

## Shifting the rules

The BEPS project has done a great deal to shine a light on the risks associated with tax loopholes. The results are nothing short of transformational, according to *Jane McCormick*, Global Head of Tax, KPMG

Asked about the campaign to tackle base erosion and profit shifting (BEPS), Jane McCormick, KPMG's newly appointed Global Head of Tax, said: "Over a period of a couple of years, I think the project has achieved more international consensus and progress than anybody thought was possible." The risks associated with BEPS behaviours have been thrust firmly into the limelight; so much so that favourable tax policy is today highlighted by politicians as an important tool in rallying supporters to their cause.

By all accounts, the focus on BEPS has increased immeasurably, and the BEPS campaign has done a great deal to ensure this. *European CEO* spoke to McCormick about the latest developments in international tax and the influence of the BEPS project on a global scale.

### How has the campaign to address BEPS developed over the years?

It's been a very intense project. First of all, I think tax professionals and people working in the world of tax policy understood that the international tax system had a whole series of inefficiencies – let's use that word. Those inefficiencies work both ways, in a way that creates double taxation and in a way that creates what is now known as less-than-single taxation.

I think what happened is that around 2012, post-crash, this second point turned from being a technical issue discussed among tax professionals and policymakers to a political issue. Partly driven by the financial crash, partly driven by the fact that there's just more infor-

mation out there, I think two key things came together: first, the technical people realised there was a problem but had no power to act, and then the politicians – or the people who can enact tax law – realised there was an issue.

### What risks do BEPS behaviours pose?

Well, they pose risks on both sides, as I mentioned, in creating unintentional double taxation and unintentional less-than-single taxation – I hate that phrase, but it's the one that's used.

It's simply because, historically, what countries have done is come up with tax rules that tax their domestic economies. And of course we've moved from a world where businesses just exist in domestic economies into one where they exist in international ones. In that world, what tax policy was primarily aimed at doing was taxing or, if you like, policing the borders of the national economy, rather than looking at the overall tax take from a global business.

We're still not at that level of being able to look at the overall tax take, and we're still bound by the fact that tax is a matter of national rule. But there's a little more to it now. Although we're still in a world where policy is bound by national rules, we're in a world where national rules are at least taking into account what happens outside the country in question.

### Can you tell us about KPMG's involvement in the BEPS project?

Obviously the BEPS project is a huge issue for us, because it's causing a lot of issues for our clients. We are involved in two respects really. The first is to monitor progress, to try



and have a view on what's going on so we can help to keep our clients informed. And second, there have been a whole series of consultations going on, both at the international level and within countries as they work out how to implement BEPS.

We play a part in those consultations, not in any way trying to drive the direction of the policy but in providing input to experts on how the law could operate. Particularly, our view of what the practical implications of the proposals would be. Obviously, as advisors to multiple clients, we have a unique vision of how it's likely to affect a whole industry or country. So it's that sort of expert view that we provide.

### What minimum standards should tax administrations be made to adhere to?

Well, I think there are two separate issues within BEPS in this regard. One is in relation to tax administrations and the BEPS proposals to set out certain standards for tax administra-

tions, particularly in terms of how they assess transfer prices. But actually, the much bigger issue is governments, and people who are writing tax policy. That's where BEPS is seeking to set out various minimum standards in relation to things like the level of deductibility of interest, and the treatment of so-called hybrid entities and instruments.

I think we're getting to a point where there will be an agreed standard type of tax legislation. As I say, types of tax legislation that don't just look at what's happening within countries, but take into consideration what's happening outside the country. I would stress, however, that national tax policies and tax legislation are written in the context of the economic situation of the country concerned, and it's very difficult to come up with a tax policy that fits every single country.

So, the BEPS proposals are allowing for a certain degree of flexibility, even if we all agree the minimum standards, because their

implementation has to be representative of any one economic climate.

### What developments in international tax should we be prepared for?

That's a big question. The real thing is not any one proposal under BEPS, it's actually the combined impact of it all. I think the big differences are going to be what BEPS is doing to draw the national borders in a slightly different place. So, the definition of what is a taxable business in one country has changed and the rules about how you determine how much of the taxable profit ends up in one country or the other has changed, or will be changing.

For example, a very global business that has a very small footprint in lots of different countries historically paid their tax largely in a central location, and didn't have to worry too much about all those peripheral locations. Now they may have to pay tax in a lot of them, and that obviously creates a huge burden in terms

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of identifying and complying with the laws. I think a lot of people are going to have to take a bit of a step back and ask "does the structure we've got currently operate efficiently?"

### Do you think we should be happy about what's been achieved so far?

I think we should, because it has done two things. One is the hard tax rules thing, and there's no doubt that as a result of BEPS we're going to end up with tax guidance and tax rules that are far more fit for current business models than the ones that previously existed.

I also think that BEPS, whether you call it BEPS or everything that's going on around BEPS, has raised the whole question of the importance of tax as a social instrument, which in my view can only be a good thing. It is a fundamental part of our society and it's good that we talk about it. I think it has also caused policymakers to think a bit harder about how tax rules work.

### What does the future hold for the BEPS project and KPMG's involvement in it?

I think it's going to be a bit of a bumpy ride. As always, change is a challenge and the BEPS project means a lot of change in a very short period of time. I also think there's going to be the "what next?" debate. We're seeing a lot of people ask whether corporate income tax is actually a good tax or how tax plays a role in the development of developing nations. In terms of where KPMG is now, it's all about rolling up our sleeves, getting round to our clients and helping them in their preparations. ■