



Class Ruling

Fringe benefits tax: health services provided by Good Health Solutions Pty Ltd

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	80
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	118
Appendix 2:	
Detailed contents list	336

ⓘ 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 provisions dealt with in this Ruling are:

- section 38 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 41 of the FBTAA;
- section 47 of the FBTAA;
- section 58M of the FBTAA;
- section 58P of the FBTAA;
- section 61F of the FBTAA;
- subsection 136(1) of the FBTAA;
- section 32-5 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- section 32-20 of the ITAA 1997.

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 services provided by Good Health Solutions Pty Ltd (Good Health) 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 79 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.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Copyright Law Branch
Attorney-General's Department
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

Date of effect

8. This Ruling applies to schemes that commence from 1 April 2009. 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, as the case may be, form part of and are to be read with this description. The relevant documents or parts of the documents incorporated into the description of the scheme are:

- the application for a Class Ruling (dated 6 August 2008);
- a 'Service Standards Agreement' between Good Health and an employer client;
- a document titled 'Proposal to provide corporate health services'
- a document titled 'Good Health Solutions it adds up to a healthier company'
- an example of a Good Health Solutions questionnaire;
- various examples of reports produced by a Health Assessment Centre;
- various examples of an employer's health profile report;
- additional information provided in the letter dated 5 February 2009; and
- a document titled 'Health Intervention referral'.

10. Good Health offers a range of corporate health services with the aim of assisting employers to improve the quality of their employees' work performance by:

- maintaining a healthier workforce in an ageing population;
- reducing absenteeism;
- improving the productivity of the workforce; and
- improving employee retention.

11. The range of services can be divided into five broad categories:

Category A – consultancy services

Category B – health assessments

Category C – targeted health interventions

Category D – gymnasium management services

Category E – program management and reporting

12. The services that are provided to a particular employer will vary depending upon the employer's risk profile. Generally, the process will start with confidential assessments of the employer's employees. The results of these assessments are used to identify common health problems and strategies to reduce the risks.

13. Good Health uses a range of employees and contractors to provide the services including qualified medical practitioners, nurses and health professionals. For the purpose of this ruling a health professional is a person with a qualification in the relevant area who is not a qualified medical practitioner or nurse.

Category A – consultancy services

14. The consultancy services are designed to provide employers with a preliminary assessment of the health related issues relevant to their business and employees. They are designed to ascertain the health risk profile of the employer and are intended to identify areas for improving the health and wellbeing of employees with the aim of reducing absenteeism and improving staff productivity and engagement.

15. The consultancy services include:

- a Health and Productivity Survey completed by employees that is used to determine the state of health and wellbeing of the employer's workforce and to identify the drivers of productivity and absenteeism within a particular business;
- advice regarding program design;
- services directed at achieving the successful implementation of the employer's program. This may include budgeting preparation and analysis and assessments of risk prevalence, geographical dispersion and technological dispersion; and
- canteen audits to provide advice with respect to improving and promoting food and drink quality with better nutritional value to employees.

Category B – health assessments

16. The health assessments are conducted for the purpose of ascertaining the existence or risk of contraction of an employee's health problems.

17. They are designed and reviewed by the Medical Director who is a legally qualified medical practitioner.

18. They include:

- (a) Executive Health Assessments;
- (b) Workplace Health Assessments;
- (c) Workplace Health Screening; and
- (d) Self Reported Health Risk Assessments.

(a) Executive Health Assessments

19. Executive Health Assessments are aimed at addressing the health risks of senior staff and executives or other employees who face similar risks associated with their level of responsibility and/or job.

20. Generally, an Executive Health Assessment is conducted by a qualified medical practitioner or nurse employed by Good Health at a Good Health Assessment Centre. However, health professionals may assist at particular stages of the assessment. For example, a health professional may measure the employee's height and weight.

21. In some cases an employee must travel a significant distance to attend a Health Assessment Centre. This can require an overnight stay for those employees travelling from regional areas or interstate.

22. Where an employee is required to travel a significant distance the following costs may be paid or reimbursed by the employer:

- transportation costs in respect of petrol, car hire, airfare, train or bus tickets;
- accommodation costs in respect of hotel rooms and/or serviced apartments; and
- meal costs in respect of food consumed during travel to and from the examination.

23. The following three levels of Executive Health Assessment are available:

- Health Essentials;
- Classic Health Assessment; and
- Premium Health Assessment.

Health Essentials

24. Health Essentials is a one-hour assessment that provides a snapshot of the employee's health status paying particular attention to lifestyle issues affecting heart disease, cancer, cholesterol and diabetes.

Classic Health Assessment

25. The Classic Health Assessment is a two hour assessment that builds on the Health Essential assessment to provide a slightly more detailed review, including cardiac stress testing.

Premium Health Assessment

26. The Premium Health Assessment is a three hour assessment which includes cardiac stress testing, optional mammograms, bone density scans and chest X-rays (where requested).

27. Employees who undertake an Executive Health Assessment receive a comprehensive report of their assessment results, including a summary of their health information, identified health problems and any recommendations. Where necessary a referral will be provided to an external general practitioner or specialist in respect of identified health problems.

28. The results are also recorded in the Good Health data base where they are collated so as to provide the employer with an overall health report of their workforce.

(b) Workplace Health Assessments

29. Workplace Health Assessments are a comprehensive health assessment targeted at identifying lifestyle-related health issues such as poor nutrition, inactivity, unhealthy weight levels, drug and alcohol dependence, stress and sleep disorders.

30. A Workplace Health Assessment will generally be conducted by either a qualified medical practitioner, or a health professional at the employee's workplace using portable testing equipment.

31. The following two levels of workplace health assessments are available:

- Employee Health Check; and
- Employee Health Check Plus.

Employee Health Check

32. The Employee Health Check is a twenty minute assessment that measures an employee's major cardiovascular disease risk factors, as well as providing an overview of their general health.

Employee Health Check Plus

33. The Employee Health Check Plus is a forty-five minute workplace health assessment that includes a blood pathology and physiological evaluation and employee lifestyle counselling.

34. Employees who undertake a Workplace Health Assessment receive a comprehensive report of their assessment results, including a summary of their health information, identified health problems and any recommendations, strategies or referrals. In addition an aggregated report will be provided to the employer.

(c) Workplace Health Screening

35. A Workplace Health Screening may be conducted by a qualified medical practitioner or a health professional using portable testing equipment at the employer's premises.

36. The Workplace Health Screenings test is for a limited range of specific health risks including:

- Diabetes Health Risk Screening;
- Heart Health Risk Screening; and
- Skin Checks.

Diabetes Health Risk Screening

37. The Diabetes Health Risk Screening is a ten minute assessment that focuses on health risk factors including Blood Glucose, body mass index, waist measurement, blood pressure and lifestyle risk factors. It includes a medical history questionnaire and brief lifestyle counselling. This short consultation gives the participant the opportunity to discuss diabetes risk factors along with how to limit these risks as part of a healthy lifestyle plan.

Heart Health Risk Screening

38. The Heart Risk Screening is a ten minute assessment that focuses on health risk factors including blood pressure, waist measurement, total cholesterol and lifestyle risk factors. It includes a medical history questionnaire and brief lifestyle counselling. This short consultation provides the opportunity for the employee to discuss health risk factors.

Skin Checks

39. A Skin Check is a ten minute visual skin assessment that is conducted by a medical practitioner at the employee's workplace. This assessment will detect and address any areas of concern, as well as promoting the importance of early detection and being 'sun smart'. A one-page report will be provided to employees, including a specialist referral if required.

40. Once the screening is completed the health information, identified health problems and any recommendations or referrals are collated and recorded in Good Health's database which is used to provide an aggregated report to the employer.

(d) Self Reported Health Risk Assessments

41. Self Reported Health Risk Assessments are designed to be carried out individually by the employee through various mediums, including hard copy questionnaires, telephone, email and online surveys.

42. A Self Reported Health Risk Assessment is designed to capture health information, identify specific health problems as well as provide recommendations and strategies for prevention and improvement in light of the particular employee's circumstances.

43. The assessment focuses on the key areas known to affect health including demographic data, nutrition, exercise, smoking and alcohol consumption, various measurements including height, weight, blood pressure, family medical history, personal medical history, mental health, health-seeking behaviour and readiness for change.

44. The online assessment can generate a personal health report immediately which will include feedback on:

- overall health risk (including expected longevity);
- specific health risk; and
- opportunities for change – where lifestyle change is identified as being important, specific recommendations will be made.

45. The Self Reported Health Risk Assessment and the recommendations were designed and developed by the Medical Director who also reviews the questions, risk categorisations and the delivery mediums on a continuous improvement basis. Once the assessment is completed the health information, identified health problems and any recommendations or referrals are collated and recorded in Good Health's database.

Category C – targeted health interventions

46. An employee may participate in a targeted health intervention:

- following a referral by a Good Health medical practitioner or nurse at a health assessment;
- following a referral by an external medical practitioner based on a recommendation made by a health professional employed by Good Health at a health assessment; or
- an employee may decide to participate in an activity without a referral or a health assessment.

47. To facilitate the referral process Good Health has implemented a Health Intervention Referral process that involves Good Health medical practitioners, nurses and health professionals following guidelines set down by the Medical Director to determine whether the employee should be referred for a health intervention.

48. Where the health assessment is conducted by a Good Health medical practitioner or nurse they will refer the employee to the health intervention.

49. Alternatively, where the health assessment is carried out by a health professional a Health Intervention Referral form will be provided to the employee.

50. The Health Intervention Referral form sets out the key health risks that have been identified by the health professional and the recommended health interventions. The employee provides this form together with associated information such as their health report and information about the health interventions to their personal General Practitioner to obtain their approval for the employee to participate in the suggested health intervention.

51. In providing their approval the General Practitioner indicates whether at the conclusion of the intervention they wish to see the employee and/or receive a copy of the report provided to the employee.

52. The report provided to the employee at the conclusion of the intervention includes their attendance record and a summary of the measured health and behavioural outcomes.

53. The results contained in the report are also entered onto Good Health's database to be reviewed by the Medical Director through the Quality Assurance process.

54. The targeted health interventions include:

- (a) group seminars;
- (b) group exercise classes;
- (c) personalised consultation sessions;
- (d) personalised consultation programs;
- (e) personalised exercise classes;
- (f) personalised massage therapies; and
- (g) personal resources.

(a) group seminars

55. Group seminars are usually conducted on the employer's premises in a classroom setting by a qualified medical practitioner or nurse employed by Good Health. Alternatively, they may be conducted by a health professional employed by Good Health or a person contracted to provide services on behalf of Good Health. Generally, all employees are notified of the seminars being conducted. However, in some circumstances only those employees with specific risk profiles are invited to attend. Employees are required to enrol in advance for a particular seminar.

56. The topics discussed at the group seminars include:

- MASTering Life;
- Introduction to Health;
- Back care;
- Chronic Conditions;
- Gender Health;
- Nutrition;
- Physical Activity;
- Smoking Cessation;
- Stress;
- Sleep; and
- Cooking Demonstrations.

57. The MASTering Life seminar provides participants with information to enable them to balance life's competing priorities including work, family, physical health, psychological health and social activity.

58. The Nutrition Practice consultation involves a personal food and nutrition specialist working one-on-one with clients to set and achieve health, weight and performance goals.

59. The cooking demonstrations are tailored to suit each corporate client's setting and time availability. They may be customised to a particular health theme in line with the company's other health related activities. Popular themes include heart health, bone health, weight control and packed lunches for all the family. Employees are encouraged to take part and enjoy the food that is prepared. The recipes and nutrition fact sheets are provided to employees during the session.

(b) group exercise classes

60. Group exercise classes may be conducted by a qualified medical practitioner or nurse employed by Good Health, a health professional employed by Good Health or a person trained in the particular activity that is contracted to provide services on behalf of Good Health. The classes are conducted on the employer's premises or an adjacent public area, such as a park. Generally, all employees are notified of the seminars being conducted. However, in some circumstances only those employees with specific risk profiles are invited to attend. Employees are required to enrol in advance for a particular class.

61. The group exercise classes include:

- yoga/stretching classes;
- pilates/core stability class;
- tai chi;
- stretch and relaxation;
- circuit;
- boxexercise;
- meditation; and
- boot camps.

62. The number of participants in each class will vary depending upon the activity. For example, the circuit, boxexercise and boot camps will usually be larger classes that may be attended by twenty participants, whereas the classes for the other activities will usually be smaller classes with only ten participants.

(c) personalised consultation sessions

63. Personalised consultation sessions are conducted on a one-to-one basis. They may be conducted by a qualified medical practitioner or nurse employed by Good Health, a health professional employed by Good Health or a person trained in the particular activity who is contracted to provide services on behalf of Good Health.

64. The sessions may be conducted either on the employer's premises, or remotely via a range of mediums including telephonic and online communication. They offer customised advice, recommendations and support to individual employees in respect of addressing and alleviating their identified health problems.

65. Generally only those employees with a specific risk profile will be notified about the sessions. The general structure of the sessions is designed by the Medical Director to ensure a consistent standard of quality offered to all participating employees.

66. Topics discussed at the sessions include:

- nutrition consultation;
- exercise consultation;
- psychology consultation; and
- health coaching consultation.

(d) personalised consultation programs

67. Personalised consultation programs are delivered on a one-to-one basis. They may be delivered by a qualified medical practitioner or nurse employed by Good Health, a health professional employed by Good Health or a person trained in the particular activity who is contracted to provide services on behalf of Good Health.

68. The programs may be provided on the employer's premises or delivered remotely via telephone, email et cetera. They are a series of personalised consultation sessions joined together in a structured approach to create a personalised program to support individual employees in respect of addressing and managing their health problems and risk profile.

69. Generally only those employees with a specific risk profile are offered a personalised consultation program. Topics covered include:

- health coaching programs;
- weight management programs;
- smoking cessation programs; and
- other health problem programs.

(e) personalised exercise classes

70. Personalised exercise classes are a series of one-on-one classes that provide consultation, motivation, advice and support whilst the employee performs specific exercise directed activities.

71. Generally the personalised exercise classes are provided by a health professional employed by Good Health. However, they may be provided by a person trained in the particular activity who is contracted to provide the services on behalf of Good Health.

(f) personalised massage therapies

72. Generally, the personalised massage therapy sessions are provided by a health professional or experienced masseur employed by Good Health. However, they may be provided by a person contracted to provide the services on behalf of Good Health.

73. The personalised massage therapies are offered to employees to address individual muscular requirements. Generally they are aimed at relieving stress and alleviating muscular or ligament tension associated with neck or back pain and/or headaches.

74. The personalised massage therapy sessions offered are:

- a 10 to 15 minute head and neck massage therapy conducted at the employee's workspace; or
- a 10 to 15 minute lower back and shoulders therapy conducted in a nearby meeting room.

(g) personal resources

75. Personal resources relates to the dissemination of a range of health-related information including:

- the Good Health Solutions monthly newsletter which is a general employee-wide newsletter that provides eight pages of health information, research reports, recipes, answers to common health questions and information about Good Health Solutions products and services;
- personalised e-mails containing relevant healthcare information that are sent to an employee based on the employee's health problems and risk profile;
- health and wellbeing information including brochures, booklets and electronic information which are available from the Health Resource Centre to supplement the advice and information provided in seminars and health assessments;
- health and wellbeing information is also provided by a call centre to employees who do not have access to online services;
- web based reporting and monitoring tools to help with the organisation and monitoring of self administered team walking challenges;
- self managed health improvement programs such as video based seminars, hard copy information or internet delivered programs to address health related issues; and
- various types of health-related information including health and lifestyle related quizzes, calculators, old newsletters and data bases that can be accessed through an Interactive Health and Wellbeing portal.

Category D – gymnasium management services

76. The gymnasium management services are offered to employers who provide in-house gym facilities for exclusive use by employees. They include:

- management and administration of the gym facility;
- maintenance of the gym facility and equipment;
- instruction to employees regarding the correct and safe use of the equipment;
- creation of rosters and timetables for gym use;
- attendance at periodic performance review and administrative meetings with the client;
- preparation of reports to clients as to the use and effectiveness of the gym facility; and
- marketing and promotion of the gym facilities to employees.

77. The gymnasium management services do not include payments by the employer for items such as gym instructors and personal training of employees.

Category E – program management and reporting

78. The program management and reporting services are offered to employers who require greater provider involvement in respect of implementing and operating the employer's program.

79. These services may involve Good Health having an active role in the management and administration of the program and can include participation reports and aggregated employee health and wellbeing information such as current health status, health changes, program return on investment and employee feedback.

Ruling

Category A – consultancy services

80. The consultancy services provided to an employer by Good Health will not be a 'fringe benefit' as defined in subsection 136(1).

Category B – health assessments

81. An Executive Health Assessment of an employee will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' where the assessment is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related medical screening' in subsection 136(1).

82. The payment or reimbursement of transportation expenses incurred by an employee in attending an Executive Health Assessment will be an exempt benefit under subsection 58M(2) unless a cents per kilometre basis is used to calculate the amount of the reimbursement. Where the cents per kilometre method is used to calculate the amount of the reimbursement the taxable value of the expense payment fringe benefit may be able to be reduced to nil under section 61F.

83. The payment or reimbursement of accommodation and/or meal costs incurred by an employee in attending an Executive Health Assessment will be an exempt benefit under subsection 58M(2).

84. A Workplace Health Assessment of an employee conducted by a qualified medical practitioner or nurse employed by Good Health will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' where the assessment is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related medical screening' in subsection 136(1).

85. A Workplace Health Assessment conducted by a health professional will not be an exempt benefit under section 58M. However, the assessment will be an exempt minor benefit where the requirements of section 58P are satisfied.

86. A Workplace Health Screening of an employee conducted by a qualified medical practitioner or nurse will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' where the assessment is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related medical screening' in subsection 136(1).

87. A Workplace Health Screening conducted by a health professional will not be an exempt benefit under section 58M. However, the screening will be an exempt minor benefit where the requirements of section 58P are satisfied.

88. A Self Reported Health Risk Assessment of an employee will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' where the assessment is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related medical screening' in subsection 136(1).

Category C – targeted health interventions

89. The attendance of an employee at a group seminar conducted by a qualified medical practitioner or nurse will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

90. The attendance of an employee who has a referral from a qualified medical practitioner or nurse at a group seminar conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

91. The attendance of an employee who does not have a referral from a qualified medical practitioner or nurse at a group seminar conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

92. The food provided at the cooking demonstration group seminar may be an exempt benefit under section 41 where the food is provided to and consumed by the employee on a working day on business premises of the employer (or if the employer is a company, business premises of a company that is related to the employer).

93. Alternatively, where section 41 does not apply, the food provided to an employee at the cooking demonstration group seminar may be an exempt benefit under subparagraphs 58M(1)(b)(iii) or (iv) where the care or counselling provided at the group seminar is the only reason for the food being provided.

94. However, section 41 and subparagraphs 58M(1)(b)(iii) and 58M(1)(b)(iv) will not apply if the food provided at the cooking demonstration seminar constitutes the provision of a tax-exempt body entertainment benefit under section 38.

95. The attendance of an employee of an employer who is wholly or partially exempt from income tax at a group exercise class will be a tax-exempt body entertainment fringe benefit under section 38 of the FBTAA if section 32-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) would have prevented an employer subject to income tax from claiming a deduction for the expenditure (assuming section 32-20 of the ITAA 1997 had not been enacted).

96. Where the attendance of an employee at a group exercise class conducted by a qualified medical practitioner or nurse constitutes a residual benefit, the benefit will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

97. Where the attendance of an employee at a group exercise class as a result of a referral by a qualified medical practitioner or nurse constitutes a residual benefit, the benefit will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

98. The attendance of an employee at a group exercise class that is not conducted by a qualified medical practitioner or nurse will not be an exempt benefit under section 58M where the employee does not have a referral from a medical practitioner or nurse. However, the attendance will be an exempt minor benefit where the requirements of section 58P are satisfied.

99. The attendance of an employee at a personalised consultation session conducted by a qualified medical practitioner or nurse will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

100. The attendance of an employee who has a referral from a qualified medical practitioner or nurse at a personalised consultation session that is conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

101. The attendance of an employee who does not have a referral from a qualified medical practitioner or nurse at a personalised consultation session conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

102. The attendance of an employee at a personalised consultation program conducted by a qualified medical practitioner or nurse will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

103. The attendance of an employee who has a referral from a qualified medical practitioner or nurse at a personalised consultation program conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

104. The attendance of an employee who does not have a referral from a qualified medical practitioner or nurse at a personalised consultation program conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

105. The attendance of an employee of an employer who is wholly or partially exempt from income tax at a personalised exercise class will be a tax-exempt body entertainment fringe benefit under section 38 of the FBTA if section 32-5 of the ITAA 1997 would have prevented an employer subject to income tax from claiming a deduction for the expenditure (assuming section 32-20 of the ITAA 1997 had not been enacted).

106. Where the attendance of an employee at a personalised exercise class as a result of a referral by a qualified medical practitioner or nurse constitutes a residual benefit, the benefit will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

107. The attendance of an employee at a personalised exercise class where the employee does not have a referral from a medical practitioner or nurse will not be an exempt benefit under section 58M. However, the attendance will be an exempt minor benefit where the requirements of section 58P are satisfied.

108. A personalised massage provided to an employee as a result of a referral by a qualified medical practitioner or nurse will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

109. Where the employee does not have a referral from a medical practitioner or nurse a personalised massage will not be an exempt benefit under section 58M. However, the massage will be an exempt minor benefit where the requirements of section 58P are satisfied.

110. The provision of the hard copy health related publications will be an exempt benefit under subparagraph 58M(1)(b)(ii) where they are provided as a result of the employee receiving a health assessment that is 'work-related medical screening'.

111. The provision of the hard copy health related publications will be an exempt benefit under subparagraph 58M(1)(b)(iii) where they are provided as a result of the employee attending a seminar that is 'work-related preventative health care'.

112. The provision of the hard copy health related publications will be an exempt benefit under subparagraph 58M(1)(b)(iv) where they are provided as a result of the employee attending a seminar that is 'work-related counselling'.

113. The provision of the Good Health Solutions newsletter will not be an exempt benefit under section 58M. However, the newsletter will be an exempt minor benefit where the requirements of section 58P are satisfied.

114. The information provided in the personalised e-mails, by the call centre, video based seminars, internet delivered programs or through the web based tools such as the interactive health and wellbeing web portal will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the care is made available generally to all employees who come within paragraphs (a), (b) and (c) of the definition of 'work-related preventative health care' in subsection 136(1).

115. The information relating to the walking challenge will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

Category D – gymnasium management services

116. The gymnasium management services provided to an employer by Good Health will not be a fringe benefit as defined in subsection 136(1). However, a fringe benefit may arise from the provision of a membership, or the use of a gym facility managed by Good Health if the requirements of subsection 47(2) are not satisfied.

Category E – program management and reporting

117. The program management and reporting services provided to an employer by Good Health will not be a 'fringe benefit' as defined in subsection 136(1).

Commissioner of Taxation

25 November 2009

Appendix 1 – Explanation

❶ *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 a fringe benefit arise from the provision of the services?

118. In general terms, a 'fringe benefit' is a 'benefit' provided to an employee in respect of the employee's employment that is not an exempt benefit.

119. Some of the services offered by Good Health will be provided to the employer, rather than the employee. As a fringe benefit will not arise where the benefit is provided to the employer, a fringe benefit will not arise from the provision of the following services to an employer:

- consultancy services;
- gymnasium management services; and
- program management and reporting.

120. However, an employee may receive a benefit in relation to a gym facility managed by Good Health if he or she is provided with a membership, or when he or she uses the facility. This benefit will be a fringe benefit if the requirements of subsection 47(2) are not satisfied. For example, subsection 47(2) will not apply if a tax-exempt body entertainment benefit arises from the use of the facility, or the benefit is a membership that is a property benefit under section 40.

121. The circumstances in which these benefits may arise are discussed at paragraphs 127 to 135 of this Ruling.

What benefits may be received by an employee?

122. An employee may receive a range of services as part of an arrangement between the employer and Good Health.

123. 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 ...

124. Divisions 2 to 12 of Part III divide benefits into different categories. For the purpose of this ruling the relevant categories to consider are:

- expense payment benefits;
- tax-exempt body entertainment benefits;
- property benefits; and
- residual benefits.

Expense payment benefits

125. Section 20 provides that an expense payment benefit may arise where the employer either:

- makes a payment to a third party to discharge an obligation of the employee to pay an amount to the third person; or
- reimburses the employee for expenses they incur.

126. As part of the scheme an employer may pay or reimburse the following costs where an employee is required to travel a significant distance to attend an Executive Health Assessment:

- transportation costs in respect of petrol, car hire, airfare, train or bus tickets;
- accommodation costs in respect of hotel rooms and/or serviced apartments; and
- meal costs in respect of food consumed during travel to and from the assessment.

Tax-exempt body entertainment benefits

127. In general terms, a tax-exempt body entertainment benefit may arise under section 38 from entertainment expenses incurred by an employer who is wholly or partially exempt from income tax, or who does not derive assessable income from the activities to which the entertainment relates.

128. 'Entertainment' is defined in subsection 32-10(1) of the ITAA 1997 to mean:

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel to do with providing entertainment by way of food, drink or recreation.

129. As part of the scheme an employee attending a cooking demonstration group class may receive food and drink. Guidelines for determining whether this food and drink constitutes the provision of entertainment are provided by Taxation Ruling TR 97/17 Income tax and fringe benefits tax: entertainment by way of food or drink.

130. 'Recreation' is defined in subsection 995-1(1) of the ITAA 1997 to include 'amusement, sport or similar leisure-time pursuits'.

131. As part of the scheme the following benefits which come within the definition of 'recreation' in subsection 995-1(1) of the ITAA 1997 may be provided:

- participation in a group exercise class; and
- participation in a personalised exercise class.

132. A tax-exempt body benefit will arise from the provision of this entertainment by an employer who is wholly or partially exempt from income tax if section 32-5 of the ITAA 1997 would have prevented an employer subject to income tax from claiming a deduction for the expenditure (assuming section 32-20 of the ITAA 1997 had not been enacted). Entertainment expenditure for which an income tax deduction could have been claimed under sections 32-30, 32-35, 32-40, 32-45 or 32-50 of the ITAA 1997 will not be a tax-exempt body entertainment benefit.

133. A benefit which is a tax-exempt body entertainment benefit will not be an exempt benefit under either section 41 or section 58M.

Property benefits

134. A 'property benefit' 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).

135. An employee may receive the following property benefits under an arrangement between Good Health and an employer:

- food provided at the cooking demonstration group seminar; and
- a range of hard copy health-related publications.

Residual benefits

136. 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* to mean

2. the supplying or supplier of any articles, commodities, activities, etc., required or demanded.

137. An employee may receive the following services under an arrangement between Good Health and an employer:

- an Executive Health Risk Assessment;
- a Workplace Health Assessment;
- a Workplace Health Screening;
- information and advice at a group seminar;
- participation in a group exercise class;
- advice and information provided at a personalised consultation session;
- advice and information provided in a personalised consultation program;
- participation in a personalised exercise class;
- a personalised massage therapy; and
- a range of information and advice on an interactive health and wellbeing portal and access to a call centre.

Will the benefits be exempt benefits?

138. The FBTAA specifies certain benefits will be exempt benefits. For the purpose of this ruling the relevant exempt benefits to be considered are the exemptions for:

- property provided to and consumed by an employee on a working day on business premises of the employer in section 41;
- 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling' in section 58M; and
- minor benefits in section 58P.

The application of section 41

139. The provision of food or drink to an employee may be an exempt benefit under section 41 where the property is provided to, and consumed by, an employee on a working day on the business premises of the employer (or if the employer is a company, business premises of a company that is related to the employer).

140. However, subsection 41(2) provides that the exemption will not apply where the food or drink is provided as a result of the employee agreeing to receive food or drink in return for a reduction in the employee's salary or wages that would not have happened if the agreement had not been entered into.

The application of section 58M

141. In general terms section 58M provides an exemption from fringe benefits tax for a 'work related medical examination', 'work-related medical screening', 'work-related preventative health care', 'work-related counselling' and 'migrant language training'.

142. For the purpose of this ruling the relevant exemptions to be considered are those that apply for 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling'.

143. 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.

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

145. Where none of these exemptions apply to a benefit provided under the program, the exemption contained in subsection 58M(2) will also need to be considered.

Which expense payment benefits are exempt under paragraph 58M(1)(a)?

146. Paragraph 58M(1)(a) provides that an expense payment benefit will be an exempt benefit where the recipients expenditure is in respect of 'work-related medical screening' of an employee, 'work-related preventative health care' of an employee or 'work-related counselling' of an employee or an associate of an employee. These terms are discussed at paragraphs 162 to 196 of this Ruling.

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

147. 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.

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

Required

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

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

150. This meaning corresponds to 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'.

151. 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.

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

Solely

153. 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

154. 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)?

155. Paragraph 58M(1)(c) provides that a residual benefit will be an exempt benefit where it consists of the provision of 'work-related medical screening' of an employee, 'work-related preventative health care' of an employee or 'work-related counselling' of an employee or an associate of an employee.

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

156. Subsection 58M(2) provides that an expense payment benefit, 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.

157. A benefit will be 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 if all the conditions set out in section 143E are satisfied.

158. Section 143E provides that an expense payment benefit will be an associated benefit for the purposes of subsection 58M(2) where:

- the recipients expenditure is in respect of the provision of transport, or meals 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, meals or accommodation are for the employee or associate.

159. Where the benefit is an expense payment benefit paragraph 58M(2)(c) contains two additional conditions that provide:

- a reimbursement of transport expenses incurred by an employee in relation to a car owned by, or leased to the employee that is calculated on a cents per kilometre basis will not be an exempt benefit under subsection 58M(2), but the taxable value of the expense payment fringe benefit may be able to be reduced to nil under section 61F; and
- documentary evidence of the expenditure must be given to the employer before the date on which the relevant FBT return is lodged.

160. 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.

161. 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.

‘Work-related medical screening’, ‘work-related preventative health care’ and ‘work-related counselling’

162. The definitions of ‘work-related medical screening’, ‘work-related preventative health care’ and ‘work-related counselling’ in subsection 136(1) contain a number of conditions that must be satisfied.

Identifying the relevant exemption

163. As each of the three exemptions has different conditions it is necessary to initially identify the relevant exemption to consider. The process for doing this and the conditions that need to be considered in relation to each of the exemptions are summarised in the flowcharts in paragraphs 166 and 180 of this Ruling.

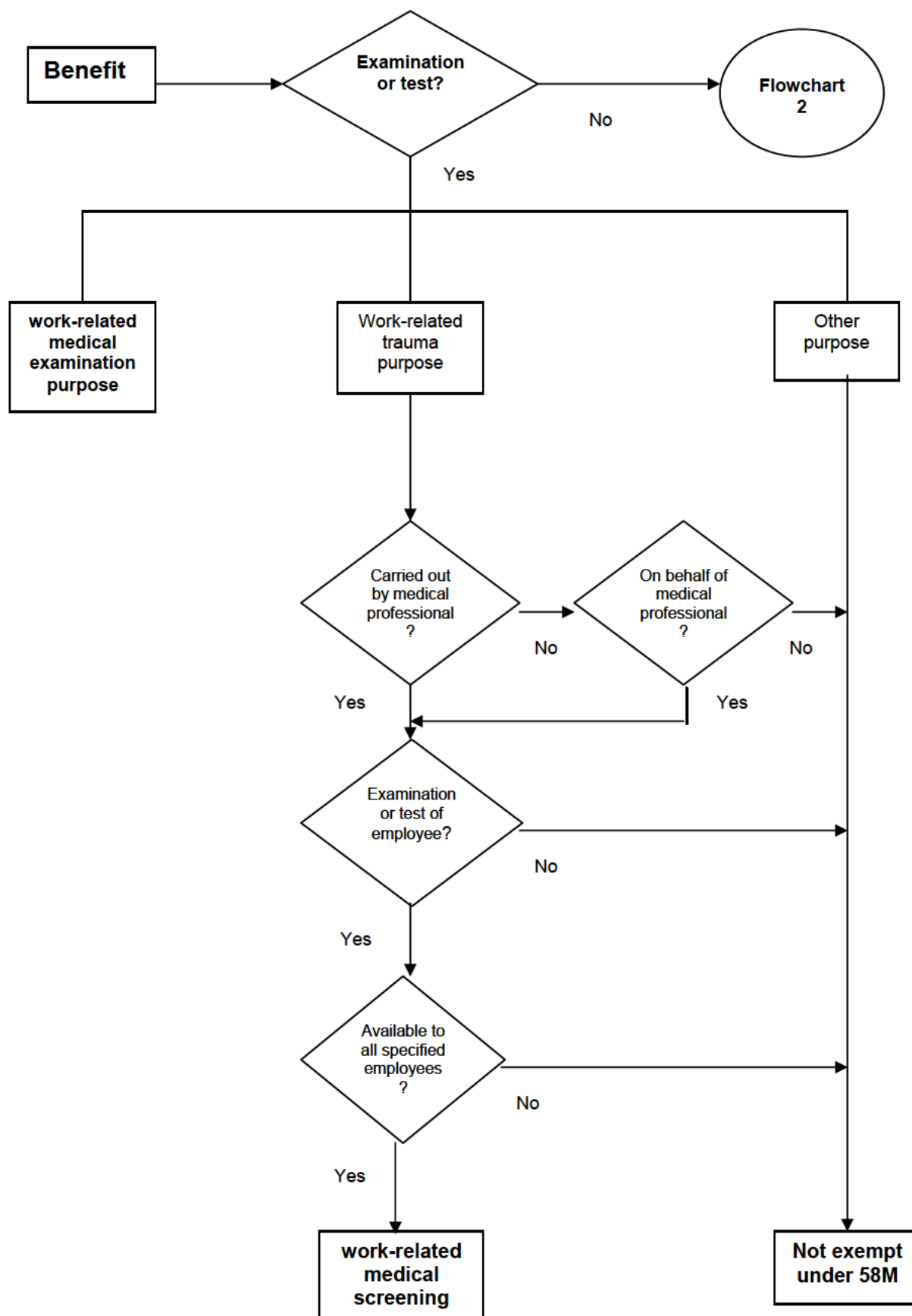
164. Flowchart 1 in paragraph 166 of this Ruling illustrates that the initial question to be considered is whether the benefit is an examination or test?

Examination or test

165. 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 ...

166. Flowchart 1 in this paragraph is a diagrammatic representation of the conditions to be considered where the benefit is an examination or test.



167. Where the benefit is an examination or test it is necessary to determine the purpose of the examination or test.

The purpose of the examination or test

168. As illustrated in flowchart 1 in paragraph 166 of this Ruling the purposes can be categorised into the following three categories:

- (a) to ascertain the physiological or psychological condition of the employee for one of the four purposes listed in the definition of 'work-related medical examination' in subsection 136(1);
- (b) to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' as defined in subsection 136(1); and
- (c) other purposes.

(a) Purposes listed in the definition of 'work-related medical examination'

169. Where the examination or test is for one of the four purposes listed in the definition of 'work-related medical examination' in subsection 136(1) it is necessary to consider the conditions contained within that definition. As this exemption is not being considered as part of this Ruling these conditions are not illustrated in the flowchart in paragraph 166 of this Ruling.

(b) Ascertain if employee has suffered or is at risk of suffering from 'work-related trauma'

170. Where the purpose of the examination or test is to ascertain if the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' the relevant conditions to consider are those contained within the definition of 'work-related medical screening' in subsection 136(1).

What is 'work-related trauma'?

171. '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.

The tests that apply to 'work-related medical screening'

172. As illustrated by flowchart 1 in paragraph 166 of this Ruling an examination or test that is carried out principally to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' will be 'work-related medical screening' if the following requirements are met:

- (a) the examination or test is carried out by, or on behalf of a medical professional listed in the definition of 'work-related medical screening' in subsection 136(1);
- (b) the examination or test is carried out on an employee; and
- (c) the examination or test is available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1). These are employees:
 - who are likely to have suffered, be suffering or 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.

Who is a medical professional for the purpose of 'work-related medical screening'?

173. Where the benefit is an examination or test for 'work-related trauma' the definition of 'work-related medical screening' in subsection 136(1) requires the examination or test to be carried out by, or on behalf of an audiometrist, a legally qualified medical practitioner, nurse, dentist or optometrist.

On behalf of

174. Where the person providing the benefit does not come within one of the listed categories it is necessary to consider whether the benefit is being provided on behalf of a listed medical professional.

175. The phrase 'on behalf of' is not defined for the purposes of the FBTAA. The Australian Oxford Dictionary, 1999, Oxford University Press, Melbourne 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*).

176. In *Cuthbertson & Richards Sawmills Pty Ltd v. Thomas* (1999) 93 FCR 141; (1999) FCA 315 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.

177. 'Auxiliary' is defined in the Macquarie Dictionary:

1. giving support, helping, aiding or assisting

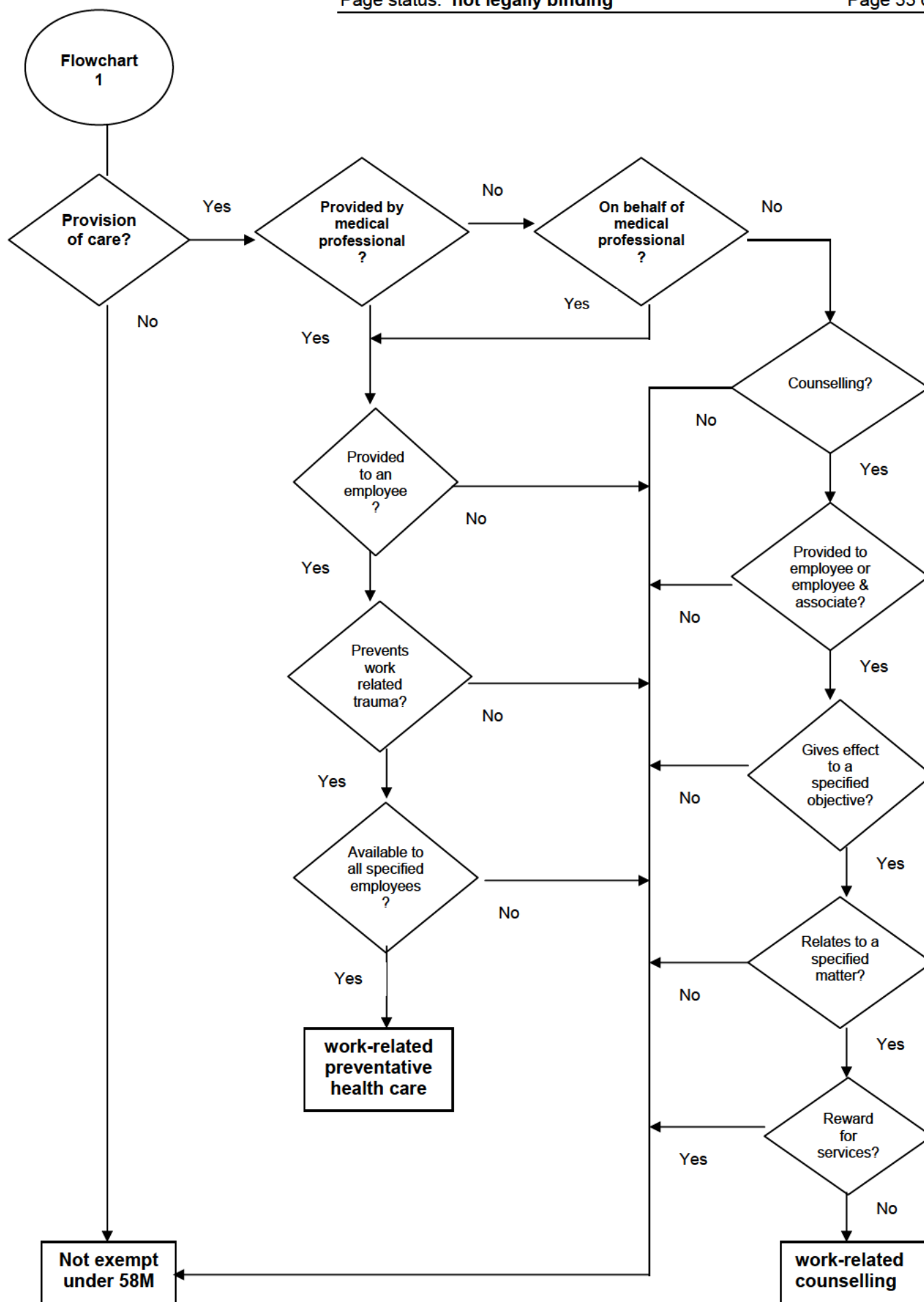
178. In the context of the definitions of 'work-related medical screening' and 'work-related preventative health care' in subsection 136(1) the phrase 'on behalf of' requires a relationship between the two parties such that one party is acting in place of or as representative of the other. That is, if the person carrying out the examination or test or providing the care is not a specified medical person, then that person must be giving support or assisting a specified medical person who is providing the benefit.

(c) Other purposes

179. Where the purpose of the examination or test is not for purposes set out in the definitions of 'work-related medical examination' or 'work-related medical screening' in subsection 136(1) the examination or test will not be an exempt benefit under section 58M.

Conditions when the benefit is not an examination or test

180. The conditions to be considered when benefit is not an examination or test are illustrated in flowchart 2 in this paragraph.



181. The initial question to be considered when the benefit is not an examination or test is whether the benefit constitutes the provision of care?

Provision of care

182. The word 'care' is not defined within the FBTAA. However, 'health care' is defined in subsection 136(1) to mean 'any examination or test or form of care (whether therapeutic, preventative or rehabilitative) that is related to the physiological or psychological health of a person'. It includes the provision of drugs, vaccines or other medical preparations in connection with the care.

183. 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.

184. In applying the definitions in paragraphs 182 and 183 of this Ruling it can be concluded that 'care' is wider than just health care and can include counselling or other activities that are provided either by, or as a result of a referral by a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

185. Where the benefit consists of the provision of care it may be either 'work-related preventative health care' or 'work-related counselling'. As illustrated by flowchart 2 in paragraph 180 of this Ruling the relevant conditions that need to be considered will depend upon whether the care is provided by or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

186. If the care is provided by or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1) the relevant conditions to consider are those listed in the definition of 'work-related preventative health care'. By contrast, if the care is not provided by or on behalf of a listed medical professional the relevant conditions to consider are those contained in the definition of 'work-related counselling'.

Who is a medical professional for the purpose of 'work-related preventative health care'?

187. The definition of 'work-related preventative health care' in subsection 136(1) requires the care to be provided by or on behalf of a legally qualified medical practitioner, nurse, dentist or optometrist.

The other tests that apply to 'work-related preventative health care'

188. As illustrated by flowchart 2 in paragraph 180 of this Ruling care that is provided by or on behalf of a listed medical professional will be 'work-related preventative health care' where it satisfies the following tests:

- (a) the care is provided to an employee;
- (b) the principal purpose of the care is to prevent the employee from suffering from 'work-related trauma'; and
- (c) the examination or test is available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' of subsection 136(1). These are 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.

The other tests that apply to 'work-related counselling'

189. As illustrated by flowchart 2 in paragraph 180 of this Ruling, care that is not provided by or on behalf of a listed medical professional will be 'work-related counselling' where the following tests are satisfied:

- (a) the care is counselling;
- (b) the counselling is attended by either an employee, or an employee and an associate;
- (c) the attendance of the employee or the employee and associate gives 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 performance of employees' duties;
- (d) the counselling relates to any of the following matters:
 - safety;
 - health;
 - fitness;
 - stress management;
 - personal relationships;
 - retirement problems;
 - drug or alcohol abuse;

- rehabilitation or prevention of work-related trauma or of other disease or injury;
 - first aid; or
 - any similar matter, and
- (e) the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

What is counselling?

190. In understanding the meaning of this term it is helpful to refer to the ordinary dictionary meanings.

191. The *Macquarie Dictionary* defines the word 'counsel' as 'advice; opinion or instruction given in directing the judgment or conduct of another'. The *Australian Concise Oxford Dictionary* defines 'counselling' as the act or process of giving counsel' and relevantly the noun 'counsel' as 'advice, esp. formally given', and the verb as '**1** ... advise (a person) **2a** give advice to (a person) on social or personal problems, esp. professionally' and '**b** assist or guide (a person) in resolving personal difficulties'.

192. The wording of the definitions in paragraphs 190 and 191 indicates 'counselling' involves a suitably qualified person providing advice or guidance to someone else in relation to their established area of expertise.

193. The Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 indicates the advice or information can be given either on an individual basis, or in a group situation such as a seminar. This is reflected in the definition of 'counselling' in subsection 136(1) which states that 'counselling' 'includes the giving of advice or information in a seminar'.

194. The advice or information can be in relation to a wide range of matters. For example, the Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 indicates it can be related to matters such as safe work practices, stress management, fitness, drug or alcohol abuse or retirement problems. This list of examples is extended by Taxation Determination TD 93/153 to include outplacement services such as assistance in writing a resume and job application, guidance on seeking new employment or training for employment interviews and selection tests.

195. Although the advice or information provided can be in relation to a wide range of areas a benefit will not be considered to be 'counselling' unless the provision of advice is the principal purpose for the benefit being provided to the employee. For example, although 'counselling' can include training or advice about how to undertake various physical activities, a physical activity session with limited instruction undertaken by an employee for the purpose of keeping fit will not constitute 'counselling'.

The meaning of 'relate'

196. Paragraph (d) of the definition of 'work-related counselling' in subsection 136(1) requires the counselling to 'relate' to certain specified matters. The word 'relate' is not specifically defined in the FBTA and therefore has its ordinary meaning. The *Concise Oxford Dictionary* defines 'relate' to mean '...establish relation between; connected; allied'. The *Macquarie Dictionary*, in so far as is relevant, defines 'relate' to mean 'to bring into or establish association, connection, or relation'. In applying these definitions the counselling will 'relate' to a listed matter if it is connected to or associated with the listed matter.

The application of section 58P

197. A benefit provided under the scheme which is not an exempt benefit under sections 41 or 58M may be an exempt benefit under section 58P where:

- the notional taxable value of the minor benefit is less than \$300; and
- it can be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58P(1)(f), to treat the minor benefit as a fringe benefit.

198. However, where the benefit is a tax-exempt body entertainment benefit paragraph 58P(1)(d) limits the application of the minor benefit exemption to two limited circumstances which are unlikely to apply in relation to a benefit provided under the scheme.

199. The five criteria which paragraph 58P(1)(f) requires to be considered in determining whether it would be unreasonable to treat the benefit as a fringe benefit are:

- the infrequency and irregularity with which associated identical or similar benefits are provided;
- the sum of the notional taxable values of the benefit and any associated benefits which are identical or similar to the minor benefit;
- the sum of the notional taxable values of any other associated benefits;
- the practical difficulty in determining the notional taxable values of the benefit and any associated benefits; and
- the circumstances surrounding the provision of the benefit and any associated benefits.

Are the expense payment benefits an exempt benefit?

200. As discussed at paragraph 126 of this Ruling an employee may receive the following expense payment benefits:

- transportation costs in respect of petrol, car hire, airfare, train or bus tickets;
- accommodation costs in respect of hotel rooms and/or serviced apartments; and
- meal costs in respect of food consumed during travel to and from the examination.

201. In applying the test outlined in paragraph 146 of this Ruling it is necessary to determine whether the employee's expenditure was in respect of 'work-related medical screening', 'work-related preventative health care' or 'work-related counselling'.

202. The expenditure to which the expense payment benefits relate was incurred to obtain transport, accommodation or meals. In applying the conditions summarised in the flowcharts these expenses will not be 'work-related medical screening, or 'work-related preventative health care' as the transport, accommodation and meals are not an examination or test and they are not provided by or on behalf of a listed medical professional.

203. Further, by applying the definition of 'counselling' that was discussed in paragraphs 190 to 195 of this Ruling it can be concluded that the transport, accommodation and meals will also not constitute the provision of 'counselling' as they do not involve the provision of advice or information. Therefore, these expense payment benefits will not be an exempt benefit under subsection 58M(1).

204. However, as discussed at paragraphs 156 to 161 of this Ruling an expense payment 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.

205. The transport, accommodation and meals are provided in connection with the employee's attendance at an Executive Health Assessment.

206. As discussed at paragraph 228 of this Ruling an Executive Health Assessment is considered to be 'work-related medical screening'.

207. Therefore, in applying the tests discussed in paragraphs 158 and 159 of this Ruling the expense payment benefits will be exempt benefits under subsection 58M(2) provided:

- the employee's attendance at the Executive Health Assessment is the only reason for the expenditure being incurred;

- the expense payment benefit that arises in relation to the transportation costs is not a reimbursement calculated on a cents per kilometre basis; and
- the necessary documentation is provided to the employer before the date on which the fringe benefits tax return is lodged.

208. Where a cents per kilometre basis is used to calculate the reimbursement of the transportation costs the taxable value of the expense payment fringe benefit may be able to be reduced to nil under section 61F.

Are the property benefits an exempt benefit?

209. As discussed at paragraph 135 of this Ruling an employee may receive the following property benefits:

- (i) food provided at the cooking demonstration group seminar; and
- (ii) a range of hard copy health-related publications.

Will the provision of food at the cooking demonstration group seminar be an exempt benefit?

210. Provided the food does not constitute the provision of entertainment, the provision of food at a cooking demonstration group seminar may be an exempt benefit under either section 41, or subparagraph 58M(1)(b)(iv). If the food provided at the cooking demonstration group seminar constitutes the provision of entertainment a tax-exempt body entertainment benefit may arise for employers who are wholly or partially exempt from income tax under section 38.

Will the provision of food be an exempt benefit under section 41?

211. As discussed at paragraphs 139 and 140 of this Ruling the provision of the food to an employee at the cooking demonstration group seminar will be an exempt benefit under section 41 where the following conditions are satisfied:

- the food is provided and consumed by the employee on a working day;
- the food is provided and consumed by the employee on the business premises of the employer (or if the employer is a company, business premises of a company that is related to the employer); and
- the food is not provided as part of an agreement that resulted in a decrease in the employee's salary or wages in return for the provision of the food.

Will the provision of food be an exempt benefit under subparagraph 58M(1)(b)(iv)?

212. Alternatively, if the provision of the food is not an exempt benefit under section 41 it may be an exempt benefit under paragraph 58M(1)(b) where the food is required solely for the purposes of either 'work-related preventative health care' or 'work-related counselling' of the employee.

213. The cooking demonstration is one of the group seminars that are classified as a targeted health intervention. An employee may attend a cooking demonstration following a referral by a medical practitioner. However, it is also possible for an employee to attend a cooking demonstration without a referral.

214. In applying the tests summarised in the flowchart in paragraph 166 of this Ruling the cooking demonstration will not constitute 'work-related medical screening' as it is not an examination or test for 'work-related trauma'.

215. However, it may constitute 'work-related preventative health care' where a medical practitioner provides a referral for the employee to attend the cooking demonstration so as to prevent the employee suffering from 'work-related trauma' if the cooking demonstration is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

216. Alternatively, the advice and information provided at the cooking demonstration may constitute the provision of 'work-related counselling' where the seminar gives 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 and is not provided as a reward for services rendered or to be rendered by the employee.

217. In either situation, it is also necessary for the 'required solely' test to be satisfied. As discussed in paragraph 154 of this Ruling this test requires the cooking demonstration to be the only reason for the food being provided. For example, this test will be satisfied where the food is provided as samples to illustrate the concepts being presented in the seminar. By contrast, the 'required solely' test will not be satisfied where there is an additional purpose for providing the food.

Will the provision of the hard copy health related publications be an exempt benefit?

218. The hard copy health publications can be provided to an employee either at a health assessment, or at a seminar.

219. As discussed in paragraphs 225 to 249 of this Ruling, the health assessments conducted by a qualified medical practitioner or nurse will be 'work-related medical screening'. A hard copy publication provided as part of the assessment will be an exempt benefit under subparagraph 58M(1)(b)(ii).

220. A seminar may be conducted by a qualified medical practitioner or nurse. As discussed at paragraph 259 of this Ruling a seminar conducted by a qualified medical practitioner or nurse may be 'work-related preventative health care'. A hard copy health related publication provided as part of a seminar which comes within the definition of 'work-related preventative health care' in subsection 136(1) will be an exempt benefit under subparagraph 58M(1)(b)(iii).

221. Alternatively, as discussed at paragraph 259 of this Ruling the attendance of an employee at a seminar conducted by a health professional may be 'work-related preventative health care' where the employee attends the seminar as a result of a referral from a listed medical professional. A hard copy health related publication provided as part of a seminar attended by an employee who has been referred to the seminar will be an exempt benefit under subparagraph 58M(1)(b)(iii).

222. Alternatively, as discussed in paragraph 265 of this Ruling the attendance of an employee without a referral at a seminar conducted by a health professional may be 'work-related counselling'. When this occurs the provision of a hard copy publication that relates to the seminar will be an exempt benefit under subparagraph 58M(1)(b)(iv).

Will the residual benefits be an exempt benefit?

223. As discussed at paragraph 137 of this Ruling an employee may receive the following residual benefits:

- (i) an Executive Health Risk Assessment;
- (ii) a Workplace Health Assessment;
- (iii) a Workplace Health Screening;
- (iv) a Self Reported Health Risk Assessment;
- (v) information and advice at a group seminar;
- (vi) participation in a group exercise class;
- (vii) advice and information provided at a personalised consultation session;
- (viii) advice and information provided in a personalised consultation program;
- (ix) participation in a personalised exercise class;
- (x) a personalised massage therapy; and
- (xi) a range of information and advice on an interactive health and wellbeing portal and access to a call centre.

224. The first four benefits listed in paragraph 223 of this Ruling are health assessments conducted for the purpose of ascertaining the existence or risk of contraction of an employee's health problems. As such they are an examination or test for work-related trauma. Therefore, in applying the steps summarised in flowchart 1 in paragraph 166 of this Ruling it is necessary to consider whether these assessments constitute the provision of 'work-related medical screening'.

(i) Does an Executive Health Assessment constitute the provision of 'work-related medical screening'?

225. To determine whether an Executive Health Assessment constitutes the provision of 'work-related medical screening' it is necessary to consider the tests summarised in flowchart 1 in paragraph 166 of this Ruling.

(a) Is the Executive Health Assessment carried out by a listed medical professional?

226. An Executive Health Assessment will generally be conducted by a qualified medical practitioner or nurse employed by Good Health. However, other health professionals may assist at particular stages of the assessment. For example, a health professional may measure the employee's height and weight. When they do so they will be performing the test on behalf of the medical practitioner or nurse who prepares the report that is provided to the employee.

(b) Who is examined or tested?

227. An Executive Health Assessment assesses the health risks of an employee.

(c) Is the examination made available to all the specified employees?

228. As all the other conditions are satisfied an Executive Health Assessment will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the assessment is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

(ii) Does a Workplace Health Assessment constitute the provision of 'work-related medical screening'?

(a) Is the Workplace Health Assessment carried out by or on behalf of a listed medical professional?

229. A Workplace Health Assessment will generally be conducted by a qualified medical practitioner or nurse employed by Good Health. Where this occurs the first condition will be satisfied as both a qualified medical practitioner and a nurse are a listed medical professional in the definition of 'work-related medical screening' in subsection 136(1).

230. However, on occasions the assessment may be conducted by a health professional. Where this occurs it is necessary to consider whether the assessment is conducted on behalf of a listed medical professional.

231. As discussed at paragraph 178 of this Ruling the 'on behalf of' test requires the person conducting the assessment to be giving support or assisting a listed medical professional to conduct the assessment. That is, it requires a listed medical professional to retain medical responsibility for the assessment report and to provide direction to the person conducting the assessment.

232. In evaluating the circumstances in which a Workplace Health Assessment will be conducted by a health professional a Workplace Health Assessment is provided as part of a structured assessment process that has been developed by the Medical Director who is a qualified medical practitioner. The Medical Director is also responsible for developing the training that is undertaken by the health professional and the quality assurance program that reviews the assessment process.

233. Although the health professionals in undertaking a Workplace Health Assessment are required to follow a process that has been developed by a qualified medical practitioner, this by itself, is not sufficient to conclude that the assessment is conducted 'on behalf of' the Medical Director.

234. In making a Workplace Health Assessment, the health professional provides a summary of the employee's health information, identified health problems, recommendations and if necessary a Health Intervention Referral form. The employee provides this information to his or her personal General Practitioner who has the responsibility for deciding what further treatment or interventions may be required.

235. As the Medical Director does not have a direct involvement in the examination, the report or the on-going care of the employee it is not possible to conclude that a health professional in carrying out a Workplace Health Assessment is doing so on behalf of a listed medical professional.

236. Therefore, a Workplace Health Assessment conducted by a health professional will not be an exempt benefit under section 58M.

(b) Who is examined or tested?

237. A Workplace Health Assessment is a health assessment of an employee.

(c) Is the examination made available to all the specified employees?

238. As all the other conditions are satisfied a Workplace Health Assessment that is conducted by a qualified medical practitioner or a nurse will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the assessment is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

(iii) Does a Workplace Health Screening constitute the provision of 'work-related medical screening'?

(a) Is the Workplace Health Screening carried out by or on behalf of a listed medical professional?

239. A Workplace Health Screening will generally be conducted by a qualified medical practitioner or nurse employed by Good Health. Where this occurs the first condition will be satisfied as both a qualified medical practitioner and a nurse are a listed medical professional in the definition of 'work-related medical screening'.

240. However, on occasions the assessment may be conducted by a health professional. Where this occurs it is necessary to consider whether the assessment is conducted 'on behalf of' a listed medical professional.

241. For the reasons set out in paragraphs 231 to 236 of this Ruling in relation to a Workplace Health Assessment, the 'on behalf of' test will not be satisfied as the Medical Director does not have a direct involvement in the examination, the report or the on-going care of the employee.

242. Therefore, a Workplace Health Screening conducted by a health professional will not be an exempt benefit under section 58M.

(b) Who is examined or tested?

243. A Workplace Health Screening is an assessment of an employee.

(c) Is the examination made available to all the specified employees?

244. As all the other conditions are satisfied, a Workplace Health Screening that is conducted by a qualified medical practitioner or a nurse will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the assessment is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

(iv) Does a Self Reported Health Risk assessment constitute the provision of 'work-related medical screening'?

(a) Is the Self Reported Health Risk assessment carried out by or on behalf of a listed medical professional?

245. A Self Reported Health Risk assessment is a questionnaire or survey style assessment that is completed by the employee in their own time.

246. Both the questionnaire and the generated recommendations which are based on the responses provided by the employee are designed and developed by the Medical Director who is a qualified medical practitioner.

247. Although the Medical Director does not personally examine the employee, the Medical Director is directly involved in the provision of the recommendations. Both the recommendations and the criteria which determine the particular recommendations that are provided to the employee are developed by the Medical Director. Therefore, it can be concluded that the assessment has been carried out by a qualified medical practitioner.

(b) Who is examined or tested?

248. A Self Reported Health Risk assessment is carried out on an employee.

(c) Is the examination made available to all the specified employees?

249. As all the other conditions are satisfied, a Self Reported Health Risk assessment will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the assessment is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

(v) Is the information and advice provided at a group seminar an exempt benefit?

250. As a group seminar is not an examination or test for work-related trauma the initial question to consider is whether the group seminar is provided by, or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

251. A group seminar may be conducted by a qualified medical practitioner or nurse employed by Good Health. When this occurs the seminar will be provided by a listed medical professional and the relevant conditions to consider are those that apply to 'work-related preventative health care'.

252. However, on occasions the seminar will be conducted by a health professional employed by Good Health or a person contracted to provide services on behalf of Good Health. Where this occurs it is necessary to consider whether the seminar is conducted on behalf of a listed medical professional.

253. An employee may attend a seminar conducted by a health professional as a result of a referral provided by:

- a Good Health medical practitioner or nurse; or
- an external medical practitioner.

254. In both situations the presenter will be acting 'on behalf of' the referring medical practitioner or nurse as they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'.

255. By contrast, a health professional presenter who provides a seminar to an employee who decides to attend the seminar without a referral from a qualified medical practitioner or nurse will not be acting 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'.

Is a group seminar conducted by a qualified medical practitioner or nurse or attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?

256. To determine whether the group seminar will constitute 'work-related preventative health care', it is necessary to consider the following conditions.

(a) Who attends the seminars?

257. The group seminars are attended by employees.

(b) What is the principal purpose of the group seminars?

258. The principal purpose of a group seminar is to provide advice and information about the particular topic so as to prevent the employee suffering from 'work-related trauma'.

(c) Is the care made available to all relevant employees?

259. In applying the final condition it can be concluded that the attendance of an employee at a group seminar conducted by a listed medical professional, or at a seminar conducted by a health professional where the employee has been referred by a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the seminar is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

Is the attendance of an employee who does not have a referral at a group seminar conducted by a health professional or a person contracted to provide services on behalf of Good Health 'work-related counselling'?

(a) Does the group seminar constitute the provision of counselling?

260. As set out in paragraphs 190 to 195 of this Ruling 'counselling' involves a suitably qualified person giving advice or guidance in relation to their area of expertise. This can include seminars. Therefore, where a group seminar is conducted by a qualified presenter it will constitute the provision of counselling.

(b) Who attends the seminar?

261. The group seminars are attended by employees.

(c) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

262. This condition will be satisfied where the seminar is provided as part of a plan or policy of the employer.

(d) Does the counselling relate to a specified matter?

263. The seminars can cover a range of topics including health related issues, fitness, stress management, personal relationships, drug or alcohol abuse and healthy eating. Each of these topics come within the list contained in paragraph (d) of the 'work-related counselling' definition in subsection 136(1).

(e) Is the counselling provided as a reward for services?

264. To come within the definition of 'work-related counselling' in subsection 136(1) the counselling must not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

265. In evaluating each of the relevant factors it can be concluded that the attendance of an employee without a referral from a medical professional at a group seminar conducted by a health professional will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

(vi) Will the participation in a group exercise class be an exempt benefit?

266. As a group exercise class is not an examination or test for 'work-related trauma', the initial question to consider is whether the group exercise class is provided by, or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

267. A group exercise class may be conducted by a qualified medical practitioner or nurse employed by Good Health. When this occurs the care will be provided by a listed medical professional and the relevant conditions to consider are those that apply to 'work-related preventative health care'.

268. However, on occasions, the group exercise class will be conducted by a health professional employed by Good Health or a person trained in the particular activity that is contracted to provide services on behalf of Good Health. Where this occurs it is necessary to consider whether the group exercise class is conducted on behalf of a listed medical professional.

269. An employee may attend a group exercise class as a result of a referral provided by:

- a Good Health medical practitioner or nurse; or
- an external medical practitioner.

270. In both situations, the health professional conducting the class can be seen to be acting 'on behalf of' the referring medical practitioner or nurse as they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'.

271. By contrast, the care provided to an employee who attends without a referral cannot be seen to be made 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'.

Is a group exercise class conducted by a qualified medical practitioner or nurse or attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?

272. To determine whether the group exercise class will constitute 'work-related preventative health care', it is necessary to consider the tests summarised in flowchart 2 in paragraph 180 of this Ruling:

(a) Who attends the exercise class?

273. The exercise classes are attended by employees.

(b) What is the principal purpose of the group exercise classes?

274. This condition will be satisfied where the employee attends an exercise class wholly or principally to prevent them suffering from 'work-related trauma'.

(c) Is the care made available to all relevant employees?

275. In applying the final condition it can be concluded that the attendance of an employee at a group exercise class conducted by a listed medical professional, or at a class conducted by a health professional where the employee has been referred by a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the class is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

Is the attendance of an employee who does not have a referral at a group exercise class 'work-related counselling'?

(a) Does the group seminar constitute the provision of counselling?

276. As set out in paragraph 195 of this Ruling, although the knowledge or skills provided as part of counselling can be in a wide range of areas that may include training or advice about how to undertake various physical activities, a predominantly physical activity session with negligible or no lecture component will not constitute 'counselling'.

277. The classes are conducted to enable the employee to participate in the particular type of activity. As such, they are not considered to be principally for the provision of advice or information. Therefore, they do not constitute the provision of counselling and the attendance of an employee will not constitute the provision of 'work-related counselling'.

(vii) Is the information and advice provided at a personalised consultation session an exempt benefit?

278. As a personalised consultation session is not an examination or test for 'work-related trauma' the initial question to consider is whether the group seminar is provided by, or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

279. A personalised consultation session may be conducted by a qualified medical practitioner or nurse employed by Good Health. When this occurs the session will be provided by a listed medical professional and the relevant conditions to consider are those that apply to 'work-related preventative health care'.

280. However, on occasions the seminar will be conducted by a health professional employed by Good Health or a person contracted to provide services on behalf of Good Health. Where this occurs it is necessary to consider whether the seminar is conducted on behalf of a listed medical professional.

281. An employee may attend a personalised consultation session conducted by a health professional as a result of a referral provided by:

- a Good Health medical practitioner or nurse; or
- an external medical practitioner.

282. In both situations the presenter will be acting 'on behalf of' the referring medical practitioner or nurse as they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'.

283. By contrast, a health professional presenter who provides a consultation session to an employee who decides to attend the session without a referral will not be acting 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'.

Is a personalised consultation session conducted by a qualified medical practitioner or nurse or attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?

284. To determine whether the personalised consultation session will constitute 'work-related preventative health care' it is necessary to consider the tests summarised in flowchart 2 in paragraph 180 of this Ruling.

(a) Who attends the consultation session?

285. The consultation session is attended by an employee.

(b) What is the principal purpose of the personalised consultation sessions?

286. The personalised consultation sessions offer customised advice, recommendations and support to individual employees in respect of addressing and alleviating their identified health problems. Generally only those employees with a specific risk profile will be notified about the sessions.

287. As illustrated in the flowchart 2 in paragraph 180 of this Ruling the exemption for 'work-related preventative health care' only applies to care that is provided to prevent the employee suffering from 'work-related trauma'.

(c) Is the care made available to all relevant employees?

288. In applying the final condition it can be concluded that the attendance of an employee at a personalised consultation session conducted by a listed medical professional, or as a result of a referral from a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the consultation session is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

Is the attendance of an employee who does not have a referral at a personalised consultation session conducted by a health professional or a person contracted to provide services on behalf of Good Health 'work-related counselling'?

(a) Does the group seminar constitute the provision of counselling?

289. As set out in paragraph 192 of this Ruling 'counselling' involves a suitably qualified person providing advice or guidance in relation to their area of expertise. Employees who attend a personalised consultation session receive advice and recommendations to assist them to address and alleviate their identified health problems. This advice will come within the definition of counselling in subsection 136(1) when it is provided by a suitably qualified person.

(b) Who attends the consultation sessions?

290. The personalised consultation sessions are attended by an employee.

(c) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

291. This condition will be satisfied where the consultation sessions are provided as part of a plan or policy of the employer.

(d) Does the counselling relate to a specified matter?

292. The counselling can cover a range of topics including health related issues and fitness. Each of these topics come within the list contained in paragraph (d) of the 'work-related counselling' definition in subsection 136(1).

(e) Is the counselling provided as a reward for services?

293. To come within the definition of 'work-related counselling' the counselling must not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

294. In evaluating each of the relevant factors it can be concluded that the attendance of an employee without a referral from a listed medical professional at a personalised consultation session conducted by a health professional may be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling'. This will occur where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

(viii) Is the information and advice provided in a personalised consultation program an exempt benefit?

295. As a personalised consultation program consists of a series of personalised consultation sessions that are joined together to create a personalised program to support individual employees in respect of addressing and managing their health problems and risk profile, the program will be treated in the same manner as the individual personalised consultation sessions.

296. That is, the program will be an exempt benefit under:

- subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the program is conducted by or on behalf of a listed medical professional and the conditions discussed in paragraphs 285 to 288 of this Ruling in relation to a personalised consultation session are satisfied; or
- subparagraph 58M(1)(c)(iv) as 'work-related counselling' if the conditions discussed in paragraphs 289 to 294 of this Ruling in relation to a personalised consultation session are satisfied.

(ix) Will the participation in a personalised exercise class be an exempt benefit?

297. As a personalised exercise class is not an examination or test for 'work-related trauma' the initial question to consider is whether the group exercise class is provided by, or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

298. A personalised exercise class is a one-on-one class conducted by a health professional employed by Good Health or a person trained in the particular activity that is contracted to provide services 'on behalf of' Good Health. As this person is not a listed medical professional it is necessary to consider whether the group exercise class is conducted on behalf of a listed medical professional.

299. An employee may attend a personalised exercise class as a result of a referral provided by:

- a Good Health medical practitioner or nurse; or
- an external medical practitioner.

300. In both situations the person conducting the class can be seen to be acting 'on behalf of' the referring medical practitioner or nurse. This is because they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'.

301. By contrast, the care provided to an employee who attends without a referral cannot be seen to be made 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'.

Is a personalised exercise class attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?

302. To determine whether the exercise class will constitute 'work-related preventative health care' it is necessary to consider the tests summarised in flowchart 2 in paragraph 180 of this Ruling.

(a) Who attends the exercise class?

303. The exercise class is attended by employees.

(b) What is the principal purpose of the group exercise classes?

304. This condition will be satisfied where the employee attends an exercise class wholly or principally to prevent them suffering from 'work-related trauma'.

(c) Is the care made available to all relevant employees?

305. In applying the final condition it can be concluded that the attendance of an employee at a personalised exercise class as a result of a referral from a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the personalised exercise class is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

Is the attendance of an employee who does not have a referral at a personalised exercise class 'work-related counselling'?

(a) Does the personalised exercise class constitute the provision of counselling?

306. As set out in paragraph 195 of this Ruling although the knowledge or skills provided as part of counselling can be in a wide range of areas that may include training or advice about how to undertake various physical activities, a predominantly physical activity session with negligible or no lecture component will not constitute 'counselling'.

307. The classes are conducted to enable the employee to participate in the particular type of activity. As such they are not considered to be principally for the provision of advice or information. Therefore, they do not constitute the provision of counselling and the attendance of an employee will not constitute the provision of 'work-related counselling'.

(x) Will the personalised massage therapy be an exempt benefit?

308. As a personalised massage is not an examination or test for 'work-related trauma' the initial question to consider is whether the massage is provided by, or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1).

309. A personalised massage is provided by a health professional employed by Good Health or a person trained in the particular activity that is contracted to provide services on behalf of Good Health. As this person is not a listed medical professional it is necessary to consider whether the group exercise class is conducted 'on behalf of' a listed medical professional.

310. An employee may receive a personalised massage as a result of a referral provided by:

- a Good Health medical practitioner or nurse; or
- an external medical practitioner.

311. In both situations the person conducting the class can be seen to be acting 'on behalf of' the referring medical practitioner or nurse as they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'.

312. By contrast, the care provided to an employee who receives a massage without a referral cannot be seen to be made 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'.

Is a personalised massage provided to an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?

313. To determine whether the massage will constitute 'work-related preventative health care' it is necessary to consider the tests summarised in flowchart 2 in paragraph 180 of this Ruling

(a) Who receives a massage?

314. The massage is provided to employees.

(b) What is the principal purpose of the massage?

315. This condition will be satisfied where the employee receives a massage wholly or principally to prevent them suffering from 'work-related trauma'.

(c) Is the care made available to all relevant employees?

316. In applying the final condition it can be concluded that the attendance of an employee at a personalised exercise class as a result of a referral from a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the personalised massage is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

Is the provision of a personalised massage to an employee who does not have a referral 'work-related counselling'?

(a) Does the personalised exercise class constitute the provision of counselling?

317. As set out in paragraphs 190 to 195 of this Ruling counselling involves the giving of advice or information. As a massage does not involve the provision of advice or information it will not constitute the provision of counselling and as such will not constitute the provision of 'work-related counselling'.

(xi) Are the personal resources provided by email, on the interactive health and wellbeing portal or by the call centre an exempt benefit?

318. Apart from the hard copy health related publications discussed at paragraphs 218 to 222 of this Ruling an employee may also receive a range of information including:

- the Good Health Solutions monthly newsletter;
- personalised e-mails;
- health related information on the web site and the interactive health and wellbeing portal; and
- web based reporting and monitoring tools to help organise and monitor team walking challenges.

319. As none of these are an examination or test the relevant conditions to consider are those set out in flowchart 2 in paragraph 180 of this Ruling. In considering these conditions the initial question to consider is whether the provision of the information involves the provision of care.

320. As discussed at paragraphs 184 to 187 of this Ruling 'care' involves one person looking after another person. This can be provided in a number of ways including by way of counselling.

321. In applying this test to the various sources of information listed in paragraph 318 of this Ruling, the monthly newsletter will not involve the provision of care. Although the newsletter includes some health related information that may be applicable to the employee it is not specifically targeted at the employee. Rather, it provides general health information in the context of the Good Health products and services. Therefore, the provision of the Good Health Solutions newsletter will not be an exempt benefit under section 58M.

322. For the other products, it is necessary to consider whether the information is provided by or on behalf of a listed medical professional. When this occurs the relevant conditions to consider are those that apply to 'work-related preventative health care'.

323. Alternatively, the employee may receive the information without the involvement of a medical professional. In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'.

324. In applying this second test to the information provided some of the information is provided by or on behalf of a listed medical professional. For example, the personalised e-mails are received as a result of a health assessment conducted by a listed medical professional. Similarly, the information provided by the call centre or through the web based tools such as the interactive health and wellbeing web portal will be provided by or on behalf of a listed medical professional.

325. However, other information such as the team walking challenge does not involve a listed medical professional. Therefore, in considering the team walking challenge it is necessary to consider the conditions that apply to 'work-related counselling'.

Are the personal resources provided by or on behalf of a qualified medical practitioner or nurse 'work-related preventative health care'?

326. To determine whether the personal resources provided by or on behalf of a qualified medical practitioner or nurse will constitute 'work-related preventative health care' it is necessary to consider the tests summarised in flowchart 2 in paragraph 180 of this Ruling.

(a) Who receives the personal resources?

327. The personal resources are provided to employees.

(b) What is the principal purpose for providing the information?

328. The information covers a range of health related matters that will assist in preventing the employee from suffering from 'work-related trauma'.

(c) Are the resources made available to all relevant employees?

329. In applying the final condition it can be concluded that the personal resources provided by or on behalf of a listed medical person may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the resources are made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

Will the provision of the team based walking challenge information be 'work-related counselling'?

(a) Do the personal resources constitute the provision of 'counselling'?

330. As set out in paragraph 192 of this Ruling 'counselling' involves a suitably qualified person giving advice or guidance in relation to their area of expertise. This requirement is satisfied as the walking challenge information is provided by a suitably qualified person.

(b) Who receives the information?

331. The information is provided to employees.

(c) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

332. This condition will be satisfied where the information is provided as part of a plan or policy of the employer.

(d) Do personal resources relate to a specified matter?

333. The information relates to health and fitness related issues.

(e) Are the personal resources provided as a reward for services?

334. To come within the definition of 'work-related counselling' in subsection 136(1) the personal resources must not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

335. In evaluating each of the relevant factors it can be concluded that the provision of the team based walking challenge information will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

Appendix 2– Detailed contents list

336. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Category A – consultancy services	14
Category B – health assessments	16
(a) <i>Executive Health Assessments</i>	19
<i>Health Essentials</i>	24
<i>Classic Health Assessment</i>	25
<i>Premium Health Assessment</i>	26
(b) <i>Workplace Health Assessments</i>	29
<i>Employee Health Check</i>	32
<i>Employee Health Check Plus</i>	33
(c) <i>Workplace Health Screening</i>	35
<i>Diabetes Health Risk Screening</i>	37
<i>Heart Health Risk Screening</i>	38
<i>Skin Checks</i>	39
(d) <i>Self-Reported Health Risk Assessments</i>	41
Category C – targeted health interventions	46
(a) <i>Group Seminars</i>	55
(b) <i>Group Exercise Classes</i>	60
(c) <i>Personalised consultation sessions</i>	63
(d) <i>Personalised Consultation Programs</i>	67
(e) <i>Personalised exercise classes</i>	70
(f) <i>Personalised massage therapies</i>	72
(g) <i>Personal resources</i>	75
Category D – gymnasium management services	76
Category E – program management and reporting	78
Ruling	80

Category A – consultancy services	80
Category B – health assessments	81
Category C – targeted health interventions	89
Category D – gymnasium management services	116
Category E – program management and reporting	117
Appendix 1 – Explanation	118
Will a fringe benefit arise from the provision of the services?	118
What benefits may be received by an employee?	122
<i>Expense payment benefits</i>	125
<i>Tax-exempt body entertainment benefits</i>	127
<i>Property benefits</i>	134
<i>Residual benefits</i>	136
Will the benefits be exempt benefits?	138
The application of section 41	139
The application of section 58M	141
Which expense payment benefits are exempt under paragraph 58M(1)(a)?	146
Which property benefits are exempt under paragraph 58M(1)(b)?	147
<i>Required</i>	149
<i>Solely</i>	153
<i>Required solely</i>	154
Which residual benefits are exempt under paragraph 58M(1)(c)?	155
Which benefits are associated benefits under subsection 58M(2)?	156
‘Work-related medical screening’, ‘work-related preventative health care’ and ‘work-related counselling’	162
Identifying the relevant exemption	163
Examination or test	165
The purpose of the examination or test	168
(a) Purposes listed in the definition of ‘work-related medical examination’	169
(b) Ascertain if employee has suffered or is at risk of suffering from ‘work-related trauma’	170
What is ‘work-related trauma’?	171
The tests that apply to ‘work-related medical screening’	172

<i>Who is a medical professional for the purpose of 'work-related medical screening'?</i>	173
<i>On behalf of</i>	174
<i>(c) Other purposes</i>	179
Conditions when the benefit is not an examination or test	180
<i>Provision of care</i>	182
<i>Who is a medical professional for the purpose of 'work-related preventative health care'?</i>	187
The other tests that apply to 'work-related preventative health care'	188
The other tests that apply to 'work-related counselling'	189
<i>What is counselling?</i>	190
<i>The meaning of 'relate'</i>	196
The application of section 58P	197
Are the expense payment benefits an exempt benefit?	200
Are the property benefits an exempt benefit?	209
<i>Will the provision of food at the cooking demonstration group seminar be an exempt benefit?</i>	210
<i>Will the provision of food be an exempt benefit under section 41?</i>	211
<i>Will the provision of food be an exempt benefit under subparagraph 58M(1)(b)(iv)?</i>	212
<i>Will the provision of the hard copy health related publications be an exempt benefit?</i>	218
Will the residual benefits be an exempt benefit?	223
(i) Does an Executive Health Assessment constitute the provision of 'work-related medical screening'?	225
<i>(a) Is the Executive Health Assessment carried out by a listed medical professional?</i>	226
<i>(b) Who is examined or tested?</i>	227
<i>(c) Is the examination made available to all the specified employees?</i>	228
(ii) Does a Workplace Health Assessment constitute the provision of 'work-related medical screening'?	229
<i>(a) Is the Workplace Health Assessment carried out by or on behalf of a listed medical professional?</i>	229
<i>(b) Who is examined or tested?</i>	237
<i>(c) Is the examination made available to all the specified employees?</i>	238

(iii) Does a Workplace Health Screening constitute the provision of 'work-related medical screening'?	239
(a) <i>Is the Workplace Health Screening carried out by or on behalf of a listed medical professional?</i>	239
(b) <i>Who is examined or tested?</i>	243
(c) <i>Is the examination made available to all the specified employees?</i>	244
(iv) Does a Self Reported Health Risk assessment constitute the provision of 'work-related medical screening'?	245
(a) <i>Is the Self Reported Health Risk assessment carried out by or on behalf of a listed medical professional?</i>	245
(b) <i>Who is examined or tested?</i>	248
(c) <i>Is the examination made available to all the specified employees?</i>	249
(v) Is the information and advice provided at a group seminar an exempt benefit?	250
<i>Is a group seminar conducted by a qualified medical practitioner or nurse or attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?</i>	256
(a) <i>Who attends the seminars?</i>	257
(b) <i>What is the principal purpose of the group seminars?</i>	258
(c) <i>Is the care made available to all relevant employees?</i>	259
<i>Is the attendance of an employee who does not have a referral at a group seminar conducted by a health professional or a person contracted to provide services on behalf of Good Health 'work-related counselling'?</i>	260
(a) <i>Does the group seminar constitute the provision of counselling?</i>	260
(b) <i>Who attends the seminar?</i>	261
(c) <i>Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</i>	262
(d) <i>Does the counselling relate to a specified matter?</i>	263
(e) <i>Is the counselling provided as a reward for services?</i>	264
(vi) Will the participation in a group exercise class be an exempt benefit?	266
<i>Is a group exercise class conducted by a qualified medical practitioner or nurse or attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?</i>	272
(a) <i>Who attends the exercise class?</i>	273

<i>(b) What is the principal purpose of the group exercise classes?</i>	274
<i>(c) Is the care made available to all relevant employees?</i>	275
<i>Is the attendance of an employee who does not have a referral at a group exercise class 'work-related counselling'?</i>	276
<i>(a) Does the group seminar constitute the provision of counselling?</i>	276
<i>(vii) Is the information and advice provided at a personalised consultation session an exempt benefit?</i>	278
<i>Is a personalised consultation session conducted by a qualified medical practitioner or nurse or attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?</i>	284
<i>(a) Who attends the consultation session?</i>	285
<i>(b) What is the principal purpose of the personalised consultation sessions?</i>	286
<i>(c) Is the care made available to all relevant employees?</i>	288
<i>Is the attendance of an employee who does not have a referral at a personalised consultation session conducted by a health professional or a person contracted to provide services on behalf of Good Health 'work-related counselling'?</i>	289
<i>(a) Does the group seminar constitute the provision of counselling?</i>	289
<i>(b) Who attends the consultation sessions?</i>	290
<i>(c) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</i>	291
<i>(d) Does the counselling relate to a specified matter?</i>	292
<i>(e) Is the counselling provided as a reward for services?</i>	293
<i>(viii) Is the information and advice provided in a personalised consultation program an exempt benefit?</i>	295
<i>(ix) Will the participation in a personalised exercise class be an exempt benefit?</i>	297
<i>Is a personalised exercise class attended by an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?</i>	302
<i>(a) Who attends the exercise class?</i>	303
<i>(b) What is the principal purpose of the group exercise classes?</i>	304
<i>(c) Is the care made available to all relevant employees?</i>	305

<i>Is the attendance of an employee who does not have a referral at a personalised exercise class 'work-related counselling'?</i>	306
<i>(a) Does the personalised exercise class constitute the provision of counselling?</i>	306
<i>(x) Will the personalised massage therapy be an exempt benefit?</i>	308
<i>Is a personalised massage provided to an employee as a result of a referral from a listed medical professional 'work-related preventative health care'?</i>	313
<i>(a) Who receives a massage?</i>	314
<i>(b) What is the principal purpose of the massage?</i>	315
<i>(c) Is the care made available to all relevant employees?</i>	316
<i>Is the provision of a personalised massage to an employee who does not have a referral 'work-related counselling'?</i>	317
<i>(a) Does the personalised exercise class constitute the provision of counselling?</i>	317
<i>(xi) Are the personal resources provided by email, on the interactive health and wellbeing portal or by the call centre an exempt benefit?</i>	318
<i>Are the personal resources provided by or on behalf of a qualified medical practitioner or nurse 'work-related preventative health care'?</i>	326
<i>(a) Who receives the personal resources?</i>	327
<i>(b) What is the principal purpose for providing the information?</i>	328
<i>(c) Are the resources made available to all relevant employees?</i>	329
<i>Will the provision of the team based walking challenge information be 'work-related counselling'?</i>	330
<i>(a) Do the personal resources constitute the provision of 'counselling'?</i>	330
<i>(b) Who receives the information?</i>	331
<i>(c) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</i>	332
<i>(d) Do personal resources relate to a specified matter?</i>	333
<i>(e) Are the personal resources provided as a reward for services?</i>	334
Appendix 2 – Detailed contents list	336

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TR 97/17; TD 93/153

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 20
- 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 38
- FBTAA 1986 Pt III Div 10A
- FBTAA 1986 Pt III Div 11
- FBTAA 1986 40
- FBTAA 1986 41
- FBTAA 1986 41(2)
- FBTAA 1986 Pt III Div 12
- FBTAA 1986 45
- FBTAA 1986 47(2)
- FBTAA 1986 58M
- FBTAA 1986 58M(1)
- FBTAA 1986 58M(1)(a)
- FBTAA 1986 58M(1)(b)
- FBTAA 1986 58M(1)(b)(ii)
- FBTAA 1986 58M(1)(b)(iii)
- 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 58M(2)(c)
- FBTAA 1986 58P
- FBTAA 1986 58P(1)(d)
- FBTAA 1986 58P(1)(f)
- FBTAA 1986 61F
- FBTAA 1986 136(1)
- FBTAA 1986 143E
- ITAA 1997 32-5
- ITAA 1997 32-10(1)
- ITAA 1997 32-20
- ITAA 1997 32-30
- ITAA 1997 32-35
- ITAA 1997 32-40
- ITAA 1997 32-45
- ITAA 1997 32-50
- ITAA 1997 995-1(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 Pty Ltd v. Thomas (1999) 93 FCR 141; (1999) FCA 315
- Dingwall v. Federal Commissioner of Taxation (1995) 57 FCR 274; 95 ATC 4345; (1995) 30 ATR 498
- 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; 93 ATC 4508; (1993) 26 ATR 76
- Smith v. National Coal Board [1967] 2 All ER 593

CR 2009/67

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

NO: 2009/11517

ISSN: 1445-2014

ATOlaw topic: Fringe Benefits Tax ~ Miscellaneous exempt benefits