Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

Release Document

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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.

Submission by

The Employers and Manufacturers Association (EMA)

to the

Tax Working Group

October 2018

About the EMA

The EMA has a membership of more than 8500 businesses, from Taupo north to Kaitaia, employing around 350,000 New Zealanders.

The EMA provides its members with employment relations advice from industry specialists, a training centre with more than 600 courses and a wide variety of conferences and events to help businesses grow.

The EMA also advocates on behalf of its members to bring change in areas which can make a difference to the day-to-day operation of our members, such as RMA reform, infrastructure development, employment law, skills and education and export growth.

We have a solid reputation as a trusted and respected voice of business in New Zealand, and our presence makes a difference. Therefore, we are constantly called on to speak at conferences, comment in the media and partner or provide advice to Government on matters which impact all employers (such as ACC, health and safety, pay equity).

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The EMA has considered the points raised in the interim report and wishes to make the following comments:

Capital and Wealth

While not opposed to a capital gains tax, we do consider that any such tax must be fully balanced against capital loss and should also take account of inflationary over normal CPI growth within the economy. This is effectively risk free rate of return however we do also understand that this may become unduly complicated if implemented.

We also would point out that under existing tax law, where currently an investor is deliberately investing for the purpose of capital gain then that gain is already liable for income tax. Trading in shares for this purpose does incur such a tax and historical tax cases post 1987, also show that losses that occurred when tax had been paid were able to be claimed.

Under the current brightline test it is effectively a capital gains tax on property unless the property is held for an extended period to address the issue of speculation. The historical argument against capital gain is that a rental property is acquired for rental income and that income is taxable. If capital gains is applied to property then the brightline test becomes irrelevant and should be repealed.

The EMA believes that if capital gains taxes are applied to investment tools such as shares then the converse of losses must equally be applied when this occurs.

If such loss offsets are available across a wide capture capital gains tax, then it must include property.

We accept this has significant ramifications to the tax base in the event of a major property crash such as 1989 and given historically there are defined cycles to property price inflation and deflation.

We are however strongly opposed to the imposition of a continuous application of the capital gain obligation when assets have not been realised with that capital gain. Such application would impose an unnecessary tax burden on business and investors. Application of the tax if imposed must only be at the time the gain is realised.

Kiwisaver is by its nature a speculator for capital gain on shares and other wealth creating tools and we would see that if a capital gains tax is applied then there can be no exemptions as this could create an uneven investing platform against non Kiwisaver managed funds and other investors.

Retirement Savings

We question why there should be a cap on the Kiwisaver employer contribution in the recommendations when that contribution is generally part of the total remuneration package negotiated with the employer and higher earning individuals may choose to opt out of Kiwisaver to receive the equivalent amount directly enabling them to focus other investments.

Housing Affordability

It could be argued that this is no longer an issue due to the brighline test and that the current property cycle appears to have peaked.

If we look to markets such as Australia where a capital gains tax has been applied for a considerable period, we do not see capital gains as having a significant effect on housing affordability compared to pure

supply and demand. We see the same type of cycles within the Australian capital cities as are seen within New Zealand.

As such we do not believe this provides a strong argument for capital gains on property and other arguments would need to be made for a capital gains tax.

Environmental and Ecological Outcomes

It may be argued that we already have taxes in place with the ETS and Waste levy being applied. The question should however be made that if such taxes are put in place, how would they actually alter the outcomes in way that is desired.

The current waste levy is under spent in spite of some exemptions being applied and has yet to demonstrate significant outcomes that are beneficial to the environment. The intention that councils who receive 50% of this levy would create new ecological projects and boost recycling has yet to be seen and the lack of deployment of the other 50% held by the Ministry raises significant question on whether any other environmental taxes would have value.

The current ETS is in our opinion adequate and extension of it would harm significant parts of our economy without benefits to New Zealand's contribution to greenhouse gases reduction. Simply it adds cost without achieving change and places the viability of some significant businesses in jeopardy.

Corrective taxes

We do not take a position on corrective taxes but do note that such taxes can impact society by increasing the willingness to undertake criminal activities in order to obtain cheaply those products affected by them. Such activities can place small business owners are significant personal risk of harm.

International Income Tax

We support a continued move to negotiated double taxation agreements as this does provide tax certainty for New Zealand based business who choose to invest outside of New Zealand in order to expand their global footprint in taking New Zealand products and services to the world.

GST

The EMA endorses the groups recommendation that GST should remain on all goods and services as this retains the integrity of the tax system and for business keeps it simple. The application of exemptions as applied in other markets such as Australia adds cost and complexity for businesses and can make it difficult to establish where the line is drawn between some products.

We note that there is no current suggestion for the application of GST within Financial transactions, however the point is worth discussion. We believe that in the context of fees and other non-interest transactions, it would be possible to apply GST however, the offset would be to allow financial institutions to recover GST on their inputs which may negate any potential gain.

The bigger issue is whether an effective replacement for GST would be a financial transaction tax and if so how such as tax might be applied. We believe there is value in discussion around this but are not of the opinion it should be advanced at this point in time as such a tax may encourage a move back to the cash economy.

The application of GST for all cross border services regardless of value is supported however the method currently proposed does raise concerns that some international players will reject New Zealand as too small to bother complying with. We have already seen this applied in Australia with the Amazon decision.

We also note that while major services like Netflix do comply with the existing law there are significant numbers of smaller service and software providers that may cross the threshold but do not easily come to the attention of IRD as they do not deliberately market into New Zealand.

We believe the same may apply for goods once this change is applied and Customs will not have the resources to effectively check and provide that data to IRD.

Personal Income and the Future of Work

The EMA does not support any increase in the top level of tax applied to personal income. New Zealand can struggle to attract top talent for positions and any increase would in the end either result in increased cost or not getting the best person for key roles when recruiting in the global market place.

The current top level of tax comes into force a relatively low threshold and therefore this tax level hits the recruitment of trades people, educators and technical experts. An increase would provide an additional challenge to New Zealand businesses and even government in trying to attract the best people.

The encouragement of full tax compliance by the self-employed is endorsed however, we do not accept that this can be solved by adding withholding tax obligations on businesses who engage independent contractors.

Such obligations could become a nightmare for a business who engages for example, a sole trader electrician and then needs to obtain a tax number, pay GST on the invoice and perhaps then hold and pay withholding tax to IRD.

If this example were to become reality, then business might cease to engage a competitive sole trader in favour of a larger registered company which would harm the sole traders opportunity to maintain a working SME business.

We are also aware that the majority of the Direct Selling industry which provides an FTE of 5000 people under the independent contractor status would be significantly impacted if withholding tax was required when there is no employment type relationship and in many cases a pure buy/sell activity. We believe there will be other sectors who may be equally impacted should such a change be mandated.

The EMA strongly rejects the suggestions to treat dependent contractors as employees as set out in points 13.5 and 13.6 of the recommendations. They are not employees and we see such as suggestion as implying that employee obligations would then fall on the business who engages them around holidays, ACC and Kiwisaver.

Most dependent contractors have chosen to be a contractor for the purposes of personal flexibility around children or other obligations fill a particular need for business. Removing GST for those contractors will impact on their cost structure but will in our opinion not result in any increase in GST revenue overall. For those currently over the GST threshold, it will result in them sitting in a very grey area when they are currently clearly defined as not being an employee but working for themselves.

Recommendation 13.5 also indicates a review should be taken on GST for dependent contractors. We have seen a similar review undertaken in Australia around the ABN, which has seen for example graphic designers who work from home on a project by project basis suddenly having their ABN revoked and unable to continue to work as a contractor.

We do not believe that a review of GST for dependent contractors should be allowed to have a similar impact in New Zealand and the follow of this is the suggestion in 13.6 of employee obligations for the business who engages them.

The Taxation of Business

The EMA supports a reduction of company tax and we note this has not been supported by the Tax Working Groups recommendations. We believe that for a country that engages globally the level of tax applied should be internationally competitive in order to continue to attract international investment.

The other points from 14.1 to 14.9 in the recommendations are accepted and we particularly support the recommendation to lift the provisional tax thresholds.

The Integrity of the Tax System

The EMA strongly rejects the recommendation in 15.2 that, a shareholder should need to provide a security to IRD for a company related debt. This is an unjustified impost on the deployment of capital and raises the question of what happens if the shareholder is unable or unwilling to provide that security. Does the business then face liquidation by the IRD?

It also raises the question of who decides whether there is a likelihood that the debt will not be paid in order to require this security for the IRD?

The need to identify the hidden economy through better labour reporting is supported in principle however, we recognise this may be difficult to achieve other than from proactive enforcement by IRD.

The suggestions made in 15.5 are strongly rejected by the EMA. We do not believe that directors should be made personally liable for arrears in PAYE or GST unless there is clear evidence in the case of a single director company that the arrears are directly attributable that director and subject to penalties under the respective legislation.

We believe the application of this liability along with departure prohibition orders (travel ban) would have serious implications for directors serving on a number of companies. In relation to a departure prohibition order a director who has a legitimate purpose for travel on behalf of another company, would effectively be unable to act on behalf of that other business.

These suggestions negate the purpose of a limited liability company and will make directors reluctant to take on smaller companies as independent directors.

The EMA has significant concern around the creation of a crown debt collection agency and would question why the use of commercial debt collectors are not used if collection is not currently effective within the crown agencies.

Such a crown debt collection agency will undoubtedly be granted powers outside of commercial debt collection and when for example a debt is applied by IRD to a director as suggested we believe this to highly one sided.

We believe that the respective agencies do have sufficient ability to pursue debts and should any not then the use of a licensed commercial agency operating under specific rules is more appropriate.

Signed on the behalf on the EMA,

[1]

Kim Campbell / Chief Executive

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