

From: s 9(2)(a)
To: [Policy Webmaster](#)
Subject: LTIB first draft
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Attachments: s 9(2)(a)

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Feedback summary

1. Thank you for the opportunity to comment. My apologies for the lateness and brevity of my comments s 9(2)
2. The views expressed herein are those of the author and those views are not necessarily those of s 9(2)
3. In summary, I give the LTIB first draft a well-earned 'F'. 'Well-earned' because the IRD is in no position to evaluate this topic impartially. 'F' because IRD has purported to do its analyses impartially and has soundly failed to do so.
4. As it stands, this paper is, and in my estimation intentionally so, a 'conversation killer' though whilst in draft might yet be saved.
5. I may be contacted to discuss the points raised, if required. Please note my comments are deliberately provocative because that is what appears needed. As such, my comments are for the IRD and are not provided for public consumption without prior consent.

'Well-earned' because the IRD is in no position to evaluate this topic impartially

6. Section 8 of the Public Service Act 2020 provides as follows:
 - Long-term insights briefings
 - (1) A chief executive of a department must give a long-term insights briefing to the appropriate Minister at least once every 3 years and must do so independently of Ministers.
 - (2) The purpose of a briefing is to make available into the public domain
 - (a) information about medium- and long-term trends, risks, and opportunities that affect or may affect New Zealand and New Zealand society;
 - (b) **information and impartial analysis**, including policy options for responding to matters in the categories referred to in paragraph (a).
 - (3) A briefing may set out the strengths and weaknesses of policy options **but without indicating a preference** for a particular policy option.
 - (4) The subject matter must be selected by a chief executive taking into account—
 - (a) the purpose of the briefing; and
 - (b) the matters in the categories in subclause (2)(a) that the chief executive considers are particularly relevant to the functions of their department.
 - (5) Two or more chief executives may give a joint briefing that meets the requirements of this clause for each of the departments covered by the briefing.
 - (6) Any agency in the State services may contribute to a briefing by a department or departments on subject matter relevant to the operation of their agency.
 - (7) The Minister must present a copy of a briefing to the House of Representatives as soon as is reasonably practicable after receiving it.

[emphasis added]
7. Section 6A of the Tax Administration Act 1994 sets out Commissioner's duty of care and management
 - Care and management**
 - (1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

Highest net revenue practicable within the law

- (2) In collecting the taxes committed to the Commissioner's charge, and despite anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect 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 persons with the Inland Revenue Acts; and
 - (c) the compliance costs incurred by persons.
8. In short, the Commissioner is statutorily charged to be, and is in fact, anything but impartial in relation to possibilities that might be construed as causing or having the possibility of causing reductions in net revenue. Put another way, this choice of topic was a brave one on the terms prescribed.

'F' because IRD has purported to do its analyses impartially and has soundly failed

9. For over 35 years IRD has promoted and successfully pursued a "broad base low rate" ("BBLR") paradigm. It has been so successful in this that, capital gains aside, there are probably more examples of systematic over-taxation than there are of systematic under-taxation¹. BBLR has become an unchallengeable metaphor for what the IRD considers an effective tax system for a small open economy and one generating the highest net revenue over time. And IRD is rightly proud of this and entitled to be so.
10. However, to define a scope for this LTIB topic impartially, never-mind to carry it out impartially, the Commissioner must first get outside of its BBLR metaphor and she has not. BBLR currently infects the choice of scope, the work that has not yet been done, the amount of investment in the project, the lack of collaboration, the timing of requiring submissions and the structure of the draft report. Dare I say it, the paper appears designed to conclude BBLR whatever evidence it encounters in its way, including no matter how compelling.
11. By way of example, in chapter 3 of the draft LTIB evidence is presented that NZ's FDI is woeful. That fact is left hanging. Then, buried at paragraph 5.7 is the conclusion:

"At the same time, chapter 3 provided evidence that New Zealand does appear to be an outlier in the way it taxes inbound investment. Costs of capital and EMTRs are higher in New Zealand than in most other OECD countries."

12. Surely the conclusion "does appear to be an outlier" is a key finding and one that merits deep exploration?
13. Given the typically very high quality of IRD policy papers and related processes on matters consistent with its BBLR metaphor these defects cannot be dismissed as accidental. On the other hand, those defects could well be evidence of a 'Kodak' moment² for the Commissioner.

Conversation killer

14. I observed earlier that this topic choice was a brave one. I must unfortunately now qualify that it could have been brave. Instead, in its lack of bravery, it comes across as in my view as an unashamed attempt to kill an important conversation.

Might yet be saved:

15. First, by dropping BBLR as a unidirectional relic necessitated by a time and tax administration system that is no longer so readily compartmentalised.
15. Second, by developing a more mature metaphor for the role of tax and tax systems in regulating the economy – a metaphor befitting a modern economy and the \$1.5b investment in START. As Deirdre McCloskey, author of "The Rhetoric of Economics", says "metaphors are not just a pasted-on ornament ... they're terribly consequential."
16. Third, and mandatory (for impartiality), would be to approach the topic from a wider perspective than tax (i.e. limiting the focus to tax is like analysing liver function whilst ignoring the body of which it is a part – an LTIB put out by the Commissioner must surely deal with the real world not merely first year university tax theory and equivalent level assumptions?)³.

Footnotes:

1 Note every occasion where policy papers have identified over-taxation and excused this on the basis of fiscal constraints.

2 An infamous moment when Kodak could have gone on to dominate digital photo technology having invented it but could not follow through to reinvent itself – instead the market did and the rest is history.

3 In line with what at least one submitter on the scoping document recommended.