



Tax Working Group
Te Awheawhe Tāke

Tax Working Group Information Release

Release Document

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This paper contains advice that has been prepared by the Tax Working Group Secretariat for consideration by the Tax Working Group.

The advice represents the preliminary views of the Secretariat and does not necessarily represent the views of the Group or the Government.

Minutes

Date: Thursday 19 and Friday 20 July 2018

Location: The Treasury, No 1 The Terrace

Attendees: Sir Michael Cullen (Chair), Geof Nightingale, Joanne Hodge, Kirk Hope, Robin Oliver, Nick Malarao, Craig Elliffe, Marjan van den Belt, Hinerangi Raumati, Michelle Redington

Independent Advisor: Andrea Black

Secretariat: Paul Kilford, Mark Vink, Matt Benge, Bevan Lye, Emma Grigg, Phil Whittington, Michael Sherwood, Shane Domican, Fiona McCarthy, Hannah Overton, Sam Rowe, Carmel Peters, Keith Taylor, Kelvin Stewart, Geoff Leggett, Peter Frawley, Mike Nutsford, Bary Hollow, Keith Taylor, Chris Gillion, Trish leong, Casey Plunket

Apologies: Bill Rosenberg, Kirk Hope

1. Previous minutes, administration, forward agenda, stocktake

Noted	<ul style="list-style-type: none"> • Noted minutes for previous meeting.
Agreed	<ul style="list-style-type: none"> • Need to do further work on detail of lower tax rates for KiwiSaver • On 17 August to review what further work needs to be commissioned for Secretariat between interim report and final report • Geof Nightingale to Chair next meeting • Recommended changes to minutes regarding Charities: <ul style="list-style-type: none"> ○ To put in interim report possibility of implementing proposal outlined by Talia Smart proposal but state it would require further work on detail and consideration regarding what circumstances accumulation is acceptable ○ Change final bullet point to “consider impact on Maori authorities” rather than “difficulties” ○ Change Action for Secretariat to make sure it is about knowing the implications on Maori Authority foundations of potential changes ○ Table of charities issues to be considered in drafting of interim report

Actions for the Secretariat	<ul style="list-style-type: none"> • Provide further analysis in impact on METRs of extension of taxation of capital income • Add organisational/academic submitters to stakeholder list • Circulate stakeholder list to see if anyone wants to add additional groups
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2. Public Engagement for interim report

Noted	<ul style="list-style-type: none"> • The Group considered a range of public engagement options provided by the secretariat for the interim report, from simple press release to an advertising campaign along similar lines to the submissions background document
Agreed	<ul style="list-style-type: none"> • Engagement strategy for interim report to involve: <ul style="list-style-type: none"> ○ Interim report being on TWG website with an email address for feedback ○ Sending interim report to key stakeholder groups, ○ Sir Michael to do media interviews, ○ Group members to attend relevant conferences, focus group, and hui. ○ Secretariat to produce a sample one-page fact sheet on Extending the Taxation of Capital Income for the Group to consider.

3. Secondary schools challenge

Noted	<ul style="list-style-type: none"> • Received 45 entries from 23 schools • Submissions cared about how policies affect future generations and sustainability such as environment • Main themes were income tax, capital gains tax and environment tax • Comment from students was that it was difficult to understand tax and to find simple information regarding it
Actions for the Secretariat	<ul style="list-style-type: none"> • Send winning entries to Group

4. Sub Group Report Back

Noted	<ul style="list-style-type: none"> • Planned recommendations for inclusion in interim report outlined in appendix. • There is a process in place for understanding how the extension of the taxation of capital income would affect the Māori asset base
Agreed	<ul style="list-style-type: none"> • Response to Ministers regarding ring-fencing of rental losses to outline that Group considers that the Government should consider whether loss ring-fencing should continue to apply following an extension of the taxation of capital income • To prepare write up of PIE and KiwiSaver issues

Actions for the Secretariat	<ul style="list-style-type: none"> • Provide data for potential inclusion in interim report regarding assets held by PIEs and how CGT would impact them
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CGT design considerations (current state of sub-group deliberations, so subject to change as conversations continue)

What to tax
<i>To include recommendations in interim report</i>
<ul style="list-style-type: none"> • Defined list of assets which are taxable including: <ul style="list-style-type: none"> ○ land (including holiday homes); ○ business assets; and ○ interests in equity (shares, PIEs, KiwiSaver, life insurance) • List of assets does not include <ul style="list-style-type: none"> ○ personal assets (such as gold or jewellery); <ul style="list-style-type: none"> ▪ except for land; or ▪ if acquired for purpose of resale ○ family home • Family home defined as: <ul style="list-style-type: none"> ○ centre of vital interest (where you live/where your family are); ○ a couple can have separate family homes; ○ the family home exception continues for a few years after you and your family is absent from home (to allow time for sales); ○ family homes held by trust can have main home exception where beneficiary uses as main home subject to rules regarding distribution to beneficiary (with detail to be worked through); ○ work is continuing on how family home exceptions works in a Māori context.

When to tax	
<i>To include recommendations in interim report</i>	<i>Interim report to explore options and ask for feedback</i>
<p>Rollover</p> <ul style="list-style-type: none"> • Principles for rollover are that rollover should apply when there is no change in economic substance or no cash to pay tax • If rollover on death should be rollover for gifts made out of natural love and affection <p>Realisation</p> <ul style="list-style-type: none"> • Tax is on realisation not accruals. • Rules on realisation are the same as existing rules for revenue account property • Deemed realisation: <ul style="list-style-type: none"> ○ on emigration (except for NZ land); and 	<p>Detail of rollover</p> <ul style="list-style-type: none"> • Just for same economic ownership • Or illiquid taxable asset transferred for consideration that is not convertible to cash • To consider options for rollover on death <p>Other issues</p>

<ul style="list-style-type: none"> ○ when assets destroyed. <p>Other issues</p> <ul style="list-style-type: none"> • Gifts to charities are not taxed • Deemed acquisition on emigration • If emigrate can elect no deemed realisation of assets until sold 	<ul style="list-style-type: none"> • consider rule for significant damage/loss such as seismic or leaky buildings
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Calculating gains and losses and rate of tax
To include recommendations in interim report
<ul style="list-style-type: none"> • Calculate capital gain through the difference between realisation price less acquisition costs plus capitalised expenses • No deductions allowed for personal expenditure on capital assets (such as repairs and maintenance and interest on holiday homes) • No ring-fencing of losses except portfolio shares • Marginal income tax rates

Entities	
Subgroup to consider further	Interim report to explore options and ask for feedback
<ul style="list-style-type: none"> • Should we retain FDR for non-Australasian shares? • Considering sale of shares by active CFC and sale of shares in active CFC • Considering current rule regarding untaxed capital gains able to be distributed tax free on wind-up 	<ul style="list-style-type: none"> • Raise issue regarding double taxation, including outline of problem, how it may be resolved through changes in share prices or paying imputed dividends, and potential options • To provide range of options regarding KiwiSaver and multi-rate PIEs including: <ul style="list-style-type: none"> ○ partnership approach; ○ accruals tax with lower rate; ○ tax gains at single rate, tax; ○ KiwiSaver schemes on FDR basis; or ○ no capital gains tax for KiwiSaver or other PIEs

Tax administration and social policy
Subgroup to consider further
<ul style="list-style-type: none"> • Should there be annual returns outlining cost base of assets and capital improvement? • Should we have withholding taxes? • Should gains be subject to provisional tax or terminal tax? • Should capital gains be included for WFF, student loans and child support?

5. Housing affordability

Noted	<ul style="list-style-type: none"> • Secretariat paper
Agreed	<ul style="list-style-type: none"> • To recommend repeal of the 10 year rule • Group to consider depreciation on buildings as part of revenue reducing options • Not to recommend zero-rating GST on new homes • Group considers there is potential merit in options regarding tax on vacant land, tax on empty homes, and changing ratings from capital value to land value • Recommend that Review of Local Government funding should consider options regarding tax on vacant land, tax on empty homes, and changing ratings from capital value to land value

6. Digital Economy

Noted	<ul style="list-style-type: none"> • Update from officials on international developments regarding the taxation of the digital economy • Concerns that going too far with extension of international tax framework could expose New Zealand exporters with risks
Agreed	<ul style="list-style-type: none"> • New Zealand should continue to participate in the discussions at the OECD, with a view to supporting a consensus for change to the international tax framework that would allow appropriate taxation of the digital economy • An equalisation tax is something that can be considered further in New Zealand but the desirability of moving in this direction depends on <ul style="list-style-type: none"> ○ A critical mass of other countries also adopting an equalisation tax (particularly Australia) ○ New Zealand companies are not unduly affected by the tax; and ○ The tax will not just be passed on to New Zealand consumers • That if a critical mass of other countries adopt an equalisation tax, such that the risk to New Zealand exporters is minimal then New Zealand should look to introduce an equalisation tax • Skepticism on ability to achieve consensus. NZ should be prepared with designed equalisation tax to implement if appropriate. • That interim report should make clear that focus of equalisation taxes is on digital services where there are user contributions and value creation in the country. Application on goods is potentially risky for New Zealand due to impact on exporters.

7. Integrity

Collections

Noted	<ul style="list-style-type: none"> • Nick Malarao presentation and Secretariat paper
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Agreed	<ul style="list-style-type: none"> • Interim report to use framework outlined in presentation from Nick Malarao • Interim report to draw from Secretariat papers in presenting specific recommendations • To recommend the introduction of options similar to director penalty notices to enable attribution of tax debt to directors • To recommend that these options should only apply to GST, PAYE, and other deductions made from employees • Interim report should signal issues regarding inconsistency of criminal penalties between PAYE and GST with further work needed for recommendations in final report • Interim report should signal option for departure prohibition order with further work needed for recommendations in final report • Withholding on current account balances not being considered further as part of collections but issues regarding current account balances to be considered further as part of consideration of closely held companies • Options to pierce corporate veil will address main collections issue with corporate and trading trusts. Other issues regarding trusts to be considered further as part of further consideration of trusts. • To support work being considered for Inland Revenue to obtain better information from businesses.
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Hidden Economy

Noted	<ul style="list-style-type: none"> • Current rules do allow IR to collect some data. IR wants a reporting system that requires information to be given regularly. Issues with platforms held overseas considered manageable. • The most recent tax bill introduced into the House, and the BEPS Act, provide additional information gathering powers to IR • IR will have access to new data sets in the future to help identify non-compliance. • Other countries have other approaches. <ul style="list-style-type: none"> ○ Australia does not allow deductions on payments if compliance/withholding rules not complied with. ○ UK requires increased reporting if you work with Government. Australia is also interested in this
Agreed	<ul style="list-style-type: none"> • The hidden economy section in the interim report needs to be more specific. The paper is too general. • Be clear in the interim report about what has been done on information gathering e.g. the tax bill recently introduced in Parliament. • The interim report could refer to work on new data sets, e.g. trade accounts with suppliers, in order to get the behavioural response from, taxpayers before the tools come online. • Interim report to support the increased use of withholding and reporting for contractor income. • Interim report to support the continued auditing of the hidden economy in order to encourage behavioural changes, even if the recovery rate from that auditing is low. • Interim report should support the continued education and advertising around the hidden economy

Trusts

Noted	<ul style="list-style-type: none"> Note recent work by the Law Commission in this area Note that GB 5 already provides an anti-avoidance rule There may be some specific technical issues with some uses of trusts, but these can be dealt with in the work programme
Agreed	<ul style="list-style-type: none"> To the extent that trusts can still trade losses, the rules should be strengthened to stop this If the Group decides to extend the taxation of capital income, the issue of streaming will be largely addressed Interim report to have clear explanation of where law now is now that rates are aligned. Explanation of why now largely not a problem Agree that there are sufficient constraints in place to prevent income splitting through trusts in abusive or contrived ways. Reference the collections proposals will deal with the abuses. Need to explain in the interim report why income splitting is fine in the situations that we allow it Welfare Advisory Group should look at trusts being used to shelter assets when applying for residential care subsidy

Closely-held companies

Noted	<ul style="list-style-type: none"> Extending the taxation of capital income would help deal with the issue of dividend stripping There are a number of ways in which to deal with the issue of debit current accounts. Underlying issue is misalignment with company and personal tax scale.
Agreed	<ul style="list-style-type: none"> IR is doing work around debit current accounts. The Group supports this work continuing as it blurs the issue of the corporate veil. Interim report to canvas that options include CIR being able to get security over the current account and/or a deemed dividend being triggered after 2-3 years.

8. Tax Administration Issues

Tax advocate/ombudsman

Noted	<ul style="list-style-type: none"> General support for the current disputes process, which provides a good service for medium to large taxpayers A tax Ombudsman There are arguments for having a tax advocate either inside, or outside, IR. There is an argument for a shortened disputes process for tax payers who have a dispute that is less than a specified de minimis.
Agreed	<ul style="list-style-type: none"> Recommend establishing a tax advocate, possibly to be set up as a departmental agency within IR.

	<ul style="list-style-type: none"> • Recommend having someone within the Ombudsman's Office with sufficient knowledge of the tax and social policy systems so they can deal with administrative issues people have with IR. Could also deal with complaints from future collections agency. Complaints to go first to IR with standard for compliant to be at Judicial Review level. • A truncated disputes process for smaller disputes along lines of NZICA/LS proposal to be considered.
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GTPP

Noted	<ul style="list-style-type: none"> • GTPP is working well in general, but some recent policies have left some practitioners feeling ignored. • Stakeholders outside the tax community also not currently integrated. • There is more need for earlier engagement, ideally at the problem definition stage. • It is important that Treasury continues to have a strong role in tax policy development. Treasury can help apply the living standards framework to policy development. • The classical approach to tax policy is not enough. There needs to be more than just engagement for the sake of engagement. It needs to have a purpose. • Group supportive of existing review at IR that is embracing these points.
Agreed	<ul style="list-style-type: none"> • The Group supports the current review of GTPP by IR. • Support for earlier, more frequent, and good faith engagement. • Interim report to also stress importance of Treasury as well as senior deep tax technical skills at IR.

Transparency

Noted	<ul style="list-style-type: none"> • The Australian approach of making some taxpayer information available to the public resulted in the media having a misunderstanding of what the data meant. • Discussion of nordic approach but note NZ not ready for this. • There is a lack of empirical tax research in New Zealand. More transparency around tax information could improve research in this area. • Open question as to whether environmental information should be collected by IRD. Are they the best agency to collect this? • Open question as to whether IR is currently collecting the best data to inform policy development or tax administration.
Agreed	<ul style="list-style-type: none"> • There should be stronger access to statistical tax information, but with continued protection of individual privacy. • Environmental tax related information should be collected by Inland Revenue • Need to reconsider what is the best data IR should be collecting.

Purpose statement

Noted	<ul style="list-style-type: none"> • Tax legislation is complex and intrusive. A purpose statement would help be clear to the public what the legislation is doing, and why. • A purpose statement could also help the courts in applying tax legislation by giving them explicit permission to look at supporting material.
Agreed	<ul style="list-style-type: none"> • Recommend that the Government should consider if tax legislation should set out what the purpose is. • Agree that the interim report should recommend that the Government investigate using a general purpose statement for tax legislation, covering the areas set out in the paper. Focus on parliamentary intent and the purpose of taxation.

9. Potential Revenue Reducing Options

Noted	<ul style="list-style-type: none"> • Note that the Group has not agreed to measures that will generate significant revenue • Note that changes to the tax system are unlikely to be the key to improving New Zealand's productivity performance. • Productivity to be defined as that which increases all four capitals • Note that there could be a better term than "revenue reducing options". Another option could be "recycling revenue from tax increases". • Note that the Government would have other options for using additional revenues, including transfers, government expenditure or saving the revenue to reduce taxes on future generations
Agreed	<ul style="list-style-type: none"> • Agreed that the objectives that the Group wishes to prioritise is improving the wellbeing of New Zealanders, including improvements to all four capitals. • The options agreed to by the Group should be listed in the interim report without prioritisation • The interim report would recommend the Government consider the following policies if it extended the taxation of capital income: <ul style="list-style-type: none"> - Reduce personal income taxes for those on low and middle incomes through changes to rates and/or thresholds - Reintroducing depreciation on commercial buildings and multi-unit residential buildings. - Relaxing loss continuity provisions targeted at fast growing, innovative firms. - Reducing compliance costs for small businesses through changes to various thresholds and other measures. • The interim report would not recommend: <ul style="list-style-type: none"> - inflation indexing income tax thresholds - inflation indexing taxation of interest income - implementing the CAANZ proposed small business changes - accelerated depreciation for capital investment • The interim report should note that changes to the income tax system if appropriately targeted at low income earners would be more progressive than a GST reduction. • The company tax rate should remain at 28%, but should be kept under review with monitoring of international developments.

	<ul style="list-style-type: none"> • The interim report should articulate concern around loss trading, and to note that work on loss continuity is ongoing. • Agree that if the Group recommends extending the taxation of capital income to also recommend reform to the treatment of black-hole expenditure. • Agree to consider recommending reconsidering the loss-ring-fencing if the Group recommends extending the taxation of capital income. • The interim report would address the balance of productive vs speculative economy by noting that extending the taxation of capital income would encourage a shift in capital investment away from activities that currently generate untaxed capital gains.
Actions for the Secretariat	<ul style="list-style-type: none"> • The Secretariat will come back to the Group with more information on the effect of exempting the Superfund from tax.

10. Nationally Significant Infrastructure (NZ Superfund Submission)

Noted	<ul style="list-style-type: none"> • New Zealand needs the expertise that Sovereign Wealth Funds bring (e.g. track records on infrastructure projects). • Need to think about whether using the tax system is the correct lever to achieve the desired outcome. • Need to also think about the importance of the submission's proposal for regulatory approvals to be fast-tracked? If it is of small importance, tax may be the option. But, if it is of large importance, tax may not be the answer.
Agreed	<ul style="list-style-type: none"> • The Secretariat will prepare a note on the advantages and disadvantages arising out of the proposal, pointing out any potential hazards. The note will also consider whether using the tax system is the correct lever to achieve the desired outcome.

11. Interim Report

Process

Agreed	<ul style="list-style-type: none"> • As first-draft chapters are created, they will be put onto Diligent. • Word versions will be emailed to those TWG members that have volunteered to be responsible for individual chapters. • One member from each chapter group will be responsible for consolidating the comments (the consolidator). • TWG members are to talk amongst themselves and the consolidator will send an agreed version (with track changes) back to the Secretariat by the end of Tuesday 31 July. • That agreed version will be uploaded onto Diligent on Wednesday 1 August. • At the next meeting on 3 August, TWG will discuss anything members are fundamentally opposed to in the chapters (i.e. with a focus on deal-breakers rather than the nuance of particular arguments).
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Māori perspectives on environmental taxes

Noted	<ul style="list-style-type: none"> Noted the Group's commissioned report "A Māori Perspective on Environmental Taxes and Economic Tools" prepared by Tina Porou.
Agreed	<ul style="list-style-type: none"> The report should be released on the Group's website and circulated with Ministers. The tikanga identified in the report should be fed into the interim report; the other points identified should be considered post-interim report.

Tikanga framework

Noted	<ul style="list-style-type: none"> Following submissions, two tikanga hui were held in Wellington and Auckland to determine the value a tikanga framework would have and what key tikanga concepts would be most applicable. The hui were attended by government officials, representatives from some of the Māori organisations that submitted, and some representatives from academia. Based on feedback from the hui, officials drafted a high-level indicative tikanga framework as a starting point for ongoing discussion and consultation. The framework incorporates the three tikanga from the Group's call for submissions (manaakitanga, whanaungatanga, and kaitiakitanga), with the concept of ōhanga, to form an all-encompassing framework for Aotearoa. The tikanga framework incorporates the four capitals of the Living Standards framework; and its development is running alongside that of the Living Standards Framework. The tikanga framework is a working draft, which will continue to be tested and developed with input from a range of tax and tikanga expertise.
Agreed	<ul style="list-style-type: none"> The tikanga framework will be included in the interim report as a work in progress. Officials will test the tikanga with experts in the field by commissioning an academic piece.