Submission

By

Business NZ

To

Policy Advice Division,
Inland Revenue Department

On

Streamlining the Taxation of Fringe Benefits

27 February 2004

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STREAMLINING THE TAXATION OF FRINGE BENEFITS
SUBMISSION BY BUSINESS NEW ZEALAND
27 FEBRUARY 2004

1. Introduction

1.1 Encompassing five regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, Canterbury Manufacturers' Association, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 53-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

1.2 In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

1.4 The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.

1.5 The tax system has a critical role to play in attracting investment and fostering a dynamic, productive and innovative economy. High tax rates and complex compliance requirements impose significant costs on the community, including lower investment, output, incomes, and employment as well as distortions in behaviour.

1.6 Business New Zealand welcomes the opportunity to comment on the discussion document *Streamlining the Taxation of Fringe Benefits*. We consider tax simplification initiatives to be of high priority, particularly to small and medium sized enterprises, and we have welcomed previous proposals in this area. Employers and tax agents alike consider Fringe Benefit Tax (FBT) to be a critical tax compliance issue and one of the most technically complex to master.

1.7 It is timely for FBT to be reviewed from first-principles. However, although the Review is comprehensive it falls short of our expectations of 'first-principles'.

This is because of an over-emphasis on ensuring the maintenance of existing levels of revenue. The result is a mixed bag of proposals, and while many of them have considerable merit and are warmly welcomed (e.g., low-value benefits, exempting certain business tools), others do not go far enough (e.g., valuation of motor vehicle benefits, work-related vehicles, low-interest loans) and some are retrograde steps that are strongly opposed (e.g., car parks).

2. Summary of Recommendations

2.1 Business New Zealand recommends that:

(a) As a matter of principle, the liability for FBT should rest with the employee;

(b) The proposal to reduce the rate applying to a motor vehicle's cost from 24% to 20% should proceed;

(c) The proposal to allow the use of a vehicle's written-down book value should proceed, provided that the 36% rate is reduced and there is no minimum value for FBT purposes.

(d) The proposal regarding vehicles to amend the definition of a 'day' to that of a 24-hour period commencing from a time elected by the employer should proceed;

(e) The Government should supplement the current definition of 'work-related vehicle' by applying any changes to vehicles that would qualify for the definition but for the fact that they are cars;

(f) The proposal to provide the Commissioner with the power to waive logo requirements for work-related vehicles should proceed;

(g) The proposal to remove car parks from the on-premises exemption from FBT should not proceed;

(h) There should be a minimum threshold for car parks to exclude small benefits and a maximum cap on the amount payable;

(i) The proposed on-line FBT calculator should proceed;

(j) The proposal to enable employers to elect a publicly available market rate for loans to employees should proceed, but that anomalies around the valuation of services should be addressed;

(k) The proposals to increase the thresholds for low-value benefits and to exempt employer health and safety benefits from FBT should proceed; and

(l) The proposal to exempt the use of certain business tools from FBT should proceed.

3. Compliance Costs

3.1 Compliance cost reduction is a top priority for the business community, particularly the SME community. Successive governments have certainly recognised this priority but with few exceptions their initiatives have in aggregate been more likely to increase rather than reduce compliance costs.

3.2 Last July Business New Zealand, in conjunction with KPMG, undertook the first of what will be an annual survey of business compliance cost trends and perceptions (see www.businessnz.org.nz for a copy of the 2003 report). 760 businesses responded to the survey from the very largest to the very smallest across the country and with a wide spread of industries represented. The annual nature of this survey will mean that we will be able to track trends over time, so enabling us to better assess the impacts of policy and legislative changes.

3.3 The survey's key finding was that small enterprises, employing five or fewer employees, bear compliance costs of $3,400 per employee per year. By contrast, an enterprise with over 100 employees faces compliance costs of $538 per employee per year, indicating that small businesses have a compliance burden at least six times higher than larger ones.

3.4 The survey also found that around 30% of compliance costs are tax-related; another 30% are employment-related and around 25% are environment-related. Respondents viewed the Health and Safety in Employment Act as the highest priority for improvement and the compliance area with the largest increase in costs over the past year. The Companies Office was perceived as the most helpful agency and the Environmental Risk Management Authority (ERMA) the least helpful. IRD was middle-ranked in terms of helpfulness.

3.5 There is some good news in the survey's findings - recent tax simplification initiatives, could, for example, be having a positive influence on perceptions on tax. However, meaningful tax compliance cost reduction cannot be achieved without some loss of revenue.

3.6 Tax is normally the greatest reported concern in similar surveys. In this survey, although tax was the top priority for action, it came in second behind the Health and Safety in Employment Act once respondents' top three priorities were combined. The newness of the Health and Safety in Employment Act probably accounted for its high showing. It is, however, part of a package of employment-related costs, including employment relations and holidays that are together causing business great concern.

3.7 Turning specifically to FBT, the survey results revealed that:

- 37% of respondents considered that FBT compliance costs had risen over the preceding 12 months, with 3.5% considering that they had fallen. These findings were similar for the average across all tax compliance cost areas.

- The larger the business the more likely it was to have considered that FBT compliance costs had risen over the preceding 12 months.
- Businesses in the Manufacturing sector were most likely to consider FBT compliance costs to have risen over the preceding 12 months. Those in the Government, Personal and Other Services sector were least likely to have considered that FBT compliance costs had risen.
- There were many comments expressing frustration at FBT, with calls for it to be simplified, clarified, and abolished altogether. The complexity of multi-rate FBT was cited on numerous occasions.

4. General Comments on the FBT Review

4.1 In October 2002 the Government invited employers and other interested parties to forward their concerns about FBT as a first step in its FBT Review. FBT is one of the biggest tax compliance issues for employers and tax agents alike and is regarded as being one of the most technically complex area of tax to master[1]. It is hardly unsurprising therefore that undertaking a first-principles review of FBT was one of the recommendations of the 2001 Ministerial Panel on Business Compliance Costs. Business New Zealand provided a submission in December 2002.

4.2 Business New Zealand appreciates the opportunity to provide further comment – this time on specific proposals contained in the Government discussion document *Streamlining the Taxation of Fringe Benefits*. Overall, we find the discussion document to be comprehensive and it touches on the key compliance issues around FBT. However, we consider the document's proposals to address these issues to be a decidedly mixed bag.

4.3 While Business New Zealand supports a number of the document's proposals (e.g., making the private use of employer-owned business tools exempt from FBT, increasing the thresholds for low-value benefits, exempting benefits provided by employers as part of health and safety obligations, etc), others do not go far enough (e.g., proposals on the valuation of motor vehicles), and others are in our view retrograde steps (e.g., treating car parks the same regardless of whether they are on or off premises).

4.4 The key problem is that while the FBT Review was intended to be a 'first-principles review', the requirement for its outcome to be revenue neutral has unduly constrained the Review by forcing it to find ways to compensate for proposals that would cause a revenue loss. For example, while we can understand the principle behind the proposal to end the difference in FBT treatment for assets that are owned, leased, or licensed, the completely unprincipled decision with respect to on-versus-off premises car parks sees an encroachment on the important principle that benefits enjoyed on-premises should be exempt from FBT. The only credible rationale for this decision is that it would bring in a significant amount of revenue, probably more than making up for revenue losses resulting from some of the other proposals contained in the discussion document.

4.5 This overriding constraint on the FBT Review to be revenue neutral means that it gives with one hand and takes away with the other. On such a basis the Review cannot get to the heart of the key business concerns about FBT.

4.6 The remainder of this submission comments on the specific issues presented in the discussion document.

[1] IRD's own research, cited on page 4 of the discussion document, found that FBT was the second most important tax-related compliance issue for employers. It was also the second biggest issue for tax agents and their most significant technical tax issue. FBT was also regarded as one of the most significant wastes of tax agents' time

5. Who Should Pay FBT?

5.1 In its original submission in 2002, Business New Zealand recommended that the Review should consider whether the liability for the payment of FBT should lie with the employer or the employee. This issue is addressed in Chapter 4 of the discussion document.

5.2 The discussion document accepted that FBT is a tax on individual benefits and that it would be possible to collect it from employees through the PAYE system with an end-of-year square up through the tax return process. It also observed that there could be benefits from equity and economic efficiency perspectives. However, the document also noted that:

Because employers would still need to calculate benefits and attribute them to individual employees, changing who pays the tax is unlikely to result in any material compliance savings for employers, although it may obviate their need to undertake multi-rate calculation. Overall compliance costs would probably increase for employees. Furthermore, if benefits could not be attributed, the tax impost would probably remain with the employer.

5.3 The discussion document concludes that most of the advantages of integrating FBT into PAYE could be achieved without shifting who pays the tax and it noted that the Government is already working on improvements to the way FBT is calculated and returned. The Government therefore considers that employers should continue to pay FBT.

5.4 As a matter of principle, Business New Zealand maintains its position that liability for FBT should rest with the employee. We also agree with the equity and economic efficiency advantages that were raised in the discussion document. In practice, though, we accept that there would be difficulties in implementation, particularly the significantly increased compliance costs for employees without a significant reduction in compliance costs for employers.

5.5 Improving access for employers to on-line calculation tools should assist to some extent, but such an initiative on its own would not change the underlying issue that employers will continue to be subject to a significant compliance burden, a burden that IRD acknowledges to be very real.

5.6 Employers might be more accepting of FBT if it were more substantially reformed but, as observed earlier in this submission, the proposals contained in the discussion document are a mixed bag and do not go to the heart of employer concerns. Hence there will continue to be strong employer complaints about FBT and there will continue to be calls to abolish FBT altogether or make employees liable for FBT.

5.7 *Recommendation: Business New Zealand recommends that, as a matter of principle, the liability for FBT should rest with the employee.*

6. Valuation of Motor Vehicle Benefits

6.1 Chapter 5 of the discussion document addresses the valuation of motor vehicle benefits. In its original submission Business New Zealand recommended that the Review should consider whether FBT should be levied on the depreciated value of motor vehicles.

6.2 The discussion document makes the following proposals:

- Owners would have the choice of calculating the benefit based on the vehicle's book value (to a minimum value of $3000) or, as at present, its cost.
- The rate applying to either the cost price or the book value would be reduced in recognition of lower real motoring costs since the rate was set in the early 1980s. This would reduce the rate from 24% to 20% of cost. The equivalent rate under the proposed book value option would be 36%.
- The incentive to use various leasing structures to reduce FBT liability would be removed, by aligning the treatment of leased vehicles with that of owned vehicles. This would mean that the benefit in respect of a leased vehicle would be based on either cost or book value. Market value (at a rate of 27%) could, however, be used if information on the cost or book value could not be easily obtained.
- Each employer would have the option to elect the start time for a day, which would be consistently applied in calculating the motor vehicle fringe benefit.

6.3 Business New Zealand welcomes the proposed reduction in the rate applying to a motor vehicle's cost value from 24% to 20%. This is a long overdue recognition that motor vehicle running costs have fallen since FBT was introduced – and that motor vehicle fringe benefits have been significantly over-taxed for some time.

6.4 *Recommendation: Business New Zealand recommends that the proposal to reduce the rate applying to a motor vehicle's cost from 24% to 20% should proceed.*

6.5 We also support the option of using the vehicle's written-down book value. However, we note that the amount of FBT payable under the book value option is unlikely to fall despite the diminishing value of the vehicle. This is because the FBT will be levied at a higher rate of 36% (being the diminished value rate equivalent to the 20% of cost straight-line rate).

6.6 The 36% rate for the written-down book value option is clearly a revenue saving device and negates the original premise of the option – recognition of the value of the benefit declining over time. The result is that in the earlier years in the life of a vehicle the FBT amount will be considerably higher than at present, with the benefit of diminishing value not being realised until the vehicle is somewhat older. However, even then we find that a floor of $3,000 is being proposed as a minimum value for FBT purposes so making the option even less attractive. Business New Zealand predicts that the 36% rate and the minimum value will significantly discourage the use of the book value option.

6.7 *Recommendation: Business New Zealand recommends that the proposal to allow the use of a vehicle's written-down book value should proceed, provided that the 36% rate is reduced and there is no minimum value for FBT purposes.*

6.8 Business New Zealand notes that aligning the treatment of leased vehicles with owned vehicles will mean the end of 1+1+1 leases. These have been used to effectively reduce the value of a motor vehicle to a diminished market value. Although we accept that there is no policy justification for the different treatment of leased as opposed to owned vehicles, the end of these leases will be costly for many businesses that have entered into such arrangements that have been permitted up to this time.

6.9 Business New Zealand supports the change in definition of a day to that of a 24-hour period commencing from a time elected by the employer rather than the existing calendar day. This should address the present anomaly where an employee takes a vehicle home overnight but the vehicle is considered to be available for private use for two days (rather than one).

6.10 *Recommendation: Business New Zealand recommends that the proposal regarding vehicles to amend the definition of a 'day' to that of a 24-hour period commencing from a time elected by the employer should proceed.*

7. Work-Related Vehicles

7.1 Chapter 6 of the discussion document addresses work-related vehicles. In its original submission Business New Zealand asked the Review to look into the compliance cost implications of making changes to the rules around work-related vehicles. As the discussion document observes, submitters consider the problem with the existing definition to be that the exemption for a 'work-related vehicle' focuses on the type and appearance of the vehicle rather than the purpose to which it is put. The definition is also regarded to be inflexible and fails to keep up with changing work practices. Business New Zealand concurs with these concerns.

7.2 The discussion document observes that there would be no problem if the vehicle was used solely for work purposes and no private element arose. However, it also acknowledges that incidental private use will inevitably occur from time to time, so requiring an 'exclusion mechanism'.

7.3 Business New Zealand agrees that logbooks, while being an accurate measure of work versus private use, would involve a significant compliance burden for all concerned. We would therefore not recommend the use of logbooks for FBT purposes. We also agree though that the current regime causes a number of distortions and inequities, as described in the discussion document.

7.4 Despite the concerns expressed by submitters, the discussion document does not make any specific proposals to change the definition of 'work-related' vehicle. It does discuss some options for simplifying the definition, but these are subject to a requirement that behaviour is not changed in order to maintain the tax base (another example of the constraint faced by the FBT Review) and the Government states that it is not committed to any of them.

7.5 The options for change are:

- Extending the current exemption by widening the definition of 'work-related vehicle' to include any vehicle, subject to certain safeguards;
- Replacing the exemption with a minimum taxable value that also covers cars;
- Replacing the exemption with a charge for per-kilometre private use for vehicles that meet a widened definition of 'work-related vehicle';
- Supplementing the current definition by applying any changes only to vehicles that would qualify for the definition of 'work-related vehicle' but for the fact that they are cars; or
- Replacing the exemption with a charge for per-kilometre private use for vehicles that meet the current definition of 'work-related vehicle'.

7.6 All but one these five options would result in higher compliance costs due to requirements to assess the level of private use or actual benefits (e.g., through the use of logbooks). However, the fourth option listed above (i.e., supplementing the current definition by including cars that would qualify for the definition of 'work-related vehicle') is clearly the best option as it would address many of the concerns expressed by submitters about the problems associated with the focus on type and appearance of the vehicle, while not going the way of additional compliance requirements that are the feature of the other options discussed.

7.7 Not surprisingly Government does not favour this option due to concerns about the potential for revenue loss and that there would be behavioural and enforcement issues arising from increased incentives to characterise cars in order to meet the new requirements.

7.8 Business New Zealand does not accept the discussion document's concerns about revenue loss. As discussed earlier in this submission, we consider that any first-principle review of FBT needs to assess any and all proposals on their merits and that existing revenue levels should not be the overriding consideration. As for the concerns about behaviour and enforcement, these are directly related to their likely impact on revenue. Business New Zealand submits that the Government should therefore adopt the fourth option listed above.

7.9 *Recommendation: Business New Zealand recommends that the Government should supplement the current definition of 'work-related vehicle' by applying any changes to vehicles that would qualify for the definition but for the fact that they are cars.*

7.10 The only change proposed under Chapter 6 is to give the Commissioner power to waive the logo requirement if the employer can demonstrate that the requirement would seriously compromise the nature of the business undertaking sensitive activities (e.g., in the health sector). This would appear to be a sensible proposal.

7.11 *Recommendation: Business New Zealand recommends that the proposal to provide the Commissioner with the power to waive logo requirements for work-related vehicles should proceed.*

8. Car Parks

8.1 Chapter 7 of the discussion document addresses issues around car parks. The discussion document proposes that there would no longer be any FBT distinction between car parks regardless of whether they are leased or licensed, or even provided on-premises.

8.2 Business New Zealand agrees with other submitters and the Government that the treatment of different types of car parks has been arbitrary and that treatment should be made more consistent. However, while we can see a case for equalising the treatment of off-premises car parks regardless of legal form, we are strongly opposed to removing the existing 'on-premises exemption' which exempts a wide range of benefits provided by employers.

8.3 Business New Zealand is strongly opposed to removing car parks from the on-premises exemption. To do so would be an unprincipled and retrograde step. In reality, this proposal is all about expanding the FBT tax base and the discussion document concedes this point: "Consequently, significantly more employee-provided car parks would be subject to FBT, irrespective of their legal form or whether they are on or off-premises"[2]. Recalling the overriding requirement for the discussion document's proposals to be revenue neutral, this dramatic proposal to expand the FBT base must be motivated by a need to compensate for revenue losses elsewhere as a result of other proposals.

8.4 As well as making FBT more complex for those employers that currently pay FBT, making on-premises car parks subject to FBT would significantly increase the exposure of FBT among the many employers who currently do not provide any fringe benefits to their staff apart from on-premises car parks. These employers are likely to be less than expert at dealing with FBT issues and could face a steep learning curve. Removing car parks from the on-premises exemption would therefore run completely contrary to the rationale behind having the Review – that FBT should be 'streamlined' and 'simplified'.

8.5 Although the discussion document makes no mention of environmental considerations, the only other possible motivation for the car park proposal would appear to be to 'encourage' people out of their cars by discouraging the provision and the use of car parks. Business New Zealand has been aware of a number of areas (notably transport and energy) where 'MMP considerations' have dictated policy and we would be concerned if this were to spread and impact negatively on New Zealand's business environment and economic growth potential.

[2] See page 40 of the discussion document.

8.6 For many employers the provision of car parks is not a 'perk', but a necessary condition of employment and even a health and safety obligation – particularly where many employees work out of normal business hours (e.g., shift workers). Even our largest cities with well-developed public transport services have few if any services that run late at night or in the early hours of the morning. Discouraging the provision of car parks would add cost and time for employees travelling to and from work, particularly those having to travel outside normal business hours. As a result, such a policy would be inconsistent with policies designed to make work more 'family friendly' and could expose employees to a greater risk of falling victim to crime.

8.7 It is important to recognise that car park benefits are arbitrary to the extent that the user is not usually able to choose their location (and thus the extent of the 'value' of the 'benefit'). As a result, the employer paying FBT on a car park will be faced with an arbitrary element of cost in that an Auckland or Wellington location will always cost more than one in Gore, for example. Also, costs of car parks can change frequently, may not be constant in the same location or even in the same car park, and local authority regulations will often have a significant influence on the cost. All of these involuntary variables constitute further compliance complexity.

8.8 More generally, Business New Zealand is also concerned about the precedent of removing car parks from the general on premises exemption. We would be most concerned if this were to result in other 'benefits' being removed from the on-premises exemptions (e.g., showers, bathrooms, kitchens, and Friday night drinks).

8.9 *Recommendation: Business New Zealand recommends that the proposal to remove car parks from the on-premises exemption from FBT should not proceed.*

9. Valuation of Car Parks

9.1 Chapter 8 of the discussion document addresses the valuation of car parks. With the proposal to remove the on-premises exemption for car parks their valuation obviously becomes a significant issue. In the case of car parks provided on-premises the value of the fringe benefit would be based on identifying the cost of alternative parking that the employee would have to obtain if the employer had not provided the car park.

9.2 The discussion document recognises that in areas where free or inexpensive car parking is available, FBT on the employer-provided car park would be nil or very low. On the other hand, the value would be much higher in areas where car parking is more expensive.

9.3 Business New Zealand is strongly opposed to removing the on-premises exemption for car parks. Doing so is likely to be very expensive for employers in the central business districts of Auckland, Wellington and Christchurch in particular. While the costs of car parking in rural and provincial areas is very low in comparison, the compliance costs for rural, provincial, and suburban employers in dealing with FBT on their car parks could be much higher than the revenue raised from them.

9.4 Without prejudice to our recommendation above opposing any removal of the on-premises exemption for car parks, we submit that there should be a minimum threshold for car parks to exclude small benefits and a maximum 'cap' on the amount payable.

9.5 *Recommendation: Business New Zealand recommends that there should be a minimum threshold for car parks to exclude small benefits and a maximum cap on the amount payable.*

10. Multi-Rate Calculation

10.1 Chapter 9 of the discussion document addresses issues around multi-rate FBT. The introduction in 2000 of multi-rate FBT was a consequence of introducing the 39% personal tax rate for incomes over $60,000. Moving from a single to a multi-rate system inevitably increased the complexity of FBT and the compliance burden.

10.2 The 2001 Report of the Ministerial Panel on Business Compliance Costs noted the additional complexity associated with multi-rate FBT and recommended that the Government should consider reverting to a single rate, a recommendation that the Government did not agree to.

10.3 The discussion document makes the following proposals on the multi-rate calculation:

- Employers who file their FBT returns on-line with IRD would have access to an on-line electronic calculator that would undertake the end-of-year multi-rate calculation for them.
- Other options are to replace the FBT multi-rate calculation with a simpler calculation (e.g., using the employee's top rate of marginal tax) or apply a single rate of 54% that produces the same revenue outcome.

10.4 Business New Zealand has received mixed feedback from the business community on multi-rate FBT. While some employers have expressed concern about its complexity and would support a return to a single rate, others have reported to us that they have been able to reduce the amount of FBT paid thanks to their ability to take advantage of lower rates that apply to benefits to employees on low middle and incomes.

10.5 Business New Zealand would support the development of an on-line FBT calculator to assist employers and also reduce the likelihood of errors and therefore penalties being applied. An on-line calculator would go some way to easing the compliance burden while retaining the ability to take advantage of saving money. However, we note that the amount of information needed by the calculator might be more than at present.

10.6 The proposal to use the employee's highest marginal tax rate to simplify the FBT calculation would appear to have some merit from the perspective of reducing compliance costs, although we note that it might be less accurate and therefore increase the employer's end-of-year FBT liability. We would also be concerned if its adoption required the Government having to introduce further anti-avoidance rules (so further increasing the regulatory burden).

10.7 On balance, Business New Zealand submits that, although it is more complex than a single rate, the existing multi-rate system should be maintained as it can provide savings for businesses. This is provided that IRD makes a reliable on-line calculator available as soon as possible.

10.8 *Recommendation: Business New Zealand recommends that the proposed on-line FBT calculator should proceed.*

11. Charities

11.1 Chapter 10 of the discussion document addresses the existing exemption for charities. It proposes that the existing exemption for charities should be maintained but that the ability for charities to provide their employees with credit cards as a significant proportion of their remuneration should be closed off.

11.2 Business New Zealand has no comment to make on this chapter.

12. Loans to Employees

12.1 Chapter 11 of the discussion document addresses low-interest loans to employees. It proposes that the benefit received from loans would be valued with reference to either the prescribed rate of interest (set by Order in Council and reviewed on a quarterly basis) or a publicly available market rate (generally the 'carded rate' offered by a member of the New Zealand Banker's Association). Employers would be able to elect which method to use, with the election binding for five years and applying to all their loans to employees. The 'publicly available market rate' would be defined to include discounted rates available to employees other than by reason of their employment.

12.2 Submitters suggested that the Government should move away from setting a quarterly interest rate for low-interest loans. The proposal that employers would be able to elect the use of a publicly available market rate would therefore be a welcome move.

12.3 However, we understand that the Government is not proposing to change the rules for valuing services, which includes low-interest loans. The current rules can result in an anomaly on occasions when a financial services provider offers a special rate to a large employer. If this provider offers a rate below the prevailing market rate (or prescribed rate) to the employer's staff, then there is a fringe benefit, which becomes taxable. We have been advised that the problem arises from the fact that discounts on financial services are benchmarked against a market 'carded rate', which may in fact be higher than many members of the public pay.

12.4 *Recommendation: Business New Zealand recommends that the proposal to enable employers to elect a publicly available market rate for loans to employees should proceed, but that anomalies around the valuation of services should be addressed.*

13. Low-Value Benefits

13.1 Chapter 12 of the discussion document addresses low-value benefits. It proposes that:

- The employee-related threshold for minor fringe benefits would be raised from $75 to $200 per quarter;
- The employer-related threshold would be raised from $450 to $2,000 per quarter; and
- Benefits that arise in relation to employer health and safety obligations would be exempt from FBT.

13.2 Business New Zealand expressed concern in its earlier submission about the very low thresholds that are currently in place for low-value benefits and we also submitted that employer health and safety benefits should be exempted from FBT.

13.3 Business New Zealand welcomes the proposals on low-value benefits. The thresholds are now at far more realistic levels, which should reduce uncertainty for many employers who are currently close to the thresholds and are having to regularly ascertain whether they are under or over. We do note however that the aggregate limit discriminates against larger employers (and by extension their employees) and that it would be fairer for all concerned to have a per employee limit.

13.4 We also welcome the proposed exemption for health and safety benefits (effectively equalising the treatment between health checks, vaccinations, and counselling provided on and off-premises). This recognises the obligations faced by employers in meeting the Health and Safety in Employment Act.

13.5 *Recommendation: Business New Zealand recommends that the proposals to increase the thresholds for low-value benefits and to exempt employer health and safety benefits from FBT should proceed.*

14. Exemption for the Use of Certain Business Tools

14.1 Chapter 13 of the discussion document proposes exemptions for the private use of certain business tools. It proposes that the private use (and availability for private use) of employer-owned business tools (e.g., cell phones and lap-top computers) would be exempt from FBT if the tools were provided to the employee primarily for business purposes.

14.2 Business New Zealand welcomes this proposal. It is likely that any private benefit from the use of such tools would be only incidental and would not have the character of remuneration. It is also both difficult and costly to monitor and value any private use.

14.3 *Recommendation: Business New Zealand recommends that the proposal to exempt the use of certain business tools from FBT should proceed.*

15. Minor Issues

15.1 Chapters 14 and 15 address other 'minor' issues. Business New Zealand has no comment on these chapters, other than to note our support for the proposals on income protection insurance and the extension of the on-premises exemption to include premises of a group company.

16. Payment Dates

16.1 Although not covered in this discussion document, Business New Zealand has supported previous proposals to align payment dates, most recently in its submission last October to the IRD discussion document *Making Tax Easier for Small Business* where options to align GST and Provisional Tax were floated. There is likely to be some merit in aligning the payment dates of FBT and PAYE, although doing so would require employers to file returns and make payments more frequently than the current quarterly or annual FBT returns.

16.2 Consistent with the approach taken by the discussion document *Making Tax Easier for Small Business*, it would have been useful if this discussion document could have included proposals on aligning FBT and PAYE for the consideration of submitters.

17. Conclusion

17.1 Overall Business New Zealand considers the proposals contained in the discussion document to be a decidedly mixed bag, reflecting the constraint placed on the Review that it must preserve the existing quantum of FBT revenue. While many of the proposals have considerable merit and would be warmly welcomed by employers (e.g., low-value benefits, exempting certain business tools), others do not go far enough (e.g., valuation of motor vehicle benefits, work-related vehicles, low-interest loans) and some are retrograde steps that would be strongly opposed (e.g., car parks).

17.2 Business New Zealand considers that the Review would have come to a consistently better package of recommendations if it had been based on first-principles and not been constrained by the overriding requirement to ensure that proposals that costing revenue were compensated by others that would gain revenue.