

22 September 2010

Social Assistance Integrity
C/o Deputy Commissioner, Policy
Policy Advice Division
Inland Revenue Department
P O Box 2198
Wellington 6140

WORKPLACE SAVINGS NZ - Submission on Social assistance integrity: defining family income (an official's issues paper dated August 2010)

We wish to submit the attached in respect of the Issues Paper released in August 2010.

Workplace Savings NZ is a national, not-for-profit, apolitical membership organisation.

Our current membership comprises around 100 major workplace superannuation schemes and KiwiSaver schemes, and another 50 organisations and individuals representing the various product and service providers for workplace savings arrangements.

From the perspective of assets under management, the membership of Workplace Savings NZ covers around 90% of retirement savings held through workplace retirement saving arrangements (i.e. Corporate & Master Trust superannuation schemes and KiwiSaver schemes).

Our objective is to be the Voice of Workplace Savings; advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved – including the core workplace superannuation scheme members who remain at the heart of the organisation. We do this through:

- Advocating – advancing legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
- Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.

- Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.
- Promotion – publicising the benefits of workplace savings, and helping to improve public confidence in workplace savings.

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Thank you for the opportunity to make this submission.

Yours sincerely



Bruce Kerr
Executive Director

Workplace Savings NZ

Te māngai penapena ā-mahi

Submission to the

**Policy Advice Division
Inland Revenue**

on the Issues Paper

**Social assistance integrity:
defining family income**

24 September 2010

Summary of our submission

Workplace Savings NZ's membership would be concerned to ensure that any proposal made did not have the effect of increasing compliance requirements and/or costs for providers of workplace savings arrangements. This applies equally to employers and scheme trustees. The majority of these arrangements are established as workplace registered superannuation schemes, including KiwiSaver schemes. Many have elected to be PIEs for tax purposes.

In principle, Workplace Savings NZ supports the proposal made in section 3.67 of the Issues Paper (the Paper). Defining an "Unlocked Pie" as "any PIE that is not a superannuation scheme registered under the Superannuation Schemes Act 1989 or KiwiSaver Scheme under the KiwiSaver Schemes Act 2006" appears to offer a straightforward distinction between PIEs that do not impose any restrictions on access and those where access to accumulated savings is restricted.

The proposal to exclude income from PIEs that are registered superannuation schemes (section 3.67) should therefore satisfy the concerns of Workplace Savings NZ's membership. However, we believe careful consideration will be needed to ensure that legislative wording clearly identifies all registered superannuation schemes and KiwiSaver schemes that are PIEs (please see comments below).

It is noted that the Paper does not propose any changes to the current rules in respect of income allocated to members of registered superannuation schemes that are not PIEs. It is therefore assumed that the criteria specified in Appendix 1 relating to certain distributions from superannuation schemes will continue to apply.

Detailed comments for the Workplace Savings NZ submission

The following Workplace Savings NZ submission comments only apply on those sections of the Paper that relate to income from certain investments – in particular, PIEs.

In Appendix 2 (page 37) of the Paper you have defined "Unlocked PIEs" as being:

"Portfolio investment entities (PIEs) are a form of collective investment vehicle such as superannuation schemes where a number of investors combine resources to make investments. PIEs have an optional set of tax rules that allows investors to be taxed, usually at their marginal tax rate, as if they had made the investment directly.

PIEs may be "locked in" when the rules for the investment prevent a person from removing their funds before retirement (other than in specific restricted cases such as serious financial hardship or first home deposits). In comparison, unlocked PIEs allow an investor to remove their funds at any time, or before retirement. Some PIEs, known as cash PIEs, can operate similar to term deposits or bank savings accounts.

All KiwiSaver funds that are PIEs are locked-in."

Submission Points

Question 1

Are there any concerns with the proposal to include income from “unlocked PIEs” in family scheme income?

Whilst not specifically the area of focus for Workplace Savings NZ, we would like to highlight that most Unit Trusts established pursuant to the Unit Trust Act 1960 are also now PIEs and that these products cover a much wider range of investment options than cash (as implied by the analogy in section 3.66 and the definition above) and can be subject to negative returns. Many are, for example, subject to the Fair Dividend Rate (FDR) tax regime applicable to overseas equity investments.

We suggest that officials should consider whether it is appropriate for ‘income’ relating to these trusts (which would be regarded as “Unlocked PIEs”) be included. The FDR regime was designed as a basis for taxing investment income on investments focussed on the long term. It is not obvious that using a nominal level of income such as this when considering shorter term situations would be readily understood.

If the prime purpose of the proposal is to ensure that income resulting from investments such as Cash PIEs (that would previously have been invested in bank term deposits for example, and therefore included as income) should be included as income going forward, it might be more appropriate to develop a more specific measure.

We also note that it is unclear whether or not investment income that accumulates within a fund (as opposed to being ‘paid’ out to the investor) is included currently in the calculation of family scheme income as detailed in Appendix 1. This is irrespective of whether the trust is a PIE or not. If the proposal is put into effect it would seem possible that this income would be brought in to the calculation only if the trust is a PIE – not if it is not a PIE.

Question 2

Is a superannuation scheme’s registration with the Government Actuary an appropriate test for not including PIE income in the proposed family scheme income?

Workplace Savings NZ believes that, generally, the test being proposed is a reasonably common sense proxy for the intended purpose; at least as far as registered superannuation schemes are concerned. As stated in the Superannuation Schemes Act 1989, registered superannuation schemes must be established principally for the purpose of providing retirement benefits.

We would point out, however, that while KiwiSaver accumulated savings are generally locked-in until the investor reaches the age of eligibility for New Zealand Superannuation (currently age 65), non KiwiSaver schemes commonly offer benefit payments at earlier ages in certain circumstances. Nevertheless, they are still commonly referred to as offering ‘locked in’ benefits.

The Paper identifies serious financial hardship as a reason for making payments prior to age 65, and this applies equally to KiwiSaver and non KiwiSaver schemes. Non KiwiSaver schemes may offer a ‘retirement benefit’ option at an earlier age than 65. Many other registered workplace Superannuation Schemes pay benefits when the member leaves the employment of the sponsoring employer, irrespective of the age of the member.

We would be concerned if such examples of “access” raises concern over the construct of your “locked-in PIE” definition. As indicated earlier, we believe that it is extremely

important for the definition to work easily in practice, even if it does not offer a purist style answer.

Finally, in order to future proof the legislation, it may be advantageous for a 'Commissioner's discretion' provision to be included that enables the Commissioner to allow specific PIEs to be considered to be "locked-in". It is likely that some PIEs that are not registered superannuation schemes should, nevertheless, be considered to be locked in. As long as access to benefits is restricted in a way that is similar to restrictions imposed by a registered superannuation scheme, there seems to be no reason for not treating them in a similar manner.

Submission Ends
