Have our tax practices embraced ESG?

Part 1

This article is the first in a two-part series of articles that seeks to discuss whether the tax practices in Ghana have evolved to acknowledge the demands of the environment we operate in as it pertains to Environmental, Social and Governance ("ESG").

The introduction of Environmental, Social and Governance ("ESG") principles into business operations have instigated changes to tax reporting and disclosures. ESG is no longer just a social phenomenon; It has gradually evolved and focuses on pertinent matters such as governance, transparent reporting, and corporate climate policies which are core to business' performance. Different ESG laws have been enacted with proven tax implications, as several ESG driven taxes have emerged world over. These taxes and/or incentives have a direct bearing on tax practices and should be considered in enhancing tax strategy, reporting and planning, and taking account of the ever evolving ESG environment.

Genesis of the ESG agenda

In the mid- 2000s, a United Nations report helped give expression to the idea of the popular Environmental, Social, and Governance phrase. Although the modern concept of ESG became well-known in the mid-2000s, the principles behind ESG can be traced to decades and even centuries ago. In the early 1960's, a movement arose where corporations needed to be accountable for the negative impact their operations had on businesses. It became necessary to come up with measures that allow these corporations to meet present human needs and in the same breadth protect the future generations' needs. Thus inferring the 'E' principles of ESG.

Shifting to the 'S' principles, the 1972 tax case law Moritz v. Commissioner of Internal Revenue[1] presents a case where a male caregiver was being precluded from getting a tax refund on the basis of sex. This case, amongst others, set the tone for labour laws being seen as discriminatory on the basis of sex - a concern for the "S" tenet under the ESG.

Several countries have put in place laws to regulate the affairs of businesses, while regulatory bodies continue to encourage good corporate governance practices among other factors, forming the foundation of the "G" tenet under ESG.

With the obvious increased rate of climate change across the globe, environmental laws have been put in place at the regional/ continental and national levels. These laws seek to regulate businesses and individuals' activities to ensure that not only are they not environmentally harmful but also inform people of their contribution in the form of carbon footprint where the goal is to mitigate emissions to acceptable levels or wherever possible facilitate total elimination of emissions.

[1] https://law.justia.com/cases/federal/appellate-courts/F2/469/466/79852/

ESG in practice

Many countries have implemented ESG related laws since the debut of the modern concept of ESG in the mid-2000s. Countries like the United States of America have gone great lengths to promote ESG principles not only in their business dealings, but also in their manner of living. For instance, in States like Columbia and Massachusetts, green building is taking over most communities.

Laws have been passed requiring car manufacturing companies to ensure their carbon emissions are not above an approved cap. It is in this regard that Volkswagen was sued a couple of years back for manipulating their carbon emission levels during testing of their vehicles.

South Africa is one of the leading countries in the African continent to embrace ESG practices and obligations. The South African Government upon implementing policies such as the King Code on Corporate Governance, and being a signatory to the Sustainable Stock Exchanges Initiatives (SSEI) has promoted ESG reporting within the country. In addition, the country in its attempt to become a low-carbon economy provides for green grants, incentives and reliefs, aimed to encourage and reward companies on implementing measures to combat climate change.

Here in Ghana, the concept of ESG may seem abstract to many, however, it is more pertinent than most may anticipate. First, a close look at the various legislations in force reveal provisions that are ESG focused. Certain provisions of Ghana's Labour Act, 2003 reveal provisions that promote fair practices in the workplace and prevent unhealthy working conditions.

Secondly, regulatory bodies such as the Bank of Ghana have laid out sustainability principles to assist banks in Ghana respond to ESG issues including mandatory adoption of ESG reporting. In the same breath, The Ghana Stock Exchange launched a guide for listed companies in Ghana and other organisations interested in adopting ESG principles, to use as a benchmark in formulating their internal ESG frameworks and reporting strategies.

In the first part of this article, we have looked at the genesis of ESG and how it has evolved over the years with some countries enacting laws to promote compliance with ESG principles. In the second part, we will discuss the interconnection of ESG and Tax, and how effective Tax Reporting and Compliance incorporates ESG principles.

Want to know more? Let's talk.

For a deeper discussion of how ESG might affect your business, please contact:

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