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Peter Frawley
Policy Lead
Inland Revenue Department

By email: peter.frawley@ird.govt.nz; hannah.simmonds@ird.govt.nz

Tēnā koe, Peter

Taxation of amounts paid to households selling excess electricity – consultation on potential changes

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (the Law Society) welcomes the invitation to provide feedback on the problem of the tax treatment of households selling excess electricity and Inland Revenue's proposed solution.

The problem

2. At paragraph [2] of the consultation letter, IR states: "in many instances the amounts received by, or credited to, a household for electricity supplied to the national grid are likely to be assessable income of the household". The Law Society agrees that is approximately correct. We note, however, that a "household" is:
 - a. not a legal entity,
 - b. not legally capable of receiving or being credited with an amount, and
 - c. not capable of being a taxpayer.
3. It would be helpful if IR were to clarify this aspect of its position.
4. More importantly, as IR observes at [2], the amounts in question are only **likely** to be assessable income. As this wording implicitly acknowledges, it is also possible, depending on the circumstances, that such amounts are **not** income.
5. At [5] IR states: "We expect that many private individuals may not be complying with their tax obligations in these circumstances." The Law Society agrees that proposition may well be true.
6. At [3] and [4] IR alludes to the difficulties taxpayers are likely to encounter in quantifying their deductible expenditure, and noted this "may result in high compliance costs for some individuals". In the Law Society's view, this seriously understates the nature and magnitude of this problem.
7. As IR notes at [5], many taxpayers who might derive assessable income by selling their excess electricity are not otherwise obliged to file a return, because the tax on all of their other income is collected by withholding (mainly PAYE). In the Law Society's view this

proposition is probably correct. The Law Society respectfully observes, however, that IR may have underestimated the importance of this point.

8. The current law, as IR explains, is that in some circumstances taxpayers are obliged to file a tax return incorporating complex calculations as to deductions and depreciation even where the amount of gross income, let alone net income, is trivial.

The solution

9. IR proposes to deal with this problem by providing for an exemption of \$1,000.00 for residential customers selling their excess electricity back to their suppliers.
10. The Law Society agrees an exemption would be entirely appropriate. The Law Society submits, however, that the proposed ceiling of \$1,000.00 is too low, given:
 - a. the possibility, implicitly acknowledged by IR (at [2] and see paragraph [4] above), that the amounts in question might not be properly classified as income at all,
 - b. the complexity of calculating the deductions and depreciation losses to which taxpayers are entitled,
 - c. the fact that many such taxpayers would not be otherwise obliged to file a tax return, and
 - d. the fact that the scope of the exemption would presumably be defined by reference to gross income, not net income.
11. For these reasons, the Law Society suggests a ceiling of \$10,000.00 would be more appropriate. It seems clear on IR's figures at [13] that the revenue loss from granting an exemption with a ceiling of \$10,000.00 rather than \$1,000.00 would be minimal.
12. An exemption such as IR proposes could also be justified on the basis that the Government's policy is to encourage self-supply of electricity.
13. At [14] IR invite answers to four specific questions. The Law Society's answers are as follows.

Question 1: Do you agree with the proposed scope based on whether the compliance costs outweigh the potential tax revenue? If not, why?

14. This proposition is correct but, in the Law Society's view, too narrowly formulated. It is generally unsound for the Government to impose a tax unless the revenue raised is at least **several times** the cost of compliance (and administration). As a useful point of comparison, the income tax generally raises almost 100 times the cost of administration and compliance.

Question 2: Should a person with a business or who carries on a profit-making undertaking or scheme (a person likely already filing a tax return) be included within the scope of any potential solution?

15. It would seem troublesome, in the case of taxpayers deriving less than the maximum amount of the exemption, to distinguish between (a) those carrying on a business (presumably a tiny minority, given that the intention is that the proposed exemption should only apply to excess electricity supplied from **residential** property) and (b) those not carrying on a business (presumably the overwhelming majority). It would be simpler therefore to make the

exemption available to all residential customers deriving less than the maximum amount of the exemption, including those (if any) carrying on a business — and doing so would entail virtually no revenue loss.

16. *A fortiori*, there would be nothing gained by excluding from the exemption persons carrying out a profit-making undertaking or scheme.
17. If the exemption were to be confined to taxpayers not carrying on a business or profit-making undertaking or scheme, that would seem to incentivise taxpayers to arrange for their residential electricity account to be in the name of some member of the household not carrying on a business or profit-making undertaking or scheme.

Question 3: Are there any other situations when a person is selling excess electricity and it could be justified to introduce targeted rules to mitigate compliance costs?

18. As explained above, the Law Society respectfully suggests that the proposed ceiling of \$1,000.00 is too low; and a ceiling of \$10,000 would be more appropriate.

Question 4: Do you agree with the proposed solution? Is there another option to mitigate compliance costs for households selling excess electricity that you would prefer?

19. The Law Society agrees it would be highly desirable to provide for a solution such as that proposed, except that the ceiling should be significantly higher than \$1,000.00 — for example, \$10,000.00.

Next steps

20. Should you wish to discuss any aspect of this feedback, please contact Aimee Bryant, Manager Law Reform and Advocacy (aimee.bryant@lawsociety.org.nz).

Nāku noa, nā



Neil Russ
Convenor, New Zealand Law Society Tax Law Committee