



# BEPS considerations for General Counsels

With Nick Roome, Head of Global Solutions for KPMG Law, Grant Wardell-Johnson, Global Tax Policy Leader and Chair of the Global Tax Policy Leadership Group, KPMG International and Christian Athanasoulas, Global Head of International Tax & M&A Tax

## Host

Hello and welcome back to the KPMG Future of Tax & Legal podcast series. This week on the podcast our guests will be delving in to BEPS 2.0 and its potential impacts and considerations for General Counsel. Joining us today, we have Nick Roome, Head of Global Solutions for KPMG Law, who will be leading a discussion with Grant Wardell Johnson, Global Tax Policy Leader and Chair of the Global Tax Policy Leadership Group, KPMG International, and Christian Athanasoulas, Global Head of International Tax & M&A Tax. Thank you all for being here today. I will hand over to Nick to kick off the discussion.

## Nick Roome

Well, Christian, Grant, thanks so much for joining me today. So this is a really interesting topic. This is a podcast that's targeted at GC's but we're going to talk about BEPS. And BEPS has been, has been described to me as one of the biggest changes in international tax that we've seen in many, many decades. And so I think there are implications for GCs that we're going to unpack a bit today on this on this podcast. So if I can start with you, Christian, first, could you please explain a bit about what BEPS is and why it's arisen as this global tax phenomenon?

## Christian Athanasoulas

So thank you very much, Nick. So there are two aspects to BEPS. There is what we call Pillar 1 and Pillar 2. And today we're going to focus on Pillar 2, which is a global minimum tax regime that approximately 140 countries around the globe have signed on to. Although it necessitates enabling legislation. And in certain countries, the legislation has been finalized, in others, it's still in process. But, what is happening is for global businesses, global multinational businesses with revenue in excess of €750 million per year, there will be a regime that looks at each jurisdiction in which they operate and asks whether there is an effective rate of tax of 15 percent in each of those jurisdictions. And what's really important is the measure of income and the measure of tax is different than it is under domestic tax legislation and under financial statement reporting.

But to the extent that there is a jurisdiction where under these principles there is a rate of tax below 15 percent, there is a three pronged approach to get that particular entity, that particular jurisdiction up to the 15 percent rate. And the three approaches or three mechanisms are a local subsidiary tax. So a tax and a jurisdiction sorry, a jurisdiction could have should, could impose a qualified domestic minimum top up tax to get to 15 percent.

So you can't just look at the laws in any one jurisdiction to the extent you have a structure whereby there is an entity resident in a jurisdiction that has adopted this legislation, this becomes very relevant and very real.

## **Nick Roome**

Wow Okay. Interesting. So Grant, just in, unpacking this points around which organizations this is likely to affect, cause, cause many people tend think with regimes like this it won't impact on me, it won't impact on my business, can we just, can we just spend a bit more time on that points on who this will apply to?

## **Grant Wardell-Johnson**

Sure Nick. So broadly all organizations with a revenue greater than €750 million in two of the last four years are potentially covered. Now there are specific exemptions for mostly the asset management industry, so various funds and rates, for instance, would be excluded and a special exemption for international shipping. How quickly the rules buy it will depend on the jurisdictions in which a multinational operates and whether that jurisdiction is passed laws at the local level or there's a parent level jurisdiction that has passed rules.

In addition, as Christian said, there's the third level where I suppose a policeman sister rule can operate that can kick in, and bringing in those multinationals into the fold. The OECD estimates that by 2025, 90 percent of MNEs with a turnover above 750 million will actually be covered by these rules. Nick

## **Nick Roome**

Wow, okay. And as you're spending time in the market talking to people, are there any myths that you're hearing that people have developed around BEPS that you'd like to debunk at this stage?

## **Grant Wardell-Johnson**

Certainly the big myth is that these rules will only kick in where you have low tax jurisdictions. The truth of the matter is that the OECD estimates that more than half the profits that are taxed below 15 percent are in high tax jurisdictions.

And the reason for that, Nick, is because the way in which the incentive regimes operate and how Pillar 2 effectively can undo the benefit of those incentive regimes.

## **Nick Roome**

Got it. Got it. So in essence, if you're a general counsel, in-house lawyer, working for a substantial multinational organization, then BEPS, BEPS Pillar 2, is almost certainly going to affect your business if it's not already. Christian, if I could just go back to you and again, putting a legal lens on this, because I'm trying to think about the implications for in-house lawyers.

What are the, what are your sort of top three scenarios where you think that BEPS Pillar 2 is going to affect legal teams?

## **Christian Athanasoulas**

Yeah, another good question, Nick, and I think it's going to be really important for legal teams to be very connected with the tax department because there are a number of intersection points. I suppose if I were to provide sort of the top three, I'd say the first is with respect to understanding and evaluating organization legal structure that has significant implications as it relates to Pillar 2.

The second is in any large multinational organization there are loads of related party transactions, supply chain transactions, financings, all of which become really, really relevant as it relates to Pillar 2 and then the third place where I would expect the legal team to be really connected with the tax team is in the context of M&A transactions. I think the way that that clients will need to approach M&A transactions will be different in this in this new world.

## **Nick Roome**

Interesting. Okay. Well, let's take the first of those points. So you mentioned that, you know, organizations are going to be looking at the structure of their organization. Can you just elaborate a bit more on what that might look like?

## **Christian Athanasoulas**

Sure. As I mentioned at the onset, there's effectively three mechanisms in play as it relates to Pillar 2, and there are ordering provisions where you first look at the tax in a particular subsidiary entity.

And then to the extent that there's a need for a top up tax that's not paid at the subsidiary level, it goes to the ultimate parent entity who would have responsibility for collecting the tax, assuming it's signed on to certain legislation and then there are instances, again, where it's a brother or sister entity. So understanding the legal structure is critical for purposes of applying these ordering rules.

The other thing I would add here is there are a lot, there's a lot of complexity as it relates to applying these rules in scenarios where there isn't a 100 percent ownership down the chain. And it can be a situation where there's split ownership within a group, it can arise from transactions, joint ventures, partnerships, other arrangements with third parties.

So really understanding that legal structure is critical to applying the rules. And one of the things that's really important for our audience to think about are the compliance burdens and the compliance obligations that are going to come out of Pillar 2. And just the volume of data and the amount of reporting is quite substantial.

And there may be instances where it makes sense to clean up and rationalize structures too, if for no other reason, clean up some of that data collection and that reporting and so, again, this is a situation where we're absolutely going to need to make sure the tax team and the legal team are joined at the hip.

## **Nick Roome**

Got it, got it, Interesting. So what I'm taking from that is that the, there may well be quite a lot of organizational change that goes on and changes to operating model, changes to structures, that sort of thing which again is something that, you know, as an organization we do a huge amount, you know, for clients and we've got great capability in legal and tax in that area.

And I know that, you know, lawyers facing into this sort of projects often grapple with the data, the information they need across many geographies, many borders. And that's something that, again, we've got some fantastic technology that supports clients with how they manage that. So if any of you are interested will include a link to episode transcript. But, but Grant, just turning back to you for a second.

I just wanted to pull all of the threads that Christian mentioned around, you know, the ramifications of Pillar 2 where you've not got 100 percent ownership. So what I'm thinking here is joint venture scenarios, Co-ownership scenarios. Could you, could you just elaborate on that slightly?

## **Grant Wardell-Johnson**

Certainly, Nick. So there are complex set of rules here where you have co-ownership and their thresholds of 80 percent, 50 percent, 30 percent.

But the important thing for GCs is that sometimes these rules operate such that the tax liability has a mismatch with the economics. Now that would be really important for GCs to say, okay, well what can we do about that? Do we need to change a shareholder agreement? How do we, how do we deal with this mismatch? Now that doesn't occur in all circumstances, but it can occur in some circumstances that require attention.

## **Nick Roome**

Interesting. So you say you may actually find a scenario where, for example, joint venture parties are coming back to the table to re-discuss the nature of the arrangements they've got because of the impacts of Pillar 2 on their, on their joint venture.

## **Grant Wardell-Johnson**

Absolutely. Nick. And it wouldn't be an intuitive, I suppose mechanism that you'd get to there, it's often counterintuitive that you really have to delve into that detail.

## Nick Roome

Okay, got it, Got it, brilliant. Christian, if I could just turn back to the second point you were talking about, which was this whole area of intra-group arrangements.

You know, you mentioned that this is, this is something that large groups, multinationals are particularly, you know, they have they have lots of this sort of arrangement. Can you just again unpack a little bit of the sorts of things that might get changed as a results of Pillar 2?

## Christian Athanasoulas

Sure, happy to do that. And maybe just as a starting point, there are certain circumstances where the Pillar 2 rules are going to require our clients to apply arm's length principles to intra-group transactions, even though the arrangement is between two entities in the same jurisdiction. And this is new and our legal teams that our clients are going to need to ensure that the transactions between related parties, even if in the same jurisdiction, are arm's length.

So that's one point. The other point I really want to focus on here, Nick, is there are opportunities. There may be opportunities in certain situations, you know, for our clients to revisit arrangements that they have had in place for some time in an effort to put themselves in an optimal position from a Pillar 2 perspective, making sure that the arrangements that are put in place are done with real business substance.

So the, the types of transactions I'm referencing here are can be quite, quite a quite a large number of transactions I suppose. But the supply chain arrangements right, there may be instances where the supply chain has been in place for a number of years. There's real business substance to it, but it was done in part to in, in consideration of tax rules.

And to the extent that those tax rules are now changing, that the BEPS Pillar 2 resulted in a different outcome as it relates to the imposition of tax at various entities in various jurisdictions. It may be one factor among many that our clients want to take into consideration as it relates to freshening up their supply chains.

So there absolutely could be instances where, again, we may see changes in the way intra-group transactions are structured, changes in the intra-group relationships between members, opportunities to again streamline and clean up structure for some of the compliance reasons I mentioned earlier. So a whole host of reasons why this may be one of several reasons why a client may want to revisit it's related party transactions.

## Nick Roome

Interesting, interesting and I mean it's, it's a new consideration to, you know as you say, to put on the table. Lawyers are often trying to think about the way those intra-group arrangements work and try and make sure they are objective and arm's length and there's good commercial substance, but there's another layer of thinking here around the tax impacts of BEPS, so that's very interesting. I just want to turn to the, the third area that we talked about earlier, which was the impacts on M&A. And maybe the way to just kind of cover this conversation is to think about it from the two ends of the sort of transaction spectrum buyers and sellers.

If you start with the sell side implications of BEPS. Are there any things that people who are either selling businesses now or looking to sell businesses in the future should think about as a result of the new Pillar 2 rules?

## Christian Athanasoulas

Yeah, I think certainly, Nick, from the perspective of a seller, again, this is a transaction, the M&A deal will potentially change the sellers position vis a vis BEPS.

Certainly it may change their revenue base. What are they going to do with the proceeds from the transaction? How are those going to be invested and deployed again, all of which can have BEPS considerations, Pillar 2 considerations that may be a bit surprising. And then another point, I think that's very relevant from the perspective of a seller and from a buyer, of course, too, is how do you negotiate the contractual provisions governing pre closed tax periods?

Who is ultimately responsible for any underpayments of tax that may be impacted by Pillar 2. So I think the contracting the reps, the warranties, the indemnification provisions all need to be revisited in in light of, of the Pillar 2 rules.

### **Nick Roome**

Okay interesting, so Grant just I guess just doubling down on that that point.

Okay interesting, so Grant just I guess just doubling down on that that point Christian was making, if we put our, if we put our buy side hat on, imagine we are potentially looking at the acquisition of a target business, that target business is being spun out from a, you know, from a broader corporate group. The, my understanding is that this is the implications of Pillar 2 are going to come change the tax risks associated with the target that we're acquiring.

### **Grant Wardell-Johnson**

That's right. That's right. Nick. So because the way in which the rules operate, a subsidiary may be responsible for tax liabilities elsewhere in the group. This goes back to the levels that Christian started off talking about. Then if that subsidiary leaves the group, then you need to make sure that it doesn't carry with it certain liabilities. And the unique thing about this is that that you won't necessarily have visibility around the other activities in the group to work out what liabilities could be carried.

So that will require some sophistication in terms of contracts, etc., ensuring that the by buyer is actually covered.

### **Grant Wardell-Johnson**

That's right. That's right. Nick. So because the way in which the rules operate, a subsidiary may be responsible for tax liabilities elsewhere in the group. This goes back to the levels that Christian started off talking about. Then if that subsidiary leaves the group, then you need to make sure that it doesn't carry with it certain liabilities. And the unique thing about this is that that you won't necessarily have visibility around the other activities in the group to work out what liabilities could be carried.

So that will require some sophistication in terms of contracts, etc., ensuring that the by buyer is actually covered.

### **Nick Roome**

Yeah, I mean, it represents some practical challenges and some contractual challenges because as you say, you know, access to information that would allow you to form a view on that is typically not available, you don't get access to information that gives you an understanding the tax position of the broader vendor group.

And so it's going to put more pressure on contractual covenants, you know, tax covenants and the like in terms of giving buyers an element of protection as to that that sort of risk they might be taking on in overtly.

### **Christian Athanasoulas**

Yes, If I could just add one more point to, to this this conversation thread is I think it's important for our clients to recognize that yet to the extent they're buying a group of companies or a business and they go and do their due diligence and sort of understand what the target company's legacy position was, vis a vis Pillar 2 that may be very different than what that position is going to be once that business gets integrated into the buyer's group as related party transactions, the vendor side are cleaned up and as the business is integrated into the buyer structure, maybe the buyer already has activities and operations in the same jurisdictions. Those operations effectively get amalgamated for purposes of the Pillar 2 analysis.

So you need to do a lot of really complex modeling to understand what the implications are in a go forward basis. And they may be very different than they were in the seller structure.

### **Nick Roome**

Interesting. So you might you may walk yourself over the threshold as a result of then.

### **Christian Athanasoulas**

You could absolutely walk herself over a threshold where maybe an acquire group didn't meet the €750 million revenue threshold.



And once this business is incorporated into the buyer's business on a combined basis, maybe it's enough to put you over the threshold.

## Nick Roome

Interesting. Fantastic insights. Just one final question for me.

You know, GCs that are that are watching this podcast and want to sort of get into the minds of the head of tax or CFO as to where they might be on this stuff, what are you seeing in the market in terms of where, you know, clients are at in that BEPS journey?

## Christian Athanasoulas

So I think Nick, our clients, our heads of tax, are very much aware of the need to jump into this. The rules that the operating rules started going into effect for this this, this calendar year 2024. In other instances, some of the enabling rules are going into effect in 25, but there are need to model the implications, there are needs to understand the financial statement implications, and that the data burden is just incredibly complex here.

Again, the data points that need to be collected to do the analysis and understand where you are and whether you qualify for certain of the safe harbors, our data points that maybe our tax teams haven't needed in the past or are our heads of tax are looking for data points that maybe they didn't have access to or needed in the past, and they're engaging in some really complex analysis and modeling.

And one of the things I'll reference here is that the rules are incredibly difficult to navigate and it's hard to sort of build a an Excel file that that allows someone to get comfortable with the rules on any particular fact pattern. So we built a proprietary software tool, a proprietary technology tool, I should say, called [KBAT](#), that a lot of our clients are using to help them analyze the implications of Pillar 2, and this tool can effectively be a bridge to the tax compliance that's going to be triggered by Pillar 2 in the in the coming years.

So again, I think it's around data, it's around technology, it's around transformation. And then some of the points we raised earlier just around modeling and understanding what the implications are and whether there are opportunities to streamline structures to be in a better position vis a vis Pillar 2.

## Nick Roome

Brilliant, brilliant. Okay, that's fantastic I just wanted to summarize very briefly so, you know, from the perspective of a of a general counsel, in-house legal team listening to this, BEPS is likely to have an impact on your organization, particularly if you're hitting those thresholds we talked about earlier. The sorts of practical implications that you might face are reorganization type activity within your business, changes to your intra-group arrangements, supply chain and also if you are involved in M&A, potential implications for your M&A activity.

But that was a brilliant session. Thank you for the time. Christian, Grant really appreciates it. Speak to you soon.

## Host

Thank you all for such an interesting discussion, and for joining us on the podcast today. That wraps up this episode of the KPMG Future of Tax & Legal podcast. Thanks for listening!

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