

Fringe benefit tax: regulatory stewardship review

Published in August 2022 by Policy and Regulatory Stewardship, Inland Revenue, PO Box 2198, Wellington 6140.

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ISBN 978-1-98-857343-4 (Online)



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Executive summary

Context and background

1. The fringe benefit tax (FBT) review was undertaken as part of Inland Revenue's regulatory stewardship role. FBT was chosen for review because it has not been fully reviewed since the reforms nearly 20 years ago, and because over time, and increasingly more recently, stakeholders have raised problems with its design and operation.
2. The review has been approached primarily as a diagnostic exercise investigating three questions:
 - Does the design of FBT meet the policy intent?
 - What is the employer and business experience of complying with FBT?
 - How does Inland Revenue administer FBT?
3. In addition, the review team has explored whether FBT as currently constructed is fit for the future. This has extended the discussion of the robustness of FBT to take workforce trends into account – for example, working from home.
4. The purpose of this report is to convey the findings of that review and high-level recommendations for next steps.

Officials' findings and recommendations

5. FBT continues to perform its primary task of ensuring that remuneration from employment is taxed whether it is paid in cash or provided by way of a non-cash benefit. FBT's role is therefore to support the tax system as a whole.
6. However, it is not clear that FBT is a tax that functions well. Consistently, views expressed to the review team were that FBT is complex and that it imposes a high administrative and compliance burden relative to the tax at stake. Although FBT was designed to tax employment-related benefits-in-kind, many interview participants felt that any intuitive connection with remuneration had been lost.
7. We also heard concern from submitters that they believe FBT is not complied with by all businesses nor enforced by Inland Revenue. This is seen as unfair by those who shoulder the compliance burden. Inland Revenue is unable to comment on the amount of non-compliance with the FBT rules using existing data, although the use of START will enable a more timely and targeted compliance approach. A regulatory risk is that if the view that non-compliance with the FBT rules is risk-free becomes entrenched, this perception

could undermine the integrity of the tax system as a whole. This risk should be addressed.

8. The review team notes that if change to current settings is considered desirable, the Enterprise Priorities and Performance Committee (the Committee) could consider one or both of the following actions:
 - Commissioning a policy project to act on the findings of the review. The scope of any future project is scalable depending on resources, priorities and appetite.
 - At the upper end, the project could include enquiry into fundamental reform, for example, moving benefits into the PAYE system. We note that a move to PAYE was not generally supported by interview participants. Alternatively, the project could look at re-establishing connection to the remuneration of employees, perhaps by changing the structure of FBT to target specific benefits.
 - If a smaller scale or remedial project is sought, the project could focus on discrete matters, such as motor vehicles, modernising the tax treatment of benefits (particularly in light of the growth in flexible and agile working practices), or updating thresholds and reducing compliance costs.
 - Requiring operations to take steps to address the concerns raised regarding compliance and enforcement. This may include:
 - improving Inland Revenue’s understanding of current compliance and the size of the FBT tax gap, whether through enhanced data requirements or other means of analysis,
 - ensuring more regular communications with employers and businesses about FBT,
 - compliance campaigns or other enforcement action.
9. Our recommended approach would be to commission a policy project at the upper end of the spectrum with the aim of re-establishing the remuneration basis of the tax, modernising FBT and reducing compliance costs. This policy project would involve full consultation per the generic tax policy process. The rules should then be the subject of a comprehensive communications campaign and enhanced data capture so that failings can be more clearly identified. Finally, non-compliance should be addressed. However, if the immediate risk posed by non-compliance is central to the Committee’s concerns, greater focus on enforcement of existing rules is a valid option.
10. We also recommend any actions taken in response to the review are monitored after delivery of this report.

Background

11. The purpose of a regulatory stewardship review is to monitor the ‘health of the system’ to ensure it is functioning as intended and, if not, to identify and prioritise significant issues. The approach to the FBT review is comprehensive – that is, it includes operational matters (administration, communication and enforcement) and business’s experience of compliance with FBT, as well as the policy and legislative considerations.
12. The FBT regime was last reviewed in the 2003 Discussion Document *Streamlining the taxation of fringe benefits*.¹ An FBT scan was undertaken in 2014. Both the media reporting on FBT² and views expressed to officials³ indicate that FBT is seen as a problematic tax. These factors were significant in selecting FBT for review.
13. This regulatory stewardship review has been approached primarily as a diagnostic review. Three basic questions lie at its heart:
 - Does the design of FBT meet the policy intent?
 - What is the employer and business experience of complying with FBT?
 - How does Inland Revenue administer FBT?

A secondary consideration in the review has been to assess whether the current design of FBT is fit to meet future challenges in the medium term (defined for this purpose as the next five to ten years) or if changes may be required to ensure that it remains fit for purpose.

14. The review approached these questions by undertaking quantitative analysis (where data is available) and obtaining qualitative data via a series of interviews conducted both within and outside Inland Revenue. The interviews were undertaken on a confidential basis and aggregated to form the qualitative factors presented in this report. Appendix 1 contains a list of interview participants and an outline of our approach to the review.
15. Many participants in the interview process expressed an interest in the findings of the report.

¹ [Streamlining the taxation of fringe benefits \(ird.govt.nz\)](https://www.ird.govt.nz/streamlining-the-taxation-of-fringe-benefits) (December 2003)

² See, for example, [Government considered \\$36 million tax break for company cars | Stuff.co.nz](https://www.stuff.co.nz/business/finance/123456789/government-considered-36-million-tax-break-for-company-cars); [Fringe benefit tax -- it's not an optional thing | Stuff.co.nz](https://www.stuff.co.nz/business/finance/123456789/fringe-benefit-tax-it-s-not-an-optional-thing); [Govt cracking down on ute owners dodging fringe benefit tax – NZ Autocar](https://www.stuff.co.nz/business/finance/123456789/govt-cracking-down-on-ute-owners-dodging-fringe-benefit-tax-nz-autocar)

³ Fringe Benefit Tax in New Zealand, Customer Insight and Evaluation, Inland Revenue, (March 2021), p 4, 5; Environmental Scan: Fringe Benefit Taxation Rules and Policy Changes, Intelligence and Insights, Inland Revenue, IR/IN/210630, p 3, 4

Current law

16. FBT is charged on non-cash benefits provided by the employer to the employee in connection with the employment. The main benefits captured by New Zealand's FBT regime are private use of motor vehicles; subsidised transport; low-interest loans; employer contributions to employee funds, insurance policies and superannuation schemes; and unclassified benefits (free, subsidised or discounted goods and services). The charge to tax is then subject to exclusions and limitations, such as a carve out for business tools.
17. FBT is paid by the employer and is excluded income for the employee. However, in limited circumstances fringe benefits may be taken into account for Working for Families purposes. Fringe benefits are also taken into account for student loans purposes, but they are not considered for child support purposes. The tax rate at which it is paid varies depending on the option for reporting and payment chosen – for example, at a single flat rate, or at the appropriate marginal rate for each employee (full attribution). FBT is paid quarterly; however, small businesses may pay annually or, if the employer is a close company, they may pay on an income year basis.
18. In some circumstances, an employer may bypass FBT and account for benefits in other ways – for example, by adjusting a shareholder's account, treating a benefit as a dividend or, if the employer is a close company that provides only one or two motor vehicles, by a private use adjustment to a person's motor vehicle expenditure.
19. Charities that provide benefits to employees are exempt from FBT where the employee has a role in carrying out the organisation's charitable purposes.
20. Further details of the current FBT rules are provided in appendix 2.

Other jurisdictions

21. The taxation of non-cash benefits derived from an employment relationship is a feature of many tax systems. Design details and administrative practices vary from country to country. However, it is possible to observe that in many other countries the value of the non-cash benefit is, in principle, included in the employee's taxable income, and the employee pays the tax due.
22. The Australian FBT system is similar to New Zealand's in that the tax due for a benefit is paid and borne by the employer. However, two key differences are that, in Australia:
 - fringe benefits are reported in the employee's annual payment summary or income statement to enable their value to be taken into account for specific purposes (such

as determining eligibility for certain social security benefits and tax concessions),⁴ and

- exemptions and concessions are a notable feature of their FBT regime.⁵

Policy intent and framework

23. The underlying intent of FBT was to address the inequity that resulted from an increasing amount of remuneration being provided in, what was then, un-taxed, non-cash benefits.⁶ FBT widened the tax base and combated the effect of tax planning in designing remuneration packages. These features mitigated tax base erosion.⁷ The decision to place the liability to pay the tax on the employer was based on an assessment that employer liability entailed a lower compliance cost.⁸

Conclusions of the Discussion Document

24. The Discussion Document *Streamlining the taxation of fringe benefits*⁹ operated as a review of FBT. Ultimately, the review affirmed the objectives of FBT and resulted in several amendments being made, primarily to the rules concerning motor vehicles.¹⁰ In particular, we note that the Discussion Document did not see merit in moving the taxation of benefits into PAYE.

Neutrality of FBT

25. The discussion of the policy framework in Chapter 2 of the Discussion Document focuses on the tax neutral treatment of cash and non-cash remuneration.¹¹ FBT is neutral in that it ensures that remuneration is subject to equivalent tax whether it is paid in cash or in kind. FBT applies a grossed-up rate to achieve equivalent taxation, as it recognises that the non-cash remuneration is delivered at a gross value. Like PAYE, FBT is deductible for the employer.

⁴ [Reportable fringe benefits - facts for employees | Australian Taxation Office \(ato.gov.au\)](#)

⁵ See, for example: [Reducing your FBT liability | Australian Taxation Office \(ato.gov.au\)](#)

⁶ It was not possible to access the original reports due to the closure of the Asteron Centre. Secondary sources, quoted in this document, have been used instead to illustrate the reasons for enacting FBT. These sources may not perfectly reflect the policymakers' considerations at the time.

⁷ Report of the Task Force on Tax Reform (1982) paras 6.182 – 6.188.

⁸ Tax Information Bulletin, Vol 18, No 5, (June 2006), pp 76-86.

⁹ [Streamlining the taxation of fringe benefits \(ird.govt.nz\)](#) (December 2003)

¹⁰ Tax Information Bulletin, Vol 18, No 5, (June 2006), p 76.

¹¹ [Streamlining the taxation of fringe benefits \(ird.govt.nz\)](#) (December 2003)

Findings of this review

Does the design of FBT meet the policy intent?

26. By ensuring that non-cash benefits are taxed, FBT ensures the tax system does not favour cash or non-cash remuneration and to that extent the treatment of the remuneration can be said to be equal. Further, there is no serious disagreement that the taxation of non-cash benefits is a necessary feature of the tax system.
27. FBT continues to maintain a broad base for the tax system and combats the effects of tax planning. A view expressed by some in the private sector is that, unlike Australia where the tax implication of remuneration packages can be a main consideration for employers and employees, there is no aggressive marketing of tax efficient remuneration packages in New Zealand.¹² In addition, whether by design or not, there is a general view that New Zealand employers prefer to pay employees in cash, rather than provide benefits.
28. As it is clear that the original objectives have been met, and that FBT does influence how employees are remunerated, it is possible to say that FBT continues to perform its role of buttressing the PAYE system.
29. Employees and employers may prefer to retain FBT and not move the taxation of benefits into the PAYE system. As a tax paid by the employer, FBT has the advantage of not increasing costs borne by business via the PAYE system, such as KiwiSaver or ACC employer liabilities. For individuals, unless the benefit is grossed up, including non-cash benefits in PAYE would lead to an increased tax liability that would have to be paid from the same cash income.
30. In connection with the above concern that inclusion in PAYE will drive up business costs, we note that FBT is not wholly consistent in capturing non-cash remuneration. Employer-provided accommodation is captured in the PAYE system.
31. We also note that Working for Families, student loans and child support were introduced after FBT and that non-cash benefits are only included in those to a limited extent, and not at all in the case of child support. Given a person's taxable income can be reduced through employer-provided benefits, it is important to understand the extent and the impacts of employer-provided benefits on these areas.

¹² Australian concessional treatment of some non-cash benefits may account, at least in part, for this observation. See for example: [Reducing your FBT liability | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/ATO/your-support/articles/Reducing_your_FBT_liability)

32. Neither of the above observations are inconsistent with the finding that FBT meets the original policy intent, but both demonstrate that the design of FBT is not necessarily consistent with the treatment of other forms of income in the tax and transfers system.

How well does the administration of FBT support its objectives?

33. The effectiveness of FBT is hard to observe directly. Its main role is to buttress the PAYE system, not to collect tax revenue in and of itself. As such, FBT could work well and not collect any revenue, for example, if only cash remuneration was paid. However, it seems likely that if FBT did not exist, non-cash benefits would be preferred based on their tax efficiency, with the result that the tax base would be weakened and revenue leakage would occur.
34. It should be noted at the outset that there was a high level of agreement between Inland Revenue and external participants about FBT's areas of strength and weakness across all areas of the stewardship review. The below discussion is based on the data available and the views expressed in interviews.

Policy, design and legislation

35. FBT is generally seen as complex: being both difficult to understand and hard to comply with. This was the most frequently discussed point and was raised by most external participants interviewed. Based on the interviews conducted, it appears that FBT's link to remuneration is only loosely understood – some interview participants indicated that employers and business see it only as a tax burden and a cost. Others described it as “a forgotten tax”, or as a tax that was difficult to discuss with employers and businesses.
36. There are two aspects to the design of FBT: the rules that give rise to the tax liability,¹³ and the rules that provide for the administration of that tax.¹⁴ Interestingly, FBT was seen as complex both within and outside Inland Revenue, and concerns were expressed that even specialists found it a difficult tax to apply.
37. In conformity with general New Zealand tax policy, FBT has a broad base. However, the broad base of FBT seems to drive complexity and compliance costs. Some interview participants indicated that they felt the design of FBT leads to over-reach, particularly when considering low-value items, such as funeral flowers, or when seeking to tax on the availability of the benefit, rather than its use or value to the employee. In contrast,

¹³ Sections CX 2 – CX 38 of the Income Tax Act 2007.

¹⁴ Subpart RD of the Income Tax Act 2007 and relevant provisions in the Tax Administration Act 1994.

GST is generally believed to have benefited from a broad base as this has simplified compliance and reduced compliance costs.

38. The FBT liability rules interact with other taxes, such as PAYE and entertainment tax, giving rise to a number of boundary issues. Other issues that commonly arise include determining whether items are exempt, the valuation of benefits and the application of thresholds and de minimis amounts. These boundaries make it easy to be wrong, even where the taxpayer is trying to get it right.
39. The liability rules have been described as unintuitive and easily misunderstood. They include items that might not be viewed as a benefit or remuneration by the employee or the employer. Unclassified benefits, which is a wide definition, is particularly likely to capture non-remunerative items, such as flowers. Interview participants indicated that employers and managers may be surprised when they realise they have incurred an FBT liability.
40. Motor vehicles were identified as the most common area in which misconceptions arise. To be applied, the rules require further interpretation. Two interpretation statements have been issued since 2002.¹⁵ IS 17/07 *Fringe Benefit Tax – Motor Vehicles*, which seeks to clarify the current law, runs to 57 pages. This may indicate that the underlying law is complex and in need of review.
41. By comparison, the administrative rules were less commented upon. Amongst other things, these rules provide for the options to calculate, report and pay FBT or to opt out of the FBT system. Generally, flexibility is welcome – however, interview participants noted that this flexibility adds to the complexity of the rules.
42. Two specific design areas were reviewed, as both raise special considerations in addition to those generally made about FBT. These are:
 - The charities and not-for-profit sector, which has an exemption from FBT unless the employment consists of business activities outside its charitable purposes.¹⁶ Views were expressed that the exemption is inefficient and incoherent: the definitions that apply to charities and not-for-profits are unclear and inconsistent. Notably, in this context, others see a role for exemptions where they relate to social and environmental wellbeing.
 - In Te Ao Māori, points of cultural difference were raised. In particular, it is not always clear when an individual is acting as an employee rather than as a member of the community, for example, where a work-related vehicle is used to transport elders to a marae for meetings.

¹⁵ IS 17/07 *Fringe benefit tax – motor vehicles* and IS3448 - *Travel by motor vehicle between home and work - deductibility of expenditure and FBT implications*.

¹⁶ See section CX 25 of the Income Tax Act 2007.

Business compliance

43. Although FBT's design was intended to keep compliance costs low, many report that the cost of compliance is out of proportion to the amount of tax at stake. Some interview participants noted that, in their view, FBT compares unfavourably with the GST and PAYE regimes.
44. Most external interview participants noted that key areas giving rise to compliance costs were tracking of available days for motor vehicles and tracking of unclassified benefits. This work is necessary to determine the extent of applicable exemptions from FBT.
45. There is an inherent tension in the design of a policy that includes options and exemptions. Options and exemptions enable flexibility and are intended to reduce tax costs. However, access to those features of the tax imposes compliance costs, as the person who wishes to use them must ensure they fall within the legislative criteria.
46. It was observed that although Inland Revenue collects only a few key data points,¹⁷ this does not reflect the reality of the work necessary to comply with FBT. That work involves identification of benefits, collation and manipulation of data, and interpretation of the rules. In addition, depending on the calculation method, allocation of benefits to employees may be required to ensure taxation at the most appropriate rate for each employee. As a result, technological solutions cannot resolve all the compliance issues with FBT.
47. Other participants noted that, in terms of its timing, FBT compliance is not well integrated with other tax systems, such as GST or PAYE. The lack of co-ordinated deadlines for filing and payment across tax types is seen as adding another compliance burden.
48. Finally, while Inland Revenue provides an FBT calculator, third-party software is reportedly preferred. The software solutions on the market offer a greater ability to organise data and prepare the FBT return, but they are not end-to-end solutions. The lack of co-ordination between online and paper filing, as well as the unavailability of gateway filing, also attracted unfavourable comment from some external interview participants.
49. Aside from the resource burden of FBT compliance, the other point that was brought to our attention was that compliance itself was a spectrum – from those taxpayers who sought to do everything by the book, through to those who do not try to comply at all.

¹⁷ These are the taxpayer's name and IRD number, the total taxable value of benefits provided, the FBT rate applied by the employer and the amount of FBT calculated, the GST payable on fringe benefits provided and the total FBT and GST to be paid.

Non-compliance was a recurring theme, touching on all aspects of the stewardship enquiry: FBT's design, administration, education, and enforcement.

50. The underlying reason appears to be low engagement with FBT in the wider community. Anecdotally, a number of businesses and employers resent the cost of compliance and are not open to advice, whether provided by Inland Revenue staff or professional advisors. A clear message was that, due to FBT's low status, few taxpayers were keen to incur the costs of advice to ensure fully accurate compliance with the rules. Instead 'near enough' is often seen to be 'good enough' in the FBT regime. Almost all participants were concerned that there was non-compliance with FBT.

Administration – external view

51. External participants reported mixed experiences of Inland Revenue's administration. Views on education, communication and enforcement are addressed separately below.
52. Interactions with Inland Revenue staff came from two primary sources, enquiries raised with compliance officers and other staff, and interactions in the course of making a voluntary disclosure. Some found staff to be helpful and well-informed, others that the person(s) they were dealing with did not fully grasp the complexities of FBT. Those who had poor experiences stressed the need for Inland Revenue to lift the capabilities in its administration of the tax. The need for additional basic and topical training and communication was reflected in internal interviews.

Administration - internal view

53. Based on the amount of revenue raised, FBT is viewed as a low-value tax. Interview participants expressed the view that this perhaps explained a perceived lack of interest in it on the part of Inland Revenue. When viewed as supporting the PAYE system, the value of FBT's role is more apparent.
54. A recurrent theme was the lack of data about FBT, whether in relation to type and value of benefits, use of concessions or aggregate information. This was particularly noted in internal interviews. The effect of this is that Inland Revenue is not easily able to assess the need for, and types of, intervention required to address deficiencies in FBT administration and compliance. It also means we have incomplete information when trying to understand the nature of income for tax policy purposes – for example, in designing and administering Working for Families. Data made available to us is summarised in appendix 3.

55. The role of START in improving the ability to administer FBT is addressed in the section entitled "*Smarter compliance risk management*" below.

Education and communication

56. Finding information on FBT can be daunting for taxpayers. Due to its complexity, taxpayers who do not take professional advice are particularly likely to struggle with FBT. Inland Revenue should be the first port of call for unadvised taxpayers whether they seek advice directly or from an internet search engine. These taxpayers may seek information on our websites¹⁸ or from frontline and compliance staff.
57. Although the attempts to explain tax in 'plain English' are generally commended, some interview participants noted that the *Fringe benefit tax guide* (IR 406) does not necessarily cover specific issues or the correct treatment of benefits in enough detail (and there are no references to specific technical publications that could provide more information). If the taxpayer does not research further, they may find the treatment they have applied is incorrect.
58. Education and communication activities may also be run by the private sector. However, the professional bodies report that there is little interest in their member bases for training and other initiatives related to FBT. This may be because, outside of the recent 39% tax changes, it is not seen as topical. This is indicative of the low engagement reported for FBT.
59. Lack of awareness was a common interview theme.¹⁹ The profile of FBT is likely to be raised by a forthcoming CCS marketing campaign that will focus on common errors.²⁰ Campaigns may combat the lack of interest in FBT in the wider community. However, what can be achieved through education and communication may be limited by the complexity of the tax regime.

¹⁸ These are: [Inland Revenue - Te Tari Taake \(ird.govt.nz\)](https://ird.govt.nz/); [Tax Technical - Inland Revenue NZ \(taxtechnical.ird.govt.nz\)](https://taxtechnical.ird.govt.nz/); [News and information about the Government's tax policy work programme | Tax Policy, Inland Revenue, New Zealand \(taxpolicy.ird.govt.nz\)](https://taxpolicy.ird.govt.nz/)

¹⁹ In this context we note that following the release of IS 17/07 *Fringe benefit tax – motor vehicles*, [Introduction to FBT and motor vehicles](#) was posted to YouTube, together with two other clips on FBT and motor vehicles. Views of the three clips range from 3.5K to 6.6K as at 19 January 2022.

²⁰ CCS has prepared a marketing campaign that focuses on common errors in FBT/getting FBT right. This campaign is intended to launch in 2022 and will run for a four-week period. Particular attention will be drawn to FBT on motor vehicles. The primary audience for the campaign is businesses registered for FBT and tax agents. START information that indicates an FBT error will also be used to determine particular customers who may need to review their FBT position.

Enforcement

60. Interview participants reported that FBT was not often raised in audits. Some had no experience of FBT enquiries being made at all. Where raised, FBT was typically brought up in conjunction with wider tax enquiries. FBT is not seen as an Inland Revenue focus for enforcement, with some participants speculating this is due to its relatively low status.
61. In addition, there is belief that FBT is not complied with—in particular, that the work-related vehicle exemption is misused or avoided.²¹ Whether or not this is true, the perception of non-compliance, coupled with a lack of enforcement, poses a risk to the integrity of the tax system.
62. Data collected by Inland Revenue shows that, in the year ending 31 March 2020, employers with 501 or more employees accounted for 2% of FBT filers, but 41.4% of FBT paid. These employers account for 0.2% of PAYE filers and 39.3% of PAYE paid.²² FBT paid drops steeply across the employee bands.
63. Currently, Inland Revenue does not collect data that helps to verify or refute the amount of non-compliance. It may be that smaller businesses make greater use of the options for accounting for fringe benefits. If so, that use fulfils the policy intent underlying that flexibility in the system. However, given the lack of data, arguments for or against compliance with the FBT regime are speculative.

Is FBT fit for the future?

Flexible working and changing workplace expectations

64. Since the introduction of FBT in 1985, employment practices have changed for many businesses and employees. In particular, technology has impacted on the way that many people work, particularly with their place of work. COVID-19 has accelerated these changes. Setting-up employees to work from home may require the employer to provide computer or office equipment and services, such as data charges, to support employees.
65. From an FBT perspective, the flexible working trend calls into question several rules that historically rested on the home/work boundary. For example:
 - the continuing fitness of the 'on-premises' and health and safety exclusions,²³ and

²¹ This belief is alluded to in media articles, for example: [David Parker looks to close ute tax exemption, as Jacinda Ardern defends legitimate ute comment - NZ Herald; Is New Zealand subsidising utes? \(newsroom.co.nz\)](#)

²¹ This belief is alluded to in media articles, for example: [David Parker looks to close ute tax exemption, as Jacinda Ardern defends legitimate ute comment - NZ Herald; Is New Zealand subsidising utes? \(newsroom.co.nz\)](#)

²² See appendix 3.

²³ See sections CX 23 and CX 24 of the Income Tax Act 2007.

- the limitation of the business tool exemption.²⁴

A number of interview participants noted that practical compliance with the conditions of the work-related vehicle exemption was made more onerous by the blurring of the home/work boundary. Other participants felt that the work-related vehicle exemption required modernisation.²⁵

66. Participants also noted that employee expectations of their working conditions are changing, and that employers themselves are more interested in wellbeing. Benefits provided under the category of “wellbeing” include gym memberships, employee assistance programmes and health insurance. These benefits are more general than those falling within health and safety, which is more focused on harm.

Digital administration of the tax and social policy system

67. There has been a significant shift towards digital services, with increasing options for online filing of tax returns as well as online payments. Digital contact channels (online, email, digital assistance) continue to increase while traditional channels (for example, in-person contacts) are decreasing.

68. There are several significant challenges to enabling greater e-administration of FBT:
- The rules that underpin the FBT regime are complex and may require interpretation before application.
 - The work that enables FBT compliance is often manual and granular. Information must be pulled together and analysed to make an FBT return. The circumstances surrounding the provision of any benefit can determine whether the benefit is subject to FBT or PAYE, is caught under the entertainment rules, or is treated as a dividend.
 - Many external interview participants confirmed that generally no one business system captures all FBT information either within businesses or across the wider business community. In some cases, benefits will be accounted for in the payroll system, whereas in others, they will be accounted for in the business’s general ledger. These factors will undoubtedly create challenges for working with businesses and software developers further on the integration of accounting systems with the FBT rules. This suggests that the benefits of e-administration might not be achievable without a significant simplification of those rules.

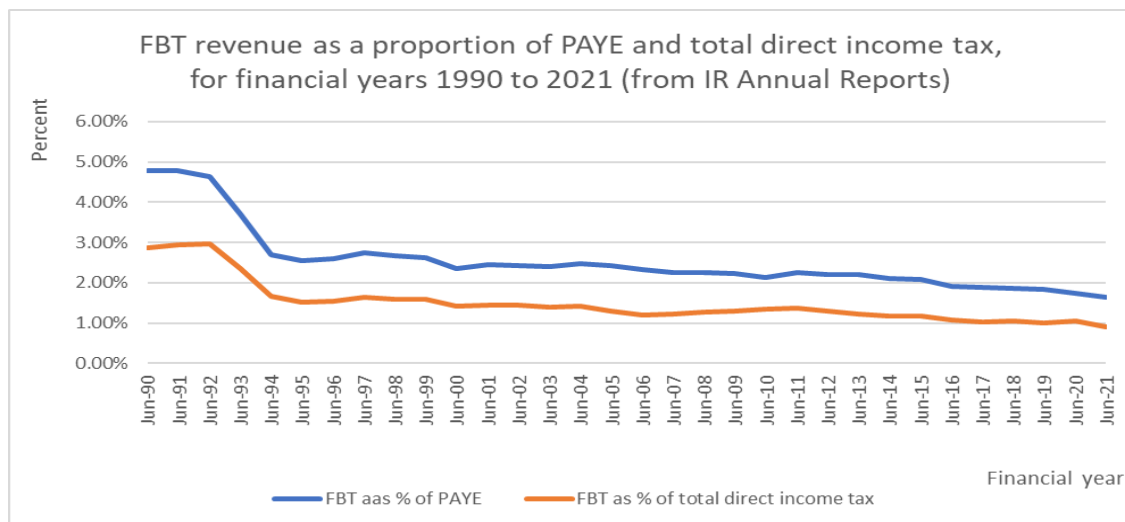
²⁴ See section CX 21 of the Income Tax Act 2007.

²⁵ Inland Revenue data for the year ending 31 March 2020 shows that the greatest number of FBT returns is filed by businesses grouped under the ANZSIC code: Professional, Scientific and Technical Services. However, this group is only the third largest filer of PAYE returns.

Smarter compliance risk management

- 69. Tax administrations are taking an increasingly proactive approach to compliance risk management, where possible seeking to intervene at earlier stages rather than after tax returns have been filed. The use of data to identify and enable interventions is key to this approach. The type and scale of intervention, and therefore the investment required, must take into account the amount of revenue at stake.
- 70. FBT comprised 0.6% of total tax revenue in the year ending 2020, whereas PAYE (including employer’s superannuation contribution tax (ESCT)) comprised 37.4% of total tax revenue in the same period.²⁶ Additionally, the value of FBT as a proportion of PAYE and total direct income taxes has been steadily declining.²⁷

Figure 1



- 71. The decline in FBT as a proportion of total direct income tax supports the comment above that the effectiveness of FBT is not directly observable. A movement towards cash remuneration, which is subject to PAYE, and reduced collection of FBT supports the finding that FBT is acting to support the PAYE system. An alternative hypothesis would be that it could be indicative of falling compliance.
- 72. However, the declining importance of FBT as a revenue source relative to other tax bases, the high cost and the likelihood of low returns on compliance-related investment all combine to make decisions to increase spending on FBT compliance management difficult to sustain (if those are indeed the causes of no real growth in FBT revenue).

²⁶ Fast Guide (IR 628) 2021 edition.

²⁷ Inland Revenue Annual Reports 1990-2021; “Direct” taxes are individual and corporate income tax, resident withholding tax, non-resident withholding tax and employer superannuation contribution tax.

73. Smarter risk management is also predicated on having data or other intelligence to identify the risks. START analytics is a platform that enables the profiling of customers by aggregate characteristics and key points so that clusters of non-compliance can be identified. START analytics is also able to work with third party data. The data sets created enable operational staff to query patterns, identify problems and design intervention strategies.
74. START analytics also supports campaign activity because it has delivery capability. Targeted communications can be sent to 'at risk' customer groups by, say, industry type, or by direct communications to tax agents. The combination of data and delivery technology is a smarter compliance management tool that enables "common errors" campaigns (as described in footnote 19).
75. Seeking more data from businesses is likely to increase compliance costs. It will, however, enable greater understanding of compliance and non-compliance and validate intervention strategies.

Assessment of regulatory risk

76. FBT poses a risk to the tax system because the perception it is not being complied with or adequately enforced by Inland Revenue could undermine the integrity of the tax system as a whole. Aspects of this risk include a sense that some in the business community see non-compliance with the FBT rules as voluntary and concern that unchallenged non-compliance is unfair on those who comply. While Inland Revenue does have measures in place to support FBT compliance, those measures do not appear to have mitigated the perception that non-compliance is widespread at this stage.
77. To mitigate the risk of regulatory failure, our preferred approach would be to commission a comprehensive policy project, as described in the first two bullet points below, with the aim of restoring the intuitive connection to remuneration, modernising FBT and reducing compliance costs. The rules should then be the subject of a comprehensive communications campaign, as well as enhanced data capture so that failings can be more clearly identified. Once the new rules are embedded, a strategy for regular education and enforcement of FBT should be built into regular compliance activity.
78. Other policy and operations issues identified by the review are subsidiary to this risk. More detail is provided in the recommendations below.

Recommendations

79. The review team has identified that both the design and the administration of FBT can be improved. Further detail and options for change are provided below. We also recommend that any actions adopted in response to the review are monitored after delivery of this report.

Policy Legislation and Design

80. We recommend that FBT is included in a future policy work programme. This policy project would involve full consultation per the generic tax policy process. The aim of the project should be to simplify the rules where possible and reduce the compliance burden. There are three possible approaches to such a future policy project:

- A full review of FBT, similar to that undertaken in 2002. The review team does not have a view on whether the taxation of non-cash benefits should be included in the PAYE system – there are good arguments for either approach. However, ways to make the link to remuneration and remunerative benefits more explicit must be considered. This is important for both tax and social policy purposes.
- A lesser review of FBT, with the aim of updating legislative settings to reflect changes in working practices. This should include consideration of the settings for motor vehicles, business tools and the “on premises” exception. In addition, the review should consider the tax treatment of unclassified benefits and, in particular, whether there is a degree of over-taxation or overreach in the liability rules.
- A remedial policy project, focused on updating thresholds and de minimis amounts.

81. In both the first two categories, it is desirable to involve Māori in the design of any changes. This may help address the cultural boundary issues identified. The extent of interest in FBT could be checked via the Māori Advisory Panel in the early stages of any policy project to ensure the degree of engagement is appropriate.

82. There is external interest in using the tax system to incentivise the provision of non-cash benefits supporting social and environmental wellbeing. We also note that many other tax systems include exemptions and incentives in their design. For the avoidance of doubt, the review does not recommend introducing incentives as an explicit objective. Any decision to move away from the standard framework would require a policy development process, which is outside the scope of regulatory stewardship.

83. In addition to the general point above, the sources surveyed in the review did not demonstrate a clear case for including incentives and concessions in the design of FBT. Updating FBT’s design to reflect workforce trends may be sufficient to address concerns raised. Further, in the long term, incentives may affect the sustainability of the tax base

and can be seen as incoherent when viewed against the overall framework. For example, reducing or removing tax on electric vehicles might promote the uptake of such vehicles, but it may be detrimental to the tax base overall. The alternative model of direct incentives, such as the 'Clean Car Discount' (a rebate administered by Waka Kotahi), is recommended.

Operations

84. We recommend that FBT is included in a future operations work programme. This may comprise multiple workstreams to address particular findings. It may be necessary to gather more information, perhaps through the use of START analytics, about the FBT landscape before changing operational practices or adjusting the policy settings. For example, operations may be able to identify areas of non-compliance that are best addressed by legislation. The timing of any operations work programme will depend on whether a policy project is commissioned, as well as the scale and timing of that policy project.

Education and communication

85. Education and communication with taxpayers require improvement to mitigate the tendency for FBT to be 'the forgotten tax' and to remind taxpayers of their obligations. There are several options that can be deployed separately or, ideally, in conjunction to ensure the widest possible audience.

- One option is a traditional campaign, which could be targeted.²⁸ There is merit in regular reminders being pushed out, whether through traditional means, such as newsletters, or via social media. However, anecdotally, these campaigns are not thought to reach unadvised and indifferent taxpayers.
- An alternative method could be to combat 'set and forget' by ensuring that employers are asked whether they need to register for FBT annually, rather than only when they are first set up as an employer, or to indicate which method they are using to account for FBT.
- Other options for direct communication include working with professional bodies to drive communications.

86. In addition to direct communications, we recommend the Inland Revenue website be revamped to enable better linking between FBT and other employment taxes, such as PAYE, with a view to creating a 'one stop shop' for information.²⁹

²⁸ CCS's forthcoming marketing campaign, which focuses on common errors in FBT/getting FBT right, is an example of a traditional campaign. The campaign is intended to launch in 2022.

²⁹ Webpages which specifically address FBT will be included in the 2022 CCS "common errors" campaign. We are unable to comment on whether these pages will assist in improving the visibility of FBT.

87. Thought should be given to varying communications strategies for engagement with Māori. Face-to-face communications is preferred. We also note that, where policy consultation is undertaken, more time should be allowed to enable adequate feedback through Māori governance structures. At a minimum, Inland Revenue guidance should include Māori-specific examples.
88. Finally, the FBT capability of Inland Revenue staff must be improved to ensure a consistent experience and level of advice is provided. This may include further training or additional support being provided to staff, particularly at the front line, via digital means or through the Technical Specialists network.

Compliance and enforcement

89. Modern tax systems use data as a key metric in measuring success. START analytics may assist with designing an enforcement approach. Data strategies could include:
 - Enhancement of data capture, which at a minimum should require employers and businesses to confirm annually the method they use to account for FBT. This will enable us to monitor the use of methods of accounting for FBT other than an FBT return. This data should be built into existing returns.
 - Internally, there is interest in obtaining a greater understanding of the benefits provided and income delivered in the form of non-cash benefits. There are different options if this is pursued – for example, obtaining third party data, such as car registration data from Waka Kotahi, or requiring employers to return further information. Whether this information is truly useful and should be captured as part of regular compliance, rather than as background to a campaign, will depend on policy settings.
 - Development of a tax gap analysis to ascertain the extent of the problem and weigh the value of different intervention strategies. This tool is used by other tax authorities to understand the size and nature of non-compliance. Methodologies differ and comment on the appropriate methodology is outside the scope of this report.
90. FBT is seen as imposing a high compliance burden. In addition to policy changes, which may lower that burden, there is scope to co-operate with third-party software and tools providers to ensure best fit with the systems and processes used by employers and businesses. However, we note there are potential barriers to smoothing administration: in particular, that no natural, widely used systems for the capture of data came to light. In addition, there remains a role for Inland Revenue to provide compliance tools for those (typically small) taxpayers who need them. Notwithstanding these barriers, we recommend considering whether systems improvement is possible. We also recommend enabling e-filing of the FBT return at the gateway to reduce double handling. Potentially,

depending on the data points included, e-filing could also improve our understanding of the FBT landscape.

91. Notwithstanding the need to keep costs low, perceived non-compliance with the FBT rules should be directly addressed. Education and communication may go some way towards raising the profile of FBT, but there is a valid concern that the perception of non-compliance undermines the integrity of the tax system as a whole.
92. Non-compliance takes a number of forms, from simple errors and mistakes to tax evasion. The area believed to be the most non-compliant is the small to medium business sector – the data strategies above may be able to validate this belief and whether this sector should be a key focus of future compliance strategies.
93. Finally, FBT enforcement is required. If a policy project is commissioned, enforcement should follow legislative change and communication of those changes. If policy work is not approved, or is only approved at a remedial level, a focus on enforcement of existing rules would need to continue and possibly be strengthened.
94. Targeted FBT auditing is resource intensive and for that reason is not a specific recommendation. However, FBT should be given more emphasis in the basic compliance package (BCP). Moreover, as the BCP is designed for significant enterprises, developing a similar approach for small and medium enterprises would be desirable. A possible strategy would be to build FBT compliance into a wider strategy of focusing on employment-related tax risks and issues.

Appendix 1 – Approach to review

Framework

1. The framework for regulatory stewardship in Inland Revenue is built on the overarching Public Sector framework and undertaken in accordance with the operational guidance provided by consultants, MartinJenkins:³⁰

“Regulatory stewardship ensures the health of key regulatory systems. Regulatory stewardship responsibilities for departments are currently embedded in the Public Service Act and its predecessor, the State Sector Act. This requires public sector agencies to adopt a whole-of-system, lifecycle view of regulation, and take a proactive, collaborative approach, to the monitoring and care of the regulatory system(s) within which they have policy or operational responsibilities.”

“Inland Revenue has policy and operational responsibilities across legislation governing the tax and payment systems. In doing so it contributes to a variety of economic and social outcomes.

Regulatory stewardship for IR means the Chief Executive needs ongoing assurance that each tax and payment system ‘product’, the delivery of these products, and the tax and payment system design and operation as a whole:

- is effective and efficient to deliver on the policy intent
- is operating as intended
- achieves intended outcomes
- remains fit for purpose, given the current and potential future environment.

Effective regulatory stewardship means that potential regulatory failures are identified and addressed early, and regulatory systems are adjusted proactively as wider objectives and needs change over time.”

Approach

2. In line with the overarching framework, regulatory stewardship requires a systematic review considering both policy and non-policy concerns. This review was primarily diagnostic, aiming to assess FBT’s current fitness for purpose. However, a portion of the

³⁰ “Regulatory Stewardship in Inland Revenue: Operating approach” Final report of MartinJenkins, October 2020, p3.

review has been devoted to considering FBT's fitness for purpose over the next five to ten years. In addition to an assessment of the health of the FBT system, the review team was also tasked with making recommendations to address any deficiencies identified during the review.

3. The approach to the FBT review was as follows:
 - Establish the initial policy rationale for FBT and its design.
 - Identify milestones in the history of FBT and what policy or design features, if any, changed over time.
 - Identify and analyse sources of quantitative data.
 - Undertake a programme of loosely structured, participant-led, interviews inside and outside Inland Revenue.
 - The questions covered the policy and design of FBT, the compliance experience, and the administration of FBT, particularly the role played by Inland Revenue in education, communication and enforcement of FBT.
 - Participant interviews were undertaken in confidence. Views presented in the report are representative of the views expressed, rather than attributed to particular participants.
 - Participants are listed below.

Timeline

4. The review was commissioned in June 2021. The initial timeframe for completion of the review was six months, but this was slightly lengthened due to resource constraints. Most interviews took place during August and September 2021, although some were conducted as late as mid-November 2021. The review presents a point-in-time assessment as at 30 November 2021.
5. The review's findings and high-level recommendations were delivered to the Enterprise Priorities and Performance Committee in February 2022.

Entities and bodies consulted: external

Accountants and Tax Agents Institute of New Zealand
Australian Taxation Office
Baker Tilly Staples Rodway
Chartered Accountants Australia and New Zealand
Corporate Taxpayers Group
CPA Australia
Deloitte
Ernst & Young
Financial Services Council
Findex
GHA
KPMG
PwC
Southern Cross
Tax Agent Cohort (an IR led group)
Tax Lab
Wolters Kluwer

Groups consulted: internal

BT Architecture and Design
CCS Small and Medium Enterprises (FBT) team
CCS Charities and Not for Profits Technical Specialists
CCS Crown
CCS Significant Enterprises
CCS Technical Specialists (FBT)
Employer's Network
Forecasting and Analysis
IIS Data Science and Analytics
IR Accounting
Kaitakawaenga Māori
Policy and Regulatory Stewardship
Tax Counsel Office
Technical Standards

Appendix 2 – FBT background

Definition

1. Fringe benefit tax (FBT) is a tax on non-cash benefits that are provided by the employer to the employee in connection with employment. A fringe benefit is likely to have the following characteristics:³¹
 - a. It is a substitute or supplement to salary or wages, and
 - b. It provides a private benefit to the recipient unrelated to work performed.

History³²

2. During the wage and price freeze of the 1980s, it became apparent that employers were providing non-cash benefits as a form of tax-free income. The Report of the Task Force on Tax Reform (1982) (often referred to as the McCaw report) laid out the case for taxing fringe benefits:
 - a. Fringe benefits that reduced an employee's need to meet private outgoings from income increased their capability to pay in the same way as the payment of extra salary or cash, yet this remuneration was untaxed.
 - b. Employers who provided non-taxable benefits in lieu of salary or wages accessed a reduced total labour cost.
 - c. [The practice] was a clear example of perceived unfairness in the system and a factor in developing a climate of avoidance and evasion.
 - d. If not taxed, remuneration in that form would grow, with the result that the tax base would narrow at the expense of Government revenues.
3. The report went on to consider the design of the tax and specific issues that arose in connection with certain benefits, such as motor vehicles.

³¹ Carr, S., & Chan, C. (2004). New Zealand's Fringe Benefit Tax 20 Years On: An Empirical Investigation into Employers' Perceptions. *New Zealand Journal of Taxation Law and Policy*, 10(3), 247-270. Retrieved from <https://www.massey.ac.nz/massey/fms/Colleges/College%20of%20Business/School%20of%20Accountancy/SoA%20intranet/Documents/Standalone%20webpages/Auditing%20and%20Taxation%20at%20Massey%20University/110289/Study%20Guide%20Topic%203.pdf>.

³² It was not possible to access the original reports due to the closure of the Asteron Centre. Secondary sources, quoted in this document, have been used instead to illustrate the reasons for enacting FBT. These sources may not perfectly reflect the policymakers' considerations at the time.

4. FBT was introduced in 1985. The reasons for its introduction, as explained in an information paper³³ to the Income Tax Amendment Bill (No. 2) 1984 (which contained the new tax), included:
 - a. widening the existing tax base as some important forms of remuneration escape taxation and taxed income is subject to higher rates than would otherwise be necessary to raise a given total yield
 - b. increasing revenue to facilitate either the lowering of the marginal income tax rate or reducing the fiscal deficit
 - c. improving the equity of the system by ensuring the non-cash forms of remuneration are subject to tax
 - d. contributing to improving the resource allocation in the economy, and
 - e. encouraging employers to remunerate their employees in cash, rather than in fringe benefits.
5. In a 1984 Question for Oral Answer, the Associate Minister of Finance, on behalf of the Minister of Finance, stated:³⁴

“In introducing a tax on fringe benefits the Government had two basic choices. It could have levied the tax on the employee, or it could have levied the tax on the employer. The objectives of the tax are to restore equity in the tax system and to encourage employers who give fringe benefits to their employees to shift those benefits into taxable cash remuneration. If the later course is adopted the employee is then assessed for tax on the true value. Also, the tax is a great deal more simple to administer by assessing it on the employer.”
6. The reasons stated reflect New Zealand’s broad-base, low-rate tax framework, as well as the economic conditions prevailing at that time. Arguably, these considerations remain relevant to the taxation of non-cash remuneration and to questions around whether the New Zealand system is fit for purpose in a modern context.
7. FBT cast a wide net.³⁵ Its original focus included motor vehicles, low interest loans, insurances, and free, subsidised or discounted goods and services. FBT was also designed to be a single rate system. However, since its introduction, incremental, remedial changes have been made.

³³ Fringe Benefit Tax Information Paper (December 1984).

³⁴ Questions for Oral Answer – Fringe Benefits Tax, (22 November 1984) 459 NZPD 1949-1950.

³⁵ The original provisions are in Part 10B of the Income Tax Act 1976.

8. In 2000 a multi-rate system was introduced that attributed fringe benefits at the marginal tax rate of the employee deriving the benefit. This was intended to prevent the overtaxing of fringe benefits provided to low- and middle-income employees.³⁶
9. The 2003 Discussion Document *Streamlining the taxation of fringe benefits*³⁷ operated as a review of FBT. Ultimately, the review affirmed the objectives of FBT but resulted in a few further amendments being made to the rules. The Discussion Document was chiefly concerned with changes to the valuation of motor vehicles for FBT, the valuation of employment-related loans and an expansion of the business tools and health and safety exemptions.³⁸
10. FBT was introduced in Australia in 1986 for similar reasons to New Zealand's – that is, base broadening and to provide integrity to the personal income tax base. However, in Australia, FBT now appears to serve wider objectives – it operates to deter the provision of non-cash benefits and provide industry assistance through concessions.³⁹

FBT design⁴⁰

Who pays FBT?

11. Broadly speaking, in New Zealand (and Australia), FBT is borne and paid by the employer. The underlying rationale for this approach was that this method has a lower compliance cost when compared to a system that attributes the benefit to the employee receiving it.
12. Beyond the general approach to FBT, there are special rules for shareholder-employees, close companies and charitable organisations. These relate to either the extent of the liability to report and pay FBT, or how the benefit is accounted for outside the FBT system.
13. In contrast to the New Zealand model for taxing fringe benefits, other jurisdictions (for example, the UK and the USA) include non-exempt non-cash benefits in the employee's total taxable remuneration. The resulting tax liability is paid by the employee.

³⁶ [Special Report - New multi-rate fringe benefit tax \(FBT\) \(ird.govt.nz\)](#) (29 September 2000)

³⁷ [Streamlining the taxation of fringe benefits \(ird.govt.nz\)](#) (December 2003)

³⁸ Tax Information Bulletin, Vol 18, No 5, (June 2006), pp 76-86.

³⁹ See, for example: [Reducing your FBT liability | Australian Taxation Office \(ato.gov.au\)](#)

⁴⁰ The current key FBT provisions are in sections CX 2 to CX 38 and subpart RD of the Income Tax Act 2007. "FBT rules" is a defined term in section RD 25. The Tax Administration Act 1994 also provides for the operation of FBT.

Benefits subject to FBT

14. The main types of benefit subject to FBT are: the private use of motor vehicles; subsidised transport; employment-related loans; employer contributions to superannuation schemes, sickness, accident and death benefit funds, and life or health insurance; and free, subsidised or discounted goods and services (unclassified benefits). These benefits are all required to be attributed to the employee unless they are below specified threshold amounts.
15. There are also several circumstances in which a benefit must be pooled. These include where the benefit: is provided to a former employee, cannot be attributed because it is used by more than one person, is below the relevant threshold, or is subsidised transport that meets certain criteria.
16. Noticeably, employer-provided accommodation is subject to PAYE, not FBT. This reflects the historic treatment of employee accommodation.
17. Charities are exempt from FBT on fringe benefits provided to their employees in connection with the carrying out of charitable activities. Benefits provided in connection with the business activities of a charity are not exempt from FBT, nor are “short-term charge facilities” – arrangements that enable employees to obtain third-party goods and services at the employer’s expense (for example, supermarket vouchers) and the value of those facilities is more than the lower of the two threshold amounts.

What is the rate of FBT?

18. The rate applying to fringe benefits is determined by the employee’s “all-inclusive pay”; that is, cash pay after tax plus the value of all fringe benefits attributed to the employee in the year.
19. There are currently three basic approaches to determining the FBT rate and therefore liability: the single rate, the short-form alternate rate and the full alternate rate. An additional method for employers to calculate FBT, which takes into account the 39% rate, was included in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.
20. Employers can choose which method they use and can change methods. The timing of changes is linked to their filing frequency (quarterly or annually). However, if the alternate rate is used in any return during the year, the employer must complete the alternate rate calculation process for quarter 4.

Table 1

Method	Explanation
Single rate	The employer pays the highest marginal FBT rate (currently 63.93%) for each quarter. The employer may ask the Commissioner to replace the quarter 4 value with the amount calculated under the alternate rate.
Short-form alternate rate	The employer pays the single rate (currently 63.93%) on all attributed benefits provided during the year. Non-attributed benefits are pooled and paid at a rate of either 49.25%, or 63.93% where the benefits are provided to major shareholder-employees.
Pooled alternate rate	The employer pays a flat rate of 63.93% on attributed benefits for those employees that earn more than \$160,000 in gross cash pay or receive more than \$13,400 in attributed benefits over the year. FBT is payable at a flat rate of 49.25% on benefits attributed to all other employees. The employer may choose to pay the 49.25% rate on benefits attributed to employees who receive less than \$129,681 in all-inclusive pay, even if the employee receives more than the gross cash pay or attributed benefits thresholds above. Non-attributed benefits are taxed at either 49.25%, or 63.93% if the benefits are provided to major shareholder-employees.
Full alternate rate	The employer pays at the rate of either 49.25% or 63.93% ⁴¹ on all attributed benefits in quarters 1 to 3. In quarter 4, the benefits are fully attributed to each employee and the rate and liability is calculated for each employee. The amounts paid in quarters 1 to 3 are subtracted from the total to quantify the balancing payment or refund. Non-attributed benefits are taxed at either 49.25%, or 63.93% if the benefits are provided to major shareholder-employees.

21. The single rate and short-form alternate rate methods are likely to result in over-taxation given the top FBT rate of 63.93%. The full alternate rate imposes a greater compliance burden but achieves an accurate tax result.
22. The table below shows the marginal personal income tax rates and bands with their FBT equivalents.

⁴¹ Which rate an employer chooses will depend on their particular situation, such as the additional time required to complete alternative rate calculations, the impact of non-attributed benefits, and the amount employees earn annually.

Table 2

Personal income tax		Fringe benefit tax	
Cash income band	Tax rate	All-inclusive income band	Tax rate
\$0-\$14,000	10.5%	\$0-\$12,530	11.73%
\$14,001-\$48,000	17.5%	\$12,531-\$40,580	21.21%
\$48,001-\$70,000	30%	\$40,581-\$55,980	42.86%
\$70,000-\$180,000	33%	\$55,981-\$129,680	49.25%
\$180,001+	39%	\$129,681+	63.93%

How and when is FBT reported and paid?

23. Employers have the choice of filing on a quarterly, annual or income year basis. Quarterly filing is the default position unless employers meet the criteria for income year or annual filing and elect one of those options.

Quarterly reporting

24. Quarterly returns are due 20 days after the end of the relevant quarter, except for the final quarter. The return periods and their relevant due dates are in the table below.

Table 3

Quarter	Return period	Return due date
1	01 April to 30 June	20 July
2	01 July to 30 September	20 October
3	01 October to 31 December	20 January
4	1 January to 31 March	31 May

Annual and income year reporting

25. Close companies that provide benefits to shareholder-employees can opt to file returns on an income year basis if certain criteria are met.⁴² These criteria are that, in the preceding income year:
 - the annual gross PAYE and employer's superannuation contributions tax (ESCT) deductions for the company were no more than \$1,000,000
 - the company only provided a maximum of two motor vehicles for private use to shareholder-employees, or
 - the company had no employees.
26. Small businesses have the option of filing annual returns if, in the preceding income year, the annual gross PAYE and ESCT deductions were no more than \$1,000,000 or the employer had no employees.⁴³
27. There are set dates by which employers must make an election to file yearly returns. These depend on the type of return (income year or annual) and whether the applicant is a current or new employer.

FBT: other options

28. Shareholder-employees can account for fringe benefits in other ways. They may choose to adjust their current accounts, treat the value of the benefit as a dividend, or make a private-use adjustment.⁴⁴

FBT intersection with child support, student loans and Working for Families

29. Fringe benefits provided by an employer to an employee are sometimes included in that person's family scheme income in Working for Families and their income for student loans. They are not included in their income for child support purposes.
30. Currently, fringe benefits may be included in family scheme income for Working for Families tax credits as follows:
 - For controlling shareholder-employees (a person who directly, or with associated persons, holds 50% or more of the voting interests), the grossed-up value of

⁴² Income Tax Act 2007, section RD 60.

⁴³ Income Tax Act 2007, section RD 61.

⁴⁴ Income Tax Act 2007, sections CX 17 and RD 54.

attributed fringe benefits to the employee are included in the person's family scheme income.

- For all other employees (including non-controlling shareholder-employees), the value of the following is included in the person's family scheme income:
 - private use of an employer-provided motor vehicle where it is part of an explicit salary trade-off, and
 - an employer-provided short-term charge facility.
31. These fringe benefits are also included in a New Zealand-based borrower's income for student loan repayment purposes.
32. By design, and as noted above, child support does not currently include fringe benefits in determining a person's income for child support purposes. Broadly, the child support rules look to a person's taxable income (and, from 1 April 2022, a person's net income). While fringe benefits are taxed, they do not count as a person's income.

Appendix 3 – Data review

1. This appendix summarises the data considered in undertaking the fringe benefit tax (FBT) regulatory stewardship review. Available data comprises taxpayer-provided information held by Inland Revenue and data from external sources, including the results of a member survey on current FBT rules undertaken by the Corporate Taxpayer Group (CTG) and Australian FBT data.

FBT returns

2. There are three different FBT returns:
 - The FBT quarterly return (IR 420). Each year these returns account for approximately 65% of all FBT returns and nearly 94% of reported FBT revenue.
 - The FBT income year return (IR 421). This return is for companies with shareholder-employees. Each year these returns account for about 20% of total FBT returns and 2% of FBT revenue.
 - The FBT annual return (IR 422). This return is for employers who qualify and have elected to file annual returns for the year. Each year these returns account for around 15% of total FBT returns and about 4% of annual FBT revenue.
3. Each of the different FBT returns follow the same basic structure. For the period of the return, the employer provides the following information:
 - The total taxable value of benefits provided.
 - The FBT rate applied by the employer and the amount of FBT calculated.
 - The GST payable on fringe benefits provided.
 - The total FBT and GST to be paid.
4. The data contained in the FBT returns provides a high-level picture of the total FBT revenue raised, the number of employers paying FBT and the average amount of FBT paid. The returns do not enable any further insights, for example, into the types of benefits currently provided by employers.⁴⁵

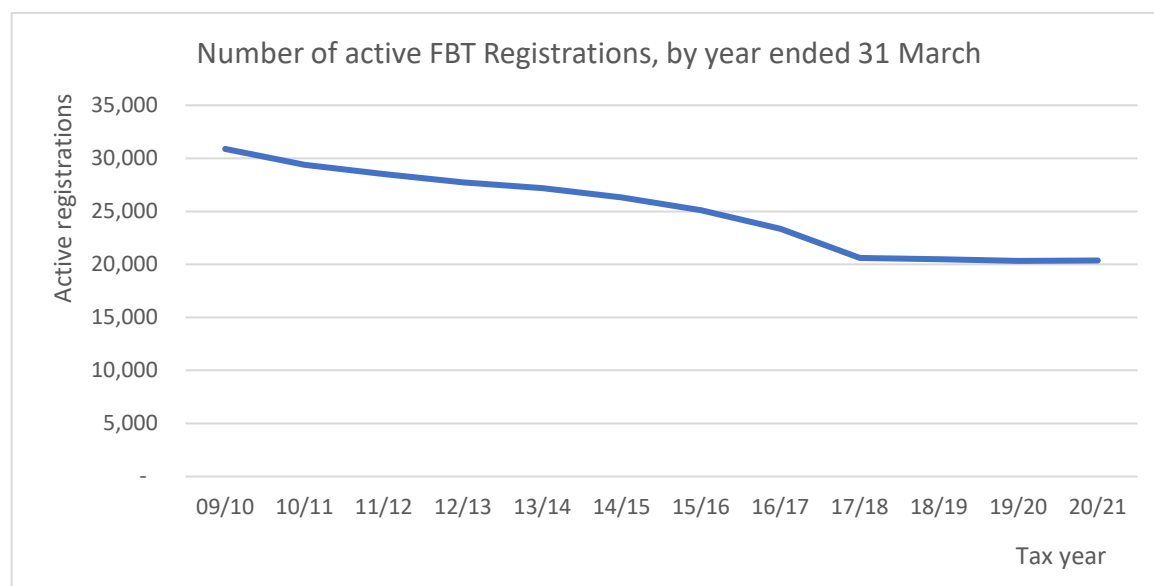
Active FBT registrations

5. There are 20,354 active FBT registrations for the most recent tax year (2020/21). This represents a 34% decline in registrants compared to the 30,887 FBT registrants Inland Revenue recorded in 2009/10. Almost all this decline (33%) occurred between 2009/10

⁴⁵ From 1990/91 to 1998/99, information on broad categories of benefit types was collected by Inland Revenue. This is discussed later in the document.

and 2017/18, with a noticeable 12% drop occurring between the 2016/17 and 2017/18 tax years (as shown in the graph below).

Figure 1



FBT filers

- There were 21,885 FBT filers in the 2019/20 tax year, of which 81% (17,834) filed non-nil returns. The breakdown of total filers and non-nil return filers, per return type, is shown in the two tables below.

Table 1

Number of FBT filers (all returns), years ended 31 March				
Tax year	Annual (IR422)	Quarterly (IR420)	Shareholder (IR421)	Total
09/10	4,628	19,731	6,411	30,770
10/11	4,393	18,258	6,556	29,207
11/12	4,285	17,270	6,495	28,050
12/13	4,126	16,771	6,270	27,167
13/14	3,947	16,457	6,032	26,436
14/15	3,854	16,181	5,897	25,932
15/16	3,783	15,873	5,773	25,429

16/17	3,858	15,201	3,747	22,806
17/18	3,674	14,299	4,601	22,574
18/19	3,783	14,286	4,928	22,997
19/20	3,725	13,744	4,416	21,885
20/21p	3,530	13,416	945	17,891

Table 2

Number of FBT filers (non all returns), years ended 31 March				
Tax year	Annual (IR422)	Quarterly (IR420)	Shareholder (IR421)	Total
09/10	2,623	15,492	3,576	21,691
10/11	2,672	14,682	3,696	21,050
11/12	2,623	13,306	3,601	20,530
12/13	2,644	14,121	3,629	20,394
13/14	2,602	13,972	3,661	20,235
14/15	2,599	13,841	3,629	20,069
15/16	2,599	13,760	3,589	19,948
16/17	2,709	13,264	2,408	18,381
17/18	2,671	12,599	3,049	18,319
18/19	2,762	12,662	3,115	18,539
19/20	2,795	12,227	2,812	17,834
20/21p	2,618	11,823	541	14,982

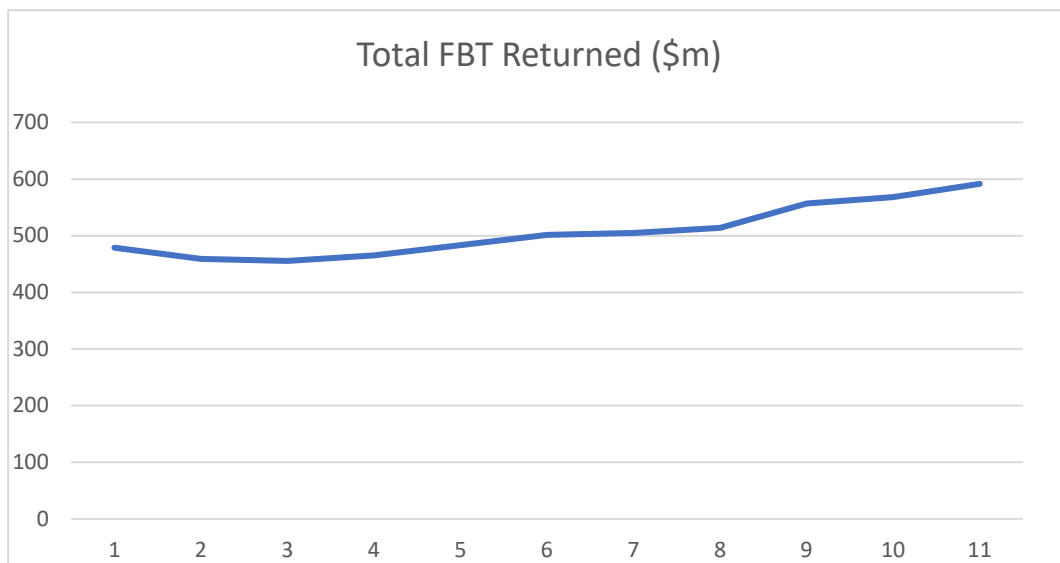
7. Overall trends for FBT filers between the 2009/10 and 2019/20 tax years are:

- A 29% decline in the total number of FBT filers.
- An 18% decline in the number of FBT filers filing non-nil returns.
- The portion of nil return filers as a proportion of total filers has been steadily reducing from nearly 30% of return filers in 2009/10 to 19% in 2019/20.

FBT revenue

8. Despite the gradual decline in the number of FBT return filers, FBT collected has increased overall during the same period. Inland Revenue collected \$592 million in FBT in the 2019/20 tax year, a 24% increase from the \$479 million collected in 2009/10 year. Most of this revenue is collected from entities that file quarterly returns.

Figure 2



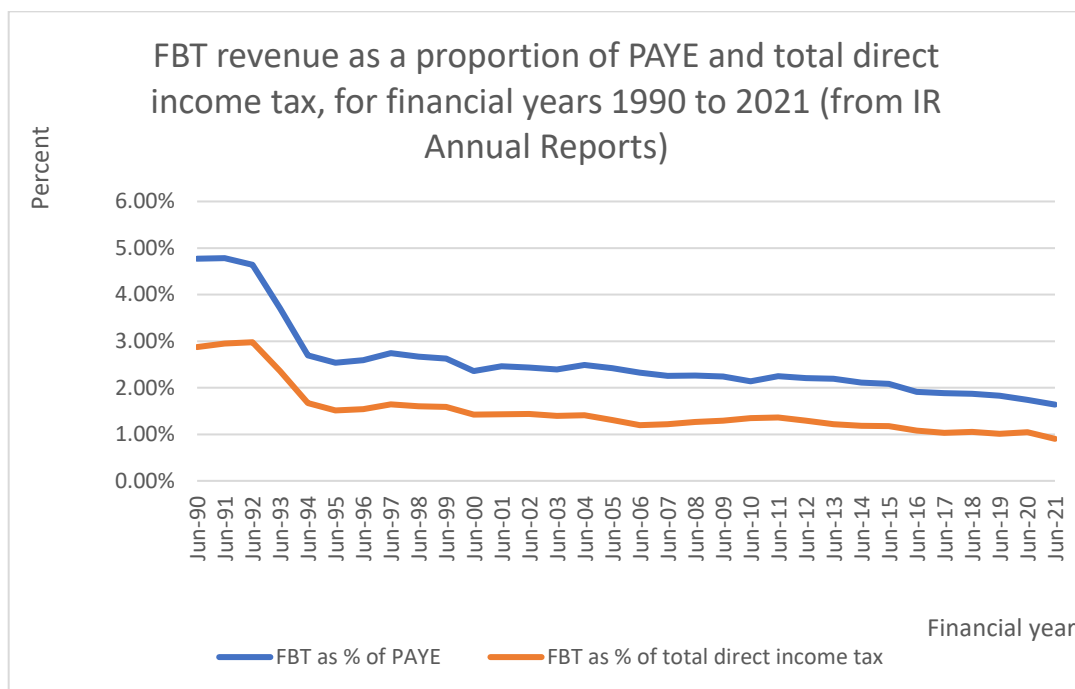
9. That said, FBT revenue has always been a small part of government revenue. In the early 1990s, the total amount of FBT revenue was close to 5% of PAYE revenue and around 3% of direct income tax revenue. Fast forward nearly thirty years, and total FBT revenue is equal to closer to 1.6% of total PAYE revenue and about 0.9% of total direct income tax revenue.⁴⁶ The proportional importance of FBT revenue may have implications for prioritising administrative efforts to enforce the current FBT rules.
10. Other insights from longer-run FBT return data is that FBT revenue increased between its introduction and 1989, and then significantly reduced between 1990 and 1995. Several factors are likely to have contributed to the 1990s decline. Some of the decline was due to certain elements being removed from the FBT net, such as the employer contributions to specified superannuation schemes. Other possible explanations include tax planning to reduce FBT and employers ceasing to provide fringe benefits so they would not be liable for the tax.⁴⁷

⁴⁶ Inland Revenue Annual Reports 1990-2021. "Direct" taxes are individual and corporate income tax, resident withholding tax, non-resident withholding tax and employer superannuation contribution tax.

⁴⁷ Carr, S.A. & Chan, C. (2004) New Zealand's Fringe Benefit Tax 20 years on: An Empirical Investigation into Employers' Perception. *New Zealand Journal of Taxation Law and Policy*, Vol. 10, No. 3, pp. 245-270 at p 252.

11. Carr and Chan’s⁴⁸ findings (based on 249 business responses) were that the introduction of FBT had no impact on staff remuneration for 44% of respondents. Other respondents did change remuneration practices: 34% of respondents removed some or all fringe benefits with compensating increases in cash, and 16% of respondents removed some fringe benefits. However, none of the respondents that provided benefits at the time of the survey said they had removed all fringe benefits in response to the introduction of FBT. Carr and Chan’s findings suggested to them that tax considerations were not the prime or only consideration when an employer decides whether to offer a fringe benefit. Other factors, such as “corporate policy” and “industry expectation”, are more influential in the decision-making process. Interestingly, these factors were reflected in comments made by interview participants in the current review.
12. After 1995, the role of FBT as a revenue collector flattens and the decrease in the proportion of FBT in comparison to PAYE or direct income tax as a whole is more subtle (see graph below).

Figure 3



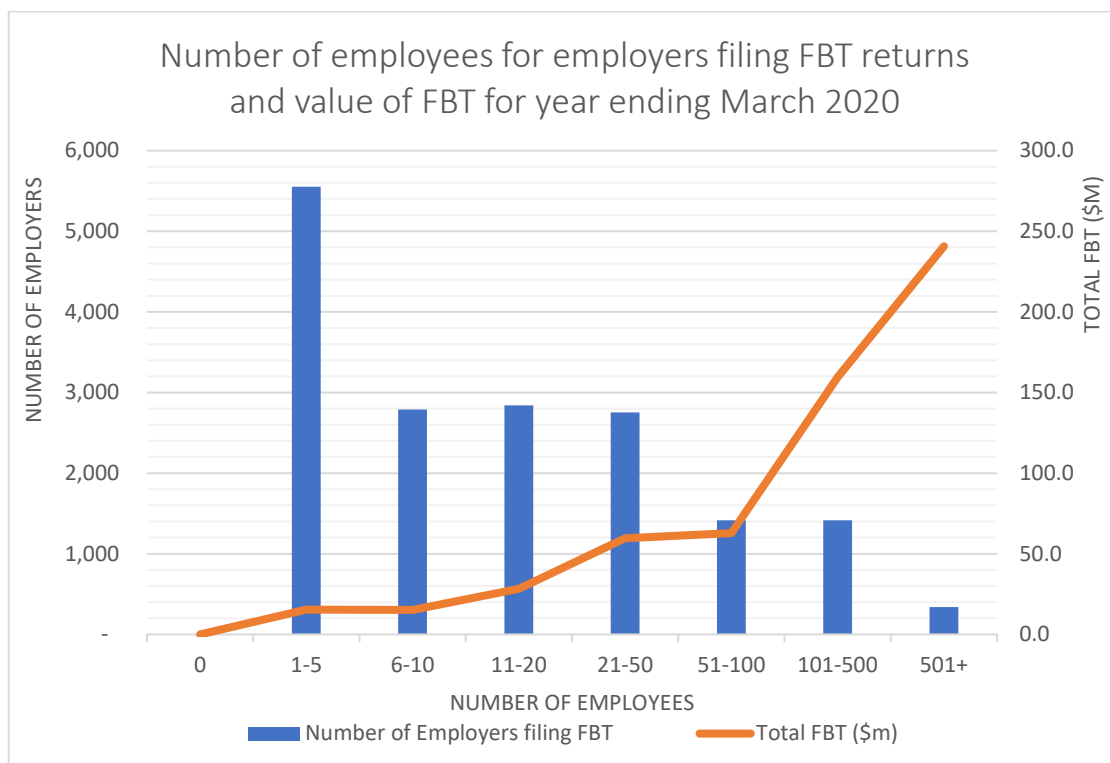
FBT payers

13. Matching FBT return data with other return data means that we can describe some of the other characteristics of employers returning FBT. The following provides a little more insight to the nature of employers who are paying FBT.

⁴⁸ Carr, S.A. & Chan, C. (2004) Ibid at p 260.

14. The bulk of FBT revenue is paid by a relatively small number of taxpayers – nearly 69% is paid by employers of 101 or more people. Data collected by Inland Revenue shows that employers with 501 or more employees accounted for 2% of FBT filers, but 41.4% of FBT paid in the year ending 31 March 2020. By comparison, employers with more than 500 employees comprise 0.2% of PAYE filers and account for 39.3% of PAYE. Employers of 101-500 employees pay 27.4% of FBT and 18.8% of PAYE. This suggests that fringe benefits may be more important in remuneration practices for this group of employers. As there may be other, or more, explanations for this disparity, this point may bear further investigation.

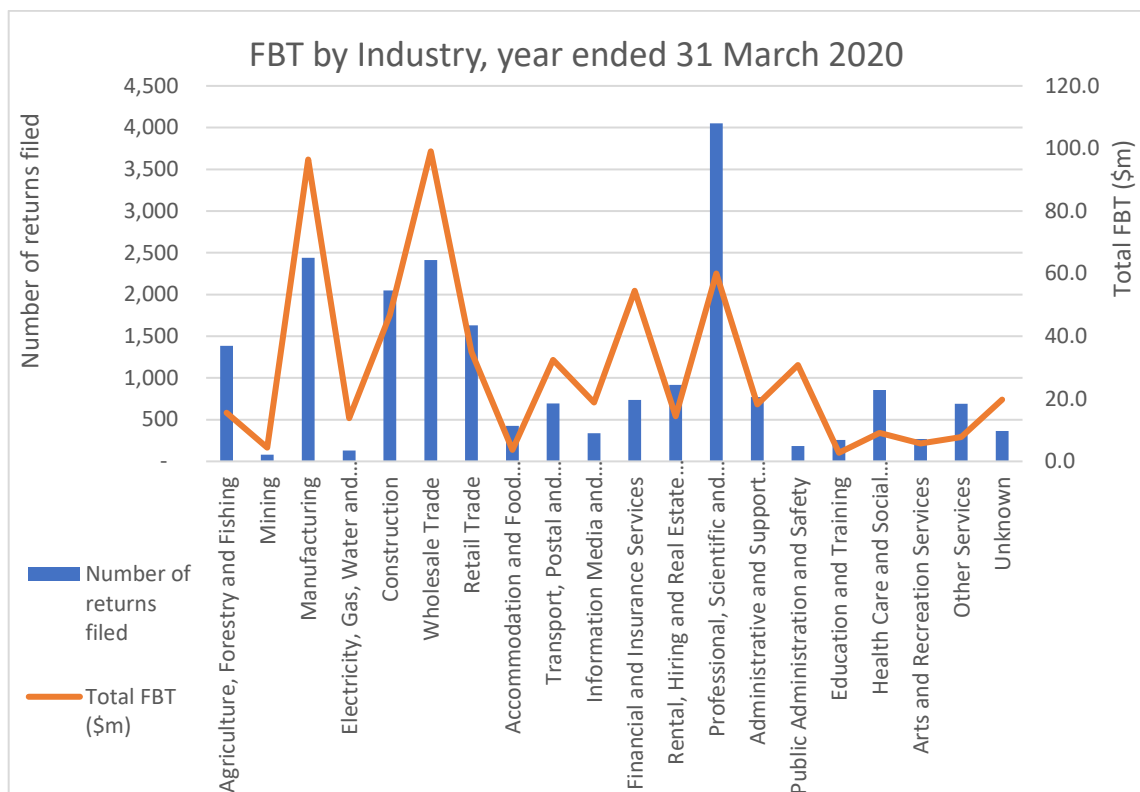
Figure 4



15. A strong correlation between total FBT paid and number of employees seems intuitive. From the return data, the fewer the number of employees, the less likely the employer is to be an FBT filer within that employee band. For the 500+ employee band, 83% of employers were FBT filers, whereas for the 1-5 employee band, less than 4% of the employers were FBT filers. It is not clear why there might be a negative correlation between the number of employees and non-cash remuneration. During the review process, we heard comments that smaller businesses tended not to prioritise FBT compliance. Alternatively, these businesses may be less able to provide fringe benefits. Finally, the legislation provides options for FBT compliance in certain circumstances that may be attractive to eligible small businesses.

16. Inland Revenue also holds FBT data by ANZSIC industry. This data enables us to observe that the Professional, Scientific and Technical services category files nearly 20% of FBT returns, but accounts for 10% of FBT revenue. In contrast, Financial and Insurance Services comprise 3.5% of returns filed, but 9% of FBT collected. Both Manufacturing and Wholesale Trade file approximately 11% of FBT returns and pay around 16% of FBT collected. The data cannot provide the reasons for these observations. A better understanding of the types of fringe benefits provided may provide an explanation.

Figure 5



What non-cash benefits are provided?

17. As mentioned above, the data Inland Revenue asks for in the FBT returns is only the total value of taxable benefits for the period. Therefore, it is not possible to provide a breakdown of what non-cash benefits employers are providing their employees.
18. In the 1990/91 to 1998/99 tax years, Inland Revenue collected data on five broad categories of taxable non-cash benefits. Table 4 below provides the proportion of FBT revenue for each of the five categories. Note that Category E was removed from the FBT net during the 1990s.

Table 3

Category	A	B	C	D	E
	Vehicles	Loans	Discounted Goods	Sickness & Benefit Funds	Retirement & Redundancy
1990/91	47%	10%	6%	5%	32%
1991/92	45%	8%	6%	7%	35%
1992/93	49%	5%	6%	10%	30%
1993/94	67%	5%	10%	11%	7%
1994/95	71%	5%	12%	12%	0%
1995/96	71%	5%	12%	12%	0%
1996/97	71%	4%	11%	14%	0%
1997/98	72%	2%	12%	15%	0%
1998/99	71%	1%	12%	15%	0%

19. In their 2004 survey of employer perceptions of FBT, Carr and Chan reported the types of benefits that were provided to three broad employee groups. The private use of motor vehicles and employer contributions to superannuation funds and/or health insurance were the most frequently provided employer benefits.⁴⁹

⁴⁹ Carr, S.A. & Chan, C. (2004) Ibid at p 257 and comments on limitations on data at p 265.

Table 4

Benefits	Top Management		Middle Management		Other Employees	
	Frequency*	Percent	Frequency*	Percent	Frequency*	Percent
Private use of motor vehicles	195	(69.6)	162	(57.9)	68	(24.3)
Contributions to super funds / health insurance	160	(57)	146	(52)	128	(46)
Discounted goods / services	33	(12)	34	(12)	30	(11)
Zero or low interest loans	13	(4.6)	7	(2.5)	12	(4.3)
Other	60	(21)	55	(20)	54	(19)

*Number (percentage) of respondent employers who provide the benefit to the different employee groups.

20. The CTG surveyed its members and provided insights to Inland Revenue from respondents for the 2021 FBT year. The below table summarises the value of non-cash benefits (excluding values of less than one percent) provided by 24 CTG respondents to their employees for the 2021 tax year.

Table 5

Category	Total approximate value of benefit	Percentage of total benefit value
Motor vehicles	\$30,800,000	45%
Low interest loans	\$1,800,000	<3%
Contribution to sickness, accident, or death benefit fund	\$4,800,000	7%
Payment of a specified insurance premium	\$14,700,000	21%
Unclassified benefits	\$16,200,000	23%
Category	Total approximate value of benefit	Percentage of total benefit value

21. The CTG data suggests that the mix of benefits provided to employees may have changed over the last 30 years. Motor vehicle benefits may not be as significant as they were in the late 1990s. It also suggests that employers may be providing employees with more unclassified benefits. However, it is not possible to draw meaningful conclusions from the data the review team was able to source. It may be desirable to collect further data, from a wider range of employers and businesses, before reaching a conclusion on the current provision of non-cash benefits to employees.

Compliance costs

22. Numerous changes seeking to reduce compliance costs for businesses have been made since the FBT rules were introduced in 1986. The changes have been both legal and administrative (for example, the provision of an online calculator). However, we have been unable to ascertain whether cost savings have been achieved.⁵⁰
23. Inland Revenue's 2018 research on small businesses noted that "[f]ringe benefit tax performs the worst for customers when registering and managing change, especially around the ease, time and stress, and reassurance."⁵¹ The key compliance points for small businesses included that FBT can be time consuming and complex, vehicle FBT is tricky

⁵⁰ See also Fringe Benefit Tax in New Zealand, Inland Revenue, (March 2021), p 12.

⁵¹ Small business landscape report (2018), p 51.

to calculate and burdensome, and FBT calculations are confusing. However, the 2021 Inland Revenue internal survey on business costs for small businesses showed that FBT does not incur the greatest amount of time or cost – other taxes, such as GST, are more significant.⁵² In contrast, the private sector’s perception captured in this current review is that FBT imposes a high compliance burden. Why there is a difference between the reviews is not clear. It could be due to the focus on FBT separate to other taxes.

24. In interviews conducted during this review, participants commented that the task of sorting through expenses and possible payments of fringe benefits is time consuming. This view was shared by large and small business representatives. CTG survey respondents estimated that doing the calculations and preparing FBT returns takes around 3,745 hours per year (across 21 respondents) – averaging at 178 hours each per year.
25. CTG members also raised compliance cost concerns as part of their survey, including that:
 - motor vehicle benefits are being overtaxed in many instances due to the complex and burdensome nature of the current FBT rules, and
 - capturing and tracking unclassified benefits and vehicle use are the biggest cause of compliance costs when preparing FBT calculations and returns.
26. Another possible driver of compliance costs is the way in which the multi-rate calculation aims to impose FBT at a PAYE equivalent rate. The calculation results in more accurate taxation but requires attribution to each employee. This necessarily incurs compliance costs. The CTG survey indicated that 54% of respondents attributed benefits for all employees, while 17% used the single rate option.
27. There have been several independent reviews and comments on FBT compliance costs since its introduction. Carr and Chan (2004) reported business perception that the “administrative costs to the employer were often higher than the value of the benefits for the employee and the revenue for the Government”.⁵³ This point was reflected in discussions with the private sector in the current review.

⁵² 2021 study on the time and cost of doing business taxes incurred by NZ small businesses (April to June 2021), Inland Revenue

⁵³ Carr, S.A. & Chan, C. (2004) Ibid at p 257 and comments on limitations on data at p 261. See also Van Zijl, T. (1985) Is There Anything Good to Say About the Perks Tax? *Chartered Accountants Journal* Vol 64:[1], and Sandford, C. and Hasseldine, J. (1992) The Compliance Costs of Business Taxes in New Zealand (Institute of Policy Studies, Victoria University of Wellington)

Australian data

28. Australia, like New Zealand, imposes an employer-paid FBT on non-cash benefits. As there are differences in the underlying policy (see appendix 2) and in the tax base, only broad observations can be made. In addition to being able to observe information regarding FBT filers and payments, the Australian Tax Office (ATO) also collects information on the types of benefits provided to employees.⁵⁴ This may enable a better understanding of both benefits provided and their relative popularity over time.

Tax gap analysis

29. An approach used by some overseas tax administrations to assess FBT compliance, compliance risks and concerns involves estimating the tax gap for FBT. Evaluation of the appropriateness of a tax gap analysis in the New Zealand context and comment on tax gap methodology is outside the scope of this report.
30. We have briefly looked at the tax gap work of the ATO.⁵⁵ The Australian analysis for FBT⁵⁶ indicates that for 2018–19, the net FBT gap estimate was around 22.6%. However, when looked at in the context of Pay as You Go withholding and FBT together, the integrated gap was approximately 2.1%.
31. In the ATO's view, the primary driver of its gap estimate is employers not participating in the FBT system where they are providing benefits to employees. It further estimated that almost a third of FBT adjustments resulted from a lack of awareness of FBT obligations by either the employer or the tax agent.
32. The ATO's insights supported their views of the reasons for the FBT gap. These insights indicated that contact between tax agents and their clients for FBT matters was often on an ad hoc basis, and that some employers may be reluctant to engage a tax agent to undertake FBT work because of the additional cost of doing so. Echoes of these insights were heard in the interviews conducted in this review.

Conclusions

33. At a high level, Inland Revenue can report on the amount of FBT revenue collected and the number of employers returning FBT and provide a broad description of the types of employers providing benefits to employees or shareholder-employees. However, there

⁵⁴ [Fringe benefits tax statistics | Australian Taxation Office \(ato.gov.au\)](#)

⁵⁵ Other tax authorities that undertake a tax gap analysis include Her Majesty's Revenue and Customs (HMRC) in the United Kingdom, the United States Internal Revenue Service (IRS) and the Canada Revenue Agency (CRA).

⁵⁶ [Fringe benefits tax gap | Australian Taxation Office \(ato.gov.au\)](#)

are major gaps in currently available information, particularly data that might inform Inland Revenue and the broader public debate on FBT compliance, risks and concerns.

34. The then Government's stated purpose in introducing the FBT rules included restoring equity to the tax system and encouraging employers who give fringe benefits to their employees to shift those benefits into taxable cash remuneration. The Government also considered that FBT would be simpler to administer if it was assessed on the employer.⁵⁷
35. Having reviewed the available data, it is difficult to know whether these objectives have been achieved. What we can say is that:
 - The FBT rules may have improved the equity of the tax system. However, better evidence of employer compliance with the FBT rules would strengthen such a conclusion.
 - Notwithstanding the introduction of FBT, businesses have continued to provide non-cash benefits to employees. This suggests there may be other reasons that drive the provision of fringe benefits.
 - There continues to be costs for businesses in complying with the current FBT rules. Some of these costs undoubtedly arise from the structure of FBT, including the options for calculation and returns, which were intended to increase fairness or reduce compliance costs.
36. Based on the limitations of the data available to inform the current review, there is scope to improve our understanding of the FBT landscape. One option is to continue to use insights generated from ongoing Inland Revenue work. Another is to regularly capture more information from employers and businesses via returns. A third option may be to analyse the tax gap. Regardless of the approach, an understanding of the degree of compliance with FBT in New Zealand is likely to be particularly useful given the perception of non-compliance expressed in interviews during this review.

⁵⁷ Questions for Oral Answer – Fringe Benefits Tax, (22 November 1984) 459 NZPD 1949-1950.