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Our ref: Document2

Rob Falk

National Advisor
Technical Standards, Legal Services
Inland Revenue
(sent via email)

5 February 2021

Dear Rob

ED0225: administration of the imported mismatch rule (section FH 11)

Thank you for the opportunity to comment on the above exposure draft.

We welcome the clarification of the Commissioner's expectations as to how taxpayers should meet their self-assessment obligations when applying the imported mismatch hybrid rule in section FH 11 of the Income Tax Act 2007 ("the Act") and the guidance on how the rule will be administered by Inland Revenue.

We set out below points where we consider further clarification is required.

Scope of Operational Statement

Inland Revenue should publish a list of the countries that it considers qualifies as having rules that are equivalent to New Zealand's. We expect that Inland Revenue would already have such a list as it needs to have its own view for relevant countries to be able to audit compliance (or to apply risk ratings for transactions with particular countries.)

We acknowledge it may not be possible to cover all countries. At a minimum, it would be useful if Inland Revenue published its view on countries that New Zealand commonly trades with.

It is not clear from the draft whether the receipt of a statement by the New Zealand taxpayer from the group tax function acts as a "safe harbour" from further action from Inland Revenue. Our assumption is that it will not but it would be helpful for this to be clearly stated.

Further, it is not clear what the consequences are if a taxpayer does not obtain a statement - does the absence of a statement show a lack of reasonable care in taking a tax position? And will taxpayers be able to seek the certification should Inland Revenue ask?

On a more minor note, paragraph 6 of the draft refers to the Operational Statement applying to all arrangements referred to in sections FH 8 - FH11. However, the draft only relates to section FH 11.

Practical implementation

We note that there is no proposed application date for the Operational Statement and it is not clear whether it will apply to 2020 tax returns and disclosures due 31 March 2021. It would be

helpful to also clarify what approach Inland Revenue will take to 2019 tax returns and disclosures that were due 31 March 2020 i.e. will a retrospective certification be expected.

We consider Inland Revenue should clarify its process for asking for the existence of a statement i.e. whether it will be in the international questionnaire, the BEPS disclosure (this would seemingly make the most sense) or some other method. If the BEPS disclosure, we expect that Inland Revenue will use the answer to consider whether further inquiry is required. If this the case, the statement should state the Commissioner's disclosure expectations and the consequences of not making a full disclosure.

Contact us

If you have any queries regarding this submission or would like to discuss, please contact me on (04) 816 4518 or contact Neesha Morar on 09 367 5982.

Yours sincerely

John Cantin
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