

Tax Working Group Public Submissions Information Release

Release Document

February 2019

taxworkinggroup.govt.nz/key-documents

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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.

MEMORANDUM

Date: 1 November 2018

To: Tax Working Group

From: Chartered Accountants Australia and New Zealand

Subject: Submission on Tax Working Group Interim Report – Tax Administration and the Integrity of the Tax System

Thank you for the opportunity to provide you with feedback on your interim report.

Following our workshop on 11 October 2018 we summarise our key recommendations below.

Tax Administration

Transparency of IR – information and data

- Devise a framework for publishing data and information.

Accountability of IR – Taxpayer Advocate Service and tax disputes

- We fully support the establishment of a Taxpayer Advocate Service (TAS) as an independent “voice for the taxpayer” within the tax system. With appropriate safeguards this could operate as an autonomous unit within IR.
- It is reasonable that the initial focus of the TAS be to provide taxpayers, especially SME and individual taxpayers, with help and resources to deal with tax issues.

- The role of the TAS should promote the fairness of the tax system in terms of operation and also perception by taxpayers.
- The immediate focus of the TAS should be to:
 - address taxpayer complaints and challenges faced through their interaction with the tax system;
 - act as a ‘circuit breaker’ during a tax investigation to avoid entrenchment;
 - ensure taxpayer issues are escalated within IR and dealt with appropriately; and
 - be an independent moderator/facilitator with early involvement in the formal disputes process (waiting until the conference stage is too late as an intervention in terms of taxpayer time and cost already expended);
 - a narrower rather than broader focus at the outset is appropriate until the service is fully operational and understood by taxpayer’s.
- Further work and thinking is required to fully scope the role and powers of the TAS and how it would be structured – including more consultation with key stakeholders (CA ANZ, NZLS, CTG, IR (PAS and Customer and Compliance), Treasury).
- Irrespective of whether or not a TAS is established it is imperative that taxpayer issues are able to be escalated within IR to avoid entrenchment of positions and taxpayer burn off.

Transparency of IR/Integrity of the Tax System – development of tax policy

- Action is required to address identified shortcomings in the execution of the GTPP.
- Suggested areas of review include:
 - engagement needs to be early and meaningful – preferably at “problem definition” stage;
 - timeframes;
 - volume of work;
 - consideration of complexity of issues;
 - management and ownership of each project;
 - quality of draft legislation at Bill stage (drafting process should not be rushed and careful checking required before including in a Bill).

- A process should be established within Parliamentary convention to allow the detail of the draft legislation to be discussed/debated.
- Consistent with the “right from the start” approach, IR Policy should be responsible for the outcomes that result from the administration of the legislation (i.e. their responsibility does not stop at determining the policy).

Accountability of IR/Integrity of the Tax System – legislative frameworks

- Need to appropriately resource and prioritise continual work on remedials, e.g. establish a remedials committee (model on former Rewrite Advisory Panel).
- Post-implementation reviews should be prioritised/carried out as a matter of course under GTPP.

Integrity of the Tax System

Hidden economy

- The strategy adopted must be coherent and consistent, including the contemporaneous roll out of targeted and wider public awareness campaigns.
- There is a behavioural aspect to addressing the hidden economy, e.g. there is strong anecdotal evidence that IR has a low profile outside of the main metropolitan centres, leading to the perception that compliance is low in the regions; this influences taxpayer behaviour.
- Increasing/expanding the withholding tax rules does not address the issues at the consumer-to-business level – need another plan for this aspect.
- More work is needed on whether it is appropriate to introduce a rule that would remove tax deductibility if a payer has not complied with withholding or reporting rules; and if such a rule were to be introduced, what the rule would look like (e.g. appropriate criteria and exceptions).

Directors' liability

- More work is required regarding the Director Penalty Notice regime to clearly define the problem and the approach to be adopted.

- Concern regarding the practical risks of introducing the Director Penalty Notice regime, e.g. unnecessarily put off professional advisors taking up directorships, loss of valuable skills in business, unintended consequences.

Debt collection

- Further consideration is required regarding:
 - secrecy implications;
 - consistency of tax and non-tax debt collection rules/processes in IR and other Government departments;
 - relief and repayment rules (i.e. instalment arrangements);
 - role of tax pooling;
 - interest and penalties rules;
 - who would have powers to write-off?
- Need to ensure outsourcing IR debt collection does not create negativities and anxieties – critical that the information acted on is correct.

Overdrawn shareholder current accounts

- IR already has extensive dividend rules which could be better utilised.
- If additional powers of enforcement/recovery are given to the Commissioner there is a need to ensure that there is balance between these powers and the principles of fairness and equity.

We would like to continue our involvement with the Tax Working Group and to provide further input as required. Please contact John Cuthbertson in this regard.

Yours sincerely

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[1]

Paul Dunne
Chair – Tax Advisory Group

John Cuthbertson
NZ Tax and Financial Services Leader

MEMORANDUM

Date: 1 November 2018

To: Tax Working Group

From: Chartered Accountants Australia and New Zealand

Subject: Submission on Tax Working Group Interim Report – Business Tax

Thank you for the opportunity to provide you with feedback on your Interim Report.

Following our workshop on 23 October 2018 we summarise our key recommendations below.

Key principles

- Simplicity – increases productivity; increases voluntary compliance.
- Thresholds and exemptions where appropriate – legislation should be written for the vast majority of taxpayers who comply, not the very small minority who do not.
- Maintaining the integrity of the tax system – complexity means the rules may not be followed.
- Optionality – including a simple option allows a business to spend less time on compliance; most smaller businesses do not have the time or resources to carry out several complex calculations. Acknowledge (but do not agree with) officials’ position that optionality encourages businesses to “game the system” and increases compliance cost.

Overall comments

- We agree with the decision in the Interim Report to not consider a bifurcated tax rate.
- A lost opportunity for large scale reform – for example presumptive taxes based on turnover or gross income, with rates set by IR, would remove all complexity around deductions and amounts returned would be “close enough”.

Limiting the application of current rules

- Suggest limiting a series of regimes or sets of rules for businesses below a consistent turnover threshold e.g. \$5m.
- This could be done through a combination of some or all of the below.

Comments on specific rules

- Low value asset write-off
 - Increase in threshold would be a significant simplification for all businesses, but could be limited to smaller businesses if subject to fiscal constraints.
 - We suggest a prospective rule that applies only to new assets.
 - Fiscal costs seems high – what assumptions were used for the modelling?
 - Should be retained as a measure for when the Government has sufficient fiscal headroom.
- Capital/revenue boundary
 - The capital/revenue boundary could be eliminated for expenses up to a certain level e.g. \$20,000.
 - This would be an expansion of the current rules for legal fees, which allow expenses up to \$10,000.
 - Even the thresholds suggested involve very modest amounts of tax and could be increased.
- Entertainment regime
 - We agree with suggestions to exclude all but the most significant costs.
 - We agree with suggestions that automation could also be helpful, but the technology would need to be accessible to all businesses and not just large businesses.
- Building depreciation
 - We agree that some commercial buildings do depreciate in value.
 - A specific amendment could be made for seismic strengthening costs to allow deduction or depreciation of those costs. This issue also manifests itself in the discussion regarding the taxation of income from capital. Depending on which, if any, recommendations are adopted, it is likely that a tax on income from capital could resolve the issue and would defer the cost to government until realisation. This would put new builds on the same footing as existing buildings.
 - We recognise that the fiscal cost is significant and that a degree of compromise may be required.
- FBT and motor vehicles
 - Allowing an up-front payment (or reduction in GST claimed) in return for no FBT payable and no GST adjustments would be a significant simplification. This measure could include an environmental element e.g. concession applies to electric vehicles.

- Current definition of “work related vehicle” incentivises use of double cab utes – rules should be relaxed to allow more exemptions for environmentally friendly vehicles
- Expansion of the “work related vehicle” exemption would also mitigate the current issues with the disproportionate FBT cost in respect of very limited availability for private use on a particular day.
- Financial arrangement rules – definition of “cash basis person”
 - We understand that an extension to the definition is on IR work programme.
 - Would create alignment with investment income information.
- Hybrid rules
 - Should not apply to small business and ideally should apply only to large multinational groups and structured arrangements.
 - Rules currently apply to simple business transactions including transfer of trading stock and utilisation of losses. The hybrid rules should not apply to these transactions.
- Depreciation rates
 - Should be reduced in number for small businesses.
 - We suggest small businesses be allowed to use a simplified set of default rates for the life of the asset e.g. a rate for motor vehicles, plant and machinery, office equipment, computers, buildings
- Threshold for GST adjustments
 - Increase the threshold for not requiring a change of use adjustment, which is compliance intensive for low revenue and poor compliance.
 - This concern was raised at the time of the regime’s introduction.
- “Same business test” for losses
 - Would remove the need for complex ownership / continuity calculations.
 - Would assist start-up businesses and those in growth phase.
 - Could be extended to allow loss carry back (which would also benefit start-ups).
 - If there is to be a “same business” test it must be crafted to work for the vast majority who are simply trying to comply – we recommend a “materially the same” test – that is applied in a practical way.
- AIM
 - We have held a workshop with officials to discuss how AIM could be made more accessible and more user friendly.
 - Following the workshop, officials are carrying out work to revise or eliminate certain determinations to reduce complexity and to consider incentives for entry.
- Feasibility
 - Implementing appropriate rules to ensure feasibility study costs are immediately deductible, or at least amortisable.

We would like to continue our involvement with the Tax Working Group and to provide further input as required. Please contact John Cuthbertson in this regard.

Yours sincerely

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Paul Dunne
Chair – Tax Advisory Group

John Cuthbertson
NZ Tax and Financial Services Leader

MEMORANDUM

Date: 1 November 2018

To: Tax Working Group

From: Chartered Accountants Australia and New Zealand

Subject: Submission on Tax Working Group Interim Report – Capital and wealth.

Thank you for the opportunity to provide feedback on your Interim Report.

Following our workshop on 16 October 2018 we summarise our key recommendations below:

Problem definition:

- Establish a list of criteria to measure and assess fairness when considering what to tax;
- Avoid complexity when designing the rules;
- Greater analysis is needed to ensure New Zealand's productive economy is not detrimentally impacted.

What should be included?

- Land, residential investment, commercial and farms;
- Shares – in principle. However, this is a complex area because of the obvious double and triple tax issues and requires more analysis than has occurred to date;
- Business assets.

What should be excluded?

- Main home;
- Personal assets.

Other matters:

- Consider further the exclusion of holiday homes that are held solely for personal use, particularly in the context of intergeneration/wider family ownership;
- Consider what the impact might be on the New Zealand capital markets. Would introducing a tax on capital simply cause the flight of capital offshore?

Shares

- The treatment of shares requires further analysis and debate;
- Preference to align the tax treatment of domestic listed shares and offshore shares to ensure New Zealand capital markets are not impacted by tax arbitrage;
- Consider taxing a portfolio investment in foreign shares on a realisation basis.

Business assets

- Allow the purchaser to deduct or amortise the cost of goodwill.

Main home

- More than one home, allow the person to choose;
- Main home used for income earning activity, include a de minimis e.g. X days;
- Exempting the family home has distributional and equity impacts given that the value of the exemption differs depending on the location of the home;
- Relatedly, a financial exemption raises issues of equity and can behave like an estate duty or inheritance tax. In the same way that the TWG needs to look at whether death is a taxable event it should likewise be examined in the family home context.

Transitional rules

- It is essential we have good quality legislation. The timeframe is tremendously ambitious. Given the design complexity and the need to provide certainty for various parties to update their systems, the initial application date should be deferred;
- Adopt a phased approach to develop and pass legislation. Would allow for further investigation of the merits and desirability of each asset type to ensure all outcomes are understood:
 - Stage 1 - income producing land;
 - Stage 2 – shares and business assets;

- Stage 3 – managed funds and retirement savings;
- Provide optionality for valuing existing assets;
- Reconsider the merits of applying prospectively to new assets (ie the Australian approach). We are not certain that the cost and robustness of the “valuation at a time” approach has been adequately assessed;
- We do not favour a process where taxpayers file an annual statement of cost. However, there needs to be a clear and approved process for record keeping.

Calculation method

- Impose tax on a realisation basis;
- “Realisation” should be defined on a consistent basis;
- Additional consideration should be given to recognising value shifting within the overall design. Detailed anti value shifting rules for some situations may be required or robust avoidance rules.

Rollover relief

- Rollover relief should be focused on situations where the asset is not converted to cash or a cash equivalent and where the proceeds are not reinvested within a prescribed commercial timeframe. The Christchurch earthquake experience will be useful in determining the appropriate rollover timeframe;
- Provide rollover relief:
 - when there has been no change in ownership in substance including wider family transfers;
 - on death (if death is considered a realisation event) on transfers for natural love and affection, including testamentary transfers or transfers to a trust where it is because of natural love and affection the transferor has for the beneficiaries;
 - on an involuntary disposition where the proceeds are reinvested;
 - intra group transactions;
 - on dispositions of business assets where the proceeds are reinvested (including farms, business premises and assets).
- Other possible options for rollover include:
 - making rollover mandatory not optional and including losses. This would reduce pressure on quarantining losses;
 - spreading the tax on the gain rather than complete deferral;
 - allowing rollover only to the extent that the profit exceeds the losses for the year.

Losses

- We support the TWG's approach of allowing the offset of losses except for fungible assets. We recognise this policy comes under pressure depending on rollover relief.

Non-residents

- Adopt a principled approach consistent with the Income Tax Act and tax non-residents on their New Zealand sourced income, subject to the Double Tax Agreements;
- New Zealand should alter its tax treaty negotiations stance to achieve parity between residents and non-residents on New Zealand sourced income;
- Consideration needs to be given to offshore holding structures that non-residents use to hold New Zealand assets to ensure all income from capital is subject to tax.

Retirement Savings

- Taxation of retirement savings should follow a consistent approach as there are various ways in which people save for their retirement;
- The application date should be deferred to allow the funds industry time to update their systems to implement the legislative changes.

We would like to continue our involvement with the Tax Working Group and to provide further input as required. Please contact John Cuthbertson in this regard.

Yours sincerely

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