

A conference presented by the IBA Taxation Section

13th Annual London Finance and Capital Markets Conference

15–16 January 2024, One Great George Street, London, England



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Tax director's panel



**Francesco
Gucciardo**
Aird & Berlis



**Martin
Arzethauser**
Kuehne + Nagel



**Niall
Cogan**
Digital Realty



**Joanna
Linfield**
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**Denise
Romano**
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Tax Directors Panel

Moderator

Francesco Gucciardo, *Aird & Berlis LLP*
Toronto, Canada

Speakers

Martin Arzethauser, Head Group Tax, Kuehne + Nagel
Schindellagi, Switzerland

Niall Cogan, VP Tax EMEA, Digital Realty
Dublin, Ireland

Joanna Linfield, Tax Professional, Triton Partners
London, UK

Denise Romano, Head of Fund Tax – Private Investments,
Bain Capital, Boston, USA

Mikko Saressalo, Managing Director Taxation, PSP
Investments, London, UK

Panelists



Joanna Linfield
Triton
Tax Professional



Denise Romano
Bain Capital
Head of Fund Tax



Dr Martin Arzethauser
Kuehne + Nagel
SVP Corporate Tax



Mikko Saressalo
PSP Investments
Managing Director



Niall Cogan
Digital Realty
VP Tax EMEA

Agenda

- I. ESG
- II. Pillar Two Application & Readiness
- III. Finding Certainty
- IV. Controversy, Audits & Settlements

ESG

I. ESG

S ... Sustainability

- MNEs, Funds & Institutional Investors are developing and publishing their own Tax Codes of Conduct and including Tax-Related Initiatives in External Investor Reports
- Investors are looking at investee entities and portfolio entities and including transparency and tax strategies in their assessments

I. ESG

“ ... as a global investor, having our portfolio companies adopt a tax structure that respects communities is fundamental to our sustainable asset management approach. This is why we are one of the few fund managers in the world who committed to carrying out a systematic portfolio review from a tax perspective. We based that review on specific criteria, including the minimum tax rate recommended by the OECD and supported by the G20.”

-Charles Edmond, President & CEO, Caisse de dépôt et placement du Québec
Opening Message from Sustainable Investing Report

I. ESG



Tax and transparency Expectations of companies



“Aggressive tax behaviour undermines the effectiveness of tax systems and may expose investors to reputational and financial risks. We expect companies to adopt appropriate and prudent tax policies and to be transparent about where they generate economic value.”

“Our expectations on tax and transparency rest on three main principles. The first is that companies should comply with the letter and the spirit of tax laws and pay appropriate taxes where economic value is generated. The second is that company tax arrangements are a board responsibility. The third is that tax transparency, including public country-by-country reporting, is a core element of responsible tax behaviour.”

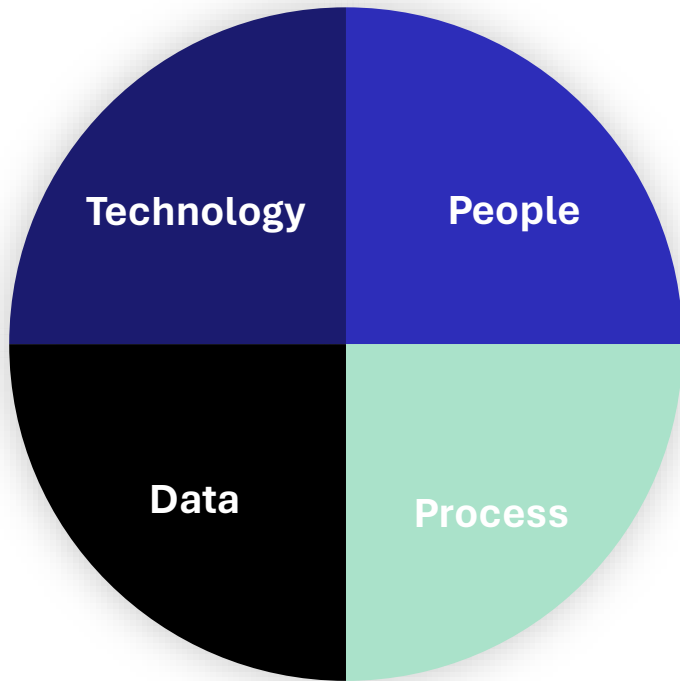
<https://www.nbim.no/contentassets/29f69f7ae81449f9adc88a32aa3de8c8/tax-and-transparency.pdf>

I. ESG

- How can or do you reconcile pressure to optimize for both a target IRR and ESG?
- Are MNEs & Funds considering the updating or adoption of Tax Codes of Conducts or including tax-related initiatives in external investor reports?
- To what extent are CFOs and Tax Directors being integrated into the general business beyond the traditional tax function or being called into the boardroom?
- What is the trend, where are we headed and how can your professional legal advisors help?

P2 Application & Readiness

II. P2 Application & Readiness

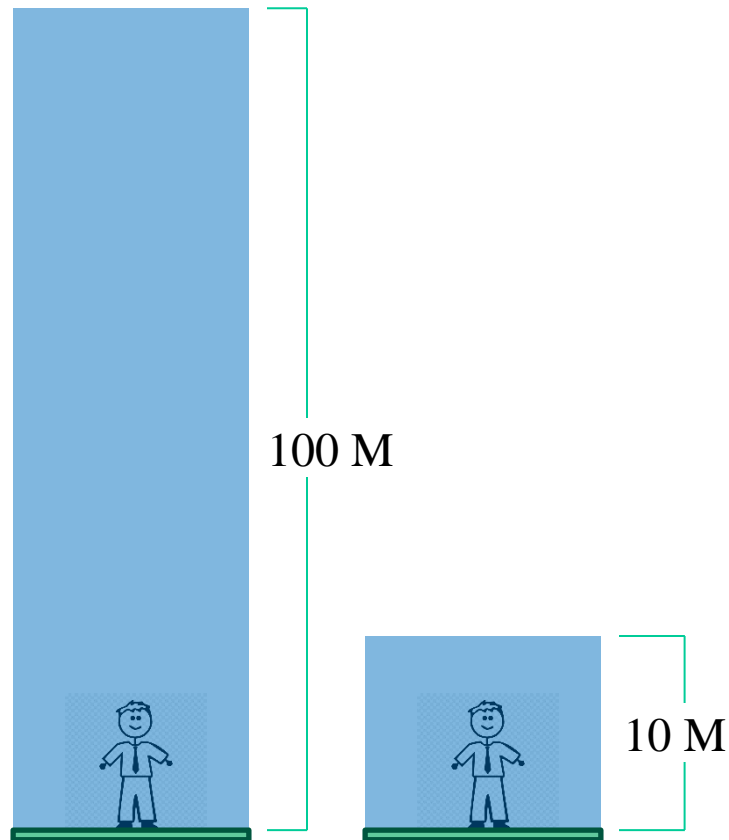


- **Significant organization-wide undertaking drawing on people, technology, processes and data resources for readiness and compliance**
 - Assessing safe harbour and GloBE adjustments and calculating GloBE income
 - Establish key accounting policies & perform data gap analysis
 - Creating tools and systems for compliance readiness
 - Calculating Pillar Two tax exposure
 - Preparing analysis memos/workpapers to meet anticipated auditor requirements
 - Providing guidance in drafting model financial disclosures and footnotes
 - Monitoring and analyzing evolving global and domestic legislation and interpretations

II. P2 Application & Readiness

- **Transitional CbCR Safe Harbour Rules (3 years):**
 1. **De Minimis Test:** < EUR10M Revenue & < EUR1M profit before tax in Qualified CbC Report
 2. **ETR Test:** <15% Simplified Tax Rate in 2024 (16% and 17% in 2025 and 2026)
 3. **Routine Profits Test:** where Substance-based Income Exclusion (SBIE) > Profits before Tax (e.g. no excess profits after excluding routine profits)
- **Simplified Calculations Safe Harbour:** part of a permanent safe harbour designed to simplify compliance by reducing the number and complexity of calculations required

II. P2 Application & Readiness



How will the transitional safe harbours help in practice or ~~are we just drowning in 10 meters* of water instead of 100 meters*~~ do challenges remain?

**Replace meters with feet if you prefer Imperial measurements*

II. P2 Application & Readiness

- What is a qualified CbC Report?
 - Prescribed data sources must be used (Qualified Financial Statements) which may result in differences relative to ordinary CbC Reports
- Does an error in a single country cause the entire qualified CbC Report to fail, or does it impact that single jurisdiction only?
- Transfer pricing adjustments
 - Impact of post year-end adjustments on transitional safe harbour?
 - Those resulting from subsequent audits – ability to change previous years' minimum tax?

II. P2 Application & Readiness

- What practical impacts do you anticipate from a diligence or structuring perspective as it relates to M&A transactions and/or credit facility negotiation?
- What are the key challenges and anomalies that you are encountering?
- What does Pillar II readiness mean and look like in practical terms?
- What is the trend, where are we headed and how can your professional legal advisors help?

Finding Certainty

III. Certainty

“Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes.”

— Benjamin Franklin, in *Letter to Jean-Baptiste Le Roy, 1789*

“You lye, you are not sure; for I say, Woman, 'tis impossible to be sure of any thing but Death and Taxes.”

—Toby Guzzle, in Christopher Bullock, *The Cobbler of Preston, 1767*

“Taxes are certain, but they are anything but.”

— Francesco Gucciardo, *London, 2024*

III. Certainty

- Doth seek rulings? Where art thou?
 - As outdated as Ye Old English? Part of the Reformation? Will we see a Renaissance?
- Tax Liability Insurance ... not just for the past
 - Applicability of transfer taxes, indirect disposal rules, PE and residency risk, withholding taxes, treaty benefits, debt/equity characterization, availability of losses, revenue/capital characterization, application of PPT and GAAR, stamp duty, VAT/GST risks, employment taxes, transfer pricing, etc.,
- Transfer Pricing – APAs, ICAP, MAP
- What is the trend, where are we headed and how can your professional legal advisors help?

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Controversy, Audits & Settlements

IV. Controversy, Audits & Settlements

- Evolution of relationship with tax authorities?
- Observations relating to impact of digitization and data consolidation on tax authorities' approaches and positions
- Settlements, Voluntary Tax Payments and Foreign Tax Credit Position issues

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