Tax Working Group Information Release

Release Document

February 2019

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This paper has been prepared by the Secretariat to the Tax Working Group 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 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.

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[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;
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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.

Coversheet: Post Final Report process

Position Paper for Session 23 of the Tax Working Group
22 and 23 November 2018

Purpose of discussion

Understand the process following the publication of the Final Report, and decide whether to comment on it in the Final Report.

Key points for discussion

Whether the Group wishes to include a comment in their Final Report about the Government's process after the publication.

Recommended actions

We recommend that you:

a **note** the proposed process following the publication of the Final Report

b **note** that Robin Oliver has provided a paper on options for staggered introduction of the Group's capital gains tax recommendations

c **note** that the Secretariat view on the Group moving away from a Valuation Day concept is set out in the accompanying report: *Compliance costs of taxing more capital gains*

d **decide** whether to include a comment on the proposed timeline in the Final Report

e if so, **recommend** the Government note the risks associated with the current timetable and consider the possibility of delaying or phasing the introduction of legislation.

Post Final Report process

Position Paper for Session 23
of the Tax Working Group

November 2018
Prepared by Inland Revenue and the Treasury

TABLE OF CONTENTS

1. Introduction

1. The Tax Working Group (the Group) is due to publish its Final Report in February 2019. This paper:

   - provides our understanding of the Government's indicative timeline for the advancement of any legislative proposals that may arise out of the Group's recommendations in the Final Report;
   - summarises feedback received on that process by submitters; and
   - discusses two alternative timelines.

The process following the publication of the Final Report

2. The Government has indicated that it intends to make decisions about the Group's recommendations in April 2019. We understand this is to ensure there is sufficient time to prepare a consultation document; conduct consultation about the contents of that document; and draft, introduce, and enact legislation before the next election (by July 2020).

3. Our understanding of timing of the various steps to achieve that timeline are as follows:

   - February 2019 – Group's Final Report delivered to the Government and published
   - April 2019 – Cabinet decides on key policy matters
   - May 2019 – Discussion document released for consultation
   - August 2019 – Cabinet decision on policy
   - November 2019[1] – Bill introduced to Parliament
   - July 2020 – Bill enacted
   - April 2021 – Possible implementation date

Feedback on the proposed process

4. Following the publication of the Group's Interim Report, the Group (and Secretariat) have consulted with stakeholders and submitters. Group members have also spoken at various conferences. One item which has been raised frequently with

[1] The date which was previously publicly announced for Bill introduction was September 2019, however Treasury has recently suggested November 2019 to Ministers instead.

the Group and Secretariat in these encounters is a level of disquiet with the proposed process following the publication of the Final Report.

5. Concerns have been expressed about the timeline. These tend to be focused on:

- The lack of time/opportunity for the public to give feedback on whether they agree with the Group's final recommendations. The Secretariat notes that the public has had the opportunity to consult on the merits of taxing more capital (and other key Group proposals), as part of the feedback process on the Group's interim report.

- The timeframe for engagement under the Generic Tax Policy Process (GTPP) in relation to any of the detailed design aspects of Government decisions. Some submitters have expressed their frustration with the strain they perceive GTPP to be under in recent years.

- The timeframe for drafting legislation, noting that the proposed timetable does not readily lend itself to consulting on draft legislation, legislative changes would be extensive, and would permeate throughout both the Income Tax Act 2007 and the Tax Administration Act 1994.

- The risk of unintended consequences of legislation drafted in a short time, including the possibility of subsequent amendments being required to the legislation to correct any errors or omissions arising – potentially increasing both uncertainty and compliance costs.

- The timeframe for Inland Revenue to implement system changes, noting the planned timeline for the remainder of its Business Transformation programme.

  – Inland Revenue advises that to ensure that taxing more capital gains could go live as part of Release 5 (April 2021) it would need certainty on the policy design / legislation by July 2020 to be able to complete the design of systems and processes in time.

- The timeframe for the private sector to design, build and implement necessary systems (for example the managed funds industry indicated they would not be willing to build systems until after the result of the 2020 general election was known). Software developers play a critical role in the tax system, and it will be important to ensure that they can adequately include any Government priority in their development plans.

  – From the perspective of taxpayers being able to comply with new rules from 1 April 2021, we agree that there are particular concerns for managed funds as they will need to return tax during the year (compared to other taxpayers who can return tax at the end of the year).

Secretariat view

6. If the Tax Working Group recommends a comprehensive extension of tax on capital gains, the Secretariat's first best advice is to legislate that in one Bill. We believe including all legislation in one Bill is preferable to splitting over multiple Bills as it provides a better opportunity to achieve a coherent and sustainable change to the tax system. It would also eliminate the need for temporary measures that may be necessary to enforce boundaries that would exist in the short term but not once all relevant asset classes were subject to tax. We note that the legislative changes would be extensive and would permeate throughout the Tax Acts.

7. We acknowledge that the Government favours a timeline which would allow taxpayers to have certainty about the application of the Group's recommendations before the general election.

8. We agree with submitters that the current timelines **(option 1)** for the detailed policy design, legislative development, and implementation are extremely challenging. Of the related concerns of submitters, the one we have most sympathy for is that tight deadlines increase the risk that legislation will include unintended consequences, and so in turn will require more amendments post-enactment than would otherwise be the case (we note that some amendments are inevitable).

9. Our recent experience on complex legislation (for example, the Base Erosion and Profit Shifting (BEPS) legislation) is that tight timelines have in fact resulted in a higher number of legislative errors. Stakeholders have criticised the legislation due to the lack of certainty these errors create at a time when taxpayers are attempting to understand the impact that changes will have on their business. In this context, it is important to note that the BEPS legislation, although complex:

   - Was not as extensive as any legislation on taxing more capital gains is expected to be;
   - Impacted on a relatively small number of parties engaged in cross-border transactions, which can be directly contrasted to the high numbers of people affected by any recommendation by the Group to tax more capital gains.

Alternative options

10. An alternative option would be to introduce, but not allow time to enact, comprehensive legislation before the general election **(option 2)**. Under this approach, the Government would still release a discussion document for consultation in mid-2019 but would not introduce a Bill to Parliament until mid-2020, with a possible implementation date of April 2022. The Secretariat acknowledges this would have the fiscal effect of pushing revenue back one year, which in turn may impact on the Government's capacity to introduce revenue negative packages.

11. However, the key benefit we see to this approach over the current timeline is the additional time it affords to consult more extensively on detailed policy design, and

also potentially on exposure drafts of key aspects of the legislation before it is introduced to Parliament. We think this consultation process would be iterative and allow for any issues to be explored and remedied before the Bill is introduced to Parliament.

12. While this would arguably provide less certainty to taxpayers than the current option (in that legislation would not be enacted before the election), the additional consultation time (approximately six months) would mean that the legislation as introduced to Parliament would likely require fewer changes after enactment, thus providing a different type of certainty.

13. This application date of April 2022 would also provide taxpayers with more time to plan and implement any necessary system changes.

14. If, however, the Government wanted to enact a Bill before the election, the Group might consider whether they would be comfortable with phasing their recommendations **(option 3)**. This approach would provide taxpayers with certainty on the proposals which had been introduced or enacted, but not on any proposals which were not included in legislation. If the Group decides to recommend phasing of an extension of tax on capital gains, the Secretariat note that this would lead to inequity between classes of assets or taxpayers and would entail boundary issues over what or who the extended tax applied to. It would also impact the Government's fiscal position – the extent of which would depend on the asset classes first subject to the tax and the length of time over which the phasing took place.

15. The consequences of these broad options are assessed below:

	Policy considerations			
Option	**Coherence**	**Certainty/ compliance costs**	**Fairness**	**Fiscal**
1. Enact comprehensive legislation before the election	Higher coherence, as both general principles and specific effect on asset classes are determined at one time	Legislation enacted before election Risk of unintended consequences of legislation drafted in a short time Not much time after election before implementation to make system changes.	All asset classes and all taxpayers affected at the same time	Revenue from all proposals from April 2021
2. Introduce comprehensive legislation before the election	Higher coherence, as both general principles and specific effect on asset classes are determined at one time	Legislation in Parliament at election More time to improve quality of legislation through more consultation, including iterative exposure drafts By the time legislation is enacted, it is certain that it will take effect (there is no intervening election)	All asset classes and all taxpayers affected at the same time	Revenue from capital gains delayed until the year commencing April 2022, so possible corresponding one-year delay in revenue negative aspects of packages

3. Phase legislation - introduce or enact only some before the election.	Risk of incoherence, especially in the short/medium term	Certainty for some, but not all, classes of assets or taxpayers	Different classes of assets or taxpayers would be affected at different times Could be seen as inequitable	Revenue from some aspects of capital gains later than April 2021, so possible corresponding delay in revenue negative aspects of packages