pensionbriefing

THE UNIVERSITY OF AUCKLAND BUSINESS SCHOOL

A briefing paper from the retirement policy and research centre

The tax implications of pay, salary sacrifice, KiwiSaver and PIEs

RPRC Briefing Paper 06/2007

Introduction

This Briefing Paper explores the nature of the various tax changes to be introduced in 2007/08 and their impact on possible decisions by employees concerning the structure of their remuneration and contributions to KiwiSaver.

The new tax rules concern employer and employee contributions to KiwiSaver Schemes and the rules applying to Portfolio Investment Entities (PIEs).

The tax changes mark the demise of the pure comprehensive income tax approach that has been the hall-mark of New Zealand's retirement savings policies for nearly 20 years. Their introduction significantly complicates decisions for employers, employees and other savers, with implications for an erosion of the tax base. Given their complexity, this Briefing Paper sets out, primarily, the factual aspects of these changes, while a subsequent briefing paper will assess their implications.

RPRC submissions on these tax changes are at http://www.rprc.auckland.ac.nz

The new environment

To illustrate the complexity of the new environment, this paper looks at the decisions from an employee's perspective, given the employer's cooperation. What, given the choices faced by employees, might be the optimal position purely from a tax viewpoint?

To understand the options, Appendix 1 gives a brief description of the nine regulatory definitions of what is regarded as a 'superannuation scheme'. Appendix 2 lists five regulatory definitions of 'pay' and a brief description of their interactions with tax and the state benefit arrangements.

In the context of those regulatory interventions in the decision-making process, the following describes the different issues that an employee may take into account.

1. "Salary sacrifice"

If an employee agrees not to receive part of the employee's remuneration as taxable pay in exchange for a contribution by the employer to a superannuation scheme ('salary sacrifice'), tax savings may arise as follows:

1.1 **To a KiwiSaver Scheme**: The "specified superannuation contribution withholding tax" (SSCWT) is nil on the employer's contribution up to 4% of the employee's gross taxable income, or up to the employee's own contributions when they are

less than 4%. Normal SSCWT rates applicable to the employee, of 15% 21% or 33% apply to any excess over either of those amounts. Fund Withdrawal Tax (see below) can potentially apply to contributions to which SSCWT applied[1]

1.2 **To a Complying Fund**: a similar KiwiSaver Scheme treatment applies to salary that is sacrificed to a Registered Superannuation Scheme that has been approved by the Government Actuary as a Complying Fund. However, the KiwiSaver 'kick start' of $1,000 and the annual membership fee subsidy of $40 a year do not apply.

1.3 **To another Registered Superannuation Scheme**: The highest rate of SSCWT is 33% so that if an employee's income together with the employer's contribution would have indicated a marginal tax rate of 39%, contributions are taxed advantaged.

1.4 **To a separate unregistered scheme**: These are referred to in the Income Tax Act 2004 as "Superannuation Schemes" and may have a place in financial planning. While a Fringe Benefit Tax of 49% (or 64%) that is deductible to the employer applies to these contributions, (which is equivalent to 33% or 39%, as the case may be, non-deductible) such contributions are not aggregated with other income for purposes of determining any SSCWT on contributions to any other registered scheme. Nor is any Fund Withdrawal Tax (see below) payable on benefits withdrawn. Salary sacrifice to an unregistered scheme, while not actually saving tax by comparison with PAYE Earnings, can reduce what counts as "income" for a number of purposes without overly affecting flexibility.

The new rules to limit so-called "extreme salary sacrifice" require that, from 1 April 2007, the appropriate SSCWT rate no longer depends on the last dollar of taxable pay but on the combined amount of 'taxable pay + employer contributions' in respect of the member in the last complete financial year. If the employee has not worked for the employer for a complete year, the total is based on the employer's estimate for the current financial year.

However, the tax thresholds for normal income tax ($9,500 and $38,000) are increased by 20% (to $11,400 and $45,600) before the next higher tax bracket applies for SSCWT. This is an all or nothing test – if the total passes a threshold by only $1, the higher rate applies to all the employer's contributions.

The top rate of SSCWT is 33% so that applies to all sacrificed income if the total exceeds $45,600 in a year.

Salary sacrifice will also reduce personal and employer ACC levies. But benefits such as ACC other pay-related benefits (such as death cover or superannuation entitlements) may be reduced as they are based on taxable pay after the sacrifice. An employer that introduces salary sacrifice can avoid this consequence by redefining 'pay' for those other employee benefits to include the amount sacrificed. That will not, however, affect the ACC-related liability (and benefit) that remains tied to PAYE Earnings.

[1] But will have limited practical effect, given that KiwiSaver benefits are locked up until age 65 in most cases. KiwiSaver schemes will not therefore be used to cycle significant amounts of salary except, perhaps in the years immediately before retirement.

2. "Fund Withdrawal Tax" (FWT)

To limit taxpayers' ability to cycle pay through superannuation schemes, FWT charges 5% on withdrawals that are not 'proper' superannuation benefits. However, FWT does not apply in some cases but, confusingly, can apply at "normal retirement"[2]. FWT applies to Registered Superannuation Schemes, but not, in due course, to KiwiSaver Schemes (see the explanation of the FWT calculation in Appendix 2). The government will be changing the law on this to exempt all KiwiSaver benefits from FWT[3].

However, FWT can even apply to 'real' employer subsidies as opposed to re-arranged remuneration that is the subject of this Briefing Paper. However, if the sum of employee's "taxable income" (note, not PAYE Earnings) and employer contributions is less than $60,000 in each of the four years preceding a benefit payment, no FWT is payable[4]. For the example case analysed in this Briefing Paper, the exemption will not apply.

3. KiwiSaver Schemes

An employee who joins a KiwiSaver Scheme qualifies for a number of incentives, each of which improves the net value of the employee's remuneration. In summary:

3.1 "Kick start": The government will contribute $1,000 tax-free after three months' membership.

3.2 "Tax credit: If the employee contributes at least $1,042.86 a year (equivalent to $20 a week), the government will contribute a matching amount. Again, that is tax-free and is paid as a lump sum direct to the employee's KiwiSaver Scheme after the end of the government's financial year (30 June).

3.3 Employer's contributions: From 1 April 2008, employers must contribute to KiwiSaver for employees who belong to a KiwiSaver Scheme and who are contributing. The required contributions start at 1% for the 2008/09 year and grow by 1% a year to a maximum of 4% by 2011/12. The contributions are not subject to SSCWT and are therefore tax-free.

This also attracts a matching tax subsidy up to $20 a week but payable to the employer. This paper assumes that the employer retains that for its own account[5].

Whether the employer's contribution directly rewards an employee depends on the employer's remuneration strategy. In the context of this Briefing Paper, the employer's net contribution will be treated as part of pay rather than as an additional amount the employer has to pay on top of regular remuneration[6].

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[2] FWT is a complex tax with a number of quite detailed exemptions. One such is for "early retirement" as long as that complies with certain rules. There is no exemption for a full retirement at, say, age 65. This is a clear gap in the legislation. Regrettably, it is only the most obvious gap.

[3] Also, KiwiSaver equivalent payments from a Complying Fund – see clause 141 of the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill 2007.

[4] Section CS6(1) Income Tax Act 2004.

[5] That is what will probably happen. In the "total remuneration" environment that is the example to illustrate this paper, the employer's tax credit will be an incentive to encourage employees to join KiwiSaver. The net 'compulsory' employer contributions will come from the employee's regular remuneration.

[6] In a pure "total remuneration" environment that this briefing paper contemplates, any amounts the employer is required to pay as a result of the employee's decision to join a KiwiSaver Scheme will be taken into account in setting the remaining pay. It is possible that some employers may choose to reward those in KiwiSaver with contributions that are in addition to gross pay.

However, the tax consequences of those contributions will be taken into account…. is this where you cover the issue?

3.4 **Membership fee subsidy**: This is a tax-free government subsidy of $40 a year paid in two $20 instalments.

3.5 **First home subsidy**: Under certain conditions a first home buyer[7] may qualify for a government subsidy of $1,000 a year for up to five years' membership.

This Briefing Paper will have regard for the consequences to remuneration of only items 3.2 (the "tax credit" on the employee's contributions) and the SSCWT-free nature of the employer's contributions and the employer tax credit (item 3.3). The "kick start" is a one-off; the membership fee is inconsequential and the first home subsidy will tend to apply to KiwiSavers who will not be restructuring their remuneration in the way contemplated in this Briefing Paper.

4. PIE income

The new Portfolio Investment Entity ("PIE") rules start on 1 October 2007. They are designed to ensure that investment income attributed to a member is taxed at a rate that reflects their overall taxable income.

If a member earns only PIE income then tax on the PIE's investment income that is attributable to the member is 19.5% as long as the PIE income does not exceed $60,000 a year before tax.

If the member has taxable income then, as long as that does not exceed $38,000, the member can have combined pay + PIE income of up to $60,000 in a tax year and still effectively pay only 19.5% on the PIE income component[8]. The test is based on combined income in either of the two previous financial years. It is sufficient if the test is satisfied in one of those years.

However, if the member receives $1 more than $38,000 in taxable pay or $1 more than a combined $60,000 of pay + PIE attributed income, then the whole of the PIE income in respect of the member is taxed at the alternative higher PIE rate. From 1 April 2008, the top PIE rate reduces from 33% to 30% but the lower rate remains 19.5%.

Both rates from 1 April 2008 will result in investment income being taxed at a lower rate in a PIE than would have applied had the income been earned directly by the member.

The PIE tax rate that applies in respect of a member of either 19.5% or 30% (from 1 April 2008) is called the "Prescribed Investor Rate" ('PIR').

[7] There are household income and house price restrictions that aim the subsidy at 'average' earners buying cheaper houses as a 'principal residence'.
[8] The PIE itself pays the tax as a proxy for the member who receives a credit of the net amount within the PIE's accounts.

The employee's decision

Faced with the above, what avenues are open to the employee to maximise their gains from the new regime, assuming the employer is prepared to co-operate?[9]

Let's assume the employee earns a total of $100,000 a year and that the employer does not mind a bit of administration but is not prepared to pay any more (by way of a subsidy to superannuation – even to KiwiSaver from 1 April 2008). Before any re-organisation, the normal tax would be $30,270, the ACC levy $1,298 a year and the employee's net take home pay would be **$68,432**.

Ignoring, for a moment what the employee might need to live on, the employee could maximise the after-tax (and ACC levy) value of the remuneration package as described below. There should be three steps – first to lower taxable pay to $39,520 a year. After step 3, taxable pay becomes $38,000 and the difference between that and $39,520 becomes the employer's contribution to KiwiSaver (4% of $38,000). Fixing taxable pay in this way will allow the employee to step into the favourable PIE regime. The detailed calculation follows:

Step 1 Salary sacrifice to a registered superannuation scheme

Reduce gross remuneration by $60,480 so that the employer can pay $60,480 to a normal, accessible, employer-sponsored, Registered Superannuation Scheme (not a KiwiSaver Scheme).

SSCWT of 33% will be payable on the whole of this salary sacrifice. Tax on sacrificed contributions between $39,520 and $60,000 is the same as it would have been had it been paid as salary (33%) so there is no tax saving there. The reason for turning the amount between $39,520 and $60,000 into an employer contribution is to do with the way PIE income is taxed – see (d) below.

Step 2 Set taxable pay at $38,000

Set direct, taxable pay at $38,000 gross. Before the re-arrangement for KiwiSaver (see the next Step 3), this will leave $30,096 after PAYE tax and the ACC levy as the take-home income. The ACC levy is now $494 a year because taxable pay is less. However, the income-related disability pension benefit under ACC, if it became payable, will also be based on $38,000. Other ACC benefits are unaffected.

Step 3 Employer contribution to KiwiSaver

Contribute to KiwiSaver. Because taxable pay has been reduced in Step 2 above to $38,000 by way of salary sacrifice, the maximum employer contribution is now $38,000 x 4% or $1,520. That employer contribution will be tax-free. However, the employee must also contribute 4% (another $1,520). The ACC levy is unaffected by this and remains at $494 a year.

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[9] The legislation giving effect to the so-called "tax credits" (in reality a tax subsidy) was passed on Budget night in May 2007. The other legislation, mainly affecting, for the purpose of this briefing paper, the employer's compulsory contributions to KiwiSaver, has yet to be passed (the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill 2007). This Briefing Paper assumes the proposed legislation will become law.

The employee's after-tax, after-contributions, take-home pay is now $28,576 which is the net take-home pay described in Step 2 above after deducting the employee's KiwiSaver contribution. (Note that we have assumed the advantage of the employer's $1042.86 a year tax credit will be retained by the employer.)

Summary Combined net remuneration

After taking the above three steps, the employee's resulting overall position is now:

Take-home pay	$28,576
Superannuation – net contribution	$40,522
KiwiSaver (employee)	$1,520
KiwiSaver (employer)	$1,520
PAYE tax	$7,410
ACC levy	$494
SSCWT – normal superannuation	$19,958
Sub-total	**$100,000**
Plus employee's tax credit	$1,043
Total	**$101,043**

Note: The calculation assumes that the employer retains its tax credit.

Contributions worth a total, net (after SSCWT) $43,562 are now in both the accessible employer-sponsored scheme and in the 'locked to retirement' KiwiSaver.

The employee's total net remuneration is now **$73,181**, an improvement of $4,749 on the initial, all-cash position.

The PIE influence

So, why not maximise the KiwiSaver tax break? On total remuneration of $100,000, the employee could have salary-sacrificed $3,846 a year[10], tax-free to KiwiSaver rather than the $1,520 in the example. The employee seemingly loses $767[11] by paying more tax by comparison with the sacrifice to the normal, accessible superannuation scheme.

There are two reasons for the suggested approach:

1. The more important relates to the loss of the PIE income concession described below.
2. Secondly, unless the employee is committed to retirement saving, losing flexibility with respect to $7,692 of annual contributions (employer and employee contributions together) that would be locked up until age 65 (or even later if the state pension age increases) may not be worth the price of $767 in tax benefit gained.

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[10] Taking a salary sacrifice reduces the taxable pay on which KiwiSaver contributions are based. In the current case, the maximum tax-free contribution is calculated as ($100,000/1.04) x 4%. The employee must match that from pre-tax pay to make the employer's contributions tax-free.

[11] The $3,846 free of tax becomes, in the example $1,520 free of tax and $2,326 that will be taxed at 33% as a contribution to the non-KiwiSaver scheme (a saving of $140 in tax on what would otherwise have been taxed at 39%).

There is also a more general issue that will probably see KiwiSaver become subject to increasingly detailed regulation as people respond to the signals embedded in the KiwiSaver framework. Those expected changes are unlikely to improve flexibility with respect to KiwiSaver savings.

The PIE advantage is as follows - once the employee has been on the basis outlined above for at least one complete tax year, up to $22,000 of investment income ($60,000 less the taxable pay of $38,000) can be earned through a PIE with tax at only 19.5%. Had that been added to other taxable pay, it would have been at 33%

The value of that will depend on the employee's PIE position (how much money is invested in PIEs) but could be worth as much as $2,970 a year ($22,000 * (33%-19.5%)). The employee's spouse/partner can also be joined in to increase the advantage of the PIE income concession to the household.

Interaction with state-provided benefits

There are several other influences that may affect the employee's decision. Most income-tested state benefits are affected by PAYE Earnings as that is defined in Appendix 2. This applies to things like Working For Families Tax Credits, student loan payments; child support payments and ACC levies (and income-related benefits). It also affects an employee's obligations to contribute to a KiwiSaver Scheme.

A decision to sacrifice salary can therefore have a positive effect on a family's net spendable income, depending on its potential entitlements under these different programmes.

Conclusion

New Zealand has moved away from a natural definition of what constitutes "income" from employment. That change also has significant implications for state benefits where some form of test of "income" affects entitlements and/or obligations.

As the boundaries between different kinds of rewards for work become less clear, there will probably be a growing role for tax planners and remuneration advisers who will be needed to help employers and employees through the different rules. There will also be more changes as the boundaries are tested.

Appendix 1

The nine different types of superannuation schemes

KiwiSaver has changed the face of superannuation. Until now, we have had two types of schemes from a regulatory viewpoint.

We are about to have nine.

1. Registered Superannuation Scheme

This is a scheme registered by the Government Actuary under the Superannuation Schemes Act 1989. That Act imposes minimum requirements for registration, reporting and administration. The Government Actuary provides regulatory oversight of each registered scheme. The Income Tax Act 2004 calls this a "superannuation fund".

2. Superannuation Scheme

Under the Income Tax Act 2004, a superannuation arrangement that isn't a Registered Superannuation Scheme is called, confusingly, a "superannuation scheme" Employer's contributions are subject to the FBT regime.

3. KiwiSaver Scheme

Under the KiwiSaver Act 2006, a Registered Superannuation Scheme (1. above) can apply to the Government Actuary to become a KiwiSaver Scheme. This can be either established for the purpose or part of a wider scheme that qualifies under 1. above. A KiwiSaver Scheme must comply with the requirements of both the Superannuation Schemes Act and the KiwiSaver Act. Once it is an approved KiwiSaver Scheme, it is no longer a Registered Superannuation Scheme. It receives KiwiSaver contributions from individual members and their employers. Benefits are generally locked up until age 65. The government subsidises the scheme with "sweeteners" and with tax concessions on employee and employer contributions. There will probably be 40-50 KiwiSaver Schemes.

4. Chosen KiwiSaver Scheme

A KiwiSaver Scheme (3. above) may also be a **Chosen** KiwiSaver Scheme. An employer can identify a particular KiwiSaver Scheme as the one its employees will join, by default, if the employee does not choose a scheme directly.

5. Default KiwiSaver Scheme

A KiwiSaver Scheme (3. above) may also be a **Default** KiwiSaver Scheme. The government chooses a limited number of KiwiSaver Schemes. If an employee does not choose a KiwiSaver Scheme **and** if there is no **Chosen** KiwiSaver Scheme (4. above), the IRD randomly allocates the employee to a Default KiwiSaver Scheme. A default scheme can also be a Chosen KiwiSaver Scheme.

6. Exempt Scheme

The more accurate description is a Registered Superannuation Scheme (1 above) that lets an employer be an "exempt employer"; that is, exempt from the automatic enrolment of all new employees into a KiwiSaver Scheme. An Exempt Scheme requires at least 4% of pay as contributions in respect of members. It can be part of a wider scheme that qualifies under 1. above. Benefits do not have to be locked up until age 65 but there are no government-paid incentives.

7. Complying Superannuation Fund

If an employer wants to contribute to a separate scheme (1. above) and qualify for the same tax concessions as noted in 3. above, it can ask for a scheme (that existed on 1 July 2007) or a section of a scheme to be classified as a Complying Superannuation Fund. Contributions and benefit provisions parallel those of a KiwiSaver Scheme (3. above). A "complying" fund can be part of a wider scheme that qualifies under 1. above.

8. Existing Superannuation Scheme

After 1 April 2008, employers must contribute to KiwiSaver for employees who join. Employer contributions start at 1% in year 1 and become 4% by year 4. However, if the employer contributes to a Registered Superannuation Scheme (1. above) that existed on 17 May 2007 for members who join before 31 March 2008 (or have the right to join), the employer does not have to contribute to KiwiSaver for them; that is, as long as the KiwiSaver minimum is paid.

9. Retirement Savings Scheme

The Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill 2007 proposes a new type of scheme – a "Retirement Savings Scheme" (RSS). This imposes "retirement scheme contribution withholding tax" (RSCWT) that is the same as the member's normal marginal tax rate (19.5%, 33% or 39%). The RSS must be a PIE and the investment income will not affect income-tested state benefits. Benefits are subject to similar rules as apply to Complying Funds (7 above).

[Aventine Consulting Limited has consented to the publication of this summary as part of the briefing paper.]

Appendix 2

What is "income"?

The new rules that affect contributions to superannuation schemes (and investment income from them) have increased the number of regulatory definitions of "pay" and the tax and state benefit consequences that follow. Here are the main definitions that an employer might encounter:

(a) 'Pay' for income tax

The 'pay' for ordinary income tax is direct cash remuneration, including bonuses, overtime and allowances - we'll call this "PAYE Earnings". The tax to be paid accumulates by income band as follows:

Taxable pay	% tax on this band
0 to $9,500	15%
$9,501 to $38,000	21%
$38,001 to $60,000	33%
$60,001 and over	39%

Note: ACC premiums for both employee and employer are based on PAYE Earnings. The permanent disability ACC pension is also based on this.

If the employee receives non-cash benefits (like a car, low interest loan, subsidised or free accommodation) the value of that is added to direct cash remuneration for the calculation of Fringe Benefit Tax (FBT). The grossed up equivalent of the tax that would have been paid by the employee is payable by the employer. The employee pays no tax directly as it is not income earned directly by the employee.

(b) 'Pay' for SSCWT

Since 1 April 2007, the 'pay' that drives the rate at which SSCWT is calculated is the total of PAYE Earnings and contributions paid by the employer to Registered Superannuation Schemes in respect of the employee, including employer contributions to KiwiSaver that exceed the tax-free limit – we'll call this the "Total of Relevant Amounts".

It does not include employer contributions to what the Income Tax Act calls a "Superannuation Scheme"[12]. Those are subject to FBT.

[12] The Income Tax Act 2004 confusingly calls a scheme that is registered under the Superannuation Schemes Act a "superannuation fund" while an unregistered scheme is called a "superannuation scheme".

The SSCWT rate is as follows:

Total of Relevant Amounts	SSCWT rate
	- for normal scheme
0 to $11,400	15%
$11,401 to $45,600	21%
$45,601 and over	33%
	- for KiwiSaver
(a) For up to 4% PAYE Earnings (or employee contributions if lower)	0%
(b) On the excess	As above

Note: an alternative SSCWT rate is 33% on all affected contributions.

SSCWT is not cumulative, as with income tax. If the employer's contributions mean that the Total of Relevant Amounts is $45,601, SSCWT becomes 33% of all employer contributions, including for the contributions below $45,600. However for KiwiSaver on its own, the exemption is allowed to the maximum with only the excess taxed as for other employer contributions.

(c) For PIE income

The tax payable by a PIE in respect of a member depends on the amount of the total in a financial year (ending on a 31 March) of:

- (i) the member's PAYE Earnings;
- (ii) other taxable income received by the member (interest, dividends, other employment);
- (iii) PIE income in that year.

We'll call this the "PIE Total".

The member must advise the PIE whether the PIE tax rate (what the Act calls the "Prescribed Investor Rate") should be either 19.5% or 33%[13] as follows:

PIE Total	PIE tax rate
0 to $60,000	19.5%
$60,001 and over	33.0%

Notes:

1. The PIE tax rate is an 'all or nothing' test. If either the PIE Total exceeds $60,000 or the total of the member's PAYE Earnings and other taxable income exceeds $38,000 in that year, the PIE tax rate must be 33%. Both tests must be satisfied for the lower 19.5% rate to apply.
2. The PIE Total includes "portfolio investor allocated income" from all PIEs but does not include income from collective investment vehicles

[13] 30% from 1 April 2008.

that are not PIEs but that are "final" taxpayers, such as another registered superannuation scheme or under an unregistered "superannuation scheme", as defined in the Income Tax Act 2004.

The 'year' to which these tests apply is not straightforward – it applies only to complete financial years and if the test is satisfied in either of the last two financial years, the lower PIE tax rate applies in the current year, regardless of either PIE income or taxable income in either the other of the two years or the current year.

The PIE must comply with the member's election as to the PIE tax rate.

(d) For calculating Fund Withdrawal Tax (FWT)

FWT of 5% is due on the payment by an employer-sponsored Registered Superannuation Scheme. The rules for this are complex and there are exemptions but the 'pay' that triggers the potential liability is as follows:

> PAYE Earnings (as above) and other taxable income **plus** all the employer's contributions paid to any Registered Superannuation Scheme by any of the member's current employers (and also including previous employers) in the current year and during the four preceding financial years. Let's call this the "FWT Total".

The 'contributions' for this purpose currently include the employer's contributions to a KiwiSaver Scheme but this will be changed later in 2007. All employer contributions to KiwiSaver, including those made over the 4% tax-free amount, will be exempt FWT on a permitted withdrawal from a KiwSaver Scheme (and a Complying Fund). That also applies to an employer's contributions to an unregistered "superannuation scheme" as they have been subject to the FBT regime for contributions.

If the FWT Total is less than $60,000 in all of the four years, no FWT is payable. The potential FWT liability is reduced by 25% for each complete year the FWT Total is less than $60,000.

(e) Interaction with state benefits

The entitlements to a number of state-provided benefits or obligations depend in some way on "income". These include:

(i) Working For Families Tax Credits;

(ii) Student Loan payments;

(iii) Child support payments;

(iv) ACC levies and benefits.

In each of these cases, it is the earner's PAYE Earnings that count. This Briefing Paper has demonstrated that there is considerable potential to manipulate PAYE Earnings and, therefore, their impact on all of the above items.

Using salary sacrifice to an unregistered "Superannuation Scheme" also has the same effect. Even though it will not reduce overall tax (PAYE tax + FBT), it will reduce PAYE Earnings.

(f) For calculating holiday pay

"Ordinary weekly pay" under the Holidays Act 2003 includes:

(i) pay for an "ordinary working week";
(ii) bonuses but only if they are a regular part of pay;
(iii) overtime payments if those are a regular part of pay;
(iv) the "cash value of any board or lodgings provided by the employer".

Irregular and discretionary payments are not included in calculating pay for ordinary holidays so the amount will often be less than PAYE Earnings.

However, for public holidays "relevant daily pay" means, broadly, the pay the employee would have received on the public holiday concerned, including what might have been irregular payments that might have been excluded for ordinary holidays.