Tax Working Group Information Release

Release Document

February 2019

taxworkinggroup.govt.nz/key-documents

This paper has been prepared by a member/s of the Tax Working Group for consideration by the whole Tax Working Group.

The advice represents the preliminary views of the member/s who prepared the paper 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.

DISCUSSION NOTE

For: Tax Working Group **From:** Joanne Hodge

Date: 27 August 2018

Re: Further work on extending tax of capital gains

I've combined Robin and Craig's list and added mine. Still to hear from Geof. Have followed the order of topics in the Appendix. We might be able to follow the same order in the new report?

Taxing realised capital gains

Assets to be included - review the asset list and be as specific as possible – eg what choses in action, what intangible property;

List all asset classes and comment on those that might need special attention (cancellation of contracts, lump sum non-compete payments etc)

Excluded family home – review the proposed definition, review change in use and apportionment options, review the trust ownership rules

Excluded family home might be excluded from capital gains tax but will they still be subject to brightline tests? If so can we standardise definitions somehow – eg farmland and lifestyle blocks excluded from brightline; how will these two regimes fit together

What happens if taxpayers switch from capital gains to revenue account property for their homes (a problem or not, eg excluded home to capital gains home, excluded home to revenue account home, capital gains home to revenue account home)

Change in use of homes generally, impact on deductions

Foreign homes, rental properties and not rented

Death, gifting and rollover – need to flesh out restricted or narrow rollover and what follows (pros and cons, how loss rules might work) and model that; flesh out broader rollover and what follows (pros and cons), how loss rules work there – and model that. This are very important – affects saleability of the tax; but the broader the concessions the less tax collected etc.

Loss ringfencing – a big call – linked to narrow or broad rollover – need to cover the extremes and explain consequences and impact on modelling

Trusts – review and expand

Transition – cost and practicality of valuations on an asset by asset basis – any short cut rules – use of RV- valuations for what asset types, if all taxpayers for all land, how will that affect commercial industrial and agricultural land, will it be overtaxing if RV values are a lot less than independent values; how to we explain using RV when banks might have different values, financial accounting values, values recently allocated to assets in business sale and purchase agreements etc; best to sue same values as are used in Income Tax Act or GST Act as market values if similar circumstances?

Review of equity rules – KiwiSaver, Pies etc and consistency, impact of switching from capital gains treatment to revenue account (if any) for share investments.

Maori assets and Maori authorities

Integration with existing rules – lots of detail but officials should be able to do most of this; list taxing regimes and think about how the rules might interact – eg financial arrangement rules and

JOANNE HODGE
BARRISTER & SOLICITOR
PO BOX 4491
AUCKLAND
021 663 058

excepted financial arrangements (go through the Income Tax Act to identify taxing regimes to check what the overlap is/problem areas are), see XIX Other Issues in the Appendix.

Compliance; what additional calculations and returns will be required by individuals, companies, trusts

Administration and audit; what additional systems will be required by IRD to detect non-compliance and to audit information.

Somehow estimate additional compliance costs by taxpayers and by Inland Revenue

RFRM

What assets to tax; is taxing that asset with RFRM a better outcome on the asset type cf capital gains (pros and cons) shares and houses, just houses, just shares?
Apportionment for private use (houses)
Apportionment for mixed use real estate (eg rented residential accommodation over commercial or industrial buildings)
On net or gross, deductions generally, issues with both options
How to set the rate
Compliance
Integration with other regimes
What is impact of moving the asset from capital account to revenue account (i.e. what could taxpayer response be) eg no losses for RFRM, taxpayer treats asset on revenue account to get realisation based tax and normal use of losses
Assumptions for modelling

Overall

We also need to decide what the Group needs exactly to be able to recommend the introduction of these measures. Would it be on the basis that a) the additional revenue to be collected outweighs the added compliance costs; b) there aren't better ways of doing it (hidden economy, more stringent avoidance rules), robustness but at what costs etc etc. It would be good to decide this so we can be sure the work gets us to a measurable outcome.

One comparison to keep in mind is an increase in the company tax rate by [x%] or an increase in the GST rate by [x%], which can happen with a simple amendment and we compare that with amounts of tax under these changes. All of these are also possible.

Is this right – what else does the Group need to be able to say yes, this is a good idea.