

The NED

Independent intelligence on fund director issues

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Watch out for BEPS

BEPS' rules on Permanent Establishment mean that offshore directors will probably have to show that they make the decisions on the funds on whose boards they sit. Otherwise the fund may well fall foul of BEPS' rules on Permanent Establishment. BEPS could well have a massive impact on this business.

The principle behind Permanent Establishment, BEPS' Action Plan 7, is to align a company's economic activity – including, for example, its sales, product development and intellectual input – with where it pays its taxes. Put the other way around, it is intended to stop companies using low tax jurisdictions as a location to book profits.

Funds that cannot come up with a good reason for locating their legal base in a particular jurisdiction, other than for tax purposes, might well have a problem when BEPS is implemented. Just being able to show that the directors of the fund are based in a particular location will not be sufficient to pass BEPS' rules on Permanent Establishment.

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Director diversity

The fund director universe is diversifying; choice is broadening at present. Judging by some of the newer subscribers to The NED it seems that more people are trying their hand as directors with different – and perhaps complementary - skill sets from many of those that have done this job that are based in one or other of the international fund jurisdictions.

This could develop into something much more significant in the coming years, particularly if BEPS plays havoc with the traditional structure of the offshore fund business, as many seem to expect. (Please see article above.)

A number of its newer subscribers to The NED are individuals that have worked in senior positions in the alternative fund business in London, New York, Zurich and other similar cities. Some of them are working on their own; others are working in association with colleagues in semi-autonomous boutiques.

Referring back to the articles that The NED published on director remuneration late last year, it is interesting to note how different the compensation arrangements for these new breed of 'onshore' director is from that that in Cayman or indeed even in Ireland or Luxembourg.

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