Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

Release Document

September 2018

taxworkingroup.govt.nz/key-documents

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

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

[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.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [1] appearing where information has been withheld in a release document refers to section 9(2)(a).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

He tono nā

ki

TAX WORKING GROUP

e pā ana ki te

FUTURE OF TAX: SUBMISSIONS BACKGROUND PAPER

Kai-te-haere/April 2018

Contact Person
Rebecca Clements I General Manager (Acting) – Strategy and Influence I Te Rūnanga o Ngāi Tahu
I 15 Show Place, Addington I Christchurch

[1]

1. EXECUTIVE SUMMARY

1.1. Te Rūnanga o Ngāi Tahu ("**Te Rūnanga**") welcomes the opportunity to comment on the Tax Working Group's Future of Tax: Submissions Background Paper.

1.2. Te Rūnanga would like to acknowledge the Tax Working Group ("**the TWG**") for the opportunity to make a submission. Te Rūnanga applauds the TWG's intent to focus on Te Ao Māori and explore potential challenges, risks, and opportunities facing the tax system over the next decade and beyond.

1.3. While these are positives, Te Rūnanga is concerned with:

- The issue of income equity for Māori;
- The taxation treatment of Māori authorities and charities;
- The potential introduction of a land and capital gains tax;
- The use of environmental tax; and
- Māori engagement with the tax system.

1.4. Te Rūnanga welcomes the opportunity to comment on areas of particular relevance and significance to Ngāi Tahu. Moving forward, as a Treaty Partner, Te Rūnanga expects direct engagement on these issues; specifically, any discussions with regard to freshwater.

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: SUBMISSIONS BACKGROUND PAPER

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: SUBMISSIONS BACKGROUND PAPER

4.1. Te Rūnanga notes that there will be many challenges, risks, and opportunities facing the tax system over the next decade and beyond. These are discussed in the response below.

The future environment

4.2. Te Rūnanga welcomes clear acknowledgement of the challenges faced by changing demographics. Data shows New Zealand has an ageing population that will over time be supported by a growing Māori population. To support changing demographics there needs to be major improvement in current educational, employment and income outcomes of Māori. New Zealand needs an integrated system that focuses on creating educational, employment and business development pathways while reducing income gaps and social inequities. While the tax system can assist in improving outcomes widespread change across the whole of government is also essential.

4.3. One of the key opportunities for the tax system moving forward is how the system can support a reduction in income inequity for Māori. There is a significant gap between the average income of Māori and that of the average New Zealander. Te Rūnanga would like to see the TWG prioritise areas that:

- Support growth in regional economies;
- Reduce income inequity for Māori; and
- Target areas of investment that improve health, educational and social wellbeing outcomes.

4.4. Te Rūnanga believes targeted responses will help address income inequity for Māori.

4.5. Te Rūnanga supports a progressive tax system and a review of income brackets including a potential exemption for those in the lowest income bracket and a review of the highest tax threshhold in line with wage inflation and the Organisation for Economic Co-operation and Development average. Bridging the income gap and reducing overall inequity will provide a number of social and economic benefits for Māori and New Zealand.

4.6. An increase in wage rates will generate tax revenue. If the income gap was reduced so that the average income for Māori was consistent with the New Zealand average, tax revenue would increase by around $700 million per annum[1].

Recommendation

4.7. Te Rūnanga recommends that:

- The TWG prioritise areas that help address income inequity for Māori; and
- The TWG consider a review of income brackets; including an exemption for

1 Tokona Te Raki Change Agenda: Income Equity For Māori.

those in the lowest income bracket.

Living Standards Framework

4.8. Te Rūnanga applauds the introduction of the Living Standards Framework and the growth, distribution and sustainability of areas that facilitate a more comprehensive analysis of the multiple factors relating to intergenerational wellbeing.

4.9. Te Rūnanga is undertaking a research project to assess the underpinnings of a Ngāi Tahu Living Standard. Research has shown that the inclusion of cultural capital is essential to ensure the validity and application of a Living Standard Framework.

Recommendation

4.10. Te Rūnanga recommends that:

- The Living Standards Framework informs all areas of tax reform; and
- Cultural capital is included in the Living Standard Framework alongside the Four Capitals.

Goods Service Tax (GST) exemption for particular goods

4.11. Te Rūnanga would like to see GST exemptions on fruit and vegetables and correlating GST increases on unhealthy foods such as, fast food and sugary drinks. The tax system should incentivise consumer behaviour that leads to improved outcomes and disincentivise consumer behaviour that leads to negative outcomes. Increasing the tax on unhealthy products and ensuring healthy options are available at lower cost will help improve nutrition and reduce pressure on the health system.

4.12. To mitigate the impact of loss in income through a GST exemption for healthy products, Te Rūnanga recommends increasing the tax rate on things such as:

- Advertising of junk food and sugary drinks;
- Taxes on harmful fertiliser (to reduce nitrogen pollution of waterways); and
- Taxes on pesticides (to reduce non-essential usage).

4.13. Te Rūnanga believes increasing the tax rate on harmful goods will help address the negative externalities associated with the consumption and/or usage of particular goods.

4.14. Te Rūnanga would also welcome health services being eligible for tax exemptions. Tax revenue generated through the health care system should be ring-fenced and used to reduce inequities in the health care system.

4.15. The TWG should also consider the merits of including a health impact evaluation on all aspects of tax reform (including equity impact evaluation).

4.16. Te Rūnanga welcomes a tax system that is focused on supporting the most vulnerable.

Recommendation

4.17. Te Rūnanga recommends that:

- The TWG include a health impact evaluation on all aspects of tax reform;
- The TWG apply GST exemptions to fruit, vegetables and health services;
- Any revenue generated through the health care system be used to reduce inequities in the health care system; and
- The TWG increase tax on harmful products.

Māori authority regime

4.18. Te Rūnanga considers that the Māori authority regime is working well and operates effectively to meet the needs of Members. Te Rūnanga does not propose that any changes are required.

4.19. The Māori authority regime has been in place for some time and its purpose, to provide an appropriate tax framework for iwi assets to be held in collective ownership, is being achieved. For Te Rūnanga, the current framework works well in serving this purpose. Māori authorities are an important feature of the Māori governance and asset ownership landscape that must be maintained to provide continuity for generations to come.

4.20. Some of the attributes of the Māori authority regime include an income tax rate reflective of the marginal tax rate of Members, low compliance costs, refundable credits, and the removal of the need for most Members to complete an income tax return (at least to the extent that they would need to claim or pay the difference between the Māori authority tax rate and their own personal tax rate). These are attributes that Te Rūnanga believe should remain in place given the underlying policy rationale of having tax levied at a rate approximating the marginal tax rate of Members.

4.21. Māori authorities are an integral part of the administration of the tax system, not only for Members but also more generally. For some Members, their most significant interaction with the tax system other than pay-as-you-earn is through the Māori authority regime, which subject to minor adjustment, meets the needs of Members.

4.22. Te Rūnanga would be very concerned if changes were proposed that would impact on the ability of Māori authorities to hold and manage their assets through a collective vehicle and for the tax on income earned to approximate that rate of the members. This is particularly so given the intergenerational view that is taken to management of the putea that means that not all income is distributed in each year. Therefore accumulated income should continue to be taxed at the marginal tax rate of Members and any tax refund or top up for individual Members occur on distribution.

Recommendation

4.23. Te Rūnanga recommends that:

- The taxation treatment of Māori authorities remain unchanged.

Charities

4.24. Te Rūnanga supports the current application and operation of the charities regime as it relates to Māori organisations, in particular its application to the Ngāi Tahu Charitable Trust, Papatipu Rūnanga and Ngāi Tahu subsidiaries.

4.25. Te Rūnanga invests millions of dollars a year into charitable programmes and activities to enhance the health, well-being, identity, and education of Ngāi Tahu whānui and other charitable purposes relating to the protection and sustainability of the natural environment within our takiwā.

4.26. Te Rūnanga understand that the TWG is considering the tax treatment of charities, including (but not limited to) the exemption from income tax for 'tax charities' in the Charities Act 2005, the list of donor organisations and the application of fringe benefit tax to charitable organisations.

4.27. Application of the Charities regime in its present form to Ngāi Tahu is fundamental because the kaupapa of Te Rūnanga, the Ngāi Tahu Charitable Trust, Papatipu Rūnanga and Ngāi Tahu subsidiaries are fundamentally charitable. The health, well-being, identity and education of Ngāi Tahu whānui are at the heart of why Te Rūnanga, the Ngāi Tahu Charitable Trust, Papatipu Rūnanga and Ngāi Tahu subsidiaries exist.

4.28. Te Rūnanga would be very concerned if changes were to occur to the Charities regime that would impose a tax cost on the source of funds or income that is applied by charitable entities for charitable purposes and activities. We believe that this would be in direct contravention to the Act's intent; creating, the potential for confusion and inconsistency.

Recommendation

4.29. Te Rūnanga recommends that:

- The taxation treatment of charities remain unchanged.

Land tax

4.30. Te Rūnanga does not support the potential introduction of a land tax as the cost of this would be borne disproportionately by Māori. Under the Treaty Settlement process, Māori negotiated in good faith for redress for historic grievances by the Crown. As part of the process, iwi (including Ngāi Tahu) received land from the Crown, as well as other assets, as full and final settlement/redress for historic grievances. As a result, Māori hold a significant portion of freehold land in New Zealand and by virtue of this would suffer the greatest impact if a land tax were to be introduced. A land tax would, in effect, be a tax on Māori – one that would

exacerbate the myriad of current inequities discussed in this submission.

4.31. Iwi negotiated and settled the Ngāi Tahu Claims Settlement Act ("**the Settlement**") in good faith and expect that Settlement lands will not be negatively affected by future regimes. If a land tax had been in contemplation at the time of Settlement, Te Rūnanga considers the outcomes from negotiations would have been substantially different. A land tax would decrease the effective value of the land received under the Treaty Settlement, significantly reducing the redress provided under the Settlement process.

4.32. Many iwi may not be able to absorb the impact of the decrease in effective value, or to fund a land tax. This would particularly be so where a significant amount of the land transferred through the Treaty settlement process generates very low returns as it is classified as cultural land, is poorly productive land or is encumbered by existing rights (for example, Crown Forest licenses) that impact on the financial return. A land tax may force Māori to sell the very land that was transferred to them in settlement of the historical grievances committed against them by the Crown.

4.33. Whilst Te Rūnanga do not support a land tax in any form, if a land tax is to be introduced, all land owned by iwi authorities (and their groups) should be excluded from such a tax.

4.34. If a land tax were to be imposed on all land including land transferred as redress under a Treaty settlement, Te Rūnanga would need to reconsider its position given that past claims will be negatively impacted in a significant manner.

4.35. While Te Rūnanga understand that minor changes will be made to New Zealand's tax system over time (including changes that will affect Māori organisations), a land tax would be a significant and substantial change that would have a material impact on Māori.

Recommendation

4.36. Te Rūnanga recommends that:

- The TWG do not introduce a land tax; and
- If a land tax is to be introduced, all land owned by iwi authorities (and their groups) should be excluded from such a tax.

Capital gains tax

4.37. Te Rūnanga does not support the potential introduction of a capital gains tax ("**CGT**"), for many of the reasons noted above in relation to a potential land tax.

4.38. The introduction of a capital gains tax would again be borne disproportionately by Māori as it would largely apply to land.

4.39. Whilst Te Rūnanga understand the driver behind a CGT being to encourage investment in more productive or income generating assets rather than capital appreciating assets, Māori hold a disproportionate number of low income

generating capital assets (particularly land) and are not afforded such flexibility to simply divest those assets in favour of other assets. As such, Māori would be caught by a CGT.

4.40. Again, iwi negotiated and settled under a particular regime. If a CGT had been in contemplation at the time of the Settlement, Te Rūnanga considers the outcomes from negotiations would have been substantially different.

4.41. A CGT would decrease the effective value of assets and land received by iwi / Māori land trusts, significantly reducing the redress provided under the Settlement process from that which was expected and negotiated.

4.42. If a CGT was to be imposed on all land including land transferred as redress under a Treaty settlement and/or land owned by iwi authorities (and their groups), Te Rūnanga would need to reconsider its position given that the basis of past claims will be negatively impacted in a significant manner.

4.43. If a CGT is to be implemented, all land including land transferred as redress under a Treaty settlement and/or land owned by iwi authorities (and their groups) should be excluded, it should only apply on a realised basis, and roll-over relief should be provided to allow asset ownership reorganisations to take place without tax consequences.

Recommendation

4.44. Te Rūnanga recommends that:

- The TWG do not introduce a CGT; and
- If a CGT is to be introduced, all land including land transferred as redress under a Treaty settlement and/or owned by iwi authorities (and their groups) should be excluded from such a tax. A CGT should only apply on a realised basis, and roll-over relief should be provided to allow asset ownership reorganisations to take place without tax consequences.

Environmental tax

4.45. Environmental sustainability, particularly the protection and sustainable management of the natural environment and resources for future generations is a key concern for Te Rūnanga.

4.46. The relationship with the natural environment is at the heart of the Settlement and our whenua and natural environment is fundamental to Ngāi Tahu's identity.

4.47. As kaitiaki Te Rūnanga invests considerable money and resources to sustainably manage natural resources throughout the Ngāi Tahu tribal takiwā. This is significantly over and above the action required by statute or regulation. Te Rūnanga is best placed to determine what the Ngāi Tahu contribution to sustainability measures should look like based on intergenerational knowledge.

4.48. Te Rūnanga believes the best results are achieved when the appropriate balance of

disincentives and incentives is struck. Te Rūnanga acknowledges that environmental taxes can provide some benefits however, if not implemented correctly can dis-incentivise rather than incentivise.

4.49. Te Rūnanga generally favours incentives for example, tax credits or greater deductions for those investing in environmentally friendly alternatives or other environmental initiatives.

4.50. Ngāi Tahu whānau have rights interests and responsibilities for freshwater bodies and their tributaries throughout the Ngāi Tahu tribal takiwā. Te Rūnanga does not accept an environmental tax on consumption/use of freshwater bodies as such a tax would impact on Ngāi Tahu rights and interests and impinge on our ability to exercise rangatiratanga. Te Rūnanga would however support the use of effective tax measures to dis-incentivise freshwater and plastic pollution and ring fence tax revenue to support activities that result in positive environmental benefits.

4.51. The tax system should support sustainability measures (such as pollution mitigation, riparian planting, forestry etc). Mechanisms should err on the side of deductibility so that tax is not a barrier. Often such environmental expenditure ends up as a 'black hole' expenditure, with no immediate deduction available and no depreciation deduction certainty.

4.52. Environmental taxes must not impose any additional costs on iwi who already significantly contribute to the sustainable management, protection and restoration of the natural environment.

4.53. Any consideration of environmental taxes must take into account the contribution, funds, activities and resources already directed towards the sustainable management, protection and restoration of the environment by iwi.

Recommendation

4.54. Te Rūnanga recommends that:

- Te Rūnanga does not accept an environmental tax on consumption/use of freshwater bodies; and
- If an environmental tax is to be introduced, it should take into account the contribution, funds, activities and resources already directed towards the sustainable management, protection and restoration of the natural environment.

Engagement by Māori with the tax system

4.55. Historically, Māori have had, as a generalisation, low levels of engagement with Inland Revenue, to the detriment of the Māori economy and in particular the next generation of rangatahi.

4.56. For example, a 33% RSCT rate automatically applies to distributions/contributions to savings schemes where the Māori organisation does not hold a Members IRD number. Te Rūnanga understands that future changes may increase the non-

declaration rate in some cases to 45%. This also applies to PIR tax which automatically defaults to the highest rate of 28%.

4.57. This has a significant impact on the amount of net funds that may be paid/contributed to a members saving schemes when their marginal rates would on average be closer to 17.5% and in the case of pēpi, tamariki and rangatahi, 10.5%.

4.58. This is particularly true in the case of Te Rūnanga as members of our savings scheme who are 15 years and under and who do not supply an IRD number are automatically defaulted to the highest RSCT and PIR tax rate. Te Rūnanga knows by fact that 99% of those members do not have an income in excess of $14 thousand per annum.

4.59. The cumulative impact over time is significant as it affects the lifetime balance of the member and is a barrier to improving the social-economic outcomes for Māori as they are being over taxed.

Recommendation

4.60. Te Rūnanga recommends that:

- All members of a savings scheme aged 15 years and under who do not supply an IRD number or RSCT/PIR default to a RSCT and PIR Tax of 10.5%.

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