

Tax Working Group Public Submissions Information Release

Release Document

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30 April 2018

Hon Sir Michael Cullen
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By email: submissions@taxworkinggroup.govt.nz

Tēnā koe Sir Michael

Tax Working Group submission

1 Introduction

- 1.1 These submissions have been prepared by Ngāti Whātua Ōrākei Whai Rawa Limited (Whai Rawa) on behalf of the Ngāti Whātua Ōrākei Trust (the Trust).
- 1.2 We appreciate the opportunity to submit on issues set out in the Tax Working Group's Future of Tax Submissions Background Paper (the Background Paper). We are happy to be contacted by the Tax Working Group in relation to any of the points raised in our submissions.

2 About Ngāti Whātua Ōrākei

- 2.1 Ngāti Whātua Ōrākei are a hapū of the wider Ngāti Whātua iwi based in the Tāmaki Makaurau (Auckland) area. Ngāti Whātua occupation of Tāmaki Makaurau began in the 17th century when Te Tāōū, a hapū of Ngāti Whātua, campaigned against Te Waiohūa. The campaign was led by Tuperiri, to whom every member of Ngāti Whātua Ōrākei can trace their whakapapa back to.
- 2.2 As Treaty partners in the early-mid 19th century, Ngāti Whātua Ōrākei transferred significant amounts of land to the Crown in order to facilitate European settlement on the Tāmaki isthmus. By the mid-late 19th century, Ngāti Whātua Ōrākei had been left in a state of virtual landlessness, holding less than 700 acres of their ancestral land.
- 2.3 In 2011, Ngāti Whātua Ōrākei entered into a deed of settlement with the Crown in respect of historical claims arising from Crown acts or omissions prior to 21 September 1992. The deed of settlement package included an agreed historical account and Crown acknowledgements forming the basis for a Crown apology to Ngāti Whātua Ōrākei, cultural redress, and financial and commercial redress.
- 2.4 Today, Ngāti Whātua Ōrākei numbers over 4,000 people. The Trust, which is our Post-Settlement Governance Entity, is responsible for overseeing the commercial and social development of Ngāti Whātua Ōrākei for the benefit of our members. This work is primarily done through two subsidiaries:
 - a Whai Rawa – responsible for protecting and building the asset base of Ngāti Whātua Ōrākei. Whai Rawa currently holds over \$1.0 billion of

assets; these are primarily investments in properties in Tāmaki Makaurau; and

- b Ngāti Whātua Ōrākei Whai Maia Limited (Whai Maia) – responsible for advancing the cultural, social and environmental aspirations of Ngāti Whātua Ōrākei.

3 Key Points

- 3.1 Whai Rawa agrees that, while tax must provide sufficient revenue to the Government to fund the provision of public goods, services, and transfers, the tax system should also be designed with regard to its broader impacts on the wellbeing of New Zealanders. We support the examination of our tax system for further improvements to promote fairness, efficiency and long-term sustainability.
- 3.2 We are generally in favour of base-broadening measures that will improve the overall fairness of the tax system.

Māori authority regime

- 3.3 We strongly support the retention of Māori authority regime with only minor changes.
- 3.4 The Māori authority regime has been key to providing ownership models with economic consequences that reflect the nature of certain assets as being held communally by the members of a Māori authority.
- 3.5 As set out in more detail below, we consider that only minor changes should be made so that it is easier for members to claim Māori authority credits and so that entities wholly-owned by Māori authorities are eligible to receive Māori authority status themselves.

Land tax

- 3.6 We have specific concerns regarding the possible effects that a land tax might have on the retention of land held by hapū and iwi. Land is of critical importance to Māori, it takes a central role in how Māori identify themselves and in the practice of Māori culture. We consider that a land tax must be designed to ensure that Māori retain their tribal land.
- 3.7 Given New Zealand's history of alienating Māori from their land and the obligations between Crown and Māori as Treaty partners, we would not support changes which risk the further alienation of Māori from their land. We consider this risk should be protected against by carve-outs for land held by Māori.
- 3.8 In the context of post-settlement hapū and iwi in particular, there is a tendency for Māori to be "asset rich" (generally, land assets) and "cash poor". In this situation it may be difficult for hapū and iwi to meet the costs of a land tax. This can continue beyond the initial settlement period where Māori continue to purchase land, either privately or pursuant to any pre-emptive purchasing rights they may have, as they work towards restoring their land base.
- 3.9 A land tax may encroach upon Māori tino rangatiratanga (Māori rights to sovereignty and self-determination) in respect of their land, or otherwise penalise certain uses of land that are of benefit to society but do not provide a source of income to off-set the cost that a

land tax would impose. This would be inconsistent, and possibly conflict, with a Te Ao Māori world view which tends to take a more holistic approach to valuing and using land.

- 3.10 If the Tax Working Group were to propose a land tax, we would strongly recommend carve-outs for land held by Māori, particularly within their tribal area. We would be reluctant to see any carve-outs construed too narrowly given our concern that Māori retain tino rangatiratanga over their land to the fullest extent possible and that Māori should be free from the risk of further alienation from their lands.

Capital gains tax

- 3.11 We consider that the same concerns we have in respect of a land tax will be relevant if a capital gains tax were to be applied to Māori held land.
- 3.12 As with a land tax, our concerns include the risk that Māori will be alienated from their lands, the particular vulnerability of "asset rich" and "cash poor" Māori held entities, and the impact on Māori sovereignty in respect of their land.
- 3.13 Given our relationship with our land, any tax on realisation of a land holding will effectively operate on a similar economic basis as a land tax. This is because such a realisation will always be linked to an ongoing investment in our land.

4 Key issues

The current and future environment

- 4.1 We are keen to see how the Tax Working Group considers our tax system should respond to the risks, challenges and opportunities it faces. We identify the following as areas for particular focus:
- a the environment;
 - b growing inequality;
 - c affordable housing; and
 - d investment in wellbeing.
- 4.2 On the environment, we support a balancing of disincentives with incentives so that environmentally harmful activities may be offset by positive activities. We also support setting aside the revenue raised from environmental taxes specifically for reinvestment back into the environment via development and sustainability projects.
- 4.3 As observed above, we support broadening the tax base so that overall, tax rates may be lowered and asset classes may be taxed more evenly. We would encourage a review of the income tax rates with a view reducing the tax-burden on low and middle income households. This may also include raising the income threshold required before a person is taxed at the top marginal tax rate.
- 4.4 In respect of affordable housing, it occurs to us that GST incentives could play a part to promote the development of affordable housing. This could operate by allowing developers to access the 25% discount that is available to long-term commercial dwellings on the sale of qualifying affordable housing.

- 4.5 Related to inequality, we query whether incentives such as removing GST from fresh fruits and vegetables or disincentives such as sugar taxes could have a long-term positive impact on the wellbeing of New Zealanders. We support the Tax Working Group inquiring into the efficacy of these, or similar, targeted strategies. We are in favour of these approaches where there is evidence to suggest they will be effective at promoting wellbeing.

Retention of the Māori authority regime

- 4.6 We consider that it is important to recognise that certain assets will be held communally by Māori, rather than by individuals. The Māori authority tax regime allows for certain ownership structures (where the regime currently applies) to reflect the communal ownership of the underlying assets by ensuring tax paid at the authority level aligns with the tax rate of the underlying beneficiaries.
- 4.7 Given the importance that a Māori authority tends to play in holding structures, particularly in the post-settlement space, we would be wary of any major changes to the regime that would disrupt current ownership structures. We are in favour of retaining the regime generally with only minor changes.
- 4.8 We support the introduction of administrative changes to the regime that would make it easier for members of a Māori authority to receive back any excess Māori authority credits automatically.
- 4.9 We also support changes that would allow wholly-owned subsidiaries to apply for Māori authority status themselves so that Māori authority credits can be used to preserve tax neutrality within an ownership structure.
- 4.10 We would oppose any change that would reduce the economic alignment offered by the Māori authority tax regime on the basis that to do so would create a bias in favour of individual ownership which should not be supported.
- 4.11 Traditionally, land was treated by Māori as a communal resource and was held collectively. The legislative push beginning in the 19th century towards partitioning and individualising land ownership, to the exclusion of larger communal groups, did significant damage to hapū and iwi throughout New Zealand. The push for individual ownership eroded traditional authority structures and provided the basis upon which significant amounts of Māori held land were subsequently lost in breach of the principles of the Treaty of Waitangi.
- 4.12 By the end of the 20th century, Ngāti Whātua Ōrākei was virtually landless, having previously held thousands of acres in Tāmaki Makaurau. In respect of their land loss, the Waitangi Tribunal observed that the critical damage had been done by the instruments which broke down communal ownership and which necessarily destroyed the mana or authority of the tribe in and over their land.¹
- 4.13 Against this backdrop, we are wary of changes that would reintroduce a bias in favour of individual asset ownership. We encourage the retention and improvement of the Māori

¹ Detailed in the Waitangi Tribunal's summary of findings. Refer: Waitangi Tribunal *Report of the Waitangi Tribunal on the Orakei claim* (Wai 9, 1987) beginning at 253.

authority regime so that, to the fullest extent possible, the regime facilitates and supports communal ownership structures for Māori.

- 4.14 Consistent with the Tax Working Group's observations in respect of the broader Māori economy, we consider that post-settlement hapū and iwi are naturally in a good position to facilitate positive social, economic, and environmental outcomes. This is facilitated by the intergenerational focus of hapū and iwi, and the general concerns commonly shared by hapū and iwi stakeholders. We see the role of Māori authorities growing as New Zealand continues to develop and we would support the retention of the Māori authority tax regime in support of this.

A land tax should not apply to certain land held by Māori

- 4.15 As discussed above, we generally support broadening the tax base and lowering rates from both a fairness and policy perspective. We note that applying a land tax to land held by Māori may come into conflict with other Government commitments relating to the Treaty settlement process, the protection of Māori tino rangatiratanga, and limiting the possibility for the Crown to further alienate Māori from their land.
- 4.16 We consider there are a number of reasons why land held by Māori may not be developed or used as a means of producing income but which provide other societal benefits. In these examples, a land tax arguably incentivises that the land be used to provide a source of income to offset the cost, unless the owners of the land are prepared to wear that cost elsewhere. Examples may include:
- a land used for marae;
 - b land used for urupā (cemeteries);
 - c the preservation of wāhi tapu (sacred sites);
 - d the preservation of historic sites;
 - e the preservation of natural environments.
- 4.17 Māori tino rangatiratanga in respect of their tribal land should be preserved and a land tax should not influence Māori decision making in respect of their land. Carving out certain 'approved uses' of land by Māori may be seen as one way of addressing our concerns however we consider these will fall short of the Crown's obligations in respect of Māori tino rangatiratanga and that wider carve-outs should be drawn.
- 4.18 Because Māori value their tribal land in a holistic sense, there are cultural drivers to acquire and retain our lost tribal land where possible. This is consistent with the important place land has within a wider Māori cultural framework. While a land tax might incentivise land-bankers and other taxpayers with significant landholdings to put their land to more efficient uses, the same would not be true for hapū and iwi as they have fundamentally different reasons for holding their land.
- 4.19 We also consider that a land tax should not be introduced if it risks alienating hapū and iwi from their tribal lands.
- 4.20 We note that typical Māori land holding structures may be at risk to losing land as a result of a land tax, particularly as a result of the way in which Treaty settlements are



carried out and the liquidity profile of many post-settlement entities. In the post-settlement context, hapū and iwi tend to be “asset rich” and “cash poor” and this state may continue well-beyond initial settlement where hapū and iwi purchase additional land, either privately or pursuant to any pre-emptive rights they may have.

- 4.21 The land-heavy profile is typical of hapū and iwi as they develop given the role that land plays, not just to their economic prosperity, but also to their social and cultural prosperity. We are therefore concerned that the introduction of a land tax poses a real risk to current and future Treaty settlements. We also have concerns that a failure to address this risk may undermine the good faith within which Treaty settlements are conducted.
- 4.22 Even if a land tax might be levied at a low rate, the overall impact may still be significant where Māori hold significant land assets. In some cases there may also be specific difficulties in meeting the cost of a land tax because:
- a there may be no intention to develop the land to provide income;
 - b there may be insufficient cashflow to begin development projects that would provide income; and
 - c land may be subject restrictions which inhibit the ability for it to developed/sold.
- 4.23 We strongly recommend that, if considering a land tax, carve-outs are included in order to limit the risk that Māori will be alienated from their land and to preserve Māori tino rangatiratanga.
- 4.24 As previously expressed, we consider that hapū and iwi have particular features which mean they are well suited to facilitating positive social, economic, and environmental outcomes. We support Māori held land being excluded from a land tax as a means of supporting these positive outcomes.
- 4.25 Finally, where land is subject to both local government rates and a national land tax regime we query whether a deduction should be available for the local government rates.

Capital Gains Tax

- 4.26 As discussed above, taxing land held by Māori on an unrealised basis raises particular concerns. The same concerns and oppositions we have to a land tax will be relevant in respect of a capital gains tax in respect of our land holdings.
- 4.27 Because of the cultural significance our land holds for us, we generally do not intend to sell-down our land holdings in order to profit. One narrow instance in which we can envisage selling-down land holdings would be as a means to finance the acquisition or development of other land within our area. We consider that hapū and iwi should generally not be subject to a realised capital gains taxation in these circumstances as the focus is on regaining tribal land pursuant to Māori redevelopment rather than the pursuit of profits.

A framework for exploring a land tax or capital gains tax

When exploring an appropriate framework for the impacts that either a capital gains tax or a land tax will have on Māori, we recommend that the Tax Working Group consider, among other things:

- a the commitments undertaken by the Crown in respect of Māori tino rangatiratanga and whether tax is consistent with these;
- b whether the tax introduces a risk that Māori may be alienated from their land, and the desirability of avoiding or limiting this risk;
- c the cultural or environmental benefits which may be promoted through tax concessions for land held by Māori; and
- d whether the tax will be in general conflict with the principles of the Treaty of Waitangi.

4.28 Again, please contact us if you wish to discuss any of the matters raised in our submissions.

Yours sincerely

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Nāku noa. nā

Andrew Crocker
Chief Executive
Ngāti Whātua Ōrākei Whai Rawa Limited

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