Framework for Evaluating Tax Strategies for B Corp Certification

This document provides B Lab's framework for evaluating tax strategies that meet the requirements of B Corp Certification. It includes the rationale for needing a framework, challenges in its application, consideration of alternatives, and an invitation for public conversation to further refine this framework over time.

The Need for a Framework for Evaluating Tax Strategies

Businesses create value for society beyond the taxes they pay. Businesses create jobs -- preferably high quality jobs that offer dignity, a living wage and benefits to support a family, and the opportunity to find fulfillment and build assets for long term security. Businesses can provide access to basic goods and services as well those that improve our quality of life.

However, in addition to the many different aspects of value that business provides society, business has an obligation to contribute its share of taxes. This is because business exists within the context of society; its proper role is to serve society, not the other way around. Moreover, healthy businesses can only exist over the long term in a healthy society. A healthy society depends upon public expenditures made possible by taxes. These public expenditures benefit business in both direct and indirect ways.[1]

Just as there are individuals and organizations who believe that outsourcing manufacturing overseas is inappropriate, there will certainly be those who believe that any tax management strategy that results in the reduction of corporate taxes through the recognition of revenues in lower tax jurisdictions is inappropriate. This is a legitimate argument.

A thoughtful critic might say that a company could manage its business without routing its revenues through a low tax market, and therefore any reasons for setting up operations in another jurisdiction are just cover for avoiding taxes. B Lab recognizes that this is a hard issue without black and white answers. B Lab's judgment is that this critique dismisses legitimate business choices and that these business choices are clearly distinguishable from the more questionable tax avoidance schemes pursued by many companies.

Given these complexities, there ought to be public debate about the appropriate levels of taxation and the sources and uses of tax receipts, as well as regarding what tax strategies a business can use while

[1] For example, in the U.S., federal public expenditures include health care for the elderly and poor (25% for Medicare and Medicaid), Social Security (24%), income security (20%), national defense (18%), interest on the national debt (6%), transportation like highways and bridges (3%), and public education (1%). Source: Heritage Foundation, 2013 U.S. Federal Spending. In the U.S., state and local public expenditures include health care (21%), education (28%), welfare (8%), transportation (8%), pensions (8%) protection (7%). Source: usgovernmentspending.com, FY 2016 U.S. State and Local Spending.

fulfilling the obligations of its social contract as a global corporate citizen. As a global non-profit that certifies businesses that meet higher standards of positive overall social and environmental impact, B Lab recognizes that it is essential to consider the strategies a business uses to manage its tax burden in order to understand whether it has met the requirements of the Certification.[2]

A Framework for Evaluating Tax Strategies for Certification

A framework for evaluating tax strategies for Certification should reflect both the role that taxes play in contributing to, and the value business receives from, a healthy society. B Lab's working framework for the evaluation of tax strategies for Certification is as follows and will evolve over time:

> *The evaluation of a tax strategy for B Corp Certification should include whether 1) the amount of overall taxes paid over time appropriately reflects the actual amount of income generated by the business; and, 2) the amount of taxes paid over time in each jurisdiction appropriately reflects the actual operations of the business in that jurisdiction.*

Guidance for Applying the Framework

This is a framework, not a prescriptive or specific rubric, for the evaluation of tax strategies for Certification. There is, therefore, a degree of judgment required to apply this framework in a meaningful and practical manner.

Importantly, this framework does not prohibit a business from managing its tax payments and potentially reducing them, but rather allows B Lab to make an informed judgment about whether the business's tax management has met the requirements of B Corp Certification. Many tax management strategies exist that may or may not fall within the parameters of the Certification, including the use of corporate shells or the sale of intellectual property to a foreign subsidiary. Rather than basing B Lab's evaluation on the methods of the strategy, B Lab's approach instead focuses on the outcome -- whether the strategy ensures that the taxes paid over time are representative of the business's actual income and operations in each jurisdiction. The latter can be reviewed by examining the current sources and locations of revenues, operating expenses, and/or workforce, as well as future projections for the business.

Because businesses are constantly fluctuating both in strategy and scale, it is impractical for a business to manage their taxes so payments perfectly reflect current operations. It is therefore important to consider tax payments as a range rather than a particular number. This range could take into account current and past operations, as well as future projections.

Due to the complexity of many tax strategies and assessing their outcomes, it would be inadvisable for B Lab to define all tax strategies that would either qualify or disqualify a company from Certification; however, there is some clarity around certain strategies that would require additional scrutiny, including:

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[2] Taxation is included in B Lab's Disclosure Questionnaire, a negative screen used by B Lab as part of its B Corp certification process to identify whether businesses are using certain strategies to avoid paying their fair share of taxes. The DQ item (DQ2.1) is a true/false statement: *Company has not reduced or minimized taxes through the use of corporate shells or structural means*. While a negative answer to the question does not imply that a company is not paying its share of taxes, it does trigger further review by B Lab staff and, if deemed material, by B Lab's independent Standards Advisory Council, and may result in a request for additional disclosure, remediation, or denial of certification or recertification.

- Employing a "corporate inversion" where a company's legal domicile is moved to a low/no-tax jurisdiction while material operations remain in its higher tax country of origin;
- Employing a "Double Irish" tax strategy where corporate income can be effectively taxed nowhere;
- Utilizing a "patent box" or other method to transfer intellectual property to a low/no-tax jurisdiction and licensing back the intellectual property to reduce/eliminate local taxes; or
- Utilizing multiple shell entities or structures to reduce or minimize taxes

The below is an example of a tax strategy that would not hold up to the scrutiny of B Lab's Standards Advisory Council when evaluated for B Corp Certification:

> Company X is based in Country A, earns 99% of its revenues and has its entire workforce based there. In compliance with all relevant laws, regulations, and generally accepted accounting principles, the company has created an entity in Country B – a jurisdiction with a significantly lower tax rate than that in Country A – through which all of its revenues, and therefore profits, will pass from an accounting point of view, but where almost none of its workforce is located or revenue is generated. As a result, the company pays all corporate income taxes in Country B at its lower rate.

Other Possible Frameworks for Evaluating Tax Strategies

In arriving at this framework, B Lab considered a variety of other possible frameworks that for the reasons outlined below were deemed insufficient:

(1) *The tax rate in the country where the business is headquartered.* The nature of a global business means that it generates revenue and profit from, and may have workforce in, multiple countries. Paying taxes only where the business is headquartered would therefore not appropriately fulfill the obligations of the business in other places where value is created or operations exist.

(2) *The tax rate where the business was founded.* While it is important to consider the past unique contributions of value to a business from the jurisdiction in which it was founded, this definition alone is insufficient for the same reasons as the definition above, as the business would not be supporting healthy societies where it currently operates and generates revenue and profit.

(3) The tax rate is x%. This is a matter of public policy and, as such, it is inappropriate for B Lab to identify a specific tax rate in an evaluative framework for a business that is independent of actual tax codes determined through public debate and a legislative process. Rather, B Lab's definition focuses on how a company should act given the tax codes that exist in the jurisdictions in which it operates.

(4) *Anything that is legal qualifies for Certification.* Legality and the requirements for Certification are two different concepts. Because of variance in tax codes in different jurisdictions it is possible for a company to engage in legal strategies that are not consistent with the values of the community of Certified B Corporations. A tax strategy that meets the requirements of Certification should therefore allow a business to manage its tax bill while fulfilling the obligation of it social contract as a global corporate citizen.

Conclusion and Invitation

B Lab recognizes there is still much to learn and much judgment that must be used in applying this Framework; it is a work in process and we welcome critical feedback.

Further, B Lab strives in its standards development process to go beyond *negative* practices to identification of *best* practices. We are clear about what constitutes negative tax practices that would likely disqualify a company from B Corp Certification, but B Lab acknowledges that it does not yet have a view of what constitutes best practices for tax policy. We are looking forward to input from multiple stakeholders to develop those best practices that can provide all companies a roadmap to improve their tax practices from the perspective of global corporate citizenship while remaining competitive.

In addition to applying this framework for Certification, B Lab believes it is an important matter of public policy to determine what tax rates exist in each jurisdiction and to address the implications of the fact that tax rates vary among jurisdictions because policymakers use tax policy as one lever to attract business and spur economic development. B Lab hopes that this Framework -- as well as documents outlining how B Lab has applied this Framework and any additional Certified B Corporation's Disclosure Materials[3] -- is helpful to other stakeholders who wish to engage on these important issues in the context of a thoughtful, constructive conversation about the role of business in society.

To learn more about the B Impact Assessment and the standards used for B Corporation Certification, see here.

To learn more about how B Lab develops its standards, see information about B Lab's Standards Advisory Council here.

[3] B Lab's transparency requirements recognize that some information is sensitive and, while disclosed to B Lab for purposes of certification, is not appropriate to be made public. Sensitive information includes that which might prejudice litigation, advantage a competitor, or create an undo reporting burden for a publicly-traded company.