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GLOBAL TRANSFER PRICING SERVICES

# Global Transfer Pricing Review

New Zealand

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TAX



# New Zealand



## KPMG observation

New Zealand's tax authority, Inland Revenue, has publicly endorsed the work of the Organisation for Economic Co-operation and Development (OECD) on Base Erosion and Profit Shifting (BEPS). New Zealand is an active participant at discussions regarding BEPS and has signalled that it will take a principled and co-operative approach to the recommendations of the OECD around this global focus.

The 2013/14 focus area for Inland Revenue continues to be intercompany financing, with a growing number of disputes revolving around group financing transactions. These include loans, guarantee fees, debt factoring and foreign exchange risk management. We note that the New Zealand Government has increased the funding available to Inland Revenue to use in reviewing structured finance transactions and has invested in developing significant expertise in the field of banking and financing.

Inland Revenue supports the concept of implicit credit support in relation to intra-group financial arrangements and this influences the perceived credit-worthiness of related party borrowers, with the potential to have a significant impact on Inland Revenue's determination of an arm's length interest rate.

Unilateral Advanced Pricing Agreements (APAs) remain popular and tend to be resolved quickly (6 to 12 months) at a relatively low cost to taxpayers.

## Basic information

### Tax authority name

Inland Revenue.

### Citation for transfer pricing rules

Sections GC 6 – GC 14 of the Income Tax Act 2007.

### Effective date of transfer pricing rules

1997.

### What is the relationship threshold for transfer pricing rules to apply between parties?

Cross-border arrangement between associated persons, based on 50 percent or greater common shareholding or effective control.

### What is the statute of limitations on assessment of transfer pricing adjustments?

Four years from the end of year in which the tax return is filed.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, for New Zealand-owned outbound multinational groups. Disclosures are required for Controlled Foreign Companies (CFCs).

### What types of transfer pricing information must be disclosed?

The primary activity of the CFC, details of gross revenue, royalty income, earnings before interest and tax, among other detailed financial information.

### What are the consequences of failure to prepare or submit disclosures?

None specifically related to the failure to prepare or submit the disclosure.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No statutory requirements, but requirements in practice.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Penalty protection, shifting of burden of proof, requirement in practice/ expectation of authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a "best method" rule?

Yes.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal Inland Revenue practice is to specify a due date. This is generally at least 28 days from the receipt of the information request. However, deadlines may be extended via negotiation.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes. Taxpayers can follow a prescribed dispute resolution process which includes:

- Inland Revenue issuing a notice of proposed adjustment to the taxpayer
- a conference between taxpayer and Inland Revenue
- disclosure by both parties
- adjudication and review
- assessment/amended assessment by Inland Revenue

- litigation, if both parties cannot reach an agreement in the earlier steps of the process.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only, normally 20 to 40 percent of the tax shortfall.

To what extent are transfer pricing penalties enforced?

Sometimes.

What defences are available with respect to penalties?

Specific legislative and Inland Revenue ruling requirements dictate when penalties may be imposed. Taxpayers may be able to make a case that the penalty provisions should not apply in their circumstances (e.g. reasonable care has been taken in relation to their transfer prices evidenced through supporting documentation), or may be able to apply for a reduction in penalties on the basis of prior compliance with income tax rules.

What trends are being observed currently?

KPMG in New Zealand has observed a continuing increase in the level of transfer pricing audit activity, with transfer pricing questionnaires being issued in all general income tax audits of multinationals in the last 4 to 5 years. There is also an increasing use of APAs to resolve audit disputes.

## Special considerations

Are secret comparables used by tax authorities?

Yes, but only for the purposes of transfer pricing risk assessment by Inland Revenue prior to an audit.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. In practice it is difficult to identify sufficient qualitative and quantitative information on New Zealand comparables.

Do tax authorities have requirements or preferences regarding databases for comparables?

No specific database required.

What level of interaction do tax authorities have with customs authorities?

Moderate. Inland Revenue and the New Zealand Customs Service have entered into a Memorandum of Understanding allowing the sharing of information. KPMG in New Zealand are aware of the sharing of information for the purposes of enforcing the transfer pricing rules.

Are management fees deductible?

Yes, provided they meet the requirements of the normal deductibility rules.

Are management fees subject to withholding?

No, unless they include an amount that is subject to the withholding tax rules (such as royalties or interest).

Are year-end transfer pricing adjustments permitted?

Yes, subject to meeting the arm's length requirement.

Other unique attributes?

Inland Revenue has reserved its position on Article 7 of the OECD Model Tax Convention. The Inland Revenue supports the single entity concept rather than the separate legal entity concept for branch taxation.

## Other recent developments

None.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Medium. New Zealand's double tax treaty network is focused on countries with strong trading and investment ties to New Zealand, as well as developing countries that New Zealand may have trading ties with in the future.

If extensive, is the competent authority effective in obtaining double tax relief?

Sometimes.

### When may a taxpayer submit an adjustment to competent authority?

It depends on the mutual agreement provisions of the relevant double tax agreement.

### May a taxpayer go to competent authority before paying tax?

Yes.

## Advance pricing agreements

### What APA options are available, if any?

Unilateral, bilateral, and multilateral.

### Is there a filing fee for APAs?

Yes, the fee is 322 New Zealand dollars (NZD).

### Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

### Please provide some information on how successful the APA program is and whether there are any known difficulties?

Unilateral APAs are highly successful and most APAs are concluded in a timely manner. Bilateral APAs are generally reserved for high value or high risk transactions.

## Language

### In which language or languages can documentation be filed?

English.

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Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 131196

Publication date: June 2014