Tax Rationality, Politics and Media Spin: A Case Study of New Zealand’s Failed ‘Car Park Tax’

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Abstract

In 2013, the New Zealand government introduced an omnibus tax Bill, whose provisions included an initiative to extend fringe benefit tax on employer-funded car parking. Plausible reasoning underpinned the proposal but government displayed apparent ineptitude in presenting its case to the media and thus the general public. In contrast, a hastily formed FBT Action Group effectively captured media attention and the proposal was scrapped even before the action group could become fully mobilised. Despite having tax rationality on its side – that, beside an army of ‘spin doctors’ – government was defeated by an unlikely coalition of business and trade union leaders.

This paper uses the car park tax proposal as a case study to illustrate how tax rationality is insufficient to win public debate in the contemporary polity: tax proponents need to ‘out spin’ their opponents. The tax rationality of the car park tax is first outlined. The tax would have removed unjustified exclusions and brought a clear fringe benefit into the tax net; furthermore, its credentials as an environmental tax were well-grounded, if not promoted. The paper then tells the story of the failed proposal using a timeline of media reports. This narrative demonstrates the lackadaisical introduction of the proposal, unsupported by strong media-friendly arguments, and the effective opposition by a small alliance of disparate interest groups. Finally, the consequences for rational tax measures of this case study are discussed and conclusions drawn.

I INTRODUCTION

In 2013, the New Zealand government introduced an omnibus tax Bill,¹ whose provisions included an initiative to extend the scope of fringe benefit tax (‘FBT’) in relation to employer-funded car parking in the Auckland and Wellington central business districts (‘CBDs’). Plausible rationale and sound policy goals underpinned the proposal to extend the FBT base (‘the proposal’), although certain, compelling reasons for the proposal, relating to

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¹ Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill 2013 (‘the Bill’).
the easing of traffic congestion, were not put forward. Government, particularly the Inland Revenue Department (‘IRD’) and Peter Dunne, the Minister of Revenue, appear to have displayed remarkable ineptitude in presenting the case for the proposal to the media and thus the general public. In contrast, the hastily formed FBT Action Group (‘FBTAG’) effectively captured media attention and the proposal was scrapped even before the lobby group could become fully mobilised. Despite having tax rationality on its side, in addition to numerous communications staff, pejoratively referred to as ‘spin doctors’, government was compelled by this unlikely coalition of business interest groups and trade unions to abandon the proposal.

This paper, which should be considered a work in progress, uses the proposal as a case study to illustrate how tax rationality is insufficient to win public debate in the contemporary polity: government also needs to ‘out spin’ its opponents. The tax rationality of the car park tax is first outlined. The paper then tells the story of the proposal’s failure,

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2 Opponents to the proposal did raise certain transport-related arguments but these were not obviously challenged by government: see Appendix B below.

3 ‘Tax rationality’, as used in this paper, implies that a tax proposal is congruent with well-established tax principles, notably equity and efficiency. Carl S Shoup, Public Finance (Weidenfeld and Nicolson, 1969) 22 describes equity and efficiency as ‘consensus criteria’.


5 The Oxford English Dictionary (online, draft additions 1993) defines ‘spin doctor’ as ‘a political press agent or publicist employed to promote a favourable interpretation of events to journalists’.

6 Compare the proposal with the effective marketing campaign for goods and services tax (‘GST’), which included a leaflet explaining the benefits of the new tax being distributed to every household: see Jeff Todd, ‘Implementing GST – Information, Education, Co-ordination’ in Richard Krever and David White (eds), GST in Retrospect (Brookers, 2007) 27, 33–35.

7 The use in this paper of the term ‘car park tax’ reflects the effective framing of the issue by FBTAG in order to suggest a wholly new tax. (See section IV A below on framing as a communication technique.) In fact, the proposal merely represented an extension of existing FBT rules to ensure that a wider range of employer-provided car parks would be subject to FBT or, otherwise, closed a loophole that enabled some employers to avoid paying FBT.
using a timeline of print media reports. This narrative demonstrates the lackadaisical introduction of the proposal, unsupported by strong media-friendly arguments, and the effective opposition by a small alliance of disparate interest groups. The concepts of frames and spin are applied to the proposal. Finally, the consequences for rational tax measures of this case study are discussed and conclusions drawn.

II THE PROPOSAL

This part of the paper outlines the proposal in the context of extant FBT rules and considers its underpinning policy in the light of well-established tax principles.

A Extant FBT Rules

Monetary benefits arising from employment are taxed in an employee’s hands as assessable income, whereas non-cash benefits are potentially taxable as fringe benefits in the hands of the employer. Under extant FBT rules, certain perquisites, such as the provision of subsidised transport, are defined as fringe benefits. Additionally, perks which are not specifically defined nor excluded are taxable as ‘unclassified benefits’. An employer-provided car park is an unclassified benefit and is therefore prima facie subject to FBT. However, benefits excluded from the FBT net include those used or consumed on the

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8 This paper emphasises public communications aspects of the proposal. A further critical consideration was the inadequacy of IRD’s regulatory impact statement (‘RIS’) which failed to link sound policy goals with likely outcomes. This failing is noted but may deserve its own specific analysis.

9 The breadth and heterogeneity of FBTAG can be overstated. Absent the Unite union, FBTAG essentially comprised property owners and their tenants.


11 Income Tax Act ss CX RD 26(1); CX2-CX38.


13 Income Tax Act ss CX 6-CX 16.

14 Income Tax Act s CX 37.
premises of the employer or those of a fellow group company. Following the common law understanding, the term ‘premises’ includes real property owned or leased by the employer, as well as sites where employees are required to perform their duties. A car park located on premises owned or leased by an employer is therefore exempt from FBT under current law. This exclusion extends to car parks leased by an employer but located in a building not owned by the employer. This provision leads to apparent anomalies: for example, if an employer arranges and pays for parking in a reserved area of a commercial car park for certain employees, an FBT liability is incurred but not if the spaces are the subject of a formal lease or rental agreement with the employer.

**B Outline of the Proposal**

In terms of the proposal, a fringe benefit arises when an employer makes a parking space available to an employee if any of the following conditions applies:

- The parking space is in the Auckland or Wellington CBD;
- The parking space is provided to the employer by a commercial car park operator for a consideration of more than NZ$210 per month; or
- The employee is entitled to a greater amount of employment income if the employee had not chosen to receive the car park benefit (that is, a salary sacrifice).

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15 *Income Tax Act s CX 23.*


19 The Bill defined the extent of the respective CBDs. For Wellington, the delineated CBD extended significantly beyond the parameters of what is generally recognised as the central business district. For both cities, the boundaries of the CBDs as delineated in the Bill gave rise to ostensibly arbitrary outcomes: for examples, see Matt McCarten, ‘On Bosses’ Side over Carpark Tax’, *The New Zealand Herald* (online), 17 March 2013 <http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=10871692>.
The tax treatment of a parking space depends on whether or not it is allocated to a specific employee. If a parking space is allocated to a specific employee, a fringe benefit of one parking space will arise on a day when the employer makes the space available to the employee. A fringe benefit does not arise if the parking space is restricted to a ‘business or certificated vehicle’ (that is, a motor vehicle with a valid disabled parking permit, a work-related vehicle, or a pool vehicle that is not available for private use).

If a parking space is not specifically allocated to one employee (that is, a pool parking space), a fringe benefit arises from the availability of a pool parking space for an employee, of:

- One parking space, if the number of pool parking spaces is equal to or greater than the number of pool parking users;
- Zero, if the employee is restricted to the use of a pool parking space for parking outside the hours between 6 am and 10 pm;\(^\text{20}\)
- Zero, if the number of pool parking spaces is equal to or greater than the number of pool parking users and the employee is restricted to the use of a pool parking space for parking a business or certificated vehicle;
- A fraction of a parking space if the number of pool parking spaces is less than the number of pool parking users, and the night shift exclusion does not apply.\(^\text{21}\)

The daily value of a fringe benefit that arises from the availability of a parking space is one of the following, if the parking space is:

- Provided by a commercial car park operator, the value of the parking space is the amount charged by the car park operator to the employer for the parking space for one day (treating a month as having 30 days and a year as having 360 days);
- In the Auckland or Wellington CBD and is not provided by a commercial car park operator, the value is a standard value determined by the Commissioner of Inland Revenue (anticipated to be NZ$250 per month)

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\(^{20}\) The rationale for excluding parking outside the hours of 6am to 10pm is set out in the Commentary on Supplementary Order Paper No 167 to the Bill (‘SOP’) <http://taxpolicy.ird.govt.nz/sites/default/files/2012-commentary-lvaerm-sop.pdf>: ‘This recognises the fact that public transport may not be readily available during those hours. It also recognises the fact that two employees may be parking in the same space at different times during the day and night.’

\(^{21}\) The formula for calculating the fraction is complex and so is not detailed here.
• Not in the Auckland or Wellington CBD and is not provided by a commercial car park operator, a fringe benefit arises only if the employee sacrificed employment income for the parking space. In this situation, the value of the fringe benefit is the amount of additional employment income the employee would have been entitled to if they had chosen not to receive the parking space.22

C Horizontal and Vertical Equity

A fundamental and uncontroversial tax principle holds that taxes on income should manifest horizontal equity so that taxpayers with similar incomes should bear a similar income tax burden.23 FBT can be seen as an element of the Haig-Simons comprehensive income tax model,24 which seeks to ensure horizontal equity by including all annual increments in wealth in the income tax base. In New Zealand, FBT is charged to the employer, rather than the value of the benefit being included in the employee’s income as the Haig-Simons model indicates but it may be presumed that the employer will pass on the FBT cost to the employee by reducing their remuneration.25 However, employees with strong negotiating power, such as executive directors, may be able to ensure that the tax cost stays with the employer.26 Extant FBT law favours some benefits over others, for example: employer A, which subsidises its employees’ public transport costs, is subject to FBT but employer B, which

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22 SOP cls 12D, 13D, 44B and 67C.
26 A firm’s surplus (income that exceeds claims of third party creditors) is contestably distributed between employees, directors and shareholders: see Erling Rasmussen, Employment Relations in New Zealand (2nd ed, Pearson Education New Zealand, 2009) 390. If directors can avoid assuming FBT costs, such costs must deplete the pool of surplus available to employees and shareholders.
provides on-site parking, is not. Presuming employers do in practice pass on their FBT costs to their employees, employee A of employer A, who earns the same income as employee B of employer B, pays more tax on a similar value of income.

Vertical equity is not technically breached since the calculation of FBT is based on the employee’s marginal income tax rate. Nevertheless, the sentiment prevails that the proposal is regressive and that ‘[T]he only ones who will really get pinged by this carpark tax will be low-paid inner-city workers’. As noted, senior employees are more likely to be able to bargain with the employer to assume the FBT cost. Furthermore, Kim Campbell, chief executive of the Employers and Manufacturers Association (Northern) (‘EMA’), suggests ‘[T]he big end of town can afford to pay their tax lawyers more than the IRD can pay theirs. And they’ve always found their way around things.’ Conversely, if the proposal is rejected, a regressive benefit would continue to accrue to wealthier workers.

How the subsidy is provided will determine its tax treatment. If the subsidy is paid to the employee in cash (or the employee is reimbursed for tickets purchased), it will be subject to income tax (PAYE) but not FBT. If the employer purchases tickets and gives these to the employee, this would be treated as a fringe benefit. In the latter case, the benefit would be subject to FBT at the rate of 42.86 per cent (based on the employee’s total income). In the example provided in the following footnote, it is presumed that a FBT liability is incurred.

If employee A is entitled to cost-to-company annual remuneration of NZ$55 000, including a NZ$5000 subsidy for public transport, the transport benefit would be subject to FBT at the rate of 42.86 per cent (based on the employee’s total income), i.e. NZ$2143. If this cost is passed on to the employee, Employee A’s salary would be reduced to NZ$47 857. Tax at (assumed) 20 per cent would be NZ$9571, leaving a net salary of NZ$38 286 plus the NZ$5000 subsidy.

For Employee B (NZ$50 000 salary plus NZ$5000 tax-free on-site parking), the employee only pays PAYE on the NZ$50 000 salary, since the NZ$5000 on-site parking is income tax and FBT-free. Tax at 20 per cent would be NZ$10 000, leaving a net income NZ$40 000 plus NZ$5000 free parking.

See McCarten, above n 19.

Hamish Rutherford, ‘Car Parks Tax Broken Promise – Employers’ The Dominion Post (Wellington), 14 March 2013, A2. Somewhat cryptically, Campbell adds ‘I have no idea but they’re very, very inventive’: ibid.

Julie Anne Genter notes: ‘The reality is that the vast majority of people driving to work in the Auckland and Wellington central business districts are on high incomes, so continuing to subsidise car-parks is actually a regressive move.’ See New Zealand, Parliamentary Debates, House of Representatives, 26 June 2013, 691, 11340 (Julie Anne Genter) <http://www.parliament.nz/mi-
D Neutrality/Economic Efficiency

The principle of neutrality holds that taxes should not alter individuals’ or companies’ investment decisions.32 However, under the extant FBT set up, the salary sacrificed is less than the benefits gained from employer-provided parking; hence, FBT on car parks does not have neutral effect. The proposal appropriately seeks neutrality.

E Administrative Efficiency

Administrative efficiency has long been considered a characteristic of a good tax system,33 and comparison of likely yield and cost has proved persuasive in the formulation of New Zealand tax policy.34 However, administrative efficiency must be balanced against other policy goals. If a tax is principally a revenue raising instrument, then, we may expect yield to comfortably exceed cost to Revenue and taxpayers: but, if the purpose of the measure is to, say, correct egregious unfairness in the system or to modify socially undesirable behaviour,
provided the policy response is proportionate,\textsuperscript{35} then, yield is a secondary but not, of course, an irrelevant concern.

\textbf{F Congruence with Other Policy Goals}

Analogous to assessing taxation fairness by considering the overall equity of a tax-transfer system rather than a particular tax burden,\textsuperscript{36} we might also reasonably consider a tax in the context of other policy goals: for example, levying heavy excise duties on tobacco is congruent with the efficient allocation of scarce resources in the public health system.\textsuperscript{37} Likewise, FBT on motor vehicles may be considered in tandem with government priorities for transport.\textsuperscript{38}

In 2012, the New Zealand Transport Agency (‘NZTA’), the government agency charged with implementing national transport policy, commissioned a research report from Booz & Co on the effects of company cars and FBT on strategic transport targets.\textsuperscript{39} In

\begin{footnotesize}
\begin{itemize}
  \item[37] See, for example, on smokers being required to quit before surgery, Michelle Duff and Jo Moir, ‘Quit Before Surgery, Doctors Tell Smokers’, The Dominion Post (online), 9 November 2013 <http://www.stuff.co.nz/dominion-post/news/9380868/Quit-before-surgery-doctors-tell-smokers>.
  \item[39] R A Scott, G V Currie and K J Tivendale, Company Cars and Fringe Benefit Tax – Understanding the Impacts on Strategic Transport Targets (2012) NZ Transport Agency Research Report 474, [7.1] <http://www.nzta.govt.nz/resources/research/reports/474/docs/474.pdf>. The report considered both the provision of company cars and car parks. The arguments for each are similar but, it seems likely that the provision of subsidised company cars has the greater effects on inner city congestion and urban sprawl. It is not wholly clear where the benefits lie: thus the report states ‘There are over 250,000 company cars in New Zealand. The untaxed benefits total at least $675 million annually’.
\end{itemize}
\end{footnotesize}
addition to noting the breach of the fundamental principle of horizontal equity, the report concluded:40

- Commuters with the highest parking costs gain the largest untaxed fringe benefit under current tax policy;
- Through exemptions, the current FBT set up subsidises and encourages (long-distance) driving over resource efficient modes of travelling to work, such as walking, cycling and public transport;
- The externalities of driving including congestion, road and parking facility costs, crashes, energy consumption, pollution emissions, sedentary living/obesity, and sprawl are not considered in the development of FBT policy. Consequently, the broader community bears the costs of the benefits received by those who enjoy employer-provided parking;
- The exemption of employer-provided parking is a widespread benefit that has a significant impact on transport choices. The value of employer-provided car parking in the largest cities is around NZ$2700 per employee;
- Taxing employer-provided car parks is a viable option as practised in Australia;
- Employee parking subsidies undermine attempts to encourage more efficient commuting behaviour. FBT reform can create more neutral (and therefore more efficient and equitable) commuting incentives.

\[G \text{ Critique of Proposal}\]

The proposal manifested policy flaws, including the unnecessary inclusion of low-pay workers and arbitrary geographic specificity, but was principally undermined by an inadequate RIS.

1 \textit{Inclusion of Low-Pay Workers}

The proposal excluded shift workers – to some extent. However, it emerged, after the Bill was published, but not, it seems, during the consultation phase,41 that some low-pay shift

\[40 \text{ Ibid.}\]
workers (including Unite union members) would, most likely, be disproportionately affected by the proposal. Since it was accepted in principle that shift workers should be excluded, greater efforts could have been made to identify who would be affected and appropriate exclusions crafted accordingly.

2 Arbitrary Geographical Specificity

The proposal should have applied to car parks above a certain value threshold. This would have removed arbitrary geographical outcomes and would have obviated ‘the unintended consequence of incentivising development outside of the central business district, where it would be harder to provide high-quality public transport’.42

3 Inadequate RIS

IRD’s RIS for the proposal was inadequate. The New Zealand Institute of Economic Research (‘NZIER’), which was commissioned by FBTAG, identified the following failures in the RIS:43

- Failure to comply with Cabinet requirement for best possible advice, notably identifying the nature and size of a problem;
- Failure to quantify the number of employer-sponsored car parks;
- Failure to consider the indirect economic effects;
- Failure to identify plausible compliance costs;
- Failure to take into account distortionary effects of geographical boundaries.

As observed, proportionality requires a rational link between a policy goal and a predicted outcome to be demonstrated. Although the NZIER did not present alternatives,44 its report


42 Genter, above n 31.

FBTAG did selectively present similar arguments: see, for example, McCarten, above n 19. However, numerous other factors would be relevant to where a company locates its offices, for example, local government rating policy and efficient and cheap public transport. In Wellington, the costs of earthquake strengthening are likely to be far more significant considerations for building owners than parking costs.

highlighted that the RIS lacked sufficient evidence to demonstrate a rational nexus between the proposal and the desired policy outcome. In short, IRD should not have proposed regulatory change without ‘clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust’. The Booz & Co report did demonstrate that the proposal was a proportionate; unfortunately, IRD was either unaware of that report or chose not to use it.

H Conclusion to Part II

Despite uncertainty about the amounts involved, the proposal would have removed unjustified breaches of horizontal equity and brought a clear fringe benefit into the tax net. Furthermore, the likely effects of the extension of FBT on traffic congestion were in line with government’s long-term transport goals. Certainly, the proposal as introduced manifested some design faults but these deficiencies could have been identified, investigated and remedied during the Committee stage of the Bill. However, IRD’s failure to provide persuasive information left a blank slate on which opponents’ spin doctors could project their own unsupported figures.

III Narrative

44 Rob Hosking, ‘What’s Behind Government Nip and Tuck Tax Grab?’ The National Business Review (New Zealand), 15 March 2013, 4 reports that the NZIER provided FBTAG with a report showing ‘the cost to employers could be $30 million a year’. If this is correct, the report was not made publicly available. It seems more likely that the estimated figure is derived from accountants Lock & Partners’ estimate.

45 The Treasury, above n 35, [2.1].


In this part of the paper, the main players are identified and a timeline of the proposal’s defeat is sketched.

**A Dramatis Personae**

- FBTAG comprised the EMA, Tournament Parking, the Property Council, the Communications Agencies Association (‘CAANZ’) and the Unite union.\(^{47}\)
- Matthew Hooten is a right wing commentator and principal of Exceltium,\(^{48}\) the corporate and public affairs consultancy that ran the anti-proposal campaign for FBTAG.
- Matt McCarten is an experienced left wing activist, who is particularly noted for his success in recruiting fast food and other low-pay workers into the Unite union and negotiating better wages and conditions, including subsidised parking for cleaners at the SkyCity casino.
- Peter Dunne, solo Member of Parliament for and leader of the centrist United Future party, was the Minister of Revenue at the time of the proposal and held the same post under the previous Labour-led government.
- Prime Minister John Key was previously National Party spokesperson for finance and was an outspoken opponent of FBT extensions which might give rise to undue compliance costs.
- Bill English is Minister of Finance.
- Michael Cullen was Minister of Finance under the fifth Labour Government (1999-2008).
- David Cunliffe is currently Labour leader and, at the time of the proposal, was opposition finance spokesperson.
- Julie Anne Genter is the Green Party’s transport spokesperson and, by profession, a transportation consultant.

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The New Zealand Confederation of Trade Unions (‘CTU’) announced that it was joining FBTAG on the day the proposal was withdrawn: see CTU, ‘CTU Joins Action Group against Carpark Tax’ (media release), 18 March 2013 <http://www.scoop.co.nz/stories/PO1303/S00205/ctu-joins-action-group-against-carpark-tax.htm>.

According to Exceltium, ‘[T]he proposed tax was abandoned within a week of the campaign going public’.\(^49\) Once the issue entered into public discourse, the Minister of Revenue capitulated in a remarkably short period of time;\(^50\) indeed, CAANZ, which represents about 100 advertising and media agencies, joined FBTAG but the proposal was retracted before CAANZ could put its planned campaign into action.\(^51\) However, the issue is older than that, as the following timeline indicates.

1 April 1985

FBT is introduced to New Zealand as part of the radical restructuring of the economy under the neoliberal fourth Labour government (1984-1990). Neutrality was a key informing principle of the tax reforms.\(^52\) However, while full capture of the value of all perquisites is an impeccable principle, FBT is problematic to implement.\(^53\)

2004

Michael Cullen rejects IRD officials’ proposal for an extension of FBT. According to an anonymous Fairfax Media reporter, IRD officials ‘tried to get their car park tax through … but finance minister Sir Michael Cullen was not having it. In 2004, he said the tax had several “thorny issues” and his government had “no intention of imposing extra costs on businesses for the sake of it”’.\(^54\)

2005

\(^{49}\) Ibid.

\(^{50}\) Dunne announced the proposals on 3 October 2012 and with Bill English announced that there would be no changes on 18 March 2013.


\(^{52}\) See Paul Goldsmith, *We Won, You Lost, Eat That!: A Political History of Tax in New Zealand since 1840* (David Ling, 2008) 294–99.


As opposition finance spokesperson, John Key promises not to extend FBT.\textsuperscript{55}

**20 May 2010**

In his 2010 Budget Speech,\textsuperscript{56} Bill English talks of reforms to improve the fairness and integrity of the tax system but no explicit mention is made of extending the FBT base.

**April 2012**

IRD’s Policy Advice Division publishes an officials’ issue paper.\textsuperscript{57} Referring to the 2010 Budget comments on fairness and integrity, the paper establishes the following basic principle:\textsuperscript{58}

\begin{quote}
Key in this objective is the comprehensive taxation of labour income and other benefits provided by employers to their employees in exchange for labour services, or as comprehensive an approach as practicalities will allow.
\end{quote}

Furthermore, revisiting the issue that Cullen had rejected as too ‘thorny’, the paper states:\textsuperscript{59}

\begin{quote}
Focusing on salary trade-offs also addresses a long-standing issue with the current boundary used to determine whether the provision of a car park is or is not a fringe benefit. That boundary has traditionally been whether the car park is on the employer’s premises, with “premises” being based on the interpretation of common law so that a leased car park, like one that is owned by the employer, is exempt from FBT whereas a licensed car park is not. There are, however, arguments that some licensed car parks would also qualify for an exemption, which would make the boundary hard to identify. Under the suggested salary trade-off approach, this distinction would be removed. All car parks and childcare benefits would be excluded from the on-premises FBT exemption and instead only be taxable when part of a salary trade-off.
\end{quote}

**3 October 2012**

Announcing new FBT rules in relation to employer-provided car parks, Peter Dunne says ‘[W]e have listened to public submissions and the proposed new rules are now narrower than

\textsuperscript{55} Rutherford, above n 30, A2.
\textsuperscript{58} Ibid, [1.2].
\textsuperscript{59} Ibid, [1.3].
originally suggested, focusing predominantly on employer-provided car parks’. 60 He explains further: 61

A wider set of car parks provided to employees are to be taxed, through the FBT (Fringe Benefit Tax) rules. The new FBT rules will focus predominantly on car parks provided to employees in the Auckland and Wellington CBDs (the areas where the benefits to the employee are greatest). There will be certain exclusions, for example, for car parks used by work vehicles, for late night shifts and disabled car parks. To reduce compliance costs, standard values will apply when the car park is not provided through a commercial car park operator.

12 December 2012

Draft legislation is released. Although the extended rules cover all car parks that cost an employer more than NZ$210 a month, the proposal principally is seen as a regional tax as it will mostly affect Auckland and Wellington CBDs. 62

7 March 2013

The NZIER provides Exceltium with a report critical of IRD’s RIS.

11 March 2013

FBTAG releases its first press release. 63

13 March 2013

CAANZ joins FBTAG.

14 March 2013

- EMA’s Campbell reminds Key of his 2005 promise to ‘remove a substantial amount of the paperwork that currently occupies too much administrative time for many of our


61 Ibid.


63 FBTAG, above n 47.
businesses, especially the small ones’ and not to ‘entertain suggestions of applying FBT to on-premises car parks’.64

- National Party MPs seek to distance themselves from the proposal, claiming it was Dunne’s ‘brainchild’.65

15 March 2013

An anonymous Fairfax Media political commentator blames IRD officials for the proposal:66 ‘Inland Revenue Department officials are like rust, they never sleep … Almost a decade [after Cullen’s rejection], officials are trying again with Revenue Minister Peter Dunne.’

18 March 2013

AM

- It is reported that IRD officials are testing FBTAG’s claim of an annual compliance cost of $30 million a year ‘across the almost 200,000 carparks in the Auckland and Wellington CBDs the tax would apply to’.67
- An anti-carpark tax editorial is published in The New Zealand Herald,68 the country’s largest circulation daily newspaper.69
- Dunne defends the fairness of the proposal and the consultation process.70

64  Rutherford, above n 30, A2.
66  ‘Today in Politics: Friday, March 15’, above n 54.
68  ‘Editorial: Good Reasons to Ditch Plan for Tax on Carparks’, above n 46.
70  Bennett, above n 41.
PM

A joint media release from English and Dunne announces that the proposal has been withdrawn and states:\footnote{Bill English and Peter Dunne, ‘Tax Status of Carparks to Remain Unchanged’ (media release), 18 March 2013 <http://www.scoop.co.nz/stories/PA1303/S00292/tax-status-of-carparks-to-remain-unchanged.htm>. The release was published on Scoop, a news aggregator at 2.24 PM.}

While we do not resile from that general principle of fairness, we do need to be pragmatic. This was considered likely to be one of those proposals from IRD where the cost of compliance, compared with the likely return, made it not worth pursuing.

19 March 2013

• The government back-down on the proposal is widely reported.

• Prime Minister Key casts doubts on IRD officials’ figures, saying: ‘Not $30 million, maybe $3 million, but what the officials said that it’s very subjective, so it could be a bit more, it’s hard for them to absolutely know. Say you raise $17 million but you put $6 million or some other number like that cost on the private sector, in the end it probably wasn’t worth that.’\footnote{Adam Bennett, ‘Tax Backdown Pleases Business’, The New Zealand Herald (online), 19 March 2013 <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10872123>.
}

• Key makes it clear that a mooted extension of FBT to employer-provided cellphones and laptops will not go ahead.\footnote{Adam Bennett, ‘iPad Tax’ also Taken off the Table’, The New Zealand Herald (online), 19 March 2013 <http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10872253>.}

7 June 2013

Dunne resigns as Minister of Revenue. While his resignation is not caused by the failure of the proposal, David Cunliffe’s observation that ‘the u-turn showed Dunne was a lame duck minister’ proved prophetic.\footnote{Vernon Small and William Mace, ‘Government Ditches Controversial Car Park Tax Plan’, Stuff (online), 18 March 2013 <http://www.stuff.co.nz/national/politics/8440084/Government-ditches-controversial-car-park-tax-plan>.
}
Speaking in Parliament, Julie Anne Genter notes that, when the Bill ‘came to the Finance and Expenditure Committee, no one on the select committee, nobody speaking to the select committee, and not even the officials from the Inland Revenue Department were apparently aware of this [Booz & Co] report and the research that had gone into it’.  

IV ANALYSIS AND DISCUSSION

In this part of the paper, the communications tactics of the various parties are analysed and discussed. To this end, a search was conducted of the EBSCO Host Australia/New Zealand Reference Centre. Results from Fairfax Media regional newspapers were excluded because articles are commonly repeated in group newspapers. It was thought likely that arguments would be sufficiently covered by *The Dominion Post* (Wellington) or *Stuff*, Fairfax’s national news website.

A Spin and Frames

Around half of the stories appearing in New Zealand newspapers ‘are likely to have some input from public relations people’. Private and government communications specialists therefore play a critical role in influencing media content and thereby shaping public discourse. Steven Foster notes, ‘[T]he goal of [spin doctors] is to set the media’s agenda, ensuring that the headlines are dominated by stories which play to their party’s advantage’. Trevor Morris and Simon Goldsworthy observe:

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76 ‘FBT OR fringe benefit tax AND car park*% OR carpark*’ with a time parameter of 11–20 March 2013. Some additional Google searches were made.  


Spin is firmly associated with the exercise of power … It conveys … a sense of manipulation … Spin implies that the information communicated is carefully selected and delivered in a way that is to the advantage of the sender of the message.

Frames are communication devices that reduce the complexity of an issue; they include the key messages used to influence how people engage with political issues. Frames seek to establish the most persuasive ‘policy narratives’. It is plausible that ‘if one side can establish the relevant terms of debate over an issue it can successfully persuade individuals to support its position’. Both information emphasised and information omitted influence audiences. Framing is, then, a critical element of spin and, put bluntly, FBTAG’s spin doctors proved far more effective than those of government with regard to the proposal; in short, FBTAG successfully framed the debate in the ways it chose.

B Tactics and Frames

1 Tactics

Exceltium identifies its key tactics in the FBTAG campaign as:

- Pressure on government through direct lobbying;
- Distribution of bumper stickers;
- A ‘No Carpark Tax’ Facebook page.

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A policy narrative exists ‘when the author or group strategically constructs the story to try to win the desired policy outcome’: see Shanahan et al, above n 81, 375.


Exceltium, above n 48.

It is not clear whether a FBTAG Facebook page was in fact established and, if so, the number of ‘friends’ or ‘likes’ it might have garnered. A search of Facebook and Google on 25 October 2013 showed no trace of such a page.
• Sustained print, radio and television media activity.  

2 Frames

From the texts analysed, frames or discrete messages were identified. Twelve frames were identified in favour of the proposal but 28 against. A multiplicity of frames might be expected to detract from key messages, however FBTAG was successful in ensuring that critical points were repeatedly cited. In particular, the frame that compliance costs would be disproportionately high in relation to revenue raised was reiterated. FBTAG successfully engaged NZIER, as a plausible independent agency, to critique the robustness of IRD’s RIS and, having done this, was able to frame the debate in accordance with its own figures. In particular, it successfully asserted that FBT would apply to 200,000 car park spaces, whereas, according to Genter, ‘there are only 24,000 employer-provided car-parks in the Auckland central business district’. As Genter observes, ‘Government and Labour were quite quick to jump on the numbers provided by the FBT Action Group’. Thus, despite the lack of proof, Labour’s Cunliffe argued the proposal ‘would have been inefficient, costing twice as much to administer as it would have brought in’. Other unproven claims included that ‘Auckland and Wellington carpark costs will shoot up 50 per cent’. Furthermore, according to CAANZ CEO, Paul Head ‘one [of] our members did a back of the envelope calculation that immediately added $30,000 a year to his compliance costs’. A more plausible source, the

86 A notable feature of the defeat of the proposal is that it was not brought about by popular use of new social media, such as Twitter, which have stoked mass protests around the world: see, for example, Philip N Howard and Muzammil M Hussain, Democracy’s Fourth Wave?: Digital Media and the Arab Spring (Oxford University Press, 2013). Rather, it was an example of ‘old school’ public relations manipulation by a small number of media-savvy insiders.

87 See Appendix B.

88 Genter, above n 31 observes that more than ‘half the people who travel into the Auckland central business district at the moment travel by public transport, walking, or cycling’.

89 Ibid.

90 Small and Mace, above n 74. See Bennett, above n 72 on Key’s undermining of IRD’s calculations.


92 Green, above n 51.
accounting firm Lock & Partners, estimated ‘the costs of gathering the carpark tax would be almost double the take’\(^{93}\) but these calculations were not subjected to the rigorous analysis to which IRD’s RIS had been. Nevertheless, they were widely accepted as correct – except by IRD. FBTAG’s unproven figures prevailed: IRD’s calculations, it seems, were disbelieved by both government and opposition.

3 Political Parties’ Frames

Dunne, as government spokesperson, argued that the proposal would make the tax system fairer and would be ‘pretty reasonable’. (National, as senior coalition partner, was absent from the debate until English jointly withdrew the proposal with Dunne\(^{94}\) and Key cast doubt on IRD officials’ calculations.\(^{95}\)

Labour principally portrayed the proposal as ‘penny pinching’, a desperate attempt by government to balance its books.\(^{96}\) Thus Labour MP David Clark said ‘now it’s putting a tax on carparks. What next?’\(^{97}\) Labour also questioned IRD’s competence.\(^{98}\)

Genter, perhaps the MP best qualified to comment on the issue, presented compelling arguments in favour of the proposal (in principle, if not detail) after the government had backed down,\(^{99}\) but the Green Party was significantly absent from the debate before then.

\(^{93}\) See ‘Editorial: Good Reasons to Ditch Plan for Tax on Carparks’, above n 46. It seems that the Lock & Partners analysis was tabled in Parliament but not otherwise made publicly available: see Hansard above n 46.

\(^{94}\) See above n 77.

\(^{95}\) See above n 78.

\(^{96}\) Small and Mace, above n 74.

\(^{97}\) Adams, above n 62. FBT did, of course, already apply to car parks – just not all car parks.


\(^{99}\) For Genter, above n 31: ‘The purpose of fringe benefit tax is not primarily to raise revenue; it is to ensure that employers and others are not trying to avoid paying tax by providing benefits that result in distortions. The purpose of extending fringe benefit tax to car-parks was to achieve greater horizontal tax equity, but the primary reason would be to get smarter transport outcomes. The best way to get
This is unfortunate since the environmental arguments for extending FBT in terms of the proposal could have taken the debate in a significantly different direction.

V Conclusion

This paper has examined how a reasonable, albeit flawed, tax policy proposal could be defeated by a small but determined interest group. Dunne, as a junior coalition partner, was saddled with the blame for the failure of the proposal and National MPs quickly distanced themselves from the reversal. However, the failure of the proposal did not reflect well on the governing party’s competence. In one of the rare – it seems, the only article – supporting the proposal, Brian Rudman observes:100

A smarter right-wing Government would have latched on to the distortions the taxation system creates in the transport market, and painted the present move as a levelling of the playing field. Instead, it’s making no friends by treating it purely as a simple tax-gathering exercise.

Labour opportunistically attacked the extension of FBT, whereas the Greens were absent until after the event. Yet the proposal was underpinned by sound principles; it would have added equity to the FBT system and furthered desirable transport goals – outcomes any of the major parties might have promoted.

Head, the CEO of CAANZ, described the government back down from the proposal as a ‘pragmatic response’ and said ‘the reality is it’s a democracy and this is politics’.101 It is not obvious which kind of democratic model – beyond plutocracy – is envisaged when a relatively small number of business interests can, in the name of naked self-interest, defeat a rational and fair tax proposal. It is clear from the car park tax story that democratically-elected government’s tax policy can be derailed by a media-savvy interest group. Perhaps the

100 Brian Rudman, ‘Taxing Carparks the Right Move’, The New Zealand Herald (online), 13 March 2013 <http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10870834>. It may be noted that, while promoting horizontal equity in the area of FBT, the National-led government opposes the more significant horizontal equity measure of introducing a general capital gains tax.

101 Small and Mace, above n 74.
proposal was petty in the greater scheme of distributive justice but the message to be learnt is not trivial – in relation to tax policy, spin does matter.
Appendix A: Items Analysed

• Matt McCarten, ‘On Bosses’ Side over Carpark Tax’, *The New Zealand Herald* (online), 17 March 2013
• ‘Editorial: Good Reasons to Ditch Plan for Tax on Carparks’, *The New Zealand Herald* (online), 18 March 2013
• Kate Shuttleworth, ‘Government Backs out of Carpark Tax’, *The New Zealand Herald* (online), 18 March 2013
• Adam Bennett, ‘Tax Backdown Pleases Business’ *The New Zealand Herald* (online), 19 March 2013
• Adam Bennett, ‘iPad Tax’ also Taken off the Table’, *The New Zealand Herald* (online), 19 March 2013
Appendix B: Frames Identified

Positive Frames (number of mentions)

1. Would make the tax system fairer/more equitable (6)
2. Dunne’s ‘It is being pretty reasonable’ (2)
3. Parking subsidies provide a significant untaxed benefit (1)
4. Lack of car park tax encourages people to drive into CBD (1)
5. Lack of car park tax encourages use of bigger cars (1)
6. Lack of car park tax encourages workers to live further away from workplace (1)
7. Lack of car park tax exacerbates rush-hour traffic jams (1)
8. Lack of car park tax creates need for more expenditure on road network (1)
9. Would make public transport more viable (1)
10. Lack of car park tax promotes traffic congestion in CBDs (1)
11. Most opposition comes from people with vested interests (1)
12. Compliance costs of new tax overestimated by opponents (1)

Negative Frames (number of mentions)

1. Compliance costs would exceed amount of tax collected (14)
2. It would only raise NZ$17 million in tax (8)
3. Will impact on some shift workers and create health and safety issues (7)
4. The proposed tax is petty (7)
5. Would cost businesses an extra NZ$1500 per annum for on-premises carparks; NZ$2400 for commercial carparks (5)
6. Discriminatory and inefficient legislation (5)
7. Breaks an election pledge by Key (5)
8. Limiting it to Wellington and Auckland makes it a regional tax (which government previously ruled out) (3)
9. Cost would be passed on to employees (3)
10. Bad policy to restrict the tax to Auckland and Wellington CBDs (3)
11. Complexity of legislation and calculations (3)
12. It will hit low paid workers as well as the high paid executives (3)
13. Damaging to small businesses (3)
14. Unfair because focuses only on Wellington and Auckland (2)
15. A ‘barrel-scraping’ levy (2)
16. Business will get rid of carparks or lower salary rates (2)
17. Affected CBD car park costs will increase by 50 per cent (2)
18. Would push businesses to the fringes of the affected cities (2)
19. A desperate attempt by government to balance its books (1)
20. Contains some ‘nasty fish hooks to look out for’ (1)
21. Increased parking costs (1)
22. It would hurt businesses and workers (1)
23. Difficult for IRD to enforce/administer (1)
24. Creates distortions and inequities, rather than removing them (1)
25. Will reduce competitiveness of the affected CBDs (1)
26. Big business would inevitably find a way round it (1)
27. The expression ‘car park tax’ (1)
28. Would take money from the budgets of inner city schools in the affected cities (1).