DEBORAH JANE MARRIS

"FRINGE BENEFITS"

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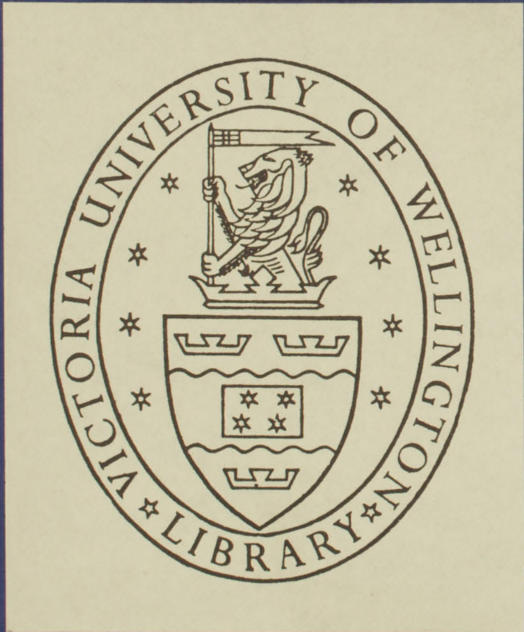
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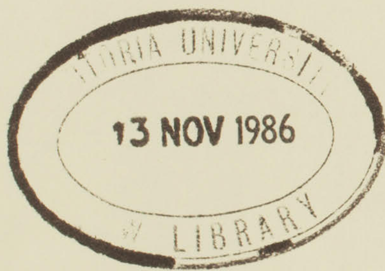
DEBORAH JANE MARRIS

"FRINGE BENEFITS"

Submitted for the LL.B. (Honours) Degree
at the Victoria University of Wellington.

1 September 1986.



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Abbreviations:
The following abbreviations are commonly used in this work in relation to tax legislation from various countries:

ITA	Income Tax Act 1976 (New Zealand)
ITAA	Income Tax Assessment Act 1936 (Australia)
IRC	Internal Revenue Code 1954 (United States)
FA (year)	Finance Act (United Kingdom)

I INTRODUCTION

Increasing personal tax rates[1] have exposed serious flaws in the New Zealand tax scheme. Widespread discontent fostered tax avoidance as a means of reducing the incidence of personal income tax.

This paper provides a broad overview of the concept of fringe benefits. Part one considers the nature of fringe benefits. Part two considers the initial approaches to the taxation of fringe benefits in New Zealand, the United Kingdom, Australia, and the United States of America. Part three canvasses the reasons mooted for the taxation of fringe benefits in some form. Part four provides a broad overview of the legislative responses to fringe benefits in the four named jurisdictions; illustrating the different approaches taken to the taxation of fringe benefit An underlying focus of this paper is the political component inherent in the taxation of fringe benefits.[2]

The author hopes to illustrate the necessity to tax fringe benefits in some form. Dispelling the belief that fringe benefi taxation is a 'tax of envy'.

A. The Nature of Fringe Benefits.

Fringe benefits are defined as:"...any benefits or advantages other than the payment of wages and salary, passing from the employer to employee and arising out of the employment."[3]

Fringe benefits are common at all levels of the employment strata. Ranging from subsidized cafeterias, creches, subsidized goods and services to the more visual company car, subsidized housing, overseas trips and employer-provided holiday accommodation.

Employment remuneration, often comprises a combination of monetary reward and fringe benefits. Fringe benefits, in lieu of monetary compensation, decrease an employee's need to meet private outgoings out of after-tax income. For example, employees at Wattie Canneries Limited receive a package of tinned goods

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weekly, as part of their remuneration. This reduces the need of these employees to use after-tax income to acquire these goods, enabling them to purchase other items with their after-tax income.

Fringe benefits confer a personal economic advantage. Conditions of employment do not. It is important the two are distinguished, as conditions of employment do not threaten the tax system. Conditions of employment are an important element in maintaining a cogenial work place. For example, pleasant bathroom facilities and office space. However, it is often difficult to distinguish between conditions of employment and fringe benefits.

II INITIAL APPROACH TO THE TAXATION OF FRINGE BENEFITS

A. New Zealand.

The Income Tax Amendment (No.2) Act 1985 was enacted on the 23 March 1985. By codifying the taxation of fringe benefits it provides for comprehensive taxation of employment income.[4]

Prior to the 1985 Amendment fringe benefits were taxed in a piecemeal fashion, coping with specific fringe benefits. Fringe benefits in the form of retiring allowances[5], share options or purchase schemes[6], accommodation allowances[7] and certain reimbursing allowances[8] were taxable. A more comprehensive approach was hindered by the concept of income and principle of convertibility.

1. The Concept of Income.

The concept of income can be approached on both an economic and juristic basis.

a. The economic definition of income.

Economists, generally, refer to the 'dominant Haig-Simons'

definition of income[9]. Income is calculated by adding consumption during the period to wealth at the end of a period; then subtracting the wealththat existed at the beginning of the period[10]. This definition of income,includes within income all benefit (ie. gain).

Although, the Haig-Simons definition of income has been the basis of tax reform proposals[11], it has been rejected by most jurisdictions as impractical for use in the court[12].

b. The juristic definition of income.

Income is not defined in the Income Tax Act 1976 (hereinafter referred to as ITA). There is no comprehensive definition of income in any of the jurisdictions considered. The basic approach is to provide a non-exhaustive set of categories as examples of what the Legislature considers income. For example, section 65(2)(h) of the ITA, lists royalties as income.

A good example of the generality of approach is found in the New Zealand legislation: " Without in any way limiting the meaning of the term..."[13]. The term being assessable income. The ordinary meaning of income is incorporated as a general test, to whether an item is income; as a final category[14].

The cornerstone to the development of employment income is section 65(2)(b). Upon a literal interpretation, section 65(2)(b) applies to every form of employment remuneration. The breadth of section 65(2)(b) has been severely restricted by the judiciary. An illustration of the Commonwealth courts[15] conservative approach to construing tax acts[16].

2. The common law.

The common law approach focuses on the meaning of the term 'allowance'in section 65(2)(b), to determine whether fringe benefits are income. The rationale being if a fringe benefit is an allowance, it is income within section 65(2)(b).

A limited concept of allowance was introduced to New Zealand

in Edwards v. Commissioner of Taxes.[17] The issue was whether a superannuation allowance paid to a retiring judge was 'earned income'. The court in holding it was not, considered the meaning of the term allowance. The court read the term allowance ejusdem generis with the other words in the section - wages and salaries In support, the court applied the proposition, viz - extra payment for extra work[18], in holding the term allowance to mean money paid in relation to existing employment.

In Stagg v. I.R.C.[19], the court extended Edwards to establish the principle of convertibility. An employer paid for an overseas trip by an employee and his wife. The value of the airline tickets was held not to be employment income within section 65(2)(b). The tickets were not convertible by the employee for money, nor were they exchangeable with the employer for money.

The court reiterated the dictum of Edwards, focussing on the words 'sums' and 'whether in cash or otherwise'. Hutchinson J laid down four characteristics, based on the characteristics of wages and salaries, that a fringe benefit must possess to be income.[20]

In reaching a decision, the court cited the principle of resolving in favour of a taxpayer, where an ambiguity existed.[21] The phrase "whether in cash or otherwise" was considered ambiguous. Hutchinson J raised two further points in support of the majority decision. Firstly, there is no means of valuing non-monetary benefits within section 65(2)(b).[22] Secondly, if the term allowance encompassed non-monetary benefits section 89[23] would have been unnecessary.

The court in Edwards and Stagg in restricting the meaning of allowance, focussed on the phrase,'All salaries, wages, or allowances (whether in cash or otherwise)', largely ignoring the rest of the section.

In the case of C.I.R. v. Parson (No. 2)[24], a second phase of the

common law developed. The court held, a share option given to a senoir employee was not taxable. In reaching that decision, the court focused on what was not an allowance; as opposed to what is an allowance, as in earlier decisions.

The court looked at the historical development of section 65(2)(b), focussing on the words "including all sums received or receivable by way of bonus, gratuity, extra salary, compensation for loss of office or employment, or emolument of any kind,...", added by the 1900 Amendment. On that basis the court established a two-fold test to determine whether a benefit was taxable. If a benefit was a bonus, gratuity, extra salary or emolument it was an allowance.[25] If the benefit was an allowance, the court had then to consider the second stage of the test. Due to the words "sums received or receivable", to come within the section, the benefit had to be convertible to money. The court demoted the convertibility principle to the valuation stage of a two part test.

In 1968, a specific provision was enacted to tax share options.[26] The Legislature by not enacting comprehensive legislation impliedly upheld the majority decision in Parson (No.2).

In 1982, the decision in Parson (NO.2) was reinforced in Sixton v. C.I.R.[27] The issue was whether a prize, in the form of a points cheque, redeemable for goods or travel, received by an employee under an incentive scheme run by the employer was assessable income. The court treated the case, as being one based on the true construction of section 88(1)(b). Parson (No.2) was held to be highly relevant. The court held the prize was not an allowance. It was, therefore, irrelevant whether the prize was convertible to money.[28]

The common law approach to section 65(2)(b) focussed on a close analysis of the statutory language, effectively leaving section 65(2)(b) inoperative in the taxation of fringe benefits.

The 1967 Ross Report[29], and the Mc Caw Report in 1982[30], on tax reform came out strongly in favour of taxing fringe benefits.

The position as it stood in 1982 was recognised by Wallace J in Sixton:

> ....[T]he arguments in favour of the wider interpretation are not unattractive. It is perhaps unfortunate that the opportunity was not taken to resolve the matter when the 1976 Act was introduced... Be that as it may, it appears to me that I am bound to follow the interpretation adopted by the majority of the Court of Appeal in C.of I.R. v. Parson and that it is not possible in the present case to reach a different conclusion by reference to the facts or by adopting a pragmatic approach."[31] (Emphasis added)

B. United Kingdom.

The common law approach in the United Kingdom developed in a similar fashion to New Zealand (or vice versa). The case law turned on a close analysis of the statutory language.

The House of Lords in the case of Tennant v. Smith[32] promulgated the convertibility principle. It forms the basis of the judicial approach and the United Kingdom approach today. Free accommodation provided to a bank employee, as part of his employment, was held not to be taxable within Schedule E.[33] The court held as the accommodation was not convertible to money, it was not income.[34]

In reaching their decision, the court focussed on eighteenth century concepts of income, as a yield from a productive source; connoting money.[35] Halsbury J, recognised Mr Tennant was in possession of a material advantage. However, considered this irrelevant as the charging provision excluded the advantage. The mere occupation of a house could not be reconciled with the word 'payable'.[36]

In contrast, the Lord Justice-Clerk in the lower court,[37] stated the only 'commonsense approach' was to hold the accommodation subject to tax. The Lord Justice-Clerk stated:"... it is what a man enjoys...upon which he must be assessed for income tax". 38

The majority decision in Tennant was reinforced in the House of Lords case of Abbott v. Philbin,[39] and Heaton v. Bell.[40]

In the case of Abbott v. Philbin, an option granted to an employee to purchase shares in the company was held assessable within Schedule E. The court adopted the test, whether by its nature the benefit was capable of being converted to money. Shares could be sold immediately acquired or used as collateral for a contract.[41]

The case of Heaton v. Bell involved an optional scheme run by an employer, whereby a car was made available for the employee's personal use, for a reduction in salary. The court held the entire salary of the employee remained assessable. The use of the car was a perquisite to the employee's employment. The decision in Heaton is limited by the facts of the case. It involved a specific scheme and the deduction of a specific amount regularly. Both cases extended the principle of convertibility enunciated in Tennant, beyond a simple form of sale.

The basic judicial approach has been to 'look back' to Tennant to determine whether a twentieth century benefit is within the concept of income. In both Heaton and Abbott the court focussed on the probable intention of the Legislature in 1803.[42] The judiciary handicap itself by this approach.

The case of Tennant remains the basis of the United Kingdom approach to fringe benefits, though modified by legislation. Even after Diplock J recognised the inherent limitations, in Heaton:

> ...I have no doubt that the man in the street would call the benefit of the use of car, if nor a "perquisite" at any rate a "perk". But it is I fear to late to read the relevant words of the current legislation in what I should regard as being their current acceptation.[43] (Emphasis added)

C. Australia.

Income is not defined in the Australain Income Tax Assessment

Act 1936 (hereinafter referred to as ITAA).[44] Section 25(1) defines assessable income as including gross income. Section 26 lists items considered to be assessable income. The Australian legislation is broader than the New Zealand counterpart. It does list, benefits-in-kind as a category of assessable income.[45] However, failure to enforce section 26(e) coupled with the judicial approach to fringe benefits, has restricted the scope of section 26(e). It is important to note, even if enforced section 26(e) would not extend to the provision of benefits to third parties.[46]

The principle of convertibility is established in Australia. The case of F.C.T. v. Cooke and Sherden[47] cited Tennant as general authority for the convertibility principle. Certain retailers were provided with free non-assignable holidays by their wholesaler. The court held the value of the holidays was not assessable income within section 25(1) or section 26(e) of the ITAA, as they were not convertible to money. Similar to the accommodation provided in Tennant, the holidays could not be transferred or exchanged for money. The better view limits Tennant as authority only to the assessibility of non-monetary benefits in reference to Schedule E.[48]

In 1975, the Asprey Report[49] on tax reform called for the taxation of fringe benefits. Prior to this Report only limited provision for the taxation of fringe benefits had been made. An attempt to tax fringe benefits had been made in 1974 in respect of motor vehicles, and in 1980 in respect of coal miner's housing; but had been ineffective.[50] The value of share purchase and option schemes,[51] and employee housing[52] are taxable.

In New Zealand, the United Kingdom, and Australia the judicial approach to the interpretation of income is largely responsible for the tax-free status of fringe benefits.

E. United States.

Section 61(a) of the Internal Revenue Code 1954 (hereinafter referred to as IRC), defines gross income as including income from whatsoever source. Treasury regulations are an important part of the tax system in the United States. Treasury regulations include within gross income compensation paid in other than money.[53] The judiciary in applying section 61(a) has taken a practical approach to the concept of income. Congressional debates are used to determine the intent of the Legislature. Earlier decisions are frequently distinguished or limited, enabling the courts to reach a commonsense approach, given the particular facts of the case.

The judiciary has focussed on income as a gain;[54] though not to the extent of adopting an economic definition of income.[55] In contrast, the Commonwealth judiciary has approached income as a yield, limiting their approach to monetary reward. The concept of income as a gain imports all types of benefit; whereas income as a yield is restricted, focussing mainly on monetary return.

In Commissioner v. Glenshaw Glass Company,[56] the court in holding exemplary damages must be reported within a taxpayer's gross income, considered the breadth of section 22(a). As Congress in enacting section 22(a) had applied no limitations to the source of taxable receipts, nor restrictive labels to their nature, the court was able to exert the "full measure of its taxing power".[57] The court focussed on the phrase "gains or profits and income from any other source",[58] in defining income as all accessions to wealth.[59]

In C.I.R. v. Smith,[60] the court laid down a test to determine when a benefit was taxable within section 22(a). A fringe benefit was taxable if it was an economic or financial benefit, whatever its form or mode.[61] In applying the test, the court held a share option granted to an employee for compensation of services, was assessable as income.

In Rudolph v. U.S.,[62] an insurance company paid for a

group of employees and their wives to attend a convention in New York City. The court applied the test in Smith to hold the value of the trip assessable to the employees within section 61 (a).

It would appear the United States' existing legislation is adequate to assess fringe benefits for tax. Not so! In reality, fringe benefits are excluded from gross income. As one commentator stated.[63] "...In light of such broad readings of IRC Section 61 and its predecessors, it is an anomaly that non-statutory fringe benefits have not been the subject of systematic taxation." The problem lies in the many administrative bodies active in the taxation area. The different practises of these authorities has created widespread confusion. As a result, a piecemeal approach has been adopted.

E. An Overview of Judicial Approach.

The different approach of the Commonwealth judiciary to that of the United States'judiciary, to the interpretation of cases, is highlighted in the development of fringe benefit taxation. The approach taken by the judiciary is important to the effectiveness of the legislation.

The difference in approach is highlighted by the statements of two judges, each commenting on the approach of their judicia body. Mr Justice Holmes in Johnson v. U.S. said:

> The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly that will should be recognised and obeyed....It is not an adequate discharge of the duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.[64]

In contrast Turner J in Edge v. C.I.R.[65] said: "....[I]t is not what the Legislature had in mind, but what the words of the statute must be taken to mean that is the subject of inquiry."

These statements are illustrative of the different approaches taken by these jurisdictions, today, in the interpretation of tax cases. The approach of the courts in the cases discussed, has been to look back to the Legislature's intent in enacting the provision. However, the Commonwealth courts have limited their approach, to the words actually stated.

Conclusion.

The illogical conclusion, in New Zealand, is that employment remuneration paid in money is taxable, whereas remuneration paid in a non-monetary form is not taxable.

III THEORETICAL ANALYSIS OF FRINGE BENEFITS

A. The Attractiveness of Fringe Benefits.

Fringe benefits largely remained an untaxed means of remunerating employees. In most cases, deductible to the employer and tax-free to the employee, they provided a means of lessening the income tax burden of the employee. This is the central advantage to using fringe benefits, though not the only advantage.

1. The Employee.

Fringe benefits, in lieu of monetary remuneration, act as a hedge against inflation. Compensation in the form of goods and services at day one paid over a period of time is of greater value than the equivalent cash wage, at day one, paid over a similar period of time. For example, A receives compensation of $6,000 per annum, in year one, and a promise of $6,000 per annum, in compensation, for five years. Assume A intends to purchase a car, worth $6,000 in year one, with that compensation each year. Inflation is at a rate of 5 per cent. A would be unable to purchase that same car after the first year. In year five the car would cost approximately $7,700

to purchase. B receives a car in year one valued at $6,000 and a promise to receive the same car over five years. Inflation is at a rate of 5 per cent. In year five, the car B receives is worth approximately $7,700. The value of goods, changes over time to cope with inflation, the value of money does not.

Many argue fringe benefits have acted as a 'safety valve' in light of the high personal tax rates caused by inflation. Fringe benefits compensate an employee with out incurring any tax liability, thereby an employee is paying less tax on the actual income received. Therefore, fringe benefits do no more than counter the high rates of income tax.

Bulk purchases of goods or services by the employer enables the employee to obtain items at a cheaper price than possible by an individual purchase.[64] For example, the purchase of a fleet of cars by a business as opposed to the individual purchase of a car.

A major opportunity for the wage and salary earner to lessen their income tax burden is to take advantage of fringe benefits. The greater the income tax bracket of the employee the greater the tax advantage. For example, if a fringe benefit valued at $1,000 is provided to six taxpayers each within the separate tax brackets, the advantage of not paying tax on the amount is:

Personal income tax rates: (commenced on the 1 April 1986)

A. 0 ... 6,000	17.5	175.0
B. 6,000 ... 9,500	24.0	240.0
C. 9,500 ...25,000	31.5	315.0
D.25,000 ...30,000	37.55	375.5
E.30,000 ...38,000	52.05	520.5
F.38,ooo	57.0	570.0

The payment of fringe benefits,in lieu of cash, may have the added advantage of keeping the employee out of a higher tax bracket. For example, A earns a cash-equivalent salary

of $39,000 per annum. A's salary is comprised of $29,000 in cash and $10,000 worth of fringe benefits. A pays $10,889.5 tax on the $29,000 cash. If A had received his entire salary in the form of cash, he would have had to pay $16,530 on that $29,000 (a total tax bill of $22,230).

Fringe benefits have developed as a visual means of gauging the value of an employee to a firm; especially in the United States.[65] The idea is, that a more junior executive is provided with a less expensive car, than a senior executive. For this reason an employee may prefer a visual benefit than the cash equivalent.

2. The employer.

Fringe benefits have enabled some employers to operate under lower cost structures. By decreasing the cost of one of the factors of production - labour.[66] For example, investment companies and finance houses have been able to remunerate employees partly with low interest or no interest loans, at comparatively little cost to themselves. Both the principles of the bulk purchase and the nature of the employer's business help in the cheaper provision of fringe benefits.

If an employer wanted to provide an employee in the top tax bracket with one dollar of monetary reward after-tax he/she would have to pay the employee three dollars. Whereas if the employer provided that one dollar compensation in the form of a non-monetary benfit he/she need only pay one dollar. It costs an employer three times as much to pay cash as opposed to fringe benefits to an employee in the 66 per cent tax bracket, to satisfy a wage demand. The advantage to the employer, increases as the tax bracket of the employee increases. For example, an employer pays an employee's tuition fee of $4,000. If the employer was to provide the employee with the cash equivalent he/she would need to spend $12,000. If the employee was in the 33 per cent tax bracket, the employer would need to spend

$6,000.

An efficient cost structure enables employers to be more competitive, both in attracting employees and in their business.

Fringe benefits enable an employer to maintain a stable work force. By providing long term benefits that are non-transferable the mobility of a worker is restrained. For example, long term loans and retirement plans.[67]

It has been suggested by authors in the United States, that fringe benefits can be used as a screening mechanism in employment.[68] It is suggested that an employer is able to change the benefit package offered to obtain the candidate the company wants; where discrimination is illegal. In addition, an employee's choice of benefits provides an indication of their motivational outlook.

Management theorists suggest the prime component of a successful corporate strategy is executive compensation.[69] Without adequate compensation an employee lacks motivation. Fringe benefits provide an alternative to monetary compensation, and are often more efficient in creating motivation. In some situations fringe benefits prompt a greater and longer lasting response.[70]

The granting of fringe benefits often comprises a dual advantage for the employer. Fringe benefits allow some employers to operate under a more efficient cost structure, and often have a business motive. For example, an executive's free accommodation may be used to entertain company clients. A clothes retailer may provide discounts to employees, to encourage them to wear his/her clothes, promoting the goods to customers.

For both employees and employers, fringe benefits provide a more cogenial work place.

a. Deductions.

Generally a person carrying on a business to produce assessable income is entitled to deduct any revenue expenditure or loss 'necessarily incurred in carrying on the business'.[71] For example, the expense of employee remuneration. Once it is established that the expenditure is incurred in the course of the business it is not open to the Commissioner of Inland Revenue to question the expense or level of expense.[72]

It is important to the employer that fringe benefits are a deductible expense. If an expense is not deductible, it is equivalent to placing a tax on the employer in light of that expense. For fringe benefits to be a viable alternative to wages and salaries they must be deductible, by the employer, as wages and salaries are. For example:

A has an expense of $1,000.
A has a taxable income of $50,000.(tax rate of 0.45)
If the expense is non-deductible A pays tax of $22,500.
If the expense is deductible A pays tax of $22,050.
The difference is the taxable value of the expense.
ie. 0.45(1000) = $450.
If the expense is deductible, the net cost of providing the benefit is $550. (1000 - 450)

If the expense has a private or domestic character it is not deductible.[73] Section 104 of the ITA allows for the apportionment of an expense that has both a business and private element, if the taxpayer can substantiate the business claim.[74]

It is suggested, that most fringe benefits will have a sufficient degree of connection with the income-earning process to satisfy the section 104 test.[75] However, in the past, where fringe benefits have been seen to have a private or domestic purpose they have not been deductible, as in the case of T.R.A.9[76] That case involved a partnership in the business of buying and selling machinery. A car was provided to carry out the extensive travelling required in the business. The court held there was a

sufficient relationship between the car expense and the business to be deductible but not the home to work travel.

3. Society.

Provision of some fringe benefits by the private sector has freed the State to provide other services. This is of special significance in the United States, in regard to health care and the provision of pension plans.[77]

Fringe benefits provided in the form of education and training, as well as opportunities to attend conferences and refresher courses is of benefit to the community. Increased knowledge creates greater efficiency and innovation.

Macro-economic objectives may also be fostered by fringe benefits. For example, an increase in the savings rate, as employees spend less on goods and services.[78] High marginal tax rates reduce incentive to save and work.

Fringe benefits are political. Some argue fringe benefits are an implicit subsidy to the wealthy when an explicit subsidy would be unacceptable.[79] By allowing fringe benefits to continue, largely tax-free, the incidence of income tax on the higher paid employee has decreased (ie. more wealth to the wealthy). For example, low interest loans and subsidised housing.

B. Why Tax Fringe Benefits?

The use of fringe benefits as an avenue to avoid income tax became very popular.[80]

The following reasons are mooted as a basis for the taxation of fringe benefits:

1. Revenue.

By taxing fringe benefits, it was estimated tax revenue would increase by $150 million.[81] This additional revenue, arguably an amount the government should already receive, would be used to decrease our fiscal deficit.[82]

The imposition of a fringe benefit tax would widen the tax base to allow the reduction in personal tax rates.[83]

The main catalyst for the government's zest to tax is probably the ability to increase government coffers. Although, the government states its main concern to be the inequity caused by the widespread use of fringe benefits.

2. Equity.[84]

All sectors of society demand an equitable tax system. The system must be fair. It must be perceived to be fair. An equitable tax system requires horizontal equity[85] and vertical equity.[86] Both are related to ability to pay.

a. Horizontal inequity.

Horizontal inequity arises when taxpayers earning the equivalent income do not pay equivalent income tax. Employees remunerated solely in monetary wage or salary incur a greater portion of the tax burden, than employees remunerated partially in the form of tax-free fringe benefits. For example, two employees, A and B, both earn $25,000 per annum (tax rate of 0.315). A receives her salary entirely in cash. B receives $20,000 of his salary in cash and $5,000 in fringe benefits. A pays $7,875 tax per annum. B pays $6,300 tax per annum. A tax difference of $1,575. This inequity is highlighted when considering employees in the top tax bracket. For example, an employee receives a monetary salary of $100,000 per annum. That employee pays $66,000 in tax. If only $60,000 of the salary

was paid in cash, the employee would pay only $39,000 in tax. A difference of $26,400 per annum.

b. Vertical inequity.

Vertical inequity arises when progressiveness in the income tax scales is not mirrored in the distribution of tax burden. Those that earn more, do not pay more tax.

The question arises whether high income earners are in fact paying tax at the appropriate rate on their 'true' income. As a result of fringe benefits, a taxpayer's assessable income is less than the aggregate of his/her total remuneration, inclusive of benefits.The proportion of tax to 'income' and rates of tax applicable will be reduced. The taxpayer who receives no fringe benefits, in lieu of monetary compensation, pays a 'true' rate of tax in accordance with prevailing rates. As a result the extent of progressiveness in the tax system becomes illusionary. The scale to be imposed, is thwarted, by its limitation, in applying only to monetary remuneration. In New Zealand, full-time wage and salary earners, in the middle income bracket (ie. earning a maximum of $20,000 per annum), incur most of the tax burden.[87]

c. Taxpayer morality.

Inequity in the tax system has two major effects. Firstly, wage and salary earners unable to benefit from a decrease in the incidence of income tax, become discouraged by the high rates of income tax. Their attitude becomes: 'why work hard, just to pay more of my pay packet in tax'. Productivity is directly effected.

An incidental effect, is the loss of community welfare. The aim of the tax system is to redistribute wealth. Those that earn more, are better able to pay more tax to help with community welfare. If those that earn more do not

pay progressively more tax, not only will there be a decline in tax revenue but the aim of the tax system to redistribute wealth is thwarted. In theory, the wealthy get wealthier.

Secondly, many fringe benefits are conspicuous in nature. For example,company cars, housing and overseas trips. While many taxpayers see their real incomes shrinking, they are confronted by those more able to manipulate their incomes; to cope with taxation, as well as inflation. This perceived unfairness fosters contempt for the tax system.[88] Tax avoidance and evasion become more acceptable.

3. A gain.

Fringe benefits are gains. The underlying principle of income tax is the taxation of gains. An individual's gain over a particular period being the best indication of ability to pay.[89]

4. Economic reasons.

Fringe benefits, in lieu of monetary remuneration, distort individual preferences. Often an employee will not want a fringe benefit, or would not have been as lavish in acquiring the benefit. Individual preferences, as displayed in the market place, act as signals. Based on those signals the market determines which goods and services are in demand, and where (geographically). Fringe benefits often distort these signals by directing employee consumption - a tax-free car or the monetary equivalent!

Unrealistic signals result in allocative inefficiency, both at the consumption and production level. Waste and distorted, usually inflated, prices occur in individual markets. This has happened in New Zealand car and real estate markets.[90] In the United States, the inflated health-care prices, have been a major argument in Congresses bid for employees to provide their own health-care.[91]

Monetary remuneration fosters free choice and realistic consumption patterns. It should be encouraged.

To foster complete equity and efficiency, all fringe benefits, however small, would need to be taxed.[92] While some fringe benefits remain tax-free, the after-tax price of those taxed benefits will not reflect their true relative value. Those benefits not taxed will appear more beneficial.

C. Conclusion.

The lack of equal distribution of fringe benefits places an untolerable burden on those not receiving fringe benefits.

IV LEGISLATIVE RESPONSES TO THE FRINGE BENEFITS

Fringe benefit taxation is a developing area. Part four of this paper provides an overview of some of the different approaches taken to the taxation of fringe benefits.

A. New Zealand.

The Income Tax Amendment (No.2) Act 1985, provided New Zealand with a comprehensive code for the taxation of fringe benefits.

Prior to the Bills enactment it was placed before a select committee to receive and review public submissions.[93] This represented the first time a New Zealand tax bill had been subject to public comment before enactment.[94] A commendable approach, provided heed is taken of those submissions in drafting the final legislation.

The Act creates three mutually exclusive categories of employment income: monetary remuneration, section 65(2)(b); fringe benefits, Part XB; and specific benefits within neither of those; for example, section 68 and section 72. Part XB of the Act imposes a tax on the value of fringe benefits, payable by the employer. The tax is paid quarterly, at the rate of 48 per cent.[95]

Important to the success of the fringe benefit tax is the decrease in personal tax rates.[96] By decreasing personal tax rates to a maximum of 48 per cent, equivalent to the fringe benefit tax rate, much of the incentive in providing fringe benefits is removed. For those employees at tax rates below 48 per cent, remuneration should be in money. If they are compensated in the form of fringe benefits, the tax paid on that compensation will be greater than otherwise payable. Lowering personal tax rates makes fringe benefits a more costly way of compensating low income taxpayers, and of no tax advantage to employees at the 48 per cent rate. For example: A is in the 0.57 tax bracket. B is in the 0.315 tax bracket. If each receive $10,000 in cash they will pay, respectively, $57,000 and $31, 500 in tax. If that $10,000 was provided in taxable fringe benefits $48,000 tax would be paid on it. Therefore it is only profitable for those above the 48 per cent tax rate to receive fringe benefits, as a means of tax planning. Before the fringe benefit tax, provision of fringe benefits to all employees was advantageous. Until the level of individual tax rates is decreased the provision of fringe benefits remains advantageous only to the highly paid.

Fringe benefit tax is not deductible to the employer. It will act as an additional business cost to the employer, substantially reducing the incentive to provide fringe benefits. A company on a 45 per cent tax rate has to produce additional revenue of $1.82 per dollar of fringe benefit tax.

The fringe benefit tax is comprehensive. The Act

initially provides a wide range of definitions of what is and is not a fringe benefit; and to whom the fringe benefit tax applies.[97] The key to the tax is the provision of a benefit, by reason of employment. The terms 'employee' and 'employer' are widely defined; applying to past, present and future employment. The only major exception from the definition of 'employer' is the provision by a charitable body[98] of a benefit, solely used in charitable or religious work of the body. For example, the use by the Seventh Day Adventist Church of a car for charitable work, as opposed to the use by the Seventh Day Adventist Church of a car at Sanitarium Health Food Company. Many non-profit bodies will be subject to the tax.

The fringe benefit tax applies to the provision of benefits to associate's of the employee.[99] The benefit may be provided by some other party, with whom the employer has an arrangement. Therefore, a benefit may be subject to fringe benefit tax,though it has not been provided to an employee, by an employer. For example, the provision to an employee's spouse of a low interest loan by Broadbank, while the employee is employed at Apparel Limited.

The Act then prescribes rules to affix values to the fringe benefits. Certain amounts, such as contributions by the employee, will be deducted in calculating the taxable value of the benefit. Where an employee contributes the total value of the benefit there is no taxable value. Where a bnefit has a nil taxable value no fringe benefit tax will be payable. For example, where the interest rate of a low interest loan, provided to an employee is equal to the prescribed rate of interest.

The treatment of shareholder-employees of a private company,[100] illustrates the problems surfacing once legislation is put into practise. The Income Tax Amendment (No.3) Act 1986 amended the treatment initially enacted to deal with shareholder-employees. The initial legis-

lation was complex, creating three categories of shareholder-employees.[101] Where a benefit was provided by reason of a person's position as a shareholder in the company, the benefit was not subject to fringe benefit tax. Both the shareholder and company were subject to an income tax adjustment. Most companies sort to claim a benefit had been provided as part of employment.[102] If the benefit was within the fringe benefit taxation, the company could deduct the expense of providing the benefit. As a result, the company though paying fringe benefit tax at 48 per cent, was paying less tax overall. This occurs as a result of the non-deductibility of the expense of providing a benefit by reason of shareholding. Effectively, this is equivalent to the company paying tax on the benefit at 45 per cent. The value of the benefit is then taxable to the shareholder-employee at their tax rate.[103] The benefit was,in effect,taxed twice. Where the shareholder-emploee was in the 66 per cent tax bracket, a benfit was taxable at a combined rate of 111 per cent.

The fringe benefit tax treatment of shareholder-employees is now dependent on the extent of the shareholding.[104] Shareholder-employees that hold less than 10 per cent of the shares or voting rights in the company are treated as if they held no shares.[105] The benefit is deemed to be provided as part of the employee's remuneration.[106] A shareholder-employee that owns more than 10 per cent of the shares in the company is deemed to be a 'major shareholder'.[106] The benefit is deemed to be a dividend to the shareholder, within section 4(2). The expense of providing the benefit is not deductible to the company.[107]

1. Motor vehicles.

In 1984, 293,000 vehicles were registered by companies.[108] Company cars represent a major avenue of tax avoidance. Fringe benefit tax applies to all motor vehicles with a gross laden weight of less than 3.5 tonnes. The avail-

ability or use of a motor vehicle, for private use, by an employee or associate is taxable. For example, where an employee leaves a company vehicle, locked in his/her garage, while he/she is on holiday the car is subject to fringe benefit tax, though it will not be used during this time.[109]

The tax value is calculated on a daily basis. Any private use on that day will subject the whole day to fringe benefit tax. There are three exceptions from the fringe benefit tax of motor vehicles. A limited concession is made for 'work related' vehicles that meet specific requirements. 'Work related' vehicles are vehicles other than motor cars, which have the employer's name permanently affixed to the exterior. Taxicabs are exempt from the definition of motor car. A Departmental ruling excludes station wagons with welded down, or removed back seats from the definition of motor car.[110] This was a practical move in light of the many local bodies and businesses that use station wagons as work vehicles. For example, the Automobile Association, Tiscos and city council officers, such as the Hydatids Control officer; all of whom made submissions to the select committee. Private use of a qualifying vehicle for travel to and from work, as a condition of employment, or incidental private use of a vehicle during the work day is exempt.

The use of a vehicle on an 'emergency call', outside normal work hours is exempt.[111] The call must be requested by the employer, a member of the public or a client. The service must be essential to the operation of plant or machinery of those persons or the maintenance of energy or fuel to the public.

The 'sales rep' exemption, exempts the use of a vehicle for a continuous period.[112] It must be in the nature of the employee's work to be regularly absent from home. For example, if an employee leaves home at 8am. on day one and returns at 11am on day two, two days are exempt from fringe benefit tax.

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The taxable value of the benefit will be effected by whether the vehicle is leased, rented or owned.[113] In determining the value of the vehicle, the cost price of the vehicle is used, if the employer owns the vehicle. In all other cases the market value is used. The value of non-business accessories are included within the taxable value. For example, radios and gas conversions.[114]

An example of how the fringe benefit tax is calculated: Employee A has available, the private ues of a company car. The car cost $30,000 four years ago, of which A paid $10,000. During the months of June to September 1985, the car was placed in a garage for repair work, for a week, made two emergency calls and went on a selling trip for ten days. During this time A paid $20 per week as private running costs.

1. Number of days the vehicle was made available for private use.

			90
less:	days in the garage	7	
	emergency calls	2	
	business trip	10	19
			71

2. Gross value of the benefit.
(71 - 90) x 30,000 x 0.06[115] = $1,420.

3. Contributions to the cost by the employee.
$20 per week x 12 = 240
$10,000 x 0.025 = 250
490
adjustment: 1,420 - 490 =930 taxable value.

4. Tax payable.
930 x o.45 = $418.5, that quarter.

2. Loans.

The term loan is widely defined in the Act.[116] It includes all credit facilities, except trade credit. For example, if an employer advances an apprentice $300 on tool allowance, an interest free loan exists.

A benefit arises when a loan is made available by reason of employment, at favourable interest rates. The purpose for which the loan is made is immaterial. For example, a loan to assist relocation of an employee is taxable.

The taxable benefit is the difference between the prescribed rate of interest and the actual rate of interest accruing on the loan, applied to the balance of the loan. The prescribed rate of interest is set down each year by regulation.[117] Where a loan is made before the 31 March 1985 that has a non-reviewable rate of interest the taxable value is the difference between the non-concessionary rate of interest and the interest actually accurring on the loan.[118]

An example of how the fringe benefit tax is calculated:

A receives a house loan from Broadbank on the 1 April 1985, at a rate of interest of 5 per cent. A is an employee of Broadbank. During the second quarter of 1985 A pays interest of $1,800. For the equivalent period, the interest calculated at the prescribed rate is $5,040. The difference is $3,240.

3,240 x 0.45 = $1,458. tax payable for the quarter.

Interest free loans made to employees under share purchase schemes, that meet the requirements of section 166 are exempt.[119]

The outstanding amount on a loan that is forgiven will be taxable as monetary remuneration.

3. Subsidised goods and services.

a. Subsidised tansport.

Subsidised transport provided by an employer who is in the business of providing that transport to the public, is taxable. The taxable value of the benefit is 25 per cent of the highest amount at which similar transport is provided to the public, less any contribution by the employee.[120] For example:

A is an employee of an airline. A pays $50 for an airline ticket to go on holiday, on the 30 April 1986. The same ticket regularly retails for $450.

high est price of the fare:	450 x 0.25 =	112.50
fare the employee pays :		50.00
		72.50

$72.50 x 0.48 = $34.50 tax payable in the quarter.

If the employer is not in the business of providing public transport, but makes an arrangement with some other person to provide a subsidised travel benefit, it is not within this section.

b. Residual goods and services.

The fringe benfit tax incorporates a catchall provision to subject " any benefit of any other kind whatever, received or enjoyed by the employee", to tax.[121] For example, discounted goods and services and the provision of a home phone paid for by the company for private use.

i. Goods.

Goods provided to an employee are liable for fringe benefit tax if they are provided to the employee at less than 'cost to the employer'. For example, A is employed by a manufacturer of men's shoes. He is able to purchase a pair of shoes for $70. The cost to the manufacturer in producing the shoes is $50. The shoes are sold for $60. There is no taxable benefit. The cost to the employer is the purchase price of the goods.

If the employer manufactures the goods the cost is the lowest arms-length price at which identical goods are sold by the employer. If the open market retail selling price of the goods is below cost, the value to the employee is deemed to be the retail price.[122]

Where an employee's discount combined with the open market discount, results in the goods being offered to the employee at less than cost, the goods are deemed to be sold at cost. Provided the selling price of the goods, before the open market discount, does not exceed $200. For example, B is employed by a whitewear retailer. B pays $400 for a fridge on the 7 June 1986. The wholesale price of the fridge is $800, and the retail price is $1,000.

cost to the employer		800
price the employee paid	400	
$50 exemption	50	450
		350

$350 x 0.48 = $168 tax payable.

ii. Services.

Services provided to employees at less than the normal market price to the public are liable to tax.[123]

4. Exemptions.

i. General.

A $50 per employee per quarter allowance can be deducted from the aggregate value of benefits provided.

Benefits provided and enjoyed on an employer's premises are not subject to fringe benefit tax. For example, car parking and social functions. This provision creates an anomaly as Christmas parties on the premises for staff are not subject to fringe benefit tax, but Christmas parties off the premises are. The benefit must not extend beyond the premises. For example, if a dentist gives his/her receptionist free treatment, the benefit is taxable as

it extends beyond the premises.

In defining what is a fringe benefit, certain items that are not considered fringe benefits are listed. These include the payment of school fees and tuition or exam fees: the payment of premiums on an employee's personal accident or sickness insurance[124] and the transportation of persons in any vehicle not designed to carry passengers.

ii. Monetary remuneration.[125]

Benefits provided in cash will usually fall outside fringe benefit tax. In some cases, a benefit may not be taxable within the fringe benefit tax but will be taxable as monetary remuneration. For example, the payment of insurance premiums by an employer, on a policy owned by the employee.

The use of a credit card, provided by an employer, an employee, for personal use will be taxable. If the employee uses the credit card to acquire goods and services it will be taxable within fringe benefit tax. If the employee is permitted to acquire money with the credit card it will be taxable as monetary remuneration.

iii. Specific sections.

Sections 68, 69, 72 and 73 are not affected by the fringe benefit tax. If a benefit would have been exempt if provided as a monetary allowance; it is still exempt if provided in goods and services.[126]

iv. Business related benefits.

Specifically excluded from the fringe benefit tax are certain benefits which have a mainly business purpose. Such as entertainment of clients, incidental travel expenses while on business, and club subscriptions.[127]

5. Conclusion.

The question remains is there any advantage in continuing to provide fringe benefits?

An employer buys a motor vehicle for $20,000. He/she borrows the money at an interest rate of 25 per cent, for four years, but plans to dispose of it in two years. The monthly payments will be $663.[128]

Depreciation:[129] Year one $2200
Year two $1760

In year one the taxpayer will pay $663 x 12 = $7,957. Of this approximately $4,633 is interest and $3,324 is principle.

The cash expense is approximately $8,000.

Tax deduction:

Interest	$4,600
Depreciation	$2,200
	$6,800

At a tax rate of 0.45, $3,060 is deductible.

The total after-tax cost is approximately $4,900.

Assume, the value of the car to the employee is $5,000 per annum. For a taxpayer in the 0.66 bracket this represents a before tax payment of $15,000.

By providing a car the employer is saving $10, 000. If the employer paid this in tax-free dollars the cost would be $8,250 (15,000 - 0.45 x 15,000).

Other factors need to be taken into account in deciding what form an employer's remuneration will take. Such as the problem of garaging vehicles if they are to remain on premises and preventing vandalism. How much disruption will be caused to staff relations should also be taken into account. A problem may arise as some employees see fringe benefits as conditions of employment. The Kiwifruit Authority have offered employees a car or $7,000. The Kiwifruit Authority does not pay company tax so the cost of providing the car is not deductible.[130]

There is a cash flow advantage in paying fringe benefit

tax quarterly as opposed to PAYE tax monthly. For example, if $100 of tax has to be paid under PAYE $25 per week needs to be made available; under fringe benefit taxation $8.33 per week needs to be made available.

Comment:

The New Zealand fringe benefit tax is unusual in that the tax ia levied on the employer. Australia is the only other country where this is the practise. Who pays the tax is a political issue, as regardless of who the tax is levied on it is the consumer and the employee who will pay the tax. In the form of higher prices and smaller wage increases.

A theoretical problem in levying the tax on the employer is that horizontal inequity is not cured. Employees with the same standard of living are still paying different amounts of tax.

A main criticism of the tax is that it taxes the ownership of a business asset rather than the personal benefit enjoyed by the employee.[131] If a vehicle is used 80 per cent of the day for business purposes and 20 per cent of the day for personal purposes, the whole day will be subject to fringe benefit tax. A comparision of two business assets illustrates the effect of a fringe benefit tax on business vehicles:

		essential business vehicle	other plant
cost		20,000	20,000
annual depreciation		2,000	2,000
FBT: 0.48 x 0.24 x 20000		2,304	-
total non-deductible costs		4,304	-
deductible depreciation		-	2,000
Pre-tax income required to meet these expenses:			
company	0.45	7,825	2,000
individual	0.66	12,658.8	2,000

One of the main practical problems with the fringe benefit tax will be enforcement, especially with the introduction of the goods and services tax in October 1986. Fringe benefit taxation has been termed a 'bureaucratic nightmare'.[132] The problems of enforcement are partially due to the excessive administration requirements.[133] Administration of fringe benefit tax cost approximately $8.9 million in 1985-86 , with the addition of 415 new staff to help cope.[134] That is one dollar for every $11.70 collected. However, due to a Departmental ruling, that nil returns can be made annually a saving of $2.3 million will be made on administration, due to a decrease in staff.[135]

WHAT HAS BEEN THE EFFECT OF FRINGE BENEFIT TAX?

In the first year in which fringe benefit tax was operative $103.9 million was collected.[136] Only 8 per cent of employers paid the tax, 92 per cent remained untouched. The fringe benefit tax paid was comprised of 78per cent motor vehicles; 20 per cent loans and 7 per cent travel and services[137]. Government departments and organisations paid $16 million in fringe benefit tax.

B. United Kingdom.

The United Kingdom has been subject to comprehensive tax reform since Part IV of the 1948 Finance Act. The approach of the United Kingdom to the provision of fringe benefits is based on two categories of employee: those employees who earn less than £8,500 per annum and those employees who earn more than £8,500 per annum and directors. There is some overlap, for example, the taxation of accommodation.

The legislation modifies the general approach, that a benefit is only taxable if it is convertible to money. The benefit is taxable on the second hand value.[138] For example, in <u>Wilkins</u> v. <u>Rogerson</u>[139] an employer provided an employee with a new suit. The court held the suit was assessable on the second hand value of the suit (ie. one

third of the cost).

Where a fringe benefit is provided, that is subject to tax, the tax will be levied on the employee, at that employee's personal tax rate.

1. Vouchers.

In 1975, legislation was enacted to deal with the use of vouchers.[140] A voucher provided by an employer, to any employee, that is exchangable for goods, services or money is taxable.[141] The taxable value is the cost to the employer, less any payment by the employee.

Relief is provided where the voucher has a substantial business basis.[142]

Where no voucher is provided, but the benefit is still provided, there is no assessment under this legislation.

In 1982, this legislation was modified. Credit tokens were added.[143] Travel tokens to lower paid employees[144] and Her Majesty's Forces[145] were exempted.

2. Living accommodation.

Up to 1977, an employee was assessable on the benefit of a rent-free residence, if the residence was 'beneficial' and not 'representative'. After the case of Langley v. Appleby[146] in 1976, a review of the legislation took place. In Langley, the occupation of a police house was held to be 'representative' not beneficial, and therefore tax-free.

In 1977, the law was amended to provide for the taxation of all rent-free accommodation.[147] The taxable value is the market value of the accommodation less any contributions by the employee.

Three major exceptions to this general rule exist. Firstly, where the nature of the employment necessitates the provision of accommodation.[148] For example, in the case of a caretaker or boarder mistress.

Secondly, where it is the practise to provide accommodation to employees in that class of employment, and enables the employee to better perform the duties. For example, in the case of farm workers.

Thirdly, where accommodation is provided for the safety of the employee.

Where the accommodation is provided for personal reasons, by an individual, it is exempt.[149] Where a local authority, is the employer and the accommodation is provided on the same terms to the public, it is exempt.[150]

Additional tax is payable by higher paid employees where the accommodation is valued at greater than £75,000.[151] This provision only applies if section 33 is also applicable. The taxable value is the 'additional value' of the accommodation, calculated by applying the benefit loan rate (at present 12 per cent). A deduction is made for any rent paid.[152]

The employee is able to claim a deduction for the whole or any part of the additional tax, to the extent the accommodation is used for business purposes.[153]

3. Miscellaneous.

Up till 1982, the provision of medical insurance for the employee and family was assessable, within Schedule E. From 1983, it is only assessable to directors and higher paid employees.[154]

The provision of share options is taxable.[155] In 1984, a more generous treatment of approved share options was introduced.[155]

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Certain restricions apply for the more generous scheme to apply. For example, the shares must not be subject to any special restrictions and must be part of the fully paid-up ordinary share capital of the company.

The reimbursement of employee tuition and exam fees are assessable to the employee. The provision of creches and recreation facilities are also taxable.[156] However, in-house creches, available to lower paid employees are exempt.

4. Directors and higher paid employees

Tax avoidance at the higher paid level of the employment strata has taken the form of excessive expense allowances and the provision of fringe benefits. As a result section 60 to section 72 of the FA 1976 was enacted. The new legislation covers all agencies, including charitable and non-trading bodies.

Higher paid employees are those employees whose emoluments are in excess of £8,500 per annum. In calculating an employee's emoluments all vouchers, cash payments and benefits, in general, are included.[157] The legislation is applicable to directors, whatever their salary. A director will rate as higher paid unless he/she has no material interest in the company (ie.5 per cent), and either works full-time or the company is non-profit making or a charity.

a. Expense allowances.

The provision of expense allowances is taxable to the employee.[158] All payments of expense allowances and reimbursing allowances are taxable. The only expense not caught is that met by the employer.

The onus is on the employee to claim deductions for sums actually expended; within the Act. A deduction is prohibited for entertainment unless it involves an overseas

customer and the expense is reasonable. An exemption also exists were entertainment is provided for staff, and is not merely incidental.[159]

b. Fringe benefits.

Section 61 of the FA 1976 provides for the taxation of ancilliary accommodation services, domestic or other services, or benefits, or facilities of whatsoever nature. The employee is taxed on the monetary equivalent of the benefit,[160] usually cost.[161] An adjustment is made to the employee's Schedule E coding to cope with the increase in assessable income.

The expense of providing the benefit will be deductible to the employer, where it can be shown the expense was a business expense.

A benefit will be assessable to the employee whether provided to the employee or his/her family, or household.[162]

i. Exemptions

Expenses incurred by an employee in providing accommodation supplies or services used on the premises, by the employee, during the course of employment, are exempt.[163] For example, an employee is not taxable on the value of office furniture provided.

The provision of meals in a cafeteria, to all employees is exempt.[164]

ii. Motor vehicles.

In 1975, 94 per cent of top managers in the United Kingdom were receiving the private use of motor vehicles, as part of their remuneration.[165]

The private use of a motor vehicle is taxed, on a less restrictive regime than in New Zealand. Since 1976, a scale has been used to value the benefit, based on the cost, size and age of the car. Appendix A. The tax is levied on the employee and a reduction is made for any employee contribution.

An assumption is made, that the greater the mileage of a vehicle, the greater the business use. The taxable value is reduced by 50 per cent if the car travelled more than 18,000 miles during the year, and increased by 50 per cent (ie. 150 per cent in total), if the car travelled less than 2,500 miles. The taxable value is also increased by 50 per cent if the car is provided as afamily car or second car, to the employee.

An exemption exists where a car is provided as part of a car pool.[166] Where any private use is incidental to the business use, the benefit is not taxable.

a. Fuel.

In the case of Richardson v. Worrall, Westall v. MacDonald,[167] the use of a credit card to purchase petrol for private use was taxable as an emolument of employment. The provision of free petrol for private motoring is taxable to the employee.[168] There is no reduction in the taxable value for any contribution made by the employee. A scale of charges is used to assess the taxable value. Appendix A. A similar 50 per cent reduction and addition, is made based on the mileage travelled.

iii. Loans

The provision of a loan to an employee or relative,[169] at favourable rates of interest is taxable to the employee.[170] This provision does not cover the granting of a loan to an ex-employee. The taxable value is the difference between the amount of interest that would have been paid

at the official rate and any interest that was paid.[171] For example, A borrows £8,000 from his/her employer. On the 30 June A repaid £4,000, but borrowed another £5,000 on the 3 September. At the end of the year of assessment £9,00 is outstanding. A pays £52 of interest. The official rate is 12 per cent.

1. Average amount outstanding during the year.

$$\frac{£8,000 + £9,000}{2} = £8,500$$

£8,500 x o.12 = £102.

2. Tax payable

£102 - £52 = £50.

A de minimus exception operates where the cash equivalent of all such loans is less than £200.[172]

The purpose for which the loan is made is material. The provision does not apply where the interest paid, on the loan, is deductible from total income.[173] Cheap house loans below £30,000 remain tax-free.[174]

Where a loan is waivered the amount waivered will be taxable, regardless of the interest rate at which the loan is charged.[175]

iv. Accommodation - ancilliary services.

Where an employee occupies accommodation rent-free, that is within one of the three exceptions of living accommodation, the taxable value of ancilliary services is limited.[176] Ancilliary services in the form of heating, lighting, cleaning, repairs, maintenance, furniture and other effects normal for the domestic occupation are only subject to 10 per cent tax.[177] Where the exemptions do not apply, the entire value, less any contribution by the employee, is taxable to the employee.

C. Australia.

In July 1985, the Hawke government held a 'Tax Summit'. One of the results of the Summit was the enactment of comprehensive fringe benefit tax legislation, That legislation came into force on the 1 July 1986.

Four separate acts were enacted. Had the legislation been incorporated in the existing legislation constitutional problems may have arisen. The tax is placed on the employer. Expenditure is taxed rather than income.

The Fringe Benefit Tax Assessment Act 1986 is the main act. It provides for the assessment and collection of the tax.

The Fringe Benefit Act 1986 declares the rate of tax to be 46 per cent during the transition phase,[178] then to increase to 49 per cent. This Act formally imposes the tax on theemployer.[179]

The Fringe Benefit Tax (Miscellaneous Porvisions) Act 1986 amends other acts.

The Fringe Benefit Tax (Application to the Commonwealth) Act 1986 ensures Commonwealth departments and authorities are subject to the tax, as if they were separate corporate employers

The Australian legislation draws largely on the New Zealand approach. There is an extensive definition provision A fringe benefit will arise when a benefit is provided by reason of employment, either to an employee or associate.[180] The benefit can be provided under arrangement with another an employer.[181]

1. Motor vehicles.[182]

The private use and availability of a company vehicle is taxable to the employer. The tax is applicable to any

vehicle which has a carrying capacity of less than one tonne or fewer than nine passengers. The fringe benefit tax does not apply to taxis, panel vans, utilities and other commercial vehicles not specifically designed to carry passengers, if an employee's private use is solely work related.[183] For example, the use of a vehicle by a sales rep.

The employer has the choice of two methods to calculate the taxable value of each car benefit.[184]

a. Statutory formula method.[185]

The base value is the original puchase price of the vehicle, including the cost of any non-business accessories. The base value of a leased vehicle is the market value at the time the lease commenced. If the vehicle has been owned or leased for four years the base value is reduced by one-third.

The statutory formula is a percentage of the base value of the vehicle according to the total number of kilometres travelled in the year. Appendix A. The taxable value is reduced by the number of days in the year when the vehicle was unavailable for private use, and by any contributions made by the employee. There is an onus on the employer to keep records of expenses.

For example,

original cost of a vehicle	29,000
taxable value:	
employee benefit: 0.24[186] (29,000)	6,960
less employee contribution	- 500
taxable value	6,460

6,460 x 0.49 = $3,165.4

quarterly instalments of $791.35

b. Actual operating cost method.[187]

The taxable value is the private usage proportion of the actual cost of operating the car during the year. An

election must be made to use this method. The operating costs include running expenses and maintenance, financing costs and other costs. An example of the calculation is provided in the Appendix A.

For example,

total motor vehicle expenses	13,000
total mileage is 25,000 km of that 60 per cent is private	
private proportion of motor vehicle expenses	7,800
less employee contribution	- 300
taxable value	7,500

7,500 x 0.49 = $3,675 tax payable

quarterly instalments $918.75

In most cases, where private use of the vehicle is great the statutory formula method will be more advantageous to the taxpayer. Both methods are less stringent than the New Zealand provision, catering for more variables. For example, private use and age.

2. Loans.

A loan provided at favourable rates of interest, by reason of employment is taxable to the employer.[188] The taxable value is the difference between the lowest rate charged by the Commonwealth Savings Bank for housing loans and the interest actually accruing.[189] Loans at fixed rates of interest granted before the 1 July 1986 are subject to the Commonwealth Savings Bank housing loan that prevailed in the year the loan was granted.

If an advance is made by an employer solely to enable an employee to meet employment expenses there is no taxable benefit.[190] For example, where a trainee chef is required to purchase German knives to undertake the traineeship.

3. Subsidised goods and services

a. Subsidised transport.

Free or subsidised transport provided to an employee on a passenger aircraft is taxable.[191] Where the employee does not fly on a stand-by basis, the benefit is valued as aresidual benefit. Where the benefit is provided on a stand-by basis the value of the benefit is 37.5 per cent of a standard economy fare, less the amount paid by the employee[192] The Chairman of Quantus, Mr J Leslie estimates this provision will cost them $33 million in the first year.[193]

b. Subsidised goods.

Where an employer is in the business of providing the same goods to the public, the taxable value of the employee's benefit is the amount by which 75 per cent of the lowest price to the public exceeds the price paid by the employee.[194] In other cases, the value is the cost to the employer.[195]

4. Housing.

A taxable benefit arises when an employee is able to use accommodation provided by an employer, as his/her usual residence.[196] The taxable value is the market value of the right to occupy the accommodation, less any rent or other consideration paid by the employee.[197]

Where a benefit is provided to an employee of a government or non-profit body, in caring for a person needing home care the benefit is exempt.[198]

Where housing is provided in an remote area a deduction is made of 40 per cent, or a statutory formula is used to calculate the value.[199]

5. Exemptions.

A $200 per annum per employee exemption exists in respect of benefits, in the form of airline transport, goods and residual benefits.[200]

The provision of home to work transport by an employer who carries on a public transport business is exempt.[201]

Recreational and creche facilities on the premises of the employer are exempt. There is no overall on premises exemption.

The Australian government expects to receive $320 million in 1986 from this legislation.[202]

6. Expense allowances.

The government believes the payment of excessive allowances as a means of compensating an employee is just as offensive as fringe benefits.[203]

a. Entertainment.

The Legislature has taken the view that the most effective way to counter excessive deductions is to prohibit them altogether. The Tax Laws Amendment (No.4) Act 1985 prohibited the deduction of entertainment expenses, the provision of food and drink, and any travel or accommodation facilitating entertainment, after 19 September 1985, regardless of the business relation.[204] Certain exemptions were made where the entertainment is provided to the sick and disabled, for the provision of food and drink during normal work hours and for promotional entertainment provided to the public at large.

New Zealand has not adopted this approach to expense allowances. Perhaps this will be a future approach by government.

D. United States.

The provision of fringe benefits has increased over the last ten years.[205] In a survey of 465 corporations, in 1981 68 per cent provided company cars; in 1983 80 per cent provided company cars.[206]

By 1983, 14 per cent of employment compensation was provided in non-monetary form.[207] Nearly half of this was in the form of pensions and health insurance. It is estimated if the fringe benefits were taxed in the United States, tax revenue would increase by $100 billion.[208]

The underlying basis to the taxation of fringe benefits has been, that only benefits that threaten the integrity of the tax system should be subject to tax. This principle recognises that some benefits are so enmeshed in the work place they should not be taxed. Where a fringe benefit tax does exist it is levied on the employee.

1. Tax authorities.

A disarray among taxing authorities in the United States has thwarted a comprehensive approach to the taxation of fringe benefits. The authorities have been inconsistent in their interpretation of what constitittutes a taxable personal benefit, causing widespread confusion.[209] Taxpayers have attempted to take advantage of the absence of national guidelines, especially during the moratorium on fringe benefit regulations. At apractical level, the taxation of fringe benefits has been determined by individual Internal Revenue Service agents, at the local level.

The four main authorities involved in the confusion are the Internal Revenue Service and Congress, Treasury, and the Securities Economic Commission.[210]

The 1970's represented a period of controversy in regard to fringe benefits. An inquiry by the Joint Committee on Internal Revenue Taxation, into the affairs of President Nixon, focussed greatly on fringe benefits he gained while in office.[211] For example, the personal use of government air transport by Nixon's family and friends. The Committee focussed on whether Nixon received an economic benefit from the flights. They held he did.

In 1975, the Treasury promulgated draft regulations for the taxation of fringe benefits.[212] Treasury regulations are an important part of the tax scheme. The regulations covered a diverse group of benefits, provided by employers, currently not within the Internal Revenue Code 1954. The regulations focussed on the cost to the employer of providing the benefit and the purpose for which the benefit was provided.[213]

On the 17 December 1976, the regulations were withdrawn, due to widespread criticism.[214] The Internal Revenue Service objected to the regulations as being to lax.[215] The Commissioner of the Internal Revenue Service,Mr Kurtz warned, if Congress did not act to tax these fringe benefits, they would issue a directive to tax fourty fringe benefits, presently not taxable.[216]

In 1978, Treasury issued a second draft of regulations. In response Congress issued a moratorium on the issuance of fringe benefit regulations, till 1983. In June 1978, the House Ways and Means Committee reviewed the position of tax perks. They failed to make any recommendation before going out of existence.[217]

The moratorium on the issuance of regulations was extended till 1 January 1984, on the basis that Congress would then act. Congress in extending the moritorium stated[218] "....[T]he tax treatment of fringe benfits is among the most complex and emotional

[problems] that face Congress."

While the Internal Revenue Service and Treasury were prohibited from promulgating fringe benefit regulations, the Securities Economic Commission (SEC) continued to pursue fringe benefits. The SEC'S main concern was the excessive use of benefits within a corporation, not disclosed to shareholders.[219] The SEC used tax terminology in its pursuit, but not the principles, causing confusion.

Three weeks after the Presidential elections, in November 1984, a plan for radical revision of the tax system was announced. A national debate on tax reform was scheduled for 1985. Since 1980, Congress had been decreasing the personal tax rates. In President Regan's 1985 address, the fourteen existing tax rates would be reduced to three, with a maximun level of 35 per cent for those earning above $42,000.[220]

In the past, attempts to combat fringe benefits have been restrained due to widespread opposition.[221] Congress has made only minor reforms.[222] One area of reform has been in the area of business expense deductions.

a. Entertainment.

There has been a definate restriction in the deduction of business entertainment expenses. As from the 1January 1986 there will be no deduction for business meals, unless furnished in a clear business setting.[223] Where business meals are incurred in an 'ordinary and necessary' manner, with a clear business setting the first $25 per person is deductible. Thereafter only 50 per cent of the excess is deductible.[224] The traditional three martini lunch has become the one and a half martini lunch. There is no deduction for lavish or excessive expenditure.

As the law was, all types of entertainment expenses were deductible , where a reasonable business connection could be demonstrated. Even if less time was devoted to business or there was no business discussion. In contrast, the presence of any personal benefit is deemed sufficient to disallow a deduction to an individual. As a result the law favoured the limited class with the flexibility to arrange their affairs.[225].

The tax system has encouraged excessive and wasteful expenditure. For example, it costs nothing extra to take a business associate to the theatre, if it serves little or no purpose. The attendance of the business associate permits the taxpayer to claim both tickets as deductible.

b. Travel.

To deduct business expenses of travel, it must be shown the expense was 'reasonable and necessary' to the business.[226] In the case of overseas conferences it must be shown it is as reasonable to hold the conference overseas as inside North America.[227] This restiction attempts to curtail board meetings on cruise ships and such like.

3. Deficit Reduction Act 1984.

The Deficit Reduction Act ended the moratorium on the issuance of fringe benefit regulations and provided a guide to the taxation of fringe benefits. The Act set out four major exemptions to the inclusion of fringe benefits within an employee's gross income.[228]

Firstly, where there is no additional cost to providing the service, including foregone revenue.[229] For example, stand-by flights provided to airline employees. The employer has to be in the business of

providing that service to the public. It is suggested that this exception creates false no cost situations.[230] For example, where an employee is given shares in a company, through the creation of more shares. It would appear there is no cost. However, there is a cost as the value of other shareholder's shares in the company are reduced in value, as there are more shares available.

Secondly, qualified employee discounts on goods and services, provided in the course of the business are exempt.[231] For example. the provision of discounts to retail staff. The exemption is limited is terms of how much discount is allowable.

These two exemptions will apply only to higher paid employees if the benefit is available to all employees on substantially the same terms.[232] The non-discriminatory provision is very important. It underlies the focus of Congress that no employee should be favoured over another because of their level of employment.[233]

Thirdly, where the fringe benefit is part of a working condition it will be exempt.[234] The benefit must be an 'ordinary and necessary' business expense. For example, the use of a company car by a sales rep.

Fourthly, where the benefit is so small it makes accounting for it unreasonable and administration impractical, it is exempt as de minimis.[235] For example, personal use of a photocopier.

This rather lax approach to the taxation of fringe benefits has been justified on the ground that low and middle income earners should be given the opportunity to enjoy untaxed economic benefits. Thus counter-balancing the untaxed benefit that high income earners have for so long enjoyed.[237]

4. Motor vehicles.

The personal use of employer provided motor vehicles is taxable to the employee.[238] The exemption rules in the Deficit Reduction Act are applicable to vehicles to exclude insignificant private use and use of the vehicle as a working condition.[239]

A specific exemption exists where the employer provides a commuter van or bus to transport employees to and from work, if non-discriminatory.[241] The provision must be in addition to any compensation otherwise payable to the employee.

5. Loans.

The provision of loans at favourable interest rates provided to employees are taxable.[242] The loan is re-characterised as an armslegth transaction, in exchange for a note bearing the statutory federal rate of return. The employee has to pay the interest at that rate.

A de minimis exception exists for loans not principally designed for tax avoidance.

6. Cafeteria plans

Cafeteria plans arise where an employer allows an employee to choose between cash and a range of benefits for that employee's compensation.[243] Since 1 January 1984, the plan has been limited to the selection between cash or non-taxable statutory benefits.[244] Where non-taxable benefits are chosen, they are not taxable to the employee. Cafeteria plans are non-applicable to highly compensated employees if the plan is discriminatory.[244] In effect, section 125(d) allows employees to choose benefits without jeopardising the benefits non-taxable status, if non-discriminatory.

7. Miscellaneous.

On premises athletic facilities operated by the employer are exempt.[245] Meals provided on premises at the employer's convenience are exempt.[246] Board as a condition of employment on premises is also exempt.[247] Congress exempts certain other benefits, specifically, such as group term insurance plans[248] and certain injury or sickness benefits.[249]

In President Reagan's recent tax proposals, he proposes to place a tax on health care benefits. This is one of the most controversial elements of the proposals. As a result, extensive lobbying has taken place.[250] The main argument of opponents is the saving to the State of private provision of health care. As the Chairman of the United States Chamber of Commerce stated,[251] ..."(it has) enabled the nation to avoid the burdens and chaos of a broadly based national health system."

E. Summing Up.

There are three principles any tax legislation hopes to achieve, these are certainty. equity and efficiency. These principles are of special importance in a self-assessment tax, such as this. Legislation which achieves these principles will enhance compliane. The question arises : does the New Zealadd fringe benefit tax legislation meet these principles? It does not due to the excessive administration requirements and what many find, in the business sector, complex legislation.

The imposition of a tax, usually has certain social aims. These aims must be visual in the legislation enacted. As Mr J.Howard said recently,

> ...[T]he realistic tax reformer must recognise that our system is not just a means of raising revenue. It is also a social and economic instrument. A path to

tax reform that does not recognise this is doomed.[252] This is one of the errors in the New Zealand legislation in that in its drawing up some of the principles behind the tax were lost, such as the desire to only tax those benefits that represented a significant means of tax avoidance. The legislation enacted also subjects many benefits enjoyed by low income earners to taxation. As a result, the employer will be unable to continue providing these benefits. It will be these benefits that are disposed of first. In contrast the United Kingdom and United States legislation makes allowances for the provision of benefits to the lower income earner.

The United States legislation is a good example of a more practical attempt at taxing fringe benefits. The New Zealand legislation is generally the most restrict in the taxation of fringe benefits, of all the jurisdiction considered. For example, in the method of valuing , the taxable value, of the private use of a vehicle. If the legislation is to be enforced strictly some modification in the existing regime should be made, especially as regards the approach to business related assets. However, in light of the goods and services tax to be enacted in October it is unlikely alot of effort will go into the enforcement of the fringe benefit legislation.

V CONCLUSION

The fringe benefit tax has highlighted the range, extent and economic value of the fringe benefits that existed in the New Zealand business sector. It has also raised broad policy questions such as to what extent employers should be encouraged to act as providers of welfare benefits.

The fringe benefit tax has effected the means by

which an employee is compensated.[253] With the addition of the goods and services tax to fringe benfits it is likely all, but the very senior employees, will be remunerated solely in the form of money. For example, presently the fringe benefit tax on a $20,000 car is $2,304 per annum, with the introduction of the goods and services tax an additional $480 will be payable.

It is unlikely fringe benefits will be completely eliminated. Some fringe benefits should be encouraged to help make worker's lives more cogenial. Of course as with any new tax new methods of avoidance will emerge.

As Professor Sandford said:

> Whoever hopes the perfect tax to see
> Hopes that ne'er was, nor is, nor e,er shall be.

FOOTNOTES.

1. Personal income tax revenue as a percentage of total tax revenue.
   1961 43.2 per cent
   1981 66.8 per cent
   See Taxation in New Zealand: The Taxation Review Committee Report: April 1982, 11
2. As stated by Mr C.M.ARthur "Variations on the Tax Reform Theme" (1982) 16 N.Z.Eco.Papers 58,68.
3. Richardson and Congreve Tax Free Fringe Benefits. (Rydge Publications, Sydney, 1975) p.3.
4. Part XB, ITA 1976 (NZ)
5. Section 68, ITA 1976 (NZ).
6. Section 69, ITA 1976 (NZ).
7. Section 72, ITA 1976 (NZ).
8. Section 73, ITA 1976 (NZ).
9. H.Simons Personal Income Taxation. (University of Chicago Press, Chicago, 1938) p.50-51.
10. Idem.
11. For example, the Carter Royal Commission in Canada(1966) and the United States Treasury Report to the President, "Tax Reform for Fairness, Simplicity and Economic Growth".
12. Oxford Motors Ltd v. Minister of National Revenue [1959] C.T.C. 195,202.
13. Section 65(2), ITA 1976 (NZ).
14. Section 65(2)(l) and section 38, ITA 1976 (NZ).
15. Reference to Commonwealth in this paper refers to New Zealand, Australia and the United Kingdom.
16. Mangin v. I.R.C. [1959] A.C. 739,746
17. [1925] G.L.R. 247.
18. Burgess v. Clark (1884) 14 Q.B.D. 735,738.
    Edwards v. Salmon (1889) 23 Q.B.D. 531.
19. [1959] N.Z.L.R. 1252.
20. Ibid. p. 1256-1257.
21. I.R.C v. Ross and Coulter (Blackrock Distellery Co. Ltd) [1948] 1 All E.R. 616.
22 In C.I.R. v. Dalgety and Co. Ltd. (1929) 15 T.C. 216,234, Lord Hanworth MR made the same point.

23. Land and Income Tax Act 1954 (equivalent to section 72, ITA 1976 (NZ)).
24. [1968] N.Z.L.R. 574.
25. In the case of Naismith v. C.I.R. (1981) 5 N.Z.T.C. 61,046, these words 'bonus, gratuity or emolument' were held to have a wide meaning.
26. Section 88c, Land and Income Tax Act 1954 (equivalent section 69, ITA 1976 (NZ).
27. [1982] 5 N.Z.T.C 61,285.
28. Ibid. p.61,287.
29. Taxation in New Zealand: The Taxation Review Committee Report: October 1967.
30. Taxation in New Zealand: The Taxation Review Committee Report: April 1982, Chpt. VI.
31. Supra. 28, p. 61,288.
32. [1892] A.C. 150.
33. Income Tax Code 1843.
34. Supra. 32, p.156.
35. The Income Tax Code 1842, was largely based on Addington's Income Tax Act 1803.
36. Supra.34, p.155.
37. Tennant v. I.R. (1891) Session Cases, series 4, vol. 18, 428.
38. Ibid. p.434.
39. [1961] A.C. 352.
40. [1970] A.C. 728.
41. Supra. 39,p.366,371.
42. Supra. 35. For example, Reid J in Heaton,p. 744.
43. Supra. 40,p. 764-765.
44. Scott v. Commissioner of Taxes (1935) 35 S.R.(N.S.W.) 215,220.
45. Section 26(e). For example, in the case of L54 (1979) 79 A.T.C. 399, school fees were taxable within section 26(e).
46. Case 16 (1963) 12 C.B.T.R. 88.
47. (1980) 10 A.T.R. 696.
48. M.P.Rigby "The taxation fo Fringe Benefits" (1985) 15 V.U.W.L.R. 301,318.
49. Taxation in Australia: The Taxation Review Committee Full Report: 31 January 1975, Chpt. 9.
50. J. Elmgreen "Reform of Fringe Benefits Taxation" (1985) Australian Tax Research Foundation, No. 3.

51. Section 26AAC, ITAA 1936 (Aus)
52. Section 26AAAA and scetion 26AAAB, ITAA 1936 (Aus).
53. Treasury Regulations s.1-61 - 1(a) (US).
54. Eisner v. Macomber 252 U.S. 189,207 (1920).
55. Weiss v. Warner 279 U.S. 333 (1979).
56. 348 U.S. 426 (1955).
57. Douglas v. Willcuts 296 U.S. 1,9 (1935).
    Irwin v. Gavit 268 U.S. 161,166 (1925).
58. Section 22(a), Revenue Act 1913 (US).
59. Supra. 56,p. 431.
60. 324 U.S. 177 (1945).
61. Ibid. p. 181.
62. 370 U.S. 269 (1962).
63. M.Weisman "A Model for the Equitable Taxation of Fringe Benefits" (1978) 56 TAXES 347,349
64. 163 F. 30,32 (1908).
65. [1958] N.Z.L.R. 42,49.
64A Economies of scale.
66. The other factors of production are land, capital and entrepreneurship.
67. O.S.Mitchell "Fringe Benefits and Labour Mobility" (1982) 17 The Journal of Human Resources 286.
68. K.W.Adamache and F.A.Sloan "Fringe Benefits:To Tax or Not To Tax?" (1985) 38 National Tax Journal 47,48.
69. J.Carr "Executive Compensation" (1984) 58 Management (Canada) 45,48.
70. A.Robinson"Proposing Remneration and Employee Benefits' (1974) September The Australian Accountant 640,648.
71. Section 104, ITA 1976 (NZ).
72. de Pelichet McLeod Ltd v. C. of R. (1982) 5 N.Z.T.C. 61,216.
73. Section 106(1)(j), ITA 1976 (NZ).
74. C.of R. v. Banks (1978) 3 N.Z.T.C. 61,236.
75. Supra.3,p. 34.
76. (1984) 7 T.R.N.Z. 158.
77. The private sector provides approximately 80 per cent of the medical care for those under 65 years of age.
78. Supra.68,p.48.
79. Idem.
80. Supra.30,p. 152.

81. Hon.R.O.Douglas(Minister of Finance) Budget 1984 (Government Printer, Wellington, 1984),19.

82. Ibid. p.2

83. Ibid. p.18-19.

84. The McCaw Report stated that this alone was a strong enough reason to warrant the imposition of a fringe benefit tax.

85. Fairness among taxpayers at the same level.

86. Fairness among the rates of tax at the different levels.

87. Ninety per cent of the income tax collected is from PAYE taxpayers, earning up to $25,000 pa.

    Seventy per cent of all New Zealanders earn less than $25,000.

    See:S.McTagget "Knocking the Hip Pocket Nerve" (1983) Listner (NZ),14.

88. J.A.Kay and M.A.King The British Tax System (3ed. Oxford University Press, Oxford,1983),50

89. R.J.Vann "General Principles of the Taxation of Fringe Benefits" (1983) 10 S.L.R. 90,91.

90. Infra.94.

91. Supra.68,p.49.

92. This would include leisure and psychic benefits from employment.

93. The Select Committee heard approximately 300 written submissions, 85 oral submissions and 20 supplementary submissions.

94. N.Z. Parliamentary Debates.Vol.461 (1985),p. 3696.

95. During the transition phase the tax was paid at 45 per cent.

96. The decrease in personal tax rates is scheduled to come into effect on the 1 October 1986.

97. Section 336N(1), ITA 1976 (NZ).

98. The institution must come within section 56A(2), ITA 1976 (NZ).

99. Section 336N(3), ITA 1976 (NZ).

100. Private company is defined as in section 2 of the Companies Act 1955.

101. Those three categories were:

    1.Source deduction payments, no fringe benefit tax.

    2.Source deduction payments, fringe benefit tax.

    3.No source deduction payments.

102. The Commissioner resisted these claims where there was no business reason for the change, apart from tax reasons.
103. The value of the benefit was taxable to the employee as a dividend, section 4(2), ITA 1976 (NZ).
104. Section 336N(2A), ITA 1976 (NZ).
105. Idem.
106. Section 105A, ITA 1976 (NZ).
107. Section 106(1)(j), ITA 1976 (NZ).
108. "Anomalies Abound in Proposed New Tax" (1985) 4 The Fin.Rev.
109. A recent Departmental ruling has exempted cars left at the airport and not used for more than 24 hours from tax. (March 1986)
110. Inland Revenue Department Understanding Fringe Benefit Tax October 1985.
111. The call must be between 6.00pm and 6.00am Monday to Friday; and any time Saturday, Sunday and public holidays.
112. Continuous period means not less than 24 hours.
113. Section 336O(1A), ITA 1976 (NZ).
114. Supra.110,p.9.
115. Section 336) and the Tenth Schedule, ITA 1976 (NZ).
116. Supra.97.
117. Section 336W(1)(a) and (2), Ita 1976 (NZ).
118. Section 336O(2), ITA 1976 (NZ).
119. Supra.97.
120. Section 336O(3)
121. Supra.97.
122. Section 336O(4)
123. Section 336O(5)
124. A personal accident or sickness policy to which section 59 applies.
125. Section 65(2)(b).
126. Supra.73.
127. The club subscriptions must be deductible under Part IV of the Act. Club subscriptions will not always be deductible:Case F 91 (1984) 7 N.Z.T.C. 6,001.
128. This figure is calculated using a financial calculator.
129. Section 110 reduces the allowable depreciation to $11,000. There are plans to amend this section.

130. W.Berryman "Fringe Benefits Tax Turns Business To National Party" 25 March 1985 National Business Review,25.
131. For example: Submissions by the N.Z. Society of Accountants to the Select Commissions,2.
132. Supra.94.
133. Fletcher Challenge has estimated the fringe benefit tax will cost them $10 million in the first year. $2 million of this is administration costs.
134. Supra.130.
135. The Evening Post 1985.
136. "Perks Tax: Starting to Change the Shape of Executive Remuneration" June 1986 Management,15.
137. Idem.
138. Supra.32.
139. 1961 1 All ER 358.
140. Section 36,FA (No.2) 1975.
141. Section 37 .
142. Section 36(2).
143. Section 45.
144. Section 44(4) ,FA 1982.
145. Section 68(3),FA 1981.
146. [1976] S.T.C. 368.
147. Section 33, FA 1977.
148. Section 33(4).
149. Section 33(7).
150. Supra.149.
151. Section 33A, FA 1983.
152. Taxable value:(cost of the accommodation)- 75,000x 0.12-excess rent.
153. Section 33A(9).
154. Section 72(2), FA 1981.
155. *Weight* v. *Salmon* (1935) 19 T.C. 174.
156. Revenue Press Release dated 24 April 1985.
157. Section 69(1).
158. Section 60.
159. Section 411, Tax Act 1970.
160. Section 63(1).
161. *Rendell* v. *Went* [1964] 2 All ER 404.
162. Section 61(1).
163. Section 62(3).

164. Section 62(7).
165. Damond Commision Report No.3. 1976.
166. Section 65(3).
167. 1985 S.T.C. 693.
168. Supra.157.
169. Where a loan is provided to a relative it is open for the employee to show he/she receives no benefit Section 66(4).
170. Section 66(1).
171. Prescribed by Treasury. Section 66(9)9d).
172. Section 66(2).
173. Section 75.
174. Section 3(2), F(NO.2)A 1983.
175. Section 66(3).
176. Supra.148.
177. Section 34.
178. The transition period is from 1 July 1986 to 31 March 1987.
179. Section 66(1).
180. ----
181. ----
182. Section 7,Fringe Benefit Tax Assesssment Act 1986.
183. Section 8, " " " " " " .
184. Section 10(1), " " " " " .
185. Section 9(1),
186. Provided for in the statute.
187. Section 10(1),
188. Section 16(1),
189. Section 18,
190. Section 17(3),
191. Section 32.
192. Supra.177.
193. Supra.50.
194. Section 48.
195. Idem.
196. Section 25.
197. Section 26.
198. Section 58(1).
199. Section 29.
200. Section 62(1).
201. ---
202. Supra.50.

203. Reform of the Australian Taxation System: Statement by the Hon.Paul.Keating,M.P. Sept.1985.

204. Infra.225.

205. Infra.206.

206. F.Kessler "Executive Perks under Fire" 22 July 1985 112 Fortune 16.

207. Supra.68.

208. Supra.49.

209. Supra.206.

210. C.C.Carter "Fringe Fighting" 15April 1985 3 Fortune, 125.

211. Staff of the Joint Committee on Internal Revenue Taxation: Examination of President Nixon's Tax Returns 1969-1972.

212. Treasury Regulations 1.61-16 (US).

213. S.R.Finneran "Fringe Benefits or Conditions of Employment: Uniformity, Uncertainty and Compliance" (1983) 78 Northwestern University Law Review 198, 200.

214. Secretary of Treasury, William Simon withdraw the regulations with the statement that the blanket approach to fringe benefit problem was all wrong.

215. Infra.216.

216. "Fourty Fringe Benefits IRS Wants to Tax"(1978)USNWR 76.

217. Supra.213.

218. 1984 Congreeional Quarterly p.1100.

219. For example, proceedings were brought against H.Hefner for excessive use of fringe benefits.

220. Ibid.206.

221. Supra.206.

222. For example, section 274(a)(1) entertainment facilities and section 274(h)foreign travel.

223. Section 274(a).

224. Infra.225.

225. The United States Treasury Report to the President, "Tax Reform for Fairness, Simplicity and Economic Growth" May 1985.

226. Idem.

227. Idem.

228. Section 132 , Deficit Reduction Act.

229. Section 132(b), " " "

230. W.D.Popkin "the Txation of Employee Fringe Benefits" (1981) 22 B.C.L.R. 439,443.

231. Section 132(c),DRA.

232. Explanation of provisions:Deficit Reduction Act.

233. Supra.225.

234. Section 132(d).

235. Section 132(e).

237. Ibid.225

238. Dole v. Commissioner 351 F.2d 308 (1965).

239. For example, section 132(3).

241. Section 124.

242. Section 7872,IRC.

243. CCH United states Master Tax Guide 1986.(6ed.CCH, New York,1986)

244. Section 125(d).

245. Infra.246.

246. Section 119,IRC.

247. Idem.

248. Section 79.

249. Section 106.

250. 1984 Congressional Quarterly p.450.

251. Idem.

252. Australian Tax Reform Summit 1985.

253. Supra.136.

APPENDIX A.

Table 1. Scales for the Calculation of Car and Fuel Benefits: U.K.

Car benefits: 1987–88

	Business use up to 2,500 miles pa or additional car		Business use over 2,500 miles pa but under 18,000 miles		Business use 18,000 miles pa or over	
	Under 4 yrs old	*4 yrs old or more*	*Under 4 yrs old*	*4 yrs old or more*	*Under 4 yrs old*	*4 yrs old or more*
Original market value up to £19,250	£	£	£	£	£	£
1,400 cc or less	787·50	525·00	525	350	262·50	175·00
Over 1,400 cc up to 2,000 cc	1,050·00	705·00	700	470	350·00	235·00
Over 2,000 cc	1,650·00	1,087·50	1,100	725	550·00	362·50
No cylinder capacity:						
Under £6,000	785·50	525·00	525	350	262·50	175·00
£6,000 or more, but under £8,500	1,050·00	705·00	700	470	350·00	235·00
£8,500 or more, but not more than £19,250	1,650·00	1,087·50	1,100	725	550·00	362·50
Original market value over £19,250						
Over £19,250 up to £29,000	2,175	1,455	1,450	970	725·00	485·00
Over £29,000	3,450	2,295	2,300	1,530	1,150·00	765·00

(**E4.607**)

Car fuel benefits		Business use under 18,000 miles pa	Business use 18,000 miles pa or over
		£	£
Cylinder capacity:	1,400 cc or less	480	240
	Over 1,400 cc up to 2,000 cc	600	300
	Over 2,000 cc	900	450
Original market value: (if no cylinder capacity)	Under £6,000	480	240
	£6,000 or more but under £8,500	600	300
	£8,500 or more	900	450

CAR BENEFITS FOR 1986–87

TABLES A AND B

Cars with original market value up to £19,250

Cylinder capacity of car in cubic centimetres	Age of car at end of relevant year of assessment	
	Under 4 years	4 years or more
1,300 cc or less (less than £6,000)*	£450	£300
1,301 to 1,800 cc (£6,000–£8,500)*	£575	£380
More than 1,800 cc (£8,500–£19,250)*	£900	£600

* Where car has no cylinder capacity.

TABLE C

Cars with original market value more than £19,250

Original market value of car	Age of car at end of relevant year of assessment	
	Under 4 years	4 years or more
More than £19,250 but not more than £29,000	£1,320	£875
More than £29,000	£2,100	£1,400

APPENDIX A.

Table 2. Statutory Formula Scales: Australia.

The following table sets out the percentages that will apply:

Total Kilometres	Taxable Value as % of Original Cost to Employer	Tax Payable as % of Original Cost to Employer
Less than 25,000	24	11.0
25,000 to 40,000	16	7.4
More than 40,000	8	3.7

Table 3. Calculation of Operating Costs :Australia.

CARTAX CALCULATION

(contributed by Ernst & Whinney, Chartered Accountants)

Tax comparison motor vehicle —	BMW 318i	
Motor vehicle expense worksheet	$	$
Running & maintenance expenses		
Petrol & oil	1,398.00	
Regular service	1,720.00	
Repairs	0.00	
Tyres, batteries	450.00	
Total running & maintenance expenses		3,568.00
Financing costs		
Interest or lease charges	7,482.00	
Depreciation	0.00	
Total financing costs		7,482.00
Other costs		
Insurance & registration	1,100.00	
Car washes	0.00	
Total other expenses		1,100.00
Total motor vehicle expenses		$12,150.00

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