently been challenged in the US, it is my belief that registration will continue to be the norm for many other countries around the world. I believe it is only a matter of time before Canadian tax return preparers are required to be registered and regulated by a government body. In my view, that would be a positive move.

What about tax advisory? Should tax advisory services be regulated? For the same reasons that preparers should be regulated, so should advisors. Tax advisors and their clients should be aware of such a moving landscape.

Complex tax legislation

As society continues to increase in complexity and the world continues to shrink via the internet, governments are challenged to respond to such complications by continuously introducing legislation in an attempt to ensure the integrity of the public fisc. Such legislation tends to be extremely broad and very complex which causes challenges for taxpayers and their advisors. While it is good politics and media to speak and trumpet "tax simplification," the reality is that "tax simplification" is easier said than done. The simple fact is that society is complex and does not appear to be simplifying anytime soon. Tax simplification, while well intentioned, is a pipe dream that we will not be seeing anytime soon (see for example the Office of Tax Simplification in the UK whose purpose is to give independent advice to the government on simplifying the UK tax system).

The above is simply the tip of the iceberg and should provide a flavor that many powerful forces are impacting tax changes. Good tax advisors need to be aware of such forces and respond appropriately.

1. Pursuant to section 237.3 of the *Income Tax Act.*