ESG in the High-Tech Corporate Sphere

38th Annual TEI-SJSU High Tech Tax Institute Conference
November 7, 2022
Palo Alto, CA

Agenda

- Introductions
- Relevance of ESG
- Tax & ESG
- Environmental Opportunities
- Social & Governance
- Key Takeaways
- Questions?

Today's Presenters

WELCOME

Michael Lebovitz
Partner
Mayer Brown

Wendy Punches
Managing Director
PwC

Kris Russell
Senior Manager
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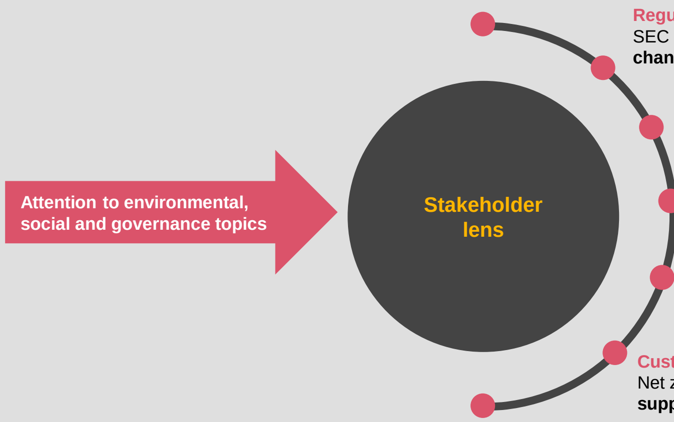
Taking stock: Forces increasing the priority of ESG today

Stakeholders across the business ecosystem are tuned into ESG.

Disruptive, structural trends like a growing wealth gap, a planet in peril, and technological advancements (among many others) are changing the world we live in. These shifts are exposing the need for a more sustainable and equitable future - and stakeholders are putting the pressure on our clients to act.

While each views ESG through a different lens, all want to see change.



Investors
Sustainable funds flows topped **$51.1B in 2020,** twice the record set in 2019[1]

Regulators
SEC requests public input on **climate change disclosures**[4]

Employees
86% of surveyed employees prefer to support/work for companies that care about the same issues they do[3]

NGOs/activists
The UN calls for **urgent revisions** to countries' climate action plans[2]

Society
COVID-19 parallels climate change in the response required[5]

Customers
Net zero targets set by governments are driving **supplier requirements**

Consumers
80% of surveyed consumers are **more likely to buy** from a company that stands up for environmental issues[6]

1: Morningstar, Morningstar Sustainable Funds U.S. Landscape 2021 (2021)
2: UN, UNFCCC NDC Synthesis Report (2021)
3: PwC, Beyond Compliance: Consumer and Employees want business to do more on ESG (2021)
4: SEC, Public Input Welcomed on Climate Change Disclosures (2021)
5: GatesNotes, Climate Change and COVID-19 (2021)
6: NHS, Delivering a 'Net Zero' National Health Service (2020)
7. PwC, Beyond Compliance: Consumer and Employees want business to do more on ESG (2021)

Top Business Risks in 2022

- **Cyber Incidents (e.g. cyber crime, IT failure/outage, data breaches, fines/penalties**
- **Business Interruption (incl. supply chain disruptions)**
- **Natural Catastrophe (e.g. storm, flood, earthquake, wildfire, weather events)**
- **Shortage of Skilled Workforce**
- Changes in Legislation and Regulation (e.g. trade wars, tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)
- **Climate Change (e.g. physical, operational, financial and reputational risk as a result of global warming)**
- **New Technology e.g. impact of artificial intelligence, connected/autonomous vehicles, electric/fuel cell vehicles, 3D printing, Internet of Things, nanotechnology, blockchain, 5G)**
- Fire, Explosion
- **Loss of Reputation or Brand Value (e.g. public criticism)**

SOURCE: Allianz Risk Barometer 2022

ESG Reporting Trends

TECHNOLOGY SECTOR

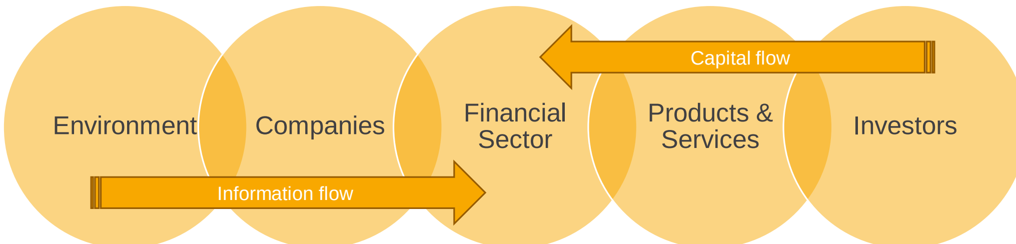
- New International Sustainability Standards include industry-based SASB standards and climate-related disclosures (consistent with TCFD framework)
  - First standards anticipated in Dec 2022
- International Sustainability Standards Board (ISSB) is part of IFRS
  - Goal to develop a comprehensive corporate reporting system that includes both financial accounting and sustainability disclosure

Climate Disclosure Standards Board | INTEGRATED REPORTING | SASB | WORLD ECONOMIC FORUM | TCFD TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES

International Sustainability Standards Board

Mandatory ESG Disclosure is Growing

GLOBAL TRENDS

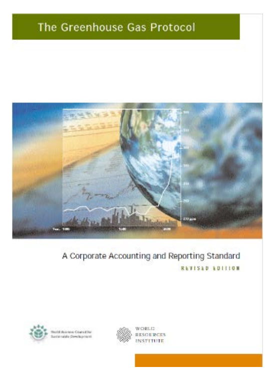


Climate Disclosure

U.S. SEC RULEMAKING

- SEC's Proposed rule is based on broadly accepted disclosure frameworks, such as the Task Force on Climate-Related Financial Disclosures (TCFD) and the Greenhouse Gas Protocol
- Objective is "decision-useful information for investment decisions" that are: Consistent, Comparable, Reliable
  - Disclosure requirements begin in 2024 filings *(based on FY23 data)*
  - Assurance requirements begin in 2025 filings *(based on FY24 data)*

NOTE: Assumes December 2022 Effective Date



TOP ESG PRIORITIES

Tech Industry

ENVIRONMENTAL

Energy & Climate

Decisions about data center specifications are important for managing costs, obtaining a reliable supply of energy and water, and lowering reputational risks, particularly as there is an increasing global regulatory focus on climate change.

SOCIAL

Recruiting a Diverse & Skilled Workforce

Initiatives to improve employee engagement and work-life balance may influence the recruitment and retention of a diverse workforce.

Greater workforce diversity is important for innovation and helps companies understand the needs of their diverse and global customer base.

GOVERNANCE

Managing Systemic Risks from Technology Disruptions

Companies' investments in improving the reliability and quality of their IT infrastructure and services are likely to affect their ability to attract and retain customers, thereby impacting revenues and opportunities in new markets.

Data Security

Companies are well-positioned to uncover revenue opportunities by providing secure software and services to meet the demand for ensuring data is kept secure

ESG Shareholder Trends

2022 PROXY SEASON

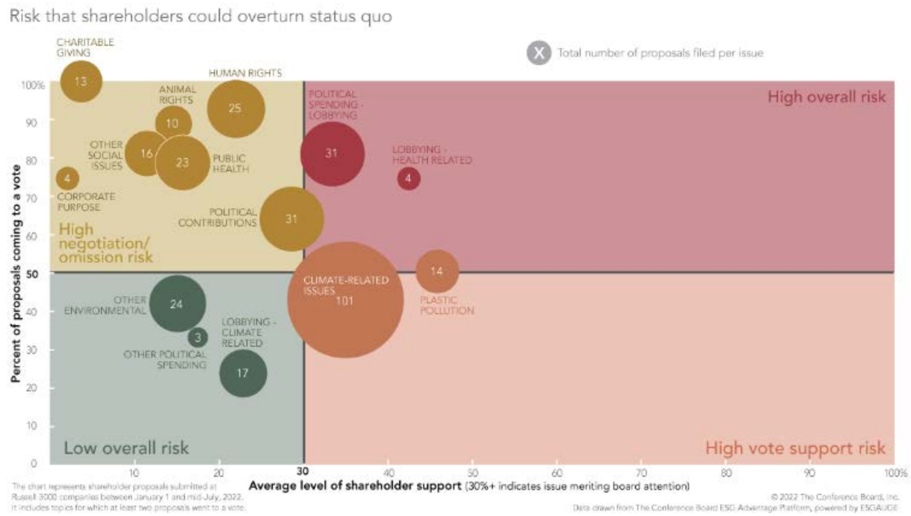
- **Increasing investor focus on ESG performance**
  - Driven by a growth in environmental and social proposals
  - Boards need to be fluent in key ESG issues and understand the link to business strategy
- **Climate-related disclosure is the key environmental issue**
  - 25% of voted resolutions received majority support at annual shareholder meetings
  - Investors expect companies to disclose governance and risk management strategies related to climate
- **Racial equity and civil rights are the key social issues**
  - Legal and reputational risks are drivers
  - 43 proposals requesting companies to commission a third-party audit of the impact of their corporate policies, practices, products, and services on the civil rights of stakeholders, including ethnic and other minorities

SOURCE: Shareholder Voting Trends (2018-2022): Executive Summary (conference-board.org)

ESG Proposals

2022 PROXY SEASON

- 58% of all proposals related to environmental and social issues
- 25% of voted resolutions on climate disclosure
- Health-related lobbing presents highest overall risk

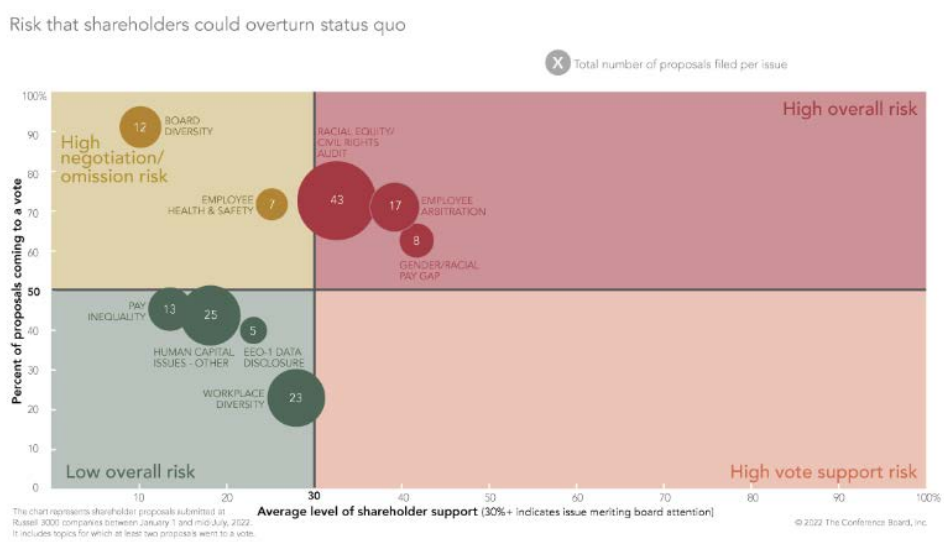


SOURCE: Shareholder Voting Trends (2018-2022): Environmental and Climate-Related Proposals (Brief 1) (conference-board.org)

Human Capital Proposals

2022 PROXY SEASON

- 43 proposals requesting companies to commission third-party audit of corporate policies and practices
- Racial equity and civil rights are highest overall risk

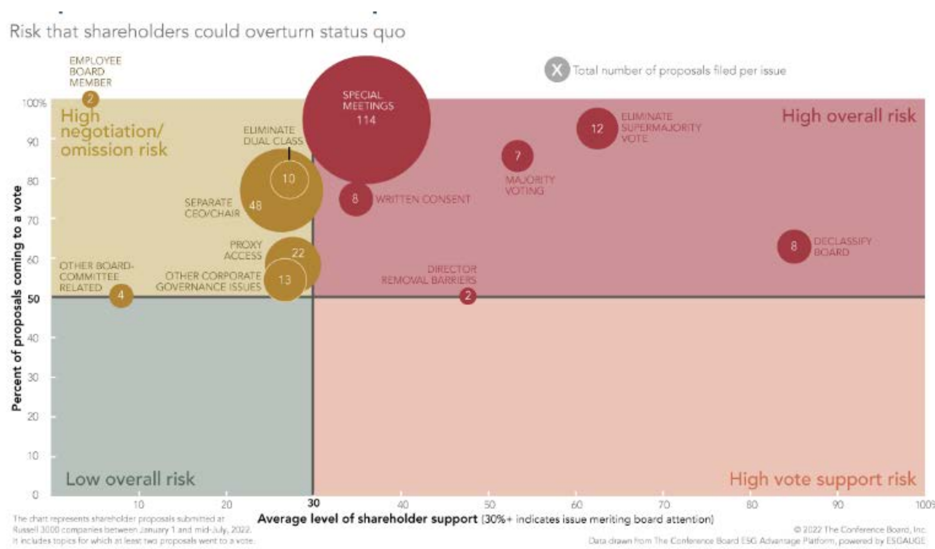


SOURCE: Shareholder Voting Trends (2018-2022): Human Capital Management and Social Policy Proposals (Brief 2) (conference-board.org)

Governance Proposals

2022 PROXY SEASON

- Institutional investors have introduced voting policies to hold individual business leaders accountable for shortcomings in the ESG area.
- In 2022, 75 directors nominated by management did not get elected.



SOURCE: Shareholder Voting Trends (2018-2022): Governance Proposals, Say-on-Pay Votes, and Director Elections (Brief 3) (conference-board.org)

Ecosystem of Reporting

FINANCIAL & SUSTAINABILITY ACCOUNTING STANDARDS

SOURCE: IFRS - Our structure

SOURCE: SASB Standards & Other ESG Frameworks - SASB

Taking a value creation approach across ESG issues

Driving value for all stakeholders

Drive growth
"How can social and environmental trends help us **differentiate our products** and increase our market share?"

Reduce costs
"How can we **operate our business more efficiently,** realizing efficiencies across all the inputs to our operations from electricity use to travel?"

Enhance reputation
"How can a sustainability strategy help enhance our reputation (and keep us from negative headlines) with **customers, employees, investors and analysts?**"

Manage risks
"How do we build **resilience to business disruptions** caused by climate change and resource scarcity?"

Identifying sources of value to the business is the foundation of the business case

Minimize impacts
"How do we fulfill our obligation to operate **responsibly**, both from an **environmental and social perspective?**"

Be a force for good
"How can we use our business to drive **positive environmental and social change?**"

Value to society pays back to the business in the medium- to long-term

Value to the business

Tax & ESG - Key Considerations

ESG Strategy

Relevance
- Leaders are looking to position their companies to be successful in a sustainable economy. This encompasses
  - Reimagining products and services
  - Developing a Net Zero strategy
  - Integrating ESG in deals and investment decisions
  - Analyzing impacts of ESG on brand value, supply chain and operating model
  - ESG risk mitigation and value creation

Tax Considerations
- Planning to support ESG-related changes in operating model, and transfer pricing
- Tax informed ESG decisions - green taxes and incentives
- Customs and Trade Implications
- Deal modeling (with tax-effected scenarios)
- Use of tax equity financing

Net Zero **Decarbonization Planning**

Relevance
- In order to achieve net zero goals, companies are implementing ESG aspects into everyday operations, often making large scale, sustainability - driven, business transformations
  - Net Zero Transformation
  - Planning and execution to support infrastructure build projects
  - ESG focused "fit-outs"
  - Impact investing
  - Responsible sourcing

Tax Considerations
- Tax-effected carbon planning scenarios
- Identification of ESG tax credits & incentives
- Core domestic planning for capital investments
- Evaluation of taxes (above and below the line), incentives, and tax audit risk
- Alignment of carbon adjusted forecasting and climate risk policies with tax operating model and tax strategy

ESG Reporting: **Recordkeeping Requirements**

Relevance
- Leaders are looking for ways to technology enable ESG data gathering for reporting, verification, and risk management modeling
- Many companies are looking to develop carbon ledgers to understand the carbon impact of their companies and products

Tax Considerations
- Tax ESG data business requirements analysis - tax obligations often need data by Legal entity, jurisdiction, asset address, and cross-border
- Consistency between ESG disclosures and tax filings to minimize controversy
- Tax and accounting implications of carbon credits and offsets

Governance & Risk Management

Relevance
- Companies are defining and implementing non-financial KPIs to address diverse stakeholder interest
- Growing global scrutiny on corporate paying "their fair share" of taxes (including future taxes on carbon emissions)
- Growing global trend for mandatory public disclosure of country by country reporting, tax strategy document, and tax risk document

Tax Considerations
- Alignment of tax function to corporate governance and tax risk management
- Development of a tax charter and strategy document
- Public transparency readiness assessment
- Develop data requirements, automated model and dashboard for CbCR and Total Tax Contribution ("TTC")
- Technology enabled green tax compliance, including co-source/outsource

Inflation Reduction Act - overview

Overview

- Largest federal investment in clean energy in US history
- Reinstates and significantly expands current incentives providing an estimated $370 billion of new energy related tax credits over the next 10 years
- Not just an “Energy” bill, but an “ESG” bill.
- Allows for planning - many credits continue until end of 2032 (with some transition dates)

Major themes:

- Decarbonizing power generation and transportation
- Promoting lower-carbon manufacturing
- Building energy efficiency
- Promoting domestic manufacturing/US jobs
- Creating options for financing

Inflation Reduction Act - key highlights

Tiered credit system

Many new and existing incentives now have a two-tiered system with a ‘base rate’ and a ‘bonus rate.’ The bonus rate would equal five times the base rate and would apply to projects that meet certain wage and apprenticeship requirements. Some of the credits also include additional rate enhancements based on the domestic content of the property as well as where the projects are located (i.e., low income communities, energy communities, etc.).

Decarbonizing power generation

Extends and expands the current system of tax credits through 2024 and then transitions those incentives into ‘technology-neutral’ credits beginning in 2025. Solar is now eligible for the PTC, and new credits support nuclear energy and other lower-carbon technologies, such as biogas and stand alone battery storage.

Carbon capture

Enhances the existing tax credits for carbon capture and storage or utilization. Taxpayers would be eligible to receive up to $60 - $180 per metric ton of carbon captured depending on the method by which the carbon is captured and the way it is sequestered.

Energy credits and incentives - key highlights

Decarbonizing transportation

Extends the income and excise tax credits for biodiesel, renewable diesel, and alternative fuels, and provides new credits for sustainable aviation fuel, clean hydrogen, and other clean transportation fuels. Extends and expands the tax credits for Electric Vehicles, and promotes US jobs by including content and assembly requirements for some credits.

Building energy efficiency

Extends and expands the energy efficient commercial buildings deduction, the new energy efficient home credit, and provides enhanced benefits for individuals.

Lower-carbon manufacturing and green jobs

Revives the qualified advanced energy project credit, allowing the Secretary to allocate an additional $10 billion of tax credits to qualifying projects. Credit requirements are similar to the original credit, yet eligibility is expanded to include industrial facilities. The credit is expanded to include projects that reduce GHG emissions at existing industrial facilities by at least 20%. Creates a new advanced manufacturing production credit for each eligible component that is produced in the US and sold to an unrelated party. Eligible components include qualified solar and wind components, inverters, battery components and critical minerals.

Energy credits and incentives - Direct pay & transferability

Direct pay:

- Taxpayers that fall within the definition of 'applicable entities' (i.e., tax-exempt entities, state & local governments, etc.) can elect to be treated as having made a payment of tax equal to the value of the credit they were eligible for
- The limitation on applicable entities does NOT apply to credits for:
  - Carbon capture and sequestration (Section 45Q)
  - Clean hydrogen (Section 45V)
  - Advanced manufacturing production credit (Section 45X)

Transferability:

- Generally, entities that are not applicable entities under the direct pay rules may transfer tax credits to third parties
- Transfer may be for all or a portion of a credit
- No re-transfers allowed, and no deduction for buyer or income inclusion for seller

Treasury and IRS Request Comments on Implementing the Inflation Reduction Act’s Clean Energy Tax Incentives

Issued October 5, 2022
Responses requested by November 4, 2022, though comments will be accepted thereafter

1. Energy Generation Incentives: Production Tax Credit, Investment Tax Credit, ZeroEmission Nuclear Credit, Clean Electricity Production Credit, Clean Electricity Investment Credit, Low Income Community Adder to Investment Tax Credit
2. Credit Enhancements: Prevailing Wage, Apprenticeship, Domestic Content, Energy Communities provisions that increase the value of multiple credits
3. Incentives for Homes and Buildings: Energy Efficient Home Improvement Credit, Residential Clean Energy Credit, New Energy Efficient Home Credit, Energy Efficient Commercial Building Deduction
4. Consumer Vehicle Credits: Clean Vehicle Credit, Credit for Pre-Owned Clean Vehicles
5. Manufacturing Credits: Advanced Energy Project Credit, Advanced Manufacturing Production Tax Credit
6. Credit Monetization: Direct Pay, Transfer of Certain Credits

Issued November 3, 2022
Responses requested by December 3, 2022, though comments will be accepted thereafter if consideration will not delay the issuance of guidance

1. Qualified commercial clean vehicles provisions and the alternative fuel refueling property.
2. Credit for carbon capture.
3. Credit for the production of clean hydrogen and the clean fuel production credit.

CHIPS & Science Act - overview

Overview

- Historic bipartisan investment to:
  - Spur American-made semiconductors,
  - Tackle supply chain vulnerabilities by making more goods in America
  - Revitalize America’s scientific research and technological leadership
  - Strengthen economic and national security
- Includes Grants and a Tax Credit

Major themes:

- Grants: $53 billion of funding authorized by Congress:
  - $39 billion is directed towards domestic facilities and equipment for semiconductor fabrication
  - $13 billion for R&D and the “CHIPS for American Defense Fund”
  - $700 million for technology and education funds
- Investment Tax Credit
  - 25% of an eligible taxpayers qualified investment in an advanced manufacturing facility
  - Equipment and Building Structures Eligible
  - “Direct Pay” option

The G Forces in the Tax ESG Landscape

- Relevant stakeholders
- Emerging reporting environment
- External pressures – shareholder proposals
- Spectrum of approaches and preparation

The G Forces in the Tax ESG Landscape

- Government - “I write seeking information relating to XXX’s international tax practices including the methods used by XXX to pay a stunningly low effective tax rate…”
- Public – “XXX believes every corporation has a responsibility to pay all the taxes they owe…[We] comply with the law wherever we operate and pay taxes on everything we earn around the world.”
- Investors – “In connection with [BEPS], companies are required to disclose more information to tax authorities on operations around the world, which may lead to greater audit scrutiny of profits earned in other countries.”
- Board – “The Audit Committee shall oversee the Company’s tax strategies and assessment of tax risks and related tax policies.”
- Employees – wrongful termination actions producing tax whistleblower complaints

The Emerging Reporting Environment

- 2017 – UK Tax Strategy reporting
- 2018 - B Team standards
- 2019 – Business Roundtable standards
- 2020 – GRI 207
- 2020 – World Economic Reporting
- 2021 – EU Public CbyC
- 2022 – FASB endorses SEC CbyC, Australia CbyC

The Emerging Reporting Environment

GRI 207 - Taxation

1. Approach to Tax
- Tax Strategy & Narrative
- Executive-Level Oversight
- Regulatory Compliance
- Linking Tax to Commercial Operations & Sustainability

2. Tax Governance, Control & Risk Management
- Tax Governance, Control & Risk Management
- Assurance Process

3. Tax Stakeholders
- Tax Authorities
- Tax Policy Advocacy
- Gaining Stakeholder Views

4. Country By Country Tax Reporting
- CbyC Report, Payments To Governments & Reconciliations

WEF: Core tax metric

Community and social vitality	**Total tax paid** The total global tax borne by the company, including corporate income taxes, non-creditable VAT and other sales taxes, employer-paid payroll taxes, and other taxes that constitute costs to the company, but its category of taxes	**Adapted from GRI-201-1**

WEF: Expanded metrics

Community and social vitality	**Additional tax remitted** The total additional global tax collected by the company on behalf of other taxpayers, including VAT, and employee-related taxes that are remitted by the company on behalf of customers or employees, by category of taxes.	**Adapted from GRI-201-1**
Community and social vitality	**Total tax paid by country for significant locations** Total tax paid, and if reported, additional tax remitted by country for significant locations.	**Adapted from GRI-201-1**

Rating Agencies - S&P/DJSI

S&P Global Tax Strategy Criteria:

Does your company have a **publicly available** tax strategy in place which indicates your approach towards taxation?

☒ Yes, we have a publicly available tax policy in place covering the following elements. Please **provide the relevant weblink**:

- ☒ A commitment to compliance with the letter as well as the spirit of the tax laws and regulations in the countries in which the company operates
- ☒ A commitment not to transfer value created to low tax jurisdictions
- ☒ A commitment not to use tax structures without commercial substance
- ☒ A commitment to undertake transfer pricing using the arm's length principle
- ☒ A commitment not to use secrecy jurisdictions or so called "tax havens" for tax avoidance
- ☒ An approval process of the tax policy by the board of directors

Isn't this just a European thing?

- Companies with some form of global tax policy
  - Global 100 – 32%
  - Fortune 500 – 16%
  - KPMG Fortune 500 survey – "Have you or will you publish a global tax strategy in the next 12 months?"
    - January 2021 – 30%
    - May 2022 – 85%

Shareholder activism

- Amazon
- Cisco
- Microsoft
- Others to come

Developing a Tax ESG Strategy

- Benchmarking
- Global Tax Strategy
- Reevaluating Tax Control Framework
- Assessing Transparency Options Beyond Required Information
- Tax data mapping

Key Takeaways

- Connect with the organization’s broader ESG and investment strategy
- Tax credits play a pivotal role in making investments in energy transition economically viable
- Engage with Treasury, Finance, and Internal controls
- Connect with cross functional teams to understand their 1-5 year investment strategy
- Overlay tax credits in CHIPS/IRA to help finance your domestic expansion/ESG strategy
- Model benefits to optimize returns
- “Transferability” can be a lever for collaboration