
THE EFFECTIVENESS OF TAX REVIEWS IN NEW ZEALAND: AN EVALUATION AND PROPOSAL FOR IMPROVEMENT

The Centre for Commercial and Corporate Law Inc
2020

Published in Christchurch by
The Centre for Commercial & Corporate Law Inc
School of Law, University of Canterbury
Private Bag 4800, Christchurch, New Zealand

ISBN 978-0-473-52769-3

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Published by the University of Canterbury

FOREWORD

This book proposes the establishment of a New Zealand Taxation Review Commission (NZTRC). It develops its argument for this in two ways. First, there is a survey of ad hoc tax reviews between 1922 and 2019. This survey ends with an analysis of the learnings that can be drawn from these reviews and draws together some thoughts on the characteristics of ‘best practice’ for review committees. Secondly, lessons are sought from a selection of permanent bodies that consider aspects of tax policy in a number of other countries. The final part of the book is the development of a plan for the Commission, concluding with draft legislation for its implementation.

This book presents a survey of a 100 years of tax reviews in Aotearoa New Zealand. Coincidentally, those reviews are book-ended by two global pandemics (as a random aside, the 1922 Committee into Taxation made no reference to the global pandemic of 1918/19.) Over that century, taxation has been transformed. Some simplistic measures reveal a glimpse of this change. The Land and Income Tax 1916 contained 168 sections and was 42 pages long. The Income Tax Act 2007 is 2,400 pages long, counting the section numbers would numb the brain, and it is only one of the Revenue Acts. In 1919, the Government’s tax revenue (in descending order of magnitude) was from income tax (newly emerged as the principal source of revenue), customs duty, stamp and death duties, and land tax. In 2019, the sources of revenue (in same order) were income tax, goods and services tax, and excises. In 1918, about 36,000 taxpayers paid income tax in a total population of 1.15 million. In 2019, there were about 3.8 million income taxpayers in a population of just under 5 million. No doubt there are a number of other random measures that could be chosen to illustrate the change. All point in the same direction. Tax, its forms, and its collection and administration have changed immensely over the last century. In Sawyer’s view, few of the committees achieved much when we take a short-term perspective from the time of the report. But on a longer-term perspective, most have left a ‘significant’ but not usually ‘substantial’ impact. The one with the most lasting impact is probably the 1994 Organisational Review. Sawyer has mapped out a route through this century of transformation using 10 of these Reports. It is probably not a definitive list. For example, there was the 1952 Commission of Inquiry into the Taxation of Maori Authorities. There may be others. But the chosen 10 are the important markers. For scholars of legal history and, more particularly, tax history this survey provides material for further study. Linking these reports to broader questions of tax policy development and economic history would be an interesting project, or more likely several interesting projects. Beyond that potential use, this analysis gives a useful description of how tax policy has been developed over the years. Given the radical changes in taxation and tax policy over the past 100 years and Sawyer’s doubts about the

lasting influence of them, the description ‘ad hoc’ seems most apt. That sets the scene for the proposals for a more coherent approach.

Sawyer makes the case for a permanent Taxation Review Commission, or at least a semi-permanent one. He constructs this by drawing on the lessons from past reviews and here the principles of best practice are especially useful to his case. Secondly, he considers permanent bodies in a number of countries that perform some of the roles he envisages for the New Zealand Commission. He envisages that the mission and role of the Commission involves establishing ‘principles of taxation’ and studying, examining and if necessary recommending changes to New Zealand’s tax system. This model is fully developed, including an outline of draft legislation. No doubt further work would be required before legislation could be passed and, in this regard, much could probably be learned from the New Zealand Law Commission. Established in 1986, the Law Commission has provided independent reviews of many areas of law and made recommendations to its responsible Minister. Its practice of developing issues papers, undertaking extensive consultation and the use of expert reference groups has proved a helpful model. There are probably many insights that could be brought to bear on developing this tax specific body from New Zealand’s experience with a permanent body designed, as its purpose states, for the ‘systematic review, reform and development of the law in New Zealand’.

The development of tax policy currently rests with Inland Revenue’s Policy and Strategy Group, working jointly with Treasury. Policy is developed using the Generic Tax Policy Process, a framework that has been used since 1995. This does involve extensive consultation but there are no independent voices in the process. The Policy and Strategy Group also drafts tax legislation. All other legislation in New Zealand is drafted by the Parliamentary Counsel Office, a separate statutory body established by the Legislation Act 2012 and under the control of the Attorney-General. Tax disputes are subject to a mandatory disputes resolution system administered by Inland Revenue and which is designed to have as many cases resolved internally as possible. This has probably been the most successful civil justice reform initiative in New Zealand’s history, if keeping cases out of tribunals and courts is the measure of success. There is a specialist tax tribunal, the Taxation Review Authority, but it hears a mere handful of cases a year, although a larger number do make their way to the High Court. In summary, Inland Revenue does policy development, writes the legislation, applies it and adjudicates on it when the taxpayer disagrees. Inland Revenue has a monopoly of most of the process. Further, New Zealand is relatively unusual internationally in not having a specific Taxpayer Bill of Rights, Taxpayer Charter, Tax Ombudsman or Tax Advocate. There are such instruments and/or persons in, for example, Australia, United States, Canada, South Africa, Mexico. The creation of a Tax Review Commission would bring some independent voices to the process.

As Sawyer states, ‘[p]olitical considerations should not inform the work of the NZTRC, rather well-established good tax policy guidance should

be the basis'. But as he also reminds us, it must be 'remembered that Parliament ultimately determines the law'. That points of course to that basic constitutional principle in the New Zealand system. The Constitution Act 1986 s 22 states that it is not lawful for the Crown to levy tax 'except by an Act of Parliament'. But as Sawyer goes on to note, the law is 'in practice heavily influenced by the Executive.' The development of good tax policy is essential for New Zealand's economic well-being. More esoterically, but just as importantly, the development of it in a sound institutional manner is essential for New Zealand's well-being. Those institutions need to be structurally robust, outwardly focussed on the breadth and diversity of interests in New Zealand society, permanent, professional and independent. Sawyer's model of a NZTRC should be carefully considered. The existing system of policy development by a professional, independent civil service supplemented by occasional specialist committees has not been ineffective. But that does not mean that a re-think is not a worthwhile project.

This book makes a valuable contribution to public policy in New Zealand. It is not just for 'tax nerds' (although there is plenty in it for them), but for all interested in New Zealand's economic and social wellbeing and those concerned about robust policy development. His proposal warrants serious consideration. Let us hope it gets it.

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May 2020*

PREFACE

“We do not learn from experience... we learn from reflecting on experience”
John Dewey

Tax committees are integral to a number of jurisdictions in terms of undertaking an extensive review of their tax system (whether in whole or in part), undertaking consultation with the private sector over proposed tax policy changes, and more generally, having an influence on the tax policy framework as a jurisdiction reviews the appropriateness of all or parts of its tax system. This book adopts an exploratory case study as it reviews and reflects on the role of ad hoc tax committees in New Zealand over the last 95 years from the early- 1920s to mid-2019.

The analysis reveals two major types of tax committees: those set up to review the tax system as a whole (a minority by number), and those established principally to be the interface between policy proposals and their implementation through receiving submissions and making recommendations. With the advent of the generic tax policy process (GTPP) in 1994, these tax committees have formed an integral part of the policy development process that feeds into the legislative phase. The impact of most of these tax committees is identifiable in terms of subsequent (albeit limited) policy and legislative reform.

The analysis reveals that these tax committees have had minimal impact, at best, on developing proposals that are subsequently adopted by the Government of the day. Politics have significantly impacted the extent to which these tax committees could operate. There is frequently very little degree of separation from the Government that established them, a requirement to work within narrowly defined terms of reference, along with their reports largely ignored if the recommendations do not fit with the Government of the time's tax agenda. In all, these committees consume significant resources, frequently retrace 'old ground', and fall short of the potential that could be achieved through other means.

To improve the quality of recommendations arising from regular reviews of the tax system, a permanent oversight body that is 'independent' of the Government is developed. Drawing from earlier work, as well as considering existing structures that could be modified, this book provides the basis for improving the effectiveness and efficiency of tax reform advice in New Zealand. Its major contribution, other than the historical review, is to reflect on experience, and consequently, propose a new form of independent tax oversight body, established as a Crown entity, to be known as the *New Zealand Taxation Review Commission* (NZTRC).

This book is current on development as at March 2020. It draws upon several conference papers, journal articles and a book by the author (both sole and jointly authored):

Journal articles

Adrian Sawyer “New Zealand Tax Group’s Radical Reform Ideas” (2009) 56 *Tax Notes International* 240.

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] 3 *BTR* 321.

Adrian Sawyer “Reviewing Tax Policy Development in New Zealand: Lessons from a delicate balancing of ‘Law and Politics’”(2013) 28 *ATF* 401.

Tamer Budak, Simon James and Adrian Sawyer “International experiences of tax simplification and distinguishing between necessary and unnecessary complexity” (2016) 14 *eJTR* 337.

Adrian Sawyer “Reflections on the contributions of lawyers to tax policy-making in New Zealand” (2017) 27 *NZULR* 995.

Books

Tamer Budak, Simon James and Adrian Sawyer (eds) *The Complexity of Tax Simplification: Experiences from Around the World* (Palgrave MacMillan, 2016).

Conference papers

Adrian Sawyer “Assessing the Likely Impact of the Tax Working Group on Tax Administration in New Zealand” (paper presented to the Tax Administration Research Centre (TARC) Annual Conference, Exeter University, United Kingdom, 11–12 April 2019).

Adrian Sawyer “Principles and Frameworks for Evaluating Tax Systems: A New Zealand Perspective” (paper presented to the Taxation Research Network Annual Conference, University of Central Lanarkshire, United Kingdom, 9–11 September 2019). An updated version of this paper was presented at the University of New South Wales’ School of Taxation and Business Law on 10 March 2020.

ACKNOWLEDGMENTS

There are many people that I would like to thank for their valuable contributions enabling this book to be a reality. First, this book could not have been completed without the valuable research assistance of Dr Melinda Jone. Melinda provided much of the background material to support the April 2019 conference paper on the work of the various ad hoc tax committees that was presented at the Tax Administration Research Centre (TARC) at the University of Exeter Business School. This 2019 conference paper forms the basis of most of the chapters dedicated to the 10 ad hoc tax committees established to date in New Zealand. It is with much sadness that Melinda passed away in late September 2019.

Secondly, my thanks also go to the director and staff at the Office for Tax Simplification (OTS) in London, United Kingdom for giving up the best part of a day of their time in August 2019 to discuss the practical aspects of the establishment and operations of the OTS, and of tax policy development in the United Kingdom more generally.

Third, I would like to thank my colleague Associate Professor Andrew Maples for his comments on an earlier draft of this book. I am also grateful to Andrew's support, as the Director (alongside the Board) of the Centre for Commercial and Corporate Law Inc. in the School of Law at the University of Canterbury, for agreeing to publish this book.

Fourth, my thanks go to Harry Waddell for his proof-reading support, Brenna Sharpe for her copyediting work, and to Heather Couch in the School of Law for her oversight of the publication process.

Finally, and most importantly, my sincere thanks to my wife and family for allowing me to work on this book while on sabbatical leave, much of it spent in the United Kingdom at the University of Cambridge and the University of Exeter (based in TARC) during August and September 2019, and then in Australia at Queensland University of Technology (QUT) and University of New South Wales (UNSW) during February and March 2020.

This work is dedicated to Liz, Anna and Andrew

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1

INTRODUCTION AND PRIOR LITERATURE

I. INTRODUCTION

Governments appear to be making increasing use of committees (or working groups) to contribute to their tax policy reform agendas. Such phenomena are commonplace in many Western nations, including Australia, New Zealand and the United Kingdom. The use of such committees was central to the tax rewriting projects in each of these three countries during the 1990s–2000s¹ and more recently through their tax system reviews.²

The literature encompassing the contributions of tax committees typically looks at a particular jurisdiction's reform(s) and its impact, including the role of the tax committee in bringing about the basis for those reform(s).³ On

1 For a review of the tax rewrites in these three countries, see for example Adrian Sawyer "Rewriting Tax Legislation: Can Polishing Silver Really Turn It into Gold?" (2013) 15 J Aust Tax 1.

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

A related development is the contribution from the Office for Tax Simplification in the United Kingdom, 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] 3 BTR 321.

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

For a general comment on managing tax reform, see Richard Bird "Managing Tax Reform" (2004) 58 Bulletin for International Fiscal Documentation 42.

3 See for example, Adrian Sawyer "2010 Budget Brings Biggest Tax Changes in 25 Years" (2010) 58 Tax Notes International 790 and Sawyer, above n 2, where the Victoria University of Wellington (VUW) Tax Working Group's contribution to changes in Budget 2010 is examined.

occasions, the contribution extends to incorporating comparative analysis with other jurisdictions. In contrast, there has been little research that takes a longitudinal approach when studying tax reviews and their associated policy reforms, and no in-depth research (to the best of the author's knowledge) that focusses on the impact of one or more tax committees in bringing about policy reform. There have been reflections from tax committee chairs on the impact of that committee.⁴ Furthermore, this 'gap' extends to research that specifically focuses on the contributions of such committees to the development and impact of tax policy and administration in a particular jurisdiction (or jurisdictions). This underlies the motivation for this book.

This book applies a 'traditional' legal approach, along with a tax policy lens. The approach taken is largely positivist. Furthermore, while there is no specific theoretical framework, there is an element of grounded theory⁵ with the findings drawn through observing the impact of the various tax committees.

The book adopts an in-depth exploratory case study approach to the phenomena of establishing ad hoc tax committees to review (aspects of) New Zealand's tax system. It is common to see criticism of case studies as a research method, which may be considered 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,⁶ 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.

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

5 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).

6 Robert Yin *Case Study Research and Applications: Design and Methods* (6th ed, Sage Publications, Thousand Oaks, 2017).

II. PRIOR LITERATURE ON TAX COMMITTEES AND WORKING GROUPS

Turning to the prior literature that reviews the impact of tax committees, this is relatively small, with most of the focus on the Australian experience. In a United States context, the Joint Committee on Taxation (JCT) supports the United States Congress. Created in 1926, the JCT seeks to satisfy somewhat divergent objectives of the House and Senate branches of the United States Congress. The House's main interest was simplification, while the Senate's idea was to form a joint oversight subcommittee for its tax committees. In some ways, the JCT is like the Finance and Expenditure Committee (FEC) that supports the New Zealand Parliament in scrutinising tax bills and other materials.⁷ In his paper, Yin reviews the contributions of the JCT to the United States Congress, and concludes:⁸

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

In a review of the influence of tax administration on the development of tax law in Australia, Coleman and McKerchar⁹ look at the role of several enquiries into the Australian tax system commencing in the 1920s with the Warren Commission. The Warren Commission issued five reports, with its most significant contribution being the subsequent introduction of the Income Tax Assessment Act (Cth) 1922.¹⁰ The Ferguson Commission, established in the 1930s, led to significant amendments, including greater

7 For further discussion on the role and contributions of the FEC, see Adrian Sawyer “Reflections on the contributions of lawyers to tax policy-making in New Zealand” (2017) 27 NZULR 995. The FEC is not included in the New Zealand case study as it is not strictly a tax committee appointed to review any part of the tax system, but rather is a core component of the legislative process.

8 George Yin “Codification of the Tax Law and the Emergence of the Staff of the Joint Committee on Taxation” (University of Virginia School of Law Public Law and Legal Theory Research Paper Series 2017-39, Law and Economics Research Paper Series 2017-20, 2017) 46 (emphasis added). For an extensive overview of the United States' various tax institutions, see Victor Fleischer “The State of America's Tax Institutions” (2018) 81 Law and Contemporary Problems 7.

9 Cynthia Coleman and Margaret McKerchar “The Chicken or the Eggs?: A Historical review of the Influence of Tax Administration on the Development of Income Tax Law in Australia” in J Tiley (ed) *Studies in the History of Tax Law* (Hart Publishing, Oxford, 2004) 285.

10 Coleman and McKerchar, above n 9, at 290.

uniformity between the various Commonwealth and State Acts.¹¹ In the 1950s, the Spooner Committee's review led to significant amendments to the ITAA 1936. The Hulme Committee followed in 1955 reviewing depreciation rates.¹² Near the end of the 1950s and early 1960s, the Ligertwood Committee was established with a very specific terms of reference, namely to advise on tax avoidance issues.¹³ The Downing Enquiry set up in 1964 as an academic study commissioned by the Social Sciences Research Council, focussed in particular, on the issue of equity.¹⁴

In the 1970s, a well-known tax committee was established, the Asprey Committee, to undertake a comprehensive review of the Australian tax system. Of particular note is that while the Asprey Committee made far-reaching and extensive recommendations, adoption of its recommendations is notably absent in the short to medium term, at least.¹⁵ In the 1980s, the Matthews Committee looked at the effects of inflation on the economy and the tax system, with its main recommendation of indexation of marginal rates short lived as a policy decision.¹⁶ The reform of the Australian Tax System (RATS) in the mid-1980s led to the introduction of a capital gains tax (CGT), full dividend imputation and the fringe benefits tax (FBT).¹⁷ The Review of Business Tax (RBT) in the late 1990s led to the recommendation that Australia needed "A New Tax System (ANTS)". Major issues included the need to reform indirect taxation (which eventually led to Australia implementing a goods and services tax (GST)), and changes to CGT. Few of the recommendations of the RBT were accepted, although the ATO implemented, in a limited form, the RBT's integrated tax design approach.¹⁸

In 1994, around the time that the three tax rewrites commenced (Australia, New Zealand and the United Kingdom), a call was made in the United Kingdom to set up an independent tax policy unit to establish clear criteria as to what legislation should be brought forward and what it is intended to achieve. This should be set up *outside* of the tax authorities. Rather than coming within HM Treasury, (where anecdotally HM Treasury's record on policy making is perceived to be gravely flawed), it could be in the Department of Trade and Industry. This would be an unusual location, to say the least. In terms of its composition this should embrace representation from industry and academia. This, it was argued, would ensure a more balanced

11 Coleman and McKerchar, above n 9, at 291.

12 Coleman and McKerchar, above n 9, at 292–293.

13 Coleman and McKerchar, above n 9, at 294–296.

14 Coleman and McKerchar, above n 9, at 297.

15 Coleman and McKerchar, above n 9, at 298–299.

16 Coleman and McKerchar, above n 9, at 300.

17 Coleman and McKerchar, above n 9, at 302–304.

18 Coleman and McKerchar, above n 9, at 307–311.

and objective approach being brought to tax changes, and avoid some of the then recent concerns.¹⁹

In their reflections on tax reform in 2003, Fisher and Oats²⁰ (following the Ralph Review in Australia in 1999), argue that if proposed reforms to tax policy are ambitious, they will not become a reality. This is borne out through tax reviews undertaken through history in Australia, illustrated by the authors' comprehensive analysis of these reviews. Fisher and Oats conclude:²¹

The focus of all major (and minor) reviews has been Commonwealth rather than Australia wide reform, which means that the State taxes, widely recognised as being inequitable and inefficient, have not been brought under scrutiny, presumably as a result of a reluctance to tackle the State/Federal financial relationship head on. The reviews have also inhibited by need for revenue neutrality, indeed minor reviews have dealt with only specific aspects of income tax. ...

In relation to the real reform of the fundamental structure of the tax system, it is arguable that, *when faced with the real test, consistent with all previous tax reviews, the government took the political option of opting for the least contentious path.*

Writing in 2009 at the time of the Henry Review, Evans and Krever look at the major tax reviews in Australia prior to 2009.²² The authors, in their critique of these earlier reviews (including both Asprey and Ralph), provide a scorecard with respect to their (lack of) impact on tax policy. This context, the authors suggest, did not bode well for the Henry Review's potential impact. Evans and Krever conclude:²³

Experience suggests that tax reviews rarely lead to successful tax reform. But this brief primer on past tax reviews in Australia is not intended to be simply a counsel of despair. Tax reform in Australia is necessary and overdue, and the Review has the opportunity and the capability to lay the foundations for genuine and successful tax reform. But to do so it will need to heed the lessons of the past as it considers the challenges of today. It remains to be seen how (or whether) the fiscal landscape in Australia will change "After Henry".

Unfortunately, for Australian tax policy refinement, the Henry Review has proven to be largely ineffectual in terms of impact on tax reform. This should not come as a surprise given the low expectations for impact when viewed in the context of the earlier Australian tax reviews, along with the restrictions imposed on it through its terms of reference.

Most recently, in a forum in the *Canadian Tax Journal (Revue Fiscale Canadienne)* published in 2018, several authors explored the question as to whether Canada should have a tax commission (the last being in 1962).

19 Nicholas Dee "Room for improvement in UK tax policy and practice" (1994) 5 Int Tax Rev 11.

20 Rodney Fisher and Lynne Oats "Reflections on Reform: It's all done with mirrors" (Working Paper, Warwick Business School, 2003).

21 Fisher and Oats, above n 20, at 30–32 (emphasis added).

22 Chris Evans and Rick Krever "Tax reviews in Australia: before and after Henry" [2009] 4 BTR 339.

23 Evans and Krever, above n 22, at 350–351 (emphasis added).

In their editorial introduction, Macnaughton and Milligan asked whether Canada should continue with sequential narrow reviews or undertake a comprehensive investigation that would set out what is needed for Canada's tax system in the 21st century.²⁴ Other contributions make the case for a broad tax commission that would undertake a deep and comprehensive review²⁵ and urge caution against the efficacy of a new tax commission based on the political history of such commission.²⁶ The final two contributions discuss how such a commission should be structured and the degree of independence that should be provided to it.²⁷

To summarise, in Yin's longitudinal review of the United States JCT, and in each of Coleman and McKerchar's, and Fisher and Oats' historical narrative of tax reform in Australia, we can see the important role that tax committees *can potentially* play in reviewing the tax system and making recommendations on tax reform. Evans and Krever's low expectations for the Henry Review have proved accurate. The recent Canadian Policy Forum provides some optimism that the next tax review in Canada may not only be comprehensive, but also undertaken by some form of 'independent' tax commission. The Canadian contribution will be discussed further in Chapter 12.

III. A BRIEF INTRODUCTION TO TAX COMMITTEES IN NEW ZEALAND

What is clear is that the uptake of recommendations from the various ad hoc tax committees is low (but variable) in the short term, largely due to whether the recommendations fit within the political philosophy of the incumbent Government. However, despite this, without such tax committees, not only would the development of New Zealand's tax system most likely have gone down a different path, but there would be a distinct lack of 'independent' analysis from experts to inform the Government of the time, or future Governments that may decide to take up on a particular tax committee's recommendations. What then is the history of tax committees in New Zealand? This will soon be revealed in detail through Chapter 2 to Chapter 11.

While this book is, in places, descriptive in terms of the contributions of each tax committee, it provides insights and critical perspectives that can serve as a useful reference point for other jurisdictions considering

24 Alan Macnaughton and Kevin Milligan "Policy Forum: Editors' Introduction – Should Canada have a Tax Commission?" (2018) 66 Can Tax J 349.

25 Fred O'Riordan "Policy Forum: Why Canada needs a Comprehensive Tax Review" (2018) 66 Can Tax J 351.

26 Shirley Tillotson "Policy Forum: Then and Now – A Historical Perspective on the Politics of Comprehensive Tax Reform" (2018) 66 Can Tax J 363.

27 Jennifer Robson "Policy Forum: From Independent Tax Commission to Independent Tax Authority" (2018) 66 Can Tax J 375; Joseph Heath "Policy Forum: From Independent Tax Commission to Independent Tax Authority" (2018) 66 Can Tax J 387.

using an ad hoc tax committee approach to tax reform. Tax committees can be a mechanism to enhance the level of consultation and transparency (independent or external). However, is this reflected in practice (from a New Zealand perspective at least)? The analysis extends to incorporate the process of tax policy development and its associated administration, which itself was a major recommendation of one of the committees.

It is not possible to examine in extensive detail every tax committee that has contributed to tax legislation, administration and practice within the confines of a single book. Consequently, the intention of this book is to provide a review of the most noteworthy tax committees that have had a significant impact and/or a wide brief in their terms of reference. The analysis also provides a comprehensive list of all tax committees identified over the last 95 years in New Zealand (as at the time of writing).

Specifically, the book traces and examines the contributions of tax committees over the last 95 years in one jurisdiction, namely New Zealand. Prior to the establishment of the first tax committee, any 'reviews' of taxation were undertaken by the Government of the time. An interesting observation of the approach is made by Goldsmith, as noted in a review of his work by Roberts:²⁸

Goldsmith's scepticism about the net benefits of taxation and government spending pervade the book. A related argument developed throughout the book is that compared with Australia or the United Kingdom, *New Zealand has made poorly informed policy choices*. There is merit to this argument; *public policy in New Zealand has often been poorly researched before and after implementation*. Goldsmith does well at mining New Zealand Parliamentary Debates to show that *ex ante politicians were guessing what the effects of policies might be*. Political notions about who should pay paved the way for new taxes. Yet there *was rarely research into how well the new taxes worked in practice*. Before World War II tax policy appears to have been more informed by anecdote than accounting.

28 See Evan Roberts "Review: We Won, You Lost, Eat That!: A Political History of Tax in New Zealand since 1840 – By Paul Goldsmith" (2010) 50 *Australian Economic History Review* 106 (emphasis added). For the principal work that provides a political lens on the history of taxation in New Zealand, see Paul Goldsmith *We Won, You Lost, Eat That!: A Political History of Tax in New Zealand since 1840* (David Ling Publishing, Auckland, 2008). For an overview of taxation in New Zealand from 1840 to 1880, see Keith Hooper and Kate Kearins "Substance but not Form: Capital Taxation and Public Finance in New Zealand, 1840–1859" (2003) 8 *Accounting History* 101; Keith Hooper and Kate Kearins "Financing New Zealand 1860–1880: Maori Land and the Wealth Tax Affect" (2004) 9 *Accounting History* 87. See also, Keith Hooper "Tracing the Origins of Taxation" in Keith Hooper, Jill Somerfield, Jon Greenheld and Katherine Ritchie (eds) *Tax Policy and Principles: A New Zealand Perspective* (Brookers, Wellington 1998) 1.

The first known contribution comes from the Committee on Taxation in 1922 chaired by Leigh Hunt (the Hunt Committee).²⁹ A Commission of Inquiry chaired by William Sim closely followed in 1924 (the Sim Commission).³⁰ After a period of nearly 30 years, the Gibbs Committee released its Report of the Taxation Committee in 1951.³¹

The next substantial contribution to reform relating to a tax committee is the Taxation Review Committee 1967 (the Ross Committee).³² The Ross Committee was set up in 1966 to undertake a comprehensive review of all aspects of central government taxation in New Zealand. The next significant contribution comes from the Task Force on Tax Reform 1982 (the McCaw Review).³³ The McCaw Review was a direct result of a report in June 1981 by the New Zealand Planning Council entitled *An Agenda for Tax Reform*.³⁴

Moving ahead about 35 years, the analysis in this book concludes with the recent Tax Working Group (TWG) established in late 2017 by the Labour-led Coalition Government (the Government TWG).³⁵ In addition to considering the scope of the terms of reference and membership of this Government TWG, a Submissions Background Paper, released in March 2018, attracted a record 6,700 submissions.³⁶

Other notable contributions to tax reform in New Zealand include the Organisational Review of Inland Revenue 1994 (the Richardson Committee);³⁷ the Tax Review 2001 (the McLeod Review);³⁸ and the Victoria University of Wellington Tax Working Group (VUW TWG).³⁹ In addition,

- 29 Leigh Hunt and others *Taxation: Report of the Committee Appointed to Inquire into the Taxation of the Dominion of New Zealand* (Government Printer, Wellington, June 1922) [*Hunt Committee*].
- 30 William Sim and others *Commission Royal Commission Appointed to Inquire into Land and Income Taxation in New Zealand* (Government Printer, Wellington, May 1924) [*Sim Commission*].
- 31 Tony Gibbs and others *Report of the Taxation Committee* (Government Printer, Wellington, 1951) [*Gibbs Committee*].
- 32 Lewis Ross and others *Taxation in New Zealand – Part I-Part XIV* (Government Printer, Wellington, 1967) [*Ross Committee*].
- 33 Peter McCaw and others *Task Force on Tax Reform: Final Report* (Government Printer, Wellington 1982) [*McCaw Review*].
- 34 New Zealand Planning Council *An Agenda for Tax Reform* (June 1981).
- 35 Michael Cullen and others *Tax Working Group* (New Zealand Government, Wellington, 2017) [*Government TWG*].
- 36 Michael Cullen, Chair of the Tax Working Group “Purposes, principles and possibilities: The Tax Working Group” (speech to the New Zealand International Fiscal Association (IFA) Conference, Queenstown, 2 March 2018).
- 37 Ivor Richardson and others *Organisational Review of the Inland Revenue Department* (Government Printer, Wellington, 1994) [*Richardson Committee*].
- 38 Robert McLeod and others *The Tax Review 2001: Final Report* (Government Printer, Wellington, 2001) [*McLeod Review*].
- 39 Victoria University of Wellington Tax Working Group *A Tax System for New Zealand’s Future: Report of the Victoria University of Wellington Tax Working Group* (The Centre for Accounting, Governance and Taxation Research, Wellington, 2010) [*VUW TWG*].

a number of consultative committees and working groups, set up by Fourth Labour Government during the 1980s–1990s, reviewed specific aspects of the tax system, recommending numerous reforms. This section of the book provides an overview of several of the more significant tax committees/working groups, with a comprehensive list of these consultative committees/working groups set out in Table 8.1.

The work of other bodies, such as the New Zealand Productivity Commission, are not included as these are not ad hoc tax committees. For example, the New Zealand Productivity Commission undertook an inquiry into housing affordability in New Zealand in 2012, which had implications for taxation.⁴⁰ The principal purpose of the New Zealand Productivity Commission is to provide advice to the Government on improving productivity in a way that is directed to supporting the overall well-being of New Zealanders, having regard to a wide range of communities of interest and population groups in New Zealand society, as provided in the New Zealand Productivity Commission Act 2010. Furthermore, Inland Revenue (IR) and the New Zealand Treasury (Treasury) undertake reviews of aspects of the New Zealand tax system as part of their statutory functions. Various ‘think tanks’ and other private sector organisations also provide their own reports on aspects of the New Zealand tax system from time to time.

A recent announcement in August 2019 by the New Zealand Government will make a significant change for costing tax proposals. The New Zealand Parliamentary Budget Office (PBO - Kaitiaki Kaupapa Rawa) is to be established, assuming the proposal submitted by the Government to the Officers of Parliament Committee (OPC) is accepted. The PBO will be given the status of an Officer of Parliament. It will have a large degree of independence, with the intention that there will be more transparency about what political parties are promising to do, and fewer political games played. It was anticipated that legislation would be introduced before the end of 2019, with the intention that the PBO be operational from 1 July 2021.⁴¹ It will potentially be like the Congressional Budget Office in the United States.⁴² As at the time of writing in March 2020 there has been no further progress announced.

40 New Zealand Productivity Commission *Housing Affordability Inquiry* (March 2012). See generally, the New Zealand Productivity Commission <www.productivity.govt.nz>.

41 See further, Grant Robertson and James Shaw “Independent election policy costing unit a step closer” (press release, 20 August 2019). The Minister of Finance and Associate Minister of Finance, respectively state:

Given that the PBO would not be established in time for the 2020 election, Ministers have agreed to improve existing protocols, by which parties can ask the Minister of Finance to request that the Treasury cost a political party policy.

For the 2020 general election, the Treasury will establish a new team to provide a policy costing service to the political parties currently represented in Parliament. Political parties will be able to directly approach the Treasury for this service. The service will be performed independently from the Government.

42 See further, Congressional Budget Office <www.cbo.gov/about/overview>.

IV. STRUCTURE AND APPROACH OF THE BOOK

The book incorporates a forward-looking approach, both through offering some insights into the possible future use of such tax committees (drawing upon suggested best practice), and through proposing a new independent of government oversight body.⁴³

The remainder of this book is organised as follows. Chapters 2 to 12 are each dedicated to a review of the 10 most significant tax committees/working groups that have been established in New Zealand since 1922. A chronological approach is adopted to undertaking this contextual historical analysis. The most recent tax committee reported in February 2019, with the Government's response announced in mid-April 2019. Chapter 13 provides an overview to the proposed new independent oversight body, the New Zealand Taxation Review Commission (NZTRC). Chapter 14 sets out the concluding observations.

43 This draws upon the work of Robson, above n 27, and Heath, above n 27.

2

COMMITTEE ON TAXATION (THE HUNT COMMITTEE) 1922

I. INTRODUCTION

The earliest known official inquiry into New Zealand taxation was the Hunt Committee. Income tax had been in place in New Zealand since 1891 with the Land and Income Assessment Act 1891 (LIAA 1891). Since its enactment in 1891, most citizens did not pay income tax until the event of World War I, when additional revenues were required for the war effort. Now, many more citizens had become liable for income tax and New Zealand was in a post-war development period.

Set up by the Reform Government of New Zealand, the Hunt Committee's members represented local Chambers of Commerce, the Farmers' Union, the Sheep-owners' Federation, law and accounting societies, and industrial and manufacturing interests. Hunt was from the Wellington Chamber of Commerce, with this committee providing a cross-section of *commerce* in New Zealand at that time. All members were male, a feature of many of New Zealand's tax committees for the next few decades.

Interestingly, the Chair represented the Farmers' Union. Its focus (or terms of reference) was to look at all taxation in New Zealand with a view to ascertaining whether the burden of taxation was affecting the prosperity of New Zealand and what change would be desirable. Thus, while no specific terms of reference were provided, the Hunt Committee prepared a short statement of the work which it was considered necessary to cover, and the following statement of duties was approved:

Specifically, the functions of the Hunt Committee would be to inquire into:

1. The taxation of the Dominion of New Zealand in all its aspects;
2. The effect of existing burdens of taxation upon the general prosperity of the Dominion, and the directions of change, if any, that are necessary or desirable in the interests of the country;
3. For the purposes of the above inquiry the Committee will require information from Government Departments as to the revenue and expenditure for each year since 1913, and also the system of taxation in force in other English-speaking countries.

The Hunt Committee considered evidence and suggestions from representatives of the producing, industrial, and labour organisations, and

other classes of taxpayers. This evidence and any suggestions, as far as possible, had to be submitted by typewritten statements in triplicate.

II. CONCLUSIONS AND RECOMMENDATIONS

The Hunt Committee concluded:⁴⁴

1. *That the limits of taxation that this country can bear have been reached indeed, exceeded -and that there is now practically no reserve of taxable capacity;*
2. *That the higher graduated rate of income-tax has reached such a point that it is drying up the sources of revenue, and, if continued, must result in a reduction of revenue from these sources, must stop progress and enterprise, and impede production and industry;*
3. That the income-tax on large companies is the highest in any of the British dominions - considerably higher than in- Great Britain, and very much higher than in any other section of the British Empire;
4. That land-tax - particularly in the higher graduated rates - is very seriously affecting production and development;
5. That the rate of taxation on smaller incomes is lower, and the exemptions on these smaller incomes higher, than in any other part of the British dominions;
6. That economies in public expenditure are the principal means by which relief from the present excessive taxation can be afforded.

Overall, the recommendation of the Hunt Committee was for a shift in the tax burden to increase the burden on those with lower incomes and reduce the amount of tax levied on large companies. Adam Smith's four maxims (equity, certainty, convenience, and economy) were considered to be an acceptable foundation for determining the incidence of tax. Other factors seen as important were payment, graduation and treatment of losses. This focus led to the conclusion that income tax should ultimately be paid by the individual ultimate recipient (and hence not by companies).

There was some recognition of international competition when it came to taxing investments, indicating that rates should be competitive. A recommendation was made to lower the top income tax rate to the equivalent of 25 per cent. Debate included determination of the optimum income tax rate and structure, along with certain exemptions for businesses (e.g. coalmines). Committee members' reservations are set out in the report of the Hunt Committee.

44 Hunt Committee, above n 29, at 2 (emphasis added).

III. GOVERNMENT'S RESPONSE TO THE FINDINGS

The main response by the Government to the Hunt Committee's report was to establish the Royal Commission of Inquiry in 1924, which is the next tax committee reviewed in this book in Chapter 3. Thus, in a sense, the Hunt Committee's most important contribution was to convince the Government of the need for a formal Commission of Inquiry.

IV. CONSULTATION

During the review, 31 witnesses appeared, and members of the public submitted 71 letters and statements. These submissions formed part of the basis for justifying the conclusions and recommendations of the Hunt Committee.

V. CONCLUDING OBSERVATIONS

The Hunt Committee is known for two main features. It was the first tax committee set up in New Zealand, and looked to re-establish taxation in New Zealand post-World War I. Its principal contribution was to convince the Government of the need to establish a Commission of Inquiry into the tax system, which is the subject of the next chapter of this book.

3

COMMISSION OF INQUIRY (THE SIM COMMISSION) 1924

I. INTRODUCTION

Just two years later, following the conclusions and recommendations in the Hunt Committee's report, a more formal commission of inquiry was established under the Commissions of Inquiry Act 1908. This occurred during the same Reform Government of New Zealand's period in office. A commission of inquiry in New Zealand is one of many bodies available to the Government to inquire into various issues and stands as the highest level of inquiry available to Government. Generally, a commission of inquiry reports findings, gives advice and makes recommendations. A commission of inquiry's findings are not legally binding but can be highly influential. A statutory commission of inquiry is appointed by the Governor-General on the advice of the Government. While a commission of inquiry is independent of the Government, they receive administrative assistance from the Department of Internal Affairs.

The terms of reference for the Sim Commission of Inquiry (Sim Commission) were:⁴⁵

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

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

Additional staff can be appointed to assist a commission of inquiry, including secretarial support, legal counsel (usually drawn from the Crown Law Office), research staff and specialist advisers. A commission of inquiry is also able to draw on specialist assistance as required. At the time of this review, the process of supporting a commission of inquiry was less sophisticated than is the case in the 21st century.

45 Sim Commission, above n 30, at 2.

II. MAJOR RECOMMENDATIONS

The Sim Commission concluded that there should be a graduated scale of income tax on individuals (levied on the combination of all forms of income in one return) and the current system of taxing companies abolished. In a post-war environment there needed to be a return to a more *ideally correct* system. In terms of land tax, the weight of evidence on balance was in favour of abandoning it in favour of income tax. As a matter of principle, the source of income should not affect the rate of taxation. Tax rates were too low on those with low incomes compared to that in Australia and the United Kingdom. Further broadening of the tax base for levying income tax was encouraged, with the overall weight of taxation in need of reduction.

The Sim Commission's recommendations were:⁴⁶

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

46 Sim Commission, above n 30, at 5–7 (emphasis added).

3. Commission of Inquiry (The Sim Commission) 1924

in New Zealand are assessed on their undivided profits, and should also be liable in respect of such incomes for any flat-rate company tax.

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

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

While this is a long list of recommendations, they fall largely into one of two categories. The first category contains recommendations to put New Zealand back to a 'normal tax system' in a post-war environment. The other recommendations are about broadening the income tax base to provide revenue cover for a recommendation of abolishing land tax, and recognising that New Zealand is operating in a global environment. A perception, at least, of self-interest for some of the Sim Commission's members, is evident in several the recommendations aligning with their business and professional interests. That said, the Sim Commission took a very forward-looking approach.

III. GOVERNMENT'S RESPONSE TO THE FINDINGS

Few of the most substantial recommendations would see the light of day in terms of government action, at least in the short to medium term. The abolition of land tax did not fully occur until the early 1990s, although its impact on landowners was restricted with the passage of time. The abolition of income tax on companies has not occurred and neither is it expected to in the future, although there have been significant reforms over time. This will be evident in future tax committee recommendations. However, with the passage of time, the international dimension has come to the fore, especially in the terms of reference for several of the reports of the Valabh Committee following its establishment in the mid-1980s.⁴⁷

⁴⁷ See further, the discussion in Chapter 8 of this book.

IV. CONSULTATION

A total of 52 witnesses appeared before the Sim Commission. In addition to their written submissions, an unspecified number of submitters did not appear. The Commissioner of Taxes (now known as the Commissioner of Inland Revenue) was present throughout the hearings. In this respect, he would have been fully cognisant of the views of submitters.

V. CONCLUDING OBSERVATIONS

The Sim Commission's legacy is not so much in the initial response of the Government, which was to accept very few of its recommendations, but in its longer-term impact. Land tax was abolished around 70 years later in the 1990s (although it is probably too tenuous a link to suggest the Sim Commission's report had an influence on the subsequent decision to abolish land taxation), and other significant issues became part of various projects assigned to the Valabh Committee from the mid-1980s.

4

TAXATION COMMITTEE (THE GIBBS COMMITTEE) 1951

I. INTRODUCTION

The Gibbs Committee was the first to review the New Zealand tax system post-World War II, under the First National Government in New Zealand. More than a quarter of a century had passed since the last review in 1924 (the Sim Commission). The Gibbs Committee was appointed by the New Zealand Government with representation by way of nominated individuals from various national bodies, including (in addition to Theodore Gibbs, an accountant) the accounting and legal professions (A Buxton, R Davidson, F Harris, D Hoggard), along with those representing the farming sector/business (D Martin, E Norman, A O'Shea, S Paterson, C Plimmer and H Rowden) and one for workers generally (W Fox). The Gibbs Committee is evidence of a wider field of membership with a workers' representative, although as has been the case to date, all members were male.

The Terms of Reference (referred to as Order of Reference) were:⁴⁸

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

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

The Gibbs Committee set as its guiding principles of taxation:⁴⁹

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

48 Gibbs Committee, above n 31, at 5.

49 Gibbs Committee, above n 31, at 19 (emphasis added).

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

II. MAJOR RECOMMENDATIONS

Recommendations appear throughout the Gibbs Committee's report. One major tax policy approach debated by the Gibbs Committee was the pay as you earn (PAYE) system, which was already in operation in the United Kingdom. The Gibbs Committee recommended against extending this to income tax but suggested there be a discount for those taxpayers that pre-pay their income tax. Several recommendations included abolishing or adjusting various rebates, exemptions and allowances, and types of taxpayers. There was no recommendation on whether a husband and wife should have their income aggregated, for deductions for charitable donations, but several recommendations concerned deceased estates and trusts.

Included are suggestions for law changes affecting businesses to provide protection to taxpayers from unfair interpretations by the revenue authority. Utilisation of non-capital losses should be more flexible for taxpayers, including unlimited loss carry forwards, and enhanced depreciation allowances. Specific recommendations from the Gibbs Committee favour farming and forestry businesses, again recognising New Zealand's major industries at the time were in the primary sector.

There is encouragement to extend the exemptions from income tax for income derived in other British dominions to outside these dominions, as well as to enter into negotiations for double tax agreements (DTAs), with Australia being a priority. Again, this shows a growing international focus with respect to taxation on cross border trade. Land tax, in the Gibbs Committee's view, was indefensible and should be abolished. The report also sets out several administrative and legislative drafting matters.

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

On the matter of the general method of assessment of tax on the company and its shareholders, the Gibbs Committee was equally divided. Half of the members recommended that the present system of graduated company tax should be abolished and replaced by a system where dividends would be assessable in the hands of shareholders and companies would be taxed at a flat rate. The opposing group, which favoured the retention of the present

system, argued that the adoption of the dual system would not by itself result in increased company savings. This approach, in their view, would result in pressure from shareholders for increased dividends to offset their increased liability for income tax. This group opposed the dual system, mainly because of what they saw as ‘injustices’ that would be imposed upon investors who had acquired shares based on the existing law. Both groups admitted the inequity of the present system under which taxation rates are not related to the incomes of individual investors.

III. GOVERNMENT’S RESPONSE TO THE FINDINGS

Contrary to the Gibbs Committee’s recommendation, New Zealand introduced PAYE in 1957 and this has remained in place ever since then. Over time, the number of exemptions and rebates for individuals have reduced (or are being eliminated), with the most significant period of change being under the Fourth Labour Government during the period 1985–1987. Over time, the increased flexibility in the use of losses has also increased the perceived increase in avoidance activity. Most recently with the advent of the COVID-19 pandemic, the Government on 15 April 2020 announced as a temporary measure that legislation will be introduced to enable businesses expecting to make a loss in either the 2019/20 year or the 2020/21 year to estimate the loss and use it to offset profits in the past year, thereby being able to carry the loss back one year.

Much has happened in the international tax area, with New Zealand increasing its negotiations of double tax agreements (DTAs) over time, initially using its ‘own’ model, and gradually moving towards the OECD’s model.⁵⁰ Land tax is no longer in place, although this did not directly follow the Gibbs Committee’s recommendation. New Zealand has not adopted a joint income tax return filing system and is unlikely to do so.

IV. CONSULTATION

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

50 For a review of New Zealand’s approach to tax treaties, see Adrian Sawyer and Andrew Smith “National Report: New Zealand” in Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer (eds) *The Impact of the OECD and the UN Model Conventions on Bilateral Tax Treaties* (Linde, The Netherlands, 2012) 735. For a list of New Zealand’s current DTAs, see Inland Revenue “Tax treaties” <www.taxpolicy.ird.govt.nz/tax-treaties#dta>.

V. CONCLUDING OBSERVATIONS

The impact of the Gibbs Committee is not so much in the initial response of the Government, which was to accept very few of its recommendations, but in its longer-term impact. It would not be until the Fourth Labour Government in the mid- to-late 1980s that many of the recommendations effectively became a reality with the radical reforms of the then Finance Minister Roger Douglas. The reforms to New Zealand's international tax took a little longer to come to fruition and continue to be refined to this day.

5

TAXATION REVIEW COMMITTEE (THE ROSS COMMITTEE) 1967

I. INTRODUCTION

The Ross Committee, appointed by the Second National Government in New Zealand through Order in Council (under the Commissions of Inquiry Act 1908), had five members. Like its predecessors, all members of the Ross Committee were male. Its members were LN Ross (Chairman) (an accountant), CA Blyth, NB Fppard, LM Papps, and RG Stark. Its Terms of Reference were:⁵¹

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

II. MAJOR RECOMMENDATIONS

The Ross Committee issued four documents (two being reports (one being a supplementary report) and two appendices):

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

The Ross Committee made a substantial number of recommendations (about 120 in total), but its key recommendations were to:⁵²

1. Reduce reliance on direct income tax and put more weight on indirect consumption taxes;

51 Ross Committee, above n 32, "Introduction" (emphasis added).

52 Ross Committee, above n 32. See also, Peter Dunne, Minister of Revenue "Address to the International Fiscal Association Conference" (Wellington, 11 March 2011).

2. Remove holes in the tax base that were being exploited, in particular, that fringe benefits of employees be taxed; and
3. Generally, reduce income tax rates.

The Ross Committee recommended the merging of the existing ordinary income tax and social security income tax, to be known as the “income tax”.⁵³ The Ross Committee held the view that marginal tax rates rose too sharply in the middle-income range with the maximum rate reached at a low level. The taxation structure was complicated through having separate bases of taxation for income tax and social security tax. The Ross Committee proposed a new rate and exemption structure for the taxation of individuals.⁵⁴ The proposed rates would be on a graduated scale from 10 per cent up to 74 per cent on income over \$40,000 (in terms of 1967 dollars). This would reduce the tax burden on lower and middle-income earners and increase it on the very high-income earners. A number of exemptions/deductions would continue to apply. These ‘simplification’ recommendations, if adopted, would significantly shape future tax reform in New Zealand.

With respect to company taxation, the Ross Committee recommended retention of the basic principles of the present system of taxing incomes derived by companies and dividends received by shareholders.⁵⁵ However, a major question dividing the Ross Committee was whether all companies should pay tax on a PAYE basis or in the year following the income year. The majority of the Ross Committee favoured a general PAYE basis as the most practical means of reducing company tax rates.⁵⁶

Of the various recommendations with respect to fringe benefit tax, these include that:⁵⁷

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

53 Ross Committee, above n 32, Chapter 16.

54 Ross Committee, above n 32, Chapter 17.

55 Ross Committee, above n 32, Chapter 19.

56 Ross Committee, above n 32, Chapter 22.

57 Ross Committee, above n 32, Chapter 43.

- employers should be required to make an assessment of the value of benefits in kind provided for employees and to account for PAYE tax payable in respect of such benefits.

The Ross Committee proposed the introduction of an eight per cent general sales tax.⁵⁸ In this regard, the Ross Committee states:⁵⁹

[T]he introduction of a realised capital gains tax is desirable on the grounds of equity provided the rates of tax are moderate. Such tax should not, however, be imposed until the other recommendations of this report have been implemented. Members of the public should be given the opportunity to make representations before a final decision is made by Government on the introduction, form and structure of the tax.

The Ross Committee also recommended land tax be abolished; this is a theme carried over from the Gibbs Committee.⁶⁰ International taxation received little mention in the Ross Committee's report. There was also little focus on tax administration. However, of interest to the motivation for this book, the Ross Committee recommended a *permanent advisory and research committee on taxation*. This committee would comprise the Secretary to the Treasury, the Commissioner of Inland Revenue, the Comptroller of Customs, the Government Statistician, and two independent members (one of whom should be chairman) appointed by the Minister of Finance. The committee would have a full-time, permanent Director of Research. It should report to the Minister of Finance at least once in every year, and more often if occasion warrants.

III. GOVERNMENT'S RESPONSE TO THE FINDINGS

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

58 Ross Committee, above n 32, Chapter 65.

59 Ross Committee, above n 32, Chapter 72.

60 Ross Committee, above n 32, Chapter 73.

The Government decided that a general change to a PAYE basis for company taxes would not, at that time, be advisable. Other taxation amendments made by the Government included that non-deductible items of expenditure, other than donations, by private companies be taxed as dividends to shareholders in certain circumstances; and the benefits conferred on employees through the granting of stock and share-buying privileges would be taxed as income. The Government also reached the conclusion that, at that time, it was not opportune to abolish land tax.⁶¹ Disappointingly, in the author's view, the Government did not seek to follow up on the recommendation to create an independent tax review body. This concept warrants further consideration, with Chapter 13 of this book exploring this idea further.

IV. CONSULTATION

The invitation to the public to make submissions occurred through advertisements in the daily press. The advertisements appeared in papers throughout New Zealand during September 1966 and those wishing to make submissions had until 31 October 1966 to do so. The flow of submissions continued throughout 1967 to within a few days of the issue of the Ross Committee's main report.

Individual letters, specifically inviting submissions, went to a wide range of national organisations and trade groups having a direct interest in the work of the Ross Committee. Nearly all those approached took advantage of the opportunity offered to make representations. Government departments likely to be interested in the economic and taxation aspects of the review were asked to provide background information and were also invited to make submissions, if they so wished.

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

61 (18 July 1968) 355 NZPD 617–624.

V. CONCLUDING OBSERVATIONS

The immediate impact of the Ross Committee, like those before it, was minimal. It did have an impact through some simplification measures, including a new rate and exemption structure for individuals, and the merging of ordinary and social security taxes into one composite tax. There were also several changes to items that would be taxable. In part, this was due to the Government of the day being of the view that the economic climate would not permit many of the proposed changes.

In the author's view, the most important contribution of the Ross Committee was its recommendation to establish an independent tax review body. In part, the failure for the Government to consider this further, in conjunction with the minimal impact of subsequent tax committees, provided the motivation for this book.

6

TASK FORCE ON TAX REFORM (THE MCCAW REVIEW) 1982

I. INTRODUCTION

The McCaw Review was appointed by the Third National Government of New Zealand as a direct result of a report from the New Zealand Planning Council in June 1981 entitled *An Agenda for Tax Reform*.⁶² This followed a gap of about 15 years since the last tax committee reported (The Ross Committee). The Members of the McCaw Review were PM McCaw (Chairman) (an accountant), GJ Schmitt (Deputy Chairman), JA Kean, RT Phillips, EG Thompson, HM Titter, BHC Tyler, Kerrin M Vautier, and Sir Allan Wright. Interestingly, for the first time, not all members were male, with Kerrin Vautier⁶³ being the first female member of a tax committee in New Zealand.

Its Terms of Reference were:⁶⁴

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

62 New Zealand Planning Council, above n 34.

63 Kerrin Vautier was well qualified to sit on the McCaw Committee. She has held a diverse range of appointments across academia, public, commercial and charitable sectors in New Zealand. Her expertise in competition law has seen her as a member of the New Zealand Commerce Commission, a Lay Member of the New Zealand High Court under the Commerce Act and leader of the Competition Policy work of the New Zealand Pacific Economic Cooperation Council (NZPECC). She has been a Director of several large corporates and has served as External Monetary Policy Advisor to the Governor of the Reserve Bank, as a member of the Appeal Board of the New Zealand Electricity market, and external advisor to the Partnership Board of Deloitte. She has also served as a board member of several not-for-profit organisations, including Chair of NZPECC and the New Zealand Institute of Economic Research (NZIER). She is currently the Deputy Chair of the Reserve Bank of New Zealand.

64 McCaw Review, above n 33, "Foreword".

Because of the short time available, and in recognition of the consequent need to concentrate attention on the more important issues, the McCaw Review divided its work into three distinct categories. The first group of topics were those the McCaw Review identified as being in the greatest need of reform. These topics, together with a summary of its conclusions, are reviewed in the next section of this chapter. The second and third categories are noted in Section 6.II.I of this book.

II. KEY MATTERS REVIEWED

A. Personal Income Tax

There is a widespread public demand for a reduction in personal income tax rates. The marginal tax rate of the taxpayer earning around the average wage is now almost 50 cents in the dollar while their average tax rate has also considerably increased. The McCaw Review believed that both average and marginal personal income tax rates be reduced for the great majority of individuals and, as far as possible, the degree of progression in the scale as it affects most members of the labour force should be reduced. They provided several scales with varying levels and rates of progressivity, providing the Government with a base from which they can make the final determination. An estimate of the revenue cost in relation to each scale is included and compared with the scale currently operating.⁶⁵

B. The Tax Unit

The McCaw Review was of the view that there was a serious lack of recognition of costs associated with the family unit in the tax system at that time, with the ability of some taxpayers to split their income seen to be being unfair. Subject to one dissenting opinion, the McCaw Review recommended the combination of the income of the primary income earner and their spouse if both agreed. The next step is to divide this combined figure by a predetermined factor. By way of an example, the McCaw Review offered the following example:⁶⁶

If the combined income of both parties amounted to \$17,000 for the year, and the divisor were fixed at 1.7, the total tax liability of both parties would be determined by the average tax rate applying to $\$17,000/1.7$ i.e. \$10,000. It is important to appreciate that provisions for dividing incomes in this way should be voluntary - both parties being taxed as individuals if either so wishes.

65 McCaw Review, above n 33, Chapter 6.V.

66 McCaw Review, above n 33, Chapter 6.III. The number '1.7' was used as an example figure set as less than two (that is not a strict averaging). As noted in para 6.165:

A divisor of 1.7 has been used purely for the purposes of illustration. Use of a lower divisor, however, would reduce the benefit of partial income splitting and cost less, and conversely.

The McCaw Review believed that this option should extend in principle to include the children of the family. Because of administrative implications, they instead recommended that an increased Family Benefit would give increased recognition to children.⁶⁷

C. Family Support Measures

Because of the various scales, the McCaw Review recommended, as well as considering increases in indirect taxation, special provisions for those families with low incomes, including solo parent families. Also recommended is an extension of the low-income family rebate. The benefits provided to the single income family by way of income splitting and the increased Family Benefit were a replacement for the role of the Young Family Rebate and the Spouse Rebate, and the withdrawal of these rebates was therefore recommended.⁶⁸

D. Tax Avoidance and Fringe Benefits

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

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

The McCaw Review was of the view that it was essential that the revenue authority was provided with the resources necessary to combat undesirable avoidance practices, and to identify and consequently minimise the most serious and costly areas of avoidance and evasion. While the resources devoted to minimising taxes payable (much of which is perfectly legitimate) had grown rapidly, resources must be available to those responsible for

67 McCaw Review, above n 33, Chapter 6.IV. The (Universal) Family Benefit referred to commenced in 1946 and was paid to mothers for each dependent child under the age of 16. It replaced all previous means-tested allowances for dependent children. In 1958, the rules changed to allow families to capitalise future payments into a lump sum amount, up to a maximum of £1,000 per family, to use as a deposit on a house. Further refinements followed the Royal Commission of Inquiry into Social Security in 1969, with the (Universal) Family Benefit being replaced in the 1990s.

68 McCaw Review, above n 33, Chapter 6.IV.

administering New Zealand's income tax system in order to provide an acceptable response.⁶⁹

The McCaw Review recommended taxing all fringe benefits. It referred specifically to three types that in its view needed immediate attention. They were employer-provided vehicles available for private use; low interest loans to employees; and private accommodation provided at concessional rates. They did accept that because of administrative complexities and low revenue potential, there would remain many minor benefits, which did not produce a significant problem in terms of equity and should therefore remain exempt from tax.⁷⁰

E. Consumption Taxes

The McCaw Review suggested that the principal option available to the Government was to extend the then indirect taxation on expenditure. This would be necessary if the Government wished to reduce significantly the rates of personal income tax while remaining revenue neutral. They concluded that the most appropriate means available for immediate application would be through a rationalisation and extension of the then Wholesale Sales Tax (WST) system, as well as a tax on certain services. This would produce limited revenue, whereas, if greater revenue was needed the Government should consider introducing a Value Added Tax (VAT). As it turned out this latter option was the preferred one being implemented some four years later following the election of a new Government, with New Zealand's goods and services tax (GST) commencing in October 1986.⁷¹

F. Business Income and Effects of Inflation

The McCaw Review was of the view that the public understands the effects of inflation on business incomes had increased since the report of the Richardson Report on inflation released in 1976.⁷² The McCaw Review fully endorsed the need for reflecting the impact of inflation on the determination of business income. A specific recommendation was that the effects of inflation on inventories, depreciable assets and all monetary items, both assets and liabilities, be measured for tax purposes by use of a suitable general price index. The effect would be to reduce taxable incomes for those businesses with substantial investments in inventories and depreciable assets. On the other hand, this could increase the taxable incomes of those with significant borrowings invested in assets which are either not depreciated or are depreciated at a low rate.

69 McCaw Review, above n 33, Chapter 3.

70 McCaw Review, above n 33, Chapter 6.VI.

71 McCaw Review, above n 33, Chapter 8.

72 See Ivor Richardson and others *Report of the Committee of Inquiry into Inflation Accounting* (New Zealand Government, Wellington, 1976) [*Richardson Report*].

The McCaw Review believed strongly that this recommendation would remove or at least mitigate many of the distortionary effects of inflation as they affect the business unit. However, acknowledging some difficult transition problems, the effect on economic activity would extend beyond the confines of taxation. Going forward, an investigation, as a matter of urgency, was necessary concerning introducing a comprehensive system of inflation adjustments for business income tax purposes.⁷³

G. Company and Shareholder Taxation

The 'double taxation' of company income and dividends received by shareholders was a major issue causing inequity, highlighted by the fact that it was the subject of many submissions. Furthermore, the ability of some companies to pay tax-free dividends on a continuing basis was being unfair.⁷⁴ To remedy this, the McCaw Review recommended:

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

The Government did not accept any of the recommendations in this area, although some years later, the Fourth Labour Government introduced dividend imputation as one of its reforms in 1988.

H. Capital Gains Tax

The McCaw Review did not recommend the introduction of a capital gains tax (CGT) *at the time* it delivered its report. This is different than recommending against a CGT. They recognised the arguments in favour of a (narrow) capital gains tax, preferring imposing a CGT on real gains only, and not on those gains arising from general inflation. Interestingly, the McCaw Review members were of the view that most 'typical' capital gains are better defined as gains from the use of borrowed monies for the buying and selling of capital assets. The McCaw Review believed that its proposals in relation to borrowing gains in the business sector would achieve most of the objectives of a capital gains tax.⁷⁵

73 McCaw Review, above n 33, Chapter 7.I.

74 McCaw Review, above n 33, Chapter 7.II. The tax-free dividend discussed here refers to the ability of companies to pay tax-free dividends outside 100 per cent-commonly owned groups. In 1992 the inter-corporate dividend exemption was repealed.

75 McCaw Review, above n 33, Chapter 10.II.

I. Income Tax Concessions and Incentives

While the policy objectives that gave rise to various income tax concessions and incentives were not part of the McCaw Review's Terms of Reference, it did consider the effects of these concessions and incentives on the taxation system and the degree of monitoring. The McCaw Review estimated that the cost of business incentives in revenue forgone was around \$NZ470 million per annum (in 2019 this would be approximately \$1.3 billion per annum) It was considered necessary for further work to be undertaken in this area.⁷⁶

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

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

The areas in the third category were:

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

III. GOVERNMENT'S RESPONSE TO THE FINDINGS

The incumbent Government accepted little of the McCaw Review's recommendations where change was proposed. That said, later Governments adopted the direction of reform suggested by McCaw Review, especially after the election of the Labour Government in 1984. Once again this emphasises the need for an alignment of recommendations with a government's tax philosophy.

As noted in the McLeod Review:⁷⁷

The changes to the tax system undertaken during the 1980s were substantial. While lowering of statutory tax rates is a part of the story, it is not the whole story.

⁷⁶ McCaw Review, above n 33, Chapter 4, paras 1.9–1.10.

⁷⁷ McLeod Review, above n 38, at [1.24] (emphasis added).

The broadening of the income tax through the introduction of resident withholding tax and fringe benefit tax and the reduction of rebates and exemptions was one means by which the lowering of income tax rates was made possible. Another was the broadening of the overall tax base through the introduction of GST. Far from simply reducing the tax burden on the wealthiest New Zealanders, these changes resulted in a more equitable distribution of the tax burden across all New Zealanders. While it is quite possible that some groups paid roughly the same proportion of tax as they had done before, the moves towards a more equitable tax system also, undoubtedly, made many people better off.

IV. OTHER MATTERS AND CONSULTATION

The McCaw Review made the following critical statement:⁷⁸

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

From the above statement from the McCaw Review, one could surmise that the short time frame and lack of key information were a deliberate ploy of the Government at the time to stymie the effectiveness of the McCaw Committee. The McCaw Review decided at its first meeting that the time constraints made it inappropriate to invite submissions from the public. Consequently, it would not be practicable, in its view, to conduct formal public hearings. The McCaw Review, therefore, suffered from a relative lack of transparency. This is a significant deficiency of the review, which it could have attempted to overcome through a formal request to extend the period before it had to report to the Government.

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

78 McCaw Review, above n 33, at [1.17] (emphasis added).

V. CONCLUDING OBSERVATIONS

The McCaw Review is arguably the first of the tax committees that recognised the magnitude of its terms of reference to review the entire New Zealand tax system which it (correctly) concluded was beyond its ability in the time frame provided. It appropriately made decisions to prioritise what it would review, and in doing so made a substantial number of recommendations.

However, few of its recommendations were accepted at the time by the Government, but a number were taken up by the Fourth Labour Government in the mid- to late-1980s. Notwithstanding comments about the time constraints to allow comprehensive submissions and public hearings, the McCaw Review did not follow best practice in terms of public consultation. Its decision to invite selected groups to consult with it would, no doubt, have failed to provide unbiased input.

7

ORGANISATIONAL REVIEW OF INLAND REVENUE (THE RICHARDSON COMMITTEE) 1994

I. INTRODUCTION

The Minister of Revenue in the Fourth National Government of New Zealand appointed the Richardson Committee following the recommendations of the Valabh consultative committee.⁷⁹ The members were Sir Ivor Richardson (Chair – retired Court of Appeal judge), David Edwards, David Henry (Commissioner of Inland Revenue (IR)), Dr Murray Horn, Secretary for Treasury (when the Review Committee was considering the policy advice function). There was also an Advisory Committee, comprising: David Henry (Chair), IR; Paul Carpinter, Department of the Prime Minister and Cabinet; Chris Pinfield, Treasury; Ross Tanner, State Services Commission; Maria McKinley, IR; Graham Holland, IR; Robert McLeod, New Zealand Society of Accountants; Geoff Harley, New Zealand Law Society; and Mary-Ann Macpherson (Secretary), IR. There was also a project team with personnel from IR, State Services Commission, Treasury, and from two firms in the Big Six (as they were then) chartered accountancy firms, specifically, Deloitte and KPMG.

All members of the principal Richardson Committee were male, with two females serving on the Advisory Committee. This was the first instance of a tax committee having a much more extensive membership incorporating advisory and project teams. In this regard, the Richardson Committee was better resourced to undertake its work than prior tax committees. In terms of impact, the Richardson Committee has had the greatest (long-lasting) impact of all the tax committees on tax administration reform in New Zealand. In part, this success can be attributed to the intellectual capabilities and leadership qualities of Sir Ivor, highlighted through his time on the bench. Therefore, it is important to explore in detail its major recommendations.

The Richardson Committee's Terms of Reference were to:⁸⁰

[I]nvestigate and recommend the optimal organisation arrangements for the tax assessment and collection system, and other activities that are currently part of

79 See Arthur Valabh and others *Working Party on the Reorganisation of the Income Tax Act 1976* (New Zealand Government, Wellington, 1993), discussed further in the next subsection on consultative committees.

80 Richardson Committee, above n 37, at [1.1]. The Richardson Committee should not be confused with the earlier Richardson Report on inflation released in 1976; see Richardson Report, above n 72.

the tax system, the provision of taxation policy advice, legislative management and Ministerial servicing.

II. MAJOR RECOMMENDATIONS

The Richardson Committee released its report in 1994. With its focus being on IR and how it administers the tax system, the main aim of the review was to create a vision for tax administration in New Zealand. Sir Ivor Richardson, the Chair, was well placed to lead this committee, given his enormous experience with dealing with tax disputes in New Zealand.⁸¹ The main elements of this vision were:⁸²

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

Following wide consultation with the public and private sectors, and the wider taxpaying community, the Richardson Committee noted several key issues:⁸³

81 For a review of Sir Ivor Richardson's contributions published following his passing, see the special issue of the *New Zealand Journal of Taxation Law and Policy* published in March 2015, including Adrian Sawyer "Sir Ivor Richardson: A Tribute" (2015) 21 NZJTL 7. An earlier issue of the *New Zealand Journal of Taxation Law and Policy* had a special issue in June 2002 dedicated to papers from a conference held in honour of Sir Ivor's retirement from the New Zealand Court of Appeal. See also the personal reflections of Sir Ivor on the tax rewrite project captured in the earlier article by Adrian Sawyer "RAP(ping) in Taxation: A Review of New Zealand's Rewrite Advisory Panel and its Potential for Adaptation to Other Jurisdictions" (2008) 37 AT Rev 148.

82 Richardson Committee, above n 37, at 1.3.

83 Richardson Committee, above n 37, at 1.4 (emphasis added).

- IR's objective needs to be stated in more specific terms and more strategic performance measures are required to enable the Government and IR to assess IR's strategic level achievements;
- the costs of compliance, whilst comparing favourably with overseas jurisdictions, have an adverse effect on the fundamental strategy of voluntary compliance;
- a more structured approach to tax policy formation is needed;
- the drafting of tax legislation requires fundamental change;
- an updating and clarifying of the roles of the Commissioner and Chief Executive of IR and of the relationship with Ministers of Finance and Revenue is required;
- the resolution of tax disputes needs to be quicker and less cumbersome;
- IR's role in the delivery of social policy functions needs to be carefully specified, given the impacts on the core business of collecting tax; and
- although IR has made major changes in its operations over the last five years, there is scope for further improvement, such as increasing some 'technical' skills, more consistent interpretation of tax legislation, and more focus on specific groups of taxpayers.

The main recommendations made by the Richardson Committee concerned the structure of IR, tax policy advice, resolution of tax disputes, technical quality, subcontracting and the roles of the person holding office of both Commissioner of IR and Chief Executive of IR.

III. GOVERNMENT'S RESPONSE TO THE FINDINGS

The italicised recommendations in the previous subsection are areas where significant change was made by subsequent Governments. Thus, the Government agreed to three of the most significant recommendations, and took into account the other major recommendations over the coming years (for instance maintaining a focus on reducing compliance costs, seeing through restructuring of IR in conjunction with the Commissioner of IR, and placing more social policy functions within IR):

- a more structured approach to tax policy formation is needed (the GTPP);
- the drafting of tax legislation requires fundamental change (the tax rewrite project gathered momentum); and
- the resolution of tax disputes needs to be quicker and less cumbersome (a new disputes process was implemented from 1996).

Several years later, the Committee of Experts on Tax Compliance in 1998 observed in relation to the Richardson Committee:⁸⁴

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

IV. OTHER MATTERS – A NEW APPROACH TO TAX POLICY DEVELOPMENT

As noted above, introduction of the generic tax policy process (GTPP) followed the Richardson Committee's review. The GTPP improves the policy development process, with its main objectives to:⁸⁵

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

84 Committee of Experts on Tax Compliance *Report of the Committee of Experts on Tax Compliance* (Government Printer, Wellington, 1998) at 307–308 (emphasis added). This work of this committee is discussed further in Chapter 8 of the book.

85 The objectives and phases are reviewed by Peter Vial "The Generic Tax Policy Process: A 'Jewel in Our Policy Formation Crown'?" (2012) 25 NZULR 318; and Adrian Sawyer "Reviewing Tax Policy Development in New Zealand: Lessons from a delicate balancing of 'Law and Politics'" (2013) 28 ATF 401.

The GTPP has five distinct phases:

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

A key feature of the GTPP is the emphasis it places on consultation at each of the main stages of the process with taxpayers, their advisers, and professional and industry bodies. The GTPP remains in operation today, although it has been ‘put to one side’ or not utilised on several occasions in the past.⁸⁶ There also remains the potential deficiency of supplementary order papers (SOPs) introducing changes near the end of the Legislative phase (after all chances for consultation have passed). The GTPP is set out in Figure 7.1.

Other major reforms, including the new disputes process, are not set out here as this has been modified on several occasions since. For a diagrammatical overview of the disputes’ resolution process, see IR’s Tax Information Bulletins.⁸⁷

V. CONSULTATION

The Richardson Committee consulted extensively with government departments and the private sector in New Zealand, and several overseas tax administrations. The Richardson Committee tested the recommendations in its report with IR, and with other departments that would be most affected by its recommendations. It also made use of the Advisory Committee to gain an appreciation of how the private sector may respond to its recommendations. In this sense, it followed best practice for genuine consultation, reflecting in part the processes set out in the GTPP.

86 For a discussion of the implications of two of these ‘failures’ by the government at the time to (fully) utilise the GTPP, see Vial, above n 85 and Sawyer, above n 85.

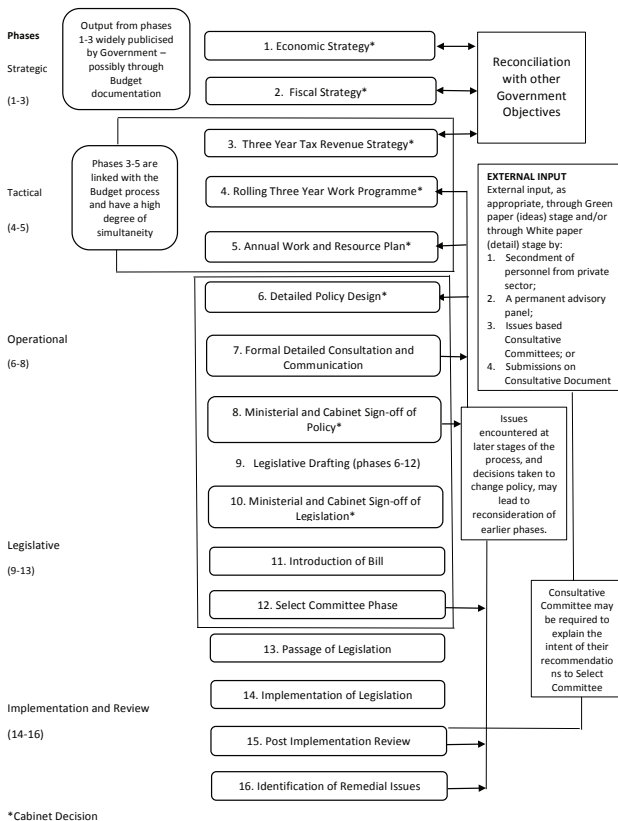
87 The latest version appears in Inland Revenue “SPS 16/05 and 16/06” (2016) 28(11) Tax Information Bulletin 14.

VI. CONCLUDING OBSERVATIONS

The Richardson Committee, in the author’s view, has been the most successful in having an immediate (and enduring) impact on significant tax policy development, both in terms of earlier tax committees, and those that have followed. However, if one were to count the number of recommendations that were adopted, the Valabh Committee arguably has had the greatest success with respect to specifically targeted proposals for which the Government sought the committee’s input and management of the submission process. This will be explored further in Chapter 8 of this book.

The Richardson Committee’s legacy remains principally through the GTPP, major changes to the disputes’ resolution process (which have continued to be refined), and on tax administration generally, especially the structure and operations of IR. It employed genuine consultation, thereby demonstrating best practice and reinforcing what it expected through utilisation of the GTPP.

Figure 7.1: The Generic Tax Policy Process (GTPP)



8

THE VALABH COMMITTEE, OTHER COMMITTEES AND WORKING GROUPS 1986–1998

I. INTRODUCTION

The principal committee at this time was the Valabh Committee, named after its Chair Arthur Valabh, a Fourth Labour Government of New Zealand appointed committee tasked with reviewing various aspects of the income tax system in the late 1980s and early 1990s.⁸⁸ Its members were: Arthur Valabh, OBE (Chair) (an accountant), Dr Robin Congreve, Lindsay McKay, Rob McLeod, and Tim Robinson. All members were male. It was supported by a secretary (Greg Cole) as well as by officials from both IR and the Treasury. The Valabh Committee, along with these other tax committees and working groups, could have been in this book before the Richardson Committee, as the Valabh Committee reported numerous times before the establishment of the Richardson Committee. Given the different nature of these committees, and the fact that their work did not finish until after the Richardson Committee had reported, they have been located after the Richardson Committee in this book.

Before exploring the contributions of the Valabh Committee further, there was a separate working group set up in 1985 to examine the proposed goods and services tax (GST), following an earlier recommendation from the McCaw Review.

II. THE ADVISORY PANEL ON THE GOODS AND SERVICES TAX

While not strictly a consultative committee, the Government appointed the Advisory Panel on Goods and Services Tax in 1985 in conjunction with the GST proposals. It had three members, with all being male: DT Brash (Chairman), AD Martin, and RA Green. It issued two reports during its tenure. While its Terms of Reference were not published, the Report of the Advisory Panel on Goods and Services Tax to the Minister of Finance in 1985 states: “The Advisory Panel on Goods and Services Tax was appointed to consider submissions on the proposals for the administration of the

88 IR’s tax policy website that provides links to many of the Valabh Committee’s reports dating back to 1987. See further, Inland Revenue <www.taxpolicy.ird.govt.nz/publications/year/>.

Goods and Services Tax.”⁸⁹ The White Paper on Goods and Services Tax, published in March 1985, invited New Zealanders to submit comments on the Government’s proposal to implement a goods and services tax (GST) on 1 April 1986. The White Paper outlined that:⁹⁰

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

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

III. THE CONTRIBUTIONS OF THE VALABH COMMITTEE

The 1980s were a period of considerable economic and tax reform in New Zealand. New Zealand had never had a formal capital gains tax (CGT) system (unlike virtually every other OECD nation). Ironically this remains the situation in New Zealand as at the time of writing in March 2020. The principal reason for establishing the Valabh Committee was to review Government proposals for a capital gains tax, which the Valabh Committee did not consider to be necessary.⁹¹ In particular, the Valabh Committee reported to the Government that it did not consider the state of the tax system in New Zealand at that time sufficiently robust enough to support additional reform of this nature. The Government accepted this recommendation and re-tasked the Valabh Committee to advise it on the structural reforms necessary.

The Valabh Committee ended up making several recommendations for fundamental reform of the scheme and structure of the New Zealand tax legislation, most of which were implemented. The Valabh Committee’s legacy is a significant impact on the direction of tax reform, including the style and drafting of the income tax legislation. The notion of restructuring the income tax legislation to be organised to have core provisions, as well as other restructuring of the legislation, was to facilitate the understanding of the rules as well as to allow for further reform to be implemented effectively. This work led directly to the Working Party on the Reorganisation of the

89 Advisory Panel on Goods and Services Tax to the Minister of Finance *Report of the Advisory Panel on Goods and Services Tax to the Minister of Finance* (Government Printer, Wellington, 1985) at 1. See also Advisory Panel on Goods and Services Tax to the Minister of Finance *Second Report of the Advisory Panel on Goods and Services Tax to the Minister of Finance* (Government Printer, Wellington, 1985).

90 New Zealand Government *White Paper on goods and services tax: Proposals for the administration of the goods and services tax* (Government Printer, Wellington, March 1985), Chapter 1.

91 David Caygill *Consultative Document on the Taxation of Income from Capital* (Government Printer, Wellington, 1989).

Income Tax Act 1976⁹² and the complete rewrite of the legislation, which was completed in 2008. The Valabh Committee also made numerous specific recommendations for the tax treatment of various expenditures (including depreciation and interest deductibility), taxation of distributions from companies, and the taxation of partnerships.

The Valabh Committee produced seven separate reports looking at specific areas of the tax system. Unlike previous tax committees, the Valabh Committee was not given a remit to undertake a comprehensive review of the tax system. It acted as a ‘sounding board’ for the Government through receiving submissions on policy proposals, and then drafting legislation to give effect to the policy. Their most active period followed the significant economic and fiscal policies announced in 1987 by the then Labour Government’s Minister of Finance, Roger Douglas.

IV. OTHER SIGNIFICANT CONTRIBUTIONS

Of the remaining committees/working groups, it is worth commenting on the Working Party on the Reorganisation of the Income Tax Act 1976. This working group was set up by the Government to advise on how to best reorganise New Zealand’s income tax legislation. It was set up in 1993 as a result of recommendations made by the Valabh Committee set up to review the overall income tax system. It comprised: Arthur Valabh (Chair), Dame Margaret Bazley,⁹³ and Sir Kenneth Keith. Importantly, its membership included one female. It issued two reports on the reorganisation of the then Income Tax Act 1976, which convinced the Government in 1995 to establish a review process for rewriting the income tax legislation, overseen by an advisory panel drawn from the private and public sectors.⁹⁴

It is not intended to provide a comprehensive review of each report from these various committees and working groups. Table 8.1 provides a high-level

92 See Working Party on the Reorganisation of the Income Tax Act *Second Report of the Working Party Preliminary Paper B31* (Government Printer, Wellington, September 1993).

93 Margaret Bazley held senior roles in various parts of the New Zealand public service. She has been appointed to various commissions and committees:

- Member Working Party on the Reorganisation of the Income Tax Act 1976 (1993);
- Chairperson, New Zealand Fire Service Commission from 1998–2011;
- Member, Waitangi Tribunal from 2001–11;
- Chairperson, Foundation for Research, Science and Technology from 2001–07;
- Commission of Inquiry into Police Conduct. Announced 4 February 2004, reported 30 March 2007; released 3 April 2007;
- Member of the Royal Commission on Auckland Governance (2007–08);
- Review of the Legal Aid System (November 2009);
- Registrar of Pecuniary and Other Specified Interests of Members of Parliament, 2007–2013; and
- Commissioner for Environment Canterbury, current.

94 For a review of the Rewrite Advisory Panel, see Sawyer, above n 81.

overview of the Valabh Committee's major contributions and that of several other specific committees and working groups. The first listed report, and those reports from the Working Party on the Reorganisation of the Income Tax Act 1976–1992 onwards, were prepared by groups other than the Valabh Committee.

V. CONCLUDING OBSERVATIONS

Overall, the Valabh Committee served as an interface between the Government and the private sector, principally through receiving and considering submissions, and making recommendations on the practical aspects of policy proposals made by the Government. The primary sector, accruals taxation and simplification/compliance cost reduction have needed more attention than other areas with the Valabh Committee producing more than one report reviewing these areas over this period. This targeted focus differs to the vast majority of New Zealand's previous tax committees, in that their terms of reference have been much more comprehensive. In this regard the Valabh Committee was very effective in terms of seeing its recommendations be accepted by the Government on specifically targeted area of taxation.

A similar targeted focus is present in the Business Tax Working Group (BTWG) in Australia.⁹⁵ The BTWG was established following Australia's Tax Forum in October 2011. The terms of reference required the BTWG to make recommendations on how the Australian business tax system could be improved to make the most of the challenges and opportunities arising from transformations in the broader economy and aims to increase productivity while at the same time delivering relief to struggling businesses.

In the author's view, the most significant impact on the wider tax system from these bodies is that of the Working Party on the Reorganisation of the Income Tax Act 1976, which led to the 15-year rewrite project.⁹⁶ In addition, with the advent of the GTPP in 1994, the use of specialist consultative committees/working groups has diminished, with greater use made of the tax committees and their more extensive terms of reference.

95 See further, Business Tax Working Group *Final Report* (Commonwealth of Australia, November 2012).

96 See further, Sawyer, above n 1 and Sawyer, above n 2. This project, originally intended to take five years to complete, took around 15 years, costing approximately twice the original estimate at \$10 million (this does not include external costs incurred by taxpayers and tax advisors, plus any other groups outside of government).

Table 8.1: Consultative Committees/Working Groups: 1986–1998

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

Committee	Reports	Impact
Working Group on the Taxation of Life Insurance and Superannuation Fund Savings 1997	1	Led to significant changes to taxation of investments and superannuation.
Committee of Experts on Tax Compliance 1998	1	Wide ambit of areas reviewed for future policy implications – indirect impact.

9

TAX REVIEW (THE MCLEOD REVIEW) 2001

I. INTRODUCTION

Returning now to the significant tax committees that followed this series of consultative committees/working groups discussed in Chapter 8. The McLeod Review was a Fifth Labour Government of New Zealand appointed committee in late 2000. The then Minister of Revenue, Dr Michael Cullen, stated:⁹⁷

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

The Members of the McLeod Review were Robert McLeod (Chair) (an accountant), Dr Srikanta Chatterjee,⁹⁸ Shirley Jones,⁹⁹ David Patterson, and Ted Sieper.¹⁰⁰ Membership included one female. The McLeod Review had a representative from each of the accounting and law professions, plus one from business and two economists (one being an academic). The Chair has also served on the earlier Richardson Committee and the Valabh Committee, ensuring greater continuity in membership as well as experience. The McLeod Review was also more ethnically diverse and included an overseas-based member.

97 Michael Cullen "Government announces terms of tax inquiry" (press release, 31 July 2000).

98 Srikanta Chatterjee is now an Emeritus Professor of Economics in the School of Economics and Finance of Massey University, Palmerston North, New Zealand. Prior to his retirement in 2011, he had held a Personal Chair in Economics, having taught here since 1981. Dr Chatterjee is originally from India.

99 At the time of the McLeod Review, Shirley Jones was Chair of the Council of Otago Polytechnic and an accountant specialising in small business.

100 Ted Sieper, at the time of the McLeod Review, was an Australian economist who has advised both the Australian and New Zealand governments.

II. TERMS OF REFERENCE

The Terms of Reference for the McLeod Review contained functions and tasks. Specifically:

The Tax Review has been appointed to carry out a public review into the tax system so that the Government has an appropriate framework within which to build tax policy. The functions of the Review were:¹⁰¹

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

The McLeod Review's mandate was to:¹⁰²

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

101 McLeod Review, above n 38.

102 McLeod Review, above n 38, at 167–169 (emphasis added).

The McLeod Review issued two reports: An *Issues Paper* in June 2001 and a *Final Report* in October 2001.¹⁰³

III. MAIN FINDINGS AND RECOMMENDATIONS

In its *Final Report*, the McLeod Review concluded:¹⁰⁴

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

The main issues now are the same as they were for the McCaw Review in 1982, namely: the level of tax; the appropriate bases for tax; the detailed definition of those bases; and the rates of tax that should apply. The recommendations made by the McLeod Review include:¹⁰⁵

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

The Tax Review, following an enormous outcry from the New Zealand public on its proposal in the *Issues Paper*, did not recommend introducing a

103 Robert McLeod and others *Issues Paper* (Government Printer, Wellington, June 2001) and McLeod Review, above n 38.

104 McLeod Review, above n 38, at 1.

105 McLeod Review, above n 38.

tax on owner-occupied housing. It also did not recommend a general capital gains tax (CGT).

IV. GOVERNMENT'S RESPONSE TO THE FINDINGS

The Minister of Revenue, Dr Cullen, provided the Government's initial response to the McLeod Review at the 2001 Institute of Chartered Accountants of New Zealand (ICANZ) National Tax Conference.¹⁰⁶ Dr Cullen stated that the Government agreed with the McLeod's Review's recommendation not to introduce a tax on owner-occupied housing. The Government observed that there was substantial public resistance to the idea. The Government did not agree with the recommendation to remove excises on alcohol, tobacco, petrol and gaming, and then to make up the lost revenue with an increase to GST. Since this time excise taxes in general have continued to rise in New Zealand. Instead, the Government would consider a carbon tax to meet New Zealand's international commitments on global warming.

In terms of the structure of personal tax rates, the Government could not support a two-step scale as it favoured a more progressive tax system than the McLeod Review's model allowed. This was in alignment with the Labour Party's philosophy for maintaining the progressive taxation of individuals. The Government agreed with the McLeod Review's analysis not to recommend the introduction of a general CGT, as this would increase the complexity and cost of the tax system.

The recommendations of greatest practical interest to the Government were those in the areas of international tax, and entities and savings taxation. These areas had the potential to stimulate economic growth. Consideration of these options became part of the Tax Policy Work Programme (TPWP), which is updated about every 18 months. Importantly, the Government accepted the McLeod Review's statement of the need to be cautious before they depart from the broad base, low rate (BBLR) approach to taxes, a platform that had been in place since the mid-1980s. Just what is understood by the BBLR in New Zealand?

A. The BBLR in New Zealand¹⁰⁷

The BBLR framework is one of several coherent frameworks. Before the mid-1980s in New Zealand, the tax system had narrow bases and high rates.

106 Michael Cullen, Minister of Finance "Minister speaks on Tax Review, policy issues" (speech to the Institute of Chartered Accountants of New Zealand Tax Conference, 26 October 2001). ICANZ later became NZICA. It 'merged' with the Institute of Chartered Accountants of Australia to form Chartered Accountants Australia New Zealand (CA-ANZ) in 2014.

107 This discussion draws upon a presentation by David Carrigan "Tax administration reform – retaining a coherent tax policy framework through change" (paper presented to Tax Administration for the 21st Century Conference, Wellington, 12-13 June 2014).

It was full of exemptions and credits. It was inefficient yet provided many opportunities for lawyers! The system could not raise enough revenue and New Zealand was close to being bankrupt in mid 1980s. This led to the introduction of a BBLR framework by the incoming Labour Government of the mid-1980s, which also radically reformed the tax system. The idea was to broaden the tax base to allow for a much lower and consistently applied top tax rate to apply (top personal rate reduced from 60 per cent to 33 per cent). This was achieved by removing tax exemptions, introducing a broad-based GST, introduction of dividend imputation, and other major changes. New Zealand collects the bulk of revenue from three broad bases – personal income, company income and consumption. The base could be broader as it does not include a specific capital gains tax, or any other form of wealth taxes.

The positives of the BBLR model can be summarised as:

- The model is a simple, understandable and coherent framework;
- It means that all areas of the economy are taxed reasonably consistently;
- It generally reduces economic distortions;
- The key bits of it are understood by public; and
- Simplicity and coherence make it durable.

The negatives of the BBLR model can be summarised as:

- The most efficient revenue tax would apply different tax rates depending on elasticities – BBLR does not do this;
- BBLR does not correct for positive and negative externalities; and
- It may not include sufficient levels of progressivity to reflect desired levels of equity.

That said, the BBLR is theoretically not a first-best model, but in practice it is arguably the most acceptable way of structuring a tax system as is available, based on the desired outcomes, and recognition that the wider welfare and transfer system can handle most of the inequities in the tax system.

B. The McLeod Review's Most Controversial Proposal – The Risk-free Rate of Return Method

As noted in section 9.II of this chapter, the McLeod Review's preferred solution to removing bias in the tax system was that investment in listed shares and securities be taxed using a standard risk-free rate of return method (RFRRM), no matter the country of investment. The Minister of Revenue was interested in this idea because it has the potential to make the relevant

tax rules simpler, fairer and more effective. Dr Cullen indicated that the Government would examine the Foreign Investment Fund (FIF) regime in the light of the McLeod Review's recommendations.

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

V. CONSULTATION AND EXTERNAL EVALUATION

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

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

To provide an external perspective, the McLeod Review commissioned Professor Alan Auerbach¹⁰⁸ to review the *Issues Paper*, to visit New Zealand to work with the McLeod Review and meet key stakeholders. In the McLeod Review's view, Professor Auerbach's report and subsequent discussions contributed to clarifying and helping with much of its analysis. Professor Auerbach prefaced his report by stating:¹⁰⁹

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

108 Alan Auerbach is the Robert D. Burch Professor of Economics and Law, University of California, Berkeley, and Director of the Burch Centre for Tax Policy and Public Finance.

109 See the McLeod Review, above n 38, at 1–2 (emphasis added).

VI. CONCLUDING OBSERVATIONS

The McLeod Review's approach became the benchmark for subsequent tax reviews in that it would produce a preliminary paper for which submissions were sought (as part of its consultation process), followed by a final report that analysed the submissions, and included its recommendations. The subsequent Victoria University of Wellington Tax Working Group (VUW TWG) operated on a more transparent process in that the papers for its various meetings were made publicly available. Endorsement of the BBLR model is an important feature as this has continued to be a feature of the recommendations from the subsequent tax committees.

Another important feature (that is unique to the McLeod Review) is to utilise external expertise to provide a form of critical appraisal of its work and recommendations. From an academic perspective, this provided a higher degree of confidence in its analysis, but unfortunately did little to increase the level of government acceptance of its recommendations. In this regard the impact of McLeod Committee's work is like most of the earlier tax committees – minimal but not insignificant. The foreign investment fund (FIF) and fair dividend rate (FDR) methods can in part be traced to the work of the McLeod Review.

10

VICTORIA UNIVERSITY OF WELLINGTON TAX WORKING GROUP 2010

I. INTRODUCTION

Unlike previous tax committees, the Government did not instigate the establishment of the Victoria University of Wellington (VUW) Tax Working Group (TWG). It was an initiative led by VUW, with support from officials in the Treasury and IR. The Ministers of Finance and Revenue of the Fifth National Government of New Zealand approved the establishment of a relatively independent panel that could give them robust advice, and subsequently inform the Government. The TWG was co-ordinated by VUW's Centre for Accounting, Governance and Taxation Research (CAGTR), and brought together invited private sector and academic experts. Officials from each of the Treasury and IR were crucial to the operation of the VUW TWG to ensure it had access to essential data and personnel support.

Specifically, the VUW TWG establishment followed an international conference on tax policy in New Zealand held in February 2009 by VUW's CAGTR and the Institute for the Study of Competition and Regulation, with support from IR and the Treasury. The author attended this conference, which examined a range of areas, including personal taxes, transfers, and company taxes, and participants identified significant concerns with the efficiency, equity and integrity of the current taxation system, concerns that required urgent attention. The Ministers of Finance and Revenue endorsed the proposal.

The members of the VUW TWG were as follows: Professor Bob Buckle, (Chair); Rob Cameron; Paul Dunne; Arthur Grimes; Rob McLeod; Gareth Morgan; Geof Nightingale; Mike Shaw; John Shewan; Casey Plunket; John Prebble; Mark Weldon; and David White. This was a mix of accountants and lawyers, businesspeople, and academics (the first to be chaired by an academic). Members also came from the Treasury (Norman Gemmill, Michelle Harding, and Bill Moran), and IR (Matt Benge, David Carrigan, and Robin Oliver).¹¹⁰ Only one member was female (a Treasury representative that supported the VUW TWG). Most members were from either the accounting or law profession, or members of the faculty at VUW (including adjunct members). Given that VUW instigated this tax committee with the

110 In addition, experts in various areas were invited to attend some sessions: Len Burman, Syracuse University, New York; Andrew Coleman, Motu Economic and Public Policy Research; Peter Conway, New Zealand Council of Trade Unions; Lew Evans, VUW; Phil O'Reilly, Business New Zealand; and Susan St John, the University of Auckland.

support of the Treasury and IR officials, the composition of the membership did not come as a surprise.

II. TERMS OF REFERENCE

The VUW TWG's Terms of Reference were relatively narrow, namely to:¹¹¹

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

Due to New Zealand's current fiscal circumstances, the VUW TWG accepted the constraint to consider tax reform on a fiscally neutral basis, and primarily focused on revenue raising taxes. New Zealand's tax system did not work effectively, and reform was necessary if New Zealand was to have a fair tax system that minimises the costs of raising taxes, reduces barriers to productivity and growth, and positions it well for future challenges. The current system was described as incoherent, unfair, lacking in integrity, unduly discouraging work participation and biasing investment decisions. The VUW TWG issued just one report, this being in January 2010. Unlike the McLeod Review, there was no independent appraisal of the VUW TWG's analysis and report.

III. MAIN FINDINGS

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

The VUW TWG considered that the BBLR option is a sound model to adopt in choosing the approach to tax design and should continue to be an underlying framework for New Zealand's tax system.¹¹² However, the VUW TWG believed that the problems with the tax system at that time are such that the mix of the BBLR required significant change. The structure of the tax system needed significant improvement through making changes that

¹¹¹ VUW TWG, above n 39, at 9.

¹¹² For prior discussion on the BBLR, see section 9.IV.A in Chapter 9 of this book.

involved a combination of changes to the tax bases and tax mix, to tax rates, and by improving some of the supporting tax rules. This contrasts with the view of the McLeod Review.

Officials provided summaries of the discussions, circulating them to participants for comment. Following this, the summaries and the documents (including background papers) prepared for the sessions, were made available after each session.¹¹³ The topics of the sessions were:

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

The main recommendations of the VUW TWG were:¹¹⁴

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

113 See Victoria University of Wellington "Tax Working Group sessions" <www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/twg/session-topics>.

114 VUW TWG, above n 39, at 9–11 (emphasis added).

comprehensive CGT and the potential distortions and other efficiency implications that may arise from a partial CGT.

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

IV. GOVERNMENT'S RESPONSE TO THE FINDINGS

In its Budget delivered on 20 May 2010, the Government announced a major overhaul of the New Zealand tax system, adopting many of the recommendations of the TWG. The main elements of the tax package announced by the then Minister of Finance, Bill English, included:¹¹⁵

1. A shift towards lower and more uniform rates of income tax, more indirect taxation and broadening the existing tax bases.

115 See further, Inland Revenue "Budget 2010 tax announcements" <www.taxpolicy.ird.govt.nz/news/2010-05-20-budget-2010-tax-announcements>.

2. From 1 October 2010 personal income tax rates will be lowered, and the rate of GST increased to 15 per cent.
3. The tax package will protect the incomes of New Zealanders in two ways.
 - a. First, for income earners at all taxable income levels, the reduction in personal income tax will be sufficient to match the increase in GST.
 - b. Second, the package will provide, from 1 October 2010, an immediate lift in the levels of New Zealand Superannuation, all main benefits, student allowances and Working for Families payments. This will be sufficient to offset the estimated impact on prices due to the rise in GST.
4. The payments will be adjusted to ensure the full CPI effect is captured, excluding the CPI impact of the tobacco excise increase.
5. Revenue raised, from GST and other base broadening measures, will be used to fund an across the board reduction in all income tax rates.
6. The changes to personal income tax rates, to apply from 1 October 2010, will be as follows:
 - a. The initial income tax rate applying up to income of \$14,000 will reduce from 12.5 per cent to 10.5%.
 - b. The tax rate applying to income between \$14,000 and \$48,000 will reduce from 21% to 17.5%.
 - c. The tax rate applying to income between \$48,000 and \$70,000 will reduce from 33% to 30%.
 - d. The tax rate applying to income over \$70,000 will reduce from 38 per cent to 33 per cent.
7. The tax rate applying to New Zealand companies will reduce from 30 per cent to 28 per cent. This will apply from the start of the 2011/12 income year.
8. 28 per cent will also become the standard tax rate applying to most savings vehicles. This rate will apply to vehicles taxed as companies, including Group Investment Funds, unit trusts, life insurance and superannuation funds. It will also be the maximum tax rate applicable to Portfolio Investment Entities (PIEs). Lower income taxpayers will still have access to lower rates via imputation credits from companies and electing lower PIE rates.
9. The tax rate applying to trusts will remain at 33 per cent, the same as the new top personal rate of income tax.
10. The Tax Working Group also reported that anomalies arise through the use of taxable income as a means of determining eligibility for certain Government assistance. Taxable income may not always be a good measure of true economic circumstances.

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

V. CONSULTATION AND OTHER MATTERS

As noted above, through a series of regular meetings between June and November 2009, and papers prepared by officials or commissioned from tax experts, the VUW TWG provided a forum for informed discussion of the issues for expert tax practitioners, academics, businesspeople and officials. Furthermore, with respect to the VUW TWG and the GTPP, Sawyer notes:¹¹⁶

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

Sawyer further states:¹¹⁷

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

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

Buckle, as Chair of the VUW TWG, observed in an address given during the VUW TWG's early deliberations:¹¹⁸

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

116 Adrian Sawyer "VAT Reform in China: Can New Zealand's Goods and Services Tax Provide Helpful Guidance?" (2014) 4 JCTP 92 at 106-7 (emphasis added).

117 Sawyer, above n 116, at 108 (emphasis added).

118 Buckle, above n 4 (emphasis added).

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

Another aspect that I hope Inland Revenue also see as an advantage is that this process has attracted the attention of the media and offered the opportunity for the policy departments, Treasury and IRD, to discuss with the media in more detail some of the issues with officials and members of the Tax Review. *This is a more informal structure designed to enhance the opportunity for IRD and Treasury policy officials to test ideas and receive feedback from a group of people with expertise in New Zealand's taxation system and with different backgrounds and perspectives*. Another feature is that at the end of each meeting the Group summarises its deliberations and makes them publicly available on the internet, along with the supporting papers discussed by the Group. ...

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

Of the various tax committees established in New Zealand, the VUW TWG has had the most substantial 'immediate' impact in terms of uptake of its recommendations by the Government. While part of this is attributable to the VUW TWG's recommendations being largely in alignment with the Government's views of reform, it may also ironically be attributable in part to its relatively 'independent' status. It sought only to consider the medium-term direction of the tax system including assessing policy options. Putting this into context, the Government was 'new' and expecting to have at least two, possibly three, terms in office. It ended up with having three terms totalling nine years, ending in 2017. Ironically, later that year the new Government would establish the next (and last) of the tax committees.

VI. CONCLUDING OBSERVATIONS

The VUW TWG is 'unique' in that it was not instigated by the Government, but established at the instigation of members of a symposium organised by a leading New Zealand university (VUW). It was also chaired by a professor, a senior academic at VUW, which may have added weight to the success of this committee in seeing many of its recommendations accepted by the Government of the time. Its level of immediate impact is significant, on a similar scale to the Richardson Committee. This in part may be attributed to the Government at time receiving recommendations that largely aligned

with its philosophy and that it was just commencing what eventually became three terms in Government. The VUW TWG once again endorsed the BBLR model and use of the GTPP to develop and implement tax policy.

Ultimately, given the change in government in 2017, along with some of the recommendations of most recent Government TWG, some of these changes were expected to be reversed (in part at least). This remains open as the TPWP continues. An early insight is provided in the next chapter of this book.

11

GOVERNMENT TAX WORKING GROUP 2019

I. INTRODUCTION

Established in late 2017, the Government Tax Working Group (Government TWG) followed the Labour Party's election tax plan, with a stated goal "... to examine further improvements in the structure, fairness and balance of the tax system."¹¹⁹ The Labour-led Coalition Government endorsed the establishment of the Government TWG.

The Government TWG membership was larger than most of its predecessors. Its members were:

- Sir Michael Cullen (Chair);¹²⁰
- Professor Craig Elliffe, University of Auckland;
- Joanne Hodge, former tax partner at Bell Gully;
- Kirk Hope, Chief Executive of Business New Zealand;
- Nick Malarao, senior partner at Meredith Connell;
- Geof Nightingale, partner at PwC New Zealand;¹²¹
- Robin Oliver, former Deputy Commissioner of Inland Revenue;
- Hinerangi Raumati, Chair of Parininihi ki Waitotara Inc.;¹²²
- Michelle Redington, Head of Group Taxation and Insurance at Air New Zealand;
- Dr Bill Rosenberg, Economist and Director of Policy at the CTU; and
- Dr Marjan Van Den Belt, Assistant Vice Chancellor (Sustainability) at VUW

119 See Tax Working Group <www.taxworkinggroup.govt.nz>. Note, this website is (at the time of writing) being decommissioned, with material being shifted to Inland Revenue's website <www.ird.govt.nz>.

120 Michael Cullen was the Minister of Finance and Revenue at the time of the McLeod Review, above n 38.

121 Geof Nightingale is the only member of the Government TWG that was also a member of the VUW TWG.

122 Parininihi ki Waitotara represent the interests of over 10,000 shareholders and is governed by a seven-member Committee of Management who are trusted and elected by the shareholders. Parininihi ki Waitotara is entrusted with the care of their whenua for their collective benefit. It seeks to increase its active management over their ancestral land and to protect and grow their assets for the current and future generations.

Membership includes four females out of the 11 members – this is an important step towards a gender balance - along with some ethnic diversity. For the first time, wide sectors of society were represented, including Māori and the trade unions. The latter may in part be attributed to the unions forming a major support base of the Labour Party. There was very little in terms of direct representation for small and medium-sized enterprises (SMEs), which make up most businesses in New Zealand. The most ‘controversial’ member of this tax committee is its chair, the former Minister of Finance under the 1999–2008 Labour-led Government, Dr Michael Cullen. This ‘controversy’ is explored further in section 11.IV.

II. TERMS OF REFERENCE

The Government TWG’s directive was to examine further improvements in the structure, fairness and balance of the tax system. Specifically, the Government stated that New Zealand’s tax system warrants commendation internationally for being a simple and efficient system. In this regard, the Government’s starting position that the *guiding principle for the NZ tax system – namely, that tax should operate neutrally and as much in the background as possible – is considered to be sound*, is logical (my emphasis). This suggests that the Government was not expecting recommendations that would be contrary to the BBLR framework or indicate that the tax system needs a major overhaul.

The Government had the following objectives for the New Zealand tax system:¹²³

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

123 See New Zealand Government *Tax Working Group – Terms of Reference* (New Zealand Government, Wellington, 23 November 2017).

The Government TWG was required to report to the Government on:¹²⁴

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

In examining these points, the Government TWG was required to consider the following:¹²⁵

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

In considering these matters, the Government TWG was expected to have due regard to the overall structure of the New Zealand tax system to ensure it is fair, balanced and efficient, as well as simple for taxpayers to understand and comply with their tax obligations. The following matters were *expressly outside the scope* of the Government TWG's review:¹²⁶

- Increasing any income tax rate or the rate of GST;
- Inheritance tax;
- Any other changes that would apply to the taxation of the family home or the land under it; and
- The adequacy of the personal tax system and its interaction with the transfer system (this is part of a separate review of Working for Families).

124 New Zealand Government, above n 123.

125 New Zealand Government, above n 123.

126 New Zealand Government, above n 123.

In addition, the focus of the Government TWG was not to encompass more technical matters already under review as part of the Government's TPWP, including:¹²⁷

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

The Government TWG was permitted to recommend further reviews be undertaken on specific issues which it considered it had not been able to explore sufficiently, or that were excluded from its terms of reference, but which could benefit from being considered in the context of its recommendations. A secretariat of officials from Treasury and IR supported the Government TWG. Importantly, the Government TWG was able to seek independent advice and analysis on any matter within the scope of its Terms of Reference. In this regard, the Government TWG had an independent advisor to analyse the various sources of advice received by it, and help to analyse and distil the information to assist it with its deliberations.¹²⁸ In developing its recommendations, the Government TWG engaged with the public.¹²⁹ This included running polls and producing an *Interim Report* for which it sought submissions as part of its consultation.

The TWG, in developing both its *Interim Report* and *Final Report*,¹³⁰ sought to be open and transparent, with consultation with the wider public encouraged. Over 6,700 members of the public made submissions to the TWG on the initial issues raised.¹³¹ Around 16,000 votes on quick polls run by the TWG is further evidence of engagement with the wider public. These submissions and votes influenced the content of the TWG's *Interim Report*. In this regard, the TWG stood out in terms of involving the wider public beyond those that would usually make submissions on proposed tax policy changes.

127 New Zealand Government, above n 123. The current TPWP can be found at Inland Revenue "Government tax policy work programme 2019–20" <www.taxpolicy.ird.govt.nz/work-programme> (updated to 8 August 2019).

128 The independent adviser is Andrea Black, who has a Master of Taxation from the University of Auckland, with experience working as an adviser to both the Treasury and IR.

129 New Zealand Government, above n 123.

130 See Tax Working Group, above n 119.

131 Tax Working Group "6,700 submissions received in Tax Working Group consultation" <www.taxworkinggroup.govt.nz/resources/6700-submissions-received-tax-working-group-consultation>.

III. PROCESS AND KEY MILESTONES

The Labour-led Coalition Government expressly stated that the implementation of any changes associated with the Government TWG would not occur before the 2021 tax year. In this regard, the anticipated timeline for the TWG was:¹³²

- Working Group established and mandated by Cabinet (by December 2017);
- First meeting(s) of Group and call for public submissions (February 2018);
- Interim report released for feedback (September 2018);
- Final report issued with recommendations for Government (February 2019);
- Cabinet decisions finalised (April 2019);
- Public Consultation on detailed changes (if any) (April–August 2019);
- If necessary, Bill introduced (September 2019);
- Parliamentary Process (including full Select Committee process) September 2019–July 2020);
- Legislation passed and enacted (July 2020); and
- Implementation of changes in the next tax year, commencing (1 April 2021).

Since announcing this schedule, the Chair of the Government TWG (Dr Cullen) delivered a speech at a meeting of the New Zealand International Fiscal Association (IFA) on 2 March 2018, updating the work of the Government TWG.

The *Future of Tax: Submissions Background Paper* was released on 14 March 2018.¹³³ This background paper set the context, with the discussion divided into six areas:¹³⁴

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

132 See New Zealand Labour Party “Labour’s tax plan” <www.labour.org.nz/tax>. The next General Election will be held on 19 September 2020.

133 Tax Working Group *Future of Tax: Submissions Background Paper* (New Zealand Government, Wellington, March 2018).

134 See Government TWG, above n 35, at 4–10.

The *Future of Tax: Submissions Background Paper* was both informative, with extensive data provided principally in the form of graphical figures, as well as provocative, in the sense of seeking to encourage submissions from the wider public. With the constraints placed in the Terms of Reference, some of the analysis was necessarily restricted, raising the risk that recommendations would be suboptimal. Submissions closed on 30 April 2018.

Several background papers are available via the Government TWG's website.¹³⁵ One of the appendices to the *Submissions Background Paper* provides evidence that a potential CGT would be a significant area of discussion, and consequently this is an area where the Government TWG sought feedback on specific design issues for a CGT. The Government TWG received a significant number of submissions and consequently, officials provided summaries to assist in the analysis.¹³⁶ The Government TWG's website continued to receive additional material, even after the release of its *Final Report* in February 2019.¹³⁷

IV. TAX WORKING GROUP'S APPROACH AND CONTROVERSY

The choice of tax principles and frameworks directed the TWG's deliberations. It is not the intention of this book to review these principles and frameworks. Rather, it is to observe that 'traditional' tax principles were applied (efficiency, equity/fairness, revenue integrity, fiscal adequacy, compliance and administration costs, and coherence), with the novel inclusion of the recent living standards framework (LSF) developed by the New Zealand Treasury.¹³⁸ The LSF refers to four capitals: financial and physical capital; human capital; social capital; and natural capital. It also incorporates Te Ao Māori perspectives. The LSF contains data measures across 12 areas, including health, housing, safety, and social connections, which are in most cases internationally comparable, a crucial aspect of the framework. It illustrates the current and future wellbeing of New Zealanders broken down by their ethnicity, age, gender, region, family time and social deprivation area (geography of poverty) over time. Figure 11.1 sets out the LSF and Four Capitals.¹³⁹ The two figures at the end of this chapter (Figures 11.2 and 11.3) provide some details on the Dashboard indicators.

135 These key background papers are available on the Government TWG's website. See Tax Working Group "Key Documents" <www.taxworkinggroup.govt.nz/key-documents>.

136 See Tom Pullar-Strecker "Tax Working Group poses threat to family 'nest eggs', says National" *Stuff* (online ed, Wellington, March 14, 2018).

137 See Tax Working Group, above n 135.

138 New Zealand Treasury *Our People, Our Country, Our Future, Living Standards Framework: Background and Future Work* (New Zealand Government, Wellington, December 2018) at 13.

139 New Zealand Treasury, above n 138, at 4.

Returning to the earlier statement about the controversy surrounding the Chair of the Government TWG. Adding to the ‘controversy’ were statements made by Dr Cullen in the early days of the TWG’s deliberations in an interview on a commercial radio station, where he stated new taxes could change what he at least sees as ‘bad behaviours.’¹⁴⁰ The public was being prepared to expect changes in the tax mix, which more likely than not would see some rebalancing of relative tax burdens.¹⁴¹ Furthermore, the same commentator stated a day later that: “Sir Michael Cullen lacks the common touch and putting him in charge of the Tax Working Group was never going to be a recipe for harmony.”¹⁴² This could suggest that much of the agenda (and possibly recommendations) have already been ‘determined’, and that the public may feel alienated and unable to be involved in making submissions that could shape the *Final Report*. Having the Chair of the Government TWG as a former high-level politician (and former Minister of Revenue in a previous Labour-led Government) with a known agenda, placed the entire process at risk of undue politicisation. Ultimately, the Government’s response in April 2019 made it clear that the major recommendation of the TWG would not go any further. With respect to the other recommendations, the TPWP will provide opportunities via the GTPP for public involvement through submissions, should they so wish to take up the opportunity.

An early commentary on Te Ao Māori perspectives is offered by Scobie and Love, particularly with respect to a Māori centric framework (in relation to tax policy):¹⁴³

He Ara Waiora is a draft framework, and while reports suggest that there is broad support among Māori involved in consultation around its development, *more engagement and implementation is required to turn the good intent of development 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*. Additionally, the framework *could 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”).

In relation to the TWG’s analysis of a CGT, Scobie and Love conclude:¹⁴⁴

While a Māori perspective on the development and implementation of an equitable system can have clear benefits with nuance and time, these benefits require effective communication. *An example of ineffective communication is provided by the*

140 See further, Tom Pullar-Strecker “New taxes could change bad behaviours, suggests Sir Michael Cullen” *Stuff* (online ed, Wellington, March 5, 2018).

141 See the discussion on a potential capital gains tax and its implications, Tom Pullar-Strecker “Silver lining from capital gains tax” *Stuff* (online ed, Wellington, March 25, 2018).

142 Tom Pullar-Strecker “Sir Michael Cullen’s tax bombshell has some food for thought in it” *Stuff* (online ed, Wellington, March 6, 2018).

143 Matthew Scobie and Tyron Love “The Treaty and the Tax Working Group, Tikanga or Tokenistic Gestures?” (2019) 21 J Aust Tax 1 at 3 (emphasis added). See also Alison Pavlovich “Striving for Intergenerational Wellbeing” (2019) 21 J Aust Tax 15.

144 Scobie and Love, above n 143, at 13–14 (emphasis added, footnotes excluded).

failure of the TWG to explain the benefits of a capital gains tax. This failure allowed opponents of a capital gains tax 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 just an obligation on the Crown under the Treaty, it is a process that will bring positive outcomes for all New Zealanders.

The Government TWG represents a return to an environment like that of the McLeod Review in 2001 in terms of being a government-appointed group. It also has a wider brief similar to that of the McLeod Review, although with expectations that its recommendations will need to place greater emphasis on addressing areas of the tax system where there is a perceived lack of fairness, as well as ensuring the tax system is future proofed. The Government set the agenda and furthermore, appointed as Chair, a former Minister of Revenue and Finance who had clear views on matters such as a potential CGT. This appointment caused some concern in the tax community of undue politicisation of the Government TWG, and that it should have as its chair someone with no clearly stated political preferences. All this controversy occurred prior to the release of the Government TWG's *Final Report*.

V. CONSULTATION

Submissions made to the TWG, following the release of the *Interim Report*, from individuals focussed on avoidance and evasion in the context of loopholes, as well as the ease of administration.¹⁴⁵ Support was forthcoming for the current BBLR model,¹⁴⁶ with automation used to fill in content where possible. With respect to organisations and academics,¹⁴⁷ in the context of administration, the concerns raised, and proposals suggested including the following.¹⁴⁸

145 See Tax Working Group, above n 133.

146 For further discussion on BBLR, see Adrian Sawyer “Reflections on the contributions of lawyers to tax policy-making in New Zealand” (2017) 27 NZULR 995.

147 Tax Working Group *Summary of Submissions from Individuals* (New Zealand Government, Wellington, September 2018).

148 Tax Working Group, above n 147. This applies to the discussion in subsections 11.V.A and 11.V.B.

A. Concerns Raised

- *The GTPP is deteriorating.* There is not enough quality consultation, some policies bypass the process, prioritisation is skewed towards revenue positive measures, there is not enough resources for remedial issues, and implementation and review of policy has been weak;
- *The disputes process has significant costs and burn-off for taxpayers.* The Commissioner does not take principled positions and does not follow policy intention;
- The shadow economy and avoidance are a concern and there needs to be greater investment in addressing this;
- *Data collection from IR to have clear protections and minimise compliance costs. Data disclosure from Inland Revenue needs to be improved;* and
- There is inconsistent treatment of tax fraud and benefit fraud.

B. Specific Proposals Recommended to Address These Concerns

- *Reforming the GTPP to encourage earlier, less formalised consultation and having a dedicated unit to deal with remedial legislation;*
- Introducing an *independent tax body to advocate for taxpayers in disputes and play a role in the generic tax policy process;*
- Changes to the disputes process;
- Clearer data protections and greater disclosure of IR information;
- *A standardised approach to debt collection across all government debt;* and
- *A Taxpayer Bill of Rights.*

The endorsement by the TWG of a significant number of these submissions appears in its recommendations to:

- Improve the GTPP;
- Increase the resourcing of the Office of the Ombudsman;
- Improve the disputes process for taxpayers;
- Improve data collection and availability of data from IR; and
- Create a single debt collection point.

In some respects, the success rate for submitters was higher with the Government TWG than is usually experienced with draft legislation under the GTPP, as well as with earlier tax committees. This in part may be due to the specific encouragement of ordinary citizens to contribute such as through various polls. That said, one should not become complacent, as ultimately the test of the process is the Government's response and the extent to which it accepts the recommendations.

VI. RELEASE OF THE FINAL REPORT AND THE GOVERNMENT'S RESPONSE – AN EVALUATION

It is not the purpose of this chapter to provide a comprehensive analysis of the New Zealand Government's response to the 99 recommendations from the Government TWG in its *Final Report*.¹⁴⁹ The most debated recommendations in the popular media and by numerous commentators concerned the TWG's majority recommendation for a capital gains tax (CGT). The New Zealand Government, somewhat surprisingly at first, agreed no further work was required on the two CGT recommendations.¹⁵⁰ What became clear subsequently is that the New Zealand First Party could not be convinced to change from its long-held opposition to any form of CGT. The Associate Finance Minister, Shane Jones, made an admission at a post-Budget 2019 luncheon hosted by Grant Thornton in Auckland on 31 May 2019, that New Zealand First were responsible for 'killing off' the capital gains tax.¹⁵¹ In this respect, a minority partner of the Labour-led Coalition Government thwarted the other two parties (Labour and the Greens) who had both publicly stated that they were in principle, at least, in favour of a CGT.

Most of the minor recommendations have made it onto the latest TPWP, which was released in August 2019.¹⁵² The New Zealand Government easily accepted several recommendations, including:¹⁵³

- not to introduce a wealth tax or land tax;
- to retain the imputation system;
- to retain the current company tax rate (and at a single rate);
- not to develop an alternative basis for taxing small businesses; and
- retain the rate for Māori Authorities.

It also accepted the Government TWG's recommendation for no change to the top personal tax rate, along with making no significant change to the tax brackets for individuals (given rejection of the CGT proposal).

149 Tax Working Group *Future of Tax: Final Report* (New Zealand Government, Wellington, 21 February 2019).

150 For the Government's response, see Grant Robertson and Stuart Nash "Govt responds to Tax Working Group Report" (press release, 17 April 2019). These were (1) a majority recommendation for a broad extension of the taxation of capital gains; and (2) if a broad extension of capital gains taxation were to occur, then it should have the characteristics detailed in Volume II of the TWG's *Final Report*.

151 John Anthony "NZ First put an end to capital gains tax, Shane Jones admits in post-Budget speech" *Stuff* (online ed, Wellington, 31 May 2019). For an extensive analysis of why the CGT proposal is likely to have failed, see David Sutton "Why New Zealand is alone in the OECD in resisting the introduction of a Capital Gains Tax: Examining the recent debate" (2020) 26 NZJTL 31.

152 See Inland Revenue "Updated policy work programme" <www.taxpolicy.ird.govt.nz/news/2019-08-08-updated-policy-work-programme>.

153 Inland Revenue, above n 152.

The recommendation that there should be no changes to GST, and the recommendation not to consider a financial transactions tax, were also accepted.

It is disappointing that an extension to the resources of the Office of the Ombudsman and establishing a taxpayer advocacy service will not occur. These would have the potential to greatly enhance taxpayers' rights in New Zealand.¹⁵⁴ For most other recommendations, the New Zealand Government's view was either to wait and consider the matter further at some later time, or to note that the issue was on the TPWP agenda.¹⁵⁵ Thus, we should expect a number of the less controversial recommendations to emerge as formal policy initially through the TPWP and then as draft legislation. The GTTP will provide opportunities for consultation on both the policy and draft legislation over the next year or so.

The opportunity to review the current broad base low rate (BBLR) model through developing a (revised version of) the proposed CGT has been lost.¹⁵⁶ This is largely, it would appear, due to an inability for the New Zealand Government to reach a consensus amongst the coalition partners. In addition to the 'suggestion' that New Zealand First was unable to be convinced to support the proposal, this may also be due in part to the fact that the recommendation for a CGT was by majority only of the TWG members (with strong contrary arguments put forward by the minority). For many the curtailing of the CGT proposal is worth celebrating, while for others this is a significant opportunity lost.

The lessons learned are only starting to emerge following release of the TWG's *Final Report* in February 2019 and the New Zealand Government's response in mid-April 2019. This gap between the public release of the document on 21 February 2019 and the eventual response fuelled the debate, including politically, along with verbal jostling between 'interested parties' and with the general public through talkback radio and other media outlets. The most important lesson is that in New Zealand, politics continues to trump tax policy based on well-accepted principles, along with the new principles underlying the New Zealand Treasury's LSF.¹⁵⁷

154 For a discussion on taxpayers' rights in New Zealand, 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). See also, Denham Martin "Honest taxpayers need advocates and real rights" (2013) 212 NZ Lawyer 22.

155 Robertson and Nash, above, n 150.

156 For discussion on this lost opportunity, see Andrew Maples and Sue Yong "The Tax Working Group and Capital Gain Tax in New Zealand: A Missed Opportunity?" (2019) 21 J Aust Tax 66. See also, Alison Pavlovich and David Sutton "The Tax Working Group Final Report: How Far Do the Capital Gains Tax Recommendations Changes Deviate from Optimisation?" (2019) 25 NZBLQ 73.

157 New Zealand Treasury, above n 138.

With respect to the CGT, Evans,¹⁵⁸ in his report, suggests that the Government TWG made a good effort to incorporate compliance cost reduction features (and thereby facilitate administration of a CGT, should the New Zealand Government had decided to accept the recommendation). Indeed, as noted earlier, the CGT proposal itself is one in which the TWG membership was divided. A majority of 8:3 of the TWG endorsed the proposal. The minority of three comprised the Business New Zealand Chief Executive, a former tax partner of a large law firm, and a former IR Deputy Commissioner (Policy).¹⁵⁹ Of particular relevance to this book is their view that the administration costs, complexity and investment distortions that will result from a CGT, as proposed, would outweigh potential revenues. That said, Professor Evan's report indicated that such costs could be kept to an 'acceptable' minimum.¹⁶⁰ Furthermore, the proposed CGT, in their view, would not significantly reduce over-investment in housing or increase tax fairness. Instead, the minority considered that a more limited CGT could be appropriate if focused on rented residential property, the source of most revenue.

Another lesson is that the Terms of Reference for a review group can be overly constraining on their ability to undertake a comprehensive review. This is largely due to their close relationship with the incumbent Government. This is particularly evident with the TWG's Chair (Dr Michael Cullen) being a former Labour-led Government Minister of Finance, who remained on the 'payroll' to 30 June 2019 to defend the TWG's CGT proposal, somewhat ironically on behalf of the New Zealand Government.

One area where the TWG's *Final Report* has not fully embraced its potential is its limited use of the wider LSF beyond that of the typical fiscally related tax principles. Since use of the LSF is breaking new ground in New Zealand, and New Zealand has just witnessed what the first well-being New Zealand Government budget looks like in May 2019,¹⁶¹ the TWG's small steps down this path is not unsurprising. The recommendations on environmental and ecological tax changes are a good example of the use of this wider LSF.¹⁶² The extent to which the LSF makes it into policy proposals that underlie legislation remains to be seen.

158 Chris Evans *New Zealand: The Compliance Costs of Taxing Capital Gains: Report for the Tax Working Group* (New Zealand Government, December 2018). An updated version of this report is published as Chris Evans "The Compliance Costs of Taxing Capital Gains: Implications for New Zealand" (2019) 25 NZJTL 381.

159 See Tax Working Group *Members: Minority View Insert into Chapter 6* (New Zealand Government, Wellington, 21 February 2019).

160 Evans, above n 158.

161 New Zealand Government *The Wellbeing Budget 2019* (Wellington, 30 May 2019).

162 The TWG recommended that the framework it developed be adopted by the Government; see Tax Working Group, above n 149, at Chapter 4. This framework incorporates aspects of the LSF, Te Ao Māori perspectives, and wellbeing generally.

The New Zealand Government's rejection of the key recommendations to develop a CGT¹⁶³ halts any further work on a possible CGT for New Zealand for the foreseeable future. The major opposition party (the National Party) has indicated that it does not support a CGT. Instead, the New Zealand Government indicated that it intends to explore options for taxing vacant land, including the recommendation by the Government TWG. Specifically, the New Zealand Government has directed the New Zealand Productivity Commission to include vacant land taxes within its inquiry into local government funding and financing and to seek a review of the current rules of taxing land speculators as a high priority for the TPWP.¹⁶⁴ As noted earlier, other important recommendations that would enhance the tax administration system, including additional resources for the Ombudsman's office and a taxpayer advocacy service, will not see the light of day.

On the downside, the approach of using another tax working group has failed to remove most of the 'politics' from the process. The Green Party, the confidence and supply partner of the New Zealand Labour-led Coalition Government wanted the full range of the TWG's recommendations implemented (including a CGT). However, the other coalition partner, New Zealand First, continued with its long-held position of opposition to a CGT, following 'consultation' with its membership. Its leader, Rt Hon Winston Peters, indicated that he is against any measures that would proliferate the accountancy profession or public service numbers at IR. His wishes have come to fruition with rejection of further work on any form of a CGT.

The Prime Minister, Rt Hon Jacinda Ardern, has stated that for the Labour Party, they were ruling nothing in or out on tax, and as such, had not determined whether they will be legislating for any reform this parliamentary term (effectively a partial back down on earlier statements). The current Minister of Finance, Hon Grant Robertson, set a timeframe for events (including a possible CGT) but the New Zealand First leader indicated any timeline from its coalition partner is non-binding. As has been seen, while there will be no CGT, the outcome of the latest TPWP¹⁶⁵ indicates that some reform may occur.¹⁶⁶

VII. AN ASSESSMENT – THE GOVERNMENT TAX WORKING GROUP – BEFORE AND AFTER ITS REPORTS

The outcome of Government TWG continued to attract the attention of commentators after release of its *Final Report* and the Government's response. Prior to the establishment of the Government's TWG, Treadaway posted

163 Tax Working Group, above n 149.

164 Inland Revenue, above n 152

165 Inland Revenue, above n 152.

166 See generally, Anthony, above n 151.

a comment by Baucher, written prior to the formation of the Labour-led Coalition Government. Baucher writes that:¹⁶⁷

[a]part from an under-representation of women, a criticism of the membership of the last two tax reviews is that they were perhaps too dominated by the large law and accounting firms.

Representation also needs to reflect organisations that look after SMEs in New Zealand and should consider exploring further a suggestion of the VUW TWG (that was not adopted), namely the establishment of something similar to the Board of Taxation (BoT) in Australia.¹⁶⁸ Baucher here is suggesting that some form of independent body is needed.

The BoT is a non-statutory advisory body, which advises the Australian Government on the development and implementation of taxation legislation and the ongoing operation of the Australian tax system. Baucher suggests this is something that a new tax working group should consider. Baucher concludes:¹⁶⁹

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

Since this comment in 2017, the Labour Party formed a Coalition Government, after the New Zealand First leader, Winston Peters, publicly announced that he had decided his party would go into government with the Labour Party. In order to have a working majority, the Green Party entered into a confidence and supply agreement with the Labour Party. One of the first acts of the new Government in its 100-day plan was to establish the Government TWG. As became clear after the release of the Government TWG's *Final Report*,¹⁷⁰ there was no recommendation that a body like the BoT in Australia be established. Such a recommendation, if it had been made and adopted, could see a reduction in the number of future tax committees.

In one respect, this case study 'story' is now complete with respect to the analysis of New Zealand's previous tax committees, following the New Zealand Government's response to the Government TWG's *Final Report*. While its work is finished, the outcome in part may be dependent upon the result of the 2020 General Election. The latest TPWP as at 8 August 2019 includes a number of the TWG's recommendations; these should make it as

167 Lee Treadaway "Terry Baucher: What would a 'tax working group' look like under a coalition government" (27 September 2017) Tax Talk Blog <www.talktax.co.nz/index.php/2017/09/27/what-would-a-tax-working-group-look-like-under-a-coalition-government/>.

168 For further information, see Board of Taxation <www.taxboard.gov.au/>. The Board of Taxation (BoT) will be discussed further in Chapter 13 of this book.

169 Board of Taxation, above n 168. The Ross Committee failed to persuade that government of the time to establish an advisory and research committee; see Ross Committee, above n 32.

170 Tax Working Group, above n 149.

far as draft legislation at least.¹⁷¹ Thus the ‘final chapter’ to this large ‘case study’ of New Zealand’s tax committees may not yet be fully complete.

Since the release of the TWG’s Final Report and the Government’s response, a revision to the GTPP has been released by IR as part of its updated TPWP. The discussion paper¹⁷² (released without any prior public consultation) sets out five principles that IR will follow as part of its wider engagement, namely:

- wider engagement;
- engagement with Māori;
- earlier and more frequent engagement;
- the use of a greater variety of engagement methods; and
- greater transparency and accountability.

In Appendix 4, the discussion paper outlines the essential information for public engagement (see Table 11.1 at the end of this chapter).¹⁷³

VIII. CONCLUDING OBSERVATIONS

In certain respects, the conclusion on the impact of the Government TWG is not yet able to be fully written. The TPWP provides an indication of the work to be done to bring several of the recommendations to fruition. Based on the sheer number of recommendations, including not to change many areas of the tax system, one would expect a reasonably high success rate. However, the importance of the recommendations is a better arbiter of success, and in this regard the Government TWG is not one of the more successful tax committees. Its flagship recommendation, the CGT, was rejected due to a minority member of the Labour-led Coalition Government refusing to budge in its long-held position of opposition to a CGT. This provides clear evidence that politics trumps everything, and that a formal proposal for a CGT appears impossible for New Zealand to achieve (in the short to medium term at least), given that the major opposition party is also opposed to a CGT.

Importantly, even though the BBLR model was endorsed, the Government TWG’s efforts will see minimal impact on much needed base broadening. Perhaps its greatest legacy will be the first significant use in a tax context of the Treasury LSF. Even here the Government TWG failed to utilise this model fully across its analysis.

171 Inland Revenue, above n 152.

172 Inland Revenue *Tax and social policy engagement framework* (Wellington, August 2019).

173 Inland Revenue, above n 172.

Table 11.1: Information that Policy Officials Will Provide for All Public Engagement

Item	Description
Subject of the consultation	A brief (one to two paragraph) synopsis defining the problem or opportunity, and what points officials are seeking feedback on.
Scope of the consultation	What decisions have already been made, and what is still able to be influenced by the consultation (that is, whether we are seeking views on what the problem or opportunity is, or only on policy options).
Intended audience	If there are any interest groups or sectors in particular that the document is aimed towards.
Duration of the consultation period	The closing date for submissions should be provided, and should be no less than six weeks except in exceptional circumstances (and those circumstances should be clearly outlined in this section).
Lead official	Name and contact details of the lead official.
Additional ways to be involved	For example, meetings between interested parties and policy officials.
Next steps following the end of the consultation period	This should briefly set out the milestones following the end of the consultation period – for example, when officials plan to report to Ministers, when feedback on submissions will be released, or whether a further round of consultation is planned.
Historical context and previous engagement	A brief (one paragraph) summary of how the issue arose, and a comprehensive list of the prior engagement to date (including title and date of past consultation documents).

Figure 11.1: The Treasury’s Living Standards Framework (LSF)

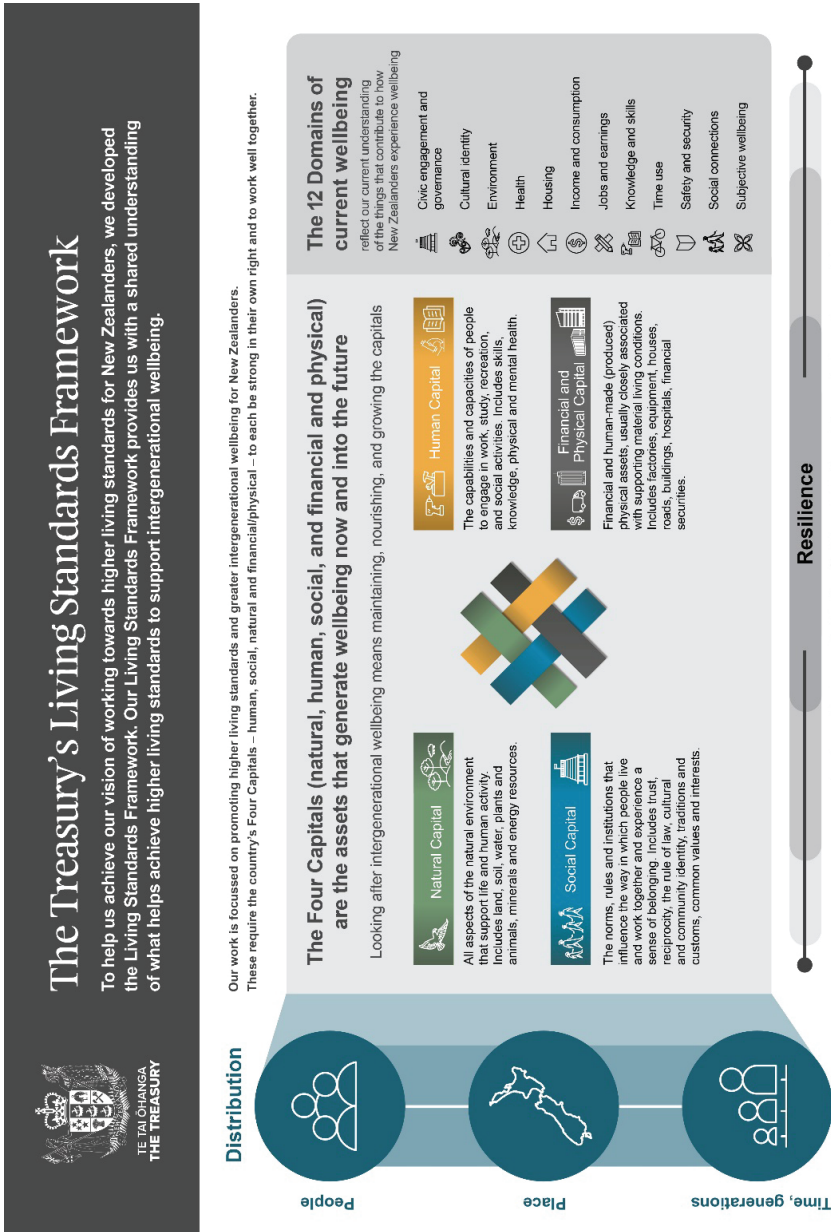


Image courtesy of the New Zealand Treasury.

Figure 11.2: ‘How the Dashboard Links to the Living Standards Framework’ (LSF)¹⁷⁴

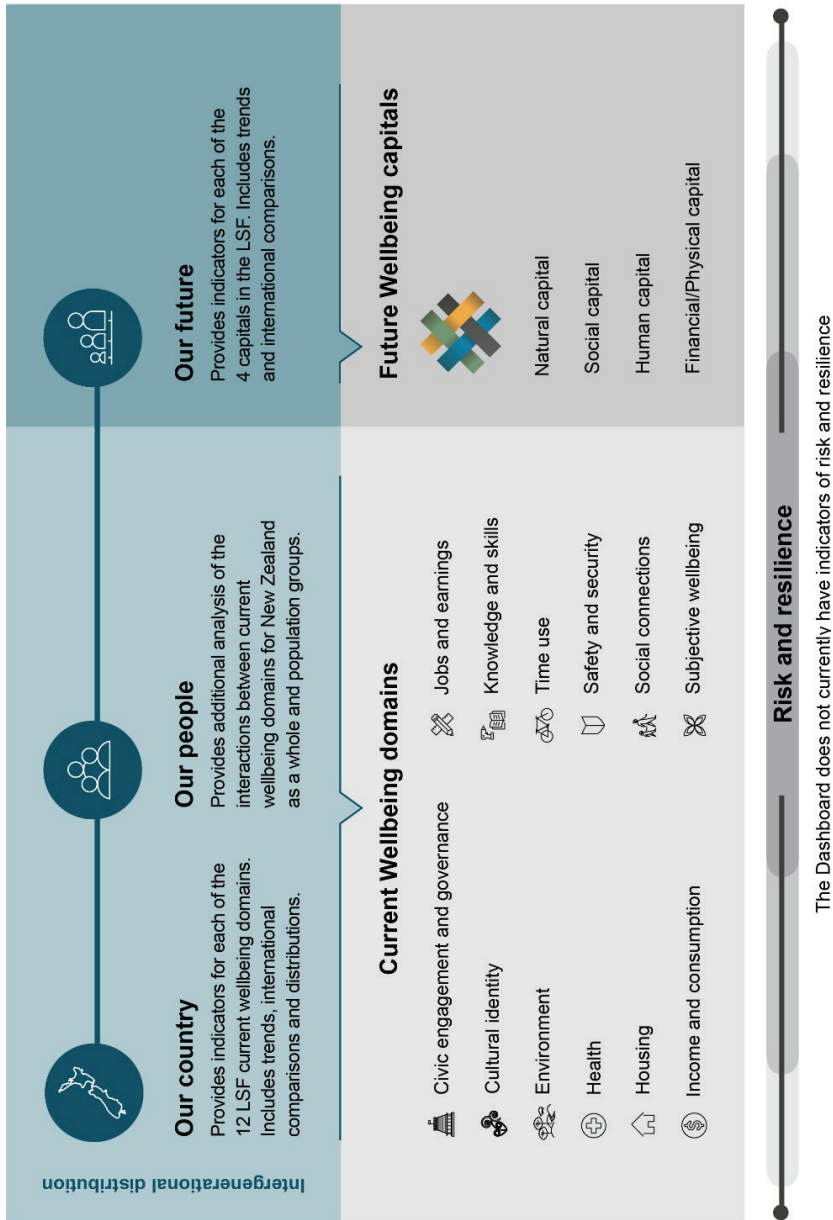


Image courtesy of the New Zealand Treasury.

174 New Zealand Treasury *Our country, Our future, Our people, The Living Standards Framework: Dashboard Update* (New Zealand Government, Wellington, December 2019) at 4.

Figure 11.3: Summary of ‘Our Country and Our Future Indicators’¹⁷⁵

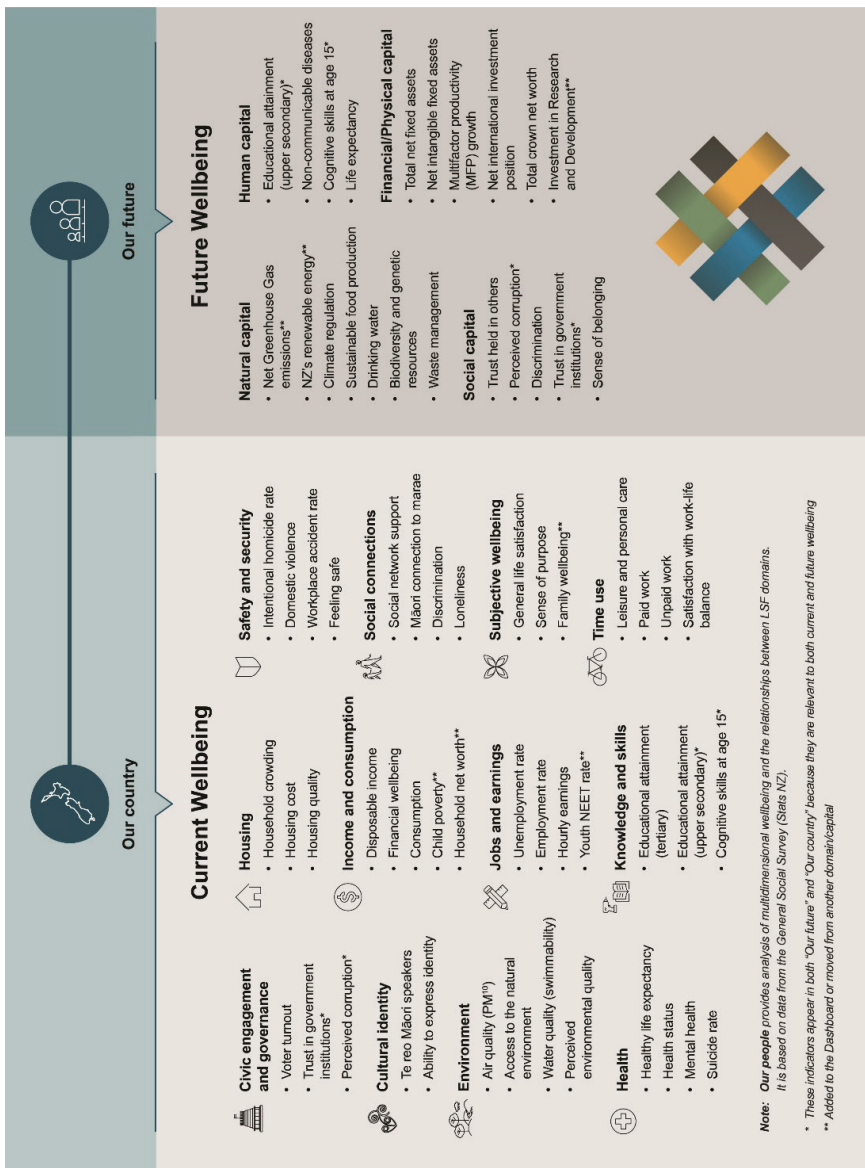


Image courtesy of the New Zealand Treasury.

175 New Zealand Treasury, above n 174, at 6.

Te Ao Māori perspectives are being used to inform the understanding and application of the LSF. At the centre of this framework (see Figure 11.4) is the concept of waiora (well-being), which draws upon four tikanga principles:¹⁷⁶

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

176 See Tax Working Group, above n 133, at 25–27.

Figure 11.4: Te Ao Māori Perspectives and the LSF

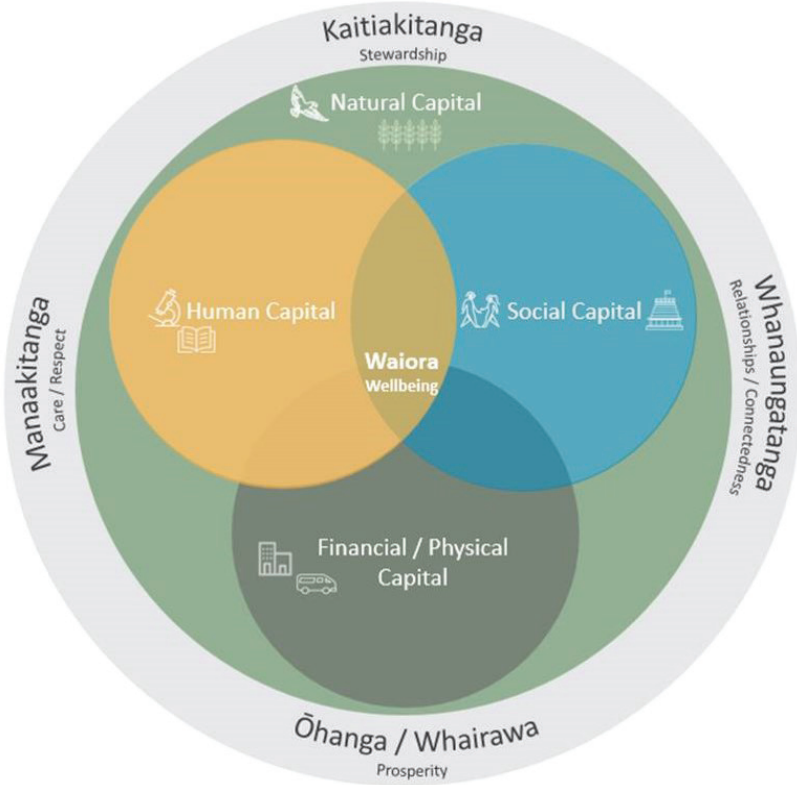


Image courtesy of the New Zealand Treasury.

12

AN EVALUATION OF NEARLY 100 YEARS OF TAX COMMITTEES IN NEW ZEALAND

I. INTRODUCTION

New Zealand has an affinity with establishing committees to review policy and associated legislation, with tax being no different. Given the high level of complexity, the sheer size of the material, and the overall pervasiveness of tax in society, engaging with experts through tax committees is a sensible approach. This approach also facilitates consultation, which is a hallmark of policy review and development in New Zealand, especially since the mid-1990s with the formalisation of the GTPP.¹⁷⁷

The establishment of tax committees is an expensive and time-consuming task for all involved, with much of this time not costed and/or not chargeable. One would therefore expect that the intended (and actual) outcomes have warranted this use of resources. What then can we say? What can we observe and learn from this rather long exploratory analysis of tax committees in New Zealand over the last 95 years or so? Is history repeating itself such that what we learn is that we do not learn from the past failings (and successes) of the ad hoc tax committee model? Is there a better way?

The intention of this chapter is to make this collective assessment and offer best practice guidelines for the establishment of ad hoc tax committees to review all significant parts of the tax system. The ultimate recommendation is to move away from this model of reviewing the tax system to the establishment of an independent tax oversight body. This will be the subject of Chapter 13. Before presenting this alternative, it is worth summarising what we have learnt from New Zealand's experience with ad hoc tax committees.

II. FREQUENCY OF ESTABLISHMENT

New Zealand has a history of relatively frequent reviews of its tax system compared to other jurisdictions, although more recently there has been a close overlap in terms of reviews of the Australian, New Zealand and United Kingdom tax systems from a simplification perspective during the period

¹⁷⁷ See further, Sawyer, above n 2.

mid– 1990s to late–2000s. In relation to calls for Canada to undertake a review of its tax system, Cuthbertson states:¹⁷⁸

Fifty years is a long time between tax reviews! In New Zealand there tends to be a reasonably comprehensive tax system review on a 10-yearly basis (relative to the last 30 years at least). ...

In New Zealand, the review terms of reference typically require all deliberations and recommendations to be tested against a sound guiding principles framework for tax.... The current review has extended these principles to include societal measures via a separate living standards framework.

Our tax reviews tend to [...] deal with both tax policy and tax administration measures. How our tax system works in practice for both New Zealand Inland Revenue and taxpayers is important.

Cuthbertson's comments reflect New Zealand history in terms of major tax reviews and the approach taken, including that of the latest Government TWG. In terms of the spread of these tax committees, their frequency increased dramatically during the mid– to late–1980s, especially with the much more focussed consultative committees and working groups reporting over a 12–year period (reporting: 1986: 2, 1987: 1, 1988: 2, 1989: 3, 1991: 1, 1992: 1, 1994: 1, 1997: 1 and 1998: 1). In terms of the more substantial tax committees, they occur *on average* once every 10 years with some gaps (1922, 1924, 1951, 1967, 1982, 1994, 2001, 2009 and 2017), generally gathering momentum in terms of frequency for committees established more recently. The largest gap is from 1924 to 1951.

What can be seen is that many of these dates closely follow in many instances a change in government. Thus, in many respects their timing is subject to political decision-making and not necessarily when reform of the tax system is most warranted.

Also noticeable is that the background of the membership of the earlier committees tended to be business and accountancy/law, and male. Ethnic and gender diversity did not feature until the last few decades (the first female member in the McCaw Review in 1982, and emerging gender diversity with the McLeod Review in 2001). In this respect these ad hoc tax committees have struggled to be a fair reflection of the rich diversity of New Zealand society.

III. DEGREE OF IMPACT

In the author's view, the analysis reveals the critical role that tax committees have had in shaping tax policy and improving the quality of draft legislation. They have served as a 'delicate balance' where those with relatively

178 John Cuthbertson "Leading the way forward – Insights from tax review role models" in CPA Canada *The Best Way Forward: Designing a Tax Review for Canada* (CPA Canada, Toronto, 2019) at 4–5.

‘independent’ representation having more success than those established with a clear government desired perspective. In this sense, these tax committees reflect the politicisation of taxation. It needs to be remembered that Parliament ultimately determines the law, although it is in practice heavily influenced by the Executive.

Throughout the period from the mid-1980s, there has been a degree of consistency through the adoption of the BBLR framework (with some tweaking),¹⁷⁹ supplemented in 1994 with the adoption of the GTPP.¹⁸⁰ While the former framework is attributable to Roger Douglas (with support from the Treasury and IR), the latter is a product of the Richardson Committee, one of the more successful tax committees in terms of its impact.¹⁸¹

All tax committees that have been established to date have finished their work, with an overwhelming majority of the comprehensive tax committees leaving a significant (albeit not usually substantial) impact on shaping tax policy if viewed from a long-term perspective. In the short term, with the exception of the VUW TWG, the impact of these tax committees has been minimal at best. Many of the tax committees’ recommendations reflect the need for the tax system to adjust to societal and economic changes. For those more focussed consultative committees/working groups (especially those established in the late 1980s and 1990s),¹⁸² their greatest impact has been to improve the drafting of legislation to reflect concerns and issues raised in submissions on policy documents. With the advent of the GTPP in 1994,¹⁸³ the number of these limited focus consultative committees has reduced significantly, such that there has been none set up since 1998.

Of the major tax committees, the VUW TWG has had the greatest impact on shaping medium term policy, within a narrower brief (partially self-imposed, along with constraints set by Government officials), than the others.¹⁸⁴ This tax committee’s relative ‘independence’ from the Government, while recommending changes that came within the Government’s intended policy direction, are likely drivers for this ‘success’. The VUW TWG, however, worked closely with Treasury and IR officials, relying upon them to ensure the review could proceed efficiently.

Expectations were for the latest Government TWG to take a similar approach to the McLeod Committee,¹⁸⁵ with its clear government mandated terms of reference, but with some well-reasoned recommendations adopted up by the Government as part of their 2020 election policy. While its flagship recommendation, the CGT, will not be developed further, other

179 For prior discussion, see section 9.IV.A in Chapter 9.

180 For prior discussion, see Chapter 7.

181 See further, Chapter 7.

182 Refer to Chapter 8.

183 Proposed by the Richardson Committee, above n 37, as discussed in Chapter 7.

184 See further, Chapter 10.

185 See further, Chapter 9.

recommendations form part of the current TPWP.¹⁸⁶ Thus there may be some change to tax policy and legislation arising from this tax committee's recommendations. The Government TWG is also the first instance of the appointment of a non-independent chair (a former Minister of Finance and Revenue). Other tax committees (including the consultative committees), have had chairs that *subsequently* took on political roles (for example, Dr Don Brash led the National Party when in opposition from 2003–2006).

With the more recent tax committees, there has been more comprehensive transparency in terms of making their draft papers and analysis publicly available, as well as using external experts to critically appraise the analysis and recommendations in the final report (for example, the McLeod Review and the VUW TWG). All the tax committees have had consultation as a core aspect of their operations, although this was very limited for the Ross Committee.¹⁸⁷

IV. RECOMMENDATIONS FOR ESTABLISHING AN AD HOC TAX COMMITTEE

Before embarking on developing the basis for a new model, namely one that would see the establishment of an 'independent' tax oversight body, it is worthwhile exploring what emerges as best practice from New Zealand's tax committee experience. The following discussion serves as a reference point for both future New Zealand Governments and those in other jurisdictions contemplating establishing an ad hoc tax committee to review all or part of their tax system.

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

1. Have an independent chair and make sure the tax committee can be as independent of the Government as is feasible, while ensuring it has adequate support from key government agencies;
2. Set a clear direction and terms of reference for what is to be included and excluded, leaning towards being more comprehensive than less;
3. Ensure the membership represents as many stakeholders as is feasible including an appropriate mix of gender, ethnicities, et cetera;
4. Establish an advisory group to support the main tax committee, especially in testing ideas with the general public and private sector;

186 See above Anthony, above n 151 and Sutton, above n 151.

187 See further, Chapter 5.

5. Ensure it is adequately resourced, both financially and with administrative personnel, plus officials from the relevant government departments;
6. Ensure the process is transparent and consultative, allowing the public and the private sector to make submissions and be heard;
7. Have an independent expert (or group) critically appraise the analysis and final draft reports, and release this review with the final report; and
8. An influential factor on the uptake of recommendations is the degree of alignment of the tax committee's membership with government philosophy. Some recommendations are unlikely to progress further until a new Government takes office.

In looking back at New Zealand's experience, a mix of the best features of the Richardson Committee, McLeod Review and VUW TWG could serve as a blueprint for future reviews undertaken by tax committees. Unfortunately, the most recent tax committee, the Government's TWG, was not established with best practice in mind. Rather, it was set up to fulfil a Labour Party election promise.

V. CONCLUDING OBSERVATIONS

New Zealand's experience with ad hoc committees is a 'mixed bag' in terms of their impact on tax policy and the tax system. Tax committee members have devoted significant resources and the Treasury and IR have needed to provide extensive support, creating opportunity costs. Until recently membership has been skewed in favour of males, with minimal gender, ethnic and societal diversity. One would be hard pressed to conclude that these tax committees have provided 'value for money' in the short term, although to be fair this is largely the fault of the Government that established the tax committee. From a longer-term perspective, one could argue these tax committees have provided a significant resource that has shaped aspects of New Zealand's tax policy.

That said, collectively these tax committees do provide a basis for developing a method of best practice, as set out in the previous section. The recommendations for best practice summarised above would change if there were a permanent body in place, like for example, the BoT in Australia, or that proposed by other commentators. The next chapter explores this idea further, culminating in a proposal for a permanent independent oversight body.

13

A NEW PATH – THE NEW ZEALAND TAXATION REVIEW COMMISSION (NZTRC)

I. INTRODUCTION

The notion of an ‘independent’ oversight body for reviewing a tax system is not a new idea. Thus, this book does not profess to propose a new idea, but rather to develop a more concrete proposal drawing upon earlier contributions and existing organisations globally. Before developing the proposal that serves as a core part of this book, a brief overview of earlier contributions on some form of independent oversight body is warranted. Three recent contributions are those of James, Sawyer and Wallschutzky,¹⁸⁸ and Robson and Heath in a recent Canadian Policy Forum.¹⁸⁹ To the author’s knowledge, there are no other published academic works examining the establishment of a ‘permanent’ oversight body in taxation. However, before examining these contributions, it is important to recall that before either of these contributions, in a New Zealand context, there has been a much earlier call for an independent body, namely from the Ross Committee in 1967.¹⁹⁰

II. THE ROSS COMMITTEE (1967) – AN EARLY PROPOSAL OUTLINED

The Ross Committee recommended a permanent advisory and research committee on taxation in its 1967 report.¹⁹¹ According to the Ross Committee, this committee should comprise the Secretary to the Treasury, the Commissioner of IR, the Comptroller of Customs, the Government Statistician, and two independent members (one of whom should be chairman), appointed by the Minister of Finance. This committee would have a full-time, permanent Director of Research. It should report to the Minister of Finance at least once in every year, and more often if the occasion warrants.

What is not made clear from this recommendation is that in addition to ensuring the committee would have expert representation, it needs to take into account gender and ethnic diversity, and ensure that it has a sufficiently large budget to obtain the resources necessary for it to operate effectively. The balance of permanent and fixed term staff (including a secretariat) would

188 Simon James, Adrian Sawyer and Ian Wallschutzky “Tax Simplification: A Review of Initiatives in Australia, New Zealand and the United Kingdom” (2015) 13 eJTR 280.

189 Robson, above n 27 and Heath, above n 27.

190 Ross Committee, above n 32.

191 Ross Committee, above n 32.

need to be determined, as would the way in which it could draw upon the resources of Treasury and IR. Its location 'within' the wider public service in New Zealand would need to be carefully considered. Unfortunately, as noted earlier in Chapter 5, the Government did not follow up on this recommendation, so these, and other issues, were never considered. This leaves us to consider calls from other sources for such a body; in each case these come from academics.

III. JAMES, SAWYER AND WALLSCHUTZKY (2015) – KEEPING A WATCH OVER TAX SIMPLIFICATION

Nearly 40 years after the Ross Committee, and in the context of tax simplification, writing after the release the VUW TWG's report,¹⁹² James, Sawyer and Wallschutzky proposed the creation of a permanent oversight body. Specifically, the authors suggest that:¹⁹³

To achieve structural and long-term benefits, what may be required is the establishment of a permanent body to *oversee on a long term basis the development of tax policy*, including simplification. ...

[P]erhaps it might be worth exploring the possibility that an *independent contribution to the development of tax strategies could be advantageous*. Currently most of the input in this area comes from ad hoc enquiries and miscellaneous contributions from both the public and private sectors. *If an appropriate body were charged with the responsibility of collecting the information necessary to develop strategies on a permanent basis, it could offer systematic guidance to the process of reforming taxation over time.*

There would be no shortage of work for such a body. Particular aspects include attempts at *weighing up the importance of different aspects of the income tax*. ...

Another substantial task is analysing the *economic, social, political and technological environment in an international context and the implications for the successful operation of the tax system*. There is clearly scope for a more detailed analysis of the possible role and powers of such a body. ...

Should a precedent for such an approach emerge somewhere in the world, it should be examined closely by policymakers and researchers.

While this proposal was within the context of tax simplification, it suggests that such a body could oversee, on a long-term basis, the development of tax policy more generally. The authors' contribution was intended to enliven debate on the subject. In this context, what further contributions have been made? The Canadian Policy Forum proposals, which follow, have been developed with the Canadian context in mind and not in the context of tax simplification.

192 VUW TWG, above n 39.

193 James, Sawyer and Wallschutzky, above n 188, at 300–301 (emphasis added).

IV. ROBSON (2018) AND HEATH (2018) – A CANADIAN PROPOSAL

Robson¹⁹⁴ has advanced a proposal in the Canadian context of effecting a review of the Canadian federal tax system. Robson's contribution is part of a Policy Forum in the *Canadian Tax Journal* in 2018.¹⁹⁵ Like other jurisdictions, tax policy reform is not a one-time event. Robson recommends the creation of a publicly funded body that has a mandate to conduct analysis, engage stakeholders through consultation, and make policy recommendations to Government. This results from asking two key questions:¹⁹⁶

First, how far at arm's length should a tax review body be from the government of the day? And second, if the review is to generate advice that will be adopted and acted upon by the government of the day, how close should the body conducting the review be to the institutions of government?

Robson then sets out some fundamental principles for this body. The first is that form should follow function. This approach suggests:¹⁹⁷

1. The body should deliver a package of proposals for comprehensive tax reform including personal and corporate income taxes and consumption taxes;
2. The work and recommendations of a review should be transparent; and
3. The package of proposals for comprehensive reform should be grounded in a clear statement of principles for optimal tax design that is independent of current policy.

This leads Robson to conclude that: "... the best options for a comprehensive, transparent, and independent review of Canada's tax system seem to be housed outside the day-to-day operations of the Government."¹⁹⁸ This conclusion leads to the second principle such that form should support policy change. Robson argues that a task force or advisory panel model is a poor fit for comprehensive tax reform. She does suggest that a Royal Commission could potentially meet the requirements of independence, transparency and access to important information, but it would be unlikely to be able to deal with complex and persistent policy problems. Robson then observes:¹⁹⁹

Tax policy is a wicked policy problem, and it is also, most certainly, an ongoing one. *Tax reform cannot, in my view, be done as a single exercise, shaped by a single report and a set of recommendations that will be expected to stand for as long as successive*

194 Robson, above n 27.

195 See discussion around footnotes 24 to 27 in Chapter 1.

196 Robson, above n 27, at 377.

197 Robson, above n 27, at 379.

198 Robson, above n 27, at 380.

199 Robson, above n 27, at 384 (emphasis added).

governments are content to avoid another review. As Doern wrote, ‘there is need for a permanent body of expertise related to recurring social and economic problems.’

Robson sets out two further advantages of using a permanent body:²⁰⁰

[A] standing external body is not very useful to a government looking to delay a decision or action. ... In short, a standing body can *inform future policy choices*, but it also gives no quarter to a government that is already aware of some important tax changes that it could make. Second, a standing external body becomes *formally part of the policy-making system, albeit at arm’s length from the government.* ...

Robson concludes:²⁰¹

On the issue of comprehensive tax reform, we ought to look for similar opportunities to form consensus if we want recommendations for tax reform to be enacted into policy. *Such consensus will take more public engagement than the public service is permitted. It will take more time and independence than a ministerial task force or advisory panel has available. And it will take a collaborative, cross-sectoral way of working, rather than a quasi-judicial one.* Finally, decision makers and the public should be able to ask those who do the analysis and issue recommendations to defend and account for their work, and to remain formally engaged in the debates that follow.

Robson comments on the ineffective nature of ad hoc committees:²⁰²

The task force or advisory panel model is a poor fit for the project of comprehensive tax reform. As discussed above, recent examples show a *tendency to use task forces and advisory panels for very narrowly defined policy questions that are concerned with either a particular problem in tax policy* (such as the proliferation of spending measures through the tax code) *or a particular problem with respect to which tax policy is a key instrument to the government* (such as financial support for persons with disabilities or for research and development). *Furthermore, such ad hoc bodies are appointed by a minister to report to or advise that same minister. Their mandates are generally limited in scope, as well as in duration, encouraging the appointed members to wrap up their work quickly, generally with the support of a small cadre of officials seconded from the minister’s department.* The work of the panel or task force is completed when the members issue their final report; there is no mechanism to hold them to account for their analysis or advice. *The government, for its part, is free to take or leave the advice given—or, more likely, to cherry-pick the parts that it finds useful as support for its preferred policy approach.*

Heath,²⁰³ in the same Canadian Policy Forum, observes that the Bank of Canada operates with a large degree of independence from the Government, and suggests that this could be considered as a model for the policy approach for a new tax commission. In doing so, this requires a careful balancing of the political context traditionally present in tax reform, and ensuring democratic legitimacy is balanced against the benefits of utilising technical expertise and

200 Robson, above n 27, at 384–385 (emphasis added).

201 Robson, above n 27, at 386 (emphasis added).

202 Robson, above n 27, at 382 (emphasis added).

203 Heath, above n 27.

guidance that an independent tax commission could provide. This balance may involve the Government setting some of the parameters with the detail worked out in a non-political manner. Heath considers objections to an independent tax body, including whether it would be constitutional, how would one deal with equity and efficiency trade-offs, and whether it would be democratic. All these objections may be managed, in part through the degree of discretion provided to the body. Specifically, Heath states:²⁰⁴

An ITA would enjoy a more *substantial grant of delegated authority, with the power to determine both the base and the rates for all general revenue-generating taxes*. It would be governed either by a board and chief executive officer appointed by the prime minister, for a term sufficiently long to establish independence from the government of the day (and in the case of a board, staggered terms). One might also institute something like the “minister’s directive” provision of the Bank of Canada Act, which allows the minister of finance to give the governor of the Bank of Canada instructions “in specific terms and applicable for a specified period,” which the bank must then comply with. Thus, *explicit political direction would remain always a possibility*; the hope would be that a convention of non-interference would emerge, as it has with the central bank. ...

Bureaucratic administration typically proves superior to political decision making when the attainment of these objectives benefits from the deployment of complex technical knowledge over a long time horizon, where there is a need for consistency over time, and where there is some desire to insulate decision making from the influence of interest groups. ...

In the Canadian context, this means that a *federal ITA would have authority over income, consumption, corporate, and inheritance taxes*. It would not control customs, tariff, and excise taxes, nor would it control taxes that can be construed as Pigovian, such the usual “sin taxes,” or the revenue from a carbon-pricing regime.

Robson’s analysis of ad hoc bodies and her recommendations fit well into the New Zealand tax policy scene. Her proposal warrants further analysis with the prospect of creating such a body in New Zealand, rather than relying on frequent reforms by bodies established by the Government of the time. Heath’s proposal suggests that whatever approach is taken, the level of discretion granted to the independent body can be used to mitigate against the major objections, and provide a model that is a best fit for the environment in which it would operate.

As Chapter 12 has illustrated, such ad hoc tax committees in New Zealand have, in the main, been ineffective in persuading governments to undertake significant tax reform when necessary. With this background, it is now the time to evaluate possible models that could be adapted from other jurisdictions in terms of aspects of the potential structure of this independent oversight body. However, there is a worst-case scenario, as will be outlined in the next section of this chapter.

204 Heath, above n 27, at 393–394 (emphasis added).

V. A WORST-CASE SCENARIO – THE RELATIVE ABSENCE OF ANY FORM OF (REGULAR) TAX COMMITTEE

The discussion in the previous section has presented three instances of recommendations for creating some form of oversight body dealing with tax policy reform. Rather than continuing, as has been New Zealand's history, to establish working groups/committees which make substantial recommendations for change with little impact, a permanent body could provide oversight of reviews and make recommendations more frequently that require less substantial reform. Potentially some of the 'political heat' is extractable from the process, such as has been experienced with the most recent Government TWG.

Before examining several existing 'permanent bodies' it is worthwhile reflecting upon how fortunate New Zealand has been to have several tax committees, even if their impact has not been as significant as one could have hoped for. New Zealand has not suffered from the absence of any form of comprehensive tax review as is the case in Canada. Canada's last such comprehensive review was the Carter Commission which was set up in 1962 and reported in 1966.²⁰⁵ The Carter Commission undertook a comprehensive examination of what the Canadian federal tax system should be in terms of what to tax, how the taxes should be administered and how much they should be. The Carter Commission inquired into the incidence and economic effects of taxation on employment and savings, as well as the distribution of tax burdens among individuals. It had a very broad mandate, and produced a report containing some 6,000 pages of condensed material. Of particular interest, the Carter Commission recommended that all gains (including capital gains) be brought into the "comprehensive tax base" and taxed at the same rate.

In terms of a response, the Canadian Federal Government took two years to formulate a response, which eventually came out as a White Paper in 1969.

205 Kenneth Carter and others *Report of the Royal Commission on Taxation* (Ottawa, 1966) [*Carter Commission*]. A limited focus review was conducted in the mid-1990s looking at business taxation; see Technical Committee on Business Taxation *Report of the Technical Committee on Business Taxation* (1996). The Technical Committee recommended several measures to make the Canadian tax system more neutral:

- lowering corporate income tax rates for business toward international norms and correspondingly broadening the tax base;
- making certain profit-insensitive taxes fall more heavily on those who derive related benefits from public programs or contribute to costs imposed on Canadians;
- reducing compliance costs and improving enforcement within the tax system; and
- facilitating the co-ordination and disentanglement of federal-provincial corporate tax policies within Canada's economic union.

For a measured analysis of the work of the Carter Commission, see Donald Fleming, Former Minister of Finance (Canada) "Some Thoughts on the Carter Report" (speech to the Empire Club of Canada, 16 March 1967).

After two years of debate the 1971 Canadian Federal Budget introduced some reforms, which were then implemented in 1972.

As noted by the Bellevue Chamber of Commerce, "... [t]he last time Canada undertook a comprehensive review of its tax system, humankind still hadn't set foot on the moon."²⁰⁶ The Bellevue Chamber of Commerce suggests:²⁰⁷

Canada needs a Royal Commission on tax to conduct a whole-of-system review and build a new system from the ground up. This comprehensive review should look at:

- *Broadening the tax base to explore the most effective tax policy solutions.*
- Adjusting the tax mix to better promote business investment and economic growth.
- Bridging the digital tax divide to ensure a fair and equitable tax system.
- Further simplifying the tax filing experience with digital filing solutions.
- Legislating a Taxpayer Charter of Rights to hold CRA accountable.
- Providing a representative for small business to resolve conflicts with CRA.
- *Conducting regular comprehensive reviews to keep the tax system up to date.*"

CPA Canada has recommended the following way forward for Canada in terms of reviewing its tax system:²⁰⁸

Recommendations in brief

Canada needs a 21st century tax system: a simple, predictable, fair, efficient and transparent tax system with internationally competitive tax rates, where everyone pays their share so that all Canadians prosper.

In these pages, CPA Canada recommends that a tax system review for Canada should start by defining the priority principles that will guide the review and ground the recommendations. Among these principles, we believe simplicity, fairness, competitiveness and efficiency of the tax system would be key.

For optimal results, CPA Canada recommends the tax system review should be designed to be:

1. **Comprehensive in scope**, putting all aspects of tax policy and administration and how they interact on the table in order to identify broad, systemic measures to improve the tax system for the benefit of Canadians, their businesses and our economy overall;

206 See Bellevue Chamber of Commerce *Call for Comprehensive Review of Canada's Tax System* (March 2019).

207 Bellevue Chamber of Commerce, above n 206 (emphasis added).

208 CPA Canada, above n 178, at 8–9 (emphasis in original).

2. Conducted by an **independent expert panel** appointed by the Minister of Finance and comprising a mix of senior members of the tax, legal, business, economics and academic communities, and representatives of key stakeholders;
3. Governed by **clear terms of reference** that set out a broad mandate for a **transparent process of analysis, public consultation and review** within a **reasonable timeframe** and with **access to adequate resources** for research and analysis. We then recommend how a review panel could deliver **opportunities to make a difference** by focusing on areas that ultimately **promote sustainable growth and prosperity for Canada and Canadians**.

We suggest areas where a review panel could investigate and develop practical recommendations, with examples under each of these themes:

1. Make the tax system **simpler, fairer, more efficient and competitive** so that all Canadians benefit.
2. **Simplify** and modernize tax policy.
3. Support changes to the CRA and tax administration that **ease compliance for taxpayers**.

As proposed in this report, CPA Canada recommends a well-designed tax review that will result in recommendations for a competitive tax system that supports sustainable growth and serves Canadians' best interests.

Milligan, in a recent speech, asked whether Canada needs a tax commission.²⁰⁹ After reviewing the Carter Commission, he provides a conditional *yes* to a second such commission, but with some serious reservations. The opportunities for such a commission would be to:²¹⁰

- develop a framework for legislators to follow (including establishing currently relevant tax principles);
- focus on the technical issues; and
- be comprehensive in its scope.

Concerns expressed include the timing of the review (requiring at least two years), implementation (it cannot be a big bang style), so priorities will need to be established; and the necessity to avoid politics (as much as possible). History reveals just how challenging it was to get any of the Carter Commission recommendations enacted. Tax commissions, in Milligan's view, need to focus on the "... big picture structure for how a modern tax system should work. This [i]s based on research, consultation, and deep thinking about how taxes affect fairness and economic growth."²¹¹

209 Kevin Milligan "Does Canada need a Tax Commission?" (speech to the Canada 2020 Tax Event, Ottawa, 22 October 2018).

210 Milligan, above n 209.

211 Milligan, above n 209.

Thus, how does this stack up against the best practice outlined in Chapter 12, considering Canada’s position of not having any form of tax system review for over 50 years? For an ad hoc committee this high-level recommendation closely aligns with what would be best practice in the author’s view drawing upon New Zealand’s experience. The three opportunities for a focus would be an excellent place to commence such a review.

These suggestions would be an excellent starting point for New Zealand’s next comprehensive tax review should it maintain the ad hoc committee approach. However, the recommendation for a Royal Commission or government-appointed panel runs the risk of Canada experiencing the same problems as New Zealand with its ad hoc tax committees. Thus, the focus of this book is to develop a proposal of an independent oversight body rather than a one-off government-appointed body. Before doing so, it is important to consider possible precedents that could be developed as the basis for an independent permanent oversight body for taxation.

VI. THE SOUTH AFRICA EXPERIENCE – THE DAVIS TAX COMMITTEE

Much of the prior discussion has focussed on developed countries. What may be said about developing countries? It is not the intention of this book to provide a comprehensive review, but rather to comment on one prominent example of a tax committee in a developing country that has had some impact on legislative reform.

The Davis Tax Committee (Davis Committee) was appointed by the South African Minister of Finance in 2013 to “inquire into the role of the tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability”.²¹² It operated using various subcommittees which considered: small business, macro analysis, mining, VAT, estate duty, carbon tax, public benefit organisations, funding the National Health Insurance and tertiary education, and tax incentives. The Davis Tax Committee completed its work in 2018. Unlike the New Zealand experience, the Davis Committee’s brief was broader than just taxation, and it delivered numerous reports, 25 in total, to the Minister of Finance. It was advisory in nature and has only made recommendations for consideration by the South African Government.

In the Davis Committee’s terms of reference it stated:²¹³

The minister will take into account the report and recommendations and will make any appropriate announcements as part of the normal budget and legislative

212 Davis Tax Committee *Closing Report on the work done by the Davis Tax Committee* (March 2018), Terms of Reference.

213 Hogan Lovells “The outcomes of the Davis Tax Committee” <www.hoganlovells.com/en/publications/the-outcomes-of-the-davis-tax-committee>.

processes. As with all tax policy proposals, these will be subject to the normal consultative processes and parliamentary oversight once announced by the minister.

Like most tax reform committees, the Davis Committee was advisory in nature and its recommendations required legislative amendments. The extent to which any changes to the tax system have been implemented or are likely to be implemented has been evaluated, indicating a reasonable level of success in having some of its recommendations accepted by the South African Government.²¹⁴ With respect to tax administration, for example, the Davis Committee believed that it was within its terms of reference to examine certain key aspects of the tax administration model. This had been undertaken previously by the Katz Commission in the 1990s,²¹⁵ where aspects of tax administration affect the implementation of certain tax policy recommendations.

VII. MOVING FORWARD – DRAWING UPON FEATURES OF SELECTED CURRENT ‘PERMANENT’ BODIES

One of the important ‘limitations’ of the examples that follow is that the bodies are based in jurisdictions where there is no systematic corruption at the government level.²¹⁶ Given New Zealand is perceived to be a country with very low levels of government corruption, the analysis does not extend to jurisdictions with notably higher levels of corruption.

The organisations reviewed in this chapter are far from exhaustive of potential precedents. They have been selected in part because they may include aspects of what the author’s proposed body would undertake, offer concrete details of how they have been established and operate, and provide global perspectives (or at least encompass Australia, Sweden, the United Kingdom and the United States). The examples of organisations are diverse and extend beyond those with a taxation focus, where there are useful features. In many instances, they have a degree of independence from the central bureaucracy, including oversight and reporting to the parliamentary (or equivalent) body in that jurisdiction. Furthermore, it is not necessary that the proposal in this book attempt to ‘reinvent the wheel’ when there are current precedents worthy of examination.

214 Hogan Lovells, above n 213.

215 Known as the Katz Commission of Inquiry into Taxation, which delivered its final report in 1996. See further, Katz Commission Report into Taxation *Third Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa* (South African Government, Pretoria, 1996).

216 In terms of perceptions of country corruption from an annual global survey of Transparency International, see Transparency International “2018 Corruption Perceptions Index” (30 January 2019) <www.transparency.org/whatwedo/publication/corruption_perceptions_index_2018>.

A. Council for Advance Tax Rulings - Sweden

One possible example for exploration and further development is the Council for Advance Tax Rulings (CATR) in Sweden, which acts independently of the tax authority to issue all binding rulings.²¹⁷ While the subject matters differ significantly to what the proposal in this book would cover, the CATR provides an example of the importance of ‘independence’.

Organisationally, the CATR is a part of the National Tax Board (NTB) of Sweden. It consists of two full time judges appointed by the Government as well as representatives of the legal profession, tax authorities and organisations, that is, the Swedish Federation of Industries. The NTB is also always one of the two parties to the application. There is an unconditional right of appeal of the CATR’s decision to the Swedish Supreme Court. Thus, the rulings system constitutes a quasi-judicial rather than an administrative process. It is to be noted that the tax authorities now have the right to appeal on advance rulings even if they do not want to change the outcome but just want to reinforce a precedence.

Lindencrona states with respect to the CATR:²¹⁸

In Sweden both the taxpayer and the National Tax Board (In Swedish Skatteverket) could ask for an advance tax ruling from the Council for Advance Tax Rulings (In Swedish Skatterättsnämnden) on the tax consequences of a future transaction. *The purpose of the Council is to safeguard legal security by giving the taxpayer the possibility to know the tax consequences of a planned transaction.* In a high tax country like Sweden this possibility has been very important. The Council is, however, also important in another way. The decisions of the Council for Advance Tax Rulings are appealed directly to the Supreme Administrative Court. No leave of appeal is necessary and the Supreme Administrative Court decides such a case with priority over other cases. *In this way it has been possible to get precedents regarding newly enacted tax acts.* This method is often used by different associations, who help one of their members to ask for an advance ruling in order to get a precedent on some important but obscure piece of tax legislation.

Of relevance to the proposal that is developed in this book is that the CATR is set up independently by statute although it comes within the NTB from an organisation perspective. While the CATR’s focus is on binding rules and disputes (rather than tax policy), its decisions are reviewable by the courts, and as such, the NTB stands on par with taxpayers in disputes over advance rulings. CATR’s longstanding existence indicates that, as a model, it works effectively.

217 Carlo Romano *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System?* (IBFD Doctoral Series Vol 4, Amsterdam, 2002), Chapter 6. Most of the discussion draws upon the work of Romano.

218 Gustaf Lindencrona “Unique features of the Swedish Tax System” (2007) 50 *Scandinavian Studies in Law* 164 at 166 (emphasis added).

B. Office for Tax Simplification – United Kingdom

Another possible approach is to adapt the structure of the Office for Tax Simplification (OTS) from the United Kingdom.²¹⁹ The OTS is an independent adviser to the United Kingdom Government on simplifying the United Kingdom tax system. It was set up on 20 July 2010 for an initial period of five years. Subsequently, it was made a permanent independent Office of HM Treasury on 21 July 2015. It has a statutory basis through sections 184 to 189 and Schedule 25 to the Finance Act 2016, which came into effect as from 28 November 2016 by Statutory Instrument 2016/113 (UK).

The OTS Framework document²²⁰ sets out some key aspects of how the OTS operates within the framework provided by the legislation. Specifically, the OTS provides advice to the Chancellor of the Exchequer (United Kingdom) on the simplification of the tax system, either at the Chancellor's request or of its own accord. The OTS liaises with HM Treasury, Her Majesty's Revenue and Customs (HMRC) and various other government departments. In conducting its work, the OTS is permitted to consider the substance of tax law and HMRC's administration of the tax system. The OTS must also have regard to all those affected by the tax system, namely: individual and business taxpayers (all sizes of business), agents, and HMRC. In addition to this provision of advice, the OTS prepares and publishes an annual report that contains details of its performance of its functions for the financial year.

The OTS Board is led by an independent Chair and independent Tax Director, and has up to six further members, supported by a team drawn from the civil service (HM Treasury and HMRC) and the private sector. Specifically, this team, of six–10 people (or their full-time equivalents), is made up of a mix of full and part time staff. All OTS staff work from a single office located within the HM Treasury – HMRC Building in London.

The Chair and the Tax Director are responsible to Ministers for the OTS's work, including the content of its reports. Two other members of the Board are appointed from HM Treasury and HMRC. Up to four further members with relevant knowledge or experience can be appointed to the board. The Board, or its members, may be required to appear before the relevant United Kingdom House of Commons Parliamentary committees to discuss the contents of the OTS's reports.

219 See United Kingdom Government "Office of Tax Simplification" <www.gov.uk/government/organisations/office-of-tax-simplification>. For an early review of the OTS, see Sawyer, above n 2. See also James, Sawyer and Wallschutzky, above n 188.

220 See Office of Tax Simplification *Office of Tax Simplification Framework Document* (London, 2016).

The OTS Board is responsible for taking forward the strategic aims and objectives of the OTS. The Board’s minutes are published on its website. Specifically, the OTS Board:

- meets regularly throughout the year, normally bi-monthly;
- provides leadership and direction to take forward OTS strategic aims and objectives;
- ensures the work programme is appropriately focused on the impact to the taxpayer and prioritised to maximise the value of its impact; and
- ensures the work of the OTS is aligned with other related bodies, in particular the Administrative Burdens Advisory Board (ABAB).

The Secretariat of the OTS comprises up to 10 full time equivalents. As noted earlier, these include some on secondment from HM Treasury and HMRC, while others are recruited directly by the OTS with recent or contemporary private sector experience and some are seconded by their firms to the OTS.

The responsibilities of the Secretariat are to support the Board in undertaking their duties and to carry out the OTS’s day-to-day work. This includes:

- supporting the Board in the conduct of the OTS’s enquiries, including through gathering evidence, conducting analysis, leading engagement with interested parties and the HM Treasury and HMRC, and producing the OTS’s reports;
- acting as the secretariat for the Board and its consultative committee(s); and
- responsibility for the day-to-day operation of the OTS, including its financial management and budgeting.

For reviews undertaken under the authority of section 174 Finance Act 2016 (UK), the OTS will normally establish a consultative committee to facilitate close consultation with interested parties in the OTS’s work, and to provide input and challenge to the review process and recommendations. Such consultative committees will be chaired by the Tax Director and include up to 10 members drawn from the tax and legal professions, business and other interested parties. Representatives of HM Treasury and HMRC will also attend consultative committee meetings and invitations will also be extended to other relevant Government departments. As an Office of HM Treasury, the OTS’s budget is agreed through HM Treasury’s business planning process. The OTS follows the principles, rules, guidance and advice in HM Treasury’s *Managing Public Money*.²²¹ One major issue remains – is the OTS independent or is it ‘controlled’ by HM Treasury?

221 HM Treasury “Managing Public Money” (1 October 2019) <www.gov.uk/government/publications/managing-public-money>.

The discussion around the proposed new oversight tax body for New Zealand will draw upon the OTS as it contains several features that could be incorporated. This includes a statutory platform, relative independence from the Government, access to key resources and personnel, a clear approach by which its agenda is set, to name but a few of the important characteristics.

C. Government Accountability Office – United States

Aspects of the United States Government Accountability Office (GAO)²²² may be relevant. The GAO is an independent, non-partisan agency that works for the United States Congress. The Budget and Accounting Act 1921 (US) established the GAO to investigate all matters related to the use of public funds. It requires the GAO to report on its findings and recommend ways to increase economy and efficiency in government spending. It is designed to provide the United States Congress and federal agencies with objective and reliable information. Effectively, the GAO is the United States Government's audit institution and is part of the Legislative branch of Government. The GAO's work is undertaken at the request of congressional committees or subcommittees, or is statutorily required by public laws or committee reports, as per the United States Congressional Protocols.²²³

In terms of effectiveness, for example, in Fiscal Year 2018, the GAO identified \$US75.1 billion in financial benefits - a return of about \$US124 for every dollar invested in it. It also identified 1,294 other benefits that led to program and operational improvements across the United States Government.

The GAO is headed by the Comptroller General, who is appointed for a 15-year term and is not eligible for reappointment. The long tenure of the Comptroller General gives GAO a continuity of leadership that is seen as rare within the United States Government. When a vacancy occurs in the Office of the Comptroller General, the Congress establishes a bipartisan, bicameral commission to recommend individuals to the United States President.

While the GAO is in many respects a different creature to the proposal that this book develops, the process of appointment of its head is relevant, as is its relative independence from the United States Government.

222 For further information see United States Government Accountability Office "About" <www.gao.gov/about/>.

223 United States Government Accountability Office *GAO's Congressional Protocols 17-767G* (United States Congress, Washington DC, 2017).

D. National Audit Office – United Kingdom

The National Audit Office (NAO)²²⁴ also offers possible guidance in developing the proposal in this book. Specifically, the NAO scrutinises public spending for the United Kingdom Parliament. Like the GAO, its public audit perspective assists the United Kingdom Parliament to hold the United Kingdom Government to account and improve public services. The NAO audits the financial statements of all central government departments, agencies and other public bodies, and reports the results to the United Kingdom Parliament. Its other work comprises value-for-money studies, local audit, investigations, support to the United Kingdom Parliament and international activities. The NAO also shares its cross-government insight through guides setting out good practice and the questions it asks when assessing value for money. A major aim is to see its recommendations and reports assisting the United Kingdom Government to make better use of public money to improve people's lives.

The Comptroller and Auditor General (CAG) leads the NAO and is an officer of the House of Commons (as part of the United Kingdom Parliament). The CAG, along with the staff of the NAO (about 800 people), are independent of the United Kingdom Government. They are not civil servants and do not report to a minister.

The CAG certifies the accounts of all government departments and many other public sector bodies. Importantly, the CAG has statutory authority to examine and report to the United Kingdom Parliament on whether departments and the bodies they fund have used their resources efficiently, effectively and with efficiency. The CAG uses their statutory powers to:

- decide which value for money examinations to carry out;
- decide how to report results to Parliament; and
- use rights of access to documents and staff to get information and explanations.

The Public Accounts Commission (PAC), a United Kingdom Parliamentary committee of Members of Parliament (MPs), oversees the work of the NAO.²²⁵ Specifically, the PAC:

224 See further, United Kingdom National Audit Office “About us” <www.nao.org.uk/about-us/#>. This body should not be confused with the Australian National Audit Office (ANAO) which supports accountability and transparency in the Australian Federal Government sector through independent reporting to the Australian Federal Parliament, thereby contributing to improved public sector performance. See further, ANAO <www.anao.gov.au/about/australian-national-audit-office>.

225 For further details on the United Kingdom's PAC, see United Kingdom Parliament “Public Accounts Committee” <www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/>. The PAC is the United Kingdom's equivalent of the Finance and Expenditure Committee (FEC) in New Zealand.

- approves the NAO's budget;
- scrutinises the NAO's costs and performance;
- appoints the NAO's external auditors; and
- commissions value for money studies of the NAO's work.

The NAO provides useful guidance into the importance of being independent of the Government, and considerable flexibility in determining how it will carry out its statutory tasks. Its accountability to Parliament via the select committee process, rather than to a minister, supports its independence. This is a feature that could be applied to the proposed tax oversight body for New Zealand.

E. Board of Taxation – Australia

The Board of Taxation (BoT) was noted in the discussion in section VII of Chapter 11 as a possible recommendation for further consideration for New Zealand, during the period preceding the release of the Government TWG's *Final Report*. As stated previously, no such recommendation was made. That said, the BoT is worth a closer examination.

The operations of the BoT are governed by its Charter.²²⁶ In addition, all BoT members are required to adhere to a mandatory conflict of interest policy.²²⁷ In terms of its Charter, the BoT's mission is to contribute a business and broader community perspective to improving the design of taxation laws and their operation in Australia.

In terms of independence, the BoT is within the 'control' of the Australian Federal Treasurer. Its members are appointed by the Treasurer, for a term of up to three years, based on their personal capacity (and experience). Normally the members are appointed from within the business and wider community, regarding their ability to contribute at the highest level to the development of the Australian tax system. The BoT's Chair is appointed by the Federal Treasurer from among the members of the BoT. If the Treasurer decides to appoint a Deputy Chair, they are also appointed from among these members of the BoT. Importantly, members may be re-appointed which assists with maintaining a degree of continuity. In addition, the Secretary to the Department of the Federal Treasury, the Federal Commissioner of Taxation and the First Parliamentary Counsel, are also members of the BoT.

²²⁶ See Board of Taxation, above n 168.

²²⁷ See Board of Taxation, above n 168, 'Conflict of Interest Declaration'.

The BoT provides advice to the Federal Treasurer on:²²⁸

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;
- improvements to the general integrity and functioning of the taxation system;
- research and other studies commissioned by the BOT on topics approved or referred by the Federal Treasurer; and
- other taxation matters referred to the BoT by the Federal Treasurer.

From time to time the Australian Federal Government or the Federal Treasurer may establish other boards or bodies, with set terms of reference to advise on aspects of Australian tax law. In such cases the Federal Treasurer advises the BoT on a case-by-case basis of its responsibilities, if any, in respect of issues covered by other boards and bodies. An advisory panel of members of tax practice and industry directly supports the BoT through providing broader advice from their constituencies.

The Chair of the BoT reports to the Federal Treasurer, at least annually, on the operation of the BoT during the year. The BoT is supported by a Secretariat comprising of secondees from the private sector, the Australian Tax Office (ATO) and the Australian Treasury. It may engage private sector consultants to assist it with its tasks. Members meet regularly during the year as determined by the BoT's work programme and priorities, which are generally available on its website. The BoT will from time to time set up working groups, which are supported by Australian Government officials from other agencies, namely Treasury and the ATO. These working groups will have specified areas for review within their brief. Importantly for the analysis in this book, the BoT has not been tasked with undertaking major reviews such as those undertaken by government-appointed tax committees. That said, it has made several notable contributions, including the development of the voluntary Tax Transparency Code (TTC),²²⁹ at the instigation of the Australian Federal Treasurer.²³⁰

Non-government members receive remuneration and allowances to cover travelling and other expenses, at approved rates. The Australian Federal Government determines an annual budget allocation for the BoT.

228 See Board of Taxation, above n 168.

229 See further, Board of Taxation "Development of the Voluntary Tax Transparency Code" <www.taxboard.gov.au/consultation/voluntary-tax-transparency-code/>.

230 For a discussion on the TTC, see Taylor Witkiewicz "Tax Transparency and Corporate Tax Avoidance" (Honors Theses and Capstones, University of New Hampshire, United States, 2017) 340.

The BoT has many similarities to the OTS in terms of its establishment and administrative support. While the operations of the BoT significantly overlap what would be expected to come within the proposal developed later in this chapter, the BoT has much less independence from central bureaucracy than the author considers to be desirable. The degree of influence of the Australian Federal Government is significant, including determination of membership and influence over what the BoT's work will be. Its remit is much broader than tax policy development, which could serve as a possible benchmark for extending the proposal developed in this book.

Beyond these specific examples, the OECD's Network of Parliamentary Budget Officials and Independent Fiscal Institutions (PBO-IFIs) is another potential source of guidance, especially with respect to how the independence of these bodies is maintained, along with their reporting and accountability.²³¹ It is not proposed to go into any further detail at this time.

We have now arrived at the point where this analysis of the relatively ineffective nature of previous ad hoc tax committees, plus the experience of possible precedent organisation overseas, leads to the most important aspect of this book, namely the proposal for a new independent tax oversight body for New Zealand.

VIII. A PROPOSAL FOR A NEW 'INDEPENDENT' TAX OVERSIGHT BODY FOR NEW ZEALAND – THE NEW ZEALAND TAXATION REVIEW COMMISSION

A. Introduction

It is important to state at the outset that this proposal should not be considered as a substitute for a tax policy unit located within a branch of government within a jurisdiction. As the International Monetary Fund

231 See further, Organisation for Economic Co-operation and Development "OECD Network of Parliamentary Budget Officials and Independent Fiscal Institutions (PBO-IFIs)" <www.oecd.org/gov/budgeting/oecdnetworkofparliamentarybudgetofficialspbo.htm>. For example, Australia's Parliamentary Budget Office (PBO) was established by the Parliamentary Service Act 1999, as amended by the Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011. The appointment of the first Parliamentary Budget Officer was in July 2012. The PBO's mandate is to inform the Australian Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals. It was provided with an initial budget of \$AU29.7 million over four years in 2014. This includes short-term funding to address demands during election periods. Out of a maximum of 40 staff provided in the budget, it currently employs 38. Another example is the Scottish Fiscal Commission (SFC) whose mission is to produce independent, official forecasts. The SFC bases its values on those set out by the OECD's Independent Fiscal Institutions, which require the SFC to be independent; transparent; accessible and open. The SFC works closely with the Office of Budget Responsibility, Revenue Scotland, the Scottish Government, HMRC and other bodies.

(IMF) indicates, a tax policy unit (TPU) is critical to guiding tax reform, revenue and economic impact analysis, legal drafting, treaty negotiation and the like.²³² Whether this unit is entirely within one branch or split between two or more depends upon what approach works effectively for a jurisdiction. In New Zealand, for example these tasks are split between the Treasury and IR, where both departments work closely together in the interests of New Zealand, and as instructed by ministers and the Government. The proposal would leave these two departments intact but would add to their responsibilities.

In terms of establishing a TPU, the IMF's guidance offers some useful pointers for the proposal that is central to this book. These principles are:²³³

1. *Establishing a TPU requires broad support in government.*
2. *A TPU may start on a small scale and grow gradually.*
3. The revenue analysis section of the TPU may initially operate as a technical working group with delegated staff.
4. The drafting of tax laws may initially be assigned to the attorney generals' office, with growing involvement of the TPU over time.
5. *The TPU should ultimately employ an interdisciplinary group of experts.*
6. *TPU staff positions need clear job descriptions and performance agreements.*
7. *TPU leadership must have solid experience in tax policy theory and contemporary tax debates.*
8. *The TPU should be supported by a binding agreement with the revenue administration about accessing sanitised taxpayer data.*
9. *A newly created TPU should disseminate information publicly.*
10. Complex analyses may be contracted out to local academic institutions.

As discussed through the earlier chapters, New Zealand's approach when comprehensive reviews of the tax system have been sought, is to establish an ad hoc committee separate to the Government but generally where appointments are made by the Government and the terms of reference are prescribed. As the earlier discussion shows, this approach has been mildly successful at best, and suboptimal in the author's view. It has also been unduly hampered by underlying politics.

Consequently, the central aim of this book is to advocate an additional feature, namely an independent of Government and permanent tax body to oversee reviews of all (or parts) of the New Zealand tax system. The remainder of this chapter will outline the structure of this body and its key features.

232 International Monetary Fund *Fiscal Policy: How to Establish a Tax Policy Unit* (New York, 2017).

233 International Monetary Fund, above n 232, at 11–12 (those of relevance are highlighted in italics).

The proposed body could be a quango - a quasi-autonomous non-governmental organisation.²³⁴ The 'non-government' reference here means these entities are not part of the wider public service (which comprises government departments and ministries). Quangos have developed and increased in their number in New Zealand over a long period, principally to undertake:

- specific, often single, commercial or technical functions;
- to fund social and cultural activities, without direct ministerial accountability;
- *to provide expert advice and research services*; and
- to regulate private activities in the public interest.

However, from the mid-2000s, quangos became known as Crown entities in New Zealand.²³⁵ These are central-government organisations defined by the Crown Entities Act 2004, mostly created by specific acts of the New Zealand Parliament, and with their own governing bodies. The Crown Entities Act 2004 covers the appointment, powers and responsibilities of members of the governing body, its accountability to Parliament, and financial rules. Crown entities, as public bodies, are responsible for a wide range of public services and regulatory functions.

Importantly, a Crown entity is at arm's-length from Ministers, but still an integral part of the State sector. Each statutory Crown entity has its own enabling legislation. Furthermore, each Crown entity will have its own board, whose role includes:

- operating in accordance with the Crown Entities Act and its own legislation; and
- monitoring and reporting on its performance.

Crown entity boards have overall responsibility for the entity's performance, with the minister responsible for the entity setting expectations for the performance of the entity. The monitoring department's role includes:

- assisting the responsible Minister;
- administering appropriations and legislation as required; and
- providing advice to the Minister on entity performance.

234 For a discussion on quangos in New Zealand, see Enid Wistrich "Quangos in New Zealand" in Martin Flinders and Matthew Smith (eds) *Quangos, Accountability and Reform* (Palgrave Macmillan, London, 1999) 84. The third area identified above reflects the proposed entity.

235 See further, State Services Commission "Crown entities guidance" <www.ssc.govt.nz/our-work/crown-entities/>.

The proposed body or ‘entity’ would most certainly come within the domain of a Crown entity, requiring its own empowering legislation. Of the various types of Crown entities, the category known as ‘independent Crown entities’, would best fit the proposed entity. These Crown entities are generally *fully independent of government policy*. Currently in New Zealand they include some important regulatory and quasi-judicial bodies like the Commerce Commission, the Electoral Commission, the Independent Police Conduct Authority and the Financial Markets Authority. Potentially another category of organisation, known as “autonomous Crown entities”, may also be a possible structure. These Crown entities must only have regard to *policy directives* from Ministers.

At this point the structure of this proposed entity needs to be outlined, which is the subject of the next subsection.

B. Key Components of the New Zealand Taxation Review Commission (NZTRC)

Working on the premise that the New Zealand Tax Review Commission will be established as a Crown entity (desirably as an ‘independent’ Crown entity), with its own empowering legislation, it is time now to outline the essential structure, scope and mandate for this body. The following subheadings briefly set out what needs to be developed to form part of the empowering legislation and refined to form part of the agreement between the entity and the Crown (through its responsible minister and department).

Legislative backing

Legislation will need to be drafted, drawing upon best practice examples for existing Crown entities, and modified to incorporate the necessary content to enable the NZTRC to function. This could be known as the *New Zealand Taxation Review Commission Act 20xx*. At this time draft legislation should not be developed until the concept of the NZTRC is fully settled and agreed. However, some key potential statutory provisions in general terms are provided as an Appendix to the book.

Responsible department and minister

The NZTRC’s role requires the support and resources from both the New Zealand Treasury and IR. Given the wider focus on taxation with IR, it should be the responsible department in the first instance, with a link to New Zealand Treasury as a secondary department. The responsible minister would be the Minister of Revenue, with a link to the Minister of Finance. Since the New Zealand Treasury and IR already work closely together in tax policy and administration, this proposed relationship is not anticipated to create any unmanageable tensions and other challenges. In terms of accountability of the NZTRC, this should be to Parliament via the select committee process

(such as via the Finance and Expenditure Committee (FEC)), rather than to the responsible minister (such as the NAO in the United Kingdom). Furthermore, CATR offers an insight into the importance of separating certain tax-related functions from the responsible department, which in that case is binding rulings.

Terms of reference and scope

The NZTRC will be provided with terms of reference that are sufficiently flexible yet clear in their scope with respect to regularly undertaking comprehensive or targeted reviews of the New Zealand tax system. The responsible minister and department may also from time to time direct that NZTRC undertake a review on specific aspects of the New Zealand tax system, including reviews instigated as its own initiative. Unless otherwise directed, the NZTRC will determine the scope of its reviews, although it will be confined to taxation as it affects New Zealand at the central level (it will not investigate local authority taxation, for example). Cross border tax issues come within its ambit provided it is only considering matters that come within New Zealand's jurisdiction. Potentially, professional organisations and others could approach the NZTRC with issues indicative of problems in the tax system that they believe are in need of review. The NZTRC will determine whether to follow up on these requests and undertake its own reviews, including matters raised by external organisations such as professional accounting bodies. Reviews may be substantial covering all of the tax system, or smaller and more focussed. In this regard it would be useful to examine the experience of Inspector General of Taxation (IGT) in Australia and similar bodies.

The NZTRC should not be restricted, for example like the Government TWG, with significant parts of the tax system being excluded from consideration. It should also be able to examine the aspects of government policy that interrelate with the New Zealand tax system, such as the wider social security system. Other roles that IR is responsible for, such as student loans, should also be able to be reviewed by the NZTRC. Political considerations should not inform the work of the NZTRC; rather well-established good tax policy guidance should be the basis. This includes traditional principles and the relatively new New Zealand Treasury LSF (and its associated Dashboard).²³⁶ Where specific issues are referred to the NZTRC by the responsible minister and/or department, there may be political considerations that need to be considered.

That said, there is clearly a need for some restrictions on the NZTRC to give recognition of the democratic process by which MPs are elected and governments are formed under New Zealand's electoral process (a Mixed

236 New Zealand Treasury, above n 138, and above n 174.

Member Proportional system).²³⁷ This necessitates that there will be some form of government direction needed, perhaps drawing upon the way in which the Reserve Bank of New Zealand (like the Bank of Canada)²³⁸ has some direction but otherwise wide discretion to meet those broad parameters.

Operational details will need to be refined as the broad structure of the NZTRC is finalised. In this regard it will be useful to look at how other bodies were initially developed, and changes made to their operations over the first period of their operation. It may be practical to initially establish the NZTRC to meet as and when required (as determined by the Director and/or requirements of the relevant minister(s) in terms of government requested reviews). If demand and needs require, then the NZTRC could operate on a full-time basis, undertaking regular targeted reviews, and comprehensive reviews approximately every 10 years. As there is no equivalent body in place as at the time of writing, there is no direct precedent to be evaluated. Organisations such as the OTS and BoT may be useful starting points.

Choice of evaluation frameworks

The NZTRC will be empowered to determine what frameworks it applies to reviewing the New Zealand tax system (in whole or in part). It would be expected to apply traditional principles (such as those used by prior New Zealand ad hoc tax committees), as well as adopt the Treasury LSF (and its associated Dashboard) and Te Ao Māori perspectives (as appropriate).²³⁹ These could be part of the direction provided to the NZTRC by the Government upon its establishment. Subsequent governments should not interfere with these frameworks unless there is clear evidence of the need for a review of them. The NZTRC will need to provide reasons for any departure from these frameworks prior to undertaking any review.

Establishment – staff permanent and fixed term

The NZTRC will have enough permanent members to be able to undertake its role. This includes a director and deputy director appointed for terms of five years (with one reappointment permitted), plus six–10 (part time) fixed term seconded personnel (drawing upon those in accountancy, and legal professions, economists, and other relevant experts). The director would be appointed by Parliament on the recommendation of the responsible minister. The director would therefore report to and be accountable to Parliament for

237 For further details on New Zealand’s MMP system, see for example, New Zealand Parliament “What is the MMP voting system?” (11 October 2016) <www.parliament.nz/en/get-involved/features/what-is-the-mmp-voting-system/>.

238 See Heath, above n 27. For the Reserve Bank of New Zealand approach, see Reserve Bank of New Zealand “Monetary policy framework” <www.rbnz.govt.nz/monetary-policy/about-monetary-policy/monetary-policy-framework>.

239 New Zealand Treasury, above n 138, and above n 174.

the operations of the NZTRC. The reports of the NZTRC, however, would go to the responsible minister and would be subsequently tabled in Parliament for public release.

Membership may include staff from New Zealand Treasury and IR (although collectively they should not form most members). Consideration of having an appropriate gender and ethnic mix, along with inter-generational diversity, is to be a guide in appointing operational staff and experts. Membership should include those with business experience, including SME experience. Enough staff to form the Secretariat will be required – previous tax committee experience should provide some guidance in this area. Specific consultancy services may be utilised when necessary. All staff and consultants will need to sign the necessary confidentiality agreements and codes of conduct required for Crown entities. The OTS provides a relevant and useful form of guidance for developing staffing and other associated requirements of the NZTRC.

Annual reporting

The NZTRC will report annually in accordance with standard practice for Crown entities in New Zealand. This includes reporting on its activities along with utilisation of financial resources. It will need to produce financial statements in accordance with relevant financial reporting standards. It will also provide separate reports on its activities, before planned reviews commence (including the terms of reference), during the review (with interim reports and opportunities for consultation), and final reports which will go to the responsible minister and department. The NZTRC will manage its consultation process, including holding public hearings.

Unrestricted access to tax data

As has been the case for prior ad hoc tax committees, the NZTRC will require access to New Zealand Treasury and IR resources and personnel to facilitate its work, as and when required. This will ensure the NZTRC is working with real data and that any recommendations made are fully factually informed. Access to anonymised taxpayer data will also need to be provided when necessary to ensure the accuracy and relevancy of the NZTRC's analysis and subsequent recommendations. Standard confidentiality agreements will need to be signed and in place for anyone with access to such data.

Consultation – mandatory nature and process

New Zealand is well known for having a transparent and comprehensive process for consultation on tax policy through the GTPP. The NZTRC needs to reflect best practice, being consultative and transparent in its activities as far as is practical. This includes consulting with the general public; the Government TWG model would be a good model to build upon for this

aspect of the NZTRC.²⁴⁰ In this regard the website (www.nztrc.org.nz) would be the critical interface between the NZTRC and the wider public. The NZTRC's responses to submissions generally would also be available on the website. Submissions will be made publicly available on this website unless good reasons are provided that they should remain confidential (or be redacted in part). For example, with the Government TWG, it took the position with respect to submissions that:²⁴¹

Information in these submissions has only been redacted or withheld on the grounds of privacy, commercial sensitivity, or any other reason under the Official Information Act. We have withheld the email addresses and other contact details of private individuals as a matter of course, but not the names of submitters.

Process of making recommendations & mandatory requirement for publication of Government response

Upon completion of a review, the NZTRC will send its report, with recommendations, to the responsible minister and department confidentially, for comment and response. The NZTRC is not expected to specifically consider political considerations in recommending how the Government should deal with its recommendations. However, it should be cognisant of the political environment in any suggestions made for implementing its recommendations.

After an agreed period (usually no more than two months after completion), the report will be made public on its website, with the Government to provide its formal response within an agreed period (usually within two months from receipt of the report). The Government's response will also be provided on the NZTRC's website, with reasoning provided for why any recommendations are not accepted. A provisional timetable for inclusion of items in the Government's TPWP will also be provided within two months of the Government's response.²⁴²

Resourcing

Resourcing of the NZTRC will principally come from appropriations made by Parliament, similar to how other Crown entities are funded. Some appropriations will be in kind, such as through secondment of staff from the Treasury and IR, while other costs will need to be met by annual appropriations. This includes salaries of permanent staff, and the expenses for temporary and seconded staff (following current New Zealand Government protocols). Provision for engaging consultants will also need to be included. Given that major reviews will not be an annual event, in some years a higher appropriation will be required. Funding for the Secretariat, including a webmaster, media liaison, and wider taxpayer education, will also need to be

240 See Tax Working Group, above n 119.

241 Tax Working Group, above n 119.

242 For further details on the TPWP, see Inland Revenue, above n 152.

included. The OTS model provides a relevant and useful form of guidance for developing resourcing and other needs of the NZTRC. Potentially, while the costs of the NZTRC could exceed those of the ad hoc committees, it is expected that these costs will be justified through more effective (and accepted) policy advice.

Website

The website will be the principal mechanism for communication between the NZTRC and the general public. The content will be developed with time, and refreshed as necessary, but should include in relation to the NZTRC:

- Its role (including link to empowering legislation and terms of reference);
- Its people (including its structure, Board, leadership and members);
- Its vision and strategy;
- Its priorities;
- Its policies and guidelines (these include its privacy policy, conflict of interest policy, submissions policy, et cetera.);
- Strategic planning and accountability reporting (content provided as material becomes available, including annual reports, performance reporting and other government-required reporting, all reports forming part of the tax reviews undertaken, and other communication mechanisms, such as: public polls, agendas and minutes of meetings, framework documents and background papers – some may be withheld until completion of a specific review);
- How to request official information (under the Official Information Act 1982 where necessary), including access to submissions made to the NZTRC;
- Historical records of all previous New Zealand ad hoc tax committees' reports and links to their websites (where applicable); and
- Working with other agencies (both governmental and non-governmental), including relevant links.

Provision of resources specifically for the media, including media releases, should also be included on the website.

Miscellaneous matters

The NZTRC may in due course have its remit extended to encompass other aspects of tax policy, beyond that of reviews of all or part of the tax system. In this regard the BoT provides a helpful model for the NZTRC to develop and recommend other changes, such as the voluntary Tax Transparency Code (TTC) in Australia. It could also examine more limited or targeted aspects of New Zealand's tax system, such as focussing on areas for further simplification in a manner like the OTS.

How might the NZTRC be structured? The next subsection attempts to provide a working draft of how it might be set up.

C. Diagrammatical presentation of the New Zealand Taxation Review Commission (NZTRC)

Figure 13.1 provides an indicative overview of how the NZTRC may be structured, including the various links to external stakeholders. Solid lines indicate a direct relationship with arrows showing the expected direction. Where there are no arrows the relationship may be both ways. Broken (or dotted) lines indicate an indirect relationship.

Figure 13.1 provides a high-level depiction and as such does not indicate the number of personnel comprising the membership and the Secretariat. Operational details will need to be developed to support the concept of the NZTRC as it is explored further. Figure 13.1 appears at the end of this chapter.

IX. CONCLUDING OBSERVATIONS

This chapter has traversed a large area in leading up to the proposed New Zealand Taxation Review Commission (NZTRC). It commenced with an overview of earlier calls from academics for developing a form of independent oversight body.²⁴³ In a New Zealand context, the first known call came from one of the tax committees itself, the Ross Committee in 1967.²⁴⁴ Robson's and Heath's separate contributions to the Canadian Policy Forum offer valuable insights into what needs to be balanced when proposing an independent tax body. This involves asking (and answering) several fundamental questions, such as: How much discretion should it have? What should be within its terms of reference? How should it operate? How does one overcome the objections such as the influence on the democratic process (the constitutionality of the concept), and to what extent will guidance influence the choice of tax principles to be applied?

The chapter then considered what would be a worse scenario than what has transpired in New Zealand, namely the absence of 'regular' ad hoc tax committees, which in Canada has been the situation for over 50 years. Arguably, New Zealand has not been as successful in terms of the impact of its ad hoc tax committees in relation to South Africa's Davis Committee. In part, this may be a factor of the relative need for reform between the two jurisdictions, as well as the political environment being supportive of many of the Davis Committee's recommendations.

243 James, Sawyer and Wallschutzky, above n 188, Robson, above n 27, and Heath, above n 27.

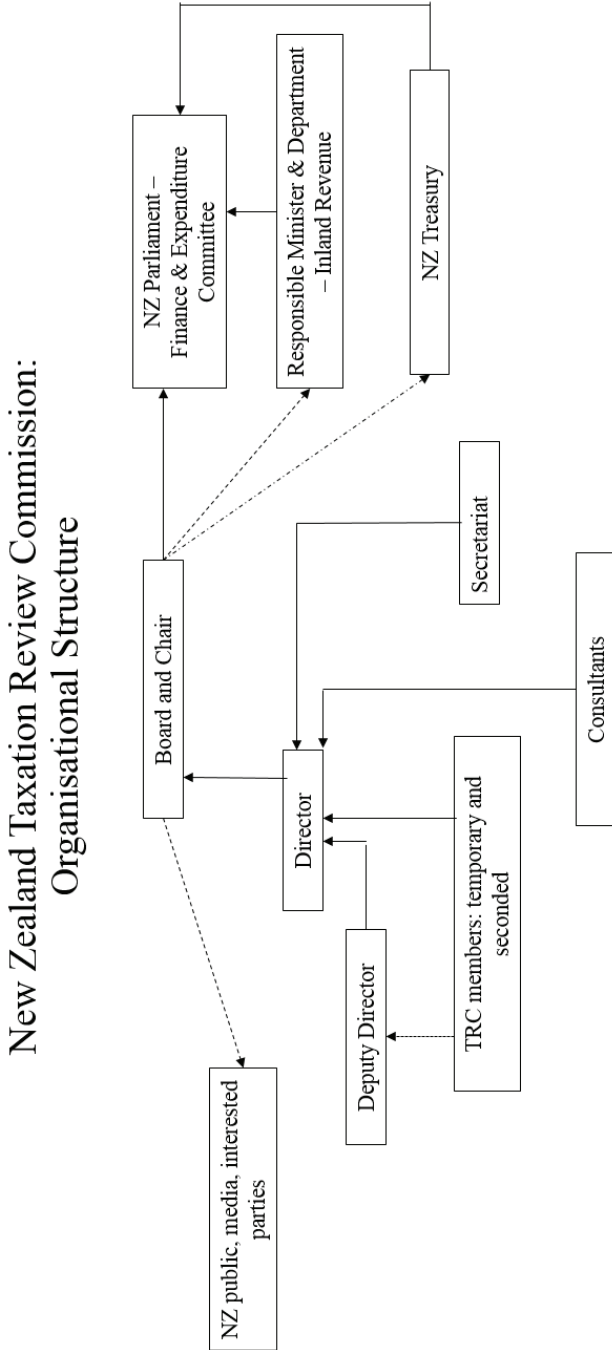
244 Ross Committee, above n 32.

Before setting out the proposed NZTRC, the chapter examines several permanent bodies in other jurisdictions (Australia, Sweden, the United Kingdom and the United States), that offer some valuable features to be included within the proposed NZTRC. This includes the Council for Advance Tax Rulings (CATR) in Sweden, the Office for Tax Simplification (OTS) in the United Kingdom, the Government Accountability Office (GAO) in the United States, the National Audit Office (NAO) in the United Kingdom and the Board of Taxation (BoT) in Australia. This is not an exhaustive list of overseas bodies that could be reviewed as the basis for developing the NZTRC. Rather, those selected were based on illustrating key features that should form part of the NZTRC and demonstrate that they are workable in practice. From these potential precedents and building upon the best practice for tax committees outlined in section IV of Chapter 12, the NZTRC proposal is introduced.

The key components of the NZTRC are set out, along with a preliminary organisational structure. In the appendix to the book, the basic outline of some of the key provisions that would need to be included in draft legislation to establish the NZTRC are laid out. Essentially the NZTRC would be established as a New Zealand Crown entity, with the NZTRC preferably developed as an ‘independent Crown entity’, meaning that it would be generally fully independent of government policy. That said, it could be instructed to undertake specific reviews from the responsible minister but setting its own terms of reference and scope of the review following best practice. Nevertheless, it would be naïve to expect that a review that has been initiated by the NZTRC and is not in line with the political direction of the Government at the time (as has been the case with many of the tax committees), then its reviews will most probably be ignored. This may be less likely where minister initiates the review (but still possible).

The proposal developed at this time is necessarily at a high level – much of the detail has not been developed as this would depend upon most importantly acceptance by the New Zealand Government to investigate the proposal further, and based on the direction taken, to add ‘flesh to the bones’ of the proposal outlined in this chapter. Developments in other jurisdictions should also be reviewed, especially if Canada decides about how they will undertake their next major tax review (assuming this is a question of *when*, not *if*). Furthermore, the time frame for establishing the NZTRC, assuming the concept receive approval from the Government, would take many months before it could be operational. It is hoped that the NZTRC would be operational before New Zealand is ‘due’ its next major tax system review, which based on prior experience, would be by 2027. It is hoped that the NZTRC would be able to undertake smaller, more targeted reviews prior to then.

Figure 13.1: Proposed Structure of the New Zealand Taxation Review Commission



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OVERALL CONCLUDING OBSERVATIONS

The forgoing chapters have traversed nearly 100 years of tax history in New Zealand in the context of ad hoc tax committees and working groups established to undertake reviews of all (of most) of New Zealand's tax system. The historical review of each of the 10 major tax committees, along with the smaller working groups, is presented in individual chapters, from Chapter 2 to Chapter 11, inclusive. A major finding is that the degree of impact that the vast majority of these ad hoc tax committees has had on reforming the tax system is minimal. A common challenge has been recommending changes that do not meet the political philosophy of the Government at the time. Where recommendations have been taken up this often occurs many years (or decades later). Most of these tax committees' membership has also failed to reflect gender and ethnic diversity, and in some instances, relevant cross sections of New Zealand society.

In summary, from a general cost versus benefit assessment,²⁴⁵ the ad hoc tax committee model has not been an effective and efficient way in which to ensure New Zealand's tax system is meeting the fiscal requirements of the country, and operating in a manner that is fully reflective of well-established (and emerging) tax principles. With the most recent tax committee (the Government TWG), an additional framework has been added, namely the New Zealand Treasury's LSF and its associated Dashboard.²⁴⁶ While it is early days, the LSF did not have a significant impact on most of the Government TWG's analysis and recommendations.

What should not be forgotten is that the situation in New Zealand could have been much worse than the minimal impact that the ad hoc tax committees have managed to convince the Government to pursue. Canada, for example, has not had a significant tax review for over 50 years, with growing calls for the urgent need of a review, potentially like that of the Carter Commission that reported in 1966.²⁴⁷

The most significant conclusion to be drawn is that the ad hoc tax committee process has not delivered significant change in terms of adoption of recommendations. Politics has had a substantial influence, not only in the level of acceptance of recommendations, but in establishing the terms of reference and in some instances through the appointment of members of tax committees. One pertinent example is the appointment of the chair of

245 It is not the intention of this review to undertake in any way a financially costed analysis – the data would not necessarily be available, requiring significant assumptions to be made.

246 See New Zealand Treasury, above n 138, and above n 174.

247 See Carter, above n 205.

the most recent Government TWG, Dr Michael Cullen, a former finance minister in a previous Labour-led Government. Chapter 12 provides further analysis of the examination of the ad hoc tax committees in New Zealand over the last 95 years (as at the time of writing). The conclusion drawn is not one that is entirely pessimistic – several committees had a significant impact, and in that regard, a statement of best practice is provided in section IV of Chapter 12.

This situation, viewed in its entirety, suggests that a new approach is needed. In this regard, the author does not purport to suggest that he had the original idea of establishing some form of independent tax oversight body. Several academics have already made such a call (the author was one of those academics),²⁴⁸ as did one of the ad hoc tax committees in New Zealand, the Ross Committee.²⁴⁹ Before presenting the proposed New Zealand Taxation Review Commission (NZTRC), the analysis reviews existing bodies in a number of jurisdictions that have features that could be adapted for the NZTRC.²⁵⁰

The current author's contribution, above that of the historical review and analysis, is to flesh out the major components of such a body, including core aspects such as its statutory basis (as a Crown entity), responsible department and minister, its terms of reference and scope, evaluation frameworks, establishment of staff, annual reporting, access to data, mandatory consultation, process of making recommendations and government's requirement to publicise its response, resourcing, and its website. From this information, a diagram setting out the core structure and relationships is set out in Figure 13.1 in Chapter 13. Draft provisions that should form part of the empowering legislation are set out in the Appendix to the book.

Having outlined a proposal for the NZTRC, what can one say about the future? What are the chances of an entity resembling in any manner that which is proposed here? The author's experience with proposing new organisations is to be circumspect and not to anticipate action in the foreseeable future.²⁵¹ However, in this instance, he would dearly love to be surprised by New Zealand Government uptake of the proposal, conceptually at least. Even if the proposal 'grows legs' it is sometime off before such a body would emerge and become operative in New Zealand.

The author would also suggest that the extensive analysis in this book provides the basis for a theory to be tested going forward, namely that a

248 James, Sawyer and Wallschutzky, above n 188, Robson, above n 27 and Heath, above n 27.

249 Ross Committee, above n 32.

250 The organizations included are: CATR (Sweden), OTS (United Kingdom), GAO (United States), NAO (United Kingdom) and BoT (Australia). The PBOs and IFI established under the auspices of the OECD could also be explored.

251 See for example the author's proposal for an international (world) tax organisation, as laid out in Adrian Sawyer *Developing a World Tax Organisation: The Way Forward* (Fiscal Publications, Birmingham, United Kingdom, 2009). This proposal is for a much more substantial global body, compared to the NZTRC that this book develops and proposes for New Zealand.

permanent review body will develop both more extensive and timely recommendations for improving tax policy, as well as prove more successful in having its recommendations accepted by governments. This contrasts with the relatively poor performing ad hoc tax committees reviewed in this book. However, without the establishment of a permanent committee, this theory is unable to be empirically tested in New Zealand.

This book has several limitations, including at the outset that it is an exploratory case study proposing a normative solution to the relatively ineffective nature of ad hoc tax committees in New Zealand. It is largely country specific. Nevertheless, through an in-depth case study it sets out recommended best practice that could be adapted by other jurisdictions intending to utilise ad hoc tax committees.

Furthermore, the proposal for an independent oversight body draws upon international experience with various bodies established to carry out core tax and other functions. This illustrates how key concepts such as ‘independence’, scope, and operational practice have been adopted. Even so, the proposed NZTRC would need adaptation for consideration in any other jurisdiction, assuming it would create a wider interest outside of New Zealand. Even more fundamentally, the proposal needs to overcome political resistance to the establishing of another Crown entity that in addition to requiring funding from tax revenues, could make recommendations that the Government of the day would not be willing to support. The independent nature of this proposed body in part is designed to take the ‘politics’ out of the process, at least as far as when reports of recommendations are tabled in Parliament and considered by the Finance and Expenditure Committee (FEC). The Canadian Policy Forum papers²⁵² offer valuable insights into the various trade-offs that need to be managed.

Future research beyond this book could extend to adding further ‘flesh’ to the broad framework outlined for the NZTRC. This would include further investigation of other bodies globally that could offer precedents for part of the structure and operations of the NZTRC. Furthermore, there is a need for wider support and approval for the concept from others, including: other academics, professional bodies, business groups, taxpayer representatives, the Treasury and IR, and eventually key politicians from the various parties in Parliament (including relevant ministers).

252 Robson, above n 27 and Heath, above n 27.

APPENDIX

Draft outline of the New Zealand Taxation Research Commission legislation

The information that follows indicates some of the key aspects of the NZTRC to be included in legislation. It does not include specific formats and styles used for drafting legislation in New Zealand. Neither does it attempt to include all the standard provisions for Crown owned entities. This preliminary draft will need to be developed jointly between IR's drafting personnel and the Parliamentary Counsel Office drafting team. This draws upon the precedent for the North Carolina Tax Policy Commission.²⁵³

Section 1 Title: New Zealand Taxation Review Commission Act 20xx

Section 2 Interpretation [insert provisions as necessary]

Section 3 Commission Established - A New Zealand Taxation Review Commission (the Commission) is established under this Act.

Section 4(1) Membership - The Commission shall consist of xx members (including the Director) who shall represent, insofar as practicable, the diverse interests and regions of New Zealand and shall include individuals with expertise in tax policy, tax administration, and professional tax practice. Consideration of gender and ethnic diversity must be considered.

4(2) The relevant minister, on advice, will appoint the permanent members, including the Director, Chair of the Board and other Board members. The Director, once appointed, will nominate the Deputy Chair from amongst the membership, to be confirmed by the responsible minister. The Board will be comprised of at least five members, being representative of New Zealand wider society, with appropriate expertise.

4(3) Appointments to the Commission and the Board shall be made no later than xx xxx 20xx. Vacancies will be filled by the original appointing authority.

253 See North Carolina Tax Policy Commission "Interim report to the 1999 General Assembly of North Carolina" <www.archive.org/stream/northcarolinatax00nort/northcarolinatax00nort_djvu.txt>. The North Carolina Tax Policy Commission is one example of a United States phenomenon where a major restructuring of a State's tax system may commence with the creation of a state tax commission. This will typically be an independent group that studies and makes recommendations for improving a State's tax system. Some commissions are requested to find new tax revenue during a fiscal crisis, others are asked to find ways to lower tax burdens during, and some update or simplify an outdated tax system in typically a revenue-neutral way. Over the period 2006–2016, 27 tax commissions have published findings in 22 states and the District of Columbia (DC) in the United States. See Richard Auxier *How State Tax Commissions Approach Economic Development* (Urban Institute, 2016). See also, Richard Auxier *State Tax Commissions 2006–2016* (Urban Institute, 2016).

Section 5 Mission and vision - The mission of the Commission is to study, examine, and, if necessary, recommend changes to New Zealand's tax system in accordance with a clear, consistent tax policy. This mission requires:

5(1) Establishing the principles of taxation (including traditional tax principles, the New Zealand Treasury's Living Standards Framework and He Ara Waiora) upon which New Zealand's tax system should operate.

5(2) Examining the current tax system to determine if it reflects these principles.

5(3) Recommending changes to the tax system to the extent it does, and does not, reflect these benchmark tax principles.

5(4) Recommending principles and practices to ensure New Zealand's tax system is fit for purpose. While not limiting its terms of reference, the Commission may consider whether existing taxes need to be changed to be in accord with the benchmark tax principles; determine how the administrative burden on taxpayers and the State may be reduced; maximise taxpayers' use of electronic tax payment and reporting methods; and to reduce the costs of collecting and administering taxes.

Section 6 Duties - The Commission will:

6(1) Evaluate the New Zealand tax system in terms of:

(i) Responsiveness of each base to the changing and emerging economies (e.g., from farming and manufacturing to services, commerce, such as Internet sales, and technology, and other areas as relevant).

(ii) Rates compared to other jurisdictions.

(iii) Cost of administering and collecting each tax.

(iv) Tax burden imposed on individuals and businesses in New Zealand.

(v) Principles of taxation reflected in the tax.

(vi) Other guidance as developed by the Commission from time to time.

6(2) Review tax changes made since its last review to determine the impact of changes on New Zealand compared to their projected impact, and to assess any economic or demographic conditions on the horizon that may alter their impact.

6(3) Carry out any directed reviews from the responsible minister as time and resources permit.

Section 7 Report - The Commission will submit an annual report on its operations, plus interim and final reports as part of its reviews, (including findings and recommendations), to the responsible minister, who will subsequently table these in Parliament. Review reports may include draft legislation to implement recommendations along with an analysis of the fiscal impact of each recommendation.

Section 8 Expenses of Members - Members of the Commission who are not part of the Secretariat will receive per diem, subsistence, and travel allowances in accordance with ... as appropriate. The Chair and Deputy Chair will receive a negotiated salary as permanent members. The Secretariat will be paid in accordance with standard State Sector payment mechanisms.

Section 9 Meetings and work location - The Commission will meet as required. Parliamentary Counsel will ensure adequate meeting and workspace to the Commission is available in a public sector building. This space may be within the responsible department.

Section 10 Subcommittees and consultants - The Commission may appoint subcommittees of its members and other knowledgeable persons or experts to assist it. It may also engage expert consultants, if deemed desirable by its members, to assist it as and when necessary.

Section 11 Consultation - The Commission will establish a process of wider citizen and stakeholder participation and engagement that provides the opportunity for them to be informed of, and contribute to, the work of the Commission.

Section 12 Staff - Within funds available, the Commission, the Director will employ enough staff to form the Secretariat who will report to the Commission through the Director (and Deputy Director where appropriate). Other members of the Commission will be appointed by the responsible minister upon advice and will report to the Director. The Director will report to the Board who are appointed by the responsible minister upon advice. Additional support may be provided by Inland Revenue and the Treasury.

Section 13 Powers - The Commission may exercise all the powers provided under the provisions of this Act, the Crown Entities Act 2004 and other relevant statutory provisions. The Commission may contract for consultant services as provided by ...

Section 14 Cooperation by Government Agencies - The Commission may call upon any department, agency, institution, or statutory officer in New Zealand for facilities, data, or other assistance.

Section 15 Funding - The Executive will allocate from the annual expropriations from Parliament, enough funds, as negotiated between the Director, the Chair of the Board, and the responsible minister, for the expenses of the Commission. The Commission may apply for, receive, and accept grants of non-government funds, or other contributions as appropriate to assist in the performance of its duties.

Note: Underneath this statute will be regulations that contain the detailed operational matters. As is usual practice, these will need to be approved by an Order in Council with the prior agreement, as appropriate, of the Director and Chair of the Board.

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