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Deputy Commissioner, Policy
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Addressing hybrid mismatch arrangements

Dear David,

I wish to make a submission in support of the recent release by the Government of the discussion document seeking to counter tax mismatches through the use of hybrid arrangements.

I support the government's moves in this area as the tax reductions possible through their use are, by definition, only available to companies that transact cross-border. As New Zealand's tax policy is heavily guided by a desire to improve efficiency through removing distortions it is the correct thing to do to ensure cross-border activity is not incentivised compared to domestic activity.

It also has fairness or equity benefits because such tax reductions are not available to New Zealand firms operating only in New Zealand.

I wish to commend the policy officials for their work on this paper as - even for tax - it is a technically complex area.

I do, however, wish to make two specific points.

First while I welcome the comprehensiveness of the proposals I am aware that there is significant concern in the tax community about the complexity - particularly in respect of imported mismatches. I am also aware that within its BEPS programme the government still needs to address excess interest limitations and the limitations of the transfer pricing and permanent establishment rules.

With this in mind, if pushing through comprehensive rules creates such an antagonistic environment with the private sector that the other issues would struggle to proceed - I would prefer a less comprehensive approach. From the recent labour hire firm proposals to the staged approach to the 2009 international tax reforms to the limitation of the acting together rule to thin capitalisation and some NRWT structures - a less than comprehensive approach to tax reform is quite usual.

Secondly - as alluded to in paragraph 7.29 - I cannot see any reason why these rules would not apply to trusts with a resident trustee and non-resident settlors - foreign trusts. To the extent that the settlors do not face taxation on any income earned by the trustee this exactly creates the double non-taxation that these proposals are seeking to address. To otherwise exclude foreign trusts from these proposals would only make sense in terms of an unprincipled concession to the foreign trust industry.

I would be happy to discuss either of these points with officials if that would be helpful. I can be contacted on andreataxandyoga@gmail.com.

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