


***CR 2021/15 - CU Health Pty Limited - exempt benefits relating to work-related medical examinations, medical screenings, preventative health care and counselling of employees***

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## Class Ruling

# CU Health Pty Limited – exempt benefits relating to work-related medical examinations, medical screenings, preventative health care and counselling of employees

### Relying on this Ruling

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

If this ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in the ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this ruling

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### What this Ruling is about

1. This Ruling sets out the fringe benefits tax consequences for employers who engage the services of CU Health Pty Limited (CU Health) to provide work-related medical examinations, medical screenings, preventative health care and counselling to employees.
  2. Full details of this arrangement are set out in paragraphs 10 to 23 of this Ruling.
- Note:** By issuing this Ruling, the ATO is not endorsing this service. Potential purchasers/users must form their own view about the service.
3. All legislative references are to the *Fringe Benefits Tax Assessment Act 1986* unless otherwise indicated.

### Who this Ruling applies to

4. This Ruling applies to you if you are an employer engaging CU Health's services.

### When this Ruling applies

5. This Ruling applies from 1 April 2020 to 31 March 2025.

## **Ruling**

6. The 'General Practitioner Video Consultation' is an exempt benefit under subparagraph 58M(1)(c)(ii) being 'work-related medical screening' as it is an examination or test conducted by a qualified general practitioner (GP) to ascertain whether an employee is suffering from work-related trauma, and is provided to all employees of the same general risk and duties of employment.

7. The 'Dietitian Video Consultation' is an exempt benefit under subparagraph 58M(1)(c)(iv) being 'work-related counselling' as it is counselling attended by an employee to improve or maintain the employee's performance relating to health and fitness, and was not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

8. The 'Psychologist Video Consultation' is an exempt benefit under subparagraph 58M(1)(c)(iv) being work-related counselling as it is counselling attended by an employee to improve or maintain the employee's performance relating to health and stress management, and was not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

9. The 'Real-time counselling with Registered Nurses' is an exempt benefit under subparagraph 58M(1)(c)(iii) being 'work-related preventative health care' as it is care conducted by qualified Registered Nurses (RNs) implementing care plans based on GP consultations to prevent work-related trauma.

## **Scheme**

10. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

11. CU Health provides medical and allied healthcare services to the employees of Australian businesses through innovative digital means including video conference, the use of clinically validated bio-medical devices, and custom-designed soundproof booths or pods.

12. CU Health is an employer-funded service. Organisations engage CU Health to improve employee health and deliver improvements to the underlying productivity and profitability of an organisation.

13. The benefits of CU Health to organisations are quantified with Annual Wellbeing Dividends. CU Health improves access and convenience to managing one's routine healthcare within an innovative and engaging custom platform that has been designed to seamlessly integrate and align with the daily workflow and lives of professionals.

14. CU Health's premium healthcare service reduces prevailing levels of absenteeism and presenteeism through:

- being a bridge between employees and their regular GP to further the provision of good medicine and continuity of care
- guiding employees who do not have a regular GP to find a CU Health doctor to provide treatments for symptomatic issues, as well as to offer preventative healthcare services and guidance on an ongoing basis
- embedding clinical psychologists, dietitians and RNs as part of a consistent medical team to monitor underlying risk factors that can exacerbate chronic conditions and provide actionable advice to manage and prevent chronic health conditions

- providing regular on-premise seminars to promote health education to improve health literacy and promote a healthy, positive work culture, and
- being a high-value service offering that enables staff retention and improves morale.

15. Employers pay CU Health a fixed fee to provide employees with services under the CU Health program. In return, CU Health will provide four different types of consultations as part of its service. The enrolment will entitle each employee to a set number of consultations through a credit system for the following consultation types:

- General Practitioner Video Consultations
- Dietitian Video Consultations
- Psychologist Video Consultations
- Real-time counselling with Registered Nurses

16. CU Health provides medical examination and healthcare advice through the various modes of consultations to employees in a proactive and convenient manner, rather than a reactive manner of consulting GPs when they are already unwell.

### **General Practitioner Video Consultations**

17. A consistent team of GPs will routinely be available to:

- assess the traumatic exposure within a workforce population
- test the symptomatic needs of employees in order to optimise occupational health and wellbeing
- reassess ongoing management and prevention of chronic illness to prevent downstream traumatic complications
- perform preventive health screening to identify risk factors for undiagnosed illnesses and progress appropriate management plans
- provide access to other forms of medical examinations other than some physical examinations.

18. CU Health's platform allows for video consultations with a GP. This is the initial examination of a patient allowing the services listed in paragraph 17 of this Ruling to be the gateway to the broader healthcare team to address unmet health concerns in an organisation's workforce through early diagnosis and detection in a digital format that can be delivered during working hours.

19. Once a year, each employee will be entitled to preventative health screening. This includes an extended video examination with a GP to identify specific risks for the individual followed by an array of standard pathology requests, designed to identify risk factors for disease or make early diagnoses of underlying chronic illness. To facilitate this engagement and increase the likelihood of patient compliance with management plans, a registered nurse is available to provide support and guidance in between medical appointments.

### **Dietitian Video Consultations**

20. In partnership with the GPs, a consistent team of Accredited Practising Dietitians (members of the Dietitians Association of Australia) is available to investigate the underlying nutritional contributors to existing illnesses. They will work with the employees

to educate them on the importance of nutrition and how their existing illnesses can be impacted by their diet. As part of this provision of information, the dietitians will provide the employees with appropriate treatment plans to prevent downstream illnesses that would have either resulted in the trauma of a new chronic disease diagnosis or impact the occupational wellbeing of an employee.

## **Psychologist Video Consultations**

21. A consistent team of clinical psychologists is available to progress the mental healthcare plans initiated by GPs. These psychologists have a special interest in the wellbeing of working professionals and in organisational wellbeing, including managing conditions such as major depression, anxiety, substance abuse, eating disorders, post-natal depression, anxiety associated with family planning, and post-traumatic stress disorder.

## **Real-time counselling with Registered Nurses**

22. In partnership with the healthcare team, a consistent team of RNs is available to drive engagement with personalised treatment plans between episodes of care. This service is designed to ensure that treatment plans are safely followed, and compliance is optimised, thus forming a holistic system of care together with the GP and other CU Health consultations to enhance the timely delivery of healthcare which directly addresses the unmet health needs of employees.

23. In between GP sessions, CU Health allows for RNs to keep in regular contact with the employees through a unique question-and-answer-based dialogue feature. The RNs are able to review the patient's medical file and provide personalised care. In partnership with the healthcare team, a consistent team of RNs is available to drive engagement with personalised treatment plans between episodes of care. This service is designed to ensure that treatment plans are safely followed, and compliance is optimised, thus forming a holistic system of care together with the GP and other CU Health consultations to enhance the timely delivery of healthcare which directly addresses the unmet health needs of employees.

## Appendix – Explanation

**❶** *This Explanation 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.*

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### Has a benefit been provided?

24. A 'fringe benefit' is defined in subsection 136(1) as:
- ... in relation to an employee, in relation to the employer of the employee, in relation to a year of tax, means a benefit:
- (a) provided at any time during the year of tax; or
  - (b) provided in respect of the year of tax;
- being a benefit provided to the employee or to an associate of the employee by:
- (c) the employer; or
  - (d) an associate of the employer; or
  - (e) ...
- in respect of the employment of the employee, but does not include:
- (f) ...
  - (g) a benefit that is an exempt benefit in relation to the year of tax; ...
25. A 'benefit' is defined in subsection 136(1) as including:
- ... 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;
    - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or

- (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; ...

26. For a fringe benefit to arise, a benefit must have been provided, and the provision of the benefit must have arisen in respect of the employment of the employee.

27. An employer, for a fixed fee pre-agreed with CU Health, will bear the cost to enrol its employees in the CU Health program which will enable the employees to obtain an agreed number of consultations. As a benefit is being provided at each consultation, the various health professionals are providing employees with a service with the cost borne by the employer.

28. A benefit will be a residual benefit if it cannot be categorised as a fringe benefit under Divisions 2 to 11. CU Health is an employer-funded health program where the employees are not liable to pay for the services and as such there are no expense reimbursements. The benefit is not an expense payment fringe benefit under section 20, or any other fringe benefit under Divisions 2 to 11. The benefit is therefore a residual benefit under section 45.

### **Section 58M exempt benefits**

29. A benefit will not be a fringe benefit if it is an exempt benefit. The relevant section for this Ruling is subsection 58M(1):

Where any of the following benefits is provided in respect of the employment of an employee:

- (a) ...
- (b) ...
- (c) a residual benefit where the recipients benefit consists of the provision of:
  - (i) a work-related medical examination of the employee;
  - (ii) work-related medical screening of the employee;
  - (iii) work-related preventative health care of the employee;
  - (iv) work-related counselling of the employee or of an associate of the employee; ...

the benefit is an exempt benefit.

30. The term 'work-related medical examination' is defined to mean, broadly, an examination or test carried out by a medical practitioner, nurse, dentist, optometrist or audiometrist where the employee is required to undergo the examination or test in order to commence new employment, to transfer to a different job with the same employer, or to gain entry to a superannuation fund. The services provided by CU Health are not limited to this definition, and therefore the definition is not applicable to the services which are the subject of this Ruling.

31. The term 'work-related medical screening' is defined in subsection 136(1) to mean:

in relation to an employee of an employer, means an examination or test carried out by, or on behalf of, an audiometrist or a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to ascertain whether the employee has suffered, is suffering or is at risk of suffering, from work-related trauma, but does not include an examination or test that is not made available generally to all employees of the employer:

- (a) who are likely to have suffered, be suffering or be at risk of suffering, from similar work-related trauma;

- (b) who perform the duties of their employment at or near the place where the employee performs the duties of his or her employment; and
- (c) whose duties of employment are similar to those of the employee.

32. The term 'work-related preventative health care' is defined in subsection 136(1) to mean:

in relation to an employee of an employer, means any form of care provided by, or on behalf of, a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to prevent the employee suffering from work-related trauma, but does not include a form of care that is not made available generally to all employees of the employer:

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

33. The term 'work-related counselling' is defined in subsection 136(1) to mean:

- (a) in relation to an employee of an employer, means counselling attended by the employee; and
- (b) in relation to an associate of an employee of an employer, means counselling attended by the associate where the associate is accompanied by the employee;

where all of the following conditions are satisfied:

- (c) the attendance of:
  - (i) if paragraph (a) applies – the employee; and
  - (ii) if paragraph (b) applies – both the employee and the associate;

at the counselling gives effect to an objective, purpose, plan or policy devised, adopted or required to be followed, by the employer to:

- (iii) improve or maintain the quality of the performance of employees' duties; or
  - (iv) prepare employees for retirement;
- (d) the counselling relates to any of the following matters:
  - (i) safety;
  - (ii) health;
  - (iii) fitness;
  - (iv) stress management;
  - (v) personal relationships;
  - (vi) retirement problems;
  - (vii) drug or alcohol abuse;
  - (viii) rehabilitation or prevention of work-related trauma or of other disease or injury;
  - (ix) first aid;
  - (x) any similar matter;
- (e) there is no benefit that:
  - (i) is provided in respect of the employment of the employee;
  - (ii) consists of the provision of, or relates to, the counselling; and



- (iii) is provided wholly or principally as a reward for services rendered or to be rendered by the employee.

34. The term 'work-related trauma' is defined in subsection 136(1):

in relation to an employee, means:

- (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.

### **Will General Practitioner Video Consultations be an exempt benefit under subparagraph 58M(1)(c)(ii)?**

35. To qualify for the exemption under subparagraph 58M(1)(c)(ii), an examination or test needs to be carried out by a specified medical professional, in order to ascertain whether the employee has suffered, is suffering or is at risk of suffering, from work-related trauma, and the examination or test is available to all specified employees.

36. An examination or test is a process that tries to determine if a person has some sort of condition, either physical or psychological.

37. In a General Practitioner Video Consultation, a legally-qualified medical practitioner will perform standard GP medical consultations, including extensive diagnostic and treatment components, to either address a medical complaint, perform a basic medical follow-up, or provide repeat prescriptions.

38. The General Practitioner Video Consultation aims to address the traumatic exposure within a workforce by conducting examinations and questioning to ascertain the existence or risk of contraction of an employee's health problems. The examinations focus on detecting trauma or risk factors, managing any trauma, or preventing the trauma from occurring in the future.

39. The General Practitioner Video Consultation aims to reduce absenteeism by both cutting down hours in work time for doctor consultations, and prevention of illnesses, through convenient onsite access to GPs through 'telehealth technology'. The reduction of absenteeism reduces work-related trauma as it reduces disadvantage to the employee.

40. The General Practitioner Video Consultation is provided to all employees of the same general risk and duties of employment.

41. The General Practitioner Video Consultation is an exempt benefit under subparagraph 58M(1)(c)(ii) being 'work-related medical screening' as it is an examination or test conducted by a qualified GP to ascertain whether an employee is suffering from work-related trauma, and is provided to all employees of the same general risk and duties of employment.

**Will Dietitian Video Consultations be an exempt benefit under subparagraph 58M(1)(c)(iv)?**

42. Dietitians are not listed among the medical professionals in any of the work-related activities. Work-related counselling does not list medical professionals.

43. The word 'counsel' refers to advice, opinion or instruction given in directing the judgment or conduct of another. The definition indicates that counselling involves a suitably qualified person providing advice or guidance to someone else in relation to their established area of expertise. The dietitian sessions will only be provided by qualified professionals in the field of dietetics, and they are qualified dietitians of the professional body of Dietitians Australia.

44. The advice can be given either on an individual basis or in a group situation such as a seminar. The term 'counselling' is defined in subsection 136(1) as 'includes the giving of advice or information in a seminar'.

45. The employees enrolled in CU Health's scheme are the only attendees of these consultations.

46. The counselling needs to give effect to an objective, purpose, plan or policy adopted or required to be followed by the employer. The objective or purpose of the employer is that better health leads to higher productivity. The consultations with the dietitians are provided to improve the productivity of the employees.

47. The definition of work-related counselling in subsection 136(1) lists 10 matters, any one of which needs to be satisfied. The relevant matters appear to be (d)(ii) health and (d)(iii) fitness. Consultations with dietitians seek to provide information and advice to the employees designed to improve their diet as a method to improve the employees' health and fitness levels.

48. Consultations with dietitians will be available as part of the package of services provided by CU Health to all employees of the employer. Employees will not be compensated any differently whether they access the services and are not required to contribute to the cost of the service. The benefit is therefore not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

49. The Dietitian Video Consultation is an exempt benefit under subparagraph 58M(1)(c)(iv) being work-related counselling as it is counselling attended by an employee to improve or maintain the employee's performance relating to health and fitness, and was not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

**Will Psychologist Video Consultations be an exempt benefit under subparagraph 58M(1)(c)(iv)?**

50. As stated in paragraphs 42 to 49 of this Ruling, the provision of counselling involves a suitably qualified person providing advice or guidance to someone else in relation to their established area of expertise.

51. The psychologists involved in the video consultations are all qualified clinical psychologists and are tasked with developing a care plan for the employees and advising them as to how working professionals can improve their psychological wellbeing including managing conditions such as major depression, anxiety, substance abuse, eating disorders, post-natal depression, anxiety associated with family planning, and post-traumatic stress disorder.

52. The employees enrolled in CU Health's scheme are the only attendees of these consultations.

53. The counselling needs to give effect to an objective, purpose, plan or policy adopted or required to be followed by the employer. The objective or purpose of the employer is to reduce mental stress and to achieve improvement in the productivity of a company's employees.

54. The definition of work-related counselling in subsection 136(1) lists 10 matters, any one of which needs to be satisfied. The relevant matters appear to be (d)(ii) health and (d)(iv) stress management. Consultations with psychologists seek to provide information and advice to the employees, designed to manage any stress or mental health problems that will affect the productivity of the employees.

55. Consultations with psychologists will be available as part of the package of services provided by CU Health to all employees of the employer. Employees will not be compensated any differently whether they access the services and are not required to contribute to the cost of the service. The benefit is therefore not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

56. The Psychologist Video Consultations is an exempt benefit under subparagraph 58M(1)(c)(iv) being work-related counselling as it is counselling attended by an employee to improve or maintain the employee's performance relating to health and stress management, and was not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

## **Will Real-time counselling with Registered Nurses be an exempt benefit under subparagraph 58M(1)(c)(iii)?**

57. A form of care provided by medical professionals, including nurses, to prevent work-related trauma may be considered to be work-related preventative health care.

58. The real-time counselling is provided by qualified RNs who engage in regular contact with the employees to review and answer questions the employees may have about their health, and advise employees how they can best stay on track with the care plan set down by the GPs.

59. The RNs will support the healthcare team to drive engagement with personalised treatment plans between GP consultations that are designed by the GP to address any injury, disease, damage or condition that is connected to or associated with the employee's employment.

60. The primary purpose of these sessions is to provide continuing care and to ensure the care plan devised in the GP consultations that is designed by the GP to address any injury, disease, damage or condition that is connected to or associated with the employee's employment, is safely followed.

61. The care plans conducted by RNs arise from examinations or tests under the General Practitioner Video Consultations have the purpose of optimising occupational health and wellbeing that is otherwise neglected due to the workplace arrangements and gaps in the traditional provision of healthcare, and to ensure that the management and prevention of chronic illness is optimised to prevent downstream traumatic complications.

62. The prevention of work-related trauma is paramount, as the consultations are designed to prevent the contraction, aggravation, acceleration or recurrence of a disease of the employee.

63. The Real-time counselling with Registered Nurses is provided to all employees of the same general risk and duties of employment.

64. The Real-time counselling with Registered Nurses is an exempt benefit under subparagraph 58M(1)(c)(iii) being work-related preventative health care as it is counselling conducted by qualified RNs implementing care plans based on GP consultations to prevent work-related trauma.

## References

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- FBTAA Div 2
- FBTAA Div 3
- FBTAA Div 4
- FBTAA Div 5
- FBTAA 20
- FBTAA Div 6

- FBTAA Div 7
- FBTAA Div 8
- FBTAA Div 9
- FBTAA Div 10
- FBTAA Div 11
- FBTAA 45
- FBTAA 58M(1)(c)(ii)
- FBTAA 58M(1)(c)(iii)
- FBTAA 58M(1)(c)(iv)
- FBTAA 136(1)
- TAA 1953

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ATO references

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