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AUSTRALIA + NEW ZEALAND

25 March 2019

The Chair  
Finance and Expenditure Select Committee  
Parliament Buildings  
Wellington

Dear Sir

**Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill – Supplementary Order Paper**

Thank you for the opportunity to submit on the Supplementary Order Paper attached to the latest tax bill (the SOP).

In summary, we support the proposal to give greater flexibility to the Commissioner of Inland Revenue (the Commissioner) in the use of her care and management power. The SOP also gives the Minister of Revenue (the Minister) the ability to recommend that the Governor-General make a modification to the application of the Inland Revenue Acts by Order In Council.

The Cabinet Paper states that it takes on average 670 days from when it is identified to remedy a legislative anomaly through primary legislation. We agree that taxpayers filing returns and taking tax positions during that period are subject to considerable uncertainty and often experience increased compliance costs.

We believe that the amendments included in this SOP will help to reduce taxpayer uncertainty and promote the efficient administration of the tax system.

The Cabinet Paper also states that:

“The nature and volume of tax law changes mean that unforeseen or unintended outcomes (legislative anomalies) *often* arise. This is likely to continue to be the case into the future given the increasing complexity of tax law and rapidly evolving business practices.” (Emphasis added)

We agree. The power is needed, in part, because of the volume and pace of tax reform. It is still important that draft legislation has been subject to appropriate and meaningful consultation and has been thoroughly reviewed prior to introduction to ensure that it accords with the policy intent.

Our specific comments are attached.

Yours faithfully



John Cuthbertson, CA  
NZ Tax and Financial Services Leader



Greg Haddon, FCA  
Chair, CA ANZ Tax Advisory Group

## **Specific comments**

As stated in our cover letter, we support the overall proposal to give more flexibility in tax administration.

The proposed legislation has been the subject of extensive consultation and we would like to thank officials for listening to feedback.

The redrafted power allows for modifications to and exemptions from the Revenue Acts in certain circumstances and for a limited time. We believe that this is appropriate.

## **Existence of appropriate safeguards**

Although we have always supported the extension of the power, we believed it was important that appropriate safeguards were put in place. This proposed legislation includes a number of safeguards including:

- A requirement for consultation;
- Consistency with Government policy;
- Classification as a disallowable instrument;
- A time limit on the decisions made;
- Taxpayer optionality; and
- Application of the decision to a class of taxpayer rather than to individuals.

## **Retrospectivity**

We had previously submitted on the applicability of any modifications or exemptions to prior tax years. We are pleased to see that this has been considered.

The proposed new power will increase taxpayer certainty by addressing situations where the current tax legislation does not work as intended. The exemptions or modifications will apply to the years following

the decision. They must also apply to the earlier years not yet statute barred. Otherwise taxpayers will face further uncertainty over whether the prior years will be subject to a different tax treatment.

This issue has been partially rectified by proposed section 6D(3)(b) in the case of modifications and proposed section 6E(4)(b) in the case of exemptions. We would like to thank officials for responding to feedback.

However, it is not clear to us why the retrospectivity is four years in the case of modifications but only one year for exemptions. In our view the period should be four years for both.

## **Operation**

The success of the new power will depend on how it is operationalised. Some in the tax community would argue that the existing care and management powers should be sufficient to achieve the stated aims but that the Commissioner has restricted her use of the current provisions by her narrow interpretation. However, we acknowledge that the proposed power is intended to be wider than the current power and to allow the Commissioner or the Minister to give primacy to the policy intent of the legislation.

It will be important that the new power is used in a targeted way, in situations when it is needed and to the extent intended.

Given the importance of the Government policy to the exercise of the power, it will be important the policy officials are involved in decisions on its exercise.

If these things are not done, there is a risk that the power will not be effective.