

Tax Talk Bites - Update for Overseas Owned Businesses

November 2019

Inland Revenue have recently released two items that may impact on businesses who carry on cross-border activities and are majority-owned by non-residents. In this Tax Talk, we briefly discuss the impact of each item.

BEPS Disclosure Return

Inland Revenue have recently released their BEPS disclosure form and associated guidance. This form is required to be filed by taxpayers who have any of the following:

- a group debt percentage of more than 40% for thin capitalisation purposes
- a hybrid or branch mismatch
- more than \$10 million of related party borrowing

The form is applicable for periods commencing 1 July 2018, and so in some instances will need to be filed as part of the 2019 income tax return. The form can be filed separately, if the 2019 return has already been submitted.

If you have any concerns about the BEPS disclosure form, please contact your Baker Tilly Staples Rodway advisor.

Multinational Enterprises Compliance Focus

Inland Revenue have released their updated Multinational Enterprises Compliance Focus for 2019. This document was last released in 2016 and, given the significant legislative change in the ensuing period, the updated guidance is welcome.

As with such similar documents, it is helpful to see the areas Inland Revenue are focussing on. For taxpayers, this provides an opportunity to review their affairs and to ensure they are prepared for any Inland Revenue scrutiny.

Much of the document discusses more complex measures being undertaken by Inland Revenue and are more focussed on larger businesses. Nevertheless, Inland Revenue have also provided helpful comment for smaller cross border activities.

Inland Revenue have outlined ten risk indicators for overseas-owned businesses that are likely to warrant further attention from them. These indicators are:

1. Two consecutive years of tax losses
2. Negative earnings before interest and tax
3. For service charges, a greater than 5% cost plus margin
4. For distributors, a less than 3% earnings before interest, tax and exceptional items (EBITE) percentage
5. For retailers, a less than 5% EBITE percentage
6. For manufacturers, a less than 7% EBITE percentage
7. More than 33% of EBITE being made up of royalties
8. More than 20% of earnings before interest, tax, depreciation and amortisation being made up of interest
9. A group debt percentage of more than 40%
10. More than \$20 million of purchases and other operating expenses involving jurisdictions where company tax is less than 15%

Inland Revenue have stated if any one of these risk indicators are present, then additional information is likely to be requested.

Inland Revenue have also made it clear to us in recent months their international tax team is fully staffed and ready to engage in investigations and other enforcement action. While it may have been possible for smaller cross border businesses to fly under the radar previously, those days are well and truly over.

The compliance focus and recent Inland Revenue activity make the importance of maintaining quality transfer pricing documentation clear. This need not be complicated and can be designed to suit the unique circumstances of your business, considering some of the simplification measures available to smaller cross border businesses.

Beyond providing simplification measures to smaller cross border businesses, Inland Revenue also provide binding rulings and advance pricing agreements. Provided taxpayers follow the conditions of the ruling or agreement, Inland Revenue is bound to the agreed interpretation of the legislation. For businesses engaging in the process, these provide a degree of certainty in an increasingly uncertain field.

If your business is overseas owned or engages in cross-border activities with related entities, now is an opportunity to get your transfer pricing documentation in order and to consider the possibility of having a binding ruling or advance pricing agreement with Inland Revenue. Contact your Baker Tilly Staples Rodway advisor if you have any queries.

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