

## **Draft**

**Tax Administration Research Centre (TARC) Annual Conference, April 2018**

# **THE CONTRIBUTIONS OF TAX COMMITTEES: A NEW ZEALAND PERSPECTIVE**

**Adrian Sawyer\***

## **Abstract**

Tax committees are integral to a number of jurisdictions in terms of undertaking an extensive review of the tax system, undertaking consultation with the private sector over proposed tax policy changes, and more generally, having an influence on the tax policy framework as a jurisdiction reviews the appropriateness of its tax system. This paper takes an exploratory case study approach reviewing the role of tax committees in New Zealand (NZ) over the ninety five years from the early 1920s to early 2018. The analysis reveals two major types of tax committees: those set up to review the tax system as a whole (a minority by number), and those established principally to be the interface between policy proposals and their implementation through receiving submissions and making recommendations. With the advent of the generic tax policy process (GTPP) in 1994, these tax committees have formed an integral part of the policy development process that feeds into the legislative phase. The impact of most of these tax committees is identifiable in terms of subsequent policy and legislative reform.

## **1. INTRODUCTION**

Governments appear to be making increasing use of committees (or working groups) to contribute to their tax policy reform agendas. Such a phenomena is commonplace in many Western nations, including Australia, New Zealand (NZ) and the United Kingdom (UK). The use of such committees

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\* Dr Adrian Sawyer is Professor of Taxation at the University of Canterbury, Christchurch NZ and International Fellow of TARC. Email: [adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz). I am grateful for the research assistance provided by Melinda Jone in gathering information on the previous NZ tax committees; any errors and omissions remain my responsibility. This paper is current as at 29 March 2018.

was central to the tax rewriting projects in each of these three countries during the 1990s-2000s<sup>1</sup> and more recently through their tax system reviews.<sup>2</sup>

The literature encompassing the contributions of tax committees typically looks at a particular jurisdiction's reform(s) and its impact, including the role of the tax committee in bringing about that reform.<sup>3</sup> On occasions the contribution extends to incorporating comparative analysis with other jurisdictions. In contrast, there has been little research that takes a longitudinal approach when reviewing tax reviews and reforms, and no in-depth research (to the best of the writer's knowledge) that focusses on the impact of one or more tax committees in bringing about policy reform. There have been reflections from tax committee chairs on the impact of that committee.<sup>4</sup> Furthermore, this 'gap' extends to research that specifically focuses on the contributions of such committees to the development and impact of tax policy and administration in a particular jurisdiction (or jurisdictions). This underlies the motivation for this paper.

This paper applies a 'traditional' legal approach, along with a tax policy lens. The approach taken is largely positivist. Furthermore, while there is no specific theoretical framework, there is an

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<sup>1</sup> For a review of the tax rewrites in these three countries, see for example: Adrian Sawyer, "Rewriting Tax Legislation: Can Polishing Silver Really Turn It Into Gold?" (2013) 15(1) *Journal of Australian Taxation*, 1-39.

<sup>2</sup> For an overview of the impact of the tax system reviews in Australia, NZ and the UK, see Binh Tran-Nam, Chris Evans, Richard Krever, and Philip Lignier, "Managing Tax Complexity: The State of Play after Henry" (2016) 35(4) *Economic Papers* 347-358; Paul Kenny, "The Mirrlees Review's good tax system: 'old world' versus 'new world' professor opinions" (2015) 30 *Australian Tax Forum* 491-516. A special issue of *Fiscal Studies* was dedicated to the Mirrlees Review in 2011: see for example, Paul Johnson and Gareth Myles, "The Mirrlees Review" (2011) 32 (3) *Fiscal Studies* 319-329; James Mirrlees, Stuart Adam, Timothy Besley, Richard Blundell, Stephen Bond, Robert Chote, Malcolm Gammie, Paul Johnson, Gareth Myles and James Poterba, "The Mirrlees Review: Conclusions and Recommendations for Reform" (2011) 32 (3) *Fiscal Studies* 331-359; John Creedy, "Reflections on Tax by Design" (2011) 32 (3) *Fiscal Studies* 361-373; Chris Evans, "Reflections on the Mirrlees Review: An Australasian Perspective" (2011) 32 (3) *Fiscal Studies* 375-393; Roger Gordon, "Commentary on Tax by Design: The Mirrlees Review", (2011) 32 (3) *Fiscal Studies* 395-414; Louis Kaplow, "An Optimal Tax System" (2011) 32 (3) *Fiscal Studies* 415-436; Christian Keuschnigg, "The Design of Capital Income Taxation: Reflections on the Mirrlees Review" (2011) 32 (3) *Fiscal Studies* 437-452.

A related development is the contribution from the Office for Tax Simplification in the UK; see: Adrian Sawyer, "Moving on from the Tax Legislation Rewrite Projects: A Comparison of New Zealand Tax Working Group/Generic Tax Policy Process and the United Kingdom Office of Tax Simplification" [2013] *British Tax Review*, No 3, 321-344.

For an overall review of the three tax system reviews, see Chris Evans, "Reviewing the reviews: A comparison of recent tax reviews in Australia, the United Kingdom and New Zealand or 'a funny thing happened on the way to the forum'" (2012) 14(2) *Journal of Australian Taxation* 146-182.

<sup>3</sup> See for example, Adrian Sawyer, "2010 Budget Brings Biggest Tax Changes in 25 Years" (2010) 58 *Tax Notes International*, (June 7), 790-793; and Sawyer, above n 2, where the TWG's contribution to changes in Budget 2010 is examined.

<sup>4</sup> See for example, Bob Buckle, "The New Zealand Tax Working Group: What lessons for tax reform processes?" *Presentation to the Structures, Processes and Governance in Tax Policy-making Conference*, Saïd Business School, Oxford, 8-9 March (2012). See also, Bob Buckle, "Toward a World Class Tax System", *Presentation to the Inland Revenue Department's Technical Leaders Conference*, James Cook Hotel Grand Chancellor, Wellington (25 August 2009).

element of grounded theory through the findings that can be drawn through observing the impact of the various tax committees.

The paper adopts an in-depth exploratory case study approach. Case study as a research method is often maligned and considered to be a non-scientific approach to undertaking research. Notwithstanding this view, case study research is used extensively in academic enquiry in traditional social science disciplines as well as practice-oriented fields. When adopting a case study approach, the design and analysis considerations are of prime importance, more so often than the description of events or the scenario under review. As Yin states,<sup>5</sup> the need for a case study arises out of the desire to understand complex social phenomena and allows investigators to retain the holistic and meaningful characteristics of real-life events.

While this paper is in places descriptive in terms of the contributions of each tax committee, it provides insights and critical perspectives that can serve as a useful reference point for other jurisdictions considering using tax committees. For example, (independent or external) tax committees are frequently touted as a mechanism to enhance the level of consultation and transparency. But is this reflected in practice (from a NZ perspective at least)? The analysis extends to incorporate the process of tax policy development and its associated administration. The paper incorporates a forward-looking approach through offering some insights into the possible future use of such tax committees.

The remainder of this paper is organised as follows. In section 2 there is a brief review of the prior literature that focuses on the impact of one or more tax committees. This is followed by section 3 that reviews the contributions of the most significant tax committees in chronological order, followed by concluding observations in section 4.

## **2. LITERATURE REVIEW**

In a United States (US) context, the Joint Committee on Taxation (JCT) was established to support the US Congress. The JCT was created in 1926 to satisfy somewhat divergent objectives of the House and Senate branches of the US Congress. The House's main interest was simplification, while the Senate's idea was to form a joint oversight subcommittee for its tax committees. In some ways, the JCT is similar to the Finance and Expenditure Committee (FEC) that supports the NZ

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<sup>5</sup> Robert K Yin, *Case Study Research: Design and Methods* (Sage Publications, 2nd ed. Vol. 5, 2003).

Parliament in scrutinizing tax bills and other materials.<sup>6</sup> In his paper, Yin reviews the contributions of the JCT to the US Congress, and concludes:<sup>7</sup>

“Partly by design but largely by happenstance, Congress authorized a staff in 1926 that helped change the nature of the legislative process. By serving at or near the intersection of three great divides in government—those between the parties, the houses of Congress, and the legislative and executive branches—the *JCT staff demonstrated the value of unelected professionals assisting directly in the formation of legislation and led Congress to rely more on its own resources in the legislative process rather than those of the executive branch.* This article has described the emergence of the JCT staff from a modest conception much different from its eventual role. The staff’s work on a lengthy and highly technical project—a dozen-year effort to codify the tax statutes—contributed to the growth of its influence and the changes that would take place in the legislative process.”

In a review of the influence of tax administration on the development of tax law in Australia, Coleman and McKerchar<sup>8</sup> look at the role of a number of enquiries into the Australian tax system commencing in the 1920s with the Warren Commission. The Warren Commission issued five reports, with its most significant contribution being the subsequent introduction of the Income Tax Assessment Act (Cth) 1922.<sup>9</sup> In the 1930s the Ferguson Commission was established, leading to more significant amendments, including greater uniformity between the various Commonwealth and State Acts.<sup>10</sup> In the 1950s the Spooner Committee’s review led to significant amendments to the ITAA 1936. This was followed by the Hulme Committee in 1955 reviewing depreciation rates.<sup>11</sup> Near the end of the 1950s and early 1960s, the Ligertwood Committee was established with a very specific terms of reference, namely to advise on tax avoidance issues.<sup>12</sup> In 1964 the Downing

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<sup>6</sup> For further discussion on the role and contributions of the FEC, see Adrian Sawyer, “Reflections on the contributions of lawyers to tax policy-making in New Zealand”, 2018 28(1) *New Zealand Universities Law Review* 995-1022. The FEC is not included in the NZ case study as it is not strictly a tax committee appointed to review any part of the tax system, but rather is a core component of the legislative process.

<sup>7</sup> George K Yin, “Codification of the Tax Law and the Emergence of the Staff of the Joint Committee on Taxation”, *University of Virginia School of Law Public Law and Legal Theory Research Paper Series 2017-39 Law and Economics Research Paper Series 2017-20* (August 2017), at 46, (emphasis added).

<sup>8</sup> Cynthia Coleman and Margaret McKerchar, “The Chicken or the Eggs?: A Historical review of the Influence of Tax Administration on the Development of Income Tax Law in Australia”, in John Tiley (ed) *Studies in the History of Tax Law* (Hart Publishing, Oxford, 2004), at 285-312.

<sup>9</sup> *Ibid.*, at 290.

<sup>10</sup> *Ibid.*, at 291.

<sup>11</sup> *Ibid.*, at 292-293.

<sup>12</sup> *Ibid.*, at 294-296.

Enquiry was set up as an academic study commissioned by the Social Sciences Research Council, focussing in particular on the issue of equity.<sup>13</sup>

In the 1970s, one of the more well-known tax committees was established, namely the Asprey Committee, to undertake a comprehensive review of the Australian tax system. Of particular note is that while the Asprey Committee made far reaching and extensive recommendations, none of these were acted upon, in the short to medium term at least.<sup>14</sup> In the 1980s, the Matthews Committee was established to look at the effects of inflation on the economy and the tax system, with its main recommendation of indexation of marginal rates short lived as a policy decision.<sup>15</sup> The reform of the Australian Tax System (RATS) in the mid-1980s led to the introduction of a capital gains tax (CGT), full dividend imputation and the fringe benefits tax (FBT).<sup>16</sup> The Review of Business Tax (RBT) in the late 1990s led to the recommendation that Australia needed “A New Tax System (ANTS)”. Major issues included the need to reform indirect taxation (which eventually led to Australia getting a goods and services tax (GST), and changes to CGT. Few of the recommendations of the RBT were accepted, although the ATO implemented in a limited form the RBT’s integrated tax design approach.<sup>17</sup>

In Yu’s longitudinal review of the US JCT, and Coleman and McKerchar’s historical narrative of tax reform in Australia, we can see the important role that tax committees play in reviewing the tax system and making recommendations on tax reform. What is clear is that the uptake of recommendations is hugely varied, largely due to whether the recommendations fit within the political philosophy of the incumbent government. Without such tax committees, not only would the development of these two countries’ tax systems most likely have gone down different paths, but there would be a distinct lack of ‘independent’ analysis from experts to inform the government of the time, or future governments that may decide to take up on a tax committee’s recommendations. What then is the history of tax committees in New Zealand? This is the subject of the next section of this paper.

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<sup>13</sup> Ibid, at 297.

<sup>14</sup> Ibid, at 298-299.

<sup>15</sup> Ibid, at 300.

<sup>16</sup> Ibid, at 302-304.

<sup>17</sup> Ibid, at 307-311.

### 3. THE HISTORY OF TAX COMMITTEES IN NEW ZEALAND

It is not possible to examine in detail every tax committee that has made contributions to tax legislation, administration and practice within the confines of a single research paper. Consequently the intention of this paper is to provide a review of selected tax committees that have had a significant impact and/or a wide brief in their terms of reference, as well as provide a comprehensive list of all tax committees identified over the last ninety five years or so in NZ.

Specifically, the paper traces and examines the contributions of tax committees over the last ninety five years in one jurisdiction, namely NZ. The first contribution comes from the Committee on Taxation in 1922 Chaired by Leigh Hunt (the Hunt Committee).<sup>18</sup> This was closely followed by a Commission of Inquiry chaired by W Sim in 1924 (the Sim Commission).<sup>19</sup> After a period of nearly thirty years, the Gibbs Committee was established, releasing its Report of the Taxation Committee in 1951.<sup>20</sup>

The next substantial contribution to reform relating to a tax committee is the Taxation Review Committee 1967 (the Ross Committee).<sup>21</sup> The Ross Committee was set up in 1966 to undertake a comprehensive review of all aspects of central government taxation in New Zealand. The next significant contribution comes from the Task Force on Tax Reform 1982 (the McCaw Review).<sup>22</sup> The McCaw Review was a direct result of a report in June 1981 by the New Zealand Planning Council entitled *An Agenda for Tax Reform*.<sup>23</sup> The analysis in the paper concludes with the recent Tax Working Group (TWG) established in late 2017 by the Labour-led Coalition Government (Government TWG).<sup>24</sup> The terms of reference and membership of the Government TWG are

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<sup>18</sup> Leigh Hunt (Chair), Edward Anderson, Peter Barr, William Barton, John Bitchner, Ewen Campbell, Walter Gow, Ernest E Hunt, George Shirtcliffe, Bernard Tripp, Thomas Shailer Weston, CJ Ward, *Taxation: Report of the Committee Appointed to Inquire into the Taxation of the Dominion of New Zealand* (Wellington: Government Printer, June 1922).

<sup>19</sup> William A Sim (Chair), James Begg, William D Hunt, George Shirtcliffe and Thomas Shailer Weston, *Royal Commission Appointed to Inquire into Land and Income Taxation in New Zealand* (Wellington: Government Printer, May 1924).

<sup>20</sup> Tony Gibbs et al, *Report of the Taxation Committee* (Wellington: Government Printer, 1951).

<sup>21</sup> LN Ross et al, *Taxation in New Zealand – Part I-Part XIV*, (Wellington: Government Printer, 1967).

<sup>22</sup> PM McCaw et al, *Task Force on Tax Reform: Final Report* (Wellington: Government Printer, 1982).

<sup>23</sup> New Zealand Planning Council, *An Agenda for Tax Reform* (June 1981).

<sup>24</sup> Sir Michael Cullen et al, *Tax Working Group 2017* (2017).

known, with this committee meeting three times as at the time of writing. A Submissions Background Paper will be released on 14 March 2018.<sup>25</sup>

Other notable contributions to tax reform in NZ include: the Organisational Review of Inland Revenue 1994 (the Richardson Review);<sup>26</sup> the Tax Review 2001 (the McLeod Review);<sup>27</sup> and the Victoria University of Wellington Tax Working Group (VUW TWG).<sup>28</sup> In addition, a number of consultative committees set up by Fourth Labour Government during the 1980s-1990s reviewed specific aspects of the tax system, recommending various reforms. This section of the paper provides an overview of a number of the more significant tax committees, with a comprehensive list of these consultative committees/working groups set out in a table.

### **3.1 Committee on Taxation (Hunt Committee) 1922**

The Hunt Committee is the first known inquiry into taxation in NZ. It was set up by the government, with its members representing local Chambers of Commerce, Farmers' Unions, Sheeponers Federation, law and accounting societies, and industrial and manufacturing interests. It provided a cross-section of commerce in NZ at that time. All of its members were male. Interestingly the Chair represented the Farmers Unions. It should be remembered that this inquiry followed soon after the conclusion of World War I when taxes had been increased to fund the war effort. Its focus (or terms of reference) was to look at all taxation in NZ with a view to ascertaining whether the burden of taxation was affecting the prosperity of NZ and what change would be desirable.

#### *3.1.1 Conclusions and Recommendations*

The Hunt Committee concluded:<sup>29</sup>

1. *That the limits of taxation that this country can bear have been reached indeed, exceeded - and that there is now practically no reserve of taxable capacity;*

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<sup>25</sup> Sir Michael Cullen, "Purposes, principles and possibilities: The Tax Working Group", *Speech to the New Zealand International Fiscal Association (IFA) Conference*, (Queenstown, 2 March 2018); available at: <https://taxworkinggroup.govt.nz/documents/twg-spch-2018-03-02-purpose-principles-possibilities.pdf>.

<sup>26</sup> Sir Ivor Richardson et al, *The Organisational Review of the Inland Revenue Department* (Wellington: Government Printer, 1994).

<sup>27</sup> Robert McLeod et al, *The Tax Review 2001: Final Report* (Wellington: Government Printer, 2001).

<sup>28</sup> Victoria University of Wellington Tax Working Group, *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Wellington: CAGTR, 2010).

<sup>29</sup> Hunt Committee (1922), at 2 (emphasis added).

2. *That the higher graduated rate of income-tax has reached such a point that it is drying up the sources of revenue, and, if continued, must result in a reduction of revenue from these sources, must stop progress and enterprise, and impede production and industry;*
3. That the income-tax on large companies is the highest in any of the British dominions - considerably higher than in- Great Britain, and very much higher than in any other section of the British Empire;
4. That land-tax - particularly in the higher graduated rates - is very seriously affecting production and development;
5. That the rate of taxation on smaller incomes is lower, and the exemptions on these smaller incomes higher, than in any other part of the British dominions;
6. That economies in public expenditure are the principal means by which relief from the present excessive taxation can be afforded.

Overall the recommendation of the Hunt Committee was for a shift in the tax burden to increase the burden on those with lower income, and reduce the amount of tax levied on large companies. Adam Smith's four maxims (equity, certainty, convenience, and economy) were seen as an acceptable foundation for determining the incidence of tax. Other factors seen as important were: incidence, payment, graduation and treatment of losses. This led to the conclusion that income tax should ultimately be paid by the individual ultimate recipient (and hence not by companies). There was some recognition of intentional competition when it came to taxing investments, indicating that rates should be competitive. The top income tax rate was recommended to be lowered to the equivalent of 25%. Determination of the optimum income tax rate and structure was debated, along with certain exemptions for particular businesses (e.g. coalmines). Some reservations were made by particular committee members and set out in the report of the Hunt Committee.

### *3.1.2 Government's response to the Findings*

The main response by the Government to the Hunt Committee's report was to establish the Royal Commission of Inquiry in 1924, which is the next tax committee to be reviewed in this paper.

### 3.1.3 *Consultation*

During the inquiry, thirty one witnesses appeared, and seventy one letters and statements were received from members of the public. These submissions formed part of the basis for justifying the conclusions and recommendations of the Hunt Committee.

## 3.2 **Commission of Inquiry (Sim Commission) 1924**

Just two years later following the Hunt Committee's report, its conclusions and recommendations led to the establishment of this more formal Commission of Inquiry under the Commissions of Inquiry Act 1908. The terms of reference for this Inquiry were:<sup>30</sup>

“[T]o investigate and report on the present system of land and income taxation in New Zealand in all its aspects, including the scope, rates, and incidence of the several taxes; allowances, and reliefs; assessment, appeal, and collection; and prevention of evasion; and to report what alterations of the law are necessary or desirable, and what effect such alterations would have on rates of tax if it were necessary to maintain the total yield of land and income tax respectively.”

The members of the Commission of Inquiry represented the legal profession (T S Weston), were company directors (W Hunt, and G Shirtcliffe), a retired farmer (J Begg), and chaired by a then Supreme Court (now known as the High Court) Judge W Sim. This composition differs to most other tax committees, illustrated by the absence of anyone directly representing the accounting profession, and a narrow focus on commerce/business. All of the members were male.

### 3.2.1 *Conclusions and Recommendations*

The Sim Commission concluded that there should be a graded scale income tax on individuals (levied on the combination of all forms of income in one return) but that the current system of taxing companies be abolished. In a post-war environment there needed to be a return to a more ideally correct system. In terms of land tax the weight of evidence on balance was in favour of abandon it in favour of income tax. The rate of taxation should not in principle be varied depending upon its source. Tax rates were considered to be too low on those with low incomes compared to that in Australia and the UK. Further broadening of the tax base for levying income tax was encouraged, with the overall weight of taxation needing to be reduced.

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<sup>30</sup> Sim Commission (1924), at 2.

The Sim Commission's recommendations were:<sup>31</sup>

- (a) That legislation be passed instructing and empowering the Commissioner of Taxes, when obtaining future income-tax returns, to compel the individual to include in his return the whole of his income from all sources, specifying the amount from each source separately.
- (b) When the data asked for under (a) is obtained and compiled (which will be towards the end of 1925), the question whether or not a complete change can be made from the present system of taxing companies direct as individuals to the system of taxing every individual upon his total income from all sources (excepting only tax-free war loans) should be carefully considered. *If a complete change is found difficult or impracticable, then a beginning should be made by taxing individuals in respect of the dividends received by them from companies, and supplementing the revenue obtained in this way by a moderate flat rate on all the profits of companies.*
- (c) *That the maximum rate of the graduated tax should first be fixed at a level that will not cause an outflow of capital from New Zealand. It would be advantageous to fix a rate which would cause an inflow of capital.* This rate must be adjusted from year to year according to financial requirements and circumstances both within and without New Zealand.
- (d) Having fixed the maximum rate, the graduation downwards should be on a scale that will enable the required sum to be raised, such graduation to be made in such a way as not to be oppressive on the taxpayer of small means.
- (e) *The rate upon undivided profits of companies should be approximately half the maximum rate.*
- (f) If it is impossible without undue hardship to obtain the necessary revenue from the sources already mentioned, then the revenue from these sources should be supplemented by a moderate flat tax on companies, assessed upon their total profits. This supplementary tax should be in addition to the tax on their undivided profits.
- (g) Companies registered outside New Zealand should be taxed on their total incomes derived from New Zealand at the rate at which companies registered in New Zealand are assessed on their undivided profits, and should also be liable in respect of such incomes for any flat-rate company tax.
- (h) Oversea [sic] shareholders and debenture-holders in companies registered in New Zealand should have their tax stopped at the source at the maximum rate. The companies interested

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<sup>31</sup> Ibid, at 5-7 (emphasis added).

should be deemed agents for their oversea shareholders and debenture-holders, and should be responsible for the payment of the tax. Oversea [sic] shareholders and debenture-holders should have the right to apply for and obtain a rebate of the difference between the maximum rate charged and the rate that would apply to the whole of their income derived from New Zealand. No exemption should be allowed to oversea [sic] investors in New Zealand.

- (i) The incomes of pastoral tenants should be made subject to tax, and this should be done immediately, so that the incomes for the year ending 31st March, 1924, will not be allowed to escape taxation.
- (j) *That the present graduated land-tax should be abolished, and income-tax should be paid in respect of income from land as part of the taxpayer's income.*
- (k) That any loss of revenue brought about by the adoption of the last recommendation should be made up by a flat rate of land-tax on all unimproved land values over £2,000, with a rate below £2,000 of two-thirds of the rate above £2,000. Present £500 and mortgage exemptions should be continued. It is thought that in the pound up to £2,000, and 3/4d in the pound beyond that amount, will produce the sum at present required. In assessing income-tax no exemption should be allowed in respect of this land-tax.
- (l) *The flat-rate tax on companies referred to in paragraph (f), and the flat rate land-tax referred to in paragraph (f.), should both be regarded as temporary taxes, to be reduced and ultimately abolished as soon as the national finances permit.*
- (m) In the meantime, and until the individual system of income-tax has been brought into operation, the incomes of individuals from all sources (except tax-free war loans) should be aggregated in order to fix the rate that should apply to that portion of the taxpayer's income that is taxable in his own hands. In fixing the amount of his tax the amount of tax paid at the source in connection with his other investments should be taken into account, but no rebates should be made if the total amount paid, after charging the amount taxable in the taxpayers' own hands at the rate that would apply to that amount only, comes to more than the amount that the tax would have been if the whole income had been taxed in the hands of the taxpayer.
- (n) *That when these land-tax recommendations are put into effect the Commissioner of Taxes should be empowered to assess a net income at 5 per cent, on the capital value of any land that he considers to be either lying idle or not being utilized so as to produce a reasonable income.*
- (o) *That the question of double taxation be further considered, and arrangements made that will result in British capital invested in New Zealand being placed in a position at least as*

favourable as in Australia, provided such an arrangement does not put British investors in New Zealand on a better footing than New Zealand investors.

- (p) That in any event the favoured position of public-body and company debentures, as far as income-tax is concerned, should be abolished immediately.
- (q) That if the graduated land-tax is not abolished, relief should be given in connection with the present graduated land-tax payable on business premises.
- (r) *That State and public-body trading and public-utility concerns should be charged income and land tax to the same extent as private enterprises, and that, for the purposes of taxation, their borrowed capital should be treated in the same way as borrowed capital in private enterprise is treated.*
- (s) That tax-paid company debentures should be put on the same footing as tax-deducted company debentures.
- (t) That relief from land-tax be given to land devoted to plantations of timber trees and areas not exceeding 25 acres of native bush.
- (u) That a more reasonable allowance for depreciation of tramways, workers' cottages, and other wasting assets be allowed in the case of sawmilling and mining ventures.

While this is long list of recommendations, they fall largely into one of two categories. The first is to put NZ back to a normal tax system in a post-war environment. The other recommendations are about broadening the income tax base to cover for a recommendation of abolishing land tax, and recognising that NZ is operating in a global environment. A perception at least of self-interest for some of the Sim Commission's members is evident in a number of the recommendations.

### *3.2.2 Government's response to the Findings*

Few of the most substantial recommendations would see the light of day in terms of government action, at least in the short to medium term. The abolition of land tax did not fully occur until the early 1990s, although its impact on landowners was restricted with the passage of time. The abolition of income tax on companies has not occurred and neither is it expected to in the future, although there have been significant reforms over time. However, with the passage of time, the international dimension has come to the fore, especially in the terms of reference for a number of consultative committees set up in the late-1980s to early 1990s.

### 3.2.3 Consultation

A total of fifty two witnesses appeared before the Sim Commission. In addition to their written submissions, an unspecified number of further submissions and returns were received from those that did not appear. The Commissioner of Taxes was present throughout the hearings.

### 3.3 Taxation Committee (The Gibbs Committee) 1951

The Gibbs Committee was the first to review the NZ tax system post-World War II. More than a quarter of a century had passed since the last review in 1924. It was appointed by the NZ government with representation by way of nominated individuals from various national bodies, including the accounting and legal professions (A Buxton, R Davidson, F Harris, D Hoggard), along with those representing the farming sector/business (D Martin, E Norman, A O'Shea, S Paterson, C Plimmer and H Rowden) and one for workers generally (W Fox). All of the members were male.

The Terms (Order) of Reference were:<sup>32</sup>

“Inquire into the present system of land and income taxation in New Zealand in all its aspects, and having regard to the proposed consolidation of the land and income tax and social security charge legislation, to report on –

- (a) What alterations are considered necessary or desirable;
- (b) The relation of taxation to the national economy;
- (c) The effect of any proposed alterations on the national economy, the rates of tax and the total tax yield of land tax, income tax or social security tax, respectively.”

The Gibbs Committee set as its guiding principles of taxation:<sup>33</sup>

- (a) Taxes should be *broadly based* over the whole community;
- (b) Taxes should be *fair* as between members of the community;
- (c) Taxes should be levied with due regard to *encouraging primary and secondary production*;
- (d) Taxes must be *capable of being collected*;
- (e) Taxes should not be levied at rates or by methods that impair or prevent *adequate savings*.

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<sup>32</sup> Gibbs Committee (1951), at 5.

<sup>33</sup> Ibid, at 19 (emphasis added).

In addition it was considered necessary that there be an effective distinction between capital (a source of production) and income (the result of production). What should be clear is that the focus of the Gibbs Committee was that NZ would continue to be a primary producer, and the tax regime needed to be supportive.

### *3.3.1 Major recommendations*

Recommendations are spread throughout the Gibbs Committee's report. One major tax policy approach debated by the Gibbs Committee was the pay as you earn (PAYE) system, which was already in operation in the UK. The Gibbs Committee recommended against extending this to income tax, but suggested that a discount be given to those taxpayers that pre-pay their income tax. A number of recommendations were made to abolish or adjust various rebates, exemptions and allowances for certain types of taxpayers. No recommendation could be made on whether a husband and wife should have their income aggregated, for deductions for charitable donations. A number of recommendations were made concerning deceased estates and trusts.

With respect to businesses, a number of law changes were suggested to provide protection to taxpayers from unfair interpretations. It was recommended to make the utilisation of non-capital losses more flexible for taxpayers, including unlimited carry-forwards, and enhanced depreciation allowances. Specific recommendations were made in favour of farming and forestry businesses, again recognising NZ's major industries being in the primary sector.

There is encouragement to extend the exemptions from income tax income derived in other British dominions to outside these dominions, as well as to enter into negotiations for double tax agreements (DTAs), with Australia being a priority. It was recommended that land tax was indefensible and be abolished. A number of administrative and legislative drafting matters were also raised.

A number of members provided dissenting opinions or reservations on some of the recommendations and these are set out in the report. Where this is most noted is in the area of company and shareholder taxation, where a minority report is also provided. Recommendations were made that would affect specific types of companies such as life insurance and insurance companies.

### 3.3.2 *Government's Response to the Findings*

Contrary to the Gibbs Committee's recommendation, PAYE was introduced in NZ in 1957 and has remained in place ever since then. Over time, the number of exemptions and rebates for individuals have reduced (or being eliminated completely), with the most significant period of change being under the Fourth Labour Government during the period 1985-1987. Over time, the flexibility of use of losses was enhanced but this has introduced with the increase in the perceived increase in avoidance activity. Much has happened in the international tax area, with NZ increasing its negotiations of DTAs over time, initially using its 'own' model, and gradually moving towards the OECD's model.<sup>34</sup> Land tax was eventually abolished but not directly following the Gibbs Committee's recommendation. New Zealand has not adopted a joint income tax return filing system.

### 3.3.3 *Consultation*

A total of 42 organisations and 83 individuals provided representation to the Gibbs Committee. There is little comment in the report on how these submissions influenced the discussion and recommendations made by the Gibbs Committee.

## 3.4 **Taxation Review Committee (The Ross Committee) 1967**

The Ross Committee was appointed by the Government by Order in Council under the Commissions of Inquiry Act 1908. Its members were: LN Ross (Chairman), CA Blyth, NB Fippard, MBE, LM Papps, and RG Stark, MBE. All of the members were male. Its Terms of Reference were:<sup>35</sup>

“The Committee is requested to carry out a comprehensive review of the rates, structure, and incidence of the whole field of central Government taxation in New Zealand, including both direct and indirect taxes, and to report upon any changes in taxation law or practice which appear to be desirable. ‘In carrying out the review the Committee should have regard, inter alia, to the *need to maintain an adequate level of total taxation revenue in relation to Government expenditure and to the requirements of economic growth and stability*’.”

### 3.4.1 *Major recommendations*

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<sup>34</sup> For a review of NZ's approach to tax treaties, see Adrian Sawyer, and Andrew Smith, “National Report: New Zealand” in M. Lang, P. Pistone J. Schuch, and C. Staringer, C. (eds) *The Impact of the OECD and the UN Model Conventions on Bilateral Tax Treaties*, (Linde, The Netherlands, 2012), 735-767.

<sup>35</sup> Ross Committee, (1967), Introduction (emphasis added).

Four documents were issued by the Ross Committee (two reports and two appendices):

1. Taxation in New Zealand – Part I-Part XIV: Report of the Taxation Review Committee (1967);
2. Taxation in New Zealand – Appendix 1-Appendix 10 (1967);
3. Taxation in New Zealand – Appendix 11-Appendix 18 (1967);
4. Taxation in New Zealand – Supplementary Report of the Taxation Review Committee (1968).

The Ross Committee made about 120 key recommendations, but its key recommendations were to<sup>36</sup>:

1. Reduce reliance on direct income tax and put more weight on indirect consumption taxes;
2. Remove holes in the tax base that were being exploited, in particular, that fringe benefits of employees be taxed;
3. Generally reduce income tax rates.

The Ross Committee recommended that the existing ordinary income tax and social security income tax should be merged into one tax to be known simply as “income tax”.<sup>37</sup> The Ross Committee held the view that marginal tax rates rose too sharply in the middle income range, that the maximum rate was reached at a low level and that the taxation structure was complicated by separate bases of taxation for income tax and social security tax. The Ross Committee proposed a new rate and exemption structure for the taxation of individuals.<sup>38</sup>

With respect to company taxation, the Ross Committee recommended that the basic principles of the present system of taxing incomes derived by companies and dividends received by shareholders should be retained.<sup>39</sup> However, a major question on which the Ross Committee was divided was whether all companies should pay tax on a PAYE basis or in the year following the income year.

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<sup>36</sup> See *ibid*; and see also: <http://taxpolicy.ird.govt.nz/news/2011-03-11-speech-ifa> .

<sup>37</sup> *Ibid*, Chapter 16.

<sup>38</sup> *Ibid*, Chapter 17.

<sup>39</sup> *Ibid*, Chapter 19.

The majority of the Ross Committee favoured a general PAYE basis as the most practical means of reducing company tax rates.<sup>40</sup>

Various recommendations were made with respect to fringe benefit tax, including that:<sup>41</sup>

- the provisions of the then section 89 Income Tax Act 1954 should be widened so as to include in the term “allowances”, benefits in cash or kind in respect of the use of cars and other assets, cheap interest rates, travel, and stock options;
- specific provision should be made in the return of income forms for the declaration of all cash allowances and benefits in cash or kind and a taxpayer incurring expenditure out of such an allowance should be required to keep sufficient records to substantiate such expenditure where he claims a deduction;
- employers should be required to disclose all allowances and benefits in cash or kind given to or provided for employees; and
- employers should be required to make an assessment of the value of benefits in kind provided for employees and to account for PAYE tax payable in respect of such benefits.

The Ross Committee proposed the introduction of an 8% general sales tax.<sup>42</sup> The Ross Committee stated that “the introduction of a realised capital gains tax is desirable on the grounds of equity provided the rates of tax are moderate. Such tax should not, however, be imposed until the other recommendations of this report have been implemented. Members of the public should be given the opportunity to make representations before a final decision is made by Government on the introduction, form and structure of the tax”.<sup>43</sup> The Ross Committee also recommended that land tax should be abolished; this is a theme carried over from the Gibbs Committee.<sup>44</sup>

International taxation received little mention in the Ross Committee’s report. There was also little focus on tax administration. However, a permanent advisory and research committee on taxation was recommended. This committee would comprise the Secretary to the Treasury, the Commissioner of Inland Revenue, the Comptroller of Customs, the Government Statistician, and two independent members (one of whom should be chairman) appointed by the Minister of Finance.

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<sup>40</sup> Ibid, Chapter 22.

<sup>41</sup> Ibid, Chapter 43.

<sup>42</sup> Ibid, Chapter 65.

<sup>43</sup> Ibid, Chapter 72.

<sup>44</sup> Ibid, Chapter 73.

The committee would have a full-time, permanent Director of Research. It should report to the Minister of Finance at least once in every year, and more often if occasion warrants. This recommendation was not accepted, but in the writer's view warrants further consideration.

### *3.4.2 Government's Response to the Findings*

The proposal for the introduction of an 8% general sales tax was not acceptable to the government in the prevailing economic circumstances. Accordingly, as this was to be a major alternative source of revenue, the government found that some of the Ross Committee's other proposals could not be proved to be financially possible. The proposals of the Ross Committee for broadening the tax base would, in the opinion of the government, have caused undesirable disruption for the organisations and individuals concerned. The government decided to introduce a new rate and exemption structure for individuals, broadly in line with the Ross Committee's recommendations. This included: the merging of ordinary and social security taxes into one composite tax, the adoption of lower levels of special exemption applying to the composite tax, the adoption of an amended rate structure with a rise in the income level for the maximum rate.

The government decided that a general change to a PAYE basis for company taxes would not be advisable at that present time. Other taxation amendments made by the government included that non-deductible items of expenditure, other than donations, by private companies would be taxed as dividends to shareholders in certain circumstances; and the benefits conferred on employees through the granting of stock and share buying privileges would be taxed as income. The government also reached the conclusion that, at that time, it was not opportune to abolish land tax.<sup>45</sup>

### *3.4.3 Consultation*

In terms of consultation, by advertisement in the daily press, the public was invited to make written submissions to the Ross Committee. The advertisements appeared in papers throughout New Zealand during September 1966 and those wishing to make submissions were requested to do so by 31 October 1966. While a number of submissions was received by this date, their flow continued throughout 1967 to within a few days of the issue of the Ross Committee's main report.

Individual letters, specifically inviting submissions, were addressed to a wide range of national organisations and trade groups which might be expected to have a direct interest in the work of the

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<sup>45</sup> See Hansard, Vol 355, (1968), at 617-624.

Ross Committee. Nearly all those approached took advantage of the opportunity offered to make representations. Government departments likely to be interested in particular economic and taxation aspects of the review were asked to provide background information and were also invited to make submissions, if they so wished.

The Ross Committee did not consider it necessary to ask all those who furnished submissions to appear before it in support of their written opinions. To have done so would have unduly prolonged its review and in most cases the submissions were quite clear. The Ross Committee invited a number of people to meet with it where it thought a discussion would be of assistance, and all those who expressed a wish to make oral representations were heard. Submissions were received from 212 departments, organisations, and individuals. In some cases a number of submissions were received from the one source, and altogether the Ross Committee studied a total of 261 submissions. The full list is published in Appendix 17 to the Ross Committee's main report.

### **3.5 Task Force on Tax Reform (The McCaw Review) 1982**

The McCaw Review was a government appointed body as a direct result of a report in June 1981 entitled *An Agenda for Tax Reform*.<sup>46</sup> The Members of the McCaw Review were: PM McCaw (Chairman), GJ Schmitt (Deputy Chairman), JA Kean, RT Phillips, EG Thompson, HM Titter, BHC Tyler, Kerrin M Vautier, and Sir Allan Wright. Interestingly, for the first time, not all members were male, with Kerrin Vautier being the first female of a tax committee in NZ.

Its Terms of Reference were<sup>47</sup>

- (a) To undertake a thorough and systematic review of all aspects of central government taxation;
- (b) To draw on what is already known and established about taxation here and overseas and report on options for a reformed tax system for New Zealand;
- (c) To consult in the course of its deliberations with the Private Sector Study Group, the New Zealand Planning Council and such other agencies, groups and individuals as it thinks necessary;
- (d) To present an interim progress report to the Minister of Finance and the Minister of National Development before 7 December 1981 and a final report before 7 April 1982.

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<sup>46</sup> New Zealand Planning Council, *An Agenda for Tax Reform* (June 1981).

<sup>47</sup> McCaw Review (1982), foreword.

The final report should include an evaluation of the costs and benefits of the various options.

Because of the short time available and in recognition of the consequent need to concentrate attention on the more important issues, the McCaw Review divided its work into three distinct categories. The first was the group of topics which were considered were those which the McCaw Review identified as being in the greatest need of reform. These topics, together with a summary of its conclusions, are as follows.

### *3.5.1 Personal Income Tax*

There is a widespread public demand for a reduction in personal income tax rates. The marginal tax rate of the taxpayer earning around the average wage is now almost 50 cents in the dollar while his average tax rate has also considerably increased. The McCaw Review believed that both average and marginal personal income tax rates should be reduced for the great majority of individuals and, as far as possible, the degree of progression in the scale as it affects most members of the labour force should be reduced. They provided a number of scales with varying levels and rates of progressivity which, in our view, provide the Government with a base from which they can make the final determination. The main features of each scale were examined. An estimate of the revenue cost in relation to each scale compared with the scale currently operating is also provided.<sup>48</sup>

### *3.5.2 The Tax Unit*

The McCaw Review was of the view that there was a serious lack of recognition of costs associated with the family unit in the tax system at that time, with the ability of some taxpayers to split their income seen to be being unfair. Subject to one dissenting opinion, the Task Force recommended that, if both parties agreed, then the income of the primary income earner in a family could be combined with that of their spouse, and then divided by a predetermined factor. An example was provided:<sup>49</sup>

“If the combined income of both parties amounted to \$17,000 for the year, and the divisor were fixed at 1.7, the total tax liability of both parties would be determined by the average tax rate applying to  $\$17,000/1.7$  i.e. \$10,000. It is important to appreciate that provisions for

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<sup>48</sup> Ibid, Chapter 6.V.

<sup>49</sup> Ibid, Chapter 6.III.

dividing incomes in this way should be voluntary - both parties being taxed as individuals if either so wishes.”

The McCaw Review believed that this option should extend in principle to include the children of the family. Because of administrative implications they instead recommended that increased recognition of children should be provided by way of an increased Family Benefit.<sup>50</sup>

### *3.5.3 Family Support Measures*

As a consequence of the scales the McCaw Review recommended, as well as taking into account increases in indirect taxation, special provision was recommended to be made for those families with low incomes, including solo parent families. An extension of the low income family rebate is therefore recommended. The benefits provided to the single income family by way of income splitting and the increased Family Benefit were seen as a replacement for the role of the Young Family Rebate and the Spouse Rebate, and the withdrawal of these rebates is therefore recommended.<sup>51</sup>

### *3.5.4 Tax Avoidance and Fringe Benefits*

A constant theme in submissions received by the McCaw Review was the concern at the unfairness of a system which allowed a large element of discretion to be built into the personal income tax area, in particular by taxpayers in upper-middle to high income levels. This is something that was resented by those taxpayers in the same income groups who do not have this discretion and by those in lower income brackets who see themselves as having to accept a tax burden which in their view properly belongs elsewhere.

The McCaw Review saw the rapidly increasing tax rates as a major reason for the then significant uptake in the use of fringe benefits and other forms of tax avoidance. Nevertheless, the McCaw Review did not anticipate that these practices and their perceived inequities would disappear just with a reduction in tax rates. In their view it was imperative that positive steps be taken to control and reduce the revenue losses and inequities inherent in their use.

The McCaw Review was of the view that it was essential that the revenue authorities were provided with the resources necessary to combat undesirable avoidance practices and to identify and

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<sup>50</sup> Ibid, Chapter 6.IV.

<sup>51</sup> Ibid, Chapter 6.IV.

consequently minimise the most serious and costly areas of avoidance and evasion. While the resources devoted to minimising taxes payable (much of which is perfectly legitimate) had grown rapidly, it was considered to be essential that the resources made available to those responsible for administering NZ's income tax system be sufficient to provide an acceptable response.<sup>52</sup>

The McCaw Review was of the view that all fringe benefits should be taxed, and referred specifically to three types that in its view needed immediate attention. They were: employer-provided vehicles available for private use; low interest loans to employees; and private accommodation provided at concessional rates. They did accept that because of administrative complexities and low revenue potential, there would remain many minor benefits which did not produce a significant problem in terms of equity and should therefore remain exempt from tax.<sup>53</sup>

### *3.5.5 Consumption Taxes*

The McCaw Review suggested that the principal option available to the government was to extend the then indirect taxation on expenditure. This would be necessary if the government wished to reduce significantly the rates of personal income tax while remaining revenue neutral. They concluded that the most appropriate means available for immediate application would be through a rationalisation and extension of the then Wholesale Sales Tax (WST) system, as well as a tax on certain services. This would produce limited revenue, whereas, if greater revenue was needed the government should give serious consideration to introducing a Value Added Tax (VAT). This latter option was the preferred one and could take approximately four years to implement fully, with NZ's goods and services tax (GST) commencing in October 1986.<sup>54</sup>

### *3.5.6 Business Income and Effects of Inflation*

The McCaw Review was of the view that the public's understanding of the effects of inflation on business incomes had increased since the report of the Richardson Committee in 1976.<sup>55</sup> The McCaw Review fully endorsed the need for reflecting the impact of inflation on the determination of business income. A specific recommendation was that the effects of inflation on inventories, depreciable assets and all monetary items both assets and liabilities, be measured for tax purposes

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<sup>52</sup> Ibid, Chapter 3.

<sup>53</sup> Ibid, Chapter 6.VI.

<sup>54</sup> Ibid, Chapter 8.

<sup>55</sup> See Ivor Richardson, Don Brash, R.P. Kellaway, P.S. Stannard, H.M. Titter, *Report of the Committee of Inquiry into Inflation Accounting* (NZ Government, Wellington, 1976).

by use of a suitable general price index. The effect would be to reduce taxable incomes for those businesses with substantial investments in inventories and depreciable assets. On the other hand, this could increase the taxable incomes of those with significant borrowings invested in assets which are either not depreciated or are depreciated at a low rate.

The McCaw Review believed strongly that this recommendation would remove or at least mitigate many of the distortionary effects of inflation as they affect the business unit. However, it was acknowledged that there would be some difficult transition problems and the effect on economic activity would extend beyond the confines of taxation. Thus an investigation was recommended as a matter of urgency concerning introducing a comprehensive system of inflation adjustments for business income tax purposes.<sup>56</sup>

### *3.5.7 Company/Shareholder Taxation*

The “double taxation” of company income and dividends received by shareholders was seen as a major issue causing inequity, highlighted by the fact that it was the subject of many submissions. Furthermore, the ability of some companies to pay tax-free dividends on a continuing basis was seen as being unfair.<sup>57</sup> To remedy this, the McCaw Review recommended:

- 1) A personal rebate of 20 per cent be granted on all dividends received by individuals;
- 2) The current exemption extended to tax-free dividends should be withdrawn in circumstances where revenue reserves are available for this purpose; and
- 3) Bonus issue tax should be abolished, subject to suitable anti-avoidance safeguards.

None of the recommendations in this area were accepted, although some years later, dividend imputation was introduced as one of the Fourth Labour Government’s reforms.

### *3.5.8 Capital Gains Tax*

The McCaw Review did not recommend the introduction of a capital gains tax (CGT) *at this time*. They recognised the arguments in favour of a capital gains tax, preferring that a CGT should be imposed only on real gains, and not on those gains arising from general inflation. Interestingly, the McCaw Review members were of the view that the majority of what would usually be seen as capital gains are in better defined as gains from the use of borrowed monies for the buying and selling of

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<sup>56</sup> McCaw Review (1982), Chapter 7.I.

<sup>57</sup> *Ibid*, Chapter 7.II.

capital assets. The McCaw Review believed that its proposals in relation to borrowing gains in the business sector would achieve most of the objectives of a capital gains tax.<sup>58</sup>

### *3.5.9 Income Tax Concessions and Incentives*

While the policy objectives that gave rise to various income tax concessions and incentives were not part of the McCaw Review's terms of reference, it did consider the effects of these concessions and incentives on the taxation system and the extent to which they were monitored. The McCaw Review estimated that the cost of business incentives in revenue forgone was around \$NZ470 million p.a. (in 2018 would be \$1.2 billion p.a.) Further work in this area was recommended.<sup>59</sup>

For the second and third categories, insufficient time was available for detailed study, so no specific recommendations were made. In this regard, the McCaw Review was someone 'incomplete'. The principal areas in the second category were:

- wealth taxes;
- life insurance companies;
- superannuation funds;
- building societies;
- co-operatives;
- trusts; and
- charities.

The areas in the third category were:

- a direct personal expenditure tax
- a turnover tax
- a factor tax - principally for the agricultural sector.

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<sup>58</sup> Ibid, Chapter 10.II.

<sup>59</sup> Ibid, Chapter 4, paras 1.9-1.10.

### 3.5.10 Government's Response to the Findings

The direction of reform indicated by the McCaw Review was subsequently adopted by later governments, especially after the election of the Labour Government in 1984. As noted in the McLeod Review<sup>60</sup>:

“The changes to the tax system undertaken during the 1980s were substantial. While lowering of statutory tax rates is a part of the story, it is not the whole story. *The broadening of the income tax through the introduction of resident withholding tax and fringe benefit tax and the reduction of rebates and exemptions was one means by which the lowering of income tax rates was made possible.* Another was the *broadening of the overall tax base through the introduction of GST.* Far from simply reducing the tax burden on the wealthiest New Zealanders, these changes resulted in a more equitable distribution of the tax burden across all New Zealanders. While it is quite possible that some groups paid roughly the same proportion of tax as they had done before, *the moves towards a more equitable tax system also, undoubtedly, made many people better off.*”

### 3.5.11 Other matters and consultation

The McCaw Review made the following critical statement:<sup>61</sup>

“From an early stage in our deliberations it became clear that the requirement in the terms of reference to *‘undertake a thorough and comprehensive review of all aspects of Central Government taxation’ and to report to the Government by 7 April 1982 were not compatible.* We therefore decided that the first priority was to report by the due date and, in so doing, to *identify and report on those areas which we considered to be most in need of change.* This we have done. We have also identified a number of special areas which, in our view, require further study as a prelude to reform. Finally, we have referred to a lack of information in some important areas of concern which, if available, might have enabled us to make further recommendations. We strongly urge detailed attention to these areas”.

The McCaw Review decided at its first meeting that the time constraints made it inappropriate to invite submissions from the general public. Consequently it would not be practicable, in its view,

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<sup>60</sup> McLeod Review (2001), at [1.24] (emphasis added).

<sup>61</sup> McCaw Review (1982) at [1.17] (emphasis added).

to conduct formal public hearings. The McCaw Review, therefore, suffered from a relative lack of transparency. This is a significant deficiency of the review, which it could have attempted to overcome through a formal request to extend the period before it had to report.

The compromise solution was to invite around 40 organisations in the commercial, labour, professional and academic fields with a particular interest in taxation reform to respond. Almost all such organisations responded, with other submissions received right up to near its time to report. The McCaw Review met with the Private Sector Study Group and the New Zealand Planning Council, and maintained a close and continuing relationship with several government departments (including The Treasury, Customs, Inland Revenue, Statistics and the Reserve Bank).

### **3.6 Organisational Review of Inland Revenue (The Richardson Committee) 1994**

The Richardson Committee was appointed by the Minister of Revenue following the recommendations of the Valabh consultative committee.<sup>62</sup> The members were: Sir Ivor Richardson (Chair), David Edwards, David Henry, Dr Murray Horn, Secretary for Treasury (when the Review Committee was considering the policy advice function). There was also an Advisory Committee, comprising: David Henry (Chair), IRD; Paul Carpinter, Department of the Prime Minister and Cabinet; Chris Pinfield, Treasury; Ross Tanner, State Services Commission; Maria McKinley, Inland Revenue Department (the IRD); Graham Holland, the IRD; Rob McLeod, New Zealand Society of Accountants; Geoff Harley, New Zealand Law Society; and Mary-Ann Macpherson (Secretary), IRD. There was also a project team with personnel from the IRD, State Services Commission, Treasury, Deloitte, and KPMG.

All members of the principal Richardson Committee were male, with two females serving on the Advisory Committee. This was the first instance of a tax committee having a much more extensive membership incorporating advisory and project teams.

Its Terms of Reference were to:<sup>63</sup>

“[I]nvestigate and recommend the optimal organisation arrangements for the tax assessment and collection system, and other activities that are currently part of the tax system, the provision of taxation policy advice, legislative management and Ministerial servicing”.

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<sup>62</sup> See *Working Party on the Reorganisation of the Income Tax Act 1976*, (1993), Chaired by Arthur Valabh, discussed further in the next subsection on consultative committees.

<sup>63</sup> *Organisational Review of the Inland Revenue Department*, (1994), at [1.1].

### 3.6.1 Major recommendations

The Richardson Committee released its report in 1994. With its focus being on the IRD and how it administers the tax system, the main aim of the review was to create a vision for tax administration in NZ. The main elements of this vision were:<sup>64</sup>

- The IRD is collecting the highest net revenue over time that is practicable within the law;
- voluntary compliance is regarded as the norm, and non-compliance is regarded as socially unacceptable;
- taxpayers respect the tax administration, and believe it is fair, helpful and efficient;
- taxpayers believe that if they disagree with any decision, the dispute will be handled fairly and quickly;
- the costs of compliance with the law are reduced to the lowest level consistent with IRD's overall objective and the mix of taxes and other revenues chosen by the Government; and
- tax administration is based on legislation that is well understood by taxpayers, and is presented in the simplest manner possible.

Following wide consultation with the public and private sectors, and the wider taxpaying community, the Richardson Committee noted several key issues:<sup>65</sup>

- The IRD's objective needs to be stated in more specific terms and more strategic performance measures are required to enable the Government and the IRD to assess the IRD's strategic level achievements;
- the costs of compliance, whilst comparing favourably with overseas jurisdictions, have an adverse effect on the fundamental strategy of voluntary compliance;
- *a more structured approach to tax policy formation is needed;*
- *the drafting of tax legislation requires fundamental change;*

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<sup>64</sup> Ibid, at 1.3.

<sup>65</sup> Ibid, at 1.4 (emphasis added).

- an updating and clarifying of the roles of the Commissioner and Chief Executive of the IRD and of the relationship with Ministers of Finance and Revenue is required;
- *the resolution of tax disputes needs to be quicker and less cumbersome;*
- the IRD's role in the delivery of social policy functions needs to be carefully specified, given the impacts on the core business of collecting tax; and
- although the IRD has made major changes in its operations over the last five years, there is scope for further improvement, such as increasing some 'technical' skills, more consistent interpretation of tax legislation, and more focus on specific groups of taxpayers.

The main recommendations made by the Richardson Committee concerned the structure of the IRD, tax policy advice, resolution of tax disputes, technical quality, subcontracting and the roles of the Commissioner of Inland Revenue (CIR) and Chief Executive.

### 3.6.2 *Government's Response to the Findings*

The italicised recommendations in the previous section are areas where significant change was made by subsequent governments. Several years later, the Committee of Experts on Tax Compliance in 1998 observed:<sup>66</sup>

“These recommendations have largely been or are in the process of being implemented. In particular, the Inland Revenue Department's service delivery has been restructured from a functional basis to one based on customer segments. ... The distinction between design and delivery has ensured clearer accountabilities for managing performance at national and local levels. *A generic tax policy process was introduced following the Organisational Review ... New disputes resolution procedures took effect on 1 October 1996* and included the establishment of a new adjudication function and also a litigation management unit within the Inland Revenue Department. The new adjudication unit ensures that a separate structural focus is given to the adjudication of the department's final quantification of a taxpayer's liability. Section 6A of the Tax Administration Act 1994 gives *explicit recognition of the obligation on the Commissioner to operate within limited resources in the care and management of the tax administration functions.*”

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<sup>66</sup> Committee of Experts on Tax Compliance, *Report* (1998), at 307-308 (emphasis added).

### 3.6.3 *Other matters*

As noted above, the generic tax policy process (GTPP) was introduced as a result of the Richardson Committee's review. It is intended to improve the process by which tax policy is developed, with its main objectives to:<sup>67</sup>

- encourage earlier, explicit consideration of key policy elements by Ministers;
- provide opportunities for substantial external consultation in the tax policy development process, which is intended to increase transparency and improve the quality of advice at both the conceptual and detailed design stages; and
- clarify the responsibilities and accountabilities of participants in the process.

The GTPP five distinct phases:

1. Strategic phase – the development of an economic strategy, a fiscal strategy, and a three-year revenue strategy.
2. Tactical phase – the development of a three-year work programme and an annual resource plan.
3. Operational phase – the detailed policy design, formal detailed consultation, and ministerial and cabinet approval of detailed policy recommendations.
4. Legislative phase – the translation of detailed policy recommendations into legislation.
5. Implementation and review phase – the implementation of legislation, the post-implementation review of legislation, and the identification of remedial issues.

A key feature of the GTPP is the emphasis it places on consultation at each of the main stages of the process with taxpayers, their advisers and professional and industry bodies. The GTPP remains in operation today, although it has been 'put to one side' or not utilised on several occasions in the past.<sup>68</sup> There also remains the potential deficiency through the use of supplementary order papers

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<sup>67</sup> The objectives and phases are reviewed by: Peter Vial, "The Generic Tax Policy Process: A "Jewel in Our Policy Formation Crown"?" (2012) 25(2) *New Zealand Universities Law Review*, 318–346; and Adrian Sawyer, "Reviewing Tax Policy Development in New Zealand: Lessons from a delicate balancing of 'Law and Politics'" (2013) 28(2) *Australian Tax Forum*, 401-425.

<sup>68</sup> For a discussion of the implications of two of these 'failures', see Vial, *ibid* and Sawyer, *ibid*.

(SOPs) introducing changes near the end of the Legislative phase (after all chances for consultation have passed).

### 3.6.4 Consultation

The Richardson Committee consulted extensively with government departments and the private sector in New Zealand, and several overseas tax administrations. The Richardson Committee tested the recommendations in the Report with the IRD, and with other departments that would be most affected by its recommendations. It also made use of the Advisory Committee to gain an appreciation of how the private sector may respond. In this sense it followed best practice.

## 3.7 Consultative committees and working groups– an ‘overview’

While not strictly a consultative committee, the Advisory Panel on Goods and Services Tax was appointed by the government in 1985 in conjunction with the goods and services tax (GST) proposals. It had three members, with all being male: DT Brash (Chairman), AD Martin, and RA Green, issuing two reports. Its Terms of Reference were not published but the Report of the Advisory Panel on Goods and Services Tax to the Minister of Finance in 1985 states: “The Advisory Panel on Goods and Services Tax was appointed to consider submissions on the proposals for the administration of the Goods and Services Tax.”<sup>69</sup> The White Paper on Goods and Services Tax, published in March 1985, invited New Zealanders to submit comments on the Government’s proposal to implement a goods and services tax (GST) on 1 April 1986. The White Paper outlined that:<sup>70</sup>

“Matters raised in submissions should not stray outside the scope of the administration of the GST (for example questioning the decision to introduce the GST). In particular, the Government wishes to receive submissions that deal with issues such as:

- how the proposals might be modified to operate more effectively;
- how the proposals will mesh with existing business practices; and
- how best to achieve a smooth introduction of the GST.”

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<sup>69</sup> Advisory Panel on Goods and Services Tax to the Minister of Finance, *Report of the Advisory Panel on Goods and Services Tax to the Minister of Finance* (1985), at 1. See also Advisory Panel on Goods and Services Tax to the Minister of Finance, *Second Report of the Advisory Panel on Goods and Services Tax to the Minister of Finance* (1985).

<sup>70</sup> NZ Government, *White Paper on goods and services tax: Proposals for the administration of the goods and services tax*, (New Zealand Government, March 1985), Chapter 1.

To the best of the current writer's knowledge, there are a further thirteen separate consultative committees/working groups that have been set up in NZ by the government to look at specific areas of the tax system. None of these consultative committees/working groups had a remit to undertake a comprehensive review of the tax system as a whole. A number of these consultative committees/working groups acted as a 'sounding board' for the government through receiving submissions on policy proposals, and then drafting legislation to give effect to the policy. Their most active period followed the significant economic and fiscal policies announced in 1987 by the then Labour Government's Minister of Finance, Roger Douglas. Space limits do not permit a comprehensive review of each committee/group; consequently Table 1 provides a high level overview only.

**Table 1: Consultative Committees/Working Groups: 1986 - 1992**

<b>Committee</b>	<b>Reports</b>	<b>Impact</b>
Consultative Committee (CC) on Accrual Tax Treatment of Income and Expenditure (the Brash Committee) 1986	3	Led to changes to the accruals regime
CC on Primary Sector Tax Changes 1986	1	Led to changes to livestock taxation and tax treatment of agriculture, etc. capital expenditure
CC on Full Imputation and International Tax Reform 1987	3	Led to implementation of full dividend imputation and introduction of CFC and FIF regimes
CC on Superannuation Life Insurance and Related Areas 1988	2	Led to changes to superannuation, life insurance, plus taxation of charities and sporting bodies
CC on Accrual Tax Treatment of Property Transactions 1988	1	Extended the 1986 committee's work to property transactions
Working Party on Charities and Supporting Bodies 1989	1	Led to changes to taxation and administration of sporting bodies and charities
Tax Simplification CC 1989	2	Provided guidance to simplify aspects of the tax system
CC on Taxation of Income from Capital 1989	7	Worked over a period of 2 years, leading to important legislative changes
CC on Livestock Valuation 1991	1	Extending work of 1986 Committee
Working Party on the Reorganisation of the Income Tax Act 1976 - 1992	2	Changes to CIR's and Minister's roles; recommendation of reorganisation and rewriting of income tax act adopted
Business Compliance Cost Reduction Working Group 1994	1	Through consultation, raised issues and areas for reducing compliance costs
Working Group on the Taxation of Life Insurance and Superannuation Fund Savings 1997	1	Led to significant changes to taxation of investments & superannuation
Committee of Experts on Tax Compliance 1998	1	Wide ambit of areas reviewed for future policy implications – indirect impact

Overall, many of the earlier appointed consultative committees and working groups have served as an interface between the government and the private sector, principally through receiving and considering submissions, and making recommendations on the practical aspects of policy proposals. The primary sector, accruals taxation and simplification/compliance cost reduction have needed more attention than other areas with more than one committee assigned to review these areas over this period. In the writer's view, the most significant impact from these bodies is that of the Working

Party on the Reorganisation of the Income Tax Act 1976, which led to the fifteen year rewrite project.<sup>71</sup> Also, with the advent of the GTPP in 1994, the use of specialist consultative committees/working group has diminished, with greater use made of the tax committees and their more extensive terms of reference.

### **3.8 Tax Review (The McLeod Review) 2001**

Returning now to the significant tax committees that followed these consultative committees/working groups. The McLeod Review was a government appointed committee in late 2000. The then Minister of Revenue, Dr Michael Cullen, stated:<sup>72</sup>

*“The tax inquiry is intended to be architectural in nature. It will examine how the tax structure meets New Zealand’s current and future needs. A top to bottom review is long overdue. The last one - the 1967 Ross Report - pre-dated the global economy, the deregulation of the financial sector, e-commerce and such important social developments as the rise of the two income household and the single parent family. These are all significant events carrying huge implications for the fairness and on-going viability of the tax system. The Government’s decision to commission an inquiry developed out of these changes rather than out of any specific tax reform agenda.”*

The Members of the McLeod Review were: Robert McLeod (Chair), Srikanta Chatterjee, Shirley Jones, David Patterson, and Ted Sieper. Membership included one female, as well as a representative from each of the accounting and law professions, from business and an economist.

#### *3.8.1 Terms of Reference*

Its Terms of Reference for the McLeod Review were divided between functions and tasks. Specifically:

The Tax Review has been appointed to carry out a public review into the tax system so that the government has an appropriate framework within which to build tax policy. The functions of the Review were:<sup>73</sup>

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<sup>71</sup> See further, Sawyer, note 1 and Sawyer, note 2. This project was originally intended to take five years only to complete.

<sup>72</sup> Michael Cullen, “Government announces terms of tax inquiry”, *Media Release*, (31 July 2000); available at <http://taxpolicy.ird.govt.nz/news/2000-07-31-government-announces-terms-tax-inquiry> (emphasis added).

<sup>73</sup> *Ibid.*

- a) to examine and inquire into the structure and effects of the present tax system in New Zealand;
- b) to formulate proposals for improving that system, either by way of making changes to the present system, abolishing any existing form of tax, or introducing new forms of tax; and
- c) to report to Parliament through the Minister of Finance, the Minister of Revenue and the Minister of Economic Development.

The McLeod Review was tasked to:<sup>74</sup>

- a) assess the extent to which the *tax system can contribute to broader social and economic objectives* such as encouraging secure, high-quality employment, generating a fair distribution of income, maintaining a sustainable environment and promoting higher savings;
- b) Recommend structural changes for the tax system, if appropriate. In doing so the [McLeod] Review will focus on the following questions:
  - (i) *Can the tax system be made fairer in its role of redistributing income?* This includes considering whether the income tax base should be broadened and the extent to which marginal rates should increase with levels of income, wealth and expenditure. The [McLeod] Review should consider the best mix between different tax bases such as income, consumption, financial transactions and wealth.
  - (ii) *How can the tax system be designed to encourage desirable behaviour* (e.g., work and savings) and *discourage undesirable behaviour* (e.g., the wasteful use of non-renewable resources)?
  - (iii) How can the level of tax that is reasonably required by government for the provision of essential social services such as health, education, superannuation and social welfare be achieved reliably in the medium and long-term bearing in mind the need for the tax system to be an effective instrument of fiscal policy in the management of the economy?
  - (iv) *Do the tax system and tax rates need to be modified in light of new technology and international competition?*

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<sup>74</sup> The McLeod Review (2001), at 167-169 (emphasis added).

- c) The Tax Review will report on progress to the Minister of Finance, the Minister of Revenue and the Minister of Economic Development at regular intervals during the course of the review.

Two reports were issued by the McLeod Review: an *Issues Paper* in June 2001 and a *Final Report* in October 2001.<sup>75</sup>

### 3.8.2 Main Findings of the Tax Committee

In its *Final Report*, the McLeod Review concluded:<sup>76</sup>

“This Review was asked to consider whether the architecture of our tax system is adequate for today’s needs. *We conclude that radical restructuring is not required.* The broad architecture of the tax system is sound. *That contrasts with the conclusions of the last general review of our tax system – the 1982 McCaw Report.* Reporting almost twenty years ago, McCaw concluded that the then tax system needed a major overhaul. We generally conclude that the *subsequent reform programme has been a success and should not be reversed.*”

The main issues now are the same as they were for the McCaw Review, namely: the level of tax; the appropriate bases for tax; the detailed definition of those bases; and the rates of tax that should apply. The recommendations made by the McLeod Review include:<sup>77</sup>

- Adopting a two-step rate for personal tax: 18% on income up to \$29,500 and 33% thereafter;
- Capping personal tax liability at \$1m;
- Aligning the tax rate for companies and trusts with the top 33% personal rate;
- Reducing the company tax rate to the extent of a company's foreign ownership;
- Taxing savings and investment vehicles and offshore portfolio investments by a consistent method based on a risk-free rate of return;
- Removing excise taxes on tobacco, alcohol, gaming and roading, and replacing the lost revenue by increasing GST;
- Considering a widely-held/ closely-held regime for entities;
- Reducing taxes on new non-resident investment to 18%;

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<sup>75</sup> McLeod Review, *Issues Paper* (June 2001) and McLeod Review, *Final Report* (October 2001).

<sup>76</sup> Final report, *ibid.*, at 1.

<sup>77</sup> *Ibid.*

- Repealing the grey list for listed Foreign Investment Funds;
- Considering a carbon charge to meet Kyoto commitments; and
- The Tax Review did not recommend introducing a tax on owner-occupied housing or a general capital gains tax.

### 3.8.3 *The Government's Response to the Findings*

The Minister of Revenue, Dr Cullen, provided the government's initial response to the McLeod Review at the 2001 Institute of Chartered Accountants of New Zealand (ICANZ) National Tax Conference.<sup>78</sup> Dr Cullen stated that the government would not be introducing a tax on owner-occupied housing. Not only did the McLeod Review not recommend one, but there was substantial public resistance to the idea. The government did not agree with the recommendation to remove excises on alcohol, tobacco, petrol and gaming, and then to make up the lost revenue with an increase to GST. Instead, it would consider a carbon tax to meet NZ's international commitments on global warming.

In terms of the structure of personal tax rates, the government could not support a two-step scale as it favoured a more progressive tax system than the McLeod Review's model allowed. The government agreed with the McLeod Review's analysis not to recommend the introduction of a general CGT, as this would increase the complexity and cost of the tax system.

The recommendations of greatest practical interest to the government were those in the areas of international tax, and entities and savings taxation as they were seen as having the potential to stimulate economic growth. Consideration of these options would be incorporated into the tax policy work programme. Importantly, the government agreed with the McLeod Review that governments need to be cautious before they depart from the broad base, low rate (BBLR) approach to taxes, a platform that had been in place since the mid-1980s.

The McLeod Review's preferred solution was that investment in listed shares and securities be taxed using a standard risk-free rate of return method (RFRRM), no matter the country of investment. The Minister of Revenue was interested in this idea because it has the potential to make the relevant tax

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<sup>78</sup> Michael Cullen, "Minister speaks on Tax Review, policy issues", *Institute of Chartered Accountants of New Zealand 2001 Tax Conference* (26 October); available at: <http://taxpolicy.ird.govt.nz/news/2001-10-26-minister-speaks-tax-review-policy-issues>. ICANZ later became NZICA and has since 'merged' with the Institute of Chartered Accountants of Australia to form Chartered Accountants Australia New Zealand (CA-ANZ).

rules simpler, fairer and more effective. Dr Cullen indicated that the government would examine the Foreign Investment Fund (FIF) regime.

In terms of the taxation of entities, the McLeod Review favoured reducing the number of different tax treatments, thus reducing the influence of tax in the choice of investment entity. In the government's view, decisions over the choice of entity should be based on what best suits the business, rather than tax. The McLeod Review's recommendation that savings and investment entities be taxed in the same way, applying the standard RFRRM, was viewed positively by the government. Further work would be necessary. Thus, very little of the recommendations would progress any further with this government.

#### 3.8.4 Consultation

Submissions brought a number of issues to the McLeod Review's attention, which challenged it to carefully consider the robustness of its analysis, and provide a strong indication of public sentiment on various aspects of tax policy. An open and inclusive consultation process contributed significantly to the McLeod Review's thinking and subsequent recommendations.

There were two rounds of public consultations. The first round, at the beginning of 2001, sought to gauge the full range of public views on the best framework to underpin tax policy. The McLeod Review received 197 written submissions and heard oral submissions from five group submitters. These submissions formed an important input into the *Issues Paper* released on 20 June 2001. The second round of consultations was based on its *Issues Paper*. There was significant interest in the *Issues Paper*, with 245 submissions received. The McLeod Review met with 20 group and individual submitters. Public resistance to the application of the RFRRM on private housing led to this proposal being dropped and not included in the *Final Report*.

As part of the consultation process and to provide an external perspective, the McLeod Review commissioned Professor Alan Auerbach<sup>79</sup> to review the *Issues Paper*, to visit New Zealand to work with the McLeod Review and meet key stakeholders. In the McLeod Review's view, Professor Auerbach's report and subsequent discussions contributed to clarifying and helping with much of its analysis. Professor Auerbach prefaced his report with:<sup>80</sup>

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<sup>79</sup> Professor Auerbach is the Robert D. Burch Professor of Economics and Law, University of California, Berkeley, and Director of the Burch Centre for Tax Policy and Public Finance.

<sup>80</sup> See the McLeod Review (2001), *Final Report*, at 1-2 (emphasis added).

“New Zealand’s current tax system already conforms more closely to the standard objectives of taxation than do the tax systems of many other developed countries. Thus, *New Zealand’s tax system is not obviously in need of major overhaul*. Still, any tax system, including New Zealand’s, *has its flaws and inconsistencies, and seeking improvement is a worthwhile objective.*”

### **3.9 Victoria University of Wellington Tax Working Group (VUW TWG) 2010**

The VUW TWG, unlike previous tax committees, was not set up by the government. It was an initiative led by VUW, with support from officials in the Treasury and the IRD. Approval was then sought, and received, from both the Ministers of Finance and Revenue to set up an independent panel that could give them robust advice, which would then be taken to the Ministers. The TWG was co-ordinated by VUW’s Centre for Accounting, Governance and Taxation Research (CAGTR) and brought together invited private sector and academic experts, as well as officials from each of Treasury and the IRD.

Specifically, the VUW TWG was set up following an international conference on tax policy in NZ held in February 2009 by VUW’s CAGTR and the Institute for the Study of Competition and Regulation, with support from the IRD and Treasury. The writer attended this conference, which examined a range of areas, including personal taxes and transfers and company taxes, and participants identified significant concerns with the efficiency, equity and integrity of the current taxation system, concerns that required urgent attention. This proposal was endorsed by the Ministers of Finance Revenue.

The members of the VUW TWG were as follows: Bob Buckle, (Chair); Rob Cameron; Paul Dunne; Arthur Grimes; Rob McLeod; Gareth Morgan; Geof Nightingale; Mike Shaw; John Shewan; Casey Plunket; John Prebble; Mark Weldon; and David White. This was a mix of accountants and lawyers, business people, and academics. Members also came from Treasury (Norman Gemmell, Michelle Harding, and Bill Moran), and the IRD (Matt Benge, David Carrigan, and Robin Oliver).<sup>81</sup> Only one member was female (a Treasury representative that supported the VUW TWG). Most members were from either the accounting or law profession, or members of the faculty at VUW. Given that VUW instigated this tax committee, this should not come as a surprise.

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<sup>81</sup> In addition, experts in various areas were invited to attend some sessions: Len Burman, Syracuse University, New York; Andrew Coleman, Motu Economic and Public Policy Research; Peter Conway, New Zealand Council of Trade Unions; Lew Evans, Victoria University of Wellington; Phil O’Reilly, Business New Zealand; and Susan St John, The University of Auckland.

### 3.9.1 *Terms of Reference*

The VUW TWG's Terms of Reference were relatively narrow, namely to:<sup>82</sup>

- (i) identify concerns with the current taxation system,
- (ii) describe what a good tax system should be like,
- (iii) consider options for reform, and
- (iv) evaluate the pros and cons of these options.

Due to New Zealand's current fiscal circumstances, the VUW TWG accepted the constraint to consider tax reform on a fiscally neutral basis, and primarily focused on revenue raising taxes. New Zealand's tax system was not considered to be working effectively and reform was necessary if NZ is to have a fair tax system that minimises the costs of raising taxes, reduces barriers to productivity and growth and positions it well for future challenges. The current system was considered to be incoherent, unfair, lacks integrity, unduly discourages work participation and biases investment decisions. The VUW TWG issued just one report.

### 3.9.2 *Main Findings of the VUW TWG*

The VUW TWG considered options for reform in terms of six principles of a good tax system: the overall coherence of the system; efficiency and growth; equity and fairness; revenue integrity; fiscal cost; and compliance and administration costs. In the VUW TWG's view, a good tax system should also reduce uncertainty over future tax rates and the future application of tax bases. This required the tax system to be, and be seen to be, both economically and politically sustainable.

The VUW TWG considered that the BBLR option is a sound principle to adopt in choosing the approach to tax design and should continue to be an underlying framework for NZ's tax system. However, the VUW TWG believed that the problems with the tax system at that time are such that it requires significant change. The structure of the tax system needs to be significantly improved by making changes that involve a combination of changes to the tax bases and tax mix, to tax rates, and by improving some of the supporting tax rules. This is in contrast to the view of the McLeod Review.

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<sup>82</sup> VUW TWG (2009), at 9.

Summaries of the discussions were prepared by officials and circulated to participants for comment. Following this, the summaries and the documents (including background papers) prepared for the sessions, were made available after each session.<sup>83</sup> The topics of the sessions were:

- Session One: The fiscal framework
- Session Two: Structure of the personal income tax and GST systems
- Session Three: Revenue raising options
- Session Four: Corporate taxes and tax integrity
- Session Five: Wrap-up

The main recommendations of the VUW TWG were:<sup>84</sup>

1. The company, top personal and trust tax rates should be aligned to improve the system's integrity. If at any time this is no longer feasible due, for example, to global pressure causing the company rate to reduce, at the very least the trustee rate, top personal tax rate and top rate for portfolio investment entities (PIEs) and other widely-held savings vehicles need to be aligned, accompanied by the introduction of suitable fiscal integrity measures.
2. New Zealand's company tax rate needs to be competitive with other countries' company tax rates, particularly that in Australia. Balancing this factor against the integrity benefits of a fully aligned system will guide choices between an aligned and non-aligned system.
3. The imputation system should be retained. However, this may need to be reviewed if Australia decides to move away from its imputation system.
4. *The top personal tax rates of 38% and 33% should be reduced as part of an alignment strategy and to better position the tax system for growth. Where possible, the Group would like to see a reduction in personal tax rates across-the-board to ensure lower rates of tax on labour more generally. This could be achieved as part of a package to compensate for any increase in GST.*
5. Base-broadening is required to address some of the existing biases in the tax system and to improve its efficiency and sustainability. Base-broadening is also required if there are to be reductions in corporate and personal tax rates while maintaining tax revenue levels.

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<sup>83</sup> See: <https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/twg/session-topics>.

<sup>84</sup> VUW TWG, (2010) at 9-11 (emphasis added).

6. The most comprehensive option for base-broadening with respect to the taxation of capital is to introduce a comprehensive capital gains tax (CGT). While some view this as a viable option for base-broadening, *most members of the TWG have significant concerns over the practical challenges arising from a comprehensive CGT and the potential distortions and other efficiency implications that may arise from a partial CGT.*
7. The other approach to base broadening is to identify gaps in the current system where income, in the broadest sense, is being derived and systematically under-taxed (such as returns from residential rental properties) and apply a more targeted approach. The majority of the TWG support detailed consideration of taxing returns from capital invested in residential rental properties on the basis of a deemed notional return calculated using a risk-free rate.
8. Most members of the TWG *support the introduction of a low-rate land tax as a means of funding other tax rate reductions.*
9. The following targeted options for base-broadening should be considered for introduction relatively quickly:
  - Removing the 20% depreciation loading on new plant and equipment.
  - Removing tax depreciation on buildings (or certain categories of buildings) if empirical evidence shows that they do not depreciate in value.
  - Changing the thin capitalisation rules by lowering the safe harbour threshold to 60% or by reviewing the base for calculating this measure.
10. *GST should continue to apply broadly. There should be no exemptions.*
11. Most members of the Group consider that increasing the GST rate to 15% would have merit on efficiency grounds because it would result in reducing the taxation bias against saving and investment. However, any increase in the GST rate would need to be accompanied by compensation to those on lower incomes. This would significantly reduce the net revenue raised from a higher GST.
12. There should be a comprehensive review of welfare policy and how it interacts with the tax system, with an objective being to reduce high effective marginal tax rates.
13. Government should introduce institutional arrangements to ensure there is a stronger focus on achieving and sustaining efficiency, fairness, coherence and integrity of the tax system when tax changes are proposed.

### 3.9.3 Government's Response to the Findings

In its Budget delivered on 20 May 2010, the Government announced a major overhaul of the NZ tax system, adopting many of the recommendations of the TWG. The main elements of the tax package announced by the then Minister of Finance, Bill English, included:<sup>85</sup>

1. A shift towards lower and more uniform rates of income tax, more indirect taxation and broadening the existing tax bases.
2. From 1 October 2010 personal income tax rates will be lowered, and the rate of GST increased to 15%.
3. The tax package will protect the incomes of New Zealanders in two ways.
  - a. First, for income earners at all taxable income levels, the reduction in personal income tax will be sufficient to match the increase in GST.
  - b. Second, the package will provide, from 1 October 2010, an immediate lift in the levels of New Zealand Superannuation, all main benefits, student allowances and Working for Families payments. This will be sufficient to offset the estimated impact on prices due to the rise in GST.
4. The payments will be adjusted to ensure the full CPI effect is captured, excluding the CPI impact of the tobacco excise increase.
5. Revenue raised, from GST and other base broadening measures, will be used to fund an across the board reduction in all income tax rates.
6. The changes to personal income tax rates, to apply from 1 October 2010, will be as follows:
  - a. The initial income tax rate applying up to income of \$14,000 will reduce from 12.5 per cent to 10.5%.
  - b. The tax rate applying to income between \$14,000 and \$48,000 will reduce from 21% to 17.5%.
  - c. The tax rate applying to income between \$48,000 and \$70,000 will reduce from 33% to 30%.
  - d. The tax rate applying to income over \$70,000 will reduce from 38% to 33%.
7. The tax rate applying to New Zealand companies will reduce from 30% to 28%. This will apply from the start of the 2011/12 income year.

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<sup>85</sup> See further: <http://taxpolicy.ird.govt.nz/news/2010-05-20-budget-2010-tax-announcements>.

8. 28% will also become the standard tax rate applying to most savings vehicles. This rate will apply to vehicles taxed as companies, including Group Investment Funds, unit trusts, life insurance and superannuation funds. It will also be the maximum tax rate applicable to Portfolio Investment Entities (PIEs). Lower income taxpayers will still have access to lower rates via imputation credits from companies and electing lower PIE rates.
9. The tax rate applying to trusts will remain at 33%, the same as the new top personal rate of income tax.
10. The Tax Working Group also reported that anomalies arise through the use of taxable income as a means of determining eligibility for certain Government assistance. Taxable income may not always be a good measure of true economic circumstances.

The Government did not accept the recommendation for the introduction of a low-rate land tax, but accepted the majority recommendation not to introduce a CGT.

#### 3.9.4 *Consultation and other matters*

As noted above, through a series of regular meetings between June and November 2009, and papers prepared by officials or commissioned from tax experts, the VUW TWG provided a forum for informed discussion of the issues for expert tax practitioners, academics, businesspeople and officials. Furthermore, with respect to the VUW TWG and the GTPP, Sawyer notes:<sup>86</sup>

*“[W]hile the [VUW] TWG received resource support from the IRD and the Treasury, it operated separately from and outside the ‘government appointed committee’ framework of earlier tax reviews. It is arguable that this was a critical factor in its success, in that the TWG complemented the role of the GTPP which seeks to remove, as far as practicable, political influences on the process of tax reform (after the Strategic Phase), with respect to producing high quality legislation. In this regard the [VUW] TWG is not a necessity for an effective GTPP, but it facilitated the development of higher quality policy and legislation through its input into the GTPP.”*

Sawyer further states:<sup>87</sup>

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<sup>86</sup> Adrian Sawyer, “VAT Reform in China: Can New Zealand’s Goods and Services Tax Provide Helpful Guidance?” (2014) 4(2) *Journal of Chinese Tax and Policy*, 92-119, at 106-7 (emphasis added).

<sup>87</sup> *Ibid*, at 108 (emphasis added).

“Turning the focus on how the TWG operated within the GTPP, prior analysis reviews the comments on the contributions of the TWG within the GTPP environment from those involved either as members of the GTPP, advisors, and expert consultants. Collectively these commentators/academics emphasise the importance of the interdisciplinary backgrounds and expertise of those involved, the attempt to rationalise tax policy debate, and engaging the public in the debate. *A major constraining factor with most reviews, the TWG being no exception, is the revenue neutral constraint placed on reviews.* Focussing on addressing issues of fairness, especially horizontal equity, was also crucial to the TWG’s success. ...

I have observed that the work of the TWG illustrates a recent example of the operation of the GTPP, through an extension of the usual external input into the policy making process, namely *an independent temporary advisory body that has made one of the more significant contributions to tax policy development in NZ.*”

Buckle, as Chair of the VUW TWG, observed in an address given during the VUW TWG’s early deliberations:<sup>88</sup>

The purposes of the Tax Working Group are to provide a forum for informed discussion of the priorities for medium-term tax policy that can feed into advice to Government Ministers and to promote and inform a wider public debate on tax policy. *The process can be viewed as a part of the process of preparing the background for the examination of medium-term tax policies by Ministers.* It was not designed necessarily to lead to specific policy recommendations but rather to *allow full identification of the issues that will need to be considered in reviewing medium-term tax policy.* Nevertheless, the Group has decided that it would be worthwhile at the end of the process to produce a report and give its views on to the direction in which it considers tax reform should take in the medium-term.

The idea of the Tax Working Group is a rather interesting one in my view and *represents a departure from the typical development of public policy advice.* It is not a formal Government commissioned advisory group of the type that has previously been established to review taxation, such as the 2001 Tax Review. ...

Another aspect that I hope Inland Revenue also see as an advantage is that this process has attracted the attention of the media and offered the opportunity for the policy departments,

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<sup>88</sup> Buckle, “Toward a World Class Tax System”, above n 4 (emphasis added).

Treasury and IRD, to discuss with the media in more detail some of the issues which officials and members of the Tax Review. *This is a more informal structure designed to enhance the opportunity for IRD and Treasury policy officials to test ideas and receive feedback from a group of people with expertise in New Zealand's taxation system and with different backgrounds and perspectives.* Another feature is that at the end of each meeting the Group summarises its deliberations and makes them publicly available on the internet, along with the supporting papers discussed by the Group. ...

To summarise, from the perspective of the importance of the tax system for economic performance and the importance of a tax system that satisfies fairness, revenue adequacy, and integrity, administrative simplicity and coherence, *the New Zealand tax system is in need of review and reform.* Furthermore, I sense there is a *political opportunity to change the tax system*, at least if we accept the comments in the recent speeches by the Prime Minister and the Minister of Finance who have both emphasised the importance of a world-class tax system as one of the six pillars in their policy agenda for improving New Zealand's economic performance.

Of the various tax committees established in NZ, the VUW TWG has had the most substantial 'immediate' impact in terms of uptake of its recommendations by the government. While part of this can be put down to the VUW TWG's recommendations being largely in alignment with the government's views of reform, it may also ironically be attributable in part to its 'independent' status. It also sought to only consider the medium-term direction of the tax system including assessing policy options. Putting this into context, the government of the time had been only recently elected and was expecting to have at least two possible three terms in office.

### **3.10 Government Tax Working Group (Government TWG) 2019**

The Government TWG was established in late 2017 following the Labour Party's tax plan, with a stated goal "to examine further improvements in the structure, fairness and balance of the tax system."<sup>89</sup> The Labour-led coalition government endorsed the establishment of the Government TWG.

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<sup>89</sup> See: <https://taxworkinggroup.govt.nz/>.

The Members of the Tax Committee are: Sir Michael Cullen (Chair);<sup>90</sup> Professor Craig Elliffe, University of Auckland; Joanne Hodge, former tax partner at Bell Gully; Kirk Hope, Chief Executive of Business New Zealand; Nick Malarao, senior partner at Meredith Connell; Geof Nightingale, partner at PwC New Zealand;<sup>91</sup> Robin Oliver, former Deputy Commissioner at Inland Revenue; Hinerangi Raumati, Chair of Parininihi ki Waitotara Inc.; Michelle Redington, Head of Group Taxation and Insurance at Air New Zealand; Bill Rosenberg, Economist and Director of Policy at the CTU; and Marjan Van Den Belt, Assistant Vice Chancellor (Sustainability) at VUW. Membership includes four females out of the eleven members – this is an important step towards a gender balance, along with some ethnic diversity.

### 3.10.1 Terms of Reference

The Government TWG has been established by the government in order to examine further improvements in the structure, fairness and balance of the tax system. Specifically, NZ's tax system, in the government's view, has been justifiably commended internationally for being a simple and efficient system. The government's starting position is that the *guiding principle for the NZ tax system – namely, that tax should operate neutrally and as much in the background as possible – is considered to be sound*. This suggests that the government is not expecting recommendations that would be contrary to the BBLR framework, or indicate that the tax system as a whole needs a major overhaul.

The government has the following objectives for the NZ tax system:<sup>92</sup>

- A tax system that is efficient, fair, simple and collected;
- A system that promotes the long-term sustainability and productivity of the economy;
- A system that supports a sustainable revenue base to fund government operating expenditure around its historical level of 30% of GDP;
- A system that treats all income and assets in a fair, balanced and efficient manner, having special regard to housing affordability;
- A progressive tax and transfer system for individuals and families; and
- An overall tax system that operates in a simple and coherent manner.

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<sup>90</sup> Dr Cullen was the Minister of Finance and Revenue at the time of the McLeod Review (2001).

<sup>91</sup> Geof Nightingale is the only member of the TWG that was also a member of the VUW TWG.

<sup>92</sup> See NZ Government, *Tax Working Group – Terms of Reference* (23 November, 2017); available at: <https://www.beehive.govt.nz/release/towards-fairer-tax-system-tax-working-group-terms-reference-announced>.

The Government TWG is required to report to the government on:<sup>93</sup>

- Whether the tax system operates fairly in relation to taxpayers, income, assets and wealth;
- Whether the tax system promotes the right balance between supporting the productive economy and the speculative economy;
- Whether there are changes to the tax system which would make it more fair, balanced and efficient; and
- Whether there are other changes which would support the integrity of the income tax system, having regard to the interaction of the systems for taxing companies, trusts, and individuals.

In examining these points, the Government TWG is expected to consider the following:<sup>94</sup>

- The economic environment that will apply over the next 5-10 years, taking into account demographic change, and the impact of changes in technology and employment practices, and how these are driving different business models;
- Whether a system of taxing capital gains or land (not applying to the family home or the land under it), or other housing tax measures, would improve the tax system;
- Whether a progressive company tax (with a lower rate for small companies) would improve the tax system and the business environment; and
- What role the taxation system can play in delivering positive environmental and ecological outcomes, especially over the longer term.

In considering the matters above, the Government TWG is expected to have due regard to the overall structure of the tax system to ensure it is fair, balanced and efficient, as well as simple for taxpayers to understand and comply with their tax obligations. The following are outside the scope of the Government TWG's review:<sup>95</sup>

- Increasing any income tax rate or the rate of GST;
- Inheritance tax;

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

- Any other changes that would apply to the taxation of the family home or the land under it; and
- The adequacy of the personal tax system and its interaction with the transfer system (this will be considered as part of a separate review of Working for Families).

In addition, the focus of the Government TWG should not be on more technical matters already under review as part of the government's Tax Policy Work Programme (TPWP), including:<sup>96</sup>

- International tax reform under the Base Erosion and Profit Shifting (BEPS) agenda, and
- Policy changes as part of the IRD's Business Transformation programme.

The Government TWG is permitted to recommend further reviews be undertaken on specific issues which it considers it has not been able to explore sufficiently, or that were excluded from its terms of reference but which could benefit from being considered in the context of its recommendations. The TWG will be supported by a secretariat of officials from Treasury and the IRD. Importantly, it is able to seek independent advice and analysis on any matter within the scope of its Terms of Reference. The Government TWG will have an independent advisor to analyse the various sources of advice received by it and help to analyse and distil the information to assist its deliberations.<sup>97</sup> The TWG will be expected to engage with the public in developing its recommendations.<sup>98</sup>

### 3.10.2 Other matters

The implementation of any changes associated with the TWG will not occur before the 2021 tax year. The anticipated timeline for the TWG is:<sup>99</sup>

- *Working Group established and mandated by Cabinet (By December 2017);*
- *First meeting(s) of Group and call for public submissions (February 2018);*
- Interim report released for feedback (September 2018);
- Final report issued with recommendations for Government (February 2019);
- Cabinet decisions finalised (April 2019);

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<sup>96</sup> Ibid. The current TPWP can be found at: <http://taxpolicy.ird.govt.nz/work-programme>.

<sup>97</sup> The independent adviser is Andrea Black, who has a Masters of Taxation from the University of Auckland, with experience working as an adviser to both the Treasury and the IRD.

<sup>98</sup> NZ Government, above n 92.

<sup>99</sup> See: <http://www.labour.org.nz/tax>. Those stages complete as at the time of writing are italicized. The next general election is provisionally scheduled for the later part of 2020.

- Public Consultation on detailed changes (if any) (April –August 2019);
- If necessary, Bill introduced (September 2019);
- Parliamentary Process (including full Select Committee process) September 2019 – July 2020);
- Legislation passed and enacted (July 2020);
- Implementation of changes in the next tax year, commencing (1 April 2021).

Since this early announced schedule, the Chair of the Government TWG (Dr Cullen) delivered a speech at a meeting of the NZ IFA on 2 March 2018, updating the work of this committee. Specifically, as at the time of writing, the Government TWG members had met three times, with the Future of Tax: Submissions Background Paper released on 14 March 2018.<sup>100</sup> This paper sets the context, with the discussion divided into six areas:<sup>101</sup>

- the future environment (within which the tax system will need to continue to provide adequate revenue to fund government programmes);
- the purposes and principles of a good tax system;
- the current New Zealand tax system;
- the results of the current system;
- thinking outside the current system; and
- specific policy challenges (which the Terms of Reference require the Group to address).

The Future of Tax: Submissions Background Paper is both informative with extensive data provided principally in the form of graphical figures, as well as provocative, in the sense of wishing to encourage submissions from the wider public. With some of the constraints placed in the terms of reference, some of the analysis will necessarily be constrained, raising the risk that recommendations will be sub-optimal. Submissions are able to be made up to 30 April 2018. Evidence that a CGT is likely to be a significant area of discussion is reflected in one of the appendices which sets out specific design issues for a CGT that the Government TWG is seeking feedback on. The Government TWG is expecting a significant number of submissions as officials have been requested

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<sup>100</sup> Tax Working Group (NZ), *Future of Tax: Submissions Background Paper* (NZ Government, March 2018); available at: <https://taxworkinggroup.govt.nz/resources/future-tax-submissions-background-paper>.

<sup>101</sup> See Cullen, above n 25, at 4-10.

to provide summaries.<sup>102</sup> Information continues to be provided on the Government TWG's website for those interested in making a submission on the Future of Tax: Submissions Background Paper.<sup>103</sup>

Adding to the 'controversy' are recent statements in an interview on a commercial radio station, where new taxes could be introduced to change what Dr Cullen at least sees as 'bad behaviours.'<sup>104</sup> The public is being prepared to expect changes in the tax mix, which more likely than not will see some rebalancing of relative tax burdens.<sup>105</sup> Furthermore, the same commentator stated a day later that: "Sir Michael Cullen lacks the common touch and putting him in charge of the Tax Working Group was never going to be a recipe for harmony."<sup>106</sup> This could suggest that much of the agenda (and possibly recommendations) have already been 'determined', and that the general public may feel alienated and unable to be involved in making submissions. Having the chair of the Government TWG as a former high level politician with a known agenda places the entire process at risk of undue politicisation. Ultimately, time will tell.

The Government TWG represents a return to an environment similar to that of the McLeod Review in 2001 in terms of being a government-appointed group. It also has a wider brief similar to that of the McLeod Review, although with expectations that its recommendations will need to place greater emphasis on addressing areas of the tax system where there is a perceived lack of fairness, as well as ensuring the tax system is future proofed. The government has set the agenda and furthermore, has appointed as chair a former Minister of Revenue and Finance. This appointment has caused some concern in the tax community that the TWG is unduly politicized, and should have as its chair someone with no clearly stated political preferences.

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<sup>102</sup> See Tom Pullar-Strecker, "Tax Working Group poses threat to family 'next eggs', says National" (March 14, 2018), available at <https://www.stuff.co.nz/business/industries/102245362/tax-working-group-says-mind-not-made-up-as-submissions-paper-released>.

<sup>103</sup> See <https://taxworkinggroup.govt.nz/key-documents>.

<sup>104</sup> See further, Tom Pullar-Strecker, "New taxes could change bad behaviours, suggests Sir Michael Cullen" (March 5, 2018), available at <https://www.stuff.co.nz/business/industries/101970814/new-taxes-could-change-bad-behaviours-suggests-sir-michael-cullen>.

<sup>105</sup> See the discussion on a potential capital gains tax and its implications, Tom Pullar-Strecker, "Silver lining from capital gains tax" (March 25, 2018), available at: <https://www.stuff.co.nz/business/money/102475922/capital-gains-tax-could-lower-tax-on-cash-savings>.

<sup>106</sup> Tom Pullar-Strecker, "Sir Michael Cullen's tax bombshell has some food for thought in it" (March 6, 2018), available at <https://www.stuff.co.nz/business/industries/102017241/cullens-tax-bombshell-food-for-thought>.

#### **4. CONCLUDING OBSERVATIONS**

What can we observe from this rather long exploratory analysis of tax committees in NZ over the last 95 years or so? In terms of the spread of these tax committees, their frequency increased dramatically during the mid- to late-1980s, especially with the much more focussed consultative committees and working groups (1986-2, 1987-1, 1988-2, 1989-3, 1991-1, 1992-1, 1994-1, 1997-1 and 1998-1). In terms of the more substantial tax committees, they occur on average once every ten years (1922, 1924, 1951, 1967, 1982, 1994, 2001, 2010 and 2019), generally gathering momentum in terms of frequency for those that are more recent. The largest gap is 1924 to 1951. These dates closely follow in many instances a change in government.

Of those tax committees that have finished their work to date, an overwhelming majority of the comprehensive tax committees have had a significant impact on shaping tax policy, even if many of their recommendations take some time to be accepted (if they are accepted at all). Many of the recommendations reflect the need for the tax system to adjust to societal and economic changes. For those more focussed consultative committees/working groups, their greatest impact has been to improve the drafting of legislation to reflect concerns and issues raised in submissions on policy documents. With the advent of the GTPP in 1994, the number of these consultative committees has reduced significantly, such that there have been none since 1998.

Of the major tax committees, the VUW TWG has had the greatest impact on shaping medium term policy, within a narrower brief (self-imposed), than the others. This may in part at least be attributed to its 'independence' from the government, while recommending changes that came within the government's intended policy direction. The latest Government TWG is expected to be similar in approach to the McLeod Committee with its clear government mandated terms of reference, but hopefully will see its well-reasoned recommendations be taken up by the government as part of their 2020 election policy. The Government TWG is also the first instance of the appointment of a non-independent chair (a former Minister of Finance and Revenue). Other tax committees (including the consultative committees), had chairs that subsequently took on political roles (for example, Dr Don Brash has led the National Party).

With the more recent tax committees, there has been more comprehensive transparency in terms of making their draft papers and analysis publicly available, as well as using external experts to critically appraise the analysis and recommendations in the final report (for example, the McLeod

Review and the VUW TWG). All of the tax committees have had consultation as a core aspect of their operations, although this was very limited for the Ross Committee.

In the writer's view, this case study reveals the critical role that tax committees have had in shaping tax policy and improving the quality of draft legislation. They have served as a 'delicate balance' of 'independent' representation with those bringing a clear government desired perspective. In this sense they reflect the politicisation of taxation, such that it is Parliament that ultimately determines the law, heavily influenced by the Executive. Throughout the period from the mid-1980s, there has been a degree of consistency through the adoption of the board base low rate (BBLR) framework (with some tweaking), supplemented in 1994 with the adoption of the GTPP. While the former framework is attributable to Roger Douglas (with support from the Treasury and IRD), the latter is a product of the Richardson Committee.

Looking forward to what could happen through the work of the current Government TWG. Treadaway posted a comment by Baucher, written prior to the formation of the Labour-led coalition government. Baucher writes that: "[a]part from an under-representation of women, a criticism of the membership of the last two tax reviews is that they were perhaps too dominated by the large law and accounting firms."<sup>107</sup> Representation also needs to reflect organisations that look after SMEs in NZ, and should also consider exploring further a suggestion of the VUW TWG (that was not adopted), namely the establishment of something similar to the Board of Taxation in Australia.<sup>108</sup> This is a non-statutory advisory body which advises the Australian government on the development and implementation of taxation legislation and the ongoing operation of the Australian tax system. While this recommendation was not adopted, Baucher suggests it is something that a new tax working group should consider. Baucher concludes:<sup>109</sup>

“In the absence of something like a Board of Taxation, *regular tax reviews should be a feature of any democracy*. They should act as a sort of *conscience for governments by pointing out some politically inconvenient facts about distortions in the tax system*. If Labour does form the next Government it will be interesting to see how it reacts to the findings of a tax working group.”

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<sup>107</sup> Lee Treadaway, “Terry Baucher: What would a ‘tax working group’ look like under a coalition government” (2017) TaxTalk Blog (September 27, 2017); available at: <http://www.talktax.co.nz/index.php/2017/09/27/what-would-a-tax-working-group-look-like-under-a-coalition-government/>.

<sup>108</sup> For further information on the Board of Taxation, see: <http://taxboard.gov.au/>.

<sup>109</sup> Ibid. It should be noted that the Ross Committee recommended an advisory and research committee be established, although this has not been taken up by any government.

Since this comment was made, the Labour Party formed a coalition government, after the NZ First leader, Winston Peters, publicly announced that he had decided his party would go into government with the Labour Party. In order to have a working majority, the Green Party entered into a confidence and supply agreement with the Labour Party. One of the first acts of the new government in its 100 day plan was to establish the Government TWG. Its composition is 7 male and 4 female (a significant improvement that reduces the typically large gender imbalance). In terms of their employment sector, 4 are from professional accounting/law firms, 3 from business, and the others include a range of academic institutions and the union sector. There is very little in terms of direct representation for SMEs which make up the majority of businesses in NZ. It will be of interest to see whether something similar to the Board of Taxation in Australia is a recommendation of the Government TWG in due course. Such a recommendation, if adopted, could see a reduction in the instances when a tax committee needs to be set up.

This case study ‘story’ is not ‘complete’ in that the last substantive ‘chapter’ is incomplete. The Government TWG has just been established and is not due to release an interim report for feedback until the end of September 2018. With its Submissions Background paper there is some early indication of where this committee is likely to head. Statements from its chair suggest a focus on changing the tax mix and relative burden on taxpayers. Its work is not expected to be finished until early 2019, with the final outcome in part dependent upon the result of the 2020 General Election. There may yet be an interesting ‘final chapter’ or sequel to this large ‘case study’.

For other jurisdictions considering establishing a tax committee, the following is a check list that should facilitate best practice, drawing upon the NZ experience (both positive and negative):

1. Have an independent chair and make sure the tax committee can be as independent of the government as is feasible;
2. Set a clear direction and terms of reference for what is to be included and excluding, leaning towards being more comprehensive than less;
3. Ensure the membership represents as many stakeholders as is feasible including an appropriate mix of gender, ethnicities, etc.);
4. Establish an advisory group to support the main tax committee, especially in testing ideas with the general public and private sector;
5. Ensure it is adequately resourced, both financially and with administrative personnel, plus officials from the relevant government departments;

6. Ensure the process is transparent and consultative, allowing the public and the private sector to make submissions and be heard;
7. Have an independent expert (or group) critically appraise the analysis and final draft reports, and release this review with the final report.
8. The uptake of recommendations is heavily influenced by the degree of alignment of the tax committee's membership with government philosophy. One should not be surprised that some recommendations are not considered until a new government takes office.

In looking back at NZ's experience, a mix of the best features of the McLeod Review and VUW TWG could serve as a blueprint for future reviews undertaken by tax committees. This recommendation would change if a permanent body was established, similar to for example, the Board of Taxation in Australia.