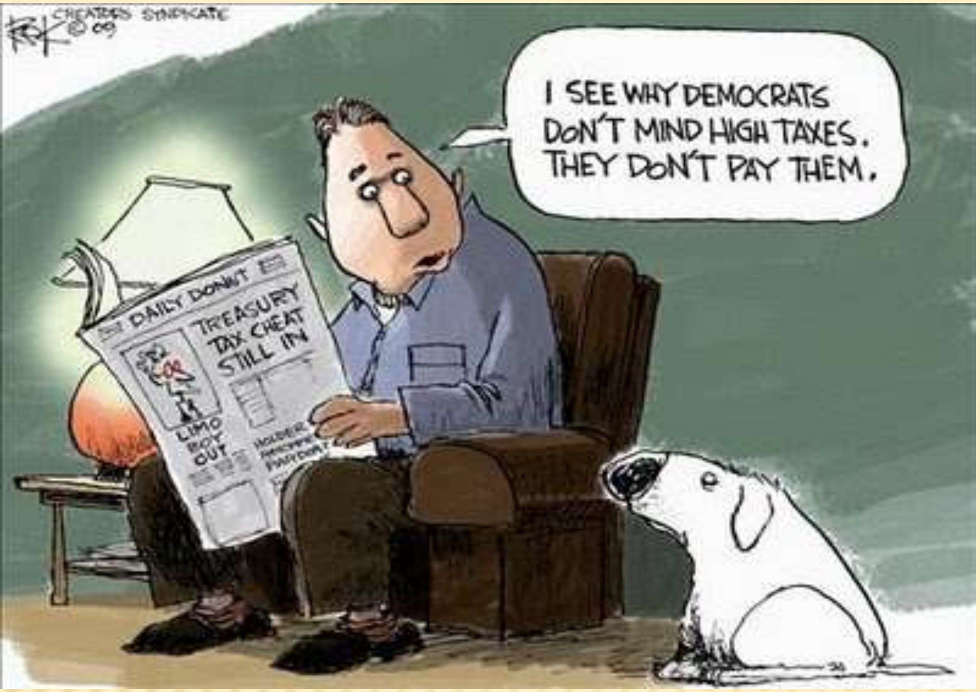

ANNUAL TAX WORKSHOP
PRESENTATION: TAX RISK MANAGEMENT AND STRATEGY FORMULATION
VENUE: MOMBASA WHITESANDS
DATE: 16TH SEPTEMBER 2014

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BOARD & EXECUTIVE ENGAGEMENT

FEELING TAX SECURED

Overview and Objectives of the presentation

- Designed to provide participants with an overview of the tax issues that the boards and all company staff have an obligation to manage.
- How taxes flow in the value chain
- Importance of a tax framework
- Components of A tax policy
- How to develop a tax policy

TAX RISK MANAGEMENT

FEELING TAX SECURED

Definition

- Tax risk management means that we need to identify the maximum level of risk appetite of the company in the worst-case scenario.
- Risk has been defined in European commission's guide on Risk Management for Tax Administrators as: “Anything negative that can affect the organization’s ability to achieve its objectives”
- Risk management began emerging as an important tool in policy and business literature at the end of the twentieth century.
- It has now entered both private and public sector management thinking

TAX RISK MANAGEMENT

FEELING TAX SECURED

Tax Jokes

- The difference between the short and long income tax forms is simple. If you use the short form, the government gets your money. If you use the long form, your accountant gets your money.
- A couple of weeks after hearing a sermon on Psalms 51:2-4 [knowing my own hidden secrets] and Psalm 52:3-4 [lies and deceit], a man wrote the following letter to the Inland Revenue's Inspector of Tax:

'I have been unable to sleep, knowing that I have cheated on my income tax. I understated my taxable income, and have enclosed a cheque for £150.

If I still can't sleep, I will send the rest.'

MICHAEL PORTER'S VALUE-CHAIN

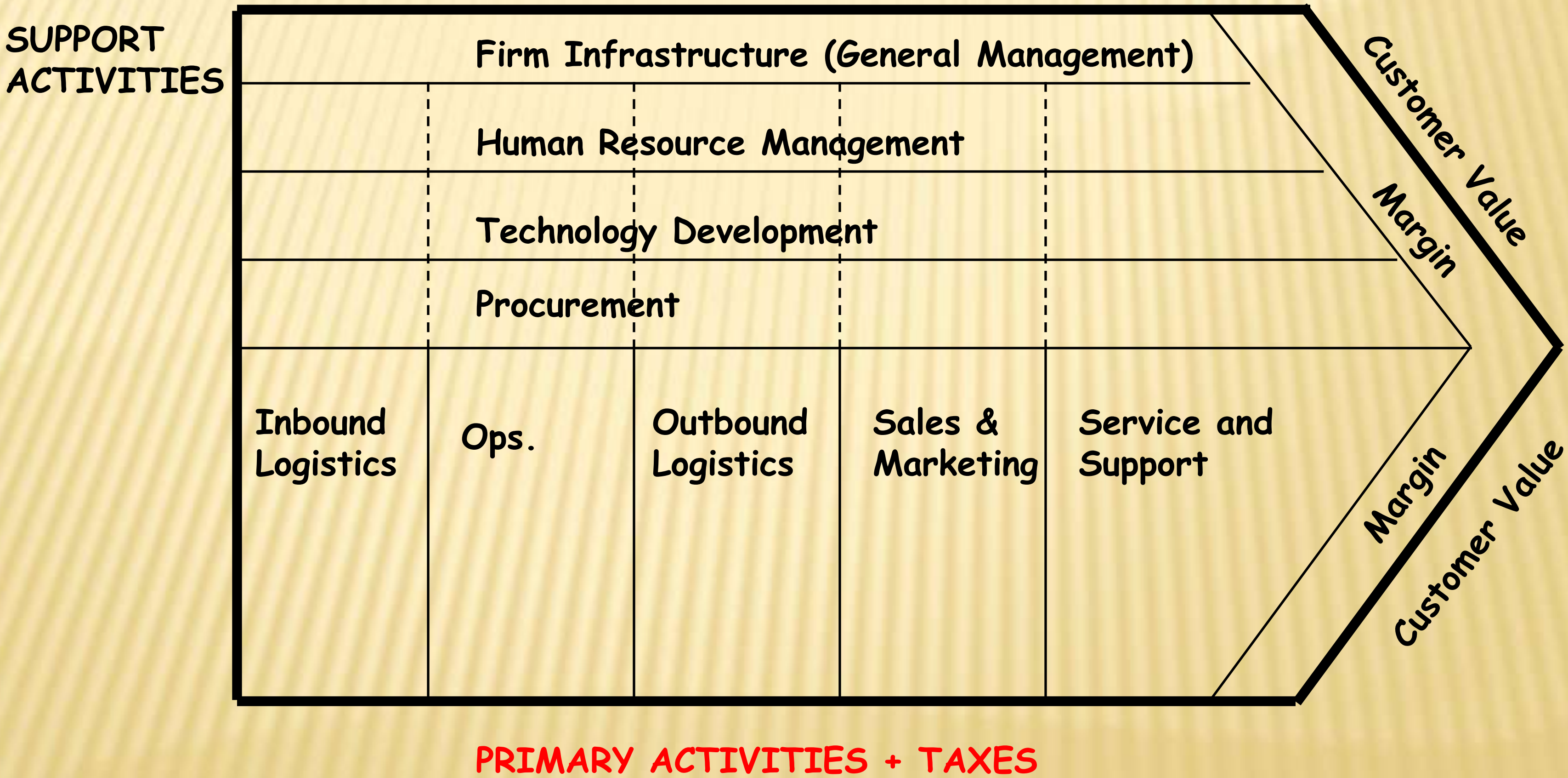
- Developed in 1985 by Michael E. Porter in Competitive Advantage
- Highlights ***cost advantages*** and ***distinctive capabilities***--the value processes
- Taxes flow in the value chain

VALUE CHAIN BENEFITS

- Identifies value processes

- Identifies areas for cost improvement
- Remember in the costs, we have taxes .

VALUE CHAIN MODEL FROM MICHAEL E. PORTER'S COMPETITIVE ADVANTAGE



BOARD & EXECUTIVE ENGAGEMENT

- Corporate tax risks, which often had been relegated to tax departments and outsourced to consultants, now re-emerge in corporate board rooms.

- In many jurisdictions the chief executives and the board may now be held personally accountable for the failures in the tax risk management of their companies.

- The increased emphasis on the tax risks calls for the effective management of such risks.

- Companies in different industries and in different regions of the world administer the process of managing tax risks in a wide variety of ways .

Has it ever happened to Your Company

DO BOARDS PARTICIPATES IN TAX STRUCTURING?

- Tax Structuring is defined as a form into which business or financial activities may be organized to minimize taxation.
- An important part of tax structuring is deciding how to set up a business before commencing operations. A business may run as a sole proprietorship, general partnership, limited partnership, corporation or limited company.
- International tax structuring means different things to different people—depending upon their responsibilities within a company; but if its done correctly it can relieve (sometimes) onerous financial burdens that can inhibit a company's development.
- An integrated international tax program which takes careful account of all of a company's tax exposures can free up precious capital that can be redirected to the firm's long-term benefit.

Issues Underlying Tax Structuring

- Tax Residency
- Permanent Establishment
- Transfer Pricing
- Substance
- Due Diligence
- Anti Avoidance/Abuse/Tax Risk Management
- Treaty Shopping/WHT issues

BOARD & EXECUTIVE ENGAGEMENT

Has it ever happened to Your Company

IS THE BOARD RESPONSIBLE?

Kenya: Soda Prices Likely to Increase as Soda Company Loses Bottle-Washing Excise Tax Case

"A court battle has ensued between four Soda bottling companies and the Kenya revenue authority over a 5 billion shillings tax bill slapped on them. The Kenya revenue authority charges that the bottling companies have been enjoying revenue from collecting deposits on returnable bottles without paying taxes for this. The high court however temporarily stopped the revenue collector and its agents from reining on the bottling firms to recover t*he* money"

BOARD & EXECUTIVE ENGAGEMENT

IS THE BOARD RESPONSIBLE?

Global case: Glaxo SmithKline

1. Glaxo SmithKline agreed to a payment of USD 3.4 billion in a settlement of a transfer pricing dispute.
2. The Internal Revenue Service won a high-profile tax shelter case involving Bank of New York Mellon Corp., in a ruling that could cost the company more than $800 million.
3. Also during the year, Sens. **Carl Levin** (D., Mich.) and **Sheldon Whitehouse** (D., R.I.) introduced a bill aimed at closing a range of corporate tax loopholes, proposing to raise $189 billion over the next decade. The bill targets multinational corporations' use of offshore tax havens to shelter profits from U.S. tax.

BOARD & EXECUTIVE ENGAGEMENT

Company Strategy

All Boards are focused on achieving strong, long-term financial performance of their respective companies

Your future results of operations are subject to a number of risks and uncertainties. These risks and uncertainties could cause actual results to differ materially from historical and current results and from your projections.

Corporate Governance

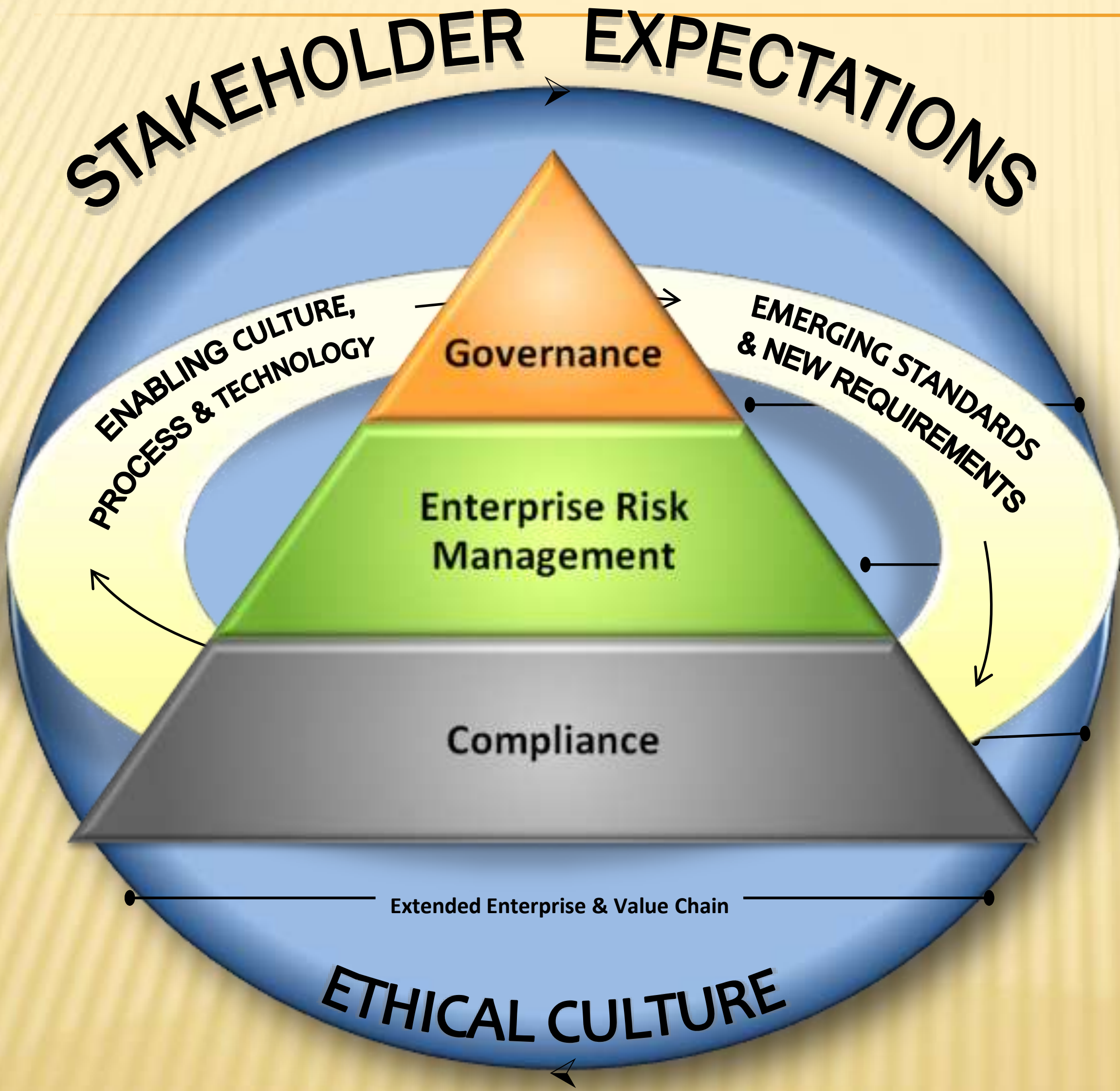
lead the Board, particularly as it focuses on strategic risks and opportunities facing the Company."

Risk Oversight

One of the functions of the Board is oversight of risks inherent in the operation of the Company's business. The Board fulfills this function through reports from officers for oversight of particular risks within the Company, through legal review of the Company's strategic plan, and through delegation of certain risk oversight functions

SOURCE OF TAX INFORMATION

Establishing Context



Setting strategy, objectives, tone, policies, risk appetite and accountabilities; monitoring performance.

Identifying and assessing risks that may affect the ability to achieve objectives; determining risk response strategies and control activities.

Operating in accordance with objectives; ensuring adherence to laws and regulations, internal policies and procedures, and stakeholder commitments.

- A proliferation of complex and significant tax risks are at the forefront of global news.
- Aggressive tax planning, tax avoidance, tax evasion and fraud are terms used interchangeably to describe actions by multinationals.
- Tax authorities, governments, G8, G20, among others, are discussing new ways to combat these perceived risks in the form of additional tax transparency, audit resources, new legislation, etc.
- Similarly, tax organization structures should also be reviewed based on a tax risk management approach

- As part of Corporate Governance Code, the Board of directors must disclose in annual report its business risks (strategic, operational, financial and compliance risks).

- Taxes fall under the business risks of compliance and may involve either the below the line taxes or transactional taxes.

- Tax risks management entails the risks associated with non-compliance with tax legislation, risks of wrong reporting or risks of missed opportunity to save tax cash outflow.

- The big picture is that taxes can curtail corporate strategy and company **reputation**.

- **The following are identified as risks that are inherent in an organization tax system:-**
- Valuation risks-The risks that the tax amount disclosed in Financial Statements are wrong. This may include both corporate taxes, differed taxes and transaction taxes as VAT and other levies
- Reputation risk-The risk that failure to pay taxes may have a negative impact on a company after a revenue authority audit that may disclose additional taxes that are well above its cash flow ability.
- Operation risk-We have some taxes that are outside the scope of the tax department but may curtail business performance. E.g payroll taxes, VAT and information reporting
- The above can only be managed by a change in human factor and changes of cultural aspects (correct **"Tone at the top"**).

- In contrast to popular believes, tax risks mainly arise from issues related to **poor** or lack of communication between departments and people, instead of factual or technical analysis of tax issues.
- Insight-**Communication**
- Follow-up-**Communication**
- **Facts Analysis-Communication**
- Technical Analysis-**Knowledge**

- From the above, it is clear that communication is critical to a tax risk management. 85% of mistakes in taxes are arising from communication.
- Making sure that the relevant persons understand the tax issue, the essential facts and what is needed to resolve the issue and most importantly: **Who takes ownership** requires an organization to have a tax role and responsibility matrix

DISCLOSURES: Risks related to unforeseen tax liabilities

Because Ahold operates in a number of countries, its income is subject to taxation in differing jurisdictions and at differing tax rates. Significant judgment is required in determining the consolidated income tax position. We seek to organize our affairs in a tax-efficient and balanced manner, taking into account the applicable regulations of the jurisdictions in which we operate. As a result of Ahold's multi-jurisdictional operations, it is exposed to a number of different tax risks including, but not limited to, changes in tax laws or interpretations of such tax laws. The tax authorities in the jurisdictions where Ahold operates may audit the Company's tax returns and may disagree with the positions taken in those returns.

DISCLOSURES: Risks related to unforeseen tax liabilities

An adverse outcome resulting from any settlement or future examination of the Company's tax returns may result in additional tax liabilities and may adversely affect its effective tax rate, which could have a material adverse effect on Ahold's financial position, results of operations, and liquidity. In addition, any examination by the tax authorities could cause Ahold to incur significant legal expenses and divert management's attention from the operation of its business.

❑**Relevance of a Tax Policy and Procedures Manual**

A good policy manual establishes trust, prevents misunderstandings and clarifies expectations for both the company and its staff.

It gives staff a solid understanding of their responsibilities in helping the company achieve full compliance from the onset and helps to avoid unnecessary confusion.

❑**Reduction in the cost of tax management**

With clarity on what is expected of staff, involvement from your tax consultants will be minimised except where there are changes in legislation or administration. More importantly, increased compliance will reduce time and resources spent in delaing with costly tax disputes with the Revenue Authority.

Evaluation Tool

- The policy and procedures manual will clarify the roles and responsibilities of various parties and thus provide an objective yardstick against which their performance can be measured.

Our Approach to documenting a Tax Policy and Procedures Manual-Sometimes called a TCF-Tax control Framework

- Tax Control framework (TCF) –A tax control framework is a system (process) to identify, mitigate, control and report tax risks.
- A TCF forms part of a business control framework, which is different for every organization.
- In documenting the TCF, it is important to first and foremost identify the different activities, transactions or instances typical in the performance of Company business which may have a tax implication and document the procedures undertaken, as well as issues that may come up in the day-to-day operation of the business.
- In designing the framework , we have to seek to understand the functions performed by various departments and relevant staff members.
- It would therefore be necessary for staff in the different functions to take us through their day to day processes highlighting any interlinks with tax where applicable.

- The ultimate goal of a Tax control Framework is to build a tax function within an organization that is effective, efficient and transparent.
- The processes to be reviewed would include the following:
  - Budgeting;
  - Procurement;
  - Contract processing;
  - Sales procedure and invoicing;
  - Issuance of credit notes;
  - Payments and recognition of expenses; and
  - Payroll processes.

- Company also need to review existing policies and procedures with a view to identifying the linkages with tax and ensuring that the Tax Policy and Procedures Manual is in line with the overall objectives of the organisation.

OUR APPROACH TO TAX

Organization tax policies have been the subject of much debate in recent years.

There is interest in

- How we make decisions about tax
- How much we pay and
- where we pay.

OUR SAMPLE TAX POLICY

- ❑Our Code of Business Principles requires all our group companies to comply with the laws and regulations of the countries in which they operate, and this applies just as much to taxation as to any other issue.
- ❑Our approach to tax seeks to align the long-term interests of all our stakeholders, including governments, shareholders, employees and communities.
- ❑In making decisions about tax, we look to be consistent with international best practice guidelines.
- ❑In addition, steps taken to plan our tax position must be consistent with the normal course of our business operations and reflect our corporate strategy.

OUR TAX POLICY

GOVERNANCE

Our Board's Audit Committee is responsible for overseeing our policy on tax planning.

This Committee comprises only independent Non-Executive Directors.

The Financial Leadership team, chaired by the Chief Financial Officer, is responsible for XYZ tax strategy.

OUR TAX POLICY

1. **Planning and general approach**
   The Group aims for certainty on tax positions it adopts but where tax law is unclear or subject to interpretation, written advice or confirmation will be sought as appropriate to ensure, on the balance of probabilities, that the position adopted would, <u>more likely than not, be settled in our favour.</u>

2. Compliance and Tax Authority relationship

The Group should comply with all tax regulations in all countries in which it operates. It should submit all returns by their due dates and in line with local tax law.

OUR TAX POLICY

3. **Reputation**

It is not appropriate for the Group's tax affairs to appear in the public domain or for a tax decision to have any adverse effect on shareholder value. The Group is only prepared to enter into transactions which could appear in the public domain where they have an underlying commercial rationale or have become common practice. Where this is a risk, the CFO, Media Relations and appropriate parties must be informed before the risk is taken. The tax function will manage its compliance affairs to minimize the risk of any adverse public comment.

Tax risk management framework

Ideas for developing Best Practices in tax risk management include the following:

1. List the top 5 tax risks; then align these risks with the tax personnel whose primary function it is to focus on such risks.
2. Are the top 5 risks being managed efficiently internally and / or externally?
3. Is each risk the top priority of one or more members of the tax team?
4. Is the strength of each tax member aligned with the respective risk?
5. Are you currently able to shift resources away from geographical / functional responsibilities to address current risks?
6. Are the tax members adding focus on these risks in addition to their other responsibilities?

7. Have specific strategies been developed to address the top tax risks, and champions assignable for each risk?
8. Are specific training courses being developed to better inform the tax team and the business of developing risks?
9. Are proactive discussions being held with senior management and the Board to ensure efficient tax risk management?
10. Is there a quarterly tax risk review to assess status and future actions?
11. Have internal procedures been reviewed, as well as mitigating controls, to address potential risk gaps?
12. Is the business aware of such risks on an ongoing basis?
13. Is this an opportunity to review tax resources to achieve the proper focus on the top tax risks?
14. Compare the current tax organizational structure with the tax risks; is it fit for purpose?

15. Review Best Practices for obtaining APA's, entering mutual audit procedures such as CAP(Compliance Assurance process), horizontal monitoring, enhanced cooperation in today's increased emphasis on mutuality and tax transparency with tax authorities.
16. Who conducts audit meetings with tax authorities around the world? Is this an opportunity to minimize risks at an early stage? Are these individuals knowledgeable of the top tax risks? Do you conduct training for audit meetings, including negotiation skills?
17. Is internal audit aligned to identify tax risk gaps in their routine audit reviews?
18. Is Global Mobility trained to identify potential PE risks? Consider a review of their internal processes for assignments.
19. Who reviews Branch activities to ensure such activities do not inadvertently lead to a PE?

20. Review the Transfer Pricing documentation framework to address transfer pricing issues early.
21. Ensure Treasury is aligned with the tax risks and processes are in place for intercompany loan arrangements.
22. Align cross-functionally to ensure new strategies, or a change in current strategies, are reviewed for tax risk exposure.

Questions

Questions?

Thank you!

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