



# ***CR 2010/66 - Fringe benefits tax: employers who participate in the Local Government Employees Health Plan***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *24 November 2010*



## Class Ruling

# Fringe benefits tax: employers who participate in the Local Government Employees Health Plan

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### **📌 This publication provides you with the following level of protection:**

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

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

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

## What this Ruling is about

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

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 58P of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA); and
- the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.

All legislative references in this Ruling are to the FBTAA unless otherwise stated.

## Class of entities

3. The class of entities to which this Ruling applies are the Municipal Association of Victoria (MAV), its member councils and associated statutory bodies who are employers and who participate in the Local Government Employees Health Plan (LGE Health Plan).
4. Within this Ruling the class of entities are referred to as 'Participating Employers'.

## Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 10 to 28 of this Ruling.
7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
  - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
  - this Ruling may be withdrawn or modified.
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## Date of effect

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9. This Ruling applies from 1 April 2010. 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

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10. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, as the case may be, form part of and are to be read with the description:

- application for Class Ruling from Health Link Consultants Pty Ltd dated 6 November 2009;
- Conduct Rules – Excess Refund Account;
- description of the scheme in letter dated 24 August 2010; and
- description of the scheme in letter dated 1 October 2010.

11. 'The Applicant' is Health Link Consultants Pty Ltd which is a privately owned health insurance advisory firm. The MAV has partnered with the Applicant to provide the LGE Health Plan to 'Eligible Employees'.

12. 'Eligible Employee' means a person who is currently employed by a Participating Employer and who has taken out a health insurance policy with the 'Health Insurer' under the LGE Health Plan.

13. 'Health Insurer' means GMHBA Limited who is a not-for-profit health insurance provider. The Health Insurer is independent of the MAV and the Applicant and is acting at arm's length in connection with the provision of health insurance under the LGE Health Plan.

14. The MAV, in consultation with the Applicant, introduced the LGE Health Plan with effect from 28 November 2008. The object of the LGE Health Plan is to enable Eligible Employees to obtain competitively priced health insurance cover from the Health Insurer.

15. The Hospital Excess Refund Pool (ERP) is a key feature of the LGE Health Plan. The ERP is a fund established and maintained by the MAV. It is funded by an 'Administration Allowance' paid monthly to the MAV by the Health Insurer. The Administration Allowance is equal to a percentage (currently 4%) of health insurance premiums paid to the Health Insurer by, or on behalf of, Eligible Employees participating in the LGE Health Plan. This Administration Allowance is calculated on the amount paid by the Eligible Employee to the Health Insurer for the health insurance policy inclusive of the 30% private health insurance rebate provided by the Commonwealth government.

16. The Administration Allowance is paid to the MAV by the Health Insurer on the basis that it will be accumulated in the ERP and applied to pay 'Hospital Excess Refunds' to Eligible Employees.

17. 'Hospital Excess Refunds' means an amount paid by the ERP to an Eligible Employee or an 'Eligible Family Member' as a refund of the hospital excess that the Eligible Employee is liable to pay as a result of being hospitalised and subsequently making a claim under the health insurance policy with the Health Insurer.

18. 'Eligible Family Member' means a person who is a family member of an Eligible Employee and is covered by the Eligible Employee's health insurance policy with the Health Insurer.
19. Under the Rules of Conduct for the ERP a start-up deposit is required from Participating Employers. This deposit is refundable once the ERP became self-funding.
20. The MAV has opened a bank account in the name of the ERP, into which all funding is deposited and from which all Hospital Excess Refunds are paid.
21. The ERP's funds are applied to provide Eligible Employees or Eligible Family Members with a Hospital Excess Refund when they incur and pay a hospital excess.
22. The entitlement to claim benefits under the LGE Health Plan ceases when an Eligible Employee ceases to be employed by a Participating Employer. The Eligible Employee and the Eligible Family Members may however continue to hold membership with the Health Insurer.
23. If an Eligible Employee moves employment from one Participating Employer to another Participating Employer then that person remains an Eligible Employee.
24. An Eligible Employee or Eligible Family Member is able to claim a Hospital Excess Refund from the ERP if all the following conditions are met:
- the Eligible Employee or Eligible Family Member is hospitalised;
  - the Eligible Employee or Eligible Family Member is eligible to make a claim against their health insurance policy with the Health Insurer, for example, because he or she has completed any relevant waiting periods applying to the policy; and
  - the Eligible Employee or Eligible Family Member has paid the full amount of the hospital excess payment required under the health insurance policy to the relevant public hospital, private hospital or registered day hospital facility.
25. To make a claim from the ERP an Eligible Employee or Eligible Family Member must complete a claim form and provide it to the Participating Employer, which will forward the form to the MAV for review and settlement. Claims must be accompanied by documentation including a receipt confirming that the hospital excess has been paid.
26. The Eligible Employee or Eligible Family Member who has satisfied these threshold requirements is entitled to a Hospital Excess Refund from the ERP (currently up to \$250) in respect of the hospital excess they have paid for each episode of hospitalisation. The Hospital Excess Refund paid by the ERP to an Eligible Employee or Eligible Family Member may increase up to an amount of \$500 per hospital episode.

27. The number of times that an Eligible Employee or Eligible Family Member can claim a Hospital Excess Refund from the ERP is limited by the number of times that he or she is required to pay an amount of hospital excess under the terms of their particular health insurance policy.

#### **Variation to scheme**

28. In the variation to the scheme, the main scheme as described above applies except that rather than the ERP being maintained by the MAV, the ERP is instead maintained by the Participating Employer.

## **Ruling**

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29. This Ruling applies in relation to an 'employee', in relation to the 'employer' of the 'employee' and in relation to the 'year of tax' as those terms are defined in subsection 136(1).

30. The provision of rights to an Eligible Employee or Eligible Family Member to receive a payment of a Hospital Excess Refund from the ERP is a 'benefit' as defined in subsection 136(1).

31. This provision of rights will be an exempt benefit under section 58P where the Administration Allowance that is paid by the Health Insurer in a year of tax, in respect of the employee's health insurance policy, is less than the amount specified in paragraph 58P(1)(e), currently \$300.

32. This provision of rights will be a 'fringe benefit' as defined in subsection 136(1) where the Administration Allowance that is paid by the Health Insurer in a year of tax, in respect of the employee's health insurance policy, is equal to or exceeds the amount specified in paragraph 58P(1)(e).

33. The payment of a Hospital Excess Refund to an Eligible Employee or an Eligible Family Member in a year of tax is a 'benefit' as defined in subsection 136(1). This benefit is not provided in respect of the employment of the employee and will not be a 'fringe benefit' as defined in subsection 136(1).

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**Commissioner of Taxation**

24 November 2010

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## Appendix 1 – Explanation

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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 the provision of rights to an Eligible Employee or Eligible Family Member to receive a payment of a Hospital Excess Refund from the ERP be a fringe benefit?**

34. The definitions of 'benefit' and 'fringe benefit' in subsection 136(1) require, amongst other things, that:

- a benefit includes any right (including a right in relation to and an interest in, real or personal property), privilege, service or facility;
- a fringe benefit must be provided in relation to an employee, in relation to the employer of the employee, in relation to a year of tax: to the employee or to an associate of the employee. The terms 'year of tax', 'employee' and 'employer' are defined in subsection 136(1);
- a fringe benefit must be provided by the employer, by an associate of the employer, by an 'arranger', or by another person when the employer participates in or facilitates the provision of the benefit and knows it is doing so;
- a fringe benefit must be provided in respect of the employment of the employee; and
- a fringe benefit does include an exempt benefit, including an exempt benefit under section 58P (minor benefits).

35. When an Eligible Employee has taken out a health insurance policy with the Health Insurer under the LGE Health Plan and makes premium payments, that employee receives a right to have the MAV reimburse up to the maximum entitlement out of the ERP if an entitlement event occurs. If the MAV were to refuse to make a reimbursement up to the maximum entitlement out of the ERP, an aggrieved employee would have to take legal action against the MAV. This right provides financial coverage for the employee against a particular event. This right (or rights) is a 'benefit' as defined in subsection 136(1).

36. A Participating Employer participates in the LGE Health Plan and in the provision of the benefit by way of making an initial (refundable) deposit into the ERP and by collecting claim forms completed by their employees and passing these forms on to the MAV. In the variation to the scheme, the employer also participates by maintaining the ERP.

37. The MAV participates in the LGE Health Plan by administering the ERP and by providing the benefit to the employee or associate of the employee.

38. The benefit is provided to the employee or to an associate of the employee and is provided by either the employer or by another person, where the employer participates in the provision of the benefit.

39. When the employer and the MAV participate in the provision of the benefit to a current employee they play a role in the giving of the benefit sufficient that the benefit is provided in respect of the employment of the employee.

40. The provision of rights under this scheme will be a fringe benefit as defined unless section 58P applies. If section 58P applies, the benefit is an exempt benefit.

#### **Minor benefits exemption under section 58P**

41. Taxation Ruling TR 2007/12 Fringe benefits tax: minor benefits, sets out the Commissioner's views on the application of the minor benefits exemption in section 58P.

42. A benefit which is the provision of rights (the 'minor benefit') provided under this scheme will be an exempt benefit under section 58P where:

- the benefit is provided in a year of tax in respect of the employment of an employee of an employer;
- the benefit is not an airline transport benefit, in-house fringe benefit or a tax-exempt body entertainment benefit;
- the notional taxable value of the minor benefit is less than the amount specified in paragraph 58P(1)(e), currently \$300; and
- it would be concluded that it would be unreasonable, having regard to the five criteria in paragraph 58P(1)(f), to treat the minor benefit as a fringe benefit.

43. The first test is satisfied as the minor benefit is provided in a year of tax in respect of the employment of the employee.

#### **Is the benefit an airline transport benefit, in-house fringe benefit or a tax-exempt body entertainment benefit?**

44. The benefit which is the provision of rights will be either a property or residual benefit. It will not be an airline transport benefit or a tax-exempt body entertainment benefit.

45. The in-house fringe benefit provisions (for property and residual benefits) require the provider to carry on a business that consists of or includes the provision of identical or similar benefits principally to outsiders.

46. 'Outsider' is defined in subsection 136(1) to mean a person who is not:

- (a) an employee of the employer;
- (b) an employee of an associate of the employer....

47. Under the LGE Health Plan the benefits are exclusively made available by the MAV to its member's employees. The members of the MAV including the local councils are Victorian public authorities and are associates under subsection 159(2). As a result of this associate relationship between members, the benefit is not provided to outsiders as defined in subsection 136(1). As identical or similar benefits are not provided principally to outsiders the benefit is not an in-house benefit.

### **Is the notional taxable value less than the amount specified in paragraph 58P(1)(e)?**

48. 'Notional taxable value' as defined in subsection 136(1) is the amount which would have been the taxable value of the benefit if it was a fringe benefit.

49. In applying the valuation for either external property fringe benefits or external period residual fringe benefits the taxable value will depend upon the 'notional value' of the benefit.

50. 'Notional value' is defined in subsection 136(1) to mean:

the amount that the person could reasonably be expected to have been required to pay to obtain the property or other benefit from the provider under an arm's length transaction.

51. In *Walstern v. Federal Commissioner of Taxation* (2003) 138 FCR 1; 2003 ATC 5076; (2003) 54 ATR 423, at FCR 96; ATC 5092; ATR 442, Hill J examined the application of this provision:

As already noted, the valuation formula depends upon the 'notional value' in relation to the provision whether of property or of a benefit to each of the Medichs. From the definition it follows that the question to be asked is what is the amount that each of the Medichs could reasonably be expected to have been required to pay to obtain the benefit from the provider under an arm's length transaction. The provider in the present case is Walstern. Hence the question in relation to Mr Ronald Medich, is how much he could reasonably be expected to have been required (i.e., by Walstern) to pay to Walstern to obtain the interest obtained by him in the fund, assuming the transaction between Walstern and him to be at arm's length.

52. In the present case a particular employee is provided with a right to have the MAV reimburse that employee's hospital excess out of the ERP. The provider of the right is the MAV and the amount that the MAV could reasonably have expected a person to pay for the right is equivalent to the funding required by the MAV to administer the ERP and be in a position to be able to reimburse the employee's excess, when an entitlement arises. This amount is the amount of the Administration Allowance for that employee as is paid by the Health Insurer to the MAV during the period of the year of tax (1 April to 31 March). This amount paid is the 'notional value' and the 'notional taxable value' of the minor benefit.

53. The Administration Allowance is equal to a percentage (currently 4%) of health insurance premiums, inclusive of the Commonwealth government health insurance rebate. Where the Administration Allowance that is paid in a year of tax in respect of the employee's health insurance policy is less than the amount specified in paragraph 58P(1)(e), currently \$300, the 'notional taxable value' will be less than this amount in a year of tax. Paragraph 58P(1)(e) will be satisfied.

**Is it unreasonable to treat the minor benefit as a fringe benefit?**

54. 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 benefits, being 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 in relation to the current year of tax or any other year of tax;
- the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;
- 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.

***Infrequency and irregularity with which associated benefits are provided***

55. For the purposes of the minor benefit exemption the term 'associated benefit' is defined in subsection 58P(2). An employee who is hospitalised will receive a Hospital Excess Refund which is a benefit as defined in subsection 136(1). For this benefit to be an associated benefit paragraph 58P(2)(b) requires both the minor benefit (the rights) and the refund to be made in respect of the employee's employment. The refund paid to the employee or the employee's family member is not made in respect of the employee's employment and is not an associated benefit. Refer further discussion below on whether the Hospital Excess Refund is provided in respect of the employment of the employee.

56. This criterion requires one to have regard to the infrequency and irregularity of the associated benefits. The greater the frequency and regularity of associated benefits, the less likely the minor benefit will qualify as an exempt benefit. In this scheme and for a particular employee there is only one minor benefit (being rights which are property or residual benefits) which exists during the period of the employee's membership of the LGE Health Plan. These rights are a single benefit which exists inside and outside the year of tax. In this scheme there are no associated benefits and therefore in terms of this criterion the minor benefit would be more likely to qualify as an exempt benefit.

***The sum of the notional taxable values of the minor benefit and associated benefits which are identical or similar***

57. In this scheme there is only one minor benefit and no associated benefits. The notional taxable value of the minor benefit is an amount less than the amount specified in paragraph 58P(1)(e). Having regard to this amount in terms of this criterion the minor benefit would be more likely to qualify as an exempt benefit.

***The sum of the notional taxable values of any other associated benefits***

58. In this scheme this value will always be nil and in terms of this criterion the minor benefit would be more likely to qualify as an exempt benefit.

***The practical difficulties in valuing the minor benefit and associated benefits***

59. It would be expected that each Participating Employer would have to make enquiries to ascertain the amount of the Administration Allowance paid in respect of a particular employee's health insurance policy in a year of tax. However, it is expected that this level of enquiry would not present considerable difficulties to the employer.

60. In terms of this criterion the benefit would be more likely not to qualify as an exempt benefit.

***The circumstances surrounding the provision of the benefits***

61. In this scheme the benefit is provided to assist the employee with reimbursement of hospital expenses. It may be argued that the benefit provides continuous coverage against an expected event, or alternatively that hospital events are, by their nature, often unexpected.

62. In this scheme the benefit is not provided as a reward for services.

63. In terms of the two parts of this criterion the minor benefit would be more likely to qualify as an exempt benefit.

64. Having regard to all of the five criteria contained in paragraph 58P(1)(f) it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit.

65. Therefore, section 58P will apply to treat the minor benefit as an exempt benefit where the Administration Allowance that is paid by the Health Insurer in a year of tax, in respect of the employee's health insurance policy, is less than the amount specified in paragraph 58P(1)(e), currently \$300.

66. Where the Administration Allowance that is paid by the Health Insurer in a year of tax, in respect of the employee's health insurance policy, is equal to or exceeds this amount, then paragraph 58P(1)(e) is not satisfied and section 58P is not satisfied. In these circumstances the provision of rights to the employee or associate of the employee will be a 'fringe benefit' as defined in subsection 136(1).

#### **Will the payment of a Hospital Excess Refund be a fringe benefit?**

67. The payment of a Hospital Excess Refund from the ERP to an Eligible Employee or an Eligible Family Member in a year of tax is a 'benefit' as defined in subsection 136(1).

68. For a benefit to be a 'fringe benefit' it must be provided in respect of the employment of the employee.

69. The payment of the refund from the ERP to an employee or an associate of an employee arises as a result of the exercise of the employee's or associate's pre-existing rights to a refund from the ERP under the LGE Health Plan.

70. When an employee or associate receives a refund, they are engaged in the 'exploitation of a valuable right' earlier granted to him or her, refer *McArdle v. FC of T* 88 ATC 4222; (1988) 19 ATR 985. The refund is not provided in respect of the employment of the employee.

71. The payment of a Hospital Excess Refund to an Eligible Employee or an Eligible Family Member in a year of tax is a 'benefit' as defined in subsection 136(1). This benefit is not provided in respect of the employment of the employee and will not be a 'fringe benefit' as defined in subsection 136(1).

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10; TR 2007/12

*Subject references:*

- exempt benefits
- fringe benefits
- fringe benefits tax
- in respect of employment
- minor benefits

*Legislative references:*

- FBTA 1986
- FBTA 1986 58P

- FBTA 1986 58P(1)(e)
- FBTA 1986 58P(1)(f)
- FBTA 1986 58P(2)
- FBTA 1986 58P(2)(b)
- FBTA 1986 136(1)
- FBTA 1986 159(2)
- TAA 1953
- Copyright Act 1968

*Case references:*

- McArdle v. FC of T 88 ATC 4222; (1988) 19 ATR 985
- Walstern v. Federal Commissioner of Taxation (2003) 138 FCR 1; 2003 ATC 5076; (2003) 54 ATR 423

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ATO references

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