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**Private and Confidential**
Tax Counsel Office
Inland Revenue
Via email (public.consultation@ird.govt.nz)

Our ref KPMG feedback on PUB00507

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To whom it may concern

## Feedback on PUB00507 When does the fringe benefit tax exclusion for benefits relating to health or safety apply?

Thank you for the opportunity to provide feedback on the exposure draft Question We've Been Asked (the draft QWBA). We appreciate Inland Revenue's efforts to clarify the application of section CX 24 of the Income Tax Act 2007. However, we have significant concerns that the draft QWBA, if finalised in its current form, will create substantial compliance challenges for employers and may lead to unintended consequences for workplace health and wellbeing.

### Employee wellness

We understand that in recent years there has been an increased uptake in broader wellness offerings provided by employers. This has been in response to employers recognising that work stresses impact employees' private lives and vice versa i.e. it is impossible to delineate between work and personal life in today's modern world.

This also needs to be considered in the wider lens of a strained health system (and particularly mental health system). It can take weeks for individuals to see their GP for a mental health appointment. Many of the offerings that employers are providing are trying to be the ambulance at the top of the cliff, rather than the bottom.

We are of the view that Inland Revenue has taken a very narrow interpretation of what constitutes managing health and safety risks under the Health and Safety at Work Act 2015 (the HSWA). We note that WorkSafe guidance takes a broader approach. We have included some extracts from the *Health and Safety Leadership A guide for small to medium business owners and company directors:*

- "Make sure your system focuses on good health not just safety. Your processes should identify, control and monitor risks to worker health"

- "Ensure your workers receive proper treatment and rehabilitation if they have an injury or ill health at work. Remember their families"

In our experience employers generally consider Employee Assistance Programme (EAP) services (or similar) to be excluded under section CX 24 and this has not been challenged by Inland Revenue in audits. In recent years employers have extended their wellbeing support such

to include meditation apps and telehealth services. Some employers have paid FBT on these, while others considered that they were meeting their health and safety obligations by providing such support.

If the draft QWBA is finalised in its current form, we expect that employers (particularly the small and medium businesses) are likely to face a tough decision between paying FBT and providing employee wellness benefits. This may provide further strain on the health system and workplace safety as early intervention support is removed.

There is also a practical consideration in respect of Example 2 – how is the employer going to be able to apportion the counselling services between work-related stress and additional services. There is strict confidentiality, and it may not be clear for what purpose the employee is accessing the services (maybe not even to the employee themselves as the cause of their stress may be multifactorial). As we understand it, EAP (or similar services) do not report back to employers on who has received the services and why they sought assistance. This is to protect employee privacy, which is crucial when providing this type of support.

**Safety gear**

We refer to Example 5 in respect of hard hats, gloves and hi-vis clothing (safety gear). In our view, these items do **not** constitute a "benefit" for FBT purposes when provided solely for use in the course of employment. They are essential safety equipment, not a private advantage.

If Inland Revenue is of the view that these are benefits, then urgent legislative change should be made so that these types of gear are not required to have the employer's logo to qualify under an exclusion. If employers are required to put logos on safety gear this will come at increased cost and inefficiency which is not beneficial for the New Zealand economy.

**FBT regime**

The conclusions in the draft QWBA highlight the need for a change to the FBT regime. Many benefits listed are not substitutes for remuneration but reflect good employer practice and compliance with HSWA.

Yours faithfully

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