

Tax Working Group Public Submissions Information Release

Release Document

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Key to sections of the Official Information Act 1982 under which information has been withheld.

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- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;
- [2] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage.

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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.

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29th April 2018

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Mr S Pryce

[1]

**Re: Taxation of lump-sum payments of backdated ACC compensation Submission
for Tax working group**

To whom this may concern:

I was informed that the New Zealand tax system is designed to apply broadly with minimal exemptions and few opportunities for abuse as it's about fairness / equitable!

I feel this situation is unfair on people with disabilities and is inconsistent with the United Nations Convention rights of persons with disabilities. I would ask that the working group look at this continuing problem.

History:

1) In 2011 I had my ACC weekly compensation suspended, ACC "Deemed I was Rehabilitated".

Instead of receiving 80% of my pre-injury weekly compensation, I was forced to live off a sickness benefit for 4 years which equated to 1/3 of the minimum wage.

Effectively this has created a new class of poverty by the two crown entities due to the lack of engagement in rectifying the issues that exists.

Try to imagine the financial injustice and social stress that has been imposed over those years of dis-entitlement / suspension.

2) ACC decision was wrong , this was challenged through the appropriate legal channels. ACC acknowledged it's decision was wrong. (Administrative decision)

3) ACC reinstated me back to weekly compensation. I was paid a substantial backdated lump sum which then incurred a significant tax liability that disadvantaged me financially further through the result of ACC errors. The backdated lump sum payment was taxed in the year it was paid. This resulted in an increase of approximately \$30,886.54 payable tax more than if the payments had been spread over the years of entitlement.

I considered the following result as double taxation. I also argued that PAYE on the backdated compensation should not have been taxed in one year but spread across the years in which the ACC entitlement arose. This in turn would have resulted in the lump sum payments being taxed at a lower marginal rate, as PAYE deductions are calculated based on a person's annual income.

Unfortunately for being a successful claimant where the lump sum arrears is accumulated and then taxed at the higher rate, to comply with the provisions of the 2007 Tax Act. This has potentially put the ACC claimant in the highest possible tax bracket for that particular tax year despite right to be taxed at a much lower marginal tax rate had ACC made the right decision.

The cost to claimants has been the benefit to the Crown as a legislative windfall that breaches a basic principle of Law of "Commodum Ex Injuria Sua Nemo Habere Debet" , which means the wrongdoer should not be enabled by law to take any

advantage from its actions, a profit to which the Crown had no right to the disadvantage.

It should be observed the breach of principle whereby the Crown was profiting from a circumstance created by a Crown entity ACC at the expense of the individual that ACC is meant to serve. If the legislation was drafted to reflect the actual situation then there was no reason for the “essential misfortune” to exist.

The lump sum did not amount to an increase in compensation (“wages”) I was then receiving for the current period. Rather, it was a payment of the amount to which I was entitled by way of compensation for the prior years of dis-entitlement. It could not therefore be characterized as an extra payment over and above my ordinary entitlement for the “pay period” in question.

- 4) I asked ACC to compensate for the extra tax ACC refused / declined stating their internal criteria were not met.
- 5) The ACC policy is that it will only compensate people for paying the extra tax when there has been a serious service failure and this directly caused a loss.
- 6) ACC stated that there is no jurisdiction to challenge this. I do not think that ACC decision was justified so I applied for a review using ACC’s Dispute Resolution Provider, Fairway Resolution Limited.
- 7) Fairway Resolution issued its decision stating it would not address ACC’s refusal to pay the extra tax incurred because it was not a “Decision” I have Initiated the Legal process to object this anomaly with the District Court of Appeal.
- 8) This has placed a significant burden sorting this Tax issue out by creating additional stress which has impacted further on my mental / physical well-being which eventually led to me being hospitalised

- 9) I have received legal advice that if the district court decides that reviewer was correct and ACC has not made a “decision”, my only other option is to seek Judicial Review in the High Court. I should not need to spend thousands on legal fees and risk tens of thousands of dollars by taking a case to the High Court to address this.
- 10) The Ombudsman has raised the issue 2009/10 annual report in reaction to a complaint about the over taxation problem these circumstances have been acknowledged by the Taxation Review Authority and the Accident Compensation Appeal Authority these parties were left to consider rectifying the inequity of those who had received a back payment that was subjected to the inequitable taxation regime. But no action has been taken.
- 11) The new Minister for Revenue wrote to the then Minister for Revenue about the issue on my behalf, explaining it’s unfair and asking that the problem be addressed. The then Minister made it clear it would not be addressed.
- 12) I wrote to the new Minister who has explained that this is harder to fix than he thought.

This unfair Tax collection has been well known to the senior administrators of the Crown at all levels as early as the 1990’s if not earlier.

I believe I have exhausted every avenue that is currently available I.e officials in government departments through Politicians in Parliament and in the process through the justice system.

I thought administrative requirement when legislative incongruities are identified by way of such Court decisions is Government departments or Crown entities such as the IRD and the ACC are required to raise such issues by way of the appropriate internal

management systems so that the Parliamentary Minister's responsible can redress the ineptly drafted 'bad law'.

It's one thing to acknowledge the existence of this anomaly, but it's another delivering a solution / remedy in a timely manner.

If the well-being of vulnerable members of society are paramount, then their needs to be an active approach to ensure that the incapacitated are not taxed at the highest marginal rate.

I respectfully ask that people in my position are not disadvantaged further in paying for others mistakes, I look forward to a direction / guidance's on how this anomaly can be addressed / rectified fairly. Please also make sure that historic problems of this nature can be addressed by the tax system.

Yours Sincerely

Sefton Pryce