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Principles and Frameworks for Evaluating Tax Systems: A New Zealand Perspective

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ABSTRACT

Traditionally taxes (and tax systems) are evaluated using principles that, in many instances, trace back to the work of Adam Smith (namely, equity, certainty, convenience and economy). Added to these principles are those of: simplicity, efficiency, and revenue raising. These principles predominantly focus on economic measures (with the exception of equity), and leave out broader social, environmental and cultural factors that impact the well-being of citizens and their country. Within the wider sphere of public expenditures, work has been underway for more than a decade in New Zealand (NZ) to create what the NZ Treasury refers to as its Living Standards Framework (LSF) to incorporate this wider concept of well-being. Fiscal policy is included within the LSF evaluations. The LSF, while still undergoing refinement, formed part of the NZ Government's Tax Working Group (TWG) framework, and appears in aspects of the TWG's 2019 Final Report. The NZ Government's Budget 2019 is one of the first globally to be a well-being budget, although it contains minimal tax content. This paper reviews both the traditional and new LSF principles, evaluates their application by the 2009-10 Victoria University of Wellington (VUW) TWG, the NZ Government 2017-2019 TWG and NZ's Budget 2019. It concludes that other jurisdictions should be keeping a close eye on the impact and 'success' of these developments.

1.0 INTRODUCTION AND OVERVIEW

Principles for evaluating whether a tax system (or for that matter, a particular tax) is considered to be 'good' or 'appropriate', frequently draw upon the early work of Adam Smith.[1] Smith observed that when evaluating a tax system, a number of canons (principles) should guide decision-making, namely: equity/ability to pay, certainty, convenience and economy.

More recently, a wider perspective to evaluating that goes beyond taxation principles has emerged, namely assessing the wider impact of government taxation and expenditures with respect to citizens in a jurisdiction through impact on well-being. Well-being forms a core part of the New Zealand (NZ) Treasury's Living Standards Framework (LSF).[2] How may one

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The paper states the position in NZ as at 31 July 2019.

[1] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776 - Edinburgh - Printed for S Doig and A. Stirling, 1817).

[2] NZ Treasury, *Our People, Our Country, Our Future, Living Standards Framework: Background and Future Work* (NZ Treasury, December 2018).

measure well-being? First, through focussing on measuring subjective wellbeing, then determining what the impacts on the measured result are. Second, since well-being is a multi-faceted concept that cannot be summarised by a person's own subjective assessments of their life satisfaction, an evaluation of a dashboard of measures is necessary. The LSF adopts the second approach.

This paper applies a 'traditional' legal approach, along with a tax policy lens. The approach taken is largely positivist, but with some normative recommendations. Furthermore, while there is no specific theoretical framework, there is an element of grounded theory[3] through observing the changes in canons/principles applied to assessing tax systems and tax policy.

The paper adopts an in-depth exploratory case study approach, whereby it assesses NZ's use of frameworks and principles (based on international concepts) to assess reforms to its tax system. It is common to see criticism of case studies as a research method, with some viewing the method to be a non-scientific approach to undertaking research. Notwithstanding this view, case study research is utilised 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,[4] 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.

After reviewing the relevant literature, this paper commences with offering some background discussion of tax policy principles in section 3, sourced from reviewing the 2009-10 Victoria University of Wellington Tax Working Group (VUWTWG), which applied traditional tax policy principles. Section 4 follows with an introduction to the Living Standards Framework (LSF) developed by the NZ Treasury,[5] and the contributions of latest Tax Working Group (TWG) set up in 2017 (which reported in February 2019).[6] The LSF has the potential to introduce a significant paradigm shift in the NZ government's approach to developing fiscal policy. In this regard, this section of the paper reviews the application of the LSF in Budget 2019, delivered on 30 May 2019. Section 5 concludes the paper.

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[3] Grounded theory was originally developed by two sociologists, Glaser and Strauss. They argued that researchers needed a method that would allow them to move from data to theory, so that new theories could emerge. These theories would be specific to the context in which they had been developed, and as such, are 'grounded' in the data from which they had emerged rather than rely on analytical constructs, categories or variables from pre-existing theories. See further, Barney Glaser and Anselm Strauss, *Discovery of Grounded Theory: Strategies for Qualitative Research* (Taylor & Francis, 2000).

[4] R K Yin, *Case Study Research and Applications: Design and Methods*, (Sage Publications, 6th ed. 2017).

[5] NZ Treasury, above n 2.

[6] TWG, *Future of Tax: Final Report Volume I: Recommendations* (February 2019), available at: See: https://taxworkinggroup.govt.nz/sites/default/files/2019-02/twg-final-report-voli-feb19.pdf.

2.0 PRIOR LITERATURE

2.1 Traditional tax principles

The contributions of Adam Smith and his cannon/principles of taxation to tax policy development are well known.[7] Specifically Smith states:[8]

> "The subject of every state ought to contribute towards the support of the government as early as possible in proportion to their respective abilities that is in proportion to the revenue which they respectively enjoy under the protection of the State. …
>
> The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid all ought to be clear and plain to the contributor and to every other person. ...
>
> Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it. ...
>
> Every tax is to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state".

Debate continues over what Smith meant by 'equity/ability to pay'; does this refer to horizontal equity only or does it also incorporate vertical equity? An abundance of research evaluates the concept of 'economy', which more commonly is recognised as the costs of tax compliance, along with (economic) efficiency.

Public finance contributors have advocated other principles/canons. These include:[9]

1. Productivity, which refers to raising sufficient revenue for the government;
2. Elasticity, the ability for the government to raise more funds without incurring any significant additional costs of collection;
3. Simplicity, such that the tax system should be simple, and understandable to taxpayers;
4. Diversity, such that the system should include a large number of taxes which are economical; and
5. Visibility, such that taxpayers should be able to see the taxes they are paying and where they are utilised by government.

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[7] See for example, Michael Fry, *Adam Smith's Legacy: His Place in the Development of Modern Economics* (Routledge, 1992).

[8] Smith, above n 1, Book V, Chapter 2 (II).

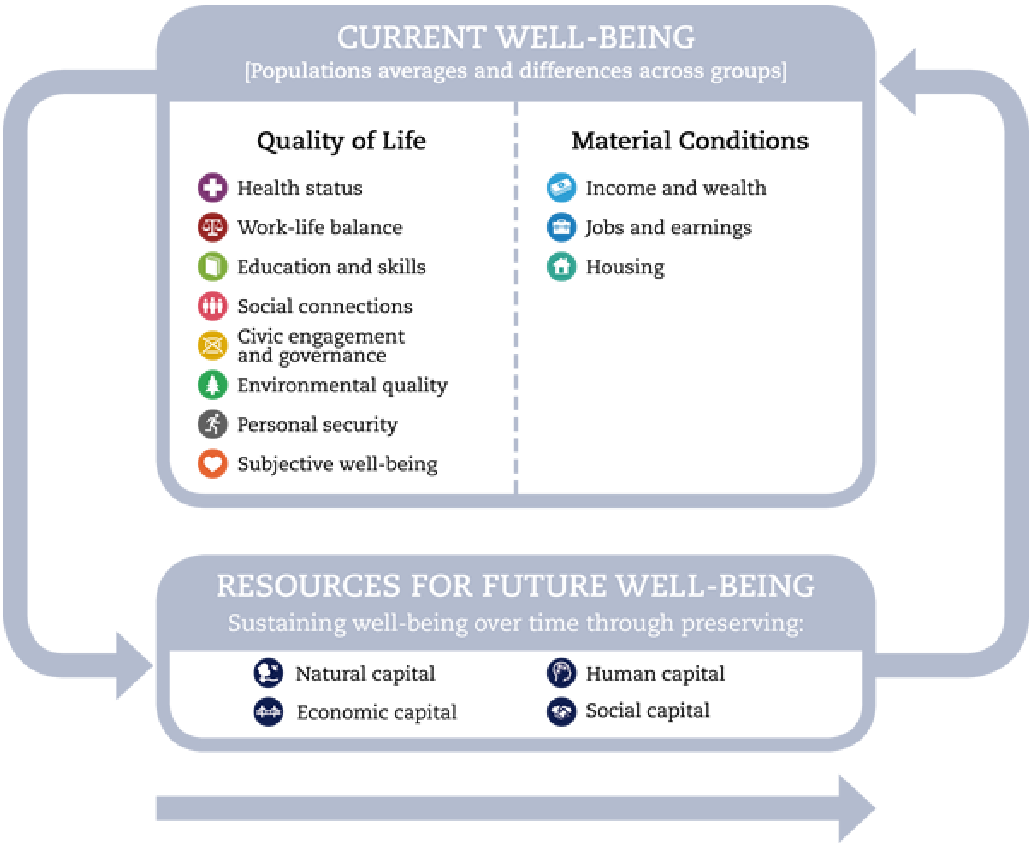
[9] See: http://economicsconcepts.com/canons_of_taxation.htm.

The American Institute of Certified Public Accountants (AICPA) also includes: information security, neutrality, economic growth, minimum tax gap, and accountability to taxpayers.[10] Thus, traditionally, the principles for the evaluation of a tax system have be fiscally focused, with little recognition for other factors that may affect taxpayers and society more generally. In some respects, these traditional measures relate more to the impact on gross domestic product (GDP) and government revenues, rather than the impact on wider society.

2.2 Well-being

The Organisation for Economic Cooperation and Development (OECD), amongst others, are promoting measures that capture well-being and living conditions, rather than just measuring impacts on GDP. The OECD has developed a framework for measuring well-being and progress, which is set out below:[11]

Figure 1: OECD Well-being Framework



The OECD's framework formed the basis for creating the NZ Treasury's LSF. Specifically, the LSF adopts as its base the well-being framework developed by the OECD that is included

[10] AICPA, Tax Policy Concept Statement 1: Guiding principles of good tax policy: A framework for evaluating tax proposals (2017), available at: https://www.aicpa.org/ADVOCACY/TAX/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf.

[11] OECD, *Measuring Well-being and Progress; Well-being Research* (2019); at: http://www.oecd.org/statistics/measuring-well-being-and-progress.htm.

in its regular 'How's Life?' Report and 'Better Life Index',[12] with minor adaptation/extension for NZ circumstances. The LSF adds the dimension of Cultural Identity to the eleven dimensions already included in the OECD framework. Further additional measures are included for mental health, volunteering and corruption, to capture a broader measurement of well-being. An advantage of the well-being approach, as reflected in the NZ Treasury's LSF, is that it assists in making it more explicit that there are well-being trade-offs involved in certain decisions.

Why is well-being so important and how does it relate to public policy? In their comprehensive work, Karacaoglu, Krawczyk and King conclude: [13]

> "This book presents and integrates eight big themes, all centred on a wellbeing-focused public policy:
>
> - The *ultimate purpose of public policy is to improve the lives of individuals and communities on a sustained basis, as they choose to live them – i.e., their wellbeing*.
> - Wellbeing is a function of multiple influences (collectively referred to as "comprehensive consumption"), which are in turn sourced from multiple capital stocks (collectively referred to as "comprehensive wealth").
> - Public policy attempts to enhance wellbeing by increasing the opportunities and capabilities (i.e., substantive freedoms) of individuals and communities to pursue the lives they value; it does so by protecting, shaping, and ensuring widespread access to "comprehensive wealth".
> - *Adopting an integrated approach to environmental, social, and economic policy is critical*; implementation is through appropriately prioritised investments in infrastructures, including institutions (collectively referred to as "ecosystems").
> - The prioritisation of these investments is assisted by numerical policy-simulation models.
> - When radical (or substantive) uncertainty and complexity are allowed for, the objective and domains of public policy remain unchanged, but the focus of implementation shifts to building resilience to systemic risks as well as nourishing creativity. Again we rely on simulation models to prioritise investments, in consultation with communities.
> - Whether a *particular public investment is worth undertaking or not, as well the prioritisation across investment options, is based on cost-benefit analyses, where the "currency" of comparison is intergenerational wellbeing*.
> - Whether public policy in general is succeeding or not is evaluated on the basis of three complementary assessment mechanisms:
>   i. objective measures of the main influences on, or dimensions of, wellbeing;
>   ii. survey-based measures of subjective wellbeing outcomes; and

[12] See further: http://www.oecd.org/statistics/how-s-life-23089679.htm and http://www.oecd.org/statistics/how-s-life-23089679.htm.

[13] Girol Karacaoglu, Jacek B. Krawczyk and Anita King, *Intergenerational Wellbeing and Public Policy: An Integrated Environmental, Social, and Economic Framework* (Springer, Singapore, 2019), at 221-222 (emphasis added).

iii. the evolution of the "wellbeing frontier" over time."

The authors, in this work, seek to lay out their development of models to integrate public policy development to support overall well-being. This includes fiscal policy as a tool to support well-being.

While research on the well-being framework remains ongoing, OECD member countries are encouraged to incorporate this into their fiscal planning and decision-making. The NZ Treasury has been developing its own LSF, with their first significant application being in Budget 2019 (The Well-Being Budget). Before moving to discuss the LSF and its application, the paper reviews the application of traditional tax principles in the context of the 2009-2010 VUWTWG.

3.0 TAX POLICY – THE USE OF 'TRADITIONAL' PRINCIPLES

Since the mid-1980s, NZ has employed a broad base low rate (BBLR) methodology to determine its tax mix.[14] The fundamental idea is to have a broadly defined tax base, which allows tax rates to be lower, thereby reducing the costs associated with taxation. Endorsement of BBLR, introduced in the mid-1980s, occurs frequently, including by the VUWTWG. BBLR provides the NZ Government with the revenue it needs to meet its objectives, while minimising distortions in economic behaviour. The Generic Tax Policy Process (GTPP), implemented by way of Cabinet guidance in 1994, further supports BBLR.[15]

Briefly, the GTPP has three main objectives. They are to:[16]

- encourage early consideration of key policy elements and trade-offs of proposals, such as their revenue impact, compliance and administrative costs, and economic and social objectives;
- provide opportunities for substantial external contribution to policy formulation; and
- clarify the responsibilities and accountabilities of participants in the process, particularly those of the Policy Advice Division of Inland Revenue and the NZ Treasury.

There are five phases in the GTPP:[17]

1. Strategic phases: economic strategy; fiscal strategy; three-year revenue strategy;
2. Tactical phases: rolling three-year work program; annual work and resource plan;

[14] For further discussion on BBLR, see Adrian Sawyer, "Reflections on the contributions of lawyers to tax policy-making in New Zealand", (2017) 27(4A) *New Zealand Universities Law Review* 995-1022.
[15] For further discussion on the GTPP, see 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. See also Stuart Little, Geoff D Nightingale, and Alan Fenwick, "Development of Tax Policy in New Zealand: The Generic Tax Policy Process" (2013) 61 *Canadian Tax Journal/Revue Fiscale Canadienne*, 1043.
[16] Sawyer, above n 15.
[17] Sawyer, above n 15.

3. Operational phases: detailed policy design; formal detailed consultation and communication; ministerial and Cabinet signoff of detailed policy;
4. Legislative phases: drafting of legislation; ministerial and Cabinet signoff of legislation; introduction of bill; select committee phase; passage of legislation; and
1. Implementation and review phases: implementation of legislation; post-implementation review; identification of remedial issues

New Zealand makes use of variants of Adam Smith's cannons or principles, namely: equity/fairness, efficiency/economy and simplicity (linked in part to improving certainty and reducing complexity). Convenience receives less emphasis, although digitalisation, for many, opens up greater convenience for interacting with Inland Revenue.[18]

The VUWTWG utilised the following principles in assessing the NZ tax system:[19]

1. Efficiency and growth
2. Equity and fairness
3. Revenue integrity
4. Fiscal cost
5. Compliance and administration cost
6. Coherence

Principles 1 and 2 fit within Smith's canons of equity/ability to pay and economy, with principles 4 and 5 also relating in part to Smith's canon of economy. Principles 3 and 6 are reflective of the complexities of modern day life and business, and support the BBLR and, to a lesser extent, the LSF. Again, most of these principles relate to financial concepts and not to overall well-being. A unique feature of the VUWTWG, unlike other reviews of NZ's tax system, is that the NZ Government did not establish it. As such, it did not have formal terms of reference. Rather it determined its own scope and objectives.[20]

In its 2010 report, the VUWTWG concluded that NZ's tax system faced three critical issues:[21]

1. its structure was inappropriate;
2. it lacked coherence, integrity and fairness; and
3. significant risks to the sustainability of the tax revenue base existed.

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[18] For an overview of how digitalisation is negatively impacting on some taxpayers, see Adrian Sawyer, "The Impact of Digital Delivery on Taxpayer Assistance – A New Zealand Perspective", *Paper presented at the Fourth International Conference on Taxpayers Rights*, University of Minnesota Law School, Minneapolis, 23-24 May 2019.
[19] VUWTWG, *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, January 2010), , at 15; available at: http://www.victoria.ac.nz/sacl/cagtr/twg/report.
.[20] VUWTWG, *Scope and Objectives of the Tax Working Group* (2009); at: https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/twg/publications/scope-and-objectives-of-the-twg.pdf.
[21] VUWTWG, above n 19.

The VUWTWG established six principles for reform (overall coherence of the system; efficiency and growth; equity and fairness; revenue integrity; fiscal cost; and compliance and administration costs). It also made a number of significant recommendations for reform, including significant changes to tax rates, structures and bases. The VUWTWG referred its recommendations to the NZ Government for its consideration.

At this point the 'success' of the VUWTWG becomes clearer in terms of shaping government tax policy adopting traditional tax principles. In its Budget 2010, delivered on May 20, the NZ Government announced a major overhaul of the NZ tax system, adopting many of the recommendations of the TWG.[22] Specifically the NZ Government determined it would:

1. lower the top marginal tax rates for individuals (to 33%) and Portfolio Investment Entities (PIEs) (to 28%);
2. lower the rate for companies to 28%;
3. increase the Goods and Services Tax (GST) rate from 12.5 to 15%;
4. remove depreciation from buildings for tax purposes; and
5. make changes to the taxation of closely held companies, amongst others.

Overall, these changes represented a rebalancing of the tax burden, effectively shifting more away from wealthier taxpayers to middle to lower income taxpayers (especially with the impact of the increase in GST). In one respect, the broad-based GST reflects horizontal equity, but does not address vertical equity (as measured by ability to pay) or the regressive impact it has. This traditional approach in NZ does not directly consider the impact of the changes on overall wellbeing. That said adjustment made to tax expenditures and welfare entitlements reduced the impact of the GST increase on lower income earners.[23]

In a speech from the then Secretary to the Treasury, John Whitehead, in 2010, the first signs of a wider consideration of tax policy to including some form of living standards is evident. Whitehead, prior to making his concluding observations, states:[24]

> Let me suggest two tests which might help you consider whether tax changes are a step in the right direction. First, there's what economists call 'horizontal equity'. Put broadly, and recognising that nothing is perfect in this world, *the question is whether the tax reforms lead in a direction towards people in similar circumstances, on the same income*

[22] For details of the New Zealand Budget 2010 announcements see: http://www.treasury.govt.nz/budget/2010. See also Adrian Sawyer, "2010 Budget Brings Biggest Tax Changes in 25 Years" (2010) 58 *Tax Notes International*, (June 7) 790-793.

[23] For further discussion on the VUWTWG's impact, 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. See also Robert Buckle, Are there any foundations for successful tax reform? Presentation to the MCA Biennial Tax Conference, Perth, (19-20 March 2019); available at: https://www.researchgate.net/publication/334281794_Are_there_any_foundations_for_successful_tax_reform.

[24] John Whitehead, "Raising Living Standards: The Role of Tax Policy", Speech delivered by John Whitehead, Secretary to the Treasury AGM of the New Zealand Institute of Managers (31 March); available at: https://treasury.govt.nz/publications/speech/raising-living-standards-role-tax-policy (emphasis added).

> *(whatever the source), paying the same amount of tax*. The second test is one of 'vertical equity', and recognises ability to pay. Given similar circumstances, we might expect people on higher incomes to pay more income tax than those on lower incomes. *This test is then around the extent to which any reform begins the process of addressing the situation where the opposite applies and the burden, in reality, falls disproportionately on those with less resources*.
>
> There is a third test, perhaps more controversial, but one attractive to many economists because it may *help to raise the overall standard of living – reducing absolute poverty –* even if relative positions may end up more dispersed. This test would look at the *opportunity and incentives the tax system provides people to help themselves by saving, or acquiring higher and better-paying skills, or just by shifting their leisure/work time balance*."

Whitehead concludes by reinforcing that five key objectives need balancing, namely: efficiency and growth; equity; fiscal integrity; compliance and administration; and revenue raising.[25] Continued support for the BBLR appears in a speech given by the outgoing Secretary to the Treasury, Gabriel Makhlouf in 2016.[26] Makhlouf comments:

> "The *stability and certainty that the BBLR approach provides is extremely valuable, along with the Generic Tax Policy Process*. One does not need to look very hard for examples of where uncertainty in other countries' tax systems has contributed to poor economic performance and even economic, and sometimes political, disruption. In *assessing tax policies against the BBLR approach, we use the principles in the Living Standards Framework* …
>
> For example, we think about the impact of tax policies:
>
> - on growth, and how tax rates affect people's decisions to work, save or invest or how to ensure our tax regime is competitive and makes it easy for international firms to invest
> - on equity, and the redistributive effects of the system
> - on cohesion, and how we ensure that everyone pays their fair share and people don't restructure their affairs in order that others bear their share
> - on resilience, and how tax can act as an automatic stabiliser in the economy, and
> - on sustainability, to ensure we continue to raise sufficient revenue.
>
> We *also consider other important principles beyond the Living Standards Framework, such as simplicity, integrity and the costs of administration*, for both taxpayers and the government."

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[25] Ibid.

[26] Gabriel Makhlouf, "Securing New Zealand's Prosperity: The Economy, Living Standards and Tax", Speech delivered by Gabriel Makhlouf, Secretary to the Treasury Chartered Accountants Australia/ New Zealand 2016 Tax Conference (17 November); available at: https://treasury.govt.nz/publications/speech/securing-new-zealand%E2%80%99s-prosperity-economy-living-standards-and-tax (emphasis added).

Makhlouf also states that Inland Revenue's Business Transformation (BT - the transformation of the tax administration system) "… as one of the most significant investments the Government is undertaking."[27] Most recently, Makhlouf comments in his speech to the International Fiscal Association (IFA) Conference in Queenstown (NZ) in March 2019:[28]

> "*Tax, as a source of revenue for the public services that underpin our standard of living, is essentially about our collective wellbeing*: our health, education, security, welfare, and environment, amongst others. *The tax system* – and to be clear, when I talk about a 'tax system', I include policy design, legislative provisions and their administration – *is an important enabler of wellbeing and living standards*."

Later Makhlouf states:[29]

> "… [T]he *LSF offers the opportunity of a paradigm shift in public policy-making as a whole and not just in improving the Treasury's own capability.* We are aligning our stewardship of the public finance system with an intergenerational wellbeing approach and, in turn, the LSF can support government agencies become more cohesive, so that public policy on wellbeing, spending, and other government interventions is aligned to improving intergenerational wellbeing. *It also applies to tax*."

Makhlouf once again endorses the BBLR model, emphasising that the GST is the best example of this in operation, and that the GTPP, alongside the BBLR, provide valuable stability and certainty. In relation to the impact of the LSF, Makhlouf offers his personal view:[30]

> "In my view, *both can also be complemented by the LSF as it encourages us to think more broadly about the impacts of change, and helps us to identify opportunities where tax can play a positive role in enhancing wellbeing*.
>
> In *assessing tax policies against the BBLR approach, we already use principles in the LSF*. For example, we think about the impact of tax policies on equity (and the redistributive effects of the system), on cohesion (and how we ensure that everyone pays their fair share and people don't restructure their affairs in order that others have to pick up the load) and on resilience (and how tax can act as an automatic stabiliser in the economy).
>
> Both the Treasury and Inland Revenue are committed to the tax policy process we have in place. Both of us share strong and fairly conventional tax policy frameworks: in short,

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[27] Ibid. See also Adrian Sawyer, "Digitalisation of Tax: Recent International Developments", *Presentation to Singapore Management University – TA Research Centre*, 17 April 2019, Singapore.
[28] Gabriel Makhlouf, "Tax and the Living Standards Framework", Speech to the International Fiscal Association, Queenstown (1 March 2019), available at: https://treasury.govt.nz/publications/speech/tax-and-living-standards-framework (emphasis added).
[29] Ibid (emphasis added).
[30] Ibid (emphasis added).

> our *common view is that taxes should distort behaviour as little as possible while achieving revenue objectives and contributing appropriately to wider policy goals. The challenge is to identify those wider policy goals where tax can make a positive contribution and not introduce damaging distortions*."

In all this suggests considerable work has been done to enhance the BBLR and GTPP through incorporation of the LSF gradually over a number of years. There is no suggestion that NZ looks to be moving away from the BBLR and use of the GTPP, both of which have proved to be beneficial for NZ's approach to developing tax policy. The LSF suggests both the BBLR and GTPP are in need of some refinement. The paper now turns to evaluate how the LSF has been developed and applied in NZ.

4.0 APPLICATION OF THE LIVING STANDARDS FRAMEWORK IN NEW ZEALAND

4.1 The Treasury's LSF and Well-being generally

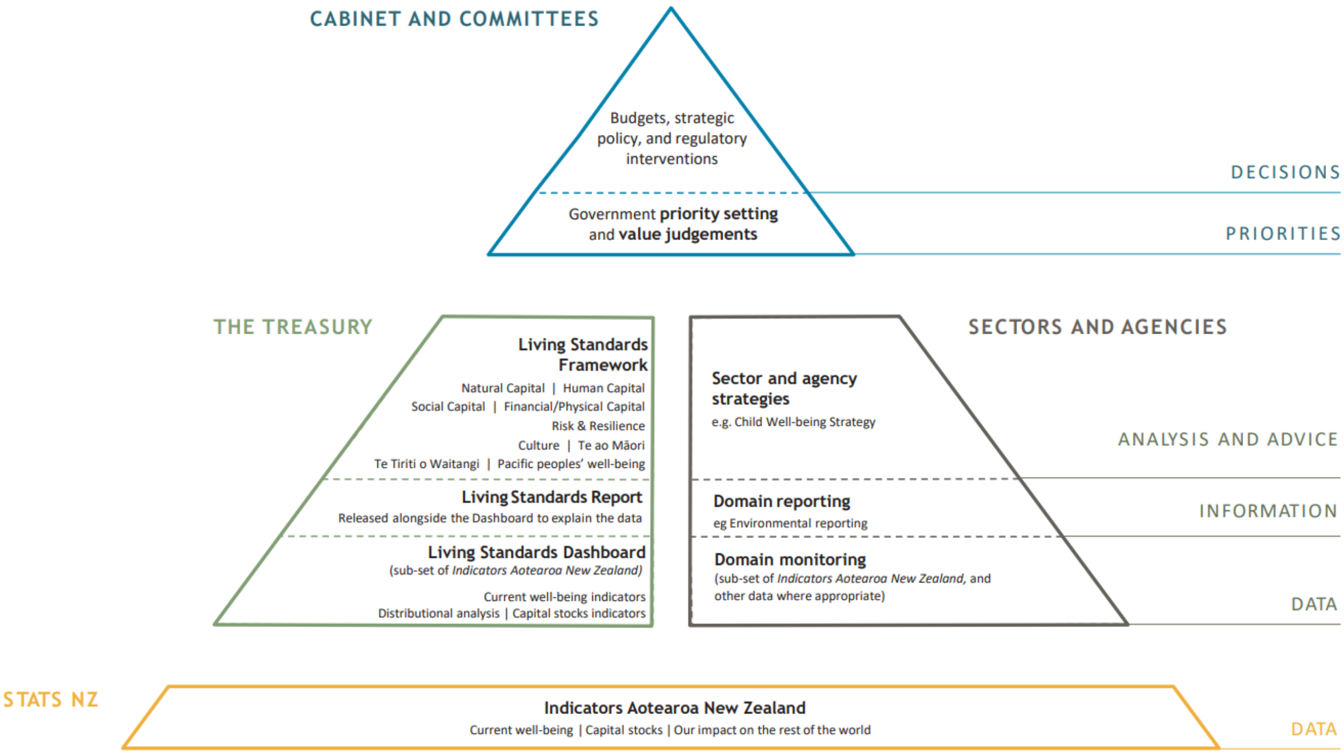
Running alongside the 2017-2019 TWG's review of the NZ tax system, the NZ Treasury had been refining its framework for assessing well-being, the LSF, in NZ. Before reviewing the TWG's work, it is important to outline the work of the NZ Treasury on developing the LSF. The LSF is to be a crucial component of future fiscal budgeting by the NZ Government such that the focus of the annual Budget is to extend beyond economic and fiscal policy. The LSF will inform the NZ Government's investment priorities and funding decisions. In order to meet these priorities and decisions, changes to the tax base and rates could arise.

However, any changes must be in accordance with the Public Finance Act 1989 (PFA). Essentially the PFA provides the legal framework for the financial management system of the NZ Government. Specifically it controls the financial activity of the NZ Government and the manner in which the NZ Parliament oversees the Executive's expenditure of public money. The PFA provides the basis for the appropriation and management of public resources. It also prescribes the reporting requirements for the Crown, government departments, and Crown entities.

The current NZ Coalition Government introduced amendments to the PFA to enable extension of the measurement of NZ's success against social, cultural and environmental indicators, not just economic measures such as GDP growth. These measures guide budget decisions with effect from Budget 2019.[31] The proposed well-being approach is as follows:

[31] See the initial proposals in a Treasury discussion document: NZ Treasury, *Embedding wellbeing in the Public Finance Act 1989* (NZ Government, September 2018).

Figure 2: Using a well-being approach to improve strategic decision-making[32]



Thus, the NZ Treasury's LSF is a tool designed to assist and enable sustainable intergenerational well-being to reside at the centre of its policy advice, government expenditure and long-term management of NZ's asset stocks (natural, social, human and financial/physical). Statistics New Zealand is developing Indicators Aotearoa New Zealand as a multiple data source for measuring wellbeing, initially at the national level, to align with the LSF.

Weijers and Morrison observe with respect to the LSF:[33]

> "The process outlined above started over a decade ago…. In 2011 the New Zealand Treasury published its Living Standards Framework as part of an international drive to develop at least conceptual wellbeing frameworks for policy. But Treasury went further still by developing the Living Standards Tool (Treasury, 2014) to aid in policy evaluation."

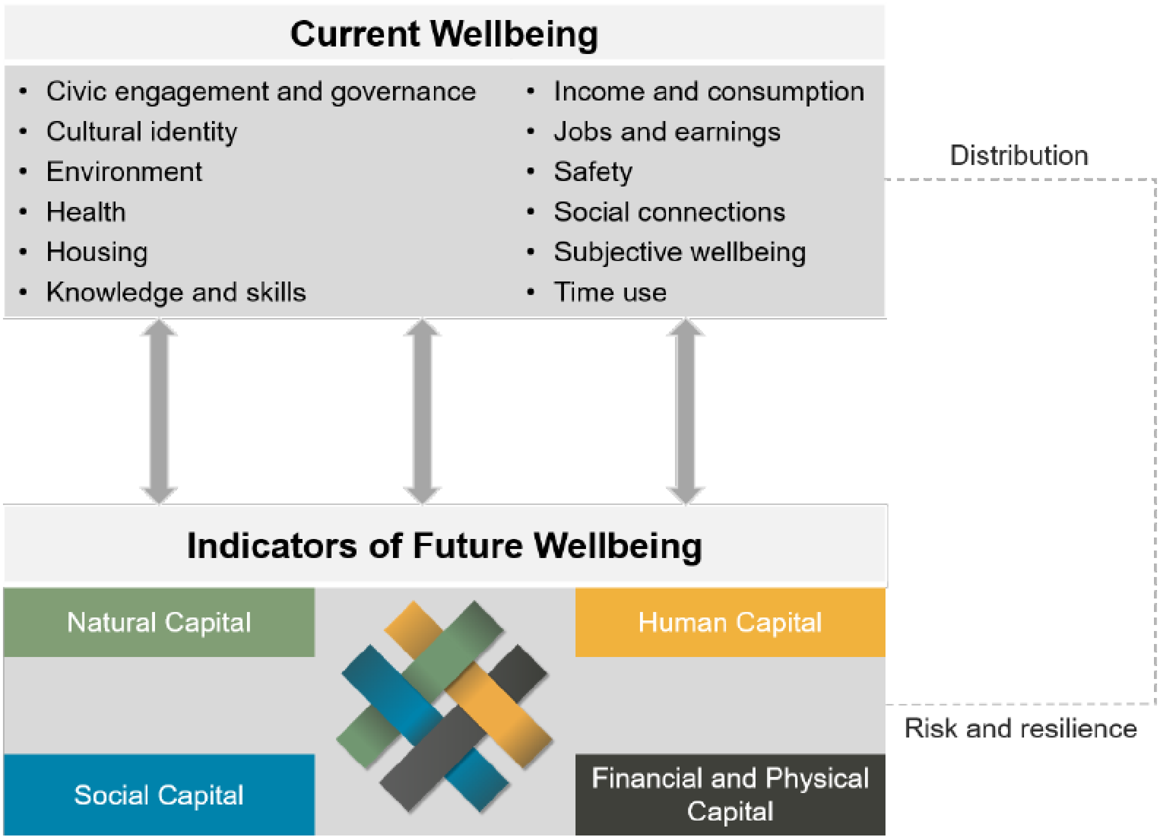
[32] Ibid.
[33] Dan Weijers and Philip S Morrison, "Wellbeing and Public Policy: Can New Zealand be a leading light for the 'wellbeing approach'?" (2018) 14(4) *Policy Quarterly* 3, at 6. See also NZ Treasury, *Working towards Higher Living Standards for New Zealanders*, (Wellington: New Zealand Treasury, 2011), http://www.treasury/govt.nz/publications/research-policy/tp/higherlivingstandards/tphlsmay11.pdf. NZ Treasury, *Living Standards: the heart of our policy advice*, (Wellington: New Zealand Treasury, 2014), https://treasury.govt.nz/sites/default/files/2017-12/sp-livingstandards-advice-oct14.pdf.

Weijers and Morrison conclude:[34]

> "All told, even though New Zealand is one of a few countries leading the field, *a range of challenges stand in the way of New Zealand becoming a leading light in the wellbeing approach to public policy*. Most notable is the *conceptual challenge of creating a policy-apt model of wellbeing*, one that works at the individual, community and national level. …
>
> There also remains the complex, conceptual and technical challenge of turning available data on wellbeing into policy-relevant information."

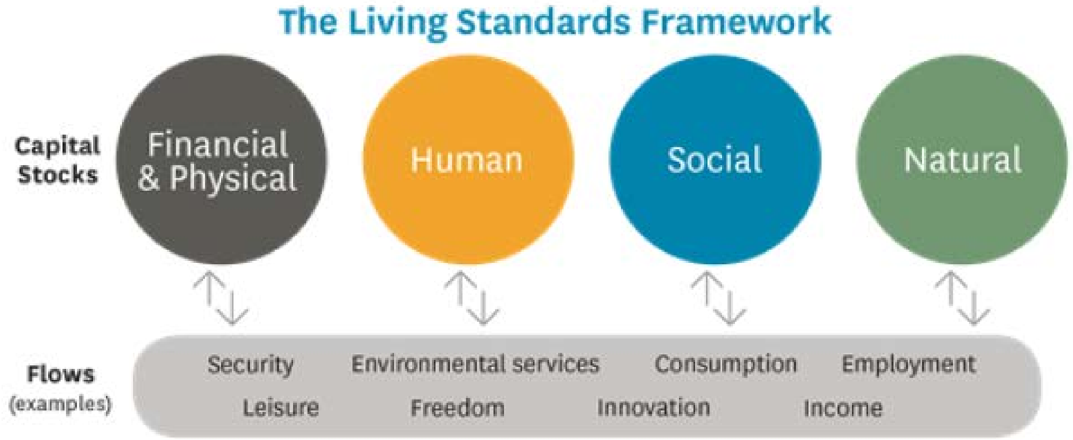
The LSF contains data measures across twelve areas, including health, housing, safety, and social connections, which are in most cases internationally comparable, a crucial aspect of the framework. It shows the current and future wellbeing of New Zealanders broken by their ethnicity, age, gender, region, family time and deprivation area over time. Expanding upon the information in Figure 2, the NZ Treasury's LSF is as follows:[35]

Figure 3: NZ Treasury's Living Standards Framework and Four Capitals



[34] Weijers and Morrison, above n 33, at 10 (emphasis added).
[35] NZ Treasury, above n 2, at 4. See: https://treasury.govt.nz/sites/default/files/2018-12/lsf-background-future-work.pdf. See also TWG Secretariat material provided to the TWG.

Figure 3: Continued



As is readily discernible from Figure 3, this framework extends well beyond financial matters in assessing the well-being of New Zealanders. However, it is important to recognise that the principles of tax policy design that are traditionally used are not set to one side under the LSF. Rather, integration of these new perspectives provides a more comprehensive evaluation of tax systems and tax policies within the LSF. This wider perspective is not new; debate has continued for several decades between economists and social scientists of the factors and metrics that government should be measuring to demonstrate success and improvements in society.[36]

Well-being has been included within the NZ Local Government Act 2002 (LGA). The LGA provides "… for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach". The previous National-led Government removed this provision when it took office in 2008. With the new Labour-led Government in 2017, this provision has recently been re-inserted. This highlights the 'politicised' nature of wellbeing in NZ.

Grimes observes that many local councils adopted programmes to promote aspects of well-being even without the legislative requirement to do so.[37] Grimes observes that:[38]

> "The Living Standards Framework domains are akin (but not identical) to Amartya Sen's 'capabilities' that contribute to well-being (Sen, 1999). The capitals (physical and financial; human; social; natural) represent resources available to support the well-being of future generations."

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[36] Further examples of the development of the LSF by the NZ Treasury appear in the Appendix to this paper (see Figure 5 and Figure 6).
[37] Arthur Grimes, "Well-being at the Local Level" (2019) 15(2) *Policy Quarterly* 44, at 46.
[38] Ibid, at 45. See also Amartya Sen, *Development as Freedom*, (New York: Anchor Books, 1999).

Grimes continues:[39]

> "Perhaps the greatest implementation challenge highlighted by practitioners is the *change in mindsets and behaviours required of both local politicians and local council officials*. These changes include a shift to incorporating minority voices into decision-making (e.g. through inclusion local iwi representatives on decision-making bodies). They also include a shift to according equal status to social, environmental and cultural well-being to that traditionally accorded to economic well-being. At the political level, this has the added complication of taking local voters along with the requisite changes."

While Grimes is evaluating well-being at a local government level, the issues that arise are equally relevant at the national level (and arguably more poignant). This change in focus is even more relevant to implementing well-being at the country level.

Returning to moves to advance the LSF and well-being at the national level, Humpage observes that:[40]

> "The Labour–New Zealand First government has since commissioned independent research to develop a dashboard of intergenerational well-being that measures these forms of capital. The research concluded that a *minimum of twenty-one (but possibly more than forty) indicators were required* to cover wide-ranging issues such as health, housing, jobs and earnings, safety, and environmental quality. To *ensure that the findings are internationally comparable, other indicators may also be needed,* while distributional issues will require breakdowns by age, sex, ethnicity and so on. …
>
> More worryingly, *many business leaders support the shift away from focusing only on financial performance, suggesting that they feel reassured that not much will change*."

Conal Smith provides a critical analysis of Treasury's *Living Standards Dashboard* in his report with respect to intergenerational well-being.[41] This analysis follows the 2017 'refresh' of the LSF to improve its usefulness in supporting the NZ Treasury's policy advice and medium-term strategy. This refresh also sought to bring the LSF more closely into line with international practice by reflecting recent developments in the economics of wellbeing. In moving forward, the report's author seeks:[42]

1. *For NZ Treasury*:
   - A response
   - A clear visual statement of the LSF

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[39] Grimes, above n 37, at 47-48 (emphasis added).
[40] Louise Humpage, "Ideas from Across the Ditch" (2019) *Arena Journal* No 51/52, at 20, at 21 (emphasis added).
[41] Conal Smith, "Treasury Living Standards Dashboard: Monitoring Intergenerational Wellbeing" *Kōtātā Insight (Behavioural Economic & Social Analysis)* (June 2018).
[42] Ibid, at 42-44.

- A review of the LS dashboard
- Revising the 'physical and financial capital' domain to 'produced capital'
- Support the development of an evidence base on the impacts of specific policy initiatives on wellbeing
- Revise NZ Treasury's advice on cost-benefit analysis

2. *For Statistics NZ*
   - Commence systematic reporting on the elements of intergenerational wellbeing
   - Consider the size and frequency of the NZ General Social Survey
   - Include time use data for several indicators in the LSF

Other suggestions offered in Conal Smith's report include greater productivity analysis, and ongoing development of the LSF. Thus, NZ's approach to well-being policy would seem to rest on two main pillars: a conceptual framework that is founded on the Treasury's LSF, and a robust set of indicators produced in large part by Statistics New Zealand as part of its Indicators Aotearoa New Zealand project.[43] With the LSF and associated indicators yet to be finalised, it is difficult to fully assess their impact at this time.

4.2 Tax Working Group (2017-2019)

To the best of the current writer's knowledge, the 2017-2019 Tax Working Group Te Awheawhe Tāke (the TWG) is the first significant instance of adoption of the wider LSF in reviewing the appropriateness of an existing tax system. In its *Interim Report* released in September 2018,[44] the TWG indicated that it believed it was important to incorporate a broad conception of well-being and living standards in its review of the NZ tax system. A quick review of the TWG's Terms of Reference indicates a wider perspective of evaluation than with previous tax reviews.[45] Specifically, the TWG utilised both the LSF and the principles of good tax policy design, but to a limited degree.

The principles of good tax policy design used by the TWG draw upon previous tax reviews, in both NZ and globally. These principles are:[46]

1. efficiency,
2. equity/fairness,
3. revenue integrity,
4. fiscal adequacy,
5. compliance and administration costs, and

[43] Statistics New Zealand, *Indicators Aotearoa New Zealand – Ngä Tütohu Aotearoa* (NZ Government, 2018), see https://www.stats.govt.nz/indicators-and-snapshots/indicators-aotearoa-new-zealand-nga-tutohu-aotearoa/.
[44] TWG, *Future of Tax: Interim Report* (September 2018), available at: https://taxworkinggroup.govt.nz/resources/future-tax-interim-report.
[45] See TWG, *Terms of Reference* (2017), at https://taxworkinggroup.govt.nz/resources/terms-reference-tax-working-group.
[46] Ibid, n 39, at 13. These principles underlie the analysis in the TWG's *Final Report*.

6. coherence.

To this list, the TWG used two further principles: predictability and certainty. This means enabling taxpayers to understand clearly their obligations, before those obligations are due. In its *Final Report*,[47] the TWG restated the frameworks and principles without adding to them. It is clear that both the LSF and the traditional principles (as espoused previously by the Secretary to the Treasury) informed their deliberations, including their assessment of the structure, fairness and balance of the NZ tax system. The TWG states:[48]

> "40. Over the past year, the Group has carefully examined the tax system in order to form a view about its overall structure, fairness and balance. Although the tax system has many strengths, the Group has found that the *tax system is not particularly progressive and relies on a relatively narrow range of taxes* (although the taxes that are levied by New Zealand have broad bases).
>
> 41. The outcomes generated by the tax system reflect deep structural choices about what is taxed and what is not taxed. Two issues have been particularly prominent in the Group's discussions: *the treatment of capital gains and the treatment of stocks of natural capital*. In the Group's view, *these structural choices have significant impacts on the fairness and balance of the tax system as a whole*."

With respect to fairness, Simonoff argues that the TWG failed to appreciate a wider concept of fairness. She states:[49]

> "Fundamentally, *the agenda of tax fairness is misguided, and we should be deeply sceptical of the principles underpinning it*. No one, since the dawn of civilization, ever wanted their grain taken away from them, and presenting the issue in the moral light of fairness is not going to change that.
>
> The recent Tax Working Group (TWG) report was a classic example of the fairness play. *It was fundamentally aimed at fairness as a concept, and how the system should be reformed to become 'more fair' – that was even part of the title of the report*. But in looking at the treatment of Goods and Services Tax, the TWG had an opportunity to consider fairness of outcome as something that can be achieved through the tax system.
>
> …
>
> Put simply, *there is no such thing as a fair tax*. So if we want to accomplish anything in building a better society, we should *focus our efforts on delivering fairer outcomes* and leave the tax collector to their duties, benevolent or not."

[47] TWG, above n 6, at 25-28.
[48] Ibid, at 35 (emphasis added).
[49] Oksana Simonoff, 'We need to completely rethink what 'fairness' means when it comes to tax' (28 May 2019); available at: https://www.grantthornton.co.nz/insights/we-need-to-completely-rethink-what-fairness-means-when-it-comes-to-tax/ (emphasis added).

In the current writer's view, moves to import 'fairness' directly into the GST should be avoided, lest we see other forms of unfairness emerge and we compromise well-established tax principles. There are many other ways to improve fairness (or more generally well-being), such as through using the tax system combined with the welfare system, and with supplements to family incomes and various tax credits.

Returning to the LSF, this identifies four capital stocks that are crucial to well-being:[50]

1. financial and physical capital;
2. human capital;
3. social capital; and
4. natural capital.

Well-being depends on the sustainable development and distribution of the four capitals outlined above. That said, relatively little use of the LSF is evident in the TWG's *Final Report*. However, one good example of progress is apparent with respect to incorporating a wider view of evaluating tax policy in relation to ecological and environmental taxes. Chapter Four of the *Final Report* provides an excellent overview of how a much wider perspective to evaluating how the tax system can support enhancement of the environment is possible. It concludes:[51]

> "134. The tax system can play a greater role in delivering positive environmental and ecological outcomes in New Zealand. It can help change behaviours and fund transitions towards a more regenerative, circular economy. …
>
> 142. *This chapter identifies opportunities for using tax to achieve positive environmental and ecological outcomes. Further work is needed to rigorously assess how taxes can complement other environmental policy measures and to work through the design principles identified in this chapter*."

A second area is how Te Ao Māori perspectives can inform the understanding and application of the LSF. At the centre of this framework is the concept of waiora (well-being), which draws upon four tikanga principles:[52]

1. manaakitanga (care and respect);
2. kaitiakitanga (stewardship);
3. whanaungatanga (the relationships/connections between us); and
4. ōhanga (prosperity).

This framework appears in Figure 4:[53]

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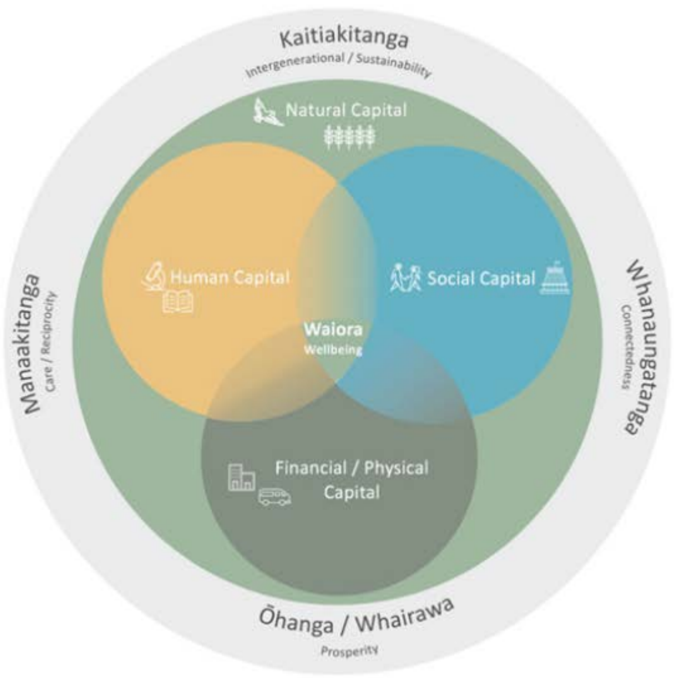
[50] NZ Treasury, above n 2.
[51] Ibid, at 54 (emphasis added).
[52] TWG, above n 6, at 25-27.
[53] Ibid, at 27.

Figure 4: Te Ao Māori perspectives and the LSF

Bringing together Te Ao Māori perspectives and the Living Standards Framework



The TWG observed with respect to Te Ao Māori perspectives in its *Final Report*:[54]

> "3. The Group also considers it is *important to bring a broad conception of wellbeing and living standards to its work, including a consideration of Te Ao Māori perspectives on the tax system*. This approach reflects the composition of the Group, which includes members with a diverse range of skills and experience, including from beyond the tax system.
>
> 4. As part of this work, the Group has *begun to develop a policy framework that would bring together concepts from Te Ao Māori, the four capitals of the Living Standards Framework, and principles of tax policy design*.
>
> 5. This framework – He Ara Waiora – draws upon the concepts of waiora (wellbeing), manaakitanga (care and respect), kaitiakitanga (stewardship/guardianship), whanaungatanga (relationships and connectedness) and ōhanga (prosperity).
>
> 6. The Group's work on He Ara Waiora appears to have resonated with many people. In light of this feedback, *discussions have been initiated with the Treasury about how He Ara Waiora could inform the ongoing evolution of the Living Standards Framework*."

[54] TWG, above n 44, at 7 (emphasis added).

As noted above, He Ara Waiora is included in a discussion paper written by the TWG Secretariat released on 20 September 2018.[55] He Ara Waiora provides a prototype framework that integrates the four capital stocks in the LSF with established principles of tax policy design. More research, as well as testing, by the NZ Treasury and Inland Revenue, will advance the LSF in this regard. The TWG also identified the cascading model proposed by Mānuka Henare as a model warranting further investigation,[56] which the current writer supports.

The outgoing Secretary to the Treasury, Gabriel Makhlouf, in a recent speech concludes with aspiration:[57]

> "Let me draw this speech to a close by touching briefly on the development of He Ara Waiora and the TWG's consideration of te ao Māori perspectives. The *TWG has made an important contribution towards encapsulating a wellbeing framework within this broader world view and the Treasury is now considering how He Ara Waiora could inform the ongoing evolution of our Living Standards Framework.*
>
> *We all have a lot to gain from incorporating te ao Māori into our world view*. We are ambitious for New Zealand and for the intergenerational wellbeing of New Zealanders. *The LSF offers a significant opportunity for both the Treasury and the wider policy community to change the paradigm of public policy-making. This applies to tax as much as it does to health and education and any other policy*."

Scobie and Love comment with respect to a Māori centric framework (in relation to tax policy):[58]

> "The framework is a draft but reports suggest that, while there is broad support for the framework among Māori, *more engagement and implementation is required to turn the good intent of the process into practical and measurable progress*. …
>
> If implemented in a genuine and committed way, the *framework could be world-leading in providing alternatives to reductive dominant development perspectives as well as assist the New Zealand government in meeting its obligations to Māori* through the principles of the Treaty of Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP')."

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[55] TWG Secretariat, *Tikanga Framework: Presentation to the Tax Working Group* (20 September 2019), available at: https://taxworkinggroup.govt.nz/resources/twg-bg-3986058-tikanga-framework.

[56] Matthew Scobie and Tyron Love, *The Treaty and the Tax Working Grou*p, Working Paper, University of Canterbury (June 2019) for further analysis of inclusion of Māori centric frameworks.

[57] Makhlouf, above n 27 (emphasis added).

[58] Scobie and Love, above n 56, at 3 (emphasis added). See also UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution adopted by the General Assembly*, 2 October 2007, A/RES/61/295.

In relation to the TWG's analysis of a CGT, Scobie and Love conclude:[59]

> "While the benefits are clear that a Māori perspective on the development and implementation of an equitable tax system can have with nuance and time, these benefits require effective communication. *An example of ineffective communication is provided by the failure of the TWG to explain the benefits of a capital gains tax ('CGT'). This failure allowed opponents of CGT to fill the communication vacuum with misinformation*. Further implementation of a Māori worldview in national governance faces similar challenges both from recalcitrant elements that reject well-established Treaty principles, and media and mainstream commentary bias against engagement with alternative perspectives. *Achievement of genuine Government-iwi partnership requires clear and concise strategies that communicate to the public why Māori engagement in developing tax policy is not only an obligation on the Crown under the Treaty, but will result in positive outcomes for all New Zealanders*."

The NZ Government's response to the laid down by Scobie and Love warrants close attention over the coming months. The failure by the major coalition partner, the Labour Party, to convince NZ First Party coalition member to accept further work on a CGT represents a backward step in advancing the LSF. Other relevant papers provided to the TWG during its deliberations includes several reports from the TWG Secretariat. These include a paper on Tax and Fairness, the TWG's Assessment Framework, and an Introduction to Frameworks for Evaluating Tax Reform.[60]

4.3 Budget 2019

New Zealand is the first central government globally to use wellbeing criteria to drive budget decisions. Unlike most government budgets, there was little content in Budget 2019 dealing with taxation directly. This is somewhat of a surprise given that of the 99 recommendations of the TWG, the NZ Government only rejected a handful (including the CGT). To quote a cliché: this may reflect the *calm* before the *storm*.

As part of its overall fiscal strategy, a clear reference to well-being, as reflected in intergenerational fairness, appears in the Budget Policy Statement of December 2018. Specifically it states:[61]

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[59] Ibid, at 16 (emphasis added, footnotes excluded).

[60] TWG Secretariat, *Tax and Fairness: Background Paper for Session 2 of the Tax Working Group* (May 2018); at: https://taxworkinggroup.govt.nz/resources/twg-bg-tax-and-fairness; TWG Secretariat, *Tax Working Group Assessment Framework: Decision Paper for Session 3 of the Tax Working Group* (May 2018); at: https://taxworkinggroup.govt.nz/resources/twg-bg-tax-working-group-assessment-framework; and TWG Secretariat, *An Introduction to Frameworks for Evaluating Tax Reform: Discussion Paper for Session 2 of the Tax Working Group* (May 2018); at: https://taxworkinggroup.govt.nz/resources/twg-bg-an-introduction-to-frameworks-for-evaluating-tax-reform.

[61] Grant Robertson, *Budget Policy Statement* (13 December 2018), at 24 (emphasis added).

> “**Having a strong fiscal strategy is a pre-requisite to maintaining and improving wellbeing**
> *Balancing the Government’s revenue and expenses over time helps to ensure intergenerational fairnes*s. Maintaining a sufficient debt buffer allows the Government to respond to negative shocks. …
>
> *The Government will ensure a progressive taxation system that is fair, balanced and promotes the long-term sustainability and productivity of the economy.* The Government believes that we need a better balance in our tax system to support the productive sector and ensure all taxpayers are paying their fair share. *The Tax Working Group is considering whether improvements can be made to the structure, fairness and balance of the tax system*. Final recommendations are due to be provided to the Government in early 2019.”

As noted earlier, the NZ Government’s response to reject the TWG’s recommendation for a CGT, as a major tool to bring about greater fairness, represents a significant lost opportunity. It also raises the issue of whether the NZ Government is fully committed to improving well-being through use of the tax system.

Two tax measures appear in pre-Budget announcements: GST on telecommunications, and repeal of racing totaliser duty. The NZ Government proposes to align the GST treatment of telecommunications services with the rules for remote services. This will mean the repeal of special rules applying to telecommunications services in the GST Act. This proposal would change levying of GST on mobile roaming services, such that the GST treatment depends on the residency of the consumer. The 15 percent standard GST rate would apply to outbound roaming services, while inbound mobile roaming services provided to non-residents in New Zealand would no longer be subject to GST. The proposal indicates these changes will apply from 1 October 2020. Phasing out of the racing totaliser duty occurs over a three-year period. The betting levy represents 4% of betting profits, which amounted to $NZ13.9 million in 2018.

A further tax announcement post-Budget 2019 concerns a digital services tax signalled for implementation in 2020. A discussion document was released exploring options for taxing the digital economy. A 2–3 percent tax on turnover is one of the templates under consideration.[62] The other option is to change the current international income tax rules (“the international tax framework”). This is currently the subject of OECD discussion.[63] The G20 has endorsed work being undertaken by the OECD to address shortcomings in global taxation through two main avenues. The first is a framework that would help resolve questions over when tax ought to be paid, and whether it collection occur where buyers or sellers are located. The second would

[62] Grant Robertson and Stuart Nash, *Options for taxing the digital economy: a Government discussion document* (NZ Government, June 2019).
[63] See further: OECD, *OECD/G20 Base Erosion and Profit Shifting Project Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy: Inclusive Framework on BEPS* (May 2019); available at: https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf. The G20

ensure that multinational companies pay a minimum level of tax, thereby discouraging them from shifting profits to countries with lower levels of taxation. If a business pays less than the minimum, countries where it operates might be able to demand more tax.[64] Key jurisdictions appear to be waiting for the OECD's guidance in this area and, arguably, so should NZ. Most tax commentators would prefer NZ to wait and follow the OECD's lead, with opinion divided.[65]

The NZ Government's previously announced that an International Visitor Conservation and Tourism Levy (IVL) applies from 1 July 2019. Most international visitors entering New Zealand will incur a levy of $35 via a new electronic form known as the Electronic Travel Authority (ETA).

Budget 2019, referred to as "The Wellbeing Budget', contains little in terms of new tax policy. In terms of management of revenues and expenses, the Budget reiterates the Budget Policy Statement of December 2018, namely: "We will ensure a progressive tax system that is fair, balanced and promotes the long-term sustainability and productivity of the economy."[66]

Robertson, in Budget 2019, sets out the NZ Government's objectives for the tax system:[67]

- A system that is efficient, fair, simple, coherent and collects the tax that is due, on time and in full;
- A progressive tax and transfer system for individuals and families;
- 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 per cent of GDP; and
- A system that treats all income and assets in a fair, balanced and efficient manner.

These six principles incorporate aspects of wider social well-being rather than merely economic well-being. Budget 2019 reiterates that the NZ Government supports a sustainable BBLR framework for the tax system. This model ensures that taxes are fair and efficient, and that they do not impede economic growth. It also helps keep compliance costs low and minimises opportunities for avoidance and evasion. Tax policy development will continue to be "… inclusive, consultative and transparent"[68] (as represented by the GTPP). Importantly, investment in BT will continue, with the latest stage incorporating tax and welfare measures through a single linked platform.

[64] See RNZ, *G20 announces strategy for multinational tax loopholes* (9 June 2019), available at: https://www.rnz.co.nz/news/world/391620/g20-announces-strategy-for-multinational-tax-loopholes.
[65] For further analysis see: Adrian Sawyer, "Taxing the digital economy: will New Zealand tread where most will not go?" (2019) *Tax Notes International* (forthcoming).
[66] NZ Government, *The Wellbeing Budget 2019* (NZ Government, 30 May 2019), at 126.
[67] Ibid, at 127.
[68] Ibid, at 127.

Given the increase in spending in the Budget 2019, tax reform that would reduce the tax take is unlikely to be a success. The Tax Policy Work Programme (TPWP) is due to be refreshed and this should provide an indication of the NZ Government's priorities.[69] Measures that increase revenue are more likely to succeed, such as ensuring contractors pay their tax, prevention of tax loss trading, reviewing the taxation of closely held companies, taxing certain land sales and taxing digital services. The TWG in their *Final Report* identified most of these proposals as areas needing review. In many regards, the NZ Government's decision to reject the TWG's CGT proposal[70] is a catalyst for the minimal content on tax in Budget 2019. Through stating that no further work was required on the two CGT recommendations, the NZ Government has missed an opportunity to give further recognition to the LSF through improved cohesion in the tax system and adjustments to the growing imbalance in wealth. Instead, the NZ Government indicated that it intends to explore options for taxing vacant land, including the recommendation of the TWG.

One further area missed in Budget 2019, and which has an impact on fairness and to a lesser extent wellbeing, is 'fiscal drag', such that the NZ Government expects to raise an additional $NZ1.9 billion over the next five years. The current top rate of 33 percent applies to $NZ70,000 of income – a threshold last revised in 2008. An unconfirmed 'proposal' has surfaced, based on a NZ Treasury calculator, that the top income tax threshold could be raised from $NZ70,000 to $NZ90,000, paid for by increasing the top rate of tax from 33 per cent to 34.5 percent. The change would leave anyone earning less than $NZ130,000 a year better off, because the 30 percent tax rate applies to income between $NZ70,000 and $NZ90,000.[71] However, we should not expect to see any firm developments until after the September 2020 General Election, at the earliest.

Economic and Social Research Aotearoa make the following statement:[72]

> "In light of the proposals of the Tax Working Group perhaps the most notable absence regarding tax in this budget is the *failure to introduce a Capital Gains Tax*. This was of course prepared in advance by the Labour-led coalition's inadequate public information campaign regarding such a tax, which failed to clearly identify the broad-based benefits of a Capital Gains Tax or the way that such a tax would bring Aotearoa New Zealand in line with other leading industrialised countries. Likewise, this budget does *nothing to remedy the problem of the intergenerational transfer of privilege*, a problem that was expanded by the abolition of death and then finally gift duties in 2011. Likewise this budget falls profoundly *short of imagination by failing to consider other tax options, which include for example widely discussed and internationally implemented examples*

[69] See further: http://taxpolicy.ird.govt.nz/work-programme (as at 290 June 2018).
[70] See: Hon Grant Robertson and Hon Stuart Nash, Govt responds to Tax Working Group Report (2019) *Media Release* (17 April), http://taxpolicy.ird.govt.nz/news/2019-04-17-government-responds-twg-recommendations.
[71] See Tom Pullar-Strecker, "Raising top tax rate by 1.5% would pay for a big hike in the $70,000 threshold" (11 June 2019), available on Stuff website at: https://www.stuff.co.nz/business/113361003/raising-top-tax-rate-by-just-15-would-pay-for-big-hike-in-the-70000-threshold.
[72] ESRA, *Budget 2019 Report* (2019), available at: https://www.esra.nz/budget-2019-report/ (emphasis added, footnotes removed).

> *such as taxes on financial speculation, taxes on land ownership or on rent, let alone simple and administratively efficient measures for confronting wealth inequality* such as the wealth tax proposed by Thomas Piketty. To defend this budget, it would be possible to say again that this failure was secured in advance by a combination of the Budget Responsibility Rules and the prohibitively narrow remit given to the Tax Working Group."

The LSF and well-being approach is lending weight to arguments suggesting traditional tax principles are insufficient in themselves as a basis to evaluate the overall well-being of New Zealanders. Vigorous debate will continue for some time over the appropriate balance of economic principles and social well-being. Politicisation is fuelling this debate.

5.0 CONCLUSIONS

The paper assesses the impact that this more comprehensive approach to evaluation of tax policy has had on the recommendations of the TWG, including an assessment of whether the outcome may have differed if only traditional principles applied. The analysis suggests that with respect to most recommendations (with the exception of those relating to the environment and ecological taxes), there would be little difference. The TWG did not fully utilise the LSF and well-being approach across all of its analysis. Rather than be overly critical, the TWG was 'feeling its way' as the NZ Government had yet to produce its first Well-being Budget applying the LSF and other principles. This is more of a lost opportunity than a failure. The TWG, the NZ Treasury and the NZ Government, remain publicly committed to the BBLR, the GTPP and utilising traditional tax principles, with the latter to be expanded to incorporate (provisional) well-being measures. Adoption of Te Ao Māori perspectives alongside the LSF is a positive step forward.

From this evaluation, this new LSF model needs further work before it fully incorporates quantifiable well-being measures alongside traditional tax principles. Until this model moves from its primitive stages to early maturity, there is no mandate for all tax policy development in NZ without concurrent application of the traditional tax policy principles. Thus the LSF and well-bring approach should not be applied using the NZ model more widely outside of NZ at this time. Other jurisdictions that are interested in well-being as a measure should follow NZ's developments in this area closely. Expectations for the future is incorporation of the LSF into tax policy development, linking tax policy to the wider public expenditure programme.

The way in which the LSF is evolving endorses a grounded theory approach in that there is no benchmark to assess the LSF against, and it is likely that what will emerge will be a framework that fits NZ's cultural, societal and economic aspirations. Once the LSF and its application and measurement are 'finalised', it will be 'fit' for testing, both within and outside of NZ (in terms of potential transferability).

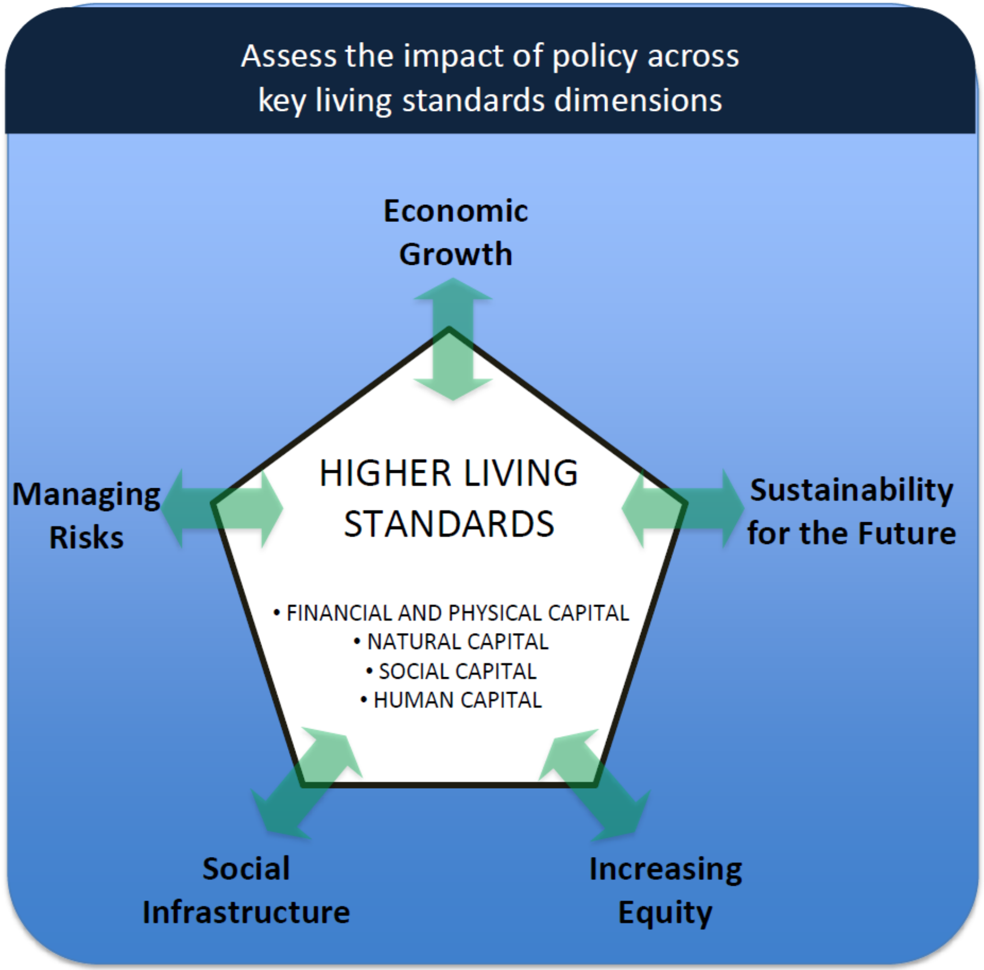
This paper comes with a number of limitations, including that the author is an 'outsider', and not privy to the internal work of the NZ Treasury, the TWG or other officials in developing the

LSF. The analysis rests entirely upon external documents and published material. Apart from having his own prejudices, the analysis is ‘free’ of political fundamentalism and lobby group agendas. That said the current writer supports retention of the traditional tax principles in developing tax policy, along with NZ’s BBLR and GTPP. Incorporation of wider accepted principles, perspectives and standards into developing tax policy, especially those forming component parts of the LSF, is an area worthy of further research. Taxation facilitates the expenditure programme of the government in providing public goods and services. The two need to work in tandem, not separately or in direct opposition. The future of the LSF in NZ, along with the incorporation of well-being more generally, reflects the commencement of a significant paradigm shift in budgeting and policy development in NZ.

Appendix One

Figure 5: Living standards: the heart of our policy advice (Source: The Treasury's Living Standards Framework 2018)

LIVING STANDARDS: THE HEART OF OUR POLICY ADVICE



Economic Growth

- Does this improve the opportunities or incentives for higher income or greater economic growth?
- Does this remove obstacles that hinder resources moving to their most efficient use, or enhance the ability of people to take up new opportunities?

Sustainability for the Future

- Does this impact on the capital stocks for future use (e.g. physical capital, human capital, or the sustainability of the environment)?

Increasing Equity

- Does this impact on the distribution across society (both intra and intergenerational)?
- Does this improve opportunities for people to improve their position?

Social Infrastructure

- Does this impact on core institutions that underpin our society (e.g. trust in the rule of law, democracy, Crown-Māori relationship, cultural identity)?
- Does this impact on the trust and connections between people?

Managing Risks

- Does this impact on NZ's ability to withstand unexpected shocks?
- In particular, does this impact on our macro-economic position (debt, deficits, inflation etc)?

Considering these five key aspects when developing your policy advice will ensure that Treasury consistently embeds Living Standards in our advice. It is an adjunct to, not a replacement for, a good evidenced-based process for developing free and frank advice. Need help or more information? See Girol Karacaoglu, Margaret Galt or Joey Au.

Figure 6: Living Standards Framework: Linking capitals and key areas (Source: The Treasury's Living Standards Framework 2018)