

# New Zealand's tax reform experience – parallels with Australia

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## **Abstract**

New Zealand's tax system has undergone significant reform during the last four decades, motivated by both domestic and international influences. From a domestic perspective, significant modernisation has ensured that it is 'fit for purpose' operationally. Alongside this focus, the foundational principles of equity, simplicity and efficiency have guided reforms. With an increasingly globalised and integrated world, New Zealand's tax system has needed to adjust to harmonise with standard international tax practices, and to deal with issues such as base erosion and profit shifting. Reforms have been gradual, interposed by significant developments in both structure and composition of taxes. Major contributions to the evolving tax system include 'Rogernomics' during the 1980s, along with significant administrative and dispute resolution reforms in the 1990s. Several major tax reviews were prominent in the 2000s and 2010s. More recently, the 2020s are highlighted by the successful completion of Inland Revenue's Business Transformation and handling the government's fiscal response to Covid-19. In many respects New Zealand's tax reform has either led or followed developments in Australia. This should not come as a surprise given the close economic and social ties between the two countries. Thus, the aim of this article is to critically examine New Zealand's tax system over the last 40 years, focusing on significant changes in tax policy, tax law and tax administration.

**Keywords:** Australia, New Zealand, tax reform

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## 1. INTRODUCTION

New Zealand and Australia have both experienced major tax reform in recent decades. Evidence of just some of the changes in New Zealand can be observed in the multitude of task forces, reviews, committees, and working groups over the past 40 years.<sup>1</sup> This article critically examines the significant tax reforms implemented over these 40 years, adopting the structure used by Professor Binh Tran-Nam to facilitate a comparison with Australia.<sup>2</sup> This involves a critical examination of New Zealand's tax reform experience from three perspectives: tax law reform, tax policy reform, and tax administration reform. While Tran-Nam's study focuses on a 30-year period, this article adopts a slightly longer focus and examines reforms in New Zealand over the last 40 years.

As this article builds on the work of Tran-Nam,<sup>3</sup> it necessarily focuses on some of the subject matter of Tran-Nam's scholarly work, specifically law reform, income tax and consumption tax policy, and administration. Therefore, we do not include any of the many other potential topics that could result in interesting comparisons between New Zealand and Australia, such as the different approaches to capital gains, international tax or the taxation of companies.

Australia, like New Zealand, has also experienced significant tax reforms in recent decades. While some reforms are similar, such as the introduction of goods and services tax (GST), there are often differences that reflect political, cultural, or historical influences. Like Tran-Nam, we use secondary data to critically examine tax reform in New Zealand, and we primarily focus on income and consumption taxes.

We start our discussion in section 2 with a brief outline of tax reform, including its drivers and objectives. We then discuss three components of tax reform over the next three sections: tax law reform; tax policy reform; and tax administration reform. The article concludes in section 6 with insights drawn from the comparison with Australia.

## 2. TAX REFORM OVERVIEW

This section discusses tax reform, starting with what we mean when we refer to this activity. We discuss the drivers and objectives of tax reform, together with the cyclical nature of the tax reform process. This section also provides some brief examples of tax reform implementation and outcomes in New Zealand.

### 2.1 What is tax reform?

Tax reform involves changing the complex and delicate balance of the tax system. Tran-Nam defines reform as 'a change for the better ... that brings about net social benefits or a welfare improvement'.<sup>4</sup> While we agree that reforms are intended to improve the tax system, we will argue that this may not always eventuate, a fact also acknowledged by Tran-Nam. We observe that the success of tax reform is often judged by longevity,

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<sup>1</sup> For an in-depth discussion see Adrian Sawyer, *The Effectiveness of Tax Reviews in New Zealand: An Evaluation and Proposal for Improvement* (Centre for Commercial and Corporate Law Inc, 2020).

<sup>2</sup> Binh Tran-Nam, 'Australia's Tax Reform Experience: Lessons for Malaysia' in Mohamed Ariff and Yeah Kim Leng (eds), *Malaysia's Taxation System: Contemporary Practices, Issues and Future Direction* (Sunway University Press, 2020) 240.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

rather than any measure of Pareto efficiency. Further, as noted by Stewart, merely increasing a tax is not tax reform: changes must be considered alongside broader policy goals.<sup>5</sup> Tax reform should consider what the tax system is intended to do and how well it currently achieves that.

Over time New Zealand's tax principles to guide reforms have varied, not only in their composition, but also the relative weight placed on particular principles. This reflects the absence of any mutually agreed principles. New Zealand's current guiding tax design principles are:

- raising significant and sustainable funds to fund government expenditure;
- addressing income inequality through progressive rates and tax credits redistributing income;
- stimulating economic activity; and
- influencing behaviour through tax rules and rebates, such as encouraging research and development or discouraging pollution.<sup>6</sup>

Reforms that raise taxes typically require either increased government benefits or a lowering of taxes to ensure support.<sup>7</sup> The latter of these can be seen in Figures 1a and 1b which show core tax changes in New Zealand and Australia over the past 55 years. By 1980, over 60 per cent of total tax revenue was collected from individual income tax in New Zealand, while this was 44 per cent in Australia. The general pattern of decreased individual income tax collection and increased sales tax (now GST) is visible in New Zealand. This has been described as 'true tax reform' with the broadening of the base permitting lower tax rates, and a 'tax-mix switch'.<sup>8</sup> However, Australia does not have the same increase in the proportion of tax collected from sales tax/GST. This will be discussed further below and reflects the increases in GST rates that have occurred in New Zealand, but not in Australia.

Australia collects at the federal level a lower proportion of tax than New Zealand, as a proportion of gross domestic product (GDP). Organisation for Economic Co-operation and Development (OECD) data reports tax revenue as a percentage of GDP in Australia as 29.5 per cent (in 2021), while New Zealand is 34.6 per cent.<sup>9</sup> The higher percentage in New Zealand suggests that the government is collecting a greater share of the economy from tax.

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<sup>5</sup> Miranda Stewart, 'What Is Tax Reform For and What Can It Do?' (Parliament of Australia Library Lecture, 21 October 2015).

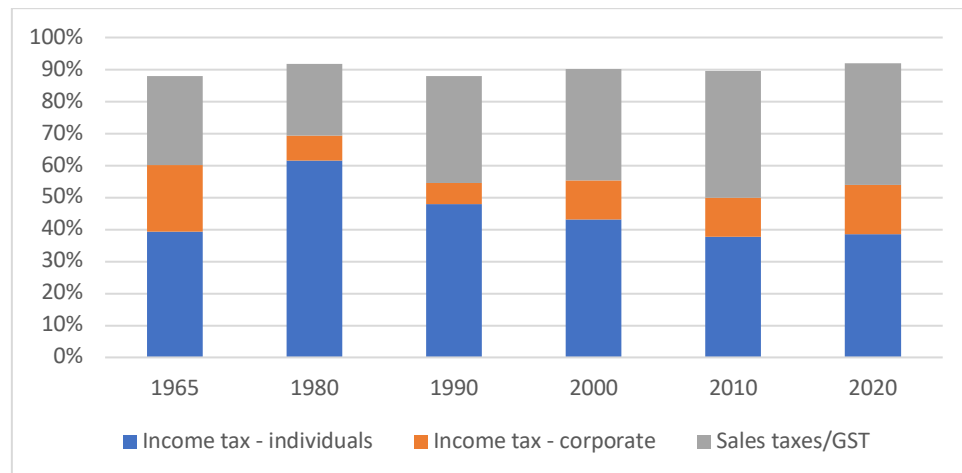
<sup>6</sup> Inland Revenue, *Briefing to the Incoming Minister* (November 2023).

<sup>7</sup> Stewart, above n 5.

<sup>8</sup> Robert Stephens, 'Radical Tax Reform in New Zealand' (1993) 14(3) *Fiscal Studies* 45, 45. This is a feature of New Zealand's Broad-Base Low-Rate (BBLR) model which we discuss in section 4 of this article.

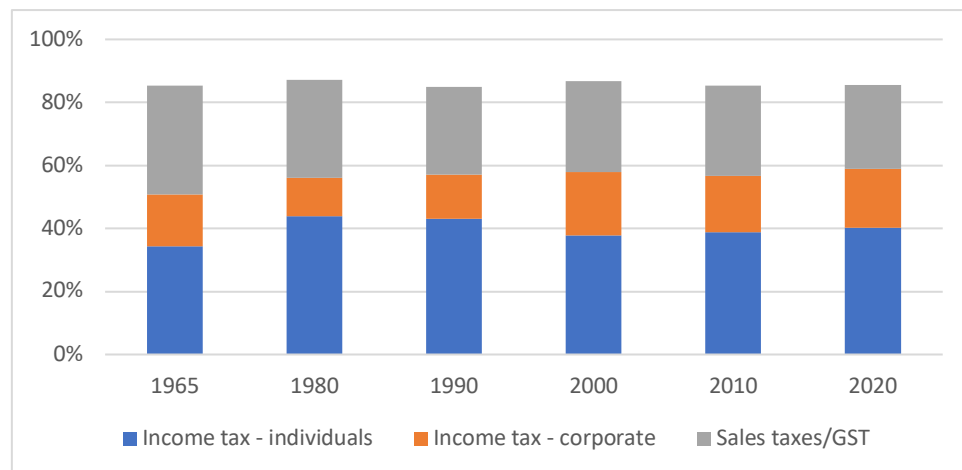
<sup>9</sup> OECD, *Revenue Statistics 2023: Tax Revenue Buoyancy in OECD Countries 1965-2022* (OECD Publishing, 2023).

**Fig. 1a: Changes in Core Taxes 1965-2020 – New Zealand (Percentage of Overall Tax Revenue)**



Source: authors, from OECD, *Revenue Statistics 2023: Tax Revenue Buoyancy in OECD Countries 1965-2022* (OECD Publishing, 2023) Table 5.7.

**Fig. 1b: Changes in Core Taxes 1965-2020 – Australia (Percentage of Overall Tax Revenue)**



Source: authors, from OECD, *Revenue Statistics 2023: Tax Revenue Buoyancy in OECD Countries 1965-2022* (OECD Publishing, 2023) Table 5.1.

As noted above, a principle of tax design in New Zealand is addressing income inequality. One measure of inequality is the Gini coefficient. The Gini coefficient provides a measure from 0 to 1, where 0 represents perfect income equality (that is, everyone has the same income) and 1 is perfect income inequality (that is, one person

has all income). The Gini coefficients for Australia and New Zealand are shown in Table 1, both before and after the impact of taxes and transfers.

**Table 1: Gini Coefficient (2019)<sup>10</sup>**

	<b>Australia</b>	<b>New Zealand</b>
<b>Before Taxes and transfers</b>	0.441 (10 <sup>th</sup> )	0.454 (16 <sup>th</sup> )
<b>After taxes and transfers</b>	0.318 (23 <sup>rd</sup> )	0.32 (24 <sup>th</sup> )

The Gini coefficients provide an indication of the extent to which the tax and transfer system addresses inequality. Table 1 shows the similarities in Gini coefficients in the two countries. While Australia is slightly more equal than New Zealand before tax and transfers, both countries are similar after tax and transfers. However, what is potentially of more interest is the relative positioning of each country compared to other OECD countries. Table 1 also shows the position of Australia and New Zealand among 37 OECD countries, with a lower ranking meaning that the country is more equal. Australia is 10<sup>th</sup> highest of the OECD countries before taxes and transfers, while New Zealand is 16<sup>th</sup>, so they are among the more equal countries. However, after taxes and transfers, they are 23<sup>rd</sup> and 24<sup>th</sup>, indicating that the tax and transfer system does not assist with inequality to the same extent as most other OECD countries. As the tax and transfer system is intended to address income inequality, those systems in both New Zealand and Australia do not achieve this as well as most other OECD countries.

## 2.2 The tax reform cycle

Tran-Nam (citing Wardell-Johnson) suggests that tax reforms occur in a 12-year cycle in Australia, attributed to the 'parliamentary term of 3 years, public forgetfulness, and the government's forward economic estimate of 10 years'.<sup>11</sup> New Zealand has the same parliamentary term, and likely the same public memory (or lack thereof), but is somewhat more haphazard in the timing of reforms. In the second half of the 20<sup>th</sup> century, reforms were undertaken in 1951 (the Gibbs Committee)<sup>12</sup> and 1967 (the Ross Committee),<sup>13</sup> before a flurry of activity in the 1980s with the McCaw Review in 1982,<sup>14</sup> and the Valabh Committee<sup>15</sup> which published several papers in the late 1980s and early

<sup>10</sup> Colin Campbell-Hunt, 'OECD Comparisons Reveal an Unflattering Picture of Inequality in NZ – Could that Change?', *The Conversation* (3 October 2024) <<https://theconversation.com/oecd-comparisons-reveal-an-unflattering-picture-of-inequality-in-nz-could-that-change-239306>>.

<sup>11</sup> Tran-Nam, above n 2, 244. See also Grant Wardell-Johnson, 'Tomorrow and Tomorrow and Tomorrow: Tax Reform after Macbeth' (Paper Presented at the Corporate Tax Association Conference, Sydney, June 2016).

<sup>12</sup> Taxation Committee (Theodore Gibbs, chair), *Report of the Taxation Committee* (1951).

<sup>13</sup> Taxation Review Committee (Lewis Ross, chair), *Taxation in New Zealand: Report of the Taxation Review Committee* (1967).

<sup>14</sup> Task Force on Tax Reform (Peter McCaw, chair), *Report of the Task Force on Tax Reform* (1982).

<sup>15</sup> These include Consultative Committee on the Taxation of Income from Capital (Arthur Valabh, chair), *Key Reforms to the Scheme of Tax Legislation* (1991); Working Party on the Reorganisation of the Income Tax Act 1976 (Arthur Valabh, chair), *First Report of the Working Party* (1993) and *Second Report of the Working Party* (1993).

1990s.<sup>16</sup> A relatively high frequency of activity continued with reviews at nine-year intervals starting with the McLeod Review in 2001,<sup>17</sup> and followed by two further tax working groups<sup>18</sup> reporting in 2010 and 2019.<sup>19</sup>

### 2.3 Tax reform drivers and objectives

Tran-Nam observes several drivers of tax reforms in Australia, including the need for modernisation to efficiently collect adequate revenue, as well as the need to harmonise with common international tax practices.<sup>20</sup> Further drivers of change include the need to adapt to changing tax practices adopted by multinational organisations and external pressures, such as those from corporations. There may also be a need to reflect on contemporary issues, such as concerns for the environment, increasing digitisation of transactions, or encouraging retirement savings. Historical reasons for tax reform in New Zealand included economic restructuring and liberalisation in the 1980s, increasing neutrality, and removing 'economic privilege resulting from the vote-seeking policies' of the previous administration.<sup>21</sup>

Additional recommendations from the OECD are aimed at supporting sustainable economic growth. These include changing the composition of the tax system to collect more revenue from consumption and recurrent property taxes, and less from income taxes (specifically corporate income tax); broadening tax bases; 'greening' the tax system; and focusing on tax compliance.<sup>22</sup> A relatively consistent set of principles has been used to assess tax design in New Zealand.<sup>23</sup> These include efficiency and growth, equity and fairness, revenue integrity, fiscal cost, compliance and administration costs, and coherence.<sup>24</sup> The most recent Tax Working Group also notes the importance of predictability and certainty.<sup>25</sup>

### 2.4 Legislating for tax reporting principles

New Zealand took a novel approach to taxation through the tabling of the Taxation Principles Reporting Bill 2023 (the Bill) as part of Budget 2023 documentation. The driving force behind the Bill was the former Minister of Revenue, Hon David Parker, who has a strong passion for greater 'fairness' in the New Zealand tax system (as outlined in a speech given in April 2022<sup>26</sup>), in part to be enhanced through a broader tax base. The Bill was enacted in a partisan manner, following a brief period for public

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<sup>16</sup> Sawyer, above n 1.

<sup>17</sup> Tax Review 2001 (Robert McLeod, chair), *Tax Review 2001: Final Report* (2001).

<sup>18</sup> Victoria University of Wellington Tax Working Group (Bob Buckle, chair), *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, 2010) ('Tax Working Group (2010)'); Tax Working Group (Hon Michael Cullen, chair), *Future of Tax: Final Report (Volume I: Recommendations)* (2019) ('Tax Working Group (2019)').

<sup>19</sup> Sawyer, above n 1.

<sup>20</sup> Tran-Nam, above n 2.

<sup>21</sup> Stephens, above n 8, 46.

<sup>22</sup> OECD, *Tax Policy Reform and Economic Growth*, Tax Policy Study No 20 (OECD Publishing, 2010).

<sup>23</sup> Tax Working Group (2010), above n 18; Tax Working Group (2019), above n 18.

<sup>24</sup> Tax Working Group (2010), above n 18.

<sup>25</sup> Tax Working Group (2019), above n 18.

<sup>26</sup> Hon David Parker (Minister of Revenue), 'Shining a Light on Unfairness in Our Tax System' (Speech Delivered at Victoria University of Wellington, 26 April 2022), <<https://www.beehive.govt.nz/speech/shining-light-unfairness-our-tax-system>> (accessed 14 March 2024).

submissions, and subsequently assented to on 29 August 2023. With a change in government following the October 2023 General Election, it was repealed on 22 December 2023. The *Taxation Principles Reporting Act 2023* set out a series of tax principles that were to be reported against by the Commissioner on a regular basis.<sup>27</sup> The last significant development occurred in late December 2023 when the new coalition government enacted under urgency the *Taxation Principles Reporting Repeal Act 2023*. One of the present authors comments on the rise and demise of this legislation, concluding:

Why was there this great desire by the previous Labour Government to rush such fundamental and important legislation? The only reasonable conclusion is one that is deeply political and partisan, such that the government at the time of enactment of the Act did not expect to be in power after the upcoming 2023 General Election (which indeed became a reality on 14 October 2023). Furthermore, the new government's approach of repealing the Act under urgency is also deeply political and partisan. *Collectively the process of enacting the original Act and then the Repeal Act leaves a sour taste, as well as a missed opportunity to develop a non-partisan series of fundamental tax principles for reporting against.*<sup>28</sup>

Thus, New Zealand is effectively back where it was prior to having the fastest enactment and repeal of tax legislation in its history; the absence of any legislatively established guiding principles for tax reform.

## 2.5 Tax reform implementation and outcome

Like Australia, New Zealand has innovated with taxes, some successfully and others less so. Frequently, politics result in new taxes being short-lived when they do not match the ideological positions of a new government. A recent example is the colloquially called 'ute tax' and the clean car discount in New Zealand.<sup>29</sup> The initiative combines an incentive and a disincentive to encourage purchases of lower-emitting vehicles with the application of a rebate or fee when the vehicle is first registered. The value of the fee or rebate changed over time but could provide a fee of NZD 6,900 at its highest or a rebate of NZD 8,625 at its most generous.<sup>30</sup> The scheme was repealed in December 2023.<sup>31</sup>

We observe that the guiding tax design principles raised earlier in this article may be challenged with this example. The recent Inland Revenue *Briefing to the Incoming*

<sup>27</sup> The first draft report was publicly released on 1 February 2024; see Inland Revenue (Policy and Regulatory Stewardship), *Taxation Principles Reporting Act: Annual Report* (Draft, December 2023).

<sup>28</sup> Adrian Sawyer, 'The Rise and Demise of the New Zealand's Taxation Principles Reporting Act – A Lost Opportunity?' [2024] (2) *British Tax Review* 261, 281 (emphasis added).

<sup>29</sup> *Land Transport (Clean Vehicle Discount Scheme Charges) Regulations 2022* (NZ), revoked on 1 January 2024.

<sup>30</sup> Hon Michael Wood (Minister of Transport) and Hon James Shaw (Minister for Climate Change), 'Biggest Year for Clean Cars on Record' (Release, 30 June 2022), <<https://www.beehive.govt.nz/release/biggest-year-clean-cars-record>>; Waka Kotahi New Zealand Transport Agency, 'Clean Car Discount Fee Pricing' (2023), <<https://www.nzta.govt.nz/assets/vehicle/clean-car-programme/clean-car-discount-fee-pricing.pdf>>.

<sup>31</sup> *Land Transport (Clean Vehicle Discount Scheme Repeal) Amendment Act 2023* (NZ).

*Minister* raised the importance of influencing behaviour through tax rules and rebates, specifically including those that discourage pollution.<sup>32</sup>

There are, however, also examples of successes. New Zealand's GST is typically acknowledged as a model for its type and will be discussed in more detail in section 4 of this article.<sup>33</sup> New Zealand also had success with the implementation of its primary retirement savings vehicle, KiwiSaver, in 2007. This has also withstood several changes in political leadership. However, with modest compulsory employer contributions that are taxed and a 50 per cent government co-contribution up to NZD 521.43 per year, it is considerably less generous than the tax incentives intended to encourage and reward retirement savings in Australia.<sup>34</sup> These are more aligned with the aforementioned tax design principles, with the GST making a strong and sustainable contribution to tax revenue collection, and KiwiSaver tax incentives positively influencing retirement saving behaviour.

Tran-Nam identifies four key lessons for tax reform that can assist in managing change:

- (a) tax reform should be revenue-neutral where possible. Financial modelling should be transparent and independent;
- (b) those who are worse off from tax reform should be identified and compensated as much as possible. This requires clear identification of winners and losers;
- (c) tax reform should be a long-term process as 'surprise tax reform announcements generally do not work'; and
- (d) independent bodies should undertake long-term strategic reviews and meaningful consultation with stakeholders should occur.<sup>35</sup>

In New Zealand, financial modelling is typically undertaken by the New Zealand Treasury and, where provided to the public, is at an aggregate level rather than fully transparent. Typically, winners and losers are not identified or compensated. However, tax reforms are typically undertaken by independent bodies, with reasonable consultation and a long-term perspective.<sup>36</sup>

## 2.6 Summary

New Zealand has experienced multiple tax reforms over recent decades. Early reforms have been described as 'more dramatic and successful than elsewhere'.<sup>37</sup> However, measures of success differ depending on who is impacted and to what extent. The

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<sup>32</sup> Inland Revenue, above n 6.

<sup>33</sup> Andrew Maples and Adrian Sawyer, 'The New Zealand GST and Its Global Impact: 30 Years On' (2017) 23(1) *New Zealand Journal of Taxation Law and Policy* 9; John F Due, 'The New Zealand Goods and Services (Value-Added) Tax – A Model for Other Countries' (1988) 36(1) *Canadian Tax Journal* 125.

<sup>34</sup> The compulsory employer contribution is currently 3 per cent. The employee may choose a contribution rate of 3 per cent, 4 per cent, 6 per cent, 8 per cent, or 10 per cent of their gross salary. The scheme member is required to contribute at least NZD 1,042.86 to receive the full government co-contribution. Note also that the scheme is voluntary. In some situations, KiwiSaver funds may be withdrawn to contribute towards a first home purchase.

<sup>35</sup> Tran-Nam, above n 2, 247.

<sup>36</sup> See Sawyer, above n 1 for a more in-depth discussion.

<sup>37</sup> Stephens, above n 8, 45.



following three sections engage in a more detailed discussion of New Zealand tax reforms, from the perspectives of law, policy, and administration.

### 3. TAX LAW REFORM

This section discusses tax law reform, commencing with the most critical issue being attempting to reduce the level of complexity. We discuss the approach that the New Zealand government has taken, comparing this with Australia. This section also sets out a brief evaluation of what was achieved and some of the shortcomings of the process.

#### 3.1 Complexity

The 1990s was a time of increasing recognition by governments in a number of countries of growing complexity in their tax systems and the need for simplification. Australia, New Zealand and United Kingdom all embarked upon rewriting their tax legislation in the 1990s as an approach to reducing complexity, with each taking their own approach. Debate was emerging in many parts of the world that the growth in complexity was increasing the level of compliance costs faced by taxpayers and potentially leading to higher levels of noncompliance (with a significant portion being unintentional). Academic research had indicated that complexity was a significant factor that influenced taxpayers' compliance.<sup>38</sup>

A range of potential options could be followed to address (in part at least) these growing levels of complexity. These include rewriting the language into a style and format that more closely follows 'plain English', reviewing areas where the underlying policy is unduly complex or its intent is not clearly expressed (and simplifying that policy), reviewing the existing legislation to remove any parts that are redundant, and where possible consolidating current legislation that is scattered across various amending statutes into a single statute. A further option is to reorganise existing legislation into a different format that is more coherent and logical. These options can also be undertaken in various combinations, which then gives rise to whether changes should be undertaken in one single step or through a number of smaller steps.

As Tran-Nam observes,<sup>39</sup> it is important at the outset to be clear as to what is meant by simplification. 'Legislative simplification' involves rewriting existing legislation (the process followed in each of Australia, New Zealand and the United Kingdom), while 'effective simplification' refers to improving the ease of determining tax liability and incorporates the costs of compliance. Related to this, it is also necessary to ascertain what taxpayer obligations are essential, notwithstanding their complexity (known as

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<sup>38</sup> See for example, Betty R Jackson and Valerie C Milliron, 'Tax Compliance Research: Findings, Problems and Prospects' (1986) 5 *Journal of Accounting Literature* 125; Maryann Richardson and Adrian J Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects' (2001) 16(2) *Australian Tax Forum* 137; Sue Yong, Karen Lo, Brett Freudenberg and Adrian Sawyer, 'Tax Compliance in the New Millennium: Understanding the Variables' (2019) 34(4) *Australian Tax Forum* 766.

<sup>39</sup> Binh Tran-Nam, 'Tax Reform and Tax Simplification: Some Conceptual Issues and a Preliminary Assessment' (1999) 21(3) *Sydney Law Review* 500 ('Tax Reform and Tax Simplification').

necessary complexity), and those which are not necessary (known as unnecessary complexity).<sup>40</sup>

As will be seen in the discussion that follows, the New Zealand government opted for a combination of steps when undertaking its legislative simplification project but implemented this in a different manner to that of Australia, as discussed by Tran-Nam.<sup>41</sup>

### 3.2 Government responses and initiatives

New Zealand was the first of these three countries (Australia, New Zealand and the United Kingdom) to commence their process in 1993, following a recommendation in 1992 by the Consultative Committee on the Taxation of Income from Capital (known as the Valabh Committee)<sup>42</sup> to undertake a simplification review. This led to the Working Party on the Reorganisation of the Income Tax Act 1976 (Working Party)<sup>43</sup> commencing the first phase of the project. The Tax Rewrite Project (TRP) involved a reorganisation of the existing *Income Tax Act 1976* (ITA 1976) and *Inland Revenue Department Act 1974* (IRDA 1974) into three new statutes: the *Income Tax Act 1994* (ITA 1994), the *Tax Administration Act 1994* (TAA 1994) and the *Taxation Review Authorities Act 1994* (TRAA 1994). The next phase was to rewrite the new 'Core Provisions' of the ITA 1994 (Parts A – E and Y – definitions) and create a new *Income Tax Act 2004*. Phase three was to rewrite the remainder of the ITA 2004 to create the *Income Tax Act 2007*. Importantly the rewrite process stopped at this point and there has been no rewriting of TAA 1994 or TRAA 1994, or for that matter the *Goods and Services Tax Act 1985* (GSTA 1985).

A number of studies have been conducted in New Zealand analysing the issue of complexity measured through various readability measures, such as the Flesch Reading Ease and Flesch Kincaid Grade level methods, as well as the Cloze procedure.<sup>44</sup> These studies found that New Zealand's approach of reorganisation and rewriting led to some significant reduction in complexity and greater understandability (or readability), but have fallen short of what may have been achieved if the process was continued through to other taxing statutes. Furthermore, since no 'big P' policy issues were addressed, the

<sup>40</sup> Tamer Budak, Simon James and Adrian Sawyer, 'International Experiences of Tax Simplification and Distinguishing Between Necessary and Unnecessary Complexity' (2016) 14(2) *eJournal of Tax Research* 337.

<sup>41</sup> Tran-Nam, above n 2, in section 3.

<sup>42</sup> Consultative Committee on the Taxation of Income from Capital (Valabh Committee), *Final Report of the Consultative Committee on the Taxation of Income from Capital* (1992).

<sup>43</sup> Working Party on the Reorganisation of the Income Tax Act 1976, *Second Report of the Working Party*, above n 15.

<sup>44</sup> See for example: Lin Mei Tan and Greg Tower, 'The Readability of Tax Laws: An Empirical Study in New Zealand' (1992) 9(3) *Australian Tax Forum* 355; Maryann Richardson and Adrian Sawyer, 'Complexity in the Expression of New Zealand Tax Laws: An Empirical Analysis' (1998) 14(3) *Australian Tax Forum* 325; J Harrison, *The Readability of the Income Tax Act 2004: A Report to Inland Revenue for the Rewrite Advisory Panel* (2006); R Castle, *Income Tax Act 2004: Parts A to E – A Model for a Review* (2006); R Castle, *The Income Tax Act 2004: Parts A to E – A Postimplementation Review: A Report to the Inland Revenue Department* (2006); Caroline Pau, Adrian Sawyer and Andrew Maples, 'Complexity of the New Zealand's Tax Laws: An Empirical Study' (2007) 22(1) *Australian Tax Forum* 59; Kathryn (Siu Ling) Saw and Adrian Sawyer, 'Complexity of New Zealand's Income Tax Legislation: The Final Installment' (2010) 25(2) *Australian Tax Forum* 213; Adrian Sawyer, 'Enhancing Compliance Through Improved Readability: Evidence from New Zealand's Rewrite "Experiment"' in Martha Eller Gangi and Alan Plumley (eds), *Recent Research on Tax Administration and Compliance: Selected Papers Given at the 2010 IRS Research Conference* (Internal Revenue Service, 2011) 221.

underlying complexity remains in many areas. An important feature that facilitated the relatively successful outcome in New Zealand was the Rewrite Advisory Panel (RAP), a feature not used in Australia.<sup>45</sup>

While calls have been made by many, including senior members of the New Zealand judiciary, to rewrite other statutes (including the TAA 1994 and GSTA 1985), these have fallen on deaf ears.<sup>46</sup> Thus, it would appear there is no longer a political appetite to undertake large-scale simplification exercises. Rather, small steps are taken on a frequent basis to simplify administrative processes where this is feasible.

In contrast, Australia commenced its rewrite process in 1994 following the Tax Simplification Task Force's recommendation in the early 1990s.<sup>47</sup> The Tax Law Improvement Project (TLIP) had a similar aim to New Zealand's project with respect to enhancing understandability, as well as to a lesser degree to reduce compliance costs. While Australia took the approach of rewriting various regimes and created a new statute (the *Income Tax Assessment Act 1997* – ITAA 1997), it left unwritten legislation in the old *Income Tax Assessment Act 1936*. Thus, one has to refer to two statutes, and as the project is only now reaching completion, this has added to the compliance obligations of taxpayers.

### 3.3 Summary

Tax law reform has been on and off the agenda in New Zealand over the last 40 years, with the greatest level of activity during the mid-1990s to mid-2000s. Much of this activity was necessitated largely as a result of the immense increase in content and scope of New Zealand's taxing statutes during the 1980s (for example, enactment of Fringe Benefits Tax (FBT), GST, international tax regimes and many others), along with the traditional drafting style that made the process of interpreting and applying tax legislation more complex than necessary.

Only the rewriting of the ITA led to what can be termed a new drafting style with the statute being structured in a similar manner to which a person may complete their tax return, with high-level core provisions, then the remaining parts set out in a logical structure to reflect this approach. Indications of defined words are also provided at the end of each section. As the other revenue statutes were not rewritten, they retain the old drafting style. This drafting style remains unique to the ITA, which is in part due to Inland Revenue having the ability to draft its own legislation; all other legislation in New Zealand is drafted by the Parliamentary Counsel Office (PCO).

The need for further tax reform is warranted, not only with respect to rewriting the other revenue statutes, but also to addressing many of the complex underlying policy issues to remove unnecessary complexity. Even more importantly, if New Zealand really

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<sup>45</sup> 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(3) *Australian Tax Review* 148.

<sup>46</sup> See Adrian Sawyer, 'New Zealand's Tax Rewrite Programme – In Pursuit of the (Elusive) Goal of Simplicity' [2007] (4) *British Tax Review* 405, 427. This refers to a statement made by then Supreme Court Judge, Rt Hon Peter Blanchard, 'Some Basic Concepts of New Zealand GST' in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 91, 92. His Honour was referring to the GST Act, when he stated: '[it] is not, and never has been, a user-friendly statute'.

<sup>47</sup> See further Tran-Nam, 'Tax Reform and Tax Simplification', above n 39.

believes in its broad-base low-rate (BBLR) model, then substantial reform is needed to broaden the existing tax base to embrace the taxation of capital gains more fully, along with having some form of wealth taxation.<sup>48</sup> The undue burden placed on individuals through the income tax and GST remains unaddressed. Had a non-partisan series of tax principles been in place (such as through a revamped *Taxation Principles Reporting Act 2023*), the framework for undertaking a thorough review founded on agreed principles could have commenced. This could be buttressed through the creation of an 'independent' body to oversee the structure and operation of the tax system, similar to the Board of Taxation in Australia, or along the lines proposed by Sawyer.<sup>49</sup>

#### 4. TAX POLICY REFORM

New Zealand is often lauded for its historic tax reform.<sup>50</sup> For example, Claus and co-authors outline the success of the reforms:

New Zealand governments have frequently been praised for their commitment to tax reform, for developing a tax system that displays many desirable features, and for avoiding many of the pitfalls of numerous other OECD countries' tax systems.<sup>51</sup>

Similarly, Christensen observes the breadth of the reforms, stating that 'New Zealand moved further in neo-liberal tax reform than most other advanced economies over the last three decades'.<sup>52</sup>

Like Australia, reforms in New Zealand have adopted the BBLR model from the mid-1980s, with several reviews and working groups adopting this as an optimal approach for the tax system.<sup>53</sup> New Zealand's tax reform that broadened the tax base through introducing new taxes (such as a GST and a FBT), and reduced income tax rates in the 1980s was the most significant tax change in several decades.<sup>54</sup> That said, the scope or base of each particular tax may be extensive (broad) or narrow. In referring to the BBLR model, this means that the number of tax bases is broad rather than being narrowly focused on one or two bases (such as income tax and a consumption tax).

While Australia's reforms were motivated by revenue sufficiency, efficiency, equity, and simplicity,<sup>55</sup> New Zealand's most significant tax reforms were generated by economic crises. The country was described as 'close to being bankrupt in mid 1980s'.<sup>56</sup> The tax reforms in the 1980s in New Zealand were part of a comprehensive economic

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<sup>48</sup> Progressively through the 1990s New Zealand removed its land tax, estate duty and gift duty.

<sup>49</sup> Sawyer, above n 1.

<sup>50</sup> Stephens, above n 8; Robert A Buckle, 'Introduction: Tax Policy Reform New Zealand Style' (2010) 44(2) *New Zealand Economic Papers* 129.

<sup>51</sup> Iris Claus, Norman Gemmell, Michelle Harding and David White, 'Introduction' in Iris Claus, Norman Gemmell, Michelle Harding and David White (eds), *Tax Reform in Open Economies: International and Country Perspectives* (Edward Elgar, 2010) 1, 1.

<sup>52</sup> Johan Christensen, 'Bringing the Bureaucrats Back In: Neo-Liberal Tax Reform in New Zealand' (2012) 32(2) *Journal of Public Policy* 141, 141.

<sup>53</sup> Sawyer, above n 1, 60.

<sup>54</sup> Graeme Wells and Keith Fraser, *The Tax Switch and the CPI: An Occasional Paper* (Victoria University Press for the Institute of Policy Studies, 1986).

<sup>55</sup> Tran-Nam, above n 2.

<sup>56</sup> Sawyer, above n 1, 55.

restructuring and liberalisation of the economy. Since 1980, a range of institutional voices argued that significant tax reform was required both for raising revenue, but also to meet the desired criteria of efficiency and equity.<sup>57</sup>

Further economic challenges were visible after the Global Financial Crisis in 2010. However, Christensen notes that the 2010 reforms were less about economic crisis, which explained much of the 1980s tax reform. Instead, the challenging economic situation was used to justify breaking election promises not to increase the rate of GST.<sup>58</sup> Moreover, the powerful personalities and institutions of the 1980s, combined with the electoral system of the time, allowed for more radical action that was simply not possible some 25 years later where there was a need to manage coalition arrangements.

One notable difference in the tax policy environments is the influence of the Treasury on tax policy in Australia. Unlike New Zealand, the Australian Treasury 'has primary responsibility for advising on tax policy' in Australia.<sup>59</sup> While this is undertaken in conjunction with the Australian Taxation Office (ATO), the Australian Treasury has the lead role. By way of comparison, since 1995 tax policy in New Zealand has adopted the Generic Tax Policy Process (GTPP). Following the GTPP allows for the roles of Inland Revenue and the New Zealand Treasury to be determined according to the expertise in each department. Like Australia, both agencies provide advice on tax issues to the government but, unlike Australia, the New Zealand Treasury does not formally lead the process. The strong role of Inland Revenue in providing advice in New Zealand ensures that policy is also informed by implementation consideration (and administration practicalities), along with broader economic and strategic considerations provided by the New Zealand Treasury.<sup>60</sup>

#### 4.1 Broadening of the tax base

Broadening of the tax base is widely recognised as a useful guiding principle for tax reform.<sup>61</sup> Tran-Nam suggests that Australian tax policy reform over the past 30 years 'can be characterised in terms of base-broadening and rate reduction'.<sup>62</sup> This trend is visible in most countries. Peter, Buttrick and Duncan report on the trends of 189 countries between 1981 and 2005, finding that high-income tax rates have 'declined significantly', with downward trends in all but low-income countries.<sup>63</sup> A similar trend in New Zealand will be shown in this and the following sections.

The McCaw Report in 1982 was tasked with taking a thorough and systematic review of all aspects of central government taxation.<sup>64</sup> Desirable reforms were identified as reducing the progressivity of the marginal tax rate scale, broadening the income tax base by taxing fringe benefits, and introducing a GST (although referred to as a value added

<sup>57</sup> Stephens, above n 8.

<sup>58</sup> Christensen, above n 52.

<sup>59</sup> Rob Heferen, Nicole Mitchell and Ian Amalo, 'Tax Policy Formulation in Australia' (2013) 2 *Economic Roundup* 1, 5.

<sup>60</sup> New Zealand Treasury, *Briefing to the Incoming Minister of Revenue* (February 2024), <<https://www.treasury.govt.nz/publications/corporate-documents/briefings-incoming-ministers>>.

<sup>61</sup> Claus et al, above n 51; Tran-Nam, above n 2.

<sup>62</sup> Tran-Nam, above n 2, 253.

<sup>63</sup> Klara Sabirianova Peter, Steve Buttrick and Denvil Duncan, 'Global Reform of Personal Income Taxation, 1981-2005: Evidence from 189 Countries' (2010) 63(3) *National Tax Journal* 447, 447.

<sup>64</sup> Task Force on Tax Reform, above n 14.

tax (VAT) at that point).<sup>65</sup> While recommendations were largely not taken up by the government at the time, several were taken up by the Labour government in the mid-1980s.

The particular need for the broadening of the tax base in New Zealand in the 1980s related to the historical erosion of the tax base through tax exemptions, incentives, and rebates.<sup>66</sup> Base broadening was again used to refer to the 2010 Budget, described by Buckle as a tax reform package that 'represented a switch in the New Zealand tax base achieved by reducing the heavy reliance on taxing incomes, increasing the taxation of spending and property investment income, and ... introducing a variety of base broadening measures'.<sup>67</sup> Alongside these changes were a range of additional base-broadening measures involving depreciation and some changes to inward investment.<sup>68</sup> However, these base-broadening measures were considerably more measured than those of the 1980s.

#### 4.1.1 *Income tax*

As noted, the dire economic situation in 1980s New Zealand created an environment where tax reform, along with economic reform, was essential. Thus, radical reforms were perhaps more acceptable than they may have otherwise been. Importantly the introduction of GST was accompanied by other tax changes that were at least intended for the package to have a neutral impact.<sup>69</sup>

The reforms of the mid-1980s introduced a separate tax on fringe benefits, closed many company tax loopholes, and removed many tax concessions, such as accelerated depreciation allowances.<sup>70</sup> As Stephens observes, the FBT was novel as payment was made by the employer, rather than the employee.<sup>71</sup> The structure of the FBT was intended to make employers indifferent between paying cash income and providing a non-cash benefit to employees.<sup>72</sup> However, the additional administrative and compliance costs were likely to result in a preference for cash payments that were taxed through the pay-as-you-earn (PAYE) system. While this extended the base, it did not add significantly to tax revenue collection, currently accounting for around 0.5 per cent of tax revenue.<sup>73</sup> However, from an efficiency perspective, the transfer of non-cash benefits to cash payments is likely to result in higher tax revenue collected, as there are fewer opportunities to avoid the tax.

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<sup>65</sup> Ibid 255.

<sup>66</sup> Simon James and Clinton Alley, 'Successful Tax Reform: The Experience of Value Added Tax in the United Kingdom and Goods and Services Tax in New Zealand' (2008) 8(1) *Journal of Finance and Management in Public Services* 35.

<sup>67</sup> Buckle, above n 50, 129.

<sup>68</sup> Ibid.

<sup>69</sup> James and Alley, above n 66.

<sup>70</sup> Stephens, above n 8.

<sup>71</sup> Ibid.

<sup>72</sup> Australia implemented its tax on fringe benefits in 1986 which was largely based on the New Zealand approach.

<sup>73</sup> Jessica Chaston, 'Budget 2023/24 – Summary of All Tax Collections', *Interest.co.nz* (19 May 2023), <<https://www.interest.co.nz/public-policy/121283/budget-202324-summary-all-tax-collections>>.

Before 1984, tax policy was used for economic management, with tax breaks provided to particular industries or activities.<sup>74</sup> For example, accelerated depreciation was introduced in 1945.<sup>75</sup> The Gibbs Report in 1951 recommended that depreciation allowances should be further enhanced.<sup>76</sup> As depreciation allowances reduce the cost of an investment, when these are targeted towards specific industries or businesses, resources may be directed towards activities that would otherwise be uneconomic.<sup>77</sup>

A further example is the investment allowances that were introduced in 1963.<sup>78</sup> These were intended to accelerate investment in industry, particularly the agricultural and manufacturing sectors. They took the form of an up-front deduction of a percentage of the cost of an asset, in addition to depreciation, meaning that the taxpayer could deduct more than the cost of an asset over its useful life.<sup>79</sup> Both accelerated depreciation and investment allowances were phased out by 1993.<sup>80</sup>

However, unlike Australia, New Zealand has never introduced a separate regime to tax capital gains. Rather, it has sought to tax certain 'capital gains' as ordinary income and apply the standard income tax rates to those gains. Numerous attempts to progress the debate have failed to lead to even draft legislation being tabled in Parliament.<sup>81</sup> This remains a significant deficiency in New Zealand's BBLR framework (along with the absence of any specific taxes on wealth), and a significant divergence between Australia and New Zealand's tax policy reform agendas.

#### 4.1.2 Consumption tax

Like Australia, before the introduction of the comprehensive GST, New Zealand also had a wholesale sales tax. Australia's wholesale sales tax was introduced in 1930 at a flat rate of 2.5 per cent, New Zealand's was introduced in 1933 at a flat rate of 5 per cent.<sup>82</sup> At the end of its life, New Zealand's wholesale sales tax had 12 different specific and seven ad valorem rates that ranged from 10 per cent to 60 per cent 'on an arbitrary selected one-third of total personal consumption'.<sup>83</sup> It was well known for destroying industries, with boat-building and caravans being two commonly cited examples.<sup>84</sup> While estimates were that around one-third of consumption was subject to the wholesale sales tax in New Zealand, this was even lower in Australia at 22 per cent by 1995.<sup>85</sup> In

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<sup>74</sup> Christensen, above n 52.

<sup>75</sup> Rob Vosslander, 'The Road to Freedom? Hayek and New Zealand's Tax Depreciation' (2014) 9(1) *Journal of the Australasian Tax Teachers Association* 126.

<sup>76</sup> Sawyer, above n 1.

<sup>77</sup> Vosslander, above n 75.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> For a comprehensive review, see Andrew Maples and John Minas, 'Capital Gains Tax Reviews in New Zealand – The First 50 Years (1951-2000) (or the Wheel Turns Slowly)' (2023) 29(1) *New Zealand Journal of Taxation Law and Policy* 79.

<sup>82</sup> Due, above n 33.

<sup>83</sup> James and Alley, above n 66, 39.

<sup>84</sup> Roger Douglas, 'The New Zealand GST Policy Choice and Its Political Implications' in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 3; Ian Dickson, 'The New Zealand GST Policy Choice: An Historical and Policy Perspective' in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 45.

<sup>85</sup> Tran-Nam, above n 2.

the six years from 1984 to 1990, goods and services/sales taxes increased from 12.6 per cent of total tax revenue to 21.7 per cent in New Zealand.<sup>86</sup>

When GST was introduced in Australia in 2000 it, like New Zealand, was accompanied by a package of tax reforms including changes to social security and family assistance, personal income tax rate reductions, and business tax reforms.<sup>87</sup> However, the political environment in Australia necessitated compromises, which resulted in the removal of a range of basic food and other items from the GST base.<sup>88</sup> Food was viewed by many as one of the categories that should remain GST-free to the consumer, to the extent that the Australian Democrats refused to support the GST legislation unless basic foods were zero-rated.<sup>89</sup> Thus, while there was general agreement on the benefit of a broad-based consumption tax, the Australian GST did not benefit from base broadening to the same extent as New Zealand.

A further difference in the New Zealand and Australian approaches is visible with reference to financial services. In New Zealand, financial services to consumers are exempt from GST and financial services to businesses are zero-rated. This is to ensure that GST does not become a cost to business,<sup>90</sup> and at the time inclusion of financial services items was considered to be much too complex. In Australia, all financial services are exempt from GST, unless the entity making the financial supplies does not exceed the financial services threshold. The reason provided for this treatment is 'due to the difficulty in valuing them' and being 'consistent with international practice'.<sup>91</sup>

The reforms that were introduced on 1 October 1986 in New Zealand were also part of a package, with the removal of most of the wholesale sales taxes, introduction of GST, changes to the personal income tax scales, amendments to the company tax rate, and several changes to social welfare benefits.<sup>92</sup> It is no accident that the label 'GST' was adopted in New Zealand, rather than the nomenclature of VAT that was in the United Kingdom. Dickson writes that GST was adopted to distance the New Zealand system from that in the United Kingdom, where the VAT 'had received a lot of adverse publicity in New Zealand over the years'.<sup>93</sup>

As noted by Christensen, in 2006 New Zealand's GST had a base that was significantly broader than any other OECD country.<sup>94</sup> Unlike Australia and most other jurisdictions, New Zealand did not exempt basic food items from its GST. While this was considered prior to implementation, it was determined that 'zero-rating of necessities is a blunt instrument compared to the specific instrument of family support and adjustment of benefit rates'.<sup>95</sup> This is despite the recognised regressivity of the GST. The decisions

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<sup>86</sup> Stephens, above n 8.

<sup>87</sup> Tran-Nam, above n 2.

<sup>88</sup> Richard Eccleston, 'Taxing Times: A Political Retrospective' (2002) 17(3) *Australian Tax Forum* 287.

<sup>89</sup> Fiona Martin, 'The Case for Specific Exemptions from the Goods and Services Tax: What Should We Do About Food, Health and Housing?' (2020) 18(1) *eJournal of Tax Research* 99.

<sup>90</sup> Tax Working Group, *Taxing Financial Services: Discussion Paper for Session 11 of the Tax Working Group* (Prepared by the Inland Revenue Department and the Treasury, 2018).

<sup>91</sup> Australian Treasury, *Tax Expenditures and Insights Statement* (2023) 184.

<sup>92</sup> Wells and Fraser, above n 54.

<sup>93</sup> Dickson, above n 84, 50.

<sup>94</sup> Christensen, above n 52.

<sup>95</sup> Stephens, above n 8, 55.



made around the small number of goods and services that are exempt from the GST were primarily made for pragmatic purposes, such as minimising compliance costs.<sup>96</sup>

Writing from a Treasury perspective, Dickson observes the importance of maintaining a comprehensive base of the GST, despite '[p]articularly sensitive commodities to tax would be virtually everything that was not already covered by the wholesale sales tax'.<sup>97</sup> In recognising that they could 'run a convincing argument on food and clothing', Dickson notes that in the absence of these inclusions, the potential tax revenue would reduce:

almost to the point where it would not be worthwhile proceeding. On the other hand, if you could win the issue on food and clothing you would carry so much of the moral high ground that people seeking exemptions for newspapers or books ... would find themselves unable to sustain a public position.<sup>98</sup>

Household expenditure figures of the time are worth noting. The bottom 20 per cent of households allocated 23-29 per cent of their budgets to food, while the top two deciles allocated 7-10 per cent.<sup>99</sup> Thus the regressivity of the tax was a challenge from an equity perspective but movements in income tax thresholds and increases in welfare benefits were intended to minimise the impact.

Roger Douglas, Minister of Finance from 1984 to 1988, and the 'Roger' of the economic policy in the 1980s that became known as 'Rogernomics', attributes the success of the GST to five key process elements: 'political will, the right people, the way in which the proposal was packaged, an effective consultative process, and an effective communication process'.<sup>100</sup> Notwithstanding these points, the economic crisis would have been visible to most and provided an important justification for radical policy.

## 4.2 Broadening of the tax base

Stephens observes that the reforms in the 1980s should have resulted in large efficiency gains, but did not, suggesting that 'supply-side economics, through tax reform, is not a panacea for more fundamental economic problems'.<sup>101</sup> Despite the arguments that the tax switch minimised the impact on the poorest, the reforms of the 1980s benefited the wealthy the most. While welfare benefits were increased by 5 per cent,<sup>102</sup> lower-income earners paid GST on most of their goods and services but benefited little from the tax cuts, which accrued to higher-income earners.<sup>103</sup>

### 4.2.1 *Income tax*

Australia's and New Zealand's individual income tax rates have both been reduced in two ways over recent decades. These are reductions in the top marginal income tax rate and changes to the income tax thresholds, which result in the top marginal income tax

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<sup>96</sup> James and Alley, above n 66.

<sup>97</sup> Dickson, above n 84, 51.

<sup>98</sup> Ibid.

<sup>99</sup> Dickson, above n 84.

<sup>100</sup> Douglas, above n 84, 3.

<sup>101</sup> Stephens, above n 8, 61.

<sup>102</sup> James and Alley, above n 66.

<sup>103</sup> Stephens, above n 8.

rate applying at a relatively high rate of earnings.<sup>104</sup> In 2024, \$180,000<sup>105</sup> is the amount at which the top income rate applies in both countries. However, the highest marginal income tax rate is 39 per cent in New Zealand while it is 45 per cent in Australia.

Like New Zealand, Australia also had high income tax rates in the 1980s. Tran-Nam writes that the top rate steadily reduced from 60 per cent in 1985-86 to 45 per cent in 2006-07.<sup>106</sup> Personal income tax brackets were also enlarged, while company tax rates were reduced.<sup>107</sup>

Within a relatively short period, personal income tax was reduced in New Zealand from 64 per cent of total tax revenue collected (in 1984) to 49 per cent six years later in 1990.<sup>108</sup> New Zealand made greater cuts in top personal tax rates than the OECD average from 1985 to 2010.<sup>109</sup> New Zealand's top personal income tax rate of 33 per cent from October 1988 was the lowest in the OECD.<sup>110</sup> However, it should be noted that eight months after the top personal income tax rate was reduced to 33 per cent, the GST was increased to 12.5 per cent.<sup>111</sup> Figure 2 outlines the top personal tax rate from 1986 to 2024, along with the company tax rate for New Zealand and Australia.

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<sup>104</sup> Tran-Nam, above n 2.

<sup>105</sup> In both Australian and New Zealand dollars. This increased to AUD 190,000 in Australia on 1 July 2024.

<sup>106</sup> Tran-Nam, above n 2.

<sup>107</sup> Ibid.

<sup>108</sup> Stephens, above n 8.

<sup>109</sup> Christensen, above n 52.

<sup>110</sup> Stephens, above n 8.

<sup>111</sup> James and Alley, above n 66.

**Fig. 2: Company Tax Rates and Top Income Tax Rates for Individuals 1986-2024<sup>112</sup>**

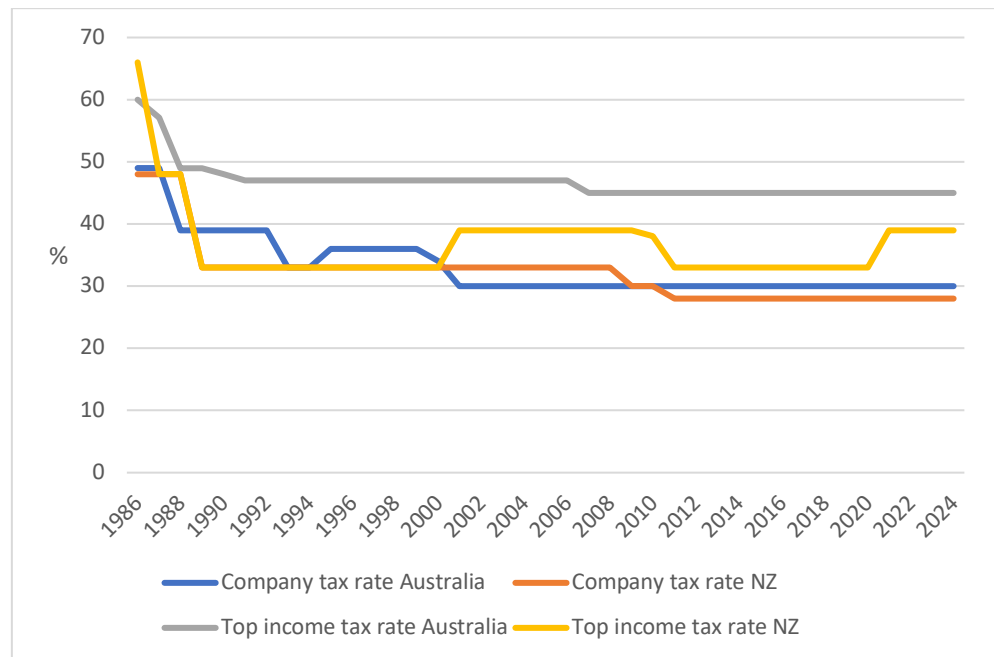


Figure 2 shows the decrease in all rates in the late 1980s. After the initial decline in the period shown, both countries' company tax rates have trended downwards. A similar downward trend can be seen in the Australian top income tax rate, although the decrease is not as significant as the company tax rate decreases. However, the top income tax rate in New Zealand has fluctuated noticeably more than the Australian rate, changing approximately every decade between 33 per cent and 39 per cent (frequently associated with a change between Labour-led and National-led governments).

Australia has had a tax-free threshold since 1915, which was initially intended to minimise the double taxation that could occur when individuals paid income tax at both a State and federal level.<sup>113</sup> However, in the present day it is intended to minimise the tax burden on low-income earners. New Zealand adopts a different approach to this issue and taxes from the first dollar earned. At the present time, the lowest rate is 10.5 per cent for income up to NZD 15,600. Instead, there is a system of tax credits, called Working for Families, which reduce the effective tax rate for lower-income earners. The aim of this is to ensure minimum incomes for those who have families and are employed and is also intended to mitigate potential disincentives to employment for lower-income

<sup>112</sup> Christensen, above n 52; Norman Gemmell, 'New Zealand's Tax Reforms and "Tax Sheltering" Behaviour' (Wellington School of Business and Government Working Paper 03/2020); Stephens, above n 8; Australian Taxation Office, 'Tax Rates – Australian Resident' (6 June 2024), <<https://www.ato.gov.au/tax-rates-and-codes/tax-rates-australian-residents>>; Australian Treasury, 'General Business Tax Issues' (chart data for *Re:Think: Tax Discussion Paper* (2015)), <<https://treasury.gov.au/review/tax-white-paper/chart-data/5-general-business-tax-issues>>. In Australia, from 2016, the company tax rate has been lower for a small business. Initially this was 28.5 per cent, gradually reducing to 25 per cent by 2022.

<sup>113</sup> Parliamentary Budget Office, 'Australia's Tax Mix' (Budget Explainer, 14 November 2024).

earners. New Zealand's approach is justified as being more targeted to those who are working with families.

From 1990 to 1999 there were few significant tax changes. However, for the next nine years, with a Labour government, there were changes to the marginal income tax rates. The political landscape in New Zealand typically witnesses greater base broadening and lower rates during periods of conservative (National-led) governments, with the opposite when a progressive (Labour-led) government is in power. The reforms under the National-led government in 2010 saw New Zealand move back towards a broader base with lower rates. The top income tax rate was reduced from 38 per cent to 33 per cent and GST was increased from 12.5 per cent to 15 per cent. Under the Labour-led government in 2021, the top marginal rate was again increased to 39 per cent, at least in part as a revenue-generating measure related to the Covid-19 pandemic. However, this Labour-led government failed to broaden the tax base significantly by continuing to distance itself from introducing a capital gains tax regime or other form of wealth taxation.

As shown in Figure 2 in section 2 of this article, the broad-base low rate was weakened with the increases in the top marginal tax rate to 38 or 39 per cent that occurred from 2001-2010 and again from 2021 to the present time. A current problem is that increases in the top marginal tax rate have been accompanied by significant bracket creep that has pushed many into higher marginal income tax brackets. This has been partially addressed with changes in thresholds implemented as part of Budget 2024 with the passing of the *Taxation (Budget) Measures Act 2024*.<sup>114</sup> With these changes in rates occurring on 31 July 2024, this has created significant complexity for the tax year ending March 2025 with a series of composite tax rates and thresholds.<sup>115</sup>

Table 2 provides a comparison of the personal income tax rates in Australia and New Zealand before and after changes in July 2024. While both countries amended their rates at the same time, Australia changed the thresholds and reduced the rates. However, in New Zealand the rates were unchanged and only the thresholds were expanded, resulting in less progressivity than that seen in Australia.

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<sup>114</sup> See further Inland Revenue, *Taxation (Budget Measures) Act 2024* (Special Report, June 2024), <<https://www.taxpolicy.ird.govt.nz/news/2024/sr-budget-measures>> (accessed 31 May 2024).

<sup>115</sup> See further *ibid* 6-8.

**Table 2: Personal Income Tax Rate Changes in Australia and New Zealand**

<b>Australia (AUD)</b>			
<b>Prior to 1 July 2024</b>		<b>After 1 July 2024</b>	
Up to \$18,200	0	Up to \$18,200	0%
\$18,201 - \$45,000	19%	\$18,201 - \$45,000	16%
\$45,001 - \$120,000	32.5%	\$45,001 - \$135,000	30%
\$120,001 - \$180,000	37%	\$135,001 - \$190,000	37%
\$180,001 and over	45%	\$190,001 and over	45%
<b>New Zealand (NZD)</b>			
<b>Prior to 31 July 2024</b>		<b>After 31 July 2024</b>	
\$0 - \$14,000	10.5%	0 - \$15,600	10.5%
\$14,001 - \$48,000	17.5%	\$15,601 - \$53,500	17.5%
\$48,001 - \$70,000	30%	\$53,501 - \$78,100	30%
\$70,001 - \$180,000	33%	\$78,101 - \$180,000	33%
\$180,001 and over	39%	\$180,000 and over	39%

#### 4.2.2 Consumption tax

Like Australia, before the introduction of the GST, the wholesale sales tax in New Zealand had multiple rates on different items that resulted in inefficiencies, a lack of coherence, and inequities. With the introduction of GST in New Zealand, wholesale sales tax rates were lowered ahead of the introduction to minimise any impact on consumption.<sup>116</sup>

Unlike income taxes, which have had a general downward trend, GST in New Zealand has increased twice since its inception, when it was set at 10 per cent. As shown in Table 3, it increased to 12.5 per cent in 1989, where it remained for the following 20 years, before increasing to the current rate of 15 per cent in 2010. New Zealand's GST currently collects around one-quarter of New Zealand's total tax revenue.

**Table 3: Sales Tax/GST Tax Rates 1984-2024<sup>117</sup>**

	<b>1984-1985</b>	<b>1986-1988</b>	<b>1989-2009</b>	<b>2010-2024</b>
Wholesale sales tax/GST rate	10-50%	10%	12.5%	15%

Dickson observes the importance of a low rate for GST. When 10 per cent was settled on in the mid-1980s, this served the purpose of being a low rate, while ensuring GST

<sup>116</sup> Stephens, above n 8.

<sup>117</sup> Ibid.

was easy to calculate and comply with. Moreover, officials believed that 'the higher the tax rate, the greater would be the pressure for exemptions'.<sup>118</sup>

Douglas notes that 'ad hoc solutions that avoided the real problems New Zealand faced were never going to work'.<sup>119</sup> In referencing the ad hoc decisions and political compromises that had resulted in serious economic problems, Douglas described the tax system as 'a mess' but needed changes to be self-balancing, fair, as simple as possible, and broad-based so that the rate of the GST could be as low as possible.<sup>120</sup>

## 5. TAX ADMINISTRATION REFORM

Over the last 40 years the level of tax reform in New Zealand has matched that of Australia in terms of its significance and level of impact. Indeed, a significant amount of the reform in New Zealand has been developed alongside or followed earlier actions undertaken in Australia. In this section we explore developments within Inland Revenue in terms of how it has been restructured and operates, its approach to encouraging tax compliance, efforts to align the reporting of taxes more closely with their payment, the significant impact of technology-driven reforms, and the relatively little appetite New Zealand has for alternative dispute resolution (ADR) in resolving tax disputes.

### 5.1 Self-assessment, internal organisation, and the compliance model

New Zealand has operated a form of self-assessment over much of the last 40 years, although it was not formalised until 1998.<sup>121</sup> Formalisation of self-assessment occurred as part of the rewrite of tax legislation project, discussed in section 3 above. Specifically, legislating for self-assessment brought the TAA 1994 into line with modern administrative practices globally; it made the law consistent with New Zealand administrative practice and reforms (such as the then recently enacted penalties provisions, dispute resolution procedures and binding rulings legislation); and it clarified the law with respect to the Commissioner's discretions.

Like Australia, the administration of the tax system is in practice based on taxpayers initially assessing (calculating) their own tax liabilities by filing themselves (or via an agent) a tax return with Inland Revenue (principally via electronic filing). In the early 1990s major changes to the tax system led to most individual taxpayers not having to complete a tax return as their income was taxed at source (supported by third-party reporting). Nevertheless, taxpayers may be required to verify the content of their income statement that is held within their online portal (myIR). This abolition of return filing by individuals coincided with the removal of employee deductions for all items (the exceptions being for income protection insurance premiums and a tax agent's filing fees).

Inland Revenue has undergone a number of internal restructures, often following the appointment of a new Commissioner. Over the last 40 years Inland Revenue has been

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<sup>118</sup> Dickson, above n 84, 56.

<sup>119</sup> Douglas, above n 84, 4.

<sup>120</sup> Ibid.

<sup>121</sup> Rt Hon Bill Birch (Treasurer and Minister of Finance and Minister of Revenue), *Legislating for Self-Assessment of Tax Liability: A Government Discussion Document* (August 1998).

organised along tax type, taxpayer type, and service type. Currently it works across business groups using terminology such as:

- Customer and Compliance Services – Individuals | Ratonga Kiritaki me te Tautukunga – Takitahi;
- Customer and Compliance Services – Business | Ratonga Kiritaki me te Tautukunga – Pakihi;
- Tax Counsel Office | Te Tari o te Rōia Tāke;
- Enterprise Design and Integrity | Hinonga Hoahoa me te Tika; and
- Enterprise Services | Ratonga Hinonga.<sup>122</sup>

With the enactment of the *Taxation (Annual Rates, Modernising Tax Administration and Remedial Matters) Act 2019*, Schedule 7, Disclosure Rules was inserted into the TAA 1994. This enables Inland Revenue to provide confidential information to other government bodies, to effectively administer its increasing number of 'non-tax' functions (these include delivering and administering many social policies such as child support, Working for Families, KiwiSaver and student loan repayments), as well as to enhance its core functions. Information exchange recognises the knowledge base, efficient information systems and reliability of Inland Revenue to deliver services on behalf of the government. It also recognises that as technology has expanded, a whole-of-government approach has been taken to see government departments and ministries work closer together, along with an increase in the number of service-level agreements (and exchange of information agreements both within and outside New Zealand).<sup>123</sup>

New Zealand's tax system assumes a voluntary compliance approach by taxpayers to meet their tax obligations, similar to that in Australia. This is an environment that depends upon an open, honest and transparent tax system where there are high levels of mutual trust and understanding between customers/taxpayers and the revenue agency (Inland Revenue).

In this regard it is important for a revenue authority to follow some form of compliance model. Inland Revenue's first formal compliance model was directly taken from that used by the Australian Taxation Office since 2000, when the then new Commissioner, David Butler, arrived in 2001. This model is essentially what is known as the

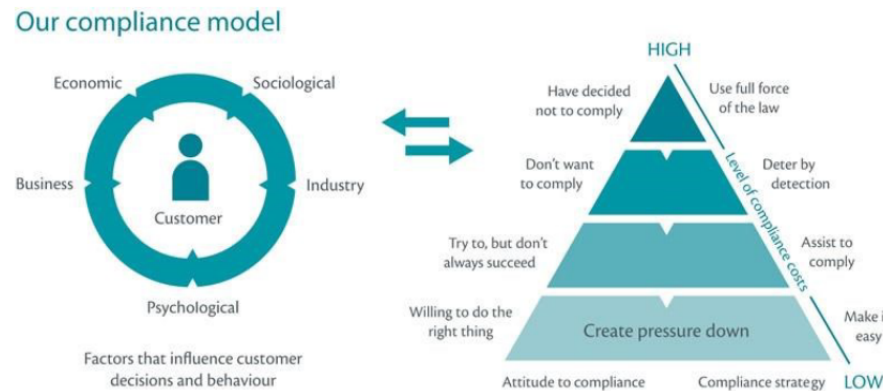
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<sup>122</sup> See Inland Revenue, 'Our Organisational Structure', <<https://www.ird.govt.nz/about-us/who-we-are/organisation-structure>> (accessed 14 March 2024).

<sup>123</sup> Currently information sharing agreements within exist between Inland Revenue and New Zealand Police, New Zealand Customs Service, Serious Fraud Office, Department of Internal Affairs, Ministry of Social Development and the New Zealand Gang Intelligence Centre agencies. There are numerous other agreements with agencies, including the Accident Compensation Corporation, Callaghan Institute, Financial Markets Authority, Land Information NZ, Ministry of Business Information and Employment, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry of Culture and Heritage, Ministry for Primary Industries, Statistics NZ, Treasury, Veterans Affairs, and WorkSafe. See further Inland Revenue, 'Information Sharing', <<https://www.ird.govt.nz/about-us/information-sharing>> (accessed 14 November 2024). For details of external to New Zealand agreements, see Inland Revenue, 'Tax Treaties', <<https://www.taxpolicy.ird.govt.nz/tax-treaties>>.

Braithwaite Compliance Model (see Figure 3 below). As a behavioural model it was readily understood in both countries.

**Fig. 3: Inland Revenue's Compliance Model (the Braithwaite Model)**



Source: Alistair Hodson, 'Inland Revenue's New Circular Compliance Model – An Overview' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 187, 189, citing Inland Revenue.

However, in 2014, Inland Revenue's Customer Strategy Team introduced what they considered a more customer-centric focus, and a 'Right from the Start' approach, which is a fundamental part of the new compliance model (see Figure 4 below). When this model was introduced (and for some time later), it was not well understood by Inland Revenue staff and those outside the organisation.

Specifically, Inland Revenue's current Compliance Model places greater emphasis on Inland Revenue understanding their 'customers' (a somewhat dubious concept), their lifecycles and perspectives. At the core of the Compliance Model are the three factors that form customer behaviour – capability, motivation and opportunity. *Capability* is how well customers can meet their obligations and access their entitlements. It includes their knowledge of rules that apply to them, their access to tools and assistance, and their ability to understand. *Motivation* is about the factors that create the willingness to comply and then actually follow through and do it. Motivation includes both social and personal norms. *Opportunity* is about how easy it is for a customer to comply or not comply with their obligations or access their entitlements.

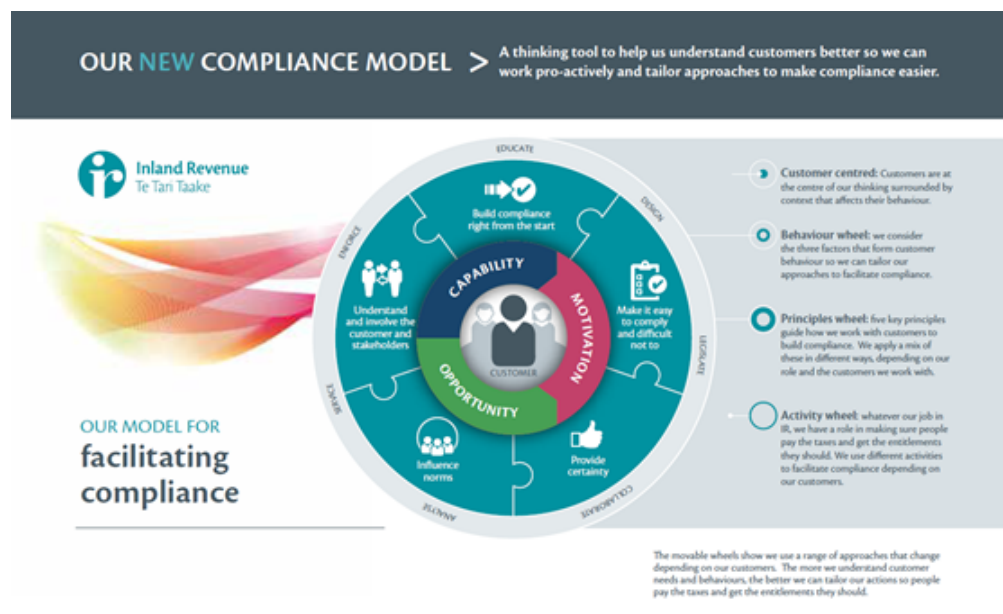
In his comprehensive review of the new Compliance Model, Hodson observes:

In reality the new compliance model is a *thinking tool*, designed to get all staff, especially the front-line staff, to consider the customer in the centre of their analysis. Inland Revenue consider they have moved from being a tax collector and enforcement organisation to more of a tax and social policy organisation.



Inland Revenue's social policy role and the new compliance model reflects this wider ambit of 'Customer'.<sup>124</sup>

**Fig. 4: Inland Revenue's Compliance Model**



Source: Inland Revenue, *Annual Report 2015* (2015) 17.

## 5.2 More cooperative tax culture

In addition to applying various compliance models, the creation of a culture of cooperation has been central to the operations of a modern revenue authority. This is evident in both Australia and New Zealand. Inland Revenue has recently started to undertake targeted compliance campaigns, focused on specific sectors and compliance issues and making use of a range of information obtained from questionnaires and follow-up interactions. For example, it has released guidance on its compliance focus for multinational enterprises in 2019,<sup>125</sup> targeting those with an annual turnover in New Zealand of over NZD 30 million.

New Zealand has been much less active than Australia with respect to entering into cooperative compliance agreements with large taxpayers, largely due to the small number of multinational enterprises headquartered in New Zealand (there are only around 20 with turnover of EUR 750 million or more). With such a small number of

<sup>124</sup> Alistair Hodson, 'Inland Revenue's New Circular Compliance Model – An Overview' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 187, 208-209 (emphasis added).

<sup>125</sup> Inland Revenue, *Multinational Enterprises Compliance Focus 2019* (2019). This is supported by a questionnaire sent to multinationals on an annual basis (see further Inland Revenue, 'International Questionnaire', <<https://www.ird.govt.nz/international-tax/business/international-questionnaire>> (accessed 14 March 2024)). The most recent edition was released in 2024; see <<https://www.ird.govt.nz/international-tax/business/compliance-focus-for-multinational-enterprises>>.

New Zealand-headquartered multinational corporations involved in cross-border activity that come within the OECD's country-by-country reporting obligations, Inland Revenue has been able to undertake extensive risk analysis of this group.<sup>126</sup>

Until 2009, Inland Revenue's internal charter was little more than a code of conduct as to how its staff should conduct themselves when engaging with taxpayers and some minimum expectations that taxpayers should expect. Following the outcome of the Wine Box Inquiry,<sup>127</sup> Inland Revenue developed and released a new Inland Revenue Charter (Charter) that sets out the minimal existing rights that taxpayers have and some further service expectations that taxpayers may have of Inland Revenue staff, along with what Inland Revenue expects of taxpayers (customers).<sup>128</sup> This Charter has no legal backing and taxpayers cannot seek to enforce it against Inland Revenue. Importantly it does refer to Inland Revenue's internal complaints management service and provides details of how taxpayers may contact the Ombudsman's office.

### 5.3 Unification of reporting and payment

New Zealand, like Australia and many other jurisdictions globally, imposes an income tax on personal income that includes a system of tax withholding at source on employment income (PAYE), and other categories of income (such as interest and dividends). This withholding mechanism has proved to be a highly efficient and effective arrangement for tax collection but imposes a burden on employers who must determine the appropriate amount of tax to be withheld from wages paid to their employees, remit taxes withheld to the tax authority, and report at year end details of wages and benefits paid and taxes (plus other deductions) withheld for each employee. Traditionally this had been undertaken on a fortnightly or monthly basis for most employers, with an end of year 'square-up'. This process would often end up with employees being under- or over-withheld based on factors such when they were employed part-time, had more than one job, and the like.

More recently, Inland Revenue has offered online and myIR services that give employers, tax agents, payroll bureaus and payroll intermediaries, secure and convenient methods of filing employment information schedules online in real time. It also requires employers to file an employment information form on every occasion they pay their employees. Employers with total annual PAYE and employer superannuation contribution tax (ESCT) of NZD 50,000 or more must file electronically. If they do not, then penalties will apply.<sup>129</sup> A number of software packages are available that enable an

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<sup>126</sup> See further Adrian Sawyer and Kerrie Sadiq, 'Country-by-Country Tax Reporting: A Critical Analysis of Enhanced Regulatory Requirements for Multinational Corporations' (2019) 36(7) *Company and Securities Law Journal* 570.

<sup>127</sup> For a discussion of the Wine Box inquiry and subsequent developments, see Adrian Sawyer, 'The Wine-Box Inquiry: Never Mind the Findings but What About the Recommendations?' (1998) 52(2) *Bulletin for International Taxation* 58; Adrian J Sawyer, 'The Wine-Box Inquiry in New Zealand: Round Two – A "Gutted" Report but no "Knockout Punch"' (2001) 55(3) *Bulletin for International Taxation* 114.

<sup>128</sup> See further Inland Revenue, 'Our Charter', <<https://www.ird.govt.nz/about-us/charter>>. This charter is essentially two pages long and compares unfavourably with the ATO's charter in terms of content and usefulness.

<sup>129</sup> See *Tax Administration Act 1994* (NZ) s 139AA.

employer to send the required information plus the withheld tax directly to Inland Revenue in real time (that is, at the time of paying their employees).<sup>130</sup>

#### 5.4 Technology-driven reforms

Granger and Sawyer provide an extensive review of the 'digital' journeys of Australia and New Zealand prior to and during the Covid-19 pandemic.<sup>131</sup> Their study applies a tax policy lens and largely positivist approach, with some normative suggestions. Their comparative case study approach observes

... how the ATO and Inland Revenue Department evolved 'just in time' to meet the challenges of digitalization. *They have been resilient adaptors to keep pace as their countries embrace the opportunities of globalization and technology innovation.* Digitalization combined with smart data exploitation has created new opportunities and challenges for them.<sup>132</sup>

Granger and Sawyer identify five key policy features from the approaches taken by the ATO and Inland Revenue:

1. the design of information technology infrastructure is moving away from being tax-specific to being integrated and networked;
2. the role of tax administrations is expanding as a smart data hub for a whole-of-government approach;
3. the shift from merely consulting stakeholders during the design process to collaborating with them;
4. support people through transition, especially the vulnerable; and
5. managing ecosystem risks.<sup>133</sup>

Many recent reforms to the New Zealand tax administration have been technology-driven or facilitated by such. This includes the use of Inland Revenue's extensive databases, information made available through exchange or sharing agreements, and the completion of its Business Transformation project (BT project).

In its 2023 *Annual Report*, Inland Revenue states:

Our technology is based on software as a service and commercial off-the-shelf products. This means third parties can collaborate with us easily, our people can access tools and data from any location, data is securely located and accessible in the event of a natural disaster and software is regularly updated.

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<sup>130</sup> Examples include MYOB and Xero.

<sup>131</sup> Jennie Granger and Adrian Sawyer, 'Digitally Prepared? The Journeys of the Revenue Administrations in Australia and New Zealand' in Nella Hendriyetty, Chris Evans, Chul Ju Kim and Farhad Taghizadeh-Hesary (eds), *Taxation in the Digital Economy: New Models in Asia and the Pacific* (Routledge, 2022) 166.

<sup>132</sup> Ibid 185 (emphasis added).

<sup>133</sup> Ibid 185-186.

*This year, our focus has been on managing and enhancing our technology assets to ensure they support performance. We'll continue to make updates to our core system, START, that allow us to benefit from advances in technology and gain efficiencies.*<sup>134</sup>

From Inland Revenue's perspective, the BTP enabled it to upgrade the systems it had been using since the 1980s, systems that were becoming vulnerable and operating well beyond their originally intended scope and capability. The intent was to deliver a modern, digital revenue system that enabled customers/taxpayers to do as much for themselves as possible in a way and at a time that suited them. BTP is, as at the time of writing, the largest IT project in New Zealand's history, and one that was successfully completed (with minor teething issues), on time and on budget!

The project was undertaken in stages, pre-tested, while the old FIRST system remained operative. This pre-testing revealed a number of failings that were subsequently addressed. After every major release and at regular intervals throughout the program, Inland Revenue conducted formal sessions to review what it had learnt, testing this on selected practitioners and other external parties. This allowed Inland Revenue to determine what worked well (and what did not), improve the efficiency of processes, cease doing anything that was no longer required and to share its findings publicly. The stages of the project were as follows:

*Stage 1 (2016 to 2017)* to enable secure digital services – to enable the majority of customers to self-manage and reduce the businesses' compliance burden in fulfilling their PAYE obligations;

*Stage 2 (2017 to 2019)* to streamline income and business tax processes – this leveraged the foundations delivered in the previous stage and further reduced the businesses' compliance burden to fulfil their tax obligations;

*Stage 3 (2018 to 2020)* to streamline social policy delivery – this led to improving the delivery of the social policies that Inland Revenue administers; and

*Stage 4 (2019 to 2021)* – Complete delivery of the future revenue system – from 2019 Inland Revenue progressively moved the remaining social policies that they administer to new systems and processes, completing the delivery of a modern, digital revenue system in 2021.

Writing in the context of taxpayers' rights, Sawyer<sup>135</sup> reviews the BTP over the period 2015 to 2019 (based upon where it was at the time). He concludes:

To respond to the question posed near the commencement of this paper: Is BTP likely to enhance taxpayers' rights with respect to meeting their obligations and interacting with IR? *For those taxpayers who are in the at-risk groups*

<sup>134</sup> Inland Revenue, *Annual Report Te Tari Taake Pūrongo ā-Tau 2022-23* (2023) 58 (emphasis added).

<sup>135</sup> 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 generally Inland Revenue's website at: <<https://www.ird.govt.nz/about-us/business-transformation>>.

*(including the digitally challenged), as it stands their position will not be improved by BTP, and in fact may be made worse. The expected failure of the NZ Government to close the digital divide by 2020 exacerbates the situation.*<sup>136</sup>

The digital divide is far from being closed in New Zealand meaning that the concerns raised by Sawyer above remain.

## 5.5 Alternative dispute resolution

When the current disputes regime was introduced in 1997, its aim was to reduce the focus of disputes on preparing to take a dispute to court, to that of reaching a settlement before that stage. This was a major feature of the recommendations of the Organisational Review of Inland Revenue in 1994, chaired by Sir Ivor Richardson.<sup>137</sup> However, significant changes to the disputes process were not put in place until after a subsequent review following the release of a discussion document issued in 2003.<sup>138</sup> A further review of the new system was undertaken in 2010.<sup>139</sup>

Following these reviews, the conference phase of the internal process within Inland Revenue, which has the purpose of discussing and clarifying the various facts and issues, was enhanced. While the conference phase is not mandatory, it is encouraged as a way of resolving disputes without needing to proceed to the more formal stages. Furthermore, from 1 April 2010 a taxpayer whose dispute remains unresolved after the notice of response (NOR) phase is invited to attend a conference meeting and offered the opportunity to have any meetings facilitated by an Inland Revenue facilitator. The conference facilitator is a senior Inland Revenue officer who has not been involved in the dispute or given advice on the dispute prior to the dispute phase. The facilitator will have sufficient technical knowledge to understand and lead the conference meeting. Inland Revenue has trained a number of staff as conference facilitators who will attend a conference on request. Importantly, a facilitator does not have authority to resolve issues, but they do have the ability to determine when the conference phase is at an end if the parties are unable to agree on this point.

<sup>136</sup> Sawyer, above n 143, 20-21 (emphasis added).

<sup>137</sup> Organisational Review Committee (Sir Ivor Richardson, chair), *Organisational Review of the Inland Revenue Department, Report to the Minister of Revenue (and on Tax Policy, Also to the Minister of Finance)* (April 1994). This review also recommended what would become New Zealand's world-leading tax policy process, the Generic Tax Policy Process (GTPP). See further Adrian Sawyer, 'Broadening the Scope of Consultation and Strategic Focus in Tax Policy Formulation – Some Recent Developments' (1996) 2(1) *New Zealand Journal of Taxation Law and Policy* 17; Peter Vial, 'The Generic Tax Policy Process: A "Jewel in Our Policy Formation Crown"?' (2012) 25(2) *New Zealand Universities Law Review* 318; Adrian Sawyer, 'Reviewing Tax Policy Development in New Zealand: Lessons from a Delicate Balancing of "Law and Politics"' (2013) 28(2) *Australian Tax Forum* 401; Lisa Marriott, 'Crown Consultation, Māori Engagement, and Tax Policy in Aotearoa New Zealand' (2021) 26(2) *New Zealand Journal of Taxation Law and Policy* 143; Lisa Marriott and Jessica C Lai, 'Indigenous Perspectives on and in Tax Research Policy' (2022) 37(3) *Australian Tax Forum* 383; Adrian Sawyer, 'Tax Policy Without Consultation: Is New Zealand on a "Slippery Slope"?' (2022) 37(4) *Australian Tax Forum* 481; Adrian Sawyer, 'Navigating Challenging Times: A New Zealand Perspective' (2023) 29(4) *New Zealand Journal of Taxation Law and Policy* 341.

<sup>138</sup> Hon Michael Cullen (Minister of Finance and Minister of Revenue), *Resolving Tax Disputes: A Legislative Review, a Government Discussion Document* (July 2003).

<sup>139</sup> Inland Revenue, *Disputes: A Review – An Officials' Issues Paper* (July 2010).

The facilitated conference is currently the only limited form of ADR within the tax disputes process in New Zealand. Calls<sup>140</sup> for expanding this to include independent facilitators, experienced mediators or even arbitration, have been resisted by Inland Revenue. Furthermore, governments to date appear to be unwilling to make any significant changes to the disputes process that involve ADR processes. One less confronting part of the court process, the Small Claims Division of the Taxation Review Authority (TRA), was removed on the basis that it was rarely used.<sup>141</sup> Thus, with respect to ADR, New Zealand is less progressive in this respect than Australia, where ADR options are available.<sup>142</sup>

One important development with effect from 21 June 2005 was the creation of the 'right of non-disclosure'. This is a statutory right set out in sections 20B to 20G of the TAA 1994 that belongs to taxpayers. It can apply to tax advice documents which the Commissioner seeks to have disclosed under his statutory powers to obtain information. While it is similar to legal professional privilege that a lawyer's advice to their client may attract, it only applies to advice provided by members of an approved advisor group concerning New Zealand taxation, where members are subject to a professional code of conduct and disciplinary processes. This right is also subject to review by the courts and comes with a number of exceptions.

Following a period of uncertainty after the announcement that the Administrative Appeals Tribunal (AAT) in Australia would be abolished with no indication of its replacement, on 7 December 2023 a new body to be called the Administrative Review Tribunal (ART) would be established.<sup>143</sup> The empowering legislation has recently been enacted, and its operation should be closely reviewed by New Zealand to ascertain how it could improve its disputes process, along with the ADR options available via the ATO.

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<sup>140</sup> See for example the work principally undertaken by Melinda Jone: Melinda Jone, 'Tax Dispute Systems Design: International Comparisons and the Development of Guidance from a New Zealand Perspective' (PhD Thesis, University of Canterbury, 2016); Melinda Jone, 'Evaluating Australia's Tax Dispute Resolution System: A Dispute Systems Design Perspective' (2015) 13(2) *eJournal of Tax Research* 552; Melinda Jone, 'Evaluating New Zealand's Tax Dispute Resolution System: A Dispute Systems Design Perspective' (2016) 22 *New Zealand Journal of Taxation Law and Policy* 228; Melinda Jone, 'What Can the United Kingdom's Tax Dispute Resolution System Learn from Australia? An Evaluation and Recommendations from a Dispute Systems Design Perspective' (2017) 32(1) *Australian Tax Forum* 59; Melinda Jone and Andrew J Maples, 'Mediation as an Alternative Option in Australia's Tax Disputes Resolution Process' (2012) 27(3) *Australian Tax Forum* 527; Melinda Jone and Andrew J Maples, 'Mediation as an Alternative Option in New Zealand's Tax Dispute Resolution Procedures' (2012) 18 *New Zealand Journal of Taxation Law and Policy* 412; Melinda Jone and Andrew J Maples, 'Mediation as an Alternative Option in New Zealand's Tax Disputes Resolution Procedures: Refining a Proposed Regime' (2013) 19 *New Zealand Journal of Taxation Law and Policy* 301.

<sup>141</sup> The TRA's jurisdiction was recently expanded to hear disputes involving issues charities.

<sup>142</sup> See further Australian Taxation Office, 'Alternative Dispute Resolution (ADR)', <<https://www.ato.gov.au/individuals-and-families/your-tax-return/dispute-or-object-to-an-ato-decision/options-for-resolving-disputes/alternative-dispute-resolution-adr>> (accessed 14 November 2024).  
<sup>143</sup> See the Administrative Review Tribunal Bill 2024, receiving Assent on 3 June 2024. See further Parliament of Australia, 'Administrative Review Tribunal Bill 2024', <[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r7117](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7117)> (accessed 14 November 2024).

## 5.6 Summary

New Zealand's response to tax administration reform has been extensive and in many respects has followed or mirrored developments in Australia. Formalising administrative practices, internal reorganisation to better fit service delivery (accompanied by changes to the manner in which compliance is encouraged), have been the early developments. Drawing upon the gains and enhanced ability provided through digitalisation, Inland Revenue has been able to facilitate real-time receipt of information reporting and payments as it finalised its seven-year BT project. Without the BT project, there is no doubt that Inland Revenue's information system could 'fall over' at any time. The digitalisation process enabled Inland Revenue, like the ATO, to be nimble during the height of the Covid-19 pandemic, with Inland Revenue basing almost all interactions through the myIR and tax agent portals. One disappointing side effect has been the failure by the government and Inland Revenue to ensure that the digital divide has been closed.

Where New Zealand has failed to undertake much needed tax administration reform is to embrace genuine ADR, through Inland Revenue's resistance to recommend that mediation and possibly other forms of ADR be available to taxpayers. With the ongoing developments in technology, including generative AI, the future will no doubt bring further significant developments as the risks increase of unauthorised data access, identity fraud, and a lack of trust in whether communications are genuine, necessitating further legislative and administrative reforms.

## 6. CONCLUSIONS

Over the past four decades, like Australia, the New Zealand tax system has experienced very significant changes. Over that time there have been periods of extensive reform activity, instigated through prominent politicians, such as Roger Douglas in the 1980s, and by several tax working groups. These include reviews undertaken on average every eight to nine years, many of which have led to further tax reform.<sup>144</sup> The guiding principles have varied, but typically have included equity, efficiency, simplicity, coherence, as well as incorporating developments internationally. Indeed, for a brief period there was a set of legislated principles set out in the *Taxation Principles Reporting Act 2023*, prior to its repeal in December 2023. Major new taxes were introduced, including FBT and GST, and significant new administrative processes (penalties and dispute resolution, to name two), international tax regimes, and numerous base protection measures. Much of this was premised on New Zealand's BBLR model. However, from the 1990s onwards, BBLR has been afforded little more than lip service as the New Zealand tax base remains narrow through the absence of taxation of any form of wealth. Most recently the base erosion and profit shifting (BEPS) measures developed by the OECD are indicative of how New Zealand operates in a global economy and needs to respond as such. The reform has usually been developed through consultative means via the GTPP, although in more recent years, governments have largely abandoned this approach.

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<sup>144</sup> See Sawyer, above n 1. Over the last 40 years, various tax reviews reported to governments in 1982, 1994, 1986-1998, 2001, 2010 and 2019.

Extensive effort, like that in Australia, has been to simplify processes and compliance obligations. This includes a moderately successful tax law rewrite project and streamlining of taxpayer interactions with Inland Revenue. This approach has been facilitated by increased reliance on digitalisation and the successful implementation of New Zealand's largest IT project through the BT project. Perhaps the most successful tax reform was the creation of the world-leading GST in the 1980s, at least from the perspective of efficiency and relative simplicity. However, the failure over time to recognise the regressive impact of the GST has severely affected many of the lower-income earners in New Zealand. Inland Revenue has shown that it can be nimble and adapt to changes in the environment, both domestically and internationally, becoming a leading tax administration agency globally. Nevertheless, it has resisted facilitating an environment that is more understanding of the challenges taxpayers face, such as through arguing against the use of ADR in tax disputes.

In summary, the New Zealand story with respect to tax reform over the last 40 years parallels the Australian story presented by Tran-Nam.<sup>145</sup> This is certainly no coincidence as policy-makers and governments in the two countries frequently meet and share ideas and proposals. That said, Australia and New Zealand have in numerous instances decided to take different paths with respect to their tax reform, tax mix and components of their respect tax administration processes.

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<sup>145</sup> Tran-Nam, above n 2.