

# Private Sector Engagement in Tax Policy Issues – Contours Of a Fast-Growing Discipline

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In this article, Bundgaard introduces his concept of private sector involvement in tax policy as a distinct professional services discipline in which private sector tax professionals can play an important role in the development of tax policy.

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“Taxation has existed since the birth of early civilisations, and it could be said that it is part of the price to be paid for living in an organized society.”

— Kath Nightingale, *Taxation: Theory and Practice*, at 1 (1997).

“For too long tax reforms have been approached *ad hoc*, without regard to their effects on the evolution of the tax structure as a whole. As a result, many parts of the system seem to lack a rational base.”

— Institute for Fiscal Studies, *Dimensions of Tax Design: The Mirrlees Review Vol. I*, at vii (2010).

### I. Introduction

Multinational enterprises of a certain caliber are being increasingly exposed to the challenges of international taxation, while policymakers (up

to heads of state) and the public at large are paying ever greater attention to tax issues. This calls for a strategic approach to taxation, including considering whether the private sector should engage in tax policy issues.

I argue that we are witnessing a global trend of significantly increasing private sector engagement in tax policy issues — maybe in response to the increased public attention and interest in the topic. MNEs are strategically engaging in the field, aiming to prepare for the flow of new tax policy initiatives and to make themselves heard. They are eager to provide practical input to the design of new initiatives or to argue for improved framework conditions through constructive dialogue.

In this article I describe and explain the private sector tax engagement phenomenon to uncover the contours of what I argue is an actual professional services discipline: private sector engagement in tax policy issues. To my knowledge this has not been described previously in any detail.<sup>1</sup>

My motivation in considering private sector tax engagement as a possible distinct discipline is a legacy of my professional experience in taxation. After being a tax professional for more than a quarter of a century, I see a clear tendency in the type of assignments among MNEs, and the magnitude of involvement, that is best described as strategic private sector engagement in tax policy.

<sup>1</sup>In this respect I disregard the discussion of tax lobbying, which has a negative ring to it. See below for further considerations about the delineation.

## II. Defining Tax Policy

Tax policy is the discipline of understanding the effects of the imposition and collection of taxes.<sup>2</sup>

The academic discipline of tax policy is considered part of the field of economics, although no exact definition seems to exist.<sup>3</sup> Because the imposition and collection of taxes may trigger effects in numerous ways, tax policy may be regarded as a compulsory discipline covering different aspects of taxes.<sup>4</sup> It comprises:

- microeconomic effects;
- macroeconomic effects (distribution, supply of labor, and allocation);
- psychological effects;
- administrative effects; and
- legal effects.

There is no authoritative list of topics for tax policy as a professional discipline. The overall objective would be to contribute to more research-based rational tax legislation.

Because of the importance of taxes for all citizens and businesses and the complexities within tax systems, the design and development of new taxes and the reform of existing measures requires expert input from several disciplines<sup>5</sup>:

- macroeconomic and public finance experts;
- public administration experts;
- technical taxation including lawyers, accountants, or economists with knowledge about the practical effects of tax legislation; and
- drafters of legal texts.

Tax policy is thus interdisciplinary by nature, and the involvement of all the named groups of experts will secure the highest quality in the design of new tax policy measures.<sup>6</sup>

As tax lawyers, our involvement with the tax system primarily arises through the legal discipline of tax law. Boundaries have, however, become more and more blurry over time, and

cross-disciplinary professional perspectives and involvement in tax matters is now more common.

## III. What Characterizes Good Tax Policy?

From a high-level social science perspective, there are quality criteria that determine good tax policy. Although economic and legal literature in principle seem to agree, they are not always closely followed.

Taking the currently popular approach of asking an artificial intelligence chatbot to answer the question, it responded with the following, not far from what can be found in classical textbooks on the topic:

Good tax policy refers to a set of principles and guidelines that a government should follow when designing and implementing tax laws. The following are some of the key elements of good tax policy:

**Efficiency:** Taxes should be designed in a way that minimizes the economic distortions they create. This means that tax rates should be set at a level that does not discourage productive activities or distort market prices.

**Fairness:** Taxes should be applied fairly, with everyone paying their fair share based on their ability to pay. This may involve progressive tax rates that increase as income rises or a flat tax rate that applies to everyone.

**Simplicity:** Tax laws should be easy to understand and comply with, to reduce administrative and compliance costs for both taxpayers and the government.

**Transparency:** Tax laws and their effects should be transparent, and taxpayers should have access to clear and accurate information about the tax system.

**Stability:** Tax laws should provide certainty and stability to taxpayers and the economy, with changes made only when necessary and after careful consideration.

**Revenue adequacy:** Tax policies should generate sufficient revenue to fund necessary government services and

<sup>2</sup> See, e.g., Gunnar Thorlund Jepsen, *Skattepolitik* 4 et seq. (1996).

<sup>3</sup> See Robert Chote in *Dimensions of Tax Design: The Mirrlees Review Vol. I*, at viii (2010).

<sup>4</sup> *Loc. cit.*

<sup>5</sup> See Victor Thuronyi, *Tax Law Design and Drafting* lv et seq. (2000).

<sup>6</sup> *Id.* at 5.

investments, while avoiding excessive deficits or surpluses.

Overall, good tax policy should balance the need for revenue with the economic and social costs of taxation and should be designed with the long-term interests of the economy and society in mind.

Comparing this to leading treatises yields similar answers to the question of what makes good tax policy. To cite an example in the literature, the following good tax policy parameters are highlighted in *Tax by Design*, part of the Mirrlees Review from 2011<sup>7</sup>:

- the negative effects of the tax system on welfare and economic efficiency should be minimized;
- administration and compliance costs — all other things being equal, a system that costs less to operate is preferable;
- fairness other than in the distributional sense — for example, fairness of procedure, avoidance of discrimination, and fairness with respect to legitimate expectations; and
- transparency: a tax system that people can understand is preferable to one that taxes by “stealth.”

The objectives have a good chance of being fulfilled if the tax system lives up to these rules of thumb<sup>8</sup>:

- neutrality;
- simplicity; and
- stability.

These principles are an integral part of a good tax system, and single initiatives should not undermine them.

In a recent book, prominent economic and legal scholars Devereux, Auerbach, Keen, Oosterhuis, Schön and Vella have introduced a set of criteria which they use to measure the properties of a good international tax system, in particular the taxation of business profits.<sup>9</sup> The criteria are largely in accordance with existing

principles but have been further developed and add:

- fairness (including fairness between countries and competitive fairness between businesses);
- economic efficiency;
- robustness against avoidance;
- ease of administration; and
- incentive compatibility (each economic agent can achieve the best possible outcome while following the norms established by a group of agents; there can be no gain from failing to cooperate with other agents).

Speaking purely from a business perspective, it is not possible to describe what good tax policy looks like in general terms. At one extreme, the absence of any taxation is the most desirable outcome. However, apart from not being realistic, this does not express how businesses in fact view taxation. Most businesses, including MNEs, consider taxation a reasonable price to pay to be part of a stable society with legal rights and well-functioning institutions that allow businesses to carry out their operations. Moreover, most businesses do not set an unreasonably high bar for tax policy. Here is a list of the commonly seen tax policy requests from businesses:

- Neutrality in tax legislation, including:
  - not treating some MNEs worse than others in comparable competitive situations;
  - not putting those that engage in cross-border activities instead of purely domestic activities in worse situations, including being subjected to double taxation;<sup>10</sup>
  - neutrality in the tax outcomes of different business choices and opportunities.
- Simplicity over complexity.
- Continuity and stability in the legislation and overall framework conditions because most businesses are allergic to unwelcome budget surprises (the system should not

<sup>7</sup> Stuart Adam et al., *Tax by Design* 22 et seq. (2011).

<sup>8</sup> Cf. at 40 et seq. of the report.

<sup>9</sup> See Michael P. Devereux et al., *Taxing Profit in A Global Economy* 33 et seq. (2021).

<sup>10</sup> Most companies and investors do pay their taxes and some even with great satisfaction, but I have heard of no one embracing double taxation with satisfaction. There is a great desire to avoid double taxation, and businesses want mechanisms in place to solve this problem in a fast and efficient manner.

change constantly as it does in many jurisdictions).

- The easing of administrative processes, burdens, and avoidance of unnecessary compliance tasks.
- Legislation that is based on and understands the challenges of businesses life, not relying on outdated factual understandings (or misunderstandings) or sticking to old perceptions or notions not in step with modern times.
- Avoidance of unreasonable taxation, for example, taxing unrealized gains; prohibiting the deduction of real economic losses; or denying deductions in combination with the taxation in the hands of the recipient.
- Ongoing legislative adjustment to reflect changes to society, business models, and other business-related parameters.
- Clarity to facilitate businesses' *ex ante* understanding of the tax implications of contemplated transactions so they can plan accordingly.
- Legislation rooted in legal principles.
- Objective legislation, not rooted in loose considerations of fairness or other subjective standards.
- Consideration of compliance costs before introducing new tax policy measures based on a proportionality assessment in which the actual need of any given piece of legislation and the costs associated with its introduction are carefully weighed.
- Recognition by legislators and tax authorities that businesses are not primarily established for tax purposes and mainly engage in activities which are not caused or even influenced by tax considerations.

Businesses must be mindful that engaging in tax policy discussions, either on behalf of a single MNE or on behalf of an industry, requires living up to certain quality standards. Moreover, MNEs should accept the inherent challenge that promoting narrow interests may lead to solutions that are not optimal from a wider perspective and may lead to additional layers of rules. Based on experience, this approach can result in deterioration of the legislation overall. MNEs are well advised to bear this in mind and to be careful

in the identification and presentation of so-called policy asks with the relevant tax policy actors (legislators or international institutions such as the OECD or EU).

#### IV. Private Sector Engagement in Tax Policy

Traditional tax policy work involves government officials and certain business associations. Not much room is left for private sector involvement, and businesses are left to await the tax policy initiatives selected by legislators and then react through broad industry representation.

But this description no longer fully characterizes the reality of tax policy. I would argue that private sector involvement in tax policy issues is increasing both in terms of the actual engagement and the importance of the engagement. My observation is based primarily on personal experience and what can be observed in the blossoming of tax policy engagement among MNEs that are increasingly establishing separate tax policy functions and officers (tax policy directors), who may or may not work within the ordinary tax functions of the MNE. The tendency becomes obvious when one looks at the number of tax policy officer positions being established.

Private sector engagement in tax policy is unfolding in many ways:

- The emergence of informal working groups, committees, or even coalitions with similar or identical tax policy interests. Tax policy engagement can make moot the identification of participants of a group within a certain area, allowing the groups to provide input in unison within the specific area, for example, an industry characterized by specific framework conditions (i.e., subject to a particular tax regime) or a specific business model (i.e., highly digitalized businesses).
- Domestic or international general business associations.
- Through direct involvement from individual MNEs either through public statements or through private contributions.
- The preparation and publication of working papers or reports by renowned experts (typically hired to assist in the promotion of

a particular agenda, though also seen as driven by pure academic interest in the subject matter).

- Involvement in think tanks.
- Through very specialized departments within the Big Four, international law firms, public affairs companies, and others.

## V. Explanations for the Increased Engagement

If the reader accepts the postulate that private sector involvement in tax policy issues has increased, understanding the causes is important. No clear-cut explanation for this exists.

I suggest the following to be parallel and equally important explanations:

- **The tendency for tax matters to move up the social and political agendas:** We live in a time in which the media, politicians, nongovernmental organizations, and activists are increasingly preoccupied with international tax matters. Increased activity is taking place among the OECD, G-20, EU countries, and most other developed countries alike. This has led to increased regulatory requirements and legislation tougher on companies. Taxation is on the agenda of heads of state.

The tendency is clear — increasing requirements for MNEs in tax matters while more and more transparency is demanded. International business has become increasingly exposed to this tendency in which countries fight over declining tax revenues. It has been exacerbated by the global financial crisis from 2008 onwards.

- **Speed:** Tax policy develops with an ever-increasing speed. This implies that the time from thought (or emotion) to political action is decreasing significantly. The era is gone (at least in many instances of modern politics) in which tax policy decisions were based on policymakers' thorough understanding of whether a given topic caused a problem and, if so, whether the topic should be regulated and how.
- **"You snooze you lose":** The fact that some MNEs engage more heavily than others may drive the others to believe they may be missing out on opportunities and may risk being worse off than their competitors or

other industries if they do not themselves actively engage in tax policy. If MNEs hesitate and don't fully understand the measures being considered, they may suffer severely ("you snooze you lose").

Accordingly, tax measures can erode the basis for some business models or products, for example, through double taxation.

- **Increased volume:** The growing volume of legislative material may be part of the explanation. The number of legislative bodies producing tax policy material is growing; sources include national legislatures (not only in the home state of the MNE but globally), the EU, international law (tax treaties), the OECD, the inclusive framework of approximately 140 countries, the U.N., trade law (WTO), NGOs, and best practice standard setters (such as the Global Reporting Initiative, B Team, and Fair Tax Foundation). This has resulted in a polycentric system of legal sources, implying that development should be monitored carefully to avoid overlooking new initiatives and not understanding technical ramifications before it is too late.
- **Declining quality:** The increased speed of the legislative initiatives will inevitably result in decreased quality. This leads to an increased likelihood of unfavorable and uncoordinated outcomes.
- **Company- or industry-specific handling of topics of interest:** Because of the increased speed and volume of tax policy material, many MNEs have experienced that tax policy engagement cannot be left solely to broad-based business associations to handle. These organizations understandably address needs and concerns of all members at once. It is therefore difficult to address specific tax policy issues with a uniform voice. If an MNE has specific tax policy needs and concerns, they may require a detail-oriented and company-specific approach in the tax policy engagement.

## VI. Objectives of Private Sector Engagement

No manual exists on private sector tax policy involvement. Ahead of any tax policy

engagement, careful strategic considerations must be made. The considerations should include a thorough mapping of the needs and concerns of the MNE or industry and a determination of which approach to tax policy would be the best to apply in the situation.

Private sector tax policy engagement aims to facilitate international or domestic dialogue on tax policy topics through seminars, public debate, and other forums. The aim may be to ensure that correct facts and accurate understanding of the business models and companies is included in the tax policy design phase of new legislative initiatives.<sup>11</sup>

In some instances, the aim may be that certain measures are completely abandoned or greatly modified. The private sector involvement may also be driven by a desire to change or repeal existing legislation or to argue for the introduction of new, specifically designed tax regimes or guidance on existing regimes.

The choice of the best approach in tax policy engagements is clearly linked to overall strategic goals. Private sector tax policy involvement takes various forms, but these are frequently applied approaches:

- Official or unofficial inquiries to point out inexpedient or inappropriate tax legislation or interpretations of currently applicable tax legislation or case law and administrative practice with an invitation to introduce new measures, create needed certainty, or secure fulfillment of tax policy goals.
- Participation in public hearings or consultations, either through written or oral statements or submissions before relevant tax policy bodies — parliaments, ministries, working groups, the EU, the U.N., the OECD, and so forth. The actual MNEs and industries are being heard at an early stage in the political process.
- Requests for a general improvement of business life conditions.

<sup>11</sup>In traditional tax lobbying, the aim may be to procure tax breaks. I argue that the role of private sector tax policy engagement should be viewed much broader than this.

## VII. The Role of Private Parties

Admittedly, there is a link to traditional tax lobbying. However, traditional corporate tax lobbying has a negative ring to it (not least in the literature dealing with it), and I would argue that the private sector tax policy involvement dealt with in this article should not be equated with traditional tax lobbying. I am not naive and am fully aware of traditional lobbying activities to secure tax breaks. However, I claim that a lot of tax policy work being carried out through private sector involvement has a much broader aim and does not only seek tax benefits for the individual MNE but works to secure a level of quality and consistency in tax policy measures for the benefit of all.

Some of the literature on tax lobbying describes the relationship between lobbying efforts and effective tax rate for the MNE carrying out the lobbying in the United States.<sup>12</sup> In recent work, tax lobbying morality standards have been presented in the context of sustainability.<sup>13</sup> On one hand it is admitted that corporate lobbying has benefits for democracy because it provides policymakers with valuable data, specialized knowledge, and relevant expertise. On the other hand, aggressive lobbying to disproportionately reduce a firm's or group of firms' tax burden is unsustainable because corporate tax benefits can reduce government revenues, affecting its ability to fund public services and invest in sustainable policies.

Lobbying can also breed excessive corporate power that can undermine the democratic process. Parliamentary debate should ensure that the design of taxes considers everyone's interests, not just powerful and influential taxpayers. Debate should be carried out with a view to safeguarding the public interest.

<sup>12</sup>See, e.g., Brian Kelleher Richter, Krislert Samphantharak, and Jeffrey F. Timmons, "Lobbying and Taxes," 53(4) *Am. J. of Pol. Sci.* 893-909 (Oct. 2009). More recently see Mike Tanglis, "The Price of Zero: A Look at \$450 Million in Political Spending By 55 Corporations That Paid Zero Federal Corporate Income Tax," *Public Citizen*, June 9, 2021. In a wider context, see Angela K. Davis et al., "Do Socially Responsible Firms Pay More Taxes?" 91(1) *The Acc. Rev.* 47-68 (Jan. 2016). The authors *inter alia* use empirical data to identify a link between the ETR and the cost spent on tax lobbying in the overall corporate social responsibility context.

<sup>13</sup>See Anne Van de Vijver and Tarcisio Diniz Magalhães, "Tax Law Meets Sustainability," *Kluwer tax blog*, Aug. 7, 2023.

In an article based on Immanuel Kant's moral theory building, authors present three standards for sustainable corporate tax lobbying.<sup>14</sup> The article is based on the argument that MNEs' aggressive tax lobbying involves free-riding behavior resulting in disproportional benefits to the lobbying MNEs at the expense of other taxpayers. This is problematic for several reasons. It undermines the legitimacy of tax legislation and negatively affects trust in the tax system. Based on Kant's theoretical approach, the article claims that MNEs should be transparent about political activities and tax lobbying.

I do not intend to engage in this theoretical discussion. However, I will point out that transparency in my view is key also from the perspective of the MNE, but indeed from the perspective of best practice responsible tax behavior.

Private sector parties, including MNEs or external advisers, can play an instrumental role in the tax policy process leading to the implementation of new tax policy measures, for example, by providing analysis and practical, economic, social, and legal impact assessments. Advisers' contributions are particularly relevant. Through this input, private actors can assist tax policymakers to design tax policy measures that are fair and efficient, and that avoid unforeseen and potentially unfortunate consequences.

Private sector involvement is generally well received, especially consultations on the design of new tax legislation. The involvement can contribute valuable information about<sup>15</sup>:

- practical, financial, and accounting implications of the new legislation; and
- identification of measures that are particularly burdensome.

Moreover, private sector involvement can secure the politically important support of industry.

Private sector involvement can promote a specific agenda or affect the political process. It can be carried out via testimonies, direct

engagement for specific changes, or through campaigns to spotlight attention on key topics.

Privately engaging advisers may also play a role in identifying important parties within the tax policy decision process to approach through existing networks. A good tax policy adviser must assist clients in navigating the corridors of national, international, and interorganizational power. Tax policy actors comprise a limited but growing group in which personal connections can play a significant role. Preexisting relationships and built-up trust can be decisive for the likelihood of obtaining the best outcome possible. Engaging with the right adviser who has the right personal network and a reputation of decency and integrity, may facilitate discussions that otherwise would not take place.

It may also help the discussions if the private sector team consists of people with a tax-related technical skill set who can interact with government officials with whom they share experience, knowledge, and a common legal or economic educational background. These individuals should be the ones to carry out the work in relation to preparing the policy decision-makers. The skill set overlap can significantly reduce miscommunications and misunderstanding through the critical phases of the tax policy work.

From the MNE perspective, the increased speed and volume of tax policy matters will require internal monitoring of the international tax scene. It may help to appoint someone to actively monitor global tax policy developments, condense the flow of tax news, and sort the news into need-to-know, nice-to-know, and sales material categories based on an overstatement of tax risks. Sifting should take place through the lens of the specific MNE's business, business model, tax exposures, and so forth. An increasing number of MNEs maintain this role in-house while others outsource.

### VIII. Required Competencies

Private sector tax policy involvement requires experience and understanding of multiple areas of taxation. The team handling the involvement must be skilled in these competencies to create the greatest chance of success. Competencies (not all may be brought into play in all instances) include:

<sup>14</sup> Van de Vijver, "Morality of Lobbying for Tax Benefits: A Kantian Perspective," 181 *J. Bus. Ethics* 57-68 (2022).

<sup>15</sup> See Thuronyi, *supra* note 5, at 8-9; and Van de Vijver and Diniz Magalhães, *supra* note 13.

- strategic and political understanding;
- communication skills;
- legal and economic knowledge and expertise; and
- insight into business life and business models.

Effective tax policy engagement requires a mixture of the traditional advocacy toolbox and approaches combined with analytical and subject matter knowledge of business life, industries, business models, and tax law. Experience and knowledge from public administration, international organizations, private companies, tax advising, and academia is a welcome combination. An ideal tax policy engagement team (depending on the concrete tax policy issue being considered) will therefore comprise members (individuals or organizations) with successful experience in these areas.

The best advisers are those with a different profile than an archetypal professional tax adviser because the field of tax policy engagement requires a broader approach than the technical legal and economic approach to a broader grasp of law, economics, politics, strategy, and communication. Also, an academic approach can increase the proposals' quality if based on the scientific method. Private engagement on tax policy, accordingly, is a field in which professionals thrive at the intersection of theory and practice. This is demonstrated by the composition of tax policy engagement teams globally. Theoretical insight and knowledge make it possible to develop new ideas and to see the big picture, while practical skills help to transform the ideas and proposals into practicable solutions in the real world.

### IX. Pitfalls and Hands-On Advice

No recipe for good private sector tax policy involvement exists. The following are my personal views on the matter. As a general caveat, there are cultural differences and legal ramifications that can be decisive for the overall tax policy involvement and options available. The MNE or its adviser engaging in tax policy should understand the landscape ahead of launching any concrete initiatives.

Ahead of any engagement, the following topics can be crucial to the process and should be

addressed. Mostly, it boils down to being well prepared.

#### A. Public Perception

MNEs can generally improve their chances of success by being well prepared in broad terms. Being recognized by policymakers and the society at large as a well-behaved organization that lives up to its societal contract. To an extent this will ensure the overall license to operate.

#### B. Contributions to State Finances

It may also be beneficial for an MNE to demonstrate that it contributes to society by paying tax. Originally a mostly European phenomenon, investors and others expecting MNEs to act responsibly in the handling of their tax affairs is becoming a global trend. Typically referred to as "responsible tax," it is linked to the sustainability, corporate social responsibility, and environmental, social, and governance agendas.

Acting responsibly within the tax agenda requires at a minimum that the MNE has prepared a public tax policy (in accordance with a leading standard such as Global Reporting Initiative (GRI) #207 or the B Team principles for responsible tax), preferably combined with public overall tax reporting (including country-by-country reporting, a tax footprint, and so forth).

#### C. General Narrative

Despite holding a positive self-image, MNEs cannot assume that those outside the company, including policymakers and government officials, are fully aware of the MNE's merits or even of its existence and societal importance. It is a good idea therefore to develop a clear story about the company's positive place in society that can be consistently communicated across multiple channels. Combining this with promotional visits by policymakers may heighten the understanding of the MNE and its position. These broad measures may increase the visibility of the MNE and its tax policy concerns, buoying up the MNE's license to speak.

#### D. Careful Design of Tax Policy Ask

As a next phase it is important to thoroughly prepare to explain the need the tax policy

addresses, why it is important for the MNE, and why the legislator or policymaker should address the matter. This phase is referred to as the “tax policy ask” and should include ideas about how the tax policy measure can be designed to complement overall tax policy principles and means.

In formulating the tax policy ask, it is important that the issue is described in a manner both matter-of-fact and as neutral as possible. Avoid tax policy asks that do nothing but loudly claim the need to lower taxes. On the contrary, the MNE should present its case as being relevant to a broad range of companies or even society at large. This is what is referred to as “evidence-based lobbying.”

The tax policy ask presentation should be as constructive and realistic as possible. This acknowledges that not all tax policy asks will be accepted and that the ability to prioritize proposals can be vital.

The tax policy ask should be communicated in a format that makes sense to policymakers, and that includes positions that can be understood and defended. The urge among tax professionals to prepare lengthy and overly technical memos may not be the right approach — at least not without being accompanied by less technical supporting documents.

### E. Behavior

Below is a suggestion for a universal behavioral minimum standard. Recall that there are important cultural dimensions to tax policy work, recognition and respect of which can be crucial.

A successful tax policy ask requires respect among the parties. This includes a respectful approach and tone. It can benefit from relations established in other forums, for example, work in technical bodies or associations.

While caution should therefore be observed when considering presenting MNE tax policy positions through the media, this approach may be preferable in some situations.

### F. The Positions of Policymakers and Officials

It is important to show understanding of the positions of policymakers and officials.

Government officials and other employees and representatives of policymaking bodies are often working under constraints of workload and time pressure. Officials are expected to deliver analyses and other decision papers quickly. Adding tasks to their workload will therefore not be welcome. The private sector tax policy team should be as helpful as possible and offer whatever assistance they can. For example, the team could prepare thorough proposals for the MNE’s tax policy ask. This could be as comprehensive as writing the suggested legislative amendment wording, preparatory remarks, and consideration of the scope and interaction with other areas of the law.

This can to some extent lessen the workload of the officials involved. If presented in a neutral and objective manner, some of the practical aspects or more principled matters can be presented to speed up the process or show paths for moving forward. With this approach, the private sector tax policy engagement team will come across as constructive, including when entertaining different options if political concerns are raised against part of the team’s proposals.

### G. Transparency

Private sector tax policy practitioners can play an important role in the global tax landscape. Transparency is another important factor — the private sector must declare openly which interests they represent to maintain credibility in the long run. Being engaged in private sector tax policy work requires a high ethical and professional standard. It is key that the stakeholders and interests at stake are not concealed. If private sector actors are deceptive about their real agenda, once it is revealed it will jeopardize the project and endanger future engagements with these tax policymakers.

The GRI 207 principles include a requirement at Disclosure 207-a-ii:

The reporting organization shall report the following information:

- (a) A description of the approach to stakeholder engagement and management of stakeholder concerns related to tax, including:

...

- ii. the approach to public policy advocacy on tax;

The guidance:

When reporting the approach to public policy advocacy on tax, the reporting organization can describe:

- its lobbying activities related to tax;
- its stance on significant issues related to tax that it addresses in its public policy advocacy, and any differences between its advocacy positions and its stated policies, goals, or other public positions;
- whether it is a member of, or contributes to, any representative associations or committees that participate in public policy advocacy on tax, including:
- the nature of this contribution;
- any differences between the organization's stated policies, goals, or other public positions on significant issues related to tax, and the positions of the representative associations or committees.

As a recent example of unethical behavior and conflicts of interest, the reader is reminded of the PwC tax policy scandal in Australia, in which inside information obtained in the role as adviser to the Australian government was revealed and shared with certain tech companies by partners of the firm. This gave the companies a head start in preparing for future tax policy initiatives. This behavior will bring severe consequences and harm long-term relationships and trust. The Australian legislator has called this the biggest crackdown on tax adviser misconduct in Australian history and has now presented measures to strengthen Australian legislation and increase penalties.<sup>16</sup>

<sup>16</sup> Australian Treasurer release, "Government Taking Decisive Action in Response to PwC Tax Leaks Scandal" (Aug. 6, 2023).

Tax policy work is complicated and requires a significant amount of patience. Despite disciplined adherence to these guidelines or other sets of principles, there are no guarantees of success as defined by the MNE or industry involved.

As a tax policy adviser, value can be added to the process by knowing when there is political momentum and what may be done to accommodate concerns or political positions. Courage is needed to speak against the immediate desires of a client (and its management). But convincing the client that the first best outcome may not be achievable and offering advice on the outcomes that are within reach will increase the chance for success.

## X. The Future

This article sheds light on private sector tax policy engagement and suggests that this engagement is experiencing an upward trend. The article presents universal guidelines and relevant governance issues to be observed when handling the area as an interdisciplinary professional services discipline that comprises more than traditional corporate tax lobbying. Given the state of affairs within the international tax landscape and geopolitical tensions, there should be little doubt that tax policy is rising on the agenda. Moreover, the international tax system should contribute to creating the right incentives to solve the climate crisis.

It makes sense to consider private sector involvement in tax policy issues as a distinct professional services discipline. It is characterized by its multidisciplinary nature. Much speaks in favor of an even faster development of tax policy engagements in the future. I hope this contribution can assist in understanding and describing its possibilities, ramifications, and limitations. ■