



*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: Friday, 4 May 2018

Location: University of Auckland, Auckland

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

Independent Advisor: Andrea Black

Secretariat: Mark Vink, Paul Kilford, Steve Mack, Matt Benge, Phil Whittington, Emma Grigg, Casey Plunket, Jordan Ward, Rachel Lilly

Guests: David Buckrell (MBIE), Ed Hearnshaw (MfE), Peter Nelson (MfE)

Apologies: Nil

## 1. Previous minutes, forward agenda and administration

<b>Noted</b>	<ul style="list-style-type: none"> <li>Minutes of previous meeting.</li> <li>Marjan van den Belt will be absent from the next two meetings.</li> <li>Hinerangi Raumati-Tu'ua will be absent from the meeting on 29<sup>th</sup> June.</li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>Secretariat to provide a broad analysis of submissions in an Officials' Report format to the Group for the meeting on 1<sup>st</sup> June.</li> <li>Secretariat to circulate the budget to the Group before it is made public.</li> <li>Secretariat to inform the Group of the policy papers being released the day before they are released.</li> <li>Secretariat to prioritise summarising submissions for the report to the Group before redacting submissions for public release.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>Pencil in further dates in the Forward Agenda.</li> <li>Work with Andrea to compile a list of possible submitters to present at the next TWG meeting (email this list to the Group on Monday for their confirmation by COP Tuesday).</li> <li>Commission external work on the Ombudsman issue. Chris Gillion's (IR) team to contact Robin Oliver on the scope of the work.</li> </ul>

**2. Companion note: Extending the taxation of capital income and environmental issues – Andrea Black**

<b>Noted</b>	<ul style="list-style-type: none"> <li>Companion note prepared by Andrea Black.</li> </ul>
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**3. “Business views on the tax system” – Kirk Hope**

<b>Noted</b>	<ul style="list-style-type: none"> <li>Business NZ survey on ‘Business views on the tax system’</li> <li>Findings from the survey:             <ul style="list-style-type: none"> <li>The tax system should (top 10 themes): (1) provide certainty; (2) eliminate black hole expenditure; (3) help to strengthen buildings; (4) restore depreciation for industrial buildings; (5) maintain an internationally competitive rate; (6) encourage R&amp;D; (7) put NZ interests first; (8) allow taxpayers some flexibility; (9) treat commercial information like personal information; (10) determine policy based on realities.</li> <li>The tax system must attract capital investment and encourage saving.                 <ul style="list-style-type: none"> <li>Comment: We have to be careful to think about NZ’s place in the world and whether a CGT would lower FDI.</li> </ul> </li> <li>The tax system must minimise compliance costs.</li> <li>The tax system must minimise distortions. E.g. investors with different tax status should be able to work together (e.g. Māori, Charitable, non-resident, etc.).                 <ul style="list-style-type: none"> <li>Comment: Need to make sure the tax system does not put barriers in the way.</li> </ul> </li> <li>Is CGT the answer? Evidence says no.                 <ul style="list-style-type: none"> <li>Note: A range of things were factored into their responses to the survey.</li> <li>Comment: If we choose to recommend introducing a CGT we need to be aware of (a) whether the costs outweigh the benefits and (b) the lock-in effect.</li> </ul> </li> <li>What’s missing?                 <ul style="list-style-type: none"> <li>How would a CGT impact FDI on natural capital?</li> <li>Introducing a CGT may not make a difference to the survey’s results – we have to think about how to provide revenue to drive growth – i.e. where some of the “big bangs” are (e.g. earthquake strengthening?)</li> </ul> </li> </ul> </li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>Craig Elliffe will find the research from Australia on compliance costs.</li> <li>Kirk Hope to distribute the evidence from the survey finding that CGT is not the answer.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>Nil</li> </ul>

#### 4. Rate issues – Phil Whittington

<b>Noted</b>	<ul style="list-style-type: none"> <li>• Paper prepared by Secretariat – “Rate issues: supplementary information”</li> <li>• As it is a model, and there are assumptions, the Secretariat are having the model externally reviewed.</li> <li>• The Australian Treasury’s model is more sophisticated but the results are similar to ours.</li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>• Model to be externally reviewed</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>

#### 5.

##### 1. Extending the Taxation of Capital Income – Phil Whittington

<b>Noted</b>	<ul style="list-style-type: none"> <li>• Paper prepared by Secretariat.</li> <li>• Secretariat are preparing a first principles view on the tax rules surrounding trusts for 6<sup>th</sup> July meeting.</li> </ul>																	
<b>Agreed</b>	<ul style="list-style-type: none"> <li>• CGT subgroup to work through the issue of indexing for inflation.</li> <li>• CGT subgroup to come up with: (1) a ‘best comprehensive’ CGT option; and (2) a ‘best targeted’ option.</li> <li>• Decisions on CGT issues:</li> </ul> <table border="1" data-bbox="513 1167 1353 1951"> <thead> <tr> <th><i>TWG</i></th> <th><i>Design issue</i></th> <th><i>Secretariat’s current view</i></th> </tr> </thead> <tbody> <tr> <td><b>Agreed</b></td> <td>Accrual vs. realisation</td> <td>Realisation</td> </tr> <tr> <td><b>Left open</b></td> <td>Rates (full or reduced)</td> <td>Potential fairness and efficiency benefits from having gains taxed at full rates as part of income tax. But administration and compliance cost issues require further analysis.</td> </tr> <tr> <td><b>Left open</b> <ul style="list-style-type: none"> <li>• Can end up with double deductions.</li> <li>• Most countries have ring-fencing but we don’t need to be constrained by it.</li> </ul> </td> <td>Losses</td> <td>Limited ring-fencing (portfolio shares and derivatives only).</td> </tr> <tr> <td><b>Left open</b></td> <td>Inflation indexing</td> <td>No inflation indexing (unless comprehensive across the</td> </tr> </tbody> </table>			<i>TWG</i>	<i>Design issue</i>	<i>Secretariat’s current view</i>	<b>Agreed</b>	Accrual vs. realisation	Realisation	<b>Left open</b>	Rates (full or reduced)	Potential fairness and efficiency benefits from having gains taxed at full rates as part of income tax. But administration and compliance cost issues require further analysis.	<b>Left open</b> <ul style="list-style-type: none"> <li>• Can end up with double deductions.</li> <li>• Most countries have ring-fencing but we don’t need to be constrained by it.</li> </ul>	Losses	Limited ring-fencing (portfolio shares and derivatives only).	<b>Left open</b>	Inflation indexing	No inflation indexing (unless comprehensive across the
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		tax system).
<b>Left open</b> • 6 July paper on trusts	Trusts	Consider measures to prevent indefinite or extended deferral of capital gains realisation.
<b>Agreed</b>	Double taxation of retained earnings	Consider whether there are any mechanisms to address potential double taxation.
<b>Left open</b>	Associated persons	Rollover losses on transactions between associated persons.
<b>Agreed</b>	Corporate groups	Consider cost-base push-down rules, where the cost of the acquired shares is allocated to the underlying company assets when someone buys a controlling stake in a company.
<b>Agreed</b>	Relationship property transfers	Apply rollover relief.
<b>Disagree</b> • Strong, although not unanimous, view that treating death as a realisation event is akin to an inheritance tax – which is out of scope of the Terms of Reference.	Death	First choice – deemed realisation for market value; second choice – rollover basis to estate and heir.
<b>Left open</b> • Look at DTAs here.	Migration	Deemed realisation of assets, subject to a <i>de minimis</i> rule.
<b>Agree</b> if this is what DTAs require.	Non-residents	Tax sales of appreciated land in New Zealand and the assets of a New Zealand branch only (and land-holding companies).
<b>Left open</b>	International tax rules – sale of portfolio shares in	Consider whether a tax on gains should replace the current FDR rules for income from portfolio shares.

		foreign companies	
	<b>Left open</b> <ul style="list-style-type: none"> <li>Further work required.</li> </ul>	International tax rules – sale of shares in controlled foreign companies (CFCs)	Exempt gains and losses from the sale of shares in active CFCs from being taxable or deductible. Gains from the sale of shares in passive CFCs should be taxable. Consider the position for CFCs that earn both active and passive income.
	<b>Left open</b> <ul style="list-style-type: none"> <li>Think about non-public companies – the SME market is concerning.</li> </ul>	Transition	Valuation day.
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>Secretariat to research whether/how many other countries have full or reduced CGT rates.</li> <li>Secretariat to examine empirical evidence relating to the deductibility of losses in this context (Matt Benge looking this up).</li> <li>Add PIEs to first order design issues.</li> <li>Consider what other circumstances roll-over relief would be used to minimise lock-in.</li> <li>Additional design issues to think about: <ul style="list-style-type: none"> <li>Collection and admin – When is tax collected? What’s the simplest way to collect?</li> <li>Capital expenditure – What is deductible? Do the ring-fencing rules apply to this?</li> <li>Collectibles – Should we exclude collectibles? Or would it be prone to manipulation? Perhaps we have an intention test?</li> </ul> </li> </ul>		

## 2. Concepts of income – Robin Oliver

<b>Noted</b>	<ul style="list-style-type: none"> <li>Paper prepared by Robin Oliver.</li> <li>The concept of “income” is nebulous.</li> <li>The Haig-Simons’ definition of “income” is a good benchmark but it’s not the only one – it should just be used as a reference point.</li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>Have some development of the concepts of income in the final report.</li> </ul>

## 6. Tax and the environment

<b>Noted</b>	<ul style="list-style-type: none"> <li>• Frameworks paper prepared by Secretariat</li> <li>• Companion note prepared by Marjan van den Belt</li> <li>• Presentation by Jordan Ward (TSY), David Buckrell (MBIE), Ed Hearnshaw (MfE), and Peter Nelson (MfE).</li> <li>• Feedback on the externalities framework             <ul style="list-style-type: none"> <li>○ Behavioural responses / elasticity (e.g., does the tax result in less pollution?)</li> <li>○ Administrative simplicity of taxes</li> <li>○ Ethical / distributional concerns about the right to pollute being restricted to wealthier individuals.</li> </ul> </li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>• Secretariat to commission two external reviewers (one orthodox &amp; one systems-thinking) to review the frameworks, and provide high-level resource-specific assessments.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>• Secretariat to prepare a second environmental paper (for consideration by TWG on 6 July) to include:             <ul style="list-style-type: none"> <li>○ High-level assessments of major pollutants / resources against the frameworks to identify opportunities.</li> <li>○ High level revenue-raising potential of environmental taxes (and hypothecation issues).</li> <li>○ A note on the circular economy, referencing OECD work.</li> <li>○ Follow up explanatory note on specific tax concession issues.</li> </ul> </li> </ul>