Tax Working Group Public Submissions Information Release

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Submission on the proposal to introduce director personal liability for PAYE and GST debts of companies

The Institute of Directors (IoD) appreciates the opportunity to comment on the Tax Working Group's Future of Tax: Interim Report (the interim report).

We reiterate comments to the Group in our submission dated 27 April 2018 on the future of tax in New Zealand. Our feedback in this submission focuses solely on the proposal to introduce director personal liability for PAYE and GST debts of companies. The prospect of director personal liability for company taxes is deeply troubling and may have far-reaching and unintended consequences. The IoD strongly opposes the proposal.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of about 9,000 members drawn from listed issuers, large private organisations, small and medium enterprises, state sector organisations, not-for-profits and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Proposal to introduce director personal liability for PAYE and GST debts

The interim report includes a recommendation that the Government explore measures to allow PAYE and GST debts of companies to be imposed on directors personally through a Director Penalty Notice regime.

This was not raised in the Tax Working Group's background paper on the future of tax in New Zealand. However, Inland Revenue informally consulted on this with key stakeholders, including the IoD, in 2016 and 2017. The proposal introducing director personal liability for PAYE and GST debt is deeply concerning and the IoD strongly opposes it. The proposal should not be viewed in isolation, but should be considered in the context of New Zealand's operating environment including governance, commercial, economic, and tax considerations.

Robust penalties and enforcement regime

The IoD is supportive of the existing measures under tax legislation that hold directors and other people accountable for tax debt of companies, including PAYE and GST. The regime is robust and Inland Revenue has significant powers to hold people to account and is successful in taking action. Given this, we believe the proposal to introduce director personal liability is not necessary and it is likely to have significant unintended consequences outweighing any potentials benefits for the reasons discussed below.

Deterring directors from serving on boards
Directors can be exposed to significant liability in their positions and this has been increasing over time across legislative and regulatory regimes. The reform under the Health and Safety at Work Act 2015 around directors' personal liability is a recent example. There are other potential changes on the horizon affecting directors and companies, for instance, the criminalisation of cartel conduct.

We are very concerned about the proposal because the increased liability could be a significant deterrent for directors and potential directors from seeking board roles. It is critical that boards attract high performing, effective, and progressive directors to help raise the standard of governance in organisations and trust and confidence in business in New Zealand

Conformance and risk adverse boards
Boards have a fundamental role in setting, driving and overseeing strategy. They must be continually engaged in strategic matters to ensure the long-term sustainability of their organisations. This is particularly important in today's complex and challenging operating environment for many organisations. They also have a responsibility to set risk appetite and oversee and monitor risk management.

The impact of increased director liability adds to boards' growing regulatory burden and means they can spend disproportionally more time on conformance rather than performance. Our 2017 Director Sentiment Survey found that 72% of directors were spending more time on compliance related activities in the last 12 months.

We are also concerned that the proposal will lead to boards becoming more risk adverse (ie not taking appropriate business risks). This could ultimately impact business success and shareholder value.

Cost burden on business and directors
Introducing director liability for PAYE and GST debts is likely to result in an increase in costs for companies and directors, including through increased compliance costs and insurance premiums for directors and officers.

We are concerned that there has been inadequate cost/benefit analysis on this proposal and we do not see sufficient benefits to support the proposed change. There should be a compelling and clear case that will deliver a material net benefit to New Zealand, beyond just revenue collection.

In conclusion, we believe that the current regime around PAYE and GST debt is sufficient and introducing director personal liability is likely to have far-reaching and unintended consequences outweighing any potentials benefits.

We appreciate the opportunity to comment on behalf of our members.

Yours sincerely
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Institute of Directors