



Tax Working Group Information Release

Release Document

February 2019

taxworkinggroup.govt.nz/key-documents

This paper has been prepared by the Secretariat to the Tax Working Group 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 whole Group or the Government.

Some papers contain draft suggested text for the Final Report. This text does not constitute the considered views of the Group. Please see the Final Report for the agreed position of the Group.

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;
- [2] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials;
- [3] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions;
- [4] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [1] appearing where information has been withheld in a release document refers to section 9(2)(a).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

Minutes

Date: Thursday 8 November and Friday 9 November

Location: Inland Revenue, Wellington (8 November), The Treasury, Wellington (9 November)

Attendees: *Group:* Sir Michael Cullen (Chair), Geof Nightingale, Kirk Hope, Michelle Redington, Nick Malarao, Robin Oliver, Craig Elliffe, Bill Rosenberg, Joanne Hodge, Hinerangi Raumati-Tu'ua, Marjan van den Belt, Nick Malarao,
Independent Advisor: Andrea Black

Secretariat: Mark Vink, Samantha Aldridge, Paul Kilford, Steve Mack, Matt Benge, Bevan Lye, Scott Petty (Note taker), Phil Whittington, Bary Hollow, Casey Plunket, Carmel Peters, Patricia leong, Emily O'Connell, Tia Greenaway, Gordon Witte, Jordan Ward

External: Sacha McMeeking¹ (present for item 2)

1. Administration

| | |
|------------------------------------|---|
| Noted | <ul style="list-style-type: none"> • Minutes for previous meeting • The Secretariat's forward agenda |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Make changes to meeting 21 minutes such that they reflect: <ul style="list-style-type: none"> ○ That in the context of KiwiSaver and a tax concession in the form of a reduced rate, there may be other options for the Government to look at to encourage savings ○ In relation to the options provided to Government on seismic strengthening and depreciation, if building depreciation is reintroduced, it should apply to all residential rental property not just "multi-unit dwellings" ○ That the Group agreed to go through Interim Report recommendations and quantify their fiscal cost where possible ○ That the Group noted in relation to tax concessions for nationally significant infrastructure, natural capital should be factored in ○ That the Group noted in relation to seismic strengthening and depreciation, greenbuild needed consideration and may merit a different rate of depreciation recognising its sustainability ○ That the Group did not make recommendations in relation to personal income tax thresholds; there was discussion but not agreement ○ That the Group had discussed a more generous discount for retirement savings. I.e. something further than the PIE tax rate |

¹ Senior Lecturer, University of Canterbury

| | |
|--|---|
| | <p>advantage. Also it was noted that FDR should not favour foreign share investment over domestic shares.</p> <ul style="list-style-type: none"> ○ That the Group notes in relation to its recommended review of the fringe benefit tax and entertainment regimes, that the intent would be to reduce overall compliance costs with a “close enough is good enough” approach. • Create six slides per subject for the Tax Working Group The Future of Tax in New Zealand Symposium • Put submissions on Diligent and categorise them into organisations, individuals etc. • Put together Secretariat paper on views of Group’s CGT design |
|--|---|

2. He Ara Waiora

| | |
|---------------|--|
| Noted | <ul style="list-style-type: none"> • Sacha McMeeking’s paper providing an independent view on He Ara Waiora |
| Agreed | <ul style="list-style-type: none"> • To apply framework at high level to some recommendations in the final report (e.g. in relation to environmental taxes), with caveat that the detail is still to be worked through • To integrate He Ara Waiora into the frameworks chapter of final report • That He Ara Waiora should be sent to the Minister of Finance with a recommendation that it be further developed as part of the Living Standards Framework by the Treasury |

3. Consultation report back

| | |
|--------------|---|
| Noted | <ul style="list-style-type: none"> • Some significant organisation submissions to the Group’s Interim Report have not yet been received • Geof Nightingale’s reporting back from consultation with health advocacy groups: <ul style="list-style-type: none"> ○ The Group could have gone further on corrective taxes ○ There is a language issue; corrective taxes implies a penalising nature to the measure, health/wellbeing taxes preferred ○ Support for environmental framework ○ The Group could go further than rationalising alcohol excise rates • The lack of strong evidence in New Zealand on corrective taxes. E.g. for sugar, distinction between showing that it is harmful and demonstrating that tax is the appropriate response • The Ministers’ letter to the Group asking for work to be provided to relevant agencies on the topic of corrective taxes • Bill Rosenberg’s reporting back from consultation with civil society organisations with a range of views expressed: <ul style="list-style-type: none"> ○ Tax and transfer systems need to be looked at together, not separate ○ Regressivity of GST wasn’t emphasised enough in Group’s interim report ○ The distributional impacts of taxing more capital gains should be considered further ○ Working groups should be working more closely together ○ Inland Revenue should be collecting data on wealth of New Zealanders |
|--------------|---|

| | |
|--|--|
| | <ul style="list-style-type: none"> ○ A graph in the interim report on tax and transfers gave the impression that those on lower incomes could be a drain on society; this should be reframed ○ Financial transactions tax, wealth tax, gifting, and taxing the family home (perhaps with a threshold) should be back on the Group's agenda |
|--|--|

4. Māori assets

| | |
|------------------------------------|--|
| Noted | <ul style="list-style-type: none"> • Secretariat paper on Māori assets and update on He Ara Waiora • A note that the independent advisor had prepared on the topic • Some Māori issues will be covered by Group's general approaches, e.g. succession of Māori interests on death – roll-over relief • Further to the matters agreed to below, iwi-iwi transactions should be considered further, and other issues relating to the Māori collectively-owned assets may be revealed in future consultation |
| Agreed | <ul style="list-style-type: none"> • No change of ownership in substance principle to include iwi to hapū transfers of assets, as well as hapū to hapū transfers • Transactions relating to Māori freehold land should have specific treatment, for example rollover relief or an exemption, but further consultation with Māori required • Roll-over relief principle for Māori organisations seeking to recover ancestral land, noting some issues require further consideration including whether just the last transaction or the full chain of transactions • Transactions to gain ownership of preferred assets (asset rationalisation) should receive rollover relief (possibly time-limited) |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Consider how general Group approach on taxing gains affects Māori collectively owned assets; integrate Māori issues into discussion as appropriate • Change final report text as per agreed actions above |

5. RFRM

| | |
|------------------------------------|--|
| Noted | <ul style="list-style-type: none"> • Secretariat paper on RFRM • Property investment industry's opposition due to cash flow impacts |
| Agreed | <ul style="list-style-type: none"> • The Group prefers taxing gains on a realised basis over RFRM • RFRM could be an option to be left open for Govt to consider, with tax paid on RFRM creditable against brightline tax liability on the same asset • There should be an appendix to the final report on RFRM |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Packages scenarios for next meeting (23) to include RFRM |

6. Roll-over²

| | |
|----------------------|---|
| <p>Noted</p> | <ul style="list-style-type: none"> • Secretariat paper and costings on roll-over variations • From consultation with Australian experts: <ul style="list-style-type: none"> ○ Roll-over removes certainty of taxing a gain ○ Gifting a significant hole on the Australian capital gains tax base ○ Australian rules drive distortions in relation to large corporate deals (demergers) • For roll-over on death, Māori freehold land would be illiquid so rolled over • No roll-over relief for gifting may drive people to retain assets until death • Very difficult to know how much roll-over relief for gifting will affect fiscals • International aspects of emigration were noted (to be dealt with later in the meeting) • That in reducing a large distortion (no taxation of some capital income), may inevitably have to introduce smaller distortions into the tax system |
| <p>Agreed</p> | <p>Death:</p> <ul style="list-style-type: none"> • Final report to record two main options for roll-over relief on death; full roll-over and roll-over on illiquid assets only • Majority of the Group prefers full roll-over <p>Gifting</p> <ul style="list-style-type: none"> • Final report to record two main options for roll-over relief on gifting; full roll-over or no roll-over • Majority of the Group preferred no roll-over • Minority of the Group preferred the same roll-over approaches to be applied to death and gifting <p>Business assets</p> <ul style="list-style-type: none"> • No roll-over relief for large businesses • Agreed to recommend two options to Government on the nature of small business roll-over: <ul style="list-style-type: none"> ○ Restricted to like-for-like assets (with no concession at the shareholder level) ○ Unrestricted as to nature of assets • Recommend that roll-over should be restricted to \$0-\$5m turnover threshold, measured as an average over five years • Recommend that Government should not disincentivise conversion of non-sustainable business to more sustainable business (noting that tax may not be the best way to ensure this). <p>Savings</p> <ul style="list-style-type: none"> • Recommending a reduced rate (i.e. 28% to align with retirement tax rate under KiwiSaver) for taxation of gains up to a certain amount (\$1m gains discussed by the Group) that is realised when a person is in retirement age, has held a business asset for a threshold of time (15 years discussed) |

² This topic was considered on both days of the meeting.

| | |
|------------------------------------|--|
| Actions for the Secretariat | <ul style="list-style-type: none"> • To incorporate roll-over suboptions in packages discussion for next Group meeting • To produce compliance cost options and loss ringfencing advice for next Group meeting • To produce a note on scrip-for-scrip and demerger ideas • Produce final report text as per agreed actions above |
|------------------------------------|--|

7. Final report structure/planning

| | |
|------------------------------------|--|
| Noted | <ul style="list-style-type: none"> • Secretariat's proposed outline of final report: <ul style="list-style-type: none"> ○ Generally accepted ○ In Vol 1, housing and retirement savings could be separated ○ Approach is to fit in Māori issues as appropriate in relation to general approach. Frameworks chapter will incorporate He Ara Waiora. ○ Reflecting earlier discussion on RFRM, to include an appendix on it that is descriptive, not analytical |
| Agreed | <ul style="list-style-type: none"> • To have two full days of meetings on 22 and 23 Nov to finish off policy issues • 30th Nov for Secretariat to circulate draft – to be discussed at 6-7 Dec meeting. • To circulate final draft and send to Ministers before end of January • There will be a brief summary reporting back on consultation in the final report |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Prepare a 'menu for ministers' type document for Group that discusses where tax will hit hard and how to lessen the blows • Prepare note on valuation day and options relating to that • Resend things already sent (final report text), acknowledging some might change, plus bullet point sketch of other parts of the report by 16th Nov • Courier docs (draft final reports) to members for editing if necessary |

8. Environment

| | |
|---------------|---|
| Noted | <ul style="list-style-type: none"> • The Group did not adopt the following recommendations from the consultation report (<i>Tax and the environment – consultation and final report chapter</i>): <ul style="list-style-type: none"> ○ Rec 3c: Recommend the Climate Commission be given powers to manage New Zealand's carbon market ○ Rec 3e: Recommend introduction of individual carbon budgets |
| Agreed | <ul style="list-style-type: none"> • To include an "Environmental and Ecological Outcomes" chapter in the final report, based on the interim report text [Rec 1] • To include the following edits to the Final Report chapter as detailed in the Working Group paper: <ul style="list-style-type: none"> ○ Rec 2a: Add text on environmental challenges ○ Rec 2b: Clarify the Group's view on agriculture and ETS ○ Rec 2c: Identify Māori rights and interests as a priority issue for carbon ○ Rec 2d: Add a chart on sources and uses of environmental tax revenue ○ Rec 3a: Externality tax framework changes |

| | |
|------------------------------------|--|
| | <ul style="list-style-type: none"> ○ Rec 3d: Add a third scenario in the greenhouse gas fiscal potential table ○ Rec 3k: Expand description of Environmental Footprint Tax • To critique the natural resources framework with reference to intertemporal fairness / kaitiakitanga, with a revised definition of intertemporal fairness (link to other frameworks/principles relating to stewardship) [relating to Rec 3b] • That the Government should expand its environmental tax capabilities (and that IR more generally should be strengthened in a number of areas incl environment, Māori, audit generally, integrity/hidden economy) [relating to Rec 3g] • That the Commissioner of the environment should provide Gov with independent advice on environmental tax work of Govt [relating to Rec 3h] • To indicate that the issue of pesticide taxes had been looked at, but that tax was not found to be a recommended instrument, in part because very high prices might be needed to impact behaviour. To also recommend that the Government strengthen regulation to stop the harmful use of pesticides [relating to Rec 3i] • To adopt the short, medium, long term vision and narrative for environmental taxes as laid out in paper/slides agreed to with following caveats [relating to Recs 3l, 3m, 3n]: <ul style="list-style-type: none"> ○ Group not agreeing to charge resource rents in short term – focus on externalities ○ Group not agreeing to endorse adoption environmental footprint tax, but rather recommend its consideration as a possible long term tax instrument ○ Biodiversity tax credits to be explored as part of long term vision • To recommend that when new environmental pricing instruments are being considered, the merits of tax vs trading schemes are reviewed [relating to Rec 3j] • That if significant progress is not made in the near term on implementing output based pricing measures or other regulatory measures, the Group recommends the introduction of input based pricing instruments, including on fertilizer [relating to Rec 3f] <p><i>Concessions</i></p> <ul style="list-style-type: none"> • Recommend to Gov to review the following provisions: <ul style="list-style-type: none"> ○ 7 year accelerated deductions for petroleum industry ○ farming business expenditure rules ○ tax regime for forestry • Integrate first three recs in Marjan's note into short term- long term vision/narrative <ul style="list-style-type: none"> • No further substantive changes |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Jordan/Marjan/Andrea to rework chapter 9 as per agreed actions above |

9. Domestic shares and corporate groups

| | |
|--------------|---|
| Noted | <ul style="list-style-type: none"> • Secretariat paper on the topic • Issues such as deferred tax to be in future Govt work (discussion doc), not final report • Secretariat and Robin Oliver to look into issue of share buybacks |
|--------------|---|

| | |
|------------------------------------|--|
| Agreed | <ul style="list-style-type: none"> • In light of timetabling difficulties, Government should figure out the detail (such as some of the recommendations in the Secretariat paper on this topic) later in consultation. Government should be able to develop answers to technical questions as part of its general consultation. • The imputation credit continuity rules can be relaxed, so that credits are not eliminated by a change of ownership, but may be restricted under rules similar to those in Australia; • To the extent losses on share sales become deductible, pressure for changes to the loss continuity rules (e.g., for small start ups) will be reduced; • In the context of natural person shareholder-company relationship, to avoid double deductions adjustments to the cost basis of shares may be required when a company's losses are used to offset another company's income without full consideration paid; • A rule may be required to prevent double deductions where a company is sold holding depreciated assets (and a mirror optional rule may be appropriate where the company holds appreciated assets); • Repeal the qualifying company regime – as the main benefit of this regime disappears with an extension of tax on capital gains. |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Change final report text as per agreed actions above |

10. International aspects

| | |
|---------------|--|
| Noted | <ul style="list-style-type: none"> • Secretariat paper on the topic • That foreign shares investment should not be incentivised over domestic shares |
| Agreed | <ul style="list-style-type: none"> • That the deemed disposal on emigration should be limited to assets that cease to be liable to tax when a person ceases to be tax resident • That the deemed disposal on emigration should not be made optional • That payment of tax on a deemed disposal can be deferred in certain circumstances and with conditions • That a de minimis should apply to the deemed disposal on emigration if it results in capital gains of less than a certain amount • That a deemed disposal should be unwound if temporary emigrants subsequently become New Zealand tax resident again while holding the asset in the same capacity • Agreed to have ordinary transitional resident rules applying for capital gains; include assets (foreign source assets) in base at end of four years with valuation at that time • Government should be able to change the FDR rate, same as FBT interest rate (order in council) • For FIF rules, remove option to go to CV method if investor return is less than FDR rate • Agreed to recommend Government to look at issue of foreign rental properties being part of the tax base or not |

| | |
|------------------------------------|--|
| Actions for the Secretariat | <ul style="list-style-type: none"> • Change final report text as per agreed actions above |
|------------------------------------|--|

11. Information collected and disseminated by IR

| | |
|------------------------------------|---|
| Noted | <ul style="list-style-type: none"> • Secretariat paper on the topic • Noted that Inland Revenue has limited ability to make comparisons across industries • Noted that Inland Revenue's information collection is currently targeted towards its tax collection function |
| Agreed | <ul style="list-style-type: none"> • To incorporate the suggested final report text in the paper |
| Actions for the Secretariat | <ul style="list-style-type: none"> • Prepare paper for next meeting with options on high net worth info collection |