#005

BEPS – Transfer pricing and permanent establishment avoidance

Submission, 18 April 2017

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18 April 2017

BEPS – Transfer pricing and PE avoidance
c/- Deputy Commissioner, Policy and Strategy
Inland Revenue
PO Box 2198
Wellington 6140

Dear Cath

BEPS – Transfer pricing and permanent establishment avoidance

Thank you for the opportunity to comment on the Government Discussion Document on transfer pricing (TP) and the permanent establishment (PE) rules.

In summary our submissions are as follows:

General comments

- We accept that the Government is concerned about BEPS and committed to introducing appropriate measures to combat BEPS.
- We agree that BEPS is detrimental to the public perception of our tax system; and may also be detrimental to New Zealand's economy.
- We are concerned that by implementing unilateral measures outside the OECD BEPS Action Plan the Government could harm our relationships with treaty partners.
- We are not convinced that the PE model will always be appropriate for digital business models and suggest another model is needed.
- We believe any new rules must be clear and specific to give certainty to taxpayers, particularly foreign investors.
- We believe any recommendations adopted as a result of this Discussion Document should be factored in to Inland Revenue's Business Transformation project so that the Commissioner can develop specialist teams to meet changing customer demands.

Permanent establishment avoidance

- It is unclear why, if the proposed rule is to counteract an entity avoiding the application of a relevant treaty, that the Commissioner cannot apply section BG 1 currently.
- It is unclear how the proposed avoidance rule will fit into our existing treaty framework.
- An uncertain rule will discourage foreign investment so it is critical that, if a rule is required, the rule is targeted and clear.

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- The Commissioner should specify all of the relevant factors she considers indicate the presence of avoidance. For example she should be specific about which countries the Government considers to be “low tax jurisdictions”, and how other indicia will be considered, including what is meant by a “well paid employee”.
- Guidance should be given as to how the Commissioner will attribute any resulting profit.

Amendments to the source rules

- The Government should provide examples to explain how the proposed PE source rule would apply and to which foreign income.
- The anti-avoidance source rule goes further than the BEPS measures proposed by the OECD and we do not believe this is appropriate.
- We agree that there is a discrepancy in tax treatment for life insurance businesses depending on the particular DTA but believe this discrepancy should be resolved by amending the particular DTAs.
- We agree that it is not necessary to have a royalty substitution rule.

Transfer pricing

- A legislative reference to the OECD transfer pricing guidelines should state that the guidelines apply only to the extent they have been adopted by New Zealand – or the guidelines should be put into regulation with reservations specified in a separate schedule or appendix.
- We are concerned that an “economic substance” test would be uncertain and difficult to administer and believe the test needs to be clearer and more tightly defined.
- If a reconstruction provision is introduced, the standard should be whether a taxpayer would be “more likely than not” to have agreed such an arrangement with a third party and an “exceptional circumstances” type test should be explicit. The same test should be adopted if a criterion of arm’s length “conditions” is introduced into legislation.
- We do not believe the burden of proof should simply be reversed. If the burden is to be shifted to the taxpayer then, at the least, the burden should be on the Commissioner in situations where she is using data that is not available to the taxpayer.
- We understand most multinational enterprises of this size provide the proposed documentation already and we do not have a problem with the requirements being formalised in legislation.
- Moving the time bar to seven years for transfer pricing issues is inconsistent with Inland Revenue’s move to customer centric, real time service and should not proceed. If resourcing is an issue, more resource should be allocated.
- As a practical matter, many investors with minor interests will not be involved in transfer pricing decisions and will not have access to transfer pricing documentation so the rule needs to have some flexibility to allow for this.

Administrative measures

- We question whether the new administrative measures are needed when most multinational enterprises cooperate with Inland Revenue.
- Any increase in administrative sanctions should be accompanied by corresponding measures to encourage and assist taxpayers to comply.
- We do not believe the Commissioner should have the power to impose fines. If this proposal

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were to proceed, we believe any imposition of a fine should need the signoff of an independent third party such as a TRA judge or the Attorney-General.

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General comments

The OECD has issued the BEPS Action Plan in order to reset the global consensus on how to tax cross-border commercial activities.

We believe the New Zealand Government must first be clear on its desired international tax policy settings and then the extent to which these are already achieved through current legislation, including an anti-avoidance rule, and adoption of the Multi-lateral Convention (MLC). If not, the Government must then determine the extent to which any further legislative reform might be needed.

We understand the Government is concerned about BEPS activities in New Zealand and we agree that BEPS is undesirable, in particular, because it affects the public perception, and thus the integrity, of our tax system. It may also be detrimental to New Zealand's tax take.

It is not clear whether the Government has developed the current proposals because it has decided to unilaterally act, outside of the MLC, to achieve its international policy settings; or whether it has developed them to deal with perceived issues with the public perception of the tax system.

Existing treaty framework

It is unclear how the proposed rules will fit into our existing treaty framework.

The proposal is stated to be a new avoidance rule. However it is not clear in the discussion document as to what the Government asserts is the test that, if avoided, will cause the proposal to be applied.

We presume that if a foreign jurisdiction implements the MLC then the proposed avoidance rule would not apply as the treaty should apply to any suggested avoidance. However it seems unclear what could occur if the relevant treaty partner does not implement the MLC in full. Is it proposed that New Zealand will apply the avoidance rule notwithstanding the negotiation with the treaty partner concluded on a different basis?

If another country does not accept the relevant MLC it is more difficult to make the argument that the proposal is an anti-avoidance rule. The parties will contemplate that a PE (and, therefore, a taxing right) would not arise.

A unilateral action also creates a risk that our other treaty partners may respond in a similar way. A similar response from other countries could limit New Zealand's tax take, rather than increase it, by having the reverse impact for New Zealand businesses trading overseas.

We suggest Officials consider delaying the application of the deemed PE rule for DTA countries until after the implementation of the MLC.

Effect on foreign investment

In our view, many of the proposed rules seem to be directed towards perceived problems. The proposed rules are framed widely and in many cases the boundaries are unclear. We are pleased that Officials first developed an overarching inbound investment framework and believe that has been a useful reference for New Zealand's policy settings. We believe Officials must now develop a coherent and cohesive set of rules within this framework that target only those arrangements that are of real concern.

If the rules are not sufficiently clear, they will have a significant effect on taxpayer certainty, particularly for overseas companies looking to conduct business here. In our specific submissions, we have made suggestions for areas where we believe explicit criteria are needed.

Relevance of the PE model

In our view, the proposals in chapters three and four attempt to force the PE model on to a type of business that does not fit into this model. It is a natural consequence of the information age and the sharing economy that, for many businesses, the value will be in its operational model, network and/or customer list. Its business may be conducted from a website rather than from bricks and mortar premises. We do not believe that the traditional concept of a PE is useful for taxing digital age businesses in all cases.

It is not the subject of the discussion document, however we consider that the OECD needs to develop a new model that will be more appropriate for taxing new economy businesses.

In the absence of a new model, the Government runs the risk that anti-BEPS measures will disadvantage taxpayers with new or innovative business models in the future. Encouraging growth and innovation is firmly on the Government's agenda. New and innovative businesses, including those from overseas, will be critical in growing the economy. In order to encourage foreign investment it is critical that we have clear and workable tax rules that are fit for purpose

Implementation

Inland Revenue has embarked on a Business Transformation programme which, we understand, will include a significant re-allocation of resources and restructure of many roles.

This presents an opportunity to develop specialist teams to resource the initiatives outlined in this Discussion Document.

For example, the Discussion Document assumes that Inland Revenue will need to audit to discover the relevant transactions and corresponding transfer pricing documentation. The transformation project provides an opportunity for Inland Revenue to establish customer service teams to assist taxpayers at the time the transactions occur and provide real time signoff on compliance.

Such an approach would give greater certainty to taxpayers and as a consequence would not require the Government to change the statute bar or the burden of proof as currently proposed.

Chapter 3: Permanent establishment avoidance

The Government proposes to deem a PE to exist where a non-resident makes sales into New Zealand, a related entity carries out activities in relation to the sale and the sales income is not all attributed to a New Zealand PE of the non-resident.

Application of the rule

The proposed rule is outlined at paragraph 3.21 of the Discussion Document. Paragraph 3.24 outlines the factors that will be relevant in determining whether the test is met.

We do not believe it will always be clear when an arrangement "ought to" result in a PE. Therefore it is imperative that the rule is clearly articulated with particular attributes clearly specified. It is important that the rule is crafted using language using specific criteria and is neither vague nor emotive in terminology.

While the proposed rule is touted as an avoidance rule it is not clear that in fact the typical indicia of avoidance are in fact required before the rule is implemented. Further it is not clear what PE test the Government is concerned with.

Any application of avoidance in New Zealand would typically include the consideration of the economic reality of the arrangement and whether there are the relevant indicia, such as artificiality, circularity, or non-commercial features that lead to the conclusion that the arrangement was an avoidance arrangement. It appears that in this instance the Government is suggesting that the existence of certain factors could trigger the rule notwithstanding these could be commercial activities.

Paragraph 3.25 states that the legislation may specify some of the factors. We agree and believe that, if possible, it should specify all of the factors. But more so the Commissioner should be required to show that the non-resident had in fact entered into a tax avoidance arrangement.

At para 3.2 the Government suggests that "The proposed rule is an anti-avoidance measure. It is intended to apply where the non-resident's economic activities in New Zealand should result in a PE here, but the non-resident has been able to restructure its legal arrangements to avoid one arising".

However what test of a PE is to be applied in this instance? What PE test is to be considered to have been avoided? In para 3.45 it is proposed that no reference will be had with the particular PE test in the relevant DTA. It is perhaps implied in paras 3.40 and 3.41 that reference is to be had to the PE test that is in the Model Convention, which will presumably mirror the MLC. If this is to be the case is the Government suggesting that it would seek to apply the proposed test to a taxpayer of a foreign jurisdiction that has not accepted the MLC PE test?

This has the potential to result in large and time consuming MAP disputes.

"Low tax jurisdiction"

Of the factors listed, the most significant is the last bullet point and, in particular, the "involvement of a low tax jurisdiction". We believe the Government must give concrete guidance on the meaning of "low tax jurisdiction".

One of the issues for all involved is whether "low tax" criterion refers solely to the corporate tax rate, or to preferences in the tax system more broadly. For example, we understand the US proposes to allow income from sales to non-residents to remain untaxed. Would this qualify it as a "low tax jurisdiction"? If not, what more would be needed?

We believe the Government should publish lists of countries whose tax systems it considers to have the features of a "low tax jurisdiction" and a list of those whose it does not. This was an approach used successfully for many years under New Zealand's former Foreign Investment Fund (FIF) rules. Specific lists would provide certainty for taxpayers as to the Government's concerns.

"Well paid employee"

The Discussion Document also states one of the factors to consider would be an entity that is allocated a low amount of profit, on the basis that it is carrying our low value services, while having a number of "well paid employees".

In our view any legislation must be specific about what is meant by "well paid employee". This is an example of vague and emotive terminology and should be replaced by or elaborated by reference to specific criteria.

Abusive tax position penalty

The Discussion Document states (paragraph 3.38) that, if the proposed rule is applied, an abusive tax position penalty would also apply. We are not convinced that this is appropriate, as the proposals seem intended to target arrangements that would not meet the criteria of "tax avoidance".

In addition, if a taxpayer may be subject to an ATP penalty (and thus double their tax bill), there is an onus on Inland Revenue to clearly articulate the rule. In addition, we believe IR must give greater access to binding rulings, within commercial time frames, to allow taxpayers certainty for their transactions.

"But for" test

The Discussion Document also proposes a "but for" test (paragraph 3.26). The rule will deem a PE to exist only if the non-resident would have had a PE but for the arrangement with the related party. The "but for" test is intended to prevent a PE being created where one does not exist in substance – consistent with paragraph 3.22, which states that preparatory or auxiliary activities would not be sufficient. We believe this test will be useful and should be specifically included in the legislation.

We note that the definition of "preparatory or auxiliary" activities will change once the MLC is implemented but assume the reference is to the current definition.

Consequences of application

The Discussion Document states (at paragraph 3.36) that Officials expect that the application of the principles will result in a "fairly significant" amount of the sales income being attributable to the deemed

PE and a “material amount” of net profit to remain.

It is important to clarify what is meant by “fairly significant” and “material amount”. We would like to discuss this further with you and work through some examples to clarify. We believe any legislation should also be accompanied by specific guidance as to how profit is to be attributed.

In the absence of a clear statement, taxpayers are more likely to err on the side of caution and decide not to place any personnel in New Zealand. Such a decision to exit employees from New Zealand would be motivated not by a desire to pay no tax in New Zealand, but by the uncertainty inherent in a profit attribution.

Moreover, future inbound investment into New Zealand depends on foreign investors being able to cost future commercial arrangements accurately. Foreign investors are generally willing to budget for a New Zealand tax liability but the calculation method must be clear.

Interaction with New Zealand’s double tax agreements

It is not clear how these proposed rules will fit into our existing treaty framework.

The Discussion Document states (paragraph 3.42) that the proposed rule is an anti-avoidance rule that will apply only to an arrangement which defeats the purpose of the DTA’s PE provisions.

However, as the Discussion Document acknowledges at paragraph 5.45, there is an increasing variety of commercial arrangements in multinational enterprises. We believe it will not always be obvious when a Government may consider an arrangement is intended to defeat the purpose of the DTA’s PE provisions. The concept of “commercial and economic reality” is not defined and is often problematic in practice. An unusual arrangement may be undertaken for genuine commercial reasons. It is critical that the proposed rule allows for a distinction between “novelty” and “avoidance”. The focus should be on artificial arrangements.

If the proposals are implemented in the form proposed, they will leave taxpayers and advisors with a lack of clarity as to when an employee of an overseas company located in New Zealand would have function and responsibility sufficient to give rise to a PE. For example, would a person located in New Zealand who plays a principal role but does not conclude contracts constitute a PE here?

The Discussion Document states (paragraph 3.39) that the ultimate aim of the proposed rule is to “discourage non-residents from entering into PE avoidance structures in the first place”. We understand this objective but believe there needs to be a balance between discouraging investors who would engage in avoidance behaviour and encouraging genuine foreign investment.

The resulting lack of certainty may result in taxpayers and advisors taking a conservative approach and not basing employees in New Zealand, so that there is no risk of inadvertently creating a PE. This outcome does not seem sensible and would stifle growth and investment.

We agree with the statement (paragraph 3.45) that taxpayers should not be able to rely on DTAs to protect tax avoidance arrangements. However, we believe that taxpayers should otherwise be entitled to rely on DTAs.

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Chapter 4: Amendments to the source rules

Permanent establishment source rule

The permanent establishment source rule would give income a New Zealand source where the income is attributable to a PE in New Zealand, whether or not the income has a New Zealand source under any other source rule.

We assume this rule is intended to refer to foreign income created by activities of the New Zealand PE that was hitherto not taxable here. We would appreciate some examples to illustrate how the rule would work in practice.

Anti-avoidance source rule

The Government proposes that a non-resident's income would have a source in New Zealand if it would have a source, treating the non-resident's wholly owned group as a single entity.

This would effectively introduce a "force of attraction" type of rule into New Zealand legislation. Such a rule – where a country can impose tax on the total income of a business with a PE there, even if the income is not earned by that PE – would be out of step with New Zealand's international tax framework, which taxes on PE and source, and goes further than the rules to be adopted via the MLC. We do not agree with this.

The Discussion Document refers to section CV 1 in support of the proposal.

It is our understanding that section CV 1 is a recharacterisation rule intended to prevent income splitting. For example, if a share dealer were to establish fifty different companies, each owning shares in a different company, in order to suggest that none of the companies are dealers. Section CV 1 would apply and consider the position of the group as a whole.

We believe a recharacterisation rule to target fragmentation and contract splitting could be appropriate, however, this would be a significant extension of our current PE rules.

Life insurance source rule

We agree that the combination of section DR 3 and the wording of Article 7 in the DTAs with Canada, Russia and Singapore results in a more favourable tax treatment for life insurance businesses operating out of those countries.

In our view, this would best be rectified by agreeing a protocol as part of the DTAs involved, rather than imposing a domestic law override. We also wonder whether there could be wider foreign policy implications of creating a domestic law override to a negotiated agreement.

Royalty substitution rule

We agree that a royalty substitution rule is not necessary in New Zealand. We already have an "in substance" royalty definition.

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Chapter 5: Strengthening the transfer pricing rules

Including an explicit reference to the OECD transfer pricing guidelines

In our view, most businesses and advisors, as well as Inland Revenue investigators, generally apply the latest OECD transfer pricing guidelines. We do not believe the proposals will result in a significant change in practice.

However, the amendment will make any New Zealand reservations more important (for example, we do not view a branch as a separate entity). The legislative provision should specifically state that the guidelines apply domestically only to the extent that New Zealand has adopted those guidelines and do not apply to the extent of any reservations we have made.

We suggest the guidelines we have adopted are put into regulations, with a separate schedule detailing the areas where New Zealand has entered reservations.

It will be more imperative than ever that the Government remain engaged in the negotiations to ensure that the guidelines are adopted only to the extent that they are consistent with our domestic law and that the Government is able to enter reservations if that is not the case.

Aligning the transfer pricing rules with economic substance

We understand the rationale behind the proposal to introduce an “economic substance” test.

However, we have concerns about how the test will be implemented in practice. The concept is a matter of judgement and, inevitably, there will be grey areas.

By its nature transfer pricing documentation reflects an agreement between related parties. It is possible that a taxpayer would request a different arrangement, or different terms, if they were negotiating with a third party.

We were recently given an example of a multinational entity with related entities in many countries. The MNE decided to enter into a new country and to license a third party in the new country to perform the services there. The same services were undertaken by related parties in all other countries. The presence of the new third party agreement immediately raises the issue of whether all related party agreements must now have the same terms as the third party agreement.

We believe Inland Revenue should explain to interested parties how it intends to administer the concepts in practice (and how this administration will be resourced). For example, in the above situation, would all related party agreements need to have the same terms and conditions as the new third party agreement? What factors would the Commissioner take into account in making her decision?

The Discussion Document states (paragraph 5.30) that the OECD guidelines focus on funding, intangible assets and legal risk. If the New Zealand Government also intends to focus on these three areas they should also be included in the legislation or, at the least, referred to in guidelines or a policy special report.

Reconstruction

The document states at paragraph 5.35 that the reconstruction should "make the related party dealing align with a commercially rational arrangement that would be agreed by independent businesses operating at arm's length". It goes on to say that "if the commercially rational alternative is that an independent business would not enter into a similar arrangement, then the arrangement may be disregarded". We agree that prices should be arm's length but do not agree that this proposed threshold is appropriate.

In our view the appropriate test is whether a taxpayer would be "more likely than not" to have agreed such an arrangement with a third party. This should be specified in legislation.

Paragraph 5.39 states that the reconstruction rules would be limited to "exceptional circumstances", although not explicitly so. We believe the legislative provision should legislate for the "exceptional circumstances" if this is the intention. If the words "exceptional circumstances' are not appropriate then another description should be used. The description in paragraph 5.40 of "aggressive and commercially irrational" arrangements may be appropriate if these terms were defined.

Paragraph 5.40 of the Discussion Document encourages taxpayers to seek APAs to increase certainty. We appreciate the Government seeking to provide certainty to taxpayers given the inherent uncertainty of a reconstruction provision. However, for many taxpayers, obtaining an APA is not realistic. We understand from our members that securing an APA does not happen at the speed of commercial business – it is a long process, and often expensive. We understand from speaking to our members that many attempts to procure APAs are abandoned due to the length of time taken and none we spoke to had succeeded in obtaining a bilateral APA. If Inland Revenue wishes taxpayers to obtain greater certainty through APAs we believe it must act to make the process as streamlined as possible, including resourcing a large team dedicated to performing this work.

Arm's length conditions

We understand the reasons for the proposal to amend the legislation to refer to arm's length "conditions" rather than an arm's length "amount". In our view it is sensible to view the entire agreement rather than the price in isolation (and we understand this currently happens in practice).

However, the proposal again adopts the Australian approach which we believe would involve significant overreach. As with the "economic substance" proposal, this one is also based on section 815.130 of the Australian Income Tax Assessment Act 1997.

The full text of the section requires that one disregards the form of the arrangement to the extent that it is inconsistent with the substance and also provides (in subsections 3 and 4) as follows:

> " … if:
>
> 1. independent entities dealing wholly independently with one another in comparable circumstances would not have entered into the actual commercial or financial relations; and

2. independent entities dealing wholly independently with one another in comparable circumstances would have entered into other commercial or financial relations; and

3. those other commercial or financial relations differ in substance from the actual commercial or financial relations;

the identification of the *arm's length conditions must be based on those other commercial or financial relations.

(4)

Despite subsection (1), if independent entities dealing wholly independently with one another in comparable circumstances would not have entered into commercial or financial relations, the identification of the *arm's length conditions is to be based on that absence of commercial or financial relations."

As we have stated under "economic substance", above, in most cases is likely that the arrangement would be different if it had been entered into by a third party; it is also likely that the parties would not have entered into the arrangement had it had not been with a related party. Businesses do not always negotiate the best deal every time. Sometimes they simply need to move forward.

As we have stated under "reconstruction", above, we believe this this proposed threshold is uncommercial and therefore not appropriate. In our view the appropriate test is whether a taxpayer would be "more likely than not" to have agreed such an arrangement with a third party. This should be specified in legislation

Burden of proof

The document proposes the burden of proof be reversed for transfer pricing issues and be placed on the taxpayer. We understand this is also the position in Australia.

We appreciate the taxpayer has better information about their affairs than the Commissioner does. However, we understand that the reason for the burden of proof being on the Commissioner in transfer pricing cases is due to the nature of the issues involved. Transfer pricing issues are often matters of judgement. The Commissioner and taxpayers use benchmarks and comparables to show that the arrangement is "arm's length". The Commissioner has access to the tax records of every taxpayer in New Zealand, and has access to offshore information from overseas tax authorities, so can be in the best position to determine whether the arrangement is similar to one that has been entered into elsewhere.

We do not believe the burden of proof should simply be reversed. If the burden is to be shifted to that taxpayer then, at the least, the burden should be on the Commissioner in situations where she is using data that is not available to the taxpayer.

Transfer pricing documentation

We understand most multinational enterprises over the proposed turnover threshold provide this information already and we do not have a problem with the requirements being formalised in legislation.

We agree compliance costs will be low because most or all affected taxpayers undertake this work currently. Compliance costs can often be an issue in transfer pricing requirements and we believe the proposal is smart and pragmatic.

Time bar

The Discussion Document proposes that the time bar for transfer pricing assessments be increased from four years to seven years, noting that this would be consistent with other jurisdictions.

The table on page 37 gives information on the time bars for ten other countries. Of these, Australia and Canada have the four year / seven year split; all others seem to have the same or a similar time bar for transfer pricing matters as for other tax matters. Given this, we do not believe that consistency with other jurisdictions is, in itself, a reason to make the change.

We understand Officials' concerns regarding the complexity of modern commercial arrangements but in our view these concerns should be addressed by increasing resource to investigate and deal with arrangements at the time they occur. We do not believe spreading the work over an additional three years to be a useful solution.

Increasing the time bar also seems inconsistent with the direction Inland Revenue is heading in its customer-centric approach. We understand one of the goals of the Business Transformation project is to provide more "real time" advice, information and assurance. A key aim is to encourage taxpayers to "get it right from the start".

In addition, Inland Revenue's compliance management approach for multinational enterprises has been to move to resolving any issues with commercial transactions in real time. It is doing this by providing more pre-filing reviews and risk reviews. In our view this is working well. The time bar has remained at four years but many taxpayers are now able to achieve practical certainty within one year.

The proposal to move the time bar for transfer pricing to seven years is out of step with and other Inland Revenue initiatives and, in our view, is a retrograde step.

If this move were to go ahead it would be imperative that the change were prospective only – i.e. would include only transactions and documentation from when the change were enacted and not documentation from six years ago.

Applying the transfer pricing rules to investors acting in concert

We understand Officials' wish to align the "associated persons" rules for thin capitalisation and transfer pricing.

However, we are concerned that, as a practical matter, many minor investors would not be involved in

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transfer pricing decisions and would not have access to transfer pricing documentation. They would rely on the decisions of the major investors. We believe the rule needs to be flexible to allow for this possibility.

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Chapter 6: Administrative measures

The new administrative measures proposed generally provide more incentives for taxpayers to comply with Inland Revenue requirements and more sanctions when they do not comply. We question whether the new administrative measures are needed when most multinational enterprises cooperate with Inland Revenue. However, if such measures are to be implemented, we agree that this should be done by way of legislation and not by reliance on administrative practice.

It is our view that any increase in administrative sanctions must be accompanied by corresponding measures to encourage and assist taxpayers to comply.

In practical terms, this means initiatives to give taxpayers certainty that they are doing the right thing, such as greater access to rulings; real time Commissioner's opinions; greater access to earlier signoffs via risk reviews; and assistance from Inland Revenue – from staff or a website – when required. As we have previously discussed, the Inland Revenue restructure provides an opportunity for the Commissioner to redeploy resources to areas where they will be most needed going forward.

In addition, in our experience, most multinational enterprises cooperate with Inland Revenue and so we question the need to introduce new administrative measures to encourage cooperation.

In terms of the specific proposals, we do not agree that Inland Revenue should have the power to unilaterally fine taxpayers for not providing information. Fines should be imposed only by an independent body such as a court. If the Government wishes Inland Revenue to have the power to impose fines we believe, at the least, that this power should exist only with the signoff from an independent party such as a TRA judge, the Solicitor-General or the Attorney-General.

We would be happy to discuss our submission with you and look forward to the opportunity to do so.

Yours sincerely

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