



**Tax Working Group Information Release**

**Release Document**

**February 2019**

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*The advice represents the preliminary views of the Independent Advisor 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.*

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

## Māori collectively held assets and capital income (3)

This note follows on from my last note on this subject.

### Māori freehold land

That note proposed an exemption for Māori freehold land on the basis it was analogous to the family home. Since then the Group has decided that individuals can only have one excluded family home and in the event they have two, one needs to be chosen. This would make an exemption for freehold land difficult to operationalise in situations where members also had a personal home.

Since consultation it has become clear to me that the rare cases where Māori freehold land is sold tend to involve situations where iwi wish to develop their land but – unlike Pākehā structures - they are unable to borrow. Therefore their mechanism for releasing funds is to sell a small proportion of land to invest in the remaining land.

This investment in remaining land is to help develop recover the asset base they have previously lost due to Crown action.

Therefore rather than an extension of the Family Home exemption, I would suggest an exemption for sale of Māori freehold land be considered to the extent that the proceeds are reinvested in existing freehold land.

### Settlement Assets

Settlement assets are assets received by iwi for past wrongs by the Crown. They reflect a tiny proportion of the actual compensation due and settlement redress usually involves an apology, some cash and possibly some land. The land given is generally the land that is available to the Crown at the time of settlement which may or may not have a commercial or cultural value to the iwi concerned. For example a closed rural school could be part of the redress.

Alongside these assets is often the *Right of First Refusal* for iwi to buy Crown assets that may come up in the future which may have much greater commercial or cultural value than the land or assets that were available at the time of settlement. Cash from the settlement or sales of other settlement assets will be used to fund subsequent assets purchased under a *right of first refusal*. It will also be used to purchase assets that themselves – in time – can be sold to recover lost ancestral land.

The current proposals for rollover would give relief when:

- 1) Assets moved from the entity that the settlement proceeds were received into the post settlement governance entity and the structure that developed underneath. This is on the basis that the **same economic owner** can be extended to involve all repackaging of assets within a particular group.

- 2) Any other form of general relief whether narrow or broad which has yet to be decided.

There are two specific circumstances that are particular to settlement assets that are unlikely to be captured by any form of general rollover relief.

- 1) Changes in asset mix to meet the strategic objectives of the iwi following development of capability. This could for example selling a rural school to purchase a high yielding commercial property. Such changes could arise as the iwi establishes its strategic objectives and ensures its asset base is compatible.
- 2) Selling existing assets to purchase lost ancestral land.

In both cases, tax in the form of a tax on the underlying gains would be an impediment to Māori regaining their former lands and efficiently being able to organise their assets and wealth in the way Pākehā already can and do. This can be contrasted with general taxation or taxation of capital gains which will reduce the asset base of Māori Authorities, it won't adversely influence decisions of iwi when deciding the most appropriate asset base post settlement or the return of lost ancestral lands.

For that reason I suggest the following additional targetted rollover relief for Māori Authorities:

- 1) All assets sold within a – to be determined time period - following settlement with the Crown. No restriction of types of asset involved but within a to be determined time period.
- 2) All assets sold to purchase lost ancestral land. No restriction on type of asset or time period.

All other scenarios would be within the general rules. This is because all other scenarios involve regular business dealings and not specific issues associated with settlement and/or recovering ancestral lands lost from Crown action.

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