


CR 2008/73 - Fringe benefits tax: Fernwood Corporate Health Counselling program

 This cover sheet is provided for information only. It does not form part of *CR 2008/73 - Fringe benefits tax: Fernwood Corporate Health Counselling program*



Class Ruling

Fringe benefits tax: Fernwood Corporate Health Counselling program

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	38
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	42
Appendix 2:	
Detailed contents list	103

ⓘ 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 58M of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 58P of the FBTAA; and
- subsection 136(1) of the FBTAA.

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

Class of entities

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

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 37 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 from 1 April 2008. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. These documents, or relevant parts of them, 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 30 November 2007);
 - the draft document titled 'Corporate Services Agreement';
 - a document titled 'Fernwood Women's Health Clubs Corporate Health Counselling Program Proposal';

- additional information provided in the letter dated 17 March 2008; and
- additional information provided in the letter dated 21 July 2008.

10. Fernwood Women's Health Clubs (Australia) Pty Ltd (Fernwood) provides a range of services in relation to women's health and fitness, including weight loss and work/life balance. As an extension of these activities, Fernwood has developed a Corporate Health Counselling program to be offered to employers who have a plan or policy in place which aims to improve the quality of the performance of employee's duties through a focus on the health and fitness of the employees.

11. The program is designed to run for 13 weeks, although this can be increased according to the specific needs of the employer and employees.

12. The program which will only be available for female employees is designed to provide women in the workplace with the additional education and skills to enable them to develop and maintain a level of fitness and health, together with a healthier work/life balance.

13. An employer who wishes to offer the program to its employees will sign an agreement with Fernwood. Under the agreement Fernwood will:

- provide the listed services;
- hold all authorisations, qualifications, permits, licences and current membership of any industry associations or other bodies required to perform the services;
- comply with the employer's usual standards of behaviour, operating principles, policies and procedures including the employer's occupational health and safety policies;
- comply with reasonable directions from the employer to ensure minimal interference with the employer's operations; and
- provide staff to conduct the sessions at agreed times.

14. The agreement provides the employer:

- will ensure the employees are available at the premises during the session times;
- will pay Fernwood the service fee set out in the agreement;
- will ensure premises occupied by the employer, or otherwise supplied by the employer, are suitably furnished and available to be used for the sessions; and

- will not during the period of the agreement carry on a business that is similar or competes with Fernwood. Nor will it engage any other person for purposes of providing services similar to or the same as services provided by Fernwood.

15. At the completion of the program Fernwood will provide the employer with a report providing various details including attendances, overall group weight loss and a summary of a program evaluation completed by participating employees at the end of the program.

16. Six months after the completion of the program Fernwood will contact participating employees to obtain details of their ongoing performance in the areas of weight loss, fitness, etc. The group results of this subsequent review will be provided to the employer.

17. The plan will be funded directly by the employer. Employees will not be able to enter into salary sacrifice arrangements in relation to costs of the program and the employer will not provide the benefit as a reward for performance or achievement of specific targets.

18. The services to be provided by Fernwood involve the provision of:

- individual review sessions;
- weekly group sessions; and
- a Participant Tool Kit.

Individual review sessions

19. In week 1 each participant will attend a 30 minute, one on one appointment with a Program Counsellor. This session will include:

- an overall 'wellness' assessment;
- personal introduction to the 'Simplicity Program' (weight control program);
- basic personality profile;
- goal setting;
- recording of height, weight, body fat and body measurements;
- assessment of current habits;
- explanation of new health eating guidelines; and
- general questions and answers.

20. Individual sessions will also be scheduled at week seven for a mid point progress review (15 minutes duration) and week 13 for a final progress review (30 minute duration).

Weekly group sessions

21. Each week a trainer will conduct a group seminar/discussion on various topics related to the participants' health, well being and fitness.

22. The sessions will be of sixty minutes duration and have a special emphasis on how to achieve a healthy lifestyle given the time constraints and other challenges of working.

23. The topics include:

- SMART Goals – setting realistic health goals;
- Understanding the basics of health eating and the importance of attaining work/life balance;
- Preparation – the key to daily success;
- Incorporating regular exercise into your working day;
- Workplace functions – making healthier choices;
- Incorporating regular eating into your working day;
- Hydration – for improved concentration and performance;
- Learn to navigate through workplace temptations;
- Time management for the time poor;
- Overcoming stress related consumption;
- Using technology to assist your healthy habits; and
- Creating a healthy workplace culture.

24. In addition to the specified topics the weekly sessions will involve:

- weekly weigh-ins and body fat readings;
- new educational/motivational topics for discussion each week;
- progress reviews;
- discussion of obstacles;
- provision of strategies to overcome obstacles; and
- discussion of relevant lifestyle strategies.

25. These sessions are designed to be conducted at the employer's premises. However, the sessions can also be conducted at the premises of the local Fernwood Health Club where this is preferred by either the employer or the employees. For example, where the employer's premises are not suitable for the program sessions, or where there is a preference to take the participating employees away from the worksite to obtain the focus required for the maximum benefits of the program.

26. The timing of the sessions is subject to the requirements of the employer and employees. They can be conducted during work hours, during lunch time or before or after work.

Participant Tool Kit

27. Each employee participating in the program will receive a Participant Tool Kit that will include:

- a food and exercise journal to record progress and habits;
- the 'Simplicity Nutritional Program' healthy eating guidelines;
- weekly resources related to individual weekly topics;
- one on one support and motivation;
- group support and motivation;
- access to Fernwood Women's Health Club website for additional resources, information and support;
- a copy of the 'Fernwood magazine';
- six guest passes that will enable a participating employee to attend a Fernwood 'beginners' group fitness class; and
- an offer of discounted membership of Fernwood Health Clubs if the participating employee becomes a full member.

Beginners' group classes

28. A participating employee is able to use the six guest passes included in the Participant Tool Kit to attend 'beginners' group classes while they are participating in the program. These passes cannot be used by, or transferred to, any other person.

29. The beginners' group classes involve an explanation and practical demonstration of various stretching, strength and aerobic activities by a qualified instructor which the participants then practice. They do not include the use of, or demonstration of gym equipment.

30. The purpose of the classes is:

- to provide a practical demonstration of the exercise concepts discussed and introduced in the weekly counselling sessions; and
- to encourage the practical application of the concepts discussed in the weekly counselling sessions.

31. The timing and location of the classes will depend upon the number of employees participating in the program and the suitability of the employer's premises.

32. If an employer has an appropriate number of employees participating in the program and suitable premises and facilities, the sessions can be conducted at the employer's premises. Where the classes are conducted on the employer's premises the classes will only be attended by employees of the employer who are enrolled in the program.

33. Alternatively, the classes will be conducted as a mixed group class on Fernwood's premises. These classes may be attended by employees of various employers and full members of the Fernwood Health Club.

34. Fernwood members who attend the sessions do so as an introduction to the basic concepts of stretching, strength and aerobic activities. There is no separate fee charged to the members for attendance at such sessions.

Discounted membership offer

35. A participating employee who takes up the discounted membership offer will:

- receive full membership of Fernwood at a reduced price; and
- not pay the usual joining fee.

36. Fernwood offers this same discount to employees of selected employers as a means of attracting new members.

37. Full members of Fernwood have full access to all of the facilities of Fernwood including access to the gym, qualified instructors, use of shower facilities and breakfast bar etc.

Ruling

38. The provision of individual review sessions as part of the Fernwood Corporate Health Counselling program will constitute an exempt benefit as work-related counselling in terms of subsection 58M(1).

39. The provision of weekly group sessions as part of the Fernwood Corporate Health Counselling program will constitute an exempt benefit as work-related counselling in terms of subsection 58M(1).

40. The attendance at the six 'beginners' group fitness classes, the provision of full club membership at a discount and the waiving of the joining fee are separate benefits that will not constitute work-related counselling.

41. The attendance at the six 'beginners' group fitness classes, the provision of full club membership at a discount and the waiving of the joining fee will be exempt minor benefits where the requirements of section 58P are satisfied.

Commissioner of Taxation

12 November 2008

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.*

Do employees participating in the Fernwood Corporate Health Counselling program receive a benefit?

42. 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...

43. Female employees of employers participating in the program could therefore receive the following benefits:

- (a) individual review sessions at the start, middle and end of the program;
- (b) 13 weekly group sessions;
- (c) six 'beginners' group fitness classes;
- (d) full club membership at a discount; and
- (e) the waiving of the joining fee.

44. Subsection 136(1) defines the term 'fringe benefit'. The term does not include, by virtue of paragraph (g) of the definition, a benefit that '...is an exempt benefit...'

Will the benefits be exempt benefits?

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

- 1. the exemption for work-related counselling in section 58M; and
- 2. the exemption for minor benefits in section 58P.

Work-related counselling

46. In accordance with the definition of 'work-related counselling' in subsection 136(1) the benefits provided to employees will be work-related counselling if the following four conditions are satisfied:

- (i) the benefit is counselling attended by the employee;

- (ii) 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;
- (iii) 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
- (iv) the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

Counselling

47. 'Counselling' is defined in subsection 136(1) to 'include the giving of advice or information in a seminar'.

48. In understanding the meaning of this term it is helpful to refer to the ordinary dictionary meanings of the words involved and the Explanatory Memorandum.

49. The *Macquarie Dictionary*¹ defines the term 'counsel' as 'advice; opinion or instruction given in directing the judgment or conduct of another'. The *Australian Concise Oxford Dictionary*² 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'.

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

² 2004, 4th Ed., Oxford University Press.

50. The Explanatory Memorandum to the Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 (the Explanatory Memorandum) 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.

51. 'Seminar' is defined in section 32-65 of the *Income Tax Assessment Act 1997* to include 'a conference, convention, lecture, meeting (including a meeting for presentation of awards), speech, 'question and answer session', training session or educational course'.

52. The *Macquarie Dictionary*³ defines 'seminar' as '2. a meeting organised to discuss a specific topic'.

53. The wording of these definitions suggests 'counselling' is not limited to verbal advice provided at a seminar, or similar session, but can extend to include discussion group meetings facilitated by a trained leader that include some practical demonstrations. The knowledge or skills provided in such situations can be in a wide range of areas, however, a predominantly physical activity session with negligible or no lecture component, such as attendance at an external gym will not constitute 'counselling'.

(a) Do the individual review sessions constitute the provision of work-related counselling?

(i) Is the attendance at the individual review sessions considered to be 'counselling'?

54. The Explanatory Memorandum indicates 'work-related counselling' is not limited to group sessions, but can extend to include individual counselling.

55. The individual review sessions which include providing advice on the 'Simplicity Program', goal setting, an explanation of eating guidelines and answering general questions therefore come within the definition of 'counselling' as they involve the giving of advice or information.

56. As the wellness assessment and the recording of body measurements at these sessions are an integral part of the advice provided at the individual review sessions, they are part of the 'counselling'.

57. Therefore, when the employee attends the individual review sessions they are considered to be attending 'counselling'.

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

(ii) Will the attendance at individual review sessions give effect to a required objective, purpose, plan, or policy?

58. The attendance of the employees at these sessions will give effect to an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

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

59. The counselling relates to the specified matters as it relates to the health and fitness of employees.

(iv) Will the benefit be provided wholly, or principally, as a reward for services rendered or to be rendered by the employee?

60. The employer will not be providing the program to employees wholly or principally as a reward for services rendered, or to be rendered by the employee. These arrangements are not subject to any salary sacrifice packaging and the costs are fully funded by the employer.

61. As each of the four requirements are satisfied the participation of the employee in the individual review sessions will be an exempt benefit under subsection 58M(1).

(b) Do the weekly group sessions constitute the provision of work-related counselling?

(i) Are the weekly group sessions considered to be 'counselling'?

62. Based on the definitions discussed at paragraphs 47 to 53 of this Ruling the group sessions provided to employees on various topics including setting health goals, healthy eating, work/life balance, exercise, hydration, time management, using technology to assist healthy habits and creating a healthy workplace culture come within the definition of 'counselling' as they involve the giving of advice or information at a seminar.

63. Therefore, when an employee attends a weekly group session they are considered to be attending counselling.

(ii) Will the attendance at weekly group sessions give effect to a required objective, purpose, plan, or policy?

64. The attendance of the employees at these sessions will give effect to an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

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

65. The counselling relates to the specified matters as it relates to the health and fitness of employees.

(iv) Will the benefit be provided wholly, or principally, as a reward for services rendered or to be rendered by the employee?

66. The employer will not be providing the program to employees wholly or principally as a reward for services rendered, or to be rendered by the employee. They are not subject to any salary sacrifice arrangement as the costs are fully funded by the employer.

67. As each of the four requirements are satisfied the participation of the employee in the weekly group sessions will be an exempt benefit under subsection 58M(1).

(c) Does the 'beginners' group fitness class constitute work related counselling?

(i) Is the attendance considered to be 'counselling'?

68. The 'beginners' group fitness classes are designed to provide participants with an explanation and practical demonstration of various stretching, strength and aerobic activities which the participants then practice.

69. The definition of 'counselling' discussed at paragraphs 47 to 53 of this Ruling is not limited to sessions that only involve the provision of verbal advice, but can extend to include sessions at which physical demonstrations are provided. However, it will not include sessions that are predominately physical activity sessions with negligible or no lecture component.

(ii) Will the attendance at weekly group sessions give effect to a required objective, purpose, plan, or policy?

70. The 'beginners' group fitness classes are conducted separately to the program. A participating employee who attends these classes will do so as a result of the employee's decision to accept the invitation provided in the Participant Tool Kit, rather than as part of the program provided by the employer.

71. Therefore, although the classes may relate to the health and fitness of participating employees, the participation of an employee in a 'beginners' group fitness class will not be an exempt benefit under section 58M as it is not part of an objective, purpose, plan or policy devised, adopted or required to be followed by the employer.

(d) Will the provision of full club membership at a discount constitute work related counselling?

(i) Is the provision of full club membership at a discount considered to be 'counselling'?

72. Full membership of a Fernwood Club enables a person to have full access to all of the facilities of Fernwood including access to the gym, qualified instructors, use of shower facilities and breakfast bar etc. These facilities and services are separate to the individual review and weekly group sessions.

73. As discussed at paragraphs 47 to 53 of this Ruling the definition of 'counselling' does not extend to sessions or activities in relation to predominately physical activity sessions with negligible or no lecture component, such as attendance at an external gym. By itself, attendance at a gym does not involve the provision of advice or information.

(ii) Will the provision of full club membership at a discount give effect to a required objective, purpose, plan, or policy?

74. The full club membership is provided as a result of an independent decision made by the employee to accept the offer provided in the Participant Tool Kit, rather than as part of the program provided by the employer.

75. Therefore, although the full club membership may relate to the health and fitness of participating employees it will not be an exempt benefit under section 58M as it does not involve the provision of advice or information and is not part of an objective, purpose, plan or policy devised, adopted or required to be followed by the employer.

(e) Will the waiving of the joining fee constitute work related counselling?

(i) Is the waiving of the joining fee considered to be 'counselling'?

76. The joining fee that is usually charged to a person who becomes a Fernwood member will be waived for a participating employee who accepts the corporate package offer. This is not considered to be 'counselling' as it does not involve the provision of advice or information.

(ii) Will the waiving of the joining fee give effect to a required objective, purpose, plan, or policy?

77. The waiving of the joining fee occurs as a result of an independent decision made by the employee to accept the offer provided in the Participant Tool Kit, rather than as part of the program provided by the employer.

78. Although the waiving of the joining fee may relate to the health and fitness of participating employees it will not be an exempt benefit under section 58M as it does not involve the provision of advice or information and is not part of an objective, purpose, plan or policy devised, adopted or required to be followed by the employer.

79. Therefore, the following benefits are considered to be separate benefits that will not be exempt benefits under section 58M if an employee decides to accept the offers contained in the Participant Tool Kit:

- attendance at the 'beginners' group fitness classes;
- full club membership at a discount; and
- the waiving of the joining fee.

Exempt minor benefits

80. Although the attendance at the 'beginners' group fitness classes, the provision of full club membership at a discount and the waiving of the joining fee are not exempt under section 58M, each of these benefits may be an exempt minor benefit under section 58P where:

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

81. If these conditions are not satisfied in relation to any of these benefits, that benefit will be a fringe benefit as the employer in entering into the agreement with Fernwood knew, or ought reasonably to have known, that the benefit would be offered by Fernwood as part of the Participant Tool Kit.

(a) Calculating the notional taxable value

82. The definition of 'notional taxable value' in subsection 136(1) provides that the 'notional taxable value' will be the amount that would be the taxable value if the benefit was a fringe benefit. This will include any reductions that would be available for employee contributions.

(i) The notional taxable value of the benefit that arises from attending a 'beginners' group fitness class

83. Section 45 provides that a benefit will be a residual benefit where the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive) of Part III. As the attendance at the class does not come within Divisions 2 to 11 it will be a residual benefit.

84. Sections 48 to 52 provide a number of different valuation rules for calculating the taxable value of a residual benefit. The appropriate method depends upon whether the benefit is an in-house or external benefit and whether it is provided over a period.

85. As the classes are not provided by the employer, or an associate of the employer and are provided on a particular day the fringe benefit that would arise from the attendance at a 'beginners' group fitness class would be an external non-period residual fringe benefit.

86. Section 50 provides three alternative methods that can be used to calculate the taxable value of an external non-period residual fringe benefit. Where the provider is not the employer, or an associate of the employer and neither the employer, nor an associate incur expenditure to the provider under an arm's length transaction the taxable value under paragraph 50(c) will be the notional value of the benefit at the provision time less the amount of the recipient's contribution.

87. '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.

88. That is, the notional value of the beginners classes will be the amount the employee would have to pay to attend the classes in an arm's length situation.

89. Taxation Determination TD 93/231 sets out a number of methods that can be used to determine the amount an employee would have to pay for a comparable (on the basis of age, type and condition) benefit under an arm's length transaction.

(ii) The notional taxable value of the provision of full club membership at a discount

90. Under section 40 a property benefit will arise when a person provides property to another person.

91. 'Property' is defined in subsection 136(1) to include tangible and intangible property. Both these terms are also defined in subsection 136(1).

92. 'Tangible property' is defined to mean goods including animals, gas and electricity.

93. 'Intangible property' is defined to mean:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property;

but does not include:

- (d) a right arising under a contract of insurance; or
- (e) a lease or licence in respect of real property or tangible property.

94. Employees who purchase a full Fernwood membership receive a right to use all of the facilities of Fernwood including access to the gym, qualified instructors, use of the shower facilities and breakfast bar, etc. This right comes within the definition of intangible property.

95. Accordingly, if the benefit was a fringe benefit it would be a property fringe benefit.

96. Sections 42 to 44 provide a number of different valuation rules for calculating the taxable value of a property fringe benefit. The appropriate method depends upon whether the property benefit is an in-house or external property fringe benefit.

97. As the full club membership is not provided by the employer, or an associate of the employer and the provider did not acquire the property from the employer, or an associate of the employer it will be an external property fringe benefit.

98. Section 43 provides three alternative methods that can be used to calculate the taxable value of an external property fringe benefit. Where the provider is not the employer, or an associate of the employer and neither the employer, nor an associate incur expenditure to the provider under an arm's length transaction the taxable value under paragraph 43(c) will be the notional value of the recipients property at the provision time less the amount of the recipients contribution.

99. By applying TD 93/231 the notional value of the full club membership will be the lowest fee charged by Fernwood in an arm's length situation. Where this is the same as the amount paid by a participating employee the notional taxable value will be nil.

(iii) The notional taxable value of the waiving of the joining fee

100. Similarly, where the lowest fee charged by Fernwood in an arm's length situation does not include a joining fee the notional taxable value of the benefit that arises from waiving the joining fee will be nil.

(b) The criteria to be considered in determining if it is unreasonable to treat the attendance at the beginners group fitness classes, the provision of full club membership at a discount and the waiving of joining fees as fringe benefits

101. In determining whether it would be unreasonable to treat these particular benefits as fringe benefits in terms of subsection 58P(1), it would be necessary to consider:

- the infrequency and irregularity with which associated identical or similar benefits are provided;

- the sum of the notional taxable values of the minor benefit and 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 minor benefit and any associated benefits; and
- the circumstances surrounding the provision of the minor benefit and any associated benefits.

102. In considering these criteria in relation to the three benefits, each of the other specified benefits will constitute an 'associated benefit' as defined in subsection 58P(2) as:

- the specified benefits are provided in connection with the benefit;
- all the benefits relate to the same employment of a particular employee; and
- the benefit will not otherwise be an exempt benefit.

Appendix 2 – Detailed contents list

103. 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
Individual review sessions	19
Weekly group sessions	21
Participant Tool Kit	27
Beginners' group classes	28
Discounted membership offer	35
Ruling	38
Appendix 1 – Explanation	42
Do employees participating in the Fernwood Corporate Health Counselling program receive a benefit?	42
Will the benefits be exempt benefits?	45
Work-related counselling	46
Counselling	47
<i>(a) Do the individual review sessions constitute the provision of work-related counselling?</i>	<i>54</i>
<i>(i) Is the attendance at the individual review sessions considered to be 'counselling'?</i>	<i>54</i>
<i>(ii) Will the attendance at individual review sessions give effect to a required objective, purpose, plan, or policy?</i>	<i>58</i>
<i>(iii) Does the 'counselling' relate to the specified matters?</i>	<i>59</i>
<i>(iv) Will the benefit be provided wholly, or principally, as a reward for services rendered or to be rendered by the employee?</i>	<i>60</i>
<i>(b) Do the weekly group sessions constitute the provision of work-related counselling?</i>	<i>62</i>
<i>(i) Are the weekly group sessions considered to be 'counselling'?</i>	<i>62</i>
<i>(ii) Will the attendance at weekly group sessions give effect to a required objective, purpose, plan, or policy?</i>	<i>64</i>

(iii) Does the 'counselling' relate to the specified matters?	65
(iv) Will the benefit be provided wholly, or principally, as a reward for services rendered or to be rendered by the employee?	66
(c) Does the 'beginners' group fitness class constitute work related counselling?	68
(i) Is the attendance considered to be 'counselling'?	68
(ii) Will the attendance at weekly group sessions give effect to a required objective, purpose, plan, or policy?	70
(d) Will the provision of full club membership at a discount constitute work related counselling?	72
(i) Is the provision of full club membership at a discount considered to be 'counselling'?	72
(ii) Will the provision of full club membership at a discount give effect to a required objective, purpose, plan, or policy?	74
(e) Will the waiving of the joining fee constitute work related counselling?	76
(i) Is the waiving of the joining fee considered to be 'counselling'?	76
(ii) Will the waiving of the joining fee give effect to a required objective, purpose, plan, or policy?	77
Exempt minor benefits	80
(a) Calculating the notional taxable value	82
(i) The notional taxable value of the benefit that arises from attending a 'beginners' group fitness class	83
(ii) The notional taxable value of the provision of full club membership at a discount	90
(iii) The notional taxable value of the waiving of the joining fee	100
(b) The criteria to be considered in determining if it is unreasonable to treat the attendance at the beginners group fitness classes, the provision of full club membership at a discount and the waiving of joining fees as fringe benefits	101
Appendix 2 – Detailed contents list	103

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 93/231; TR 2006/10

Subject references:

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

Legislative references:

- FBTAA 1986
- FBTAA 1986 Pt III Div 2
- FBTAA 1986 Pt III Div 2 Subdiv A
- FBTAA 1986 Pt III Div 3
- FBTAA 1986 Pt III Div 3 Subdiv A
- FBTAA 1986 Pt III Div 4
- FBTAA 1986 Pt III Div 4 Subdiv A
- FBTAA 1986 Pt III Div 5
- FBTAA 1986 Pt III Div 5 Subdiv A
- FBTAA 1986 Pt III Div 6
- FBTAA 1986 Pt III Div 6 Subdiv A
- FBTAA 1986 Pt III Div 7
- FBTAA 1986 Pt III Div 7 Subdiv A
- FBTAA 1986 Pt III Div 8
- FBTAA 1986 Pt III Div 8 Subdiv A
- FBTAA 1986 Pt III Div 9
- FBTAA 1986 Pt III Div 9 Subdiv A
- FBTAA 1986 Pt III Div 9A
- FBTAA 1986 Pt III Div 9A Subdiv A
- FBTAA 1986 Pt III Div 10

- FBTAA 1986 Pt III Div 10 Subdiv A
- FBTAA 1986 Pt III Div 10A
- FBTAA 1986 Pt III Div 10A Subdiv A
- FBTAA 1986 Pt III Div 11
- FBTAA 1986 Pt III Div 11 Subdiv A
- FBTAA 1986 40
- FBTAA 1986 42
- FBTAA 1986 43
- FBTAA 1986 43(c)
- FBTAA 1986 44
- FBTAA 1986 45
- FBTAA 1986 48
- FBTAA 1986 49
- FBTAA 1986 50
- FBTAA 1986 50(c)
- FBTAA 1986 51
- FBTAA 1986 52
- FBTAA 1986 58M
- FBTAA 1986 58M(1)
- FBTAA 1986 58P
- FBTAA 1986 58P(1)
- FBTAA 1986 58P(1)(f)
- FBTAA 1986 58P(2)
- FBTAA 1986 136(1)
- ITAA 1997 32-65
- Copyright Act 1968
- TAA 1953

Other references:

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

ATO references

NO: 2008/16920

ISSN: 1445-2014

ATOLaw topic: Fringe Benefits Tax -- Miscellaneous exempt benefits