



cutting through complexity™

Tax Risk Management and Driving Tax Performance

FEI Seminar Series

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1.0 Aggressive Tax Planning Era



Aggressive Tax Planning Era

- “Tax is a cost to be managed”
- Pre-packaged, off-the-shelf tax planning strategies
- KPMG firms in Canada and worldwide increase focus on tax risk
- “Social responsibility to pay a fair level of tax”

2.0 The Fallout



Tax Authorities Response — OECD Review

1. OECD Seoul Declaration (2006)

- “Unacceptable tax minimization”
- “Duty to ensure compliance”
- “Problem” of non-compliance
- Rule of law vs. tax administrators’ views

2. OECD Forum of Tax Administrators (FTA) Cape Town Communiqué (2008)

- “Enhanced relationship” based on cooperation and trust
- More effective and efficient tax administration and lower compliance costs to taxpayers
- Practically, tax administrations not equipped to achieve desired compliance

3. G20 Summit (April 2009)

- Agreement to crack down on tax havens and bank secrecy

4. OECD Paris Communiqué (May 2009)

- Pledge to develop “corporate governance codes and guidelines with a view to ensuring tax compliance is ... an aspect of good governance”

Tax Authorities Response — OECD Review (cont'd)

4. OECD FTA information note on corporate governance and tax risk management (July 2009)

- Sound framework for tax risk management and compliance
- Well-resourced in-house tax capability
- Reporting requirements to elevate tax risk
- Appropriate review and sign-off
- Effective tax risk mitigation capability, including good relationships with tax authorities
- Capacity to regularly evaluate effectiveness of tax governance systems

5. OECD Istanbul Communique (September 2010)

- Recommends and sets out guidelines for joint international tax audits
- Pledges renewed focus on improving offshore tax compliance
- Multilateral network of tax authorities to share best practices and initiatives at operational and strategic level
- 190 such initiatives identified to date

3.0 Global Trends in Tax Administration



Global Trends in Tax Administration — Enhanced Relationship

- How to improve cooperation and transparency between revenue bodies, taxpayers, and tax intermediaries – the so-called “enhanced relationship”
 - Netherlands
 - Japan
- Contract with the Board of Directors
- Full transparency in exchange for timely certainty

Global Trends in Tax Administration — Disclosure

USA - Transparency

1. **Financial Listed Transactions**
2. **Financial Interpretation Number 48 (FIN 48)**
 - Recognize uncertain tax positions on balance sheet
 - IFRS?
3. **Disclose uncertain tax positions on tax return**
 - UTP Schedule effective for Calendar Year 2010
4. **Requirement to report all payments in excess of \$600**

Global Trends in Tax Administration — Disclosure

USA – Transparency (cont'd)

5. FATCA: A New Disclosure and Withholding Regime

- effective for payments after December 31, 2012, all foreign financial institutions will be required to enter into disclosure compliance agreements with the U.S. Treasury
- UBS fallout

6. Continuous Audit Program

- Provide full transparency in exchange for IRS approving the return when filed
 - Over 100 corporations in the pilot program
 - Will be made permanent

7. Tax preparer registration

- Track quality of tax preparers

Global Trends in Tax Administration — Control Framework

United Kingdom

1. 2009 UK Budget

- Senior Accounting Officers (SAO)
- Annual certification of tax controls

2. Risk Assessing Corporates

- Governance, Tax Strategy and Delivery

Australia

1. Risk Differentiation of 1,300 corporates into 4 quadrants

- 17 high risk entities
- 800 are low risk/low consequence and subject to very little audit

4.0 The Canadian Experience



The Canadian Experience — Transparency and Disclosure

Canada

1. Aggressive Tax Planning (ATP)

a) Draft federal ATP proposals

- **Reportable transaction defined as tax avoidance with two of three hallmarks**
 - Promoter or tax adviser has charged contingent fees
 - Confidentiality imposed by promoter or adviser
 - Contractual protection for taxpayer
- **Reporting obligation jointly share by taxpayer, promoter or tax adviser and any person who enters transaction for benefit of a taxpayer**
- **Penalties equal to promoter's or tax adviser's fees**
 - Joint and several liability for penalties

The Canadian Experience — Transparency and Disclosure

Canada (continued)

2. Quebec ATP Legislation

- Mandatory disclosure of transactions subject to confidentiality agreement or conditional remuneration
- Normal reassessment period suspended until mandatory disclosure is filed
- Also extends normal reassessment period to apply Quebec GAAR and impose related penalties
- Effective October 15, 2009

The Canadian Experience — Transparency and Disclosure

Canada (continued)

3. CRA policy on access to audit working papers

- **1979 Round Table — CRA’s historical policy clarified**
 - Not Department’s policy or practice to routinely to request audit files from accountants for inspection
 - Only requested when auditor's files form part of taxpayer's records and proper examination could not be carried out without access to those files
- **2004 – 2010 — CRA consults with taxpayers and CICA on new policy**
- **May 31, 2010 — New CRA policy announced**
 - CRA has legal authority to request documents of taxpayer and “any document” of “any other person” that relates to taxpayer’s information
 - “Any other person” includes tax professionals and tax preparers
 - “Any document” includes accountants’ and auditors’ working papers
 - CRA auditors to request docs from taxpayers first
 - Policy does not extend to privileged documents

The Canadian Experience — Risk Assessment

CRA's New Risk-Based Audit Approach for 800+ large filers

1. Benefits (according to CRA)

- Greater certainty and earlier resolution of tax issues
- Less extensive audits and lower compliance costs
- CRA compliance efforts to focus on highest risks and priorities
- Optimal use of CRA resources

2. Engaging taxpayers

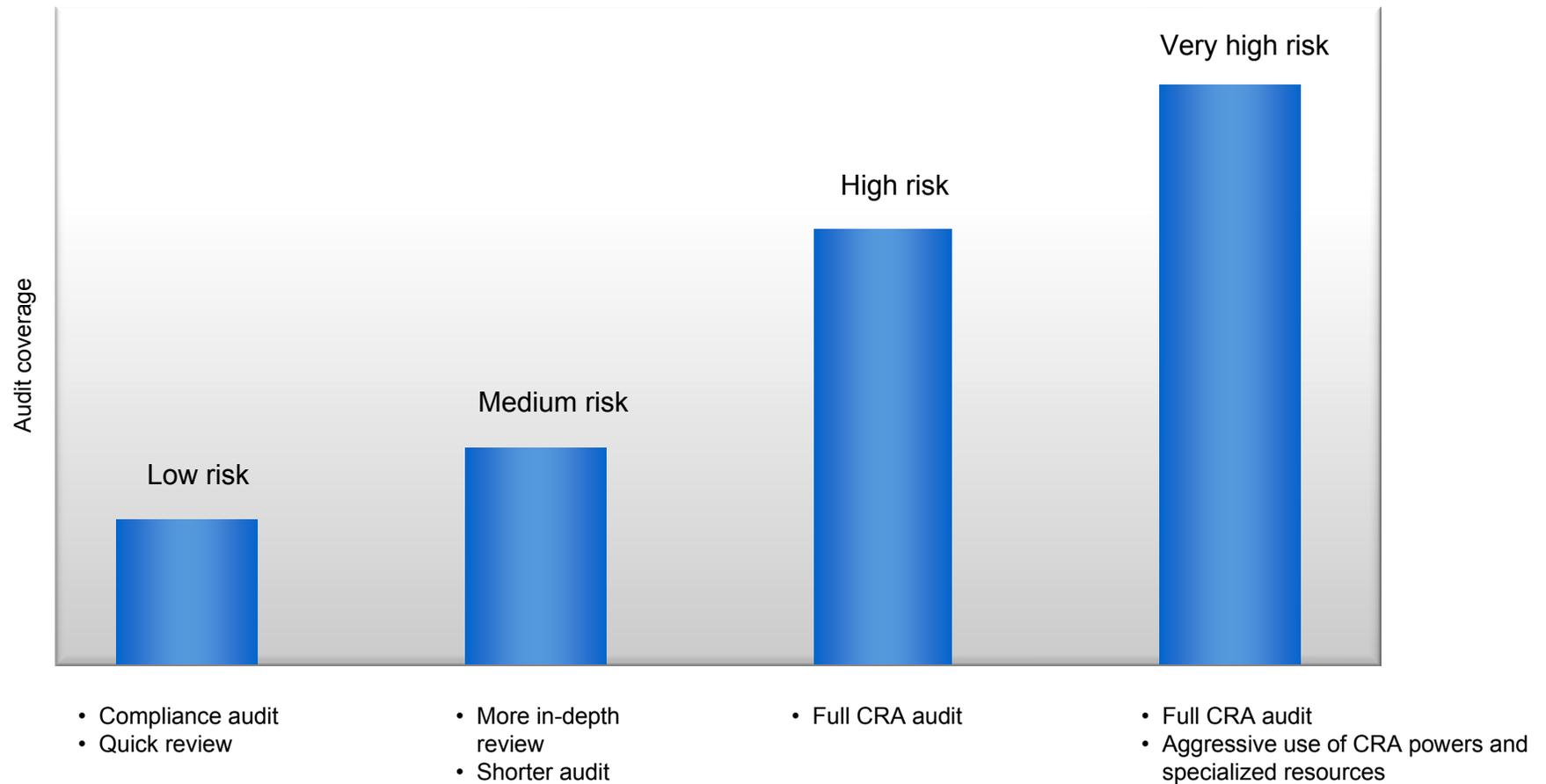
- Tax authorities believe they must consult taxpayers to properly evaluate audit and tax risk management processes

The Canadian Experience — Risk Assessment

CRA Risk Evaluation – What's In Scope

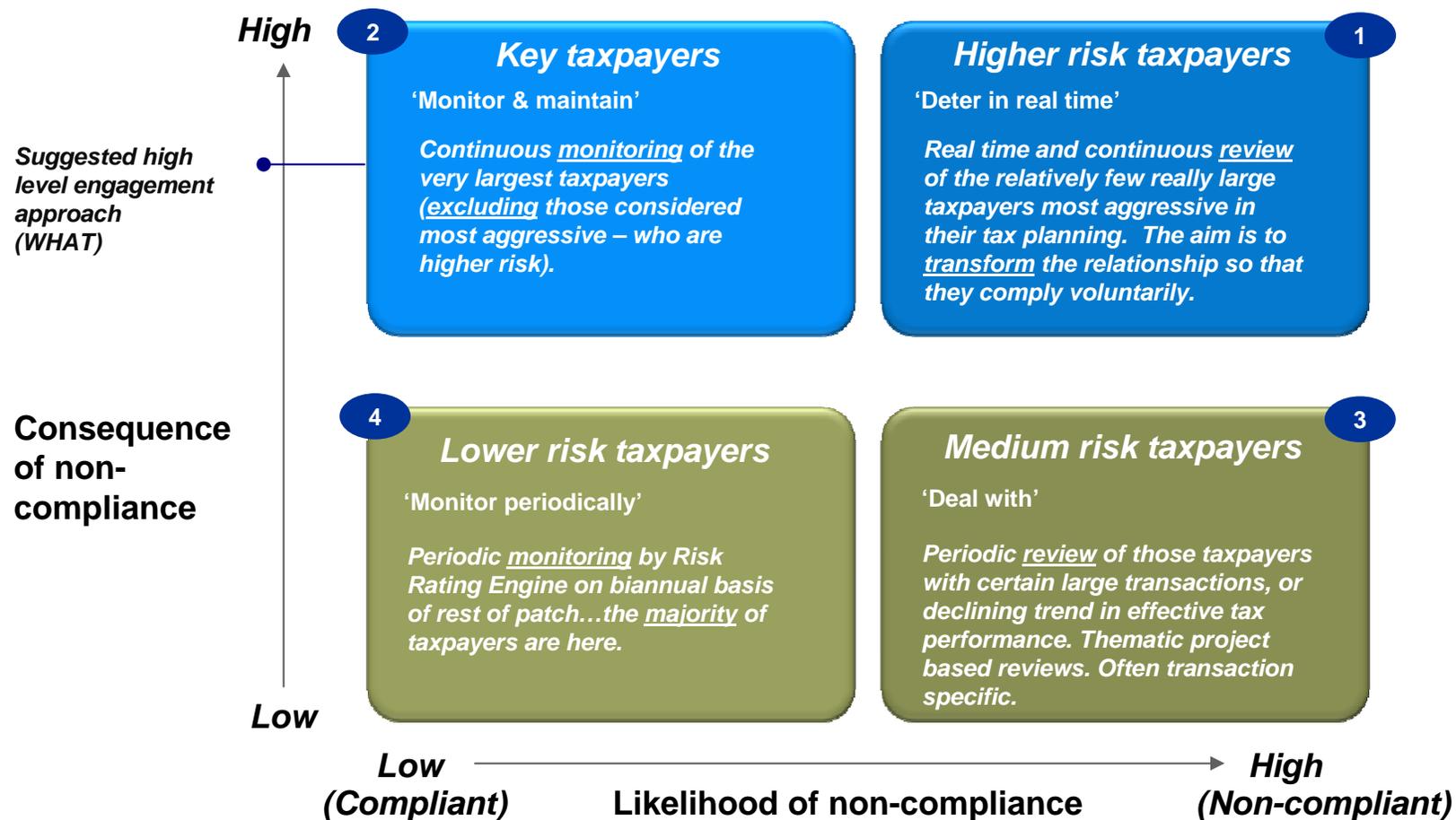
- Taxpayer “groups” with revenue > \$250 million
- Starting in 2010
- Undertaken by local CRA officials (with guidance from CRA Headquarters)
- Preliminary risk grades for CRA's FY2011-12 assigned based on CRA's internal data
- Senior tax executives, CFO, CEO, boards, committees may be interviewed in future

The Canadian Experience — CRA Risk Evaluation: Grading and Consequences



The Australian Tax Office (ATO) Risk Differentiation Framework (RDF)

The ATO segments taxpayers into four broad groupings based on different combinations of likelihood and consequence. These are suggestive stances rather than definitive action plans. A taxpayer's issues, facts and circumstances will be taken into account. The RDF will however drive the extent of interaction you can expect with the ATO.



The ATO RDF — a Quantitative Base with a Qualitative Overlay

- While the tax system is based on self assessment, the ATO uses a combination of qualitative intelligence and quantitative analysis to identify the characteristics and assess the tax risk of all taxpayers.
- No one factor is determinative – it is said to be an informed judgement at a point in time using a wide range of data and other intelligence.

Quantitative

Effective tax rates over time.
Cash tax rates over time.
Global ETR/CTR relative to Australian ETR/CTR.
History of payments and lodgement of tax returns across all heads of tax.
Quantum of taxes paid.
History of adjustment on risk review/audit.
Economic performance relative to industry peers.
Profit margins.
Level and quantum of related party dealings.
Various other financial measures.

Qualitative

Our assessment of:

- internal governance processes;
- documented tax policies and procedures.

Resources allocated to tax functions.
Whether business units report pre or post tax.
Openness and transparency with ATO and other regulators.
Use of the rulings system.
Complex legal and management structures.
Behaviour in relation to request for information.
Tax advisors and external auditors.
Past compliance behaviours.

CRA Risk Evaluation — Grading and Consequences

What will the CRA review?

1. Taxpayer's tax governance?
2. Size and capability of taxpayer's in-house tax department?
3. Taxpayer's internal reporting of significant tax risks (including reviews and sign-offs)?
4. Taxpayer's tax risk mitigation?
 - Willingness and readiness to seek guidance from the CRA on technical issues
5. Taxpayer's ongoing commitment to these matters?

CRA Risk Evaluation — Preparing for a CRA Visit

Questions to Ask Yourself

- Do you have an understanding of the major day-to-day tax issues of your company?
- Are you confident that processes are in place to identify tax risks and promote tax compliance?
- Are all tax implications of major transactions routinely considered?
- Are you aware of the overall taxes paid and how that relates to what the tax authorities expect?
- Are you familiar with your company's relationship with the tax authorities?

CRA Risk Evaluation — Getting Ready

1. Document tax function governance including organizational charts, processes, procedures
2. Review and summarize prior years' interactions with tax authorities
3. If not already done, determine your company's tax risk tolerance and philosophy and desired relationship with the CRA
4. If CRA initiates risk evaluation interview process:
 - Ensure senior management is aware that this is coming
 - Anticipate CRA interview queries and brief senior management, as appropriate
 - Consider a company tax "code of conduct"
 - Consider mock interviews

5.0 Tax Function Best Practice and Driving Tax Performance



Good, Better, Best — KPMG's Survey Results

1. Biggest tax risk?

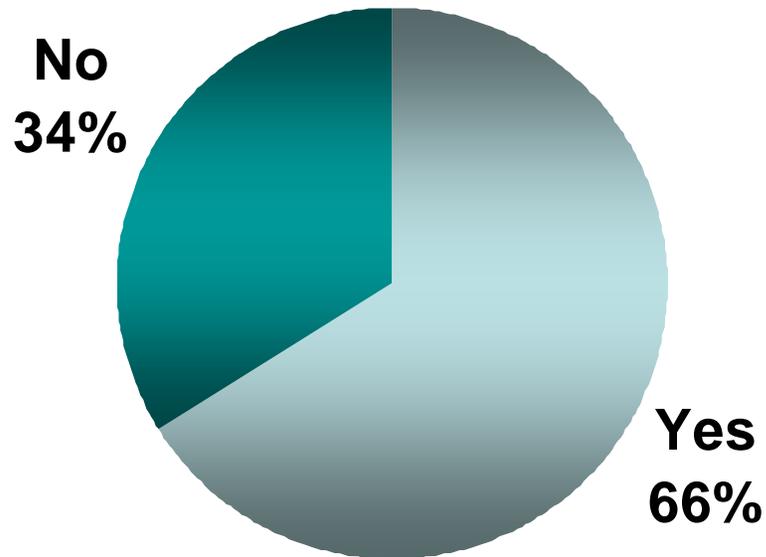
- Canada: Risk of audit by tax authorities
- Global: Shortage of qualified tax professionals

2. Area most at risk of audit?

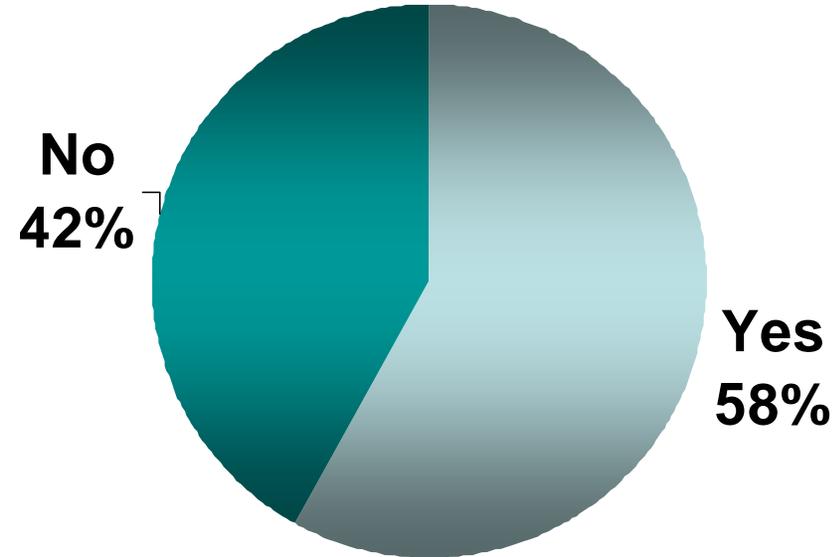
- Federal corporate income tax = 45% Canada vs. 33% globally
- Transfer pricing = 35% Canada vs. 18% globally
- Indirect tax = 43% Canada vs. 31% globally

Good, Better, Best — KPMG's Survey Results

Does your tax department have a documented tax risk management strategy?



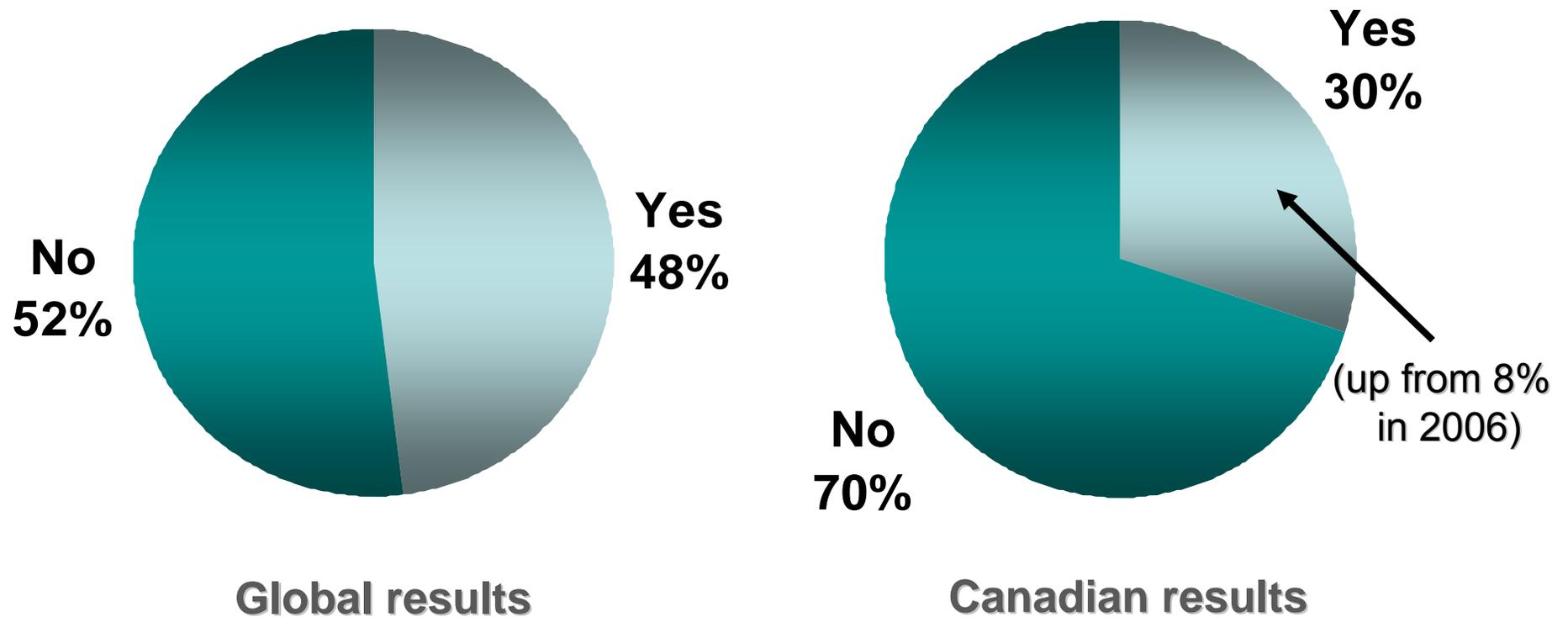
Global results



Canadian results

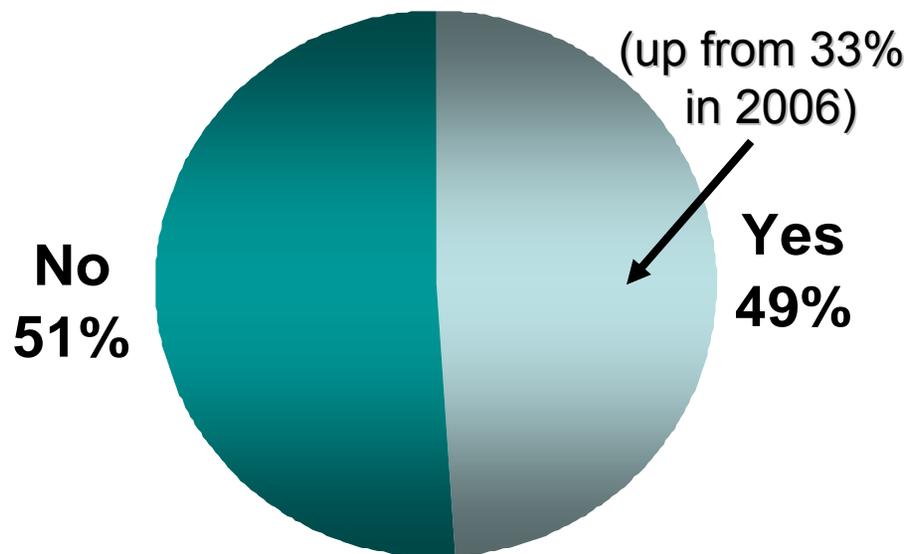
Good, Better, Best — KPMG's Survey Results

Has your board adopted a formal tax risk management policy for the company?

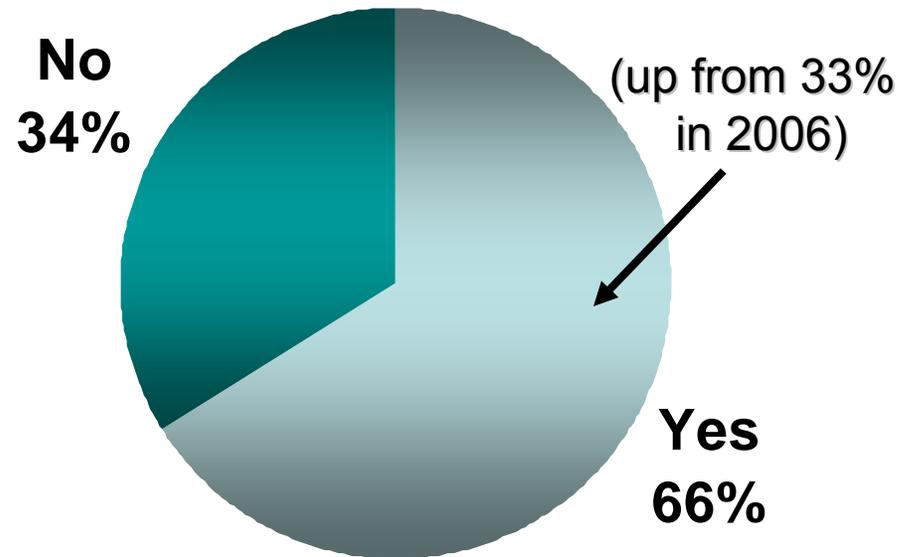


Good, Better, Best — KPMG's Survey Results

Has your board reviewed the company's tax risk management strategy in the past 12 months?



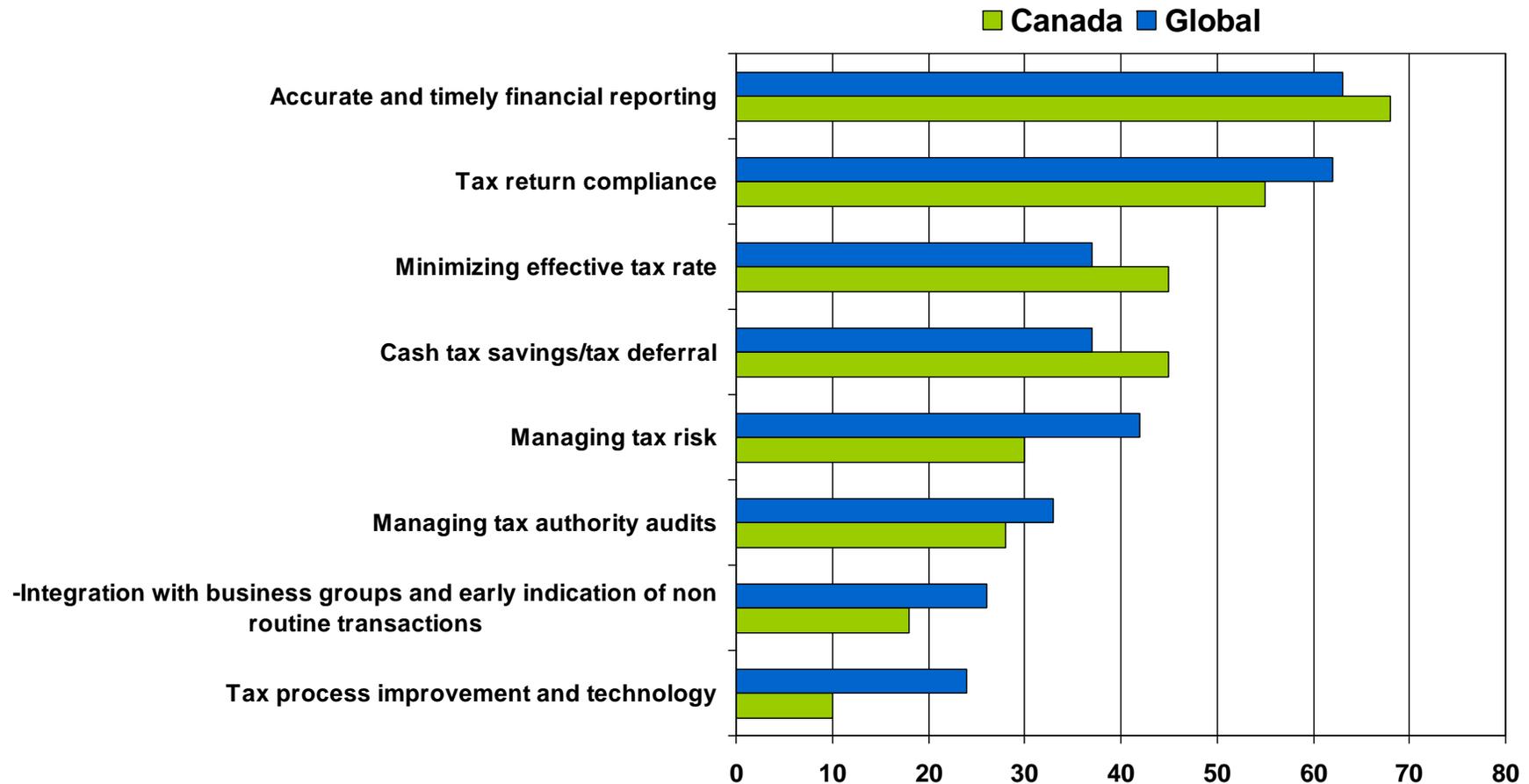
Global results



Canadian results

Good, Better, Best — Survey Results

Top tax department priorities

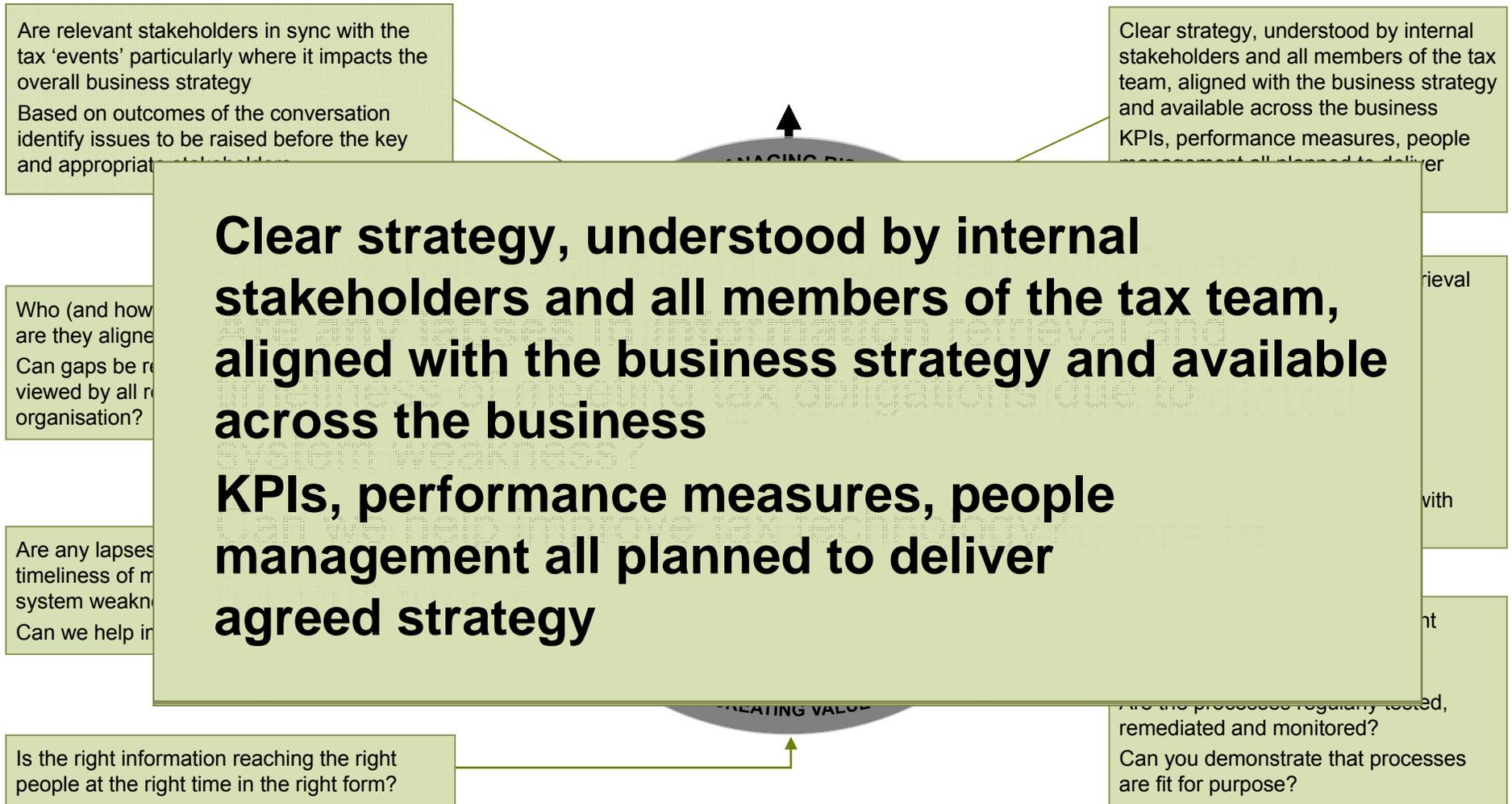


Assessing Your Company's Tax Function

Top Five Questions

1. Are you aware of the key pressures and challenges facing companies' tax departments?
2. Do you know how to successfully achieve balance between managing tax risk and creating value, within significant resource constraints
3. Do you know that standardization in tax processes, structures and reporting lines is crucial for achieving a risk-value balance?
4. Are you aware of the leading practices in implementing efficient and effective tax management processes?
5. Are you aware of the building blocks that you need to put in place to achieve a risk-value balance?

Global Trends in Tax Administration — Driving Tax Performance for Best Practice



6.0 What The Future Holds



What the Future Holds

Around the World

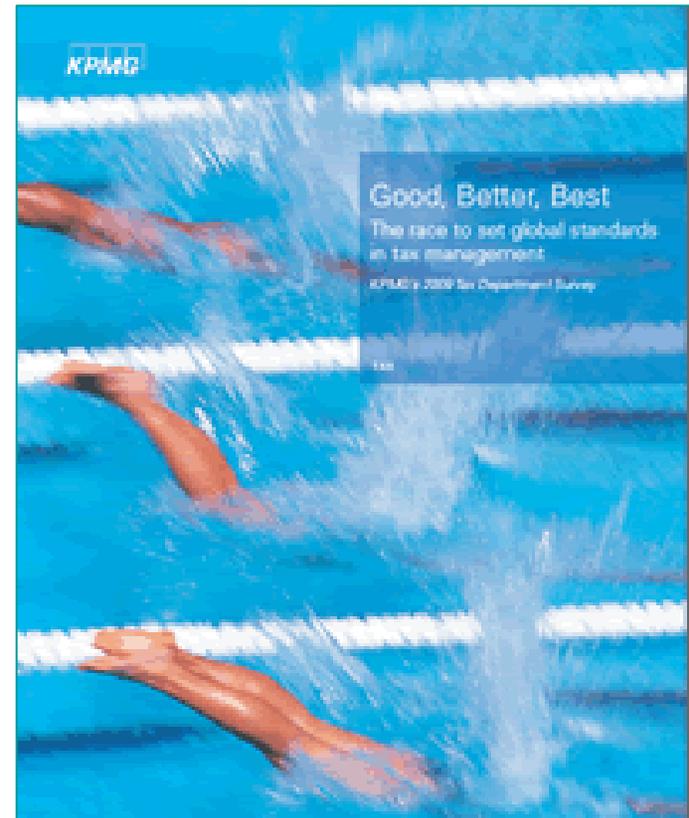
- Enhanced cooperation with tax authorities globally
- FIN 48 and IFRS — More Disclosure = Less aggressive corporate behaviour
- Continued focus on transfer pricing and ensuring multinationals pay fair share of tax in country
- Tax functions required to demonstrate greater value

In Canada

- More aggressive compliance
- Confidence in risk-assessing large tax payers
- Communication point with non-tax executives and directors
- Enhanced Relationship?

KPMG's Response to Our Environment

- KPMG thought leadership series on tax governance
- Series of tax director surveys 2004 – 2010
- Identified “hallmarks” of high-performing tax functions
- Best practices form DTP framework to help companies establish:
 - Where they want to be
 - Which gaps to address to get there



KPMG's Response to Our Environment

- Visit [kpmg.ca/what we do/special interests/managing tax risk and driving tax performance](http://kpmg.ca/what-we-do/special-interests/managing-tax-risk-and-driving-tax-performance)

Canada - English - What we do - Special Interests - Managing Tax Risk and Driving Tax Performance

Managing Tax Risk and Driving Tax Performance

Managing tax risk. Adding value. How should your company govern its tax affairs to strike the right balance?



Around the world and here in Canada, the focus on tax risk management is growing more intense. Company directors, CEOs, and finance executives are being compelled to take more interest in how tax is managed within their companies, and tax directors are working to find ways to reduce their organization's effective tax rate responsibly while managing their tax risk.

Explore how these developments may affect your business environment and what steps your company could take by [understanding more about](#)



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Publications and White Papers

- ✦ Good, Better, Best: The Race to Set Global Standards in Tax Management
- ✦ Driving Indirect Tax Performance
- ✦ The Rising Tide: Regulation and stakeholder pressure on tax departments worldwide
- ✦ The Governance of Tax
- ✦ Tax in the Boardroom
- ✦ Essence of a Leading Tax Function

Thank you

Presentation by Greg Wiebe

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