

MEMORANDUM

Date: 1 November 2018

To: Tax Working Group

From: Chartered Accountants Australia and New Zealand

Subject: Submission on Tax Working Group Interim Report – Capital and wealth.

Thank you for the opportunity to provide feedback on your Interim Report.

Following our workshop on 16 October 2018 we summarise our key recommendations below:

Problem definition:

- Establish a list of criteria to measure and assess fairness when considering what to tax;
- Avoid complexity when designing the rules;
- Greater analysis is needed to ensure New Zealand's productive economy is not detrimentally impacted.

What should be included?

- Land, residential investment, commercial and farms;
- Shares – in principle. However, this is a complex area because of the obvious double and triple tax issues and requires more analysis than has occurred to date;
- Business assets.

What should be excluded?

- Main home;
- Personal assets.

Other matters:

- Consider further the exclusion of holiday homes that are held solely for personal use, particularly in the context of intergeneration/wider family ownership;
- Consider what the impact might be on the New Zealand capital markets. Would introducing a tax on capital simply cause the flight of capital offshore?

Shares

- The treatment of shares requires further analysis and debate;
- Preference to align the tax treatment of domestic listed shares and offshore shares to ensure New Zealand capital markets are not impacted by tax arbitrage;
- Consider taxing a portfolio investment in foreign shares on a realisation basis.

Business assets

- Allow the purchaser to deduct or amortise the cost of goodwill.

Main home

- More than one home, allow the person to choose;
- Main home used for income earning activity, include a de minimis e.g. X days;
- Exempting the family home has distributional and equity impacts given that the value of the exemption differs depending on the location of the home;
- Relatedly, a financial exemption raises issues of equity and can behave like an estate duty or inheritance tax. In the same way that the TWG needs to look at whether death is a taxable event it should likewise be examined in the family home context.

Transitional rules

- It is essential we have good quality legislation. The timeframe is tremendously ambitious. Given the design complexity and the need to provide certainty for various parties to update their systems, the initial application date should be deferred;
- Adopt a phased approach to develop and pass legislation. Would allow for further investigation of the merits and desirability of each asset type to ensure all outcomes are understood:
 - Stage 1 - income producing land;
 - Stage 2 – shares and business assets;

- Stage 3 – managed funds and retirement savings;
- Provide optionality for valuing existing assets;
- Reconsider the merits of applying prospectively to new assets (ie the Australian approach). We are not certain that the cost and robustness of the “valuation at a time” approach has been adequately assessed;
- We do not favour a process where taxpayers file an annual statement of cost. However, there needs to be a clear and approved process for record keeping.

Calculation method

- Impose tax on a realisation basis;
- “Realisation” should be defined on a consistent basis;
- Additional consideration should be given to recognising value shifting within the overall design. Detailed anti value shifting rules for some situations may be required or robust avoidance rules.

Rollover relief

- Rollover relief should be focused on situations where the asset is not converted to cash or a cash equivalent and where the proceeds are not reinvested within a prescribed commercial timeframe. The Christchurch earthquake experience will be useful in determining the appropriate rollover timeframe;
- Provide rollover relief:
 - when there has been no change in ownership in substance including wider family transfers;
 - on death (if death is considered a realisation event) on transfers for natural love and affection, including testamentary transfers or transfers to a trust where it is because of natural love and affection the transferor has for the beneficiaries;
 - on an involuntary disposition where the proceeds are reinvested;
 - intra group transactions;
 - on dispositions of business assets where the proceeds are reinvested (including farms, business premises and assets).
- Other possible options for rollover include:
 - making rollover mandatory not optional and including losses. This would reduce pressure on quarantining losses;
 - spreading the tax on the gain rather than complete deferral;
 - allowing rollover only to the extent that the profit exceeds the losses for the year.

Losses

- We support the TWG's approach of allowing the offset of losses except for fungible assets. We recognise this policy comes under pressure depending on rollover relief.

Non-residents

- Adopt a principled approach consistent with the Income Tax Act and tax non-residents on their New Zealand sourced income, subject to the Double Tax Agreements;
- New Zealand should alter its tax treaty negotiations stance to achieve parity between residents and non-residents on New Zealand sourced income;
- Consideration needs to be given to offshore holding structures that non-residents use to hold New Zealand assets to ensure all income from capital is subject to tax.

Retirement Savings

- Taxation of retirement savings should follow a consistent approach as there are various ways in which people save for their retirement;
- The application date should be deferred to allow the funds industry time to update their systems to implement the legislative changes.

We would like to continue our involvement with the Tax Working Group and to provide further input as required. Please contact John Cuthbertson in this regard.

Yours sincerely



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Chair – Tax Advisory Group



John Cuthbertson
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