OXFAM
New Zealand

Deputy Commissioner Policy and Strategy
Inland Revenue Department
P O Box 2198
Wellington 6140

**Taxation of Multinationals - Discussion Documents**

Dear Madam,

Oxfam welcomes positive steps by this Government to address the unfair situation where the world's richest and most powerful companies and people are avoiding paying their fair share of tax. Tax is key to making sure everyone has vital public services. It is an essential tool to ending extreme inequality, and could help lift millions of people out of poverty. It is estimated that poor countries are losing at least $170 billion every year because of tax avoidance - this is more than the total amount that these same countries are receiving in aid. When taxation works fairly, the majority benefit.

New Zealand could be missing out on up to $500 million a year in tax from multinational companies - money that could be spent on health, education and housing. On a broad level we support the proposals in the documents however we are concerned that **they do not go far enough;**

- in ensuring that New Zealand receives its fair share of tax from multinationals operating in New Zealand
- in committing New Zealand to collaborate on issues of greater transparency around tax practices globally.

Our comments on proposed rules and recommendations are below.

**BEPS - Transfer Pricing and Permanent Establishment Avoidance**

Oxfam has long been concerned about multinationals not paying tax in the countries they operate in and trade with as it deprives the host countries of tax revenues to spend on desperately needed social services for the local populations.

***Diverted profits tax***

To that end Oxfam has been supportive of and has called for a Diverted Profits Tax to counter such behaviour. We are supportive of the government's moves to bring in an equivalent measure. We note however that the tests suggested include a consideration of whether the structure is contrary to the purpose of the respective double tax agreement.

*Recommendation*: Oxfam recommends that the proposed diverted profits tax equivalent does not reference any double tax agreement but focus simply on the other objective tests.

- a non-resident supplies goods or services to a person in New Zealand;
- a related entity (either associated or commercially dependant) carries out an activity in New Zealand in connection with that particular sale for the purpose of bringing it about;
- some or all of the sales income is not attributed to a New Zealand permanent establishment of the non-resident;

*Recommendation:* Oxfam recommends that New Zealand's double tax agreements are reviewed to ensure New Zealand can receive its fair share of tax revenue from multinationals and if favourable renegotiation is not possible then the double tax agreements should be rescinded.

**BEPS - Interest Limitation Rules**

***Interest deductions***

Oxfam notes that the government has chosen not to implement the earnings stripping rules recommended by the OECD. We are comfortable with this only if the government can assure the people of New Zealand that what it is proposing is equally effective.

On that basis we support the proposals in this document as interest deductions are a very straightforward way of reducing profit by multinationals. For this reason we particularly support:

- The removal of non-debt liabilities from the assets component of the debt to assets test. Such a move will level the playing field between multinationals that would commercially use debt to fund fixed assets and those that wouldn't. For this reason Oxfam strongly supports this move.

- The other proposal we particularly support is the removal of the 10% related party debt allowance for conglomerates including Public Private Partnerships (PPP). Currently PPPs are allowed to deduct all unrelated party debt plus 10% of their related party debt. As related party debt is a "profit stripping" device Oxfam does not see the logic of this and we are pleased to see the proposal to remove it.

***Excessive interest rates***

Oxfam is aware of the current loophole where high levels of debt can feed into a high interest rate for transfer pricing purposes. We therefore support the intent of the proposals to eliminate this. We note that the proposals are to:

- apply the credit rating of senior unsecured debt for multinationals with an identifiable parent;

- assess the level of arms-length debt and then the applicable interest rate when there is not an identifiable parent.

It is the second option that causes us concern. Multinationals without an identifiable parent include Private Equity (who are known to take a tax aggressive approach to investment). To find a comparable level of arms-length debt our understanding is that you need to find the debt level of a comparable New Zealand owned firm. Given the high levels of foreign ownership in all our major industries, Oxfam would question whether identifying such a comparable firm was possible. We note that even iconic New Zealand firms such as Spark and Fletcher Building have significant levels of foreign ownership. Even in industries that still have some level of New Zealand ownership such a move will incentivise full foreign ownership so that high levels of interest deduction can become the norm.

*Recommendation:* It is not our first preference to require all related party interest to be disallowed but if these are the only options available, they have to be taken to ensure entities such as Private Equity pay their fair share of tax. We suggest that if related party interest disallowance is considered excessive; earning stripping rules must be reconsidered for this group.

**Omissions on current proposed rules**

***Global collaboration on tax***

Oxfam is an international development agency and our mission is to eliminate poverty globally. We see progressive tax systems (spent progressively) as one of the levers to be able to achieve this goal. While there is a lot that governments can and are doing on their own to improve the progressiveness of their tax systems, such as this consultation on tax policy in New Zealand, there is a limit to what countries can do unilaterally.

Earlier this year, Oxfam released a report that revealed that 8 men own the same wealth as 3.6 billion people who make up the poorest half of humanity. Tax havens are part of this problem. In order to end poverty and inequality; we have to end tax avoidance globally.

*Recommendation:* Oxfam is calling on all countries to allow for greater collaboration on taxation. A fair and level playing field on corporate tax requires transparency measures, including full public country by country reporting, transparency on beneficial owners and transparency by governments on the tax incentives they grant and in particular on tax rulings.

***Non-resident finance companies***

Another omission is any move to apply specific interest limitation rules to non-resident finance companies. The issue is they currently only have the on-lending concession apply to them meaning they can have unlimited and unconstrained interest deductions (as was the case with the Australian banks before the specific bank rules were implemented).

We understand that there is currently not a high level of non-resident finance companies operating in New Zealand. Oxfam accepts that this may be currently the case but this can change very quickly (as was the situation with the banks).

*Recommendation:* While all the other measures are correcting issues that have been in place for some time, we suggest that it would be preferable to fix identified issues before they become a ‘significant drag’ on the tax base thereby affecting the government's ability to provide social services.

Oxfam welcomes these consultation documents and we recognise that this a positive first step to ensure multinational companies pay their fair share of tax from profits earned in New Zealand. As stated above we do strongly recommend the inclusion of policies that promote greater collaboration on tax globally to tackle the growing issue of inequality.

Oxfam wishes to acknowledge the significant assistance provided by Andrea Black, adviser to Oxfam, in the research and analysis of the Tax Consultation Documents. Oxfam also greatly appreciates the access to your officials and the open and insightful discussions they had with Andrea Black.

We would be happy to discuss any of these points in more detail. Please contact Paula Feehan-Advocacy and Campaigns Director at paula.feehan@oxfam.org.nz.

Yours sincerely,

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