Tax Policy Charitable Trust Scholarship Competition
Finalist Submission

Taxation by Technocracy: Proposal for the Establishment of an Independent New Zealand Tax Council

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1.0 Introduction

This paper proposes the establishment of an independent tax council ('the council') primarily tasked to design and enact policy as it relates to New Zealand's tax system. Similar in form and function to that of the Reserve Bank of New Zealand, the council would hold legislated responsibility for maintaining the tax base within defined economic parameters set by the New Zealand Government ('the Government'). It is envisioned that the council would enable the advancement of tax policy based on principled design, international best practise, and objective expert consensus, as well as mitigating the influence of politics and vested interests within the associated debate.

This paper proceeds as follows:

- A high-level overview of methods currently used to develop, maintain, and assess tax policy and the operation of the tax system in New Zealand, including the recently announced proposal for the introduction of a statutory reporting framework detailing the operation of the tax system;

- Assessment of New Zealand's current tax policy framework and the relationship between tax policy and politics in New Zealand;

- International examples of independent government bodies which assess the operation and administration of their jurisdiction's tax system; and

- Proposal for the introduction of an independent tax council in New Zealand, and assessment of the same against the scholarship competition's judging criteria.

2.0 New Zealand's current tax policy framework

2.1 Generic Tax Policy Process

The Generic Tax Policy Process ('GTPP') is New Zealand's primary avenue for consultation on tax policy. The GTPP was established following the release of a report by the Organisational Review Committee ('the Richardson Committee') in April 1994. The report found several key issues in response to the committee's terms of reference, including the need for a more structured approach to tax policy formation. The Government agreed with the committee's finding and adopted the GTPP as proposed in the report.

The GTPP operates by way of a Cabinet directive as a form of administrative or customary practise rather than formally by way of legislation or regulation.[1] The process has seen limited formal amendment since introduction, with variation to the practical operation of the process itself rather than in the structural foundations first espoused in 1994.[2]

The Richardson Committee stated that the GTPP's main objectives are to:

- encourage early consideration of key policy elements and trade-offs by Ministers;
- provide opportunities for substantial external consultation in the policy development process; and
- clarify the responsibilities and accountability of participants in the process.

The objectives of the GTPP are achieved through five phases:

- Strategic phase – development of high level economic, fiscal, and revenue strategies.
- Tactical phase – development of rolling three-year work programme; annual work and resource plan.
- Operational phase – detailed policy design, formal detailed consultation and communication, ministerial and Cabinet signoff of detailed policy.
- Legislative phase – translation of detailed policy into draft legislation, introduction and enactment of bill into legislation.
- Implementation and review phase – the implementation of legislation, post-implementation review of legislation, and identification of remedial issues.

The strategic and tactical phases are typically linked to the Government's annual budget process, either as a medium of publicising the various strategies within the strategic phase, or as a means of establishing priorities within the tactical phase. While the hallmark of the GTPP is arguably the emphasis it places on consultation with external parties, Cabinet unilaterally decides the economic, fiscal, and revenue strategies which underpin the direction of the GTPP – decisions which are, to an extent, influenced by politics. Independent voices are unable to deliberate Cabinet's decisions within the strategic and tactical phases of the current process.

2.2 Tax Reviews

The second method utilised by New Zealand in the review of the tax system is through the establishment of ad hoc committees and working groups. Such committees and working groups are generally established to consider and evaluate the tax system as it operates at the

[1] For further comment see Adrian Sawyer "Broadening the Scope of Consultation and Strategic Focus in Tax Policy Formulation – Some Recent Developments" (1996) 2(1) NZJTLP 17, 24.
[2] In response to recommendation 75 of the 2019 Tax Working Group's final report, a revision to the GTPP has been released by Inland Revenue which confirms officials' commitment to five principles for engagement. Of relevance to this paper are the principles of wider engagement, and earlier and more frequent engagement. See Inland Revenue "Tax and social policy engagement framework" (2019) Wellington.

time of the review. The process of consideration and evaluation typically occurs within a framework of principles either stipulated by the review's terms of reference, or mutually agreed by the committee or working group's appointed members. A report is generally prepared following the appointed member's deliberations, which outlines the discussions and conclusions of the committee or working group.

The inception of a committee or working group is typically lead by Government, with the appointment of members generally consisting of leaders in the accountancy, legal, economic, and business communities.[3] The establishment of a review is typically announced together with an explanation as to the need or requirement for the review's occurrence.[4]
The committee or working group's terms of reference typically provides a guiding statement or task as rationale for the review. The terms of reference may provide specific items the committee or working group is required to deliberate, comment, and provide recommendations in respect of. Similarly, the terms of reference may specify topics or matters which are outside the scope of the review. Fiscal expansion, contraction, or neutrality may be elements the committee or working group must consider when deliberating and designing the review's recommendations (if any).[5]

New Zealand has had on average a substantial review conducted by a committee or working group once every 10 years, with the announcement of a review commonly occurring soon after a general election and change in Government.[6] Such reviews have generally influenced the operation of New Zealand's tax system from a medium to long-term perspective following the release of their final reports.[7]

2.3 Tax Principles Act

In April 2022, Hon David Parker MP spoke to an audience at Victoria University of Wellington as part of Tax Justice Aotearoa's Tax on Tuesday seminar programme.[8]
Mr Parker's speech was wide-ranging and included comment on the general role of and public support in New Zealand's tax and transfer system.

Of particular relevance to this paper was Mr Parker's second key announcement. A new Tax Principles Act ('TPA') was conceptually introduced by Mr Parker which he believed would help enable improvements in New Zealand's tax system. If enacted, Inland Revenue would be required to periodically report to Government outlining the operation of the tax system in accordance with the "main settled [tax] principles" that have been used by

[3] A notable exception was the 2010 Tax Working Group, established by Victoria University of Wellington's Centre for Accounting Governance and Taxation Research as an independent group.
[4] For example, the 2001 McLeod tax review 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", with the 2017 Tax Working Group having been established "in order to examine further improvements in the structure, fairness, and balance of the tax system".
[5] For example, the 2017 Tax Working Group was directed to develop four illustrative fiscally-neutral packages of tax reform based on the theoretical extension of capital gains taxation, with the 2009 Tax Working Group conducting their review on a fiscally-neutral basis and primarily focused on revenue raising taxes.
[6] Especially relative within the last 40 years, with reviews occurring in 1982, 1994, 2001, 2009, and 2017. The three most recent tax reviews have occurred following a change in Government.
[7] A notable exception is the Government's announcement of major reforms to New Zealand's tax system in response to the release of the Victoria University of Wellington Tax Working Group's final report. The announcement in May 2010 occurred following the release of the final report in January 2010.
[8] Hon David Parker "Shining a light on unfairness in our tax system" (speech, 26 April 2022) via www.beehive.govt.nz

successive tax enquiries in New Zealand and similar countries overseas.[9] The act could also require the Government to issue a guiding statement setting out its views on the development of tax policy. Mr Parker expressed his desire for the principles used within the report "to be clear enough to avoid ambiguity, without determining outcomes which are political".
Mr Parker highlighted the current lack of a reporting framework for "the most core of government functions – the collection of tax" and that there was "little wonder" how tax discourse has been "so easily side-tracked by opinion and conjecture".

As at the date of this paper, no further information outside of the original announcement has been released and as such the information contained in this section may not necessarily reflect the final enacted reporting framework.

3.0 Analysis of New Zealand's current tax policy framework and influence of politics

3.1 *Generic Tax Policy Process*

The GTPP is internationally recognised and regarded as being the "global benchmark" for converting tax policy into legislation, and is held as being "the envy of both policy officials and tax practitioners in other jurisdictions".[10] Nonetheless, recent events have cast doubt as to the commitment of Government and Inland Revenue to the GTPP. Enaction of legislation under urgency without the opportunity for public consultation, proposed reforms which are often released on a confidential basis at short notice, and the over-reliance on remedial legislation and supplementary order papers late in the development process, are a selection of examples which stakeholders have cited as matters of concern.[11] This has led some to question whether recent events are the "start of a slippery slope and further erosion of use of the GTPP?".[12]

3.2 Tax Reviews

In his evaluation of 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 New Zealand's tax system (either in respect of specific aspects or holistically), Sawyer concisely summarises the effect of politics on said reviews:[13]

> 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,

[9] The settled tax principles being horizontal equity (those in equivalent economic positions should pay the same amount of tax), vertical equity (a degree of progressivity to the tax system, in that those who have the ability to pay more in tax should), administrative efficiency for both taxpayers and administrators, and minimisation of tax induced distortions to investment and the economy.
[10] Peter Vial "The jewel in New Zealand's tax crown" (2017) Acuity Magazine.
[11] For a comprehensive summary see Adrian Sawyer "Tax Policy Without Consultation: Is New Zealand On A 'Slippery Slope'? (paper presented to Victoria University of Wellington, 29 October 2021) via www.cassyni.com. See also New Zealand Law Society "Concerns about tax policy development and the quality of tax legislation highlighted to Minister" (2021) via www.lawsociety.org.nz.
[12] Adrian Sawyer and Lin Mei Tan "Editorial" (2021) Vol 27:1 NZJTLP 5, at 9.
[13] Adrian Sawyer "The Effectiveness of Tax Reviews in New Zealand: An Evaluation and Proposal for Reform" (2020) Centre for Commercial and Corporate Law Inc., University of Canterbury, at vi.

along with their reports largely ignored if the recommendations do not fit within 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.

The headline area of reform that committees and working groups have considered since 1967 has been the taxation (or lack of) on capital gains.[14] The final reports of committees and working groups over this time have been equivocal as to the introduction of a comprehensive capital gains tax ('CGT'). In the most recent example of this, it is the direct result of political influences which prevented the group's recommendation of a realisation-based CGT from being enacted.[15]

The majority of the 2019 Tax Working Group recommended a realisation-based CGT within the group's final report.[16] The Government's response to the final report stated that the recommendations on capital gains taxation would not be adapted and that no further work on that aspect of the report was necessary.[17] It was soon revealed that the recommendation had been vetoed by the leader of the Labour Party's coalition partner NZ First.[18] In this respect, it was a minority partner of the then coalition Government which prevented the recommendation from being implemented given the in-principle support for a CGT by the other two members of the coalition (Labour and the Greens). It was later discovered within trial evidence that donations linked to New Zealand's richest man were received by NZ First less than a month prior to the Government's response.[19] The donations received by NZ First followed conversations between the Hart family and NZ First MPs which concerned, at least in part, a CGT.[20] Leader of the Green Party, Hon James Shaw, stated that evidence from the trial "suggests money was involved in NZ First's decision to scupper the [CGT]".[21] New Zealand continues to be the only country in the OECD to have not enacted a comprehensive CGT.[22]

Outside of specific examples where politics has, at least in part, influenced the implementation of tax policy initiatives, the relationship can also be seen by the relative occurrence of events. The correlation between a general election and the establishment of a

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[14] For a comprehensive history of reports on the issue see Chye-Ching Huang and Craig Elliffe "Is New Zealand Smarter than Other Countries or Simply Special? Reconsidering a Realisation-based Capital Gains Tax in Light of South Africa's Experience" (2010) 16 NZJTLP 269.

[15] For a comprehensive investigation as to the reasons why the 2019 Tax Working Group's recommendation for a realisation-based capital gains tax was not implemented 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 NZJTLP 31.

[16] Tax Working Group "Future of Tax: Final Report Volume I – Recommendations" (2019) New Zealand Government, at 8.

[17] Hon Grant Robertson and Hon Stuart Nash "Govt responds to Tax Working Group Report" (press release, 17 April 2019) via www.beehive.govt.nz.

[18] Tom Pullar-Strecker "Capital gains tax abandoned by Government" *Stuff* (online ed, Wellington, 17 April 2019). See also, admission that NZ First were responsible for "killing off" the capital gains tax - 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).

[19] Matthew Scott "NZ's richest man explains donation to NZ First" *Newsroom* (online ed, Auckland, 15 June 2022).

[20] Ibid.

[21] Thomas Coughlan (@coughlthom) "James Shaw said on the Bridge that evidence from NZ First foundation trial suggests money was involved in NZ First's decision to scupper the Capital Gains Tax last term. Says it is another reason for the Government to revisit the issue" <https://twitter.com/coughlthom/status/1539791771064217601>.

[22] Sutton, above n 15.

tax committee or working group suggests that their timing is subject to political decision-making, and not necessarily when reform of the tax system is most justified.

4.0 Summary of sections 2.0 and 3.0

By way of summary, this paper has provided a high-level overview as to the operation and assessment of New Zealand's tax policy framework and highlighted the concerns and criticisms of the framework. Comments made in respect of the framework have highlighted the influence of politics and how politics has been used to prevent the enactment of recommendations from completed reviews of New Zealand's tax system. Can (or should) politics determine the implementation of tax policy and operation of a tax system?

This paper now turns to investigate international examples of government bodies which independently assess and report on the operation of their jurisdiction's tax system.

5.0 Overseas examples

5.1 Australia – Board of Taxation

The Board of Taxation ('BoT') is a non-statutory advisory body that provides the Australian federal government with real-time advice on tax policy issues.[23] The Board was established in 2000 in response to a review which identified a need to better connect with and consider the perspective of the public when improving taxation laws and their operation.[24] The operations of the BoT are governed by its charter, which states that the Board's function is to provide advice to the Treasurer on:[25]

- 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 Board on topics approved or referred by the Treasurer; and
- other taxation matters referred to the Board by the Treasurer.

The Board is comprised of 10 members, seven drawn from the private sector and three ex-officio members being the Secretary to the Treasury, the Commissioner of Taxation, and the First Parliamentary Counsel. Members of the Board are appointed by the Treasurer, for a term of up to three years, in their personal capacity.[26] The Board is supported by the Secretariat which is a group primarily provided by the Treasury and supplemented with secondees from the private sector, the Australian Tax Office ('ATO'), as well as other government departments and agencies depending on the nature of the review.[27]

The BoT produces an annual report which outlines the activities of the Board during the reporting year, including the status of ongoing and completed reviews, instances where the Board has provided real-time advice to the Australian Government, government

[23] The Board of Taxation "About the Board of Taxation" Australian Government via www.taxboard.gov.au.
[24] Tax Talks "105 | Board of Taxation (interview with Mark Pizzacalla – Board Member at the Board of Taxation)" (2020) via www.taxtalks.com.au.
[25] The Board of Taxation "Governance" Australian Government via www.taxboard.gov.au.
[26] The Board of Taxation "2020-21 Annual Report" Australian Government, at 4.
[27] Ibid.

announcements which have drawn on the Board's recommendations, and comments as to the Board's work in the coming year.

It is also worthy to note the independent statutory existence of an Inspector General of Taxation in Australia. The Inspector General is tasked with reviewing systemic tax administration issues (for example, the conduct of the ATO or the underlying laws relating to tax administration) and to report to the Government with recommendations for improving tax administration for the benefit of all taxpayers.[28] The Inspector General cannot review taxation policy, which is the responsibility of the BoT.

5.2 United Kingdom – Office of Tax Simplification

The Office of Tax Simplification ('OTS') is an independent office of HM Treasury ('HMT'). The OTS was first established temporarily in 2010 before being ratified into legislation in 2016. It is this statutory basis, and the OTS Framework Document, which confirm the OTS' function, remit, and responsibilities. Since inception the OTS has produced around 50 reviews, reports and publications on the simplification of the tax system, including:[29]

- Chancellor (Minister of Finance) commissioned reviews, requested by the Chancellor for the OTS must prepare a report and recommendations (if any) in response, to which the government must prepare and publish a response; and,
- Own initiative reviews conducted on topics of the OTS's choosing as they see appropriate and to which the government need not respond.

As the OTS holds an advisory role, decisions on tax policy and legislation remain a matter for the government. This independence is considered paramount to the OTS' effectiveness – allowing open and frank engagement with external stakeholders, with the opportunity to publicly challenge government on tax simplification, and acting as a valuable bridge linking government and policy officials to individual taxpayers, businesses and tax professionals.

Nevertheless, the OTS works collaboratively with the HMRC and HMT. Such collaboration is considered to increase the likelihood that recommendations produced by OTS are adopted, and to lean on the knowledge of both HMT and HMRC in terms of the access to data and deliberation as to possible changes in tax administration and law.[30]

6.0 Proposal for the New Zealand Tax Council

Having considered international examples of bodies tasked with the independent reporting of and recommendations on their jurisdiction's tax system, the focus now turns to how New Zealand can learn and adapt from such examples found overseas. This paper proposes the establishment of an independent tax council primarily tasked to design and enact policy as it relates to New Zealand's tax system.

It is recognised that the idea of an independent oversight body is not overly novel. This paper has concisely outlined the real-world operation of two such organisations and acknowledges the existence of distinguished contributions to this nascent area of research.[31] Where such

[28] Inspector-General of Taxation "About Us" Australian Government via www.igt.gov.au.
[29] HM Treasury "2021 Review of the Office of Tax Simplification: Final Report" (2021), at 4.1.
[30] Bill Dodwell "The OTS: the story so far" *Tax Journal* (20 January 2021).
[31] Particularly Sawyer, above n 13.

organisations and contributions maintain the separation of powers between the legislature (those who make laws) and executive (those who decide policy, propose laws, and administer the law), this proposal is unique in that such separation is not entirely sought. In other words, the council would hold delegated authority to design and enact fiscal policy as it relates to taxation.

To this end, the proposed tax council aligns with the structure of the Reserve Bank of New Zealand ('RBNZ') given the bank's delegated authority as to the formulation of monetary policy. Key aspects of the proposed tax council which are mutually shared with RBNZ include:

- The existence and operation of the council through the enactment of legislation by Parliament. At a high level, the act would confirm the council's purpose, objectives, and functions, in addition to confirming the council's operational independence from the Government.

- The requirement of the council to meet the operational objectives contained in the council's Remit, and act in accordance with the council's charter and code of conduct:

    - The Remit would be issued by the Minister of Finance at the start of each Parliamentary term following consultation with the council. It would set out the operational objectives for carrying out the function of formulating tax policy.

        - For example, the Remit could reflect the short-term intentions and long-term objectives of the Government's fiscal strategy in accordance with the Public Finance Act 1989. Two key measures within the fiscal strategy which could be used as economic objectives of tax policy are the ratios of crown revenue relative to GDP, and crown debt relative to GDP.

        - The Remit could also require the council to have regard to one or more matters in connection with seeking to achieve an economic objective. For example, tax policy formulated by the council could be required to encourage or disincentive particular activities within the economy.

    - The charter would aim to facilitate effective decision-making by the council and ensure transparency of these decisions and the decision-making process, to aid the effectiveness of tax policy and hold the council accountable. The charter would stipulate the structure of the council's membership, including the process of appointment to the council and the length of a member's term. It is envisioned that members would include ex-officio representatives from the Treasury and Inland Revenue.

    - The council code of conduct would set out minimum standards of ethical and professional conduct that council members must adhere to.

The council would be required to formulate and administer tax policy in a manner consistent with the principles typically referred to in the assessment of good tax policy and that which has been used by recent committees and working groups.[32] The legislation would endorse New Zealand's 'broad-based, low-rate' framework as a guiding principle for the council.

The council would be required to fully consulate with the public on its proposals, and utilise the methods of consultation employed by the 2019 Tax Working Group as well as the ethos of the GTPP.

7.0 Assessment against the Tax Policy Scholarship Competition judging criteria

7.1 Impact on the New Zealand economy, including GDP and business growth

It is expected that the actions of the council as to the design and operation of the tax system would directly impact the New Zealand economy. The ability of the council to freely design and enact tax policy within economic parameters set by Government would allow the council to remove current distortions which artificially affect decision making within the economy.

7.2 Social (including distributional equity) and environmental acceptability

The actions of the council as to the design of the tax system would directly impact society and the environment. By way of example, the council would have scope to increase the progressivity of the tax system within the economic parameters set by the Government's Remit. This could see the extension of the current tax base to disincentive social and environmental externalities in keeping with New Zealand's established 'BBLR' framework.

7.3 Feasibility of introduction, including political and public acceptability

The most sensitive part of the proposal is the feasibility of introducing the independent tax council, both from a political and public-acceptability stand point. No political will currently exists in New Zealand for the delegation of tax policy formulation to an independent authority. This extends to the establishment of an independent authority, as in the likes of Australia and the United Kingdom, charged with objectively reporting on the operation or simplicity of the tax system. The recently announced proposal of a Tax Principles Act is therefore indicative as to the level of influence, reporting, and accountability the Government currently considers necessary in respect of the tax system.

The delegation of monetary policy to the RBNZ does nonetheless provide precedent for the paper's proposal. In any event, and as observed by Sutton in analysis of New Zealand's recent debate concerning the introduction of a CGT, the success of introduction would require the "confluence of political will, opportunity, and strong and clear advocacy".[33]

7.4 Impact on simplicity of tax system

The implementation of an independent tax council is expected to positively impact the simplicity of the tax system. With the delegated authority to objectively design and administer New Zealand's tax system, it is envisioned that the council would avoid

[32] See section 2.3 above and footnote 9.
[33] Sutton, above n 15, at 32.

complexity that has historically been caused by politics. A recent example of such complexity can be found in the enactment of the interest limitation rules. KPMG described the proposed rules as causing “significant adverse impacts on the efficiency, coherence and simplicity of the tax system”.[34] While Inland Revenue advised the Government against denying or limiting interest deductions, the Treasury supported the proposal “in the absence of a comprehensive capital gains tax”.[35] In this example, the inability of Governments past and present to introduce a CGT has introduced substantive complexity to the tax system. The council would ensure simplicity returns to the tax system, in keeping with the ‘BBLR’ framework, and without the political restraints that have impacted the design of the system.

7.5 Ease of administration by taxpayers and Inland Revenue, or other relevant government agencies, and impact on compliance costs

It is not considered that the ease of administration for stakeholders or impact on compliance costs would be affected by the implementation of the council. It is however held, and similar to the preceding discussion on simplicity, that the council would positively impact both aspects of the tax system. This is evident through the work conducted and advocated by the OTS in the United Kingdom. The relationship of the council with Inland Revenue is of particular importance given Inland Revenue’s continued role as administrator of the revenue acts.

8.0 Conclusion

Reflecting on his experience serving as both an economic adviser to the President of the United States, and as the Vice Chair of the Federal Reserve, Alan Blinder has previously questioned how and where societies draw the line between political and technocratic governance. Blinder provides justification for central bank independence with three main reasons, and suggests that the model should be extended to tax policy:[36]

> Such a division of policymaking labor would improve policy design by assigning specific decisions to the persons best equipped to make them. Elected officials would select the ends of tax policy because ultimate goals hinge sensitively on moral, political, and value judgments that should be made democratically by elected politicians. But appointed professionals would design the means to achieve those ends, presumably choosing them on nonpartisan, technocratic grounds. Such a change in institutional arrangements would almost certainly produce a tax code far more efficient and just than the present one.

Blinder concludes by questioning whether polices would be better, and a democracy stronger, if more public policy decisions were made on less political grounds. It is envisioned that the proposal set out in this paper would answer in the affirmative, and once again elevate New Zealand as a leader in taxation jurisprudence.

Word count: 4,000

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[34] Rachel Piper and Darshana Elwela “KPMG submission on “Design of the interest limitation rile and additional bright-line rules”” *KPMG* (14 July 2021).

[35] Inland Revenue “Regulatory Impact Statement: Limiting interest deductibility on residential investment property” (8 September 2021) at 3.

[36] Alan S. Blinder “Is Government Too Political?” *Foreign Affairs Volume 76, Number 6* (November/December 1997).