Inland Revenue
Te Tari Taake

POLICY AND STRATEGY

THE TREASURY
Kaitohutohu Kaupapa Rawa

Tax policy report: Taxation of Multinationals: Update

Date:	10 April 2013	**Priority:**	Medium
Security Level:	In Confidence	**Report No:**	T2013/927 PAS2013/63

Action sought

	Action Sought	Deadline
Minister of Finance	**Note** the contents of this report	24 April 2013
Minister of Revenue	**Note** the contents of this report	24 April 2013

Contact for telephone discussion (if required)

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10 April 2013

Minister of Finance
Minister of Revenue

Taxation of Multinationals: Update

1. We reported to you on the taxation of multinational companies in December 2012 (T2012/3250, PAD2012/268 refers). A key message of that report was that these were global concerns which required a co-ordinated global response.

2. Actions that we are taking to address multinational tax concerns fall into several categories:

- Contributing to the OECD's Base Erosion and Profit Shifting project.
- Reviewing our domestic law and prioritising projects which protect the New Zealand tax base from multinational profit-shifting.
- Co-ordinating with Australia on their review, the OECD BEPS work and other multinational tax issues.

3. This report updates you on progress in these areas.

Contributing to the OECD's Base Erosion and Profit Shifting project (BEPS)

4. The OECD has been directed by the G20 to develop an action plan for addressing concerns that some multinationals appear to be able to use certain tax structures and strategies in order to pay little tax anywhere in the world.

5. This project published its first report, *Addressing Base Erosion and Profit Shifting* in February. The OECD report identified some of the ways in which multinationals shift profits and reviewed the existing research on the scale of the problem. This report was designed to develop a common understanding of the problem and to build a consensus on the need to develop appropriate policy responses.

6. The next phase of the BEPS project is the development of an action plan which will be considered by tax authorities from the OECD and participating non-member countries (such as India and China) at the Committee for Fiscal Affairs meeting in June 2013. The action plan

will (i) identify actions needed to address BEPS, (ii) set deadlines to implement these actions and (iii) identify the resources needed and the methodology to implement these actions.

7. So far the work has concentrated on scoping the main ways in which multinationals engage in BEPS and outlining a menu of possible options for dealing with this.

8. In their February report the OECD indicated that the action plan is likely to include proposals on:

- Instruments to put an end to or neutralise the effects of hybrid mismatch arrangements and arbitrage.

- Rules on the treatment of intra-group financial transactions, such as those related to the deductibility of payments and the application of withholding taxes.

- Improvements or clarifications to transfer pricing rules to address specific areas where the current rules produce undesirable results from a policy perspective. The current work on intangibles, which is a particular area of concern, would be included in a broader reflection on transfer pricing rules.

- Updated solutions to the issues related to jurisdiction to tax, in particular in the areas of digital goods and services. These solutions may extend to a revision of treaty provisions.

- More effective anti-avoidance measures, as a complement to the previous items. Anti-avoidance measures can be included in domestic laws or included in international instruments. Examples of these measures include General Anti-Avoidance Rules, Controlled Foreign Companies rules, Limitation of benefits rules and other anti-treaty abuse provisions.

- Solutions to counter harmful regimes more effectively, taking into account factors such as transparency and substance.

9. The options noted in the OECD report range from fairly targeted rules to address BEPS (such as thin cap, anti-hybrid and anti-avoidance rules) to more fundamental questions about allocating taxing rights under DTAs (permanent establishment, withholding tax rates) and options to improve the effectiveness of CFC and transfer pricing rules. Some of the more targeted rules could be applied by each country unilaterally improving their domestic laws, but many of the options will be easier to implement if there is a co-ordinated response (for example some countries may be reluctant to tighten their domestic rules if they are concerned that businesses will shift investment or headquarters into countries with weaker rules).

10. Details on the final form of the action plan and how it will be implemented are currently under consideration. New Zealand is contributing to these discussions. We note that the OECD brings together a very high level of tax expertise and has a major influence on international tax policy. For example it maintains the most influential model tax treaty and transfer pricing guidelines. The BEPS work builds on the success that the OECD has recently

had in improving exchange of tax information between countries through its Global Forum on Transparency and Exchange of Information in Tax Matters.

Prioritising projects which protect the New Zealand tax base

11. New Zealand has a range of existing measures which address BEPS concerns. These were discussed in the Annex 2 of our December 2012 report.

12. New Zealand's rules and enforcement of multinational taxation are generally considered to be at or above world standards.

13. However, it is important to continue to review these rules to identify and address any gaps and weaknesses and ensure the rules stay up-to-date with international developments.

14. To this end, we are currently consulting on a package of proposals to increase the effectiveness of the thin capitalisation rules. These rules will be included in an August 2013 tax bill.

15. We have also identified several issues that can affect New Zealand's ability to collect withholding tax, particularly on interest payments. This project is still at the research stage, we will report to you once some options have been developed.

16. We expect that our involvement in the OECD BEPS project will help to identify other areas where New Zealand could improve its rules. For example many countries have specific rules for dealing with arbitrage caused by hybrid mismatches, the OECD work could help New Zealand to review the experiences of other countries and consider similar rules.

Co-ordinating with Australia

17. New Zealand officials have been in regular contact with our counterparts at the Australian Treasury to share views on the OECD developments and related matters.

18. New Zealand officials are visiting the Australian Treasury next week to continue our engagement and to discuss latest developments.

Australian review of multinational taxation

19. As mentioned in our report in December, the Australian government has announced it will publish a scoping paper that will set out the risks to the sustainability of Australia's corporate tax base from multinational tax minimisation strategies and identify potential responses. The Australian government's scoping paper will be informed by a specialist reference group, made up of experts from business, tax professionals, academics and the community sector.

20. A consultation paper is expected to be released for comment in late April. We understand that the scoping paper will be released in late June.

Reporting tax paid by large companies

21. In addition to their more general review, the Australian Government is seeking input on proposals to improve the transparency of corporate tax information. These proposals are motivated in part by BEPS as well as other domestic law considerations.

22. Last week, a discussion document was released seeking submissions on three proposals:

- A proposal that the Australian Taxation Office (ATO) would publish a list of the names, total income, taxable income and income tax payable of companies with over $100m of total income. In addition, the ATO would also publish the names of companies that pay the new Minerals Resource Rent Tax or the Petroleum Resource Rent Tax and how much of each of these taxes they pay.

- A proposal to publish aggregate collections for each type of Australian tax even if this information could be used to deduce tax paid by a particular taxpayer.

- A proposal to enable greater information sharing between the ATO and the Treasury with respect to foreign acquisition and investment decisions affecting Australia.

23. In New Zealand, the issue of requiring certain companies to publish tax information has not been formally considered to date. We will discuss this issue further with you in the context of the Financial Reporting Bill. We note that the Financial Reporting Bill which is currently under consideration will require companies with more than $30m of revenue or $60m of assets (in each of the previous two years) to file their financial statements with the Companies Office. The Companies Office then publishes these statements (which include accounting measures of tax paid) on their website.

[Officials' note added on 19 April 2013 at 10.00 am: The "file and publish" requirement described in paragraph 23 only applies to issuers (public companies, banks, etc) and large companies that are at least 25% foreign owned.]

Recommended action

We recommend that you **note** the contents of this report.

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