



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Finance and Expenditure Committee

on the

**Taxation (Neutralising Base Erosion
and Profit Shifting) Bill**

P O Box 6645

Wellington

8 February 2018

1. Introduction

- 1.1. This submission is made on behalf of the 30 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. Thank you for the opportunity to comment on this Bill.
- 1.4. We make this brief submission in order to indicate our ongoing interest in the issue of corporate tax avoidance and its importance.
- 1.5. The loss of revenue from tax avoidance and evasion has a direct impact on our members in loss of revenue for public services which we value, and in higher taxes than otherwise necessary on working people.
- 1.6. In addition, work to prevent corporate tax evasion or avoidance is part of encouraging business responsibility. It ensures that responsible companies and investors are not undercut by the irresponsible behaviour of others.
- 1.7. We welcome the work being done in the OECD on Base Erosion and Profit Shifting. Aggressive tax avoidance and evasion by international investors and multinational corporations is best combatted by international cooperation. It is important that New Zealand acts promptly to take advantage of such agreement both to protect our own revenue and to support other countries acting or considering acting to do the same. We would not like to see New Zealand lagging in these important matters.
- 1.8. However that does not mean that New Zealand should not act unilaterally or in concert with Australia or a small number of like-minded countries when it is able to do so. We recognise that some matters will not find international agreement or will take many years to find agreement. That should not stop New Zealand from taking what action it can.

1.9. We do not believe that New Zealand should be swayed by concerns or threats of disinvestment by multinational companies. We agree with officials' comments in the Regulatory Impact Statements on this Bill¹ that

... these multinationals should not be allowed to exploit weaknesses in our tax rules to achieve a competitive advantage over more compliant multinationals or domestic firms. Furthermore, arbitrary reductions in tax, depending upon the opportunism of taxpayers, are likely to distort the allocation of investment into New Zealand. New Zealand is also undertaking these BEPS measures in line with a number of like-minded countries throughout the OECD. Given this, we believe any impacts on foreign direct investment into New Zealand will not be material and implementing these measures remains in New Zealand's best economic interests. It is also highly unlikely that foreign companies will remove their existing personnel from New Zealand as a result of these proposals. Most of the affected foreign companies are dependent on having personnel in New Zealand to arrange their sales. Without personnel on the ground, they would not be able to service their New Zealand market. It is also unlikely that they would cease to operate in New Zealand altogether.

1.10. If investors' presence in New Zealand depends on tax avoidance then it is questionable what value they add to New Zealand and whether their character should be welcomed, let alone encouraged by weak tax laws.

1.11. We also note that officials have consulted intensively with representatives of multinationals and investors and have made significant changes to what was originally proposed as a result. We are not able to judge whether those changes have weakened the Bill but make the point that overseas investors cannot complain that they have not been listened to.

2. Specific matters

2.1. We have three specific comments.

Diverted Profits Tax

2.2. Firstly we do not believe a Diverted Profits Tax should be dismissed. Such taxes have been implemented in Australia and the U.K. They are a penal rate of tax aimed to provide an incentive on multinationals to pay the right tax under the standard rules. We note that officials believe that they have addressed most of the

¹ Taxation (Neutralising Base Erosion and Profit Shifting) Bill: Bill Number 3-1: Regulatory Impact Assessments, p.21.

advantages of a Diverted Profits Tax in their proposals. The effect of the Bill should be monitored for a limited time and a Diverted Profits Tax reconsidered if the new legislation is not working.

Public Private Partnerships

- 2.3. Secondly, we do not agree with the logic (explained on p.4 of the Bill) that Public Private Partnerships should have the privilege of an exemption from thin capitalisation rules, allowing them to have high related party debt loadings. This is inviting a subsidy of PPPs through a loss in tax revenue. If the government is concerned regarding levels of debt being a competitive issue it could specify thresholds in its PPP contracts.
- 2.4. PPPs are an expensive way to fund public infrastructure and services, in part because of the higher cost of private debt compared to the government. There is no reason to encourage them.
- 2.5. They have other failings and are therefore highly controversial in New Zealand and elsewhere. This is particularly so, across the political spectrum, in the U.K. where the National Audit Office recently released a report² finding that private owners of Public Finance Initiative (a form of PPP) projects may be more costly and that there was no evidence of the assets being operated more efficiently. This adds to other similar evidence.

Taxation of Google, Facebook and others without taxable presence

- 2.6. Thirdly, we have an area of special concern: the avoidance of tax by multinational internet-based corporations such as Google and Facebook puts local carriers of advertising such as newspapers and broadcast television and radio at a competitive disadvantage. The business model of conventional news media is already severely weakened by changes in technology brought largely through the internet and other forms of digital media and communications. The advertising revenue on which the conventional media depend is undermined by these new technologies and forms of business, which they are struggling to respond to. It makes it even more difficult if their competition can lower their costs by avoiding paying tax on their activities.

² *PFI and PF2*, National Audit Office, 18 January 2018, available at <https://www.nao.org.uk/wp-content/uploads/2018/01/PFI-and-PF2.pdf>

- 2.7. This is a matter of public interest: the conventional media are still the principal originators of the content on which we largely depend for reliable news, and particularly for news about New Zealand. The steady loss of capacity through layoffs of journalists and other media staff is creating a major failure in the news media market.
- 2.8. There is therefore a strong public interest case to ensure that provision of advertising services and platforms is tax neutral. We are gravely disappointed that the proposals do not address the tax avoidance of Google, Facebook and others which have significant activity in New Zealand but do not have a tax presence in New Zealand. This is a growing issue that will affect more than the media industry. We urge action to address this.
- 2.9. We also suggest the Committee ask officials whether provisions of the proposed 'Comprehensive and Progressive Transpacific Partnership' (CPTPP, formerly the TPPA) will create any difficulties in deeming or requiring tax presence or permanent establishment. For example Article 10.6 of the proposed agreement states: "Local Presence: No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service."

3. Other matters

- 3.1. We also repeat a recommendation we made in our submission to IRD in its earlier consultation on these proposals: that it would be very valuable for IRD to regularly publish summary information on the taxation of multinationals in New Zealand. This would give the public important information that is necessary for informed discussion of such matters and to judge whether measures such as those in this Bill are effective. We ask the Committee to do what it can to ensure that this happens.
- 3.2. We wish to appear before the Committee.