

Tax Working Group Public Submissions Information Release

Release Document

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30 April 2018

Tax Working Group Secretariat
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Tēnā koe

TAX WORKING GROUP FUTURE OF TAX: SUBMISSIONS BACKGROUND PAPER

CNI Iwi Holdings Limited is writing to submit on the Tax Working Group's *Future of Tax: Submissions Background Paper* ("the submissions paper"). We would like to thank the Tax Working Group ("the TWG") for the opportunity to submit on the submissions paper and would like to comment on some key areas that are of particular relevance and significance to CNI Iwi Holdings Limited.

CNI IWI HOLDINGS LIMITED – WHO WE ARE

CNI Iwi Holdings Limited is owned in equal shares by PSGE's of: Ngāti Whakaue, Ngāti Rangitihī, Te Pūmāutanga o Te Arawa, Ngāti Tūwharetoa, Ngāti Manawa, Ngāi Tūhoe, Raukawa and Ngāti Whare.

The Board are responsible for holding and safeguarding CNI forest lands on behalf of CNI Iwi shareholders until 2043 when the forests will return to the ultimate beneficiaries.

CNI Iwi Holdings Limited's current asset base at the end of 2017 was \$285 million.

CONTEXT OF THE TREATY OF WAITANGI

The eight iwi of the CNI Forests Iwi Collective signed a Deed of Settlement with the Crown on 25 June 2008 for the settlement of historical claims in relation to the Central North Island Forests Land. The subsequent Settlement Legislation transferred ownership of the land from the Crown to the Trustee to be held on the terms of the Trust set out in the Trust Deed. The settlement included ownership of the land, but did not include rights to current forest plantation crop growing on the land.

The Deed provided for the Crown to provide Financial Redress and Commercial Redress. The financial redress included payment of all accumulated rentals of Crown Licence Payments accumulated since inception of Licence payments under the Crown Forests Act 1989.

On 1 July 2009, the Crown returned 176,000ha of central north island land leased to forestry companies along with \$284million of accumulated rentals. Under the Emissions Trading Scheme, the Crown issued 18 NZU's per planted hectare.

In the Settlement process, certain assets were agreed upon and accepted by CNI Iwi, on the understanding that the tax framework would apply in a particular way in respect of these.

When CNI Iwi settled with the Crown, they negotiated and settled in the context of the taxation framework at that time. If some of the proposals in the current TWG's submissions paper were known then, we consider that the negotiated outcomes would have been significantly different.

This holds particularly true for land and assets as any taxes imposed on these would significantly impact on the value of these assets (discussed further below in our submission). While CNI Iwi Holdings Limited understands that minor changes will be made to New Zealand's tax system over time (including changes that will affect Māori organisations), these are potential significant and substantial changes that will have a material impact to the detriment of the Māori economy.

It is in this context that CNI Iwi Holdings Limited makes its submission to the TWG and we set out below the key issues that we believe the TWG should consider.

SUBMISSION ON KEY ISSUES

1. Māori authority regime

- 1.1 CNI Iwi Holdings Limited considers that the Māori authority regime is working well and operates effectively to meet the needs of Members.
- 1.2 The Māori authority regime has been in place for some time and its purpose to provide an appropriate tax framework for assets to be held in collective ownership is being achieved. In CNI Iwi Holdings Limited's view, the current framework works well in serving this purpose. Māori authorities are an important feature of the Māori governance and asset ownership landscape that must continue for generations to come.
- 1.3 Some of the attributes of the Māori authority regime include an income tax rate reflective of the marginal tax rate of Members, low compliance costs, refundable credits and the removal of the need for most Members to complete an income tax return (at least to the extent that they would need to claim or pay the difference between the Māori authority tax rate and their own personal tax rate). These are attributes that CNI Iwi Holdings Limited believe should remain in place given the underlying policy rationale of having tax levied at a rate approximating the marginal tax rate of Members.
- 1.4 Māori authorities are an integral part of the administration of the tax system, not only for Members but also more generally. For some Members, their most significant interaction with the tax system other than PAYE is through the Māori authority regime, which subject to minor adjustment, meets the needs of Members.

1.5 We would be very concerned if changes were proposed that would impact on the ability of Māori authorities to hold and manage their assets through a collective vehicle and for the tax on income earned to approximate the tax rate of the Members. This is particularly so given the inter-generational view that is taken to management of the putea that means that not all income is distributed in each year and therefore accumulated income should continue to be taxed at the marginal tax rate of Members and any tax refund or top up for individual Members to occur on distribution.

2. Land tax

2.1 CNI Iwi Holdings Limited does not support the potential introduction of a land tax as the cost of this would be born disproportionately by Māori.

2.2 Under the Treaty of Waitangi, Māori negotiated in good faith for redress for historic grievances and return of land illegally taken by the Crown. As part of the process, iwi and Māori received land from the Crown, as well as other assets, as full and final settlement / redress for historic grievances. As a result, Māori hold a significant portion of freehold land in New Zealand and by virtue of this would suffer the greatest impact if a land tax were to be introduced. A land tax would, in effect, be a tax on Māori.

2.3 A land tax will decrease the effective value of the land received and held by Māori, significantly reducing the redress provided under the Settlement process.

2.4 Many iwi and Māori organisations may not be able to absorb the impact of the decrease in effective value or fund a land tax particularly where a significant amount of the land transferred through the Treaty settlement process generates very low returns as it is classified as cultural land, is poorly productive land or is encumbered by existing rights (for example, Crown Forest licenses) that impact on the financial return. A land tax may force Māori to sell the very land that was transferred to them in settlement of the historical grievances committed against them by the Crown.

2.5 Whilst we do not support a land tax in any form, if a land tax is to be introduced, land transferred as redress under a Treaty settlement should be excluded from such a tax.

2.6 If a land tax were to be imposed on all land including land transferred as redress under a Treaty settlement CNI Iwi Holdings Limited would need to reconsider its position given that past claims will be negatively impacted in a significant manner.

2.7 While CNI Iwi Holdings Limited understands that minor changes will be made to New Zealand's tax system over time (including changes that will affect Māori organisations), a land tax would be a significant and substantial change that would have a material impact on Māori.

3. Capital gains tax

- 3.1 CNI Iwi Holdings Limited do not support the potential introduction of a capital gains tax, for many of the reasons noted above in relation to a potential land tax.
- 3.2 The introduction of a capital gains tax would again be born disproportionately by Māori as it would largely apply to land.
- 3.3 Whilst we understand the driver behind a CGT being to encourage investment in more productive or income generating assets rather than capital appreciating assets, Māori hold a disproportionate proportion of low income generating capital assets (particularly land) and are not afforded such flexibility to simply divest those assets in favour of other assets. As such, a CGT is likely to negatively impact Māori.
- 3.4 Again, Māori negotiated and settled with a particular taxation framework in mind. If a CGT had been in contemplation at the time of Settlement, CNI Iwi considers the outcomes from negotiations would have been substantially different.
- 3.5 A CGT will decrease the effective value of assets and land received by CNI Iwi significantly reducing the redress provided under the Settlement process from that which was expected and negotiated.
- 3.6 If a CGT was to be imposed on all land including land transferred as redress under a Treaty settlement CNI Iwi would need to reconsider its position given that the basis of past claims will be negatively impacted in a significant manner.
- 3.7 If a capital gains tax is to be implemented, property transferred as redress under a Treaty Settlement should be excluded, it should only apply on a realised basis and roll-over relief should be provided to allow asset ownership reorganisations to take place without tax consequences.

4. Environmental tax

- 4.1 The submissions paper queries whether the tax system does enough to maintain natural capital, being the natural environment needed to support life and human activity (as per Treasury's 'Four Capitals').
- 4.2 Environmental sustainability, particularly the preservation and protection of the natural environment and resources for future generations, is a key concern for CNI Iwi Holdings Limited.
- 4.3 The relationship with the natural environment is at the heart of our kaupapa [purpose] and much of our constitutional documents and strategic plans give expression to our relationship with the natural resources / taonga. Our lands and environment have always been fundamental to our identity and the identity of our Members / wider whānau.

- 4.4 As such, CNI Iwi Holdings Limited invest considerable money and resources towards the preservation of the environment in honouring the CNI Iwi Holdings Limited values of kaitiakitanga and through our role as kaitiaki of the environment within our rohe. This is over and above what may be required either by statute or regulation.
- 4.5 Environmental taxes are a blunt tool, often not well directed and penalise rather than incentivise taxpayers to do more. Whilst we are supportive of more being done to protect, preserve and restore the environment we consider that there may instead be a place in the tax system for incentives, with tax rewarding positive actions; for example tax credits or greater deductions for those investing in environmentally friendly alternatives or other environmental initiatives.
- 4.6 Consideration should also be given to when there are specific tax regimes that are targeted at environmental sustainability measures (such as pollution mitigation), the tax policy should err on the side of deductibility so that tax is not a barrier to more being done. Often this expenditure ends up as 'black hole' expenditure, with no immediate deduction available and no depreciation deduction certainty.
- 4.7 CNI Iwi Holdings Limited would be concerned about the potential introduction of environmental taxes if the effect was to simply impose additional costs on iwi / Māori organisations that already significantly contribute to the preservation, protection and restoration of the environment.
- 4.8 Māori through kaitiakitanga being a key value will always play an important role in the protection, preservation and restoration of the environment. We would argue that we are best placed to determine what that contribution should look like based on our knowledge of the area and as things change from generation to generation.
- 4.9 We would not support additional environmental taxes that did not take into account the contribution, funds, activities and resources already directed towards the protection, preservation and restoration of the environment. For that reason we would support a framework of incentives rather than additional taxes.

5. Engagement by Māori with the tax system

- 5.1 Historically, Māori have had as a generalisation low levels of engagement with Inland Revenue, to the detriment of the Māori economy and in particular the next generation of rangatahi.
- 5.2 For example, a 33% withholding tax rate automatically applies to certain distributions / payments where the Māori organisation does not hold a Members Inland Revenue number. We understand that changes may increase the non-declaration rate in some cases to 45%.

5.3 This has a significant impact on the amount of net funds that may be paid to the Member when their marginal rates would on average be closer to 17.5% across Members and in the case of rangatahi 10.5%. The cumulative impact over time is significant and is a barrier to improving the social-economic outcomes for Māori as they are being over taxed.

5.4 However many Māori have, through their process of identity and whakapapa, registered with their respective iwi / as Members with their Māori organisations.

5.5 We consider that there should be scope for Māori organisations to act as agents for its Members that have registered within its system, to help them obtain Inland Revenue numbers and to start the process of engaging them in the tax system. This would be to the benefit of the Members, iwi and tax collection system.

Thank you for taking the time to consider this submission. Please let us know if you have any queries in relation to the points contained in this submission, or if you would like to discuss any of these points further.

Nāku noa, nā

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Bronco Carson
Chairman
CNI IWI HOLDINGS