

BC'S BUSINESS BRIEFS

TRANSFER PRICING - TAXPAYERS WITH OVERSEAS AFFILIATES BEWARE

IRD have recently re-affirmed that transfer pricing remains an area of focus for them. They believe that there is a barrier to compliance amongst taxpayers as a result of the costs perceived to prepare transfer pricing documentation with many taxpayers adopting a "wait and see" approach to this rather, than investing the necessary time and expense to prepare such documentation. Unfortunately this approach will not work if IRD identify a taxpayer with transfer pricing issues who have not prepared suitable documentation supporting the transfer pricing policies adopted. IRD have reinforced their position with reference to the OECD's "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" in which IRD have indicated that they will expect that these guidelines should be included in the transfer pricing policies adopted.

IRD's view is that a lot of the documentation they have seen in the recent past is too waffly and in many cases uses comparable data which is not appropriate to that particular case. They also believe that many of the documentation packages prepared by consultants could be significantly streamlined with much less emphasis on law, guidelines and overseas rulings and more analysis of profit drivers and value added. This appears to us that IRD are looking for a more common sense/grounded approach to transfer pricing policies.

Some issues which IRD have identified as being of particular concern are:

- 1 Cross border current accounts where no interest is charged are not considered to be "arms length";
- 2 The importation of Offshore Losses is viewed by IRD with suspicion. What is the business case for a NZ business making support payments to an offshore associate which effectively imports the offshore losses into NZ?;
- 3 Management fees charged cross border must have supporting documentation and a business case for the charges, as must Royalties charged/paid;
- 4 IRD have a set of transfer pricing questionnaires which are designed to help in identifying issues and setting policies. These can be found at: <http://www.ird.govt.nz/transfer-pricing/workout/>



BAIGENT
CONSULTING LIMITED

- 5 Where clients have not prepared suitable policies and IRD assess additional tax, Use of Money Interest and Late Payment penalties will ensure that the costs of not preparing the necessary documentation may well outweigh costs saved along the way.

USE OF MONEY INTEREST (“UOMI”)

The deductibility or otherwise of interest charges from IRD on Income Tax has always been a point of contention with IRD maintaining that in general this interest is not deductible while many tax professionals have believed this position to be incorrect.

Government has moved to clarify the position by introducing legislation as part of the Taxation Bill about to be introduced to Parliament. This Bill includes confirmation that in general UOMI is deductible and the Bill in fact backdates this position to 1997/98 and each year in between. Any return that is yet to be filed for these periods should include a deduction for the UOMI while returns previously filed which included a deduction for UOMI which has been disallowed should be able to be re-opened under section 113 of the Tax Administration Act 1994.

THE END OF ANOTHER YEAR

2010 will not go down as one of the great years in our economic history, however on reflection it has probably been better than 2009, with the prospect of better things to come in 2011.

This will be our last newsletter for 2010 so please accept our thanks for your business this year and we wish you and your families a Merry Christmas and prosperous new year

Ross Baigent

Disclaimer of Liability: The views contained in this article are the personal views of the author. No liability will be accepted for actions taken in reliance on those views by any other person.



BAIGENT
CONSULTING LIMITED