

Tax Working Group Public Submissions Information Release

Release Document

February 2019

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He tono nā



Te Rūnanga o NGĀI TAHU

ki

TAX WORKING GROUP

e pā ana ki te

FUTURE OF TAX: INTERIM REPORT

31 Ono/October 2018

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1. INTRODUCTION

- 1.1. Te Rūnanga o Ngāi Tahu (“**Te Rūnanga**”) refers to the Tax Working Group’s *Future of Tax: Interim Report* (the “**Interim Report**”) and our earlier submissions, both in writing and to the Tax Working Group (“**the TWG**”), on the *Future of Tax: Submissions Background Paper*.
- 1.2. Te Rūnanga would like to thank the TWG for the opportunity to comment on their Interim Report, and set out below our comments and submissions on some key areas that are of particular relevance and significance to Ngāi Tahu.

2. TE RŪNANGA O NGĀI TAHU

- 2.1. This response is made on behalf of Te Rūnanga.
- 2.2. Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (“**the Act**”).
- 2.3. We note the following relevant provisions of our constitutional documents:

Section 3 of the Act States:

“This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.”

Section 15(1) of the Act states:

“Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.”

- 2.4. The Charter of Te Rūnanga o Ngāi Tahu constitutes Te Rūnanga as the kaitiaki of tribal interests.
- 2.5. Te Rūnanga respectfully requests that this response be given the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 60,000 members, registered in accordance with section 8 of the Act.
- 2.6. Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui “for all purposes”, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

3. INTERESTS IN THE FUTURE OF TAX: INTERIM REPORT

- 3.1. Te Rūnanga notes the following interests:

Treaty Relationship

- Te Rūnanga have an expectation that the Crown will honour Te Tiriti o Waitangi and the principles upon which the Treaty is founded.

Kaitiakitanga

- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring that there is equitable and sustainable management of the tribal pūtea and factors that influence indicators of wellbeing for future generations.
- At all times, Te Rūnanga is guided by the tribal whakataukī:
“mō tātou, ā, mō ngā uri ā muri ake nei” (for us and our descendants after us).

Whanaungatanga

- Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and to ensure that the management of Ngāi Tahu assets and the wider management of resources supports the aspirations for economic and social development of iwi members.
- 3.2. The Act provides for Ngāi Tahu and the Crown to enter into an age of co-operation. An excerpt of the Act is attached as **Appendix One**, as a guide to the basis of the post-Settlement relationship which underpins this response.
- 3.3. The Crown apology to Ngāi Tahu recognises the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga.
- 3.4. With regards to the Ngāi Tahu takiwā, Section 5 of the Act statutorily defines those areas “south of the northern most boundaries described in the decision of the Māori Appellate Court”, which in effect is south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast of the South Island (see map attached in **Appendix Two**).

4. COMMENTS ON THE FUTURE OF TAX: INTERIM REPORT

Taxation of Capital Income

- 4.1. Ngāi Tahu does not support the introduction of a broad regime to tax capital income.
- 4.2. We are concerned about the impact that the taxation of capital, beyond those forms of capital that are already subject to tax, would have on our settlement asset base which was provided to compensate for both historical breaches and wrongs by the Crown and the return of culturally significant sites to Ngāi Tahu.
- 4.3. Our settlement was negotiated in good faith in a period where the significant majority of our commercial redress (land and other capital assets) would not be subject to tax. Comprehensive taxation of capital income would significantly impact on the ability of the Ngāi Tahu Group to meet the social and cultural needs of Ngāi Tahu whānui.

- 4.4. A risk free rate method would have a significant impact and may result in the sale of assets by Māori organisations to meet tax liabilities as a number of the settlement assets are locked into low yields which were part of the settlement process, e.g. forestry land assets with existing rights.

Rollover relief to accommodate communal / collective assets

- 4.5. If the TWG's recommendation is that a broad taxation of capital income occur, we submit that the design of that regime must take into account the unique manner in which Māori assets are held.
- 4.6. In particular, the design of rollover relief needs to take into account the manner in which Māori assets are held collectively and may pass from generation to generation to different Papatipu Rūnanga, hapū, whānau or sub groups of the wider iwi membership base over time.
- 4.7. The design of rollover relief needs to take into account the fact that Ngāi Tahu assets are legally held by entities established to meet Crown requirements, for the benefit of all members, and the taxation of capital income should not impose a tax cost where the assets pass from legal entity to legal entity but still within the beneficial ownership of Ngāi Tahu.
- 4.8. This is of particular importance in the case of cultural non income generating assets as well as income generating assets.

Subsidiaries of Māori authorities

- 4.9. Ngāi Tahu supports the extension of the Māori authority rules to include subsidiaries of Māori authorities. We submit that the rules be extended to include subsidiaries that are wholly owned by a Māori authority or group of shareholders that are wholly Māori authorities. We also welcome the TWG's group recommendation that the Māori authority tax rate remain at 17.5% and that further consultation occur on technical aspects to improve the operation of these rules.

Tax exemption for charities

- 4.10. Ngāi Tahu supports the TWG's comments on the treatment of business income derived by charitable organisations and submits the existing tax exemption for charities deriving business income should be maintained.
- 4.11. The Ngāi Tahu Group will be concerned if changes are made to limit access to the tax exemption on business income based on the amount that is distributed or applied to the benefit of a charitable purpose.
- 4.12. Any change to the tax exemption for charities needs to take into account the intergenerational view of Ngāi Tahu and other Māori organisations. That is, it should reflect that Māori organisations do not necessarily distribute all funds each year for charitable purposes and instead look to rebuild an asset base that will sustain the ability to deliver on the cultural and social needs of iwi on an intergenerational basis.

- 4.13. We submit that it appears that concerns relating to the taxation of business income appear to relate to distributions in a private trust / foundation context as opposed to communal or widely held trusts. We submit that the TWG's recommendation be directed toward recommending that any changes in this area be targeted to address those entities rather than a broader change that may impact Ngāi Tahu and other Māori charities.

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

APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

- 1 The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngāi Tahu understanding of the Crown’s responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

- 2 The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu’s use, and to provide adequate economic and social resources for Ngāi Tahu.
- 3 The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu’s use and ownership of such of their land and valued possessions as they wished to retain.
- 4 The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying ‘Te Hapa o Niu Tireni!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb ‘Te mate o te iwi’ (‘The malaise of the tribe’).
- 5 The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of

Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

- 6 The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.
- 7 The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.”

APPENDIX TWO: NGĀI TAHU TAKIWĀ

