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Our ref: BEPS PETPSupplementary

Private and confidential

BEPS - PE and transfer pricing strengthening
C/- Deputy Commissioner, Policy and Strategy
PO Box 2198
Wellington 6140

19 April 2017

Dear Madam

Supplementary submission

We have provided submissions on the deemed PE and transfer pricing strengthening proposals. We have a further submission on the proposals to amend the life insurance rules.

The Document notes that under New Zealand's double taxation agreements ("DTAs") with Russia, Japan, and Canada that New Zealand is unable to tax the life insurance business if a resident of those countries does not have a permanent establishment in New Zealand.

Briefly, New Zealand's framework for taxing insurance business of a non-resident is:

- For life insurance, to tax all business offered or entered into in New Zealand;
- For non-life insurance to tax 10% of the premium income if there is no fixed establishment in New Zealand.

New Zealand's DTAs typically preserve New Zealand's entitlement to tax insurance business in this way whether or not a permanent establishment exists.

The document does not say why these DTAs have not followed this approach.

We have only been able to determine two possibilities:

- New Zealand accepted a proposal by those countries to change its standard approach to taxing insurance business;
- The change in these DTAs was inadvertent, mostly likely due to a change in drafting of the relevant provision.

Neither of these reasons support the proposals. In fact, they indicate that the proposal is unprincipled. The proposals unilaterally alter the basis of taxation. The correct approach would be to renegotiate the relevant provision with the other country.

We do not accept a technical response that the proposals do not tax the non-resident insurer. The denial of the deduction for a premium (albeit offset by not taxing claims received), makes the policyholder a proxy taxpayer for the non-resident insurer. This change is likely to lead the policyholder to try to alter the terms of the agreement so the non-resident insurer is effectively bearing the tax. The substance of the proposal is the non-resident's profit is taxed.

Further, the proposal to amend the FIF rules potentially creates double taxation.

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For completeness, we note our objection to the proposals is one of principle. We are not aware of insurers using the relevant DTAs. However, we consider the proposals unprincipled in their unilateral change. As we note in our submissions on Interest Rate Limitations, it is also a worrying trend that the substance of a proposal is not made transparent. In this case, the proposal seems to be directed to correcting an error rather than addressing a matter of principle.

Further information

Please do not hesitate to contact us – John Cantin, on 04 816 4518, and Nick Hope, on 09 363 3210 – if you would like to discuss our comments in more detail.

Yours sincerely



John Cantin
Partner



Nick Hope
Director