

26 June 2014

CFC and FIF Remedials
C/- Deputy Commissioner
Policy and Strategy Division
Inland Revenue Department
PO Box 2198
WELLINGTON 6140

By email: policy.webmaster@ird.govt.nz

Re: Consultation on CFC and FIF remedials

The New Zealand Law Society (Law Society) appreciates the opportunity to comment on the controlled foreign company (CFC) rules and foreign investment funds (FIF) rules, which apply to New Zealand residents investing overseas.

Reporting requirements for tax credits/losses being carried forward

The Law Society does not support this proposal. To require taxpayers to file the calculations each year adds to compliance costs while providing information to IRD that IRD will not use. The better solution would be to require taxpayers to provide sufficient information to IRD when the taxpayer claims the credit or loss.

Unexpired prepaid expenditure

If this change is retrospective there should be a savings provision so that taxpayers who have already filed their returns do not have to take a different tax position.

Transfer pricing rules and CFCs

We question whether the issue this proposal identifies is really a concern. Given the 5% test, the issue will be relatively small but making CFCs comply with the transfer pricing rules is likely to be complicated and will be costly.

Selective consolidation

An anti-avoidance rule would be preferable over a consistency rule. The proposal for a consistency rule is based on a simple case, whereas reality is likely to be more complicated and a consistency rule is likely to catch taxpayers when that is not intended.

Selective active business test application

As with selective consolidation, an anti-avoidance rule would be preferable over a consistency rule.

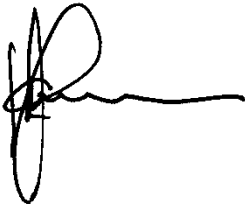
FDR usual vs. FDR unit-valuing

The Law Society does not support this proposal. Taxpayers should not be prevented from incurring greater compliance costs to determine a more accurate assessment. But they also should not be penalised if they no longer want to incur those greater costs. If this proposal goes ahead, a consistency rule would be better than a prospective election process.

Conclusion

This submission was prepared with assistance from the Law Society's Tax Law Committee. If you wish to discuss this further please do not hesitate to contact the committee convenor Neil Russ, through the committee secretary Rhyn Visser (04 463 2962), rhyn.visser@lawsociety.org.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal line extending to the right.

Chris Moore
President