



# Tax Working Group

## Te Awheawhe Tāke

**Tax Working Group Information Release**

**Release Document**

**September 2018**

**[taxworkinggroup.govt.nz/key-documents](http://taxworkinggroup.govt.nz/key-documents)**

*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 3 August

Location: The University of Auckland Law School

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

Independent Advisor: Andrea Black

Secretariat: Paul Kilford, Matt Benge, Bevan Lye, Emma Grigg, Casey Plunket, Riaan Labuschagne, Chris Ball, Phil Whittington, Steve Mack, Scott Petty, Rachel Lilly (note taker)

Apologies: Sir Michael Cullen

## 1. Previous minutes, administration, forward agenda, stocktake

<b>Noted</b>	<ul style="list-style-type: none"> <li>There is a plan to release the remaining papers and public submissions at the same time as the interim report.</li> <li>The Secretariat will be circulating the Satisfaction Survey next week.</li> <li>The current timeline for the public release of the interim report has Cabinet approving its release around 24 September, with the report to be released that week.</li> <li>There will be a glossary for the whole interim report.</li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>Secretariat to fix minor errors in papers prior to release.</li> <li>As part of the review of the interim report chapters, the Secretariat will note the open questions which may require further consideration. <ul style="list-style-type: none"> <li>For the Group's next meeting, members should conduct a similar exercise ahead of the discussion.</li> </ul> </li> <li>There will need to be focus groups set up post-interim report (e.g. for KiwiSaver issues and Māori issues).</li> <li>Need to think more about the post-interim report process and carefully consider the balance in who we get feedback from.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>Make the following changes to the previous minutes: <ul style="list-style-type: none"> <li><b>Trusts:</b> <ul style="list-style-type: none"> <li>Amend the highlighted sentence "General supportive observation on proposals for foundations" to read "The Group was generally supportive of further inquiry as to</li> </ul> </li> </ul> </li> </ul>

	<p>whether there is a problem and whether further controls are required.”</p> <ul style="list-style-type: none"> <li>○ <b>Housing affordability:</b> <ul style="list-style-type: none"> <li>▪ Delete the second bullet point and add “Some members of the Group discussed options regarding tax on vacant land.”</li> <li>▪ Delete the two references to ‘changing ratings from capital value to land value’.</li> <li>▪ Amend wording in last bullet point to read something like “The Group considered options regarding tax on vacant land and tax on empty homes.”</li> <li>▪ Need to qualify “vacant land” – what type of vacant land?</li> <li>▪ A version of this should go in the interim report.</li> </ul> </li> <li>○ <b>Potential revenue reducing options:</b> <ul style="list-style-type: none"> <li>▪ Amend the following bullet point by adding in the text in brackets: <ul style="list-style-type: none"> <li>- “Reintroducing depreciation on commercial buildings and multi-unit residential buildings (also having regard to environmental objectives).”</li> </ul> </li> </ul> </li> <li>● Circulate the links to the winning school entries.</li> <li>● Add more placeholders in members’ diaries through to Christmas. <ul style="list-style-type: none"> <li>○ For November and December – add a Thursday afternoon meeting in addition to the Friday meeting.</li> </ul> </li> <li>● The current dates have meetings falling in the last week of the month – need to look at rescheduling to ensure members can make it.</li> <li>● Forward Agenda: <ul style="list-style-type: none"> <li>○ <b>17 and 31 August:</b> include an item on priorities for the next six months. Group members to think about issues / topics that are important for them ahead of the next meeting.</li> <li>○ <b>31 August:</b> include an item on reviewing the interim report process.</li> </ul> </li> </ul>
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## 2. Potential high-level effects of the TWG’s proposed tax changes

<b>Noted</b>	<ul style="list-style-type: none"> <li>● Q: why do we not anticipate taxing capital gains for non-residents? <ul style="list-style-type: none"> <li>○ There are a couple of reasons. First, even if we wanted to – how do you enforce it? Second, Double Tax Agreements do not allow it.</li> <li>○ Noted that this is only with non-residents owning shares. If they own land, plant, or equipment – they would be caught.</li> <li>○ Also noted that if it was a NZ company selling, the capital gain would still be caught.</li> </ul> </li> <li>● Q: where is the connection with the natural capital and environmental issues? The language used in the paper is still very economic and it would be good to see what the connection with natural capital could be. <ul style="list-style-type: none"> <li>○ Acknowledge other types of productivity (e.g. land, the type of land, what you do there).</li> <li>○ Include general commentary using the LSF (the Four Capitals) regarding revenue recycling, and the design of tax.</li> <li>○ Outline the broad trade-offs in the report – e.g. what a CGT does at a transitional level (lock-in)</li> <li>○ Use this type of wording in the interim report: the current capacity does not allow us to dive deeper into the environmental analysis yet, but we are starting to do it.</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>○ Flag the lens to the interim report</li> <li>○ Officials to start thinking about “packages” / consequential amendments / interrelatedness of recommendations to discuss with Ministers.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>● Somewhere in the interim report, probably around housing affordability, need to capture the issue that the extension of taxation of capital income is likely to increase rents, but officials/the Group are looking at ways to mitigate this.</li> <li>● Paper is unclear re: caps on accommodation supplements – how much would rent increases flow-through? 70% up to the cap. Include this number in the paper. (70% of any rent increase we trigger with a CGT will already flow-through now).</li> <li>● Suggested wording: “The Government should carefully monitor changes in rents”.</li> <li>● Note the potential negative welfare impacts on rents, and balance it will the distributional benefits (and possible efficiency gains).</li> <li>● Mention that models mention that there could be moderation of house prices as a quid pro quo.</li> <li>● Cross-reference back to chapter 7.</li> <li>● Caveat the fiscal numbers with details – we have so much in share market, if end up everyone holding shares in KiwiSaver, won’t get that revenue.</li> <li>● Compliance costs: raise CC in the interim report. Go from narrower roll-over spectrum to wider. Commentary only.</li> <li>● Q: How are we dealing with revenue analysis in the interim report generally? Are estimates included in the interim report? <ul style="list-style-type: none"> <li>○ Yes, estimates are being included in the interim report.</li> </ul> </li> <li>● Q: What about RFRM/substitute revenue? <ul style="list-style-type: none"> <li>○ Include in interim report, but leave details to the discretion of officials.</li> </ul> </li> <li>● Leaving the FDR issue open.</li> </ul>

### 3. Distributional analysis and incidence

<b>Noted</b>	<ul style="list-style-type: none"> <li>● Q: the analysis seems to show that the introduction of an ECIT would have a possible impact on distribution – as it makes the tax system more progressive. Can this be captured in a diagram or table?</li> <li>● Noted Marjan’s apartment building diagram.</li> <li>● The Group can reflect that it is likely to be reasonably progressive, and can point to various factors.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>● Footnote the intergenerational distributional effects included in the previous paper in this paper.</li> <li>● It would be helpful to have something in the paper about the lack of data in New Zealand. <ul style="list-style-type: none"> <li>○ Include a recommendation that the Government is considering increasing its data collection so that it can better understand the effects of issues.</li> <li>○ Acknowledge privacy concerns – but that comes down to design.</li> </ul> </li> <li>● Include a discussion on the incidence of taxation (comments and cautions) – legislative incidence and economic incidence. <ul style="list-style-type: none"> <li>○ Economic incidence needs to be in the report generally, not just in relation to ECIT.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Include a comment in one of the earlier chapters to say that most of the report looks at legal incidence but economic incidence will be different.</li> </ul>
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#### 4. Capital income update

<b>Noted</b>	<ul style="list-style-type: none"> <li>• The Sub-group met yesterday and will be reporting back at the Group's next meeting.</li> <li>• In terms of the roll-over and death issues, the interim report should include a range of options for feedback; rather than reaching a conclusion in the interim report.</li> <li>• Need to explore Māori issues when considering the definition of the family home.</li> <li>• Two documents will be drafted ahead of the next meeting – the draft chapter 7 and an appendix of the extension of capital income tax.</li> </ul>
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#### 5. Interim report

<b>Noted</b>	<ul style="list-style-type: none"> <li>• The current draft is missing the gender lens and Māori lens.</li> <li>• Tikanga framework is going to be applied to the interim report.</li> <li>• There needs to be more commentary on the bigger picture.</li> <li>• At the beginning of the paper, there needs to be an explanation of the Group's members – i.e. “there is a mixture of tax experts, non-tax experts, etc.”</li> </ul>
<b>Agreed</b>	<ul style="list-style-type: none"> <li>• Andrea to coordinate the first five chapters of the report.</li> <li>• Use plain language in the interim report, apart from the annexes.</li> <li>• Have a link to the papers included in interim report / online so readers can access further detail.</li> </ul>
<b>Actions for the Secretariat</b>	<ul style="list-style-type: none"> <li>• Make the following changes to the draft chapters (listed below).</li> </ul>

##### 1. Chapter 1: Introductory chapter

<ul style="list-style-type: none"> <li>• Noted that this chapter will disappear when Sir Michael writes his introductory chapter.</li> <li>• The introduction needs to be grounded in the Terms of Reference kaupapa, anchoring it back to where we started.</li> <li>• Future of work/introduction chapter should include a discussion on macro trends in future work.</li> </ul>
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##### 2. Chapter 2:

<ul style="list-style-type: none"> <li>• <b>Para 4:</b> redistribution is a fundamental aspect of the tax system.</li> <li>• The paragraph should read that there are different ways the tax system supports well-being.</li> <li>• Elevate the redistribution problem as a comment – i.e. “one of the things a tax system does is to redistribute”.</li> </ul>
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### **3. Chapter 3:**

- **Para 8, bullet point 2:** need to include 'certainty' as well.

### **4. Chapter 4: New Zealand's current tax system**

- **Para 3:**
  - Remove reference to "base"; instead say "taxes".
  - In reference to Joanne's comment about reference to other countries, the Group agreed that no further reference would be made to BBLR.
  - After "*Compared to the range of possible tax bases, this is a relatively narrow range of bases for a tax system to rely on*" add in "and excludes some potential bases like environmental."
- **Para 4, bullet point 3:**
  - Re: NZ's reliance on company tax revenue – when imputation is taken into account, NZ is lower rated. Add a comment in here about imputation.
- **Chart on page 3:**
  - Add in additional bar on the chart.
- **Para 12:**
  - Amend: "*New Zealand's tax and transfer system reduces income inequality, but by less than is the case in Australia or on average across the OECD*" by adding in "that is the case of both the tax system and transfer system when taken alone."
  - Clearer labelling required for graphs.
  - Andrea to propose some words for Marjan to set up for the environmental chapter.

### **5. Chapter 5: Issues and challenges raised by submitters**

- **Para 7:**
  - Amend "assessed against" to "assessed together with".
- **Para 8:**
  - Add in a sentence saying something like: "growing dependence on the capital income base".
- **Para 15:**
  - Under fairness and integrity, mention the hidden economy and collection issues.
  - Add a line saying "wealth inequality appears to have increased" → Secretariat to go back and check if this is accurate.
  - The wording is a bit confusing, need to change to read "for example, the non-taxation of capital gains..."
- **Para 19:**
  - Remove "concessions" and insert "reductions on tax, especially on retirement savings".

### **6. Chapter 6: Gaps in the tax base**

- **Title:**
  - Change the title to "The structure, fairness, and balance of the tax system"
- **Para 5:**
  - Retain the word "households".
  - "Cultural assumptions" – add in something like "for example, different concepts about what is a whanau, the concept of income from natural capital, etc."
- **Para 10:**

- Amend: However, there is a significant element of capital income which is not taxed – generally, receipts which are not earned in the ordinary course of business, and which often come from the sale of capital assets.
- Need to talk about why a capital gains tax is a form of income, its relationship with the transfer system, etc.
  - Try and emphasise that capital gains are a form of income.
  - There might be inconsistencies in terms of different types of income.
  - Some forms of income might be more relevant (include detail around when they may be more relevant).
- Para 11:
  - Add “New Zealand” before “Income tax law”.
- Para 35, second sentence:
  - Accounting income may not be the most appropriate measure of income for tax purposes.
  - Put it in lay person terms.
  - Use Geof’s impairment example (in a footnote or in brackets).
- Para 43:
  - Not convinced with the aging argument.
  - The reliance on capital income is not just the future of income / aging argument.
- Retirement villages should go in the business tax chapter.
- Marjan to draft a paragraph bringing natural capital into the chapter and circulate to the group to test.
- Acknowledge Māori cultural and spiritual connection with the land. Hinerangi to look at ways to describe this relationship.

## 7. Chapter 10: Environment

- **Para 2:**
  - Note that we do not have statistics yet.
  - Include a comprehensive list of the pollution taxes we currently have.
- **Para 4:**
  - Expand the environmental examples – add something from the rural sector and the coastal and marine environment sector.
- **Para 9:**
  - Substitute “national consensus” to “national shared vision”.
- **Paras 11 and 12:**
  - Marjan to discuss on Monday whether positive outcomes should be brought in.
- **Para 13:**
  - Re: the working definition – use the wording in Bill R’s tracked changes version.
- **Para 14**
  - Cross-reference to other instruments (e.g. fines, bans, etc). There needs to be a bit more detail here – e.g. if activity/behaviour is bad then perhaps a ban is more appropriate.
- **Para 15:**
  - See Bill R’s tracked changes version for additional wording (something like “along with the principles of tax design applying to this whole report”).
  - Leave open Marjan’s comments for Jordan, Bill R, and Marjan to discuss on Monday.
  - Move “*Behavioural responsiveness*” up under “*Sufficient scale*”.
  - Be methodical about going through each of the criteria in the framework box – insert a table doing this.
- **Para 16:**
  - Leave until Monday, but the diagram is in the wrong place in the chapter.
  - Marjan to draft an introductory paragraph for the diagram.
- **Para 19:**

- Happy with Marjan's comment, need to be a bit more honest about NZ's carbon footprint.
  - "*The international adoption of mitigation measures is necessary to reduce the impacts of climate change*" needs to go back in there.
- **Para 29:**
  - Add something in like "*While recommending that ETS continue, it should continue to be reviewed at regular intervals to ensure that it is working as intended/achieving its purpose.*"
- **Para 34:**
  - Happy with additional wording (last sentence), but wording needs to be fixed – e.g. "on the other hand, could also be a large opportunity..."
- **Para 60:**
  - Note that Māori do not use QUEII – instead, they use Ngā Whenua Rāhui.
- **Para 61:**
  - Note Bill R's suggested wording in his tracked changes version.
  - Leave the issue until Sir Michael gets back.
- **Distributional issues:**
  - Bill R to work through this on Monday.
  - Third paragraph needs to be reworded.
- **Resource rents?**
  - Taxing resource rents was originally in the framework but the decision was made not to deal with it in this paper. If mentioned, the context would be that the Group has considered it, but are not going to consider it any further.

## **8. Chapter 11: Corrective taxes**

- The chapter seems a bit short.
- There should be more description on corrective taxes.
- Insert a segment on gambling taxes.
- Bevan to add a footnote noting that there are other corrective taxes (and that sugar is just one type of corrective tax relating to food).
- Tone the recommendations down or ensure among stakeholder groups that we consult experts in the field (i.e. tobacco and sugar).
- Note where more work needs to be done.
- **Para 13, bullet point 3:**
  - Needs a reference.

## **9. Chapter 12: International tax and the digital economy**

- **Name change**
- **Para 24:**
  - Use Bill's wording: "*New Zealand should be actively involved in diligent monitoring of developments and collaboration with other countries with respect to equalisation taxes in the absence of OECD agreement on an effective framework*".
- Sharing economy (Airbnb/Uber/etc.): include a cross-reference to the Integrity chapter.
  - First: Acknowledge that New Zealanders benefit from these platforms and that the digital economy represents a big opportunity for New Zealand.
  - Second: Mention taxation e.g. "including taxing platforms such as ..."
  - Include a line about the possible potential for natural capital in this space.

## **10. Chapter 13: GST**

- **Para 10:**
  - Happy with Bill R's suggestion.
- **Para 25:**
  - Leave distributional impacts at this stage.
- **Para 30/footnote 9:**
  - Modify it down – i.e. “wouldn’t apply here...”
  - Instead of “exaggerated” use “overstated”.

## **11. Chapter 14: Personal income and the future of work**

- **Para 11:**
  - As per Michelle’s comment, make it clear that the Group is not considering reducing the 33% top PIT rate.
- **Paras 16 – 22 (childcare):**
  - Move this section to the back of the chapter.
- **Para 22:**
  - Change “The Group would support some of the additional revenue raised from the extension of taxation of capital income being used being used to extend existing Government direct support for childcare” to “The Group would support the extension of direct support for childcare”.
- **Para 25:**
  - Remove “dependent or independent” (it should just read “operate as contractors”).
- **Para 28:**
  - Michelle to add a comment in about the fact that other studies estimate growth of 50% (with footnote).
- **Paras 38 – 40:**
  - Officials to work on Michelle’s comments. Group agrees with Michelle’s comment about referring to investigate other technologies.

## **12. Chapter 17: Charities**

- An analysis on the impact of changes to the charities rules on Māori needs to be done.
- **Para 13:**
  - The word “applied” should be changed to “used”.
- Charities using businesses may have a variety of reasons why they are structured in a certain way. E.g. a charity invests in an active business might do so to make social decisions, or might be trying to maximise profits for its charitable side.
  - Add in a comment acknowledging that some charitable businesses may be operating at lower than commercial margins because they might have a mixture of objectives.
- **Footnote 4:**
  - Move back up to below para 13.
- **Para 24:**
  - Phraseology about “over the coming months”
- **Recommendations:**
  - Change the recs to say that someone should consider this at Inland Revenue or as part of the DIA Charities Review.

### **13. Chapter 18: The administration of the tax system**

- **Para 14:**
  - Pick up Bill's comments in Craig's comment box
- The Group decided to recommend that there be a Deputy Ombudsman within the Ombudsman office with particular tax/transfers/family expertise.
- **Para 23:**
  - Replace "bar" with "scope".
- **Para 26:**
  - Agree with the recommendation in para 26.
- Could also be included in the paper:
  - What further information do we think the Government should be collecting?