

TAXATION IN A BRAVE NEW WORLD
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A ‘PRINCIPLED’ APPROACH TO TAXATION? NEW ZEALAND’S LATEST
EXPERIMENT

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ABSTRACT

New Zealand embarked on a novel approach of utilising taxation principles through the development and eventual enactment of the Taxation Principles Reporting Act 2023 (the Act). Focussing on a new reporting obligation for the Commissioner of Inland Revenue (Commissioner), this new framework has emerged without fully utilising New Zealand’s well respected Generic Tax Policy Process (GTPP), along with employing a truncated period for submissions, followed by hurried enactment against a backdrop of longstanding political partisanship. While the revised version of the Bill was an ‘improvement’ over the original version, it remains highly politicised and partisan. With a change in government following the 2023 General Election the reporting framework may never eventuate. However, the legislative framework in the Act offers valuable lessons for other jurisdictions contemplating establishing new, or amending existing, fundamental tax principles.

1.0 Introduction

Taking a principles-based approach to tax policy has been a feature of many jurisdictions over the decades, albeit it with varied levels of effective application. Two such examples are Scotland and Wales with respect to utilising their devolved taxing powers. Principles such as equity or fairness have been frequently advocated as the basis for an expansive scope of what should come within taxable income (horizontal equity), and/or to apply progressive tax rates to give effect to vertical equity.

The contributions of Adam Smith, in particular his principles or canons of taxation, are well known.¹ Specifically Smith states:²

“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. ...

* Professor of Taxation, UC Business School and Faculty of Law, University of Canterbury (NZ). Email adrian.sawyer@canterbury.ac.nz. This sets out the state of play at 30 November 2023. The abstract has been revised since the original was submitted due to the enactment of the Bill on 29 August 2023 and the outcome of the 14 October 2024 General Election, leading to a new National-led coalition government. The paper is a revised version of a paper presented at the Democracy and Tax Administration workshop held at Kings College London on 8 September 2023.

¹ See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776). See also, Michael Fry, *Adam Smith's Legacy: His Place in the Development of Modern Economics* (Routledge, 1992).

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

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 Adam Smith meant by ‘equity/ability to pay’; for example, does this refer to horizontal equity only or does it also incorporate vertical equity? Numerous studies have evaluated Smith’s principles or canons,³ while various scholars and commentators’ have advocated for additional principles. These additional principles include:⁴

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.

Another important principle is *Coherence*, such that individual reform options should make sense in the context of the entire tax system. Thus, while a particular measure may seem sensible when viewed in isolation, implementing a proposal may not be desirable given how it would be integrated within the tax system as a whole. *Neutrality* has also been put forward on the basis that taxation should not bias decision making unless the intention is to alter behaviours, which as will be discussed later, is a point of contention with the new Taxation Principles Reporting Act 2023 (the Act) in New Zealand. More philosophically, the enacted principles do not incorporate what may be termed as expected standards of conduct or behaviour (such as ethical principles) by major actors in the tax system, such as taxpayers themselves, tax practitioners, government officials and politicians.

For those not familiar with New Zealand’s tax system and its operation, the following discussion provides an overview in order to ‘set the scene’ for the ensuing analysis of the Act. Since the mid-1980s, New Zealand has employed what it terms a broad base low rate (BBLR) methodology to determine its tax mix. The fundamental idea behind the BBLR is to have a broadly defined tax base (that is, a number of taxes), which allows the associated tax rates to be lower, thereby reducing the various costs associated with taxation (such as compliance and administrative costs). The BBLR has existed largely intact to the present day, although it has been eroded through the removal of specific tax bases, including taxes on land, estates and gifts in the early 1990s. Furthermore, New Zealand has never had a specific capital gains tax (CGT) but rather has sought to expand its income tax base in an ad hoc manner.⁵ Income tax rates

³ See for example, Craig Smith, *Adam Smith* (Cambridge, Polity Press, 2020), especially Chapter 7. See also, Kwangsu Kim, “New light on Adam Smith’s view of taxation via the concept of equity” (2023) *The European Journal of the History of Economic Thought*, DOI:10.1080/09672567.2023.2225869; Zachary Greene, Jan M. Jasinski, Graeme Roy, Thomas Schober, and Thomas J. Scotto, “Plundering the Liberal Philosophical Tradition”: The use or abuse of Adam Smith in Parliament, 1919-2023” (2023) *National Institute Economic Review*, 1-13, doi:10.1017/nie.2023.23.

⁴ See: http://economicsconcepts.com/canons_of_taxation.htm.

⁵ The absence of a CGT, for instance, runs against a backdrop of many prior tax reviews recommending such a tax be put in place in New Zealand, the most recent being in 2019; see Tax Working Group (TWG), *Future of Tax: Final Report Volume I: Recommendations and Volume II: Design Details of the Proposed*

have also largely reduced since the mid-1980s, although the top marginal tax rate for individuals has twice been increased from 33 to 39 percent (where it sits currently). Furthermore, the tax rate on income for trustees will be increasing to 39 percent from 1 April 2024 if a current legislative proposal is enacted.⁶ Thus, it would be fair to conclude that New Zealand pays little more than ‘lip service’ to applying the BBLR in practice.⁷

New Zealand usually applies Adam Smith’s cannons or principles, although with some modification or adaptation. Equity (fairness), efficiency/economy and simplicity (linked in part to improving certainty and reducing complexity) are usually applied. Convenience receives less emphasis, although Inland Revenue’s overhaul of its tax information system through digitalisation has enhanced convenience for many taxpayers. In terms of the use of tax principles in recent tax reviews, the Victoria University of Wellington-led Tax Working Group (VUWTWG) in 2009-10 utilised the following when assessing the NZ tax system:⁸

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

Principles 1 and 2 above fit within Smith’s cannons or principles of equity/ability to pay and economy, with Principles 4 and 5 also relating in part to Smith’s cannon or principle of economy. Principles 3 serves as a major focus for remedial change to New Zealand’s tax system, while Principle 6 has had a significant influence on the interaction of various taxes. The 2017-2019 Tax Working Group (TWG), established by the then Labour-led government, applied the same principles as the VUWTWG, as well as adding *Predictability and Certainty*.⁹ Thus from this discussion it is clear, in a New Zealand context, that Adam Smith’s canons or principles have played a significant role in recent evaluations of the New Zealand tax system. Furthermore, as will be shown later on in this paper, these principles are largely contained (in name at least), in the Act.

In terms of how the New Zealand tax system operates, Inland Revenue is the official tax collecting authority and is established by statute. The Commissioner of Inland Revenue (Commissioner) is charged with the care and management of the taxes covered by the Inland Revenue Acts¹⁰ and with any other functions conferred on the Commissioner. It is the

Extension of Capital Gains Taxation (New Zealand Government, February 2019); available at: <https://taxworkinggroup.govt.nz/sites/default/files/2019-02/twg-final-report-voli-feb19.pdf>.

⁶ See clause 62 of the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill 2023.

⁷ For further discussion on the 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.

⁸ 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>.

⁹ See TWG, above n 5.

¹⁰ The Revenue Acts currently include the Income Tax Act 2007, the Tax Administration Act 1994, the Taxation Review Authorities Act 1994, and the Goods and Services Tax Act 1985. In addition, there are

Commissioner's duty, notwithstanding anything in the Inland Revenue Acts, to collect over time the highest net revenue that is practicable within the law, having regard to the resources available to Inland Revenue, the importance of promoting compliance, especially voluntary compliance, by all taxpayers, and, compliance costs incurred by taxpayers.¹¹ It is important to note that New Zealand has a separate Customs Service that has, under the Customs and Excise Act 2018, the responsibility to collect excise duties and goods and services tax (GST) on goods imported into New Zealand.

The administration of the New Zealand tax system is based on self-assessment, with taxpayers initially assessing (or calculating) their own tax liabilities by filing (usually online) a tax return with Inland Revenue (unless they are a non-filing taxpayer where their income is fully taxed at source). The sources of New Zealand tax law and practice are essentially threefold: tax legislation (including regulations); principles of interpretation from New Zealand and overseas case law; and lastly, determinations and binding rulings issued by Inland Revenue. While not having the force of law, Inland Revenue also publishes various guidelines, and interpretation and policy statements.

New Zealand does not have a formal constitution like most other democracies, but it has as its founding document Te Tiriti o Waitangi (the Treaty of Waitangi).¹² The principles of the Treaty are expected to be applied by government departments and ministries, including Inland Revenue. Overall, the interpretation and application of the Treaty remains a contentious issue in New Zealand.

One further important point when assessing tax policy development in New Zealand is the political system that is employed. A Mixed Member Proportional (MMP) political system, which has been in place since 1996, has operated to provide a partial 'handbrake' on government tax policy development, at least until developments following the 2020 General Election, when a single party was able to control the Legislature and Executive. New Zealand's legislative process is typical of a Westminster democracy, although it has a number of weaknesses including the absence of any upper house, and the ability for additions to be made to draft legislation through the use of supplementary order papers (SOPs) after the parliamentary select committee phase. As will be discussed shortly, the tax policy process is not contained within statute and as such can be easily altered by an Executive that controls or significantly influences the Legislature.

More recently, New Zealand has taken a wellbeing approach to fiscal and social policy, with the New Zealand government having delivered (as at the time of writing) five Wellbeing budgets.¹³ These budgets have emerged within the wider sphere of public expenditures, with the New Zealand Treasury separately developing its Living Standards Framework (LSF) to incorporate a wider concept of wellbeing in policymaking. Fiscal policy is included within the

various regulations and Double Tax Agreements. The Taxation Principles Reporting Act 2023 has been added to this list of Inland Revenue Acts.

¹¹ See further ss 6 and 6A of the Tax Administration Act 1994.

¹² The Treaty of Waitangi, as New Zealand's founding document, takes its name from the place in the Bay of Islands where it was first signed on 6 February 1840. The Treaty is an agreement, in both Māori and English, that was made between the British Crown and about 540 Māori rangatira (chiefs). It comprises three articles for which there are significant differences in meaning between the English and Māori versions.

¹³ See further for the most recent New Zealand Budget 2023: <https://budget.govt.nz/budget/pdfs/wellbeing-budget/b23-wellbeing-budget.pdf>. The first such Wellbeing Budget was delivered in 2019.

LSF evaluations, although at the time of writing, it has yet to be fully embraced in tax policy developments.¹⁴

New Zealand, in theory at least, develops tax policy through internationally acclaimed process known as the Generic Tax Policy Process (GTPP).¹⁵ This was implemented by way of Cabinet guidance in 1994.¹⁶ The GTPP has five core stages (strategic, tactical, operational, legislative, and implementation and review). It ‘wraps’ around the parliamentary legislative phase, during which the select committee process is expected to be utilised. The GTPP contains a number of external inputs and feedback loops, which are intended to reflect a flexible process that recognises some activities may occur simultaneously or in a slightly modified order, such as the timing of legislative drafting. Essentially the GTPP was designed to improve the technical quality of the tax reform process, whatever the political background of the government at the time, along with accountabilities of key players (such as the New Zealand Treasury and Inland Revenue), enhance the level of consultation on tax policy, and bring about greater transparency in the process.

As has been observed recently, the GTPP has been frequently set aside on the basis of rational put forward by the New Zealand government’s that urgency is needed, bypassing the policy consultation phase. Furthermore, on numerous instances, the select committee phase has also been bypassed through introducing supplementary order papers (SOPs) to a bill after the Finance and Expenditure Committee (FEC) has already deliberated on a bill. This approach has been made possible by the Labour government of 2020-2023 dominating both the Executive and Legislature.¹⁷

Moving now to the focus of this paper, as part of Budget 2023, the then New Zealand Minister of Revenue, Hon David Parker, tabled the long-awaited Taxation Principles Reporting Bill 2023 (the Bill). The Bill proposed a statutory framework for the Commissioner to report on ‘core’ taxation principles. Accompanying the Bill was Commentary,¹⁸ a Regulatory Impact

¹⁴ For further discussion, see Adrian Sawyer, “Principles and Frameworks for Evaluating Tax Systems: A New Zealand Perspective”, *Paper presented at the Tax Research Network Conference*, University of Central Lancashire, UK, (September 9-11, 2019). See also: NZ Treasury, *Our People, Our Country, Our Future, Living Standards Framework: Background and Future Work* (NZ Treasury, December 2018). Work continues by the New Zealand Treasury on revising the LSF and applying various dashboard indicators.

¹⁵ See for example, Christopher John Wales and Christopher Peter Wales *Structures, processes and governance in tax policymaking: An initial report*, (Oxford University Centre for Business Taxation, December 2012).

¹⁶ See further Sir Ivor Richardson, *Organisational Review of the Inland Revenue Department, Report to the Minister of Revenue and the Minister of Finance*, (April 1994).

¹⁷ For discussion on the GTPP, which was developed in 1994 as part of the review of New Zealand’s Inland Revenue in order to clarify accountabilities and provide greater transparency and opportunity for consultation, as well as recent developments, see, Adrian Sawyer ‘Broadening the scope of consultation and strategic focus in tax policy formulation – some recent developments’, (1996) 2(1) *New Zealand Journal of Taxation Law and Policy* 17-39; Peter Vial, ‘The Generic Tax Policy Process: A “Jewel in Our Policy Formation Crown”?’ (2012) 25(2) *New Zealand Universities Law Review* 318-346; 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; Lisa Marriott, ‘Crown consultation, Māori engagement and tax policy in Aotearoa New Zealand’ (2021) 26(2) *New Zealand Journal of Taxation Law and Policy*, 143-165; Lisa Marriott and Jessica Lai, “Indigenous perspectives on and in tax research policy” (2022) 37(3) *Australian Tax Forum* 383-406; Adrian Sawyer, “Tax Policy Without Consultation: Is New Zealand on a ‘Slippery Slope’?” (2022) 37(4) *Australian Tax Forum*, 481-513; and Adrian Sawyer, “Navigating Challenging Times: A New Zealand Perspective”, (2023) 29(4) *New Zealand Journal of Taxation Law and Policy*, forthcoming.

¹⁸ See <https://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-tax-principles-bill>.

Statement¹⁹ and an Inland Revenue Disclosure Statement.²⁰ Public submissions were open for only three weeks (closing 9 June 2023 with the Finance and Expenditure Committee - FEC), with the Bill originally intended to be enacted by the end of July 2023 (and to take effect retrospectively from 1 July 2023). However, it soon became apparent that this date could not be met, with the revised Bill only reported back by the FEC on 27 July 2023.²¹

The Second Reading of the Bill commenced on 15 August 2023, resuming the next day. The Second Reading was agreed to by a majority of Members of Parliament (MPs) on 17 August 2023, with the Third Reading on 23 August and the Bill receiving assent on 29 August 2023. The Bill became law on the day after it received assent, 30 August 2023.

This paper takes an exploratory case study approach focussing on one jurisdiction, New Zealand.²² The methodology is predominantly in-depth document analysis within the wider context of tax policy. The need for a case study frequently arises out of the desire to understand complex social phenomena and it allows one to investigate and review in a holistic and meaningful way the various characteristics of real-life events. However, while the paper contains a single country case study, it has wider ramifications for other jurisdictions, which may wish to learn from the lessons experienced in New Zealand concerning developing and implementing taxation principles (whether as a fundamental basis for developing policy or merely for reporting purposes). It also has relevance to jurisdictions that have developed their own tax principles, such as Scotland and Wales with respect to their devolved taxation powers.

The remainder of this paper is structured as follows. Section 2 provides the background context, while section 3 provides a brief overview of the Bill's development through to its enactment. Discussion of what the future may hold is the focus of section 4, with section 5 setting out the conclusions.

2.0 Background

At Victoria University of Wellington (VUW) on 26 April 2022, the then New Zealand Minister of Revenue, Hon David Parker, delivered a speech focussing on unfairness in the New Zealand tax system. Specifically, the Minister stated:²³

“I believe we need a route to enable improvements in our tax system. A Tax Principles Act will help.

It surprises some who witness the heat of tax debates that there is widespread agreement about core tax principles. These are long settled. Adam Smith in his 1776 book *The Wealth of Nations* laid out four maxims that still hold sway. ...

The main settled principles are:

- *Horizontal equity, so that those in equivalent economic positions should pay the same amount of tax*

¹⁹ See <https://www.taxpolicy.ird.govt.nz/publications/2023/2023-ria-pack-tax-principles-bill>.

²⁰ See <https://disclosure.legislation.govt.nz/bill/government/2023/253/>.

²¹ See <https://bills.parliament.nz/v/Bill/691e5c66-aa17-43f0-208d-08db57320db1?Tab=hansard>. See also: <https://legislation.govt.nz/bill/government/2023/0253/latest/LMS842819.html>.

²² See further, Robert K Yin, *Case Study Research and Applications: Design and Methods*, (Sage Publications, 6th ed. 2017).

²³ Hon David Parker, *Shining a light on unfairness in our tax system*, Speech delivered at VUW, (26 April 2022); <https://www.beehive.govt.nz/speech/shining-light-unfairness-our-tax-system>, (emphasis added).

- *Vertical equity, including some degree of overall progressivity in the rate of tax paid*
- *Administrative efficiency, for both taxpayers and Inland Revenue*
- *The minimisation of tax induced distortions to investment and the economy.*

...

Currently, the project is in its early stages. I am discussing this with officials in the Treasury and IRD. An important stage of the project will be wide public consultation on the proposed principles and reporting framework. We'll be going that around the middle of the year, and hope you will share your views. ...

In the context of a tax principles statutory reporting framework, this could mean a set of high-level, general principles in legislation, with a legislated requirement for the government to issue a guiding statement setting out its views on the development of tax policy. Tax policy officials would be required to independently report information relevant to those tax principles.

It could also entail more detailed principles and defined measures in legislation with officials reporting according to those defined criteria with a focus on the data controversies of the day. For example, it could require officials to report on the progressivity of the tax system.

I will be working closely with officials to develop an appropriate methodology. A Bill will then be introduced to bring these into effect and set up the reporting requirements. I would like to see these principles enacted in a Bill before the end of the current Parliamentary term. If Parliament passes it, the Tax Principles Act will take its place alongside the Tax Administration Act and other revenue Acts to create the tax system that New Zealanders can understand and be proud of. ...

They will result in stronger economy, a fairer tax system, and a better New Zealand.”

While the speech was relatively vague on the details of what might emerge, there were expectations for a draft Bill to be tabled later in 2022. As each month passed, expectations grew that tangible action was underway, building on the Minister's speech.²⁴ However, nothing eventuated publicly in terms of the direction a bill might take until the release of two major reports, one on the taxation of high net income individuals by Inland Revenue²⁵ and the other from the New Zealand Treasury on the taxation of income and wealth generally in New

²⁴ While nothing was been publicly notified until Budget 2023, paper released by Inland Revenue in October 2023 indicate that the Cabinet considered a paper concerning Establishing a Reporting Framework in a Tax Principles Act on 15 August 2022, which was confirmed by Cabinet on 22 August 2022. A further paper was considered on 3 May 2023 and confirmed on 8 May 2023. A Cabinet paper entitled Taxation Principles Reporting Bill: Approval for Introduction was considered by the Cabinet Legislation Committee on 11 May 2023 and confirmed by Cabinet on 15 May 2023. This was just a matter of days before Budget 2023. Of more interest in these papers is a draft proposed discussion document entitled *A Tax Principles Act: a reporting framework informed by tax principles: A Government discussion document* (dated for September 2022) that was never publicly released for consultation. The then Minister of Revenue, Hon David Parker, recommended to Cabinet that it be released, the Cabinet endorsed this in principle, subject to a further review, but for some reason *the discussion document was never released. No further action was taken until February 2023. See further Taxation Principles Reporting Bill: Information release of documents related to the tax principles project* (6 September 2023); available at: <https://www.taxpolicy.ird.govt.nz/publications/2023/2023-ir-tp-r-bill>.

²⁵ Inland Revenue, *High-wealth Individuals Research Project* (April 2023), and associated information sheets available at: <https://www.ird.govt.nz/>.

Zealand.²⁶ A third privately commissioned report was also released to provide a different perspective to contribute to the debate that would subsequently emerge.²⁷

The main findings of Inland Revenue's research relate to survey information obtained from 311 high net wealth (HNW) New Zealand families. The research found that the effective tax rate (tax paid divided by economic income) of the families over the period 2015-2021 varied but the median effective tax rate was 8.9 per cent. In contrast, the New Zealand Treasury research showed that a middle wealth New Zealander has an effective tax rate of 20.2 per cent. New Zealand Treasury's work took a much broader approach, and developed a taxable income capitalisation method for estimating the distribution of wealth in New Zealand. Specifically, it combined Inland Revenue's taxable income administration data with Statistics New Zealand's Household Balance Sheet to give more comprehensive estimates of the distribution of New Zealand individuals' wealth.

Alongside these two government reports was an independent commissioned report by a specialist tax advisory firm in New Zealand (Olivershaw), which painted a much different picture. Specifically, this commissioned research suggested that HNW Individuals in New Zealand pay more tax on average and represent a higher proportion of tax revenue that might be expected. The report adopted the modelling methodologies used in the OECD's Taxing Wages study as the basis to review the income and tax of illustrative households to calculate the average effective tax rates paid by each of low, medium and high-income earners in New Zealand. It should be no surprise that this report's conclusions, along with the other two reports, have met with a great deal of contention.

The most tangible development occurred as part of Budget 2023 delivered in May 2023, when the Taxation Principles Reporting Bill 2023 was tabled in Parliament. As the title suggests, the Bill sought to create a form of reporting, a much lesser scope than was envisaged following the Minister's 26 April 2022 speech. The next section briefly overviews and evaluates the original and revised versions of the Bill.

3.0 Development of the Taxation Principles Reporting Bill

3.1 The original Bill

On 18 May 2023, Hon David Parker tabled the Taxation Principles Reporting Bill 2023 (the Bill) in Parliament. As noted earlier, unlike the expectations created from the Minister's earlier speech, the Bill as originally drafted was more narrowly focussed on establishing a reporting framework for the Commissioner rather than setting any requirements with respect to how particular taxes or the tax system must incorporate the taxation principles (as set out in Schedule 1 of the Bill).²⁸ The Bill had its First Reading as part of the Budget 2023 debate and was referred to the FEC.

The taxation principles proposed in the Bill are largely orthodox, including the canons/principles proposed by Adam Smith (see the earlier discussion in this paper), although their intended descriptions are not universally held and reflect the political views of its Bill's

²⁶ Benjamin Ching, Tayla Forward and Oscar Parkyn, *Estimating the Distribution of Wealth in New Zealand, Working Paper 23/01* (April 2023) and associated methodology papers; available at: <https://www.treasury.govt.nz/>.

²⁷ See Kieran Murray, John Wallace and Mehrnaz Rohani, *Effective Tax Rates Imposed on the Incomes of New Zealand residents, Report prepared for Olivershaw* (April 2023); available at: <https://www.wereonthemoney.co.nz/>.

²⁸ For details of the First Reading of the Bill, see: https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20230518_20230519_32.

architect (and the then Labour government). The list of principles is not comprehensive, as missing from the list are the principles of *Simplicity* and tax system *Coherence*, both being used in several past tax reviews in New Zealand.²⁹

The original Bill comprised ten pages, with the key part of this Bill for the purposes of this paper being the content of Schedule 1. The original version of Schedule 1 to the Bill set out the proposed taxation principles and is reproduced in Figure 1:

Figure 1: Original version of the Schedule to the Taxation Principles Reporting Bill 2023

<p style="text-align: center;">Schedule 1 Taxation principles</p> <p style="text-align: right;">s 4</p>	
Taxation principle	Description
Horizontal equity	People with similar levels of income should pay similar amounts of tax. The time value of money matters when considering horizontal equity. The tax system should generally recognise the economic effect of income, not its name, while acknowledging there are important areas where exemptions to taxing economic income are justified in the pursuit of wider societal outcomes (eg. not taxing the imputed rent or gains on an owner-occupied home).
Efficiency	Tax revenue should be raised in ways that minimise distortions to the economy and the use of resources.
Vertical equity	The tax system should be progressive. Tax is progressive if people with higher levels of economic income pay a higher proportion of that income in tax. A progressive tax system does not mean that every tax should be progressive (eg. GST is regressive) but the overall system ought to be. In practice, wealthy people should at the very least pay no lower a rate of tax on their economic income than middle income New Zealanders already do.
Revenue integrity	The revenue system should be sustainable over time and minimise opportunities for tax avoidance and tax evasion.
Compliance and administrative costs	Compliance and administrative costs for taxpayers and the Government should be reasonable, but this is not justification for substantial unfairness in the tax system.
Certainty and predictability	People should be able to determine their tax obligations before they are due.
Flexibility and adaptability	The tax system should keep pace with changes in society, in particular technological and commercial developments, and changes in inequality.

There are no surprises with the principles of horizontal equity, vertical equity, efficiency, compliance and administrative costs, and certainty (and predictability). Revenue integrity is less frequently adopted, as is flexibility and adaptability. As noted earlier, missing from this schedule are clear references to coherence and simplicity. What is of concern are the descriptions that have been provided, which contain politically motivated value statements that do not align with the traditional explanations of many of these principles. Schedule 1's content gave reason to suspect that there would be a diversity of recommendations in the submissions.

3.2 Submissions on the Bill

Submissions were opened for a noticeably brief period (three weeks), suggesting that the Labour government was not really seeking a substantial amount of feedback from the public. Nevertheless, the FEC received 33 submissions, a sizeable number for such a brief period.³⁰

²⁹ See notes 8 and 9, above.

³⁰ The submitter on the Bill were: Dr Jonathan Barrett, Colin Bell, John Cantin, Chartered Accountants Australia & New Zealand (CA ANZ), Climate and Social Equity Working Group of Nelson Tasman Climate Forum (CSEWGNTCF), Corporate Taxpayer Group (CTG), CPA Australia, Deloitte, EY, Federated Farmers of New Zealand, Frank Fordham, Group of Nelson residents (coordinated by Peter Kemp), KPMG, The Legislation Design and Advisory Committee (LDAC), David Lyon, Max Marshall,

Furthermore, these submissions led to a remarkably substantial number of recommended changes by a majority of FEC members (the two major opposition parties, National and ACT, did not support the Bill in any form).

In their report provided to the FEC,³¹ Officials noted that a large number of submissions were received, some of which offered a variety of alternative wording on different clauses of the Bill, with some conflicting in their recommendations. Due to the tight deadline, Officials focussed on the key issues raised, and those submissions that recommended substantive changes in wording. Officials met with a variety of submitters in online forums in the week commencing 5 June 2023, along with Te Arawhiti (the New Zealand Parliamentary Counsel Office) and other Inland Revenue staff.

Along with the tabling of the revised Bill by the FEC (see the next subsection of this section of the paper), a series of reports were made publicly available.³² These reports provide important background information for the FEC from Inland Revenue and the expert advisor to the FEC. Furthermore, these reports set out the rationale that was applied to the subsequent deliberations and resulting FEC report. Importantly, these reports reveal that the submission process, while somewhat truncated, ‘improved’ the content of the Bill over its original format, albeit the Bill was flawed through its highly politicised nature. Notwithstanding this comment, it is the current author’s view that Bill should have been taken off the agenda and deliberated upon further in terms of its overall policy intent with the aim of securing a broader nonpartisan political consensus.

After the then Prime Minister, Rt Hon Chris Hipkins, announced on 24 July 2023 that there would be no CGT or wealth tax under his leadership, the then Minister of Revenue, Hon David Parker, indicated it would be untenable for him to hold his revenue portfolio, and he subsequently resigned from that role. This portfolio was passed onto Hon Barbara Edmonds (including responsibility for the Bill), although shortly thereafter responsibility for the Bill was given to Hon Deborah Russell (an Associate Minister of Finance), who led the enactment of the Bill.

3.3 *The reported back Bill*

The reported back Bill, including the tracked changes, comprised eighteen pages, eight of which set out the content of the revised Bill. The FEC’s version of Schedule 1 indicates some significant changes – it is reproduced in Figure 2 (without the tracked changes and largely as appears in the resulting Act):

Mayne Wetherell, Methodist Alliance, New Zealand Council of Christian Social Services (NZCSS), New Zealand Law Society (NZLS), New Zealand Public Service Association (NZPSA), Oliver Shaw Ltd, Patterson Legal, PWC, Public Health Communication Centre (PHCC), Andrew Riddell, Russell McVeagh, Robin Schiff, Karen Summers, Taxpayers’ Union, Tax Justice Aotearoa (TJA), Jozef Van Rens, Justinus Yudistira.

³¹ See Inland Revenue, *Taxation Principles Reporting Bill: Officials’ report to the Finance and Expenditure Committee on submissions on the Bill* (June 29023); available at: <https://bills.parliament.nz/v/6/691e5c66-aa17-43f0-208d-08db57320db1?Tab=sub>.

³² Inland Revenue, *Initial briefing; Inland Revenue Department (Revision-tracked version)* (June 2023); Inland Revenue, *Departmental report and independent adviser comments* (13 July 2023); and Independent Adviser, *Updated advice on suggested wording* (25 July 2023). See <https://bills.parliament.nz/v/6/691e5c66-aa17-43f0-208d-08db57320db1?Tab=sub>.

Figure 2: Revised version of the Schedule to the Taxation Principles Reporting Bill 2023

Schedule 1

Tax system principles

1 Purpose of taxation

- (a) raise revenue to finance government expenditure:
- (b) correct behaviour or market failures.

2 Key principles

The key principles considered for designing or changing a tax system, as measured by the approved taxation principles measurements, are set out in the following table:

Key principle	Description
Horizontal equity	Horizontal equity is the extent to which people with similar levels of economic income pay similar amounts of tax. In considering horizontal equity, the time value of money matters and the tax system should generally recognise the economic effect of income. In considering horizontal equity, there are important areas where exemptions to taxing economic income are justified in the pursuit of wider societal outcomes (for example, not taxing the imputed rent or gains on an owner-occupied home).
Efficiency	Efficiency is the extent to which tax revenue is raised in ways that minimise costs to the economy, including distortions.
Vertical equity	Vertical equity is the extent to which the tax system is progressive. Tax is progressive if people with higher levels of economic income pay a higher proportion of that income in tax. A progressive tax system does not mean that every tax is progressive (for example, GST is regressive relative to income) but the overall system ought to be. In practice, wealthy people should pay no lower an average rate of tax relative to their economic income than middle New Zealanders.
Revenue integrity	Revenue integrity is the extent to which the tax system is coherent and sustainable over time and minimises opportunities for tax avoidance and tax evasion.
Compliance and administrative costs	Compliance and administrative costs is the extent to which compliance and administrative costs for taxpayers and the Government are reasonable, but minimising costs is not justification for substantial unfairness in the tax system.
Certainty and predictability	Certainty and predictability is the extent to which the tax system is transparent and taxpayers are able to determine their tax obligations before they are due.
Flexibility and adaptability	Flexibility and adaptability is the extent to which the tax system keeps pace with changes in society, in particular technological and commercial developments, and changes in inequality or comparative wellbeing

During the Second Reading of the Bill,³³ the Associate Minister of Finance responsible for the Bill moved two further amendments, namely, to link *Coherence* with the principles of *Certainty and Predictability* (a recommendation made by Officials), and to clarify what is meant by “middle” New Zealanders (based on a recommendation from the expert adviser to the FEC). Also, some further drafting revisions were suggested by the Clerk to the FEC.

In addition to revising the taxation principles, *two purposes for imposing taxation* have been set out prior to the table in Schedule 1, namely:

- (a) raise revenue to finance government expenditure,
- (b) correct behaviour or market failures.

These ‘purposes’ were not present in the original draft and as such were not subject to public consultation. The first of these stated purposes may not appear to be hugely controversial (as it is often cited as a core reason for levying taxes), while the second is contentious (even though it is often cited as a reason for having “corrective taxes” such as excise taxes on alcohol, tobacco and fossil fuels). Importantly, the scope and intended meaning of these purposes are not clear and have not been subject to scrutiny by the FEC or open to public submissions.

In terms of how to interpret and apply the tax principles, the following statement in the accompanying commentary from the FEC provides some helpful context:³⁴

Schedule 1 sets out the seven principles against which the tax system would be measured in reports by the Commissioner. *We think these principles should be considered not individually but as a package, because they overlap and conflict and so require trade-offs and blending. We think the key principles, which relate to how a tax system is designed, should be framed in relation to the overall purpose of a tax system, which is to raise revenue, and in some cases to correct behaviour or market failures.* We recommend inserting an introduction to the list of principles in Schedule 1 to this effect.

Importantly it was recommended by the FEC that the taxation principles are to be considered as a package, as it is well known they can work in conflict with one another at times, rather than be applied individually. Furthermore, there is minimal reference in the Bill to the government’s Wellbeing framework, with the only specific indication being in the descriptor to the principle of *Flexibility and Adaptability*.

The inserted words “The key principles considered for designing or changing a tax system ...” suggest that the scope of the Bill may extend beyond just reporting information about the current tax system but that the principles are to be used whenever existing or new taxes undergo design or change. This extended scope was never made explicitly clear in the original draft of the Bill and will no doubt give rise to concerns as to what this might mean for how tax policy is developed in the future.

Numerous minor amendments were suggested by the FEC. It is important to note that these are recommendations only and are not authoritative – Parliament ultimately determines how it will respond to any such recommendation. One of these amendments is of particular interest.

³³ For the Second Reading of the Bill, see https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20230815_20230816_36; and https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20230815_20230817_03. See also: https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20230815_20230817_09; and https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20230815_20230817_15.

³⁴ Taxation Principles Reporting Bill 2023 – as reported back by the FEC, Commentary, at 5 (emphasis added). See: <https://bills.parliament.nz/v/6/691e5c66-aa17-43f0-208d-08db57320db1?Tab=sub>.

he specific reference in clause 6 of the original Bill concerning Te Tiriti o Waitangi (the Treaty of Waitangi – the Treaty) obligations has been removed, leaving this to the general obligation provided by the Public Service Act 2020 in terms of the public service to act in a manner that supports the Crown in its relationship with Māori under the Treaty. That said, the FEC recommended that the Commissioner’s report should inform the public of how different communities of taxpayers in New Zealand, such as Māori, experience the tax system in relation to the principles set out in the Bill. This recommendation will need to be handled delicately.

The approach taken by the Bill raises another important point to ponder. Is it a worthwhile policy approach to require the tax authority (Inland Revenue) to report periodically on the extent to which the country’s tax system satisfies the criteria according to which a tax system ought to be judged (whatever they may be), and (assuming it is a worthwhile approach), are the criteria provided for in the Act are the ‘right’ criteria?

The answer to the first question, conceptually at least, in the author’s view, is ‘Yes’. This is provided that the reporting framework had been developed in a non-partisan manner, offers clear guidance of why the reporting is required and how it is to be used, and includes a clear statement that there is no real or otherwise partisan political motivation behind the reporting. The reporting must be to Parliament and not to the relevant Minister(s). For example, the Commissioner currently reports each year to Parliament on the application of shortfall penalties under the s 141L of the Tax Administration Act 1994. This information can then be used by anyone without any expectation that there is a political agenda behind the reporting. This is not the case with this Act.

In relation to the second question, the tax profession in New Zealand remains unconvinced that the criteria set out in the Act are justified, appropriately defined, and their intended use clearly specified. In many respects this is a further instance of the “politicising” of the role of the Commissioner. These issues will be discussed further in the next section of the paper. Notwithstanding the politicisation of the concepts behind the Bill, it is important to emphasise that New Zealand’s public service officials (especially Inland Revenue) have still carried out the instructions provided to them by the relevant Ministers impartially and professionally.

To conclude this section of the paper, the Bill had its Third Reading and received assent on 29 August 2023. However, its future remains uncertain following a change in government following the October 2023 General Election, as the two largest parties comprising the new government (National and ACT) indicated in the FEC report that they would repeal the Act.³⁵

4.0 Discussion – what may the future hold?

With the Bill having its Third Reading (and receiving assent on 29 August 2023), what can we expect? Given its purported limited scope as originally tabled, namely reporting on information collection by the Commissioner, we will need to wait until Inland Revenue releases a template for its reporting, with the first due after the end of 2024 (assuming the legislation is not significantly amended or repealed with the change in government following the 2023 General Election). However, with the amended Bill having a new purpose for taxation inserted into Schedule 1 and potentially wider scope in terms of its application, in many respects this leaves us with more questions than answers. While some additional guidance with respect to

³⁵ A potential complication may occur since following the outcome of the counting of special votes on 3 November 2023, the National party (essentially a Tory party) and ACT party (a right-wing libertarian party) have lost their election night one seat majority, and will need to include another party in order to form a government, namely the New Zealand First party. The view of New Zealand First on the Act is unknown, although as a populist party is it likely to support its repeal.

these reports has been provided through amendments made to the draft Bill, much of the detail concerning its practical application is yet to be developed.

Furthermore, exactly how may the interim annual reports (supplemented by a more in depth report every three years) be used by politicians, how may they influence legislative proposals and existing legislation, and to what extent may taxpayers expect these principles to be effective in developing future tax policy, remain to be seen. Assuming the FEC's recommendation that the taxation principles are to be applied collectively, and not individually, is applied, this will bring into the spotlight the frequent conflicts between the principles when developing and evaluating tax policy.

While the submission process and subsequent advice of Officials has led to an 'improved' Bill as amended (and subsequently enacted), much uncertainty remains. This improvement in the resulting legislation does not overcome the major flaws in the Act, including that it is based on the political ideology of its architect (as well as being partisan in nature), the collective principles included are not universally accepted (neither are their descriptors), and the process of reporting against these principles has further politicised the role of the Commissioner.

Furthermore, the consultation process was truncated, which no doubt compromised the extent to which submitters could provide their advice and recommendations. The level of transparency has been an improvement over recent legislative developments in the tax area (the 'bar' had been set low by the Labour government of the time). That said, the Bill was never formally put through the full GTPP process in that the underlying policy rationale was not open to consultation.³⁶ In this regard, it has been argued elsewhere that the GTPP, and its associated requirements of transparency and consultation in tax policy development, should be seen as coming within the scope of taxpayers' rights. Any failure to fully utilise the GTPP represents erosion of this rights.³⁷ Inland Revenue's *Tax and social policy engagement framework* document also indirectly supports this contention.³⁸ Thus, the (democratic) right of taxpayers to be fully and meaningfully involved in tax policy development has been significantly impacted through the development and subsequent enactment of the Act., Nevertheless, with a change in government following the 2023 General Election, there may be a fresh opportunity for these rights to be exercised should the Act be repealed or substantially amended through full utilisation of the GTPP. This will become clearer over the coming months.

There is no evidence that the New Zealand government looked to other jurisdictions for inspiration in developing the principles in the Act. Both Scotland and Wales are much further down the path in terms of having established tax principles that guide their respective tax policy programs. The Scottish Government's Framework "Principles of good tax policy making" are similar to those proposed for NZ, and are based on those of Adam Smith (proportionality, efficiency, certainty, convenience, engagement and effectiveness).³⁹ The Welsh Government's approach also provides an excellent overview of the tax policy process employed in Wales,

³⁶ For an evaluation of the GTPP over the past few years, see Sawyer (2022) and Sawyer (2023), above n 17.

³⁷ See for example, Adrian Sawyer, 'Expanding the Commissioner's Core Powers – Should New Zealanders be Concerned?' (2021) 75(4) *Bulletin for International Taxation*, 162-173.

³⁸ Inland Revenue, *Tax and Social Policy Engagement Framework* (August 2019). See further, Sawyer (2022), above n 17.

³⁹ See Scottish Government, *Framework for Tax* (2021), at 10.

although it has a less ‘traditional’ focus than Scotland and is more nuanced for the particular ideals that Wales is seeking to develop. Its core principles are: ⁴⁰

- Raise revenue to fund public services as fairly as possible;
- Deliver Welsh Government policy objectives;
- Be clear, stable and simple;
- Be developed through collaboration and involvement; and
- Contribute directly to the Well Being of Future Generations Act goal of creating a more equal Wales.

Fundamental to examining these tax principles is why those contained in the Act were selected to the exclusion of others? While the material surrounding the Bill (and the subsequent Act) makes it clear that many of Adam Smith’s ‘traditional’ principles are frequently used to evaluate tax systems (as well as specific taxes), they are not universally adopted nor fully comprehensive of the principles used in prior reviews of New Zealand’s tax system or reviews undertaken in other jurisdictions.⁴¹ More philosophically, the absence of any principles that relate more to issues such as interpretation of legislation and behaviour (of key actors, such as taxpayers and revenue officials) have not been considered, such as requiring ethical behaviour by all actors in the tax system. This wider debate over appropriate tax principles for New Zealand could have been a significant part of the public consultation concerning the concept and scope of legislating for tax principles if the full GTPP had been utilised via the tax policy consultation feature (thereby necessitating that an earlier discussion document was publicly released for consultation). Such a debate may also have led to a more positive view from the tax profession (rather than the prevailing view that the process and resulting legislation is little more than a political gimmick). These issues could be taken up when reviewing the Act following the 2023 General Election as there has been a change in government.

Returning again to the focus of this paper, what other comments have been made on the Bill (outside of the submissions process) since its enactment? Brown and Handford provide an early analysis of the Bill. In taking a thorough review of the original Bill and the revised version that was subsequently enacted, the authors make the following important observations with respect to the Bill generally:⁴²

“The Select Committee’s recommended amendments have gone some way to addressing constitutional issues raised by some provisions of the Bill as introduced. *At its core, though, the Bill remains a controversial piece of legislation. There is a question as to whether the legislation is necessary at all* (a point made in the LDAC submission). *And the way some of the tax principles are described departs from the neutral language of a legal standard and reads more like a political position or aspiration. The stated principles, therefore, are unlikely to be regarded as generally accepted principles.*”

Brown and Handford also pertinently comment on the more serious aspects of the development of this Bill (namely the failure to fully utilise the GTPP) and how it may change the perceptions of Inland Revenue:⁴³

⁴⁰ See Welsh Government, *Tax Policy Framework* (2017), at 11. These principles were originally developed in 2017 and updated in 2021.

⁴¹ See Adrian Sawyer, *The Effectiveness of Tax Reviews in New Zealand: An Evaluation and Proposal for Reform*, (Centre for Commercial and Corporate Law Inc., University of Canterbury Christchurch, 2020).

⁴² Brendan Brown and Matt Handford, “Tax Update” [2023] *New Zealand Law Journal* 220-237, at 222, 237 (emphasis added). The authors work for Mayne Wetherell who provided a submission on the Bill.

⁴³ Above n 48, at 237 (emphasis added).

“If enacted, the Tax [sic] Principles Reporting Bill will represent the *second occasion this Parliamentary term in which a controversial tax law amendment raising significant constitutional law implications has been enacted without the usual public consultation under the GTPP*. The first such instance was the enactment (under urgency) of s 17GB of the Tax Administration Act 1994, giving Inland Revenue the power to compel the provision of information for tax policy purposes

A controversial aspect of both measures is that they risk politicising Inland Revenue, an agency primarily tasked with collecting tax that is payable according to law, and holding (to that end) arguably the most far-reaching enforcement powers of any government agency. Striking the appropriate balance between the political objectives of the Government of the day, and adherence to important constitutional norms (including the critical importance that Inland Revenue be, and be perceived to be, politically neutral) has been made more difficult by the fact that both of these important measures were not subject to full public consultation under the GTPP.”

In a further contribution to the post-enactment debate, Boucher makes the following important observation:⁴⁴

“The bill requires the Commissioner of Inland Revenue to prepare and publish an annual report which considers the tax system measured against the principles included in this bill.

Generally speaking, the principles in the bill are well established. The Inland Revenue commentary references the tax principles made in all three of the reports this century, the McLeod Report in 2001, the Victoria University Tax Working Group Report in 2010, and finally the most recent Tax Working Group in 2019. They all used and refer to basically the same principles of taxation.

What will happen is Inland Revenue will produce a short form report annually with a full report every three years. The first full report will be produced in 2025 with the shorter version reports produced in the interim years starting later this year. The intention is to align the requirement for this report to be produced the second calendar year of each parliamentary term.

There’s been some discussion around whether we need this bill and how does it sit within the Generic Tax Policy Process (GTPP)? *You could say it’s an extension of the GTPP and of course, it does mean that we can have a look at some of the tax policies that have been put out by the various parties and compare them against the principles set out in this bill. And I’ll be doing that a little later on. The politicians may find this new bill is something of a double-edged sword.”*

Boucher suggests that the Bill was a statutory extension to the GTPP (in itself being only a Cabinet Directive that is not enforceable). If this is an accurate assessment, then this strengthens the need for the GTPP to be enacted through its own statute.⁴⁵ Furthermore, in an online commentary,⁴⁶ the scope of the requirement that the Commissioner report on “economic income” suggests that HNW individuals need to be very cautious about how the Commissioner’s information reporting may be used.

⁴⁴ Boucher Consulting, “Taxation Principles Reporting Bill”, *The Week in Tax* (5 September 2023) (emphasis added); available at: <https://baucher.tax/taxation-principles-reporting-bill/>.

⁴⁵ For further discussion on this shortcoming of the GTPP, see Sawyer (2022, 2023), above n 17.

⁴⁶ See <https://www.interest.co.nz/public-policy/123917/new-law-could-lay-intellectual-groundwork-more-taxes-wealthy>.

If we were to undertake a preliminary assessment of how New Zealand's tax system 'stacks' up against these principles under the BBLR framework, it would receive an overwhelming 'failing mark'. The absence of horizontal equity is in all likelihood the greatest failure with the absence of any taxation of wealth along with there being no CGT. Within the income tax there is evidence of vertical equity, although the consequences of the failure to adjust the thresholds for individual income tax since 2010 has distorted vertical equity, such that an increasing burden of tax is being placed on those with 'lower' incomes. The New Zealand tax system performs better against the principles of efficiency, revenue integrity, compliance and administrative costs, certainty and predictability, and flexibility and adaptability, but there is considerable room for improvement. Furthermore, what is lacking with this Act is exactly how the Commissioner will assess the existing system against these principles, given the lack of provision over the measurement criteria. Just how the Commissioner is to report on the trade-offs that are made when it comes to the conflicts that exist between the principles, through providing an assessment of how they are operating as a package (as was recommended by the FEC in their report on the Bill), is unclear.

A further noteworthy issue for future consideration is whether the taxation principles in the Act will serve as a catalyst for undertaking significant change to give fuller effect to New Zealand's BBLR framework, such that there is a much broader base in place other than relying largely on income and consumption taxes. It is well known, within New Zealand at least, that BBLR is used in name only rather than as a genuine basis for developing tax policy. The absence of any specific taxes on wealth in New Zealand (such as a comprehensive CGT, wealth or inheritance tax, land tax or gift duty), the New Zealand tax base remains narrowly focussed on consumption (principally the very broadly-based Goods and Services Tax - GST) and a similarly broad income tax that treats some types of capital gains as income (but does not go as far as to tax economic income).

The Act represents the latest in a series of failures by the then Labour government to follow best practice through fully employing the GTPP, and rushing the development and enactment of legislation (through taking urgency) that has significant operational and constitutional flaws. As has been discussed elsewhere,⁴⁷ this is a further example of the then Labour government seeking to unnecessarily expedite legislation without fully utilising the GTPP, contributing to the ongoing erosion in the levels of trust from taxpayers and tax practitioners, amongst others. This growing use of power reinforces the application of the slippery slope framework (SSF)⁴⁸ as a lens through which to analyse the undesirable outcomes for tax policy and legislative developments in New Zealand that have occurred over the last three to four years. Importantly, had it not been for the efforts of numerous submitters to raise serious concerns with the draft Bill, together with Officials' advice to the FEC, one can only imagine the potential impact and resulting confusion from such highly politicised legislation. Since the Labour party controlled both the Legislature and Executive at the time, it could enact such fundamental legislation without any broad non-partisan political support that would enable the framework to reflect more than what many in the tax profession see as a political gimmick.

5.0 Conclusion

New Zealand has taken a novel approach to taxation through the tabling of a Bill (which was enacted and subsequently assented to on 29 August 2023) that specifically sets out a series of

⁴⁷ See for example, Sawyer (2002, 2023), above n 17.

⁴⁸ For a comprehensive discussion on the SSF, see Erich Kirchler, Erik Hoelzl, and Ingrid Wahl, "Enforced versus voluntary tax compliance: The slippery slope framework" (2008) 29 *Journal of Economic Psychology* 210–225.

tax principles that are to be reported against by the Commissioner on a regular basis. The driving force behind the Bill was the former Minister of Revenue, Hon David Parker, who has a strong passion for greater ‘fairness’ in the New Zealand tax system, in part to be enhanced through a broader tax base. With the decision by the then Labour Prime Minister in July 2023 to refuse to advance any form of CGT or wealth tax, the then Minister of Revenue relinquished his Revenue portfolio.

As a result of the submission process, and input from Officials and the Independent Adviser to the FEC, the FEC has ‘improved’ the revised Bill, although the Bill has been seen by many in the tax profession as little more than a political gimmick. The Bill was developed in a non-partisan manner by a single party government that controlled both the Legislature and Executive. Furthermore, the process to develop and enact the Bill has not been optimal, with a very brief period allowed for submissions on the content of the draft Bill (and no opportunity to question the underlying concepts, scope and policy development). . It is a further instance of the then New Zealand government’s failure to utilise the GTPP to develop tax policy.

As at the time of writing, the future of the Act is uncertain as the new National-led government is expected to repeal the Bill if two of the constituent parties follow through on the position taken during the FEC stage. . Why was there this great desire by the previous government to rush such fundamental and important legislation? The only reasonable conclusion is one that is deeply political, such that the government at the time of enactment of the Act did not expect to be in power after the upcoming 2023 General Election (which indeed became a reality on 14 October 2023).

The scope of Schedule 1 in terms of the interpretation of the purposes of taxation in New Zealand, and the extent to which the tax principles are to be used when making amendments to the current tax system or introducing new taxes, remain unclear, and of great concern should the Act remain in its current form. It is the author’s recommendation that New Zealand takes the opportunity to revisit the choice and scope of application of the principles contained in the Act and those left out/not considered, as well as how the BBLR framework can be given more prominence rather than the relative ‘lip service’ it currently receives. Thus, it may be that repeal is the only viable step ahead of debate over how (and if) a non-partisan, evidence-based proposal be developed to be fully worked through the transparent and consultative GTPP process.

It was not necessary to enact this Bill to demonstrate that New Zealand does not adhere to its stated BBLR framework. Consequently, this ‘experiment’ of taking a ‘principled’ approach may be seen as one developed and ‘planned’ with significant inherent flaws, and never move to the next step of being actively tested through the gathering of data to be reported by the Commissioner, or to be used as a basis to assess the tax system (and any proposed changes to it). Indeed, the deficiencies in the development and planning of this ‘experiment’ may render any of its outcomes to be biased or flawed, and discourage any attempt to develop a more robust and transparent ‘experiment’ (that utilises the GTPP fully) that provides reliable results and adds value to tax policy development in New Zealand moving forward. Only time will reveal the full legacy of this ‘flawed experiment’ as New Zealand continues to move through this brave new world. The future of the Act will no doubt become clearer with time.