

Tax Working Group Public Submissions Information Release

Release Document

September 2018

taxworkinggroup.govt.nz/key-documents

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)(k) - to prevent the disclosure of official information for improper gain or improper advantage.

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.



27 April 2018

Tax Working Group Secretariat
P O Box 3724
WELLINGTON 6140

By email

Email: submissions@taxworkinggroup.govt.nz

INTRODUCING A "SAME OR SIMILAR" BUSINESS TEST IN THE TAX LOSS CARRY-FORWARD RULES

Introduction

1. We have been engaged in discussions with Ministers and officials over the past 18 months about amending a tax law that unfairly disadvantages many fast growing and innovative New Zealand companies. We **attach** a copy of our letter to the Hon Stuart Nash dated 22 November 2017 which outlines the proposal, summarises the work and discussions that had by that stage already occurred, and attaches a policy paper and economic analysis of the proposal by Alex Duncan of Finology.
2. The proposal is to supplement the current rule requiring 49% continuity of ownership for a company to carry forward tax losses with a rule that losses can be carried forward so long as the company's underlying business remains the same or similar. We are submitting to the Tax Working Group ("**TWG**") on the proposal as the Government may ask that you consider it.

Submission

3. If the TWG is asked to consider the proposal, then we urge the TWG to recommend that the proposal be progressed as part of the Government's Tax Policy Work Programme as:
 - (a) The proposal would complement and enhance outcomes the Government is seeking by introducing R&D tax credits to incentivise the "pre profit" part of the innovation economy.
 - (b) The proposal would help the Government achieve its goal of boosting spending on research and development to 2% of GDP.
 - (c) Inland Revenue officials have already undertaken work in relation to both the substantive proposal and the possible implementation costs.
 - (d) The proposal is relatively straightforward and involves a discrete issue.
 - (e) Implementing the proposal would bring New Zealand into line with the rules in comparable countries. It does not have any consequential flow-on effects to other aspects of the tax system.
 - (f) The proposal is not expected to be affected by other work being undertaken by the TWG.

- (g) The recently released discussion document on R&D tax credits recognises the potential unfairness of a continuity of ownership requirement, albeit in the context of considering requirements for the carry-forward of tax credits (at page 22: "*There is a question about whether continuity should be imposed on tax credits that are carried forward. This would prevent subsequent investors in a business, who have not incurred the cost of the R&D expenditure, from getting the benefit of unallocated tax credits. However, it would remove the R&D incentive for the initial investors who undertook the R&D, and is arguably inconsistent with the growth cycle of R&D start-ups – these companies are typically loss making until the initial development work is successful, at which point additional equity investors are usually brought on board.*").
- (h) The potential unfairness of a continuity of ownership requirement will therefore need to be addressed in the context of the proposed R&D tax credit, and within a time-frame that precludes consideration by the TWG. For the TWG to consider the same issue (but in the context of the carry-forward of losses) would not be a good use of resources and could result in less coherent tax policy than if the same or similar business test is considered in parallel to the R&D tax credit proposals.
- (i) This is a tangible and readily achievable initiative which would immediately benefit the innovation and start-up eco-system in New Zealand. Consideration by the TWG (given the likely timeframes associated with changes recommended by the TWG) could significantly delay the realisation of those benefits and is unnecessary for the reasons set out above.

4. We would be happy to provide further information or meet with the TWG if that would assist, although, as noted, we consider that the best and most efficient outcome is for the Government to continue to consider and progress the proposal as part of its Tax Policy Work Programme.

Yours faithfully

[1]

[1]

Stephen Summers
Economist, Business New Zealand

[1]

Suse Reynolds
Executive Director, Angel Association New Zealand Inc

[1]

Colin McKinnon
Executive Director, New Zealand Private Equity and Venture Capital Association

John Payne
Convenor, Corporate Taxpayers Group