



Deputy Commissioner, Policy and Strategy
Inland Revenue
PO Box 2198
Wellington 6140

(sent via email: policy.webmaster@ird.govt.nz)

7 April 2017

New Zealand's implementation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)

Dear Madam

Thank you for the opportunity to comment on the Discussion Document (DD). We appreciate that participating in OECD and G20 initiatives to target base erosion and profit shifting globally is a key focus for the government.

We have set out below a number of comments that we would like Officials to consider in relation to the implementation of the MLI.

Notification of entry into effect for specific Covered Tax Agreements should be made earlier (DD Para 4.14)

We appreciate the Government's proposal to publicly announce when the MLI comes into force for each of New Zealand's DTAs. To assist with certainty and to give taxpayers the maximum opportunity possible to prepare for the modification of a DTA, it would be helpful if the Government could also publicly announce:

- the list of DTAs it wishes to modify as notified to the OECD Depository upon signing of the MLI;
- any DTAs it later adds as Covered Tax Agreements; and
- when a jurisdiction which is a party to a Covered Tax Agreement has submitted its instrument of ratification to the OECD Depository (upon notification being received from the OECD Depository) and expected date that the MLI will come into force for that DTA.

Domestic law time limit for tax refunds should be extended (DD Para 4.17)

A taxpayer should be able to claim a tax refund from Inland Revenue if that is the outcome of a Mutual Agreement Procedure (MAP) and Mandatory Binding Arbitration. Given the length of time these proceedings can take, the ability to claim the refund should not be restricted to the 4-year period currently provided for in section RM 2 of the Income Tax Act 2007. Section 78B of the Tax Administration Act 1994 could be amended to allow for an extension of time to claim a refund.

PricewaterhouseCoopers, 188 Quay Street, Private Bag 92162, Auckland 1142, New Zealand
T: +64 9 355 8000, F: +64 9 355 8001, pwc.co.nz

Any matter which is subject to MAP should be able to be subject to Mandatory Binding Arbitration (DD Appendix Para 4)

The policy aim with respect to the proposed reservation to Article 18 of the MLI for section BG 1 of the Income Tax Act 2007 is not clear. The purpose of the new arbitration mechanism is to improve the MAP dispute resolution process – in our view, any matter which is subject to the MAP should also be able to be subject to Mandatory Binding Arbitration because it will assist taxpayers to achieve a more timely resolution of disputes. Perhaps it would be more appropriate for section BG 1 to be reserved from the MAP (and as a consequence not able to be subject to Mandatory Binding Arbitration).

Should the reservation with respect to section BG 1 be extended to apply to the proposed permanent establishment anti-avoidance rule (DD Appendix Para 4)?

If the reservation to Article 18 of the MLI for section BG 1 is to be made, it may be helpful in achieving policy aims and clarity for taxpayers if the reservation extends to the proposed permanent establishment anti-avoidance rule (*BEPS – Transfer pricing and permanent establishment avoidance*).

General

We trust you find our comments useful. If you have any questions, please contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Boyce', written over a white background.

Peter Boyce
Partner

peter.boyce@nz.pwc.com
T: +64 9 355 8547

A handwritten signature in black ink, appearing to read 'Sandy Lau', written over a white background.

Sandy Lau
Director

sandy.m.lau@nz.pwc.com
T: +64 4 462 7523



Deputy Commissioner, Policy and Strategy
Inland Revenue
PO Box 2198
Wellington 6140

sent via email: policy.webmaster@ird.govt.nz

18 April 2017

Supplementary submission: New Zealand's implementation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

Dear Madam

Further to our submission dated 7 April 2017 on the implementation of the Multilateral Instrument (MLI) in NZ, we would like to make one further submission. We apologise for our original omission.

NZ should not elect to apply Article 4 of the MLI (Dual resident companies)

NZ should retain the tie breaker test for corporate tax residence in its double tax agreements. In our experience over the past 10 years, dual residence has generally arisen inadvertently where a company incorporated in one jurisdiction is effectively managed in another, and not as a result of tax planning. Removing the tie breaker test will introduce unnecessary uncertainty for a dual resident company.

Applying for a Competent Authority determination in this situation is a time consuming solution, particularly bearing mind delays already experienced by taxpayers when a tax authority in another jurisdiction is asked to certify their tax residence. A taxpayer faces uncertainty and is at risk of double tax during this time period, which it may find difficult to recover. For example, it can take more than 6 months for a taxpayer to get a certificate of residency from the IRS, and that is in a situation where the IRS is not required to reach agreement with any other competent authority.

Removal of the tie breaker test in favour of a competent authority decision will also place an unnecessary burden on competent authorities, which in many cases are already stretched for resources.

A number of NZ tax advantages which could be obtained by a company being a dual resident have been eliminated by NZ's domestic legislation already, such as an inability to use a loss to offset income of group companies, or join a tax consolidated group. Any residual concerns Officials have around the use of dual resident companies for tax avoidance purposes should be specifically dealt with in the pending hybrid rules.

We trust you find our comments useful. If you have any questions, please contact us.

Yours sincerely



Peter Boyce
Partner

Peter.boyce@nz.pwc.com
T: +64 9 355 8547



Sandy Lau
Director

sandy.m.lau@nz.pwc.com
T: +64 4 462 7523