


***CR 2006/70 - Income tax: Fringe benefits tax:
employee participation in the Weight Watchers 'At
Work' program***

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Class Ruling

Fringe benefits tax: employee participation in the Weight Watchers 'At Work' program

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① 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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 45 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- subparagraph 58M(1)(c)(iv) of the FBTAA; and
- subsection 136(1) of the FBTAA.

Class of entities

3. The class of entities to which this Ruling applies are employers who make available the Weight Watchers 'At Work' program 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 12 to 17 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies to schemes that commence after 2 August 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:
 - it is not later withdrawn by notice in the *Gazette*; or
 - the relevant provisions are not amended.
9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).
10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:
 - the income year or other period to which the rulings relate has not begun; and

- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The scheme that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the Australian Taxation Office for this Ruling. 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 documents incorporated into this description of the scheme are:

- the application for a Class Ruling (dated 15 August 2005);
- the draft contract or agreement to be entered into by Fortuity Pty Ltd and the employers;
- the draft document titled 'Proposal for the Delivery of Weight Watchers Corporate Services' dated October 2005; and
- the letter dated 7 March 2006 clarifying details of the scheme.

13. Fortuity Pty Ltd trading as Weight Watchers (Weight Watchers) is in the business of providing counselling services to the general public with respect to weight-loss management, and the promotion and achievement of a healthy lifestyle. As an extension of these business activities, Weight Watchers is proposing to make available an 'At Work' program to assist employers in achieving their aim of improving the quality of their employee's work performance.

14. The key features of the proposed arrangement are as follows:

- a) the 'At Work' program will be available for employers who have an objective, purpose, plan or policy to improve or maintain the quality of the performance of the employees' duties through a focus on the employee's health and fitness;
- b) the employer will enter into a contract with Weight Watchers for an 'At Work' program;
- c) under the terms of the contract the employer will be liable to pay Weight Watchers for the services provided during the course of the program;

- d) each program will generally last for 12 to 14 weeks, although individual programs may be shorter or longer depending on the requirements of the counselee, and will involve employees attending weekly meetings on the employer's business premises;
- e) the meetings will be held in either a group format or as one-on-one counselling sessions depending on the needs of the individual counselees;
- f) the meetings which will be held either before work, during lunch, during regular business hours, or immediately after work will:
 - (i) focus on matters relating to health and fitness, such as weight loss, healthy eating and exercises; and
 - (ii) include a confidential weigh-in, lecture and discussion;
- g) at these meetings, a specially trained leader, using proven Weight Watchers techniques will discuss topics such as:
 - (i) coping with coffee breaks;
 - (ii) surviving the lunch hour;
 - (iii) fitting exercise into a busy schedule;
 - (iv) maintaining motivation; and
 - (v) dealing with the effects of time pressure on eating habits;
- h) Weight Watchers will provide performance data to the employer for agreed periods which will include information on:
 - (i) the number of meetings held;
 - (ii) number of meeting attendees; and
 - (iii) weight loss outcomes by meeting; and
- i) Weight Watchers will appoint a national account manager to work with the employer to ensure the program achieves the desired outcomes.

Program responsibilities

15. It will be the responsibility of Weight Watchers to:
- provide a range of services to support employees;
 - provide leaders to conduct weekly 'At Work' meetings at agreed locations;
 - provide all program materials to employees; and

- report to the employer on program outcomes.
16. It will be the responsibility of the employer to:
- provide Weight Watchers with information on the details of employees enrolling in the program;
 - advertise the meeting times to employees; and
 - provide a room for 'At Work' meetings and advise both Weight Watchers and employees of any changes in room allocation prior to the meeting.
17. The opportunity to attend the meetings will not be provided to employees as:
- a reward for services rendered;
 - a reward for specific achievements; or
 - as part of a salary sacrifice arrangement.

Ruling

18. The attendance of the employees of the employer at the 'At Work' meetings will be an exempt benefit under subparagraph 58M(1)(c)(iv) of the FBTAA.

Commissioner of Taxation

2 August 2006

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.*

19. Subparagraph 58M(1)(c)(iv) of the FBTAA provides that where a residual benefit is provided in respect of the employment of an employee the benefit will be an exempt benefit if it consists of the provision of work-related counselling of the employee.

20. The employees will be attending weekly meetings on the employer's business premises. These meetings will focus on matters relating to health and fitness, such as weight loss, healthy eating and exercise programs. Each meeting will include a confidential weigh-in, lecture and discussion.

Is a benefit being provided to the employees?

21. The term 'benefit' is defined in subsection 136(1) of the FBTAA 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;
 - (ii) ...

As the services to be provided to the employees who attend the weekly meetings come within this definition, a 'benefit' will be provided to the employees.

Is the benefit provided to employees a residual benefit?

22. As this benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 of Part III of the FBTAA it will be a residual benefit in accordance with section 45 of the FBTAA.

Does the benefit consist of the provision of counselling?

23. The term 'counselling' as defined in subsection 136(1) of the FBTAA includes 'the giving of advice or information in a seminar'.

24. The Explanatory Memorandum to the Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 states in Part B:

... the term '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.

25. The services provided to employees at the 'At Work' meetings come within the definition of counselling as they involve the giving of advice or information at a meeting.

Is the counselling 'work-related counselling'?

26. The definition of 'work-related counselling' in subsection 136(1) of the FBTA provides that counselling attended by an employee will be work-related counselling where all the following conditions are satisfied:

- a) the attendance of the employee at the counselling 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 employees' duties; or
 - prepare employees for retirement;
- b) 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
- c) the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

(a) Does the 'counselling' give effect to an objective, purpose, plan or policy devised, adopted or required to be followed, by the employer to either improve or maintain the quality of the performance of the employee's duties; or prepare employees for retirement?

27. The employers to whom this program will be offered will have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

(b) Does the 'counselling' relate to the specified matters?

28. The 'At Work' meetings will focus on matters relating to health and fitness (such as weight loss, healthy eating and exercise programs). Each meeting will include a confidential weigh-in, lecture and discussion. Topics such as coping with coffee breaks, surviving lunch hour, fitting exercise into a busy schedule, maintaining motivation and dealing with the effects of time pressure on eating habits will be discussed. As these topics relate to health and fitness the counselling will relate to the specified matters.

(c) Has the benefit been provided wholly or principally as a reward for services rendered or to be rendered by the employee?

29. As the employer will not be providing the program to employees as a reward for specific achievements, or through a salary sacrifice arrangement the benefit will not be provided wholly or principally as a reward for services rendered, or to be rendered by the employee.

30. As each of these three requirements are satisfied the attendance of the employee at the 'At Work' meetings will be an exempt benefit under subparagraph 58M(1)(c)(iv) of the FBTAA.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Subject references:

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

Legislative references:

- FBTA 1986 Pt III Div 2 Subdiv A
- FBTA 1986 Pt III Div 3 Subdiv A
- FBTA 1986 Pt III Div 4 Subdiv A
- FBTA 1986 Pt III Div 5 Subdiv A
- FBTA 1986 Pt III Div 6 Subdiv A
- FBTA 1986 Pt III Div 7 Subdiv A

- FBTA 1986 Pt III Div 8 Subdiv A
- FBTA 1986 Pt III Div 9 Subdiv A
- FBTA 1986 Pt III Div 9A Subdiv A
- FBTA 1986 Pt III Div 10 Subdiv A
- FBTA 1986 Pt III Div 10A Subdiv A
- FBTA 1986 Pt III Div 11 Subdiv A
- FBTA 1986 45
- FBTA 1986 58M(1)(c)(iv)
- FBTA 1986 136(1)
- Copyright Act 2001
- TAA 1953
- TAA 1953 Sch1 357-75(1)

Other references:

- Explanatory Memorandum to the Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987

ATO references

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