New Zealand and capital gains tax: A tax experts' perspective

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ABSTRACT

New Zealand is an interesting country to study capital gains tax (CGT) as it is one of the few OECD countries at present that does not have a formalised capital gains tax. Despite international and political pressures to have a CGT over the last ten years, these attempts to introduce CGT were unsuccessful. The complexity of the tax and a strong public resistance regarding introducing a new and additional tax were the main reasons for not having a comprehensive CGT. Of late, the recommendations from the 2009 Tax Working Group and the 2013 OECD Committee had resurrected the debate to introduce CGT from the Labour and Green parties. The aim of this research is to examine the views of the tax experts' regarding introducing CGT to New Zealand. The findings showed that tax experts overall did not support CGT for various reasons. They include incurring higher tax compliance costs; difficulty in interpretation the CGT legislation; and self-interest. The current tax regime requires tax experts' advice in converting taxable incomes to capital gains in order to minimise taxes for their clients. The self interest factor has not been examined in prior studies and this study aims to address this gap.

Keywords: *Capital gains taxation, New Zealand Taxation*

Introduction

Unlike other OECD countries, New Zealand remains one of the few countries that do not have a comprehensive CGT. Having a CGT will satisfy two canons of taxation which are equity and neutrality, which are the main arguments put forward by proponents of this tax (Inland Revenue & New Zealand Treasury, 2009) At present, New Zealand adopts an "ad hoc" and hybrid approach towards CGT (Burman & White, 2003) where certain capital gains are taxed as taxable incomes under the Income Tax Act 2007 (*ITA 2007*) but not others. This lack of clarity and consistency in taxing capital gains has resulted in heated debates and much criticism about the New Zealand taxation system. In response to those criticisms, the New Zealand government had undertaken three attempts to address the capital gains debate. The first was in 2001 by the McLeod Committee (McLeod Committee, 2001), the second in 2005 with the release of the Taxation of Investment Income discussion document (New Zealand Government, 2005), and finally in 2009 by the Tax Workings Group (Tax Working Group, 2010).

The McLeod Committee (2001) acknowledged there are problems associated with the lack of a comprehensive CGT but felt that the complexity and compliance problems associated with implementing CGT far outweighs its benefits. Instead of having a CGT, they recommended incremental policy changes to eliminate the current flaws in the tax system. The consequence of the discussion document on the Taxation of Investment Income (New Zealand Government, 2005) had resulted in two major tax reforms in New Zealand relating to exemption of capital gains on investments in New Zealand and certain Australian-listed shares and the introduction of the fair dividend rate of return on other foreign investments. The reforms intend to align the tax treatment between portfolio investment entities (such as managed funds) and individual taxpayers' direct investment. However, due to the non taxable nature of capital gains made from property investments, the differential treatment between the domestic and foreign investments created further distortions in the New Zealand hybrid capital gains tax system.

The Tax Working Group acknowledged the many problems inherent in the current taxation of capital in New Zealand. It proposed several major base-broadening solutions including introducing CGT, land tax, risk free return method on residential investment property. In evaluating these alternatives, the group first perceived that a CGT could be an attractive option because of the comprehensiveness of such a tax. However, the group revealed that the introduction of a CGT could pose "practical challenges and efficiency implications" (Tax Working Group, 2010, p.66). In particular, it showed concerns about the complexity of a CGT, the CGT treatment of owner-occupied housing, and the lock-in effects of a realisation-based CGT. As such, the group finally concluded that it would not support the introduction of a CGT.

With the recommendations from the Tax Working Group in 2010, the Labour and Green opposition parties have resurrected the CGT debate. On 15 March 2012, the Labour Party renewed its plans to introduce CGT and suggested a flat tax rate on all capital gains with exemptions given for private residences (www.labour.org.nz/newNZ). The Labour Party's tax policy drew heavily from the Australian taxation system of which experience has shown that there are a number of design issues that can make CGT very complex (Cassidy and Alley, 2012, p.97). The suggestion to introduce CGT is further fuelled by the recent recommendation by the OECD as CGT is seen to facilitate a more efficient and equitable tax structure (OECD, 2013, p.3). The pressure to introduce CGT was largely driven by escalating property prices over recent years (Coleman, 2010). It is believed that CGT may dampen the overheated property market by taxing capital gains made from property transactions (Coleman, 2010).

The main rationale given for not introducing CGT in New Zealand was the complexity associated with the CGT design. This perceived complexity however, did not deter other countries from introducing a comprehensive CGT including Australia, United Kingdom, United States and South Africa. With that, it is imperative to consider other arguments beyond the complexity issue as reasons for resisting a CGT for this country. In particular, this study examines the views of four different groups of tax experts i.e. tax agents, tax accountants, tax lawyers and tax teachers. A survey was sent to a total of 558 tax experts to explore the key issues, aspects, and attributes concerning CGT in New Zealand. It is hoped that the findings of the study will enable the formulation of policy guidelines that might be used if a CGT were considered in New Zealand.

Literature review

Under the New Zealand tax legislation, both the terms "income" and "capital gain" are not exhaustively defined. Further, Part C of the ITA 2007 provides some guidance as to what is to be included as income for tax purposes. Part C lists a number of general categories of income, such as business income, personal property income, investments income, financial instruments income, royalties, and income from equity. Furthermore, there are specific subsections of Part C which taxes capital gains as incomes. In particular, they are income from land sales, income from the disposal of personal property, and gains made by holders of debt instruments (to name a few). In addition, section CA 1(2) captures all incomes under ordinary concepts i.e. a catch-all provision. In order to interpret the meaning of ordinary concepts, common law principles such as are therefore required (Alley & Maples, 2006). An overview of the major provisions of the Income Tax Act that tax potential capital gains is provided in **Table 1** on the following page**.**

Table 1 Summary of the major provisions of the Income Tax Act that tax potential capital gains

"Income" under the Income Tax Act	Details	Section (Income Tax Act 2007)
Gains from the sale of personal property (e.g., public listed New Zealand company shares)	• Capital gains will be taxable as income if: • The property was acquired for the purpose of disposing it; or • The taxpayer is a dealer in property	CB 4 and 5
Receipts arising from land transactions	Capital gains will be taxable as incomes if: • The land was acquired with an intention of disposing it; • The gain is made by land dealers, developers and builders; • The land has been used as a landfill before disposing of the land; • The gains derived from major works, subdivision or land development	CB 6 to 14
Income from financial arrangements (e.g., debt instrument)	• For cash basis taxpayers: o Capital gains are taxed on a realised basis • For non cash basis taxpayers: o Capital gains are taxed on an accrual basis	CC 3
Income from controlled foreign company	• Overseas income (including capital gains) derived by offshore companies which are controlled by New Zealand residents is subject to income tax.	CQ 1
Income from foreign investment fund	• Capital gains on foreign investment funds are taxable on an accrual basis. The FIF income is calculated using the fair dividend rate of return method.	CQ 4
Dividend income	• Corporate distributions of capital gains to shareholders are taxable.	CD 1
Receipts relating to lease agreements	• Capital gains derived from the sale of lease agreements on the use of lands and the disposal of leased asset (such as plant, machinery, motor vehicles and equipment) are taxable.	CC 1, CG 7 and FA 5
Employment income	• Restrictive covenant and exit inducement payments are deemed to be income.	CE 9 and CE 10.
Other specific gains	• The following gains are subject to income tax: • Gains by group companies, • Certain distributions to beneficiaries of foreign and non-complying trusts, and • Building society prizes (unexpected gains)	CV 1, HC 15 and CC 6

CGT in OECD countries

An overwhelming majority of the OECD countries have in place some form of general CGT regime. These countries' CGT systems are based on realisation instead of the comprehensive accrual tax system (Huang and Elliffe, 2010). In general, these countries' tax systems can be characterised as having either "semi-comprehensive" tax systems (where capital gains are taxed at the progressive rates – the same as ordinary income) or "semi-dual" tax systems (where capital gains are taxed at a lower, flat tax rate) (OECD, 2006a, p. 84). Moreover, some countries (such as the United States) have a stepped rate whereby the tax rate for CGT decreases with the increase in the holding period. Some countries (like Ireland and the United Kingdom) have a flat rate while others (such as Australia and Canada) use a discount system for taxing capital gains (Australian Government, 2006, p. 206; Tilley, 2008, p. 661).

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

Realisation- versus accrual-based taxation

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

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

Given the above arguments for and against a CGT regime, the next section will examine the research approach taken for this paper to identify the tax experts' views of having such a tax regime in New Zealand.

Research Methodology

This study represents the third phase of an ongoing CGT study. The objective is to investigate the tax experts' perceptions of a CGT in New Zealand and the CGT adoption factors which influenced them. The data collection was undertaken in three phases, in the period between 25 August 2004 and 30 November 2005.

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

In all, 558 questionnaires were distributed to two different groups of tax experts, i.e., tax teachers and tax practitioners. The first phase explored the perceptions of the tax teachers (Cheng, Davey & Hooper, 2010) while the second stage investigated the tax practitioners' perceptions (Cheng & Yong, 2011). In this study, the total 175 usable questionnaires were aggregated to create a single base of tax experts for compiling a statistical analysis. The overall response rate was 31.4% (175 out of 558) which is acceptable for tax research (Sandford, 1995).

Of the responses received from the tax practitioners in New Zealand, 76.2% (n=112) came from the North Island and 23.8% (n=35) from the South Island. It was also noted that lower than average responses were received from the Canterbury region. This lower number of responses could potentially distort the quality of the data provided by respondents. It was, therefore, important to check if any distortion did in fact occur, i.e., if there was a difference in levels of perception of a CGT across different regions. A Chi-Square test was conducted to analyse whether the respondents from different locations had produced equal response.

The Chi-Square test was used to examine whether a dichotomous factor i.e., location -North Island and South Island, was significant in CGT adoption decision in a question which asked the respondents to specify the types of asset (out of 15 classes of asset) that "should be included for CGT purposes". Two asset classes, Farm ("farm") and Private home ("home") were considered for the purpose of the test. The geographical location of the respondents would have a potential effect on the CGT adoption decision for these two assets if response bias did occur. **Table 2** displays the result.

Table 2 Chi-Square test on geographical locations (two categories: North Island and South Island)

CGT Assets	Value	Df	Asymp. Sig. (2-sided)	Null hypothesis	Comment
Farm	0.085	1	.771	Accepted	No non response bias
Private home	0.002	1	.968	Accepted	No non response bias

As Table 2 indicated, the chi-square value was 0.085 with p= 0.771 for Farm and 0.002 with p= 0.968 for Private homes. With the level of significance established at $p<0.05$, the p values for these CGT assets were well above 0.05 and, therefore, the null hypothesis was accepted.

Research results

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

Background information

Data from 175 completed surveys were used for data analysis. The respondents comprised tax practitioners and tax teachers. Tax practitioners made of 84% (n=147) and 16% were tax teachers (n=28). Of the total 147 tax practitioners, over three-quarters were male, i.e. 77% (n=113), and the rest female, i.e. 23% (n=34). Table 3 on next page reveals the geographical locations of respondents.

Table 3 Number of tax experts by region

Region	Frequency	Precentage
Auckland	60	34.3%
Bay of Plenty	5	2.9%
Gisborne/Hawkes Bay	9	5.1%
Northland	6	3.4%
Waikato	10	5.7%
Wanganui/Manawatu	19	10.9%
Wellington/Masterton	26	14.9%
Canterbury/Christchurch	12	6.9%
Otago	9	5.1%
Southland	12	6.9%
West Coast/Nelson/Marlborough	7	4.0%
Total	175	100.0%

Table 4 shows most of the respondents were registered tax agents. The remainder were members of the New Zealand Institute of Chartered Accountants, Certified Public Accountants, members of the Taxation Institute of New Zealand and members of the New Zealand Law Society. It is noted that most of the tax teachers had one or more than one professional qualifications and might overlap with the other groups of tax experts.

Table 4 Group of tax experts

Group	Professional Qualifications	Frequency	Percentage
Tax Practitioners	Chartered Accountants	42	24%
	Registered Tax Agents	84	48%
	Both CA and TINZ	13	7%
	Other (CPA, lawyers)	8	5%
Tax Teachers	Various	28	16%
	Total	175	100%

General perception of a CGT

This section looks at the respondents' general perception of a CGT. In part one of the questionnaire, respondents were asked to respond to the six CGT statements using a five-level Likert scale (ranging from strongly disagree, with a value of 1, to strongly agree, with a value of 5). With the form of ordinal data provided by a Likert scale, a comparison of medians is most technically appropriate, and non-parametric statistical tests need to be used. A summary of descriptive statistics is provided in Table 5.

Table 5 Attitude score on general CGT issues (n=175)

Questions	Mean	Median	Mode
1. As most of our trading countries have a CGT, implementation of a CGT is inevitable	2.6	2	1
2. Taxing capital gains will clarify (and possibly remove) the distinction between capital gains and income, therefore it reduces the uncertainty in the application of the tax law	2.88	3	4

Questions	Mean	Median	Mode
3. The absence of any CGT in New Zealand provides significant opportunities for tax planning	3.95	4	4
4. CGT will raise revenue for the government if only by protecting the income tax base	3.25	3	4
5. CGT is double taxing investors as the money they invest in a business has already been taxed	2.99	3	2
6. Capital gains and income should be taxed on the same basis	2.29	2	1

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

With a median score of 2 and a mode score of 1, the respondents generally disagreed or strongly disagreed that New Zealand would eventually follow the CGT approach of most trading countries (question 1), and also disagreed with equal tax treatment of capital gain and income on the same basis (question 6).

In contrast, they were uncertain about the positive and the negative effects of a CGT. With a mean of 2.88, median of 3 and mode of 4, the respondents were neutral about the statement "taxing capital gains will clarify (and possibly remove) the distinction between capital gains and income, therefore it reduces the uncertainty in the application of the tax law". A similar result was evident for question 4 where the tax experts were asked whether a CGT would "raise revenue by protecting the income tax base". Their responses were neutral with a mean of 3.25, a median of 3 and a mode of 4. When the respondents were asked about the problem of "double taxation effects on investors" in question 5, they also gave neutral responses (mean 2.99, median 3 and mode 2).

However, the responses for question 3 revealed that the tax experts agreed that the lack of CGT in New Zealand provided significant opportunities for tax planning (mean 3.95, median 4 and mode 4).

To compare the results between the tax teachers and the tax practitioners, Chi-Square tests were conducted to examine whether their responses were independent. Making inferences might not be possible for the cross-tabulations as the initial chi-square tests revealed that more than 20% of the cells did not meet the minimum expected value of 5. In order to meet the minimum statistical requirements, the five-level Likert scale was re-coded into a three-level scale (i.e., disagree, neutral and agree). Only the responses for question 3, which sought the respondents' opinions about the opportunity for tax planning, were recoded into a Yes/No category as most responses were skewed to "agreement". By performing these transformations, the expected cell count did not exceed the 20% empty cell limit.

Table 6 reveals no statistically significant relationship among the first four general CGT issues (trading partners, clarification of capital/income distinction, tax planning opportunities and income tax base protection). However, different responses were received from the tax teachers and the tax practitioners for double taxation ($p = 0.014$) and the equal treatment of income and capital gain ($p = 0.031$). Regarding double taxation, the tax teachers tended to disagree (with a lower mean 2.54 and mode 1) with the statement, while the tax practitioners were more neutral (mean of 3.09 and mode of 2). On the other hand, the tax teachers tended to be more neutral or agree to the statement “capital gains and income should be taxed on the same basis”, while the tax practitioners tended to disagree with the statement (with a mean score of 2.19, median of 2 and a mode of 1). Cramer’s V statistic is about 0.2 for each of the two variables (double taxation and equal tax treatment), and this represents a weak association between the CGT general issue and whether the tax expert is a tax teacher or a tax practitioner.

Table 6 Chi-Square scores for perception of general CGT issues by Group (n=175)

Variables	Chi-Square	Cramer’s V
1. Trading partners	3.83	
2. Clarification of capital/income distinction	0.455	
3. Tax planning opportunities	0.521	
4. Income tax base protection	1.581	
5. Double taxation	8.122*	0.198
6. Equal tax treatment	6.967*	0.198

Note: *p < 0.05

<u>CGT asset coverage</u>

Question 1-1 of part 2-1 of the questionnaire sought the tax experts’ comments on whether the 15 types of asset (such as private home, personal-use property) should be included in the CGT regime. The question was asked in a dichotomous Yes/No format. The table 7 below summarises the relevant statistics. The significant items are also highlighted in bold.

Table 7 CGT asset coverage (n=175)

	Frequencies (%)	
CGT asset	**Yes**	**No**
• Any chose in action (whether legal or equitable)	38.1*	61.9*
• Business goodwill	39.9	60.1
• **Collectables e.g., jewellery, stamps**	31.8	**68.2**
• Copyrights and patents	50	50
• Debt owed to a taxpayer	32	68
• Farms	52.1	47.9
• Land improvements	56.7	43.3
• Listed bonds and capital notes	55	45
• **Personal-use property e.g., home appliance, private car**	6.4	**93.6**
• **Private home (main residence)**	8.7	**91.3**
• **Rental home**	**61.3**	38.7
• **Second home e.g., beach house**	43.6	56.4
• Shares in a listed company	53.2	46.8
• Shares in a small company (non-listed)	40.6	59.4

CGT asset	Frequencies (%) Yes	No
• Share rights and options	50	50

*This category had high non response rate of 11.4% (n = 20)

Most of the respondents answered "no" to half of the CGT assets. In particular, above 90% of the respondents opposed the inclusion of personal-use property (93.6%) and main residence (91.3%). The majority of them wanted exemptions on CGT assets such as chose in action (whether legal or equitable), goodwill, collectables and debt asset owed to a taxpayer. Slightly more than half wanted exemptions on a second home and shares in a small, non-listed company.

On the other hand, the majority of the respondents agreed to taxing capital gains on the disposal of a rental home (61.3%). A slight majority agreed with the inclusion of farms, land improvements and listed bonds (representing 52.1%, 56.7% and 55% respectively). There was no majority on the inclusion of copyrights, shares in a listed company, and share options.

The taxation of capital gains on disposal of property represents the centre of attention for the tax experts. An overwhelming majority of the respondents opposed the taxation on a main residence (91.3%), but agreed on the taxation of capital gains on rental properties (61.3%), which was the highest percentage consensus of all for the inclusion of such an asset in the CGT regime. It is interesting to note that only a slight majority wanted exemptions on a second home (56.4%). The other significant issue was that the respondents had different views on the subject of taxation on debt equity and shares equity, that is, 68% of the respondents opposed taxation of a debt owed to a taxpayer compared to only 46.8% who opposed taxation on shares in a listed company.

It is also noted that some respondents did not know about the type of asset of "chose in action"[2]. The word "chose" is the French word for "thing". The word "chose" is pronounced like the English word "shows". The term may have been unfamiliar to some of the respondents. This may explain the high non-response rate (11.4%) for this category.

Chi-Square tests were conducted to examine any significant differences in the responses given by the tax teachers and the tax practitioners. The categories where the tax teachers and the tax practitioners had different opinions were chose in action, collectables, private home, and second home. With the exception of private home, the majority of tax teachers favoured the inclusion of these assets while most tax practitioners wanted them to be exempt for CGT purposes. Although both tax teachers and tax practitioners opposed the taxation of capital gains on a private home, the percentages for those opposing the tax varied. An overwhelming majority of 93.8% of tax practitioners supported the exclusion while only 77.8% of the tax teachers favoured the exemption. Cramer's V statistic is about 0.2 for each of these four categories of CGT asset, and this figure represents a small association between the CGT asset and whether the tax expert is a tax teacher or a tax practitioner. The result of the Chi-Square test is shown in Table 8 below.

Table 8 Chi-Square for perception of asset coverage by Group (n=175)

CGT asset	Chi-Square	Cramer's V
• Any chose in action	5.105*	0.181
• Business goodwill	0.597	

[2] According to the Butterworths New Zealand Law Dictionary, "Chose in action" is defined as "a thing of which a person has not the present enjoyment, but merely a right to recover it (if withheld) by action" (Spiller, 1995, p. 49). Examples of chose in action include money at a bank and money due on a bond. Choses in action, whether recoverable at law or in equity, can be regarded as CGT assets for taxation purposes in Australia under section 108-5 (b) of the Income Tax Assessment Act 1997.

CGT asset	Chi-Square	Cramer's V
• Collectables	7.308*	0.206
• Copyrights and patents	0.683	
• Debt owed to a taxpayer	0.599	
• Farms	2.743	
• Land improvements	0.508	
• Bonds and capital notes	0.238	
• Personal-use property	3.526	
• Private home	6.867*	0.199
• Rental home	0.128	
• Second home	3.981*	0.152
• Shares in a listed company	1.655	
• Shares in a small company	2.237	
• Share rights and options	0.171	

Note: $*p < 0.05$

Integration with current tax system

This section discusses the research findings for the questions on part three of the questionnaire which relates to the practical issues required to integrate a CGT into the current tax system. These practical issues include: 1) setting the taxes rates and structure, 2) arranging capital loss and company CGT credit, and 3) repealing existing legislation.

When asked about the general structure of CGT, 51.8% of the respondents preferred CGT to be part of income tax and the remaining 48.2% supported CGT as a separate tax. For the tax rates, 51.8% of the respondents preferred lower income tax rates, 45.8% supported the same tax rates as for ordinary income and only 2.4% supported higher CGT tax rates than those in ordinary income. These results revealed that there was a mix of opinions about the CGT structure and the tax rates in general.

Table 9 Tax Structure (n=175)

Structure	Frequencies
Part of the income tax system	51.8%
Separate Tax	48.2%

Table 10 Tax rates (n=175)

Tax rates	Frequencies
< income tax rates	51.8%
= income tax rates	45.8%
> income tax rates	2.4%

Chi-Square tests were conducted to examine whether the responses of the tax practitioners and tax teachers were independent. In order to meet the minimum statistical requirements, the three-scale tax rates were recoded into a two-level scale (i.e. lower than income tax rates and equal to or above ordinary income tax rates). By performing this transformation, the expected cell count of the other cost items did not exceed the 20% empty cell limit.

Table 11 Chi-Square for tax structure and tax rates by Group (n=175)

	Chi-Square	Cramer's V
Structure	5.195*	0.178
Tax rates	5.216*	0.177

Note: $* p < 0.05$

Table 11 reveals that significantly different responses were evident for the tax teachers and for the tax practitioners. The majority of the tax teachers (70.4%) favoured the integration of CGT as part of the income tax system, while the tax practitioners had mixed opinions about it (47.8% supported integration with the income tax legislation and 52.2% supported a separate tax approach). Similar trends were found in their responses for the application of the tax rates. The majority of the tax teachers (70.4%) favoured the application of the ordinary income tax rates, 29.6% supported a lower income tax rates approach and none of the tax teacher chose the option “higher than income tax rates”. In contrast, the tax practitioners had mixed opinions about the tax rates (55.8% supported lower rates, 41.3% supported ordinary tax rates and 2.9% opted for higher income tax rates). Cramer’s V statistic is about 0.178 which suggests the tax structure and tax rates were slightly statistically associated with the type of tax experts. The support of the majority of tax teachers for integration with income tax system and the application of ordinary tax rates revealed their preference for consistent treatment of the taxation of capital gains and ordinary income.

In Table 12 (below), it is revealed that the majority of respondents agreed that any unused capital loss should be carried forward to the next financial year for individual and corporate taxpayers (61.5% and 71.4% respectively).

Table 12 Treatment of unused capital losses (n=175)

Type of taxpayer/ Treatment of unused capital losses	**Individual (%)**	**Corporate (%)**
Tax refund	38.5	28.6
Carry forward	61.5	71.4
Total	100	100

Table 13 below shows the mean, median and mode scores for the three practical CGT issues relating to the treatment of capital loss, the transfer of company CGT credit to individual shareholders, and the measure for anti-avoidance. There was a strong level of agreement (a median of 4 and mode of 5) to the deductibility of capital loss against gross income (ordinary income). The tax experts also agreed that “CGT paid at the company level should be transferred to the shareholder as CGT credits” (median 4 and mode 5). These results confirmed that they preferred a neutral tax system where CGT credit would be transferable to the individual and that capital loss could be offset against income. However, it is important to have some anti-avoidance measure to stop taxpayers from manipulating a CGT. On this aspect, the tax experts strongly agreed that a deemed “market value” regime should apply to the disposal price when there was a lack or no consideration given by the taxpayer in a non-arm’s-length transaction (both median and mode 5).

Table 13 Attitude scores on practical issues (n=175)

Practical issues	**Mean**	**Median**	**Mode**
1. Do you think capital loss should be regarded as a deductible expense which can be set against gross income?	3.82	4	5
2. Do you think CGT paid at the company level should be transferred to the shareholder as CGT credits?	3.72	4	5
3. Do you think a deemed “market	4.08	5	5

	value" should be applied on the disposal price when there is lack of or no consideration? (e.g. non-arm-length transaction and gifts)			

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

To compare the results for the tax teachers and the tax practitioners, Chi-square tests were conducted to examine whether their responses were independent. In order to meet the minimum statistical requirements, the five-level Likert scale was re-coded into a three-level scale (i.e., disagree, neutral, and agree). No recoding was possible for the treatment of unused capital losses for the corporate taxpayers and, therefore, this category was ignored for the purpose of the Chi-Square test. By performing these transformations, the expected cell count did not exceed the 20% empty cell limit.

Table 14 Chi-Square for tax structure and tax rates by Group (n=175)

	Chi-Square	**Cramer's V**
1. Unused capital losses for individuals	1.387	
2. Unused capital losses for corporate taxpayers	N.A.	
3. Capital loss as a deductible expense	1.392	
4. Transfer of company CGT credit	2.015	
5. Measure for anti-avoidance	6.148*	0.189

Note: N.A. = no Chi-square test was conducted.
* $p < 0.05$

Table 14 reveals that no significantly different response was found, except on the measure for anti-avoidance. Although all the tax experts agreed with the application of the anti-avoidance rules for arm-length transactions, the tax teachers tended to have a stronger level of agreement (median 5) than did the tax practitioners (median 4). Cramer's V statistic is about 0.189 which suggests a small association between the issue and the type of tax expert.

Chi-Square tests were conducted to test whether the responses for the tax teachers and the tax practitioners were independent, but in all cases there were no significant differences in responses between the groups.

Discussion and analysis

The above analysis showed that majority of the tax experts in this sample prefer the current tax system relating to capital gains i.e. to be taxed as incomes under the Income Tax Act instead of having a separate CGT. This is because the current tax system provides significant tax planning opportunities for them. This involves identifying ways to convert potential taxable incomes into tax free capital gains for their clients. Arguments for CGT were usually based on equity and neutrality grounds, but the tax experts' rationale for not having a separate CGT can be attributable to the self-interest motive.

This self-interest factor in the argument against CGT can be converted to material benefits for tax experts. Though tax experts acknowledged some benefits of having a separate CGT such as raising additional tax revenues, the self interest factor appeared to have some prominence in opposing a CGT system. Further, the majority opposed having certain capital assets to be included in the CGT regime. In particular, the list of items that should not be included in the CGT is: the personal use of property; private homes; collectables; and chose in action to name a few. Items which should be included in the CGT regime are land improvements, rental homes, shares and bonds of which they are currently taxed as incomes in the present system. The list of items to be included in the CGT is consistent with their opposition of having a separate CGT regime.

The list of items suggested as exemptions to CGT by the tax experts were private residences and personal properties. Private residence exemptions from CGT are common in United States, United Kingdom and Australia (Sandford & Evans, 1999). However, exemptions for personal properties are new and by giving that exemption can potentially erode the CGT tax base.

In addition, more tax experts preferred a lower tax rate for CGT. Given the self interest factor and the opportunity to materially benefit from not having a separate CGT, tax policy makers must take this factor into account when considering the arguments put forward by different lobby groups including the tax experts. Policy makers must ensure that justifications for or against CGT should consider societal needs and not just the needs of a segment within the society.

In terms of the CGT design, tax experts preferred a system which allows for any unused capital losses to be carried forward to the next year for individuals and companies. They also suggested that capital losses be allowed as deductions against gross income. Like the dividend imputation credits regime, any CGT paid at the company level were recommended to be transferred to the shareholders as CGT credits. The use of "market value" as the disposal price for capital assets was favoured in non-arm's length transactions. This was seen as an anti-avoidance measure for disposal of assets between associated parties.

Conclusion

This study explored the attitudes of New Zealand tax experts towards a CGT regime. The results showed that most of them preferred the status quo and opposed a comprehensive CGT because of the added compliance costs, complexity of the tax and a self-interest motive. Due to the absence of a separate CGT, it had provided significant tax planning opportunities for them to mitigate the high effective marginal tax rates for their clients.

The complexity of the CGT includes the structure on which CGT is calculated and the valuation basis it uses (either realisation or accrual). To compound the problem, CGT can be seen as an additional tax and potentially create liquidity problems for taxpayers with unrealisable capital gain made under the accrual basis system. Further, the complexity of the CGT can create more tax loopholes thus making the tax system inequitable. In the opinions of the tax experts, the best approach to combat such problem would be for the government to broaden the income tax base and to use an incremental tax policy to capture capital gains but limit the taxable gains to certain assets such as rental properties, farms, shares and bonds trading.

This paper highlights the contentious arguments surrounding CGT even-though many acknowledged the need to address the capital gains debate. At the same time, many tax experts resisted the introduction of a separate CGT on the basis that it will inhibit savings and wealth accumulation; and increased the complexity of the tax system with added compliance costs. They were also reluctant to suggest a CGT because it was considered to be unfair to tax all capital gains and their self-interest motive. Despite their resistance, the New Zealand government should consider carefully the many factors for or against having a separate CGT. New Zealand may experience pressure in the future from other OECD countries to reconsider introducing CGT in order to remain competitive globally.

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