BEPS Disclosure Guidance

The BEPS disclosure must be completed in myIR. You can log in or register for an account through our website. To find the disclosure, go to your **Income Tax** account. Under the **Periods** tab, select the year for which you want to make the disclosure. On the right-hand side under **I want to...**, choose **Submit BEPS disclosure**.

There are three distinct parts to the BEPS disclosure:
- Hybrid and Branch Mismatches
- Thin Capitalisation Group Information
- Restricted Transfer Pricing Rules

You should leave boxes blank if they do not relate to you. For example, if you have thin capitalisation information to disclose but no hybrid or branch mismatches, you should leave the hybrid disclosure sections blank and proceed to the thin capitalisation pages.

Hybrid and Branch Mismatches

Hybrid and branch mismatch arrangements use differences in the tax treatment of an instrument, entity or branch under the laws of two or more countries to eliminate, defer or reduce the aggregate amount of income tax payable in those countries.

The hybrids disclosure asks whether the taxpayer is affected by hybrid and branch mismatch arrangements and for information relating to those arrangements.

A summary table of the substantive hybrid and branch mismatch sections and the arrangements they relate to follows:

FH 3 and FH 4	Hybrid financial instruments, including timing mismatches
FH 5 and FH 6	Hybrid entity and branch payment mismatches
FH 7	Payments made to reverse hybrid entities or branches
FH 8 and FH 9	Double deductions arising from hybrid entities or branches
FH 10	Double deductions arising from dual resident companies
FH 11	Imported mismatch payments
FH 12	Offsetting surplus assessable income against mismatch amounts
FH 13 and FH 14	Elections to surrender a mismatch and thereby opt out of the hybrid rules

Hybrid Disclosure Types

Under the Hybrid Disclosure Types section, you will be presented with five different types of hybrid arrangements in a checkbox list for which you can make a disclosure:
- Hybrid entity/branch/dual resident disclosure
- Hybrid payment disclosure
- Hybrid receipt disclosure
- Double deduction disclosure
- Imported mismatch disclosure

This part of the disclosure is included so that Inland Revenue can understand the types of arrangements that you are disclosing. You must select at least one type of arrangement in order to add a new hybrid arrangement for which you can provide more specific information.

You should consider the guidance questions in the *Hybrids Compliance and Disclosure* table which will help in determining whether the hybrid and branch mismatch rules apply to your arrangements and whether you need to make a disclosure of a particular type. The last column of the table identifies which type of hybrid arrangement in the BEPS disclosure you should disclose to Inland Revenue if the guidance question and commentary has indicated that a particular provision applies to your affairs. This table is also located in the special report on hybrid and branch mismatch rules (from page 90). You may find it easier to consider the guidance questions, complete your income tax return accordingly, and then complete the BEPS disclosure.

If you have made a dividend election or opaque election (under sections FH 13 or 14 of the Income Tax Act 2007) for a hybrid arrangement you have, you do not have to make a hybrid disclosure for that arrangement.

If you have a hybrid or branch arrangement that accumulates surplus assessable income with no subpart FH counteraction, you do not have to make a hybrid disclosure, though you may still find it useful to do so. However, Inland Revenue may seek an explanation for a BEPS disclosure that includes a surplus assessable income amount in the opening balance (i.e. an amount carried forward from prior years) that is not supported by an amount of surplus assessable income in the closing balance from a previous year's disclosure.

Some hybrid arrangements will have features that require disclosure of more than one arrangement type. For instance, guidance question 9 in the *Hybrids Compliance and Disclosure* table indicates that you should be selecting hybrid entity/branch/dual resident disclosure *and* double deduction disclosure.

An imported mismatch disclosure is not required for a payment that is outside the scope of the imported mismatch rule because that payment has been made to an entity in a country that has its own imported mismatch rule.

New Hybrid or Branch Arrangement

Upon selecting one or more types of hybrid arrangement to disclose, you must add a new hybrid arrangement. If you have more than one hybrid arrangement, you must complete this section for each arrangement. For instance, if you have a hybrid financial instrument and an imported mismatch, you should add a new hybrid arrangement for each of those arrangements and then disclose information relating to each arrangement.

Name of counterparty

Hybrid mismatches usually have an entity on the other side of the arrangement. For instance, a hybrid financial instrument will have a payer and a payee. If your involvement in the arrangement is as the payer (for which you would be making a "Hybrid payment disclosure"), the payee would be the counterparty. For an entity mismatch, the counterparty may be the hybrid entity itself or the owner of the entity depending on the nature and location of the entity. Where there is more than one entity that could be considered to be a relevant counterparty, you should select the entity with which you have the closer connection. For instance, in a reverse hybrid payment mismatch to which section FH 7 would apply in New Zealand, the primary counterparty entity would be the reverse hybrid entity located in a foreign jurisdiction, rather than the owners of that entity. For an imported mismatch arrangement, you should select the immediate payee entity (which is not necessarily one of the entities the hybrid mismatch relates to). Dual resident mismatches and branch mismatches will not usually have a counterparty. For these mismatches the counterparty can be stated to be the taxpayer that is completing the disclosure.

Counterparty tax ID

You must nominate the counterparty's tax ID. This will typically be the Tax Identification Number (TIN) of the counterparty that is used under the OECD's approach to the Common Reporting Standard (CRS) and Automatic Exchange of Information (AEOI). If the counterparty is the taxpayer and has its own IRD number, it is sufficient to provide that number instead of an overseas tax ID.

Counterparty tax residence

You must select a jurisdiction from the dropdown list that the counterparty is tax resident in. It is acceptable to select New Zealand if the relevant counterparty is tax resident in New Zealand (for instance, in the case of a dual resident mismatch or a branch mismatch involving a foreign branch of a New Zealand resident).

Type of arrangement

For this arrangement, you must indicate its type. The options in this dropdown list are the five types of hybrid arrangements described above. If the arrangement has two arrangement types that it relates to, it is sufficient to select one.

Amount of counteraction in New Zealand under subpart FH

You must disclose the counteraction effect that sections FH 3-11 have had on the arrangement in the income year. This amount will be an amount of deduction denial or inclusion of income and in many cases will equal the previous amount disclosed (the amount of payment/receipt/deduction). Note that an amount of counteraction that is effectively reversed due to the presence of surplus assessable income (through operation of section FH 12) should still be disclosed at this point as there are separate mismatch amount and surplus assessable income questions later in the disclosure.

Counteraction applied in another jurisdiction

If applicable, you must also disclose whether another jurisdiction has applied a counteraction to the arrangement with their hybrid and branch mismatch rules. This is a "yes" or "no" answer. A "yes" answer should be given in situations where New Zealand's hybrid and branch mismatch rules give priority to another jurisdiction's rules to apply to the relevant arrangement. For instance, the application of sections FH 4, FH 6 and FH 9 depend on the relevant foreign jurisdiction not having hybrid rules that apply to the particular arrangement in the income year.

Name of the jurisdiction applying the counteraction (if any)

If you answered "yes" to the preceding question in relation to this arrangement, you must notify us of the jurisdiction that applied that counteraction. If you answered "no", then you can leave this box blank.

Mismatch Amounts and Surplus Assessable Income Amounts

The next part of the hybrid and branch disclosure applies to mismatch amounts and surplus assessable income. If the arrangement you are disclosing is dealt with under sections FH 3, FH 4, FH 7 or FH 11 (which do not give rise to mismatch amounts), then all amounts in this part of the disclosure should be left blank for that arrangement.

This part of the disclosure should be completed for each hybrid arrangement you have created in the previous section of the BEPS disclosure.

The design of the two ledgers, one for mismatch amounts and one for surplus assessable income, is intended to assist you in complying with the technical mechanics of mismatch amounts and surplus assessable income and to keep track of those amounts over multiple

years. The following tables provide guidance for what should be disclosed in each row. If a particular ledger row does not apply to your arrangement in the income year, you should disclose an amount of zero for that row. No amount disclosed for a row should be less than zero.

Mismatch amounts	
Opening balance	This is the mismatch amounts carried forward from a previous year as per section FH 12(6). For the first income year that the hybrid rules apply to an arrangement, this amount will be zero. For following years, the amount should be the closing balance amount of the prior year.
ADD: Mismatch amounts arising	This is the mismatch amounts that have arisen during the income year due to the application of sections FH 5, 6, 8, 9, or 10 in relation to the relevant mismatch situation.
LESS: Mismatch amounts set off	This is the mismatch amounts that have been set off against the person's own surplus assessable income in the income year under section FH 12(2). This amount should be equal to the amount disclosed in the "surplus assessable income set off" row below. Note that mismatch amounts set off against the surplus assessable income of a company in the same group are dealt with in a separate row below.
LESS: Mismatch amounts eliminated	This is the mismatch amounts that do not satisfy the continuity requirement for carrying forward amounts to future income years under section FH 12(8).
LESS: Stranded mismatch amounts	This is the mismatch amounts that satisfy the requirements of section FH 12(9), which applies to stranded losses.
LESS: Grouped mismatch amounts	This is the mismatch amounts that have been offset against the surplus assessable income of a company that is part of the same group, consistent with section FH 12(10). Note that the relevant group company should be separately completing this BEPS disclosure and should declare the amount under "grouped surplus assessable income" in the row below.
EQUALS: Closing balance	This is the leftover mismatch amounts for an income year. These mismatch amounts should be carried forward to the following income year.

Surplus assessable income	
Opening balance	This is the surplus assessable income carried forward from a previous year as per section FH 12(7). For the first income year that the hybrid rules apply to an arrangement, this amount will be zero. For following years, the amount should be the closing balance amount of the prior year (and equal to the "earlier" amount in section FH 12(4)(a)).
ADD: Surplus assessable income arising	This is the surplus assessable income that arises for the income year as per section FH 12(3), not including the "earlier amount" which is incorporated into the opening balance.

LESS: Surplus assessable income set off	This is surplus assessable income that has been set off against the person's own mismatch amounts in the income year under section FH 12(2). This amount should be equal to the amount disclosed in the "mismatch amounts set off" row above. Note that surplus assessable income set off against the mismatch amounts of a company in the same group are dealt with in a separate row below.
LESS: Surplus assessable income eliminated	This is surplus assessable income that does not satisfy the continuity requirement for carrying forward amounts to future income years under section FH 12(8).
LESS: Surplus assessable income tax credit	This is the surplus assessable income that would be carried forward to the next income year but for section FH 12(7)(a) which reduces surplus assessable income to be carried forward based on tax credits granted by a foreign jurisdiction.
LESS: Grouped surplus assessable income	This amount is for surplus assessable income that has been offset against the mismatch amounts of a company that is part of the same group, consistent with section FH 12(10). Note that the relevant group company should be separately completing this BEPS disclosure and should declare that grouped mismatch amount under "grouped mismatch amounts" in the row above.
EQUALS: Closing balance	This amount represents the leftover balance of surplus assessable income for an income year. This amount should be carried forward to the following income year.

Thin Capitalisation Group Information

Debt percentages determined under the thin capitalisation rules have historically been based on an entity's debt relative to its gross assets. The thin capitalisation rules in subpart FE now require debt percentages be based on an entity's assets net of its "non-debt liabilities".

Thin capitalisation calculations and the response to the following questions are required on a group basis. If you have completed this disclosure for one member of your group, you do not have to answer the thin capitalisation questions in the disclosure for your other members. You do not have to complete this disclosure if your group is not required to comply with the thin capitalisation requirements or you are a member of a New Zealand Banking Group.

Has your group had a NZ group debt percentage for thin capitalisation purposes of 40% or higher at any measurement date during the year (s. FE 12)

Groups that are subject to thin capitalisation can choose to measure their NZ group debt percentage on a measurement date which will be either daily, at the end of each 3-month period or the end of each income year – refer to section FE 8.

You should tick this box if your NZ group debt percentage was 40% or higher at any of the measurement dates that apply to your group (that you have relied upon for thin capitalisation purposes). Note that for groups that calculate their NZ group debt percentage on a daily or 3-monthly basis the legislation averages their percentage over each of these dates whereas this question is targeted at individual measurement dates. Therefore, it would be possible for your group to be under 40% for an income year but still be over 40% at one or more measurement dates.

If, for the current income year, your NZ group debt percentage was under 40% at each of the measurement dates you do not have to answer any further questions in this section. If at any measurement date your NZ group debt percentage was 40% or higher you should answer all of the remaining questions in this section.

Group interest expense (arising from cross-border related borrowing)

This is the total interest expense deductions of your group for the current year arising from borrowing that is cross-border related borrowing as defined in section GC 6(3B).

As with all other thin capitalisation questions in this disclosure this amount should not take into account any apportionment of interest under section FE 6 for a group with a NZ group debt percentage above the relevant thin capitalisation threshold or any other adjustments such as the on-lending concession in section FE 13 or under the hybrid rules.

Group interest expense (other)

This is the total interest expense deductions of your group for the current year arising from borrowing that is not cross-border related borrowing. This amount would be equal to the total deduction amount in section FE 6(3)(a) less the total from the question immediately above: "Group interest expense (arising from cross-border related borrowing)".

Group interest-bearing debt (cross-border related borrowing)

For this question and the next four questions in this section, if you have a measurement date of daily or 3-monthly you should use the average figure from each of your measurement dates.

This will be equal to total group debt as calculated under section FE 15 where the loan is cross-border related borrowing.

Group interest-bearing debt (other)

This will be equal to total group debt as calculated under section FE 15 minus the amount in the fourth question of this section: "Group interest-bearing debt (cross-border related borrowing)".

Total group assets

Please provide the total group assets figure as calculated under section FE 16.

Group "non-debt liabilities" adjustment made to total assets for purposes of the thin capitalisation rules (s. FE 16B)

Please provide the total group non-debt liabilities figure as calculated under section FE 16B.

Group thin capitalisation percentage of the New Zealand group

Please provide the debt percentage of the New Zealand group as calculated under section FE 12(3). Do not include decimals.

To assist with comparability across groups please provide this figure without adjusting for on-lending or considering the impact of your group's worldwide debt percentage. For this reason, we recognise that the percentage for your group may be above 60% without necessarily triggering an income adjustment to be included in the question below.

Thin capitalisation income adjustment calculated under s. FE 6(2) (if an excess debt entity)

If your New Zealand group debt percentage is greater than the threshold, you should include the amount of income under section CH 9 that is calculated under the formula in section FE 6(2).

Restricted Transfer Pricing

New rules require related-party loans between a non-resident lender and a New Zealand-resident borrower to be priced using a restricted transfer pricing approach. Under these rules, specific rules and parameters are applied to certain inbound related-party loans to:

- determine the credit rating of New Zealand borrowers at a high risk of BEPS, which will typically be either one or two notches below the ultimate parent's credit rating; and
- remove any features not typically found in third party debt in order to calculate (in combination with the credit rating rule) the appropriate amount of interest that is deductible on the debt.

Separate rules apply to financial institutions such as banks and insurance companies.

At any point during the year have you had $10 million or more of cross-border related borrowing?

Tick yes to this box if, at any point during the year, you had $10 million or more of cross-border related borrowing as defined in section GC 6(3B). This is different from the number provided in the fourth thin capitalisation question in this BEPS disclosure as that question relates to your group whereas this question is specific to each taxpayer.

At this amount of cross-border related borrowing you would need to consider whether the restricted transfer pricing rules have application to your group, although dependent on your group's specific circumstances these rules may not impact on the amount of deductible interest.

Have you incurred interest on a cross-border related borrowing where the interest rate under an existing loan agreement has been reduced from the original interest rate in order to fall within any of the following sections?

- **Restricted credit rating (s. GC 16(9))**
- **Group credit rating (s. GC 16(10))**
- **Optional credit rating (s. GC 16(11))**
- **Insuring or lending person (s. GC 17)**
- **Loan features that may be disregarded (s. GC 18(3))**

The purpose of this question is to identify whether a pricing change has been made in order to fall within the restricted transfer pricing rule thresholds and, as a result, all interest amounts are deductible.

For each of the sections listed above please answer yes if, for any cross-border related borrowing that you have incurred interest during the current year, the interest rate on that borrowing has been reduced in order to comply with that section. That is to say, you consider the rate of interest that your group would have paid and would have been deductible under standard transfer pricing rules for that particular arrangement (or feature of the arrangement) would have been higher if not for the existence of that section.

This question is only targeted at actual arrangements outstanding for any part of the year. You do not need to answer yes to the extent you repaid a loan, chose not to enter into a loan or chose not to include a feature in order to meet the requirements of the restricted transfer pricing rules.

What is the value of non-deductible interest under each of the following sections?

- **Restricted credit rating (s. GC 16(9))**
- **Group credit rating (s. GC 16(10))**
- **Optional credit rating (s. GC 16(11))**
- **Insuring or lending person (s. GC 17)**
- **Loan Features that may be disregarded (s. GC 18(3))**

The purpose of this question is to identify non-deductible amounts under the restricted transfer pricing rules.

For each of the sections listed above please provide, for all cross-border related borrowing that you have incurred interest during the current year, the total interest that has not been deducted because of that particular section.

For loans where sections GC 16(9) to (11) or GC 17 have been applied to determine an appropriate credit rating please provide the total interest that has been incurred but has not been deducted because the implied credit rating in the loan agreement is higher than that calculated under the relevant provision.

For loans with a feature disregarded under section GC 18(3) please provide the total interest that has been incurred but has not been deducted because that feature has been removed from the pricing analysis.

If you have a cross-border related borrowing that has non-deductible interest under both a credit rating and a loan features section, please record the total amount under the relevant credit rating section. It is not necessary to split out the individual credit rating and loan features effects.

Have you relied on any of the following sections to allow a specific feature to be taken into account in pricing a cross-border related borrowing:

- **Term of loan adjustment (s. GC 18(8))**
- **Features reflecting other borrowing (s. GC 18(9))**
- **Borrowing required for some insuring or lending persons (GC 18(10))**

Please tick yes to each of the following sections if you have one or more loans with a feature listed in section GC 18(3) that has been included in the pricing analysis for the following reasons:

- You have third party debt with a contractual term of greater than 5 years;
- You have third party debt with the same feature; or
- You are an insuring or lending person and the feature was included to satisfy regulatory or solvency requirements set by the Reserve Bank.