Tax Working Group Public Submissions Information Release

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Tēnā koe Sir/Madam,

RE: Future of Tax – The Tax Working Group

Aotearoa Fisheries Limited, trading as Moana New Zealand, welcomes the opportunity presented by the Tax Working Group (TWG) to participate in its review of the New Zealand tax regime. In particular, we commend the TWG for its interest in organisations operating in the Māori economy and for its openness to consider the relevance of tikanga Māori to the design of New Zealand's tax regime.

In our submission we focus on areas which Moana New Zealand considers to be particularly relevant to us and our stakeholders. These are:

1. The relevance of tikanga Māori to the design of the tax regime
2. The Māori Authority tax regime
3. The Charities tax regime
4. Capital gains tax and settlement assets
5. Environmental taxes.

About Moana New Zealand

Moana New Zealand is the largest Māori-owned seafood company and the second largest seafood company in terms of quota volume and value in New Zealand. We are unique in that we are the only organisation that is owned by all Māori (58 Iwi across New Zealand).

Established in 2004 through the Māori Fisheries Act, Moana New Zealand is an important part of the inter-generational Māori Fisheries Settlement with the Crown. The nature of that settlement means that Māori will always be involved in fisheries and our activities and investments have a long-term perspective that is respectful of fisheries and the ecosystems we are part of.

Moana New Zealand must pay dividends to its shareholders of at least 40% of our annual profit, with the balance retained to invest in growth opportunities for future generations. Our ability to pay dividends and to manage assets in a commercial manner is directly linked to the successful management of New Zealand's fisheries.

We are governed by Te Ohu Kai Moana Trustee Ltd (also established by the Māori Fisheries Act) which holds 100% of the voting interests and 20% of the income interests in Moana New Zealand. Our Iwi shareholders hold the remaining 80% income interests in Moana New Zealand.

Moana New Zealand is a proud supporter and economic contributor to regional New Zealand with operations throughout the North Island, top of the South Island and the Chatham Islands.

The relevance of Tikanga Māori to the design of the tax regime

We commend the TWG for recognising the relevance of te ao Māori and the role that the Māori economy has in lifting New Zealand's overall living standards. Moreover, we are also pleased to see the interest of the TWG in incorporating concepts of tikanga Māori in the design of New Zealand's future tax system.

Moana New Zealand's tikanga are:

- Kaitiakitanga – custodians for our future generations
- Manākitanga – looking after people our way
- Whakapapa – our genealogy
- Whakatipuranga – prosperity for future generations.

These values inform our purpose and vision. They also guide our decision-making and actions. In short, our tikanga underpins every aspect of our operations. Our assets can never be sold, therefore decisions must be in-line with our values and have a long term view that is respectful of our future generations.

In our view, the adoption of such concepts, which support a forward-looking, sustainable approach for future generations, will supplement the more traditional frameworks used in the design of tax systems (for example, efficiency, equity and fairness, revenue integrity, fiscal adequacy, compliance and administrative costs and coherence) in a positive way. The interaction of both tikanga and the traditional frameworks will ensure the design of New Zealand's tax system continues to evolve in a way that remains best for New Zealand as New Zealand continues to change in the future.

The Māori authority tax regime

Moana New Zealand is a Māori authority (being specifically included as Aotearoa Fisheries Limited in the relevant definition in the Income Tax Act 2007). We strongly support the maintenance of the current Māori authority tax regime.

Specifically, Māori authorities generally have unique structures and constraints which are applicable to Māori organisations and businesses only, including restrictions on the ability of members of a Māori authority to sell their interests in the assets of the authority.

Furthermore, Māori authorities are not homogenous and they can differ in a number of ways including their legal structure, size, types of activities undertaken, the range of benefits they provide, membership of the group and the mix of objectives.

These special characteristics mean that it would be inappropriate to require Māori authorities to be taxed in the same manner as other companies or trusts. For example, while we have an accurate record of our shareholders, we are aware that for a number of our shareholders (many of whom are themselves Māori authorities), maintaining accurate share registers is challenging due to that ownership being held directly or indirectly by Iwi or hapū. This makes compliance with the technical requirements of shareholder continuity (in the case of company taxation) or to attribute income to individual members (as the case under trust rules) impractical.

Therefore, we consider that there continues to be sound policy justification for the maintenance of a specific tax regime that applies to Māori authorities. In our view, the current regime is appropriate on the basis that it achieves the following:

- Members who receive distributions are generally taxed on that income at their respective marginal rates.
- Costs for Māori authorities in complying with their tax requirements are minimised.
- Compliance costs for members who receive financial benefits from Māori authorities are reduced by reducing the need for them to file an income tax return as a result of overpayment or underpayment of tax.
- The unique characteristics, structures and conditions of Māori authorities and the activities they undertake are recognised.

However, we consider a number of refinements can be made to the current regime to ensure that the regime better achieves its intended tax policy outcomes. Specifically, we consider the following changes should be made:

1. Expanding the definition of Māori authority to include wholly-owned subsidiaries of Māori authorities
2. Allowing Māori authorities to get a refund of imputation credits that are in excess of 17.5% rather than having them convert to Māori authority tax credits
3. Removing the restrictions on the ability for Māori authorities to interact with other non-Māori authority entities in the tax regime
4. The requirement to withhold resident withholding tax at 33% is reduced to 17.5% even where the Māori authority does not know the IRD number of the recipient
5. Development of a Māori authority tax credit refund form that is similar to the resident withholding tax deducted in error form.

We discuss the above in more detail below.

Over-taxation of Māori authorities
One of the main categories of entities included in the definition of 'Māori authority' are entities that have received settlement assets directly from the Crown (although the definition is not limited to such entities, for example Te Ture Whenua entities are also eligible to elect). This means any subsidiary that is subsequently set up to hold or manage the assets by the initial entity which received the asset directly from the Crown (the Māori authority) will not be able to elect into the Māori authority tax regime.

The inability to elect into the Māori authority tax regime means that the subsidiary will be subject to the company tax rate of 28% and not 17.5%. This mismatch in tax rates means that the Māori authority accumulates excess imputation credits as a result of the subsidiary being taxed at 28% but the Māori authority is only able to effectively pass on 17.5% the benefit of those credits to its members (in the form of Māori authority tax credits).

We note that although the excess imputation credits will convert to Māori authority tax credits, those tax credits are often unable to be attached to a distribution by the Māori authority as the amount of Māori authority tax credits that can be attached is capped at 17.5%.

This issue is exacerbated by the fact that Māori authorities are prevented from interacting with other non-Māori authority entities in the tax regime. For example, Māori authorities are unable to offset losses with other companies, amalgamate with other companies or be members of a tax consolidated group with non-Māori authorities. For example, Moana New Zealand has experienced instances where losses exist within our group (in wholly-owned subsidiaries) yet Moana New Zealand is required to pay tax as it is in profit.

In our view, the issues outlined above mean that there is over-taxation of income of the Māori authority. As a Māori authority and its subsidiary are a single economic unit, there is no reason to have a different tax rate applying between the two if the policy rationale is to ensure any income derived through a Māori authority is to be effectively taxed at the members' marginal tax rate. Furthermore, the subsidiary will effectively be subject to the same restrictions as its parent in relation to its assets.

We therefore consider the following changes should be made to ensure the income of Māori authorities are not over-taxed:

- Expanding the definition of Māori authority to include wholly-owned subsidiaries of Māori authorities – this will ensure there is no over-taxation of the Māori authority's income.
- Allowing Māori authorities to get a refund of imputation credits that are in excess of 17.5% rather than having them convert to Māori authority tax credits – this will eliminate the issue of the economic unit of the Māori authority bearing a 28% tax rate on its income due to it being unable to distribute excess Māori authority tax credits to its members.
- Removing the restrictions on the ability for Māori authorities to interact with other non-Māori authority entities in the tax regime.

Improving the administration of the regime
From what we have seen and heard from our Iwi stakeholders the Māori authority regime is often not well understood. The lack of understanding, in our view, undermines the effectiveness of the regime and is also preventing it from fully achieving its intended purposes.

We would recommend Inland Revenue provide further guidance to ensure those affected by the regime understand how the regime operates in a practical sense.

An administrative issue that often arises for Māori authorities is the requirement that a Māori authority must deduct resident withholding tax up to a rate of 33% if it does not know the IRD number of the recipient (an additional 15.5% if the Māori authority distribution has Māori authority tax credits attached at 17.5%). It is not uncommon that Māori authorities are unable to identify every one of its members. This results in over-taxation of the income if there is an acceptance that recipients of Māori authority distributions are generally taxed at 17.5%.

We therefore submit that the requirement to withhold resident withholding tax at 33% is reduced to 17.5% even where the Māori authority does not know the IRD number of the recipient.

The current refund process for obtaining refunds of Māori authority tax credits is cumbersome. We consider further work needs to be done to smooth out the refund process. We recommend that a Māori authority tax credit refund form (similar to the resident withholding tax deducted in error form) is developed so that non-taxable recipients of Māori authority distributions are able to quickly and efficiently obtain a refund of any Māori authority tax credits received.

The charities tax regime

Moana New Zealand supports the policy rationale that the tax system should support organisations that have a charitable purpose. We are also supportive of the business activity exemption for charities as it supports the underlying policy of providing tax relief to charitable organisations, especially in the context of Iwi.

We also support the maintenance of a deduction for Māori authorities for donations made to donee organisations or to Māori associations.

If changes are to be made to the charities tax regime, we strongly recommend that specific consideration be given to Māori organisations as most Iwi groups have charitable organisations that are members or are associated with them. Care should be taken to ensure any changes to the charities tax regime do not result in any adverse or unintended consequences for Iwi, including any additional compliance costs that could result from such change.

Finally, we also continue to support the recognition of the uniqueness of Māori organisations and Iwi in the definition of 'charitable purpose' for income tax purposes, namely the relaxation of the 'blood ties' restriction, which was made in 2004, in parallel with a review of the Māori authorities tax regime.

Capital gains tax and settlement assets

Moana New Zealand supports a tax system that is fair, balanced and equitable. We also recognise that fairness is a key focus for the TWG.

We submit that if a capital gains tax is to be introduced, concessions should be made for 'settlement assets' to recognise their unique characteristics as, in our view, it would be inequitable for such assets to be subject to a capital gains tax. Our view is consistent with the sentiment conveyed in the Future of Tax paper which recognises the unique nature of settlement assets.

Specifically, we note that settlement assets represent compensation from the Crown to Iwi to settle historic wrongs. It would be contrary to the sentiment of compensation if Māori authorities are required to pay tax on any future transfer of these special assets.

Furthermore, settlement assets are subject to significant legislative restrictions on how they may be transferred. Such assets are only able to be transferred between Mandated Iwi Organisations. Settlement assets are therefore not subject to normal 'market' conditions which generally results in a negative impact on the value of those assets. Imposing a capital gain tax on those transfers will further dilute the value of those assets to Iwi.

Finally, practical issues can also arise if a capital gains tax is introduced and applied to settlement assets. For example, it would be difficult to ascertain the market value of such assets, especially taking into account the restrictions referred to above. It will also be difficult to determine the cost of such assets given they are a form of compensation to Iwi and not purchased.

We therefore strongly submit that settlement assets should be outside the scope of any capital gains tax and 'settlement assets' should be given a commercially relevant definition which for Moana New Zealand should include both settlement quota and shares in its subsidiaries.

Environmental taxes

The sustainable management of marine resources and the well-being of our environment is critical to Moana New Zealand's ongoing success. Moana New Zealand holds a deep sense of responsibility to Iwi to respect and protect kaimoana and kai ora.

We understand that the application of environmental taxes is a specific area that is being contemplated by the TWG. However, we note that New Zealand's current tax system has generally adopted the approach of having minimum incentives or distortions and therefore the introduction of taxes to discourage certain behaviours would be relatively novel in the context of the current tax policy settings.

Given the novelty of such taxes, we urge the TWG to fully examine the policy rationale and potential impact of any environmental taxes. Issues that should be addressed by the TWG include:

- Whether there is sufficient evidence to support that the environmental tax will affect behaviours in a way that will result in better outcomes for the environment on a holistic basis.
- Challenge whether using tax is the most effective and cost efficient way to achieve the desired environmental outcome – for example, regulation such as New Zealand's fisheries quota management regime has been effective in helping manage New Zealand's fisheries stocks in a sustainable manner for future generations.
- Clarity as to the purpose and outcome of any resulting environmental taxes. Specifically, we do not consider environmental taxes should be used as a mechanism to raise additional revenue for general government spending. Rather, any revenue raised should be directed to achieving better environmental outcomes for New Zealand.

General

We appreciate the opportunity for Moana New Zealand to be able to contribute our views and comments 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, na

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MOANA NEW ZEALAND
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