Tax Working Group Public Submissions Information Release

Release Document

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Future of tax – SFO submission

1. Thank you for the invitation to provide a submission on behalf of the Serious Fraud Office (**SFO**) in relation to the Tax Working Group's consideration of the future of tax. We agree it is an issue of vital importance that affects all New Zealanders and are therefore very happy to assist in any way we can.

2. We consider it would be of most use to the Tax Working Group if we provided our observations on how the current and any future tax structure might impact upon the work the SFO does and in particular how that might prevent or create opportunities for fraud to occur.

The current New Zealand tax system

3. We consider the current broad based, low rate taxation framework to be a positive feature of New Zealand's financial environment. It achieves relative distributive fairness and in particular the very small number of exemptions or exceptions means that incentives to structure financial affairs to evade paying tax are limited.

4. We consider it likely that any major expansion in either the range of industries, goods or services that are taxed, or the exceptions to tax being payable, could drive behaviour that seeks to fraudulently evade tax obligations. The retention of a relatively simple broad based tax framework (albeit with the flexibility to adjust to changing circumstances) is therefore desirable.

Aging population

5. In our experience (most recently in the case of the collapsed finance companies) we have seen that the elderly represent a vulnerable segment of New Zealand society that suffer the effects of fraud disproportionately. In many instances, the factors that led elderly people to take undue risks with their money during this period included (1) a lack of financial literacy/acumen and (2) a need to increase retirement savings due to a concern that their current level of assets would be insufficient to sustain them. This highlights three matters:

a. We consider that the tax system needs to remain flexible enough to take into account the need of an aging population. A lack of an adequate safety net in retirement (which could be funded by a flexible tax system) could lead to this segment of the population taking undue risks with their limited funds and become the victims of fraud at a time in their lives when they are least able to financially recover.

b. Aligned with this, our view is that the tax system should incentivise people to save for their retirement and therefore reduce their vulnerability to fraud. A system which taxed income from capital at a lower rate for those in retirement is worth considering as a possible incentive.

c. Finally, as noted below, efforts to raise the financial literacy of New Zealanders (with perhaps a particular focus on the elderly) should accompany any significant changes to our tax framework.

The International Economy

6. One of the issues increasingly faced by the SFO is the question of where the relevant conduct (and therefore potential offending) has occurred as traditional notions of jurisdiction become blurred. Similarly, the New Zealand tax system currently experiences issues with how it taxes transaction that may not have their physical base in New Zealand, but which still have clear connections to this country.

7. We appreciate the issue of how to appropriately tax international transactions (particularly those of a digital nature) is under consideration and is not straightforward. We do not propose to offer submissions on this issue, but would like to highlight a potential risk arising out an increased international presence in New Zealand that is brought about by changes to our tax framework.

8. Specifically, to the extent that New Zealand alters its company tax rate either to encourage investment from overseas, or with this as an acknowledged by-product of such a move, this may have consequences. We consider that significant protections would be required to ensure that New Zealand does not become a target for those who wish to take advantage of a framework that allows sheltering from tax, particularly given the increasingly blurred jurisdictional lines that exist from an enforcement perspective.

Disincentivising property as an investment

9. The current investment profile of New Zealanders is disproportionately geared towards residential property, as well as term deposits and Kiwisaver funds. The heavy focus on property as an investment is due to part to the current tax framework which (generally speaking) allows increases in value in property to go untaxed. This relatively unsophisticated spread of investment lacks diversity and arguably does not provide the injection of capital that a growing and forward looking economy needs.

10. However, to the extent that taxation incentives are created to move New Zealander's investment behaviour from its present focus on property, a potential unintended consequence of this should be considered.

11. Specifically, there remains a concern about a lack of financial literacy/acumen amongst many in New Zealand outside of the three core investments noted above. To the extent that investment behaviour is moved from property toward other areas (for example crypto-currency, foreign exchange trading, shares (listed and unlisted), various forms of peer to peer lending, or managed funds) through changes in the tax structure, considerable effort will need to made to ensure that this change in investment behaviour is accompanied by a commensurate investment in financial education. If this is not done, then New Zealanders may be being moved into an area of investment that they are not equipped for and may be exposed to increased risks of financial loss and fraud.

12. We are grateful for the opportunity to provide our views, and if you wish to discuss any aspect of the above, or if the Tax Working Group requires any further information or assistance with its work, we would be happy to assist.

Yours faithfully

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Paul O'Neil
General Counsel