

# Simplifying the collection of tax on employee share schemes

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*An officials' issues paper*

April 2015

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# CHAPTER 1

## Introduction

- 1.1 Officials have been advised of difficulties faced by employers and employees in accounting for tax on benefits provided under “share purchase agreements” – otherwise known as “employee share schemes”.<sup>1</sup>
- 1.2 Benefits<sup>2</sup> provided to an employee under an employee share scheme are “employment income” under section CE 1(1)(d) of the Income Tax Act 2007, but unlike most employment income, these benefits are not currently subject to tax at source under either the pay as you earn (PAYE) or fringe benefit tax (FBT) rules. This means employee recipients of employee share scheme benefits must file an IR 3 returning the employee share scheme benefit as income and account for the tax on that benefit themselves.<sup>3</sup>
- 1.3 This treatment has not been well understood to date. Accordingly, an Inland Revenue *Large Enterprises Update* in November 2013 stated:

Employee share scheme income isn’t subject to either PAYE or FBT, so shouldn’t be included in the Employer Monthly Schedule (IR 348/EMS) or FBT return you send to us. Instead any employee with this type of income must file an IR 3 tax return for the income year they receive the income in.
- 1.4 Following this *Large Enterprises Update*, officials have been asked to consider, as a simplification and compliance cost reduction measure, an amendment to the Income Tax Act 2007 to permit employers to account for tax on employee share scheme benefits at source, preferably through the PAYE system.
- 1.5 This issues paper outlines the concerns with the current system in more detail and suggests some possible solutions to deal with these concerns.

### Request for feedback

- 1.6 Officials are aware that taxpayers will have different views about this issue and different preferred solutions.

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<sup>1</sup> This paper does not cover approved employee share purchase schemes (commonly referred to as “DC 12 schemes”) as the benefit to employees under these schemes is deemed to be nil; thus the tax collection problem does not arise.

<sup>2</sup> The “benefit” under an employee share scheme is, in the case of an acquisition of shares, the amount by which the value of the shares when they were acquired is more than the amount paid or payable for them. Share options provided to employees are generally not taxed until they are exercised, at which time the tax treatment in the previous sentence applies.

<sup>3</sup> Officials are aware that employee share schemes can be structured using an employee share loan which is used to purchase shares, where the loan is ultimately repaid using a cash bonus (subject to ordinary PAYE). This “self-fix” results, economically, in tax at source on employee share scheme benefits. This issues paper therefore relates only to non-monetary employee share scheme benefits.

1.7 Therefore, this paper asks for feedback on:

- officials' understanding of the problems with the current tax collection system and how widespread these problems are;
- possible solutions to the problem and which solution would be preferred – in particular, whether PAYE or FBT is the preferred source taxation system and whether taxation at source should be elective or compulsory; and
- if a legislative amendment is made, what transitional measures would be needed to ensure existing employee share schemes are not adversely affected and what timeframe would taxpayers need to make any necessary changes to their systems.

### **Scope of issues paper**

1.8 Officials are aware that there are some wider issues with the taxation of employee share schemes and employee option schemes. This issues paper does not consider these substantive tax issues; it is solely confined to the collection of the tax that arises under the current tax rules. The paper has been prepared in response to taxpayer concerns over compliance costs associated with employee share schemes and a tax collection mechanism that is seen as a barrier to the uptake of these schemes.

1.9 Officials are currently considering the wider issues with employee share schemes and intend to commence consultation on these issues later this year.

1.10 None of the suggestions in this issues paper are intended to alter the quantification or timing of the taxation of benefits under an employee share scheme.

1.11 Feedback received will help to shape recommendations we make to the Government on the final form of any amendments to be included in a future tax bill.

### **How to make a submission**

1.12 You are invited to make a submission on the suggested reforms to the collection of tax on benefits provided under employee share schemes. Submissions should be addressed to:

Simplifying the collection of tax on employee share schemes  
C/- Deputy Commissioner, Policy and Strategy  
Inland Revenue Department  
PO Box 2198  
Wellington 6140

1.13 Or email [policy.webmaster@ird.govt.nz](mailto:policy.webmaster@ird.govt.nz) with “Simplifying the collection of tax on employee share schemes” in the subject line.

- 1.14 Electronic submissions are encouraged. The closing date for submissions is 5 May 2015.
- 1.15 Submissions should include a brief summary of major points and recommendations. They should also indicate whether the authors would be happy to be contacted by officials to discuss the points raised, if required.
- 1.16 Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with that Act. Those making a submission who consider there is any part of it that should properly be withheld under the Act should clearly indicate this.

## CHAPTER 2

### Problem with current system

- 2.1 As shares and options provided under employee share schemes are substitutes for a cash salary (or another form of employment income), our tax rules seek to tax benefits arising under employee share schemes in an equivalent way to cash salary or wages. This is to ensure neutrality between different remuneration strategies and to prevent tax distorting commercial decisions to remunerate in one way rather than another.
- 2.2 Consequently, the current rules treat as employment income a “benefit” that arises under an employee share scheme. The “benefit” under an employee share scheme is, in the case of an acquisition of shares, the amount by which the value of the shares when they are acquired is more than the amount paid or payable for them. Share options provided to employees are generally<sup>4</sup> not taxed until they are exercised, at which time the tax treatment of a share acquisition applies.
- 2.3 The benefit arising under an employee share scheme is treated as employment income under section CE 1(1)(d) of the Income Tax Act 2007, but unlike most other employment income, it is not a PAYE income payment (under section RD 3) nor is it a fringe benefit. This means that, unlike cash salary or wages, the benefit is not subject to any form of taxation at source and it is the employee’s obligation to file an IR 3 return and pay the requisite tax.

### Potential problems with current collection system

- 2.4 The example below illustrates a potential problem with this approach.

#### Example 1

John is offered 500 shares in his employer XCo for a purchase price of \$10,000. The market value of the shares on the day he is able to acquire the shares is \$50,000. If John chooses to acquire the shares, John’s employment income from the employee share scheme is \$40,000 (\$50,000 market value of the shares – \$10,000 purchase price). As an alternative, XCo offers John a \$40,000 cash bonus (which is currently his only source of income). John may choose to take either the shares or the \$40,000 cash bonus.

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<sup>4</sup> Share options are taxed before exercise when they are disposed of to a non-associated party. In this case, the taxable benefit is the consideration received from the third party for the option.

- 2.5 Under our current tax rules, if John chooses to purchase the shares and receive his \$40,000 employment income in this form, he would have to account for tax on this income himself. This would involve:
- John filing an IR 3 – which he would not otherwise have to file; and
  - funding the resulting tax liability from: (a) his after-tax cash salary; (b) the sale of a portion of his shares (assuming there is a market for the shares and the employee share scheme allows him to do so); or (c) borrowings.
- 2.6 The receipt of the employee share scheme benefit also raises the issue of whether John will be subject to the provisional tax rules. As John’s residual income tax (RIT) in the year he receives the employee share scheme benefit is less than \$50,000, the tax on his employee share scheme benefit for that income year is due in one instalment on the terminal tax date and therefore he will not bear use-of-money interest (UOMI) if he does not pay provisional tax.
- 2.7 John will be subject to the provisional tax rules in the following income year because of the inclusion of the employee share scheme benefit in the current income year. He will be required to pay provisional tax on the expectation that he will continue to be subject to the provisional tax rules whereas, in reality, receipt of the employee share scheme benefit may have been a one-off occurrence.
- 2.8 To avoid having to pay provisional tax unnecessarily in the following income year, and then request a refund once his tax return is filed, John would have to file a “nil” estimate of his provisional tax. However, this will also have the effect of dropping the threshold for liability for UOMI from \$50,000 to \$2,500. John will therefore be liable for UOMI if the RIT on any untaxed income he receives in the following income year is \$2,500 or more because of the employee share scheme benefit he received in the current income year. This would not be the case if John had not received the employee share scheme benefit.
- 2.9 John’s compliance costs in accounting for his \$40,000 of employment income in this case would be relatively high for a potentially unsophisticated taxpayer. He would likely need to seek expert advice on how to account for tax, including negotiating the provisional tax rules.
- 2.10 In contrast, if John chooses the \$40,000 bonus, his employer will deduct and pay PAYE and John will simply receive the after-tax bonus.<sup>5</sup> John will have no additional filing or provisional tax obligations and will not have to concern himself with how to fund his tax liability as a result of a potentially illiquid asset.

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<sup>5</sup> As the bonus is a PAYE income payment there could be implications for any social policy relevant to John’s circumstances.

2.11 The current tax collection mechanism for employee share scheme benefits may therefore make a pre-tax cash benefit more attractive to an employee than an equivalent pre-tax benefit under an employee share scheme. This may provide a tax disincentive to employees participating in an employee share scheme and may distort behaviour.

### **Advantages of collecting tax at source**

2.12 Based on this analysis, there appear to be compliance cost and neutrality arguments for allowing employers to account for tax on employee share scheme benefits at source on behalf of their employees. Providing at least the option for an employer to deal with the employee's tax liability arising from participating in an employee share scheme would benefit both the employee (in the form of reduced compliance costs) and the employer (by making employee share schemes equally attractive, from a tax compliance perspective, as a cash salary equivalent).

2.13 From Inland Revenue's perspective, the advantages of providing for taxation at source on employee share scheme benefits include:

- increased likelihood of compliance and improved tax recovery in relation to these benefits; and
- reduced administrative costs associated with auditing and enforcing compliance.

2.14 Example 2 illustrates these benefits.

#### **Example 2**

YCo has 1,000 employees who participate in an employee share scheme that provides an annual taxable benefit of \$4,000 for each employee. This means that for a single income year \$4,000,000 of employment income is provided by way of the employee share scheme. Assuming all employees are taxable on the employee share scheme benefit at the 33% tax rate, the tax due on these benefits is \$1,320,000.

If the tax is accounted for at a single collection point by the employer, the likelihood of recovery is improved (as the employer is likely to be a sophisticated taxpayer with resources to ensure compliance) and the cost of any administrative action to ensure compliance will be limited to interaction with the one taxpayer. Thus tax is collected in the most efficient manner.

If, alternatively, the tax must be collected from each individual employee, the chance of full recovery is reduced because this relies on voluntary compliance by 1,000 unsophisticated taxpayers who are not used to dealing with the tax filing system. In addition, the fact that each of these taxpayers owes only \$1,320 may make enforcement action administratively inefficient.

## **Potential disadvantages of tax collection at source**

- 2.15 The difficulty that arises in taxing an employee share scheme benefit in the same way as cash salary or wages is that, unlike cash salary and wages, the benefit is not payable in cash and therefore it is *prima facie* impractical to subject it to a withholding tax such as PAYE because you cannot withhold from shares.
- 2.16 This is not, however, fatal to taxation at source – for example, the FBT system provides for source taxation of non-monetary remuneration, and the provision of accommodation by an employer is subject to PAYE.
- 2.17 There may be some additional compliance costs for employers in applying a source taxation system to their employee share scheme. Officials expect, however, that the additional compliance costs should be minimal and less than those faced by individual employees trying to account for tax on the same employee share scheme benefit.
- 2.18 Some employee option schemes may not lend themselves to collection of tax at source. For example, under some schemes an employer may not know that an employee has sold their options, nor will they know the option purchase price. A less likely, but still plausible scenario, is that the employer may not know when the employee exercises their options and what the market value of the shares is on the date of exercise. In these cases, it is more appropriate for the employee to continue to account for tax on the employee share scheme benefit as they are in a better position to know the facts and circumstances of the sale or exercise than their employer.

## **Officials' preliminary view**

- 2.19 On balance, officials consider that taxation of employee share scheme benefits at source is a better approach to collecting tax on employee share scheme benefits. In addition to the benefits already outlined previously, it is a more consistent and coherent approach to taxing employment income. It is also consistent with the general policy of simplifying employees' tax obligations. Subjecting an employee to a potentially complex filing requirement for what may be a small employee share scheme benefit when that employee would not otherwise have to file a return is inconsistent with the policy objective of simplicity and reduced compliance costs.
- 2.20 In addition, it is unlikely that the difficulties associated with taxing non-monetary remuneration present an insurmountable challenge, as this has been achieved in other circumstances.
- 2.21 Having come to this preliminary conclusion, Chapter 3 sets out some possible approaches to achieving taxation at source, while Chapter 4 raises some transitional and consequential issues that will arise if we move to a taxation at source model for employee share scheme benefits.
- 2.22 We are interested in receiving readers' views on our analysis of the problem as outlined in this chapter.

## CHAPTER 3

### Possible solutions

- 3.1 There are two key considerations in designing a solution to the identified problem of taxing employee share scheme benefits:
- What is the appropriate source taxation system – PAYE, FBT or a new, specific employee share scheme withholding tax?
  - Should taxation at source be compulsory for all employee share schemes or be available at the option of the employer or employee, or by agreement between them? If it is compulsory, should employers be able to choose which system they use?

#### Source taxation system

- 3.2 Officials see there being three options for taxation at source – PAYE, FBT or a new employee share scheme withholding tax. In our view, it is preferable to use one of the existing employment income systems to tax employee share scheme benefits, rather than introducing a new withholding regime for employee share schemes. These systems are already well-developed and employers are familiar with operating them. There is little justification for considering the development of a new system.
- 3.3 To date, officials have received different views about whether PAYE or FBT would be the preferred system to deal with employee share scheme benefits.
- 3.4 One advantage of using the PAYE system is that all employers operate a PAYE system, whereas not all employers have to operate an FBT system. PAYE returns are filed monthly or twice monthly, compared with FBT returns which are quarterly (at most). Therefore, the employee share scheme benefit is likely to be taxed in a more timely manner if PAYE is used.
- 3.5 For existing employee share schemes, using the PAYE system would also mean that the economic incidence of tax remains with the employee consistent with the current treatment. In contrast, for existing schemes, using the FBT system could *prima facie* increase the cost to the employer of providing a set level of employee share scheme benefits. As discussed in Chapter 4, transitional measures could be introduced to ensure the change in the tax collection mechanism does not adversely affect current schemes. For new schemes, the economic incidence of tax can be contractually determined between the parties under either the PAYE or FBT systems, so officials do not see this as a factor influencing the choice of one system over the other.

- 3.6 Using the PAYE system would involve the employer recording the amount of the employee share scheme benefit as an “extra pay” in the Employer Monthly Schedule (EMS) IR 348 in the period in which the shares are acquired<sup>6</sup> and paying a corresponding amount of PAYE.
- 3.7 The disadvantage of using the PAYE system is that it is designed to deal with cash payments. As there is no cash to be withheld in the case of a benefit under an employee share scheme, to make PAYE work, the employer would have to either recover the cost of the tax from the employee (potentially by deducting it from after-tax salary), or sell a portion of shares on the employee’s behalf to fund the tax (this is only an option when the shares are relatively liquid – for example, when they are traded on an exchange).<sup>7</sup> The alternative is for the employee share scheme contract to provide a cash gross-up to accompany the employee share scheme benefit to fund the PAYE.
- 3.8 The problem of funding tax payments is the same dilemma currently faced by employees when they have to account for tax themselves on non-monetary benefits under an employee share scheme (which may involve selling some of the shares to fund the tax payment). Officials expect that the contractual arrangements associated with employee share schemes should be sophisticated enough to deal with this problem between the parties to the employee share scheme.
- 3.9 Officials also note that employer-provided accommodation is already dealt with through the PAYE system. Therefore, the PAYE system has already been used to account for tax on a non-monetary benefit. However, given employee share scheme benefits tend to vest in large lump-sums, there is a greater likelihood of there being a cash shortfall in a given pay period than in the case of employer-provided accommodation. If there is insufficient cash in the other PAYE income payments to meet the PAYE obligation in respect of the employee share scheme benefit in the period of vesting, the employee must reimburse the employer for the PAYE (if the employer has paid it), or if the employer has not paid the PAYE, the employee must pay the PAYE to Inland Revenue.<sup>8</sup> This reproduces the problem with the current system – the employee has to account for the tax on their employee share scheme benefit. Accordingly, employers would need to carefully consider how to manage this issue. Officials are interested in readers’ views on this problem with using the PAYE system.

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<sup>6</sup> In the case of options sold to non-associates (or options exercised without the employer’s knowledge) the employee would still need to account for the tax on the sale proceeds in an IR 3 because the employer may not have any knowledge of the sale of the option. Officials expect this situation to be fairly rare.

<sup>7</sup> If the ESS benefit vested in a particular pay period was large, there may not be sufficient cash from other salary and wages to fully satisfy the PAYE obligation. Therefore there may be a need to offer an income spreading option if PAYE was adopted.

<sup>8</sup> Section RD 21(3).

- 3.10 The advantage of using the FBT system is that it is designed specifically to deal with non-monetary remuneration. The gross-up is therefore effectively built into the rules (via the rate structure and the cost of FBT falling on the employer). There is a parallel between the tax treatment of shares provided by an employer to an employee for no consideration or below market value consideration, and the provision of goods or services by an employer to an employee for below market consideration. The latter category of employment remuneration is currently dealt with under the FBT rules, which suggests that it may be an appropriate system to deal with this type of benefit.
- 3.11 Example 3 illustrates the tax effect of PAYE and FBT when applied to an employee share scheme benefit.

### **Example 3**

ZCo has decided that it wants to provide (after-tax) \$10,000 worth of shares to a key employee – Scott. Scott is subject to the highest marginal tax rate.

If ZCo accounted for tax on the shares through the PAYE system, they would need to provide Scott with \$10,000 of shares and a \$4,925 cash bonus (a cash gross-up). This means that Scott's gross income is \$14,925. After deduction of PAYE at 33%, Scott is left with \$10,000 worth of shares.

If ZCo accounted for tax on the shares under the FBT system, it would return a fringe benefit of \$10,000 and be liable for FBT of \$4,925 ( $\$10,000 \times 49.25\%$ ). Scott would receive an after-tax benefit of \$10,000 worth of shares.

Ultimately the tax collected is the same regardless of the system used.

- 3.12 We are interested to hear readers' preferred source taxation system – PAYE or FBT.

### **Should source taxation be compulsory or elective?**

- 3.13 There are benefits to making some form of source taxation compulsory for all employee share schemes, as previously discussed. Additionally, having one source taxation system (FBT or PAYE) for all employee share schemes reduces legislative complexity and administrative costs associated with processing and monitoring elections.
- 3.14 However, officials are aware that a large number of employee share schemes currently exist and employers (and employees) will have different views on their preferred tax collection approach.
- 3.15 Officials appreciate that existing employee share schemes' contractual arrangements may have been negotiated on the basis that the employee will account for tax. As discussed in Chapter 4, appropriate transitional rules can deal with existing schemes.

- 3.16 Officials also appreciate there may be other reasons employers prefer the tax obligations associated with employee share schemes to lie with their employees (especially in the case of executive-level schemes). However, other employment income is subject to collection of tax at source, so there does not seem to be a compelling case to treat employee share scheme benefits differently (except in the case of certain option schemes, as previously discussed).
- 3.17 Even if employers were able to elect to continue with the current filing and tax payment arrangements (that is, the employee is required to return the employee share scheme benefit and pay the resulting tax), this does not provide sufficient information to Inland Revenue and is therefore undesirable from a compliance perspective. Accordingly, officials propose that any election by employers to retain the current arrangement would need to be accompanied by an obligation to provide a schedule detailing the names and IRD numbers of participating employees and the value of the employee share scheme benefits provided to each employee.

Officials seek feedback on:

- whether all employee share schemes should be subject to source taxation or whether employers should be able to elect for employees to continue to be responsible for returning and paying tax on employee share scheme benefits, with the only obligation of the employer being to provide Inland Revenue with a schedule of employee share scheme benefits granted to employees;<sup>9</sup>
- whether employers should be able to choose between using the FBT or PAYE system to account for tax;
- if source taxation were to be made compulsory, whether:
  - employers should be entitled to elect to grandparent the tax treatment of existing employee share schemes; and/or
  - source taxation should be phased in over an appropriate period of time to accommodate changes to existing schemes and systems to provide for this.

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<sup>9</sup> If source taxation were to be elective, officials would prefer that the election be at the employer's discretion, rather than the employee's. This is to minimise the number of employees with different tax treatments within the same employee share scheme (which would increase compliance and administrative costs).

## CHAPTER 4

### Transitional and consequential matters

- 4.1 While the changes suggested in this officials' issues paper are designed to affect only the collection of tax, rather than the substantive tax treatment of employee share scheme benefits, there are some important transitional and consequential matters that must be considered.

#### Transitional issues

- 4.2 Officials are aware there are many employee share schemes currently in existence. We want to ensure that any change to the tax collection mechanism (in particular, if source taxation is made compulsory) is not a burden to taxpayers.
- 4.3 Accordingly, officials seek feedback on:
- the range of employee share schemes currently on offer and whether employers would like the ability to “grandparent” the existing tax treatment for employees currently participating in these employee share schemes; and
  - whether a phase-in of the new rules over several years would be an acceptable alternative to grandparenting.

#### Consequential issues

- 4.4 There are likely to be some consequential implications of the changes suggested in this issues paper for the rest of the Income Tax Act 2007.
- 4.5 Officials seek feedback on any consequential issues readers may be aware of.
- 4.6 Three issues officials have considered are how to ensure that the suggested changes to collection do not alter:
- employer deductions for the provision of employee share scheme benefits;
  - the substantive tax treatment when the employee provides services in New Zealand and overseas; and
  - entitlements and obligations for social assistance (Working for Families, student loans, child support and KiwiSaver, collectively referred to as “social policy”).

### ***Employee deductions for the provision of employee share scheme benefits***

- 4.7 As discussed earlier, this issues paper does not intend to alter the substantive tax treatment of employee share schemes. Therefore, any legislative amendment would seek to ensure that any deductions available to an employer in relation to employee share scheme benefits would not change.

### ***Tax treatment of employee share scheme benefits that have a cross-border element***

- 4.8 Similarly, any legislative amendment would seek to ensure that changing the collection of tax on employee share scheme benefits would not alter the substantive tax treatment where the employee provides services in New Zealand and overseas.

### ***Treatment of employee share scheme income for ACC and social policy purposes***

- 4.9 Officials would seek to ensure that, as far as possible, including employee share scheme benefits in either the definition of “PAYE income payment” or the definition of “fringe benefit” (thus changing the way tax is collected) would not alter the effect the receipt of an employee share scheme benefit currently has on social policy entitlements or obligations. That is, officials do not intend the suggested changes in this issues paper to make anyone better or worse off from a social policy perspective.

- 4.10 We propose that employee share scheme benefits should continue to be either included or excluded in the relevant measures of income for ACC and social policy purposes as follows:

- ACC earners’ levy – excluded
- Working for Families tax credits – included
- Student loans – included
- Child support – included (from 1 April 2016)
- KiwiSaver – excluded.

- 4.11 A more detailed analysis of these recommendations is included in the Appendix to this issues paper.

- 4.12 Officials note that the Income Tax Act definitions of “taxable/net income” and “family scheme income” are also used by other agencies to determine other social entitlements (for example, community services cards and student allowances). This issues paper does not consider the implications of any changes for these other agencies.

Officials seek feedback on:

- whether there are other consequential issues that have not been identified; and
- whether there are practical difficulties in achieving the neutral treatment proposed – for example, would using the current FBT system make it difficult to identify the specific employee share scheme benefit provided to the employee for social policy purposes?

## APPENDIX

Social assistance policy	Means testing criteria	Are employee share scheme benefits included?
ACC earners' levy	Levied on "earnings as an employee" which is defined as PAYE income payments, with certain exclusions. <sup>10</sup>	<ul style="list-style-type: none"> <li>• Currently not included because not "PAYE income payments".</li> <li>• If the PAYE system is adopted to tax employee share scheme benefits without any further amendment, ACC earners' levy would have to be paid on these benefits. This is consistent with the treatment of employer-provided accommodation (a form of non-monetary remuneration subject to PAYE).</li> <li>• It would treat employee share scheme benefits in the same manner as cash wages, maintaining neutrality.</li> <li>• However, this treatment would depart from the current treatment and is potentially inconsistent with the policy of the ACC system. The payment of the ACC earners' levy on a particular level of "earnings as an employee" entitles a claimant to weekly compensation in certain cases of accident or injury of 80 percent of weekly earnings as an employee. The question is, if there were an accident, should ACC be paying 80 percent in income replacement for this payment? An employee share scheme benefit is usually a one-off benefit that provides an on-going equity interest in an employer – therefore officials are of the view that they should not be included in "earnings as an employee" for ACC purposes. They are very different to a regular payment of cash (or on-going provision of accommodation) which contributes to the day-to-day living costs of an employee and which needs to be covered by the ACC system.</li> <li>• Therefore, officials are of the view that, if the PAYE system was adopted, there would be a need to exclude employee share scheme benefits from "earnings as an employee definition" to maintain current treatment.</li> <li>• If the FBT system is adopted, it will not be subject to ACC earners' levy.</li> </ul>

<sup>10</sup> Sections 9 – 13 of the Accident Compensation Act 2001.

Social assistance policy	Means testing criteria	Are employee share scheme benefits included?
Working for Families tax credits	Wide definition of “family scheme income” in subpart MB.	<ul style="list-style-type: none"> <li>• Currently employee share scheme benefits are included, as is PAYE income and certain fringe benefits.</li> <li>• Regardless of treatment as a PAYE income payment or a fringe benefit, employee share scheme benefits should continue to be included in family scheme income to determine entitlement to Working for Families tax credits. It is a component of the earner’s total income and so is consistent with the Working for Families policy as targeted financial assistance to families that reduces with total income.</li> </ul>
Student loans	From 1 April 2014, the definition of “income” for student loan purposes has been broadly aligned with the definition for Working for Families purposes. <sup>11</sup>	<ul style="list-style-type: none"> <li>• As for Working for Families employee share scheme benefits are currently included in income for student loan purposes.</li> <li>• Regardless of treatment as a PAYE income payment or a fringe benefit, employee share scheme benefits should continue to be included in income for this purpose.</li> </ul>
Child support	Based on “taxable income”.	<ul style="list-style-type: none"> <li>• Employee share scheme benefits are currently included in taxable income for child support purposes.</li> <li>• Regardless of treatment as a PAYE income payment or a fringe benefit, employee share scheme benefits should continue to be included in taxable income for this purpose.</li> </ul>
KiwiSaver	Based on “gross salary or wages.”	<ul style="list-style-type: none"> <li>• Employee share scheme benefits are currently excluded from gross salary and wages for KiwiSaver contribution purposes.</li> <li>• If employee share scheme benefits are treated as a PAYE income payment, the legislation would need to make it clear they are not “salary or wages” for KiwiSaver purposes.</li> <li>• If employee share scheme benefits are deemed to be fringe benefits, employee share scheme benefits will continue to be excluded from salary and wages for KiwiSaver purposes.</li> <li>• It would be difficult and impractical for the employer to withhold 3% of the value of the benefit and pay this into a KiwiSaver fund. It raises some of the practical issues of using the PAYE system for a non-cash benefit.</li> </ul>

<sup>11</sup> As a result of the Student Loan Scheme Amendment Act 2013.