


The 5 W's of Successful Private Sector Engagement In Tax Policy Issues

by Jakob Bundgaard

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In this article, Bundgaard presents the 5W Methodology, a toolbox for professionals to successfully approach tax policy discussions at all levels.

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Introduction

Multinational enterprises of a certain caliber are increasingly being exposed to the challenges of international taxation, while tax issues are receiving more attention among policymakers (even reaching the offices of heads of state) and the public at large. This calls for a strategic approach, which includes considering whether to engage privately in the field of tax policy.

We are witnessing a global trend of significantly increasing private sector engagement in tax policy issues — maybe as a response to the increased public attention and interest in the topic. We see MNEs and a variety of institutions strategically engaging in the field, attempting to prepare for the ever-increasing flow of new tax policy initiatives, to make themselves heard by providing practical input to the actual design of new initiatives, or to argue for improved framework conditions through constructive dialogue.

Recently I described and explained the phenomenon of private sector tax policy

engagement in *Tax Notes*, with the intent to uncover and describe the contours of what I argue is an actual professional services discipline in modern times.¹ In the article, I identified tentative explanations behind the seeming increase of private tax policy engagement.

Private sector engagement unfolds in many ways and is carried out by a multitude of participants, including through:

- informal working groups, committees, or even coalitions, with similar or identical tax policy interests, which can provide input in unison within the specific area, be it an industry characterized by specific framework conditions (e.g., subject to a particular tax regime) or a specific business model (e.g., highly digitalized businesses);
- domestic or international general business associations;
- 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 engaged to assist in the promotion of a particular agenda, but it is also seen that such experts are motivated by pure academic interest in the subject matter);
- think tanks; and
- specialized departments within the Big Four accounting firms, international law firms, public affairs companies, or others.

In this article, I present a methodology based on the insights from hands-on experience of over a decade working in the field, which in my view

¹ See Jakob Bundgaard, "Private Sector Engagement in Tax Policy Issues — Contours of a Fast-Growing Discipline," *Tax Notes Int'l*, Sept. 18, 2023, p. 1553.

wholly or partly is suited as a general tool for tax policy engagements²: the so-called 5W Methodology. The idea is to contribute to the development of best practice standards within MNEs and in the professional services industry by introducing a structured approach based on actual experience.

5W Methodology as a Toolbox

Outline

No manual, recipe, or best practice standard exists for private sector tax policy involvement. Moreover, there will not be two identical approaches — it's not one-size-fits-all. Despite this, I suggest that the structure described by the 5W methodology may be well suited, wholly or partly, to most private sector tax policy engagements.

Ahead of any tax policy engagement, careful strategic considerations must be made, which should include at least a thorough mapping of the actual needs and concerns of the MNE and the industry as well as which approach may be the best to apply.

Broadly speaking, private sector engagement aims to facilitate international or domestic dialogue on actual tax policy topics. More concretely, the aim may be to ensure that relevant facts and a correct understanding of specific business models and companies are included in the tax policy design phase regarding new legislative initiatives.³ Sometimes, the aim may be that certain measures are completely given up or severely modified by tax policymakers. The private sector involvement may also be driven by a desire to change or repeal existing legislation or to promote 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

considerations. Private sector tax policy involvement unfolds in various ways, but the following are frequently applied approaches:

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

Based on my experience, I have designed an approach for universal use in tax policy engagements, which arguably can be a well-suited approach (either wholly or partly) to ensure a structured and thoroughly prepared process. I call this the “5W Methodology,” presented in the figure.

The five W's refer to the first (or the last in one category) letter in each step of the structured process, which, in my view, are crucial:

- the what;
- the why;
- the who;
- the when; and
- the how.

Let's review the thinking behind each component and explain the underlying reasoning.

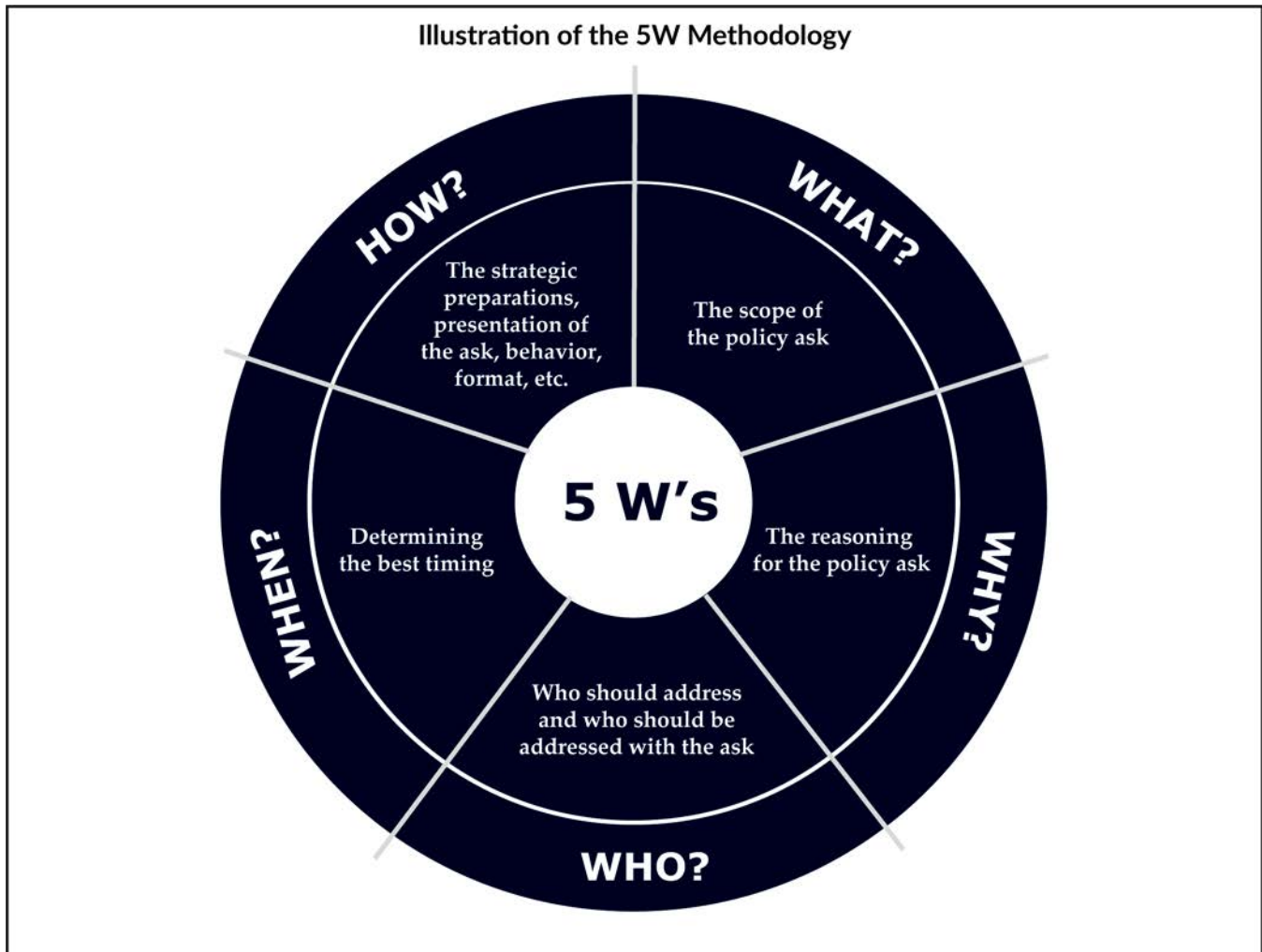
As a general caveat, there are obviously cultural differences and legal ramifications that can affect the options available. The MNE or its adviser engaging in tax policy requests should naturally understand this landscape ahead of any concrete initiatives being launched and included in the design of the best strategy for the matter at hand.

The 'What'

Defining the nature of the tax policy issue at stake is crucial for any tax policy engagement.

²The experience is gained through working extensively in the area, from being inspired by academic analysis presented to policymakers, serving as expert in public hearings, taking a seat in advisory bodies for politicians, assisting the European Commission, and engaging in the design of legislative proposals on behalf of broader interest groups and multiple MNEs in a domestic, EU-wide, or OECD inclusive framework settings.

³In 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 more broadly.



This is typically described as the “tax policy ask” or the “ask.”

It is important to thoroughly explain what the concrete tax policy need is. Tax policy engagements are unlikely to be successful if the ask is not carefully designed and analyzed in advance, including the wider implications. In other words, whoever engages in tax policy work should come prepared to explain the nature and implications of the proposal.

This phase should also include consideration about how concrete tax policy measures can be designed in light of overall tax policy principles and applications to the concrete setting.

When forming the tax policy ask, it is important that the overall issue is described as matter-of-factly and neutrally as possible. Avoid tax policy asks that do nothing apart from loudly claiming lower taxes. On the contrary, the MNE

should present its case as being relevant to a broader range of companies or even to society at large. In my experience, the MNE should be mindful that some policy asks appear more sympathetic than others, which may affect the likelihood of success. A realistic approach should be used to design the ask, bearing in mind how the concrete policy ask may be perceived on the subjective sympathy scale.

The MNE should present all relevant facts and ensure that a correct understanding of specific business models, as well as company or industry specifics, is included in the tax policy design phase.

One should always be as constructive, concrete, and realistic as possible when presenting a tax policy ask. Tax policy asks will not often be met, and the ability to prioritize

proposals according to importance can be vital in the process.

In this respect, the tax policy ask should be communicated in a format that makes sense to policymakers and includes understandable positions that can be (morally and economically) defended. For this, the urge among tax professionals to prepare lengthy and overly technical memos may not be the right measure — at least not without being accompanied by less technical documents.

The ‘Why’

Successful tax policy engagement requires careful consideration about why any tax policymaker should even consider it. This may include actual analysis on the effect or potential effect of any suggested tax policy measure.

This requires careful explanation regarding what is at stake and how society, businesses at large, and so forth may be affected in the absence of any reactions or by existing or proposed tax policy measures.

The why can also include concrete examples to illustrate the issues at stake in a specific business, or even better in a wider group of businesses, a whole industry, or society at large.

The ‘Who’

Identifying the relevant gallery of stakeholders plays a crucial role in preparing successful tax policy engagements.

The “who” is a matter of identifying the relevant institutions, bodies, and individuals to engage with, and the best way to initiate contact with them, including through which channels. Establishing dialogue with relevant stakeholders may require using formal or informal networking based on existing relationships or establishing contact for the first time.

Building a network and maintaining a trustworthy reputation are critical when attempting to make contact with relevant policymakers and government officials.

Privately engaged advisers may also play a role in identifying which parties are relevant in the tax policy decision process and thus are good parties to approach, potentially through using personal networks. A good tax policy adviser

must assist their client to navigate the corridors of power, nationally, internationally, and interorganizationally. Tax policy actors comprise a limited but growing group of people, where personal relationships can play a significant role. Preexisting relationships and trust building can thus decide the likelihood of reaching the best outcome possible. Engaging with the right advisers with the right personal networks and a reputation based on decency and integrity may open discussions that otherwise would not take place.

Setting the team on the private sector side for the actual engagement is no simple exercise.

It may improve discussions if the actual private sector team consists of people with a tax technical skill set who can interact with government officials, with whom they share a common educational background and similar experience, because they are the ones who carry out the actual work providing policymakers with the best possible basis for decision-making. This overlap in skill sets can significantly reduce miscommunications and misunderstandings through critical phases of tax policy work.

Private sector tax policy involvement requires possessing significant experience in multiple relevant areas. The team handling the involvement must have a host of competencies for the greatest chance of success. Those competencies include the following, which may not all be brought into play in every instance:

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

Valuable tax policy engagement requires a mix of traditional advocacy tools combined with analytical and subject matter knowledge about business life, industries, and business models, as well as tax law and the design of legislation. Experience and knowledge from public administration, international organizations, private companies, advisory firms, and academia is a welcome combination. This implies that an ideal tax policy engagement team (depending on the tax policy issue being considered) comprises

members (individuals or organizations) possessing this foundation.

In the advisory space, we deal with advisers that have different profiles compared with archetypal tax advisers and professionals, because the field of tax policy engagement requires a broader approach moving away from a purely legal and economical technical approach to a space touching upon law, economics, politics, strategy, and communication. Also, an academic approach can heighten the quality of concrete proposals being presented based on scientific methods. Private engagement in the tax policy agenda, accordingly, is a field that thrives at the intersection of theory and practice, which is also witnessed by the composition of tax policy engagement teams globally.⁴ This is because theoretical insight and knowledge enables developing new ideas and seeing the bigger picture, but these ideas and proposals must also be transformed into practicable solutions in the real world. The latter requires considerable knowledge about businesses and experience and input provided by businesses.

The ‘When’

Even splendid tax policy asks can end up being fruitless. It is a well-known fact that timing can be everything. This applies equally to tax policy affairs. Patience is a valuable skill for dealing with tax policy because what one day is considered undesired politics may the next day be given priority under the power of a new government. For this reason, anyone looking to engage in tax policy topics should constantly monitor when the political landscape and political dynamics allow room for certain tax policy asks and when not to make such attempts. The privately engaged party must try to identify

windows of opportunity and not use the few attempts available at the wrong time.

Tax policy work is complicated and requires patience. Despite disciplined adherence to the above guidelines or any other set of principles, there is no guarantee of a successful outcome for the MNE or the industry involved. Tax policy adviser can also add value to the process by knowing when there is political momentum and what may be done to accommodate potential concerns or political desires. A certain amount of courage is needed to speak against the immediate desires of a client (and its management), convince the client that the best outcome may not be achievable, and advise on the realistic outcomes that are within reach and how to best achieve them.

The ‘How’

The “how” is even softer and blurred by nature than the above components in the 5W Methodology. It is a matter of the format and manner in which a tax policy request should be brought forward, as well as what it requires from the engaging party in terms of general preparations and the building of trust and license to speak.

MNEs can generally improve their chances of success by being well prepared in broad terms. Being recognized by policymakers and society at large as a well-behaved organization that lives up to its societal contract and has a useful purpose to society.

It may also be beneficial for an MNE to demonstrate that it is a net contributor and in fact pays tax. Perhaps mostly a European phenomenon (but becoming a global trend), investors and others expect MNEs to act responsibly when handling their tax affairs — typically referred to as “responsible tax” linked to the sustainability, corporate social responsibility, and environmental, social, and governance agendas. Acting responsibly within the tax agenda requires as a minimum standard that the MNE has prepared a public tax policy (in accordance with a leading standard like Global Reporting Initiative (GRI) #207 or the B Team principles for responsible tax), preferably combined with public overall tax reporting

⁴ See Wolfgang Schön, “International Tax Scholarship and International Tax Activism,” Max Planck Institute for Tax Law and Public Finance, working paper 2024-06, at 11 (2024). In particular, Schön argues that one of the most problematic features of tax scholarship lies in the fact that many actors have professional or political affiliations that go beyond the academic institution where they are employed. I acknowledge that there is no easy answer to this question because professors who are also practitioners sometimes develop a deep understanding of the reality of taxation, which is sometimes sorely missed on the side of the pure academics and political agents. In any event, according to Schön, academics should refrain from using their scholarly reputation to lend authority to statements made on behalf of private clients or political organizations.

(including country-by-country reporting, a tax footprint, and so forth).⁵

Despite having a positive self-image, an MNE cannot assume that all others, including policymakers and government officials, are fully aware of its merits or even of its existence and societal importance. For this reason, it is a good idea to develop a clear narrative about the company to be consistently communicated across multiple channels, including regarding the overall contribution of the MNE to society, the labor market, and the economy. Combining this with promotional visits (for example, at production facilities) by policymakers may increase understanding of the MNE and its position. The above broader measures may increase the visibility of the MNE and its tax policy concerns and generate a license to speak.

The behavior of the private parties engaging in tax policy matters also plays a role. Below is a suggestion of a universal behavioral minimum standard. As stated above, there is a cultural dimension to tax policy work that can be crucial.

Successful tax policy involvement requires mutual respect among parties, which can benefit from long-standing relations in other forums, for example, from work in technical bodies or associations.

For this reason, caution should be observed when presenting the tax policy positions of the MNE through broader media. However, such an approach may sometimes be preferable if a wider public audience must be made aware of the issues at stake.

It is important to show understanding of the position of the policymaker and their officials, who are often working under significant constraints in terms of workload and time pressure. Officials are obliged to deliver analyses and other decision papers under great time pressure. For this reason, adding tasks to their workload will not be welcome. The private sector tax policy engagement team should therefore be as helpful as possible and provide and offer whatever assistance they can. For example, the team could prepare a concrete and thorough proposal for the design of the MNE's tax policy

ask. This could include the actual wording of suggested legislative amendments, preparatory remarks, or consideration of the scope and interaction with other areas of the law. This approach would reduce the workload being added on top of officials other responsibilities. If presented in a neutral and objective manner, some practical aspects can be included, speeding up the process or showing concrete paths to move ahead. Following this approach, the private sector tax policy engagement team should be constructive in the sense that different options are being considered meaning, if political, legal, or practical concerns are raised against some proposals. Best practice tax policy engagement should be able to provide analysis that can dismantle such concerns.

Private sector tax policy actors can play an important role in the overall global tax landscape. However, transparency is important because the private actor must declare openly which interest they represent, not only to avoid conflicts of interest, but also to maintain long-term credibility.⁶ 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 a truth that was attempted to be concealed is revealed, it will jeopardize the interaction and could destroy future opportunities to engage with the same tax policymakers.

For a recent example of unethical behavior and conflicts of interest, consider the PwC tax policy scandal unfolding 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, giving the companies a head start to prepare for and avoid future tax policy initiatives. This behavior will have severe consequences that harm long-term relationships and trust. The Australian legislator has called this the biggest

⁵ See Bundgaard, *supra* note 1.

⁶ Such a disclosure requirement is included in GRI #207, Standard for Public Reporting on Tax (para. 207-a-ii).

crackdown on tax adviser misconduct in Australian history and has presented measures to strengthen legislation and increase penalties.⁷

Outlook

This article presented a methodology based on experience on how to approach private sector tax policy engagements.

This article's goal has been to contribute to the development of best practices, increasing the quality of engagements in tax policy within the public space, MNEs, and the professional services discipline. Although no one size fits all, the 5W Methodology may be well suited, wholly or partly, as a tool to ensure optimal preparation and conduct of private sector tax policy engagement — but there are no guarantees for a successful outcome. ■

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⁷Treasurer Jim Chalmers, Member of Parliament, press release, "Government Taking Decisive Action in Response to PwC Tax Leaks Scandal" (Aug. 6, 2023).