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Explorations of Structure and Choice in Taxing Capital Gains in New Zealand: Tax Practitioners' Perspectives

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ABSTRACT

This paper explored the tax practitioners' views on taxation of capital gains in New Zealand. An 8-page questionnaire was sent to 507 tax practitioners to discuss various tax issues relating to capital gains. The tax issues were taxation on property, rollover relief, indexation and several others. The findings overwhelmingly showed that a capital gains tax (CGT) was not supported by most tax practitioners. A plausible reason for the strong opposition to a CGT by the tax practitioners was attributable to the increased compliance costs and the interpretation surrounding the CGT legislation. The absence of a comprehensive CGT in New Zealand can potentially provide lucrative business opportunities for tax practitioners by advising their clients to convert taxable incomes into tax free capital gains. However there was no empirical evidence to suggest that the loss of tax revenue was due to such tax planning activities. This might be due to the uniqueness of certain types of gains, which would normally be regarded as capital in nature in foreign jurisdictions deemed to be income in New Zealand.

Keywords: *Capital gains taxation, mixed methods, New Zealand Taxation*

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INTRODUCTION

A large majority of the OECD countries have capital gain taxes to achieve neutrality in their tax systems. New Zealand, on the other hand, remains one of the few countries that do not have a comprehensive capital gains tax (CGT). Consequently, its tax system has been accused of being unsystematic and "ad hoc" (Burman and White, 2003). The ad-hoc nature of the tax system treats some capital gains as taxable incomes. For example, certain capital receipts include gains from financial arrangement and foreign investment funds, but it excludes gains from the sale of property. This is generally not the case in other OECD countries. Unlike the traditional capital gains that are taxable in other OECD countries, New Zealand had treated some of these gains as income and is therefore taxable. Consequently, the "New Zealand style CGT" is likened to a hybrid tax system which taxes not only ordinary income but also certain selected capital gains.

Because of the criticisms from a lack of a comprehensive CGT regime, the New Zealand government had made several reviews to identify the problems and make policy recommendations to address the CGT issues. For example, the first review was undertaken in 2001 by the Government Tax Review Committee (McLeod Committee, 2001). They acknowledged the problems of the lack of a comprehensive CGT but concluded that a general CGT was not worth pursuing because of its complexity and compliance problems associated with it. Instead of recommending a radical overhaul to the tax system, they suggested incremental policy changes to eliminate the current flaws in the system.

The second attempt was undertaken in June 2005 when the government issued a discussion document on the Taxation of Investment Income (New Zealand Government, 2005). This document focuses on the treatment of collective investment vehicles and offshore portfolio investments in shares. The results of this discussion document led to two major tax reforms in New Zealand. First, it relates to the exemption of capital gains on investments in New Zealand and certain Australian-listed shares and second, it introduces the fair dividend rate of return on other foreign investments. The intention of the reforms was to align the tax treatment between portfolio investment entities (such as managed funds) and individual taxpayers' direct investment. However, because of the non taxable nature of the gains made from property investments, the differential treatment between the domestic and foreign investments created further distortions in the New Zealand hybrid tax system.

Statistics from the Reserve Bank from 1990 to 2005 showed an increasing amount of assets held by the household sector. The bulk of the increase in assets is from the housing stocks followed by deposits, managed funds and other. In Table 1, all assets had shown a net increase with the exception of superannuation and managed funds which remained stable from 2000 to 2005. The largest increase in the asset build up is from the housing stocks whereas the managed fund amount remained unchanged at $57 billion.

Table 1: Assets Held By the Household Sector (New Zealand $ in Billions)

Asset Types	**1990**	**2000**	**2005**
Housing stocks	127	231	506
Deposits	30	45	72
Life, superannuation and managed funds	26	57	57
Other	16	24	33
Total assets	**199**	**357**	**668**

Source: Extract was taken from OECD Economic Surveys New Zealand April 2007 p.63 based on Reserve Bank of New Zealand statistics database www.rbnz.govt.nz.

The above statistics showed that New Zealand had experienced an unprecedented growth in the housing market during the period from 1990 to 2005. This rapid growth had put New Zealand's national home affordability to "severely unaffordable" according to international standards (Cox and Pavletich, 2006, p.8). One of the means to deflate the overheated housing market and to make it more affordable is to advocate for capital gains made from property transactions to be taxed as suggested by two political parties *i.e.* the Green Party and the Alliance Party. The Green Co-Leader and Economics Spokesperson, Russel Norman, considered that housing speculation was one of the fundamental factors driving the housing affordability crisis. He supported the introduction of a comprehensive CGT on real estate properties, with exemption for principal residence (Norman, 2007). By doing that, income earned from investment properties would be taxed like other income and this would weaken housing speculation. Similarly, the Alliance tax spokesperson, Professor Jim Flynn, also supported the introduction of a CGT which excluded any gain on principal residence (CGT could help solve housing crisis, 2007). Flynn suggested that a CGT would stabilise property prices by discouraging investors from purchasing investment properties. In his opinion, a CGT would help housing affordability for younger and low-income people in the medium term. The New Zealand Reserve Bank was also in favour of the CGT on rental properties as it would help reduce both the inflation and interest rates caused by rising house prices (Reserve Bank of New Zealand, 2007).

The third attempt at addressing the CGT was undertaken by the Victoria University of Wellington Tax Working Group in May 2009. The group acknowledged the many problems inherent in the current tax treatment relating to the taxation of capital in New Zealand. It considered a number of major base-broadening solutions such as the introduction of a CGT, land tax, risk free return method on residential investment property, and various other issues. In evaluating these alternatives, the group first perceived that a CGT could be an attractive option because of the comprehensiveness of such a tax. However, the group revealed that the introduction of a CGT could pose "practical challenges and efficiency implications" (Tax Working Group, 2010, p.66). In particular, it showed concerns about the complexity of a CGT, the CGT treatment of owner-occupied housing, and the lock-in effects of a realisation-based CGT. As such, the group finally concluded that it would not support the introduction of a CGT. It is therefore considered a pertinent time for this paper to seriously and thoroughly discuss the issue of a comprehensive CGT and to address the ensuing problems of implementing the regime.

In light of the above government reviews on CGT, this paper explores the New Zealand tax practitioners' views on taxation of capital gains. Questionnaires were sent to 507 tax practitioners to discuss various CGT issues including issues such as taxation on property, rollover relief, and indexation. This study adopts both the quantitative and qualitative research approach to explore the tax practitioners' perceptions towards the taxation of capital gains in New Zealand.

LITERATURE REVIEW

Under the New Zealand tax legislation, both the terms "income" and "capital gain" are not exhaustively defined. However, Part C of the Income Tax Act 2007 provides considerable guidance as to what is to be included as income for tax purposes. Part C lists a number of general categories of income, such as business income, income from property, royalties, interest, dividends, and various types of gains. Added to this, there are more than 10 specific subsections of the Income Tax Act which captures a wide range of potential capital gains such as income from land sales, income from the disposition of personal property, and all gains by holders of debt instruments. In addition, there is a "catch-all" provision in section CA 1(2) which captures all incomes under ordinary concepts. In order to interpret the meaning of ordinary concepts, common law principles are therefore required (Alley and Maples, 2006). An overview of the major provisions of the Income Tax Act that tax potential capital gains is provided in Table 2.

CGT IN OECD COUNTRIES

An overwhelming majority of the OECD countries have in place some form of general CGT regime. These countries' CGT systems are based on realisation instead of the comprehensive accrual tax system. In general, these countries' tax systems can be characterised as having either "semi-comprehensive" tax systems (where capital gains are taxed at the progressive rates – the same as ordinary income) or "semi-dual" tax systems (where capital gains are taxed at a lower, flat tax rate) (OECD, 2006a, p. 84). Moreover, some countries (such as the United States) have a stepped rate whereby the tax rate for CGT decreases with the increase in the holding period. Some countries (like Ireland) have a flat rate while others (such as Australia and Canada) use a discount system for taxing capital gains (Australian Government, 2006, p. 206).

Table 2: Summary of the Major Provisions of the Income Tax Act That Tax Potential Capital Gains

"Income" under the Income Tax Act	Details	Section (Income Tax Act 2007)
Business income	• Receipts for the disposal of capital assets • Compensation for the loss of capital assets • Compensation for the loss of profits • Receipts in respect of trade tie arrangements • Receipts relating to contracts involving lease inducement payments	CB1
Gains from the sale of personal property (e.g. public listed New Zealand company shares)	• Capital gains will be taxable if: • The property was acquired for the purpose of resale; or • The taxpayer is a dealer in property	CB 4 and 5
Receipts arising from land transactions	• Capital gains will be taxable if: • The land was acquired with an intention of resale; • The gain is made by land dealers, developers and builders; • The land has been used as a landfill but not at the time of disposal; • The gains derived from major works, subdivision or development of land; or • The gains derived from resource consents or change in zoning	CB 6 to 14
Income from financial arrangements (e.g. debt instrument)	• For cash basis taxpayers: • Capital gains are taxed on a realised basis • For non cash basis taxpayers: • Capital gains are taxed on an accrual basis	Subpart EW

"Income" under the Income Tax Act	Details	Section (Income Tax Act 2007)
Income from controlled foreign company (Subject to amendments)	• Overseas income (including capital gains) derived by offshore companies which are controlled by New Zealand residents is subject to income tax.	EX 1
Income from foreign investment fund (e.g. public listed company shares in the UK)	• Capital gains on foreign investment funds are taxable on an accrual basis. The FIF income is calculated using the fair dividend rate of return method.	EX 28 and 29
Dividend income	• Corporate distributions of capital gains to shareholders are taxable.	CD 1
Receipts relating to lease agreements	• Capital gains derived from the sale of lease agreements on the use of lands and the disposal of leased asset (such as plant, machinery, motor vehicles and equipment) are taxable.	CC 1, CG 7 and FA 5
Depreciation recovery income	• Capital gains on disposal of depreciable property can be clawed back. Full capital gains tax applies if the property is damaged and the taxpayer receives compensation payments in relation to the damaged property. Also any capital gains on the sale of pooled assets are taxable.	EE 48(1), EE 52 and EE 22(5)
Employment income	• Restrictive covenant and exit inducement payments are deemed to be income.	CE 9
Other specific gains	• The following gains are subject to income tax: • Gains by group companies, • Certain distributions to beneficiaries of foreign and non-complying trusts, and • Building society prizes (unexpected gains)	CV 1, HC 15 and CC 6

Notwithstanding the differences among the CGT systems in the OECD countries, it was found that, in a large survey of 20 of these countries, there were several important policy considerations for the introduction of a CGT regime (OECD, 2006b). Drawing from different countries' experiences, the OECD report (2006b) found that the advantages of a CGT generally outweighed its disadvantages. Most importantly, a CGT provides the benefits of: (i) securing tax revenues, (ii) improving efficiency, (iii) strengthening the horizontal and vertical equity, (iv) encouraging savings and investment, and (v) simplifying the tax system. It is, therefore, important for New Zealand to consider the issue of taxing comprehensive capital gains in a wider context and begin to investigate numerous design issues in respect of the implementation of a CGT from a policy perspective. These issues will be discussed in the ensuing section.

DESIGN OF CGT RULES

To design a CGT system, it is important to consider what types of properties are included to be taxed with CGT and how to implement the tax effectively. A review on numerous CGT design issues with respect to the implementation of a CGT is highlighted. These issues include: CGT asset coverage; structure and administration of a CGT; CGT realisation events and rollover relief; CGT preferences; and realisation-versus accrual-based taxation. Each of these issues will be discussed in the following paragraphs.

CGT ASSET COVERAGE

One of the most important considerations for designing a CGT system is to examine the types of properties which are likely to be subjected to a CGT. A comprehensive CGT will tax all assets in general. However, certain types of properties have generated more contentions in the literature and they are: (a) listed company shares, (b) land and principal residence, and (c) personal use property.

First, there is generally no CGT on long-term gains from the disposal of listed New Zealand company shares. But certain short-term capital gains from company shares are treated as personal property and the gains are taxed under section CB 4 of the Income Tax Act. If a comprehensive CGT were introduced in New Zealand, both short-and long-term gains from the disposal of shares would be captured in the tax base. However, the suggestion of a CGT on shares has little support in New Zealand because of the low potential revenue yield derived from these transactions. In particular, two previous tax committees considered that the real capital gains (after adjustment of inflation) from the disposal of listed company shares have been minimal and therefore a CGT was not recommended (McCaw, 1982; McLeod, 2001). As noted by the McCaw Committee (1982), the aggregate real capital gains on equity investments "have been negative over the twenty year period". Moreover, the ability for investors to defer realisation of a gain and to neutralise it by realising capital losses on other assets made the revenue yield of a CGT very low (paragraph 10.29).

Second, another important design issue regarding the asset coverage is land taxation. Under the Income Tax Act, specific provisions are made in sections CB 6 to 14 to tax capital receipts arising from land transactions. These sections list several major classes of assessable income from land disposal:

1. Gain on sale of land acquired with an intention of resale (s CB 6)
2. Gain made by land dealers, developers and builders (s CB 7, CB 9 to 11)
3. Gain on disposal of land which had been used as a landfill but not at the time of disposal (s CB 8)
4. Gains arising from major works, subdivision or development of land (s CB 12 and 13) and
5. Gains arising from resource consents or change in zoning (s CB 14).

Singleton (2003) considered that these provisions targeted a specific group of people who undertook land transactions. In this respect, the tax legislation was not considered neutral as other non land transactions (which gave rise to capital gains on disposal for similar reasons as those listed in CB 6 to 14 of the Income Tax Act 2007) would fall outside the existing tax net. Consequently, Oliver (2001) argued that these provisions lacked a consistent conceptual base and are too "detailed and complex" (p. 78).

However, a taxpayer's principal residence poses special problems when designing a CGT regime of land transactions. It is contentious to tax principal residence as the tax will affect those shifting houses involuntarily (such as relocation of company office). This taxation will discourage people from moving to take up new employment since the tax payment on the sale of their home will mean that they will have to purchase a smaller house or borrow a home loan when purchasing a new house. This phenomenon is often referred to as the "lock-in" effect as people are "locked" into exempt CGT assets in order to avoid paying tax for as long as possible. This lock-in effect will result in efficiency loss as the tax might restrict the more economic use of house-room resulting from a move to smaller houses by those whose needs have changed (Sandford, 1967).

Finally, in defining the asset coverage of a CGT, one must also consider the taxation of personal-use property. In New Zealand, gains from the sale of personal property are not income, unless they are business income. The receipts are regarded as of capital nature. Despite this, under sections CB 4 and 5, the amount derived from the sale of a personal property will be taxable if the property was acquired for the purpose of resale or the taxpayer is a dealer in property.

If the capital gain on all personal-use property were taxable, the tax would be more complicated to administrate as taxpayers would be required to keep a record of the costs of all of their personal-use properties. It is also noted that most personal-use properties seldom grow in value as these assets normally decline in value due to personal consumption. However, the same is not true of collectables such as coins, stamps, jewellery and artworks, which will likely to increase in value due to economic conditions. Moreover, on neutrality and equity grounds, capital gains on disposal of a personal use property should be treated the same as gains on disposal of other capital property (Krever and Brooks, 1990). If a gain on personal use property arises and is realised by a taxpayer, this gain will increase the taxpayer's ability to pay, as with other forms of capital gains.

STRUCTURE AND ADMINISTRATION OF A CGT

In order to implement a CGT system, it is important to have an appropriate tax rate structure. In some jurisdictions, preferential tax treatment in terms of lower tax rate is given to all capital gains compared to ordinary income. Even in those jurisdictions without special preferential CGT tax rate given, the majority of their CGT systems often adjust the tax liability according to the holding period of the CGT asset. The reason for the preferential treatment is to mitigate the lock-in effect of the realisation-based CGT. This would encouraged taxpayers to realise the gains more frequently resulting in tax revenues for the government (OECD, 2006b). However, the problem associated with a preferential tax rate is the likelihood of taxpayers changing their incomes into capital gains to take advantage of the lower tax rate. Hence, tougher and more specific anti-avoidance measures are needed to prevent taxpayers from abusing the preferential tax treatment for capital gains (OECD, 2006b, p.105).

It has been argued that capital gains should be taxed at the taxpayer's ordinary marginal income tax rates based on neutrality and equity grounds. Evans and Sandford (1999) further suggested that a distinction made between short-term and long-term capital gains would distort economic decisions made. In addition, the differences in treatment for these capital gains would heighten the complexity of the tax regime and contradicts the fundamental principle that capital gains should be treated equally as ordinary income (Krever and Brooks, 1990).

If capital gains are taxed at a lower tax rate, the deduction of capital losses should be restricted to capital gains only. The non-deductibility of capital loss against income is justified on the grounds of protecting the tax base and prohibiting taxpayers from exploiting the concession (Cheng, Hooper, and Davey, 2000). As noted by the McCaw Committee (1982), investors will take advantage of the relief for capital losses by deferring realisation of a gain. At the same time, the investors will sell and, possibly repurchase later, other capital gains assets to produce capital losses that are just sufficient to neutralise the gain.

CGT REALISATION EVENTS AND ROLLOVER RELIEF

Another issue with the CGT relates to the timing of realisation of the tax liability. In general, a CGT liability is established when a capital gain (i.e., the sale proceeds less cost of acquisition) is realised. However, there may be situations (or CGT events) where no physical changes have taken place. For example, a property may be deemed to be "disposed off" upon a person's death or when the person ceases to be a tax resident of a country. The ambiguity in the ordinary meaning of "acquisition" and "disposal" often leads to uncertainty in the application of a CGT (Evans and Sandford, 1999). To tackle these definitional problems, a CGT event approach has been used in Australia. In those circumstances, events are set out that will trigger a CGT liability and specify the tax treatment relating to it.

It is also necessary to consider the situations in which a CGT should be excluded or deferred. Non-recognition or roll-over provisions are sometimes provided so that taxpayers are able to defer payment of a CGT that might otherwise be triggered. The rollover provision is justified on the presumption that, if the disposal is essentially a paper transaction (that is, there is a change in form but not substance), the person concerned would not have attained any gains in reality because his or her financial position remained unchanged. In other cases, business organisations are reluctant to reorganise their business structure as this may incur a significant CGT liability. The rollover regimes are there to mitigate the lock-in effect of a CGT resulting from business restructuring.

CGT PREFERENCES

In addition to the above CGT design issues, a number of CGT preferences and exemptions need to be considered for policy reasons. One of these preferences is the provision of indexation, i.e. adjustment for inflation. The negative impacts of inflation have long been recognised in New Zealand. The McCaw Committee (1982) found that horizontal inequity would occur unless adjustments were made for inflation in the tax base as a whole. On efficiency grounds, it was suggested that the CGT system should be adjusted for inflation so that only real profits were taxed and investment direction would not be distorted. Similarly, the McLeod Committee (2001) discussed the impacts of inflation on the effective tax rates and showed that the tax system could tax a person at more than 100 percent of real income if relief were not provided for the effects of inflation. The issue of inflation was considered as critical by the Valabh Committee (1989) that it went one step further by introducing a comprehensive inflation allowance regime.

In practice, however, the method of taxation normally fails to distinguish real capital gains and nominal gains. An alternative measure such as the tapering discount is considered. The tapering discount allows for a reduction in a CGT liability when the taxpayer disposes the asset after holding it for a specified period of time. Prior to April 2008, the United Kingdom provided a taper relief which gradually reduced both the inclusion rate and the resulting overall effective CGT tax rate, i.e., the longer a capital gains asset was held, the lesser the tax rate is levied. However, this taper relief was later abolished on April 6th, 2008 as part of the amendments to the CGT (International Master Tax Guide, 2008).

It is noted that CGT preferences can be given in the form of small gains exemption. For simple administration, most countries with a comprehensive CGT provide some forms of exemption for small gains to reduce the taxpayer's compliance cost. It is argued that by doing so it would exempt small capital gains "where the economic cost of compliance outweighed the national benefits [flowing] from neutralising the capital/ income boundary as [far as] tax liability was concerned" (Morgan, 2001, p. 23).

REALISATION-VERSUS ACCRUAL-BASED TAXATION

Though most OECD countries have adopted a realisation based CGT regime, they have encountered some problems associated with the implementation and administration of the regime. It is argued that such a tax structure distorts market and taxpayers' behaviour because of the lock-in effect (as already discussed in section under the heading, "CGT asset coverage") and the bunching effect (Singleton, 2003). "The bunching effect" occurs when certain taxpayers' income becomes extraordinarily high because gains in each year are accumulated and added to their income in the year in which they dispose of the property. As a result, the taxpayers have to pay the CGT at a higher marginal tax rate because of the larger gain (Ross and Burgess, 1996).

There are strong theoretical grounds to support the introduction of an accrual-based CGT. In theory, an accrual based CGT taxing capital gains at the same effective rate across all investment provides neutrality to the tax system and avoids distortion. However, accrual taxation is hard to operate in practice due to its valuation and liquidity problems. In fact, no country has applied an accrual-based comprehensive CGT and therefore most capital gains are taxed on a realisation-basis (OECD, 2006b). Despite this, New Zealand is the one of the two OECD countries other than Australia that applies a partial accrual taxation which is applicable to certain asset classes such as expected gains on corporate bonds[1].

Given the above arguments for and against a CGT regime, the next section will examine the research approach taken for this paper to identify the tax practitioners' views of having such a tax regime in New Zealand. The research approach used for this paper is that of mixed methods methodology.

MIXED METHODS AND METHODOLOGY

This study followed a mixed method research strategy using a pragmatic research paradigm as originated by Tashakkori and Teddlie (1998). There are many advantages of using the mixed method, as evidences can be corroborated using survey and interviews. The interview findings also provided depth to some of the findings.

The sample in the survey was the tax practitioners who had good working knowledge of the New Zealand tax system. These practitioners were made up of tax accountants, tax agents and tax lawyers with working experience of three or more years. A covering letter was initially sent to two professional bodies namely the Tax Agents' Institute of New Zealand and the New Zealand Institute of Chartered Accountants (NZICA) since some of their members are tax practitioners. Assistance was sought from these two professional bodies to furnish contact details of their tax practitioners members to be included in the survey research. They replied with the web addresses of their members' databases such as the website of the Tax Agents' Institute of New Zealand and the search engine at the NZICA's websites. These databases were freely accessible to the public and designed to facilitate potential clients to search for their tax agents.

[1] The Financial arrangement rules (traditionally referred to as "the accrual rules") are contained in Subpart EW of the Income Tax Act 2007.

Other sources of contact details of tax practitioners were obtained via the websites of major accounting and law firms in New Zealand namely, KPMG, Deloittes, Pricewaterhouse Coopers, Ernst and Young, BDO Spicers and Chapman Tripp. The individuals were selected based on their title and/or interest in taxation. As a result, a total of 507 tax practitioners were included in the survey sample.

RESEARCH METHOD

The practitioner surveys were mailed to the sample in the period between 27 October 2005 and 30 November 2005. In total, 170 responses were received. However, 23 chose not to participate because of family problems, insufficient time, retirement, incompetent knowledge and skill, or reluctance to complete the questionnaire. As a result, 147 completed surveys were used for data analysis giving a response rate of 29%.

A response rate of 29% is considered acceptable for a tax survey as other tax surveys have also achieved similar results. For example, a large postal survey (with a sample size of 16,000) conducted by the Inland Revenue achieved a similar 29% response rate (Oxley, 1993). In addition, Evans (2003) who surveyed 667 tax experts in Australia and the United Kingdom also achieved a 29% response rate. A survey of 600 small businesses conducted by Arthur Andersen and Co (1985) only achieved a 7% response rate. It is common therefore to expect a relatively low response rates for tax surveys. This may be due to the perceived sensitivity of tax topics by survey participants.

Of the total 147 respondents, 77% (n=113) were males and 23% (n=34) were females. The geographical locations of the respondents were well distributed across New Zealand. Most of the respondents were registered tax agents followed by members of NZICA, Certified Public Accountants, the Taxation Institute of New Zealand and the New Zealand Law Society. In addition, two thirds of the respondents had tax working experiences of more than 10 years.

The questionnaire also invited the respondents to further participate in a one to one face follow up interview. 20 of the same respondents participated in the follow up interview. Twelve of the interviewees were from small and medium sized tax agencies, seven were from a large accounting firm and the remainder one was from a law firm. All interviewees had been in the taxation practice for more than ten years. The interviews were conducted face to face at the respondents' premises in the period between 23 December 2005 and 28 April 2006. The interviews were taped with the permission of the interviewees and each interview had an average duration of 90 minutes.

RESEARCH RESULTS

This section is divided into several parts pertaining to CGT issues. The first part identifies the general issues of CGT followed by CGT asset coverage; recommended structure of a CGT; CGT realisation events and rollover relief; CGT preferences; administration of a CGT; the practical issues of the accrual CGT; and finally the overall decision for CGT adoption. Each of these parts will be discussed in depth under the various subsections.

GENERAL CGT ISSUES

This part examines the common issues pertaining to CGT regime. As part of introducing the CGT topic to the respondents, they were asked to rate the six CGT statements using a five-level Likert scale (ranging from strongly disagree, with a value of 1, to strongly agree, with a value of 5) to identify their attitude towards the tax. A summary of the descriptive statistics findings are provided in Table 3.

In summary, the results from the survey showed that there was a general awareness of the tax planning potential for the tax practitioners if CGT is not introduced (median 4 in question 3). However, most of the respondents were uncertain (median 3) about the issues of double taxation (question 5) and the beneficial effects from the introduction of CGT. Common benefits should CGT be implemented include the protection of income tax base (question 4) and the distinction made between income and capital gains (question 2).

Table 3: Attitude Score on General CGT Issues

Questions	Mean*	Median*	Mode*
1. As most of our trading countries have a CGT, implementation of a CGT is inevitable	2.63	2	1
2. Taxing capital gains will clarify (and possibly remove) the distinction between capital gains and income, therefore it reduces the uncertainty in the application of the tax law	2.85	3	4
3. The absence of any CGT in New Zealand provides significant opportunities for tax planning	3.92	4	4
4. CGT will raise revenue for the government if only by protecting the income tax base	3.22	3	4
5. CGT is double taxing investors as the money they invest in a business has already been taxed	3.09	3	2
6. Capital gains and income should be taxed on the same basis	2.19	2	1

*Ranging from 1 = strongly disagree to 5 = strongly agree

The uncertainties of having a CGT regime were also shared by the interviewees. Most of the interviewees were generally satisfied with the status quo i.e., no CGT. They agreed that the current tax system had sufficiently covered most of the capital gains issues and the government should only tax those who had intentions for resale or for profit-making business pertaining to property transactions. Some respondents argued that the complexities of implementing a CGT would create more tax loopholes than to eliminate it. For example, a taxpayer might choose to maximise capital losses for deduction of income.

The respondents also considered the income/capital gain distinction to be reasonably clear but they cannot ascertain the differences with total confidence as mentioned by one of the interviewees:

> "…nobody can say for certain not even an expert, that something is or isn't taxable when it involves a certain degree of subjectivity that follows from an interpretation of a word in the Tax Act".

The above discussion showed that there are still many contentious issues relating to CGT that are not easily resolved just by implementing the regime.

CGT ASSET COVERAGE

This part explores the tax practitioners' perceptions about the taxation of capital gains on 15 types of CGT assets. Although answers were given in a Yes/No format, occasionally, the respondents provided additional feedback by writing their comment beside a particular question. The discussion of this qualitative information is also included, if applicable. The data is summarised in Diagram 1.

In Diagram 1, majority of the respondents answered "No" to most of the CGT assets. In particular, over 90% of the respondents opposed the inclusion of personal-use property (95.2%) and main residence (93.8%). For the other remaining options of CGT assets, the majority of them wanted exemptions, except for copyrights (48.6%), farms (49.3%), shares in a listed company (51%) and share options (49.3%).

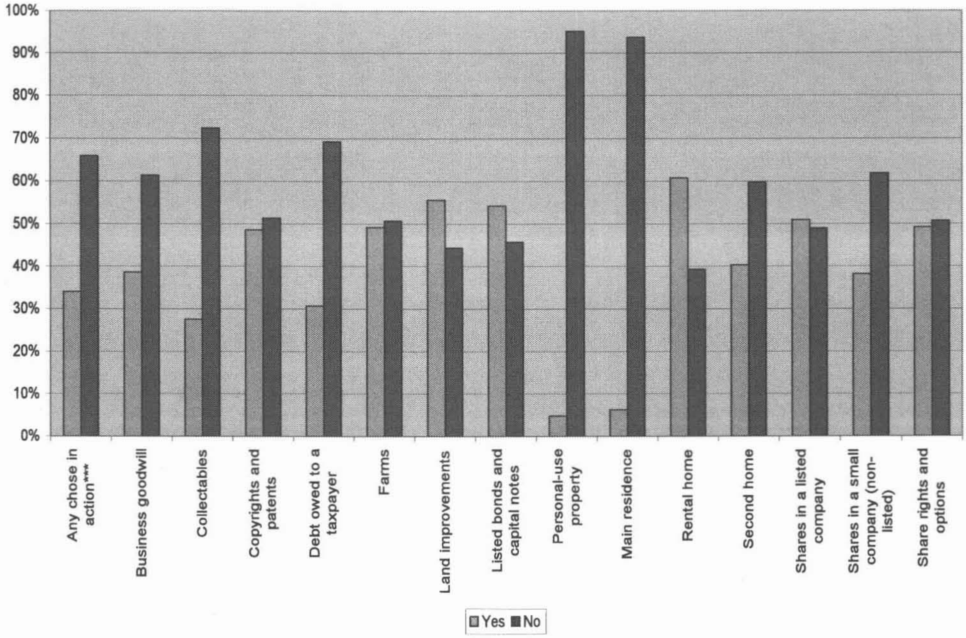

Diagram 1: CGT Asset Coverage

***The category (any chose in action) had high non-response rate of 12.2% (n=18)

The exemption for main residence (i.e., no CGT) was the most cited subject discussed during the interviews. Many highlighted the importance of differentiating the nature of properties for CGT exemptions. One respondent cited that "implementing CGT is ideal to curb people gaining tax free by way of owning numerous properties thereby forcing up prices." However, he reiterated that "a second home or a rental home should not be taxed to allow a family to build up their assets for their children and themselves". In contrast, another respondent preferred a CGT on rental properties as he considered rental properties as providing tax relief in offsetting mortgage and other expenses which would otherwise be not available for private home owners. Moreover, there are administrative difficulties and added compliance costs should CGT be implemented on private homes as suggested by a respondent:

> "There are significant issues regarding CGT particularly if there are exemptions for the family home, i.e., at what value. What is the difference between people who live in a $500,000 family home and have a $500,000 beach house and spend equal amount of time living in both and someone who lives in a $1 million home at a beach?"

CGT remains a complicated issue and the next subsections will discuss what constitute a proper structure of CGT.

STRUCTURE OF A CGT

This part explores the tax practitioners' perceptions about how the CGT should look like in terms of its structure, the rate and the cost base.

Regarding the general CGT structure, just over half the respondents (52.2%) preferred a separate tax from the normal income tax system for CGT compared to the rest of them (47.8%) who preferred CGT to be included as part of the present income tax system.

As for the tax rates, a slight majority (55.8%) preferred capital gains to be taxed at a lower rate than ordinary income whereas 41.3% considered the CGT to be taxed at the same level as the income tax. Only a very small minority (2.9%) proposed a higher tax rate for capital gains.

Table 4 reveals the items that could be included for the calculation of the cost base for CGT purposes. The vast majority of the respondents suggested a broad based cost structure. They supported (with a median of 4 and above) the inclusion of most items, except for contingent liabilities and repair and maintenance expenses (with medians of 3).

Table 4: Items for Calculation of the Cost Base

Item	Mean*	Median*	Mode*
Agent fees e.g. commission and brokerage	4.38	5	5
Contingent liabilities	3.33	3	5
Debts to finance the property	3.7	4	5
Improvement expenditure for property	4.42	5	5
Interest for financing the property	3.68	5	5
Legal fees and stamp duty	4.45	5	5
Market value of any property a taxpayer gave or is required to give in respect of acquiring a CGT asset	4.21	5	5
Purchase price	4.56	5	5
Repair and maintenance expenses	3.24	3	5

*ranging from 1 = strongly disagree to 5 = strongly agree

In the interview phase, the respondents generally agreed that all costs should be deductible for CGT purposes. However, one respondent pointed out the timing problem in respect of the deduction of capital expenditure:

> "The government should look at the whole picture. If CGT were introduced, they would have to accept that all running expenses should be deductible in the year incurred when the tax payers need the tax breaks the most".

CGT is also unique in the sense that it has issues relating to the realisation events and the rollover relief which will be discussed in the following subsections.

CGT REALISATION EVENTS AND ROLLOVER RELIEF

This part reveals the practitioners' opinions (based on a 5-point Likert scale) on 14 CGT events that would trigger the need for implementing a CGT.

A low median score of one indicates a strong level of disagreement to realisation event which could be defined as a strong desire for the introduction of rollover relief (non-realisation) in that situation. The survey results are summarised in Table 5.

As shown in Table 5, the respondents preferred rollover (non-realisation) for business relocation (median 2), incorporation of a company (median 2), involuntary disposition (median 2), renewal of a lease agreement (median 2) and spousal transfer of assets (median 2). This is because these events are considered as part of the normal business operations and they are not undertaken specifically to make capital gains.

The only CGT event that the respondents agreed on was when a taxpayer ceased to be a tax resident (median 4). This is because non residents are perceived to be no longer benefitting New Zealand and therefore should be liable to pay taxes owing. Overall, the respondents had neutral opinions about other realisation events.

Table 5: CGT Events - Situations Where A "Disposal" Of A Property Should Have Taken Place for CGT Purposes

CGT Events	Mean*	Median*	Mode*
Assets-for-shares acquisition	2.92	3	1
Business relocation	2.29	2	1
Gifting away the asset	2.9	3	4
Incorporation of a company	2.22	2	1
Insurance payment for destroyed property	2.78	3	1
Involuntary disposition e.g. compulsory acquisition by the government	2.52	2	1
Like-kind property exchange	2.95	3	1
Liquidations including the situation where a wholly owned subsidiary is wound-up into its parent	2.89	3	4
Reinvestment in replacement property	2.74	3	1
Renewal of a lease agreement	2.1	2	1
Share-for-share exchanges	2.79	3	1
Termination of a contract	2.80	3	1 and 3
Transfers of assets between related parties including spousal transfer	2.48	2	1
When a taxpayer ceases to be a tax resident in New Zealand	3.31	4	5

*ranging from 1 = strongly disagree to 5 = strongly agree

The next subsection will capture the uniqueness of CGT in terms of what is preferred to be included in the CGT regime.

CGT PREFERENCES

This section reveals the opinions of the tax practitioners' regarding the provisions of certain CGT preferences. As shown in Table 6, the respondents generally gave median scores of 4 and higher to the 7 statements which indicate their level of agreement to the provision of all CGT preferences. In particular, they strongly agreed with a median of 5 for the following issues:

1. that the cost base should be adjusted for inflation e.g. indexation for capital gains,
2. the provision of general exemption for small gains for administrative simplicity, and
3. partial exemption for disposal of active assets of small businesses.

These findings overwhelmingly reflect the practitioners' view for a fair and simple CGT regime to be implemented in order to be effective and neutral.

The need for indexing the CGT was corroborated by some interview respondents. They further suggested the need to index particular classes of assets including goodwill, farms, rental home, and shares. By doing so the same losses attributable to these same assets should also be deductible. However, a respondent pointed out that any exemptions from a tax would become a tax "planning option". By allowing for the exemptions, he believed that it could provide "a mine field" allowing for unscrupulous tax avoidance activities to be undertaken by aggressive tax planners. He is also of the opinion that the exemptions should be limited to capturing larger transactions for administrative simplicity.

Table 6: CGT Preferences

CGT preferences	Mean*	Median*	Mode*
1. Do you think the cost base should be adjusted for inflation e.g. indexation for capital gains?	3.85	5	5
2. Do you think a tapering discount should be provided in order to reduce the lock-in effect?	3.77	4	5
3. Do you think an averaging relief should be provided in order to reduce the bunching effect?	3.68	4	5
4. Do you think a tax relief should be provided for disposal of a small business (e.g. turnover of less than $1 million)?	3.63	4	5
5. Do you think a tax relief should be provided for new/ innovative business venture?	3.47	4	5
6. Do you think a general exemption should be provided for small gains (e.g. the total of capital gains of a taxpayer is less than $1,000) because of administrative simplicity?	4.59	5	5

CGT preferences	Mean*	Median*	Mode*
7. Do you think a partial exemption should be provided for the disposal of active assets of a small business (whose annual turnover is less than $1 million)?	3.95	5	5

*ranging from 1 = strongly disagree to 5 = strongly agree

ADMINISTRATION OF A CGT

Most tax practitioners strongly supported (median 5) the deductibility of capital loss against gross income (ordinary income). Also, the majority of the respondents agreed that any unused capital loss should be carried forward to the next financial year for individual and corporate taxpayers. They also agreed that "CGT paid at the company level should be transferred to the shareholders as CGT credits" (median 4). These results confirmed that they preferred a neutral tax system as CGT credits would be transferable to the individual and capital loss could be offset against income.

However, it is important to have some anti-avoidance measures to stop taxpayers from manipulating a CGT. On this, the tax practitioners agreed (median 4) that a deemed "market value" regime should apply to the disposal price when there is no consideration given.

Regarding international taxation, the respondents agreed (median 4) with the statement that "New Zealand tax residents' overseas assets should be included for CGT purposes". They also strongly agreed (median 5) that "non-residents should pay CGT if they earn capital gains from disposing of New Zealand assets". The comments reflect the need for a neutral CGT regime. But despite this, some practical issues need to be considered as discussed in the next subsection.

ACCRUAL CGT – PRACTICAL ISSUES

Another element pertaining to CGT is the practical issues surrounding an accrual based CGT. It explores issues such as asset valuation and the liquidity problem if CGT is implemented. The result from the survey is summarised in Table 7.

Table 7: Asset Valuation and Liquidity Problem of an Accrual Based CGT

Do you think an objective market price is obtainable for the following assets?	Mean*	Median*	Mode*
• Commercial property	3.45	4	4
• Collectibles e.g. jewellery, stamps	2.46	2	1
• Farms	3.31	4	4
• Financial instruments (listed) e.g. bonds and capital notes	3.58	4	4
• Intangible assets e.g. patents and copyright	2.3	2	1
• Personal-use property e.g. home appliance and private car	2.47	2	1
• Residential property	3.22	4	4
• Shares in a listed company	3.69	4	5
• Shares in a small company (non-listed)	2.46	2	2
Do you think taxpayers will suffer liquidity problems under an accrual-basis tax because they have not yet converted the gain to cash?	4.62	5	5

*ranging from 1 = strongly disagree to 5 = strongly agree

The respondents generally agreed (with median of 4 and above) that an objective market price is obtainable for commercial property, farms, listed financial instruments-bonds and capital notes, residential property, and shares in listed companies. However, they disagreed (with median 2 on average) that the market values for collectible, intangible assets, personal use property and shares in private companies could be measured in an objective manner. With the lack of objective values for these items, these findings therefore suggested the exclusion of these non-quantifiable items from an accrual based CGT. The respondents were also mindful of the liquidity impact on the taxpayers should an accrual based CGT be implemented. This is because of the unrealisable gain made with the items remaining in the taxpayer's possession and is not sold to another party. In addition, this view is corroborated by the qualitative interview findings that a large majority generally opposed an accrual based CGT due to the huge compliance costs required for having to value their assets on an annual basis.

The next subsection discusses the findings for the overall perception in adopting a CGT regime for New Zealand. It is interesting to note that the majority preferred a non comprehensive CGT regime and to have the existing tax system to remain as it is.

OVERALL SURVEY RESULTS FOR CGT ADOPTION DECISION

The crux of the survey is to seek the respondents' overall support for or against having a CGT regime.

The factor "CGT priority" was constructed to examine the respondents' preference by ranking their maximum level of support to a comprehensive realisation based CGT, to a comprehensive accrual based CGT, and to the status quo tax system. The value of this factor ranges from "-1" to "1", where "-1" indicates opposition against a CGT, "0" for neutral (or equal maximum level of support to the status quo tax system and the CGT model) and "1" indicates support for a CGT. For example, a person giving attitude scores of 5 for status quo, 3 for realisation based CGT and 1 for accrual based CGT, would be given a "-1" score of CGT priority. The factor also represents a comparison of the level of support between the status quo tax system and a realisation based CGT as the attitude score for an accrual based CGT is very low (strong disagreement). The statistics of the "CGT priority" factor are summarised in Diagram 2.

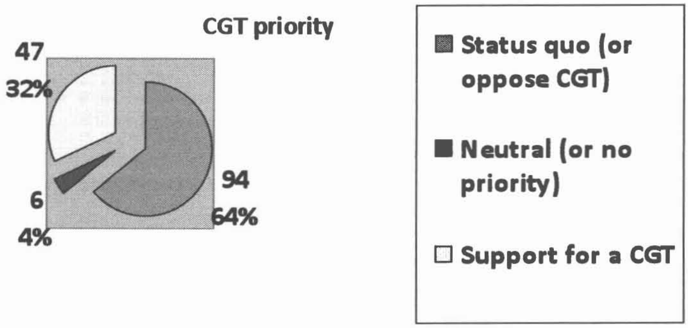

Diagram 2: CGT Priority

Diagram 2 shows that 63.9% (n=94) of the respondents preferred the status quo tax system, 32% (n=47) for a CGT model and 4% (n=6) for neutral/equal preference of the two tax systems. It is noted that the factor CGT priority had a mean score of -0.32, a median of -1 and a mode of -1. These results show that the respondents generally preferred the status quo tax system. As for the written feedback, most of the respondents expressed a preference for the status quo tax system and opposed the introduction of a CGT. The reasons for their opposition were varied, but the most common criticism was that CGT was complex and created compliance issues. This same view is also confirmed by the interview respondents. With this in mind, it is therefore not surprising that the New Zealand government has been hesitant in implementing the CGT despite three attempts to address the CGT concerns based on neutrality reasons.

DISCUSSION AND ANALYSIS

Both the survey and interview results revealed that the tax practitioners generally were satisfied with the current tax system and they do not want a CGT regime to be introduced. In particular, they agreed that the core fundamentals of the tax system provided reasonable equity, some degree of efficiency, and excellent simplicity for the wage and salary earners. However, they considered that there should be room for improvements in business taxation as the compliance cost for business was regarded as high. High compliance costs for New Zealand businesses are well documented in the literature. For example, the New Zealand compliance costs in 1990-1991 was estimated at 2.5% of GDP which is equivalent to NZ$1.8 billion (Caragata, 1998). One tax practitioner commented on the overall tax compliance cost of small businesses:

> "...if you take a little guy [who] starts out in business and suddenly he is faced with GST, FBT, PAYE, those are the three main ones that he will be involved with straight away when he starts in business in general. Unless you do your paperwork on time, you will incur a lot of extra expense in the terms of penalties because they are non-deductible."

Most tax practitioners had identified the high effective marginal tax rate as the major problem in the current tax system. This problem was due to the system of social assistance and tax abatements. Some suggested a reduction of the top marginal tax rate, while some preferred an increase in the tax threshold. In particular, they considered that New Zealand did not need a CGT because the taxpayers had already been overtaxed through the income tax and GST system.

It would be a better alternative to raise more revenue by increasing the GST tax rate. These suggestions were in line with the recommendations made by the 2010 Tax Working Group (Tax Working Group, 2010). At this stage, the GST increase had been ratified by the New Zealand government to commence on the 1 October 2010.

It is noted that the tax practitioners were generally satisfied with the New Zealand hybrid CGT tax system which is applied to the gains made by businesses, developers and traders. The majority agreed that the current tax system had sufficiently covered most capital gains, and the government should only tax those taxpayers who had an intention for resale or for profit-making business.

Another aspect of the New Zealand hybrid tax system is the taxation of accrual capital gains under the Financial Arrangements rule. The rule was considered by the respondents as the most complex tax area. Because of the complexity of the rule, they often cited "uncertain" or "not in a position to comment on".

Some respondents strongly opposed a comprehensive CGT as the tax was considered counterproductive and hindered wealth accumulation. They recognised the importance of the tax free capital gains to the country as a whole in terms of improved balance of payments and economic growth. This argument was consistent with the view that a CGT would hinder the growth of investment and capital assets (Committee Against Capital Taxes, 1989). One respondent argued that the absence of a CGT in New Zealand was regarded as "precious" and the status quo needed to be preserved.

Most respondents regarded the compliance issues such as more paper work and increasingly complex tax legislation as the worst possible outcomes of a CGT. They considered that compliance cost would increase dramatically as the tax would claw back a number of individual taxpayers just earning salary and at present were not required to file tax returns. The complexity problem of the CGT cannot be undermined as stated by one respondent:

> "CGT would provide [an] opportunity to totally revamp tax and GST systems...political reality is that it would be a hybrid system with exemptions, making it complex and creating compliance issues".

The strong opposition against a CGT could also be partly explained by the social and political factors. As mentioned in the earlier section, the exemption for a private home was the most cited subject in the interviews. Most respondents considered that the residential property market was a vital part in New Zealand economy and that real estate property was the most secure and profitable investment compared to other alternatives such as listed company shares as many considered share trading to be a speculative activity:

> "The share market really is speculative because you buy shares, you don't know how good the shares are going to be, how they are going to perform and not everybody buys them for dividends."

Since there has been no compulsory saving regulation before KiwiSaver was implemented in 2007, household properties often represent the individual's entire saving for retirement. These assets continue to provide attractive securities for borrowing from lending institutions. Bearing this in mind, CGT on household properties was regarded as counter productive as it would hinder wealth accumulation by individuals.

Moreover, a number of respondents acknowledged that CGT was negatively perceived by the politicians. For example, it was referred to as a "political suicide" by the former New Zealand Finance Minister, Michael Cullen (New Zealand Press Association, 2000, p.1). The general view was that any political party introducing a CGT would subsequently lose any future elections due to the strong opposition from the public regarding CGT. Despite that, many respondents are aware that CGT is inevitable in the future as New Zealand remains the only OECD country at present that does not have a comprehensive CGT regime.

All in all, one respondent discussed the problem of implementing a CGT in practice and stated that:

> "I think a lot of problems that people have with a CGT is intellectually they are quite attracted to it, but when you get down to the practicalities of it, it ain't that great a tax, it does cause a lot of big problems..."

CONCLUSION

This study explored the views of New Zealand tax practitioners towards a CGT regime. The results showed that most of them preferred the status quo and opposed a comprehensive CGT largely because of the added compliance costs and the complexity associated with such a regime. Even though many preferred the status quo for the tax system, they also acknowledged that due to the lack of CGT, it had provided significant tax planning opportunities for them. They also identified the high effective marginal tax rate as the major problem in the current tax system.

The complexity of the CGT includes the structure on which CGT is calculated and the valuation basis it uses (either realisation or accrual). To compound the problem further, CGT can be seen as an additional tax and potentially can create liquidity problems for the taxpayers particularly for unrealisable gain made should the accrual basis be used. The tax practitioners also suggest that the complexity of the CGT can create more tax loopholes making the tax system unfair. In their opinions, the best approach to combat such problem would be for the government to broaden the income tax base and use an incremental tax policy to capture capital gains but limited to gains made on certain assets such as rental properties.

This paper showed that the CGT remains a contentious issue with many acknowledging the need to address some capital gains made. At the same time, they resisted the argument for implementing CGT on the basis that it will inhibit savings and wealth accumulation as well as it would increase the complexity of the tax system with added compliance costs. The tax practitioners were also reluctant to suggest a CGT because majority of them considered it was unfair to tax comprehensive capital gains. Despite these resistances, New Zealand may have pressure in the future from other OECD countries to consider CGT in order to remain competitive globally.

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