



Inland Revenue
Te Tari Taake

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International Tax Disputes

New Zealand Experience

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Resolving International Disputes Under Domestic Law

- ❖ Binding Rulings
- ❖ Disputes Process
- ❖ Court Decisions



Binding Rulings

- ❖ Statutory Binding Rulings Regime
- ❖ Three types of rulings: Public Rulings, Product Rulings & Private Rulings
- ❖ Focus is interpretation of the law on assumed facts
- ❖ Will rule on anti avoidance
- ❖ Fee based on cost recovery
- ❖ Decision binds the Commissioner



Disputes Process

- ❖ Administered by IR post investigation but prior to any judicial process
- ❖ “All cards on the table” involving legislated steps before adjustment to taxpayer’s self assessment is made
- ❖ Non-statutory phases – conferences and adjudication
- ❖ If dispute unresolved it goes to court
- ❖ Defines court proceedings through disclosure requirements relating to legal propositions



Court Process

- ❖ Post adjudication and assessment by Commissioner
- ❖ Can go to either Tax Court or High Court
- ❖ High value disputes to High Court in practice
- ❖ Two levels of appeal:
 - Court of Appeal
 - Supreme Court



Resolution of Disputes under Treaties

- ❖ Mutual Agreement Procedure (MAP)
- ❖ Advance Pricing Agreements (Subset of MAP)
- ❖ Arbitration



Source and Nature of MAP Disputes

Most MAP cases with our biggest trading partners

- ❖ Australia
- ❖ United Kingdom
- ❖ United States



Source and Nature of MAP Disputes cont'd

Types of MAP cases include:

- ❖ Is there a Permanent Establishment?
- ❖ Residence
- ❖ Tax arbitrage transactions

Bulk of NZ MAP cases are transfer pricing



Source and Nature of MAP Disputes cont'd

NZ treaties follow OECD Model in material respects:

- ❖ Article 5 Permanent Establishment
- ❖ Article 7 Business Profits
- ❖ Article 9 Associated Enterprises
- ❖ Article 25 Mutual Agreement Procedure
- ❖ Article 26 Exchange of Information



Role of Transfer Pricing Guidelines

1. Minimise number of MAP disputes
2. Common framework for resolving disputes
3. Principle based approach. No “horse trading”



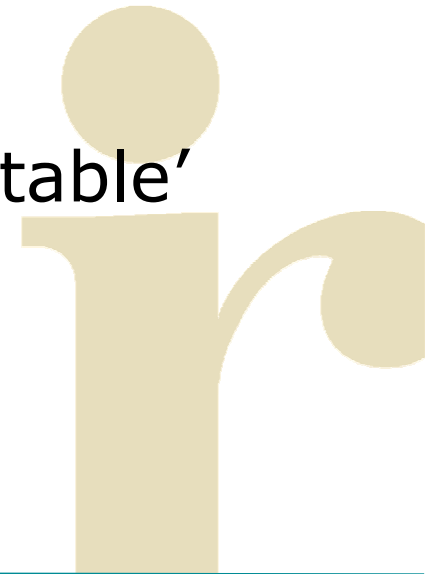
Role of Competent Authorities

- ❖ Skilled & experienced staff on TPG and EOI
- ❖ Personnel solution orientated
- ❖ Respect spirit of treaty to relieve double taxation



Role of Taxpayer & Advisers

- ❖ Compliance with TPG
- ❖ Quality documentation
- ❖ Early cooperation – ‘all cards on table’



Advance Pricing Agreements

- ❖ Advance Pricing Agreement (APAs) on the rise

- ❖ Common Taxpayer concerns
 - cost
 - timeliness
 - results



Advance Pricing Agreements cont'd

- ❖ Key advantages of APAs are:
 - No pre-established negotiating positions
 - Advance business certainty especially for difficult issues (eg, valuing intangibles)
 - Sustainable resolution of issues



Arbitration

- ❖ Article 25(5) of MTC
 - Taxpayer presents case for arbitration if disputes unresolved within two years

- ❖ Article 25(6) & (7) Australia/New Zealand Tax Treaty
 - Arbitration limited to issues of fact
 - Delayed entry into force

