



Class Ruling

Fringe benefits tax: Tyack Corporate Health program

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provision dealt with in this Ruling is:

- section 58M of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

All subsequent legislative references in the Ruling are to the FBTAA unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is employers who make the Tyack Corporate Health Program (the program) available to their employees.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 27 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 April 2008. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. These documents or relevant parts of them form part of and are to be read with the description.
10. The relevant documents or parts of documents incorporated into this description of the scheme are:
 - the application for a Class Ruling dated 25 September 2008;
 - additional information provided in the letter dated 20 February 2009;

- the health and lifestyle questionnaire that is completed by participants prior to their participation in the program; and
- examples of the recipes for sample foods provided at the presentation.

11. Tyack Health Pty Ltd trading as Tyack Corporate Health provides a comprehensive, results-focussed preventative medicine program (the program) that is designed to reduce workplace related injury, reduce absenteeism, improve employee engagement, performance, life balance and personal relationships, increase productivity and reduce stress.

12. The program is available in three different levels (gold, silver and bronze). Although the levels differ in price and level of content each of the levels include:

- a series of tests and appraisals which are used to provide a personalised Health Risk Analysis report;
- an interactive information session; and
- a vitality challenge.

13. The different levels enable the program to be customised to take account of the specific risk profile of the participants. For example, a program for executives may involve medical experts undertaking appraisals, whereas the appraisals in a program for non-executive staff are more likely to be undertaken by nurses or exercise physiologists.

14. The key features of the program are as follows:

- it is a positive psychology based program that aims to show participants how they can change their lifestyle habits to not only prevent lifestyle related diseases but also reverse the early onset of such diseases;
- it is offered to employers who have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties;
- the opportunity to participate in the program will not be provided to employees as a reward for services rendered; a reward for specific achievements; or as part of a salary sacrifice arrangement; and
- the program is conducted by a team of medical and health care professionals including a preventative medicine specialist medical practitioner, a sports medicine physician, a cardiac scientist and exercise physiologist, a physiotherapist with a degree in exercise science, a chiropractor trained in neuromusculoskeletal rehabilitation, a podiatrist, a registered nurse and a psychologist.

15. At the beginning of the program a participant will be contacted by phone or email and given an access code for a health and lifestyle questionnaire that is accessed from the Tyack website. The questionnaire covers areas such as family medical history, personal medical history, immunisations, diagnostic tests, the employee's physical activity, the employee's eating habits, alcohol use, tobacco use, drug use and sleep hygiene.

16. Following the completion of the questionnaire the participant will be sent pathology request forms to enable various tests to be undertaken. Once the results of the tests are received by Tyack the participant will be given a date and venue to attend for a series of appraisals and a group session.

17. The appraisals and group session may be held at the employer's business premises or at a local function venue. Alternatively, the testing centre at the Tyack Health Medical Centre may be used in which case transportation will be provided from Brisbane or the Gold Coast.

18. Prior to commencing the appraisals the participants view a five minute introduction DVD developed by a professional motivational speaker and health comedian. This is followed by a presentation that outlines the format of the day and introduces the medical staff, their expertise and their roles.

19. Following the introduction participants are directed to eight appraisal stations which they rotate through while undertaking an array of appraisals in the following areas:

- pathology and skin cancer check;
- physiological;
- musculoskeletal;
- podiatry;
- cardiovascular;
- neurological;
- nutrition; and
- sports medicine.

20. Within each station a full appraisal of the participant's health relating to the particular health focus is undertaken and a results sheet is given to the participant. The results sheet:

- indicates whether there is a problem in the particular area;
- if there is a problem the urgency with which it needs to be addressed; and
- an indication of the health age of the participant.

21. Following the individual appraisals participants come back to a group session conducted by a doctor, a dietician, an exercise physiologist, a performance consultant and a psychologist. Partners of participants are invited to attend this presentation.

22. During the group session participants and their partners are able to sample examples of a balanced diet prepared by a chef. The food is provided to demonstrate that there are plenty of healthy viable meal options which are quick and easy to prepare. The samples include options for breakfast, lunch and dinner, plus ideal snack foods.

23. The group session is followed by a 20 minute motivational DVD featuring the motivational speaker/comedian to close the program on a high and to motivate participants to make changes where required.

24. At the conclusion of the group session the participants receive two books. The first book written by the motivational speaker contains 100 tips to change your life. The tips relate back to the speaker's message of healthy change and improvement in one's lifestyle. The second book corresponds directly with the meal options discussed in the group session. It contains recipes for over 100 easy to follow, easy to prepare healthy meals and includes the recipes for the food samples provided during the group session.

25. Each member of the assessment team then writes a report of findings regarding the specific issues they observed for each participant. These reports together with the information collected from the online survey and the pathology tests are collated by the head doctor who provides an overall health report, recommendations and health score.

26. This report is provided to the participant about a week after the appraisals and group session. Where the participant agrees, a copy of the report is also sent to the participant's doctor. All issues of concern raised in the program will be directed back to the participant's doctor for further referral onto other specialists where relevant.

27. Each participant also undertakes a vitality challenge which requires the participant to meet with an exercise physiologist once a month for 12 months to set individual health targets, adopt a plan to achieve them and assess the participant's progress in achieving the targets.

Ruling

28. The advice and information provided to an employee at the group session will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).

29. The advice and information provided to an associate of an employee at the group session will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).
30. The sample food provided to an employee and their associate at the group session will be an exempt benefit under subparagraph 58M(1)(b)(iv) where the counselling provided at the group session is the only reason for that food being provided.
31. The two books provided to the employee at the group session will be an exempt benefit under subparagraph 58M(1)(b)(iv).
32. The transportation provided to and from the appraisals and group session will be an exempt benefit under subsection 58M(2).
33. The provision of the personalised Health Risk Analysis report to an employee will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the examinations are made available to all employees who are likely to be at risk of suffering from work-related trauma, who perform their duties of employment at or near the place where the employee performs his or her employment and whose duties are similar to those of the employee.
34. Each of the monthly consultations undertaken by an employee as part of the vitality challenge will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the consultations are made available to all employees who are likely to be at risk of suffering from work-related trauma, who perform their duties of employment at or near the place where the employee performs his or her employment and whose duties are similar to those of the employee.

Appendix 1 – Explanation

ⓘ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Will the participating employees and their associates receive a fringe benefit?

35. In general terms, the definition of 'fringe benefit' in subsection 136(1) provides that an employer will be liable to pay fringe benefits tax on the provision of a 'benefit' to an employee, or an associate of an employee in respect of the employee's employment unless the benefit is an exempt benefit. For the purpose of this ruling the relevant exempt benefits to be considered are the exemptions contained in section 58M.

What benefits will be received by a participating employee and their associate?

36. The term 'benefit' is defined in subsection 136(1) to include:

any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property...

37. Divisions 2 to 12 of Part III divide benefits and fringe benefits into different categories. One of these categories is a 'property benefit' which is defined in subsection 136(1) as being a benefit referred to in section 40 that is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III. Section 40 provides that the provision of property to another person will be a benefit. 'Property' is defined in subsection 136(1) to mean 'intangible property' and 'tangible property'. Both of these terms are also defined in subsection 136(1).

38. An employee participating in the program will receive the following property benefits:

- two books; and
- sample food.

39. Section 45 provides that a benefit that does not come within Divisions 2 to 11 of Part III will be a residual benefit. This may include the provision of a 'service'. In this regard, 'service' is defined by the *Macquarie Dictionary*¹ to mean '2. the supplying or supplier of any articles, commodities, activities, etc., required or demanded.'

40. An employee participating in the program may receive the following services:

- transportation to and from the appraisals and group session;
- advice and information about various health related issues at the group session;
- a Health Risk Analysis report which will be provided to the employee and his or her doctor approximately one week after attending the appraisals and group presentation; and
- advice and information at the consultations undertaken once a month for twelve months with an exercise physiologist.

41. Although each of these services are provided as part of the program they are separate services provided at a different point in time. Therefore, as the services do not come within Divisions 2 to 11 of Part III, each of the services will be a separate residual benefit.

42. An associate of an employee who attends the group session may receive the following benefits:

- sample food; and
- advice and information about various health related issues.

43. In accordance with the discussion in paragraphs 37 to 40 of this Ruling, the sample food will be a property benefit and the advice and information will be a residual benefit.

The application of section 58M

44. In broad terms, section 58M provides an exemption for:

- 'work-related medical screening' of the employee;
- 'work-related preventative health care' of the employee; and
- 'work-related counselling' of the employee, or of an associate of the employee.

¹ The Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

45. In explaining the circumstances in which these exemptions will apply, the Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 stated in Part B:

... 'work-related medical screening' is being defined under amendments proposed by clause 48 to mean, broadly, an examination or test carried out by a medical practitioner, nurse, dentist, optometrist or audiometrist for the purpose of determining whether the employee is suffering from an injury or illness related to the employee's employment. It is also a requirement for exemption that the examination or test is carried out as part of a screening program which applies generally to employees with similar work-related risks.

... 'work-related preventative health care' is being defined under amendments proposed by clause 48 to mean, broadly, any form of care provided by a medical practitioner, nurse, dentist or optometrist for the purpose of preventing the employee from suffering from an injury or illness related to the employee's employment. It is also a requirement for exemption that the care is provided as part of a screening program which applies generally to employees with similar work-related risks. The provision of drugs, vaccines or other medical preparations in connection with the preventative health care will also be exempt.

... 'work-related counselling' is being defined under amendments proposed by clause 48 to mean, broadly, individual or group counselling (e.g., a seminar) related to matters such as safe work practices, stress management, fitness, drug or alcohol abuse or retirement problems. It is also necessary that the benefit is provided by the employer in order to improve or maintain the efficiency of employees or to prepare them for retirement and not as a form of remuneration.

46. In considering whether any of these exemptions apply to the benefits provided as part of the program it is necessary to consider:

- paragraph 58M(1)(b) in relation to the property benefits; and
- paragraph 58M(1)(c) in relation to the residual benefits.

47. Where neither of these exemptions apply to a benefit provided under the program, the exemption contained in subsection 58M(2) will need to be considered.

48. In broad terms, subsection 58M(2) ensures that travel costs which are associated benefits incurred in attending 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling' will also be exempt. Benefits that qualify for this exemption are defined in section 143E.

Which property benefits are exempt under paragraph 58M(1)(b)?

49. Paragraph 58M(1)(b) provides that a property benefit will be an exempt benefit where the recipients property is **required solely** for the purposes of a 'work-related medical screening' of the employee, 'work-related preventative health care' of the employee, or 'work-related counselling' of the employee or of an associate of the employee.

50. Neither 'required', nor 'solely' are defined within the FBTAA. Therefore, it is necessary to consider the ordinary meanings of these words.

Required

51. The *Macquarie Dictionary* defines the word 'require' to mean amongst other things:

1. to have need of; need: *he requires medical care.*

52. This meaning corresponds to in the Administrative Appeals Tribunal decision in *Compass Group (Vic) Pty Ltd (as Trustee for White Roche & Associates Hybrid Trust) v. FC of T (Compass Group)* [2008] AATA 845; 2008 ATC 10-051. Here, SA Forgie (Deputy President) at paragraph 65 referred to the judgment of Hill J in *Roads and Traffic Authority of New South Wales v. Federal Commissioner of Taxation* (1993) 43 FCR 223; (1993) 26 ATR 76; 93 ATC 4508 and said 'the word 'require' does not contemplate choice'.

53. The presence of the word 'required' was also discussed in *Dingwall v. Federal Commissioner of Taxation* (1995) 57 FCR 274; 30 ATR 498; 95 ATC 4345. At ATC 4351; ATR 504 O'Loughlin J said:

It [required] must take its meaning from the context in which it is found; so much is clear from the decision of the House of Lords in *Smith v. National Coal Board* [1967] 2 All ER 593 per Lord Guest at 599.

54. In the context of paragraph 58M(1)(b) the property must be required or needed 'solely' for one of the listed purposes.

Solely

55. The presence of the word 'solely' was discussed in *Randwick Corporation v. Rutledge* (1959) 102 CLR 54. At page 94 Windeyer J. said:

When such words [as 'exclusively' or 'solely'] are present, it is a question of fact whether the land is being used for any purpose outside the stipulated purpose ... As Kitto J. said in *Lloyd v. Federal Commissioner of Taxation* (1955) 93 CLR 645, at p 671, such words confine the use of the property to the purpose stipulated and prevent any use of it for any purpose, however minor in importance, which is collateral or independent, as distinguished from incidental to the stipulated use.

Required solely

56. In combining these discussions in the context of paragraph 58M(1)(b), the screening, health care or counselling must be the only reason for the property being provided.

Which residual benefits are exempt under paragraph 58M(1)(c)?

57. In considering whether a residual benefit consists of 'work-related medical screening' of an employee, 'work-related preventative health care' of an employee or 'work-related counselling' of an employee or associate of an employee it is appropriate to consider the following questions.

(a) What is the benefit that is being provided to the employee or associate?

58. 'Work-related medical screening' involves an examination or test, whereas 'work-related preventative health care' involves a form of care and 'work-related counselling' involves counselling.

59. In applying this test:

- neither examination, nor test are defined in the FBTA. The *Macquarie Dictionary* defines the word 'examination' as '1. ... 2. the state of being examined. ...' and 'test' as '1. that by which the presence, quality, or genuineness of anything is determined; a means of trial. 2. ... 5. *Psychology* a standardised procedure for eliciting responses upon which appraisal of the individual can be based ...'
- 'Counselling' is defined in subsection 136(1) to 'include the giving of advice or information in a seminar'.
- 'Care' is not defined in the FBTA. However, the definition of 'health care' in subsection 136(1) indicates it will include any examination, test or form of care (whether therapeutic, preventative or rehabilitative) that is related to the physiological or psychological health of a person. The *Macquarie Dictionary* defines the word 'care' as '1...4. protection; charge: *under the care of a doctor.*' Care for is defined as 'a ... c to look after; make provision for'.

(b) Who is providing the benefit?

60. To be 'work-related medical screening' or 'work-related preventative health care' the benefit must be provided by or on behalf of certain categories of medical professionals.

61. The phrase 'on behalf of' is not defined for the purposes of the FBTA. The *Australian Oxford Dictionary*,² defines the term 'behalf' or 'on behalf of' as:

behalf n. **on** (US in) **behalf of** (or **on a person's behalf**) 1 in the interests of (a person, principle, etc.). 2 as representative of (*acting on behalf of my client*).

62. In *Cuthbertson & Richards Sawmills v. Thomas* (1999) 93 FCR 141 the meaning of the phrase 'on behalf of' was discussed. It was stated that the phrase does not have a strict legal meaning. The court referred to *R v. Toohey; Ex parte Attorney General (NT)* (1980) 145 CLR 374 at 386 where Stephen, Mason, Murphy and Aickin JJ referred to the phrase in these terms:

... it bears no single and constant significance. Instead it may be used in conjunction with a wide-range of relationships, all however, in some way concerned with the standing of one person as auxiliary to or representative of another person or thing.

... Context will always determine to which of the many possible relationships the phrase 'on behalf of' is in a particular case being applied; 'the context and subject matter' (per Dixon J in *R v. Portus; Ex parte Federated Clerks Union* (1949) 79 CLR 428) will be determinative.

63. 'Auxiliary' is defined in the *Macquarie Dictionary*:

1. giving support, helping, aiding or assisting

64. In the context of the definition of 'work-related medical screening' and 'work-related preventative health care' the phrase 'on behalf of' requires a relationship between the two parties such that one party is acting in place of or as representative of the other. That is, if the person conducting the examination or test, or providing care is not a specified medical person they must be acting in the place of, or as a representative of a specified medical person.

(c) *Who is receiving the benefit?*

65. 'Work-related medical screening' and 'work-related preventative health care' can only be provided to an employee. By contrast, 'work-related counselling' can be provided to both an employee and their associate.

(d) *What is the principal purpose for providing the benefit?*

66. The principal purpose of 'work-related medical screening' is to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma'.

² Australian Concise Oxford Dictionary, 2004, 4th edn., Oxford University Press.

67. 'Work-related trauma' is defined in subsection 136(1) to mean:

- (a) the injury of the employee (including the aggravation, acceleration or recurrence of an injury of the employee);
- (b) the contraction, aggravation, acceleration or recurrence of a disease of the employee;
- (c) the loss or destruction of, or damage to:
 - (i) an artificial limb or other artificial substitute;
 - (ii) a medical, surgical or similar aid or appliance used by the employee; or
 - (iii) clothing worn by the employee; or
- (d) the coming into existence, the aggravation, acceleration or recurrence of any other physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee;

that is related to any employment of the employee.

68. The principal purpose of 'work-related preventative health care' is to prevent the employee suffering from 'work-related trauma'.

69. The provision of 'work-related counselling' involves giving effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer to improve or maintain the quality of the performance of the employee's duties, or prepare employees for retirement.

(e) Are the other relevant conditions satisfied?

70. Both 'work-related medical screening' and 'work-related preventative health care' contain a similar requirement for the examination, test or the care to be made available generally to all employees who are likely to be at risk of suffering from similar work-related trauma, who perform their duties of employment at or near the place where the employee performs their duties of employment and whose duties are similar to those of the employee.

71. To be 'work-related counselling' the counselling must relate to one of the matters specified at paragraph (d) of that definition and not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

Which benefits are associated benefits under subsection 58M(2)?

72. Subsection 58M(2) provides that a property or residual benefit that is not an exempt benefit under subsection 58M(1) may nonetheless be an exempt benefit if it is associated with 'work-related medical screening' of an employee, 'work-related preventative health care' of an employee or 'work-related counselling' of an employee or of an associate of an employee.

73. Section 143E provides that a property benefit will be an associated benefit for the purposes of subsection 58M(2) where:

- the recipients property consists of meals in connection with transport;
- the transport is required solely because the employee attends 'work-related screening' or 'work-related preventative health care' or the employee or associate attend 'work-related counselling'; and
- the meals are for the employee or an associate.

74. A residual benefit will be an associated benefit for the purposes of subsection 58M(2) where:

- the benefit consists of the provision of transport or accommodation in connection with transport;
- the transport is required solely because the employee attends 'work-related screening' or 'work-related preventative health care' or the employee or associate attend 'work-related counselling'; and
- the transport or accommodation is for the employee or associate.

Is the advice and information provided at the group session an exempt benefit under section 58M?

(a) What is the benefit that is being provided to the employee and their associate?

75. Employees and associates who attend the group session receive advice and information during a series of group presentations provided by a doctor, a dietician, an exercise physiologist, a performance consultant and a psychologist. They also receive a 20 minute motivational DVD by the motivational speaker/comedian.

76. As the group session is a seminar as defined in subsection 32-65(1) of the *Income Tax Assessment Act 1997* the advice and information provided comes within the definition of 'counselling' discussed in paragraph 59 of this Ruling.

(b) Who is providing the benefit?

77. The group session is conducted by a number of people that may include a qualified medical practitioner and nurse.

78. In the context of the definitions of 'work-related medical screening' and 'work-related preventative health care' the presentations that are not presented by a qualified medical practitioner are not presented on behalf of a legally qualified medical practitioner as the presenters in providing the information are providing information about their area of expertise and are not acting as a representative of a legally qualified medical practitioner or nurse.

(c) Who is receiving the benefit?

79. The group session may be attended by both the employee and an associate.

(d) What is the principal purpose for providing the benefit?

80. The group session will be provided to employees (and their associates) of employers who have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties. In addition the appraisals assist the head doctor to determine whether the employee is suffering, or at risk from suffering from a disease.

(e) Are the other relevant conditions satisfied?

81. The additional conditions contained in paragraphs (d) and (e) of the definition of 'work-related counselling' in subsection 136(1) will be satisfied in relation to the group session as it relates to health and fitness and the attendance of the employee and their associate will not be provided as a reward for services rendered, nor as a reward for specific achievements and it will not be provided as part of a salary sacrifice arrangement.

82. In evaluating each of the relevant factors in relation to the group session it can be concluded that the advice and information provided at the group session to both employees and associates will qualify as an exempt benefit as 'work-related counselling' in terms of subparagraph 58M(1)(c)(iv).

Will the food provided at the group session be an exempt benefit under section 58M?

83. As discussed at paragraphs 38 and 43 of this Ruling the food provided at the group session will be a property benefit. Further, as discussed above, the group session is considered to be 'work-related counselling'.

84. In accordance with subparagraph 58M(1)(b)(iv) the food provided at the group session will be an exempt benefit where it is required solely for the purposes of 'work-related counselling'.

85. In applying the test discussed in paragraph 56 of this Ruling the food provided at the group session will satisfy the 'required solely' test where the only reason for it being provided is to illustrate the concepts being presented in the presentation.

86. By contrast, the 'required solely' test would not be satisfied where there is a secondary or different purpose for providing the food.

Will the books provided at the group session be exempt benefits under section 58M?

87. As discussed at paragraph 38 of this Ruling the books provided at the group session will be a property benefit. Further, as discussed above, the group session is considered to be 'work-related counselling'.

88. In applying the test discussed in paragraph 56 of this Ruling the book written by the motivational speaker has the necessary connection to the counselling as the tips contained in the book relate to the motivational speaker's presentation. Similarly, the second book has the necessary connection as it corresponds directly with the meal options presented by the dietician in the group session.

89. Therefore, as the counselling is the only reason for the books being provided to the employee the provision of the books will be an exempt benefit under paragraph 58M(1)(b).

Will the transportation provided to and from the appraisals and group session be an exempt benefit under subsection 58M(2)?

90. If the appraisals and group session are held at the Tyack Health Medical Centre transportation will be provided to and from Brisbane or the Gold Coast.

91. In applying section 143E, this transportation will be an exempt benefit as the only reason for providing the transport is to enable the employee and associate to attend the 'work-related counselling'.

Will the Health Risk Analysis report be an exempt benefit under section 58M?

(a) What is the benefit that is being provided to the employee?

92. The Health Risk Analysis report is a report containing recommendations that is prepared by the head doctor using the information collected from the various tests and examinations.

(b) Who is providing the benefit?

93. The report is written by the head doctor who is a legally qualified medical practitioner. Although some of the team members who conduct the tests may not be a medical professional, they are acting as a representative of the head doctor in undertaking the tests.

(c) Who is receiving the benefit?

94. The report is provided to the employee.

(d) What is the principal purpose for providing the benefit?

95. As set out in paragraphs 66 to 69 of this Ruling, each of the work-related exemptions has a different purpose.

96. In evaluating the principal purpose of the Health Risk Analysis report it will not be 'work-related health care' as its principal purpose is not to prevent the employee suffering from work-related trauma.

97. Rather, the principal purpose comes within the definition of 'work-related medical screening' as the various tests and examinations that are undertaken in preparing the Health Risk Analysis report are undertaken in order to ascertain whether the employee has any issues of concern. Where an issue is identified it is referred back to the employee's general practitioner.

(e) Are the other relevant conditions satisfied?

98. To come within the definition of 'work-related medical screening' the examination or test must be made available generally to all employees of the employer who:

- are likely to have suffered, be suffering or be at risk of suffering from similar work-related trauma;
- perform their duties of employment at or near the place where the employee performs his or her duties of employment; and
- whose duties of employment are similar to those of the employee.

99. In evaluating each of the relevant factors in relation to the Health Risk Analysis report it can be concluded that the provision of the report will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii). This is on the proviso that the examinations are made available to all employees who are likely to be at risk of suffering from work-related trauma, who perform their duties of employment at or near the place where the employee performs their employment and whose duties are similar to those of the employee.

Will the monthly consultations be an exempt benefit under section 58M?

(a) What is the benefit that is being provided to the employee?

100. Each month for twelve months the employee as part of the vitality challenge meets with an exercise physiologist to assess the employee's progress in achieving the recommendations provided by the head doctor in the overall health report.

101. In conducting this review the exercise physiologist may undertake some tests to provide information or advice to the employee on an ongoing basis. This comes within the definition of 'care' as discussed in paragraph 59 of this Ruling.

(b) Who is providing the benefit?

102. The monthly consultations are conducted by an exercise physiologist.

103. As discussed in paragraph 64 of this Ruling the phrase 'on behalf of' requires a relationship between the two parties such that one party is acting in place of or as representative of the other.

104. This requirement will be satisfied in relation to the monthly consultations as they involve the exercise physiologist monitoring the progress of the employee in achieving the targets set by the head doctor in the overall health report.

(c) Who is receiving the benefit?

105. The monthly consultations are provided to the employee.

(d) What is the principal purpose for providing the benefit?

106. The purpose of the twelve month vitality challenge is to encourage participants to implement the advice and recommendations provided in other parts of the program. In so doing, the challenge is intended to prevent the contraction, aggravation, acceleration or recurrence of a disease of the employee.

107. As the purpose of the monthly consultations is to prevent an employee from suffering work-related trauma it comes within the definition of 'work-related preventative health care'.

(e) Are the other relevant conditions satisfied?

108. To come within the definition of 'work-related preventative health care' the care must be made available generally to all employees of the employer who:

- are likely to be at risk of suffering from similar work-related trauma;
- perform their duties of employment at or near the place where the employee performs his or her duties of employment; and
- whose duties of employment are similar to those of the employee.

109. In evaluating each of the relevant factors in relation to the monthly consultations undertaken as part of the vitality challenge it can be concluded that each of the consultations will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This is on the proviso that the consultations are made available to all employees who are likely to be at risk of suffering from work-related trauma, who perform their duties of employment at or near the place where the employee performs their employment and whose duties are similar to those of the employee.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- exempt benefits
- FBT work-related counselling
- fringe benefits
- fringe benefits tax

Legislative references:

- FBTAA 1986
- FBTAA 1986 Pt III
- FBTAA 1986 Pt III Div 2
- FBTAA 1986 Pt III Div 2 Subdiv A
- FBTAA 1986 Pt III Div 3
- FBTAA 1986 Pt III Div 3 Subdiv A
- FBTAA 1986 Pt III Div 4
- FBTAA 1986 Pt III Div 4 Subdiv A
- FBTAA 1986 Pt III Div 5
- FBTAA 1986 Pt III Div 5 Subdiv A
- FBTAA 1986 Pt III Div 6
- FBTAA 1986 Pt III Div 6 Subdiv A
- FBTAA 1986 Pt III Div 7
- FBTAA 1986 Pt III Div 7 Subdiv A
- FBTAA 1986 Pt III Div 8
- FBTAA 1986 Pt III Div 8 Subdiv A
- FBTAA 1986 Pt III Div 9
- FBTAA 1986 Pt III Div 9 Subdiv A
- FBTAA 1986 Pt III Div 10
- FBTAA 1986 Pt III Div 10 Subdiv A
- FBTAA 1986 Pt III Div 10A
- FBTAA 1986 Pt III Div 11
- FBTAA 1986 40
- FBTAA 1986 Pt III Div 12
- FBTAA 1986 45
- FBTAA 1986 58M
- FBTAA 1986 58M(1)
- FBTAA 1986 58M(1)(b)
- FBTAA 1986 58M(1)(b)(iv)
- FBTAA 1986 58M(1)(c)

- FBTAA 1986 58M(1)(c)(ii)
- FBTAA 1986 58M(1)(c)(iii)
- FBTAA 1986 58M(1)(c)(iv)
- FBTAA 1986 58M(2)
- FBTAA 1986 136(1)
- FBTAA 1986 143E
- ITAA 1997 32-65(1)
- TAA 1953
- Copyright Act 1968

Case references:

- Compass Group (Vic) Pty Ltd (as Trustee for White Roach & Associates Hybrid Trust) v. FC of T [2008] AATA 845; 2008 ATC 10-051
- Cuthbertson & Richards Sawmills v. Thomas (1999) 93 FCR 141
- Dingwall v. Federal Commissioner of Taxation (1995) 57 FCR 274; 30 ATR 498; 95 ATC 4345
- Lloyd v. Federal Commissioner of Taxation (1955) 93 CLR 645
- R v. Portus; Ex parte Federated Clerks Union (1949) 79 CLR 428
- R v. Toohey; Ex parte Attorney General (NT) (1980) 145 CLR 374
- Randwick Corporation v. Rutledge (1959) 102 CLR 54
- Roads and Traffic Authority of New South Wales v. Federal Commissioner of Taxation (1993) 43 FCR 223; (1993) 26 ATR 76; 93 ATC 4508

Other references:

- Explanatory Memorandum to the Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987
- The Australian Concise Oxford Dictionary, 2004, 4th edn., Oxford University Press
- The Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW

ATO references

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