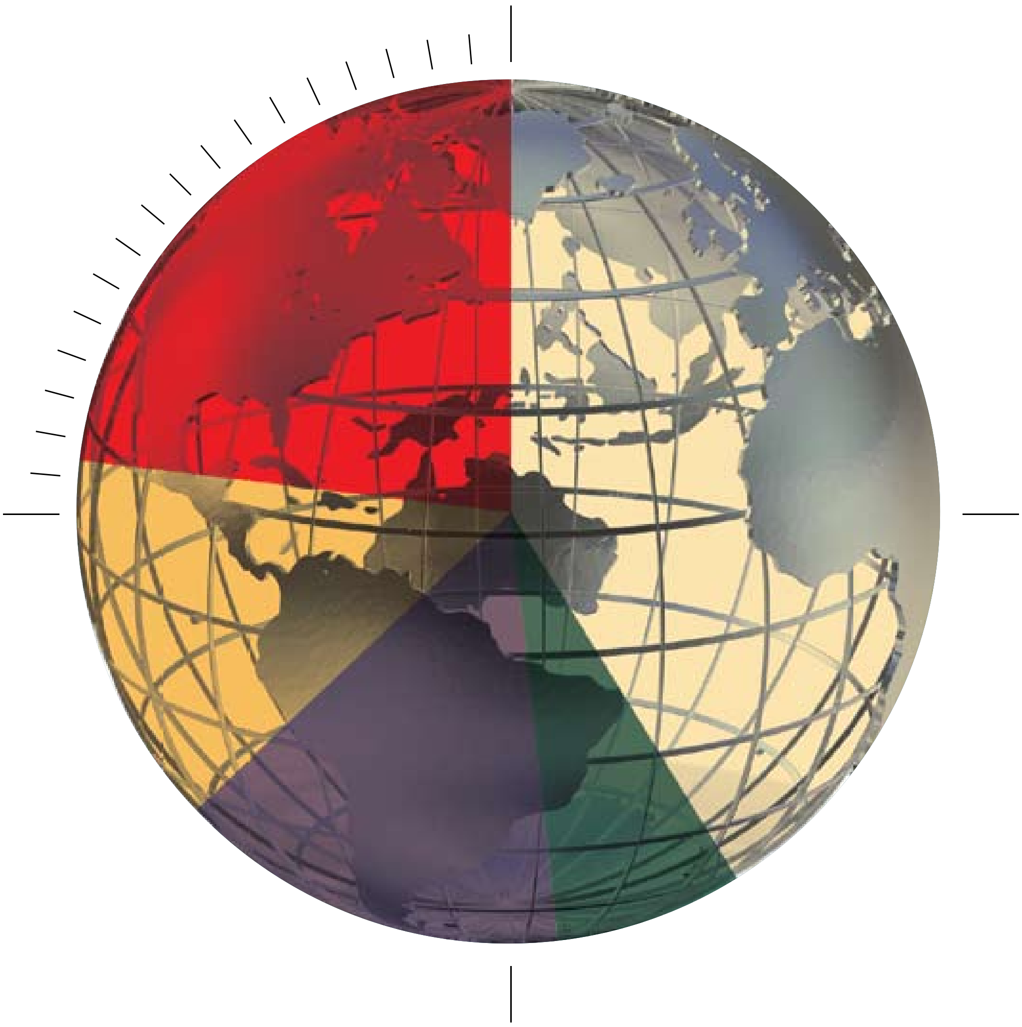
2012 TAXAND GLOBAL SURVEY

Taxand

Quality tax advice, globally

# TAXAND THE CFO

## Understanding Tax Changes as Economies Worldwide Drive Efficiency



www.taxand.com

# Foreword

Our second Taxand Global Survey has captured some thought provoking reactions from multinational CFOs following a year of rapid change as economies have sought to drive efficiencies within their tax systems.

In this year's survey we compare year-on-year results, highlight the latest global tax issues and provide Taxand's take on how multinationals can adjust to tax changes to operate ever more effectively in this demanding environment.

### Multinationals say tax is not the answer to economic woes

It has been a testing year for economies worldwide and tax has regularly featured in the debate around appropriate economic policy.

Our survey reveals that 76% of multinationals agree that tax, in isolation, is not the answer to economic stability, albeit there is little doubt of its role in determining the attractiveness of a country for foreign investment.

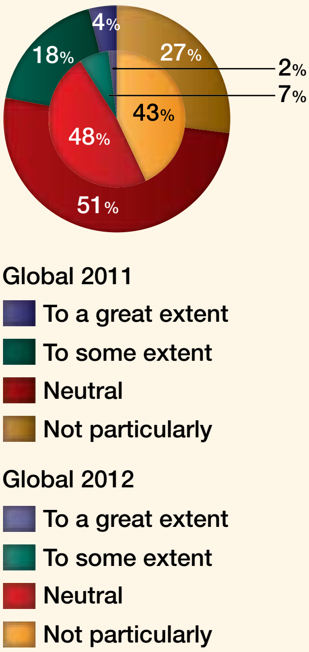
### Increasing pressure on resources

The tax challenges identified by multinationals are shifting and available resource is one of the biggest growing concerns for tax departments, up 6%. Multinationals must ensure that they are allocating resource appropriately.

### Increasing scrutiny slowing multinational growth

Almost half (48%) of multinationals believe their expansion plans have been curbed by overzealous tax authorities, with 78% also confirming an increase in tax audits year-on-year. Companies should establish protocols for responding to requests and documenting the status of tax audits.

**To what extent are tax issues on your Board's agenda?**




### Public scrutiny and reputation: The rise of citizen activism

Our survey reveals a 19% increase in the number of multinationals viewing public exposure of tax planning as detrimental to reputation. The importance of demonstrating substance has risen to the fore and companies must also be aware of retrospective legislation.

### Increased dialogue between authorities and multinationals

Multinationals have seen a marked improvement in relationships with tax authorities over the last year, jumping from 61% in 2011 to 84% in 2012. Given the ever-increasing pace of information exchange, multinationals must focus on adequate and accurate record-keeping.

### International tax: The battle for multinational investment

Our survey highlights an increase in inter-country tax competition as governments battle to secure inward investment. This trend highlights the need for multinationals to focus on whether a region's tax environment will support the investment rationale.

### Harmonisation: The double-edged sword

There remains a desire for tax harmonisation from 75% of multinationals. Whilst many attempts to foster this are yet to come to fruition, multinationals should beware of the political will to increase information exchange and boost revenues.

### Tax moving up Board agendas

The importance of tax continues to grow, with a 16% increase in the number of CFOs identifying tax as being on their Board's agenda 'to a great extent'. This number is only destined to increase, particularly given current economic uncertainty and the potential for change in tax systems. Moreover, although tax authorities across the globe may reduce in size, they will no doubt become more effective in the exchange of information across borders, radically changing the relationship between business and government.

It's clear that multinationals are facing unprecedented change at rapid speed. Taxand remains sensitive to the careful balancing act required to satisfy shareholders, tax authorities, public perceptions and multinationals' growth and ambitions. The need for tax to remain high on Boardroom agendas is greater than ever.

Frederic Donnedieu de Vabres, Taxand Chairman

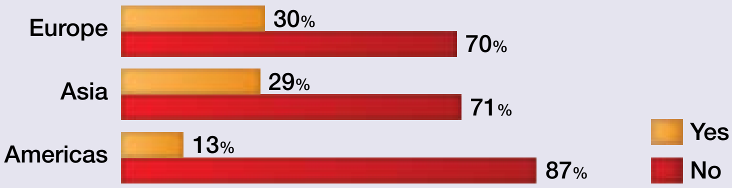
# Multinationals say tax is not the answer to economic woes

## THE ROLE OF TAX IN COUNTRY COMPETITIVENESS

Whilst tax is not viewed as the overall solution, it is undoubtedly a big lever in influencing country budgets, and perhaps more importantly, in determining the competitiveness of a country in attracting investment. In essence, tax is at the forefront in stimulating growth, and this is a key driver in countries such as India. Other countries are struggling to find ways of maintaining competitiveness in the tough economic climate; Ireland, for example, is striving to find a way to maintain its attractive corporate income tax rate which acts as a draw to a number of large multinational businesses, especially those in the technology sector.

The past year has seen sustained turbulence in the global economy, not least in the Eurozone where concerns over the financial stability of countries, most notably Greece, have been under the microscope. Whilst debate over the best resolution for such problems is ongoing, our survey reveals that an overwhelming 76% of global respondents do not believe that economic turmoil can be resolved through tax policy.

**Can economic turmoil, like that being experienced in the Eurozone, be resolved through tax policy?**



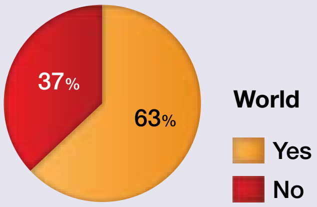

The Americas in particular consider tax policy to be immaterial with a staggering 87% responding negatively. There are numerous historic examples where countries have failed to solve problems through the implementation of tax based measures, such as the Hoover and Roosevelt tax rate rises to over 90% during the 1930s and 1940s. However, for every historic example of where tax policy has failed, there are instances where it's succeeded.

> ***Europe should be able to rebalance the economy through tax measures, but only if the political will is there.***

**Richard Baxter, Taxand Global Indirect Tax Service Line Leader,** notes that: *"Europe has a North / South divide in terms of its ability to address macro issues through tax policy. Europe should be able to rebalance the economy through tax measures, but only if the political will is there. We've worked with many governments on tax reform initiatives and have seen first-hand these policies bearing fruits for their economies."*

### Recession proof?

**With low cash reserves, are you concerned about your government's ability to help multinationals through continued recession?**



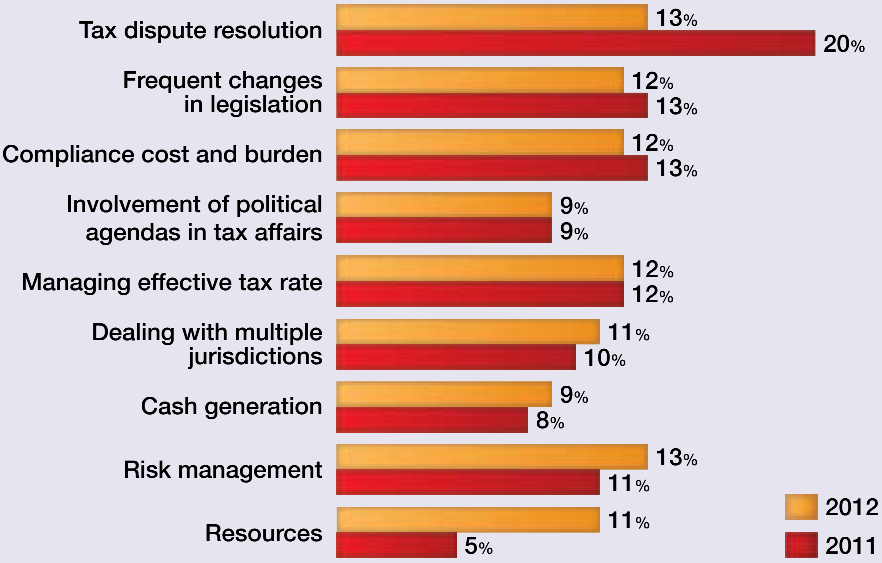

Problems in the global economy have also sparked concerns at Board level over governments' abilities to assist multinationals amidst recession. Globally, 63% said they were concerned, rising to 86% amongst Americas respondents. In the USA, companies are clearly concerned as the country struggles to gain momentum in the economic recovery. Mexico however, has learnt from previous recessions and the country's high dollar reserve now provides a reassuring level of stability.

## TAXAND'S TAKE

- **As countries worldwide continue to roll out austerity and growth models, multinationals must keep abreast of change and consider operational structures:**
  - **to maximise competitive moves for investment;**
  - **and minimise potentially damaging executive personal tax rates.**

# Increasing pressure on tax resources

**What are the key challenges facing your company's tax department?**




The tax challenges identified by multinationals are shifting. Surprisingly, tax dispute resolution was identified as less of an issue year-on-year, despite the increase in disputes globally. This shift is particularly evident in Asia where the proportion of respondents identifying this issue reduced from 25% to 15%.

### Transfer pricing: The emerging markets learning curve

We asked multinationals which areas of tax had been the most challenging from a global perspective in the last year and the top three responses were:

- Transfer pricing 20% (23%: 2011)
- International tax 17% (12%: 2011)
- Tax litigation / disputes 15% (18%: 2011)

Transfer pricing remains the most challenging area of tax for multinationals although companies are becoming more familiar with compliance demands and developing their relationships with tax authorities. In Asia, the learning curve has been steep following a 50% increase in transfer pricing legislation over the past 5-10 years. However, despite an increased understanding, the rising scrutiny of financial transactions from a transfer pricing standpoint is starting to cause some concern amongst multinationals.

**Antoine Glaize, Taxand Global Transfer Pricing Service Line Leader,** commented: *"Essentially we are seeing a dichotomy in transfer pricing. Across much of the globe, we are seeing harmonised systems with consistent approaches to transfer pricing principles. Despite this, we still have a few select countries working to slightly different rules and practices, and others that have some catching up to do in terms of enforcement; this is most notable in emerging markets where the transfer pricing knowledge base is relatively low amongst the tax authorities."*

## TAXAND'S TAKE

- **Transfer pricing disputes arising from audits are increasing in various forms (litigations, amiable or arbitrage inter-States procedures). The outcome is often favourable provided that the taxpayers' position is sufficiently supported from the origin of the transfer pricing policy implementation. As such, multinationals should not hesitate to use all levers at their disposal to achieve success.**
- **Intangible issues are still critical and controversial for taxpayers and governments. Particular procedures such as advance pricing agreements should be considered to mitigate related risks.**

## ENERGY – THE EASY TARGET FOR TAXES

The energy sector, often seen as an easy target for governments as a source of revenue, is receiving more attention in the downturn.

**Jimmie Van der Zwaan, Taxand Global Energy Service Line Leader, commented:** *"With continuing high energy demand and uncertainty in supply, the sector has been subjected to higher scrutiny and increased rates. Coupled with a need to demonstrate corporate responsibility to an increasingly environmentally friendly public, taxes and tax structuring are getting more Board attention at energy companies – a trend that likely will also affect other sectors down the line."*

The Green agenda pervading many developed markets has sparked a raft of new taxes leading to dispute and debate. A recent example was the CO2 'Airplane Tax' in Europe which resulted in the Chinese air regulator banning China's carriers from paying European Union charges on carbon emissions or other fees without government permission.

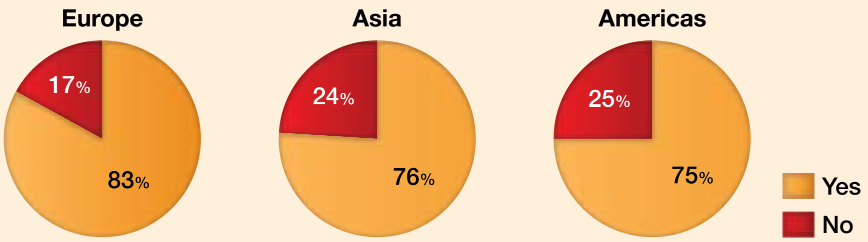
# Increasing scrutiny slowing multinational growth


## THE VAT PANDEMIC

VAT is increasingly becoming a key mechanism used by governments to generate revenue. Across the world we've witnessed hikes in rates and the proposed introduction of VAT mooted, most notably in the USA. The IMF going forward is also looking to use VAT as a tool to rescue defunct economies. The key issue for multinationals is ensuring VAT compliance as VAT rules worldwide become ever-more intricate and ever-more convoluted. Robust systems will play a key part in standing up to further scrutiny in the future.

Globally, multinationals are seeing a continued increase in the number of tax audits undertaken by authorities year-on-year, with 78% of respondents confirming this.

### Have you seen an increase in the number of tax audits in the past year?




Europe saw a rise in tax audits, a direct reflection of the troubled global economic environment and governments' needs to fill deficits. The sheer intensity and scrutiny faced during tax audits could explain the perceived increase in frequency amongst multinationals.

Interestingly, when asked whether increasing tax scrutiny measures are restricting growth for multinationals, almost half (48%) believed their expansion plans had been curbed by overzealous tax authorities.

**Manuel Tamez, Taxand Mexico,** believes tax authorities are working in a more efficient way when it comes to conducting tax audits: *"Authorities are focusing more on specific taxpayers and transactions, understanding in advance what they want to investigate, resulting in tougher, more technical challenges, for multinationals. It's become more of a rifle shot as opposed to a shotgun approach."*

### Cross-border transactions and transfer pricing remain most scrutinised

When asked whether increasing tax transparency and reporting measures ultimately increases the cost of compliance, 76% of respondents globally agree it does (2011: 84%). This trend is likely to continue, especially with the introduction of measures such as FATCA coming into force.

***Almost half of respondents believed expansion plans have been curbed by overzealous tax authorities.***

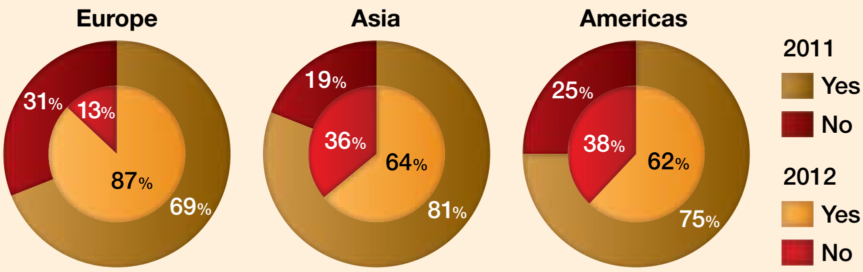
## TAXAND'S TAKE

- **A tax audit typically involves managing a number of moving pieces but navigating tax audits in multiple jurisdictions is even more challenging. Multinationals must be wary of inter-country competition for revenue from the same dispute as this increases the possibility of double taxation.**
- **Companies should establish protocols for responding to requests and documenting the status of tax audits. Specific response mechanisms for each jurisdiction will ensure consistent information is provided to all authorities involved. This is especially important given that taxpayer data is routinely exchanged among tax authorities.**
- **Ensure your systems can cope with change to deliver VAT compliance worldwide.**

# Public scrutiny and reputation: The rise of citizen activism

Globally, 72% of respondents felt that public exposure to tax planning could be detrimental to a company's reputation, increasing from 53% in 2011. Europe ranked public scrutiny highest in 2012, a shift from Asia, with over 87% acknowledging the impact.

**Do you believe that exposure to the public of corporate tax planning activity has a detrimental impact on a company's reputation?**




### Demands for responsible capitalism

The past year has seen the rise of citizen activism as the economic crisis deepened and governments attempted to make up the shortfall in the public purse by hiking VAT rates, tightening legislation and enforcing retrospective taxes on businesses. The 'occupy' movement has focused attention on banks' tax contributions and added to the already increasing public scrutiny on the tax bills of multinationals.

**Jaime Sol, Taxand Global Compensation Service Line Leader,** commented: *"The increasing level of personal liability for company directors means that multinationals have again focused on ensuring tax planning is substantive. However, the threat of negative publicity surrounding tax payments, added to the growing criticism of directors' remuneration packages and multinationals' compensation tax, is higher than ever before."*

***Companies are realising they need to be seen as good corporate citizens or face reputational damage.***

**Alvaro de la Cueva, Taxand Spain,** added: *"There remains a significant amount of confusion around tax planning; legitimate tax structures are not always seen that way. Companies need to be seen as good corporate citizens, or face reputational damage."*

## TAXAND'S TAKE

For the second year running, scrutiny into multinationals' tax is top of the public's agenda. However, much of the information reported in the media is sensationalist and only presents part of the picture.

**To avoid undue attention, multinationals should:**

- **Not dismiss legitimate structures that work in the best interests of shareholders.**
- **Only engage in purely commercially driven transactions.**
- **Be aware of retrospective legislation and how the company could be affected by tax structures in the future.**

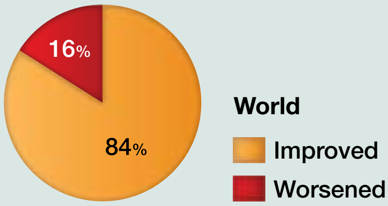

## MULTINATIONALS HELD TO ACCOUNT

As governments try to maintain popularity ratings, they are exerting pressure on multinationals who are considered to be avoiding paying the appropriate amount in tax. There have been many examples in the press over the last year particularly in the UK, USA and India where large corporates have been named and publicly shamed for their planning approaches. More often than not these approaches have been legitimate at the time of planning but governments have brought in retrospective legislation to close perceived gaps. Multinationals need to plan for the future as GAAR legislation spreads worldwide.

# Increased dialogue between authorities and multinationals

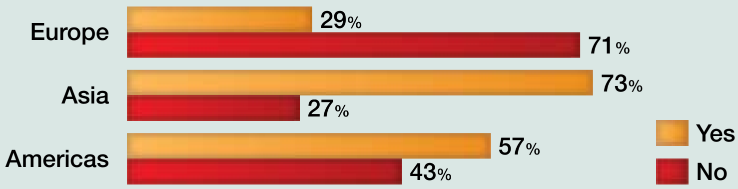
Multinationals have seen a marked improvement in their relationship with tax authorities over the last year, with 84% seeing further progress, up from 61% in 2011.

### Do you think your relationship with tax authorities has improved or worsened over the last year?




Tax authorities are increasingly hiring from multinationals, helping to foster better relations. Some authorities have also recruited additional staff providing a valuable, single point of contact for businesses.

### Do you feel your tax authority has been more transparent and co-operative over the last year?




The survey data shows a global split of 55% yes and 45% no, a similar trend to last year's results. Regionally, there is a mixed picture with 29% of European respondents believing authorities have been more transparent and co-operative, compared to 73% in Asia.

The rapidly changing tax landscape in Europe could account for the 71% who perceived a lack of transparency from local tax officials and the maturing of tax departments in Asia could account for the increase in the region.

Although respondents do not believe tax authorities are being as transparent with multinationals, they unilaterally agree (84%) that tax authorities are co-operating more with each other across the globe. A key reason behind this is the increase in bilateral agreements. The sheer speed with which the world's tax administrations joined forces is astonishing, with taxpayers' data and information being shared at remarkable rates. These agreements have grown from relatively few to over 700 in only the last few years.

***The sheer speed with which the world's tax administrations joined forces is astonishing, with taxpayers' data and information being shared at remarkable rates.***

**However, Keith O'Donnell, Taxand Global Real Estate Service Line Leader,** perceives a downside to these agreements: *"As tax administrations around the world gather and strengthen taxpayer information, there is good reason to believe that issues with one country's tax audit can quickly grow into controversy in other nations, potentially leading to greater complexity in dealing with multiple adjustments that are not consistent across countries. To date, tax authorities' appetite to collect more information cross-border is not matched by an appetite to quickly and efficiently deal with so called "competent authority" matters on a multilateral basis."*

## TAXAND'S TAKE

- **Given the ever-increasing pace of information exchange, multinationals need to focus more than ever on adequate and accurate record-keeping.**
- **Keep abreast of the rapidly changing world of legislation – whilst commerciality is key, the effective use of bilateral agreements can benefit international tax planning.**

## BILATERAL AGREEMENTS

Developed by the OECD Global Forum Working Group on Effective Exchange of Information, the purpose of these agreements is to promote international co-operation in tax matters and to address harmful tax practices. Two main types of bilateral agreements are used: Double Taxation Agreements (DTAs) which are also known as income tax treaties and Tax Information Exchange Agreements (TIEAs).

DTAs are comprehensive agreements between two states to prevent income or profits from international economic activity being taxed twice. Countries enter such agreements to foster foreign investment.

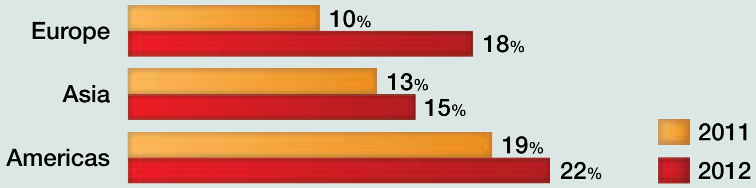
TIEAs are intended to complement DTAs or for use with countries for which DTAs are not deemed appropriate, mainly because they have no, or low, taxes on income or profits.

The effectiveness of these agreements requires political will and management. Europe has experienced a marked increase in the efficiency in the exchange of information which should help persuade countries that have been reluctant to incorporate the agreements in the past.

# International tax: The battle for multinational investment

When asked which areas of tax have been the most challenging from a global perspective, an increasing number of multinationals highlighted international tax. International tax, which in this context includes all cross-border activity and international tax incentives, is also the largest growing concern for multinationals, with all regions showing an increase in respondents identifying this.

**Respondents highlighting international tax:**




Changes in international tax legislation, such as thin cap rules and the OECD's papers on permanent establishment, have increased the focus on substance. Alongside this, complex cross-border transactions and growing issues around offshore capital reserves have noticeably impacted the mood of multinational CFOs.

**Ian Fleming, Taxand Global Transaction Tax Service Line Leader,** commented: *"We are definitely seeing an increasing focus on acquisition structures. Holding companies in tax friendly areas such as Luxembourg and the Netherlands are facing more scrutiny and there is rising pressure from the EU to ensure that multinationals based in these jurisdictions are not bending European-wide laws."*

***Countries remain trapped in a schizophrenic scenario whereby they want to attract business, but have limited fiscal latitude.***

Alongside this, we've seen an unprecedented amount of inter-country tax competition, as countries battle to secure inward investment. As a result of the recession and 'cash is king' philosophy, significant cash piles are sitting on balance sheets doing nothing. Multinationals are holding back on investment fearing a further deterioration in the macro-economic environment. To position themselves for the eventual deployment of these reserves, countries are striving to appear attractive. In the indirect tax arena, a number of governments are increasing VAT to finance the decrease in CIT, simultaneously ensuring the double whammy of increased investment and increased tax revenues. Countries remain trapped in a schizophrenic scenario whereby they want to attract business, but have limited fiscal latitude.

## TAXAND'S TAKE

- **Re-assess your structures to ensure they are compliant with OECD best practice, particularly in high-profile jurisdictions where certain structures are under the microscope.**
- **Tax and regulation are becoming more important when considering investment in emerging markets. As cost savings diminish in countries such as India, and as the economy becomes more mature, multinationals should focus on whether the tax environment will support your investment rationale.**

## CONTROLLED FOREIGN COMPANIES (CFC) REFORM

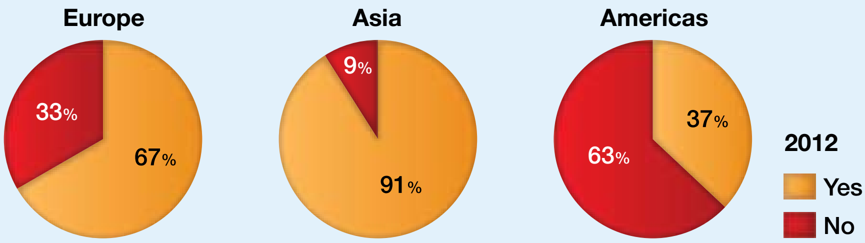
For UK headquartered multinationals, a significant new aspect of international tax is the proposals for a revamped Controlled Foreign Company (CFC) regime. CFC rules exist in many countries including the US, Germany, Japan, France and Australia. In the UK the new regime seeks to only tax profits of foreign subsidiaries where those profits have been artificially moved from the UK for tax purposes. These profits will now be identified by applying a so-called "Gateway" system. The new approach should help address some of the problems associated with the existing regime that does not cater adequately for modern business practices adopted by multinationals. The Government's biggest challenge in the competitive-ness stakes is to deliver a CFC regime that is satisfactory to all stakeholders and one that will stem the recent exodus of companies from the UK. It will be interesting to see if other authorities, such as the US, follow suit and change their longstanding rules to fit today's business environment.

# Harmonisation: The double-edged sword

## EMERGING MARKETS MUDDLE

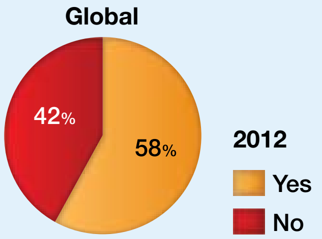
Tax is fast becoming an issue for multinationals in emerging markets. The developing nature of their tax regimes has caught out a number of companies that followed the rush of investment as the developed economies hit the buffers four years ago. Asia's growth rate is phenomenal and is destined to account for 50% of the world's economy by 2050, but has the greatest disparity in tax systems due to the different economies, growth rates and forms of government. As a result, harmonisation is simply not possible in tax terms, but greater harmonisation of trade across the region could bring greater benefit.

### Is global tax harmonisation desirable?




For the second year, multinationals have strongly expressed a desire for global tax harmonisation. While information exchange has increased, with around 70 TIEAs signed around the world in 2011, high profile political moves for cross-border tax harmonisation, such as the Financial Transaction Tax in Europe, have largely failed to date. The particularly strong desire for harmonisation in Asia (91%) could be influenced by the Vodafone case in India and the fact that fast-growing emerging markets are characterised by varying approaches to tax codes and rapidly changing legislation. What is clear is that multinationals are attracted to the idea of harmonisation as simple tax systems equal cheaper compliance.

### Is regional tax harmonisation more achievable in the next 5-10 years?




*Businesses must be careful what they wish for as taxes that are dressed up as harmonisation could lead to a greater tax burden or even double taxation.*

Whilst harmonisation is desirable, multinationals seem unsure that it is achievable. In Asia only 55% believe it could be implemented. In the Americas 71% say it is not achievable. In Europe, the most harmonised of the three regions, 71% say it can be done despite the evidence to the contrary: both the Financial Transaction Tax, mooted as the saviour to Europe's deficits, and the CCCTB, which seeks to simplify tax, have been perceived as threats to countries' competitiveness. The reality of harmonisation means governments feel measures would hinder their ability to fight for the affections of multinationals, their cash piles and the economic growth they bring.

**Mukesh Butani, Head of Taxand Asia,** notes that: *"Multinationals want the simplification that harmonisation offers, they want to reduce their costs and they want certainty, a certainty they thought they could rely on in the developed markets, which has now evaporated. Greater harmonisation is key in some emerging markets in Asia, particularly if we are to attract future investment, but businesses must be careful what they wish for as taxes that are dressed up as harmonisation could lead to a greater tax burden or even double taxation when the detail emerges."*

## TAXAND'S TAKE

- **Whilst bold attempts at harmonisation are yet to come to fruition, multinationals should beware of the political will to foster information exchange and increase revenues and the inevitable compliance burden this will bring.**

## Methodology

Taxand has conducted its second Global Survey amongst an exclusive selection of large multinational clients that operate across industry sectors. Survey responses comprise mainly interviews with CFOs supported by Tax Directors' views. The questions asked in the survey covered a range of topics including how to deal with increasing pressure on tax resources; public scrutiny and reputation; the improved dialogue between authorities; the battle for multinational investment and the impact of harmonisation.

Companies selected for interview in the Taxand Global Survey have over 30,000 employees globally, and are headquartered in over 30 countries with operations in the Americas, Europe, Asia and beyond. More than half the multinationals that participated generate over $US1 billion in revenues each year.

The survey provides a current picture of the global tax landscape and how multinational companies interact with the legislation and tax authorities that operate within it. The survey results are supported by Taxand's Take; Taxand's opinion on the findings and calls to action for multinationals.

## About Taxand

Taxand provides high quality, integrated tax advice worldwide. Our tax professionals, nearly 400 tax partners and over 2,000 tax advisors in nearly 50 countries - grasp both the fine points of tax and the broader strategic implications, helping you mitigate risk, manage your tax burden and drive the performance of your business.

We're passionate about tax. We collaborate and share knowledge, capitalising on our collective expertise to provide you with high quality, tailored advice that helps relieve the pressures associated with making complex tax decisions.

We're also independent—ensuring that you adhere both to best practice and to tax law and that we remain free from time-consuming audit-based conflict checks. This enables us to deliver practical advice, responsively.

Taxand has achieved worldwide market recognition. In the International Tax Review's (ITR) World Tax 2012, over 95% of Taxand locations are ranked top. 35 countries were voted top in the ITR Transaction Tax Survey 2012 and in the ITR Tax Planning Survey 2012. Taxand has received over 40 national awards and 13 regional awards in the ITR European, Americas and Asia Tax Awards since 2009. These include European Private Equity Tax Firm of the Year, European Indirect Tax Firm of the Year, European Tax Policy Firm of the Year, Asia Transfer Pricing Firm of the Year, Asia Tax Policy Firm of the Year, and Latin America Tax Disputes Firm of the Year.

Full details of awards and further information about Taxand can be viewed at www.taxand.com.

Taxand

## Key contacts


**Frederic Donnedieu de Vabres**
Taxand Chairman
T. +33 1 70 38 88 01

**Abbie Tarren**
Taxand COO
T. +44 20 7715 5243

**Alvaro de la Cueva**
Taxand Spain
T. +34 91 514 5200

**Antoine Glaize**
Taxand Global Transfer Pricing
Service Line Leader
T. +33 623 088 006

**Ian Fleming**
Taxand Global Transaction Tax
Service Line Leader
T. +44 207 663 0425

**Jaime Sol**
Taxand Global Compensation Tax
Service Line Leader
T. +34 91 514 5988

**Keith O'Donnell**
Taxand Global Real Estate Tax
Service Line Leader
T. +352 26 940 257

**Manuel Tamez**
Taxand Mexico
T. +52 55 5201 7403

**Mukesh Butani**
Taxand Asia
T. +91 124 339 5010

**Richard Baxter**
Taxand Global Indirect Tax
Service Line Leader
T. +44 20 7663 0750

**General Enquiries**
taxand@taxand.com
T. +44 20 7072 3251