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SUBMISSION TO THE TAX WORKING GROUP

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EXECUTIVE SUMMARY: *This submission focuses on tax revenue collection and fairness. The submission highlights a range of different approaches adopted by Inland Revenue and the Ministry of Social Development to debt collection. In addition, the submission notes the different approaches to debt collection adopted across a range of other government agencies and recommends consideration of a centralised debt collection agency to manage government debt. This would increase equity with consistent treatment of debtors holding government debt and potentially increase collection of debt. The submission also recommends consideration of the use of director penalty notices where companies enter into liquidation with outstanding withholding taxes. The final recommendation is consideration of greater funding for the Inland Revenue audit, investigation and litigation functions, which will further assist with revenue collection.*

1 INTRODUCTION

Thank you for the opportunity to make a submission to the 2018 Tax Working Group. This submission focuses on two connected issues: revenue collection and fairness. Higher levels of government revenue may be achieved from the implementation of new taxes or increasing extant taxes. However, it may also be achieved from greater focus on collecting tax that is known to be owed and/or pursuing tax that is hidden and not known to be owed. Thus, the primary focus of this submission is on tax debt collection and management. Collecting additional tax revenue owing will contribute to the fiscal objective of supporting a sustainable revenue base to fund government operating expenditure. Ensuring that everyone who has a legal obligation to pay tax is actually paying the amount owed will improve fairness in the tax system. Fairness extends not only to tax policy, but also to the application and implementation of that policy.

This submission has four parts. Part one outlines the background to the issues addressed in this submission. Part two provides a more detailed analysis of the issues outlined. Part three discusses some possible options with recommendations provided in part four.

2 BACKGROUND

Table 1 shows Inland Revenue debt as at 2016/17 and for the previous five years. Tax debt as at 30 June 2017 was \$3 billion, a significant reduction from previous years.² There were 234,462 Inland

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author or publically available.

Data used in this submission is the most recent data held by the

² Inland Revenue, Annual Report 2017, Retrieved from: <http://www.ird.govt.nz/resources/4/5/45a7f9a4-87eb-4181-b38c-c4ce25531dce/annual-report-2017.pdf>, 23 April 2018, 41.

Revenue debtors with overdue debts as at 30 June 2016.³ A large component of tax debt comprises penalties and interest: 48.8% in 2015-16, including student loan debt.⁴

Table 1: Inland Revenue Debt (NZ\$ billion)⁵

Debt Type	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Tax debt	\$5.404	\$5.342	\$5.471	\$5.153	\$4.80	\$2.991

In 2015-16, 87% of tax payments made by taxpayers were on time.⁶ The corollary is 13% of tax payments were not on time, generating tax debts. Inland Revenue writes off significant amounts of tax debt each year. This may be through insolvency or bankruptcy, or through negotiated outcomes undertaken with Inland Revenue. Table 2 shows the value of Inland Revenue debt written off in 2015/16. Over \$1.1 billion of tax revenue was written off in this period. The majority of the debt written off was from core tax (\$936 million).

Table 2: Inland Revenue Debt Category Breakdown (2015/16)⁷

Debt Type	NZ \$'000
General Tax	\$936,414
Working for families tax credits	\$187,168
KiwiSaver	\$3,026
Total debt write-offs	\$1,126,608

Of the debt written off, around \$400 million results from company liquidations and individual bankruptcies. This is shown in Table 3.

Table 3: Inland Revenue Liquidations and Bankruptcies (2015/16)⁸

Entity Type	Client Status	Number of Entities	Amount of Tax Written Off (NZ\$ Millions)	Average Tax Obligation Uncollected
Company	Liquidation	1,956	\$210.8	\$107,771
Individual	Bankruptcy	2,070	\$191.2	\$92,367
Society / Club	Liquidation	2	\$0.3	\$150,000
Trusts	Liquidation	46	\$6.7	\$145,652
Total		4,075	\$408.9	\$100,344

In addition to known tax debt that is written off, some tax is unknown, due to deliberate tax evasion or error. By way of illustration, recent research reported by Inland Revenue suggests that \$800 million

³ Calculated from the 339,192 debtors reported in the Inland Revenue annual report, less 104,730 student loan debtors (information received under the OIA, 12 September 2017, Inland Revenue).

⁴ It is not possible to get this figure broken down into different borrowing types.

⁵ Above n. 2 and Inland Revenue, Annual Report 2016, Retrieved from; <http://www.ird.govt.nz/resources/3/0/30b48dc6-0bf7-4fbf-9f5d-f84f2d5c153d/annual-report-2016.pdf>, 23 April 2018, 29.

⁶ Inland Revenue, Annual Report – 2016, above n.5, 48.

⁷ Information received under the Official Information Act 1982 (OIA), 29 November 2017, Inland Revenue.

⁸ Information received under the OIA, 29 November 2017, Inland Revenue.

is underreported, and therefore uncollected, from self-employed workers annually.⁹ The extent to which this underreporting is intentional is unknown. This is only one example of evaded tax.

The amounts written off by Inland Revenue may be contrasted with those written off by the Ministry of Social Development (MSD) shown in Table 4. In 2015/16 Inland Revenue wrote off \$1.1 billion of debt, while MSD wrote off \$13 million. The amounts classified as overpayments in Table 4 are those that result from error. This error may be on the part of the Ministry or error by the recipient of the welfare benefit. It has not been possible to get a breakdown of the overpayment amount in order to identify how much of this amount is accurately classified as debt; therefore, this amount may be overstated.

Table 4: Ministry of Social Development Debt Written-Off (2015/16)¹⁰

Debt Type	Amount
Recoverable assistance (loans)	\$3,512,935
Fraud	\$1,057,137
Overpayment	\$8,698,572
Total	\$13,268,644

Writing off significant amounts of tax debt creates equity issues between taxpayers. Taxpayers who earn only wages and salaries have no option to not pay their tax, as it is deducted at source. They therefore do not benefit from the options available to other taxpayers to negotiate outcomes with Inland Revenue. The different treatments of tax debtors and welfare debtors generates further inequities in the tax system.

Inland Revenue and MSD have different approaches to: remission or writing-off debt; the treatment of debtors who are suffering from serious hardship; the treatment of the partners of debtors where fraud exists; collection of debt; and amounts invested in collection of debt. Each of these is discussed below.

2.1 Writing off debt

As noted above, Inland Revenue and MSD write off significantly different amounts of debt – over \$1.1 billion by Inland Revenue and \$13 million for MSD. The two agencies operate under different legislative provisions that, at least in part, contribute to this outcome. Under the Tax Administration Act 1994 (TAA) the Commissioner of Inland Revenue must maximise the recovery of outstanding tax from a taxpayer.¹¹ However, the Commissioner may not recover outstanding tax where it would be an inefficient use of Inland Revenue resources or would place the taxpayer (a natural person) in a position of serious hardship.¹² The duty to maximise revenue collection is subject to an overriding obligation to protect the integrity of the tax system as per s 6A(3) of the TAA, where the Commissioner of Inland

⁹ Inland Revenue, Research Reinforces Need for Simpler, Easier Tax Processes, Retrieved from: <https://media.ird.govt.nz/articles/research-reinforces-need-for-simpler-easier-tax-processes/>, 23 April 2018.

¹⁰ Information received under the OIA, 30 November 2017, Ministry of Social Development.

¹¹ TAA s 176(1).

¹² TAA s 176(2).

Revenue is charged with collecting: *'over time the highest net revenue that is practicable within the law having regard to*

(a) the resources available to the Commissioner; and

(b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and

(c) the compliance costs incurred by taxpayers'.

By way of comparison, under section 86 of the *Social Security Act 1964*, the Chief Executive of MSD has a duty to *'take all reasonably practicable steps to recover a debt'*. The MSD approach to writing off debt is *'where all reasonable and practicable avenues of recovery have been exhausted the Ministry may consider writing off the debt'*.¹³ Examples provided by MSD include where a debtor has died and the estate is insolvent or distributed prior to the Crown notifying its claim; where the debtor is insolvent and has been adjudicated bankrupt; or the Official Assignee has recognised under the No Asset Procedure that the debtor is insolvent with no realisable assets.¹⁴ Death does not automatically result in the elimination of a welfare debt. Section 86(4) of the *Social Security Act 1964* provides for recovery from the estates of a deceased beneficiary any excess amounts of benefit obtained. No similar provision exists for tax debtors.¹⁵ Instead, taxpayers may approach Inland Revenue and request relief on their tax debts. Moreover, there are statutory provisions that provide for tax debt to be written off.

2.2 Serious hardship

As noted in the previous sub-section, under the TAA the Commissioner of Inland Revenue must collect the highest net revenue that is practicable within the law, having regard to: available resources; the promotion of compliance by all taxpayers; and the compliance costs incurred by taxpayers.¹⁶ Notwithstanding this objective, recovery of tax must not place the taxpayer in a position of serious hardship or be an inefficient use of Inland Revenue resources.¹⁷ There are provisions within the TAA for taxpayers to apply for financial relief, such as when recovery of their tax debt will place them in a position of 'serious hardship'.¹⁸

The TAA definition of serious hardship includes when the taxpayer would be unable to meet:

- minimum living expenses estimated according to normal community standards of cost and quality;
- the costs of medical treatment for an illness or injury of the taxpayer or their dependant;
- the cost of education for the taxpayer's dependants; or

¹³ Information received under the OIA, 9 May 2013, Ministry of Social Development.

¹⁴ Information received under the OIA, 30 November 2017, Ministry of Social Development.

¹⁵ There is no specific provision in the Revenue Acts for the Inland Revenue Department to collect tax debt from the estate of a deceased taxpayer. However, the Commissioner of Inland Revenue will be a creditor of an estate where taxes are owing, in the same manner as other creditors, and would accordingly have a civil claim against the estate ahead of other beneficiaries of that estate. Information was requested from the Inland Revenue Department on evaded taxes recovered from the estates of deceased taxpayers. I was advised this information is not recorded in a readily accessible format and was not able to be provided.

¹⁶ TAA, s 6A(3).

¹⁷ TAA, s 176(2)(a)-(b).

¹⁸ TAA, s 177. Not all tax debt is eligible for financial relief, such as some tax evasion debt.

- other factors that the Commissioner thinks are relevant.¹⁹

Compliance, or non-compliance, with tax obligations is not a factor taken into consideration when making the decision on financial relief.²⁰ 'Normal community standards of cost and quality' must take into account the individual circumstances of the taxpayer, such as which part of the country the taxpayer resides.²¹ Inequity arises with the current treatment of serious hardship, as individuals who earn wages, salaries or other income where tax is deducted at source, do not have the same opportunity to negotiate with the Inland Revenue if they are in a similar position of serious hardship.

Where Inland Revenue may remit or write-off penalties, interest and/or tax debt in cases of hardship, MSD will take hardship into account by '*negotiating realistic repayment rates with debtors so that significant hardship is not caused*',²² while also noting that '*hardship does not necessarily preclude recovery*'.²³ In '*exceptional circumstances*' payment may be temporarily deferred until a person's financial circumstance improves in order that significant hardship is not caused.²⁴ However, the different approaches insofar as what is serious hardship for a taxpayer and what is serious hardship for a welfare recipient result in different outcomes.

2.3 Partners of debtors

From 7 July 2014, amendments to the *Social Security Act 1964* result in partners of those who receive overpayments of welfare benefits resulting from relationship fraud becoming potentially jointly and severally liable for the debt generated from fraud committed by their partners. Moreover, criminal liability for the fraud may be extended to the partner of the individual who committed the fraud. Prior to this change of legislation, only the person who received the welfare benefit was liable for the welfare debt and prosecution was only actionable against the person engaging in the fraudulent activity. Under the amended legislation, the liability arises where the partner of the beneficiary who committed the fraud has benefited from the fraud either knowingly, or where they ought to have known they were benefiting from fraud.²⁵ The partner of the beneficiary who has committed the fraud does not need to know the precise amount of the fraud, or how the fraud occurred.

At the time of the legislative change, a number of issues with the legislation were noted, including one from the New Zealand Law Society who submitted that: '*absent a positive act that would normally ground criminal liability ... the justification for criminal liability is not apparent*'.²⁶ Importantly, these

¹⁹ TAA, s 177A(2).

²⁰ TAA, s 177A(3).

²¹ Inland Revenue, Standard Practice Statement SPS 15/03 Writing Off Outstanding Tax (Inland Revenue, 2013) 56.

²² Office of the Associate Minister for Social Development (2012) *Welfare Debt Recovery*, 3.

²³ Above n.22, 2.

²⁴ Above n 22, 3.

²⁵ A person 'ought to have known' they were benefiting from funds obtained fraudulently when 'they would have known had they made inquiries that a reasonable person would have made' (above n.22). This is interpreted as the person may not actually have known they were benefiting from fraud, but should have been aware of the possibility that they were (above n.22). *Social Security Act 1964*, s.86AA(4).

²⁶ New Zealand Law Society, (2013) *Social Security (Fraud Measures and Debt Recovery) Amendment Bill*, Submission by the New Zealand Law Society, <http://www.lawsociety.org.nz>, 6.

legislative changes dilute the generally accepted foundation that all individuals in society are treated as equals.²⁷

The amended legislation targets a single group of people for more punitive treatment in the justice system, because they are receiving a welfare benefit. If there is valid reason for, and benefit from, targeting the partners of those on welfare on the basis of presumed guilt, then a logical extension is to include the partners of those convicted of tax evasion or other forms of financial fraud where partners are also likely to benefit from the offending. Adopting a similar approach to the partners of tax evaders would address some of the inequity that exists from this legislation that currently applies only to a small section of society, i.e. welfare recipients.

2.4 Use of deduction notices / asset seizures

The TAA has a number of provisions that allow for deductions of tax from payments such as wages, salaries or individual bank accounts, when tax debt exists.²⁸ Table 5 outlines information on the use of deduction notices by Inland Revenue and MSD.²⁹ Deduction notices were issued to 7-12% of welfare recipients. This compares to around 1% of taxpayers. It is noted that despite many more deduction notices being issued to welfare recipients, many welfare debtors will not be employed or have few financial assets from which debt can be collected.

Table 5: Deduction Notices Issued (2011-2015)³⁰

Tax			Welfare		
Year Ended	Notices Issued	% of Taxpayers	Year Ended	Notices Issued	% of Welfare Recipients
30 Jun 11	64,025	0.915%	30 Dec 2011	20,275	6.76%
30 Jun 12	68,501	0.979%	30 Dec 2012	25,733	8.58%
30 Jun 13	57,395	0.820%	30 Dec 2013	33,425	11.14%
30 Jun 14	66,126	0.945%	30 Dec 2014	35,115	11.71%
30 Jun 15	73,013	1.043%	30 Dec 2015	36,269	12.09%

Inland Revenue advise that 36 charging orders in total were applied under section 169 of the TAA over the five-year period shown in Table 5. A charging order prevents a debtor from selling the property over which the charging order is placed until the creditor has had the opportunity to seize or sell it to satisfy any outstanding debt.

Inland Revenue do not seize assets from debtors. Instead, they advise that they have other, more efficient, mechanisms to collect debts. However, the values of debts written off suggests that there is capacity to supplement these mechanisms with other tools, such as asset seizures or greater use of deduction notices.

²⁷ Sen, A. *The Idea of Justice* (Penguin Group, 2009).

²⁸ TAA, s 157.

²⁹ Deduction notices are issued to third parties, typically banks or employers, in order that deductions are taken from amounts payable to the debtor. Deductions may be lump sums or instalment arrangements.

³⁰ Information received under the OIA, 12 July 2016, Inland Revenue and 30 November 2017, Ministry of Social Development.

2.5 Stronger penalties

In cases of serious tax evasion, Inland Revenue has access to stronger penalty options, such as criminal prosecution. However, these are infrequently used and only a small number of criminal prosecutions take place each year. Instead, Inland Revenue will typically endeavour to negotiate repayment options with taxpayers who have incurred tax debts. Conversely, MSD will prosecute in situations where the case meets the Crown Law and MSD guidelines for prosecution, which is in approximately one-quarter of cases investigated.

Inland Revenue pursues approximately 50-60 prosecutions each year for serious tax offending, while MSD pursues approximately 700-900 for welfare fraud. Thus, around 15 times as many prosecutions take place for welfare offending as compared to tax offending. In addition, approximately 15-20 times as many investigations occur for welfare cases than for tax cases.³¹ While tax cases are likely to be more complex and therefore more costly to investigate and prosecute, this does not fully explain the different approaches to financial fraud that are adopted between the two agencies.

2.6 Investment in collection

At \$3 billion of known debt and potentially many billions more of undetected tax, tax debt is economically more significant than welfare debt (currently around \$1 billion). However, there is greater effort to collect welfare debt. Recent data is not available, therefore I have used data obtained in 2012. In 2011/12 the cost of debt recovery for welfare debt was \$17.00 for each \$100 collected.³² At June 2012, the tax debt recovery cost was \$2.86 for collecting \$100 of overdue revenue.³³ At the same time, 92% of current MSD clients with debts were repaying their obligations with average payments of \$14.32 per week while 13% of Inland Revenue debts were repaying by instalment.³⁴ The different costs of collection are likely to reflect the different approaches to debt collection: MSD collects a large number of smaller payments and cannot write off debt except within a limited range of circumstances.

2.7 Comparison across agencies

Table 6 outlines the different amounts written off across a number of agencies. Table 6 also shows the number of deduction notices served by each agency and whether the relevant legislation has a provision to alleviate debt when the debtor is in a situation of serious hardship. The final row shows the proportion of write-offs against year-end debt held by the respective agency.

Table 6 shows that Inland Revenue writes off significant amount of tax – 85 times the amount written off by MSD. All the other government departments shown write off relatively low amounts when compared to Inland Revenue. While the amount of student loan debt written off is low, the amount of write-downs of the debt are high and comparable to the write-downs of Inland Revenue. Student loan write-downs are due to the high cost to the government of providing student debt facilities.

³¹ Lisa Marriott, Justice and the Justice System: A comparison of tax evasion and welfare fraud in Australia and New Zealand, *Griffith Law Review*, 22(2013): 403-429.

³² Lisa Marriott, Unpaid Tax and Overpaid Welfare: A comparison of the debt recovery approaches in New Zealand, *New Zealand Journal of Taxation Law and Policy*, 20(2014):46-70.

³³ Data provided under the Official Information Act 1982, 9 May 2013.

³⁴ Above n.32.

While it appears that the Ministry for the Environment write-off a high proportion of their debt, the actual amount written off is low at \$55,042 (or around 1/20,000 of that written off by Inland Revenue).

Table 6: Comparative Information across Government Departments and Loan Types³⁵

	Inland Revenue	MSD	Student Loans	Ministry of Justice	Ministry for the Environment	Ministry of Primary Industries	MBIE
Write-offs (2015/16)	\$1.1BN	\$13M	\$18M ³⁶	\$29M	\$55,042	Nil	\$396K
Write-Downs	\$680M	N/A	\$659M	N/A	N/A	N/A	N/A
Serious Hardship Provision	Yes	No	Yes	Yes	N/A	N/A	N/A
Deduction Notices	73,013	36,269	Unknown ³⁷	86,941	N/A	N/A	N/A
Write-offs as % of debt	19.1% ³⁸	1.9%	See footnote 38	4.7%	36%	0%	N/A ³⁹

3 OPTIONS

As noted above, increasing tax debt collection will assist with revenue generation and with improving inequities within the tax system. This section outlines a range of possible options.

3.1 Director penalty notices

Typically, non-compliance with tax laws results in some form of civil or criminal action which, if the offender is found guilty, results in some form of punishment. However, there are situations where non-compliance does not result in a negative consequence, such as when companies enter liquidation and, as a result, withholding taxes that have been deducted are not paid to the government. Unlike some other countries, New Zealand company directors are not automatically liable for certain tax debts (such as pay-as-you-earn deductions (PAYE), goods and services tax (GST), pension contributions and other amounts withheld from employee salaries) if that company is wound up. In other countries, directors may be held liable for these taxes in the event that the company enters into insolvency, as these payments are held in trust by the company for the government or employees. Moreover, it is these taxes that a struggling entity may use for funding cash flow shortages when in a position of financial distress.

By way of illustration, Australia, Canada and the United Kingdom have schemes where directors may be personally liable for a company's debts, in addition to the usual provisions that exist through

³⁵ Sources: Official Information Act requests and annual reports from respective agencies.

³⁶ Due to bankruptcy.

³⁷ The Student Loan Scheme Act provides for the use of deduction notices, but it is not known if they have been used to help collect student loans.

³⁸ This figure combines Inland Revenue and Student Loan debt as Inland Revenue cannot provide a break down between student loan write-offs, with the exception of that written off due to bankruptcy.

³⁹ The write-off amount for MBIE is greater than the year-end receivables held.

company law (such as where there is fraudulent activity). In Australia, under the Director Penalty Notice regime the Commissioner of Taxation has powers to collect certain outstanding tax debts from company directors. These taxes are unpaid Pay-As-You-Go deductions and Superannuation Guarantee Charge amounts.⁴⁰ A similar provision exists in Canada, where it extends to GST, employee payroll deductions and the harmonized sales tax. Her Majesty's Revenue and Customs in the UK may use Personal Liability Notices where negligence (or fraud) is present. A Personal Liability Notice will make the individual personally liable for PAYE, National Insurance Contributions or value-added-tax. The Personal Liability Notice is not limited to a liquidated company and may be issued to a going concern where there is risk of non-payment.⁴¹

3.2 Increase investment in audit, investigation and litigation

There are only a small number of tax prosecutions each year in New Zealand, where the criterion for prosecution is serious non-compliance. As revenue collection is the primary objective of Inland Revenue, prosecution proceeds in only the most serious of cases, as prosecution is unlikely to result in additional revenue. This differs to welfare fraud, where prosecution proceeds in over one-quarter of all cases detected. While Inland Revenue have recently adopted a range of other tools to encourage compliance, such as credit reporting, it is noted that recent funding for audit, investigations and litigation has not increased in line with revenue collection.⁴²

In 2011, the OECD published a document comparing debt collection mechanisms across OECD countries.⁴³ While this information dates back to 2009, it provides an historical perspective on resources invested in the debt collection mechanism in a range of countries. Across the 34 OECD member states reported, New Zealand had one of the lowest proportions of staff usage on debt collection and related functions at 9.4%.⁴⁴

New Zealand has a low cost of collection ratio for tax debt, which the OECD observe is used as a measure of efficiency and effectiveness of the administration.⁴⁵ New Zealand's cost of collection ratio

⁴⁰ Australian Securities and Investments Commission, Director's personal liability for unpaid company tax, Retrieved from: <<http://asic.gov.au/regulatory-resources/insolvency/insolvency-for-directors/directors-personal-liability-for-unpaid-company-tax/>> 15 December 2017. Superannuation Guarantee Charge amounts are the compulsory pension contributions paid by employers on behalf of employees.

⁴¹ National Insurance Manual, Class 1. Personal Liability Notices: When a PLN will be considered? Section 131C, Social Security Administration Act 1992, Retrieved from: <<https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim12203>>, 3 February 2018.

⁴² Appropriations for funding category M57, Inland Revenue, Investigation, audit and litigation activity over the past five years are: \$172 million (2012/13); \$183 million (2013/14); \$175 million (2014/15); \$176 million (2015/16); \$175 million (2016/17). Retrieved from New Zealand Treasury, Details of Appropriations and Capital Injections, Annual and Permanent Appropriations: <https://treasury.govt.nz/sites/default/files/2018-04/est15-v5-reven.pdf>; <https://treasury.govt.nz/publications/vote-chapter/vote-revenue-finance-and-government-administration-sector-estimates-2016-2017-html#section-2>; <https://treasury.govt.nz/publications/vote-chapter/vote-revenue-estimates-appropriations-2012-13-estimates-2012-2013-html#section-1>, 25 April 2018.

⁴³ OECD, Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (OECD Publishing, 2011).

⁴⁴ Above, n.43, Table 23. Countries reporting lower proportions are: the Czech Republic (6.3%); Norway (5.1%); the Slovak Republic (5.5%); Switzerland (6.1%); and Turkey (7.8%).

⁴⁵ OECD, Tax Administration 2015. Comparative Information on OECD and Other Advanced and Emerging Economies (OECD Publishing, 2015).

((administration cost/net revenue collection)/1) is 0.85.⁴⁶ While this would appear to be a positive sign, other countries that have low cost of collection ratios typically have a low tax burden. In the case of New Zealand the low cost of collection may reflect a high level of efficiency or it may also reflect non-collection of debt that incurs higher costs to collect.

Significant resource has been invested in improving tax compliance and collection in New Zealand. However, as observed by the OECD, there is little to be gained from sophisticated strategies for enhancing or enforcing compliance, if the tax owed is not actually collected.⁴⁷ Globally, governments are becoming more innovative in the methods used to assist with debt collection, such as Automatic Number Plate Recognition to assist with collecting tax debt (the Netherlands),⁴⁸ publishing the names of taxpayers with debts (Finland) or using specialist debt collection agencies (the UK).⁴⁹ The UK approach was reported as collecting an additional 77% more cash than if the debt collection agencies had not been used.⁵⁰

A range of factors have been identified as contributing to positive debt collection outcomes, including: the existence of extensive debt collection powers; the ability to collect taxes from third parties, close businesses and cancel licences; the ability to obtain liens over assets; requiring tax clearance prior to being awarded government contracts; withholding government payments where tax debt is outstanding; and imposing tax debts on company directors.⁵¹ Additional factors include investment in information technology and effectively resourced tax authorities. The OECD note the importance of having a well-staffed debt collection function, which is organised within a dedicated unit.⁵²

3.3 Standardised Debt Collection

Differences in debt collection are visible across different government agencies. Some agencies, such as the Ministry for Primary Industries, collect all fines, penalties and levies imposed. Others, such as the student loan scheme administered by Inland Revenue, collect around 55% of debt.

In a small country such as New Zealand, there may be efficiency gains and more effective outcomes from a standardised approach to debt collection across all government debt. This would extend to collection of debt, penalties, interest or fines, as well as write-off provisions. Such an approach would increase transparency and equity, as all debtors would be treated equally. Currently, some debt, such as student loan debt or fines may be remitted where it is 'just and equitable' to do so. However, this is not the case for all debt. There is a case to be made that all debtors are entitled to 'just and equitable' treatment in relation to debt repayment.

⁴⁶ Above n.45, Table 5.4, p.181. Data reported as at 2013. It is acknowledged that a range of factors can impact on these measures resulting in difficulties in engaging in cross-country comparisons. These factors include when the tax authority has other roles such as collecting social insurance contributions or excise taxes, the legislated tax burden or economic conditions.

⁴⁷ OECD, Forum on Tax Administration. Scoping document: Working smarter in tax debt management (OECD Publishing, 2013).

⁴⁸ OECD, Forum on Tax Administration. Information Note. Working smarter in structuring the administration, in compliance, and through legislation (OECD Publishing, 2012) 39.

⁴⁹ Above, n.48.

⁵⁰ Above, n.47, 40.

⁵¹ Above, n.47, 56.

⁵² Above, n.47.

Consistency across treatment of all debtors to the Crown is desirable. Some legislation permits remission of debt where the debtor is in a position of serious hardship. However, such a provision does not apply in a standardised manner to all debtors. Where hardship provisions do exist they do not result in equal treatment of different types of debtors. Those taxpayers whose tax is deducted at source do not have the potential to take advantage of the serious hardship provision.

At the present time, multiple debt collection activity occurs across all agencies. Not only does this result in duplication of resources, it minimises the extent to which best practice used in larger government departments can be adopted by smaller government departments. The OECD note increased use of advanced analytics for targeting debtors with accompanying targeted intervention strategies.⁵³ Such tools could be appropriately shared across all debtors if debt management was the role of a coordinated agency.

4 RECOMMENDATIONS

Following from the above discussion, please find below my recommendations for consideration by the Tax Working Group:

- Investigate the process of writing off tax debt and consider introducing consistency of debt write-off processes for all government debt.
- Consider the role of a centralised agency for government debt collection in order that debt collection approaches are consistent for all government debt.
- Consider extending liability to partners of tax debtors where the tax debt results from fraudulent activity in order to achieve consistency with welfare fraud.
- Consider increasing Inland Revenue funding for audits, investigations and litigation to assist with revenue collection. This will assist with deterrence of tax evasion, collection of revenue, and reduce the inequitable treatment of welfare debtors when compared to tax debtors.
- Consider the adoption of a directors' penalty regime, for withholding taxes, including GST, in the event of company insolvency.

⁵³ OECD, *Tax Administration 2017 Comparative Information on OECD and other Advanced and Emerging Economies* (OECD Publishing, 2017) 18.