



cutting through complexity

Global Transfer Pricing Review

New Zealand

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TAX



New Zealand



KPMG observation

The New Zealand Inland Revenue published a new international tax questionnaire on its website (www.ird.govt.nz/international/business/questionnaire/).

Along with the increasing global focus on Base Erosion Profit Shifting, Inland Revenue designed this new questionnaire to collect key information on financing (including cash pooling), tax governance and transfer pricing issues. It is expected that Inland Revenue will distribute the questionnaire in May 2015 to New Zealand taxpayers (or NZ groups) that are foreign-owned, and which have turnover in excess of 80 million New Zealand dollars (NZ) per year. The questionnaire currently focuses on the 2014 income year (i.e. the year-ended 31 December 2013).

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

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 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 submit disclosures?

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

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions.

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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 28 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

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, what dispute resolution options are available?

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; or
- 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 defenses 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 four to five 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.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Multiple year averages, with a preference for five years.

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 in relation to GST, which may go to issues of valuation.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. Management fees must meet the requirements of the normal deductibility rules.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Royalties must meet the requirements of the normal deductibility rules.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. Where the tax treatment of a transaction differs to the accounting treatment.

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.

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, multilateral.

Is there a filing fee for APAs?

Yes. The fee is NZD322.

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

Yes.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

No. 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.

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