TARGETING AMNESTIES AT INGRAINED EVASION – A NEW ZEALAND INITIATIVE WARRANTING WIDER CONSIDERATION?

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I INTRODUCTION

A most intriguing development in New Zealand from a behavioural tax compliance perspective was the announcement on August 17, 2004 (along with the associated discussion document) concerning the possibility of limited scope (or targeted) tax amnesties in an effort to reduce the level of ingrained tax evasion in targeted industries. Options For Dealing With Industry-Wide Tax Evasion sets out the NZ Government’s proposals for cracking down on the hidden economy through targeted tax measures.

The proposals described in the discussion document would allow the IRD to offer limited amnesties to targeted industries or other groups, giving businesses within those industries a last chance to “clean up their act” and begin complying with the law. Income tax evasion is proposed as the main subject of the amnesties but these amnesties could also extend to other taxes, such as GST, depending upon the circumstances (as determined by the IRD). The limited amnesties would be backed up by intensive enforcement activity against those who did not take up the offer. Submissions on the proposals closed on 1 October 2004. If the NZ Government determines it will go ahead with the proposal, legislation was intended to be introduced early in 2005. As at 1 December 2005, with changes in the Government’s policy and legislative priorities, and the new Government arrangement put in place following the September 2005 General Election, there has been no progress on the proposals, publicly at least.

The NZ Government within days of the announcement was on the back foot given the immediate and frequently emotional reactions to the proposal. In response Ministers were at pains to emphasise that the proposal is not about simply letting tax evaders “off the hook”. Rather, David Cunliffe, Associate Minister of Finance and Revenue, argued that the proposals are intended to improve the incentives to come forward for those who are willing to begin complying with the law, allowing the IRD to focus more resources on those who continue to evade tax.

However, several commentators are of the view that the proposal is a non-starter and unlikely to be effective, and they may in fact cause more negative reaction than positive. In fact, a New Zealand Herald Editorial shortly after the announcement suggests that using an amnesty for businesses that have been evading taxes as a weapon of choice “is hopelessly naïve”.

It is important to understand that a limited or targeted tax amnesty can only be justified if it reduces the level of evasion within a specific industry or area of the economy where evasion is rife, eases the competitive pressure to evade tax in the future, and does not adversely affect the behaviour of


compliant taxpayers and attitudes towards the tax system. This is a big ‘if’! It is contended by the NZ Government that such problems can be overcome through ensuring that each amnesty would be offered only for a limited time to a specific industry that had been identified as displaying ingrained evasion.

In the next section of this article, I provide an overview of the international and Australasian compliance literature on tax amnesties, which is followed by a review of the major proposals contained in the discussion document in section III, along with a review of the submissions received on the proposals. Section IV of the article contains some comment on, and analysis of, the proposal. Concluding thoughts and implications for consideration by the ATO and Australian tax policymakers are set out in section V of the paper, prior to an appendix that sets out a substantial number of studies examining tax amnesties forming part of the tax compliance literature. It should be noted that the analysis in this paper builds upon an earlier comment on the proposals by Sawyer and Tan.3

II LITERATURE ON TAX AMNESTIES

A International tax compliance literature

Richardson and Sawyer4 note that a tax amnesty generally involves providing previously noncompliant taxpayers with the opportunity to pay back-taxes on undisclosed income, without fear of penalties or prosecution.

The main types of tax amnesties are as follows:

1. **Filing amnesty**: this involves the waiving of penalties for non-filers who commence filing;

2. **Record-keeping amnesty**: this involves the waiving of penalties for past failure to maintain statutorily required records, provided such records are now kept;

3. **Revision amnesty**: this is an opportunity to revise past tax returns without penalty or with a reduced penalty. This enables taxpayers to correct past returns (upwards) and pay any taxes that are missing or outstanding. Taxpayers will not normally be immune from investigation and auditing activities. Possible rationales for revision amnesties have been analysed by Andreoni5 and Malik and Schwab;6

4. **Investigation amnesty**: This involves a promise not to investigate the source of incomes disclosed for specific years and may require the payment of an ‘amnesty fee’. It will also

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involve a promise in effect not to investigate the real amount or origin of the income. Such amnesties may often be in the form of a “laundering amnesty”; see Das-Gupta and Mookherjee.7

5. **Prosecution amnesty**: This will involve immunity from prosecution for detected offenders, usually a waiver of the penalty on pleading guilty, with the penalty waived on the basis of the payment of some compensation. These amnesties are discussed further in Franzoni.8

The main benefits and costs of a tax amnesty can be summarised as follows. The benefits of amnesties include:9

- Generating an immediate increase in tax revenues;
- Reducing administrative costs;
- Improving post-amnesty voluntary compliance through better record-keeping and monitoring of individuals who were previously non-filers or did not declare all of their income; and
- Improving post-amnesty voluntary compliance if the amnesty is part of a larger effort directed at reforming the tax system, such as through improved enforcement efforts, reasonable and equitable civil and criminal penalties, and more extensive and improved taxpayer services and education.

The costs of amnesties include:10

- Producing small and overstated amnesty revenues (in relation to revenues arising from normal audit activities); and
- Reducing post-amnesty voluntary compliance from:
  - previously honest individuals who view the amnesty as unfair,
  - individuals who are now less motivated by guilt to pay their taxes,
  - individuals who are now aware of the presence of non-compliance,
  - individuals who now realise that the government is unable to enforce the tax laws, and
  - individuals who anticipate that another amnesty may be given in the future.

As will be seen later in this paper when the current amnesty proposal is discussed, these benefits and costs are applicable in evaluating the proposal but need to be slightly modified to reflect the fact that the proposal is really a series of targeted amnesties at particular industries with ingrained evasion, not a general amnesty. Hence, future amnesties will be anticipated but in different industries – an amnesty will not be repeated for any industry.

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7 Das-Gupta, and Mookherjee, above n 4.
10 Ibid, 4.
Tax amnesties in the United States ("US") (and in countries such as Australia and New Zealand) have primarily been revision and prosecution amnesties. Stella\(^{11}\) argues that the bulk of amnesty revenues from the amnesties held in different states in the US have been from prosecution amnesties. In contrast, amnesty programs in India, the Philippines and Colombia have usually been investigation amnesties.

An important aspect of amnesties is their psychological features. These features are often crucial in determining participation and the direct and indirect revenue effect of amnesties. These various features are now discussed in turn. An unanticipated amnesty can affect tax revenue both during and after the amnesty. An anticipated amnesty can have a positive effect on revenue prior to the amnesty in the absence of other concomitant changes to the tax system. This occurs because taxpayers can be induced to alter their tax reporting behaviour prior to the amnesty merely because they expect a future tax policy change. If their reporting behaviour, in the absence of this change in their expectations, was ‘optimal’, any change in behaviour is no longer “optimal” since nothing has really changed.\(^{12}\) Furthermore, the total effect of the amnesty may not be positive when evaluated in the context of all three phases of an amnesty; that is, before, during and after the amnesty.

Does an amnesty signal anything about future levels of enforcement? Without a clear and credible commitment to administrative reform, an amnesty may serve as a signal of weak enforcement capacity of the tax administration, with adverse revenue consequences during and after the amnesty. Two identical amnesties in different political environments may therefore induce very different participation levels. Furthermore, an often neglected signalling effect of an amnesty is via its effect on the workload of the administration, given limited administrative resources. For example, a successful amnesty with widespread participation that increases the workload of the administration massively may prevent the administration from devoting sufficient resources to enforcement in years after the amnesty. This would imply, therefore, that a ‘highly successful’ amnesty may be at the cost of future revenue on account of the workload effect.

What information does an amnesty convey to future tax enforcers? A successful tax evader may be unwilling to participate in an amnesty if the information that his or her participation in the amnesty conveys to the tax administration leads the tax administration to pay greater attention to the tax evader’s future tax disclosures. Consequently, without other simultaneous changes in the environment, the most ‘successful’ or hard core tax evaders are unlikely to participate in an amnesty.

Many of the criteria discussed above for evaluating the structure of amnesty are related. For example, intermittent amnesties will sooner or later be anticipated by taxpayers, thereby providing a signal of future enforcement.

The effect of tax amnesties on taxpayer compliance was excluded from Jackson and Milliron’s\(^ {13}\) earlier review of the tax compliance literature in 1986. The growing popularity of amnesty programs since the early 1980s\(^ {14}\) has seen a turn-around in this area, with increasingly more

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\(^{12}\) Das-Gupta and Mookherjee, above n 4.


\(^{14}\) National tax amnesties have been conducted in countries such as Australia, Belgium, France, India, Italy, New Zealand, and Sri Lanka, while a number of states within the United States have run similar programs. A brief
researchers publishing work on the topic, evident in the extensive but non-exhaustive list of publications in the appendix to this paper.

Although research into tax amnesties has developed significantly since Jackson and Milliron’s review, Richardson and Sawyer observe that relatively few studies have examined the issue of how amnesties affect the long-term compliance of taxpayers.\(^{15}\) This aspect of tax amnesties was identified by Mikesell\(^{16}\) as the most critical factor needing investigation. However, most of the research has been concerned with other issues, such as identifying the ingredients of a successful tax amnesty\(^{17}\) and describing the characteristics of amnesty participants.\(^{18}\) Richardson and Sawyer note that this limited attention directed at the long-term compliance implications of tax amnesties means that much uncertainty still exists about the relationship between this variable and taxpayer compliance.\(^{19}\)

Of those studies which have examined the long-term impact of tax amnesties on compliance behaviour, Richardson and Sawyer identify only three have sought to empirically test the nature of the relationship.\(^{20}\) Of these three studies, only Alm, McKee and Beck,\(^{21}\) and Alm and Beck\(^{22}\) are of general applicability, with the results of Das-Gupta, Lahiri and Mookherjee\(^{23}\) being affected by

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\(^{15}\) Richardson and Sawyer, above n 4, 219.


\(^{19}\) Richardson and Sawyer, above n 4, 220.

\(^{20}\) Richardson and Sawyer, above n 4, 220. In addition to these empirical studies, Alm and Beck, and Malik and Schwab developed economic models to determine the long-term compliance implications of a tax amnesty. The models failed to produce any clear predictions about the long-term effect on compliance, with the results generally dependent on the type of amnesty program adopted; see J Alm and W Beck, ‘Tax amnesties and tax revenues’ (1990) 18 Public Finance Quarterly 433-453; and Malik, and Schwab, ‘above n 6.


\(^{23}\) A Das-Gupta, R Lahiri and D Mookherjee, ‘Income tax compliance in India: an empirical analysis’ (1995) 23 World Development 2051-2064. Das-Gupta, Lahiri and Mookherjee performed regression analysis using compliance data from India, and found that tax amnesties lowered compliance significantly in the long-term. This result, however, is not generalisable to other countries, as a consequence of the unique nature of India’s tax regime. Five amnesties
factors unique to the Indian tax system. The following analysis is drawn from Richardson and Sawyer.\textsuperscript{24}

Alm, McKee and Beck\textsuperscript{25} conducted a comprehensive experiment to assess the long-term effect of tax amnesties on compliance behaviour, with the results indicating that the exact effect of an amnesty on compliance depends on the type of amnesty program adopted. The authors found that where an amnesty was conducted without any accompanying changes to the tax system, the level of taxpayer compliance post-amnesty was significantly lower than the pre-amnesty level. Conversely, where an amnesty was used to pave the way for a harsher enforcement regime, post-amnesty compliance was found to be significantly higher than the pre-amnesty level, with results even showing this compliance level to be higher than where increased enforcement efforts were adopted without such an amnesty. The authors’ experimental results also indicated that a tax amnesty raises the hope of future amnesties, and thereby lowers subsequent compliance, even in the presence of express assurances that the amnesty is a once-off occurrence. This finding supports the preceding discussion regarding the results of Das-Gupta, Lahiri and Mookherjee\textsuperscript{26} being a consequence of the frequent use of amnesties in the Indian tax system.

While the results of Alm, McKee and Beck are intuitively appealing, Alm and Beck\textsuperscript{27} failed to find supporting evidence using data from Colorado’s state amnesty run in 1985. Alm and Beck performed various time-series analyses using this data, and the results indicated that Colorado’s amnesty had no long-term effect on compliance levels in the state, even though a harsher enforcement regime was introduced at the conclusion of the amnesty. Alm and Beck suggest that this ‘no effect’ finding may reflect the small size of the Colorado amnesty, or alternatively may be the result of competing amnesty effects offsetting each other. The authors’ second explanation appears to have particular merit, with some features of an amnesty program likely to aid compliance (for example, getting previously noncompliant taxpayers on the revenue authority’s files, and the introduction of a harsher enforcement regime), while others could arguably hinder it (for example, honest taxpayers may respond negatively to such a program, and expectations may be raised of another amnesty in the future).

Consequently, it may be that the exact effect of an amnesty program on subsequent taxpayer compliance depends upon the relative size of these competing effects, which may differ on a case-by-case basis. Time-series analysis of data from other tax amnesties should help shed some light on this issue, and should be undertaken by future researchers.

Richardson and Sawyer conclude with respect to tax amnesties:

“That it is clear that research into the relationship between amnesties and tax compliance has progressed during the decade or so since Jackson and Milliron’s (1986) earlier review of the tax compliance literature. Several studies analysing the relationship have been published,

were conducted in the Indian tax system during the period of analysis, which represents a significant departure from other tax systems where the once-off use of an amnesty program is the norm. This difference undoubtedly contributed to the direction of the result found by Das-Gupta, Lahiri and Mookherjee, and highlights the need for care when interpreting results from different tax jurisdictions.

\textsuperscript{24} Richardson and Sawyer, above n 4, 220-221.
\textsuperscript{25} Alm, McKee and Beck, above n 21.
\textsuperscript{26} Das-Gupta, Lahiri and Mookherjee, above n 23.
\textsuperscript{27} Alm and Beck, above n 22.
where none existed before. However, advancement on the issue has been minimal, with only a handful of researchers displaying an interest in this compliance variable. Future researchers therefore have much work to do in terms of advancing knowledge on this issue, although it is acknowledged that amnesties are traditionally a rare occurrence, thereby severely restricting the potential source of available data.”

Importantly, as Richardson and Sawyer\(^{29}\) observe, tax officials also have a role to play in developing knowledge in this area, with improved data collection during amnesty programs imperative for increased understanding of the implications of an amnesty on tax compliance behaviour. In this regard, Lerman\(^{30}\) and Martin\(^{31}\) both commented on the poor state of data collection by amnesty officials, especially in the US. It seems that amnesty officials generally collect the minimum amount of information necessary for running the program, with little consideration given to long-term compliance issues, or for that matter, academic research that would utilise the data. The data collection carried out during the Michigan tax amnesty was, however, identified by Martin as an exception to this trend, and was cited as an example for subsequent amnesty officials to follow.

An excellent overview of tax amnesties conducted internationally was undertaken by Hasseldine in the mid 1990s.\(^{32}\) Hasseldine provides a summary of the advantages and disadvantages of tax amnesties, reviews prior research on tax amnesties, including empirical research, followed by an analysis of the success or otherwise of various US state\(^{33}\) and national tax amnesties in other countries.\(^{34}\) It is clear from the review that amnesties tend to cover a particular tax type or types, rather than be limited to specific industries.

Hasseldine’s review of tax amnesties offers a template for issues to be resolved prior to conducting an amnesty. Specifically this summary provides an excellent template for the process of contemplating the possibility of an amnesty, its design and subsequent implementation (should an amnesty be considered necessary and advantageous to improving compliance), and the process of

\(^{28}\) Richardson and Sawyer, above n 4, 221 (emphasis added). As the appendix to this paper reveals, the interest in amnesties has continued to grow since Richardson and Sawyer’s 2001 review.

\(^{29}\) Ibid, 221.


\(^{34}\) There has not been any US Federal tax amnesty, although commentators have considered the merits of such; see for example, LP Martinez, ‘Federal tax amnesty: Crime and Punishment Revisited’ (1991) 10 Virginia Tax Review 535-585; and GP Moran, ‘Tax Amnesty: An Old Debate as Viewed from Current Public Choices’ (1992) 1 Florida Tax Review 307-331.
evaluation after the amnesty is complete. Hasseldine’s decision parameters are reproduced in Table 1:35

Table 1: Amnesty decision parameters for tax agencies – based on Hasseldine (1998)

<table>
<thead>
<tr>
<th>A. Prior to the decision to offer a tax amnesty</th>
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<tbody>
<tr>
<td>1. Assess level of voluntary compliance.</td>
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<td>2. Assess taxpayer attitudes to paying taxes and to tax amnesties.</td>
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<tr>
<td>3. Assess severity of current penalty provisions. Is any strengthening required? What is the current policy on voluntary disclosure? How well known is this policy? Is any change desirable?</td>
</tr>
<tr>
<td>4. Assess adequacy of audit coverage. Do citizens perceive that they could be caught (and punished) for evading tax? Can greater funding be allocated to enforcement activities?</td>
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<tr>
<td>5. Examine the results of previous tax amnesties, in particular those conducted in similar jurisdictions.</td>
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<tr>
<td>6. Assess the amount of revenue expected under a tax amnesty.</td>
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<tr>
<td>7. Is legislative authorisation necessary for an amnesty to take place?</td>
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<tr>
<td>8. Is there a better alternative to a tax amnesty to encourage compliance, for example, the non-filer programme of the US?</td>
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<tr>
<th>B. The design and administration of a tax amnesty</th>
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<tbody>
<tr>
<td>1. What taxes (or offences) are to be included?</td>
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<tr>
<td>2. Who will the amnesty apply to? Most likely, non-filers can participate, but what about known delinquents? Are there any other eligibility issues needing consideration?</td>
</tr>
<tr>
<td>3. Over what time period will the amnesty run? Will any extension be required?</td>
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<tr>
<td>4. Which officers will be responsible for staffing the amnesty?</td>
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<tr>
<td>5. What sort of media campaign will be run to encourage amnesty participation? Should assurances be given that this is a “once-only” amnesty?</td>
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<tr>
<td>6. Other operation aspects of the amnesty – eg form design, toll-free numbers, liaison with tax practitioners, will instalment arrangements be permitted, etc?</td>
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<tr>
<th>C. After a tax amnesty has finished</th>
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<tbody>
<tr>
<td>1. Compute gross and net amnesty revenue.</td>
</tr>
<tr>
<td>2. Construct a database of amnesty participants. Examine the characteristics of amnesty participants and isolate common trends and features. Use this information in future enforcement activities.</td>
</tr>
<tr>
<td>3. Assess level of voluntary compliance and taxpayer sentiment.</td>
</tr>
<tr>
<td>4. Make appropriate media releases.</td>
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<tr>
<td>5. Compare results to those of previous amnesties.</td>
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While these parameters are presented in the context of general amnesties (the most common types utilised in national and state amnesties to date - whether or not they are limited to particular tax types), in my view they can be adapted for application to the current proposal, namely amnesties targeted at particular industries. In his review study, Hasseldine reminds the reader that amnesties are not a panacea but should be considered as an optional tool that can be used in association with changes to penalty provisions and policing procedures.36 Furthermore, consideration of an amnesty

35 Hasseldine, above n 32, 308-309.
36 Ibid, 309.
needs to be undertaken with an assessment of taxpayers’ current attitudes and levels of voluntary compliance.

A recent contribution to the analysis of amnesties was conducted by Ritsema, Manly and Thomas using data from the Arkansas amnesty. In their review of Arkansas amnesty participants, the authors conclude:

“[that] the comments made by participants in the 1997 Arkansas Tax Penalty Amnesty Program [identify] four general excuses for the failure to file state tax returns: (1) Forgetfulness (unintentional evaders); (2) Personal choice due to individual circumstances or opinion (intentional evaders); (3) Error, either by the taxpayer, his representation, or the state; and (4) Confusion, primarily due to the complexity of the tax rules.”

These comments indicate that major reasons for non-compliance are not necessarily intentional tax evasion but may include forgetfulness, mistakes and confusion. This point should not be lost on policymakers.

Outside of the predominantly US literature, a recent analysis of a Spanish amnesty held in 1991 was provided by Lopez-Laborda and Rodrigo. The authors conclude that this amnesty had no effect on either the short or long term levels of tax collection, which is in line with most previous studies.

The literature and empirical analysis outlined above indicates that amnesties are widespread. What may be the reason(s) for this?

1 Inability to commit to a long-term enforcement policy

The optimal tax enforcement literature recognises that governments may have a short term incentive to scale back enforcement levels to reduce monitoring costs. Similarly, once an audit or prosecution is in progress, the ex-post revenue effects of pursuing taxpayers to the end may not be considered to be worthwhile. Taxpayers currently under investigation may be induced to ‘settle’ their dues voluntarily via an amnesty program. A third example of inability to commit is when a government lowers the tax rate through lenient taxation in an amnesty. Such amnesties, if utilised frequently, causes taxpayers to rationally anticipate such amnesties which adversely affecting ex ante deterrence. Thus in the long run it is desirable for the government to commit to a given enforcement policy, and forego the use of such amnesties.

2 Flexibility

Can amnesties conceivably form part of a long term enforcement policy to which the government commits? A possible reason why this may not be the case is that amnesties permit greater flexibility in enforcing tax compliance than is otherwise the case.


39 This discussion draws upon comments from the World Bank’s discussion on amnesties; see the following link to its website: http://www1.worldbank.org/publicsector/tax/amnesties.html.
First, optimal audit policies generally require that high income disclosures be investigated less frequently than low disclosures. The tax administration may, however, be constrained (for example, by legislation or government policy) to over-auditing taxpayers who make high income disclosures. Consequently it may be revenue and welfare enhancing if such taxpayers are offered an investigation amnesty. However, instead of an amnesty, direct reform of investigation policy could also remove these restrictions.

Second, with the limited information possessed by a tax administration about the heterogeneity of taxpayers with respect to risk-aversion or to the costs of concealing income, taxpayers may make it revenue and welfare enhancing for the government to offer a menu of enforcement policies between which these taxpayers self-select.

3 Insurance

Andreoni and Franzoni also point to the insurance value to risk-averse citizens of an amnesty for past tax evasion, combined with the saving in audit costs to the government. In fact Andreoni argues that amnesties tend to be revenue neutral since the revenue loss from earlier cheating is offset by amnesty receipts.

4 Equity

A justification sometimes offered by governments is that an amnesty is an equitable transition measure to a period of stepped up enforcement. This argument is far from conclusive since an amnesty inequitably allows lenient treatment of amnesty participants, contrasted to offenders convicted either before or after the period of the amnesty. Nevertheless, it has some merit.

5 Avoiding costly prosecution

Amnesties may allow the tax administration to economise on prosecution costs. This has an obvious resemblance to the rationale for out-of-court settlements, and has special importance in countries where the court system is overburdened.

6 Asset laundering

Amnesties targeted at inducing taxpayers to declare hidden assets have been important in, for example, India, and in other countries where significant assets are held offshore. Declaration of assets can enhance taxpayer compliance subsequent to an amnesty since these assets are now known to tax authorities. On the other hand, if such an amnesty is anticipated, taxpayers may strategically evade taxes prior to the amnesty, owing to the projected dilution of penalties for tax evasion which could, as discussed in the context of anticipated amnesties, actually increase revenue prior to the amnesty.

40 Andreoni, above n 5.


43 Ex ante incentive effects have been discussed by CYC Chu, ‘Plea Bargaining with the IRS’ (1990) 41 Journal of Public Economics 319-333; Kaplow and Shavell, above n 42; Franzoni, above n 8 and Franzoni, above n 41.
Nevertheless, the long run revenue effects of such amnesties are likely to be negative. This result may not be the case with economic reforms leading to greater investment opportunities. In such a case, former tax evaders may wish to disclose assets in order to take advantage of the higher rates of return on assets outside of the black or underground economy.

B  Australasian study(ies)

There has been almost a dearth of studies on amnesties conducted in Australasia, which largely reflects the minimal usage of tax amnesties in Australia and New Zealand. The only major study is the review by Hasseldine in 1989 of both the Australian and New Zealand general tax amnesties conducted in 1988. After reviewing the characteristics of tax amnesties in general terms (including their advantages and disadvantages), Hasseldine outlines the two Australasian general tax amnesties. There is minimal comment on the Australian amnesty other than to note that the ATO regarded the amnesty to be successful in terms of the number of responses received and publicity received. In contrast, the New Zealand amnesty is discussed in depth, including the responses and tax collected. Hasseldine, in his conclusion, observes that many taxpayers may still be ignorant of their reporting requirements and need further help (notwithstanding the amnesty), and furthermore, some taxpayers may need to receive additional audit attention or be encouraged via some other method to comply – the amnesty is not a stand-alone method to remedy non-compliance.

III  Major Proposals in the Discussion Document and Consultation

A  Modifying the Major Proposals

The discussion document proposes that limited amnesties would be offered to operators in some industries in which tax evasion presents a particular set of problems that could be unnecessarily costly for the tax administration to tackle using traditional tax education and audit systems. Essentially these limited amnesties would:

1. Be a one-off opportunity for people in a targeted industry to come forward and disclose their past evasion;
2. Allow the IRD to offer amnesties to some industries or other groups, at its discretion;
3. Offer an attractive advantage for evaders to disclose undeclared income under the terms of an amnesty by limiting the number of years for which income would have to be disclosed; and
4. Be backed up by intensive audit activity focused on those who within the industry in question do not come forward under an amnesty offer.

In launching the discussion document, the NZ Government identifies that there are severe penalties for tax evasion with reduced penalties for voluntary disclosure of tax evasion to the IRD. These

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44 See Das-Gupta, and Mookherjee, above n 4; and A Das-Gupta, and D Mookherjee, Incentives and Institutional Reform in Tax Enforcement (1998).
45 Hasseldine, above n 17.
46 Ibid, 522.
47 New Zealand Government, above n 1.
rules reflect the NZ Government’s view that there should be no tolerance of people who are determined not to pay tax and will do so only if they are forced to do so.

One key issue is that the amnesty proposal is aimed at 'entrenched' or 'ingrained' evasion. It recognises that it can be difficult for people who have evaded tax in the past, and who want to begin complying with the law, to come forward and sort out their tax affairs. This is particularly so when tax evasion is prevalent across a whole industry. The reassessment of previous years can result in large debts made worse by the addition of penalties and interest, even if reduced for voluntary disclosure, and lead to bankruptcy or liquidation.

1 The IRD’s thinking

New Zealand’s existing tax rules are designed to apply to individual businesses and the IRD considers that this approach is inadequate to deal with the industry-wide tax evasion problem that underlies the impetus for the proposal. The IRD proposes an industry-wide approach to promote compliance (rather than business by business approach) when evasion common place within an industry.

The IRD’s (and the Government’s) proposal would allow the IRD to offer limited amnesties to target industries or other groups, giving businesses within those industries a last chance to “clean up their act” and begin complying with the law. Evasion of income tax is the main amnesty target but could also extend to other taxes, such as GST. The IRD intends to back up a limited amnesty with intensive enforcement activity against those in the industry who did not take up the offer.

A major concern is that the limited tax amnesty proposal would be simply “letting evaders off the hook”. The IRD, however, sees this matter of concern from the other side, in that the proposal is directed at improving the incentive for tax evaders to come forward through offering a concession by limiting the number of past years for which tax would be assessed under an amnesty.

Furthermore, the underlying justification for offering a limited tax amnesty would necessitate a reduction in the level of evasion within a specific industry or area of the economy where evasion is rife, as well as an easing of the competitive pressure to evade tax in the future. Therefore, each amnesty offer would be only for a limited time to a specific industry (identified with entrenched/ingrained evasion). Importantly, there would be no guarantee that any given industry would ever be offered an amnesty, and importantly there will be no general amnesty for all taxpayers.

After the amnesty period is over, the IRD’s audit and enforcement activity would increase, and those taxpayers caught evading tax would incur full penalties and other enforcement measures, although no mention is made in the proposal of the possible nature of the increased enforcement measures that will be applied to those targeted industries following the amnesty. The IRD does not propose to extend the amnesty eligibility to those people already being audited when an amnesty is announced.

2 How would these limited amnesties work?

The IRD proposes that the amnesty offer would specify who was eligible to participate, the start and end date between which eligible people could come forward, and the terms and conditions that would have to be met to qualify for the benefits of the amnesty. Eligibility could be specified in a number of ways, depending on the circumstances of the amnesty; hence this component is left rather vague.
In order to participate, taxpayers would need to contact the IRD and provide information about their evasion as required by the terms of the amnesty offer. Subsequently the IRD would check that information against other information it held, which could well be sourced from third parties and others participating in the amnesty.

The IRD proposes that the incentive to come forward will be that in making a voluntary disclosure of evasion, the extent to which core tax amounts can be assessed will be limited, but the normal penalties and interest will be applied to the assessed (disclosed) amounts. Furthermore, most of the usual rules would apply from the moment someone comes forward under an amnesty.

Taxpayers qualifying under the terms of an amnesty would be those who earn income from a particular industry. Although more than one industry might be targeted over time, those who worked in more than one industry would be eligible to make use of one amnesty only. Once a person has come forward they will be known to the IRD as an amnesty participant, and will be expected to disclose all income, including that arising in the target industry and in any other industry that they may be operating. In all cases, persons already being audited by the IRD would not be eligible to participate.

The IRD is contemplating requiring additional information in addition to the (revised) tax returns and would monitor participants closely to ensure they did continue to pay tax correctly – that is, there will be some analysis of longer term compliance trends. Concessions offered by the IRD under an amnesty would be contingent on both full disclosure and future compliance. Importantly, instalment arrangements could be entered into for the payment of tax debt assessed under an amnesty in the same way that other tax debts can be paid by instalment.

3 The size of the amnesty coverage period - how many back-years should be assessed?

It is proposed that no tax relief could be provided in respect of the most recent year for which tax is due, which is a reasonable proposition. The IRD’s current preference is for a two year period with the most recent and second most recent year assessed being fully liable for tax. The discussion document also contains three and four year options for assessment. The IRD considers that a two-year period would provide a greater incentive than would a three or four-year period (which is logical), and would be relatively easier to administer, although not everyone may perceive shorter disclosure periods as fair, particularly compliant taxpayers.

Currently there is no limit in NZ’s tax legislation as to the number of back years that can be reassessed when evasion is involved - hence any limit on back years would provide some incentive to disclose income. There may be practical limitations on how far back reassessments may go in terms of the IRD proving and quantifying the level of evasion, as the onus of proof for tax evasion rests with the IRD. The further back reassessments are permitted to be made by the IRD, the more the proposal resembles the ‘normal’ rules and the lower will be the incentive to come forward.

One concern recognised by the IRD concerning the requirement for full disclosure over a long period of back years is that the taxpayers involved might have difficulty providing the information required, or fear that the IRD would not be satisfied with the information they provide. As noted above, the further back the information goes, the harder it will also be for the IRD to verify its accuracy. Consequently, there is some logic in requiring only a relatively short period for disclosure, as this would alleviate these concerns.
4 Criminal penalties and prosecution

The terms of a limited amnesty would prevent criminal penalties under the *Tax Administration Act 1994* (TAA 1994) being imposed for:

- absolute liability and knowledge offences (ss 143 and 143A TAA 1994);
- evasion or similar offences (other than the offence of pretending to be another person) (s 143B TAA 1994);
- an offence committed by an employee or officer to the extent that it would be an offence if committed by the taxpayer and the taxpayer would qualify for the amnesty (s 147 TAA 1994); and
- aiding or abetting someone to commit an offence to the extent it would be an offence if committed by the taxpayer and the taxpayer would qualify for the amnesty (s 148 TAA 1994).

Interestingly, immunity would not extend to offences under other enactments, such as the *Crimes Act 1961* or *Serious Fraud Act 1990*. On occasions the IRD has involved or sought the assistance of the Solicitor General or Director of the Serious Fraud Office to invoke these provisions for case of alleged tax fraud.

5 Tax law changes

In what appears to be more of an after thought than a thoroughly considered possibility, the IRD considers that amnesties may also be beneficial when a change in tax law highlights previous, possibly unintentional, non-compliance. This should not be underestimated as an important mechanism to allow non-intentional non-compliance to be remedied through reduced cost to taxpayers.

In its release of the discussion document, the Associate Minister of Finance and Revenue, David Cunliffe offered some answers to key questions regarding the proposal.49

The first question is: “Why is the government releasing this discussion document?” The key reason is that some industries have entrenched tax evasion, which affects every person, as those who evade tax contribute less than their fair share to services. It also disadvantages those in the industry who comply with the law as they bear costs that those not paying tax do not. Importantly it is recognised that a barrier to cleaning up tax evasion is that those who have evaded tax in the past and who want to begin complying with the law can face back taxes and penalties that are so high they may be forced out of business (and into bankruptcy/liquidation).

Thus the IRD and NZ Government argue that tax rules that focus solely on individuals may not deal most effectively with industry-wide evasion, necessitating more innovative ways of dealing with the problem. It is suggested that there may be an overall benefit to New Zealand that industries can be cleaned up by offering limited amnesties to businesses to allow them to ‘clean up their acts’ so they can continue trading and start contributing their fair share to society. Importantly, since the proposal represents what is considered by the NZ Government to be ‘innovative thinking’, any

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49 Refer to comments on the Executive Branch of the NZ Government’s website, at http://www.behive.govt.nz, under “Cunliffe”.
action arising from the discussion document will be trialled and very closely monitored by the IRD to ensure the proposal achieves its aims.

The second question is: “Why would some industries be targeted and not others?” The NZ Government, states Cunliffe, is concerned about the pressures being placed on honest, hard-working taxpayers in some industries because they have to compete with other, less scrupulous business persons who do not pay tax and so can charge less – commonly done at a ‘cash’ price. In some industries, the NZ Government believes this is making it hard for legitimate businesses to stay afloat without adopting the same practices – even though they might not want to. However, as noted in the submissions on the proposals (and discussed later in this paper), the NZ Government has done little in this regard and is not proposing any initiatives of real substance to make it easier for compliant taxpayers and businesses to meet their obligations.

The third question is: “What industries would be targeted?” Since the discussion document represents an idea that is “just a proposal at this stage”, industries have not been identified publicly. However, Cunliffe states that “if” the proposal goes ahead, the IRD would identify groups for whom amnesties would be effective as part of a broader strategy to ‘clean up’ problem industries, from a tax compliance point of view. Whether this includes those industries under the current IRD-business partnership scheme is unclear. This strategy would include intensive follow-up audit and investigation in the targeted industry.

Cunliffe states that no potential candidate industries have been determined (or more correctly, no public announcement has been made concerning these industries, although one would expect that the IRD had industries in mind when it was developing the proposal). The first announcement as to an industry will be when a limited amnesty is offered. This approach is designed to prevent people changing their current taxpaying habits in anticipation of an amnesty in the future. Furthermore, Cunliffe states that no industry could be certain it would be offered an amnesty, so it would be much wiser to continue paying taxes rather than gamble on perhaps having one. However, it is naïve of the NZ Government to believe that certain industries are not expecting to be targets compared than others, given their perceived level of non-compliance.

The fourth question is: “How would the limited amnesties work?” The response to this question has been discussed in detail above with regard to the discussion document, but essentially limited amnesties would allow tax evaders the opportunity to get back on track by coming forward and paying only a certain number of years of back-taxes.

A major concern is raised through the fifth question: “Wouldn’t tax evaders just be let off the hook?” Cunliffe states that taxpayers coming forward under an amnesty will be assessed with penalties for whatever period is determined following consultation on the discussion document and the (generic tax) policy process (and eventually set out in legislation). Evaders may not end up paying their full tax liability but this is also likely to be the case if they were bankrupted or put into liquidation by a large tax assessment so it is a matter of finding the appropriate balance. The limits of the incentive to come forward aim to prevent those arrears from being overwhelming, such that they can be managed, say, by instalment arrangements, while the taxpayer involved also has to meet their current and future tax obligations.

Cunliffe observes that this may appear unfair in some respects but it might be more unfair not to try to do something about the evasion problem in some industries – hence it is a matter of balance. This position is also because the NZ Government believes that there are groups of people who are not hard-core evaders but have been pressured into, and subsequently trapped in, ‘dodgy’ tax practices by having to try and compete with hard-core evaders.
Furthermore, legislation in NZ currently treats all evaders in essentially the same way. Cunliffe observes that pursuing the full force of the law in a lot of cases could result in large numbers of bankruptcies, which could disrupt the industries involved, meaning that no-one will gain in the long run. It appears to be lost on the NZ Government that this does not appear to have stopped the IRD in the past as being the most frequent creditor seeking bankruptcy of taxpayers. The NZ Government is considering offering a concession now to evaders in order to improve the long-term picture for everyone.

The sixth question is: “Why wouldn’t a limited amnesty be offered to everyone?” Cunliffe asserts that general amnesties normally do not provide any positive benefits and they risk encouraging future non-compliance, especially if people think another one is going to be offered in the future. This is a valid observation in the light of many of the empirical studies reported in the literature but it is not necessarily true of all amnesties that have been reviewed.

Cunliffe observes that a key part of the proposal is the ability to ensure that follow-up investigations and audits can be conducted intensively by the IRD. From a practical standpoint, there is no way a limited amnesty could be credibly proposed if it is spread too thinly over large numbers of people or the whole economy. This argument is more about the level of resourcing the IRD will dedicate to following up on the amnesty rather than necessarily a limitation of a general amnesty.

The seventh question: “Wouldn’t it be unfair to offer limited amnesties to some people and not others?”, is one that has some validity to it. The aim of the NZ Government, states Cunliffe, is to increase fairness by making sure that businesses are operating on a level playing field. The targeted amnesty is an opportunity for industries with ingrained evasion to come clean and start to contribute their fair share to society. Limited amnesties may be a way to shift the aggregate behaviour of an industry in which evasion has become a deeply ingrained problem. Thus the aim is to get a whole group of people back on track in the most manageable way, giving them a chance to come forward first, so that the IRD is able to focus its attention on those who choose not to come forward under the amnesty. This is a last chance before the full force of the law is exercised. The response that compliant taxpayers would be expected to make to this point is why not apply the full force of the law in the absence of an amnesty, since there is to be no increase in penalties following the amnesty, just greater enforcement of existing penalties? Supporting this position is the findings of the amnesty literature, although with appropriate terms and conditions an amnesty may be beneficial overall.

The eighth and final question is: “How would things like child support be affected?” Cunliffe’s response is that social policy programmes like child support, student loans and family assistance will be affected to the extent that income is disclosed and assessed for tax when someone comes forward under an amnesty. In the case of child support this may have a flow-on effect of providing more financial support for children.

B  Recommended changes to the proposal

Returning to the discussion document proposals, as noted above, under the conditions of the limited amnesties that have been proposed, the amount of core tax that would be assessed for past periods of evasion would be limited. This is illustrated in Figure 2 from the discussion document

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50 See AJ Sawyer, ‘Report from New Zealand: Reprioritising Priorities- IRD the big loser?’ (2000) 8(2) Insolvency Law Journal 116-123, where details of the IRD’s role as the major petitioning creditor in bankruptcy is considered in the context of the high priority in repayment that various taxes are provided by statute.
(reproduced as Figure 1) although it is suggested that possibly consideration could be given to reducing the level of tax assessed for the second most recent year, under the two year option, to 50 percent and thereby providing more consistent comparatives:51

**Figure 1: Proportion of tax assessed under the three options**

<table>
<thead>
<tr>
<th>The period for which income must be fully disclosed</th>
<th>Most recent year assessed</th>
<th>Second most recent year assessed</th>
<th>Third most recent year assessed</th>
<th>Fourth most recent year assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 years</td>
<td>100%</td>
<td>100%</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3 years</td>
<td>100%</td>
<td>50%</td>
<td>50%</td>
<td>-</td>
</tr>
<tr>
<td>4 years</td>
<td>100%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Incorporating the suggested change would see Figure 2 in the discussion document appear as follows:

**Figure 2: Proportion of tax assessed under the three options**

<table>
<thead>
<tr>
<th>The period for which income must be fully disclosed</th>
<th>Most recent year assessed</th>
<th>Second most recent year assessed</th>
<th>Third most recent year assessed</th>
<th>Fourth most recent year assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 years</td>
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<td>50%</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3 years</td>
<td>100%</td>
<td>50%</td>
<td>50%</td>
<td>-</td>
</tr>
<tr>
<td>4 years</td>
<td>100%</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
</tbody>
</table>

However, penalties and interest would still apply to the tax that was assessed and any repayments of family assistance or back payments of child support and student loans for the disclosure period would still have to be made. An example of the changes is set out in Figure 3 in the discussion document (which appears as Figure 3 below), indicating that the two and three years options are more attractive than the four year option to tax evaders that come forward under the amnesty (with the two year option possible more attractive if the 2-year option is reduced to 50 percent for the second year were included):52

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51 New Zealand Government, above n 1, 20.  
52 Ibid, 23.
**Figure 3:** The resulting tax bill under current and proposed treatments for someone who has undeclared income of $100 a week, $5,200 a year

![Figure 3](image)

Incorporating the suggested change would see Figure 3 in the discussion document appear as follows (emphasis added):

**Figure 4:** The resulting tax bill under current and proposed treatments for someone who has undeclared income of $100 a week, $5,200 a year

![Figure 4](image)

As stated previously, the purpose of offering a limited amnesty to a targeted industry would be to provide tax evaders with an incentive to stop evading tax permanently. Limited amnesties would be considered in conjunction with changes in tax law on a case-by-case basis. Given that it is uncertain whether limited amnesties would prove to be effective, the NZ Government proposes that the IRD would be required to monitor the results of amnesties and report to the relevant Ministers as well as to Parliament on the success or otherwise of any amnesty. If these amnesties were not successful, the IRD’s power to offer them would be removed via Order in Council, although at this point serious damage to the NZ tax compliance environment may already have been inflicted.
While only receiving brief mention in the discussion document\(^53\) and without any supporting references, the NZ Government makes assertions through the discussion document concerning how tax amnesties should be planned and conducted. The tax compliance literature on amnesties suggests that it is possible to develop and conduct a tax amnesty that successfully improves overall tax compliance in the long run, without being seen as unfair to those who have complied with their tax obligations, provided it is designed appropriately.

Following an unexpected telephone conversation on 1 September 2004 with a senior policy official within the IRD, I was advised that the relevant tax compliance literature concerning tax amnesties was reviewed extensively prior to releasing the discussion document (although this is not evident from the discussion document). However, in the interests of making the discussion document readable to as wide an audience as possible, IRD officials determined that references to the literature would be omitted. Furthermore, given the sensitive nature of tax amnesties, the IRD was not prepared to consult outside a small group within the Department prior to releasing the discussion document, since there was genuine concern that information could become public prior to the release of the discussion document.

While this approach is understandable, it would still have been preferable to have included citations to several of the leading amnesty studies, along with the main literature review studies and the State of Michigan study within the main body, with a more detailed list integrated as an appendix to the discussion document. This approach, I would argue, would provide assurance to readers and the general public that the IRD had undertaken extensive research prior to releasing the proposal. The list of studies in the appendix to this paper is testament to the extensive size and variety of studies forming a substantial component of the known tax compliance on tax amnesties. Furthermore, the IRD’s research phase could have been undertaken in conjunction with appropriate experts through confidential means.

It is well established in the literature that tax amnesties tend to discriminate against those that comply with their obligations and may in fact send the message: “evade tax and wait until an amnesty comes along and then declare your income”. Consequently any proposal for an amnesty should be considered within the broader picture of overall fairness, such that all taxpayers meet their correct tax obligations in the least painful manner. The current NZ tax system largely operates with a ‘stick’ approach to encourage compliance (via penalties and use of money interest), and if a taxpayer is operating outside the tax system, the consequences of coming back may be dire, thereby encouraging them to remain outside the system. An amnesty needs to be constructed to overcome or at least reduce this disincentive, while concurrently avoiding any negative impact on existing compliant taxpayers – a better balance through a ‘carrot and stick’ approach.

In this regard, KPMG identifies that the proposal does not encompass the situation of a person that is operating outside the tax system, but is not part of an industry per se, such as someone that ‘wheels and deals’ in various goods or undertakes work that is paid for ‘under the table’.\(^54\) This situation is not the intention of the proposal as it is directed at specific industries; rather KPMG’s issue is more relevant to a general amnesty.

\(^{53}\) Ibid, 12-13.

C Consultation and submissions on the proposal

1 Institute of Chartered Accountants of New Zealand

The Institute of Chartered Accountants of New Zealand (ICANZ) provided a detailed submission on the proposals. ICANZ is in agreement with the IRD that tax evasion should be reduced – this is hardly a controversial stance to take. However, it is ICANZ’s preference that a wider amnesty than that proposed be offered. In conjunction with this expansion of the scope of the amnesty, ICANZ considers that the amnesty changes should be accompanied by a relaxation of the voluntary disclosure rules (through removal of penalties in the case of voluntary disclosure subject to appropriate safeguards being put in place).

The ICANZ submission observes that the proposal is designed with a view to sorting out ‘tax evaders’ who have deliberately not paid tax. Concern is raised that taxpayers who are not ‘tax evaders’, but nevertheless have not complied with their obligations, such as through a mistake they have made in relation to their tax position, are faced with the ramifications and penalty costs of voluntary disclosure. Correctly, ICANZ argue that it is important that such non-complying taxpayers are not discouraged from voluntary compliance by the operation of the penalties regime. A similar situation arises when taxpayers have historically dealt incorrectly with their tax affairs and are afraid to come forward due to the significant financial consequences of accumulating use of money interest and shortfall penalties.

ICANZ then submits that amending the voluntary disclosure rules to eliminate penalties would enhance the likelihood of success of any amnesty. It is suggested that amending the voluntary disclosure rules in this way should provide a permanent environment that encourages and provides incentives for voluntary disclosure that apply to everyone, not just tax evaders. This position has some merit but as revealed in the compliance literature, this has risks in that the complete elimination of penalties in these circumstances may cause undesirable reactions from existing compliant taxpayers. ICANZ acknowledges that there would need to be safeguards and that any such amendment would need robust rules to ensure its effective operation. Developing such rules would necessitate a delay in introducing the first targeted amnesty.

ICANZ identifies the nub of the issue when stating that:

“those involved in the cash economy need to be given a strong signal that such behaviour is not appropriate. The success of any amnesty will depend on its ability to encourage people to come forward and sort out their tax position. An important aspect is convincing these people that the benefits of sorting out their tax position will outweigh the costs, and there is a strong likelihood that they will eventually get caught, and that is a high risk to take. People that need to sort out their tax position should not be discouraged from coming forward because of a harsh penalties regime.”

55 ICANZ, Submission on Options for Dealing with Industry-wide Tax Evasion, (22 October 2004). Available from ICANZ’s website at: http://www.icanz.co.nz under “submissions”. I was involved in preparing this submission, particularly in terms of providing an overview of aspects of the relevant amnesty literature.

56 See Richardson and Sawyer, above n 4, 219-221.

57 ICANZ, above n 55, 2 (emphasis added).
ICANZ states that should their recommended approach to a wider amnesty with the voluntary disclosure approach not prove acceptable to the IRD, then they would like a wider amnesty in scope than that proposed in the discussion document, with follow up action targeted at tax evaders.

ICANZ then accepts that if the limited amnesty approach is considered the most appropriate tool by the NZ Government and IRD to deal with the tax evasion problem, then it accepts that this will go part-way to addressing the problem, but not to the full extent. As the amnesty literature indicates, amnesties are a tool that can have some positive effect in improving compliance but not significantly, and they require extremely careful planning and implementation.

ICANZ notes that it is difficult to develop and conduct a tax amnesty that successfully improves overall tax compliance in the long run without it being seen by some parties as unfair to those who have complied with their tax obligations – this is also one of the major concerns arising in the literature. Consequently a limited amnesty proposal must be appropriately designed to maximise the prospects of success. ICANZ understands, on the basis of advice received from policy officials, that the relevant tax literature on tax amnesties was reviewed extensively before preparation of the discussion document. The lessons on best practice that can be learnt from this research should be useful in the implementation of the limited amnesty proposal.

According to the discussion document, the IRD’s proposal has been developed on the premise that it will strike a fair balance between the concession offered to past tax evaders and the increased future compliance that will result in exchange. As part of the consultation process, the IRD asked specifically for comments on whether the balance is right, and on how the proposals might be made fairer in the eyes of the general public and taxpayers who already comply with the law.

ICANZ states that most of its comments in the submission would be unnecessary if a wide amnesty adopting voluntary disclosure rules is introduced. The IRD is not prepared to entertain this possibility. ICANZ then raises important matters for consideration as part of the design of a limited tax amnesty.

(a) Boundary issues – inherent design issues

ICANZ notes that an important aspect will be the definition of the boundaries of the industry and eligibility to participate in the amnesty. Communicating clearly the boundaries of an industry is vital. ICANZ states that although it is difficult to have sympathy for a tax evader, it is important that those tax evaders who do come forward under the amnesty were able to ascertain that the limited amnesty applies to them. If tax evaders do come forward and discover that the amnesty does not cover them, this may be perceived as unfair by such tax evaders as they will not be able to benefit from the amnesty.

One of the boundary issues that will need to be made clear is the situation when a tax evader is involved in more than one industry. ICANZ ask of the IRD: “If an amnesty is announced in one of those industries what is the position? Is that person able to bring all undisclosed income within the ambit of the amnesty?” If all undisclosed income may be included, tax evaders may take the opportunity to use the situation to claim some recent involvement in that industry and benefit from the amnesty. This may be difficult to verify since records will often be scarce in this type of situation.

ICANZ plays ‘devils advocate’ when stating that if the amnesty umbrella only covers undisclosed income from the nominated industry, it will not be attractive to a person evading tax in a variety of industries. On the other hand, unless the amnesty is restricted to the nominated industry, there is a
chance that tax evaders who are not significantly involved in the industry will find a way to take advantage and obtain exemption for many years of undisclosed income from dealings in other industries. A balance needs to be struck, and this requires considerable thought and weighing up of the risks and benefits of a narrow targeted amnesty or a broader scope amnesty.

Limited amnesties should include all taxes over the given period – a view espoused by ICANZ that is contrary to that proposed by the IRD. Taxes are often interrelated (for example, income tax and GST). This should also apply to the social policy measures that are determined by income and administered through the tax system (for example, family assistance, child support and student loans). ICANZ agrees that the limited amnesty should not extend to programmes administered by other Government agencies (for example, ACC) and that the tax evader should be required to face up to the consequences from exchange of information on taxable income.

ICANZ believes that the proposal is drafted such that anyone already being audited by the IRD will not be eligible to participate. Although ICANZ understands that it is important to provide a clear boundary of eligibility this may result in an unfair result in some circumstances, and there may be merit in widening the scope to include those under audit to come forward and disclose income. ICANZ suggests that it may be worth considering whether limited amnesties should extend to those taxpayers who belong to the targeted industry and make a voluntary disclosure purely of their own accord prior to a limited amnesty commencing for their industry. A time frame would need to be considered to ensure this is not perceived as something closer to a general amnesty.

ICANZ suggests that limited amnesties will favour tax evaders who are about to or have recently retired. This is because people often wind down close to retirement and the tax that will be disclosed under the amnesty will be lower in the most recent years. Whether this is an accurate prediction will only be revealed following an analysis of amnesty participants. Additionally, I would suggest that as the tax compliance literature indicates, older people are generally more compliant as they wish to tidy up their tax affairs, particularly if they are ceasing to run a business. If that person has been a tax evader for many years then there will a high proportion of tax that will escape the net. ICANZ also notes that there will be minimum payback in tax in the future because the person is in retirement.

(b) Incentives – part of the design process

The proposal provides for an incentive for tax evaders to make a voluntary disclosure by limiting the extent to which core tax amounts can be assessed, but applying the normal penalty and use of money interest amounts to the assessed amounts. ICANZ agrees that this is a preferable approach to suspending the application of rules that would normally impose penalties and use of money interest, and assessing just the core tax amounts. As the amnesty literature suggests, it is important that tax evaders under an amnesty are required to meet the same requirements as other taxpayers once the undisclosed tax has been assessed. No concessions should be provided to tax evaders in this situation, unless they are available to other taxpayers. Otherwise, compliant taxpayers will perceive the treatment as unfair, and some may retaliate through undertaking some noncompliant activities themselves.

ICANZ also agrees that the most recent year would have to be fully assessed. In most situations there will be a lack of records available and for this reason it makes sense to provide for a shorter disclosure period.

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58 See generally Jackson and Milliron, above n 13; and Richardson and Sawyer, above n 4.
An important aspect of providing an incentive for evaders to disclose will be the communication of the amnesty to industry participants. As the amnesty literature suggests, the more real the (perceived) threat of audit is, the more likely that an evader will come forward under an amnesty. ICANZ makes a useful suggestion that it is more likely for the threat to be effectively conveyed to evaders if industry participants are identified and sent a personal letter setting out that the industry has been targeted for audit, and that an amnesty has been offered on certain terms, with the implications for evaders not disclosing income provided. In some industries this may be difficult to achieve so other means of getting the message to industry participants will need to be considered. This will require closely working with the targeted industries, perhaps adapting the techniques used through the IRD’s Industry Partnership model.

The key purpose of the amnesty proposal, ICANZ suggests, is to get people to comply in the long term and the concessions offered under the amnesty would be contingent on full disclosure and future compliance. The amnesty literature suggests this is the most difficult part of an amnesty program to achieve. The IRD may require further information than just tax returns, and would monitor participants closely to ensure they continue to pay tax correctly. As a result, tax evaders who come clean under an amnesty could expect to be subject to greater scrutiny in future than other taxpayers, and any statements from the IRD to the contrary are unlikely to be believed.

ICANZ suggests that given a person’s previous tax evasion activities it may be difficult for a person to meet the initial disclosure requirements and the ongoing tax compliance standards without some form of assistance. Many may find trying to determine the extent of their tax obligations extremely difficult given the lapse of time and poor state of their records. ICANZ raises the notion of the provision of assistance to ensure an evader is able to successfully meet these requirements and become a “reformed taxpayer” – that is, a fully compliant taxpayer meeting their obligations voluntarily. To this end ICANZ suggests that an incentive should be provided to tax evaders who obtain professional assistance with getting their tax affairs into order and to achieve ongoing tax compliance. Alternatively, it may be that a special team be made available within the IRD to respond to queries and enable the taxpayer to have some continuity of IRD personnel to resolve issues.

The ability to pay the debt assessed under amnesty conditions is an important consideration for a tax evader in deciding whether or not to come forward. The IRD’s proposal is that instalment arrangements could be entered into for the payment of tax debt assessed under an amnesty in the same way that other tax debts can be paid by instalment. ICANZ makes the useful suggestion that a debt repayment programme should be offered as part of the amnesty, so that it is clear to the tax evader at the outset what the payment arrangement will be. This is likely to be more conducive to tax evaders coming forward under the amnesty.

(c) Managing changes in the tax system – the cause of considerable unintentional non-compliance

An amnesty could be developed to provide extra flexibility to deal with problems that arise when tax law changes. The example provided in the discussion document is the legislative clarification of a tax issue which might highlight that interpretations applied previously were not consistent with policy, thereby increasing the risks of penalties. ICANZ considers that this concept has considerable merit and could be applied with much more justification, fairness and success than the proposed industry-specific amnesties. That is, this form of amnesty should operate regardless of targeted amnesties.
ICANZ further states that its supports the availability of such amnesties and agrees with the view in the discussion document that Ministers should consider the application to any legislative tax reform on a case-by-case basis. ICANZ considers that there may be interpretation and policy issues that do not result in legislative change, but still justify an amnesty, and such non-legislative change situations should also be within the scope of the Minister’s authority to declare an amnesty. The main concern here is the relative frequency of such amnesties – there may need to be a form of standing amnesty provided for within the legislation, with the exact application of the amnesty to be determined as required.

(d) Safeguards

As noted above, before offering an amnesty, the IRD would be required to report to the relevant Ministers on the reasons for the implementation in the context of a targeted industry or group, its monitoring of the results, and in addition to the relevant Ministers report to Parliament on the success or otherwise of any amnesty conducted. If these amnesties were not successful, the IRD’s power to offer them would be removed by Order in Council.

Given the uncertainty whether limited amnesties would be effective, ICANZ considers that the selection of the first two or three target industries is important, a view with which I agree. If tax amnesties are not successful, then serious harm could be inflicted on the general tax compliance environment. Any proposal for a limited amnesty should, as ICANZ suggests, outline the boundaries’ issues that may exist, the way these will be treated, and the communication strategy.

It appears from the discussion document that to ensure that the objectives of an amnesty were being achieved, the IRD would also be required to report specifically on the effectiveness of the first two or three amnesties. The amnesties initially offered would be treated as piloting the proposal. ICANZ surmises that this means that there would be more extensive reporting requirements in relation to the pilot amnesties, as compared to any subsequent amnesties.

ICANZ also considers that it is appropriate as part of the amnesty to prevent criminal penalties under the TAA 1994 being imposed on tax evaders, and agrees with the proposal that this immunity should not extend to offences under other enactments.

2 Business New Zealand submission

Business New Zealand (“BusinessNZ”), which encompasses four regional business organisations and affiliated industry groups, also put in a submission. Overall BusinessNZ states that it welcomes the NZ Government’s willingness to consider ways to increase voluntary compliance with the tax system. However, it is not convinced that offering limited/targeted amnesties to those in certain problem industries would be either the fairest or most effective way to increase voluntary compliance. Nevertheless, BusinessNZ agrees, not surprisingly, that tax evasion should be reduced, that tax evaders pay less than their fair share of tax revenue and honest taxpayers have to pay more to cover the shortfall. BusinessNZ considers a better approach would be to address the underlying reasons for tax evasion.

BusinessNZ then spends a considerable portion of its submission arguing that most NZ businesses pay more than their fair share of tax, that ongoing complexity and changes to the legislation has

made compliance more difficult, diverting its focus from the essence of the proposals in the discussion document. The reason for this diversion seems to be as a form of explanation, but not an excuse for tax evasion. The high and growing tax burden and increasing complexity of the tax system should not be underestimated when considering issues around tax evasion, particularly for those businesses that are otherwise operating lawfully. BusinessNZ correctly identifies that the discussion document largely ignores these issues and instead focuses more narrowly on the current approach to enforcement and penalties. BusinessNZ appears to miss the point since this is the intended focus of the proposal.

The submission correctly recognises that New Zealand currently uses the ‘stick’ approach for ensuring that businesses and individuals pay their ‘fair share’ of tax, involving strict enforcement by the IRD and the use of what by international standards are very punitive penalties provisions. Conversely, there is very little use of the ‘carrot’ approach. Although this approach is designed to protect the revenue base, it is likely that it also has unintended consequences.

Most importantly for the vast majority of taxpayers, the penalty provisions are too punitive against those who make innocent mistakes and as a result they generate a climate of fear and result in high compliance costs – a view endorsed by many tax preparers. Moreover, it is also likely that the penalty provisions discourage tax evaders from complying – once they are outside the tax system, the penalty provisions ensure that there are dire consequences if they were to want to come back inside the system.

BusinessNZ see the amnesty proposal as effectively suggesting that a ‘carrot’ approach is also needed for tax evaders in certain industries – this is a useful way to view an amnesty from the perspective of a potential amnesty recipient. BusinessNZ is pleased that the NZ Government has acknowledged that the current regime discourages voluntary compliance for those outside the tax system. BusinessNZ is not convinced that an amnesty approach would either be fair for the vast majority of those who do pay their fair share or would even succeed in achieving a higher degree of voluntary compliance from those that currently do not – this concern is frequently stated in the tax compliance literature.

The NZ Government acknowledges that its proposals would raise concerns with those who do voluntarily comply. BusinessNZ correctly identify that this is an equity issue, the importance of which should not be underestimated. Anecdotal information if offered, with BusinessNZ stating that it:

“… received strong feedback from both businesses and individuals concerned about fairness and equity, with the majority instinctively negative about the proposal, particularly when they see IRD imposing punitive penalties on honest taxpayers making innocent mistakes.”

On the issue of effectiveness, BusinessNZ comments that the discussion document notes that overseas experience with amnesties has been mixed, with a number of risks associated with them (this must be seen within the very limited comment on the literature in the discussion document). An important point, that is in accord with the amnesty literature, is that amnesties are likely to be more effective when they are used sparingly and for a special purpose, for example implementing

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61 BusinessNZ, above n 59, 4 (para 3.4).
significant changes to the tax system that would disadvantage taxpayers. To this end, BusinessNZ agrees that the credibility of an amnesty would rely upon enhanced detection and enforcement efforts to build an expectation that tax evaders will actually be caught.

In this context, BusinessNZ reveals it underlying view on the proposal, stating that with overseas experience on amnesties mixed at best, a fairer and more effective approach would be for IRD to accept that honest taxpayers should not be punished for making innocent mistakes, but ensure that those who deliberately evade feel the full force of the law. This view follows the compliance pyramid62 that the IRD applies, implying that the IRD agrees that it should concentrate its enforcement efforts on those who have consciously decided to evade paying their fair share of tax, while making it easier for those that do voluntarily comply. BusinessNZ strongly supports the IRD’s Compliance Model, but it is aware that a perception remains that IRD is still going after those that make innocent mistakes. Consequently, BusinessNZ believes that more could be done to transform the Compliance Model into reality by providing greater leniency to honest taxpayers and discretion to IRD officials on the action taken against taxpayers. This approach, it suggests, would help address some of the fairness issues around providing amnesties for tax evaders.

BusinessNZ then provides a response to the various questions raised in the discussion document, but unlike ICANZ, it does not comment on the questions regarding the design of an amnesty regime as it does not feel sufficiently able to comment on the questions of detail. Given BusinessNZ’s membership and expertise, this is an entirely justified decision.

BusinessNZ, in response to the question: “Would it be acceptable to offer limited amnesties to tax evaders?”, does not agree, unless the issue of fairness for honest taxpayers and reasonable certainty that an amnesty would be effective in increasing voluntary compliance are satisfactorily addressed. In its view, neither of these conditions would appear to be a ‘given’ at present.

In response to the question: “Would limited amnesties help evaders to begin complying with the tax laws?”, BusinessNZ considers that the international experience would suggest that the case does not appear to be strong. In considering the question: “Would it be fair to offer amnesties, even limited ones, as a last chance for tax evaders to get their tax affairs in order?”, its view is probably not, but a possible exception may be if an amnesty were offered as part of implementation of a significant change in the tax system that would disadvantage taxpayers. This latter statement is in accord with the amnesty literature as a valid reason for consideration of implementing a tax amnesty. Such an amnesty would need to be open to all taxpayers, not just those in certain ‘problem’ industries – BusinessNZ is thus showing its preference for a general amnesty, which in these particular circumstances has some credence.

In response to: “Are there other options instead that would deal with industries or areas of the economy where there is ingrained evasion?”, BusinessNZ believes that the NZ Government should make greater efforts to reduce the overall tax burden (including lower tax rates), simplify the tax system, and take a less punitive approach to taxpayers who make honest mistakes (as opposed to deliberate evaders who should feel the full force of the law). To buttress their view, BusinessNZ is of the view that policymakers need better information about the scale of the problem. BusinessNZ then appears to stray from it area of expertise when it contends that the frequently quoted figure of the ‘black economy’ being around 10-12% of GDP in NZ is “implausibly high”.63 Such research

62 New Zealand Government, above n 1, 7 (Figure 1).
63 See the discussion in section IV of this article below referring to the work of Professor David Giles.
has been undertaken by experts and BusinessNZ does not possess such expertise to counter these estimates.

With regard to specific industries or areas of the economy, BusinessNZ states that it is aware that the IRD has been working constructively with several industry groups on improving compliance with tax requirements. In its view, this should be extended to other ‘problem’ industries in the first instance, with positive incentives for the ‘clean’ operators/taxpayers that are compliant and better efforts at detecting and catching those that are not. This recommendation is a useful one that can be adopted regardless of whether the amnesty proposal proceeds.

BusinessNZ see some scope for a public education campaign to raise awareness about the economic and societal costs of ‘cash jobs’ and the wider issue of tax evasion. This, I would argue is a useful contribution to the discussion, and could be incorporated within the amnesty program or considered alongside it, or possibly even in isolation of the proposal.

3 Other submissions

A request was made under the Official Information Act 1992 for a copy of the submissions made on the proposal. A total of 14 submissions were made, including that of ICANZ and Business NZ discussed above. Three submissions (21 percent) were substantial in size, including ICANZ, BusinessNZ and KPMG. Five (36 percent) were medium in size and six (43 percent) were small (often less than a page). Five submissions came from industry and professional groups (Collision Repair Association, NZ Tourist Industry, NZ Retailers Association, BusinessNZ and ICANZ), four from private individuals, three from CA firms (KPMG, PWC, and NSA Ltd), and one each from an academic (not the author!) and a Member of Parliament.

On an analysis, five (36 percent) were strongly or mildly in support of the proposals, four 929 percent) offered weak support or other ideas that could be developed, and two (14 percent0 expressed no view on the proposals (that is, they were largely irrelevant). In terms of the contribution made by the content of the submissions, seven (50 percent) provided useful ideas and analysis, four (29 percent) some ideas, with three (21 percent) were not at all relevant to the proposals.

The large submissions commented on issues of structural problems within the New Zealand tax system and the penalties regime, and tended to prefer the offering of a general amnesty over the targeted amnesty proposal. With specific relevance to the proposal itself, issues of the boundaries, incentives to come forward, managing changes and safeguards were raised as potential concerns. Most submissions, from an academic analysis, were devoid of reasoning that was informed from the content of the tax amnesty literature and associated research, and offered comments that were largely anecdotal. It will be interesting to see what the IRD makes of the submissions when it publicly announces whether the proposal will proceed to the next stage.

IV DISCUSSION AND ANALYSIS

A The amnesty literature and reaction to the proposal

A key reason why the proposed targeted amnesty is ‘up against the odds’ of working effectively is outlined in the discussion document. It notes that a study of an amnesty in the US State of
Michigan in 2002 found that most of the tax evaders who came forward had failed to comply for just a single year\textsuperscript{64} – it did not attract the “hard-core” evaders.

Christian, Gupta and Young,\textsuperscript{65} in their analysis of the Michigan amnesty data, find that two-thirds of the new filers and ninety percent of the previous filers’ amended returns under the amnesty subsequently filed tax returns. This suggests there is considerable value in increasing compliance via an amnesty for previous non-compliers. The associated threat of enhanced enforcement also appears to have been successful. Many (about two-thirds) of the nonfilers that came into the system with the amnesty were already known to the revenue authority, which raises the issue of whether an amnesty was needed to make these taxpayers compliant. This outcome may make identifying other nonfilers more difficult for the revenue authority. The amount of revenue brought in was about 0.1 percent of the total revenue. Nevertheless, increasing revenue is usually only a secondary target of an amnesty, with changing noncompliant behaviour permanently the most important matter. The overall impact of this amnesty on compliance is hence minimal but it is at least positive.

Disappointingly, there is no citation to the Michigan amnesty studies in the discussion document, a common theme through the entire text of this discussion document. Consequently, only those researchers that are familiar with the literature will be able to verify or comment authoritatively on these statements. Nevertheless, through having an awareness of key studies on amnesties, such as those summarised by Richardson and Sawyer,\textsuperscript{66} and subsequent studies\textsuperscript{67} (see also the appendix to this paper), informed comment can be made on the assertions contained in the discussion document.

What is even more surprising is that there is no specific reference in the discussion document to a study of the previous general New Zealand tax amnesty conducted by the IRD in 1988, which was reviewed by Hasseldine.\textsuperscript{68} Not only does his analysis provide useful background but the 1988 general amnesty provides a benchmark for developing any future amnesties, such as those proposed in the discussion document, along with details of the key issues that need to be considered in such an analysis. The NZ Government would also be served well to consider other studies, such as the comparative analysis and template provided by Hasseldine.\textsuperscript{69}

Amnesties can also send out the wrong message about compliance and non-compliance, as indicated in previous studies. Amnesties can lead to those who have complied with their obligations feeling aggrieved by a write-off of tax evaders’ obligations. These taxpayers have


\textsuperscript{66} Richardson and Sawyer, above n 4.


\textsuperscript{68} Hasseldine (1989), above n 17. See also Hasseldine (1995), above n 17.

\textsuperscript{69} Hasseldine, above n 32.
already been placed at a competitive disadvantage by tax evaders who have not accounted for taxation in their pricing and costs, and would now have to suffer this additional insult. Furthermore, as the amnesty literature indicates, the operation of an amnesty gives rise to expectations of future amnesties and reason to relax and wait until this occurs. While an amnesty may reduce the stress among people who want to become compliant with the system but were afraid they could not afford to (the non-hardcore non-compliers), it will rarely be effective against the hardcore non-compliers.

The literature suggests, however, that there may be justification for an amnesty particularly if there is to be a more harsh penalties regime to come in immediately after the amnesty, not merely greater enforcement of existing penalties, which could be achieved without the use of an amnesty.\textsuperscript{70}

Research published by economist Professor David Giles estimated the New Zealand hidden or “black” economy to be about $9 for every $100 worth of goods and services produced in the official economy.\textsuperscript{71} That would amount to around $12 billion a year in 1998 dollars. Thus the lost tax revenue could be as large as $3-4 billion p.a. While some of this would come from illegal activities such as the drug trade, and is likely to remain outside the tax net even with an amnesty, substantial gains in revenue could be made from capturing even a small percentage of the underground economy, which in itself could be seen as a good reason to support the NZ Government’s amnesty proposal.

There is a growing argument that the IRD’s current approach to gaining greater voluntary compliance through partnerships with trade associations in industries in which cash jobs are common is not achieving the level of success desired. Maintaining such a ‘softly-softly’ or ‘carrot’ approach is questionable if it is not being successful, indicating that a much harsher approach may be required through greater enforcement of existing law and penalties. Nevertheless, it is a matter of finding the appropriate balance of ‘carrot and stick’ measures to improve level of compliance.

Importantly the IRD has argued that any benefits from an amnesty would need to be weighed against adverse reaction from taxpayers who had done the right thing. The IRD is also concerned that an amnesty would set a dangerous precedent - if taxpayers thought there would be amnesties, they could afford to relax. Such concerns are valid and should be considered.

PriceWaterhouseCoopers (PWC) tax partner John Shewan is reported as stating that:

“… this would be the first amnesty in 30 [sic] years, and there is a very clear signal than this is a one-off and that if you don’t come forward and continue to evade you can expect to be dealt with very harshly. In my experience there is huge emotional stress associated with people who realise they have done wrong and want to get back in the system but don’t want to get hung, drawn and quartered for so doing - and that is what the current rules tend to do.”\textsuperscript{72}

New Zealand’s previous general tax amnesty was held in 1988, some 16 years ago, although this is still a significant time in the past, and prior to more recent changes to the tax system, including the current penalties regime. An opportunity when an amnesty could have been held was prior to the

\textsuperscript{70} Richardson and Sawyer, above n 4, 220-221.

\textsuperscript{71} This is referred to in a study by P Caragata, The economic and compliance consequences of taxation: a report on the health of the tax system in New Zealand, (1998). See also, for example, DEA Giles, ‘Modelling the hidden economy and the tax-gap in New Zealand’ (1999) 24 Empirical Economics 621-640.

1997 introduction of the new comprehensive penalties regime, although this would have been less
than 10 years after the previous general amnesty.

_The New Zealand Herald’s_ Editorial on 19 August 2004 is particularly scathing of the proposal. It
states in relation to the finding of the Michigan amnesty that “[c]hronic tax dodgers showed no
interest in the amnesty. They carried on regardless. The same, almost certainly, would happen in
this country.”

Further on, this Editorial comments:

“…in the words of a tax specialist, ‘there is a huge emotional stress associated with people
who realise they have done wrong and want to get back in the system, but don’t want to get
hung, drawn and quartered for so doing’. Really? No stress is associated with the
commonplace. And those who evade taxes because they lack a sense of social responsibility
feel no guilt?’”

The Employers and Manufacturers’ Association (Northern) (EMA), not surprisingly has been
extremely critical of the proposal, stating through their CEO, Alasdair Thompson, that:
“Government’s largesse in granting the tax amnesty is no medal winner for over 90 percent of
businesses.” Rather, the EMA would prefer that the Government establish a business compliance
environment that does not tempt small business people to cheat on taxes in the first place.

By way of an example of what could be done to reduce the likelihood of tax cheating, EMA’s CEO
Alasdair Thompson pointed to a tax strategy adopted by the United Kingdom where the first
£10,000 of business income is tax free and the next £300,000 is taxed at only 19 pence in the pound.
Currently in NZ all company profit is taxed at the high rate of 33 cents plus FBT rates up to 64 per
cent. A small business in the UK earning £30,000 per year pays little or no tax. In NZ it would pay
at least $9,900 tax. In the view of EMA’s CEO, if NZ’s business environment was fixed, tax
amnesties would not even need to be considered, although there appears to be no realistic likelihood
that such a proposal or anything similar would ever occur under the current NZ Government.

PriceWaterhouseCoopers, in their newsletter, observe that an amnesty will not eliminate the black
economy but acknowledge that the Government is not suggesting that this is the aim of the
proposal. As PWC note, the Government is also not suggesting that tax evaders be ‘let off the
hook’ entirely. To the contrary, evaders that come forward under the amnesty would be required to
pay interest and some of the core tax and penalties, as discussed above. PWC conclude their
positive perspective on this proposal with the following comment:

“The Government has put forward a constructive proposal which deserves much more careful
consideration than that demonstrated by most commentators to date.”

In the _National Business Review_’s Editorial of 20 August 2004, it concludes aptly in part with the
statement: “A more lateral approach would be to establish why there is not more widespread

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73 Ibid.
74 See Anon, ‘EMA pans amnesty proposal’ (2004) _National Business Review_ (August 18). This is also reflected
in BusinessNZ’s submission, since EMA is a member of this organisation; see section III(C)(2) of the article above.
76 Ibid, 1.
voluntary compliance, reduced barriers and penalties to assist this, and relying less on ‘income’ and more on spending to raise revenue.” However, while this approach is worth considering, the issue of tax mix is a separate area that is beyond the scope of this amnesty proposal.

B Issues for Australian policymakers

Recently the ATO indicated part of its process for combating tax evasion in 2004. Specifically in a media release on 31 March 2004, the ATO states:

“We have a very active compliance program to ensure that everyone complies with their tax obligations. Part of this program deals with tax evasion in the cash economy. We also have an increased presence in the community as part of our expanded cash economy strategy, with about 660 field staff dedicated to investigating those who do not declare their correct income and identifying businesses which operate outside the tax system.

We will contact around 70,000 businesses over the coming year as part of this strategy to investigate undeclared income. About 30,000 of these businesses will be visited by one of these field staff.

_Tax evasion can occur in any industry, but the industries we are now focusing on include building and construction; taxis; cafes, restaurants and takeaway food outlets; hairdressing and beauty salons; cleaning services; clothing and textiles; and pubs, clubs and taverns._

_Other industries we are looking at closely this year include tobacco growing; liquor wholesaling and manufacturing; motor vehicle retailing; gold bullion; art and antique dealing; the sex industry; and the tourism and hospitality industry._”

This statement provides an indication of areas where potentially a tax amnesty could be targeted to some of the industries identified, should such an approach be considered justifiable based on a thorough review of the industry, and an understanding of the relevant literature and previous empirical experience with amnesties. Furthermore, both Australia and New Zealand have similar tax systems (founded on voluntary compliance through self-assessment and enforcement mechanisms), and similar amnesty experiences, with the last known general amnesty in Australia in 1988, the same year as New Zealand. A current focus for improving compliance in both nations is directed at reducing tax evasion via targeting industries, including the use of some form of industry partnership.

Importantly, through this discussion document, NZ tax policymakers have proposed a new and unique approach to tax amnesties, through targeting amnesties to specific industries (although these industries at the time of writing are unknown). Australian tax policymakers, if no so already, should play close attention to the development, and possible implementation, of targeted amnesties.

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78 See Hasseldine, above n 17.

79 This should not be a surprise since the New Zealand Commissioner of Inland Revenue is formerly from the ATO and has introduced ideas that have been successfully applied in Australia, and both the NZ Commissioner and his Australian counterpart are conducive to considering research and analysis from the tax compliance literature.
in NZ. Other jurisdictions are expected to show an interest in these proposals as well, since ingrained tax evasion is an international phenomenon.

V CONCLUSIONS AND LIMITATIONS

The NZ Government’s targeted tax amnesty proposal may have been developed with the best intentions but the proposal, as disseminated in the discussion document, falls short of the mark for a well-reasoned and research-informed policy document. Not only does the proposal fail to provide any references from the extensive literature on tax amnesties, but it neglects to make any reference to the previous general amnesty conducted in New Zealand in 1988. The IRD’s response as to why it took the approach of nondisclosure and lack of detail is understandable but not acceptable if it was really seeking to obtain informed comment by way of submissions and provide evidence to convince taxpayers that the IRD had “done its homework”. Nevertheless, in my view the proposal should be advanced to the next stage, namely publicly disseminating draft legislation for consultation which one would hope is based on relevant research-informed policy.

The initial reaction to the proposal by commentators has been swift and frequently scathing – few appear to support this initiative, although the submission from ICANZ is well-reasoned and generally supportive. In my view the NZ Government would have been better advised had it given more careful consideration to the existing literature, possibly requiring that it sought expert assistance prior to releasing the proposal for public comment (within the necessary level of secrecy), and provided an analysis, even if by way of appendix, to the discussion document.

After all, this debate leaves an important question to be answered – “When should an amnesty be declared in practice?” The best advice that can be given is: unless an excellent and inarguable reason can be found for an amnesty, then it is best not to declare one. The level of ingrained evasion in some industries in New Zealand suggests that consideration of an amnesty is warranted, and to this end the IRD’s initiative is to be applauded. However, the amnesty literature indicates that future revenue effects of an amnesty are almost sure to be negative (or at best just positive), either because of a negative signalling effect or due to the reduced fear of the consequences of further evasion once taxpayers have had their ‘slates wiped clean’. Nevertheless, the effect on compliance behaviour of a suitably designed amnesty may be positive in the long-run.

Possible reasons for “one-shot” (general) amnesties (or possibly even for targeted amnesties) discussed above include self selection (flexibility), insurance effects (insurance), economising on prosecution costs (avoiding costly prosecution), asset laundering during economic liberalisation (asset laundering), and reducing workload arrears (transitional amnesties via ‘cleaning the slate’). Nevertheless, since the literature indicates that most amnesties will have negative compliance and revenue costs, projected benefits should be carefully weighed against costs before they are instituted. Costs also include the equity costs of all amnesties including, especially, amnesties that are designed to offer a self-selection menu of options to tax evaders.

The major limitation of this article is that the subject matter is under review at the time of writing and in fact there is no clear indication whether the IRD will be pursuing this proposal to the next stage – drafting legislation originally due for tabling in Parliament in the first part of 2005. As of 1 December 2005 draft legislation has not as yet emerged. The concept may be ‘killed’ at this early consultation phase if the overwhelming view in submissions is negative and the yet to be complete
analysis of the literature causes the IRD to lose its early optimism for the proposal. Should the proposal proceed, the draft legislation may differ to that in the proposal as a result of content of the fourteen submissions on the proposals and further review of the relevant literature. Thus future analysis should be conducted to review the detailed legislation, if it eventuates, or the reasons given for withdrawing the proposal, depending upon which alternative eventuates. If these amnesties become a reality, then independent as well as IRD analysis should be undertaken to review their success (or otherwise), and identify any changes that can be made to further targeted amnesties, should they be contemplated. Other jurisdictions, including Australia, should closely follow these developments with this innovative New Zealand proposal for targeted industry tax amnesties.
VI APPENDIX

Tax Amnesty Studies from the World Bank’s website:

As this paper has illustrated, even the list below is far from exhaustive of amnesty studies.


