

Consultation with Tax Agents – 31 May 2012

Purpose:

Feedback regarding:

- the IRC’s transfer pricing program;
- the International Dealings Schedule and instructions;
- the Losses Schedule and instructions; and
- Any other issues.

Present:

Dr Daton, Commissioner of Tax
 Brian Wilson, AC Tax Audit
 Grace Torova, AC Collect Taxes
 Ueri Pahina, AC Assess & Prioritise
 Ketty Masu, Director LB Assessing
 Sam Loi, Director LB Audit
 Michael Daimo, SME Auditor
 Tim Fraser, SGP Adviser
 Geoff Smith, Transfer Pricing (ATO)

Michael Frazer, Partner PWC
 Jason Ellis, Partner PWC
 Noel Smith, Director Deloitte

Apologies
 Bouk Wagenaar, Deloitte
 Ernst & Young

Issues Discussed:

Item	Issue	IRC Response	Allocated to	Status
	IDS & International Tax			
1	The IDS requires details of the ultimate beneficial owner to be provided. Externals questioned who is the ultimate beneficial owner in situations where a PNG entity is held by an offshore holding company which may be a vehicle for a joint venture project. Does the IRC require details of the actual holding company (which probably correctly answers the question but may not be	IRC commented that we would probably prefer details on both. Further discussion with ATO and updating of IDS instructions probably required.	Sam	In progress.

	useful to IRC), details of the actual joint venturers, or details of both.			
2	Given the ambiguity of some of the questions in the IDS and “newness of the return” taxpayers, agents and IRC may still have different perspectives of what is required. Externals sought assurance that where a “best effort” had been made to complete the IDS but something had been inadvertently overlooked, the IRC would contact the agent to rectify the error without sending the entire return back to the taxpayer.	Dr Daton confirmed that the IRC would contact agents directly where staff had any concerns about the completion of the IDS. Ueri is to communicate this direction to staff.	Ueri	In progress.
3	Question 1(a) queries international related party transactions. Neither the IDS nor the instructions adequately define these terms. Further, externals have had difficulty determining exactly what was required even after referring to TC 2011/2. Is it just related parties, or do we want to capture broader international dealings? Do we need to consider the extremely complex definitions for associates? What should be included in transaction with another entity in which you had a 30% stake if another stakeholder held the other 70% of interests?	The IRC noted that the question was really targeted around controlled transactions. Geoff will discuss this further with the ATO transfer pricing team supporting the IRC.	Geoff	In progress.
4	The table at question 3 was raised. What are taxpayers supposed to do where there are both income and expenses from related party dealings? Should an average be used, or should they select the higher rate?	There was consensus that the form needed to be revised to insert an additional table: one for income and another for expenses with related parties. The form needs to be re-distributed electronically to all tax agents.	Sam & Rakatani	In progress.
5	In relation to question 4, it is possible that taxpayers may borrow from related parties in	The IRC agreed that several further fields should be inserted to the table to	Sam & Rakatani	In progress.

	multiple jurisdictions and/or lend to related parties in multiple jurisdictions. The form requires an “average balance” for the entirety of the amount lent or borrowed and a country code to identify the country from which the amount was borrowed or lent. How are taxpayers to disclose multiple jurisdictions?	allow dissection of the loans between the countries involved. The form needs to be re-distributed electronically to all tax agents.		
6	In relation to question 4, determining the average balance is time consuming for tax agents and ultimately relies on special purpose calculation by the client to complete this label. Is it really necessary?	During the discussion it was noted that these labels appear to be modelled on the draft of the new Australian IDS. While initially it was suggested these were relating to the Thin Cap rules in Australia, it was also noted that an average balance makes the interest paid or received far more meaningful from a transfer pricing perspective. Geoff Smith will discuss with the ATO team in Brisbane and provide some advice to the IRC via Sam.	Geoff & Sam	In progress.
7	It was also noted that there seems to be an overlap of information collected in the IDS and in Statement 4 of Form C return.	The IRC is looking to undertake a more comprehensive review of each of the tax return forms in the future and wants to ensure that the IDS is a complete stand alone schedule regardless of what is collected in Form C.		No further action required.
8	It was noted that the wording of questions 5 & 6 are such that you may answer “yes” at box 5 to having an interest in a foreign company or trust, while answering “zero” at box 6 which asks the number of “associated international foreign entities”.	The IRC agreed that where the interests reported at box 5 were minority interests, this may in fact be the correct response, depending on the specifics of the circumstances. Accordingly, tax agents appear to be correctly understanding the purpose of these		No further action required.

		questions.		
9	Tax agents are preparing the IDS for aid agencies because such entities are required to lodge the Form C return. This seems to be excessive.	IRC agreed that aid agencies should not have to lodge the IDS. The IRC will provide further guidance as to what entities are not required to lodge the IDS and update the instructions accordingly. The website will also be updated to communicate this.	Sam	Awaiting action.
10	Tax agents are preparing the IDS only for companies resident in PNG. Where foreign resident company operates in PNG through a branch, there is no requirement to lodge an IDS since there is no international dealing.	<p>The IRC noted that this was currently how the instructions read, but that there was an intention to capture cost allocations between a branch and a head office. For the purposes of the IDS, branches should be treated as a entity separate from its head office.</p> <p>The IRC also noted that in the first year, only companies were required to lodge the IDS, but in subsequent years it was intended that partnerships and trusts would also be required to lodge the IDS.</p> <p>The IRC will provide further guidance in relation to these issues.</p>	Geoff, ATO TP team & Sam.	In progress.
11	FCWT provides real arbitrage opportunities for taxpayers.	The IRC agreed this can provide anomalous results and should revisit the FCWT regime with a possible view to introducing a cap on access to the regime.	Technical	IRC to consider internally and possibly raise with Treasury.
12	Externals indicated that they would like to engage in further dialogue as to how the IRC characterises risk. They would also appreciate updates as to the progress of the transfer pricing	The IRC intends to maintain an ongoing dialogue with tax agents regarding the implementation of the program generally and to discuss further the	Sam	Revisit in October.

	implementation project.	risks that are being identified from analysis of the schedules. The ATO will be conducting further twinning programs in 2012 and the IRC will likely work off the back of those programs in terms of providing further information in relation to risk identification and the characterisation of risk.		
13	General discussion regarding thin capitalisation ensued. Externals suggested that a thin cap provisions covering taxpayers generally was required. Opinion was split as to whether the anti-avoidance provisions could be used to address thin capitalisation in extreme cases.	The IRC indicated they had recently been profiling several SME and Large taxpayers and had identified a large taxpayer whose capitalisation ratios were extremely low (<1% equity). The IRC is considering whether to commence an audit on the taxpayer and whether the anti-avoidance provisions could be applicable in this instance.	Technical Committee	In progress. Listed for discussion with Treasury.
	Losses			
14	Externals indicated that losses instruction had never been finalised or published.	IRC agreed to finalise these as soon as possible and disseminate to tax agents.	Ketty	Awaiting action.
15	Externals suggested that it would be useful if IRC could generate a report from the new SIGTAS system of the losses carried forward to enable reconciliation with taxpayers accounts.	IRC agreed this would be very useful in the future, but would not be possible in the first year since that data is currently recorded in paper files and would not be entered into the system until the first year of lodgments had been processed. IRC will seek to develop this functionality whilst still in the development stage.	Ketty & Adrian	In progress.
16	Externals suggested that the notice of assessment could also provide a balance of losses	The IRC agrees in principle and is currently working on this with the	Ketty & Adrian	Referred to SIGTAS project team.

	carried forward. If this was separate to the balance the taxpayer was carrying, a query could be resolved with the IRC and the record corrected.	software developer. It was noted however, that any losses carried forward on the assessment were not a validation by the IRC of either of the utilisation tests, or even that the loss was validly incurred in the first instance, but rather a record keeping matter.		
17	Externals noted that expenditure on mining exploration was quarantined under a separate regime and carried forward for future deduction. Taxpayers sometimes got this confused and thought of these as general tax losses.	The IRC confirmed that these expenditures were not captured under the loss schedule. A clarifying comment will be put in the draft instructions to cover this issue.	Ketty	Awaiting action.
	Other			
18	PWC raised an issue regarding insurance companies applying withholding on an insurance agent. The income tax return (Form C) allows only one country to be listed and one rate of WHT. Although this can be manually dealt with, it may cause problems in SIGTAS.	The IRC agrees and thanks externals for raising the issue. We will have to work on this with the project leader and software developer.	Ketty & Adrian	Referred to SIGTAS project team.
19	Further in relation to insurance agents, externals mentioned that there is often only one transaction from which to withhold, yet the taxpayer cannot remit the funds to the IRC until they have lodged a return and been assessed. It was suggested that some form of regime similar to interest or dividend withholding could be introduced.	IRC agreed this sounded sensible in principle, although the inconvenience caused to taxpayers was relatively isolated. The IRC undertook to consider whether an administrative arrangement could be introduced or whether legislative change would be required. A separate account may also need to be raised in SIGTAS for this type of withholding.	Grace & Ueri	Awaiting action.
20	Externals raised concerns about postal addresses not being updated in a timely fashion, particularly for one client.	The IRC apologised for this ongoing problem and agreed to make a bigger effort to update postal addresses in a	Deloitte & Dr Daton	List provided by Deloitte 5 June. Currently being actioned.

		timely manner. In relation to the specific taxpayers raised, the agent was invited to provide Dr Daton with a specific list which he would personally ensure was actioned.		
21	Tax agents queried the current status of the Taxation Circular program and what topics had been selected and whether there would be any consultation with them regarding the Circulars.	<p>IRC advised that four topics had been selected and work was well advanced on the drafts. The IRC would be looking in the very near future to consult with them specifically in relation to future topics for tax circulars and in particular on the four topics currently selected being:</p> <ul style="list-style-type: none"> • Late lodgment penalties; • The Tourism Incentive scheme; • Employee v contractor relationships; and • The new redundancy concession. 		No immediate action required.
22	Tax agents noted that these meetings were very helpful and indicated they would like to set up a regular forum.	Dr Daton advised that he was currently in the process of doing this and looked forward to meeting with them on a regular basis.	Dr Daton	Awaiting action.