Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

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The New Māori Trustee

Tax Working Group secretariat

30 April 2018

Via email: submissions@taxworkinggroup.govt.nz

Future of Tax: Māori collectives group submission

E te rangatira, e Tā Michael, koutou mā hoki te Tax Working Group, tēnā koutou katoa

On behalf of the following Māori land and iwi collectives, we welcome the opportunity to provide the following submission to the Tax Working Group (TWG) in this important review of the New Zealand tax regime. This submission is made on behalf of the following entities:

- Te Tumu Paeroa – the Māori Trustee
- Tūaropaki Trust
- Wakatū Incorporation
- Mangatū Blocks Incorporation
- Wi Pere Trust
- Ngāti Pāoa Group Investments Limited

Our collective represents more than 200,000 beneficial owners, over $1Bn in assets and approximately 140,000 hectares of land. In addition, our members are involved in a number of major industries that range from farming, to forestry to food production and power generation to name a few.

Our submission focusses on the following areas that we consider most relevant to our organisations and members, namely:

1. The Māori authority tax regime
2. Land tax
3. Capital gains tax
4. Environmental taxes

We would welcome the opportunity to discuss our submission kanohi ki te kanohi, particularly given the short written submission timeframe (meaning for example, it has been very difficult for us to consult with our members).

1. The Māori authority tax regime

Submission 1	A separate Māori authority tax regime should be maintained and the tax rate should continue to match the marginal tax rate of the majority of individual Māori taxpayers. The regime in this respect works well, is fair and efficient.

1.1 All of our submission group members are or have Māori authorities within their group structures. We strongly submit that key tenets of the current Māori authority tax regime remain.

1.2 The separate tax rules for Māori authorities is based on the unique way that Māori freehold land and other tribal assets are administered and owned, including communal ownership and restrictions on the ability to sell. It is highly unlikely that these unique structures and constraints will ever change or be removed. We consider that it would be inappropriate for Māori authorities to be taxed as general companies or trusts. As an example, it is difficult for many of our long-established Māori land entities in particular, to maintain accurate ownership registers across an ever-increasing number of owners, who are required to undertake a legal process to formally succeed to their interests. Therefore, compliance with technical requirements such as shareholder continuity (under the company tax regime) or income attribution to individual members (under the trust rules) is practically impossible.

1.3 The lower tax rate of 17.5% reflects the marginal tax rate that the majority of the underlying members of a Māori authority are subject to, which we understand was estimated at over 80% of the Māori population at the time of the regime was introduced. We predict that this proportion will unfortunately not improve significantly in the near future. However, we note that all of our submission group members vehemently hope and strive to improve this situation – we want our people and our organisations to be in economic positions that mean they should be subject to higher marginal tax rates! In the meantime, we consider that the Māori authority rate should match the marginal tax rate of the vast majority of our members (currently 17.5%).

1.4 On the basis of the above, we submit that the policy rationale for the retention of a separate Māori authority tax regime and the current tax rate remains sound. The model in practice works well and we endorse its retention. This will continue to recognise the unique characteristics and obligations of Māori authorities, ensure that distributions to members are generally taxed at their respective marginal rates, and minimise administrative and compliance costs for members (by removing the need for members to file a tax return in order to square up their final tax liability).

Submission 2	Wholly owned and controlled subsidiaries of Māori authorities should be eligible to elect Māori authority status. It will remove the over taxation and complication of Māori authority groups, and aligns with the policy of the Māori authority regime.

1.5 The ability to elect Māori authority status is restricted, broadly to companies or trusts that ‘receive’ Treaty settlement assets (fisheries or land), or ‘own’ Māori land. Generally, wholly owned or controlled subsidiaries established to hold or manage the assets or commercial activities of the parent are not able to elect Māori authority status.

1.6 We understand that in the lead up to the introduction of the current Māori authority regime, officials had recommended that wholly owned and controlled subsidiaries be included in the Māori authority definition. However, the eventual exclusion was a response to lobbying and concerns that the lower tax rate for subsidiaries would confer a competitive advantage and distort competitive neutrality.[1]

1.7 The inability for subsidiaries to elect Māori authority status means that the subsidiary will often be subject to the company tax rate of 28% and not 17.5%. One implication of denying Māori authority status to wholly-owned subsidiaries is that a Māori authority will end up with excess imputation credits from the subsidiary being taxed at 28% but the Māori authority is only able to pass on 17.5% of the benefit of those credits to its members. This problem is exacerbated by the inability of Māori authorities to offset tax losses or profits against non-Māori authority entities in their group. Many of our submission members have been in situations where their wholly-owned group is in a tax loss position but has had to pay tax.

[1] Taxation (Annual Rates, Māori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Bill as reported from the Finance Expenditure Committee – Commentary.

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1.8 The above issues have led most if not all of our members to either conduct commercial activities directly, or engage tax advisors and lawyers to establish look-through company or limited partnership structures (to achieve a 17.5% tax rate with look through treatment). We consider it inefficient to unnecessarily structure ourselves in a manner to achieve a sensible tax outcome rather than according to commercial merit. For less mature or resourced Māori authorities, the difference in rates may mean that they lose the ability to quarantine commercial risk or access more efficient commercial structures.

1.9 We consider that the above issues inevitably lead to the over taxation or over complication of Māori authorities. Wholly-owned subsidiaries of Māori authorities face constraints on their activities due to the restrictions placed on their parent entity, which are not faced by competitors who do not have a Māori authority parent entity. As the Māori authority and its wholly-owned or controlled subsidiaries are a single economic unit, there is no reasonable justification for their income to be taxed differently when the policy of the Māori authority regime is to tax the income of that unit at the members' marginal tax rate. We submit therefore that subsidiaries of Māori authorities should also be able to access the same tax rate as its ultimate economic owners.

2. Land tax

Submission 3	We do not support a land tax. It is likely to lead to over taxation, cash flow difficulties and increased inequity. Māori, where land is often collectively owned, would be amongst the groups hardest hit by a land tax.

2.1 Taxes can be imposed on a number of bases, and these bases change over time and across jurisdictions. Some of the most common tax bases are income, consumption and wealth. Land taxes (or any tax that taxes based on the value of an asset, rather than the income it produces) are a form of wealth tax. Since 1992, with the abolition of land tax (which was collecting immaterial amounts of revenue at the time), New Zealand has relied principally on income and consumption taxes. This is a mix that we consider continues to work well for Aotearoa New Zealand.

2.2 The merits of introducing a wealth tax – and a land tax as a particular form of wealth tax – were canvased by the 2001 Tax Working Group ("the McLeod Review"). They considered that wealth taxes would likely lead to over-taxation of certain assets (like land, where any rental income was already taxed) and concluded at paragraph 2.77 of the Issues Paper:

> *A case can, however, be made for considering taxes on wealth where they would fill in gaps in the income tax base. To the extent that wealth is acquired by reinvesting after tax income, it has already been recognised by the income tax system and there is no gap to fill. This suggests there is no need to pursue the idea of a general wealth tax.*

2.3 The Victoria University Tax Working Group of 2010, which saw merit in further consideration of a land tax, also noted the equity issues of imposing a land tax, noting:

> *The equity impacts of a land tax are also unclear. Firstly, it taxes only one component of wealth, and therefore mainly impacts those people and organisations holding their wealth in that form. Retirees, Māori authorities and farmers could be particularly affected. [Emphasis added]*

2.4 While no tax is without issues, land taxes pose a series of problems that make them difficult to support in the absence of some other obvious hole in the tax base. We have seen no compelling argument put forward for such a hole in the base.

2.5 In particular, because a land tax is not linked to the income produced by an asset, there may be difficulty in funding the tax payments. For our Māori land owners, this can be a particular problem. Land held collectively may not generate significant cash flows, either as the land is held for its cultural significance and cannot (or will not) be developed or sold, or because of the constraints imposed by the Te Ture Whenua Māori Act 1993 our collective owners have difficulty borrowing against the land, developing the land or disposing of it. The imposition of an annual charge against the land, even at a relatively low rate, is likely to have a disproportionate impact on our Māori land owners – possibly forcing the sale of land which may once again alienate our people from our whenua; in some cases land which may have been recently returned as part of a Treaty settlement.

2.6 For the majority of our Māori land, used in forestry or farming, there are limited alternative uses for the land. In these situations, it is not the case that imposing a tax on the land could or will drive a more productive use of the land. Even where alternative uses may be available, some of our Māori land owners still lack the access to capital needed to convert land to those uses. The imposition of a land tax will make that problem worse.

2.7 If a land tax was introduced, certain design aspects would be necessary to minimise these adverse impacts. These measures could include:

2.7.1 For the reasons outlined above, excluding Māori collectively owned land, or at a minimum, culturally significant Māori land from a land tax.

2.7.2 Applying the tax only to land that exceeded a certain threshold (such as $70,000/ha). If the concern driving a land tax is that land bankers in high value urban fringe areas and property speculators are being undertaxed, excluding land below a certain dollar limit may exclude most Māori collectively owned land (and farms – the other obvious pressure point for a land tax).

2.7.3 Providing land owners the opportunity to defer any tax liabilities until the sale of the land. While this would address some of the cash flow issues related to the tax, the effect of the accumulating liability over time (particularly if there was an imputed interest charge to reflect the deferral), could have a significant impact over time. If land was held for multiple generations, the tax liability would grow to the point where it swallowed the whole value of the land on its eventual sale. Put simply, a 1% per annum land tax rolled-up over land owned for 100 years equals 100% of the land value.

3. Capital gains tax

Submission 4	We do not support a capital gains tax. It is possible that a tax on investment properties would simply be passed on to renters, which would disproportionately impact on Māori. If there is going to be a capital gains tax, there needs to be a practical mechanism for owners of unsuccessful businesses to access capital losses.

3.1 We do not see the need for a capital gains tax to be introduced. However, if there is to be one, it needs to be comprehensive with as few exceptions as possible. Our particular concerns relate to capital losses and the potential unintended impact on the housing market.

Losses

3.2 As you are aware, the Māori economy is in a state of substantial growth as we regain access to our resources and successfully grow our asset base. This means many Māori businesses and ventures (both collectively and individually owned) are in a start-up phase and not all will be successful. If capital gains are to be taxed, in the interests of both efficiency and equity, there needs to be a meaningful way for start-up businesses and their owners to access the losses where the business is

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unsuccessful. While we are aware that most jurisdictions have differing treatment of capital gains and losses, these differences need to be minimised. Unsuccessful Māori businesses need to be able to access the capital losses (ideally through a cash-out mechanism) to allow us to start again.

Housing

3.3 We are concerned that any capital gains tax considered by the TWG has had owner-occupied housing already ruled out. Māori are significantly under-represented in house ownership statistics and over-represented as renters. Any capital gains tax will fall only on rental properties. Almost any house in New Zealand can move freely between being a rental property or being owner-occupied. The dynamics of house price setting means that it is not clear who sets house prices in New Zealand: owner-occupiers or investors. It is, therefore, not clear how any capital gains tax would impact house prices – if untaxed owner-occupiers are the marginal buyer and set the prices. A capital gains tax would not make entry into the housing market any more affordable for Māori.

3.4 Equally it is unclear whether the cost of the tax would be borne by the landlords. If landlords are currently 'subsidising' rents on the basis they can earn a tax-free capital gain on the eventual disposal of the property, any tax on the gain may simply be passed on to renters in the form of higher rents. These rent increases would disproportionately impact our people, who are more likely to rent.

4. Environmental taxes

Submission 5	We support the development of effective environmental taxes that result in better outcomes for our environment and organisations. The challenge is whether and what tax is the most effective and cost efficient way to achieve these outcomes.

4.1 We are kaitiaki of our land and natural resources. The sustainable management of our resources and care for our environment is of the upmost importance to our organisations. Therefore, we support the consideration of any environmental taxes that result in better outcomes for our environment and organisations.

4.2 At 1.3% of GDP New Zealand's revenue from environmentally related taxes is among the lowest in the OECD[2]. However, we do not consider environmental taxes should be used as a mechanism to raise additional revenue for general government spending. In fact, by definition if they succeed in changing behaviour, the direct revenue raised should be small. Any revenue raised should be directed to achieving better environmental outcomes for Aotearoa New Zealand.

4.3 We consider that a key challenge lies in determining whether environmental taxes will affect behaviours in a way that will result in better outcomes for the environment on a holistic basis. And whether tax reform can achieve a given level of environmental protection at lower cost than non-tax alternatives such as trading schemes or regulation. Given the limited time available to us, we do not have a specific view on these issues. However, we urge the TWG to fully examine these particular aspects and potential impact of any environmental taxes on our organisations.

[2] OECD Environmental Statistics Database (OECD average is 1.6%). See https://www.oecd-ilibrary.org/environment/data/oecd-environment-statistics/environmental-policy-instruments_data-00696-en?parentId=http%3A%2F%2Finstance.metastore.ingenta.com%2Fcontent%2Fthematicgrouping%2Fd77d7b93-en (as at 19 April 2018).

We appreciate the opportunity for our group of Māori collectives to be able to contribute our submissions to the TWG on the future of New Zealand's tax system.

Please feel free to contact us should you wish to discuss our comments further.

Nāku noa, nā

[1]

Jamie Tuuta
Māori Trustee (on behalf of the organisations listed on page one)