

CA ANZ, 2018a

Taxation (Neutralising Base Erosion and Profit Shifting) Bill

08 February 2018

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We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

General Position

In formulating its submissions, Chartered Accountants Australia and New Zealand takes a best practice, public policy perspective. That is, we endeavour to provide comment on a “what is best for New Zealand” basis.

We recognise Government’s legitimate right to set tax policy direction. We comment on those policies, and also make comment on their practical implementation. Our public policy perspective means we endeavour to provide comment free from self-interest or sectorial bias.

Research confirms that in practice the best tax system is one with a broad tax base and low tax rates. Such an approach restricts the conditions that make tax avoidance attractive.

Our guiding principles in formulating this submission are that New Zealand’s tax system must not impede New Zealand’s international competitiveness; growth of the New Zealand economy; and innovation and entrepreneurship.

Recognising there are judgments and trade-offs, taxes should, as far as possible:

- be simple in their application;
- provide certainty in their application;
- be perceived as broadly fair;
- minimise the costs of compliance and administration;
- minimise distortions to the economic behavior of individuals and businesses;
- utilise businesses’ own accounting systems as the data source for calculation;
- align the obligations with the businesses’ own cash flows; and
- be imposed at an overall rate which allows adequate retention of investment funds within businesses.

We believe one of the pillars of an effective and efficient tax system is taxpayer certainty. This will increase voluntary compliance, decrease administration costs, and deliver positive economic benefits. Tax legislation must be as clear in its policy intent and application. Further, any identified errors post-enactment should be corrected without delay.

In Chartered Accountants Australia and New Zealand’s view tax legislation should not be retrospective unless it corrects an anomaly to ensure taxpayers pay no more tax than Parliament intended. Retrospective application dates undermine the principle of taxpayer certainty and the Generic Tax Policy Process.

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The Chair

Finance and Expenditure Committee

Parliament

Wellington

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Thank you for the opportunity to submit on this Bill.

As you are aware we take a public interest perspective in the creation and revision of tax policy settings.

General comments

We understand the Government is concerned about BEPS activity in New Zealand and we agree that BEPS is undesirable, in particular, because it affects the public perception, and thus the integrity, of the tax system. As an active member of the OECD, New Zealand is committed to a BEPS response. We support the introduction of BEPS legislation.

We would like to thank officials who have listened through the consultation process.

However, we remain concerned that the current package of reforms:

- leaves New Zealand as an outlier in terms of its global response;
- does not consider the wider effects on New Zealand's economy;
- includes many examples of overreach;
- lacks coherence; and
- is out of proportion relative to the problem being addressed.

We recommend that measures are prioritised and that only the most critical measures (those which address current base erosion issues for New Zealand) are enacted immediately.

[New Zealand response to OECD recommendations](#)

If New Zealand were to adopt this package of reforms it would be going further than most other OECD countries. Other countries have not adopted the measures in full because they have determined that it is not in their national interest to do so.

It is not in New Zealand's best interests to be an outlier from international norms in any international tax regime. We have past experience of this and if we continue down this path it is likely to manifest in problems in the future.

Effect on New Zealand economy

New Zealand is a net capital importer – we rely on foreign investment to grow our economy. The Inland Revenue report *New Zealand's taxation framework for inbound investment* states:

“Overall there are strong arguments for considering initiatives in [the BEPS] area. However, when considering initiatives we obviously should not lose sight of the importance of keeping New Zealand an attractive place to base a business and invest. Cost of capital issues will be an important consideration, especially in the case of interest limitation changes, where (depending on options chosen) changes are likely to have the biggest effects on the cost of capital.”

Despite this statement from 2016, there is limited analysis in the current package on the implications for the cost of capital for New Zealand businesses and, more importantly, on any overall effect on the New Zealand economy as a whole.

The Regulatory Impact Statements say that “New Zealand relies heavily on foreign direct investment to fund domestic investment and, as such, the Government is committed to ensuring New Zealand remains an attractive place for non-residents to invest.”

There is no real analysis of the impact these proposals will have on the access to investment capital for New Zealand business.

Focus of hybrid rules

The reforms include many examples of overreach. Most OECD countries need additional rules to address hybrids because they tax income on a territorial basis. New Zealand taxes income on a worldwide basis so does not need to undertake the same level of reform in order to achieve the same result. Overreach in the hybrids area will impact SMEs.

Coherence of reforms

As a result of the truncated timeframe, the reforms lack coherence. Each appears to have been developed in isolation rather than as part of an overall package. For example, we agree that excessive interest deductions should not be allowed but the proposals as drafted ignore fundamental tax policy principles such as respect for an arm's length rate.

Prioritisation

We recommend that the implementation of the BEPS reforms be prioritised. There are core issues which should be the initial focus. The core issues are those which address potential current base erosion and include:

- double dips;
- thin capitalisation and asset values;

